Legal Research Methods in the U.S. and Europe. By J. Paul Lomio and Henrik Spang-Hanssen. Copenhagen, Denmark: DJØF Publishing, 2008. Pp 329. ISBN 978-87-574-1715-9 US$34 95

The practice of law is increasingly globalizing, which underscores the need for lawyers to be well versed with conducting research in legal systems around the world. As the world economy becomes more integrated, this process will continue as disputes arise and are resolved through a combination of national and international law. Already, rigid distinctions are breaking down as international tribunals deal with domestic claims ranging from the designation of an ecological park in Mexico, to a Mississippi judge's conduct in a jury trial, to the denial of Value Added Tax refunds in the Ecuadorian oil sector.[20] Legal education is likewise changing to meet these new challenges The first year of Harvard Law School's curriculum was revised in 2007 to require a course on "global legal systems," while Stanford Law School already has 12 joint degree programs on offer and is adding more annually. A critical portion of this legal education will involve students, and practitioners, learning how to conduct foundational legal research in unfamiliar common and civil law systems.

Legal Research Methods in the U.S. and Europe is the first book that offers a comprehensive survey of transnational legal research methods, albeit focused on U.S. and European systems, and is meant to be equally helpful to

[20] *SD Myers, Inc v Government of Canada* (merits) (13 November 2000), 40 II M 1408, 15(1) World Trade and Arb Mat 184, *Metalclad Corporation v United Mexican States* (Merits) (30 August 2000), 16 ICSID Rev 168, 40 II.M 36, 5 ICSID Rep 212, 13(1) World Trade and Arb Mat 45, *Loewen Group, Inc and Raymond L Loewen v United States of America* (Merits) (26 June 2003), 42 ILM 811, 7 ICSID Rep 442, 15(5) World Trade and Arb Mat 97

common law lawyers and civil law attorneys ("jurists"). The purpose of the book is to introduce U.S. legal research to Europeans, and European legal research to Americans, in an effort to create a common foundation for transatlantic collaboration. The book consists of an introduction and six chapters. The chapters break down as follows: chapter 2 is a practical guide for foreign lawyers conducting legal research in the U.S.; chapter 3 focuses on European and the civil law; chapter 4 lays out resources for researching European Union (E.U.) law; chapter 5's topic is public international law; and chapters 6 and 7 analyze comparative law research methods. The book attempts to bridge legal cultures from the first page, just as the European Court of Justice does in combining civil and common law traditions, showing areas of common ground and also enumerating areas in which unique legal research tools are required. For instance, the authors note that many Europeans criticize U.S. legal research because of the significant amount of time spent on unraveling the case law on a particular subject. This viewpoint is based on a misconception about the fundamental importance of case law to the U.S. system. In this way, the book is couched in the particular social contexts of each nation and legal system surveyed, providing a thorough and culturally sensitive account of legal research methods.

The book abounds with many useful asides regarding the similarities and differences of common and civil law, which is useful to scholars and practitioners alike on both sides of the Atlantic. The prolific use of pin-cited footnotes, as an example, is the bane of many European authors who are used to much more scant documentation than is the norm in American legal scholarship. Such a philosophy would be professional suicide for American legal scholars. At the same time, several nations are experiencing a convergence of civil and common law, such as in the U.K. where statutes are becoming more prevalent and are trumping longstanding common law principles, whereas there is now a greater use of precedent on the continent than has historically been the case. Indeed, much common ground is shared in the structure of U.S. and E.U. law. The U.S. federal legal system, being comprised of a central government and 50 distinct legal entities, resonates with the E.U. experience. Nevertheless, significant differences also exist, which Lomio and Spang-Hanssen unravel in turn. The most significant areas that will be focused on herein include: (a) the commonalities and differences between the civil and common law experience; (b) a review of practical research guides included in the text; and (c) specific civil law differences relating to statutes, case law, and secondary sources. The focus of this review will be on chapters 3-7. The topic of chapter 2 is legal research in the U.S., offering a broad-based introduction to U.S. law from the composition and passage of state laws to the wide array of secondary sources available to guide research efforts. This review, though, is meant primarily for a U.S. (or

common law) audience wishing to research civil law in Europe and beyond, which is the subject of the latter chapters.

Chapters 3-7 of the book offer a tremendous amount of information useful to foreign lawyers researching in European legal systems. This introduction to civil law is critical for international attorneys, given that civil law is the dominant legal tradition in not only Europe, but also Central and South America, most of Asia and Africa, and even such diverse places as Scotland, Louisiana, Quebec, and Puerto Rico. All of these regions sport rules, institutions, procedures, and traditions largely alien to a common law trained lawyer. Distinctions may also be made among groups of common and civil law nations – neither branch of law is monolithic. The Code Civile of France's philosophy of breaking with the monarchy is in marked contrast with the German Civil Code's attempt to codify existing law, while the U.S. codifies law and has a written constitution, unlike the U.K. The common thread in the civil law context is that *stare decisis*, the foundation of common law jurisprudence, is not sacrosanct. Instead, legislators enact statutes, scholars give them meaning, and judges apply results. Jurists consult with both sources in formulating their arguments, the goal being to interpret statutory texts so as to conceptually fit them into the overall system. Given this fact, legal researchers approaching a civil law matter must undertake their investigation in a far different manner from which is common in the U.S. or other common law jurisdictions. To underscore these differences, the authors lay out a guide for researchers.

The natural starting point of a civil law investigation is so-called "hard law." This includes sources such as constitutional articles, then acts, codes or statutes, then examining intent (strict constructionism is not a force in European jurisprudence) through the legislative history and white papers. Next, legal researchers should look to administrative judicial precepts, such as regulations or government orders, and only then research cases, which are broken down into "soft law" including (a) court decisions and (b) decisions by an administrative authority. The history of each case must then be scrutinized to see if it has any precedential value – though some states, such as Denmark, give greater weight to precedent than others, such as Spain. If any conflicts exist, they should first and foremost be resolved through applying the *lex superior principle*, which states that hierarchy must be respected, i.e., the legal rules adopted by lower bodies must comply with statutes and other higher-order rules. Only then may the "legal meaning" of the statute be concluded with any degree of confidence. If time is of the essence, the authors advise a hurried advocate to research the applicable "hard law," and forego the soft law precedents. Drilling down on the fundamentals, the authors, primarily Spang-Hanssen in chapters 3-7, starting at a macro level, next consider statues, cases, and secondary sources.

European legal systems are interconnected to a degree that may be familiar to U.S.-trained lawyers in considering interlocking federal and state systems. Chapter 4 offers many useful comparisons between the E.U. and U.S. federal systems, the main difference being that E.U. nations maintain full sovereignty in a greater range of matters, e.g., there is no European version of the dormant commerce clause. Detailed explanations are also offered for the different spheres of power of in the E.U., e.g., the European Commission and Council. Basic search strategies for these institutions are provided, such as a website containing all of the basic legal texts on which the E.U. and European Communities are founded. In this manner, the book offers a firm grounding on the continental and European-wide court systems. At a macro level, though, civil law nations are setup fundamentally differently from common law countries. The separation of powers takes on an entirely different meaning in Europe than it has in the U.S. Moreover, civil law is a creature of parliament, not the "government." "Public" and "private" law distinctions also have a far different connotation in the U.S. and Europe. Private law is conceived far more narrowly in Europe and is distinguished from commercial law in many nations (excluding Switzerland and Italy). That is not where the differences end.

The authors note that even the composition of statutes, acts, and codes, all areas in which civil and common law systems would seem to have the most in common, differ greatly. In civil law countries, acts are authored by parliament, ordinances by government, and regulations by agencies.[21] Further, European statutes are not structured like their U.S. equivalents, nor are they compiled as is the practice with the U.S. Code. No specific hierarchy exists in statutory construction, from title, to chapter, section, and paragraph. Many of these terms in the E.U. are interchangeable, even the symbol "§," well-known to American legal scholars as signifying "section," can be used to indicate paragraph, section, or an entire statute in Europe. As one would surmise, this is the result of the fact that there is no common European citation system, though the Guide to Foreign and International Legal Citation, published by N.Y.U. Law School, is offered as a helpful guide and is available for free download.

Beyond statutes, myriad practical distinctions exist between the U.S. and European benches, such as the fact that all European judges are appointed for life, like the U.S. federal judiciary. None are elected. Another point of

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[21] It should be noted that the term "government" has very different meanings in civil and common law countries. The key distinction is that in the U.S., "government" may refer an amorphous combination of the Executive, Legislative, and Judicial branches, whereas in Europe "government" is commonly used solely in reference to the Executive

distinction that would confuse American and European researchers alike is the practice of writing dissenting and concurring opinions. This practice is far less common in Europe than it is in the U.S., potentially because cases generally have far less importance as "law" in the civil law context. This also means that European case decisions are difficult to come by. Few are available online, and those that are, are posted only in the official language of the court's host state. Widespread access to Lexis and WestLaw is far less common on the continent, with most law schools only have a single, shared account. Similarly, law reviews are not managed or edited by students in the E.U. as they are in the U.S. Nor are they affiliated with a single university, instead being regional publications with boards consisting of professor, judges, and other legal experts. Articles are shorter, are rarely available electronically (compared to the U.S. in which some newer law reviews are published exclusively online), and do not have the same precedential weight across Europe.

Despite its many triumphs, there still exists opportunities for revision in the next edition of *Legal Research Methods in the U.S. and Europe*. Organizationally it would benefit the reader to have a well-developed introduction at the beginning of each chapter laying out the goals of the chapter and providing some structure for the different issues that will be addressed. This would be especially helpful in chapter 4 on European Union resources, since it covers such a wide range of information. In this process, the authors should also distill down information to its core, editing such passages as the five page quotation from *Corpus Juris Secundum* beginning on p.142. In this vein, a greater use of diagrams and checklists, such as which appears on p.116 and p.127, would also be useful throughout chapters 3-7 to aid the reader. These are more common in chapter 2, and provide for an easy comprehension of, at times, difficult conceptual terrain at a glance. Strategies for researchers are similarly included, but are embedded in the text. These should be highlighted. Chapters 3-7 could also benefit from a greater use of examples, and precise directions on how to locate civil law statutes, explanatory white papers, and other secondary interpretive sources. Examples of principles could also be provided. What are the *jus cogens* and *erga omnes* norms? Other minor inconsistencies among the chapters should also be addressed. For example, why would civil law be "the law of professors" if in fact government ministers draft legislation without consultation with legal scholars, and the white papers that are published are from panels appointed by the ministers themselves? And how can Portugal be categorized as a Romanistic as well as a Germanic nation? What significance does this have in researching Portuguese civil law?

On a related point, the sections on legal families and comparative law should be revised. Legal unity began to break down in Europe in the

eighteenth century as national codes were put in place of Roman law. As a result, distinct legal groupings have been created across Europe. The authors deconstruct these groupings usefully into the following continental European families, including: the Romanistic family (France, the Benelux countries, Italy, Spain, and Portugal), the Germanic family (Germany, Austria, Croatia, Switzerland, Greece, and Portugal), the Anglo-American family (England, Wales, Northern Ireland, Ireland, Scotland, the U.S., Australia, New Zealand, and Canada (excluding Quebec)), and the Nordic family (Denmark, Finland, Iceland, Norway, and Sweden). This listing is offered in chapter 3, and is replicated in chapter 6 with the addition of "the law in the far east" (China, Japan), and the vaguely named "religions legal systems" (Islamic and Hindu Law). These groupings are duplicative, and should be folded together in chapter 6 (itself only 5 pages), which should then be expanded to contain a more thorough discussion of the heart of this book, comparative legal research (the subject of chapter 7). In addition, although it would add to the length of the book, a brief synopsis of legal research methods in each civil law nation would be of great benefit to the researcher. Namely, this could include a basic list of secondary sources, examples of statute and case citation. In future editions, it would also be helpful to add a chapter on Asian, Latin American, and African legal research, potentially in a revised chapter 6.

Minor typographical errors should also be addressed in the next edition, such as spacing on p.120, grammatical inconsistencies on p.97, and formatting concerns on p. 142. The prose and style of the latter chapters can, at times, be disjointed. This may distract the reader, and detract from full comprehension. The different philosophies undergirding citation methods in the U.S. and the E.U. is also easily apparent in the book. Chapter 2 offers far more detailed, and formatted, citations than does chapter 4, which documents cited tables as coming from "E.U. websites, the same as all other tables in this chapter." Such discrepancies between the chapters should be ironed out in future editions, though they are instructive as to the divide in legal cultures that separates American and European legal cultures. This also underscores the need to develop a distinct but commonly understood citation system to be used by American and European practitioners.

Legal Research Methods in the U.S. and Europe has broken new ground by offering a concise guide to transatlantic legal research in a single volume. It is clear that as the practice of law globalizes, so too must legal education, specifically legal research methods. Through offering an examination of legal research in the U.S. and Europe, Lomio and Spang-Hanssen have opened the door for more literature in this vital area. The law, and legal research, can no longer be considered in national or regional

isolation. We live in an increasingly interdependent world requiring research techniques that span legal cultures as easily as data now spans continents.

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From Human Rights to International Criminal Law: Studies in Honour of an African Jurist, the Late Judge Laïty Kama / Des droits de l'homme au droit international penal: Etudes en l'honneur d'un juriste african, feu le juge Laïty Kama. Edited by E. Decaux, A. Dieng, and M. Sow. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. vii, 774. ISBN: 9789004160552. €175.00; US$245.00.

The untimely death of Judge Laïty Kama in May of 2001 was a great loss to the international legal community. In a press release on the occasion of his passing, then Secretary General Kofi Annan eulogized Judge Kama thusly:

> Judge Kama was an eminent jurist who played a key role in the development of the judicial work of the Rwanda Tribunal. He has made historic contributions to international humanitarian law as former presiding judge of the Tribunal's first Trial Chamber that rendered judgements in the *Akayesu* case and the *Kambanda* case in 1998. It will be recalled that the *Akayesu* case was the first ever judgement for the crime of genocide by an international court and was also the first ever judgement to convict an accused person of rape as a crime against humanity. Judge Kama's verdict in the *Kambanda* case (which involved the former Prime Minister of Rwanda) was the first ever conviction of a head of government for genocide.[22]

Indeed, Judge Kama, who served as President of the International Criminal Tribunal for Rwanda (ICTR) from 1995 to 1999 and later as Presiding Judge of the Tribunal's second Trial Chamber was instrumental in the creation and development of the Rwanda Tribunal in its formative years. As a jurist, he presided over several of the most significant decisions on international humanitarian law since the verdicts rendered at Nuremberg. In an effort to recognize his considerable jurisprudential contributions, the

[22] Press Release, Secretary-General of the United Nations, Kofi Annan, Secretary-General Expresses Profound Sadness at Death of Judge Laity Kama, First President of Rwanda Criminal Tribunal (May 8, 2001) *at* http://www.uuis.unvienna.org/unis/pressrels/2001/sgsm7794.html.