

# Buchbesprechungen

**Miller, Russell A.: An Introduction to German Law and Legal Culture.**

**Text and Materials.** Cambridge: Cambridge University Press 2024. ISBN: 978-1-107-14113-1 (hardback), xxv, 375 pp. € 137,15. ISBN 978-1-316-50637-0 (softcover). xxv, 375 pp. € 49,85

Russell Miller is an internationally widely respected scholar who specialises in German constitutional law. He is currently a professor at Washington and Lee University, but he spent many years in Germany as a Fulbright Fellow and later as a Humboldt Fellow (he even served as head of the Max Planck Law Network). He also worked as a judicial clerk at the German Federal Constitutional Court and co-founded the German Law Journal. When an author with such a biographical background pens a large volume on German law and legal culture, expectations are understandably high.

The present book is an informed yet accessible textbook with the ambition to influence the comparative law discourse in general. It reflects a contextual approach (which very much conforms to the title of the series ‘Law in Context’): it is written in the tradition of ‘comparative legal cultures’, and does more than just compare positive laws. Throughout the work, the reader senses the author’s love and admiration for German legal culture (in the meaning of what legal sociologists call the ‘internal’ legal culture, i. e. the mindset of German lawyers, as opposed to the ‘external’ legal culture, i. e. the beliefs, behavioural patterns and attitudes of ordinary citizens towards the legal system) and also for German culture in general (through the use of quotations of German poetry, the description of the architecture of court buildings in Karlsruhe and Leipzig, and anecdotes about Goethe’s youth as a law student etc.). In fact, one could say that the book is a 476-pages-long love letter – which does not show blind love, but the love of a decades-long marriage where you embrace the whole package for the rest of your life. Although not emphasised, the reader can sense that Miller clearly sees certain limitations of German legal culture (characterised by highly abstract and decontextualised terms that present a steep learning curve for any foreigner). The book covers the entire German legal system, including constitutional law, administrative law, civil law, criminal law, and procedural law. Moreover, there are separate chapters on the interplay between German law and European Union (EU) law, on legal history, on German legal education (explaining the differences between *Gutachtenstil* and *Urteilsstil*, meditating about the implied concept of law behind the *Falllösungsschema*) and on the German legal mind (showing how legal scholarship is centred around the rigorous conceptual systematisation of *Rechtsdogmatik*, exemplified by the propor-

tionality analysis). It is always a difficult decision to decide what to include and what to leave out of such a book (it is already a heavy volume) and in future editions it might even grow longer, as such textbooks usually do (e.g. with a new chapter on the direct and indirect influence of German legal culture on foreign legal systems, including on EU law and international law).

Miller promises a special approach to macro comparison (without attempting to categorise legal systems into different families), but in fact he conducts both macro and micro comparison in this book. His main methodological novelty is that he conceptualises the German legal system as a conglomerate of various legal traditions (his conceptualisation is following Patrick Glenn's seminal work on legal traditions): predominantly civil law (based on German tribal law, Roman law and canon law), with elements of common law (in the form of constitutional court case law), socialist law (which survived as a residual in the legal culture of citizens of East Germany), Islamic law (as the law of immigrant families recognised by the German legal system), both inquisitorial and adversarial traditions of procedural law, and a dialogue with EU law. He imagines 'German law as a tapestry consisting of many colourful threads (legal traditions) woven together'. (p. 6) He also shows how the *Freirechtslehre* and the *Reine Rechtslehre* failed to permeate German legal culture, and remained irritants.

The tone of this book is personal. The author invites the reader on a journey of discovery. He regularly addresses the reader directly: 'the materials in this book should nurture your curiosity' (p. 3) and lures them into an exciting intellectual adventure. His perspective is a clearly non-German one (hence the United States [US] textbook-style subtitle 'text and materials' and the occasional references to US law, which can help to understand or to differentiate German legal concepts). It reads almost like a self-help book in a good sense: 'In spurning your primary or "national" legal system for this book's foreign affair, you will cultivate the habit of pursuing creative directions in your life in the law, and in your life more generally. [...] It should cause you to reflect critically on your domestic legal system.' (p. 4)

This book has four layers: (1) It is an introduction to German law (for foreigners, necessarily in a shortened and simplified manner), (2) it is an introduction to German legal culture (i. e. how German lawyers think, what their typical lawyerly style is – these aspects make the volume a useful read for German lawyers as well), (3) it is a theory of legal cultures (which are conceived as a mixture of legal traditions, similar to a DNA analysis of ancestry), and (4) it is also a theory of comparative law (emphasising the contextual approach and rejecting the boxing-in exercises). The target audience is both foreign students of German law (its Questions & Answers [Q&A] sections can contribute to it being used as a self-study book, but

these can also serve as topics for classroom discussions) and academics (the state-of-the-art methodological reflection and the ample literature references in the endnotes at the end of each chapter are very useful for researchers).

Miller shows the familiar from a new angle, also for those who are already acquainted with German legal culture. It is an enjoyable read in an easily understandable style with impressive intellectual depth. This volume will definitely be the most used university textbook on German law in English. It is not just the theoretically founded content that elevates it above any other book ever written on this subject, but also its student-friendly delivery (the style and the various didactic parts, such as graphs visualising complicated concepts, a series of diagrams, photographs, and also the Q&A sections at the end and the study tips at the beginning of each chapter are especially commendable). This volume is the result of decades of research and teaching; it shows both passion for and expertise of the subject (the author worked on the manuscript between 2015 and 2024, but it actually summarises all of his former theses on German constitutional law and on the methodology of comparative law published in various forms). Miller is a highly esteemed ambassador of German legal culture all around the world (not just in the US). This book will cement his reputation for the foreseeable future.

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