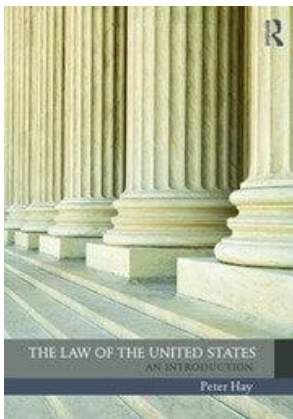

BOOK REVIEW

Peter Hay's *The Law of the United States: An Introduction*

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Hay, Peter. *The Law of the United States: An Introduction*. Translated from the German by M. M. Boguslavsky and F. W. Grosheide. Abingdon, Oxon; New York, NY: Routledge, 2017. xviii + 359 pp. Paperback ISBN 978-1-138-22202-1

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Peter Hay's *The Law of the United States: An Introduction*, published by Routledge in January 2017, originated as a German-language text titled *Einführung in das Recht der USA* before appearing in an English translation prepared by two of Hay's former students. At slightly more than 350 pages, the volume addresses an audience that the author himself describes in the preface as primarily non-American lawyers, scholars, and advanced students who require a systematic first encounter with a legal system that differs profoundly from the civil-law tradition in which most of them were trained. A secondary readership consists of American-trained lawyers or academics who seek a concise comparative overview. The book therefore occupies a somewhat unusual position in the English-language literature on American law: it is neither a casebook for first-year law students nor a narrative history for the general public, but rather a deliberate attempt to present the essential architecture of the United States legal order in a manner accessible to readers accustomed to codified systems and abstract doctrinal categories.

The work opens with a historical sketch that traces the reception of English common law in the colonial period, the deliberate break with certain aspects of that inheritance after independence, and the subsequent development of a distinctly federal jurisprudence. Hay devotes particular

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attention to the adoption of the Constitution in 1787–1789 and to the early controversies surrounding judicial review, federalism, and the scope of congressional power. Although necessarily brief, this opening chapter manages to convey the dual character of American law as both a continuation of English legal culture and a conscious experiment in written constitutionalism. The discussion remains factual and avoids the mythic register that sometimes dominates popular accounts of the founding era.

From this historical foundation the text proceeds to an examination of the sources of law in the United States. Hay explains the hierarchy that places the federal Constitution at the apex, followed by federal statutes and treaties, state constitutions, state statutes, administrative regulations, and finally judicial precedent. The explanation of precedent occupies considerable space, since the binding force of prior judicial decisions constitutes one of the most unfamiliar features of the system for civil-law readers. Hay carefully distinguishes between vertical and horizontal stare decisis, between holding and dictum, and between common-law and statutory interpretation methodologies. He also addresses the role of the Restatements published by the American Law Institute and the influence of the Uniform Commercial Code and other model laws. The treatment is precise and avoids the common simplification that American law is simply “judge-made.” Instead, Hay presents a more nuanced picture in which statutes have acquired increasing importance since the New Deal era, yet judicial elaboration retains a centrality unknown in most European systems.

The federal structure of the United States receives extended analysis. Hay details the allocation of legislative competences between Congress and the state legislatures, the doctrines of pre-emption and dormant commerce clause, and the complex interplay of state and federal judicial systems. Particular care is taken to clarify the operation of *Erie Railroad Co v Tompkins* and its consequences for choice-of-law in diversity cases. Readers trained in unitary states or in federal systems such as Germany or Switzerland will find the explanation helpful, even if the sheer number of sovereign jurisdictions within a single country continues to defy intuitive understanding.

Constitutional law proper forms the core of the public-law section. In approximately forty pages Hay covers judicial review, separation of powers, federalism, and the principal individual rights protections contained in the Bill of Rights and the Fourteenth Amendment. Landmark decisions appear only when strictly necessary—*Marbury v Madison*, *McCulloch v Maryland*, *Brown v Board of Education*, *Roe v Wade* (still controlling precedent at the time of writing), and *Obergefell v Hodges* among them. The exposition remains descriptive rather than argumentative; Hay neither defends nor criticizes the Court’s various doctrinal turns. The account of substantive due process and equal protection analysis is especially clear, and the explanation of how an eighteenth-century text can generate new rights in the twentieth and twenty-first centuries is presented with detachment. Some readers may wish for more discussion of originalism and living-constitutionalism debates, but the choice to omit extended methodological controversy is understandable in a work of this scope.

Administrative law follows constitutional law and receives proportionally less space. Hay outlines the structure of federal agencies, the rule-making and adjudication processes, and the standards of judicial review established by the Administrative Procedure Act. The Chevron doctrine appears in its pre-2017 form, and the subsequent partial retreat from Chevron deference that began in the 2020s naturally could not be anticipated. Similarly, the discussion of presidential control over administrative agencies reflects the understanding prevailing before the major pronouncements of the current decade. These limitations are inherent in any published work and do not detract from the accuracy of the text at the moment of publication.

The private-law sections occupy roughly half the book and follow a systematic order familiar to civil-law jurists: persons and family law, property, obligations (subdivided into contract and tort), commercial law, companies and partnerships, and succession. This arrangement itself constitutes one of the book's distinctive contributions, because American lawyers rarely encounter their own private law presented in Pandectist categories. Hay acknowledges the artificiality of imposing such order on a decentralised, judge-made body of rules, yet the experiment largely succeeds. The chapter on contract law explains consideration, promissory estoppel, the parole evidence rule, and the battle of the forms under UCC Article 2 with admirable economy. Tort law receives comparable attention, with separate treatment of negligence, strict liability, and the economic-loss doctrine. Products liability appears in some detail, including the shift from the Second to the Third Restatement. Property law covers estates in land, future interests, recording statutes, and the basic structure of landlord-tenant relations. Family law and succession are treated briefly but accurately, with emphasis on the diversity of state approaches and the absence of a federal family code.

Corporate law appears under the rubric of commercial law rather than as a separate discipline, which accurately reflects its historical development in the United States. Hay explains the internal-affairs rule, the Delaware dominance phenomenon, and the basic fiduciary duties of directors and controlling shareholders. The account necessarily remains general; readers seeking detailed treatment of takeover defences or shareholder litigation will need to consult specialist works.

Civil procedure and evidence receive separate chapters toward the end of the book. The exposition of American civil procedure focuses on the Federal Rules of Civil Procedure, pleading standards, discovery, summary judgment, and trial by jury. Hay correctly identifies discovery as the feature that most astonishes foreign lawyers, and he devotes several pages to its scope and cost. Criminal procedure appears more briefly, with emphasis on Fourth, Fifth, Sixth, and Eighth Amendment protections as incorporated against the states. The Miranda rule, the exclusionary rule, and the right to counsel are explained without extensive discussion of subsequent limitations imposed by the Supreme Court.

The final substantive chapter addresses conflict of laws, a field in which Peter Hay established his scholarly reputation over decades. Here the text is at its most confident and detailed. The revolution wrought by the choice-of-law theories of Brainerd Currie and others appears

alongside the continuing influence of the First and Second Restatements. The treatment of jurisdiction, recognition of foreign judgments, and the public-policy exception is comprehensive within the limits of an introductory work.

Several observations arise from this overall structure. First, the book consciously prioritises breadth over depth. Entire fields that occupy whole semesters in American law schools—antitrust, securities regulation, intellectual property, environmental law, labour law, immigration—receive only passing mention or are omitted entirely. Second, the text reflects the state of doctrine as understood in late 2016. Subsequent developments such as the partial overruling of *Roe v Wade*, the abandonment of affirmative action in university admissions, the limitation of agency power, and the expansion of Second Amendment rights remain outside its scope. Third, the translation, while generally fluent, occasionally retains traces of German legal usage: “competence” for subject-matter jurisdiction, “formation of contract” rather than the more common American phrasing, “juridical person” for corporation. These minor infelicities do not impair comprehension but remind the reader of the book’s origin.

The intended readership emerges clearly from these choices. European lawyers preparing for an American LL.M. programme will find the volume invaluable as pre-arrival reading. The systematic presentation and constant (yet unobtrusive) comparisons with civil-law concepts provide exactly the orientation that most continental students need before confronting the case method. Scholars based in civil-law jurisdictions who require a reliable reference work on American law will likewise benefit. American law students, by contrast, will discover little that their casebooks and statutory supplements do not already provide in greater detail, and the absence of hypotheticals, notes, and problems limits its pedagogical utility in a first-year curriculum. General readers without legal training may find the density of information daunting, and those seeking narrative or critical engagement will need to look elsewhere.

In sum, Peter Hay achieved what he set out to do: he produced a concise, accurate, and systematically organised introduction to a legal system that resists easy summarisation. The civil-law framework he adopted both clarifies and occasionally distorts the material, but the benefits for the target audience outweigh the drawbacks. Seven years after publication, and notwithstanding significant doctrinal shifts in the interim, the book retains considerable utility for readers approaching American law from a civil-law perspective. It belongs on the shelf of any comparative lawyer or institution that regularly advises foreign-trained students or practitioners about the United States legal order, even if its role is now supplemented rather than exclusive.