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Learning Anglo-American Law: A Thematic Introduction

By Kuo-Lee Li

烟台大学英美法研究中心

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Resume

Professor Li was born in Yantai City, Shandong province in 1935. He graduated from the Law School of Taiwan University in 1959.

In 1963, he left Taiwan for Canada to study at the Institute of Air and Space Law and the Library Information Science School of McGill University. In 1968, he obtained the two master degrees in the same year. Since then, he taught at both the Institute and the Law School of McGill University. He retired in 2000.

Professor Li has a very strong interest in space law, international law, and philosophy of law. In these areas, he published a number of essays, and wrote the most comprehensive multi-volume World-wide Space Law Bibliography.

After China and Canada established diplomatic relations, Professor Li took an active and leading role in advocating the importance of establishing an institutional base for Chinese law. In 1987, with the support of the leaders of overseas Chinese in Canada, the China Law Foundation was founded and he was elected as the chairman of the Foundation. Subsequently in the name of the Foundation, he donated more ten thousands of law books in English on the law of United States, Canada, and Great Britain to the Peking University, Yantai University, the Ministry of Foreign Affairs, the Trade and Commerce Promotion Commission,and so on.

After retirement, Professor Li has always come back to his hometown Yantai to live for a few months. Because of his deep interest in the promotion of legal education in China, he conferred with the Law School of Yantai University in early 1999 for the purpose of devoting his service in this respect. In 2000, he accepted the position of teaching Anglo-American Law in English at the university. To serve as a teaching and research platform, they established the Center for Study of Anglo-American Law of Yantai University in 2002. And he has been appointed as its founding Director.

Professor Li take his position and responsibility very seriously. He purport to promote the comparative value of Anglo-American Law in China and help with her legal modernization undertaking.

Preface

This publication is the revised text of the content of lectures given at the Faculty of Law, Yantai University. Some of the lectures are based on a number of books on the subjects included. Other lectures included are the results of my own findings and views. As such, these are not normally found in books of this nature. But in my opinion, they are very much an integral part of the subject matter, Anglo-American Law. The main focus of the lectures is on the law and legal system of the United States. This is primarily due to the fact that not only the United States has adopted the Common law tradition, it has the most rich and vibrant law and legal system in the work and has an unprecedented and unsurpassed influence internationally.

The lectures purport to emphasize the systemic components, features, and characteristics of Anglo-American Law. This is evident from the content of the lectures. No subject components of any substantive law, especially private law are included. What are generally missed or overlooked by other introductory works on Anglo-American Law have been particularly chosen to strengthen the systematic nature of Anglo-American Law properly understood. Thus, one finds in this work a chapter on Anglo-American Law and you, the building of a good legal system, United States law in action, legal reason, legal research and legal materials.

The systematic emphasis of the lectures is purported to stress the process and operation of the making, unmaking and remaking of the law rather than inanimate nature of substantive rules. The emphasis is on how decisions are made, how decision-makers interact and how a rule of law finally emerges. The central theme of the emphasis is interactivity between sources and decision-makers. How and why decision-makers interact and how and why the law finally emerges is believed to be an important element in studying Anglo-American Law.

For ease of learning and locating any specific text and information, a detailed table of content is deliberately structured. In addition, catching headings and distinct paragraphs are specifically created. The unique way of the structure of the table of content also serves to reveal at a quick glance the thematic presentation of lectures and the content thereof. Instead of a subject index normally featured in

books of this nature, it is believed that a detailed table of content is a better means of access. In a few instances, text of a more or less similar nature is found in more than one place. This is deliberately done to maintain the holistic structure of the topic concerned.

In addition to the many books that inform these lectures, an amply number of footnote references have been provided. However, should there be any mistakes, gaps, omissions, inaccuracies, they are the sole responsibility of the author and should not attributed to any institution or individual that is associated with the author.

Kuo-Lee Li
Center for Study of Anglo-American Law
December 28, 2004
Yantai University, China

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Chapter One : Anglo-American Law and You

Section One : Political and Moral Perspective

You are the center of the legal normative universe. Anglo-American Law is part of that universe, same as your domestic law. This is true whether you take the nationalist perspective of law and the internationalist perspective of law. How do you live through your experience with Anglo-American Law will inform, define, and shape that normative universe — a universe that aspires to and cherishes liberty, democracy, equality, justice and other highly regarded values of political morality. This legal normative universe is a shared and collaborated one ; you share it with all citizens who take an internal view of it. What form, content, character, objectives and functions of this shared and collaborated normative universe will take depends very much on your intelligence, efforts, devotion, and commitment. You are the protagonist of this inclusive, shared, and evolving normative universe. You are its master.

Your response to the idea above may be fast and sharp. You would retort by saying that this is incredible, unrealistic, and even fantasy ; I am not the master of my house, the legal universe of my own country, let alone the master of the Anglo-American Law world. From where I am to where you imagine I will be, it is a long and difficult way. The prospect looks like an ever-fading horizon.

Aim high and hit low. There is a will, there is a way. You create your world. First you must have a right perspective. You have to mobilize the power of intention, efforts, devotion, and commitment. The power of intention and a heart-felt and life-long commitment would bring you to your destiny. Your perspective may be that of a nationalist, or internationalist. You may take a stance from an external or an internal point of view. These perspectives and stances will converge at the right time and form a unity, if not in reality, at least in your mind.

Remember that you are not alone. You as a collective political moral force just may be able to change the legal normative world.

Section Two : Anglo-American Law Defined

Broadly speaking, Anglo-American Law may be understood to signify the entire body of the law of the English-speaking world. Such a view would include the Common Law, all the established sources of law and much more. Narrowly defined, it mainly refers to the Common Law tradition, especially the Common Law system as it was conceived by and evolved first in England and as received in all other countries belonging to that tradition.

The sources of the Anglo-American Law world include much more than the Common Law — a body of law that is understood to be originally derived from the decisions of the royal courts of England as well as the principles developed from these decisions. In its broad conception, Anglo-American Law signifies the decisions of the court as well as other established sources of a primary nature. In addition, it encompasses secondary sources of law. Moreover, any broad and realistic conception of the sources of law would extend much further to include all law generative events and phenomena. Thus, any comprehensive study of Anglo-American Law has to cover the Common Law which in modern terminology refers to the law of judicial decisions or judicial law, legislation, and other sources of authoritative and effective decisions, state and non-state.

The main feature of Anglo-American Law is that it is a body of law based on judicial decisions — judge made law. More specifically, it adheres to the basic concepts, principles, and values originated from that version of the law as it arose and developed in England. But this should be understood as true as far as private law and a few other subjects are concerned. ①

Some believe that the Common Law before anything else is reason. Today in England, law remains primarily a work of reason and distinct from legislation or statute. For example one does not think of the Common Law as a system of "National Law"; it is much more "the common heritage of the English-speaking peoples."

In modern welfare states, judicial decisions are not what people mostly concerned with. What affects their life are increasingly more legislative, administrative, regulatory, and even rules, regulations, and decisions made in the

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① Atiyah and Summers, Form and Substance in Anglo-American Law : A Comparative Study of Legal Reasoning, Legal theory and Legal Institutions, Oxford, N. Y., Clarendon Press, 1987.