La Pensée Juridique de Paul Foriers, Centre National de Recherches de Logique, Bruylant, Brussels, 1982, 2 volumes, 912 pp.

The death occurred on 18 May 1980 of Paul Foriers, noted legal philosopher and lawyer, member of the Brussels School and close associate for many years of Chaim Perelman and other members of the Centre National Belge de Recherches de Logique. This compilation of writings which were dispersed in various journals, reviews and other publications over a span of 31 years, was put together by his friends and pupils as evidence of the breadth of his interests and to improve the accessibility of his scattered shorter pieces.

It forms an impressive collection covering many aspects of legal thought: though most of the pieces in these two volumes relate to one of three fields, criminal law, natural law or legal reasoning, those on conflicts of law, procedure, the relationship between national law and international law, legal history and bankruptcy express the broad range of his practical and theoretical work.

Two features of Foriers' work immediately strike the reader: the exquisite clarity of his style (often accompanied by the lively play of humour) and the realism of his approach to the law. This realism is evident in his emphasis on the importance of aspects of law which tend to be considered of minor importance by Civil Lawyers, such as equity and the unwritten sources of law. Foriers' insistence of the importance of these is a welcome corrective to stereotypes of Code Law systems as "written law" and show that the differences between Common Law and Code Law systems are often those of emphasis and not of essence. His discussion of the place of custom, for example, lists the many provisions where the Civil Code refers the judge to existing practice and explains the important role that practice plays in filling gaps in the law. He accords general principles of law an equally important place ("Les Relations des Sources Ecrites et non Ecrites", pp. 675-695).

His insights into the process of interpretation are illuminating. Against the tide of traditional theories of interpretation in French law he had no hesitation in affirming that interpretation goes beyond the function of explaining the written provisions and has an innovative and creative role to play. Indeed, if a written provision stands in the way of a development seen as necessary to adapt the law to social change, it may be the function of the judge to render it *unclear* so that the rule can be used productively. The judge thus makes the law into an instrument of more use in society and better able to produce justice than it was before his "interpretation" of it (p. 711). The function of the interpreter is even more obviously creative when there is a *lacuna* in the law which he has to fill. At the same time Foriers emphasized that this more overtly creative role is still an interpretive one: the judge continues to use the same techniques and methods as in his more common role of explanation of the text. It is this working method which distinguishes the judge's art from that of the legislator (p. 713). He does not fear to dismiss many of the vaunted methods of

"correct" interpretation as being quite unrealistic for describing the activities of the judge — however valid they may be as doctrine.

The judge, in Foriers' view, at least in the legal systems of western continental Europe, chooses whatever method seems to be the best one for the job in hand. Students of methods of interpretation in Common Law courts may here again find themselves on familiar territory. The existence of the exegetical, teleological, logical and literal methods of interpretation merely open to the judge a storehouse of techniques by which he can justify a decision which answers existing social needs. These views favouring reality above formality, and representative of the philosophy of the Brussels School, are very much in accord with realist and sociological strands of juristic thinking in other European systems of law, for example the writings of Julius Stone in the Common Law and Josef Esser in the German legal system.

This broad agreement by eminent juristic thinkers across several European systems in the general trend of the work of the Brussels School perhaps obscures a little for us its originality among French-speaking jurists. Whereas in the Common Law "realism" and sociological interpretations of the judicial function have been with us a very long time, the predominant theorizing about the law among French language writers has remained dominated by the traditional view that judges do not (and must not) create law, that their function is merely explicative and this is clearly reflected in French judicial practice which until recent years never, and still predominantly, gives no room in judgments to considerations of social reality, practical expediency or changing ideas of justice. Against this predominantly conservative view the refreshing realism of the Brussels School, of which Foriers was such an eminent member, provide a stimulating and provocative contribution to juristic thought.

This book is a worthy tribute to an outstanding contributor to Continental legal theory. One might only regret that, amid the wealth and diversity of his writings, Foriers did not find the time to write a definitive study of the process of interpretation on the French codes. Certainly, however, no future study of the process can be complete without a consideration of his views.

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