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The latest issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has recently been released. It contains the following articles:

- *Reinhard Zimmermann*, **Text and Context – Introduction to the Symposium on the Process of Law Making in Comparative Perspective,** pp. 315-328(14)

  On 29 June 2013, on the occasion of the annual meeting of the Association of Friends of the Hamburg Max Planck Institute, a symposium took place on the topic of "The Process of Law Making". This essay is based on the lecture introducing that symposium. First, it provides an overview of the position in Germany: the procedure to be adopted, the different actors involved, and the documents produced in the various stages of law making by means of legislation. Secondly, the essay analyzes the role and influence of legal scholarship in the process of law making by means of legislation. And, thirdly, it reflects on the fact that the application of a statute normally involves two stages. A statute is a text that has been formulated at a specific time by specific persons and in response to, or in contemplation of, specific problems or challenges. It needs to be understood against that background and in that context. This implies a historical approach. Such understanding provides a reliable basis for a critical reflection of that text from today's perspective, and in view of the challenges and problems with which the modern lawyer is faced.

- *Jörg Schmid*, **The Process of Law Making in Switzerland,** pp. 329-345(17)

This paper explores the importance of the law-making process from the Swiss perspective. After explaining the term “preparatory works” (*Gesetzesmaterialien*, “legislative materials”, i.e. materials which document the process of the formation of a new act or section) and distinguishing different types thereof, the article presents the formative players in Swiss legislation. In Switzerland, these are the Federal Council (government) and the Federal Assembly (parliament). The Federal Council submits bills to the Federal Assembly which are explained in the Federal Council’s Dispatch (*Botschaft des Bundesrates*). The Federal Assembly (with its two chambers: the National Council and the Council of States) is the formal legislative power on the federal level. The Federal Council’s drafts and explanations are debated by the Federal Assembly and are often explicitly or implicitly approved. In other cases the texts are modified and the Federal Assembly creates its own rationale. As an exception, a statutory rule does not derive from parliament, but from a majority of the electorate and the cantons (approved popular initiative). As there are no law commissions in Switzerland, it is academic opinion and jurisprudence which indicate the need for legal reforms.The article furthermore explores the meaning of the law-making process for the interpretation and gap-filling of statutes. Firstly, the author explains how Swiss law is interpreted in general. Secondly, he examines how the Federal Supreme Court applies a purposive approach particularly when interpreting recently enacted statutory law. However, the Federal Supreme Court employs the purposive approach in a rather “result-oriented” way (called “pluralism of methods”). Thirdly, the author argues that unpublished preparatory documents (i.e. preparatory works that are not open to the public) must not be taken into account for the interpretation of the law.

- *Guillaume Meunier*, ***Les travaux préparatoires* from a French Perspective: Looking for the Spirit of the Law,** pp. 346-360(15)

The French Constitutional Supreme Court attributes a constitutional value to the objective of making the law more accessible and more understandable, in order to facilitate its acceptance by the country's citizens. The European Court of Human Rights has also ruled that the law must be adequately accessible and that a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable citizens to regulate their conduct.Yet, it is admitted that when the letter of the law is obscure, ambiguous, or incomplete, denying the judge the power to search for the *ratio legis* may be considered to be a denial of justice. But where can we find the *ratio legis*, if not in the *travaux préparatoires*?

The identification of a theory of *travaux préparatoires* requires, first of all, a definition of that term. This, in turn, requires an overview of the legislative process, from the informal ministerial drafting phase to the formal phase involving the debates before the two chambers of Parliament. The true spirit of the law, i.e.the will of Parliament, can only, of course, be established by documents that are accessible to the public. The principle of secrecy overshadowing parts of the legislative process presents a considerable obstacle.

The merits of interpreting a statute by reference to its *travaux préparatoires* are disputed. A comprehensive investigation into the legislative history of a statute, including its historical context, takes more time than busy practitioners often have. None the less, the *travaux préparatoires* have established themselves as an important interpretative tool when courts have to determine the conformity of a national statute with an international

Treaty, or with the Constitution.

- *Jens M. Scherpe,* **The Process of Statute Making in England and Wales,** pp. 361-382(22)

  English statutory drafting has traditionally taken the position that the words “for the avoidance of doubt” should not appear in a statutory provision, because to do so implies that without it the words might generate doubt. This article addresses how the traditional approach to statutory drafting can and should continue in England. It first describes the “technical” side of the drafting of statutes in England, by looking in particular at the role of Parliamentary Counsel, bill teams and the Law Commission. Then it examines the interpretation of statutes and especially the roles that Parliamentary debates as recorded in Hansard, explanatory notes and Law Commission papers play in this. The article concludes that while the English system of legislative drafting might have been very effective in the past, this appears not to be the case anymore. The speed with which legislation needs to be drafted and the workload of the individuals involved means that this system in its current form might not be fit for the 21st century.

- *Hans-Heinrich Vogel,* **The Process of Law Making in Scandinavia,** pp. 383-414(32)

  In all Scandinavian Countries (in Denmark with the Faroe Islands and Greenland, in Finland with the Åland Islands, in Iceland, Norway, and Sweden) legislative materials are regarded as very important documents – so important that lawyers sometimes forget that the law primarily has to be identified by means of the enacted text of the statute and not the materials. Law-making procedures are streamlined and similar in all Scandinavian countries and so are the main documents emanating from them. The series of documents usually starts with a report of a

government-appointed committee, which will be circulated for comment. Report and comment will be considered by the government, and a government bill will be drafted, which after extensive internal checks and necessary adjustments will be sent to parliament. Members of parliament may propose changes, and their motions will be considered together with the bill by one of parliament's standing committees. The committee will report on the matter to the full house and submit its recommendations for a formal vote. Then, the house will debate the report and the recommendations and will finally vote on the recommendations as such – not on any reasons for or against the legislation. Both the debate and the vote will be recorded in minutes. And finally, parliament will notify the government of its decision. The government then will publish the adopted act in the Official Gazette.Nowadays almost all key documents (committee reports, hearing results, government bills, reports of parliamentary committees, minutes of parliamentary debates, and adopted acts) are highly standardized. All are published, with only very rare exceptions. Extensive publication on internet sites of both the government and parliament is the rule in all Scandinavian countries. Through these interlinked sites all key documents are easily available and accessible for everyone. Professional legal research has traditionally been made easy by footnotes or endnotes to published documents, now elaborate linkage systems across internet sites facilitate it even more. As a consequence, legislative materials have gained enormous importance even for everyday legal work. The methodological difficulties, which their use had caused earlier and which jurisprudence traditionally had to deal with, are more or less evaporating by means of the ease of use of *travaux préparatoires* in Scandinavia today. But the advice has to be honored that the law must be identified primarily by means of the enacted text.

- *Oliver Unger,* **The Process of Law Making as a Field for Comparative Research,** pp. 415-428(14)

Whereas legal literature considering the legislative process traditionally had more regard to formal parliamentary laws, the recent past has seen the emergence of a comprehensive and more contoured conception of treatises, taking into account the diverse forms that legal provisions assume in modern times (e.g. regulations, by-laws, administrative rules). The role to be played by comparative scholarship in this inquiry is still very much in its early stages of definition. Whereas studies can be found for most European legal systems as regards the various stages of law making and the legislative materials created in this process, comparative analyses that go beyond providing merely a descriptive overview are relatively rare. Such efforts are generally limited to isolated proposals for the reform of a given legal system, aiming at the drafting of "better" laws.Thus, the topics explored at the symposium "The Development of Legal Rules in Comparative Perspective" ("Die Entstehung von Gesetzen in rechts vergleichender Perspektive"), held on 29 June 2013 at the Max Planck Institute in Hamburg, posed distinct challenges for the comparative scholars in attendance. The present paper makes a first attempt at addressing the matter in a systematic manner and should at the same time serve to summarize the conference findings and inspire further work. The article considers six different aspects of law-making which would appear to have particular relevance within a comparative framework: the role of governmental institutions, the role of interest groups and private stakeholders, the language of the law, the relevance of legislative materials, the role of academia and the importance of comparative research.