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# **Introduction to The 2005 Rudolf B. Schlesinger Lecture on International and Comparative Law**

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The first thing I should say about Professor Rudolf Schlesinger is that in his honor I am wearing a bow tie, which otherwise I never wear. So you can imagine my amazement when I find in today's lecture program the one picture taken in his entire life in which he wears a four-in-hand. I wish to aver that this is a distorted image of Rudy Schlesinger and it shouldn't be taken seriously. The hair, that's real, and the rest of the portrait, but not the tie.

I probably am one of the few still-active teachers who was a student of Schlesinger in his first couple of years at Cornell University. He arrived there in 1948 and there is a very pleasant, touching autobiographical memoir by him that goes up to that point. It doesn't rise to the level of a formal memoir because it was really just written for his grandchildren, but Hastings Professor Ugo Mattei had the great idea of having it published recently and you have it in your library.<sup>1</sup> I would urge you, if you're interested, to look at it because the story of his life, both before he came to the United States and then in the early years at least at Cornell, is a wonderful narrative and he tells it very well.

The other thing that I'd like to say about Professor Schlesinger, before a couple of comments on the merits, is that you are fortunate in having two people, and I think particularly at this time of Professor

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1. Rudolf B. Schlesinger, *MEMORIES*, (Ugo Mattei & Andrea Padi, eds.), Trento: Università degli Studi di Trento (2000).

Ugo Mattei, who resemble him in another way. Not in their wearing of ties, but in their ebullience, their effervescence, and their ability to make the subject of Comparative Law, which in some schools is attended by as many as twelve people in a seminar every other year, into a topic which rivals Evidence, Constitutional Law, and even Tax for your interest. He was one of the most ebullient people I ever had the pleasure to meet and he could carry a class in a way that no one I've ever met before or since could - although Ugo comes very close in my judgment.

I had a course from him - I had many courses from him - but I had one called International Transactions, which was in a way the forerunner of his Comparative Law course and of his famous Comparative Law casebook,<sup>2</sup> and it is a matter of some nostalgia for me in one particular. I've been, until recently, the American member of a German-American Commission, with a Swiss chair, that is an arbitral body for property claims filed by persons who were stripped of their property during the Nazi occupation of eastern countries in World War II with the active involvement of German industry. This is the so called "Fund for Remembrance, Responsibility, and the Future."<sup>3</sup> We had many cases from the former Czechoslovakia and I kept waiting for the one major case that I just knew we were going to receive: the case of the Bata Shoe Company empire. It was owned by an extended Jewish family and seized by the Germans. That Bata case (actually a rash of cases ranging from Delaware to India) was the core of the international business transaction seminar that Rudy Schlesinger taught in 1950 and 1951. I cannot think of Czechoslovakia without thinking of those fights between the relatives of that company and the fun that Rudy had in following and, in fact, also participating in their litigation.

He was, in other words, a practitioner as well as an academic. His view of Comparative Law is one that you have to understand as

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2. Rudolf B. Schlesinger, *COMPARATIVE LAW: CASES, TEXT, MATERIALS*, (1st ed.), Brooklyn: Foundation Press (1950).

3. Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft" of August 2, 2000, BGBl II, p. 35 (2000), based on U.S.-Germany: Agreement concerning the Foundation "Remembrance, Responsibility and the Future" of July 17, 2000, U.S.-F.R.G. 39 I.L.M. 1298 (2000). Its creation, and the events leading thereto, are discussed by a leading participant in Stuart E. Eizenstat, *Imperfect Justice* (New York 2003) and by two close observers in Richard Wolffe & John Authers, *The Victim's Fortune* (New York 2002).

coming from the early postwar era. Of course, looking at it from the European perspective, Comparative Law was less esoteric than it might have been then in the United States, where we have a wider parochialism of our own because we have wider borders. Nonetheless, his view of Comparative Law after World War II was that it could be a force - a small force, a peripheral force, but still a relevant force - for assuring a peaceful world after that tragedy and disaster.

Now, he couldn't tell that to the students, however. He had to sell it on the basis of its practical utility, and so the casebook - the famous Schlesinger casebook - still in use<sup>4</sup> - really begins by telling you you're all going to be practicing lawyers and you're going to have lots of these kinds of matters and therefore it's very important that you know the nuts and bolts of how civil law systems work and "think," and so forth. But in my opinion you should not be fooled by that particular illusion that he put into those introductory words in his casebook.

Rudy Schlesinger was not an idealist - that's the last thing he was - but he was a fervent believer in the need to do whatever one could at that time, in whatever your role was in life to assure the possibility of a peaceful future. That is what makes the connection to the Hastings of today so interesting to me. Your colleague Ugo Mattei is, as some of you must know, the co-founder of an amazing project called the Trento Common Core of Private Law Project,<sup>5</sup> which is now in its twelfth year and which is producing in Europe the bedrock for at least the possibility of more harmonization of private law, should that turn out to be desirable, than has been the case to date.

This is very much something that Mattei and his group have taken up in the spirit of Rudolf Schlesinger. In a recent book of theirs they say, "Some may thus prefer to say that our initiative belongs to those efforts aiming at the cultural integration of law echoing the inspirer of the project, the late Rudolf Schlesinger, and to

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4. Rudolf B. Schlesinger, *COMPARATIVE LAW: CASES, TEXT, MATERIALS*, (6th ed.), New York: Foundation Press (2000).

5. See the discussion of the founding meeting in 1995, available at [http://www.jus.unitn.it/dsg/common-core/meeting\\_10\\_project.html](http://www.jus.unitn.it/dsg/common-core/meeting_10_project.html).

that perspective we are indeed committed.”<sup>6</sup> We now are 60 years past that first commitment. What Rudy did at Cornell with his version of the Common Core Project was also to try to find the common elements, the similarities, of Contract Law. In a sense, of course, that particular approach was overtaken by events. But what the Mattei project, the Trento project, on the Common Core is doing is in fact continuing that tradition.

You students are in a fortunate position to be enjoying not only today's leadership of that type of project, but to recognize in it the spirit of someone who spent a wonderful 20 years teaching here after his retirement at Cornell. I really am privileged to be permitted today to reflect back on Rudolf Schlesinger, on his wife Ruth (known to all as Putti), and on their family. Some of you may have been here last year when Ron Katz, the Schlesingers' son-in-law and himself a distinguished practitioner, introduced Tufts University Law Professor Michael Glennon, the keynote speaker. I enjoy the fact that each new student generation at Hastings will get at least a glimpse of the personality and the history of this admirable teacher and person.

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6. Rodolfo Sacco, Foreword: A Memorial Address for Rudolf Schlesinger, in *MAKING EUROPEAN LAW, ESSAYS ON THE "COMMON CORE" PROJECT*, (Mauro Bussani and Ugo Mattei, eds., 2000).