Centennial World Congress on Comparative Law: Opening Remarks

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I feel greatly privileged and honored to be given the opportunity to say a few words at the opening session of this Congress on behalf of the International Association of Legal Science (IALS). I would like first to join in the warm welcome that has already been extended to all the participants. Some of those who are present here have come as neighbors, but others have crossed a continent, or an ocean, to be with us today. I know that part of the pleasure of attending this Congress is being in New Orleans, a superb city in a beautiful state. This area of the country has a special flavor for all people of culture and remains very close to the heart of all French people, who like to think of it as a true Eden and still feel a bit at home in such places as Lafayette or Saint Martinville or in the colorful streets of the Vieux Carré. It is also an honor to be the guest of this prestigious law school, which contributes so successfully to perpetuating a unique tradition in the United States: that of a civil law state in a common law nation. This tradition is one of the many reasons why we thought that Tulane was indeed the most appropriate forum for a colloquium on comparative law. And we were most delighted when, as soon as the idea started to germinate, the Eason-Weinmann Center of Comparative Law cordially and enthusiastically agreed to join us in sponsoring this project. All this gives me the occasion, at the very outset, to express my deep gratitude to all those who have made this meeting possible, and

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especially to Dean Sherman and to Professor Yiannopoulos, who agreed with such generosity and have worked with such efficiency to host and organize this Conference. I know all the difficulties they have had to overcome. I wish to thank them very sincerely for their understanding, their cooperation, and their hospitality, which are well in accordance with southern customs. My thanks also go to the two organizations that have kindly agreed to cosponsor this event: the International Academy of Comparative Law (IACL) and the American Society of Comparative Law (ASCL). The IACL is led by Professor Kerameus, its president, who lends us his authority and experience. The ASCL is led by its president, Professor Bermann, who is responsible for gathering such a large and distinguished audience here, and its secretary, Professor Symeonides, who, along with Professor Stoffel of the International Association of Legal Science, played a crucial role in the preparation of our working sessions.

Our presence here is, in fact, due to a triple celebration. I shall not elaborate on the first one, which is our impending entrance into a new millennium. Although we all know that it will occur only, and exactly, in two months, we cannot ignore the symbol represented by the year 2000 to mark the beginning of a new era. This, however, has already been said so often that it seems useless to dwell on this point. More important indeed, are the fiftieth anniversary—the golden jubilee—of our IALS and the centennial of the first World Congress of Comparative Law, which took place in 1900 in Paris. Let me say a few words about these two events.

It is probably superfluous to introduce here the IALS. I will only point out some of the reasons that give it a rather special position among international organizations of jurists. It was established as a nongovernmental organization in 1950, in the wake of World War II, under the auspices of UNESCO. It is headquartered in Paris, managed by an Executive Committee (the International Committee of Comparative Law), and actually run by a Secretary General with the help of a Director of Scientific Work. Its purpose is, according to its charter, to encourage “the study of foreign laws and the use of the comparative method,” with the “ultimate object” of furthering “the mutual knowledge and understanding of nations.” This purpose, of course, must be put in the context of the Cold War because, for a long time, the Association served as a bridge between jurists in the East and in the West. Still, this ideal of being an instrument of peace remains

perfectly valid, and we can dream that the IALS now plays a similar role in the relations between the North and the South. No doubt we have already advanced some in this direction, but we can all agree that much remains to be done.

A distinctive feature of the IALS is that it is composed, not of individuals, but of institutions. It is truly an "organization of organizations," bringing together most of those associations of comparative law that now exist almost everywhere. Nearly fifty of them are national committees, one for each country, and about ten are "associate members," normally specialized in a particular branch of law. Over the years, we have been able to broaden our geographic coverage, so that we now have national committees on all of the five continents. But there is still some progress to make, and it is one of our main goals for the years to come to attract a greater number of countries, especially those which are too often underrepresented in forums of this sort. We all know that the time has come to pass from a purely national to a truly international science of comparative law. In order to accomplish this goal, we must strive for better coordination of the various national associations that are already operating and stimulate their creation where they do not exist. We are also eager to develop our cooperation with other organizations that pursue the same objective, in particular, the IACL, whose support is so much appreciated in our present undertaking.

As an international body, the IALS carries on the tradition of bilingualism, which may give some of us (including myself) an occasion to say a few words in French. You will not be surprised if I confess that I am much attached to this tradition, not only for the reason you can easily imagine, but also, and less egotistically, because I am strongly convinced that, unless (or until) we have one single system of law applying throughout the world, it would be a considerable impoverishment to have one single language, even for the sake of this new idol of the modern times: communication. This is, however, one of the points we are going to discuss, and I do not want to anticipate on our future debates.

Apart from those I have already mentioned, the main activities of the IALS are to conduct research in the field of comparative law and to organize conferences. Unfortunately, it is true that we cannot do as much research today as we did in the past, or as much as we would like to do, because our ambitions go far beyond our financial means. Still we must remember that our Association is the sponsor of the *International Encyclopedia of Comparative Law*, which constitutes the
unique and considerable undertaking you all know. As for our other main activity, organizing conferences, we have succeeded so far in maintaining the tradition of an annual colloquium, because we think that the best way to promote international exchanges of ideas and values is to facilitate personal encounters among jurists. This is precisely what has brought us here today.

This year, however, you can observe that the colloquium, normally limited to a small group of specialists, has been converted into a large Congress, open to comparative lawyers from all over the world. The reason for this innovation is that we are also celebrating another anniversary: the centennial of the first World Congress of Comparative Law, organized at the dawn of this century under the auspices of the French Society of Comparative Legislation. This centennial celebration dictated to us both the format of this conference and its topic.

Everybody has heard about this Congress of 1900, which still remains the inescapable reference point for all comparatists, inasmuch as it marked, if not the birth of comparative law (which had long existed before that date), at least the beginning of a true reflection on this new branch of the legal science. It gave a tremendous impetus to the study of foreign and comparative law throughout all the century. Its success was due, to a large extent, to the participation of the most important jurists of the time—Saleilles, Esmein, Duguit, Lambert, Pollock, Huber, Kohler—all giants of comparative law. They considered all of the main aspects of this discipline: its aims, its uses (and misuses), its means and its functions, its relationship to other branches of law, the way it should be taught, and its impact on the practice of law. One realizes today, by reading the papers that were presented then and the debates to which they gave rise, that many problems had been tackled and many ideas had been launched that we sometimes believe, with an ounce of naïveté, we have recently discovered. The opinions expressed at the 1900 Congress were, in fact, much more advanced than we often assume, so much so that we are naturally led to wonder whether, in spite of all appearances and in spite of countless colloquia, books, and articles, we have made any real progress in this field.

This brings us precisely to our point. One hundred years later, and especially in this year 2000, the moment seems quite appropriate

2. The Encyclopedia is published under the scientific direction of the Max-Planck Institute for Foreign and International Law in Hamburg, to which we are much indebted.

3. The Society is the oldest among the national associations of comparative law, since its creation dates back to 1869.
to examine where we stand on comparative law, to weigh the experience acquired in the past, to assess the present situation, and to make plans for the future. We may ponder the results obtained—successes or failures—and ask ourselves what is left of the ideals (and the dreams) of our predecessors, such as the elaboration of “a common law for all civilized mankind.” The fact is that now, more than ever, comparative law seems to be at the crossroads. On one side, its legitimacy as an object of study is no longer disputed. It has found a place in the curriculum of most law schools and has become a common and indispensable feature in most academic works—treatises, articles, or symposia—so that almost every jurist tends to consider himself a comparatist. But, on the other side, this very development has resulted in a sort of “identity crisis,” which, although latent for a long time, has grown noticeably in recent years to the point of becoming an occasional source of confusion and misunderstanding. One knows less and less what comparative law really is, how it should be approached, and what use can be made of it. There are epistemological debates that obscure, rather than clarify, the matter. It is more than time to come back to the fundamentals of this discipline and resume serious reflection on some questions that are vital to its future.

Scholars of comparative law might object that most of these questions are now outdated, for they have been raised many times and have already received an answer. The claim is that everything has been said about these old and classical issues, that nothing new can come out of such discussions, and that we are doomed to repeat some trite and obvious generalities that are of little interest for the comparatists of today.

Nothing is less true. The more progress a science makes, the more crucial it becomes to reach a bare consensus on its goals and methods. Although many problems were broached in 1900, not all of them were solved, if only because they were at the heart of major controversies. Since then, so many ideas and theories have been voiced that it has become more and more impossible to reach an agreement, with the result that most of the difficulties still exist. Even when they have been settled, the debate is not necessarily definitively closed, because we all know that the world has changed a lot during this century and that it is likely to change still more rapidly in the

future. Some of the positions that were adopted one hundred years ago, however modern and enlightened they were at the time, may look inadequate today. By the same token, some arguments that had been exchanged may now seem ill-founded. Who could believe, for example, that points of view have remained the same concerning the place of comparative law in legal education or in legal practice? Quite obviously, the twenty-first century will be one of internationalization and globalization. For the jurists, it will be the century of comparative law. We must be ready for this challenge.

But comparative law is not an end in itself. It is just a means. It is part of a broader science, from which its development must finally benefit. By taking the initiative of holding this Congress on comparative law, in cooperation with the Eason-Weinmann Center of Comparative Law and with the invaluable help of our cosponsors, the IALS is conscious that it is perfectly within its role, which is to foster “the development of legal science throughout the world.” This is why we are so grateful to all those who have allowed us to fulfill our task and remain faithful to our vocation.

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5. *Statutes of the IALS, supra* note 1, art. 3.