

# Friedrich Juenger's Vision of Legal Harmony

*Leonel Perezniето-Castro*

Professor Fritz Juenger was one of those rare U.S. professors of his generation who looked to the world outside of the United States. It was probably his European origin that opened this possibility for him. He wrote numerous and important works on European and especially German law.<sup>1</sup> After his first law course in the International Law Academy of The Hague,<sup>2</sup> he became known in Europe and, until his death, developed many relationships with European professors and lawyers who helped him understand their law.

However, little is known of Professor Juenger and his work in Latin America where, with a profound love of Mexico<sup>3</sup> and also Uruguay,<sup>4</sup> he promoted academic projects and supported legal scholars of the region,<sup>5</sup>

---

<sup>1</sup> Among others, *Zum Wandel des Internationalen Privatrechts*, Juristische Studiengesellschaft Karlsruhe, 1974; *Trends in European Conflicts Law*, 60(6) CORNELL L. REV., 968-984 (August 1975); *The Conflict Statute of the German Democratic Republic: An Introduction and Translation*, 25(2) AM. & COMP. L. REV. 332-353 (Spring 1977); and his critical study on the German Masterpieces works: GERHARD KEGEL, 8 BÜRGERLICHES GESETZBUCH (SOERGEL-KOMMENTAR) (11th ed. 1984) and HANS JUERGEN SONNENBERGER, 7 BÜRGERLICHES GESETZBUCH (MÜNCHEN KOMMENTAR) (1983); 34(3) AM. J. COMP. L. 562-571 (Summer 1986), etc.

<sup>2</sup> 1983, The Hague Academy of International Law, General Course on Private International Law.

<sup>3</sup> Prof. Juenger and his wife, Barbara, were married in México. Previously both took a long trip around the country during which they told friends on many occasions that this was the beginning of a close relationship with this country. Prof. Juenger and Barbara decided that their oldest son would be a Mexican born citizen, and Barbara went to Mexico for her son's birth. Over the years Prof. Juenger and Barbara visited Mexico many times where they have numerous friends.

<sup>4</sup> Where Prof. Juenger spent a sabbatical year (1987) and discovered the works of Quintin Alfonsín on Private International Law, which according to him were the best private international works in Latin America.

<sup>5</sup> One of the projects that Prof. Juenger supported was the Mexican Seminar on Private International Law in which he participated and invited other American scholars to participate in as well. In October 2003 the Seminar celebrated its 27th Congress; the 26th Congress was

introducing them to other circles. His swift learning of Spanish allowed him to interact with Latin American professors and lawyers, which rounded out his broad and profound vision of international legal relations.<sup>6</sup> With this background, Professor Juenger has been able to offer us a work with deep perspective: *Choice of Law and Multistate Justice*.

In this commentary, I wish to emphasize two aspects that seem very important to me in the work that brings us together in this colloquium. The primary one is the definition of a "multilateral choice of Law rule" and the other, more general one, is the comparativist vocation of the author.<sup>7</sup>

The idea of achieving a just balance among the laws that may apply in any given place encompasses an international spirit, but such a concept is also possible in practice through the integration of a body of law or jurisprudence with the purpose for local courts to reach fairer decisions in multistate cases.

Professor Juenger refers principally to European and U.S. cases, courts and doctrine, because this is where the principles of international trade and the *lex mercatoria* are forged together with judicial application of the local laws, resulting in a more equitable decision.<sup>8</sup>

Courts will begin to nourish the international conventions, model laws and legislative guidelines, principally UNICITRAL and UNIDROIT, and to a lesser extent the OAS (through its Specialized Commission on Private International Law) Draft. Judicial decisions can thereby extend such principles to the internal laws of the countries that have remained distant

dedicated to Prof. Juenger's memory. Prof. Juenger was also a strong supporter of the REVISTA MEXICANA DE DERECHO INTERNACIONAL PRIVADO Y COMPARADO, inviting American scholars to write and to have their recent works reviewed. Prof. Juenger published two essays in this review: *Contract Choice of Law in Americas* (October 1977) and *The Need of a Comparative Approach to Choice of Law Problems* (October 1999).

<sup>6</sup> Prof. Juenger developed international relations with 31 different academic institutions all over the world.

<sup>7</sup> For a broader opinion on *Choice of Law and Multistate Justice* see my critical review published in 51 NETHERLANDS INT'L L. REV. 385-386 (1994).

<sup>8</sup> Prof. Juenger's earliest ideas on the necessary balancing of interstate or international decisions can be found in his essay: *Mass Disasters and Conflict of Laws*, 1 U. ILL. L. REV. 105-205 (1989), with this same point of view, see a critical review of the U.S., "Conflict Revolution": *Choice of Law: How It Ought Not to Be*, 48 MERCIER L. REV. 757-764 (1997); *Correspondence of Friedrich K. Juenger and Larry Kramer to Henry C. Sigman* (1994), 28 VANDERBILT J. TRANSNAT'L L. 445-486 (1995).

from international trade and that have only recently begun to integrate themselves into such systems. Therefore, Professor Juenger's call to construct this body of principles is even more critical now.

Mexican trade with the U.S. has increased with NAFTA; more and more often business conducted in Mexico gives rise to cases decided by U.S. courts. Under these circumstances it would be desirable to choose from a pool of applicable laws to resolve those cases.<sup>9</sup>

When I testify as an expert witness in U.S. courts, I always try to mention what the codified law method is in the specific case so that the U.S. court can orient itself properly and, above all, honor the central maxim of comparative law: "Judge the foreign law as if it were your own." What is relevant in the world of contemporary comparative law is nothing less than the establishment of principles that serve the peculiarities of Mexican law and allow both countries to find economic and legal common ground.

Ten years ago Professor Stephen Zamora published an article entitled "The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement."<sup>10</sup> In that article he contended that the Mexican legal system was searching for legal models in U.S. law, as had happened with the enactment of the Mexican Foreign Trade Law, which is similar to U.S. trade regulation principles. Just as Professor Zamora predicted, other U.S. legal concepts continue to be integrated into Mexican law in such areas as telecommunications, energy, economic competition and the environment, among others. Ten years later, Mexican law is being modernized in order to compete in international markets, and the legal model it has chosen is that of the United States. Therefore, it is necessary to establish principles common to both laws, at least in the area of trade and family law, and to provide the courts with laws that allow them to resolve the legal problems that transcend borders in such critical areas as contracts, assignments, child abduction, support payments and marriage regimes.

It is to this context that Professor Juenger refers—transboundary traffic within closely linked economies. Therefore, the judicial decisions should be harmonious, and for that purpose he proposes the adoption of the

---

<sup>9</sup> The American Law Institute sponsors two projects on the unification of law in the three NAFTA member countries: in civil procedure, to unify concepts of jurisdiction, international judicial assistance and recognition of damages; in torts and contracts, to establish a code based on the UNIDROIT principles.

<sup>10</sup> *Law and Policy in International Business*, 24 Georgetown University Law Center 391-415 (1993).

“substantive law approach” as a means of resolving cases that carry elements linked to laws of other countries.

I would like now to turn to the matter of comparative law to which Professor Juenger was devoted. The friendship that we had for almost 30 years allowed me to see the comparativist in him. More important, however, he was a comparativist critic and a promoter of ideas that have been incorporated into legal texts such as Art. 10 of the Inter-American Convention on International Contracts,<sup>11</sup> in which his proposal for a substantive law approach is reflected.<sup>12</sup> In the work on which we are commenting today, in the section dedicated to The Virtues of Teleology, Professor Juenger undertakes a line of reasoning based on comparative law which at times reminds us of Ernst Rabel.<sup>13</sup> I cite one passage in which he states: “the rules of decision applied in multi-state cases are not necessarily identical with those found in domestic laws.” Great comparativists have sought to build a legal and jurisprudential body that contains the international principles necessary to boost the legal categories that internal laws establish in only a limited manner.<sup>14</sup> A local judge can understand that a marriage of partners coming from different legal systems can be recognized and valid, or that an assignment of right can be recognized as well. In that way, Professor Juenger’s vision of legal harmony can be achieved in practice.

---

<sup>11</sup> “Art. 10. In addition to the provisions in the foregoing articles, the guidelines, customs, and principles of international law as well as commercial usage and practices generally accepted shall apply in order to discharge the requirements of justice and equity in the particular case.”

<sup>12</sup> During the working groups of this Convention (March 1994) Prof. Juenger as a member of the U.S. Delegation to the Conference, proposed the above mentioned text that was approved by the rest of the working group.

<sup>13</sup> I THE CONFLICT OF LAWS, A COMPARATIVE STUDY 49 et al. (1958).

<sup>14</sup> The international comparativist position of Prof. Juenger led him to be a hard critic of localist positions such as the one defended by Brainerd Curie and his school. *See, in this regard, Correspondence of Fredrich K. Juenger and Larry Kramer, op. cit.*