

Michigan Law Review

Volume 77 | Issue 3

1979

A Significant Contribution to the Literature of Comparative Law

Arthur T. von Mehren
Harvard University

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Arthur T. von Mehren, *A Significant Contribution to the Literature of Comparative Law*, 77 MICH. L. REV. 347 (1979).

Available at: <https://repository.law.umich.edu/mlr/vol77/iss3/4>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

A SIGNIFICANT CONTRIBUTION TO THE LITERATURE OF COMPARATIVE LAW

Arthur T. von Mehren†

AN INTRODUCTION TO COMPARATIVE LAW: VOL. I, THE FRAMEWORK; VOL. II, THE INSTITUTIONS OF PRIVATE LAW. By *Konrad Zweigert** and *Hein Kötz***. Translated from the German by *Tony Weir****. Amsterdam, New York, Oxford: North-Holland Publishing Co. 1977. Pp. xvii, 385, xvii, 379. \$29.75 per volume; \$50.25 per set.

The first volume of this admirable work was published in 1969; the second volume appeared in 1971. Unchanged except for "the occasional deletion of a reference," "updating of bibliographies," and a number of specifically noted alterations that take into account developments since the book first appeared,¹ the work is now available in a superb English translation.

In the first volume the authors paint on a vast canvas. After a brief treatment of some methodological and background matters (pp. 1-56), "The Legal Families of the World" are considered (pp. 57-380). The discussion of the "Romanist," "Germanic," "Anglo-American," and "Socialist" Legal Families is quite extensive. Briefer consideration is given to the "Nordic" and the "Far Eastern" Legal Families and to Islamic and Hindu Law. The second volume deals in some detail with three basic institutions of private law: Contract (pp. 1-207), Unjustified Enrichment (pp. 208-63), and Tort (pp. 264-360).

The authors provide in the first volume a general background for comparative study. In the second volume the comparative method is applied and the insight and understanding that comparative study can contribute to thinking about legal problems and institutions are illustrated. The discussion is of considerable interest not only to those particularly concerned with comparative law and comparative legal institutions but also to anyone who seeks to understand his own legal system's approach to contract, unjustified enrichment, and tort.

† Story Professor of Law, Harvard University. B.S. 1942, LL.B. 1945, Ph.D. 1946, Harvard University.—Ed.

* Professor of Law, University of Hamburg; Director, Max Planck Institute for Foreign and International Private Law.

** Professor of Law, University of Konstanz.

***Fellow of Trinity College, Cambridge.

1. See Vol. I, p. 381; Vol. II, p. 361.

In a work of this scope, there are inevitably not only points of detail but also questions of emphasis and analysis as to which there may be disagreement. For example, the statement (Vol. I, p. 112) that the French courts never referred questions of doubtful construction to the legislature—the so-called “*référé facultatif*”—is incorrect.² The proposition that, where two cars collide, “the loss will [in French law] be divided between” the persons responsible (Vol. II, p. 325) is not true.³ It is misleading to discuss *Stilk v. Myrick*⁴ under the rubric “indicia of seriousness” (Vol. II, p. 63).⁵ But these are minor blemishes. So far as this reviewer is in a position to judge, accuracy in detail and soundness of judgment characterize the entire work.

In Volume I the authors undertake to describe for several of the legal families considered “an institution which is characteristic of the style” (p. 124) of the legal family in question. This undertaking provides an opportunity to discuss several topics of considerable interest: “The Legal Position of Illegitimate Children—A Distinctive Feature of the Style of the Romanist Legal Family” (pp. 123-32); “The Doctrine of the Abstract Real Contract—A Distinctive Feature of the Style of the Germanic Legal Family” (pp. 177-88), and “The Trust—A Distinctive Feature of the Style of the Anglo-American Legal Family” (pp. 274-83). Each of these subjects has great intrinsic interest; however, the methodological claim that each is characteristic of the *style* of its legal order is somewhat forced. Moreover, each topic gives a different kind of insight into the legal order. The legal position of illegitimate children in Romanistic legal systems has special interest from a sociological perspective. The Germanic institution of the abstract real contract is particularly revealing as to characteristics of legal analysis and method. The trust is suggestive with respect to the importance of institutional evolution in the development of the law and illustrates well the role of creative judicial ingenuity. The light cast by each of these three studies thus illuminates very different aspects of a legal system; except in the case of the Germanic system, these are not closely related to style, at least as that term is ordinarily understood. Methodological

2. See A. VON MEHREN & J. GORDLEY, *THE CIVIL LAW SYSTEM* 221-25 (2d ed. 1977).

3. See *id.* at 652-54. Each car's guardian is fully liable for the damage caused to the other car and its occupants.

4. 2 Camp. 317, 170 Eng. Rep. 1168 (1809).

5. Cf. von Mehren, *Civil-Law Analogues to Consideration: An Exercise in Comparative Analysis*, 72 HARV. L. REV. 1009, 1063 (1959) (fairness of adjustments in on-going relationships).

objections do not reduce the general interest of these studies. But the question remains whether it is not exceptional for a single institution to be strongly suggestive of stylistic characteristics common to an entire legal system.

But such matters are quibbles. Professors Zweigert and Kötz have written an excellent book and Mr. Weir has provided a translation that has style and pace as well as accuracy and lucidity. Although entitled "An Introduction to Comparative Law," the work's remarkable qualities can be fully appreciated only by one with considerable comparative learning. The book is of great value not to the neophyte alone but also to the comparatist and to the student of domestic law who seeks a deeper understanding of the areas of substantive law discussed. The work is an important contribution to legal scholarship.