



The economics of comparative law

Gerrit De Geest, editor

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Book Review by Sally Ramage

Edward Elgar

Edward Elgar Publishing published this refreshingly clear book. Edward Elgar has its UK offices in Cheltenham and Camberley and US offices in Northampton, Massachusetts, USA. Founded in 1986, Edward Elgar is a leading international publisher in economics, finance, business and management, law and public policy. Edward Elgar publishes over 250 new books a year.

The book

This work is divided into four parts:

Part I Classics

Part II Property Law

Part III Courts and the Legal System

Part IV Other

The contributors

Scholars whose works were chosen to be included in this tome include:

Martin J Bailey, Thorsten Beck, Mauro Bussani, Steven N S Cheung, Robert D Cooter, Simeon Djankov, Erica Field, Ronald J Gilson, Tom Ginsburg, Edward L Glaeser, Gillian K Hadfield, Henry Hansmann, Michael A Heller, Glenn Hoetker, Simon Johnson, Alsi Demirguc-Kuni, Henrik Lando, Ross Levine, Saul Levmore, Douglas C North, Vernon Valentine Palmer, Francesco Parisi, Rafael La Porta, Casper Rose, Martina Santilli, Andrei Shleifer, Florencio Lopez-de-Silanes, Michael L Smith and Robert Paul Thomas. Among these scholars are legal experts Beck,

Demirguc- Kunt, Levine, Ginsburg, Hadfield, Hoetker, Glaeser, Scleifer, Djankov, Lopez-de-Silanes, Hansmann, Santilli, Gilson, Lando, Rose, Johnson, and Smith. It is of note that the editor did not choose to include the very readable works of Ugo Mattei and Alberto Monti.

Differences in legal systems

In studying economic comparative law, differences among legal systems are analysed from an economic point of view. Part I includes an analysis of the work of Adam Smith's classic *The Wealth of Nations*, followed by an overview which concludes that '*economic growth occurs if output grows faster than population*'.

Property rights

It describes assumptions about the way people behave and concludes that property rights make it worthwhile to undertake socially productive activity. Such property rights are costly to create and so 'governments take over the protection and enforcement of property rights because they do so at a lower cost than private volunteer groups.

Legal systems borrow, inherit and impose onto each other

In the tort law scholarship paper by Saul Levmore, the author tells us that 'traditional comparativists explain uniformity among legal systems as a product of direct borrowing, imposition or common inheritance. The next paper examines legal rules covering protection of corporate shareholders and creditors in 49 countries.

In Part III, Glaeser and Schaefer's paper states that, for a legal system to protect property, the effects of coercion and corruption must be curtailed and acknowledges the politicization of justice.

Japan's low level of litigation

Paper 13 by Ginsburg and Hoetker, is an excellent perspective of Japanese law. Accepting that there is great dispute in scholarly communities as to why the Japanese litigate less than many other countries, they used, '*a unique set of prefectural-level data for the 1990s*', to evaluate the various theories of Japanese litigation behaviour.

Japan's Criminal and Commercial Codes

The first major legislation enacted in Japan was the Criminal Code of 1880, followed by the Constitution of the Empire of Japan in 1889, the Commercial Code, Criminal Procedure Act and Civil Procedure Act in 1890 and the Civil Code in 1896 and 1898. These were called the *roppo* (six codes) and the term began to be used to mean the whole of Japan's statute law. The *roppo* thus included administrative law of both central and local government and international law in the treaties and agreements of the new government under Tenno. Ginsburg and Hoetker conclude that litigation rates studied within a single legal system can isolate the factors which lead to more or less litigation and the impact of particular reforms. In the civil law system of Japan judicial precedent provides guidelines on how laws should be interpreted in practice.

Judge-made law

Although not legally binding, judges do take precedent, especially a Supreme Court decision, into serious consideration, thus making understanding of precedent essential to practice. In 1990, the Law and Society Review published an article by Takao Tanase entitled *The Management of Disputes: Automobile Accident Compensation in*

Japan. This article was a milestone in sociological study of the Japanese legal system. It showed precisely how the calculated structuring of governmental and legal processes, not a cultural propensity toward harmonious social relations, accounted for the persistently low litigation rate in that country.

Conclusion

In conclusion, this collection of work is extremely interesting and excellently described by Mattei and Monti, state in their paper on the subject:

‘Comparative law and economics is a rather new discipline located at the frontiers of contemporary legal research. This innovative scholarly paradigm - combining the analytical tools of adjoining and complementary social sciences in order to develop a critical approach to legal rules and institutions - conveys a distinctive European perspective on the theory and practice of law and economics... Comparative law and economics treats the legal and institutional backgrounds as dynamic variables and attempts to build models which reflect the ever changing layered complexity of the real world of the law, broadening the horizon of the underlying legal discourse and conferring a higher degree of realism to the theoretical analysis.’

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