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Comparative Law: Western European and Latin American Legal Systems -- Cases and Materials . John Henry Merryman and David S. Clark

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Book Review

COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS—CASES AND MATERIALS. By John Henry Merryman and David S. Clark. The Bobbs-Merrill Co., Inc., 1978. Pp. 1272. Index. \$23.00.

In spite of its many virtues, Comparative Law is still missing from the curriculum of too many law schools in the United States. But, this valuable course will some day come into its own; when it does a large measure of the credit must be given to the handful of comparatists who prepared the casebooks on the subject. Messrs. Schlesinger (*Comparative Law*), Karst and Rosenn (*Law and Development in Latin America*), and Von Mehren and Gordley (*The Civil Law System*) have already made their contributions. To the names of these distinguished comparatists we may now add those of John H. Merryman and David S. Clark for their *Comparative Law—Western European and Latin American Legal Systems*.

The authors, in the first sentence of the Introduction, unequivocally state their purpose—to prepare a book for a basic course in comparative law or civil law. Thus, the thread is clear, i.e. to unravel the civil law and to use its tradition—and the many civilian legal systems flowing from it—to introduce the student to the world's most prevalent legal tradition on a comparative basis. Without question they accomplished their objective, and in doing so they not only enriched the field but also added to their stature in an area still to be mined at depth by North American jurists.

The casebook, not surprisingly, given the scholarly caliber and academic background of the authors, is soundly structured and presented. It includes the basic material essential to an introductory course in civil law or comparative law, but it goes beyond that. It also contains materials that take the student beyond the fundamentals, i.e., subject matter necessary to an *understanding* of the legal systems of which the rules are only a part.

The work begins in traditional fashion with an Introduction to Comparative Law. In the first chapter the objectives, methods and uses of comparative law are reviewed. Additionally, coverage is given to practical matters such as the roles of comparative lawyers in international practice and foreign legal consultants, and to research in foreign law. The next two chapters cover the history of the civil law tradition from its Roman origins to its spread through Europe and

Latin America, plus the impact thereon of the Revolution (primarily the French in 1789) and of legal science (primarily German). This historical survey brings the civil law tradition up to the present day. Chapter Four deals with structures, i.e., the constitutional and institutional structures of various legal systems in Europe (France, Germany, Italy and Spain) and Latin America to point out fundamental structural and cultural differences. The following chapter covers Legal Education, the Legal Professions and Legal Aid, and immediately thereafter Chapter Six deals with the Judicial Process. The subject matter of Chapter Seven is Procedure (Civil and Criminal) with an additional section on the scope and structure of constitutional review. Chapter Eight ends what the authors call "the heart of the book." It is entitled "Rules" and it is designed to cover some of the rules of the civil law, but with emphasis on the concepts underlying the rules and on the civilian vocabulary which makes the rules understandable. This chapter ends with a quick look at the fields of torts, contracts, commercial law, and property.

The last three chapters on Agrarian Reform, Regulation of Foreign Investment, and Pleading and Proof of Foreign Law stray somewhat from the main theme of the book. With regard to the first two, the authors justify their inclusion on the basis of "their intrinsic interest. . . great contemporary concern. . . and as a reminder that the civil law world is not immune to social and political interests." Unquestionably true, but a concern remains. That is, whether in spite of their intrinsic worth, they should be included in a basic text on the civil law to be used presumably in a one semester, two or three credit course in law school. Personally, they seem slightly out of place, but this conclusion is tempered by the authors' conviction (which the reviewer shares) that the impact of social, political and intellectual forces on any legal system cannot be ignored. In any event, a personal preference can not be faulted, particularly when the authors clearly advise the reader that the two chapters under consideration are easily severable from the heart of the book. The misgiving concerning the chapters on Agrarian Reform and Regulation of Foreign Investment does not exist with respect to the last chapter on Pleading and Proof of Foreign Law. The material contained therein is justified, *inter alia*, on the ground that the subject "clearly relates the study of foreign law to problems arising in domestic practice." With this last statement, with the importance of the subject matter, and therefore with the inclusion of the chapter in the casebook this reviewer heartily agrees.

Each of the chapters in the book draws from previously published works to help illustrate and clarify the pertinent theme. These extracts, supplemented by the authors' Notes, Questions, and relevant cases provide an excellent and varied mix for the presentation of those subjects which should be covered in an introductory course in comparative law or civil law. Particularly pleasing was the frequent use of material from Professor Merryman's, *The Civil Law Tradition*. This small book is exceedingly rich in content, and it was good to see so much of the excellent material contained therein find its way into a new and more extensive work on the civil law.

The authors lay claim to a basic text and distinguish their effort from previous works by (1) extending coverage beyond the French and German legal systems; (2) deemphasizing rules *vis a vis* the social and intellectual climate and legal structures, roles and procedures; and (3) including empirical data relative to a number of European and Latin American legal systems. This reviewer finds the break with the past a welcome change with respect to the first two points, but is not so sanguine with respect to the third if it serves to open the door too wide for future authors. The authors' statement that empirical data "is important. . .and that it offers a fruitful way of bringing a significant additional perspective to the description and understanding of legal systems. . ." is unquestionably true. But here again the question is whether such data should be included in the material selected for an introductory course in civil or comparative law. Fortunately, the authors were sensitive to this potential concern and recognized there are more appropriate fora in which to make the case for quantitative comparative law. Accordingly, their judicious use of empirical data adds a new dimension which, because kept within bounds, does not detract from the presentation of the subject matter to the reader.

The completion of a work such as *Comparative Law: Western European and Latin American Legal Systems* must bring intense satisfaction to its authors. Presumably, that satisfaction originally arises from the accomplishment of the task—from completing a difficult, long, and exhausting undertaking. But, beyond this there is that immeasurable satisfaction which comes from a job well done—from having performed and done so meritoriously. Most probably Messrs. Merryman and Clark have, with full justification, already experienced this inner satisfaction. They now await the judgment of their peers.

Comparative Law: Western European and Latin American Legal Systems has, as previously stated, enriched our understanding of civil

law and comparative law. Basically a law school text, it is also of value to the practitioner and to all others seeking to understand, not only the basic rules of the civil law, but the spirit behind the rules. Its extended coverage of Latin American and other Western European systems (besides those of France and Germany) has added a new dimension to the usual study of the civil law tradition, and opened new vistas to those interested in exploring the similarities and differences of an added number of civilian legal systems. Obviously, Messrs. Merryman and Clark labored extensively and well in a field in which they have the highest academic credentials. For their outstanding contribution they merit the gratitude and congratulations of all those who will profit from their labor, dedication and, above all, their prowess in the civil law and comparative law areas.

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