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## DEDICATORY ESSAY

### DEDICATORY ESSAY PROFESSOR DR. DIETER GIESEN

*Harry D. Krause\**

Professor Dieter Giesen and I first met in 1973, in Birmingham, England. Perhaps a dozen family lawyers from about as many countries had been brought together by Neville Turner (now of Monash) and Zeev Falk (of Jerusalem) to plan the broad outlines of a permanent forum that would connect family law academics all over the world. Creating an international family law society then seemed an ambitious goal—one not very likely to be realized, as evidenced by the scarcity at the meeting of older, wiser academics. Had it not been for Dieter Giesen's talents, this now thriving world-wide association would probably have met an early end. I'll return to this point.

Since Birmingham, Dieter Giesen and I have enjoyed our mutual interests in law and beyond on many occasions and on three continents. While Oxford constitutes Giesen's second academic home, he occasionally visits the colonies and has taught and lectured in many distinguished institutions in South Africa, Australia, New Zealand, and North America, including a visit at Tulane, whose summer program in Berlin he enriched with a lively comparative law offering. Of course, he has often been a welcome visitor here at Illinois. On behalf of his Free University of Berlin, Giesen has built bridges to Asian institutions, ranging from Japan to Korea. Flags on a world map located in his Berlin study mark the vast number of universities he has visited, and little room remains for new exploration. He has been everywhere. We once ran into each other in the streets of Sydney, Australia, without either of us knowing the other was in town, or for that matter, on that continent.

I recall with some trepidation one of his teaching visits to Illinois, where I experienced first-hand the enormous skill, enthusiasm, charm, and deep knowledge Dieter Giesen shares with his students. Perhaps he

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was just a little bit too good. One student put on his evaluation sheet of my course—I still tell myself that he might have been joking—that Giesen should be kept on, and I should be sent to Germany! While the former exceeded our reach, the latter proved unnecessary, as I often visit Germany voluntarily. And, when I am in Germany and do not see Dieter, it is only because he is in his best-loved England. Incidentally, Giesen's course that met such universal enthusiasm among our students was a course in *English legal history!*

History, particularly English legal history, remains one of Dieter's continuing interests. Once or twice he confessed to me that he would have enjoyed being a full-time historian. His lasting accomplishment in that area exceeds that of some full-time historians. Early in his career, Giesen completed a detailed study on *Foundations and Development of the English Matrimonial Law up to the Beginning of the 19th Century in the Light of English History, Legal History and the History of the Church*.<sup>1</sup> This work is of such depth and breadth that it counts for much more than just his "Habilitation," the rite of passage through which all German professors must pass. It assured his early "Berufung" (call) to an instant full professorship. Reviewing this work, Professor Henry Finlay (of Monash and Tasmania) admires Giesen's "high standard of scholarship" and terms it an "original contribution to legal knowledge."<sup>2</sup> Professor Merzbacher (of Würzburg) invokes "the legal research community's gratitude [to] this knowledgeable author."<sup>3</sup>

Professor Giesen has achieved far beyond the usual measure of achievement expected from a German professor—or three of them. His writings span history, family law, and today he stands as the top international, comparative authority on the law of medical malpractice and physician's liability. Again, his scholarship in this area alone exceeds the lifetime outputs of other, well-reputed scholars.

I shall concentrate on his most prominent work, *International Medical Malpractice Law*.<sup>4</sup> This is a massive comparative study that traverses not

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1. Grundlagen und Entwicklung des englischen Eherechts in der Neuzeit bis zum Beginn des 19. Jahrhunderts (Bielefeld 1973).

2. Henry Finlay, Dieter Giesen's Grundlagen und Entwicklung des Englischen Eherechts in der Neuzeit bis zum Beginn des 19. Jahrhunderts, 24 INT'L & COMP. L. Q. 373, 373 (1975).

3. F. Merzbacher, ARCHIV F.D. CIVILISTISCHE PRAXIS 158 (1975) (book review of Dieter Giesen's Grundlagen und Entwicklung des Englischen Eherechts in der Neuzeit bis zum Beginn des 19. Jahrhunderts).

4. DIETER GIESEN, INTERNATIONAL MEDICAL MALPRACTICE LAW: A COMPARATIVE LAW STUDY OF CIVIL LIABILITY ARISING FROM MEDICAL CARE (1988).

only the lines of countries, but across the common law and civil law systems. John Fleming (of Berkeley) observes that "the author's familiarity with the various jurisdictions is truly impressive,"<sup>5</sup> and lauds the work as an "outstanding contribution to contemporary legal-medical literature and a notable addition to comparative law."<sup>6</sup> Fleming concludes, "the work merits first rank in the Anglo-American literature of law and medicine."<sup>7</sup> This "triumph of scholarship"<sup>8</sup> (Hood, Vanderbilt), "prodigious work . . . magnificent achievement"<sup>9</sup> (Nicholson, Adelaide), and "masterwork"<sup>10</sup> (Dickens, Toronto) had been a long time in gestation. An earlier version (1981) had presented the full text in both English and German. Lord Kilbrandon, formerly Lord of Appeal, termed this "a feat which one can contemplate only with respectful amazement."<sup>11</sup> Another predecessor version (1976) was trilingual—in English, French, and German! The final work is in English only. Reinhard Zimmermann (of Regensburg) welcomes that choice, noting that "German judicial science has much to offer in this area"<sup>12</sup> and "anyone who wants to have noted widely beyond German borders what is thought important in Germany, must utilize English."<sup>13</sup> Zimmermann sees the final work as an "*opus magnum* with a touch of the monumental, demanding the reader's unqualified admiration: A comprehensive, authoritative and in many respects extraordinary work. Everything is in grand style. . . . The discipline and the broad perspective with which Giesen tames the nearly limitless abundance of material is astonishing."<sup>14</sup> Alec Samuels (South-

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5. John Fleming, Dieter Giesen's International Medical Malpractice Law, A Comparative Law Study of Civil Responsibility Arising from Medical Care, 37 AM. J. COMP. L. 838, 838 (1989).

6. Id. at 838.

7. Id. at 841.

8. Howard Hood, 17 INT'L J. LEGAL INFO. 202 (1989) (book review of Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care).

9. Kevin Nicholson, Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care, 12 ADELAIDE L. REV. 500, 500 (1990).

10. Bernard Dickens, Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care, 71 CAN. BAR REV. 200, 200 (1992).

11. Lord Kilbrandon, Dieter Giesen's Medical Malpractice Law: A Comparative Law Study of Civil Responsibility Arising from Medical Care, 8 J. MED. ETHICS 51, 51 (1982).

12. Reinhard Zimmermann, 1990 FAM. R.Z. 241 (book review of Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care).

13. Id.

14. Id.

ampton) says, "Dieter Giesen is a scholar of high order. His mastery of the issues, his lucid exposition, and his enormous range of source materials are most impressive."<sup>15</sup> Andrew Grubb (Cambridge, now King's, London) adds, "Stunning achievement of detail—impressive work—encyclopedic—essential reference book."<sup>16</sup> Adolph Laufs (Heidelberg) states, "The author deserves appreciative thanks for having, with a great monograph, created a presence for German legal science in a dynamic international field. . . . A high point in the development of the literature of law and medicine."<sup>17</sup> Kenneth McK. Norrie (Aberdeen, now Strathclyde, Glasgow) adds, "Scholarship at the highest level."<sup>18</sup> Alexander McCall Smith (Edinburgh) sees the work as a "triumph of scholarship which has no equal in the area of civil liability studies. There is, quite simply, nothing in English which even approaches the breadth and depth of this profound and major work, which is written, incidentally, in an English of great style and clarity. . . . The debt of gratitude which the common law world owes to Giesen for this lucid masterpiece is large enough."<sup>19</sup> George P. Smith, II (Catholic University and the founder of *The Journal of Contemporary Health Law and Policy*) offers, "Elegant and meticulous . . . . My expectations were indeed great as I approached this book and were met and exceeded ten times over."<sup>20</sup> This sampling gives a flavor of the enthusiastic opinions of Giesen's work held by scholars of world repute.

Aside from Giesen's numerous articles (stretching into the hundreds as documented in the bibliography that follows), he has written many other noteworthy books, before and after *International Medical Malpractice*

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15. Alec Samuels, 15 *J. MED. ETHICS* 219 (1989) (book review of Dieter Giesen's *International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*).

16. Andrew Grubb, 40 *INT'L DIG. HEALTH LEGIS.* 767 (1989) (book review of Dieter Giesen's *International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*).

17. Adolf Laufs, 1989 *JURISTENZEITUNG* 682 (book review of Dieter Giesen's *International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*).

18. Kenneth McK. Norrie, *Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*, 39 *INT'L & COMP. L. Q.* 248, 248 (1990).

19. Alexander McCall Smith, *Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*, 57 *RABELS Z.* 764, 764 (1993).

20. George P. Smith, II, *Dieter Giesen's International Medical Malpractice Law: A Comparative Law Study of Civil Liability Arising from Medical Care*, 6 *J. CONTEMP. HEALTH L. & POL'Y* 437, 437 (1990) (book review).

*Law.* Three in just the last few years. In 1991—with a new edition in 1995—he published a text on *Rechtsgeschäfte*,<sup>21</sup> covering aspects of contract law. His one volume treatment of German family law<sup>22</sup> was published to a very warm reception in 1994. A leading appellate court president wrote, “In his presentation, Giesen orients himself by legal-cultural and legal-historical foundations, distinguishing the new publication from other up-to-date presentations of family law. Without [these foundations, modern family law] is difficult to understand.”<sup>23</sup> Another judge and professor sums up: “High academic standard—unconditionally recommended.”<sup>24</sup> As I am primarily a family lawyer, I was particularly happy to see this book as tangible proof that family law remains one of Giesen’s active and major subjects—even if, for a time, it had to take a backseat to his medical scholarship, and even if he returned to the latter when the fourth edition of his German/Austrian/Swiss medical malpractice treatise was published in 1995.<sup>25</sup>

Giesen is thus a master of three subjects, each large and important enough to provide a lifetime calling for a scholar, as well as of two systems, common law and civil law. Few comparative lawyers have ever stood so solidly with both feet in both systems. In his chosen field, Giesen is the leading interpreter of German law to the common law world.

Giesen’s work is not limited to theory and abstraction. He is not the colorless academic. Throughout his work, his deep concern with ethical issues is apparent. In a seminal piece on the subject of nonconventional reproduction and prenatal research, Giesen writes: “We must ensure that medical professionals are made aware of the limits of ethically justifiable procedures. Medical science has no special dispensation.”<sup>26</sup> Giesen does not shy away from expressing his own, deeply humanistic view of the ethical limits of modern medicine, introducing some of his commentary with the phrase: “To put it bluntly”<sup>27</sup> and following through. Over the years,

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21. BGB-Allgemeiner Teil: Rechtsgeschäftslehre (Walter de Gruyter 1st ed., 1991, 2nd ed. 1995).

22. Familienrecht (J.C.B. Mohr-Paul Siebeck, 1994).

23. Günter Otto, 1995 DAS STANDESAMT 218 (book review of *Familienrecht*, *supra* note 22).

24. Bernd Klüsener, 1995 DER DEUTSCHE RECHTSPFLEGER 231 (book review of *Familienrecht*, *supra* note 22).

25. Arzthaftungsrecht: Die Zivilrechtliche Haftung aus medizinischer Behandlung in Deutschland, in Österreich und der Schweiz (J.C.B. Mohr-Paul Siebeck, 2 ed. 1984; 3rd ed. 1990; 4th ed. 1995).

26. Dieter Giesen, Developing Ethical Public Policy on Reproduction and Prenatal Research: Whose Interests Deserve What Protection?, 8 *MED. & L.* 553, 588 (1989).

27. *Id.*

he also has participated actively in numerous German law reform efforts, prominently as a member of the West German Parliamentary Enquête Kommission "Frau und Gesellschaft" (Woman and Society).

I said earlier that without Dieter Giesen's intensive dedication, there probably now would be no International Society of Family Law. Let me explain. By 1974 (only a year after the preliminary meeting in Birmingham and perhaps just before the founders' initial momentum would have run out), Dieter Giesen had invested an enormous amount of effort to enlist the support of his university, his city, and his national government to fund and organize the fledgling society's first world congress in Berlin. Giesen staked his reputation on the idea that an international society of family law could succeed. One must consider that this was to be the first, high-risk meeting of a new group that had no track record whatsoever. In that light, it was a remarkable feat (and very hard work) to secure the generous financing he received. But Giesen succeeded brilliantly, to the point where, to reduce the risk of failure, he was able to cover the travel expenses of some prominent participants from distant countries who would not otherwise have come to Berlin. When the question arose regarding which language the Congress should use for simultaneous translation and the choice was English (the language that would reach the greatest number of participants and require the least number of interpreters), some were understandably unhappy. Giesen soothed the controversy with consummate learning, humor, and charm. To us all he wrote a long letter in impeccable Latin (at least I think it was impeccable), suggesting that neutral Latin become the Society's official language.

In the event, hundreds of eager and distinguished participants turned the Congress into a great success. In a real sense, this marked the Family Law Society's birth. Since then, Giesen has served as its president (1977-79), and the Society has gone on to build bridges between continents. It publishes an annual international survey of developments in family law and, in regular and frequent congresses since Berlin, the society has brought together thousands of family law academics and practitioners from all over the world.

Giesen's many works have been so influential world-wide that it is impossible to do them justice in this short space. To show the depth and breadth of Giesen's reputation I have quoted a small but representative sample of what his peers from all over the world have said about him. The uniformly enthusiastic nature of this sample speaks for itself, or more accurately, for Dieter Giesen's enormous accomplishments as a leading scholar and teacher, and as a dual citizen of the civil law and common law

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*Professor Dr. Dieter Giesen*

worlds. Knowing him and working with him has truly enriched my life, and I count myself fortunate that he is my friend. It is indeed an honor and a privilege to have been asked to dedicate this volume to him, and thus to have the opportunity to express a little of the admiration that is due this great scholar.





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\* Medical Law Publications only. Professor Giesen's other fields of expertise are, among others, Family Law, Contracts, Torts and Legal History, in which he has also published books and numerous articles.

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