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# Efficiency in Legal Transplants: An Essay in Comparative Law and Economics

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It is the aim of this paper to throw some light on the role of economic efficiency in explaining in a comparative perspective patterns of legal change. In doing so I will try to use the tools of law and economics and comparative law, two of the most interesting general approaches to legal scholarship within the western legal tradition.

In the first two sections of this paper I will introduce two theories of legal change that have been developed in comparative law and in law and economics. I will then describe and discuss, in the light of economic efficiency, the development of some analogies and differences between legal systems in the law of property. Indeed, in this field it is manifestly not the case that most changes in the laws of a country result from imports from other legal systems, even if it is also true that there is nothing very uncommon in such importations. Thinking in terms of efficiency may therefore offer some clue to understanding convergences and divergences in property law.

In this paper, I will consider Comparative Law and Economics a positive discipline, which—from the standpoint of efficiency—“deals with the transplants that have been made, why and how they were made, and the lessons to be learned from this.” Comparative Law and Economics, on the other hand, may be considered a practical study, which—again from the efficiency point of view—“deals with the transplants which are appropriate and how they should and can be made.”<sup>2</sup> In the language common among law and economics scholars, I can say that there may be both a positive and a normative version of Comparative Law and Economics.<sup>3</sup>

## 1. Legal Change, Legal Transplants, and Comparative Law

Comparative law has reached an important conclusion in its more recent and sophisticated developments. In most cases changes in a legal system are due to legal

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<sup>1</sup>This paper has been prepared for the first Comparative Law and Economics Forum, Berkeley, CA, October 1992. The author wishes to thank Tony Weir, Tony Jolowicz, Antonio Gambaro, P. G. Monateri, Roberto Pardolesi, Mauro Bussani, Michele Graziadei, Robert Cooter, James Gordley, Tony Ogus, Rodolfo Sacco, the participants at the first Comparative Law and Economics Forum meeting, as well as two anonymous referees, for reading and commenting on previous drafts of this paper.

<sup>2</sup>Watson, *Comparative Law and Legal Change*, Cambridge L. J. 313 (1978) 318.

<sup>3</sup>R. Cooter and T. Ulen, *Law and Economics*, (1988) 8 ff. See for such a use of EAL, Mattei-Pardolesi, *Law and Economics in Civil Law Countries: A Comparative Approach*, 11 *Int. Rev. Law Econ.* 265 (1991), 271–272.

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