Law in the United States, 2nd Edition

Law in the United States, 2nd Edition, is a concise presentation of the salient elements of the American legal system designed mainly for jurists of civil law backgrounds. It focuses on those attributes of American law that are likely to be least familiar to jurists from other legal traditions such as American common law, the federal structure of the U.S. legal system, and the American constitutional tradition. The use of comparative law technique permits foreign jurists to appreciate the American legal system in comparison with legal systems with which they are already familiar. Chapters of the second edition also cover such topics as American civil justice, criminal law, jury trial, choice of laws and international jurisdiction, the American legal profession, and the influence of American law in the global legal order.

Arthur T. von Mehren (1922–2006) was Professor of Law Emeritus at Harvard Law School. He represented the United States for thirty-eight years in the Hague Conference of Private International Law. He wrote 210 publications in English, French, Spanish, Italian, German, and Japanese. They include the groundbreaking Civil Law System, his pioneering two books and nine articles on Japanese law, his highly original Law of Multistate Problems, his foundational monographs on contract formation and form, his articles on jurisdiction, and his award-winning Hague lectures.

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Law in the United States

SECOND EDITION

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To Arthur Taylor von Mehren
Scholar, Teacher, and Builder of International Bridges
1922–2006
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The first edition of this book was an outgrowth of a series of lectures that were given by Professor von Mehren in the fall of 1983 and the spring of 1984 at the University of Ghent, Belgium. Professor von Mehren explained the focus of the book in the Preface to the first edition in the following terms:

A principal focus of my legal scholarship during the last four decades or so has been to compare the Civil Law (especially as expressed in the legal systems of France and Germany) with the Common Law. Only the last three chapters of Law in the United States: A General and Comparative View are fully and explicitly comparative. However, the book as a whole rests on a comparative foundation: The topics selected for discussion are those that seemed to me most basic for a foreign jurist’s understanding of the American legal scene. The treatment given each subject seeks to be sensitive to how a jurist not trained in American law – or, more generally, in the Common Law – can most easily find his way in the complex of legal orders that collectively comprise law in the United States.

The book is designed to introduce but to be more than introductory. The matters discussed are of fundamental importance and, on occasion, of considerable difficulty; my effort and hope are not only to impart essential information but also to give basic understanding.

In the nearly two decades since Law in the United States first appeared in 1987, jurists from around the world have found its systemic analysis and comparative approach helpful to reaching an
Preface

understanding of the American legal system. Teachers of introductory courses on American law have used the work as a core text in their courses. The book’s comparative orientation, which makes use of foreign jurists’ preexisting knowledge of their own legal systems, has brought a richness to the dialogue that a purely descriptive approach would seem to lack.

The undersigned first used *Law in the United States* as a teaching text in a course on Introduction to American Law given at the University of Freiburg, Germany, in 1998. Although the first edition was allowed to go out of print by around 2000, it has continued as the core text in a number of long and short courses on the American legal system taught at Harvard Law School, the University of Freiburg, and the University of St. Gallen Master of European and International Business Law program in the years since. Over the years, supplementary materials have been created to cover areas of American law not treated in the first edition.

Although there had been discussions with Professor von Mehren about a second edition for some years, it took John Berger of the Cambridge University Press to get the project off the ground. His suggestion in 2003 that it was high time for a new edition of Professor von Mehren’s small classic resulted in the collaboration for this volume.

The second edition retains virtually all of the contents of the first edition, although updated and somewhat rearranged to facilitate use of the work as a course text. This rearrangement reflects the junior author’s preferences from nearly ten years of teaching in this area. As was the case with the first edition, the chapters are configured to be more or less freestanding, so that colleagues can freely select and rearrange the material to suit their own pedagogical approaches. Chapters 2 (American Common Law), 6 (American Civil Justice), 9 (Choice of Law, International Civil Jurisdiction, and Recognition of Judgments in the United States), and 10 (The American Legal Profession) contain
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considerable additional material new to the second edition. Chapters 7 (American Criminal Justice), 8 (American Trial by Jury), and 11 (The United States and the Global Legal Community) are entirely new.

Although all the new and updated material in the second edition was discussed with Professor von Mehren, the original plan that he would carefully review and contribute to all of the new and revised material was frustrated by his untimely death on January 6, 2006. Thus, only Chapters 1 and 2 bear the imprint of his recent editing. For the remaining new material in the second edition, the undersigned bears the responsibility and, for any errors, the sole blame.

During the last thirteen years of his productive life as Joseph Story Professor of Law Emeritus at Harvard Law School, Professor von Mehren was assisted by a succession of gifted young German law academics, the Joseph Story Research Fellows. Following Professor von Mehren’s death, the last phases of preparation of the manuscript for the second edition were greatly aided by the helpful assistance of Dr. Eckart Gottschalk, the last Story Fellow, who carefully read each chapter and contributed helpful comments and suggestions.

Professor von Mehren’s extraordinary career as international legal scholar and teacher has been of immense meaning and influence on many levels in the United States and abroad. This second edition is dedicated to his memory.

Peter L. Murray
Cambridge, Massachusetts
July 2006