

## Contents

<i>Foreword by Philip K. Howard</i>	<i>page</i> xiii
<i>Preface</i>	xix
<i>Acknowledgements</i>	xxv
<i>Summary</i>	xxvii
PART I INTRODUCTION	1
<b>1 Introduction: Of Governments and Laws</b>	3
A. Americans' Longing for a Government of Laws	3
B. Making Good Laws Is Hard	6
C. America's Broken Government of Laws	7
D. Germany's Working Government of Laws	8
E. The Theses of This Book	9
F. How to Read This Book	9
<b>2 America's Exceptionalism in 1876: Systematizing Laws</b>	10
Philadelphia Centennial Exhibition	11
<b>3 Common Law Is Not an Option</b>	15
A. Three Common-Law Truths	16
B. Five Common-Law Myths	21
PART II HISTORICAL PART: AMERICANS' LONGING FOR LAWS FOR THE PEOPLE	31
<b>4 Founding a Government of Laws</b>	33
A. The Founders' Vision: A Government of Laws for a New Nation	34
B. The Enigmas of British Law in America	44
C. Eulogies of Adams and Jefferson	54

<b>5</b>	<b>Building a Government of Laws in the First Century of the Republic</b>	57
	A. Constitutions	57
	B. Constitutional Conventions	61
	C. Statutes	65
	D. Civics	71
	E. Self-Government	84
	F. Systematizing Laws for the People	91
	G. Ubiquity of Systematizing	100
	H. Legal Education and Systematizing Laws	127
	I. Summary of Systematizing 1776–1876	133
<b>6</b>	<b>The Rise and Fall of Codes Fin de Siècle</b>	135
	A. The Centennial Moment at Home and Abroad	135
	B. Code Combat in Upstate New York	139
<b>7</b>	<b>Historical Epilogue: From Past to Present</b>	146
	A. From Laws for People to Precedents for Professionals	147
	B. Today's Legal Professions	156
	PART III COMPARATIVE PART: WAYS TO A GOVERNMENT OF LAWS	163
<b>8</b>	<b>Inviting Comparison: A Gift Horse in Two Lands</b>	165
	A. Governing Gift Horses	166
	B. America's Horse Laws Are for Pedestrians	168
	C. Germany's Horse Laws Are for Equestrians	175
<b>9</b>	<b>Systematizing and Simplifying Statutes</b>	180
	A. Knowing the Laws that Govern	180
	B. America's Laws Are Out of Order	181
	C. Germany's Laws Are a House in Order	193
<b>10</b>	<b>Lawmaking for the Common Good</b>	206
	A. Laws Are Made by and for Everybody	206
	B. America's Laws Are Made by Nobody for Somebody	208
	C. Germany's Laws Are Made by Somebody for Everybody	216
<b>11</b>	<b>Federalism and Localism</b>	230
	A. Laws Are for People and Not for Sovereigns	230

<i>Contents</i>		xi
	B. The United States of America's Fifty-One-Plus Laws for Fifty-One-Plus Governments	232
	C. The Federal Republic of Germany's One Law for Seventeen Governments	242
<b>12</b>	<b>Constitutional Review</b>	249
	A. Validating Laws Seamlessly	249
	B. The American Plan: Three Full Instances	251
	C. The Continental Plan: A Sound Start	260
<b>13</b>	<b>Applying Laws</b>	267
	A. Enabling a Government of Laws	267
	B. America's Process Corrodes Statutes	270
	C. Germany's Process Fortifies Laws	290
<b>14</b>	<b>Conclusion: Learning from Others</b>	300
	Laws for the People in Germany	303
	<i>Appendix: The Foreign Law Controversy and the Fate of Civil Law Scholarship in American Law Schools</i>	305
	<i>Index</i>	325