

Comparative Law

Comparative Law offers a thorough grounding in the subject for students and scholars of comparative law alike, critically debating both traditional and modern approaches to the subject and using examples from a range of legal systems gives the reader a truly global perspective.

Covering essential academic debates and comparative law methodology, its contextualised approach draws on examples from politics, economics and development studies to provide an original contribution to topics of comparative law.

New to this edition:

- fully revised and updated to reflect contemporary research;
- more examples from many areas of law;
- increased discussion of the relevance of regional, international, transnational and global laws for comparative law;
- suitable for students taking courses in comparative law and related fields, this book offers a fresh contextualised and cosmopolitan perspective on the subject.

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Editors: William Twining (University College London),
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Second Edition

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Preface to the Second Edition

The main approach and structure of the book have been retained in the second edition. However, the following key changes have been made: the previous chapter on 'Fading State Borders' has been transformed into two chapters on 'Convergence, Regionalisation and Internationalisation' (Chapter 9) and 'From Transnational Law to Global Law' (Chapter 10). Some of the chapters have been expanded and/or restructured, in particular those on 'Mapping the World's Legal Systems' (Chapter 4), 'Postmodern Comparative Law' (Chapter 5), 'Numerical Comparative Law' (Chapter 7), 'Legal Transplants' (Chapter 8) and 'Reflections and Outlook' (Chapter 13). New literature published until June 2017 has been considered as fully as possible.

I am grateful for both the positive reception of the first edition and constructive comments by friends and colleagues. I also thank the editors of the Law in Context series and Cambridge University Press, in particular Marta Walkowiak, Caitlin Lisle and Valerie Appleby, and for their ongoing support.

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Preface to the First Edition

In a well-known Irish joke a foreigner asks a local how to get to a particular place, but only receives the advice that ‘if I were you, I wouldn’t start from here’. Of course, in reality (and without teleportation) one has to start from the place where one is at present. Applying this trite insight, ‘traditional comparative law’ is still a suitable starting point for a general book on comparative law. However, this book also aims to lead the reader somewhere else, namely, to a deeper and more interdisciplinary perspective. This is not to claim that traditional approaches have become obsolete, but, just as one cannot ignore past achievements, neither can one disregard new approaches and topics of comparative law.

It is hoped that this strategy has led to a book that fills a notable gap in the literature. This is not to deny that significant comparative legal research has been produced in recent years, though the focus and format of the present book is different from previous ones as (i) it deals with general questions of comparative legal method, in contrast to detailed micro-comparisons of particular rules and countries, (ii) it provides a comprehensive treatment of the state of art of comparative law, in contrast to monographs that discuss particular aspects or methods of comparative law and (iii) it is a single-authored coherent text, in contrast to books that comprise collections of articles on topics of comparative law.

As a consequence, this book is targeted at a wide audience. In the first instance, it may be appreciated by readers who are specifically interested in comparative law, be they students, academics or others. Secondly, however, comparative law is too important to be left to comparative lawyers! In today’s world, even lawyers whose main interest lies in particular domestic legal systems frequently come across foreign sources of law, making familiarity with core topics of comparative law indispensable. Moreover, this book aims to show that comparative law is often closely related to other comparative fields, such as comparative politics, sociology, economics and development; thus, comparative scholars in these fields may also benefit from this book.

Research for this book started in autumn 2009. I want to thank the universities where I have held permanent and visiting positions in recent

years. These were, on the one hand, the University of East Anglia and Durham University in the United Kingdom, and, on the other hand, the Riga Graduate School of Law in Latvia, the Central European University in Hungary, the Interdisciplinary Center in Israel, Waseda University in Japan, Shanghai Jiao Tong University and the China University of Political Science and Law in China, the Center for the Study of Law and Society at UC Berkeley and Fordham Law School in the United States, and the British Institute of International and Comparative Law and the Institute of Advanced Legal Studies in the United Kingdom.

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Of course, all remaining mistakes are my own. I would be grateful for any feedback, whether of a supportive, neutral or critical nature. This book is accompanied by a website (www.comparinglaws.blogspot.com), which provides additional information on the topics of this book.

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Abbreviations

ADGM	Abu Dhabi Global Market
AFTA	ASEAN Free Trade Area
AU	African Union
BCBS	Basel Committee on Banking Supervision
BEEPS	Business Environment and Enterprise Performance Survey
BGB	German Civil Code
BGH	German Federal Supreme Court
CA	Court of Appeal of England and Wales
CARICOM	Caribbean Community
CBR	Centre for Business Research (University of Cambridge)
CDF	Comprehensive Development Framework
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEMAC	Monetary and Economic Community of Central Africa
CEPEJ	European Commission for the Efficiency of Justice
CISG	Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CPI	Corruption Perception Index
DBR	Doing Business Report (World Bank)
DCFR	Draft Common Frame of Reference (EU)
DIFC	Dubai International Financial Centre
EBRD	European Bank for Reconstruction and Development
ECCAS	Economic Community of Central African States
ECCU	Eastern Caribbean Currency Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
EFTA	European Free Trade Association
EJN	European Judicial Networks
EU	European Union
FATF	Financial Action Task Force

G20	Group of Twenty
GCC	Gulf Cooperation Council
GRI	Global Reporting Initiative
HDI	Human Development Indicators
HRAF	Human Relations Area Files
ICC	International Chamber of Commerce
IC Ct	International Criminal Court
ICJ	International Court of Justice
ICRG	International Country Risk Guide
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFRS	International Financial Reporting Standards
ILO	International Labour Organization
IMF	International Monetary Fund
IOC	International Olympic Committee
IOSCO	International Organization of Securities Commissions
IPCC	Intergovernmental Panel on Climate Change
ISDA	International Swap and Derivatives Association
ISO	International Organization for Standardization
LDP	Liberal Democratic Party (Japan)
LL.M.	Master of Laws
MDS	metric multidimensional scaling
MERCOSUR	Mercado Común del Sur
NAFTA	North American Free Trade Association
NGO	Non-governmental organisation
OAS	Organization of American States
OECD	Organisation for Economic Development
ODIHR	Office for Democratic Institutions and Human Rights
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
OSCE	Organization for Security and Co-operation in Europe
PECL	Principles of European Contract Law
QCA	qualitative comparative analysis
QFC	Qatar Financial Centre
ROSC	Report on the Observance of Standards and Codes
SII	Structural Impediment Initiative
SE	Societas Europaea (European Company)
SEZ	special economic zone
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UCC	Uniform Commercial Code
UDHR	Universal Declaration of Human Rights
UEA	University of East Anglia

UEMOA	West African Economic and Monetary Union
UN	United Nations
UNASUR	Union of South American Nations
UNCITRAL	UN Commission on International Trade Law
UNCTAD	UN Conference on Trade and Development
UNDEF	United Nations Democracy Fund
UNDP	UN Development Programme
UNIDROIT	International Institute for the Unification of Private Law
USAID	United States Agency for International Development
WBES	World Business Environment Survey (World Bank)
WEF	World Economic Forum
WGI	Worldwide Governance Indicators (World Bank)
WHO	World Health Organization
WJP	World Justice Project
WTO	World Trade Organization
ZERP	Zentrum für Europäische Rechtspolitik (University of Bremen)

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