

## Comparative Law

THIRD EDITION

*Comparative Law* offers a thorough grounding in the subject for students and scholars alike, covering essential academic discussions and comparative law methodology. It critically debates both traditional and modern approaches to the discipline and uses examples from a range of jurisdictions to give the reader a truly global perspective. Its contextualised and interdisciplinary approach draws on examples from politics, economics and other social sciences to provide an original contribution to topics of comparative law. This new third edition is fully revised to reflect developments in the scholarship and includes two new chapters, balancing the book's structure between comparative law of the past, present and future. Suitable for students taking courses in comparative law and related fields, this book offers a fresh and cosmopolitan perspective on the subject.

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Third Edition

MATHIAS SIEMS

*European University Institute, Florence*



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## Preface

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.

Similarly, Blaise Pascal provides the following suggestion to change someone’s mind. He explains that we must identify from what side he views the matter and admit to him what is true about his position, but then also reveal to him the side that he has not considered. So the strategy is that the other person believes ‘that he was not mistaken, and that he only failed to see all sides’.<sup>1</sup> In the present case, this book aims to map a variety of perspectives on comparative law. Yet, as will become apparent, it also provides its own position on the nature and scope of comparative law.

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. Second, however, comparative law is too important to be left only 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.

The main approach and structure of the book have been retained in the third edition. However, the following key changes have been made. New chapters on

<sup>1</sup> As translated in Charles W. Eliot (ed.), *The Harvard Classics* (vol. 48): *Blaise Pascal: Thoughts, Letters, Minor Works* 11 (Danbury, CT: Grolier Enterprises, 1988).

‘The diffusion of legal traditions’ (Chapter 5) and ‘Empirical comparative law’ (Chapter 9) have been added. Thus, the structure of the three main parts is now balanced, with four chapters in each. Significant changes have also been made to chapters 6, 8, 10, 11, 13 and 14. New literature published up until May 2021 has been considered as fully as possible.

I am grateful for both the positive reception of the previous editions and constructive comments by friends and colleagues. I also thank Sylvie Taylor Armstrong for proofreading the manuscript of this edition and Cambridge University Press for their ongoing support.

## Abbreviations

2SLS	two-stage least squares (regression analysis)
ADGM	Abu Dhabi Global Market
AFTA	ASEAN Free Trade Area
ASEAN	Association of South East Asian Nations
AU	African Union
BCBS	Basel Committee on Banking Supervision
BEEPS	Business Environment and Enterprise Performance Survey
BGB	German Civil Code
BGHZ	official law reports (Germany)
BGH	German Federal Supreme Court
BRAO	Federal Lawyer's Act (Germany)
BVerfGG	Federal Constitutional Court Act (Germany)
CA	Court of Appeal of England and Wales
CARICOM	Caribbean Community
CBR	Centre for Business Research (University of Cambridge)
CCAP	Citizens' Charter Afghanistan Project
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
CIA	Conditional Independence Assumption
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
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	corporate social responsibility
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

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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
FDI	foreign direct investment
fsQCA	fuzzy-set qualitative comparative analysis
G20	Group of Twenty
GCC	Gulf Cooperation Council
GDP	gross domestic product
GI-ACE	Global Integrity Anti-Corruption Evidence
GLEE	Globalization, Lawyers, and Emerging Economies
GMM	general method of moment (estimator)
GRI	Global Reporting Initiative
HDI	Human Development Indicators
HRAF	Human Relations Area Files
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
ICt	International Criminal Court
ICJ	International Court of Justice
ICRG	International Country Risk Guide
IDA	International Development Association
IDLO	International Development Law Organization
IFC	International Finance Corporation
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
IV	instrumental variable
LDP	Liberal Democratic Party (Japan)
LL.M.	Master of Laws
M&A	mergers and acquisitions
MDS	metric multidimensional scaling (network analysis)
MERCOSUR	Mercado Común del Sur
MITI	Ministry of International Trade and Industry (Japan)



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MPI	Max Planck Institute
NAFTA	North American Free Trade Association
NATO	North Atlantic Treaty Organization
NCCUSL	National Conference of Commissioners on Uniform State Laws
NGO	Non-governmental organisation
NJW	<i>Neue Juristische Wochenschrift</i>
NOAA	National Oceanic and Atmospheric Administration
OAG	East-Asiatic Society (Germany)
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
PCIJ	Permanent Court of International Justice
PECL	Principles of European Contract Law
PROSUR	Forum for the Progress and Development of South America
QCA	Qualitative Comparative Analysis
QFC	Qatar Financial Centre
RCEP	Regional Comprehensive Economic Partnership
ROSC	Reports on the Observance of Standards and Codes
RTA	Regional trade agreement
SII	Structural Impediment Initiative
SE	Societas Europaea (European Company)
SEZ	special economic zone
SMEs	small and medium-sized enterprises
SRA	Solicitors Regulation Authority (England and Wales)
SCS	Standard Cross Cultural Sample
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
TWAIL	Third World Approaches to International Law
UCC	Uniform Commercial Code (USA)
UDHR	Universal Declaration of Human Rights
UEA	University of East Anglia
UEMOA	West African Economic and Monetary Union
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
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
UN-Habitat	UN Human Settlement Programme
UNIDROIT	International Institute for the Unification of Private Law
USAID	United States Agency for International Development
USMCA	United States–Mexico–Canada Agreement
US-ROLFF-A	US Rule of Law Field Force – Afghanistan
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
WLR	<i>Weekly Law Reports</i>
WTO	World Trade Organization
ZERP	Zentrum für Europäische Rechtspolitik (University of Bremen)
ZPO	German Code of Civil Procedure