

# Contents

<b>1</b>	<b>Introducing Comparative Law . . . . .</b>	1
1.1	Nature and Scope of Comparative Law . . . . .	1
1.1.1	Comparative Law: Method or Science? . . . . .	3
1.2	Forms of Comparative Legal Inquiry . . . . .	6
1.3	Relationship of Comparative Law to Other Fields of Legal Study . . . . .	11
1.3.1	Comparative Law and Legal History . . . . .	12
1.3.2	Comparative Law and Legal Philosophy . . . . .	13
1.3.3	Comparative Law and Legal Sociology . . . . .	16
	References . . . . .	17
<b>2</b>	<b>Assessing the Potential of Comparative Law in Expanding Legal Frontiers . . . . .</b>	19
2.1	Introduction . . . . .	19
2.2	Comparative Law in Legal Education . . . . .	20
2.3	Uses and Limits of Comparative Law in Lawmaking and Adjudication . . . . .	23
2.3.1	Comparative Law as an Aid to Legislation and the Reform of Law . . . . .	23
2.3.2	Comparative Law as a Tool of Judicial Interpretation . . . . .	26
2.3.2.1	The Role of Comparative Law in International Courts . . . . .	30
2.3.2.2	Comparative Law and Private International Law . . . . .	32
2.4	Comparative Law and the Unification or Harmonization of Laws . . . . .	33
2.5	Comparative Law and Comparative Lawyering . . . . .	41
2.6	Comparative Law and the Challenges of Globalization . . . . .	43
	References . . . . .	45

<b>3</b>	<b>Tracing the Early Origins of Comparative Law . . . . .</b>	49
3.1	Introduction . . . . .	49
3.2	Legal Comparatism in Classical Antiquity . . . . .	49
3.2.1	Ancient Greece . . . . .	49
3.2.2	Ancient Rome . . . . .	52
3.3	Legal Comparatism in the Middle Ages . . . . .	55
3.4	Pioneers of Comparative Law in the Renaissance and Enlightenment Eras . . . . .	59
3.4.1	Pothier . . . . .	62
3.4.2	Vico . . . . .	63
3.4.3	Montesquieu . . . . .	65
	References . . . . .	68
<b>4</b>	<b>The Rise of Modern Comparative Law . . . . .</b>	71
4.1	Introduction . . . . .	71
4.2	Pioneers of Comparative Law in Germany . . . . .	75
4.2.1	Ernst Rabel . . . . .	82
4.3	The Origins of Comparative Law in England . . . . .	86
4.3.1	Henry Maine . . . . .	87
4.4	Legal Thinking and the Growth of Comparative Law in France . . . . .	90
4.4.1	The Paris International Congress of Comparative Law of 1900 . . . . .	94
4.5	Concluding Remarks . . . . .	100
	References . . . . .	101
<b>5</b>	<b>Some Methodological Issues in Comparative Law . . . . .</b>	105
5.1	The Comparative Method . . . . .	105
5.2	The Normative-Dogmatic Approach to the Comparability Issue . . . . .	113
5.3	The Functional Method of Comparative Law . . . . .	115
5.4	Combining the Functional and Normative-Dogmatic Perspectives . . . . .	120
5.5	Comparing Legal Institutions of Countries with Different Socio-Economic and Political Systems . . . . .	125
5.6	Concluding Remarks . . . . .	128
	References . . . . .	129
<b>6</b>	<b>Legal Traditions, Legal Cultures and Families of Law . . . . .</b>	131
6.1	Introduction . . . . .	131
6.2	The Concept of Legal Tradition . . . . .	133
6.3	Law as Culture . . . . .	137
6.4	Grouping Legal Systems into Families of Law . . . . .	142
6.5	Western Law . . . . .	153
6.6	Concluding Remarks . . . . .	162
	References . . . . .	164

Contents	xiii
<b>7 Comparative Law, Legal Transplants and Legal Change . . . . .</b>	
7.1 Introduction . . . . .	169
7.2 Divergence and Convergence of Legal Systems . . . . .	170
7.2.1 Factors Accounting for the Divergence and Convergence of Legal Systems . . . . .	174
7.3 Legal Transplants and Reception of Laws . . . . .	178
7.4 Legal Transplants and Legal Change: Watson's Theory Revisited . . . . .	184
7.5 Concluding Remarks . . . . .	194
References . . . . .	194
<b>8 Roman Law, Medieval Legal Science and the Rise of the Civil Law Tradition . . . . .</b>	
8.1 Introduction . . . . .	197
8.2 The Heritage of Roman Law . . . . .	198
8.3 The Revival of Roman Law in Western Europe . . . . .	203
8.3.1 The School of the Glossators . . . . .	206
8.3.2 The Commentators or Post-Glossators . . . . .	211
8.4 The Reception of Roman Law . . . . .	214
8.4.1 The Reception of Roman law in France . . . . .	216
8.4.2 The Reception of Roman law in Germany . . . . .	219
8.4.3 The Ius Commune in Italy, the Iberian Peninsula and the Netherlands . . . . .	222
8.5 The Humanists and the School of Natural Law . . . . .	226
8.6 The Codification Movement . . . . .	233
8.7 The Civil Law Tradition . . . . .	238
8.7.1 Geographic Distribution of the Civil Law . . . . .	238
8.7.2 Defining Features of Civil Law Systems . . . . .	241
8.8 Concluding Remarks . . . . .	247
References . . . . .	248
<b>9 The Development and Function of Equity in the English Common Law Tradition . . . . .</b>	
9.1 Introduction . . . . .	251
9.2 Tracing the Historical Origins of the English Common Law: An Overview . . . . .	253
9.3 The Rise and Development of Equity . . . . .	264
9.3.1 The Relationship Between Common Law and Equity . . . . .	268
9.3.2 The Judicature Acts of 1873 and 1875 and the Administrative Fusion of Law and Equity . . . . .	271
9.4 Equitable Principles and Remedies . . . . .	274
9.5 Concluding Remarks . . . . .	279
References . . . . .	280

<b>10 African Legal Traditions . . . . .</b>	281
10.1 The Struggle for Recognition . . . . .	281
10.2 The Biases of Comparative Law . . . . .	283
10.3 Ranking African Legal Systems . . . . .	286
10.4 Stratification and Evolution of African Law . . . . .	287
10.5 From African Law to African Legal Traditions . . . . .	290
10.6 Pluralism in African Legal Systems . . . . .	293
References . . . . .	294
<b>Bibliography . . . . .</b>	299
<b>Index . . . . .</b>	309