

# Comparative law

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## What is Comparative Law?

What is meant by comparative law? In the strict sense, it is the theoretical study of legal systems by comparison with each other, and has a tradition going back over a century. In recent years it has gained in practical importance for two reasons. The first is the increased globalization of world trade, involving the need to “do business” in unfamiliar legal systems. The second is the move towards harmonization of laws, and more recently towards codification within the European Union, where several legal traditions coexist. More loosely, there are publications and Internet resources that assemble legal materials from several jurisdictions, without necessarily undertaking comparisons, but they can be seen as “tools of the trade” for comparative lawyers.

## Comparative law, Conflict of laws and Unification / Harmonization of law

These three topics are distinct but closely related.

Conflict of laws, or (usually) private international law, concerns national or domestic legal rules applicable in situations involving the law of another jurisdiction. This may be another country or, in the case of federations, another state.

Unification of law is a process that grew out of the need to simplify conflict of law rules, often by international conventions, and has acted on both the national and international levels. The numerous uniform laws applicable in the United States, most notably the Uniform Commercial Code, are obvious examples.

There are two main sources of international uniform law.

The [Hague Conference on Private International Law](#) first convened in 1893, and has prepared over 30 conventions on subjects such as international civil procedure including enforcement of foreign judgments, family law including marriage, protection of children and succession, and products liability.

[UNIDROIT](#), the International Institute for the Unification of Private Law, was set up in 1926 as an organ of the League of Nations, but re-established in 1940 under a new statute. About 60 nations are members. Its most notable convention is the Convention relating to a Uniform Law on the International Sale of Goods, 1964. There is a [list](#) of conventions on the website, with links to full text.

By the nature of its continuing development, the European Union is the centre of harmonization activity. The main thrusts are in the private law areas of family law, contract, sales, insurance, trusts and movable property. Relevant centres of activity include:

[Acquis Group: European Research Group on Existing EC Private Law](#)

[Commission on European Family Law](#) based at the University of Utrecht. Its monograph series *European Family Law* is published by Intersentia in Antwerp.

[European Group on Tort Law](#) in association with the [European Centre of Tort and Insurance Law](#) in Vienna. Its website is hosted at the University of Girona, Spain.

[Study Group on a European Civil Code](#) chaired by Professor Christian von Bar at the University of Osnabrück.

A thorough exposition of the movement towards a European Civil Code is contained in a collection of contributions from several legal scholars: *Towards a European Civil Code*, 3<sup>rd</sup> edition, edited by Arthur Hartkamp and others. Kluwer Law International, 2004.

Other works on European harmonization include:

BUSSANI, M. and MATTEI, U., eds. *The common core of European private law*. Kluwer Law International, 2003.

SMITS, J. *The making of European private law: toward a ius commune Europaeum as a mixed legal system*. Intersentia, 2002. (A translation of his *Europees privaatrecht in wording*)

For a much fuller discussion of uniform law resources, see Duncan Alford's [Guide on the Harmonization of International Commercial Law](#) on this website.

The world's legal systems are a product of history, largely by conquest and colonization, but also in modern times by reasoned and deliberate adoption by one state of at least part of the legal framework of another. Two important examples are the modernization of Japanese and Egyptian law, and more recently the adoption of western models of commercial, financial and property law in the former socialist countries of Eastern Europe.

We can speak of "families" of legal systems, though increasingly the term "traditions" is being used, highlighting their historical development. The best-known distinction is that between the Civil Law and the Common Law traditions. Civil Law systems have their foundations in Roman law, but are generally based on codifications produced in Europe in the 19th Century. The most important are the French Civil Code of 1804 and the German Civil Code of 1900. Each was the result of long and careful study by appointed commissions, but they are founded on differing traditions and theory.

Traditional classifications offered by the two classic writers are:

(DAVID)  
Romano-Germanic

Socialist (more recently Russian)  
Common Law

“Other conceptions of law and the social order” – Muslim, Indian, Far East, Africa/Madagascar

(ZWEIGERT & KÖTZ)  
Romanistic  
Germanic (Germany and Switzerland)  
Nordic  
Anglo-American  
Far East  
Religious – Islamic, Hindu

More recently there has been increasing interest in customary (or chthonic) law. Glenn (see below) gives a new list with a new emphasis: Chthonic, Talmudic, Islamic, Hindu, Asian, Civil law and Common law.

A relatively new object of study are “mixed jurisdictions”, where elements of more than one system are in operation. These have not fitted easily into the “accepted” classifications. Examples are Louisiana, Quebec, Scotland, South Africa and Sri Lanka.

In the first part of this article I shall mention sources on “real” comparative law, and in the second part sources that collect legal materials from many jurisdictions.

## Print sources

### Books

The main classic European theoretical works on comparative law are:

DAVID, R. and JAUFFRET-SPINOSI, C *Les grands systèmes de droit contemporains*, 11e éd. Paris, Dalloz, 2002. The book has been translated into eleven languages. An English translation of the 6th edition of 1974 was published as *Major legal systems in the world today*, 3rd edition in 1985 and reprinted in 2002.

ZWEIGERT, K and KÖTZ, H *Einführung in die Rechtsvergleichung*, 3e Aufl. Tübingen, Mohr, 1996. English translation: *Introduction to comparative law*, translated from the German by Tony Weir. Oxford, Clarendon Pr., 1998.

The seminal British author was Harold C Gutteridge. The second edition of his *Comparative law* (1949) was reprinted by Wildy in 1974.

In the United States, the study of comparative law was pioneered by Rudolf Schlesinger, who taught at Cornell University from 1948 to 1975, and then at Hastings College of Law, University of California. His *Comparative law: cases, text, materials*, first published in 1950, is now in its 6<sup>th</sup> (1998) edition. While at Cornell, Schlesinger contributed to the discussions around drafting of the U.S. Uniform Commercial Code.

Of similar standing is Arthur T. Von Mehren, whose work *The civil law system: cases and materials for the comparative study of law* appeared in 1957. A second edition, with James R. Gordley, was published in 1977.

Other titles include:

BOGDAN, M. *Comparative law*. Kluwer Law and Taxation, 1994

De CRUZ, P. *A modern approach to comparative law*. Kluwer, 1993.

De CRUZ, P. *Comparative law in a changing world*, 2<sup>nd</sup> ed. Cavendish, 1999.

GLENN, H P. *Legal traditions of the world*, 2<sup>nd</sup> ed. Oxford University Press, 2004 (1<sup>st</sup> edition gained the Canada Prize, International Academy of Comparative Law, 1998)

HARDING, A. and ÖRÜCÜ, E. (editors) *Comparative law in the 21<sup>st</sup> Century*. Kluwer Law International, 2002.

LEGRAND, P. and MUNDAY, R. (editors) *Comparative legal studies: traditions and transitions*. Cambridge University Press, 2003.

MERRYMAN, J.H. *The civil law tradition: an introduction to the legal systems of Western Europe and Latin America*, 2<sup>nd</sup> ed. Stanford University Press, 1985.

RILES, A. *Rethinking the masters of comparative law*. Hart Publishing, 2001.

SACCO, R. *La comparaison juridique au service de la connaissance du droit*. Economica, 1991. (Abridged version in English: 39 *American Journal of Comparative Law* 1; 343 (1991))

VARGA, C. *European legal cultures* Dartmouth Publishing, 1997.

WATSON, A *Legal transplants: an approach to comparative law*. Edinburgh, Scottish Academic Press, 1974, reprinted with new afterword 1993 by University of Georgia Press. The titles of the first three chapters are interesting: *Comparative law as an academic discipline*, *The perils of comparative law*, and *The virtues of comparative law*.

ZIMMERMANN, R. *Mixed legal systems in comparative perspective: property and obligations in Scotland and South Africa*. Oxford University Press, 2003.

Due for publication in 2006, the *Oxford handbook of comparative law* will contain several essays by major current scholars in the field of comparative law,

## **Journals**

*American Journal of Comparative Law* (American Society of Comparative Law)

[Boletín Mexicano de Derecho Comparado](#) 1968- (Universidad Nacional Autónoma de México) ( online from 2000)

*Comparative Law Yearbook of International Business* 1978- (current title since 1990) (Center for International Legal Studies, Salzburg)

[Electronic Journal of Comparative Law](#) 1997- (Universities of Maastricht, Tilburg and Utrecht, Netherlands)

*International and Comparative Law Quarterly* 1952- (British Institute of International and Comparative law)

*Journal of Comparative Law* 2006- (Association for Comparative Legal Studies Ltd.) Edited by Nicholas Foster of the School of Oriental and African studies, University of London. The first issue includes a collection of reviews of Glenn's *Legal Traditions* mentioned above.

[Oxford University Comparative Law Forum](#) 2000- . An electronic journal and discussion forum edited by members of the Law Faculty.

*Rabels Zeitschrift für ausländisches und internationales Privatrecht* 1927- (Max-Planck Institut für ausländisches und internationales Privatrecht)

*Revue de droit international et de droit comparé* 1949- (originally from the Institut belge de Droit Comparé)

*Revue internationale de droit comparé* 1949- (Société de Législation Comparée)

*Zeitschrift für vergleichende Rechtswissenschaft* 1878-

## Organizations and research institutes

The [International Academy of Comparative Law](#), founded at The Hague in 1924, organizes the International Congress of Comparative Law, which takes place every four years. The next Congress will take place in Utrecht in 2006. The general reports of the 1998 congress bear the illuminating title *Comparative Law facing the 21<sup>st</sup> Century*. There are both general and national reports; the national reports being prepared by national committees. They are issued by various publishers, usually in the respective country (for example, Belgian national reports are usually published by Bruylant). Publication details of the reports of the Brisbane (2002), Bristol (1998) and Athens (1994) congresses appear on the Academy's website under Publications

### National organizations and institutes

**Australia:** [Centre for Comparative Constitutional Studies](#) and [Institute for Comparative and International Law](#), University of Melbourne. [Centre for Public, International and Comparative Law](#), University of Queensland, founded 2003.

**Canada:** [Institute of Comparative Law](#), McGill University. [Compare: Canadian Bijuralism: Studies in Comparative Law](#): a joint study project of six Canadian law schools, based at the University of Ottawa Faculty of Law, and focusing on the Common Law and Civil Law traditions in Canada.

**France:** [Société de Législation Comparée](#), founded in 1869 ; [Institut de Droit Comparé de Paris](#), founded 1931 and based at the University of Paris Panthéon Assas (Paris II) [Institut de Droit Comparé Edouard Lambert](#), founded 1920 and based at the University Jean Moulin 3, Lyon.

**Germany:** [Max-Planck Institut für ausländisches und internationales Privatrecht](#) (Max-Planck Institute for Foreign Private Law and Private International law), Hamburg. Founded 1926; became a Max-Planck institute in 1949. [Max-Planck Institut für ausländisches öffentliches Recht und Völkerrecht](#) (Max-Planck Institute for Comparative Public Law and International Law), Heidelberg. Founded 1924 in Berlin. There is also the [Gesellschaft für Rechtsvergleichung](#) founded in 1950 and based at the University of Freiburg

**Italy:** [Associazione Italiana di Diritto Comparato](#), founded 1958. [Centre for Comparative and Foreign Law Studies](#) housed at the UNIDROIT headquarters in Rome, a joint initiative of UNIDROIT and the University "La Sapienza", Rome. [Istituto di Diritto Comparato](#) "Angelo Sraffa", Boccone University, Milan.

**Mexico:** [Instituto de Investigaciones Jurídicas](#), Universidad Nacional Autónoma de México (formerly Instituto de Derecho Comparado)

**Netherlands:** Nederlandse Vereniging voor Rechtsvergelijking (Netherlands Comparative Law Association), founded 1968. Current officers are based at the University of Maastricht. Details can be seen on the [Electronic Journal of Comparative Law](#) web pages

**South Africa:** [Institute of Foreign and Comparative Law](#), University of South Africa, Pretoria.

**Spain:** [Instituto de Derecho Comparado](#), Universidad Complutense de Madrid. [Instituto de Derecho Publico Comparado](#), Universidad Carlos III de Madrid. [Observatory of European and Comparative Law](#), a website provided by the University of Girona

**Switzerland:** [Institut Suisse de Droit Comparé](#), founded 1982 by the Federal Ministry of Justice

**United Kingdom:** [British Institute of International and Comparative Law](#), formed in 1958 by the merger of the Society of Comparative Legislation (1895) and the Grotius Society (1915). There is a separate United Kingdom National Committee of Comparative Law. [Institute of European and Comparative Law](#), University of Oxford. [Institute of Global Law](#), University College London

**United States:** [American Society of Comparative Law](#), founded 1951. [Center for Comparative Constitutionalism](#), University of Chicago. [Parker School of International and Comparative Law](#), based at Columbia University, New York.

## Research guides to foreign and comparative law

[World legal systems](#) from the University of Ottawa provides an overview of the legal systems of the world, with a country listing and a clickable world map that makes a good attempt to reflect the often complicated and diverse influences at work.

GERMAIN, C. *Germain's transnational law research: a guide for attorneys*. Transnational Juris Publications. One loose-leaf binder.

REYNOLDS, T and FLORES, A.A *Foreign law: current sources of codes and legislation in jurisdictions of the world*. This 8-volume loose-leaf work provides detailed information about national legal systems and resources. It is also available online (as *Foreign Law Guide*) on subscription, with numerous hyperlinks to relevant websites.

## Published collections relating to several jurisdictions

### General collections

#### Print

*International Encyclopaedia of Comparative Law*. Tübingen, Mohr Siebeck. This is being published in individual chapters over many years, and many of them have become out of date. However, volume 1: *National Reports*, and volume 2: *The legal systems of the world: their comparison and unification*, do provide useful introductions.

*International Encyclopaedia of Laws* This is an ambitious publishing project from Aspen (Kluwer), covering several fields of law (about 20), which can be purchased separately. It is in loose-leaf format. Alongside volumes containing scholarly articles for each jurisdiction, a separate "Codex" volume contains texts of relevant international instruments, and there are to be collections of national legislation. The *International Encyclopaedia for Labour Law and Industrial Relations* is the most developed component so far, and the only one with a substantial collection of national laws (filling

six of its thirty-one binders). There are tentative plans to make the Encyclopaedia available online.

*Modern Legal Systems Cyclopedia* General editor K.R. Redden. W.S. Hein, 1984- . Loose-leaf publication in about 20 binders.

*Central & East European Legal Materials* Edited by Vratislav Pechota. Juris Publishing, 1990- . Loose-leaf in 18 binders.

### **Web resources**

[\*Worldlii\*](#): World Legal Information Institute. This is part of a worldwide group of related resource collections which originated with AUSTLII, the Australasian Legal Information Institute. As well as a collection of freely available full-text databases of primary sources for several countries, there is a catalogue of links to lists of resources. It is possible to browse by country, region or subject.

[\*GLIN\*](#): Global Legal Information Network at the US Library of Congress. This is a database of laws, regulations, judicial decisions and other legal resources contributed by governmental agencies and international organizations. Official texts are contributed in the original language, and English language summaries added. Unfortunately, free access is only enabled for about 19 jurisdictions, mostly in Latin America and Eastern Europe, and indeed the total membership is only about 25 countries.

Of more practical value is Law Library of Congress [\*Guide to Law Online\*](#), an annotated guide to sources of information on government and law for the nations of the world. It includes links to guides in the *Globalex* series.

### **Specific legal subjects**

Online resources of foreign law on specific subjects are thoroughly covered in Charlotte Bynum's article: [\*Foreign law: subject law collections on the web\*](#) on this Website.

There are several printed sources that provide the text of national legislation of several countries. For a very useful list, see the Library of Congress [\*Multinational collections database\*](#), based on its own holdings and linking to specific catalogue entries. One can browse by jurisdiction or subject, and search by a combination of the two in either order (Search for France and get an alphabetical list of subjects, or search for arbitration and get an alphabetical list of countries).

**Constitutional law**: BLAUSTEIN, A P and FLANZ, G H *Constitutions of the countries of the world: a series of updated texts, constitutional chronologies and annotated bibliographies*. Oceana, 1971- . Loose-leaf in about 20 binders. Also available online by subscription.

**Family law**: Two major collections deserve a mention, though unfortunately they are not in English. Each is arranged alphabetically by countries of the world, with both commentary and texts of the relevant legislation, usually in parallel vernacular and German.

BERGMANN, A. and FERID, M. *Internationales Ehe- und Kindschaftsrecht*. (International marriage and child law) Verlag für Standesamtswesen. Loose-leaf in 12 binders.

FERID, M. and FIRSCHING, K. *Internationales Erbrecht*. (International inheritance law) Beck. Loose-leaf in 9 binders.

**Labour law:** *International Encyclopaedia for Labour Law and Industrial Relations* (Blanpain) Now part of Kluwer's *International Encyclopaedia of Laws* set. An online version is planned.

**Intellectual property:** the World Intellectual Property Organization regularly published national copyright laws as a supplement to its journals, for filing in loose-leaf binders. This ceased in 2001 and the information has been transferred to a free web database: [CLEA](#) (Collection of Laws for Electronic Access)

Printed sources for intellectual property include:

*World intellectual property rights and remedies*, edited by D. Campbell. Oceana. In 5 loose-leaf binders.

*World patent law and practice*, edited by J.W. Baxter. Matthew Bender. In 3 loose-leaf binders containing commentary, and 16 containing statutes, regulations and treaties.

**Tax and commercial laws:** the *RIA Worldwide Tax Law* database. This contains the full text of the tax and commercial laws of over 90 countries in English. Originally a loose-leaf publication not always up to date, it is now a subscription database provided by RIA Thomson.

The [International Bureau of Fiscal Documentation](#) produces extensive guides to tax systems of the world, printed as loose-leaf sets but now also available online.