Comparison Common Law Versus Civil Law Systems System

Historical Foundations of the Common Law provides a general overview of the development of the common law. The book is comprised of 14 chapters that are organized into four parts. The first part deals with the institutional background and covers the centralization of justice; the institutions of the common law; and the rise of equity. The second part deals with land properties, while the third part talks about legal obligations. The last part details criminal administration and law. The text will be of great use to individuals who have an interest in the development of the common law.

Common Law, Civil Law, and Colonial Law builds upon the legal historian F.W. Maitland's famous observation that history involves comparison, and that those who ignore every system but their own 'hardly came in sight of the idea of legal history'. The extensive introduction addresses the intellectual challenges posed by comparative approaches to legal history. This is followed by twelve essays derived from papers delivered at the 24th British Legal History Conference. These essays explore patterns in legal norms, processes, and practice across an exceptionally broad chronological and geographical range. Carefully selected to provide a network of inter-connections, they contribute to our better understanding of legal history by combining depth of analysis with historical contextualization. This title is also available as Open Access on Cambridge Core.

This book brings together the top international sales law scholars from twenty-three countries to review the Convention on Contracts for International Sale of Goods (CISG) and its role in the unification of global sales law. It reviews the substance of CISG rules and analyzes alternative interpretations. A comparative analysis is given of how countries have accepted, interpreted, and applied the CISG. Theoretical insights are offered into the problems of uniform laws, the CISG's role in bridging the gap between the common and civil legal traditions, and the debate over good faith in CISG jurisprudence. The book reviews case law relating to the interpretation and application of the provisions of the CISG; analyzes how it has been recognized and implemented by national courts and arbitral tribunals; offers insights into problems of uniformity of application of an international sales convention; compares the CISG with the English Sale of Goods Act and places it in the context of other texts of UNCITRAL; and analyzes the CISG from the practitioner's perspective.

This book addresses two countervailing challenges to theory and policy in law and economics. The first is the rise of legal origins theory, which denies the comparative law view of convergence between common law and civil law by the assertion of an economic superiority of common law. The second is the series of economic crises in the very financial markets on which that assertion was based. Both trends unsettled certainties about the rule of law and institutional economics. Meeting legal origins theory in its main areas of political science, sociology and economics, the book extends the interdisciplinary reach to neglected aspects of comparative law, legal history, dynamic econometric analysis and “quasi-natural experiments” with counterfactual evidence of different institutional regimes in divided countries. These combined methodological tools make tests of the economic impact of different legal origins much more reliable. This is shown for developed and newly industrialized countries as well as developing, transforming and emerging countries with or without financial center advantage, affected or not by financial crises. The Asian financial crises and the American subprime crisis have been, or could have been resolved using the resources of common law or civil law. These cases and data on access to justice in Africa, Asia and Latin America reveal the problem of substantive law remaining "law on the books" without efficient procedural rules and judicial structures. The single most striking common law-civil law divide is that lawyer-dominated common law procedure is slower and costlier than judge-managed civil law procedure. Countries as diverse as the Netherlands, Japan, and China show functional interaction between culture and law in legal reforms. Such interaction can reduce the occurrence of legal disputes as well as facilitate their resolution. It can use economic crises as catalysts for legal reforms or rely on regional integration, and it should replace the discredited method of legal "transplants" by sustained dialogue between legal advisors and all actors involved in legal reforms.

Judicial Deliberations compares how and why the European Court of Justice, the French Cour de cassation and the US Supreme Court offer different approaches for generating judicial accountability and control, judicial debate and deliberation, and ultimately judicial legitimacy. Examining the judicial argumentation of the United States Supreme Court and of the French Cour de cassation, the book first reorders the traditional comparative understanding of the difference between French civil law and American common law judicial decision-making. It then uses this analysis to offer the first detailed comparative examination of the interpretive practice of the European Court of Justice. Lasser demonstrates that the French judicial system rests on a particularly unified institutional and ideological framework founded on explicitly republican notions of meritocracy and managerial expertise. Law-making per se may be limited to the legislature; but significant judicial normative administration is entrusted to State selected, trained, and sanctioned elites who are policed internally through hierarchical institutional structures. The American judicial system, by contrast, deploys a more participatory and democratic approach that reflects a more populist vision. Shunning the unifying, controlling, and hierarchical French structures, the American judicial system instead generates its legitimacy primarily by argumentative means. American judges engage in extensive debates that subject them to public scrutiny and control. The ECJ resists delicately between the institutional/argumentative and republican/democratic extremes. On the one hand, the ECJ reproduces the hierarchical French discursive structure on which it was originally patterned. On the other, it transposes this structure into a transnational context of fractured political and legal assumptions. This drives the ECJ towards generating legitimacy by adopting a somewhat more transparent argumentative approach.


Currently, China is drafting its new Civil Code. Against this background, the Chinese legal community has shown a growing interest in various legal and legislative ideas from around the world. "Towards a Chinese Civil Code" aims at providing the necessary historical and comparative legal perspectives. The book addresses the following topics: property law, contract law, tort law and civil procedure.

Scholarly Essay from the year 2010 in the subject Law - Comparative Legal Systems, Comparative Law, grade: CIFS, course: Level 3, language: English, abstract: The law comprises a systematic set of rules that regulates the behavior of individuals, business, and other organizations within a society. The role of law in every country is practically...
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the same in that they all pursue one single purpose. However, we will divide them into three major legal systems as the method of facing to the given problem or the conduct of rules differs from one country to another. Each of these legal systems namely Common (Anglo-American) law, Civil (Continental) law and Religious (Islamic) law represents the same functions, and differs from each other by the way the law enacted, or processed and the way it emerged. In this article, the importance of the sources each system has and a just comparison between the sources of these systems will be covered and the importance of the convergence theory is put forward.

This text serves as an accessible introduction to the law of contract. The headings chosen for examination track the main points in the lifetime of a contract-from its formation, drafting, and onward to its eventual dissolution, whether this occurs due to the terms of the contract, the will of the parties, or because of a breach of the agreed terms. It also provides studies of other notable areas within the subject, such as third-party rights, damages, and equitable remedies. In distinction to other guides to contract law, this text provides a comparative analysis of the area, incorporating sources drawn from both the civil law tradition, characteristic of several nations within Continental Europe, as well as the Anglo-American common law tradition, with cases and legislation drawn from England and the United States of America. It also explores contract law in the unique context of so-called hybrid jurisdictions-those that incorporate elements of both the common law and civilian traditions. As business assumes a global dimension, knowledge of the operation of contract law across various legal traditions and national contexts is increasingly at a premium. This text enables the student to gain a coherent vision of contract law, as well as to speak confidently when discussing the intricacies of the subject.

Öntellectual Property in Common Law and Civil Law presents the perspectives of common as well as civil law, on global IP LawÖs most pertinent issues ranging from inventive step all the way to injunctive relief. Edited by Professor Takenaka, director of the University of WashingtonÖs renowned Center for Advanced Studies and Research on IP (CASRIP), the book assembles deep but easy to read essays by some of the worldÖs leading IP scholars. In short, IP LawÖs most important issues from a global perspective; by the worldÖs leading scholars, yet in a nutshell. ExcellentÖÖ B Christoph Ann, Technische UniversitätSt Münchener, Germany Despite increasing worldwide harmonization of intellectual property, driven by US patent reform and numerous EU Directives, the common law and civil law traditions still exert powerful and divergent influences on certain features of national IP systems. Drawing together the views and experiences of scholars and lawyers from the United States, Europe and Asia, this book examines how different characteristics embedded in national IP systems stem from differences in the fundamental legal principles of the two traditions. It questions whether these elements are destined to remain diverged, and tries to identify common ground that might facilitate a form of harmonization. Containing the most current and up-to-date IP issues from a global perspective, this book will be a valuable resource for IP and comparative law academics, law students, policy makers, as well as lawyers and in-house counselors.

The Oxford Handbook of Criminal Process surveys the topics and issues in the field of criminal process, including the laws, institutions, and practices of the criminal justice administration. The process begins with arrests or with crime investigation such as searches for evidence. It continues through trial or some alternative form of adjudication such as plea bargaining that may lead to conviction and punishment, and it includes post-conviction events such as appeals and various procedures for addressing miscarriages of justice. Across more than 40 chapters, this Handbook provides a descriptive overview of the subject sufficient to serve as a durable reference source, and more importantly to offer contemporary critical or analytical perspectives on those subjects by leading scholars in the field. Topics covered include history, procedure, investigation, prosecution, evidence, adjudication, and appeal.

Should laws be made in courts or in parliaments? Orlin Yalnazov proposes a new approach to the problem. He conceptualizes law as an information product, and law-making as an exercise in production. Law-making has inputs and outputs, and technology is used to transform one into the other. Law may, depending on input and technology, take on different forms: it can be vague or it can be certain. The ‘technologies’ between which we may choose are precedent and statute. Differences between the two being sizeable, our choice has significant repercussions for the cost of the input and the form of the output. The author applies this framework to several problems, including the comparison between the common and the civil law, comparative civil procedure, and EU law. Perhaps most critically, he offers a critique of the ‘efficiency of the common law’ hypothesis. his book will undertake a comprehensive but accessible survey and critical analysis of two of the major legal systems of the world, the Common law and Civil law traditions, through the prism of the law of contract. As businesses become increasingly international it can be essential to understand the different legal systems in which one may be operating. This publication seeks to give the student an essential overview of these differences. Contract law is one of the most important genres of private law for business in both consumer and commercial contracts. When international commercial contracts are concluded, the provisions set out in UNIDROT apply. However, when a company is operating within another state the laws of that state will apply to both personal and commercial contracts entered into. This book will examine the differences in the formation, cessation and interpretation of contracts in major Civil law (European) and Common law (UK, Canada and Australia) jurisdictions. There will also be an overview of the EU restatement on the law of contracts and a brief consideration of hybrid systems (i.e., Scotland and Louisiana). The efficacy of various political institutions is the subject of intense debate between proponents of broad legislative standards enforced through litigation and those who prefer regulation by administrative agencies. This book explores the trade-offs between litigation and regulation, the circumstances in which one approach may outperform the other, and the principles that affect the choice between addressing particular economic activities with one system or the other. Combining theoretical analysis with empirical investigation in a range of industries, including public health, financial markets, medical care, and workplace safety, Regulation versus Litigation sheds light on the costs and
benefits of two important instruments of economic policy.

Comparative, International and Global Justice: Perspectives from Criminology and Criminal Justice presents and critically assesses a wide range of topics relevant to criminology, criminal justice and global justice. The text is divided into three parts: comparative criminal justice, international criminology, and transnational and global criminology. Within each field are located specific topics which the authors regard as contemporary and highly relevant and that will assist students in gaining a fuller appreciation of global justice issues. Authors Cyndi Banks and James Baker address these complex global issues using a scholarly but accessible approach, often using detailed case studies. The discussion of each topic is a comprehensive contextualized account that explains the social context in which law and crime exist and engages with questions of explanation or interpretation.

The authors challenge students to gain knowledge of international and comparative criminal justice issues and think about them in a critical manner. It has become difficult to ignore the global and international dimensions of criminal justice and criminology and this text aims to enhance criminal justice education by focusing on some of the issues engaging criminology worldwide, and to prepare students for a future where fields of study like transnational crime are unexceptional.

In times of global uncertainty and trade war, this book can fulfill the gap in existing knowledge about China... China, the economic powerhouse, is on the mind of many in the 21st century due to projects such as Belt & Road Initiative (BRI) and probably the dispute resolution system for projects under BRI. This is probably the first book in the world that has analyzed the law in action in the Chinese courts with civil justice process in the background. In any jurisdiction, the civil justice system is run by judges, and therefore, the understanding of the thought process of Chinese judges become very important. The thought process of Chinese judges is dependent on the legal history, current political philosophy, evolution of legal jurisprudence, evolution of law and various norms and customs, evolution of the concept of justice and procedural fairness, a concept of discretionary power of the judges and even their willingness to exercise those powers, civil procedure law and its practice and so forth. The above factors are the invisible factors and contexts that are compared with similar invisible factors and contexts from a more widespread Common Law via Comparative Law Methodology. The concepts from civil law jurisdictions are also brought in the analysis at times to get a clear essence. Many stakeholders focus on the hardware of the legal system, but it's the software of the legal system that makes all the difference for substantive and procedural justice. In any jurisdiction, a civil justice system is a mirror image of any society. This book can even shed light on the Chinese society, its legal system, legal history, culture and philosophy and how it compares with the contemporaneous societies within the other common law jurisdictions.

Authors from 13 countries come together in this edited volume, Common Law and Civil Law Today: Convergence and Divergence, to present different aspects of the relationship and intersections between common and civil law. Approaching the relationship between common and civil law from different perspectives and from different fields of law, this book offers an intriguing insight into the similarities, differences and connections between these two major legal traditions. This volume is divided into 3 parts and consists of 22 articles. The first part discusses the common law/civil law dichotomy in the international legal systems and theory. The second focuses on case-law and arbitration, while the third part analyses elements of common and civil law in various legal systems. By offering such a variety of approaches and voices, this book allows the reader to gain an invaluable insight into the historical, comparative and theoretical contexts of this legal dichotomy. From its carefully selected authors to its comprehensive collection of articles, this edited volume is an essential resource for students, researchers and practitioners working or studying within both legal systems. This collection of essays explores the evolution of anti-discrimination law in European civil law jurisdictions. Historically, scholarship in this area has focused on the common law, which has also taken the lead in developing the theory and practice of anti-discrimination law. This volume breaks new ground by offering a sustained, critical, legal and socio-legal, comparative look at how discrimination is faring in European civil law environments. While it is true that anti-discrimination law is seen as a foreign transplant in some regions, it does not fare poorly across the board. As shown by the case studies herein, the success of anti-discrimination law is found to vary according to its national context, the actors involved, and the evolution of the particular concept or ground of discrimination in question.

We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand. According to U.S. Supreme Court Justice Antonin Scalia, a judge like this can maneuver through earlier cases to achieve the desired aim—"distinguishing one prior case on his left, straight-arming another one on his right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law." But is this common-law mindset, which is appropriate in its place, suitable also in statutory and constitutional interpretation? In a witty and trenchant essay, Justice Scalia answers this question with a resounding negative. In exploring the neglected art of statutory interpretation, Scalia urges that judges resist the temptation to use legislative intention and legislative history. In his view, it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawmakers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself. Scalia then extends this principle to constitutional law. He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning. Although not subscribing to the "strict constructionism" that would prevent applying the Constitution to modern circumstances, Scalia emphatically rejects the idea that judges can properly "smuggle" in new rights or deny old rights by using the Due Process Clause, for instance. In fact, such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals. This essay is followed by four commentaries by Professors Gordon Wood, Laurence Tribe,
Mary Ann Glendon, and Ronald Dworkin, who engage Justice Scalia's ideas about judicial interpretation from varying standpoints. In the spirit of debate, Justice Scalia responds to these critics. Featuring a new foreword that discusses Scalia's impact, jurisprudence, and legacy, this witty and trenchant exchange illuminates the brilliance of one of the most influential legal minds of our time.

Advancing legal scholarship in the area of mixed legal systems, as well as comparative law more generally, this book expands the comparative study of the world's legal families to those of jurisdictions containing not only mixtures of common and civil law, but also to those mixing Islamic and/or traditional legal systems with those derived from common and/or civil law traditions. With contributions from leading experts in their fields, the book takes us far beyond the usual focus of comparative law with analysis of a broad range of countries, including relatively neglected and under-researched areas. The discussion is situated within the broader context of the ongoing development and evolution of mixed legal systems against the continuing tides of globalization on the one hand, and on the other hand the emergence of Islamic governments in some parts of the Middle East, the calls for a legal status for Islamic law in some European countries, and the increasing focus on traditional and customary norms of governance in post-colonial contexts. This book will be an invaluable source for students and researchers working in the areas of comparative law, legal pluralism, the evolution of mixed legal systems, and the impact of colonialism on contemporary legal systems. It will also be an important resource for policy-makers and analysts.

Despite increasing worldwide harmonization of intellectual property, driven by US patent reform and numerous EU Directives, the common law and civil law traditions still exert powerful and divergent influences on certain features of national IP systems. Drawing together the views and experiences of scholars and lawyers from the United States, Europe and Asia, this book examines how different characteristics embedded in national IP systems stem from differences in the fundamental legal principles of the two traditions. It questions whether these elements are destined to remain diverged, and tries to identify common ground that might facilitate a form of harmonization. Containing the most current and up-to-date IP issues from a global perspective, this book will be a valuable resource for IP and comparative law academics, law students, policy makers, as well as lawyers and in-house counsels.

A comprehensive and wide-ranging account of the interrelationship between law and literature in Anglo-Saxon, Medieval and Tudor England.

"An Introduction to the American Legal System" is ideal for undergraduate students in legal studies, political science, criminal justice, pre-law, and sociology programs, paralegal programs, as well as for anyone with an interest in the historical and contemporary approaches to law in America.

The rule of law constitutes the hallmark of contemporary Western society. However, public perceptions and attitudes to the law can vary in space and time. This book explores legal solutions to selected problem scenarios in their broader historical, economic, political and societal context. The focus is on the legal traditions of civil law and common law. The book is premised on the assumption - indeed, the conviction - that use of the comparative method both facilitates and promotes a deeper understanding of the society in which we live and the rules by which it is shaped. Major "threads" that run through the book are the relationship between law and morality, the role of the state in regulating human interaction, as well as the relationship between the state and the individual. As a practical matter, the text is divided into 3 Parts. A first Part provides various building blocks for a discussion of 'the law in action' in the second and main Part of the book. A final Part addresses the issue of regional globalisation and its impact on the traditional divide between civil law and common law. An Appendix contains the full text of the Charter of Fundamental Rights of the European Union.

A highly practical, step by step guide on setting up and running a mentoring or coaching programme in a Higher Education institution. Chapters cover all aspects of the process from what it means to coach or mentor to recruitment of mentors and coaches, induction, offering supervision, and planning and conducting the evaluation.

In this collection of essays, leading legal historians address significant topics in the history of judges and judging, with comparisons not only between British, American and Commonwealth experience, but also with the judiciary in civil law countries. It is not the law itself, but the process of law-making in courts that is the focus of inquiry. Contributors describe and analyse aspects of judicial activity, in the widest possible legal and social contexts, across two millennia. The essays cover English common law, continental customary law and ius commune, and aspects of the common law system in the British Empire. The volume is innovative in its approach to legal history. None of the essays offer straight doctrinal exegesis; none take refuge in old-fashioned judicial biography. The volume is a selection of the best papers from the 18th British Legal History Conference.

This book provides a challenging interpretation of the emergence of the common law in Anglo-Norman England, against the background of the general development of legal institutions in Europe. In a detailed discussion of the emergence of the central courts and the common law they administered, the author traces the rise of the writ system and the growth of the jury system in twelfth-century England. Professor van Caenegem attempts to explain why English law is so different from that on the Continent and why this divergence began in the twelfth century, arguing that chance and chronological accident played the major part and led to the paradox of a feudal law of continental origin becoming one of the most typical manifestations of English life and thought. First published in 1973, The Birth of the English Common Law has come to enjoy classical status, and in a preface Professor van Caenegem discusses some recent developments in the study of English law under the Norman and earliest Angevin kings.

A significant introduction to the study of comparative law and a notable scholarly work, "Major Legal Systems in the World Today" analyzes the general characteristics which lie behind the development of the four principal legal systems of the world: the Civil law, the Common law, the Socialist law (primarily Soviet), and those based on religious or philosophical principles (Muslim, Hindu, Chinese, Japanese, and African). Providing unique insights into the spirit of each "legal family," the book presents a total view of the historical foundation and the sources and structure of the law in each system.

How Roman law has influenced European legal and political thought from antiquity to the present day.
What does it mean when civil lawyers and common lawyers think differently? In Charting the Divide between Common and Civil Law, Thomas Lundmark provides a comprehensive introduction to the uses, purposes, and approaches to studying civil and common law in a comparative legal framework. Superbly organized and exhaustively written, this volume covers the jurisdictions of Germany, Sweden, England and Wales, and the United States, and includes a discussion of each country's legal issues, structure, and their general rules. Professor Lundmark also explores the discipline of comparative legal studies, rectifying many of the misconceptions and prejudices that cloud our understanding of the divide between the common law and civil law traditions. Students of international law, comparative law, social philosophy, and legal theory will find this volume a valuable introduction to common and civil law. Lawyers, judges, political scientists, historians, and philosophers will also find this book valuable as a source of reference. Charting the Divide between Common and Civil Law equips readers with the background and tools to think critically about different legal systems and evaluate their future direction.

An innovative account of English constitutional ideas from the mid-fifteenth century to the time of Charles I, showing how the emergence of grand claims for common law, the country's strange unwritten legal system, shaped England's cultural development. Though he does not neglect the role of narrowly religious disagreements, Cromartie brings out the way that 'religious' and 'secular' values came to be closely intertwined: to the majority of Charles's subjects, the rights of the clergy and the king were legal rights; the institutional structure of Church and state was an expression of monarchical power, obedience to the king and to the law was a religious duty. A proper understanding of this cluster of ideas reveals why Charles found England so difficult to control and why both parties in the civil war believed that they were fighting for established institutions.

Marc Jacob analyses in depth the most important justificatory and decision-making tool of one of the world's most powerful courts.

The focus of this manual is not what provisions to include in a given contract, but instead how to express those provisions in prose that is free of the problems that often afflict contracts.

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