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Methodology

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Acclaim for the first edition: ïThis is a very important and immense book. . . The Elgar Encyclopedia of Comparative Law is a treasure-trove of honed knowledge of the laws of many countries. It is a reference book for dipping into, time and time again. It is worth every penny and there is not another as comprehensive in its coverage as ElgarÍs. I highly recommend the Elgar Encyclopedia of Comparative Law to all English chambers. This is a very important book that should be sitting in every university law school library.Í _ Sally Ramage, The Criminal Lawyer Containing newly

updated versions of existing entries and adding several important new entries, this second edition of the Elgar Encyclopedia of Comparative Law takes stock of present-day comparative law scholarship. Written by leading authorities in their respective fields, the contributions in this accessible book cover and combine not only questions regarding the methodology of comparative law, but also specific areas of law (such as administrative law and criminal law) and specific topics (such as accident compensation and consideration). In addition, the Encyclopedia contains reports on a selected set of countriesÍ legal systems and, as a whole, presents an overview of the current state of affairs. Providing its readers with a unique point of reference, as well as stimulus for further research, this volume is an indispensable tool for anyone interested in comparative law, especially academics, students and practitioners. This landmark volume of specially commissioned, original contributions by top international scholars organizes the issues and controversies of the rich and rapidly maturing field of comparative constitutional law. Divided into sections on constitutional design and redesign, identity, structure, individual rights and state duties, courts and constitutional interpretation, this comprehensive volume covers over 100 countries as well as a range of approaches to the boundaries of constitutional law. While some chapters reference the text of legal instruments expressly labeled constitutional, others focus on the idea of entrenchment or take a more functional approach. Challenging the current boundaries of the field, the contributors offer diverse perspectives - cultural, historical and institutional - as well as suggestions for future research. A unique and enlightening volume, Comparative Constitutional Law is an essential resource for students and scholars of the

subject. This comprehensive book provides a comparative overview of legal institutions that intersect with everyday life: contracts, unilateral legal transactions, torts, negotiorum gestio and unjust enrichment. These institutions form the core of the Law of Obligations, which is examined in this book from the perspective of all major legal traditions including Civil, Common, Islamic and Chinese law. This comparative analysis considers the differing approaches to important areas of law in England, France and Germany. In particular, constitutions, sources of law, rights against the state to prevent abuse of power, and rights of private individuals and organisations against each other in tort and contract are examined and compared, and the system of courts is also considered. Updated and revised, each sub-topic is introduced with the relevant material in the English system, allowing easy comparison and assimilation of the other systems. The text includes translations of relevant French and German codal material, and references to relevant cases from all of the jurisdictions. This new edition includes constitutional changes in France and the United Kingdom, in particular the new procedure for challenging existing legislation before the Conseil constitutionnel. It examines the consequences of the Lisbon Treaty, as well as other recent codal and legislative changes. Comprehensive and topical, the text explores a wide variety of new case law on issues such as: preventive detention; the use of evidence obtained by torture; the balance between suppression of terrorism and personal freedom; the internet; email monitoring; artificial reproductive techniques; use of global positioning systems (GPSs), deoxyribonucleic acid (DNA) and closed-circuit television (CCTV); the wearing of religious clothing (such as the headscarf) and symbols (such as the cross); circumcision; methods of crowd control; the prevention of human trafficking; the

preservation of privacy, especially for celebrities; and the legality of pre-nuptial agreements and success fees for lawyers. Designed for students on comparative law courses, this textbook will also prove valuable to students who are familiar with English law, but require a readily comprehensible introduction to French or German law. Comprising an array of distinguished contributors, this pioneering volume of original contributions explores theoretical and empirical issues in comparative law. The innovative, interpretive approach found here combines explorative scholarship and research with thoughtful, qualitative critiques of the field. The book promotes a deeper appreciation of classical theories and offers new ways to re-orient the study of legal transplants and transnational codes. Methods of Comparative Law brings to bear new thinking on topics including: the mutual relationship between space and law; the plot that structures legal narratives, identities and judicial interpretations; a strategic approach to legal decision making; and the inner potentialities of the 'comparative law and economics' approach to the field. Together, the contributors reassess the scientific understanding of comparative methodologies in the field of law in order to provide both critical insights into the traditional literature and an original overview of the most recent and purposive trends. A welcome addition to the lively field of comparative law, Methods of Comparative Law will appeal to students and scholars of law, comparative law and economics. Judges and practitioners will also find much of interest here. Comparative constitutional law is a field of increasing importance around the world, but much of the literature is focused on Europe, North America, and English-speaking jurisdictions. The importance of Asia for the broader field is demonstrated here i The book links the study of comparative

law with the study of law and economics The book delves into the 'deeper structures' of the world's legal systems, where law meets culture, politics and socio-economic factors. This book examines an unexplored method of interpretation: the use of domestic law in the interpretation of international law. This book presents a comprehensive study on how twenty-three countries have approached the issue of company groups. In addition to detailed profiles of each country’s legislation, written by some of the most respected experts in the field, the book also presents a general overview and offers readers an in-depth, up-to-date and highly practical comparative analysis of the company group phenomenon in connection with national legal regimes. As such, the book is a must-read for all those seeking a deeper understanding of how company groups are viewed and regulated around the globe. This revised second edition of Comparative Tort Law: Global Perspectives offers an updated and enriched framework for analysing and understanding the current state of tort law around the world. Using a critical comparative methodology, it covers not only the common tort law issues but also many jurisdictions often overlooked in the mainstream literature. Contributions explore illuminating case studies from tort systems in Europe, the US, Latin America, Asia and sub-Saharan Africa, including new chapters specifically discussing tort law in Brazil, India and Russia. The 14 essays that make up this 2003 volume are written by leading international scholars to provide an authoritative survey of the state of comparative legal studies. Representing such varied disciplines as the law, political science, sociology, history and anthropology, the contributors review the intellectual traditions that have evolved within the discipline of comparative legal studies, explore the strengths and failings of the various methodologies that

comparatists adopt and, significantly, explore the directions that the subject is likely to take in the future. No previous work had examined so comprehensively the philosophical and methodological foundations of comparative law. This is quite simply a book with which anyone embarking on comparative legal studies will have to engage. The first sustained, scholarly examination of the relationship between prosecutors and democracy from a cross-national, cross-disciplinary perspective. Written by a team of internationally distingushed contributors, this is an ideal resource for legal scholars and reformers, political philosophers, and social scientists. Offers a comprehensive and comparative picture of how countries around the globe use ordinary citizens to decide criminal cases. This volume compares the different conceptions of the rule of law that have developed in different legal cultures. It describes the social purposes and practical applications of the rule of law and how it might be improved in the varied circumstances. Reconstructs existing comparative law scholarship into a coherent analytic framework so as to both fend off current charges of theoretical arbitrariness and guide future work. This thought-provoking introduction to the study of comparative law provides in-depth analyses of all major comparative methodologies and theories and serves as a common sense guide to the study of foreign legal systems. It is written in a lively and accessible style and will prove indispensable reading to students of the subject. It also contains much that will be of interest to comparative law scholars, offering novel insights into commonplace methodological and theoretical questions and making a significant contribution to the field. This book analyses enrichment law and its development and underpinning in social culture

within three geographical regions: the United States, western members of the European Union and the late Ottoman Empire. These regions correspond, though imperfectly, with three different legal traditions: the American, continental and Islamic traditions. The book argues that we should understand law as a mimetic artefact. In so doing, it explains how typical patterns and exemplary articulations of wrongful enrichment law capture and reiterate vocal cultural themes found in the respective regions. The book identifies remarkable affinities between poetic tendencies, structures and default dispositions of wrongful enrichment law and cultural world views. It offers bold accounts of each region's law and culture providing fertile grounds for external and comparative elucidations of the legal doctrine. While the role of comparative law in the courts was previously only an exception, foreign sources are now increasingly becoming a source of law in regular use in supreme and constitutional courts. There is considerable variation between the practices of courts and the role of comparative law, and methods remain controversial. In the US, the issue has been one of intense public debate and it is still one of the major dividing issues in the discussion about the role of the courts. Contributing to the existing discussion of the use of comparative law in the courts, this book provides an inclusive, coherent, and practical analysis of the relevant law and jurisprudence in comparative law in the courts. It examines the consequences for court procedures and the form of judgments, as well as how foreign sources are drawn upon in private international law, European law, administrative law, and constitutional law as well as before general courts. The book also includes case studies of comparative law used in particular spheres of the law, such as tort law and consumer law. Written by practising

judges and lawyers as well as leading academics, this book serves as a central reference point concerning the role of comparative law before the courts. This important two-volume collection draws together the most significant and instructive articles relating to comparative law methodology and offers vast and comprehensive coverage of practices, principles, methods and sources in comparative legal research. The first volume deals with preliminary considerations such as the aims of research and the questions one should ask, as well as how to select objects for comparison and formulate a research plan. The second volume focuses on the comparative research of regulation, description, and explanation, along with discussion on functionalism, quantitative approaches, translation issues, legal transplants and global challenges. Together with an original introduction by the editors that frames the articles and helps the reader to navigate them successfully, this collection offers a balanced body of seminal research which will benefit legal scholars, students, and all who are undertaking, or seeking to evaluate, comparative legal research. "The chapters of this volume were presented at the twenty-seventh and twenty-eighth Sokol Colloquia on Private International Law, held at the University of Virginia School of Law in September 2014 and September 2015." -- Acknowledgments, p. [xi]. The most up-to-date and contextualised offering for comparative law students and scholars, referencing the newest research in the field. The primary aim of this book is to provide clear and reliable information on a number of central topics in comparative law. At a time when global society is increasingly mobile and legal life is internationalized, the role of comparative law is gaining importance. While the growing interest in this field may well be attributed to the dramatic increase in international legal

transactions, this empirical parameter is only part of the explanation. The other part, and (at least) equally important, has to do with the expectation of gaining a deeper understanding of law as a social phenomenon and a fresh insight into the current state and future direction of one's own legal system. In response to the internationalization of legal practice and theory, law schools around the world have expanded their comparative law programs. Within the legal subjects that form the core of the curriculum there is a greater interest in comparative legal analysis, as well as greater attention to how global developments and international actors and institutions affect domestic law. Transnational legal education based on comparative reasoning is intended to help shape a new generation of lawyers, public servants and other professionals who recognize and respect cultural diversity in an interconnected world. The central topics discussed in this book include: the nature and scope of comparative legal inquiries; the relationship of comparative law to other fields of legal study; the aims and uses of comparative law; the origins and historical development of comparative law; and the evolution and defining features of some of the world's predominant legal traditions. It also deals with selected theoretical aspects, such as the problem of comparability of legal events; the classification of legal systems into families of law; and the topics of legal transplants, harmonization and convergence of laws. Chiefly intended for students, the book also discusses a number of fundamental issues concerning the development of comparative law, and devotes certain sections to reviewing the salient features of the relevant literature on definitional, terminological, methodological and historical issues. What does doing comparative law involve? Too often, explicit methodological discussions in comparative law remain limited to the level of

pure theory, neglecting to test out critiques and recommendations on concrete issues. This book bridges this gap between theory and practice in comparative legal studies. Essays by both established and younger comparative lawyers reflect on the methodological challenges arising in their own work and in work in their area. Taken together, they offer clear recommendations for, and critical reflection on, a wide range of innovative comparative research projects. This is an open access title available under the terms of a CC BY-NC-ND 4.0 License. It is free to read, download and share on Elgaronline.com. This insightful and timely book introduces an explanatory theory for surveying global and international politics. Describing the nature and effects of democracy beyond the state, Hans Agné explores peace and conflict, migration politics, resource distribution, regime effectiveness, foreign policy and posthuman politics through the lens of democratism to both supplement and challenge established research paradigms. Over the past decades, the field commonly known as comparative law has significantly expanded. The multiplication of journals, the proliferation of scholarship and the creation of courses or summer schools specifically devoted to comparative law attest to its increasing popularity. Within the Western legal tradition, a traditional, black-letter approach to law has proved particularly authoritative. This co-authored book rethinks comparative law's mainstream model by providing both students and lawyers with the intellectual equipment allowing them to approach any foreign law in a more meaningful way. Governance by regulation – rules propounded and enforced by bureaucracies – is taking a growing share of the sum total of governance. Once thought to be an American phenomenon, it is now a central form of state action in every part of the world, including Europe, Latin

America, and Asia, and it is at the core of much international lawmaking. In Comparative Law and Regulation, original contributions by leading scholars in the field focus both on the legal dimension of regulation and on how this dimension operates in those places that have turned to regulation to meet their obligations. This fully revised and updated second edition of The Oxford Handbook of Comparative Law provides a wide-ranging and diverse critical survey of comparative law at the beginning of the twenty-first century. It summarizes and evaluates a discipline that is time-honoured but not easily understood in all its dimensions. In the current era of globalization, this discipline is more relevant than ever, both on the academic and on the practical level. The Handbook is divided into three main sections. Section I surveys how comparative law has developed and where it stands today in various parts of the world. This includes not only traditional model jurisdictions, such as France, Germany, and the United States, but also other regions like Eastern Europe, East Asia, and Latin America. Section II then discusses the major approaches to comparative law - its methods, goals, and its relationship with other fields, such as legal history, economics, and linguistics. Finally, section III deals with the status of comparative studies in over a dozen subject matter areas, including the major categories of private, economic, public, and criminal law. The Handbook contains forty-eight chapters written by experts from around the world. The aim of each chapter is to provide an accessible, original, and critical account of the current state of comparative law in its respective area which will help to shape the agenda in the years to come. Each chapter also includes a short bibliography referencing the definitive works in the field. This book discusses a number of important themes in comparative law: legal metaphors and methodology,

the movements of legal ideas and institutions and the mixity they produce, and marriage, an area of law in which culture – or clashes of legal and public cultures – may be particularly evident. In a mix of methodological and empirical investigations divided by these themes, the work offers expanded analyses and a unique cross-section of materials that is on the cutting edge of comparative law scholarship. It presents an innovative approach to legal pluralism, the study of mixed jurisdictions, and language and the law, with the use of metaphors not as an illustration but as a core element of comparative methodology. Written under the sign of Beckett, this book addresses comparative law's commitment to the deterritorialization of the legal and its attendant claim for the normative relevance of foreign law locally in the fabrication of statutory determinations, judicial opinions, or academic reflections. Wanting to withstand the law's persistent tendency towards nationalist retrenchment and counter comparative law's institutional marginalization, the fifteen essays at hand impart radical and discerning intellectual equipment in order to foster the valorization of the legally foreign and the comparative motion. In particular, the critique informing this manifesto examines pre-eminent topics like culture and difference, understanding and translatability, objectivity and truth, invention and tracing. Harnessing insights from a range of disciplinary discourses, this book contends that comparatists must boldly desist from their field's dominant epistemology and embrace a practice much better attuned to the study of foreignness. Provides a comprehensive description of the system of Roman law, discussing slavery, property, contracts, delicts and succession. Also examines the ways in which Roman law influenced later legal systems such as the structure of European legal systems, tort

law in the French civil code, differences between contract law in France and Germany, parameters of judicial reasoning, feudal law, and the interests of governments in making and communicating law. This book is a comparative study of the exclusion of illegally gathered evidence in the criminal trial , which includes 15 country studies, a chapter on the European Court of Human Rights, and a comparative synthetic conclusion. No other book has undertaken such a broad comparative study of exclusionary rules, which have now become a world-wide phenomenon. The topic is one of the most controversial in criminal procedure law, because it reveals a constant tension between the criminal court’s duty to ascertain the truth, on the one hand, and its duty to uphold important constitutional rights on the other, most importantly, the privilege against self-incrimination and the right to privacy in one's home and one's private communications.

The chapters were contributed by noted world experts on the subject for the XVIII Congress of the International Academy of Comparative Law in Washington in July 2010. Gifts: A Study in Comparative Law is the first broad-based study of the law governing the giving and revocation of gifts ever attempted. Gift-giving is everywhere governed by social and customary norms before it encounters the law and the giving of gifts takes place largely outside of the marketplace. As a result of these two characteristics, the law of gifts provides an optimal lens through which to examine how different legal systems engage with social practice. The law of gifts is well-developed both in the civil and the common laws. Richard Hyland's study provides an excellent view of the ways in which different civil and common law jurisdictions confront common issues. The legal systems discussed include principally, in the common law, those of Great Britain, the United States, and India, and,

in the civil law, the private law systems of Belgium and France, Germany, Italy, and Spain. Professor Hyland also serves a critique of the dominant method in the field, which is a form of functionalism based on what is called the praesumptio similitudinis, namely the axiom that, once legal doctrine is stripped away, developed legal systems tend to reach similar practical results. His study demonstrates, to the contrary, that legal systems actually differ, not only in their approach and conceptual structure, but just as much in the results. This yearbook is a compilation of thematically arranged essays that critically analyseemerging developments, issues, and perspectives across different branches of law. Itconsists of research from scholars around the world with the view that comparativestudy would initiate dialogue on law and legal cultures across jurisdictions. The themesvary from jurisprudence of comparative law and its methodologies to intrinsic detailsof specific laws like memory laws. The sites of the enquiries in different chapters aredifferent legal systems, recent judgements, and aspects of human rights in a comparativeperspective. It comprises seven parts wherein the first part focuses on general themesof comparative law, the second part discusses private law through a comparative lens,and the third, fourth and fifth parts examine aspects of public law with special focuson constitutional law, human rights and economic laws. The sixth part engages withcriminal law and the last part of the book covers recent developments in the field ofcomparative law. This book intends to trigger a discussion on issues of comparativelaw from the vantage point of Global South, not only focusing on the Global North.It examines legal systems of countries from far-east and sub-continent and presentsinsights on their working. It encourages readers to gain a nuanced

understanding ofthe working of law, legal systems and legal cultures, adding to existing deliberationson the constituents of an ideal system of law. Pure economic loss is one of the most-discussed problems in the fields of tort and contract. How do we understand the various differences and similarities between these systems and what is the extent to which there is a common-core of agreement on this question? This book takes a comparative approach to the subject, exploring the principles, policies and rules governing tortious liability for pure economic loss in a number of countries and legal systems across the world. The countries covered are USA, Canada, Japan, Israel, South Africa, Japan, Romania, Croatia, Denmark and Poland, with the contributors taking a comparative fact-based approach through the use of hypothetical problems to analyze and then summarize the individual country's tort approach. Using a fact-based questionnaire, a tested taxonomy, and a sophisticated comparative law methodology, the authors convincingly demonstrate that there are liberal, pragmatic and conservative regimes throughout the world. The recoverability of pure economic loss poses a generic question for these legal systems - it is not just a civil law versus common law issue. It will be of interest to students and academics studying tort law and comparative law in the different countries covered. Presenting a critique of conventional methods in comparative law, this book argues that, for comparative law to qualify as a discipline, comparatists must reflect on how and why they make comparisons. Günter Frankenberg discusses not only methods and theories, but also the ethical implications and the politics of comparative law in bringing out the different dimensions of the discipline. Comparative Law as Critique offers various approaches that turn against the academic

discourse of comparative law, including analysis of a widespread spirit of innocence in terms of method, and critique of human rights narratives. It also examines how courts negotiate differences between cases regarding Muslim veiling. The incisive critiques and comparisons in this book will be of essential reading for comparatists working in legal education and research, as well as students of comparative law and scholars in comparative anthropology and social sciences. Now in its second edition, this textbook presents a critical rethinking of the study of comparative law and legal theory in a globalising world, and proposes an alternative model. It highlights the inadequacies of current Western theoretical approaches in comparative law, international law, legal theory and jurisprudence, especially for studying Asian and African laws, arguing that they are too parochial and eurocentric to meet global challenges. Menski argues for combining modern natural law theories with positivist and socio-legal traditions, building an interactive, triangular concept of legal pluralism. Advocated as the fourth major approach to legal theory, this model is applied in analysing the historical and conceptual development of Hindu law, Muslim law, African laws and Chinese law. Comparative Law and Society, part of the Research Handbooks in Comparative Law series, is a pioneering volume that comprises 19 original essays written by expert authors from across the world. This innovative handbook offers both a history of the field of comparative law and society and a thorough exploration of its methods, disciplines, and major issues, presenting the most comprehensive look into this contemporary field to date.