Comparative Public Law

This collection brings together a group of international legal historians to further scholarship in different areas of comparative and regional legal history. Authors are drawn from Europe, Asia, and the Americas to produce new insights into the relationship between law and society across time and space. The book is divided into three parts: legal history and legal culture across borders; constitutional experiences in global perspective; and the history of judicial experiences. The three themes, and the chapters corresponding to each, provide a balance between public law and private law topics, and reflect a variety of methodologies, both empirical and theoretical. The volume highlights the gains that may be made by comparing the development of law in different countries and different time periods. The book will be of interest to an international readership in Legal History, Comparative Law, Law and Society, and History.

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.

The principles of freedom of expression have been developed over centuries. How are they reserved and passed on? How can large internet gatekeepers be required to respect freedom of expression and to contribute actively to a diverse and plural marketplace of ideas? These are key issues for media regulation, and will remain so for the foreseeable decades. The book starts with the foundations of freedom of expression and freedom of the press, and then goes on to explore the general issues concerning the regulation of the internet as a specific medium. It then turns to analysing the legal issues relating to the three most important gatekeepers whose operations directly affect freedom of expression: ISPs, search engines and social media platforms. Finally it summarises the potential future regulatory and media policy directions. The book takes a comparative legal approach, focusing primarily on English and American regulations, case law and jurisprudential debates, but it also details the relevant international developments (Council of Europe, European Union) as well as the jurisprudence of the European Court of Human Rights.

According to the doctrine of odious debt, loans which are knowingly provided to subjugate or defraud the population of a debtor state are not legally binding against that state under international law. Breaking with widespread scepticism, this groundbreaking book reaffirms the original doctrine through a meticulous and definitive examination of state practice and legal history. It restates the doctrine by introducing a new classification of odious debts and defines 'odiousness' by reference to the current, much more determinate and litigated framework of existing public international law. Acknowledging that much of sovereign debt is now governed by the private law of New York and England, Jeff King explores how 'odious debts' in international law should also be regarded as contrary to public policy in private law. This book is essential reading for practising lawyers, scholars, and development and human rights workers.

This book provides a comparative perspective on one of the most intriguing developments in law: the influence of basic rights and human rights in private law. It analyzes the application of basic rights and human rights, which are traditionally understood as public law rights, in private law, and discusses the related spillover effects and changing perspectives in legal doctrine and practice. It provides examples where basic rights and human rights influence judicial reasoning and lead to changes of legislation in contract law, tort law, property law, family law, and copyright law. Providing both context and background analysis for any critical examination of the horizontal effect of fundamental rights in private law, the book contributes to the current debate on an important issue that deserves the attention of legal practitioners, scholars, judges and others involved in the developments in a variety of the world’s jurisdictions. This book is based on the General Report and national reports commissioned by the International Academy of Comparative Law and written for the XIXth International Congress of Comparative Law in Vienna, Austria, in the summer of 2014.

There is growing interest in constitutional amendment from a comparative perspective. Comparative constitutional amendment is the study of how constitutions change through formal and informal means, including alteration, revision, evolution, interpretation, replacement and revolution. The field invites scholars to draw insights about constitutional change across borders and cultures, to uncover the motivations behind constitutional change, to theorise best practices, and to identify the theoretical underpinnings of constitutional change. This volume is designed to guide the emergence of comparative constitutional amendment as a distinct field of study in public law. Much of the recent scholarship in the field has been written by the scholars assembled in this volume. This book, like the field it hopes to shape, is not comparative alone; it is also doctrinal, historical and theoretical, and therefore offers a multiplicity of perspectives on a subject about which much remains to be written. This book aspires to be the first to address comprehensively the new dimensions of the study of constitutional amendment, and will become a reference point for all scholars working on the subject. The volume covers all of the topics where innovative work is being done, such as the notion of the people, the trend of empirical quantitative approaches to constitutional change, unamendability, sunrise clauses, constitutional referenda, the conventional divide between constituent and constituted powers, among other important subjects. It creates a dialogue that cuts through these innovative conceptualisations and highlights scholarly disagreement and, in so doing, puts ideas to the test. The volume therefore captures the fierce ongoing debates on the relevant topics, it reveals the current trends and contested issues, and it offers a variety of arguments elaborated by prominent experts in the field. It will open the way for further dialogue.

Examines the political dynamics of constitutional review in hybrid regimes in the context of China's Special Administrative Regions.

The aim of this book is to study how a dozen legal systems have dealt with the problem of providing a financial remedy for individuals who have suffered injury of loss as a result of government activity. The original inspiration for the book came from a collquium on the subject of governmental liability, compensation and the law of civil wrongs, held at Birmingham University in September 1985 under the auspices of the UK National Committee for Comparative Law.

A comparative perspective of role played by three generations of European Constitutional Courts in the process of transition to democracy.

Fu Hua Ling: The right to fair trial in China.

No social life is possible without order. Order being the most constituent element of society, it is not surprising that so many theories have been developed to explain what social order is and how it is possible, as well as to explore the features that social

order acquires in its different dimensions. The book leads these many theories of social order back to a few main matrices for the use of theoretical and practical reason, which are defined as 'paradigms of order'. The plurality of conceptual constructs regarding social order is therefore reduced to a manageable number of theoretical patterns and an intellectual map is produced in which the most significant differences between paradigms are clearly outlined. Furthermore, the 'paradigmatic revolutions' are addressed that marked the most relevant turning points in the way in which a 'well-ordered society' should be understood. Against this background, the question is discussed on the theoretical and practical perspectives for a cosmopolitan society as the only suitable possibility to meet the global challenges with which we are all presently confronted.

Particularly valuable for both academics and practitioners, Human Rights and the Private Sphere: A Comparative Study analyzes the interaction between constitutional rights, freedoms and private law. Focusing primarily on civil and political rights, an international team of constitutional and private law experts have contributed a collection of chapters, each based around a different jurisdiction. They include Denmark, France, Germany, India, Ireland, Israel, Italy, New Zealand, the UK, the US, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union. As well as exploring, chapter by chapter, the key topics and debates in each jurisdiction, a comparative analysis draws the sections together; setting-out the common features and differences in the jurisdictions under review and identifies some common trends in this important area of the law. Cross-references between the various chapters and an appendix containing relevant legislative material and translated quotations from important court decisions makes this volume a valuable tool for those studying and working in the field of international human rights law.

This book, one of two volumes, is an anthology that analyses, through selected examples, the role played in the development of public law by the pursuit of goals serving modernisation or national ideologies in various countries, cultural spheres, and periods. Max Planck Institute for Comparative Public Law and International Law

The 5th edition of this handbook provides a user-friendly introduction to comparative constitutional law. For each area of constitutional law, a general introduction and a comparative overview is provided, which is then followed by more detailed country chapters on that specific area. The author has expanded several chapters to provide for even more detail on national legal systems and constitutional comparison.

Together with the expansive process of human rights constitutional declarations, in addition to the writ of habeas corpus and of habeas data, Latin American constitutions created a specific judicial remedy for the protection of constitutional rights, known as the suit, action, recourse, or writ of amparo. After spreading throughout Latin America, it was incorporated in the American Convention of Human Rights. It is similar to the "injunctions" and the other equitable remedies of the United States legal system. This book examines, with a comparative constitutional law approach, the most recent trends in the constitutional and legal regulations in all Latin American countries regarding the amparo proceeding. It is an up-to-date abridged version of the course of lectures the author gave at the Columbia Law School analyzing the regulations of the seventeen amparo statutes in force in Latin America, as well as the regulation on the amparo guarantee established in Article 25 of the American Convention of Human Rights.

This is a book about the definition of executive power and the ways in which it can be rendered accountable. Such power is especially important in the modern day, as exemplified by the detention of prisoners in Guantanomo Bay. The book explores the nature of executive power in a number of different legal systems, Britain, Scotland, Canada, Australia, New Zealand, France, Germany, Italy, Spain and the EU and seeks to draw lessons and insights from the comparative perspective.

The increase in the European Union's executive powers in the areas of economic and financial governance has thrown into sharp relief the challenges of EU law in constituting, framing, and constraining the decision-making processes and political choices that have hitherto supported European integration. The constitutional implications of crisis-induced transformations have been much debated but have largely overlooked the tension between law and discretion that the post-2010 reforms have brought to the fore. This book focuses on this tension and explores the ways in which legal norms may (or may not) constrain and structure the discretion of the EU executive. The developments in the EU's post-crisis financial and economic governance act as a reference point from which to analyze the normative problems pertaining to the law's relationship to the exercise of discretion. Structured in three parts, the book starts by analyzing the challenges to the maxim that the law both grounds and constrains EU executive and administrative discretion, setting out the concepts, problems and approaches to the relation between law and discretion both in general public law and in EU law. It progresses to analyze how these problems and approaches have unfolded in EU's financial, economic and monetary governance. Finally, it moves on from these specific developments to assess how existing legal principles and means of judicial review contribute to ensuring the rationality and legality of EU's discretionary powers.

This book offers a comparative introduction, by editors and native authors, to the most important aspects of administrative law in various EU Member States (Belgium, France, Germany, the Netherlands, the United Kingdom), at the level of the EU and in the United States of America. It aspires to contribute to the 'transboundary' understanding of different regimes related to actions and decisions of the administration. For the purpose of the use of this book in education, research and legal practice, the contributions to the book are all based on one and the same format, thus making it more accessible for its readers. The main items of the format are. . What is administrative law? . Who is administrating? . Which instruments are available to the administration? . Which (formal) rules/principles (written or unwritten) govern administrative actions? . Access to (administrative) courts against administrative actions/decisions. . Recent and future developments and conclusions. The final chapter offers comparative remarks by the editors.

Investment treaty arbitration has a hybrid nature combining public international law (as regards its substance) with elements of international commercial arbitration (mainly as regards procedure). However, in essence and function it deals with a special, internationalised form of judicial review of governmental conduct that is more akin to the judicial control of governmental action provided for by national administrative and constitutional law than to either classic inter-state dispute resolution or international commercial arbitration. This has been recognised in some academic writing and several awards, where reference to national administrative law concepts and principles of international law-based judicial review

of governmental action, such as international trade or human rights law, is used to help specify and apply the open-ended concepts of investment treaties. In-depth conceptualization is however often lacking. The current study is the first, pioneering effort to bring these under-developed ad hoc references to comparative and international administrative law concepts into a deeper theoretic and systematic framework. The book thus intends to develop a 'bridge' between treaty-based international investment arbitration and comparative administrative law on both a theoretical and practical level. The major obligations in investment treaties (indirect expropriation, fair and equitable treatment, national treatment, umbrella/sanctity of contract clause) and major procedural principles will be compared with their counterpart in comparative public law, both on the domestic as well as international level. That 'bridge' will allow international investment law to benefit from the comparative public law experience, which could enhance its legitimacy, its political acceptance, and its ability to develop more finely-tuned interpretations of central treaty obligations.

With the transfer of ever more tasks and competences to the European level the EU’s administration has become increasingly complex, with ‘agencification’ as the most visible sign of this differentiation. This book offers a much-needed analytical overview of the field, with the aim of improving our understanding of administration at the European level, and indeed of improving the administration itself.

This book analyses the Nordic constitutional systems of Denmark, Finland, Iceland, Norway and Sweden in a comparative context. It has two main aims: first to fill a gap in the literature by providing an accessible English language account of the Nordic constitutions, and second to provide a comparative analysis of them, revealing their similarities and differences within their political, historical and cultural contexts. In this respect, the book challenges the assumption that the Nordic countries form a homogeneous constitutional system due to their cultural and historical affinities, a view not necessarily supported by a close comparative examination. A key issue is EU membership –where the Nordic countries have made different choices at different times – and the book will show how this has affected the individual countries and whether a divide between EU member states (Denmark, Finland and Sweden) and non-members (Iceland and Norway) has appeared. Another key issue is how the ECHR has impacted the Nordic constitutional systems and whether the convention draws the Nordic systems closer to each other. The book represents a first of its kind in the English language, and will provide constitutional scholars with a valuable comparative resource on the Nordic region.

The Max Planck Institute for Comparative Public Law and International Law in Hamburg, Germany, is concerned with all aspects of public international law, the law of international organizations, the international legal relations of the Federal Republic of Germany, and constitutional and administrative law in other countries. The institute lists its departments and staff members, provides visitor information, details its upcoming meetings and conferences, and describes its facilities and publications. The institute is named after the German physicist Max Planck (1858-1947).

This volume, which is part of the Comparative Public Law Treaties directed by prof. Giuseppe Franco Ferrari, offers the result of a reflection on the characteristics of the constitutional laws of East Asia. In the course of the work, in addition to a deepening of understanding of the legal models considered, investigations were carried out for internal comparison between the Eastern Asian legal systems, as well as for comparison with public legal systems belonging to other, mainly Western, legal traditions. The sectors of the jurisdictions that have been examined concern (a) the constitutional system, with a separate analysis of the legislative, executive and judicial bodies including constitutional justice (in the national experiences that contemplate it), (b) the forms of political-administrative decentralization, and (c) the catalogue of fundamental rights. In accordance with the prevalent trends in international literature on comparative legal methodology (as far as we are concerned, in the area of constitutional law), both diachronic and synchronic profiles of the national legal systems have been examined.

The world appears to be globalising economically, technologically and even, to a halting extent, politically. This process of globalisation raises the possibility of an international legal framework, a possibility which has gained pressing relevance in the wake of the recent global economic crisis. But for any international legal framework to exist, normative agreement between countries, with very different political, economic, cultural and legal traditions, becomes necessary. This work explores the possibility of such a normative agreement through the prism of national constitutional norms. Since 1945, more than a hundred countries have adopted constitutional texts which incorporate, at least in part, a Bill of Rights. These texts reveal significant similarities; the Canadian Charter of Rights and Freedoms, for instance, had a marked influence on the drafting of the Bill of Rights for South Africa, New Zealand and Hong Kong as well as the Basic Law of Israel. Similarly, the drafts of Eastern European constitutions reflect significant borrowing from older texts. The essays in this book examine the depth of these similarities; in particular the extent to which textual borrowings point to the development of foundational values in these different national legal systems and the extent of the similarities or differences between these values and the priorities accorded to them. From these national studies the work analyses the rise of constitutionalism since the Second World War, and charts the possibility of a consensus on values which might plausibly underpin an effective and legitimate international legal order.

This book is the first comprehensive historical and comparative analysis of the emergence of English Public law as a distinct branch of law to govern the state. It explains persistent problems and considers potential reforms by contrasting the development of the innovative and influential French system of public law. It attributes the relative inadequacies of English public law to differences between the English and French legal and political traditions.

This innovative textbook provides an introduction into comparative constitutional law to undergraduate and graduate students. Combining a clear and practical explanation of the topics with scientific knowledge, the textbook analyzes the origins and the development of constitutional law in the Western world, as well as the structure and transformations of constitutional law, up to the present day. It also examines the theoretical roots and the historical premises of constitutionalism, and explores the foundation of constitutional law in Western countries since the Age of Revolutions and the 19th Century, underlining the different constitutional traditions. Furthermore, the textbook describes the transformations of constitutional law brought about by the transition toward pluralistic societies, and analyzes the political and legal features of constitutional democracies, taking into consideration the

lessons learned in several constitutional environments in contemporary states. It also discusses the global expansion of the pattern of Western constitutionalism and the contemporary challenges in the age of globalization, focusing on the development of a European constitutional space.

In the domain of comparative constitutionalism, Israeli constitutional law is a fascinating case study constituted of many dilemmas. It is moving from the old British tradition of an unwritten constitution and no judicial review of legislation to fully-fledged constitutionalism endorsing judicial review and based on the text of a series of basic laws. At the same time, it is struggling with major questions of identity, in the context of Israel's constitutional vision of 'a Jewish and Democratic' state. Israeli Constitutional Law in the Making offers a comprehensive study of Israeli constitutional law in a systematic manner that moves from constitution-making to specific areas of contestation including state/religion relations, national security, social rights, as well as structural questions of judicial review. It features contributions by leading scholars of Israeli constitutional law, with comparative comments by leading scholars of constitutional law from Europe and the United States.

The Maastricht Collection comprises a broad selection of legal instruments and provisions that have proven to be particularly relevant and useful to students and practitioners of international, European, and comparative law. The compilation is based on the Maastricht University Law School's longstanding expertise in teaching and researching European, international, and comparative national law. It includes codes and statutory law from France, Germany, the Netherlands, and the United Kingdom, international treaties, as well as legal instruments of the European Union. The provisions contained in The Maastricht Collection are reproduced in the original English or in the authentic English version, where applicable, or they are freshly translated under critical editorship. Existing translations of written law, including officious translations available on government websites, often seek to turn old-fashioned or ambiguous original texts into modern and elegant English. Or, instead of translating, they seek to explain how certain terms and formulations are interpreted in practice. The translations in The Maastricht Collection remain as faithful as possible to the content and linguistic style of the original, thus allowing the reader not only to appreciate the substance but also the authentic form of legal sources. The fifth edition of The Maastricht Collection constitutes not only a full revision and update of the fourth edition, but also comprises many important additions, aiming to further enhance its value as a resource in teaching and research. Due to the significant expansion of the collection, this new edition has been divided into four reader-friendly volumes: Vol. I - International and European Law (ISBN 9789089521941); Vol. II - Comparative Public Law (ISBN 9789089521958); Vol. III - International and European Private Law (ISBN 9789089521965); Vol. IV - Comparative Private Law (ISBN 9789089521972) [Subject: European Law, Comparative Law, International Law, Public Law, Private Law]

A comprehensive overview of the field of comparative administrative law that builds on the first edition with many new and revised chapters, additional topics and extended geographical coverage. This research handbook's broad, multi-method approach combines history and social science with more strictly legal analyses. This new edition demonstrates the growth and dynamism of recent efforts - spearheaded by the first edition - to stimulate comparative research in administrative law and public law more generally, reaching across different countries and scholarly disciplines.A particular focus is on administrative independence with its manifold implications for separation of powers, democratic self-government, and the boundary between law, politics, and policy. Several chapters highlight the tensions between impartial expertise and public accountability; others consider administrative litigation and the role of the courts in reviewing both individual decisions and secondary norms. The book concludes by asking how administrative law is shaping and is being shaped by the changing boundaries of the state, especially shifting boundaries between the public and the private, and the national and the supranational domains.This extensive and interdisciplinary appraisal of the field will be a vital resource for scholars and students of administrative and comparative law worldwide, and for public officials and representatives of interest groups engaged with government policy implementation and regulation.

This book offers a comprehensive study of Israeli constitutional law that moves from constitution-making to specific areas of contestation including state/religion relations, national security, social rights, and structural questions of judicial review.

This analysis of Hans Kelsen's international law theory takes into account the context of the German international legal discourse in the first half of the twentieth century, including the reactions of Carl Schmitt and other Weimar opponents of Kelsen. The relationship between his Pure Theory of Law and his international law writings is examined, enabling the reader to understand how Kelsen tried to square his own liberal cosmopolitan project with his methodological convictions as laid out in his Pure Theory of Law. Finally, Jochen von Bernstorff discusses the limits and continuing relevance of Kelsenian formalism for international law under the term of 'reflexive formalism', and offers a reflection on Kelsen's theory of international law against the background of current debates over constitutionalisation, institutionalisation and fragmentation of international law. The book also includes biographical sketches of Hans Kelsen and his main students Alfred Verdross and Joseph L. Kunz.

Comparative constitutional change has recently emerged as a distinct field in the study of constitutional law. It is the study of the way constitutions change through formal and informal mechanisms, including amendment, replacement, total and partial revision, adaptation, interpretation, disuse and revolution. The shift of focus from constitution-making to constitutional change makes sense, since amendment power is the means used to refurbish constitutions in established democracies, enhance their adaptation capacity and boost their efficacy. Adversely, constitutional change is also the basic apparatus used to orchestrate constitutional backslide as the erosion of liberal democracies and democratic regression is increasingly affected through legal channels of constitutional change. Routledge Handbook of Comparative Constitutional Change provides a comprehensive reference tool for all those working in the field and a thorough landscape of all theoretical and practical aspects of the topic. Coherence from this aspect does not suggest a common view, as the chapters address different topics, but reinforces the establishment of comparative constitutional change as a distinct field. The book brings together the most respected scholars working in the field, and presents a genuine contribution to comparative constitutional studies, comparative public law, political science and constitutional history.

This book analyses the fundamental aspects of the Constitution of the United States of America, which has proven to be a reality in motion and with an 'exceptional' capacity to adapt to the rapid and profound changes that have occurred in over two centuries in American society and economy. The book aims to better understand how the constitutional text has evolved up to our times. The 27 amendments to the Constitution, the interpretation of the Supreme Court and the particular political system have ensured that the constitutional system has not undergone major institutional upheavals. Thanks to the contribution of the many authors, the book offers valuable insights into a constitutional system that still reveals an extraordinary relevance. This can be considered an added value to studies in the field of comparative law.

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.

Why do judges study legal sources that originated outside their own national legal system, and how do they use arguments from these sources in deciding domestic cases? Based on interviews with judges, this book - which is now available in paperback - presents the inside story of how judges engage with international and comparative law in the highest courts of the US, Canada, the UK, France, and the Netherlands. A comparative analysis of the views and experiences of the judges clarifies how the decision-making of these Western courts has developed in light of the internationalization of law and the increased opportunities for transnational judicial communication. While the qualitative analysis reveals the motives that judges claim for using foreign law and the influence of 'globalist' and 'localist' approaches to judging, the book also offers suggestions of a convergence of practices between the courts that are the subject of this study. The empirical analysis is complemented by a constitutional-theoretical inquiry into the procedural and substantive factors of legal evolution, which enable or constrain the development and possible convergence of highest courts' practices. The two strands of the analysis are connected in a final contextual reflection on the future development of the role of Western highest courts. It is a unique and interesting study for all those interested in the process of judicial decision-making and the effects of globalization on the legal system. (Series: Hart Studies in Comparative Public Law) [Subject: Comparative Law, Public Law, Constitutional Law, Legal Philosophy, Socio-Legal Studies]