

## Tilburg University

### Comparative law methodology

Adams, Maurice; Husa, Jaakko; Oderkerk, Marieke

*Publication date:*  
2017

*Document Version*  
Other version

[Link to publication in Tilburg University Research Portal](#)

*Citation for published version (APA):*

Adams, M., Husa, J., & Oderkerk, M. (Eds.) (2017). *Comparative law methodology: Volumes I and II*. (The International Library of Comparative Law). Edward Elgar.

#### General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

#### Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

# Comparative Law Methodology Volume I

*Edited by*

**Maurice Adams**

*Professor of General Jurisprudence  
Tilburg University, the Netherlands*

**Jaako Husa**

*Professor of Comparative Law and Constitutional Law  
University of Lapland, Finland*

*and*

**Marieke Oderkerk**

*Associate Professor of Comparative Law and Private International Law  
University of Amsterdam, the Netherlands*

THE INTERNATIONAL LIBRARY OF COMPARATIVE LAW

**An Elgar Research Collection**

Cheltenham, UK • Northampton, MA, USA

© Maurice Adams, Jaako Husa and Marieke Oderkerk 2017. For copyright of individual articles, please refer to the Acknowledgements.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the publisher.

Published by  
Edward Elgar Publishing Limited  
The Lypiatts  
15 Lansdown Road  
Cheltenham  
Glos GL50 2JA  
UK

Edward Elgar Publishing, Inc.  
William Pratt House  
9 Dewey Court  
Northampton  
Massachusetts 01060  
USA

A catalogue record for this book  
is available from the British Library

Library of Congress Control Number: 2017936576

ISBN 978 1 78536 366 5 (2 volume set)

# Contents

---

<i>Acknowledgements</i>	ix
<i>Method and Methodology of Comparative Law: Introductory Remarks</i> Maurice Adams, Jaakko Husa and Marieke Oderkerk	xi
<b>PART I PRELIMINARY CONSIDERATIONS</b>	
<b>A Comparative Law and the ‘Legal’ Approach</b>	
1. John Bell (2011), ‘Legal Research and the Distinctiveness of Comparative Law’, in Mark Van Hoecke (ed.), <i>Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?</i> , Chapter 9, Oxford, UK and Portland, OR, USA: Hart Publishing, 155–76	5
2. Mathias Reimann (2012), ‘Comparative Law and Neighbouring Disciplines’, in Mauro Bussani and Ugo Mattei (eds), <i>The Cambridge Companion to Comparative Law</i> , Part I: Chapter 1, New York, NY, USA: Cambridge University Press, 13–34	27
<b>B Research Aims, Questions and Methods</b>	
3. Jaakko Husa (2006), ‘Methodology of Comparative Law Today: From Paradoxes to Flexibility?’ <i>Revue Internationale de Droit Comparé</i> , <b>58</b> (4), 1095–117	51
4. Geoffrey Samuel (2014), ‘Asking the Right Question’, in <i>An Introduction to Comparative Law Theory and Method</i> , Chapter 2, Oxford, UK and Portland, OR, USA: Hart Publishing, 25–44, references	74
5. Vernon Valentine Palmer (2004), ‘From Lertholi to Lando: Some Examples of Comparative Law Methodology’, <i>Global Jurist Frontiers</i> , <b>4</b> (2), May, i–ii, 1–29	96
6. Mark Van Hoecke (2015), ‘Methodology of Comparative Legal Research’, <i>Law and Method</i> , <b>5</b> , accessed on 30 January 2017, 1–35, <a href="http://www.lawandmethod.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf">www.lawandmethod.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf</a>	127

**PART II GETTING STARTED****A Selecting Objects, Countries and Cases: Comparability**

7. Marieke Oderkerk (2001), 'The Importance of Context: Selecting Legal Systems in Comparative Legal Research', *Netherlands International Law Review*, **XLVIII** (3), December, 293–318 167
8. Ran Hirschl (2005), 'The Question of Case Selection in Comparative Constitutional Law', *American Journal of Comparative Law*, **53** (1), Winter, 125–55 193

**B Where to Find the Objects to Compare: Sources of Law**

9. Rodolfo Sacco (1991), 'Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)', *American Journal of Comparative Law*, **39** (1), Winter, 1–34 227
10. Rodolfo Sacco (1991), 'Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)', *American Journal of Comparative Law*, **39** (2), Spring, 343–401 261
11. Stefan Vogenauer (2006), 'Sources of Law and Legal Method in Comparative Law', in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Part III: Chapter 27, New York, NY, USA: Oxford University Press, 869–98 320
12. David J. Gerber (1998), 'System Dynamics: Toward a Language of Comparative Law?', *American Journal of Comparative Law*, **46** (4), Autumn, 719–37 350

**C Research Plan and Examples**

13. Gerhard Dannemann (2006), 'Comparative Law: Study of Similarities or Differences?', in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Part II: Chapter 11, New York, NY, USA: Oxford University Press, 383–419 371
14. John C. Reitz (1998), 'How to Do Comparative Law', *American Journal of Comparative Law*, **46** (4), Autumn, 617–36 408
15. Esin Örüçü (2007), 'A Project: Comparative Law in Action', in Esin Örüçü and David Nelken (eds), *Comparative Law: A Handbook*, Part III: Chapter 19, Portland, OR, USA: Hart Publishing, 435–49 428
16. Mark Van Hoecke (2004), 'Deep Level Comparative Law', in *Epistemology and Methodology of Comparative Law*, Chapter 9,

- Oxford, UK and Portland, OR, USA: Hart Publishing, 165–95 443
17. Maurice Adams and John Griffiths (2012), ‘Against “Comparative Method”’: Explaining Similarities and Differences’, in Maurice Adams and Jacco Bomhoff (eds), *Practice and Theory in Comparative Law*, Chapter 13, New York, NY, USA: Cambridge University Press, 279–301 474

### PART III ACTION

#### A Regulating

18. Jan M. Smits (2006), ‘Comparative Law and its Influence on National Legal Systems’, in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, Part II: Chapter 15, New York, NY, USA: Oxford University Press, 513–38 501
19. Jane Stapleton (2007), ‘Benefits of Comparative Tort Reasoning: Lost in Translation’, *Journal of Tort Law*, 1 (3), October, i–ii, 1–45 527
20. Aleksandar Momirov and Andria Naudé Fourie (2009), ‘Vertical Comparative Law Methods: Tools for Conceptualising the International Rule of Law’, *Erasmus Law Review*, 2 (3), 291–309 574

#### B Describing Legal Systems

21. Rudolf B. Schlesinger (1961), ‘The Common Core of Legal Systems: An Emerging Subject of Comparative Study’, in Kurt H. Nadelmann, Arthur T. von Mehren and John N. Hazard (eds), *XXth Century Comparative and Conflicts Law: Legal Essays in Honor of Hessel E. Yntema*, Part I, Leyden, the Netherlands: A.W. Sythoff, 65–79 595
22. John Cartwright and Martijn Hesselink (2008), ‘Introduction’ and ‘Conclusions’, in *Precontractual Liability in European Private Law*, Chapter 1 and Chapter 5, New York, NY, USA: Cambridge University Press, 1–17, 449–88 610
23. Vernon Valentine Palmer (2012), ‘A Descriptive and Comparative Overview’, in *Mixed Jurisdictions Worldwide: The Third Legal Family*, 2nd edn, Part I: Chapter I, New York, NY, USA: Cambridge University Press, 19–92 667

#### C Explaining Similarities and Differences

24. James Q. Whitman (2004), ‘The Two Western Cultures of Privacy:

- Dignity Versus Liberty', *Yale Law Journal*, **113** (6), April, 1151-221 743
25. Máximo Langer (2004), 'From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure', *Harvard International Law Journal*, **45** (1), Winter, 1-64 814