Elgar enclycopedia of comparative law
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Introduction

This is a very important and immense book, irrespective of publication date. It consists of 70 wonderful chapters and index. The jurisdictions covered are : Australia; Canada; Czech Republic; England and Wales; Germany; Greece; Israel; Japan; Lithuania; Netherlands; Poland; Russia; South Africa; Spain; Sweden; and Switzerland. Europe as a whole is covered in Chapter 24 on the European Civil Code. The editor must be congratulated for this arrangement and for successfully obtaining agreements from such illustrious legal specialists who contributed to this fine work, for which there really is no fair comparison because it is superior to all others in comprehensiveness; detailed knowledge of the law; and trustworthy eminence of its contributors.

Single-handedly, Smits has reviewed and checked this immense work to bring it to its final high standard in quality and accuracy and selection of laws.

Comparative law - a distinct legal discipline

Comparative law is the study of the different legal systems in existence in the world, including common law, civil law, and socialist law. This encyclopaedia provides an economic and legal analysis of foreign legal systems, explicitly and generally and is especially important in these times of globalisation of trade and cultural and sociological mixtures. Comparative law is not a casual mentioning of another country's law- it is actually an academic study of separate legal systems leading to comparative civil, common, commercial and criminal analyses and this is the importance of the Elgar encyclopaedia- it can be trusted implicitly for a distillation of the laws of the countries of Australia; Canada; Czech Republic; England and Wales; Germany; Greece; Israel; Japan; Lithuania; Netherlands; Poland; Russia; South Africa; Spain; Sweden; and Switzerland, without need for the legal practitioner to personally undertake a difficult two year study of comparative law at post-graduate level.

Distilled for legal practitioners

The micro and macro comparative legal analyses included here assist the legal practitioner to understand how the law of private relations is organised, interpreted and used in different countries. It pays special attention to the legal systems of the member states in the European Union. It dispels misunderstanding of other countries' laws and enables mutual understanding. The comparative study of the various legal systems assist, in context, in the understanding of how different legal regulations for the same problem function in practice.

The importance of having comparative laws secrets opened up to all cannot be underestimated, especially when Tom, Dick and Harry choose to throw in comparisons in their writings and legal arguments without knowledge of, study of, nor qualifications in comparative methodology. Other comparative law texts are **t**he *Oxford Handbook of Comparativ**e** Law*; *Comparative law: a handbook* edited by Orucu and Nelken; *Comparative law in a changing world* by Peter De Cruz; *English, French and German comparative law* by Youngs; *International investment law and comparative public law* by Schill; *Comparative administrative law* by Rose-Ackerman and Lindseth; *Comparative company law: Germany, UK, USA* by Cahn Donald; and *German law of contract: a comparative treatise* by Markesinis, Unberath, and Johnston. Of these, in my opinion Peter de Cruz really has a good understanding of the methodology of comparative law- however his book is general and is not of the enormous depth and detail of *Elgar Encyclopaedia of Comparative Law.*

Legal subjects

The subject matter that this encyclopaedia addresses includes the following subjects: agency and representation, arbitration, competition law, insolvency law, insurance law, legal culture, legal history, legal translation,

privacy, product liability, and much more. With regard to criminal law in particular, it is very important to first understand comparative criminal procedures. When the legal scholar analyses the criminal procedure of several jurisdictions, each is analysed according to a common scheme. Then the roles of public prosecutors; police; judges; defendants and victims are analysed as are the rules of evidence. This is good reason why legal translation is so important.

Common law versus civil law

Such analyses will reveal any common model in criminal procedure. Most authors analyse England, France and Germany in order to illustrate the differences between the common law system and the Romano-Germanic tradition's different branches- French and German both of these systems being inquisitorial but both taking some qualities from the common law tradition- the right to silence, long since reduced in English law; the public trial and independence between the triers of the case and the initial investigators. Germany alone still holds good to the idea that the court must hear the witness orally. The inquisitorial procedure in Europe has long since been formalised in several codes. The European criminal procedure, by and large, used to allow the human rights abuse of torture, making English criminal procedure seem morally superior. In Europe, there followed the *Napoleonic code of criminal procedure* of 1808, which eradicated torture. In 1958 in France, the *Code d'instruction criminelle* was replaced by a new process which became the *Code de procedure penale*, in force today, even though altered. In contrast England introduced professional police in 1829, the Crown Prosecution Service in 1985, having enacted the *Police and Criminal Evidence Act in 1984*, a statutory codification of the coercive powers of British police. Two decades before PACE, the 1964 Germany's criminal procedure allowed defendants to be legally represented; in 1984 so did England's; France's introduced legal representatives one decade later in 1993.

Governed by international conventions and treaties with exceptions

All countries are meant to adhere to universally acknowledged human rights; ie the principle of legality; the principle of guilt and the principle of proportionality but inevitable they do not. One example is the English strict liability offence when *mens rea* or negligence need not be proved in respect of one or more elements of the *actus reus* of an offence. If an offence is one of strict liability, the prosecution must be able to prove that the *actus reus* was committed by the accused by establishing that the conduct of the accused person was voluntary. An instance of such strict liability is found in the offence created by s. 4 of the Road Traffic Act 1988, when a person found driving a motor vehicle while unfit through drinking alcohol, having been tested by breathalyser means or urine ample, is guilty, contrary to s. 5, even if the driver's drink had been 'laced'. The precedent caselaw is still R *v Prince* (1875) L.R.2.CR. 154, D).[1]

Strict liability

Blasphemous libel is another offence of strict liability in English law. The House of Lords decided that it was not necessary to prove intent to blaspheme; all that needed to be proved was an intention to publish the words which the jury found to be blasphemous. A blasphemous publication is one which uses indecent or offensive language likely to shock or outrage the general community of Christian believers.[2] This offence remains good law and in 2002, attempts were made to have the newscaster Joan Bakewell charged with blasphemous slander after she had read out a poem during the BBC's *Taboo* series in 2001. Some have said that religion is once again 'in the dock'.[3] Blasphemy has been a criminal offence in England because English law is formulated as principles applicable to English society. Christian moral values are the values still generally adhered to within society in the United Kingdom and English law is based on Roman law and Biblical laws. The offence of criminal 'contempt of court' is another example of a strict liability offence[4] and today, strict liability in English law invariably arises in respect of offences created by statute, the most recent to be found in the Bribery Act 2010. Most of the regulatory strict liability offences are concerned with food safety, drugs, health and safety, alcohol, factories and pollution and are often termed *mala prohibita* offences.

Other countries criminal law

In Chapter 20, Thomas Weigend explains that there is much room for diversity as there are no internationally uniform standards in the broad area of limiting and excluding criminal responsibility in exceptional circumstances. He states that differing concepts exist for dealing with accessorial liability of instigators and

[1] The defendant, Prince, was convicted of taking an unmarried girl under 16 years of age out of the possession and against the will of her father. The girl had told the defendant that she was 18, but she was 14 years old at the time.
[2] *Lemon and Gay News Ltd* [1979] AC 617, HL.
[3] Lewis, C.S. (1971) *God in the Dock.,* William B. Eerdmans Publishing Co., Grand Rapids, MI. (see chapter 12). Lewis defends authentic Christianity and draws a distinct line between 'truth' and 'religion'.
[4] See s. 1, of the Contempt of Court Act 1981.

helpers. National systems also differ widely in the amount of discretion they grant courts in determining the sentence of a convicted offender.

Conclusion
The *Elgar encyclopaedia 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 Elgar's. I highly recommend the *Elgar encyclopaedia of comparative law* to all English chambers. This is a very important book that should be sitting in every university law school library.

Recommended further reading
Fletcher, G.P., (1998) *Basic concepts of criminal law*, New York: Oxford University Press.