

CHAPTER I

INTRODUCTION: THE COMPARATIVE METHOD—ITS PURPOSE AND PROMISE

Unlike most other subjects in the law school curriculum, Comparative Law is not a body of rules and principles. It is primarily a *method*, a way of looking at legal problems, legal institutions, and entire legal systems. By the use of the method of comparison, it becomes possible to make observations and to gain insights that would be denied to one whose study is limited to the law of a single country.¹

Neither the comparative method, nor the insights gained through its use, can be said to constitute a body of binding norms, or a distinct branch of law, in the sense in which we speak of "the law of Torts" or "the law of Decedents' Estates." In this respect, the term Comparative Law is a misnomer. It would be more accurate to speak of Comparison of Laws and Legal Systems. However, by the force of tradition, the term Comparative Law has become the accepted title of our subject.²

The resources of Comparative Law can be used for a wide variety of practical and scholarly purposes. The following introductory materials are intended to indicate the range of those purposes³ and, at the same time, to

1. For extensive discussion of "the concept of comparative law," see K. Zweigert & H. Kötz, *An Introduction to Comparative Law* 1-12 (Tony Weir trans., 2d ed. 1987; one-volume paperback ed. 1992). A new German edition (K. Zweigert & H. Kötz, *Einführung in die Rechtsvergleichung* (3d ed. 1996)) has since been published. Other general texts on the subject include Michael Bogdan, *Comparative Law* (1994); L.-J. Constantinesco, *Rechtsvergleichung* (3 vols., 1971-1983); id., *Traité de Droit Comparé* (3 vols., 1972-1983); René David & John E. C. Brierley, *Major Legal Systems in the World Today* (3d ed. 1985); H. G. Gutteridge, *Comparative Law* (2d ed. 1949); M. Rheinstein, *Einführung in die Rechtsvergleichung* (R. von Boriés ed., 2d ed. 1987); Rodolfo Sacco, *Introduzione al Diritto Comparato* (1990), most of which has been translated as R. Sacco, *Legal Formants: A Dynamic Approach to Compara-*

tive Law (pts. 1 & 2), 39 *Am.J.Comp.L.* 1, 343 (1991).

2. Its counterpart in French is *droit comparé* (law compared); in German, *Rechtsvergleichung* (comparison of laws). The German term has been criticized as too exclusively method-oriented; likewise, the statement that Comparative Law is primarily a method or way of looking at law has been criticized as implying that Comparative Law lacks meaningful substantive content. But "comparison" would seem to denote both the process or method of comparing laws and legal systems and the body of insights and knowledge acquired through that process.

3. For a discussion which supplements these introductory materials and furnishes a wealth of further references, see G. Winter-ton, *Comparative Law Teaching*, 23 *Am.J.Comp.L.* 69 (1975). The views of a number