Index

ABA see American Bar Association
Act on Copyright for Visual Arts and Photography 154
ADB (Asian Development Bank) 27
ADR (Alternative Dispute Resolution) 59
Afghanistan 61–4, 67–8, 71
African Growth and Opportunity Act (AGOA) 4
Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) 14–15
Åland Islands 108, 111, 115–19, 121–4, 128–30
Alchian, Armen 234
Alternative Dispute Resolutions (ADR) 59
American Bar Association (ABA)
Judicial Reform Index 70
World Justice Project 20–21
American Restatements of the Law 168
amphibology 81–3
antitrust
cases in US 262
law 265
OECD recommendations 14
regulation 12
apartheid 35
Asian Development Bank (ADB) 26–27
Australian Agency for International Development (AusAid) 27
Austria 103
constitution 101, 157
conveyancing 186, 188–92, 195, 197–9
Legal Origins Theory (LOT) 216
Barre, Siad 69
Basic Law
Germany 100, 151–9, 205–6
Hong Kong 125–8
Belgium 219
conveyancing 186, 188, 190–196
PECL 170
Berkowitz, Daniel 61, 230–233
Bern Convention 242
Bosnia and Herzegovina (BiH)
Independent Judicial Commission (IJC) 26
judicial reform 72
Judicial System Assessment Program 24–6
Bosphorus decision 104, 156
Bremen University 186
Breyer, Justice Stephen 258
Brooks, Rosa 68
Bundesverfassungsgericht see Federal Constitutional Court (FCC)
Caroline of Monaco 153–4
CECL (Commission on European Contract Law) 165–71
CENELEC (Comité Européen de Normalisation Electrotechnique) 261
Central and Eastern European countries 214–15, 227
constitutions 157–60
Centre for European Law and Politics (ZERP) 186
China 15, 226
Hong Kong handover 125–8
Civil Code
European 173, 181, 222
French 170
German 168, 201, 205–7
Swiss 222
civil law notaries 188, 192–3
Clarke, Donald 21
Coase, Ronald 221, 225, 237
Coasean theorem 13, 232
Coing, Helmut 256
Comité Européen de Normalisation Electrotechnique (CENELEC) 261
Commission on European Contract Law (CECL) 165–71
Common Law of Europe 261
Common Law of the United States 169
communications 256–8
communism 8–9, 33–6, 226
collapse in CEE 157, 213
Communist Party (Vietnam) 24
Comparative Law and Economics 11
Comprehensive Legal System Needs Assessment for Vietnam 19, 23, 26
Conseil du Notariat Latin 199
constitution
Austria 101, 157
Central and Eastern European 157–60
Czech Republic 101
drafting 140–141
English law 144
European 145–7
German 151–6
Greece 157
Spain 100, 110, 157
United States 145
constitutional drafting 66, 139–40
Constitutional Treaty for Europe 260
constitutionalisation
private law 201–11
World Trade Organisations (WTO) 261
consumer law 12, 240–243
Consumer Law Cooperation Regulation (2005) 243
consumer protection 12, 197, 240–41
contract law 22, 37, 165–71, 207–8, 263–4
conveyancing 185–200
Council of Europe 19, 100, 103–5, 257
Council of Licensed Conveyancers (CLC) 193–4
Council on Human Rights Policy 72
country targeted legislation 4
Craig, Paul 108–9
Criminal Code 66
Criminal Procedure Code 66
Critical Legal Studies 11
cross-border trade 256
Czech Republic 153, 186, 215
constitution 101
conveyancing 189–91, 195
EGTL 176
Czech Rights Charter 158–9
Czechoslovakia 157
defensive rights 203, 206, 208
democratic peace theory 52–3
Democratic Republic of Congo (DRC) 66
Denmark
CECL Reporters 166
conveyancing 187–91, 193–4
Faroe Islands 119–20
tort law 176
Department for International Development (DfID) 69
deregulated Dutch notary system see Dutch deregulated notary system
doi moi reforms 23, 34
Draft Constitution for Europe 146
DRC (Democratic Republic of Congo) 66
Driftwirkung 201, 203–6, 210
Dürig, Günter 204–6
Dutch deregulated notary system 194–7
East Germany 35
East Timor 61–3, 70
ECHR see European Convention of Human Rights
EGTL see European Group on Tort Law
England 217, 220
CECL Reporters 166
constitution 144
conveyancing 186–92, 196–7
Institutional Possibilities Frontier (IPF) 220
Legal Origins Theory (LOT) 223
Northern Ireland party system 122
PECL 170
Scottish party system 124
epistemic communities 6
Esser, Josef 262–3, 266
estate agents 185–94, 197–9
EU Code for Social Security 14
European Committee for Electrotechnical Standardization see CENELEC
European Competition and Internal Market law 195
European Constitutional Law 99–107, 160
European Contract Law 165–72, 264
European Convention of Human Rights (ECHR) 25, 99–105, 153
European Court of Human Rights 100, 104–5, 153–6
European Court of Justice (ECJ) 11, 264–5
constitutonal law 102–4, 146
establishing general principles 100
fundamental rights 156, 204, 260
European Group on Tort Law (EGTL) 173–81
European Ius Commune 261
European Union (EU) 13–14, 34, 155, 213–14
Charter of Fundamental Rights 101, 155, 260
Constitutional Treaty for Europe 260 consumer law 240
contract and commercial law 228
lack of constitution 145–6
PECL 168–9
rights 136–7
Europeanisation 173, 238–42, 258
Ewald, William 139, 214, 230, 235
Faroe Islands 119–20, 123, 128–30
Federal Constitutional Court (FCC) 100, 152–60
Caroline of Monaco 154
Handelsvertreter case 208–9
Lüth case 204–8
presumption of innocence 103
Solange decisions (1974 and 1986) 155, 260
Federal Ministry for Economic Cooperation and Development (German) 13
finalities 99, 105–6
Finland
Åland Islands 117–18, 124
conveyancing 186, 189–91
tort law 175–6
Foreign Corrupt Practices Act (US) 5
formants, legal 7–8
France
CECL Reporters 166
conveyancing 187–96
European Constitution 146
Institutional Possibilities Frontier (IPF) 220
Legal Origins Theory (LOT) 217
PECL 170
tort law 228
freedom 34–6, 44–8, 85, 104–6, 204–9
competition 15
contract 167
eexpression, of 141, 153–4
market 255
press 224
restrictions in planned economy 35
Freedom House Freedom in the World Rankings 20
French Constitution 89, 92, 102
French Constitutional Council 89
French Revolution 3, 224, 257, 263
Frowein, Jochen 100–101
functionalism 4–5, 11, 138–9
Gagauzia 124–5, 128–31
Gardbaum, Stephen 201–4
Gardner, James A. 58
GATT (General Agreement on Tariffs and Trade) 15
General Accounting Office (GAO) 59
General Agreement on Tariffs and Trade (GATT) 15
German Commercial Code 207
German Democratic Republic 35
German Family Law 153
German Federal Constitutional Court see Federal Constitutional Court (FCC)
Germany
Basic Law 151–9
CECL Reporters 166
constitution 151–9
conveyancing 185–6, 189–97
PECL 170
Ghai, Yash 125–7
Glaser, Edward 221, 224
Glendon, Mary Ann 216
global dynamics 261, 265
globalisation 11–14, 59, 213, 238, 258–60
intelectual 61
of law 58
Görgülü 153–4
Greece
  constitution 157
  conveyancing 189, 191, 194
Guide on Municipal Statutes 66

Habermas, Jürgen 42–3, 146
Hall, Peter A. 221, 224
Handelsgesetzbuch (HGB) 208
Handelsvertreter case 204, 207–8
Hanseatic League 256
Harlan, Veit 205
harmonisation 9–15, 106, 140, 239
  consumer contract law 228
  consumer law in EU 240–3
  transnational 255, 259–65
Hayek, Friedrich 223, 245
Hegelian 44
Henn and Darby case 264
Himmsworth, Professor Chris 109, 122–3
Home Rule Act (Faroe Islands) 119–20
Hong Kong 68, 125–30, 140
Hong Kong Commission 68
human rights 33–53, 73, 138–40, 255, 260
  Bosnia and Herzegovina 25–6, 72
  British 103
  compliance 20
  Council on Human Rights Policy 72
  functionalism 11
  international standards 61–7
  Liberia 57
  Vietnam 24, 29
  women’s 71
see also European Convention of
  Human Rights; Universal
  Declaration of Human Rights
human trafficking 66
Hungary 157, 176, 186
  conveyancing 188–91, 193, 195
Hussein, Saddam 64

ILO Social Security Convention 14
IMF see International Monetary Fund
Independent Judicial Commission (IJC) 26
Index of Freedom 218
Institute of Higher Studies (Vienna) 185
Institute of Information Law in The
  Netherlands (IViR) 242

Inter-Agency Steering Committee (IASC) 27
International Bank for Reconstruction
  and Development (IBRD) 4
International Chamber of Commerce (ICC) 261
International Covenant on Civil and
  Political Rights 64, 108
International Covenant on Economic,
  Social and Cultural Rights 64
International Criminal Court 65
International Crisis Group 72
International Institute for the Unification
  of Private Law (UNIDROIT) 261
International Labour Organization (ILO) 14
International Monetary Fund (IMF) 4, 213, 261
internet 21, 257
Interpretation of Statutes 264
Introduction to the Vietnamese Legal
  System 19, 23–4
IPF see Institutional Possibilities Frontier
Iraq 57, 62, 64
Ireland
  conveyancing 189–91, 195
Irish Centre for Human Rights 66
Italy
  conveyancing 186, 190–192, 194–6
Japan 140, 216–18, 227
Japan International Cooperation Agency
  (JICA) 27
Judicial System Assessment Program
  (JSAP) 19, 23–6, 30
juridification 256
Kahn-Freund, Otto 58, 236–8
Kantian 44
Kenya 10
Knowles, David 263
Komesar, Neil 231–8
Kosovo 61–5, 69–71
Kumm, M. 146, 201, 203, 209–10
La Porta, Rafael 213–23, 226–30

Antonina Bakardjieva Engelbrekt and Joakim Nergelius - 9781849803212
Downloaded from Elgar Online at 06/09/2019 03:27:36AM
via free access
<table>
<thead>
<tr>
<th>Index</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lando, Ole 165</td>
<td></td>
</tr>
<tr>
<td>Lando project 264</td>
<td></td>
</tr>
<tr>
<td>languages 10, 22–3, 38, 176</td>
<td></td>
</tr>
<tr>
<td>Lasser, Mitchel 258</td>
<td></td>
</tr>
<tr>
<td>Law on Administrative Disputes (LAD)</td>
<td>64</td>
</tr>
<tr>
<td>Law on Administrative Procedure (LAP)</td>
<td>64–5</td>
</tr>
<tr>
<td>Legal and Judicial Sector Assessment</td>
<td></td>
</tr>
<tr>
<td>Manual 20</td>
<td></td>
</tr>
<tr>
<td>legal families 216–18, 225–6, 229–30,</td>
<td></td>
</tr>
<tr>
<td>235</td>
<td></td>
</tr>
<tr>
<td>legal formants 7–8</td>
<td></td>
</tr>
<tr>
<td>Legal Origins Theory (LOT) 214–20,</td>
<td></td>
</tr>
<tr>
<td>222–30, 235–6, 244–5</td>
<td></td>
</tr>
<tr>
<td>legal positivism 7</td>
<td></td>
</tr>
<tr>
<td>legal scholarship 85–8, 91–3, 147, 224</td>
<td></td>
</tr>
<tr>
<td>Legal system needs assessment (LNA)</td>
<td>19,</td>
</tr>
<tr>
<td>legal training 38</td>
<td></td>
</tr>
<tr>
<td>legal transplants 6–8, 10–15, 255</td>
<td></td>
</tr>
<tr>
<td>during war 56–74</td>
<td></td>
</tr>
<tr>
<td>human rights 38–41, 48–50</td>
<td></td>
</tr>
<tr>
<td>legal origins 216</td>
<td></td>
</tr>
<tr>
<td>theories 236</td>
<td></td>
</tr>
<tr>
<td>Leisner, Walter 204–5</td>
<td></td>
</tr>
<tr>
<td>Liberia 57, 61, 65–7</td>
<td></td>
</tr>
<tr>
<td>Lisbon Treaty 101–4</td>
<td></td>
</tr>
<tr>
<td>Lithuania 114</td>
<td></td>
</tr>
<tr>
<td>local responsibility 261, 265</td>
<td></td>
</tr>
<tr>
<td>LOT see Legal Origins Theory</td>
<td></td>
</tr>
<tr>
<td>Luhmann, Niklas 81–2</td>
<td></td>
</tr>
<tr>
<td>Maastricht decision 156, 260</td>
<td></td>
</tr>
<tr>
<td>MacCallum, G.C. 45</td>
<td></td>
</tr>
<tr>
<td>Macau 125, 129–31</td>
<td></td>
</tr>
<tr>
<td>MacCormack, Neil 264</td>
<td></td>
</tr>
<tr>
<td>market economy 8, 33–9, 59, 167,</td>
<td></td>
</tr>
<tr>
<td>214–15, 258</td>
<td></td>
</tr>
<tr>
<td>Marketing Practices Act (Sweden) 241</td>
<td></td>
</tr>
<tr>
<td>Markovits, I 56, 71</td>
<td></td>
</tr>
<tr>
<td>Marxist economy 33</td>
<td></td>
</tr>
<tr>
<td>Mchnerney, Thomas 22</td>
<td></td>
</tr>
<tr>
<td>Memel (Territory) 113–15, 119, 121, 129</td>
<td></td>
</tr>
<tr>
<td>Mexico 5</td>
<td></td>
</tr>
<tr>
<td>Millennium Development Goals 20</td>
<td></td>
</tr>
<tr>
<td>Mittelbare Drittwirkung see</td>
<td></td>
</tr>
<tr>
<td>Drittwirkung</td>
<td></td>
</tr>
<tr>
<td>model codes</td>
<td></td>
</tr>
<tr>
<td>criminal justice 66</td>
<td></td>
</tr>
<tr>
<td>economic development 229</td>
<td></td>
</tr>
<tr>
<td>Moldova 124–5</td>
<td></td>
</tr>
<tr>
<td>Murray, Peter L. 199</td>
<td></td>
</tr>
<tr>
<td>Nader, Laura 59, 69</td>
<td></td>
</tr>
<tr>
<td>natural law 6, 8, 44, 138</td>
<td></td>
</tr>
<tr>
<td>Netherlands 146</td>
<td></td>
</tr>
<tr>
<td>CECL Reporters 166</td>
<td></td>
</tr>
<tr>
<td>convenying 186–92, 198</td>
<td></td>
</tr>
<tr>
<td>Information Law 242</td>
<td></td>
</tr>
<tr>
<td>neutrality of law 8–10, 14</td>
<td></td>
</tr>
<tr>
<td>New Comparative Economics (NCE) 219,</td>
<td></td>
</tr>
<tr>
<td>222, 229, 238, 244–6</td>
<td></td>
</tr>
<tr>
<td>effect on imposing law 221</td>
<td></td>
</tr>
<tr>
<td>institutional approach 231–2</td>
<td></td>
</tr>
<tr>
<td>Institutional Possibilities Frontier (IPF)</td>
<td></td>
</tr>
<tr>
<td>225</td>
<td></td>
</tr>
<tr>
<td>Legal Origins Theory (LOT) 213–15</td>
<td></td>
</tr>
<tr>
<td>Nipperdey, Hans 204–5</td>
<td></td>
</tr>
<tr>
<td>Non-governmental organisations (NGOs)</td>
<td>5</td>
</tr>
<tr>
<td>Nordic law 175</td>
<td></td>
</tr>
<tr>
<td>North, Douglas 231, 234–5, 243</td>
<td></td>
</tr>
<tr>
<td>Northern Ireland 109, 120–123, 128–30</td>
<td></td>
</tr>
<tr>
<td>notaries 185–200</td>
<td></td>
</tr>
<tr>
<td>numeros clausus 192–8</td>
<td></td>
</tr>
<tr>
<td>Observer Human Rights Index 20</td>
<td></td>
</tr>
<tr>
<td>Office of the High Representative 25–6</td>
<td></td>
</tr>
<tr>
<td>OHADA (Organization for Harmonization in</td>
<td></td>
</tr>
<tr>
<td>Africa of Business Laws) 68</td>
<td></td>
</tr>
<tr>
<td>Ohly, Anzgar 228</td>
<td></td>
</tr>
<tr>
<td>Ombudsperson Institution in Kosovo 63,</td>
<td></td>
</tr>
<tr>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Omega judgement 264</td>
<td></td>
</tr>
<tr>
<td>Organisation for Economic Co-operation</td>
<td></td>
</tr>
<tr>
<td>and Development (OECD) 69, 223, 229</td>
<td></td>
</tr>
<tr>
<td>antitrust recommendations 14</td>
<td></td>
</tr>
<tr>
<td>US Foreign Corrupt Practices Act 5</td>
<td></td>
</tr>
<tr>
<td>Organisation for Security and Cooperation</td>
<td></td>
</tr>
<tr>
<td>in Europe 66</td>
<td></td>
</tr>
<tr>
<td>Organization for Harmonization in Africa</td>
<td></td>
</tr>
<tr>
<td>of Business Laws (OHADA) 68</td>
<td></td>
</tr>
<tr>
<td>Osler, Douglas J. 263</td>
<td></td>
</tr>
<tr>
<td>patterns of legal reasoning 178</td>
<td></td>
</tr>
<tr>
<td>PECL see Principles of European Contract</td>
<td></td>
</tr>
<tr>
<td>Law</td>
<td></td>
</tr>
</tbody>
</table>
People’s Republic of China see China
PETL see Principles of European Tort Law
Philippines 140
Pistor, Katharina 61, 231–3
planned economy 8, 34–7
Plenary 166–70
Poland 153, 157, 215
conveyancing 186, 189–91, 194
tort law 176
Police Powers Act 66
Portugal
constitution 157
conveyancing 186, 189–92, 194, 198
PECL 170
Post-Conflict Constitution Drafter’s Handbook 66
post-modernism 9
Principles of European Contract Law (PECL) 165–71
Principles of European Tort Law (PETL) 173–6
private autonomy 203, 205–11, 241
Public International Law and Policy Group 66
Rabel, Ernst 10–11
Rechtsstaat 36, 103
Reform Treaty 155–6
regulation 106, 256
Rheinstein, Max 10
Richard, Jean-Francois 61, 231
Roman law 8, 48, 56, 237, 256
Rome Convention 242
Rule of Law 11, 70, 99, 104–5
Index 20–21
Sacco, Rodolfo 7
Scandinavia
legal origins 216–18, 223
Licensed Agent System 185, 194–7
tort law 175–6
Schlesinger, Rudolf 138, 258
Scotland 109, 122–4, 128–30
conveyancing 186, 189–90
Scotland Act 1998 122
Scottish Executive 122
Scottish National Party 123
Shleifer, Andrei 216–16, 220–221, 224
SIGMA 66
Slovakia
conveyancing 186, 188–91, 195
tort law 176
Slovenia 176
conveyancing 186, 188–91, 194
Slovenian Constitution 158
Solange decisions (1974 and 1986) 155–6, 260
Somalia 63, 67, 69
Soskice, David W. 221, 224
South Africa 140
apartheid 35
constitutional rights 202
tort law solutions 176
South Korea 15, 216
Somalia 63, 67, 69
Soskice, David W. 221, 224
South Africa 140
apartheid 35
constitutional rights 202
tort law solutions 176
Spain 36, 103
conveyancing 186, 189–91, 194
PECL 170
Spanish Constitution 100, 110, 157
Special Administrative Region (SAR) 125–7
Sri Lanka 109
stabilisation 4
State Court of Appeal (Germany) 207
Strasbourg Convention 103, 156
Strasbourg Court see European Court of Human Rights
Stromseth, Jane 68
Summers, Robert 264–5
Support for Improvement in Government and Management in Central and Eastern Europe (SIGMA) 66
Sweden 220, 230
aid 33
consumer protection 240–241
conveyancing 190–91, 197, 199
estate agents 194
European tort law 175–6, 178
tort law 180
Tort Liability Act 179
Swedish International Development Authority (SIDA) 23–4, 33
Swiss Civil Code 222
tabula rasa 9
Taiwan 15, 216–18
technology 14, 34, 257
Teubner, Gunther 50–51
Thailand 10
Index 277

Thibaut, Anton Friedrich Justus 8
Tomkins, Adam 108–9
tort law 173–81
Transparency International 5, 20
transplantability 40–53
Treaty of Lisbon 89, 101–4
TRIPs 14–15
Turkey 15, 216, 218, 222

Ukraine 151, 157–60
Ukrainian Constitution 158–60
Umeå University 23
UN Convention on Contracts for the
International Sale of Goods
(CISG) 169
UN Covenant on Civil and Political
Rights 108
UN Human Rights Council 57
UN office on Drugs and Crime
(UNODC) 74
unbound norms 87–8
UNDP see United Nations Development
Programme (UNDP)
unfair competition 228, 240, 259
UNIDROIT (International Institute for
the Unification of Private Law) 261
Unidroit Principles of International
Commercial Contracts (UPICC) 168–9
Unification of Tort Law 174
United Nations Conference on Trade and
Development (UNCTAD) 14
United Nations Development
Programme (UNDP) 26–7, 29, 33
United Nations Mission in Bosnia and
Herzegovina see UNMIBH
United Nations Mission in Kosovo
(UNMIK) 63–4, 71
see also Kosovo
United Nations Mission to Liberia 65
United Nations Report of the Secretary-
General (UNSG) 56, 62–3, 66–8
United Nations Security Council 23, 30

United Nations Transitional
Administration in East Timor 63
United States Institute for Peace 66
universal assumption 261–2
Universal Declaration of Human Rights
(UDHR) 21, 64, 140
universalism 50–51, 138
UNMIBH 18, 23
UPICCC see Unidroit Principles of
International Commercial
Contracts

Vietnamese legal system 19–30
von Jhering, Rudolf 256
von Savigny, Friedrich Carl 9

Watson, Alan 48–9, 52, 236
Weimar Constitution 151
Weimar Germany 114
Westminster 122
Whitman, James 226, 246
WHO (World Health Organization) 261
Wieacker, Franz 256
Wippman, David 68
World Bank (WB) 20, 69–70, 229, 261
globalisation 213
New Comparative Economics (NCE) 214
Vietnam 26–7, 29

World Health Organization (WHO) 261

World Intellectual Property Organization
(WIPO) 15, 242
World Justice Project (WJP) 20–21
World Trade Organisations (WTO) 14–15, 213, 260–261
World War II 140, 157, 159, 204
Worldwide Legal and Judicial Indicators 20–21, 70

WTO see World Trade Organisation

ZERP see Centre for European Law and
Politics

Zimbabwe 4
Zweigert and Kötz 138, 216–17, 222, 225–8