Contents

List of contributors vii
Acknowledgments xiv

The emergence of comparative legal history 1
Aniceto Masferrer, Kjell A. Modéer and Olivier Moréteau

PART I THEORY AND METHODS

1 What is comparative legal history? Legal historiography and the revolt against formalism, 1930–60 30
Adolfo Giuliani

2 Comparative? Legal? History? Crossing boundaries 78
Seán Patrick Donlan

3 Methodological perspectives in comparative legal history: an analytical approach 96
Dag Michalsen

4 Comparative legal history: methodology for morphology 110
Matthew Dyson

PART II LEGAL SOURCES

5 Here, there and everywhere … or nowhere? Some comparative and historical afterthoughts about custom as a source of law 140
Jacques Vanderlinden

6 Convergence and the colonization of custom in pre-modern Europe 167
Emily Kadens

7 Custom as a source of law in European and East Asian legal history 186
Marie Seong-Hak Kim

8 The ius commune as the ‘ratio scripta’ in the civil law tradition: a comparative approach to the Spanish case 212
Aniceto Masferrer and Juan A. Obarrio

9 Legal education in England and Continental Europe between the Middle Ages and the early modern period: a comparison 242
Dolores Freda

PART III LEGAL INSTITUTIONS

10 The triumph of judicial review: the evolution of post-revolutionary legal thought 262
Jean-Louis Halpérin
Comparative legal history

11 Killing the vampire of human culture: slavery as a problem in international law
Paul Finkelman and Seymour Drescher

12 Continental European superior courts and procedure in civil actions (11th–19th centuries)
C.H. (Remco) van Rhee

13 The genesis of concepts of possession and ownership in the civilian tradition and at common law: how did common law manage without a concept of ownership? Why Roman law did not
Anna Taitslin

14 The Common law and the Code civil: the curious case of the law of contract
Warren Swain

15 When the wind turned from South to West: the transition of Scandinavian legal cultures 1945–2000, a comparative sketch
Kjell Å. Modéer

PART IV CODIFICATION

16 Unification and codification in today’s European private law and 19th-century Germany: the challenges and opportunities of comparing historical and ongoing events
Dirk Heirbaut

17 Owning the conceptualization of ownership: American civil law jurisdictions and the origins of 19th-century code provisions
Agustín Parise

18 Why was private law not codified in Sweden and Finland?
Heikki Pihlajamäki

Index

284
318
341
379
400
416
432
465
483