

**CORE QUESTIONS
OF COMPARATIVE LAW**

**CORE QUESTIONS
OF COMPARATIVE LAW**

BY:

BERNHARD GROSSFELD

TRANSLATED BY:

VIVIAN GROSSWALD CURRAN

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2004
by Vivian Curran
All rights reserved.

ISBN 0-89089-730-1
LCCN 2002101292

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America.

*I dedicate this work to the memory of my Aunt Adelheid Großfeld
(1890–1980) and of my Uncle Bernhard Rotthege (1908–1983):
They often spoke to me about “God and the world;”
for that I thank them.*

Bernhard Grossfeld

CONTENTS

| | |
|---------------------------------|------|
| Foreword | xv |
| Translator's Note | xvii |
| Chapter A Introduction | 1 |
| I. Meaning | 1 |
| II. Continental Europe—England | 2 |
| III. England—United States | 4 |
| IV. Europe-Japan | 6 |
| V. Impressions, Pictures, Signs | 6 |
| Notes | 7 |
| Chapter B Methods | 9 |
| I. Culture and Order | 9 |
| II. Grammar of the Law | 10 |
| III. Law? | 10 |
| IV. Caution | 11 |
| V. Building Bridges | 12 |
| VI. Law and Literature | 13 |
| VII. <i>Ars aequi et boni</i> | 14 |
| Notes | 15 |
| Chapter C Geography | 19 |
| I. Introduction | 19 |
| II. History | 20 |
| III. Jhering | 20 |
| IV. Further Voices | 21 |
| V. Conversation with the Earth | 22 |

| | |
|---|-----------|
| VI. Overall Influence | 22 |
| VII. Particular Institutions | 24 |
| VIII. The Sedentary—Nomads | 26 |
| IX. Europe | 27 |
| X. Borders | 28 |
| Notes | 29 |
| Chapter D Geography and Language | 35 |
| 1. Influence on Language | 35 |
| II. The Sedentary—The Nomads | 36 |
| III. Position of Language | 37 |
| IV. Intensifications | 38 |
| V. Local Language—Universal Language | 40 |
| VI. Gropings | 40 |
| Notes | 41 |
| Chapter E Language | 45 |
| 1. Introduction | 45 |
| II. Imprint | 46 |
| III. Experience of the World | 47 |
| 1. Subjective View | 47 |
| 2. Language Image | 48 |
| 3. Common Reality | 50 |
| 4. Society's Structure | 50 |
| Notes | 50 |
| Chapter F Our Language | 55 |
| I. Central Position | 55 |
| II. Personal Framework | 56 |
| III. Access to Reality | 58 |
| IV. Power of Creation | 59 |
| V. The Myth of Name | 60 |
| VI. Trust in Language | 61 |
| VII. Doubt | 63 |
| VIII. Ambiguity | 64 |
| IX. Language Tradition | 65 |
| X. Warning | 66 |
| XI. Experience | 67 |
| Notes | 68 |

| | |
|-------------------------------------|-----|
| Chapter G Language of Law | 73 |
| I. Introduction | 73 |
| II. Effect of Language | 74 |
| III. Poetry and Law | 75 |
| IV. Binding Through Law | 76 |
| V. Terms | 77 |
| VI. Objectives | 79 |
| VII. Relation to Reality | 80 |
| VIII. Silence | 81 |
| IX. Summing Up | 82 |
| Notes | 83 |
| Chapter H Comparative Law | 89 |
| I. Prejudice | 89 |
| II. Warning | 90 |
| III. Autonomy of Language | 91 |
| IV. Relation to Reality | 92 |
| V. Equality | 93 |
| VI. Abstract / Concrete | 94 |
| VII. Other Sign Systems | 95 |
| VIII. Disguise | 95 |
| IX. Giving Effect to Law | 96 |
| X. Translation | 97 |
| XI. Indigenous Australians | 99 |
| Notes | 101 |
| Chapter I Encouragement | 105 |
| I. Outside Language | 105 |
| II. Common Reality | 105 |
| III. Common Understanding | 107 |
| IV. One Language | 107 |
| V. Examples | 109 |
| Notes | 110 |
| Chapter J Bypassing Language | 113 |
| I. Introduction | 113 |
| II. Understanding without Words | 115 |
| III. Child | 116 |
| IV. Simpleton | 118 |

| | |
|---------------------------------------|------------|
| V. Dreaming | 119 |
| VI. Silence | 120 |
| VII. Mysticism | 121 |
| VIII. Intuition | 122 |
| IX. Science | 123 |
| X. Understanding Law | 124 |
| XI. Conclusion | 125 |
| Notes | 126 |
| Chapter K New Language | 131 |
| I. Introduction | 131 |
| II. New Perception | 132 |
| III. Language Formation | 132 |
| Notes | 134 |
| Chapter L Writing | 137 |
| I. Introduction | 137 |
| II. Signs | 137 |
| III. Awareness of Signs | 139 |
| Notes | 140 |
| Chapter M Magic of Writing | 143 |
| I. Assumptions | 143 |
| II. Old Testament | 145 |
| III. New Testament | 146 |
| Notes | 147 |
| Chapter N Letters of the Law | 149 |
| Notes | 152 |
| Chapter O Writing and Language | 155 |
| I. Phonetic Spelling | 155 |
| II. History | 156 |
| III. Independence | 157 |
| IV. Pushing Back | 158 |
| Notes | 159 |
| Chapter P Writing and Thinking | 161 |
| I. Alphabet | 162 |
| II. Change of Signs | 163 |

| CHAPTER TITLE | XI |
|--|-----|
| III. Alphabetization | 163 |
| IV. Conclusions | 164 |
| Notes | 165 |
| Chapter Q Writing and Interpretation | 167 |
| I. Consonant Writing | 167 |
| II. Example | 168 |
| Notes | 169 |
| Chapter R Writing and Comparative Law | 171 |
| I. Translatability | 171 |
| II. Concreteness | 173 |
| III. Writinglessness | 174 |
| IV. Transposition | 174 |
| V. Difficulties | 175 |
| Notes | 176 |
| Chapter S Numbers | 179 |
| I. Use | 179 |
| II. Culture and Number | 180 |
| 1. Secretive Numbers | 180 |
| 2. Order | 181 |
| a) Greece | 182 |
| b) Bible | 182 |
| c) Middle Ages | 183 |
| 3. Border | 183 |
| 4. Power | 183 |
| 5. Word | 184 |
| 6. Number and Writing | 184 |
| 7. Thinking | 185 |
| 8. Time | 185 |
| III. Inexact Numbers | 186 |
| IV. Law | 187 |
| V. Criticism | 187 |
| Notes | 189 |
| Chapter T Number and Comparative Law | 195 |
| I. Quantity v. Quality | 195 |
| II. Translatability | 196 |

| | |
|---|------------|
| III. Functionality | 197 |
| IV. Translating | 197 |
| V. Unification of Law | 198 |
| VI. Effect of Signs | 198 |
| Notes | 200 |
| Chapter U Time | 203 |
| I. Introduction | 203 |
| II. Time in Relation to Law | 203 |
| III. Time Images | 204 |
| IV. Absolute/Relative Time | 205 |
| V. Objective/Subjective Time | 206 |
| VI. Saint Augustine/Saint Thomas Aquinas | 206 |
| VII. Religion | 207 |
| VIII. Experiencing Time | 209 |
| IX. Different Views of Time | 210 |
| X. Cultural Imprint | 211 |
| XI. Group Identity | 212 |
| XII. Time in the Legal Rule | 213 |
| 1. Generally | 213 |
| 2. Examples | 214 |
| a) Limitation Periods | 214 |
| b) Logical Second | 214 |
| c) Legal Equality | 215 |
| d) Time Conflicts | 216 |
| XIII. Accounting Law | 216 |
| 1. Time Aspect | 216 |
| 2. Global Balance Sheets | 217 |
| 3. Conclusions | 219 |
| Notes | 219 |
| Chapter V Religion | 225 |
| I. Generally | 225 |
| II. Geography, Language, Writing, Number, Time | 226 |
| III. Task | 227 |
| 1. Introduction | 227 |

| CHAPTER TITLE | XIII |
|--|------|
| 2. Life Support | 228 |
| 3. Healing | 229 |
| 4. Coping with Death | 229 |
| 5. Judgment Day | 229 |
| 6. Intermixture | 230 |
| 7. Strengthening of Law | 231 |
| IV. Steering Signs | 231 |
| V. Comparative Law | 232 |
| Notes | 234 |
| Chapter W Recognizing/Translating | 239 |
| I. Prospects | 239 |
| II. New Approach | 240 |
| III. Gradual Differences | 241 |
| IV. Translating | 241 |
| Notes | 243 |
| Chapter X End | 245 |
| 1. Method | 245 |
| II. Poetic Fantasy | 245 |
| III. Patient Optimism | 247 |
| Notes | 248 |

FOREWORD

This small book began with an exploration of environment and language in comparative law, and in turn of writing, number, time and religion. These issues scarcely are discussed in the literature of law. I therefore often make use of poetic and theological sources. This work points out where comparative law must begin, but aspires also to show how exciting and beautiful the field is if it expands into a comparison of orders.

Bernhard Grossfeld

TRANSLATOR'S NOTE

My thanks for their assistance to Georgia Post; Sven Kill; Felix Mehler; Dagmar Ruehrig; and Martina Weinberger.

**CORE QUESTIONS
OF COMPARATIVE LAW**

