Mathias Siems, *Comparative Law*, 1st edition 2014, 436 pages, Cambridge, Cambridge University Press, £30, ISBN: 9780521177177

It is hard to tell exactly why this tendency emerged, but the conventional forum of scholarly discussion about comparative law is found in handbooks – even these days, when journal articles have been starting to gain more and more relevance. In the past half century several basic handbooks have been published, from which it is hard to impartially list the most important, but the works of René David, Konrad Zweigert and Hein Kötz are certainly widely known and acknowledged.[1] Thus, writing handbooks is undoubtedly a tradition in the field of comparative law, both in universal and national legal scholarship.[2]

This tradition is continued by Mathias Siems, Professor at Durham University, whose book entitled *Comparative Law* was published in the first half of 2014 in Cambridge. Readers can tell at first glance that the book is the result of comprehensive scholarly research, and reading the book only confirms this. The 98-page long bibliography at the end also draws our attention and it documents with encyclopedic accuracy the (mostly English language) pieces published in the field of comparative law, thus providing a perfect starting point for any kind of research.

Siems does not hide his scientific standpoint in the text or behind his footnotes, but explains it both in the preface and the conclusion. In his opinion, comparative law cannot stop at the traditional approach mainly coined by David, Zweigert and other classical scholars – it should evolve into a 'deeper and more interdisciplinary'[3] understanding.[4] In the long run, the author argues that comparative law should approach those disciplines in which the comparative nature is strong as well – such as political science, cultural studies or economics.[5] Hence, the enrichment of legal scholarship through other disciplines is inevitable, demonstrated by several examples in the book. This approach is not completely new considering developments over the past

1 R. David, *Les grands systémes de droit contemporains* (Dalloz, 1973); K. Zweigert and H. Kötz, *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrecht. 1 Grundlagen* (Mohr Siebeck, 1971). Later both books were published in English as well, which helped a lot in gaining a worldwide reputation for them: R. David and J.E.C. Brierley, *Major Legal Systems in the World Today: an Introduction to the Comparative Study of Law* (Stevens, 1978); K. Zweigert and H. Kötz, *An Introduction to Comparative Law* (Clarendon, 1987).

2 For example, A.F. Schnitzer, *Vergleichende Rechtslehre I–II.* (Verlag für Recht und Gesellschaft AG, 1961); L.-J. Constantinesco, *Traité de droit comparé I. Introduction au droit comparé* (Pichon, 1972); M. Rheinstein, *Einführung in die Rechtsvergleichung* (C.H. Beck, 1974); G. Eörsi, *Összehasonlító polgári jog* (Akadémiai, 1975); W. Devroe, *Rechtsvergelijking* (Acco, 2007); V. Varano and Vittoria Barsotti, *La tradizione giuridica occidentale* (G. Giappichelli Editore, 2010).

3 About the possibilities of interdisciplinary law see an earlier article from the same author: M. Siems, 'The Taxonomy of Interdisciplinary Legal Research: Finding the Way out of the Desert', 7 *Journal of Commonwealth Law and Legal Education* (2009), p. 5–17.

4 M. Siems, *Comparative Law* (1st edition, Cambridge University Press, 2014), p. xvii.

5 Ibid., p. 316.

two decades, and as several articles have already dealt with the problem[6] – but none of them have analysed it in as much detail.

The book consists of four parts which in total contain eleven chapters. The order of these chapters shows how the author draws the boundaries of the comparative law discipline wider than that of the classical approach which was dominant until the 1990s. The relationship between the four parts could be best described by the metaphor of concentric circles: they build upon each other, but also present their subjects in ever wider disciplinary frameworks.

The first part deals with the so-called *Traditional Comparative Law*, touching upon its three big, classical topics: (i) the detailed presentation of methodology, (ii) the examination of the clash between civil law and common law, and (iii) the mapping out of the world's legal systems. It consists of almost a hundred pages and adds up to almost one-third of the book, showing both the depth of the research – including presenting the critiques in detail – and the significance of the subject.

The second part is entitled *Extending the Methods of Comparative Law* and aims at presenting the contemporary methodological developments of comparative law. Siems examines and analyses three significant branches in detail: (i) post-modern comparative law; (ii) socio-legal comparative law; and (iii) numerical comparative law. In three chapters, the author details the works of contemporary authors and the consequent intellectual debate raised. It is especially interesting to see how strong emphasis is given to the concept of legal culture in the first two chapters of the book. This suggests that an important part of the further development of comparative law will be to embed the concept of legal culture into the previous frameworks. These chapters are all of crucial importance because they draw attention to the future prospects of comparative law in the literature, if and when there is a willingness to depart from the conventional stream of study and also start engaging seriously with the achievements derived from other fields.

The third part is called *Global Comparative Law* in which the author changes his point of view and tries to find the answer to what kind of role comparative law could play in the current globalizing world – whatever that expression means – and how it could help in understanding new phenomena. The central problems tackled in this part are: (i) legal transplants; (ii) the convergence of legal systems; (iii) the effect of regional integrations on legal systems; (iv) the transnationalization of certain areas of law; and (v) the application of legal models in assisting the legal systems of developing countries. These areas have been examined separately several times, but when looking at them as a whole, it seems quite hard to argue for the autonomy and independence of national legal orders in current years, as the legal interactions are like an intricate spider web of the many different fields of legal systems.

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6 See, for example, G. Frankenberg, 'Critical Comparison: Re-thinking Comparative Law', 26 *Harvard International Law Journal* (1985), p. 411–456; P. Legrand, 'Comparative Legal Studies and Commitment to Theory', 58 *The Modern Law Review* (1995), p. 262–273.

The fourth part of the book is shorter than the previous three and deals with *Comparative Law as an Open Subject*. This part analyses future perspectives in comparative law. In this framework, Siems takes examples from other fields of sciences where the comparative method has had a considerable role, such as political science, cultural studies, and in his conclusion he argues for the further interdisciplinary opening of comparative law.

As described above, the volume is very rich in ideas and provides an in-depth examination of several subjects. Of these topics, this review presents two problems in more detail to demonstrate the book's highlights and lowlights.

Part one deals with the traditional approach of comparative law, focusing on both a detailed presentation and an analysis of critiques. Siems' method and style can already be identified here: perhaps the best way to describe them is that he tries to find a balance. The author tries to approach each problem 'correctly', so first he unbiasedly presents the positions most widely accepted by the scholarly community, and then he describes the criticisms. Afterwards, he does not try to choose between the traditional and the critical standpoints, but alerts the reader to the problems that lie within. With this approach, he shows that in legal scholarship, mainly due to the constantly changing nature of its subject, it is impossible to reveal universally applicable static truths, and it is rather worth speaking of the historical development of certain points of view and their correlations.

This approach is best demonstrated by the chapter in which the author compares common law and civil (or continental) law.[7] As an introduction, he includes a short explanation and first presents the origins of the two concepts, and later, using earlier results, he compares the two legal families or cultures. First, he examines the legal methods and sources of law, and within this, he compares statutory law and its interpretation, and the roles of courts and legal scholarship. The second point continues the parallel analysis of the two systems from the standpoint of courts and civil procedure, separately dealing with the types of courts, the exact meaning of the concept of court, the different forms of civil proceedings, the participants of a civil trial, and the wording, style and effect of court judgments. Thirdly, he deals with a key institution of civil law, the analysis of contracts. He briefly presents the different ways of contract formation, of good faith and of contractual remedies as they appear in the two legal cultures. When contrasting the three standpoints, Siems puts emphasis on the differences, which are founded by the discrepancy of the detailed rules. Nevertheless, he does not stop at this point, and closes the chapter by dissecting the previous results.

On the one hand, he highlights that neither civil law, nor common law can be considered uniform, but they can be broken down into more and more components. For example in some cases the difference between French and German law can be more stark than between French and English law or German and English law.[8] Moreover there

7 M. Siems, *Comparative Law*, p. 41–71.

8 Ibid., p. 64.

are similar intra-legal family differences between English and American law as well.[9] On the other hand, looking at the problem from the abstract, the common law/civil law differentiation could lose its significance and be dissolved into one all-encompassing type of law: Western law. The common elements of Western legal tradition – among others – can be human rights, the notion of rule of law, legal positivism or the separation of law and religion: moreover the convergence between legal systems and the spreading of the precedent-based application of law on the European Continent can moderate the strict opposition of the two legal families.[10] Through his observations, the author masterfully presents that the opposition of the two legal systems, despite being relevant from many aspects, is ultimately relative, if we apply an abstract approach. He summarizes this thought perfectly in the closing part of the chapter: '[t]hus, criticizing the civil/common law divide is not meant to imply that there are no differences, but, rather, that it can be misleading to regard this divide as the main tool to understand them (…)'.[11]

At this point, let me introduce a critical remark as well. Despite the fact that this part deals with the traditional approach of comparative law, at some points the historical, or more precisely the historical aspect of the ideas is missing from it. Siems reconstructs the traditional understanding of comparative law mostly based on literature from the past two decades, which leads to some of his statements being correct but not accurate enough. When detailing functionalism, he does not mention Ernst Rabel,[12] who – in the footsteps of Ludwig Mitteis – first applied this method in his comparative legal research. When dealing with universalism, the book does not mention the fundamental writing of Henry Sumner Maine,[13] which created a base for this approach through drafting the consecutive levels of legal development. Moreover, when analysing Western law or Western legal tradition, it would have been worth mentioning that this concept was first used in comparative law by René David.[14] However, these small deficiencies do not decrease the scholarly value of the work: they only show that using the 'freshest' literature might attract some dangers too.

For the author of this review, the most important chapter of the second part is the one dealing with the application of quantitative methods in comparative law.[15] The role of this chapter is to illustrate how we can widen the playing field of comparative research with the help of numerical analysis.[16] Undoubtedly, the quantification of

9 Ibid., p. 65–68.
10 Ibid., p. 68–70.
11 Ibid., p. 70.
12 See M. Rheinstein, 'Comparative and Conflicts of Law in Germany', 2 *University of Chicago Law Review* (1934/35), p. 247.
13 H.S. Maine, *Ancient Law* (Charles Scribner, 1864).
14 See R. David, 'Existe-t-il un droit occidental?', in K.H. Nadelmann, A.T. von Meheren and J. Hazard (eds.), *XXth Century Comparative and Conflicts Law. Legal Essays in Honor of Hessel E. Yntema* (A.W. Sythoff, 1961), p. 56–64.
15 M. Siems, *Comparative Law*, p. 146–187.
16 It needs to be mentioned that Siems has already argued for the necessity of quantitative research back in 2005. M. Siems, 'Numerical Comparative Law. Do We Need Statistical Evidence in Law in Order to Reduce Complexity?', 13 *Cardozo Journal of International and Comparative Law* (2005), p. 521–540.

results and the application of certain mathematical-statistical methods gives a 'hard(er)' scientific nature to scholarly activities – see for example the widely used methods of economics or sociology. Naturally, comparative law cannot escape this effect either, and the greatest virtue of Siems' chapter is that it convincingly argues in favour of these types of comparative legal research. The chapter – among others – deals with these questions and research topics: (i) the cross-citations between courts, so the question of how often and why different foreign courts refer to each other; (ii) references to 'foreign law' in certain national legal scholarships; (iii) the possible measuring of different (foreign and other) impacts on law; (iv) the quantification of the formal elements of legal systems (for example the number of laws and court decisions); (v) the quantification of the content of law and the analysis of the detectable interactions; (vi) the content evaluation of law from a functional point of view (for example the level of protection of shareholders); (vii) the measurability of the functioning of courts and other political institutions; and (viii) the quantification of the perceptions about the functioning of law.

Siems lists a significant amount of research and index for all topics, and this chapter alone contains an amount of material which could fill a handbook. The summary is balanced again: he considers this approach important, but does not hide the fact that several problems might arise. Such a problem can be that the numbers only give relevant information on formal law in most cases ('black letter law'), but the surrounding social-cultural environment cannot be approached like this and the effects are hard to detect.[17] Moreover, there is a high probability of making a mistake if researchers, for some reason, misunderstand the legal provisions in force, because this can make the quantitative results unmeasurable.[18]

The previous pages could only give a glimpse into some parts of Siems' book, but I hope it will be enough to draw the attention of legal scholars. The author's thought process, style and the content – the encyclopedic richness of Siems' work – could serve an important role for those who are receptive to the comparative aspect of a given legal problem.

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17 M. Siems, *Comparative Law*, p. 186.
18 Ibid., p. 187.