Is There Now A Comparative Legal Scholarship?

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Husa, Jaakko, *A New Introduction to Comparative Law*. Oxford, Hart Publishing, 2015. 284 p. Paperbound. £24.99. ISBN 978-1-849-46796-4

Samuel, Geoffrey, *An Introduction to Comparative Law Theory and Method*. Oxford, Hart Publishing, 2014. 210 p. Paperbound. £18.99. ISBN 978-1-849-46643-1

Siems, Mathias, *Comparative Law*. Cambridge, Cambridge University Press, 2014. 416 p. Paperbound. US$49.99. ISBN 978-0-5211-7717-7

Over the last century many books on "Comparative Law" have been published which were more in the nature of overviews of (Western) legal systems and their influence worldwide than works on actual comparison. What in Germany is called *Auslandsrechtkunde*. Although these descriptive overviews are useful, they do not introduce one to "comparative law" in the sense of "comparative legal scholarship". With only a few exceptions, including Harold Cooke Gutteridge (1876-1953)[1] and Léontin Jean Constantinescu[2] in twentieth century, no theory or methodology was developed for guiding comparative legal research. Recently three books have been published which respond to the needs for theory and methodology in comparative legal research. And so, with some exaggeration, one might say that finally, after more than a century, books have been published on comparative law in the sense of comparative legal scholarship. These three books are: *An Introduction to Comparative Law Theory and Method* by Geoffrey Samuel; *Comparative Law* by Mathias Siems; and *A New Introduction to Comparative Law* by Jaakko Husa. Each focuses on theory and methodology, using some examples from comparative research, but abstaining from trying to give a full overview of the legal systems in the world.

Samuel's book is the most concise, somewhat more theoretical, as the title suggests, and designed primarily for postgraduate research students. The book has been largely prepared while teaching the course "Theory of Comparative Law" in the Master Course in Legal Theory of the European Academy of Legal Theory, during the period that it was offered in Brussels (1992-2009).[3] Husa's *Introduction* is aimed at students who are taking their first

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[1] H. C. Gutteridge, *Comparative Law: An Introduction to the Comparative Method of Legal Study and Research*, Cambridge University Press, 1949

[2] L.-J. Constantinescu, *Traité de droit comparé* (1972-1983). 3 vols.; notably, the second volume *La Méthode comparative* (Paris, 1974).

[3] The course is now organized at Goethe University, Frankfurt/Main.

steps in the field of comparative law. Siems is the richest in information offered, including materials on comparative research using new methods such as quantitative ("numerical") research. All three excellent books show the profound knowledge and experience of the authors in comparative research, but Siems is the most impressive measured by the amount of literature used[4] and the cutting edge level as to new approaches and methods in comparative legal research, which Siems has used extensively, mainly during the past decade. What emerges from these books is that several approaches are open to those new to comparative legal research, although not all have been analyzed and discussed to the same extent in these three works. This said, the authors have done more expansive work in other publications, Husa perhaps being the most productive of the three authors.

These new approaches deserve attention. In this review article some aspects of these approaches to comparative legal research – which are also rapidly influencing education in law faculties and their doctoral schools and the focus of PhD research, at least in Europe – will be discussed.

A DEFINITION OF "LAW" AND "LEGAL SYSTEM"

A focus on a definition of "law" or "legal system" is rather new in comparative legal studies. In the past this was often taken for granted, for it seemed obvious that comparative law was about comparing the rules of State legal systems. It is, however, necessary to clearly define "law" so as to demarcate the object of comparative law. Samuel delves extensively into that discussion (pp. 121-151: what is meant by "law" (to the comparatist)? Is law a matter of rules, law as rights, law as concepts, law as interpretation, law as language, law as practical solutions, law as a system, law as social interests, law as underlying mentalities, or law as culture? Moreover, with globalization, regionalization, and the pluralization of legal systems and of the private production of legal norms, demarcating legal systems has become increasingly difficult, but also increasingly necessary (pp. 222-259). Accordingly, it is a matter not only of "law in the books" *versus* "law in action", but also of a choice to be made among legal systems, or at least rules, equally valid within the same territory.

Traditional comparative law has been criticized for being too country-oriented (including when a country encompasses two or more legal systems, such as English and Scottish law in the United Kingdom) and too Western, in the sense of looking at non-Western legal systems from a Western point of view without taking sufficiently into account the internal logic and the underlying culture. William Twining has called this the "Country & Western" approach of comparative law.[5] But even in the new approach to comparative research the emphasis remains on statutory and judicial rules of State legal systems, although these rules are considered within a more contextual approach than was the case in traditional comparative law.

[4] About 2000 titles in the references (pp. 218-400), all of which doubtless have been read.

[5] William L. Twining, "Comparative Law and Legal Theory: The Country and Western Tradition", in Ian Edge (ed.), *Comparative Law in Global Perspective* (2000), pp. 21-76.

A NEED FOR THEORY IN COMPARATIVE RESEARCH

As criticized by Samuel, most comparatists seem to be content with an intuitive approach to comparative law, which, in their view, would not need theory.[6] Actually, most comparative work, including by academics, has been pursued from a practical point of view, looking for answers to questions such as: are some rules the same or different when compared to one or more other countries? Such a question resulted in an emphasis on the "functional method" as the only "method" in comparative research. How, then, do lawyers and judges solve practical legal problems? The answer lies with the practical results, not the underlying doctrinal constructions. However, such doctrinal constructions are a way to look at social reality, to structure it legally with specific concepts and legal constructions. From an *academic* point of view, this should be the most interesting area of comparative legal research, but it is understandable that the practical results are more important to legal practitioners. Legal practice is law without theory. Law faculties and law professors have often, and rightly, been criticized for precisely that. Within national legal systems, legal doctrine acts as a theoretical framework for legal research and imparts to it scholarly legitimation. Comparative law, however, almost by definition, lacks such a common doctrinal framework.[7] Accordingly, another theoretical framework is needed. In contrast to what is generally accepted, this cannot be the so-called *Tertium comparationis*[8] in its rather narrow practical sense.

Yet, in order to compare, it has indeed been emphasized that we need some external point of view. We should not look at a foreign legal system with the eyes and doctrinal framework of our own legal system, but try to transcend by using external "neutral" elements for comparing legal systems: "the comparatist must eradicate the preconceptions of his native legal system".[9] Indeed, describing law is not an "objective" activity; it does not offer "pure facts" of a type that everybody would perceive in the same way, like a flower as compared to a tree, or a dog as compared to a cat.[10] Looking at concepts, rules, institutions, and the like in other societies will, at least at the first stage, always happen against the background of one's own legal system and doctrinal framework. Comparatists principally wanted to emphasize with the *tertium comparationis* the need to be aware of this bias and to try to extricate oneself from one's own conceptual framework. What this *tertium comparationis* could be and how to find it remains less clear. Should one compare apples with oranges by reference to a banana, or to pears and lemons? Or to an abstract concept

[6] Samuel quotes Tony Weir in this context, who stated that he has no theory to propound, since it "is possible for us, like Hamlet, to tell a hawk from a handsaw, and to do so without a complete theory of aerial predators or an exhaustive inventory of the carpenter's toolbox" (p. 19).

[7] In some cases the doctrinal background may be the same, but the rules or their interpretations may differ (e.g., among French and Belgian civil law or English and Australian common law), but the bulk of comparative research is focusing on different doctrinal constructions.

[8] The concept has been used by Ernst Rabel (1874-1955) in 1924: Ernst Rabel, „Aufgabe und Notwendigkeit der Rechtsvergleichung", *Rheinische Zeitschrift für Zivil- und Prozessrecht*, XIII (1924), pp. 279-301, reprinted in Hans G. Leser (ed.), *Ernst Rabel Gesammelte Aufsätze*, vol. III: *Arbeiten zur Rechtsvergleichung und zur Rechtsvereinheitlichung 1919-1954* (1967), III, p. 6.

[9] K. Zweigert and H. Kötz, *Introduction to Comparative Law* (3d ed; 1998), p. 35.

[10] Although even these objects are only seen in the same way within cultures who know these objects, where cats and dogs are domesticated, and so on. The way we see things is always determined by our own experience and worldview. For human beings there are no "objective facts" independent from human cultures.

of "fruit"? What could be the *tertium comparationis* when comparing the repudiation of a wife in Islamic law with divorce in Western law?

What has initially been a well-founded warning against biases in comparative research has, erroneously perhaps, been perceived as part of comparative method. There is no reason why comparative research should be limited to legal phenomena with common characteristics or to legal systems "at the same stage of development", as Esin Örücü has rightly claimed.[11] As comparative law has largely developed with the aim of improving one's own legal system, it is understandable that this kind of research required some level of comparability in order to be useful. However, comparative research carried out with other aims, such as understanding different legal cultures, cannot and should not use such conditions.

Nils Jansen analysed the concepts and methods of comparison in historical linguistics and comparative religion and concluded:

> Thus, *tertia comparationis* cannot be defined as part of the method; comparison must remain open for new insights. Nevertheless, as a result of successful comparisons, the discipline has – perhaps unconsciously – developed a comparative second-order language describing the concepts that constitute the different religions' beliefs. It has become highly useful for analysing the complex commonalities and differences of religion; all in all it represents a large body of comparative knowledge.[12]

Comparatists concentrating on methodology have tried to develop such a – relatively neutral – second-order language, or meta language, describing the concepts that constitute the different legal systems, even if in applied comparative research mostly first-order languages are used. Instead of looking for *tertia comparationis*, legal comparatists ought, through their research, to develop such a comparative second-order language.[13] What is presented as *tertium comparationis* is sometimes just such a second-order language.[14] It is true that legal systems can only be correctly *understood* in their own language, from their own internal perspective,[15] but in order for comparative law to develop as a discipline

[11] A. Esin Örücü, "Methodology of Comparative Law", in J. M. Smits (ed.), *Elgar Encyclopedia of Comparative Law* (2006), p. 443.

[12] Nils Jansen, "Comparative Law and Comparative Knowledge", in M. Reimann and R. Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (2006), p. 330

[13] We avoid here discussing the (im)possibility of creating a "meta-language". See: Anne Lise Kjær, "A Common Legal Language in Europe?" in M. Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law* (2004), pp. 377-398. Every discipline develops its own concepts. These "second-order languages" are not full languages such as Esperanto, but coherent conceptual tool kits. In a way, Roman law functioned in the Middle Ages as a second-order language for interpreting local customary law.

[14] For example: "I had been able to determine through previous work that mismatches between subjective intention and objective declaration, or the concern to consecrate yet also discipline party intention, were considered legal issues under English law and French law alike. Those issues therefore arguably provided appropriate *tertia comparationis* for investigating the English and the French law of, respectively, contractual mistake and contractual interpretation, even though they might prove inadequate for the purpose of investigating other areas of English and French contract law". See: Catherine Valcke, "Reflections on Comparative Law Methodology – Getting Inside Contract Law", in M. Adams and J. Bomhoff, *Practice and Theory in Comparative Law* (2012), p. 33. This shows how a second-order language may partly overlap with the legal languages of the compared legal systems. Also it shows how some concepts may be useful at a meta-level for some specific comparison, without having some broader, let alone "universal", validity.

[15] See on this, most notably Valcke, note 14 above, pp. 22-48.

some second-order language(s) will have to be worked out. Only in case of harmonization of law does a new common (first-order) legal language have to be developed.[16]

As for Husa, he interprets the *tertium comparationis* differently (p. 148):

> For the comparison to make sense, the objects compared must have at least some common characteristics or features, which form the common denominator for comparison ... it is not a question of the similarity of the objects compared but of the fact that *certain qualities* are compared from different points of view. ... In the mainstream theory of comparative law this common feature is referred to with the ... Latin expression *tertium comparationis*. It is necessary not only in comparative law but in all comparative research in general. *Tertium* is not equal to some comparative common denominator, but is instead a methodological term of a higher abstraction level that is not actually concretely connected with the object compared and is used as the common denominator that makes comparison possible. It refers to a common quality that two things, which are being compared, share. Importantly, without it comparison in a disciplined sense is not possible.

Thus Husa tried to make sense of *tertium comparationis* by making it an abstract "basic norm" of comparison, such as the *Grundnorm* in Hans Kelsen's theory. This is about comparison making sense. The compared objects – legal rules, legal systems, and the like – have to share some features or characteristics which are relevant for the comparatist. As he says (p. 148):

> The point of the characteristics compared is a factor for which each comparatist is personally responsible (because of the comparative framework constructed by the comparatists themselves), but the possibility for comparison is an absolute prerequisite.

For Husa the *tertium comparationis* is not part of a comparative method, but an abstract condition for comparison, in which *tertium* has lost its meaning as an external yardstick. It says only that there should be something to compare meaningfully, common features of two or more compared things, not a third element one would use for this purpose.

Siems (p. 291) points to the "great variety of units" that "can and have been compared" in the social sciences. He suggests that "a comparison of legal institutions, values, categories, concepts, ways of reasoning or languages ... can be the *tertium comparationis* that links diverse legal systems" (p. 33). Samuel, on the other hand, does not enter into this discussion. He mentions the term *tertium comparationis* twice, when referring to Ralf Michael's critique of the functional method (p. 66) and when referring to an article of Jaakko Husa on the same matter (p. 76).

[16] For a good overview of the problems related to such "harmonized" legal language, see: Gerhard Dannemann, "In Search of System Neutrality: Methodological Issues in the Drafting of European Contract Law Rules", in Adams and Bomhoff, note 14 above, pp. 96-119. See also, in the same volume, the contribution of Monica Claes and Maartje De Visser, "Reflections on Comparative Method in European Constitutional Law" (pp. 143-169).

CONSTRUCTING RESEARCH QUESTIONS

Doctoral theses in law, including in comparative law, used to be mainly descriptive, at least in European law faculties in twentieth century. This has changed dramatically, mainly in the last decade. Nowadays PhD students are expected to answer carefully worded research questions, using an appropriate methodology. For (domestic) positive law dissertations this can entail problems, just as much with supervisors as with the PhD students themselves, because lawyers have not been educated for critical research which transcends the sheer description of the currently valid law. Law faculties and their doctoral schools are now trying to fill this gap. In comparative law the research questions have to be so worded that they look for some causalities, for some explanations, or the like, and not just for some descriptive knowledge about foreign law.

Geoffrey Samuel pays specific attention to this matter (pp. 25-44), most notably by reference to framing the right question(s) and locating it within the State of the Art in the field by undertaking a (critical) literature review. These research questions may have to be revised in the course of the research. Validating the outcomes of the research is important too. This can be done from the standpoint of "correspondence" with facts (empirical testing), from a point of view of "coherence" with prevailing theories, or through "consensus" among scholars (pp. 39-40). Samuel regularly points to the fact that law is just one way to look at reality, a *grille de lecture*, which may be (quite) different across the legal systems compared. Legal concepts are not "objective facts". The major problem for comparatists is that domestic concepts are so deeply rooted in their legal education that it is difficult to look at the same reality in another way. Just as young children learn a language easily, adults may encounter difficulties in mastering the same language. The same seems to be true for legal language. When formulating research questions, an effort should be made to avoid concepts typical for one's own legal system but unknown in the compared legal system(s).

METHODOLOGICAL PLURALISM AND INTERDISCIPLINARITY

Turning to traditional methods in comparative law, the "functional method" has recently been subjected to criticism. Critics have pointed to its limits and to possible alternative methods; all three authors discussed here are among such critics.[17] Husa writes that the "situation is however changing, and there are visible cracks everywhere in mainstream comparative academia" (p. 119), whereas Samuel offers two alternative methods; namely, a structural one (pp. 96-107) and a hermeneutical one (pp. 108-120). Siems states that "a plurality of methods may be used in a fruitful way" in that "comparative law serves various purposes" (p. 33). Indeed, if one wants to compare the doctrinal construction of law, rather than practical solutions to legal problems, a functional method will be useless, and other methods will be needed. This pluralist approach to methodology is largely shared by Husa and Samuel. It is obvious that a comparison of legal systems as systems will require a more structural approach. Comparing, for example, the English "trust"

[17] Husa, chapter 6.VIII "Functionality – Functional Comparative Law" (pp. 118-127); Samuel, chapter 4 "Functional Method" (pp. 65-78) and chapter 5 "Alternatives to Functionalism" (pp. 79-95); Siems, Part I, 2.B "Functionalism and Universalism in Particular" (pp. 25-33) and 2.C "Critical Analysis" (pp. 33-39).

with continental trust-like legal constructions will need a more analytical approach: which rights, duties, competences and the like are included in each of the compared legal concepts and constructions?

Methodology equally raises epistemological questions. One of these involves the paradigm orientation of locating law in its cultural, historical, economic, sociological, and political context. This need is encountered in traditional textbooks on comparative law, but rarely applied in comparative research. The three discussed introductions to comparative law focus in a more detailed way on such a contextual approach.[18] Husa even states that law "is, in fact, always *law in* context" (p. 64). Siems, in particular, offers a broad overview of what a contextual approach has to offer, such as, for instance, the relevance of political economy in understanding differences in contract law. He indicates that "that common law countries tend to be more market-centred and civil law countries more state-centred".[19] Moreover, he says that the influence of a strong or weak court system is vital with regard to the use of legally binding contracts.[20] Siems concludes his chapter on Socio-legal comparative law in asserting:

> By definition, socio-legal comparative law not only considers the positive law but also other data related to society. These other data may be qualitative or quantitative. Choosing one or the other type of data can have an impact on the results of the comparative analysis. Qualitative comparative socio-legal research tends to focus on the details of particular legal systems and therefore differences between legal systems, akin to postmodern comparative research. By contrast, quantitative comparative socio-legal research may be better able to show similarities between apparently very different legal systems, in this respect akin to its traditional counterpart.[21]

This indicates that the chosen method, even within a contextual approach, is not neutral. Furthermore, the results one may expect from qualitative methods are rather limited. And so Siems continues:

> In addition, quantitative research often has the ambition of showing causal relations. ... However, the research discussed in this section has illustrated that causalities are often too complex to prove clear causal links.[22]

A thorough law-in-context approach requires the use of other disciplines and their methods. This is not obvious to the average lawyer and comparatist, as he or she has not been trained for that. Team research could resolve this problem, at least if the internal communication within that team is good, which means that, for instance, the economist is

[18] Samuel mainly in chapter 10 "Paradigm Orientations" (pp. 152-172); Husa throughout the book, and more specifically in chapters 7 (where different context perspectives are discussed at pp. 157-181) and 8 III.C "The Significance of Context" at pp. 198-200; Siems, also throughout the book and most notably in chapters 1.B.3 "The Three Dimensions of 'Comparative Law in Context'" (pp. 7-9) and most of Part II, including chapter 5 "Postmodern Comparative Law" (pp. 97-118) and chapter 6 "Socio-legal Comparative Law" (pp. 119-145) and in Part III, mainly chapter 8 on "Legal Transplants" (pp. 191-221).

[19] Siems at p.139, with reference to John Reitz.

[20] Siems at pp. 136-137, with reference to Arrighetti, Bachmann & Deakin who compared the situation in Germany, the United Kingdom, and Italy (1997).

[21] Siems, p. 144, with reference to Roger Cotterrell and David Nelken.

[22] Siems, p. 145.

able to understand the lawyer and *vice-versa*. This is not easy. Some comparatists have been trained in or acquainted themselves with another discipline. Husa has a background in linguistic science, and Siems is familiar with the use of quantitative methods and, to some extent, economics. Samuel has specialized epistemology, especially with regard to the social sciences. The expertise in other disciplines facilitates and enriches their comparative research.

Ideally, in interdisciplinary research the research question should be a research question in both disciplines. However, the ambition in comparative research is more modest – and probably has to be – but this equally limits the scope of possible results that these studies may offer. Whatever the situation, if law in context is unavoidable in comparative research, at least some interdisciplinarity is unavoidable too.[23] This may be limited to borrowing data or using quantitative or qualitative methods offered by the social sciences, but with the risk of becoming a methodology without a theoretical framework. This is the risk of the "numerical comparative law" to which Siems gives attention and which he has practiced extensively. Within, for instance, a sociological approach, methods are guided by the theoretical framework(s) offered by sociology. If one uses the same methods within comparative research, then some theoretical framework needs to be offered. It could be, in this case, sociological theory or comparative theory. However, because comparative law is not strongly developed at the level of theory, one has to be careful. In this respect, Samuel is offering an important contribution to comparative law theory, most notably by applying to comparative research the schemes of intelligibility developed by Berthelot.[24]

LEGAL FAMILIES

Traditional textbooks on comparative law have emphasized "legal families" and on a taxonomy of the legal systems in the world.[25] Today, the idea of legal families as fixed entities, nicely demarcated from each other, has been weakened for several reasons. First, such taxonomies are based on the written law, whereas the same law may be applied in a different way in different countries. This is most visible in countries outside Europe, with a clearly different cultural context, which have imported a European code (for example, Japan) or retained European law after decolonization (for example, most African countries).

Second, legal systems are constantly developing and have become increasingly mixed legal systems even if they looked quite "German" or "French" or "English" at a certain moment in history. The influence of European Union and human rights law has drawn, for instance, English law closer to continental legal systems and perhaps distanced it from other Common Law legal systems.

[23] As emphasized by Samuel (pp. 23-24) and Siems (pp. 7-9, supported by quotations from Mary Ann Glendon, Ugo Mattei, and John Reitz). Inter-disciplinarity in comparative legal research is not as such discussed by Husa, but implicit throughout the book when referring to the use of other disciplines, such as Sociology, Philosophy, Linguistics, and Economy in chapter 4 "Comparative Law – One of the Legal Disciplines" (pp. 29-48), and when discussing cultural, economic, historical and geographical factors that may explain differences and similarities among legal systems in chapter 7 "Comparing – Differences and Similarities" (pp. 147-181).

[24] Samuel throughout his book, but most notably in chapter 1.VI "Comparative Law as Epistemology" (pp. 21-23).

[25] Most influential has been René David, *Traité élémentaire de droit civil comparé: introduction à l'étude des droits étrangers et à la méthode comparative* (1950) ; as from 1964: *Les grands systèmes de droit contemporains.* Published in English in 1968 as *Major Legal Systems in the World Today,* transl. John E. C. Brierley (1968).

Third, all taxonomies are based on private law[26] and even on the "civil law" portion, given the great influence of the French *Code civil* and the German *Bürgerliches Gesetzbuch* worldwide in nineteenth and twentieth centuries. These taxonomies do not necessarily work when it comes to constitutional law, administrative law, criminal law, company law, environmental law, and the like. Thus comparatists are increasingly aware of the limited relevance of a legal family taxonomy. It has mainly a didactic use, introducing students to the law elsewhere; and it reduces complexity by making foreign legal systems more accessible.[27] For comparative research it may offer some basic information, but legal family taxonomies will not be able to guide such research.

Although Husa and Siems accept to some extent the use of legal families as a taxonomy in comparative law, they are aware of the limitations.[28] Husa writes (p. 237):

> Macro-constructs, such as legal family, are not necessary: the comparatist can do without macro-constructs. So, if comparative law is practised out of a practical interest with an intention to carry out objectives of a practical origin, the question of the classification of the world's legal systems or the results of the classification is hardly very interesting.

Siems is even more critical (pp. 93-94):

> The present and the previous chapter have shown that classifications into legal families often do not provide an accurate picture. ... The question remains, however, whether thinking about legal families does not cause more harm than good. ... It is also perfectly possible to conduct comparative legal research without using the notion of legal families. ... Thus, to get a proper understanding of the legal world, the comparatist has to be prepared to find the unexpected, i.e. unexpected differences between similar countries and unexpected similarities between different ones. It is suggested that legal families do not help in developing such curiosity.

The idea of creating a taxonomy originated in nineteenth century under the influence of positive sciences, such as chemistry (the Table of Mendeleev) and biology (the taxonomy of plants by Linaeus), in an attempt to make legal scholarship more like a "positive science". The difference is that taxonomies in positive sciences describe and classify natural objects, whereas legal taxonomy tries to classify constantly changing human constructs, which, moreover, may strongly influence each other. When the "communist" regimes in Eastern Europe collapsed, this had as a strange consequence that the "socialist legal family" equally disappeared in the Zweigert and Kötz taxonomy of private law.[29] This points to a critical point in taxonomies, namely, determining the criteria to be used. The problem is also found in positive sciences as shown, for instance, by the examples of the whale not being a "fish" but a mammal, or the "planet" Pluto having lost its status as a "planet", now being merely a "dwarf planet". Comparatists have on the whole failed to explain their criteria when proposing taxonomies. They started from the intuitive assumption that

[26] Husa discusses extensively the recent development of comparative public law as compared to more traditional comparative private law (pp. 12-15).

[27] Husa, p. 237.

[28] Husa, chapter 9 "Macro-comparison" (pp. 210-241); Siems, chapter 4 "Mapping the World's Legal Systems" (pp. 72-94).

[29] Zweigert and Kötz, note 9 above.

the major (private law) legal systems in the world were English, French, and German, leaving aside the context of the law in the countries which imported one of these laws. Consequently, such taxonomies are not "objective" classifications, but choices that may be relevant from some points of view, but irrelevant from others.

CONCLUSION

These recently published introductions to comparative law, its theory and method, show how this field has developed over the last few decades. Apparent certainties are no longer taken for granted, if not heavily criticized. These certainties include the acceptance of the "functional method" as the only or at least predominant method for comparative research, the "country and Western" approach, which leaves aside non-State legal systems and non-Western legal cultures, the idea that comparative research would consist in simply describing (aspects of) two or more legal systems, a uniquely doctrinal approach with little attention to law's context, and a more or less fixed taxonomy of "legal families". They have been replaced by a more scholarly approach to comparative law, starting from research questions and hypotheses, using methods, including those from the social sciences, which seem appropriate to find answers to those research questions and to test the hypotheses. This new approach is clearly characterized by pluralism – pluralism as to the kinds of legal systems compared (not just State law) and a methodological pluralism. Taxonomies of "legal families" are no longer considered to be important or even useful for comparative research, but only, if at all, for didactic purposes. The three discussed books represent very well the new wind blowing through the field of comparative law, making it finally a scholarly discipline. So, instead of "The End of Comparative Law", as provocatively announced by Mathias Siems in an article published less than ten years ago,[30] we may well be witnessing the rebirth of the discipline as a genuinely scholarly field of research.

[30] Siems, "The End of Comparative Law", *The Journal of Comparative Law*, II (2007), pp. 133-150.