

Zahn, Review of 'Esin Öricü and David Nelken (editors), *Comparative Law: A Handbook*' [2008]
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Esin Öricü and David Nelken (editors), *Comparative Law: A Handbook*

Hart Publishing, 2007, 480 pages, £35.00
ISBN: 978-1-84113-596-0

<http://www.hartpub.co.uk/books/details.asp?isbn=9781841135960>

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First published in the Web Journal of Current Legal Issues.

The amount of literature on comparative law is large and steadily growing. Traditional textbooks on comparative law tend to introduce the subject and its methods before going on to illustrate the nature of comparative law by introducing various areas of substantive law. Usually, this would include topics such as comparative private law, comparative labour law or comparative administrative law. The editors – David Nelken and Esin Öricü - of this book are both distinguished Professors of Law and experts in the subject area of comparative law. As the title 'Comparative Law: A Handbook' indicates, Öricü and Nelken intend to provide a practical introduction to the methods, processes and principles of comparative law, which is accessible to students and academics alike. Rather than focussing on the traditional methodological process of comparative law, however, the book aims to explain in a clear manner the contemporary debates and methodological innovations found in modern comparative law. At the beginning of the twenty-first century the debate on the usefulness and maturity of comparative law is as present as ever. Moreover, there is an increasing discussion whether comparative law is equipped to take into account non-Western systems of law, which often include additional layers of complexity due to the plurality of the legal systems. Topics covered in this *Handbook* are therefore wide-ranging, including globalisation, private law, family law, commercial law, human rights and administrative law.

In compiling the *Handbook* it was the editors' intention to go beyond the existing literature and to break free from 'traditional' topics in comparative law such as contract, tort and labour law. Instead, greater emphasis is placed on the theoretical debate surrounding the future development of comparative law within and beyond Europe. This is then applied to law in action in certain substantive areas of law. Each chapter is introduced with a list of key words. A practical feature deemed particularly appropriate for students new to comparative law is a list of questions placed at the end of each chapter but before a bibliographical list including further reading. Moreover, the further reading given is sufficiently broad to be useful for novices and as well as more advanced comparative law scholars.

The contributing articles are divided into three sections: first, an introduction by the editors of the position of 'Comparative Law at a Cross-roads'; secondly, contributions by a wide range of authors discussing possible 'New Directions for Comparative Law'; and, thirdly, a discussion of 'New Territories for Comparative Law'. Each section will be discussed in turn.

The first section of the book is thus meant to summarise the development of comparative law so far and to posit questions for the future which the subsequent contributions attempt to answer. The two introductory chapters also introduce the unfamiliar student to basic tools of the method of comparative law. Öricü's contribution on 'Developing Comparative Law' in particular highlights the process and potential pitfalls of the comparative method. The chapter by David Nelken, on the other hand, provides a number of useful illustrations on the aims of the various sections of the book which guide the reader through the Handbook. Neither chapter, however, provides very much advice on the practicalities of 'how to do' comparative law. This is also not dealt with in subsequent chapters. While the final chapter in the book provides an illustration of a comparative law project, one gets the impression that the *Handbook*, although geared towards novices and experienced academics alike, nonetheless presupposes a basic understanding of how to go about comparing in law. Rather than being practically oriented, the book places more focus on the intellectual debate surrounding comparative law. This becomes very clear in section two of the *Handbook*.

The subsequent contributions in Section Two focus on theoretical aspects of comparative law and are written by a number of distinguished authors covering a broad range of topics. All contributions merit attention and all are accessibly written and cover interesting topics. Due to lack of space, however, this review will only focus on selected contributions. The same approach will be adopted when considering the contributions in Section Three.

Areas covered by authors in Section Two include a debate on globalisation and comparative law by William Twining and a discussion of comparative law beyond Europe by Werner Menski. Other contributions that merit particular mention are the debate by Roger Cotterrell on 'Comparative Law and the Appreciation of Diversity' as well as Öricü's discussion of the suitability of traditional methods of comparison for twenty-first century comparative law. Overall, it is in Section Two that the clear aims of the *Handbook*, as set out in the preface, to move beyond 'traditional' debates on comparative law are met. The theoretical contributions to Section Two of this *Handbook*, therefore, attempt to question all aspects of comparative law and the authors go to great lengths to dispel common myths about the suitability of comparative law for non-Western cultures. In doing so, certain authors place a lot of emphasis on the idea that comparative law goes beyond the nation-state to include systems of regulation not recognised as 'law' by the state. This implies that the 'traditional' method of comparative law famously elaborated by Zweigert and Kötz may not be suitable anymore. More specifically, there is a perceptible trend throughout Section Two of the *Handbook* which seems to call for a re-classification of Zweigert and Kötz's 'legal families'. The main criticism which, for example, Öricü has of the 'legal families' classification, is that it does not take account of systems of law in developing countries. Rather, this classification limits itself, to a large extent, to the systems of law prevalent on the European continent. As a result, Öricü proposes a scheme where all legal systems are, to a greater or lesser extent, classified as 'mixed'. This would take account of the complexities inherent in individual systems while still enabling a classification of legal systems. Whereas the idea of classifying legal systems as 'mixed' seems very appealing and certainly justifiable, it is difficult to see how this would be applied in practice. Most legal systems, especially on the European continent, are influenced by each other. Using this as a criterion to classify a system as 'mixed', however, may over-complicate a classification to such an extent that it becomes useless to attempt a classification in the first place.

Although focussing to a large extent on the theoretical aspects surrounding comparative law, a lot of the authors also illustrate their argumentation through demonstrations of 'law in context' scenarios. One example can be drawn from Werner Menski's contribution entitled 'Beyond Europe'. Menski argues that 'Asian, African and other non-Western legal systems seem inherently more attuned than Western legal systems and scholars to the intellectual and practical challenges of comparative law and legal pluralism' (p. 189). Menski makes his line of argument especially clear by presenting the reader with two case studies drawn from India's personal laws. As well as presenting the reader with a unique insight into Indian law, he demonstrates the depth of understanding that a comparing scholar should bring to the exercise. Finally, he succeeds in demonstrating his line of argument that non-Western legal systems are much more capable of adapting to comparative law and legal pluralism. This coincides with the other approaches in this section. Roger Cotterrell looks at the inherent complexities of comparative law from a Western point of view and argues that differences in legal systems are not inherently bad. He bases this argument on an extended debate on the rights and wrongs of harmonisation, taking as an example Legrand's critique of the effort to develop a common European private law. Moreover, Cotterrell places a lot of emphasis on the concept of culture which often creates near-insurmountable problems when comparing different legal systems with each other. Nevertheless, he advocates an 'intercultural conversation' (p. 152) which, if done with sufficient sensitivity towards cultural differences, can contribute to further the significance of comparative law. This chapter illustrates the frustrations that often arise during the process of comparing different legal systems. Cotterrell acknowledges these difficulties, however, at the same time, he also challenges the reader to improve his understanding of the legal systems that he is comparing. This focus on one of the basic principles and difficulties of comparative law makes this section a valuable contribution to the *Handbook*.

Finally, the contributions in Section Three explore the impact of comparative law on certain areas of substantive law and question the usefulness of comparative law in these fields of law. This section is the longest of the three and also includes the description of a research project which uses a comparative approach to assess the impact of the European Community on practicing lawyers in Scotland and The Netherlands. This chapter, written by Örüçü, is intended to provide a useful practical illustration for the novice on how to conduct comparative law research. The first contribution of the section by Jan Smits, entitled 'Convergence of Private Law in Europe: Towards a New *Ius Commune*?' ties in well with Cotterrell's debate on the harmonisation of private law across Europe. Smits re-examines the long-standing debate on the need for convergence or diversity of private law in Europe. This leads to a critical commentary of contemporary efforts to harmonise the law and a solution that he calls a 'bottom up' approach to harmonisation. For him, this means the enhancement of European legal science and education, the drafting of principles of European law and the encouragement of competition amongst legal systems (p. 219-240). This approach follows the theoretical suggestions outlined in Section Two. Comparative law is only possible when differences, particularly in culture, are taken into account and are appreciated by the comparative scholar. Smits illustrates this by pointing to the process of harmonisation of European private law. Moreover, he charts the development of 'European private law' in an accessible manner to someone not an expert in the area.

The subsequent author comes to the exact opposite conclusion. In the chapter entitled 'Comparative Family Law: Moving with the Times', Masha Antokolskaia introduces the reader to the development of family law in Europe, illustrating the radical changes that have taken place over the last few decades. She supports a top-down approach to the harmonisation of family law in Western Europe. She bases her conclusion on the development of a common family law due to, in part, the activism of the European Court of Human Rights and groups of family lawyers who have used comparative law to suggest 'better law' approaches at a national level. Due to the role that Antokolskaia accords comparative law in this harmonisation process, this chapter stands out as an exception in its argumentation to the other chapters in sections two and three. These chapters

largely discuss the difficulties that comparative law must overcome. Antokolskaia, however, paints a picture where comparative law has been used successfully to create a common denominator within a subject matter of law. While Antokolskaia acknowledges that differences remain and that these differences are positive, she is heavily in favour of using comparative law to achieve a strong degree of harmonisation. This chapter, therefore, not only stands out because of the different approach to the subject matter of comparative law (based on empirical evidence rather than theory) but also because it inspires hope for comparative scholars that comparative law can achieve its theoretical purpose in practice.

In conclusion, it is submitted that this book offers the reader a valuable insight into contemporary debates on comparative law. Particularly Section Two which charts 'New Directions for Comparative Law' is of particular interest to the theoretical-minded academic and the novice alike. The contributions in this section are particularly thought-provoking and useful for the application of comparative law in all substantive areas, not just those outlined in Section Three. The division of the *Handbook* into three sections is an accessible way of structuring the book. It enables the reader to gain a general understanding of the theoretical debates surrounding a subject area before seeing these debates applied in a field of substantive law. Although a reader should have somewhat of a background in comparative law in order to fully benefit from the text, the *Handbook* provides an excellent overview of twenty-first century debates and problems surrounding comparative law.