THE END OF COMPARARATIVE LAW

Centre for Business Research, University Of Cambridge
Working Paper No. 340

by

Mathias M. Siems
School of Law
University of Edinburgh
Old College, South Bridge
Edinburgh, EH8 9YL
Email:mathias.siems@ed.ac.uk

Centre for Business Research
The Judge Business School Building
University of Cambridge
Trumpington Street
Cambridge, CB2 1AG
Email: m.siems@cbr.cam.ac.uk

March 2007

This working paper forms part of the CBR Research Programme on Corporate Governance.

Abstract
Following the 1900 congress in Paris, the beginning of the 20th century saw comparative law emerge as a significant discipline. This paper suggests that the early 21st century is seeing the decline, or maybe even the 'end', of comparative law. In contrast to other claims which see the 21st century as the 'era of comparative law', there are at least four trends which give rise to pessimism: 'the disregard', 'the complexity', 'the simplicity', and 'the irrelevance' of comparative law. These phenomena will be explained in the body of this paper; the concluding part considers suggestions as to how to proceed further.

JEL Classification: K00, K20, N20, N40, P51

Keywords: Comparative law, numerical comparative law, legal culture, law and finance, World Bank, harmonisation, convergence, governance.

I. Introduction

Following the 1900 congress in Paris, the beginning of the 20th century saw comparative law emerge as a significant discipline.[1] This article suggests that the early 21st century is seeing the decline, or maybe even the 'end', of comparative law. In contrast to other claims which see the 21st century as the 'era of comparative law',[2] there are at least four trends which give rise to pessimism: 'the disregard', 'the complexity', 'the simplicity', and 'the irrelevance' of comparative law. These phenomena will be explained in the body of this article; the concluding part considers suggestions as to how to proceed further.

This article is deliberately provocative (and deliberately brief). However, it is not suggested that from now on we should be interested in national legal systems only. Rather the opposite. Its general purpose is to reflect on the methodology of comparative law and the way in which one might respond to some its problems. In this respect, it is in line with some of the core themes of comparative law: its justification, status, and methodology.[3]

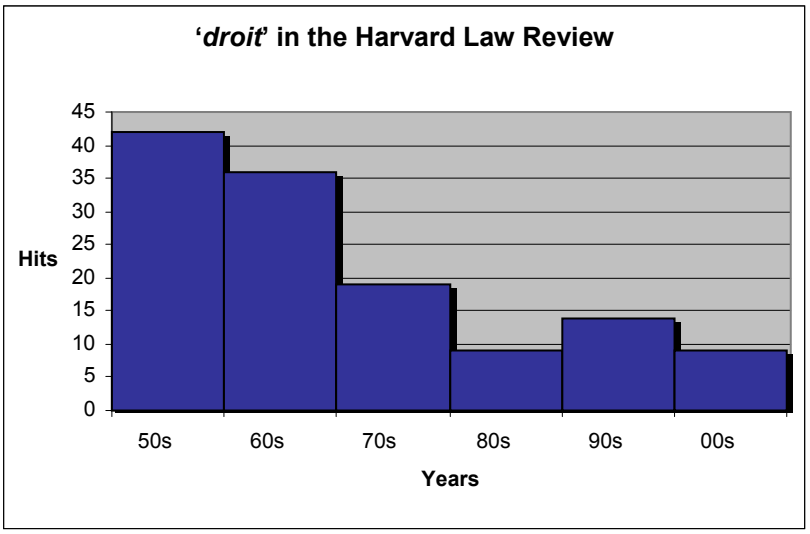
II. The Disregard of Comparative Law

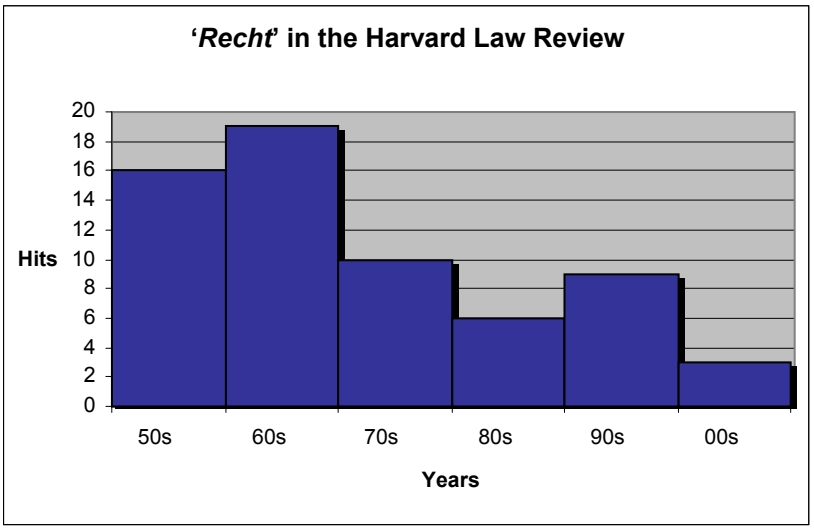
The claim that courts should disregard comparative law was recently most clearly expressed by some of the judges of the US Supreme Court. In *Lawrence v Texas* Justices Scalia and Thomson disregarded all arguments based on foreign experiences because 'this Court [...] should not impose foreign moods, fads, or fashions on Americans'.[4] Justice Scalia also referred to the 'practices of the "world community", whose notions of justice are (thankfully) not always those of our people'.[5] In another case, Justices Scalia, Thomson, and Renquist criticised the use of comparative law as cherry picking: 'to invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decisionmaking'.[6] Similarly, the new Chief Justice Roberts stated during his confirmation hearings: 'In foreign law you can find anything you want. If you don't find it in the decisions of France or Italy, it's in the decisions of Somalia or Japan or Indonesia or wherever'.[7]

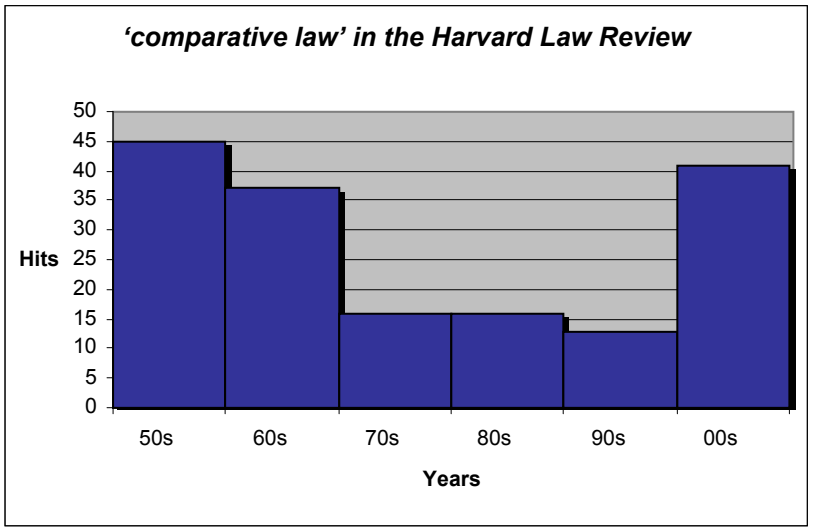
It should be noted that these statements were reactions to the opinions of the other Justices of the Supreme Court, who did make reference to foreign laws,[8] and that the cases in which these statements were made concerned the politically sensitive issues of the death penalty and homosexual rights. In other cases, it may be less controversial to use arguments from other countries.[9]

Nonetheless, the disregard of comparative insights is a general feature of contemporary US legal culture. Various academics have supported the statements of Justices Scalia et al.[10] Furthermore, it has been said that in the US 'comparative law is not a very popular subject. In its own estimation the United States is the leading country of the world. So why look around?'[11] And it has also been stated that comparative law teaching only provides a 'superficial introduction to various aspects of foreign law with incidental comparative observations'.[12]

Moreover, the influence of comparative law in the US academia is on the decline. For instance, in the 19th and early 20th century continental legal thinking exerted considerable influence on US law.[13] Yet, in the last 50 years, that influence has waned. One (admittedly simplistic, but still persuasive) indication of this can be seen in the frequency of occurrence of '*droit*', '*Recht*' and 'comparative law' in the Harvard Law Review:[14]







Note, however, that the use of the term 'comparative law' has increased in the 2000s. It remains to be seen whether this can be regarded as a new trend. Also, a numerical approach always has its limits because the meaningfulness of the use of a particular word depends on its context.[15]

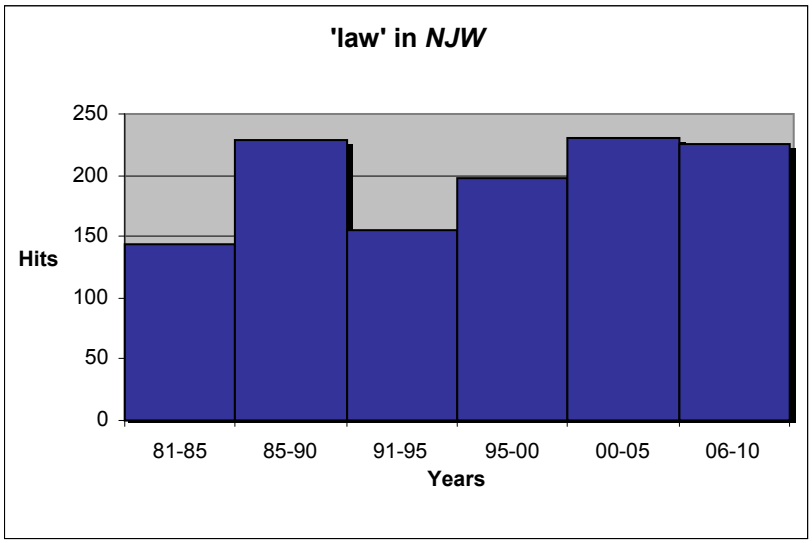
The disregard of comparative law is not limited to the US. To be sure, there is some exchange of knowledge where there are rules shared with other countries.[16] In particular, if countries have a common legal language (such as most common law countries) it is likely that some similarity among the legal systems will be maintained by the use of comparative law. This can also be proven empirically.[17] However, these are exceptions. In general, politicians and judges pay no attention to comparative law, because it is regarded as too complicated and theoretical.[18] Even Sir Basil Markesinis voices the criticism that often comparative law is often about 'ideas and notions that cannot be put

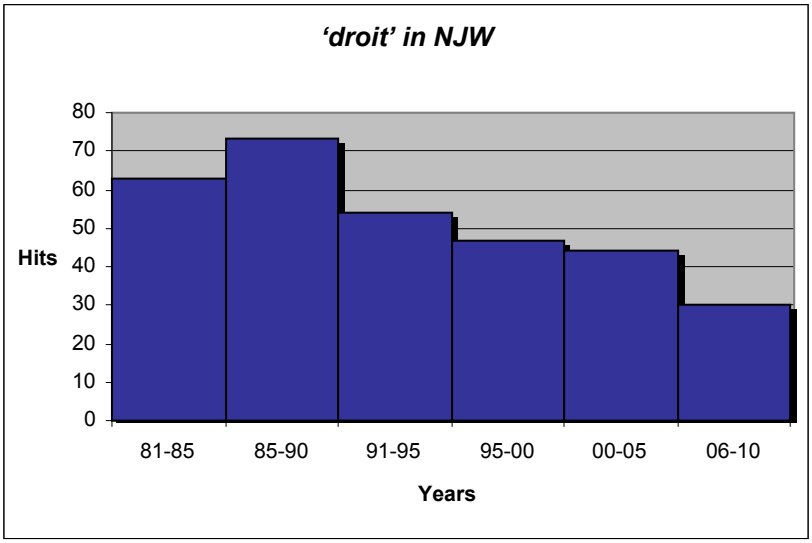
to practical use, and 'are likely to satisfy only those who spend their time devising them and then quoting each other with self-satisfaction'.[19]

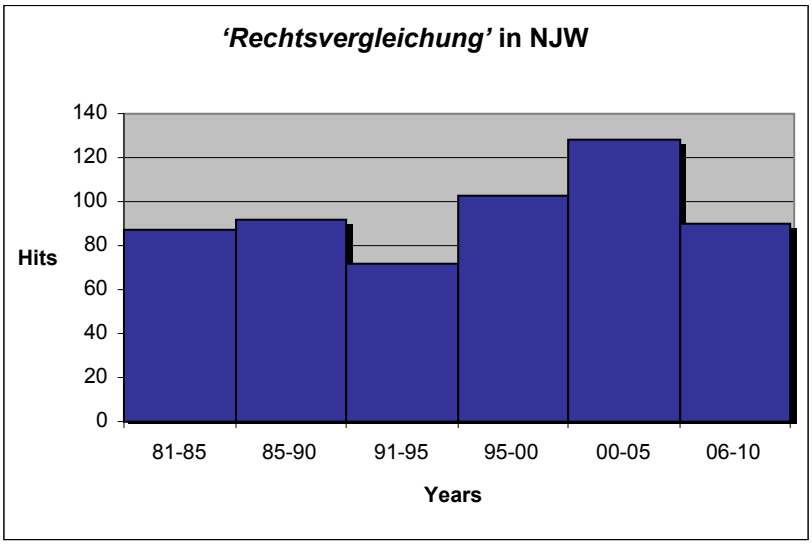
To elaborate, with respect to legislators, comparative law is often used only to deliver additional arguments for what has politically already been decided. References to small countries are in any case unlikely.[20] With respect to adjudication, except when considering legal rules with an international element, courts rarely use comparative law.[21] In some countries there has even been a decline. For instance, in Germany between 1951 and 1974 there was a wave of decisions which referred to foreign law, but in recent years there have been far fewer references.[22] This reluctance is hardly surprising. Courts often lack the knowledge and the time to take comparative arguments into account. And there may also be reasons based on national sovereignty,[23] similar to the opinions of Justice Scalia and his colleagues.

One might hope that the problem would be less acute in academia. There are indeed some positive signs as regards developments in the European Union. For instance, the discussion about the Europeanization of private law has led to new journals,[24] case books,[25] and case studies[26] about comparative private law.[27]

However, in other areas of academic study comparative law has remained an esoteric subject which matters only to a few people with special interests.[28] It is decreasing in importance and is, at best, an optional subject, even in the EU.[29] Again, this is no surprise. In most countries legal education is focussed on preparing students for legal practice, with the result that legal academics frequently see their task as 'stamp collecting':[30] primarily providing an accurate and coherent description of the law as it is applied domestically. And as English has become the internationally dominant language, non-English speaking materials are less often taken into account. Evidence for this can be found in the charts below which show the frequency of occurrence of 'law', '*droit*' and '*Rechtsvergleichung'* (comparative law) in the major German law journal *NJW (Neue Juristische Wochenschrift)* over the last 26 years. For 'law' there is no clear trend, but '*droit*' is in a near steady decline.[31]


'law' in NJW
250
200
150
100
50
0
Hits
81-85
85-90
91-95
95-00
00-05
06-10
Years


'droit' in NJW
80
70
60
50
40
30
20
10
0
Hits
81-85
85-90
91-95
95-00
00-05
06-10
Years


'Rechtsvergleichung' in NJW
140
120
100
80
60
40
20
0
Hits
81-85
85-90
91-95
95-00
00-05
06-10
Years

However, once again a caveat is necessary. The use of the word '*Rechtsvergleichung*' has increased in the years 1995-2005 (whether the decrease in the year 2006 is a general trend remains to be seen).

III. The Complexity of Comparative Law

There is a tendency to emphasise the complexity of comparative law. Two variations of this tendency can be identified, the 'strong' and the 'weaker' forms. The strong form imposes exaggerated requirements on the practice of comparative law, making it virtually impossible. The weaker form does not, but despite its merits, it too may discourage comparative research.

A. The Strong Form

The 'strong form' emphasises the poverty of the existing comparative literature, seen as positivistic, superficial and providing a mere illusion of understanding of other legal systems.[32] Instead, what is needed is a deep, interdisciplinary, critical, or even post-modern comparative law.[33] Meaningful comparison requires understanding the historical, social, economic, political, cultural, religious, and psychological context of legal rules. In particular, different mentalities have to be taken into account. Thus, the comparative lawyer has to understand the cognitive structure of the law as well as the epistemological foundations of that cognitive structure.[34] The result of this comparative exercise is that there are deep ontological differences between legal systems.[35] Comparing legal systems is like comparing different 'world versions'.[36] Every legal system is singular.[37] Similarities are only superficial, convergence impossible and people from different legal systems cannot understand each other because of irreconcilable differences in mentalities.

The result of this approach is that comparative law becomes impossible. A perfectionist view of understanding tells you that 'if you do not fully understand something, you do not understand anything'.[38] The comparative lawyer is therefore 'lost'[39] because the entire context, including the 'epistemological foundations of the cognitive structure' can never be perfectly understood. Moreover, even if one could understand a particular legal system perfectly, there could be no comparison. An analysis of two legal systems would just have two chapters, one written by someone trained in the legal tradition of the first country, the other written by someone someone trained in the legal tradition of the second country. Since generalisations which apply to both legal systems are impossible, comparison is also impossible.[40]

B. The Weaker Form

The strong form may appear quite radical. However, in a 'weaker form', a similar view is becoming more and more accepted. Like the strong form, the weaker form aims not at reducing, but at multiplying, complexity.[41] Consider the following apparently harmless statement:

> As Japan belongs to the German legal family, both German and Japanese commercial law provide that in case of a sale between traders, the buyer shall, upon taking delivery of the subject matter, examine it without delay (§ 377 German Commercial Code; § 536 Japanese Commercial Code).

This statement may give rise to various objections, including the following:

1. There is no consideration of the different business contexts in Germany and Japan. This emphasis on context is a general trend. In the US, it has existed for many years. As long ago as 1987, Richard Posner announced 'the decline of law as an autonomous discipline'.[42] Even if the trend is not yet followed elsewhere, context-dependency has become a frequent mantra of comparative lawyers.[43]

2. The mere mention of legal rules may be criticised. Rule-based comparisons are bound to be superficial. For instance, it is said that in order to get a deeper level of understanding about such fundamental concepts as 'interpretation' and 'contract', theories and conceptions are the most appropriate basis for comparing legal systems.[44]

3. Some scholars emphasise the limits of comparability. In particular, it is sometimes said that Western and non-Western countries are too different to provide a meaningful comparison:[45] You cannot compare apples and oranges. Likewise, too different legal systems may be incommensurable.[46]

4. The reference to legal families may be opposed. On the one hand, comparatists increasingly emphasise that law is becoming international, transnational, or even global, so that looking at legal families is seen as less important.[47] As one scholar puts it:

> Is it really the Germans with their Bürgerliches Gesetzbuch versus the Americans with their Uniform Commercial Code? Or is it rather the Germans and the Americans as members of the United Nations Convention on Contracts for the International Sale of

> Goods (CISG) versus the English who have not ratified it? Or is it perhaps the Germans and English as EU members (and thus signatories of the Rome Convention) versus the Americans? Or is it perhaps all these countries as members of the WTO (and thus beneficiaries of its free trade regime) versus those nations who are not?[48]

On the other hand, some scholars claim that all legal systems are mixed to some degree. One would therefore have to 'deconstruct the conventionally labelled pattern of legal systems and re-construct them with regard to parentage, relationships and the diverse fertilisers, grafting and pruning used in their development'.[49] This would apply to Japanese law, since its commercial law has not only been influenced by German, but also by US, law.[50]

Many modern comparative lawyers would therefore claim that, although the sentence above may be correct, it is far too superficial. Thus, for instance, the author of a research paper or article submitted to a journal would be asked to provide further explanations. Although this does not make comparative law impossible, it may discourage it.

To be sure, this result does not mean that the new interdisciplinary and post-modern approaches to comparative law cannot be valuable. They are indeed a useful antidote to the frequent 'simplicity of comparative law' (see the next part) and can make comparative law intellectually stronger. In particular, the concept of legal cultures may be useful to explain complementarities between legal and economic institutions.[51] However, the emphasis on the complexity of comparative law should not lead to a new 'elitism' in which every comparison which is primarily interested in differences between legal rules rather than in their broader socio-economic context is dismissed out of hand.[52]

IV. The Simplicity of Comparative Law

Comparative law is not about summarising every aspect that can be obtained about different legal and extralegal systems, but in about making a comparison. However, this crucial part of a comparative exercise is often not treated seriously enough.

A. The Traditional Simplistic Approach

The 'traditional simplistic approach' to comparative law is mainly focussed on an accurate description of a particular foreign legal system. This translation of what others have written about their domestic law[53] and accumulating and

transmitting knowledge about foreign law and legal families[54] is not really comparative law.

Examples are legion. First, consider some comparative law journals. It has been said that 'looking through the volumes of the *American Journal of Comparative Law*, one quickly recognizes that (…) the articles about foreign law outnumber (often by a huge margin) those explicitly comparing two or more systems'.[55] Second, many books on comparative law spend the bulk of their text on describing the laws of particular countries. In this respect there is no fundamental differences between books which follow a rule-based and a case-based approach. For instance, in Part II of Zweigert and Kötz's *Introduction to Comparative Law* the main aim appears to be to provide an overview of French, German, English, and US contract and tort law. The comparative passages seem to be mere supplements to this overview.[56] Similarly, the *Casebooks for the Common Law of Europe*[57] are focussed on providing information about different legal systems, without offering a fuller picture of the law in action[58] or detailed comparative explanations. The congresses of the International Academy of Comparative Law[59] provide another example. National experts produce detailed country reports on particular topics and only a general reporter then draws a comparative conclusion from the country reports. Thus – despite the fact that for most topics there is already abundant literature available in English – the main task of the academics involved is merely the compilation of information. Finally, this 'foreign law focus' can also be seen in the self-perception of comparative lawyers. Often they regard themselves not primarily as comparatists but, for instance, 'mainly as Asia specialists, Russian law scholars, constitutional lawyers with comparative interests, etc'.[60]

B. The New Simplicists

A more recent trend is, however, even more simplistic. The traditional approach treats the study of foreign legal systems seriously even if it is less interested in comparison. In contrast, the 'new simplicists' are simplistic in both respects, because they treat different legal systems as mere compilations of information which can be coded in a numerical way.

The starting point of this quantitative comparative research was an article by La Porta et al entitled 'Law and Finance'.[61] The authors coded the law on shareholder and creditor protection of 49 countries. For instance, with respect to shareholder protection they used eight variables,[62] allocating a country either a '0' or a '1' for each variable. They then drew on these numbers as independent variables for statistical regressions. Their main finding was that good

shareholder protection leads to more dispersed shareholder ownership, which can be seen as a proxy for developed capital markets.

Many subsequent papers by La Porta et al and others have used a similar methodology for other areas of law.[63] Moreover, the World Bank has extended the La Porta et al research in order to rank all the legal systems in the world in terms of their efficiency in fostering business:

Legal Systems Ranked in Terms of Ease of Doing Business		
1 New Zealand 2 Singapore 3 United States 4 Canada 5 Norway 6 Australia 7 Hong Kong, China 8 Denmark 9 United Kingdom 10 Japan 11 Ireland 12 Iceland 13 Finland 14 Sweden 15 Lithuania	16 Estonia 17 Switzerland 18 Belgium 19 Germany 20 Thailand 21 Malaysia 22 Puerto Rico 23 Mauritius 24 Netherlands 25 Chile 26 Latvia 27 Korea 28 South Africa 29 Israel 30 Spain	31 Maldives 32 Austria 33 Namibia 34 Fiji 35 Taiwan 36 Tonga 37 Slovakia 38 Saudi Arabia 39 Samoa 40 Botswana 41 Czech Republic 42 Portugal 43 Jamaica 44 France 45 Kiribati……..
Note: The rankings for all economies are benchmarked to January 2005 and reported in the country tables. The ease of doing business averages country rankings across the 10 topics covered in *Doing Business in 2006*.[64]		

The importance of these studies, and that of the World Bank's *Doing Business Report,* cannot be underestimated.[65] This line of research is one of the most important trends in contemporary comparative legal and economic scholarship. For instance, searches with Google and Westlaw show result in many times more hits for La Porta et al than for Zweigert and Kötz.[66] The La Porta et al studies have also had an immense impact in academic fields such as comparative corporate governance:[67] For instance, the EU Commission's impact assessment on the Directive on Shareholders' Rights explicitly referred to them in order to justify their recent reform.[68] In contrast to traditional comparative

law[69] these studies also have a considerable political impact. The World Bank uses its numerical benchmarks of legal rules in order to put pressure on developing and transition economies, which often depend on the World Bank's funding. Developed countries also take the *Doing Business Report* seriously. In the United Kingdom the mainstream media has contained reports about it.[70] France's ranking (44., below Namibia's (33) and Botswana's (40)), has led to a hefty counter-reaction. The French government has set up its own programme on the 'Attractivité économique du droit',[71] and a French group of academics has produced a 144-page report which challenges the World Bank's result.[72]

There are indeed major problems with this methodology, which make, for instance, the World Bank's ranking entirely useless. The first line of problems is that the legal indices of La Porta et al and their successors do not provide an accurate numerical description of the law of different countries. For instance, with respect to La Porta et al's article on shareholder protection, numerous coding errors have been identified.[73] Furthermore, eight is a very limited number of variables, and can hardly provide a meaningful picture of the legal protection of shareholders. The choice of variables has also been criticised. It not only suffers from an US bias but is also a poor proxy for shareholder protection in general, because the variables do not capture the most significant aspects of the law.[74] Secondly, the World Bank's ranking suffers from the fact that it puts together countries in which the context of particular rules is completely different. For instance, Taiwan, Tonga, Slovakia and Saudi Arabia may rank similarly (ranks 34-38) but, given the differences between these countries, this does not tell us anything about these legal systems. A convincing – quantitative or qualitative – comparative exercise would look quite different.[75]

V. The Irrelevance of Comparative Law

A major interest of traditional comparative law is the comparison of laws of different countries. Two factors make this endeavour less interesting.

A. Harmonisation and Convergence

If the laws of two countries are identical, comparative law is pointless. To be sure, some academics[76] vehemently deny that legal convergence is taking place: It is said that convergence is only superficial because, taking into account deeper structures, major differences continue to exist. For instance, civil law and common law are even today marked by such oppositions as deductive versus inductive, logical and systematic versus pragmatic, rule-bound versus fact-bound, future-oriented versus past-oriented, and so forth. For comparative law, accordingly, legal norms should be treated not as value-free rules but as

fitting into the differing mentalities of the legal systems. From this there also follows the impossibility of 'legal transplants'. Even formally identical rules are differently interpreted and applied in different legal systems, not surviving the journey from one legal system to another unchanged. Sometimes the transfer of a legal rule from one country to another is also called a 'legal irritant', which means that this transfer does not lead to convergence but triggers a whole series of new and unexpected events.[77]

These convergence critics are correct in saying that even within the European Union it is not realistic that the entirety of law (statutory law, case law, legal practice, and legal culture) is becoming identical. However, this does not mean that there can be no convergence. Convergence does not call for identity. Thus, even if, for example, differences in legal culture persist and transfers of legal rules do not lead to identity, there can still be 'convergence'. In particular, there is no denying the fact that in the EU the laws of the Member States are becoming more similar in many areas (but, of course, not identical). Although, for instance, the European Directives on company law only provide minimum harmonisation, leave many gaps, and may be applied differently,[78] they have at least reduced some differences among Member States. Thus, for instance, although one can still compare the different rules on the mandatory bid, the Takeover Directive now excludes the situation in which the law of a Member State does not provide a mandatory bid at all.[79]

The suggestion that on a global scale laws are becoming more similar is even more controversial.[80] However, at least in the field of commercial law, clear convergence forces can be identified. On the one hand, there is 'convergence through congruence'[81] because, as the social, political and economic conditions that form the background to the law come closer together internationally, the law itself also grows more similar. On the other hand, there is 'convergence through pressure' because across-countries interest groups press for an approximation of laws.[82] For shareholder protection convergence has also been demonstrated empirically.[83] The consequence is that to some extent comparative law becomes fruitless. Ironically, this is also fostered by comparatists themselves because their spreading of knowledge about different legal systems reduces path dependencies which would have hindered convergence.[84]

B. The Evolving Legal Framework

Harmonisation and convergence 'only' make it less interesting to compare national laws. The even bigger challenge is that the configuration of the legal framework itself is changing. For instance, it is said that 'state-based law in the traditional sense becomes a component in a complex network of national,

transnational and international private and public norms'.[85] Thus, one needs to study the relationship among these different types of regulations. A new type of conflict of laws and not primarily comparative law may therefore be crucial in order to understand the legal systems of the world.

Furthermore, new law making procedures make it difficult to focus just on national statutory and case law. This is one of the main themes of the debate on future 'global governance'. On a formal level 'governance' (in contrast to 'government') means that instead of mandatory, hierarchical legal norms, innovative regulatory philosophies, such as soft law and more co-operative forms of lawmaking, are used.[86] Examples include codes of conduct for national and multinational corporations.[87] Substantively, the focus on 'governance' also challenges comparative lawyers. In the sense of 'good governance' it means that even in times of globalisation public goods like a stable, fair world financial system, a minimum of social justice and an intact environment must be ensured.[88] This 'politisation' of the law can be regarded as alien to the comparative lawyer, who denies 'easy solutions or political ambitions', whose project is one of 'comprehension rather than governance', and who is 'the last honest man', whose 'goal is understanding or contributing to a broadly humanist understanding of a universal phenomenon called "law"'.[89]

These challenges mean that comparative lawyers have to rethink their methodology, and in particular their relationship to international law, soft law and politics. The last section will give some pointers as to how this might be done.

VI. Between Scylla and Charybdis

In the Odyssey, Odysseus had to choose whether to sail the side of the channel overlooked by the six-headed monster Scylla, or the other side where there was the enormous whirlpool Charybdis.[90] Similarly, it can be wondered how can comparative law escape its dangers. The first option may be to return 'back home' to the roots of comparative law. However, this is hardly feasible in view of the changes in the legal landscape.[91] It would also be unfortunate to eliminate, for instance, the innovations of the new interdisciplinary and quantitative approaches to comparative law.[92]

Second, one may choose the 'open sea' where 'anything goes'. This methodological relativism is not foreign to comparative law. It is frequently said that comparative law has no fixed working method,[93] that its methodology is 'still at the experimental stage', and that there is 'very little systematic writing about the methods of comparative law'.[94] However, this is also unsatisfactory,

because reflection about one's own methodology – which necessarily leads to the conclusion that some things are not appropriate[95] – is one of the preconditions for a serious field of research.

Third, one might try to find an appropriate 'harbour'. It has already been suggested that 'a sound theoretical canon of comparative law' should be established.[96] Such an agreement of the comparative law community is entirely unrealistic. And as the canon would probably be developed by the very scholars who control the existing institutions of comparative law, it would also stifle innovation.

In my view, the compromise solution is to look for 'rivers'. This means that there can be different approaches to comparative law research depending on its aim and the personal preferences and expertise of the researcher. This would channel the research and could also show what does not work in a particular field.[97] It would also keep the tolerance of a diversity of approaches to comparative law. Of course, exchanges and mergers of these different approaches – 'rivers flowing together' – are also possible.

Finally, it does not really matter whether these approaches are still called comparative law. For instance, Patrick Glenn did not feel it necessary to include the term 'comparative law' in the title or the preface of his award-winning book on 'Legal Traditions of the World'.[98] And although it has been suggested that the new quantitative methodology[99] be called 'numerical comparative law',[100] it is perhaps no coincidence that the supporters of this methodology prefer the title 'law and finance', thus disguising the comparative law element of their research.

VII. Summary

There is a need to reflect the purpose and methodology of comparative law. This is based on a number of reasons.

Comparative law is often disregarded. This is particularly striking in the US, but it is also a general phenomenon, and this article has presented some empirical evidence. Of course, there is no complete disregard and some recent trends may provide hope. In particular, it is worth noting that the discussion about the Europeanization of private law has led to an increasing interest in comparative private law.

There is a trend to emphasise the complexity of comparative law. In its strong form this view almost makes comparative law impossible. More common is the

weaker form, which emphasises, for instance, the importance of the socio-economic context for a comparative research. This has its merits. However, it may have the side-effect of discouraging comparative research.

The simplicity of comparative law is, on the one hand, an old phenomenon. This 'traditional simplistic approach' to comparative law is mainly focussed on an accurate description of a particular foreign legal system, which is not really comparative law. On the other hand, there is a recent trend to apply a quantitative methodology to comparative law. This can have its merits. However, most of the quantitative comparative research disregards the problems which a reduction of complexity by numbers entail.

A major interest of traditional comparative law is the comparison of laws of different countries. Thus, as far as legal systems are converging, comparative law becomes pointless. To be sure, even within the European Union legal systems will not become identical. As convergence does not mean identity, some convergence will, however, reduce the relevance of comparative law. This is also fostered by the fact that new forms of governance and the importance of politics challenge the traditional method of comparison.

There are different ways in which comparative law can be pursued. However, this does not mean that 'anything goes'. This article has identified some of the problems of contemporary comparative law. Thus, there a need to reflect about the methodology of comparative law and its relationship to related areas of research.[101]

Notes

[1] Sacco, R (2000) 'One Hundred Years of Comparative Law' (75) *Tulane Law Review* 1159; but see also Hug, W (1931-32) 'The History of Comparative Law' (45) *Harvard Law Review* 1027; Dononue, C (2006) 'Comparative Law before the Code Napoléon' in Reimann, M and Zimmermann, R (eds) *The Oxford Handbook of Comparative Law* OUP 3.

[2] Örücü, E (2004) *The Enigma of Comparative Law* Martinus Nijhoff at 216; Koopmans, T (1996) 'Comparative Law and the Courts' (45) *International and Comparative Law Quarterly* 545 at 556.

[3] See Saleilles, R (1900), 'Conception et objet de la science du droit comparé', report for *Congrès International de droit comparé* Société de Législation Comparée at 383; more recently Van Hoecke, M (ed) (2004) *Epistomology and Methodology of Comparative Law* Hart; Örücü, E (2006) 'Methodology of Comparative Law' in Smits, JM (ed), *Elgar Encyclopedia of Comparative Law* Edward Elgar 442.

[4] *Lawrence v Texas* 123 Ct 2472, 2495 (2003) (Scalia J) and *Foster v Florida*, 537 US 990 (2002) (Thomas J); see also Legrand, P (2006) 'Comparative Legal Studies and the Matter of Authenticity' (1) *Journal of Comparative Law* 365.

[5] *Aktins v Virginia* 536 US 304. 348 (2002).

[6] *Roper v Simmons* 543 US 551, 608 (2005).

[7] See http://transcripts.cnn.com/TRANSCRIPTS/0509/13/se.04.html

[8] See the cases in notes 4-6 above.

[9] See Fine, T (2006) 'American Courts and Foreign Law: The New Debate' *DAJV Newsletter* 107 at 117.

[10] Childress III, DE (2003) 'Note, Using Comparative Constitutional Law to Resolve Foreign Questions' (53) *Duke Law Journal* 193; Rubenfeld, J (2004) 'Unilateralism and Constitutionalism' (79) *New York University Law Review* 1971; Wilkinson III, JH (2004) 'The Use of International Law in Judicial Decisions' (27) *Harvard Journal of Law and Public Policy* 423; Sanchez, EJ (2005) 'A Case Against Judicial Internationalism' (38) *Connecticut Law Review* 185; Alford, RP (2004) 'Misusing International Sources to Interpret the Constitution' (98) *American Journal of International Law* 57; Posner, RA (2005) 'Foreword: A Political Court' (199) *Harvard Law Review* 31.

[11] Von Bar, C (2004) 'Comparative Law of Obligations: Methodology and Epistemology' in Van Hoecke, M (ed) *Epistomolgy and Methodology of Comparative Law* Hart 123 at 124; see also Reimann, M (1996) 'The End of Comparative Law as an Autonomous Subject' (11) *Tulane European and Civil Law Forum* 49 at 53 ('Some causes lie in the intellectual and cultural

predisposition of the majority of American lawyers, as is widely known and much bemoaned. Among them are parochialism, belief in the superiority of the American Way (i.e., arrogance), the lack of language skills, etc.')

[12] Reimann supra note 11 at 52.

[13] Hoeflich, MH (1987) 'Transatlantic Friendships and the German Influence on American Law in the First Half of the Nineteenth Century' (35) *American Journal of Comparative Law* 604; Riesenfeld, S (1987) 'The Influence of German Legal Theory on American Law: The Heritage of Savigny and His Disciples' (37) *American Journal of Comparative Law* 1; Clark, DS (2006) 'Development of Comparative Law in the United States' in Reimann and Zimmermann supra note 1 175.

[14] The data for the 2000s (ie 2000-2009) are a projection, using the data for 2000-2006. For the complete data see the Annex, below.

[15] This is one of the general limits of a numerical approach to comparative law. See Siems, MM (2005) 'Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity?' (13) *Cardozo Journal of International and Comparative Law* 521.

[16] Drobnig, U (1998) 'General Report' in Drobnig, U and Van Erp, S (eds) *The Use of Comparative Law by Courts* Kluwer Law International 3 at 12.

[17] Siems, MM (2007) 'Legal Origins: Reconciling Law & Finance and Comparative Law' (52) *McGill Law Journal* (forthcoming).

[18] See Markesinis, Sir B (2003) *Comparative Law in the Courtroom and Classroom* Hart at 39, 61-2; Levitt, N (1989) 'Listening to Tribal Legends: An Essay on Law and the Scientific Method' (58) *Fordham Law Review* 263.

[19] Markesinis supra note 18 at 53; see also Markesinis, Sir B (1990) 'Comparative Law – A Subject in Search of an Audience' (53) *Modern Law Review* 1; Markesinis, Sir B (1997) *Foreign Law and Comparative Methodology* Hart at 3.

[20] Von Bar supra note 11 at 127-8.

[21] Drobnig and Van Erp supra note 16; Drobnig, U (1986) 'Rechtsvergleichung in der deutschen Rechtssprechung' (50) *RabelsZ* 610; Kötz, H (2000) 'Der Bundesgerichtshof und die Rechtsvergleichung' in *Festgabe 50 Jahre Bundes-gerichtshof, Volume II* at 825.

[22] Markesinis, Sir B and Fedtke, J (2005) 'The Judge as Comparatist' (80) *Tulane Law Review* 11 at 42.

[23] Von Bar supra note 11 at 124-5.

[24] Eg the recent *European Review of Contract Law* and the *Zeitschrift für Gemeinschaftsprivatrecht*.

[25] Eg http://www.law.kuleuven.be/casebook/.

[26] Eg http://www.jus.unitn.it/dsg/common-core/books.html.

[27] See also Zimmermann, R (2006) 'Comparative Law and the Europeanization of Private Law' in Reimann and Zimmermann supra note 1 539.

[28] Cf Reimann supra note 11 at 65.

[29] See the webpage http://www.europaeische-juristenausbildung.de/laenderframe.htm which provides information about legal education in the EU Member States (in German).

[30] Coase, R (1993) 'Law and Economics at Chicago' (36) *Journal of Law and Economics* 239 at 254 ('Ernest Rutherford said that science is either physics or stamp collecting, by which he meant, I take it, that it is either engaged in analysis or operating a filing system. Much, perhaps most, legal scholarship has been stamp collecting. Law and economics is likely to change all that')

[31] The data for the 2006-2010 are a projection, using the data for 2006. For the complete data see the Annex, below.

[32] Legrand, P (1985) 'Comparative Legal Studies and Commitment to Theory' (58) *Modern Law Review* 262; Legrand, P (2006) *Le droit compare* Presses Universitaires de France 2nd edn.

[33] Legrand, P (1996) 'How to Compare Now?' (16) *Legal Studies* 232; Frankenberg, G (1985) 'Critical Comparisons: Rethinking Comparative Law' (26) *Harvard International Law Journal* 411; see also Riles, A (1999) 'Wigmore's Treasure Box: Comparative Law in the Era of Information' (40) *Harvard International Law Journal* 221; Reimann, M (2002) 'The Progress and Failure of Comparative Law in the 2nd Half of the Twentieth Century (50) *American Journal of Comparative Law* 671 at 678-83.

[34] Legrand, P (1996) 'European Legal Systems are not Converging' (45) *International and Comparative Law Quarterly* 52; see also Van Hoecke, M (2004) 'Deep Level Comparative Law' in Van Hoecke supra note 11 165 at 172.

[35] Legrand, P (1996) 'How to Compare Now?' (16) *Legal Studies* 232.

[36] Against this view Caterina, R (2004) 'Comparative Law and the Cognitive Revolution' (78) *Tulane Law Review* 1501.

[37] Legrand, P (2006) 'On the Singularity of Law' (47) *Harvard International Law Journal* 517.

[38] Van Hoecke supra note 34 at 173.

[39] Van Hoecke supra note 34 at 167; from a non-comparative perspective see also Kronman, A (1995) *The Lost Lawyer* Belknap Press.

[40] See for the belief that generalisation is possible as a necessary precondition for comparative law Merryman, JH (1999) *The Loneliness of the Comparative Lawyer* Kluwer at 491.

[41] For this general problem of comparative law see Siems, MM (2005) 'Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity' (13) *Cardozo Journal of International and Comparative Law* 521.

[42] Posner, RA (1987) 'The Decline of Law as an Autonomous Discipline: 1962-1987' (100) *Harvard Law Review* 761.

[43] Reimann supra note 33 at 685, 693; Roos, N (2004) 'NICE Dreams and Realities of European Private Law' in Van Hoecke supra note 11 197 at 215.

[44] Van Hoecke supra note 34 at 178 *et seq*.

[45] Cf Riles supra note 33 at 244.

[46] For a different view see Glenn, HP (2001) 'Are Legal Traditions Incommensurable?' (49) *American Journal of Comparative Law* 133; see also Örücü supra note 2 at 19 *et seq*.

[47] Eg Reimann, M (2001) 'Beyond National Systems: A Comparative Law for the International Age' (75) *Tulane Law Review* 1103 at 1115 (2001); Örücü, E (2004) 'Family Trees for Legal Systems: Towards a Contemporary Approach, Epistemology and Methodology of Comparative Law' in Van Hoecke supra note 11 359 at 361; Husa, J (2004) 'Classification of Legal Families Today – Is it Time For a Memorial Hymn?' *Revue internationale de droit comparé* 11.

[48] Reimann supra note 47 at 1114.

[49] Örücü supra note 47 at 375.

[50] See Siems, MM (2007) *Convergence in Shareholder Law* Cambridge University Press Ch 1 III 3 b (forthcoming).

[51] See Ahlering, B and Deakin SF (2007) 'Labour Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?' (41) *Law and Society Review* (forthcoming).

[52] A similar tolerance is also advocated fro legal research in general; Siems, M (2007) 'Legal Originality', Working Paper, available at http://ssrn.com/abstract=976168.

[53] Van Hoecke supra note 34 at 166.

[54] Reimann supra note 33 at 684.

[55] Merryman supra note 40 at 4.

[56] Zweigert, K and Kötz, H (1998) *An Introduction to Comparative Law* Oxford University Press at 323-708.

[57] See http://www.law.kuleuven.be/casebook/.

[58] Van Hoecke, supra note 34 at 168-9.

[59] See http://www.iuscomparatum.org/.

[60] Reimann supra note 33 at 687.

[61] La Porta, R et al (1998) 'Law and Finance' (106) *Journal of Political Economy* 1113.

[62] Namely: 'one share one vote', 'proxy by mail allowed', 'shares not blocked before the meeting', 'cumulative voting', 'oppressed minorities mechanism', 'pre-emptive rights to new issues', 'share capital required to call an extraordinary shareholder meeting', and 'mandatory dividend'.

[63] See references in Siems supra note 17; Siems supra note 41.

[64] The full report can be found at http://www.doingbusiness.org/.

[65] Similar Twining, W (2006) 'Diffusion of Law: A Global Perspective' (1) *Journal of Comparative Law* 237 at 259.

[66] Googling 'Zweigert' and 'Kötz' (with consideration of different spellings) led to 24,300 hits; 'La Porta' and 'Lopez-de-Silanes' (with consideration of the abbreviations La Porta et al and LLSV) led to 284,800 hits (date: 6 February 2007). In Westlaw (category World Journals and Law Reviews 2006) there were 30 hits for Zweigert and Kötz and 46 hits for La Porta and Lopez-de-Silanes.

[67] For a recent overview see Jordan, C (2005), 'The Conundrum of Corporate Governance' 30 *Brooklyn Journal of International Law* 983.

[68] Impact assessment on the proposal for a directive on the exercise of shareholders' voting rights, SEC(2006)181, at pp. 7, 53; available at http://register.consilium.eu.int/pdf/en/06/st05/st05217-ad01.en06.pdf.

[69] See the section on the Irrelevance of Comparative Law above.

[70] See eg http://news.bbc.co.uk/1/hi/business/5313146.stm; http://politics.guardian.co.uk/development/comment/0,,1715368,00.html; http://business.timesonline.co.uk/article/0,,8210-1682019,00.html.

[71] See http://www.gip-recherche-justice.fr/aed.htm. This project has already led to the publication of du Marais, B (2006) *Des indicateurs pour mesurer le droit ? – Les limites méthodologiques des rapports Doing business* La Documentation Française.

[72] Association Henri Capitant des Amis de La Culture Juridique Française (2006) *Les droits de tradition civiliste en question – A propos des rapports Doing Business de la Banque Mondiale* available at http://www.henricapitant.org/IMG/pdf/Les_droits_de_tradition_civiliste_en_question.pdf

[73] Eg Spamann, H (2006) 'On the Insignificance and/or Endogeneity of La Porta et al's "Anti-Director Rights Index" under Consistent Coding' available at http://ssrn.com/abstract=894301; Cools, S (2005) 'The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers' (36) *Delaware Journal of Corporate Law* 697; Braendle, UC (2006) 'Shareholder Protection in the USA and Germany – "Law and Finance" Revisited' (7) *German Law Journal* 257.

[74] See Lele, PP and Siems, MM (2007) 'Shareholder Protection: A Leximetric Approach' (7) *Journal of Corporate Law Studies* 17.

[75] For a quantitative example see Cambridge's Project on Law, Finance, and Development at http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm.

[76] In particular Legrand supra note 34; see also Foster, NHD (2006) 'The Journal of Comparative Law: A New Scholarly Recourse' (1) *Journal of Comparative Law* 1-3.

[77] Teubner, G (1998) 'Legal Irritants: Good Faith in British Law Or How Unifying Law Ends Up in New Differences' (61) *Modern Law Review* 11; reprinted in Snyder, F (ed), *The Europeanisation of Law: The Legal Effects of European Integration* Hart at 243.

[78] See eg Enriques, L (2006) 'EC Company Law Directives and Regulations: How Trivial Are They?' (27) *University of Pennsylvania Journal of International Economic Law* 1.

[79] As is the case in the US; for Europe see Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, Article 5.

[80] For the company law literature see eg Gordon, JN and Roe, MJ (eds) (2004) *Convergence and Persistence in Corporate Governance* Cambridge University Press; McDonnell, BH (2002) 'Convergence in Corporate Governance – Possible, but not Desirable' (47) *Villanova Law Review* 341; Branson, DM (2001) 'The Very Uncertain Prospect of "Global" Convergence in Corporate Governance' (34) *Cornell International Law Journal* 321; Gilson, RJ (2001) 'Globalizing Corporate Governance: Convergence of Form or Function' (49) *American Journal of Comparative Law* 329; Hansmann H and Kraakman R (2001) 'The End of History for Corporate Law' (88) *Georgetown Law Journal* 439.

[81] Others call this 'natural convergence', see Merryman supra note 40 at 30 *et seq.*; de Cruz, P (1999) *Comparative Law in a Changing World* Cavendish 2nd edition at 491.

[82] See Siems supra note 50 at Ch 8.

[83] Lele and Siems supra note 74.

[84] See Siems supra note 50 at Ch 8.

[85] Ladeur, KH (2004) 'Methodology and European Law – Can Methodology Change so as to Cope with the Multiplicity of the Law?' in Van Hoecke supra note 11 91 at 95-6; see also Teubner, G and Fischer-Lescano, A (2004), 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law' (25) *Michigan Journal of International Law* 999; Zumbansen, P (2006) 'Transnational Law' in Smits, JM (ed), *Elgar Encyclopedia of Comparative Law* Edward Elgar 738.

[86] For the term 'governance' see eg Rhodes, R (1997) *Understanding Governance* Open University Press.

[87] For corporate governance codes see generally http://www.ecgi.org; for the 2004 OECD Principles on Corporate Governance see http://www.oecd.org/dataoecd/32/18/31557724.pdf; for the 2000 OECD Guidelines for Multilateral Enterprises see http://www.oecd.org/dataoecd/56/36/1922428.pdf.

[88] See eg Stiglitz, JE (2006), *Making Globalization Work* Penguin at 269 *et seq.*

[89] Citations from Kennedy, David (1997) 'New Approaches to Comparative Law: Comparativism and International Governance' *Utah Law Review* 545 at 588-9, 614, 634.

[90] Homer, *The Odyssey*, Book XII.

[91] See the section on the Irrelevance of Comparative Law above.

[92] See the section on the Impossibility and on the Simplicity of Comparative Law above.

[93] Markesinis supra note 18 at 22.

[94] Zweigert and Kötz supra note 56 at 33; Merryman supra note 40 at 3; Mattei, U and Monti, A (2001) 'Comparative Law and Economics, Borrowing and Resistance' (1) *Global Jurist Frontiers*, No 2 Article 5 at 4.

[95] See eg the World Bank's ranking discussed in the section on the Simplicity of Comparative Law above.

[96] Reimann supra note 33 at 695-7.

[97] Such as interdisciplinary and numerical approaches to comparative law.

[98] Glenn supra note 46.

[99] See the section on the Simplicity of Comparative Law above.

[100] Siems supra note 41.

References

Ahlering, B and Deakin SF (2007) 'Labour Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?' (41) *Law and Society Review* (forthcoming)

Alford, RP (2004) 'Misusing International Sources to Interpret the Constitution' (98) *American Journal of International Law* 57

Association Henri Capitant des Amis de La Culture Juridique Française (2006) *Les droits de tradition civiliste en question – A propos des rapports Doing Business de la Banque Mondiale* available at http://www.henricapitant.org/IMG/pdf/Les_droits_de_tradition_civiliste_en_question.pdf

Braendle, UC (2006) 'Shareholder Protection in the USA and Germany – "Law and Finance" Revisited' (7) *German Law Journal* 257

Branson, DM (2001) 'The Very Uncertain Prospect of "Global" Convergence in Corporate Governance' (34) *Cornell International Law Journal* 321

Caterina, R (2004) 'Comparative Law and the Cognitive Revolution' (78) *Tulane Law Review* 1501

Childress III, DE (2003) 'Note, Using Comparative Constitutional Law to Resolve Foreign Questions' (53) *Duke Law Journal* 193

Coase, R (1993) 'Law and Economics at Chicago' (36) *Journal of Law and Economics* 239

Cools, S (2005) 'The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers' (36) *Delaware Journal of Corporate Law* 697

de Cruz, P (1999) *Comparative Law in a Changing World* Cavendish 2nd edition

Drobnig, U (1986) 'Rechtsvergleichung in der deutschen Rechtssprechung' (50) *RabelsZ* 610

Drobnig, U and Van Erp, S (eds) (1998) *The Use of Comparative Law by Courts* Kluwer Law International

du Marais, B (2006) *Des indicateurs pour mesurer le droit ? – Les limites méthodologiques des rapports Doing business* La Documentation Française

Enriques, L (2006) 'EC Company Law Directives and Regulations: How Trivial Are They?' (27) *University of Pennsylvania Journal of International Economic Law* 1

Fine, T (2006) 'American Courts and Foreign Law: The New Debate' *DAJV Newsletter* 107

Foster, NHD (2006) 'The Journal of Comparative Law: A New Scholarly Recourse' (1) *Journal of Comparative Law* 1

Frankenberg, G (1985) 'Critical Comparisons: Rethinking Comparative Law' (26) *Harvard International Law Journal* 411

Gilson, RJ (2001) 'Globalizing Corporate Governance: Convergence of Form or Function' (49) *American Journal of Comparative Law* 329

Glenn, HP (2001) 'Are Legal Traditions Incommensurable?' (49) *American Journal of Comparative Law* 133

Gordon, JN and Roe, MJ (eds) (2004) *Convergence and Persistence in Corporate Governance* Cambridge University Press

Hansmann H and Kraakman R (2001) 'The End of History for Corporate Law' (88) *Georgetown Law Journal* 439.

Hoeflich, MH (1987) 'Transatlantic Friendships and the German Influence on American Law in the First Half of the Nineteenth Century' (35) *American Journal of Comparative Law* 604

Hug, W (1931-32) 'The History of Comparative Law' (45) *Harvard Law Review* 1027

Husa, J (2004) 'Classification of Legal Families Today – Is it Time For a Memorial Hymn?' *Revue internationale de droit comparé* 11

Jordan, C (2005), 'The Conundrum of Corporate Governance' 30 *Brooklyn Journal of International Law* 983

Kennedy, David (1997) 'New Approaches to Comparative Law: Comparativism and International Governance' *Utah Law Review* 545

Koopmans, T (1996) 'Comparative Law and the Courts' (45) *International and Comparative Law Quarterly* 545

Kötz, H (2000) 'Der Bundesgerichtshof und die Rechtsvergleichung' in *Festgabe 50 Jahre Bundesgerichtshof, Volume II* at 825.

Kronman, A (1995) *The Lost Lawyer* Belknap Press

La Porta, R et al (1998) 'Law and Finance' (106) *Journal of Political Economy* 1113

Legrand, P (1985) 'Comparative Legal Studies and Commitment to Theory' (58) *Modern Law Review* 262

Legrand, P (1996) 'European Legal Systems are not Converging' (45) *International and Comparative Law Quarterly* 52

Legrand, P (1996) 'How to Compare Now?' (16) *Legal Studies* 232

Legrand, P (2006) 'Comparative Legal Studies and the Matter of Authenticity' (1) *Journal of Comparative Law* 365

Legrand, P (2006) 'On the Singularity of Law' (47) *Harvard International Law Journal* 517

Legrand, P (2006) *Le droit compare* Presses Universitaires de France 2nd edn.

Lele, PP and Siems, MM (2007) 'Shareholder Protection: A Leximetric Approach' (7) *Journal of Corporate Law Studies* 17

Levitt, N (1989) 'Listening to Tribal Legends: An Essay on Law and the Scientific Method' (58) *Fordham Law Review* 263

Markesinis, Sir B (1990) 'Comparative Law – A Subject in Search of an Audience' (53) *Modern Law Review* 1

Markesinis, Sir B (1997) *Foreign Law and Comparative Methodology* Hart

Markesinis, Sir B (2003) *Comparative Law in the Courtroom and Classroom* Hart

Markesinis, Sir B and Fedtke, J (2005) 'The Judge as Comparatist' (80) *Tulane Law Review* 11

Mattei, U and Monti, A (2001) 'Comparative Law and Economics, Borrowing and Resistance' (1) *Global Jurist Frontiers*, No 2 Article 5.

McDonnell, BH (2002) 'Convergence in Corporate Governance – Possible, but not Desirable' (47) *Villanova Law Review* 341

Merryman, JH (1999) *The Loneliness of the Comparative Lawyer* Kluwer

Örücü, E (2004) *The Enigma of Comparative Law* Martinus Nijhoff

Posner, RA (1987) 'The Decline of Law as an Autonomous Discipline: 1962-1987' (100) *Harvard Law Review* 761

Posner, RA (2005) 'Foreword: A Political Court' (199) *Harvard Law Review* 31

Reimann, M (1996) 'The End of Comparative Law as an Autonomous Subject' (11) *Tulane European and Civil Law Forum* 49

Reimann, M (2001) 'Beyond National Systems: A Comparative Law for the International Age' (75) *Tulane Law Review* 1103

Reimann, M (2002) 'The Progress and Failure of Comparative Law in the 2nd Half of the Twentieth Century (50) *American Journal of Comparative Law* 671

Reimann, M and Zimmermann, R (eds) (2006), *The Oxford Handbook of Comparative Law* OUP

Rhodes, R (1997) *Understanding Governance* Open University Press

Riesenfeld, S (1987) 'The Influence of German Legal Theory on American Law: The Heritage of Savigny and His Disciples' (37) *American Journal of Comparative Law* 1

Riles, A (1999) 'Wigmore's Treasure Box: Comparative Law in the Era of Information' (40) *Harvard International Law Journal* 221

Rubenfeld, J (2004) 'Unilateralism and Constitutionalism' (79) *New York University Law Review* 1971

Sacco, R (2000) 'One Hundred Years of Comparative Law' (75) *Tulane Law Review* 1159

Saleilles, R (1900), 'Conception et objet de la science du droit comparé', report for *Congrès International de droit comparé* Société de Législation Comparée at 383

Sanchez, EJ (2005) 'A Case Against Judicial Internationalism' (38) *Connecticut Law Review* 185

Siems, MM (2005) 'Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity?' (13) *Cardozo Journal of International and Comparative Law* 521

Siems, MM (2007) 'Legal Origins: Reconciling Law & Finance and Comparative Law' (52) *McGill Law Journal* (forthcoming)

Siems, MM (2007) *Convergence in Shareholder Law* Cambridge University Press (forthcoming)

Smits, JM (ed) (2006), *Elgar Encyclopedia of Comparative Law* Edward Elgar

Spamann, H (2006) 'On the Insignificance and/or Endogeneity of La Porta et al's "Anti-Director Rights Index" under Consistent Coding' available at http://ssrn.com/abstract=894301

Stiglitz, JE (2006), *Making Globalization Work* Penguin

Teubner, G (1998) 'Legal Irritants: Good Faith in British Law Or How Unifying Law Ends Up in New Differences' (61) *Modern Law Review* 11; reprinted in Snyder, F (ed), *The Europeanisation of Law: The Legal Effects of European Integration* Hart at 243.

Teubner, G and Fischer-Lescano, A (2004), 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law' (25) *Michigan Journal of International Law* 999

Twining, W (2006) 'Diffusion of Law: A Global Perspective' (1) *Journal of Comparative Law* 237

Van Hoecke, M (ed) (2004) *Epistomology and Methodology of Comparative Law* Hart

Wilkinson III, JH (2004) 'The Use of International Law in Judicial Decisions' (27) *Harvard Journal of Law and Public Policy* 423

Annex

Number of articles in the *Harvard Law Review* containing words indicating consideration of comparative law			
Years	*droit*	*Recht*	comparative law
1950-1959	42	16	45
1960-1969	36	19	37
1970-1979	19	10	16
1980-1989	9	6	16
1990-1999	14	9	13
2000-2010 (Projection using the data for 2000- 6)	*9*	*3*	*41*

Number of articles in the *NJW* containing words indicating consideration of comparative law				
Years	law	*droit*	*Rechtsvergleichung*	Total number of pages in *NJW*
1981-1985	112	49	68	2960 (1983)
1986-1990	197	63	80	3288 (1988)
1991-1995	137	48	67	3352 (1993)
1996-2000	198	47	103	3800 (1998)
2001-2005	231	44	128	3800 (2003)
2006-2010 (Projection using the data for 2006)	*225*	*30*	*90*	*3800 (2006)*

Hypothetical calculation if identical page number per year in *NJW*				
Years	law	*droit*	*Rechtsvergleichung*	Total number of pages (hypothetical)
1981-1985	144	63	87	3800
1986-1990	228	73	92	3800
1991-1995	155	54	72	3800
1996-2000	198	47	103	3800
2001-2005	231	44	128	3800
2006-2010 (Projection using the data for 2006)	*225*	*30*	*90*	*3800*