



What is a Mixed Legal System: Exclusion or Expansion?

Esin Örüçü*

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Summary Overview

Can it be satisfactory in our so called globalising age to group localisms under the broad headings of the ‘civil law tradition’ and the ‘common law tradition’ alone and regard other localisms as being derivatives of one of them? As a better approach I suggested a ‘family trees’ approach¹ within which legal systems could be classified according to their constituent elements. This entailed deconstruction or ‘productive disintegration’ and reconstruction of the legal systems that seemed so well settled in their respective families.

I found it equally unsatisfactory to concentrate only on legal systems that display substantial civil law and common law influences co-existing or overlapping in their structure and substance, and further still to group these in a ‘third family’.² First, not even all the legal systems that are mixtures of civil law and common law have been allocated a place in this family.³ Second, there are other combinations that are not, and cannot be given a place within this ‘third family’ as it stands, and also, third, when the theory of legal families itself is under challenge, it is not the time to create yet another monolithic one.

Thus ‘exclusion’ is a very narrow approach. ‘Expansion’ is to be advocated. Therefore, if mixed systems are to be studied together, certain sub-groups would need to be created: Some would be combinations of common law and civil law, such as Louisiana,

* Professorial Research Fellow and Professor Emerita of Comparative Law, University of Glasgow and Professor Emerita of Comparative Law, Erasmus Universiteit Rotterdam. This paper is appearing in the Journal of Comparative Law (JCL, ISSN 1477-0814) and is published in the EJCL with the permission of the JCL Editorial Board.

¹ Örüçü, E (2004) ‘Family Trees for Legal Systems: Towards a Contemporary Approach’ Chapter 18 in van Hoecke, M (ed), *Epistemology and Methodology of Comparative Law* (Oxford, Hart Publishing), 359-375. The present paper hails partly from this article as well as Örüçü, E (2004) *Enigma of Comparative Law – Variations on a Theme for the Twenty-First Century* (Leiden, Martinus Nijhoff), Chapter 10:3 and Örüçü, E ‘A General View of Legal Families and of Mixed Systems’ in Örüçü, E and Nelken, D (eds) *Comparative Law: A Handbook* (Oxford, Hart Publishing, 2007) Chapter 8, 169-187.

² Note the launching of the World Society of Mixed Jurisdiction Jurists in New Orleans (November 2002), and see Palmer, VV (2001) *Mixed Jurisdictions Worldwide: The Third Legal Family*, (Cambridge, Cambridge University Press).

³ Palmer in id, states that there are fifteen such systems but only covers seven of them (Louisiana, Israel, Scotland, South Africa, The Philippines, Puerto Rico and Quebec) and leaves out Bostwana, Lesotho, Swaziland, Sri Lanka, Mauritius, the Seychelles, Saint Lucia and Zimbabwe. The number could be sixteen as Namibia is also mentioned in passing.

Quebec, Scotland and Seychelles; some of civil law, common law, religious law and, until quite recently, Ottoman law, such as Israel; some of civil law, religious law, socialist law and tribal law such as Algeria; others, such as Hong Kong, that are combinations of traditional Chinese law, common law and socialist Chinese law, which itself embodies elements of the civilian tradition; some of common law, religious law and customary law such as India and Pakistan and so on. In addition, there would be ongoing mixtures, systems in transition, such as the legal systems looking for an identity, having left the socialist sphere in Europe and veered towards the civilian tradition. Poland, for instance, has a mixture of socialist law, Roman law, Polish law – itself a mix of German, French, Russian and Hungarian laws – traditional law and EU law. As some extreme examples one could also consider legally pluralist legal systems.

There is today an increasing interest in mixed systems in Europe. For instance, Jan Smits published a monograph ‘The Making of European Private Law: Towards a *Ius Commune Europaeum* as a Mixed Legal System’.⁴ Yet here too, though in a larger context, the exercise involves common law-civil law marriage. However, as this is not a general but a specific enterprise, with its own political agenda, this approach may be regarded as appropriate.

My ‘family trees’ scheme starts with the given assumption that all legal systems are mixed, whether covertly or overtly, and groups them according to the proportionate mixture of the ingredients. Thus some continental systems are combinations of Roman, French and German laws and indigenous law such as the Dutch; some of Roman, German and French laws such as the Italian; and some such as the Greek, of customary, neo-canon, German, Greek and Roman laws. There are even more complicated crosses such as in Malta. All continental systems are better understood as overlaps. Nevertheless, when we talk of ‘mixed systems’, this obvious fact can be put to one side and serve merely as a reminder that there are no pure legal systems in the world.

The ‘family trees’ scheme makes it easier to classify systems such as Malaysia, Singapore, Burma and Thailand, all meeting points between several legal traditions. The whole of South East Asia would be better served by this approach. Off-shoots and sub-groups would be catered for, and the overlaps clearly seen, all being the outcome of transpositions.⁵

Influences other than the civil law-common law, and different types of mixes deserve as much attention by comparatists in our century. Exclusivity pleases those who are included but does not satisfy or do justice to the excluded.

This contribution seeks to make the case for considering such systems and looks at examples of a number of overlaps of different types. The outcome would not be to suggest a new family but to pave the way for a theoretical and conceptual framework for analysis by expanding the notion of ‘mixed systems’.

⁴ Smits, JM (2002) *The Making of European Private Law: Towards a Ius Commune Europaeum as a Mixed Legal System* (Maastricht, Metro). Also see Smits, JM (1998) ‘A European Private Law as a Mixed Legal System’, 5 *Maastricht Journal of European and Comparative Law*, 328, and Smits, JM (ed) (2001) *The Contribution of Mixed Legal Systems to European Private Law* (Groningen, Intersentia).

⁵ For an analysis of ‘transposition’, see Örüçü, E (2002) ‘Law as Transposition’, (51) *International and Comparative Law Quarterly*, 205.

Introduction

For taxonomic purposes and ease of organisation comparatists have placed legal systems in legal families, though it is universally admitted that ‘the idea of a “legal family” does not correspond to a biological reality; it is no more than a didactic device.’⁶ Biological and linguistic taxonomies have been used in classification as organising devices. A first point to make is that it has been the practice to study legal systems that best represent large groups and then make generalisations based on concepts such as originality, derivation and common elements.⁷ The bases for classification have been similarities and relationships. Classifications rely on general characteristics, substance, sources and structure. The essence does not lie in diversity of rules in a given topic, nor in external criteria and context. Only the affinities are considered.

An entirely fresh approach is needed today, within which legal systems can be classified according to parentage, constituent elements and the resulting blend, and then be re-grouped on the principle of predominance. Obviously, parts of the new landscape will resemble the old, though the whole will look quite different.

A second point is that existing classifications rely on private law. They are Eurocentric and therefore heavily weighted towards the civil law and the common law families. Moreover, since legal systems may shift from one cluster towards another, fixed classifications can have only a limited lifespan. Therefore, the placing of a legal system in the legal families framework may have to be re-thought from time to time.⁸ New families may appear. It has been suggested, for example, that an ‘African legal family’ is emerging; and we know that interest in ‘mixed jurisdictions’ is increasing.

Konrad Zweigert and Hein Kötz proposed using ‘legal styles’ to discover shared distinctive elements between legal systems.⁹ However, they also pointed out that, ‘as the example of ‘hybrid’ systems shows, any division of the legal world into families, or groups is a rough and ready device.’¹⁰ We are also warned: ‘The suitability of any classification will depend upon whether the perspective is world-wide or regional, or whether attention is given to public, private or criminal law.’¹¹ Yet especially in Europe today it is commonplace not only to talk of civil law and common law families; but to treat them as if they are the only two monolithic entities. Such an approach is inadequate.

In addition, traditional classifications consider official law and the ‘top-down’ models exclusively. Groupings are all ‘legally structured’, and ‘structure-specific’. An entirely culture-specific approach may not be conclusive, but the relationship between legal and social systems must be given due weight.

⁶ David, R and Brierley, JEC (1985) *Major Legal Systems in the World Today, An Introduction to the Comparative Study of Law*, 3rd ed. (London, Stevens and Sons), at 21. Also see Husa, J (2004) ‘Classification of the Legal Families Today’ *Révue internationale de droit comparé*, 12.

⁷ For a summary of some past efforts at classification see Zweigert, K and Kötz, H (1998) *An Introduction to Comparative Law*, 3rd edn., trans. T Weir (Oxford, Clarendon Press), 63-67. Also see Bogdan, M (1994) *Comparative Law* (Göteborg, Kluwer Tano), 82-91.

⁸ Zweigert and Kötz, *ibid*, at 66.

⁹ *Ibid*, at 67-68.

¹⁰ *Ibid*, at 72.

¹¹ David and Brierley, *supra* note 6 at 21 and Bogdan *supra* note 7 at 85.

It is apparent that the 'legal families' division based solely on the 'law as rules' approach is collapsing. Other approaches are being put forward. One such suggestion, presented as being less biased, is the 'cultural families' division based on the 'law as culture' approach.¹²

Another such approach is the 'law and economics' approach, giving prominence to yet another context. Here we see how Ugo Mattei tries to draw the taxonomy away from the so-called Eurocentric axis to present a new map for the world's legal systems.¹³

Furthermore, Andrew Harding, whose main interest is in South East Asia, categorically tells us that all Eurocentric comparatists fall into the 'legal families trap'. He says that, 'Legal families tell us nothing about legal systems except as to their general style and method, and the idea makes no sense whatsoever amid the nomic din of South East Asia.'¹⁴

The above shows that scholars fail to agree on whether the notion of families is basic and scientific, or theoretically and descriptively useless. Those who do use the concept do not even agree on the criteria for classification and groupings.

Vernon Palmer, for example, places crosses between civil law and common law, in a 'third family' called 'mixed jurisdictions'.¹⁵ To talk of a new family with the name 'mixed jurisdictions' however, is not satisfactory, as not all 'mixes' would have the same or similar ingredients. It would be difficult to place, for example, Quebec and Algeria, both mixed systems, into one family. Simple mixes, complex mixes, dual systems and systems adhering to legal pluralism cannot be pooled together.¹⁶

In the website produced at the Faculty of Law of the University of Ottawa with the help of the Supreme Court of Canada Library on 'world's legal systems', the categories of legal systems are cited as civil law, common law, customary law, Islamic law, Talmudic law, mixed law and dependent territories. The use of the term 'mixed law' is then explained:

The term "mixed" was selected arbitrarily over "hybrid" or "composite". It should not be understood in the restricted sense employed by some authors. We will thus find in this category countries in which two or more legal systems apply concurrently or interactively, as well as those in which systems are rather juxtaposed because they apply to more or less clearly distinct fields.¹⁷

According to this source, 'mixed systems' appear in ten categories: mixes of civil law and common law (3.47% of the world population); civil law and customary law (28.54%); civil law and Muslim law (3.14%); common law and customary law (2.94); common law and Muslim law (5.25%), civil law, Muslim law and customary law (3.62%); common law, Muslim law and customary law (19.17%); civil law, common law and customary law (0.8%);

¹² On this basis van Hoecke and Warrington have distinguished four broad cultures: the African, the Asian, the Islamic and Western, that is, cultures with European roots: Europe, America and Oceania. See van Hoecke, M and Warrington, M (1998) 'Legal Cultures and Legal Paradigms: Towards a New Model for Comparative Law', (47) *International and Comparative Law Quarterly*, 495.

¹³ This classification is based on the rule of professional law, the rule of political law and the rule of traditional law, these three forming a triangle on the apices of which all legal systems can be placed. See Mattei, U (1997) 'Three Patterns of Law: Taxonomy and Change in the World's Legal Systems', (XLV) *American Journal of Comparative Law*, 1.

¹⁴ Harding, A (2002) 'Global Doctrine and Local Knowledge: Law in South East Asia', (51) *International and Comparative Law Quarterly*, 36 at 51.

¹⁵ Palmer, *supra* note 2.

¹⁶ See Öricü, E (1996) 'Mixed and Mixing Systems: A Conceptual Search', in Öricü, E, Attwooll, E and Coyle, S (eds) *Studies in Legal Systems: Mixed and Mixing* (London, KluwerLaw International), 344.

¹⁷ See <<http://aix1.uottawa.ca/world-legal-systems/eng-systems.html>>

common law, Muslim law and civil law (0.23%); and of civil law, common law and Talmudic law (0.09%). The number of jurisdictions that fall into the 'mixed systems with civil law' category are 65 (19.12% of the world's legal systems), 'mixed systems with common law' are 53 (15.59 %), 'mixed systems with customary law' are 54 (15.88%) and 'mixed systems with Muslim law' are 33 (9.70 %).

If a new family were to be created, 'mixed systems' would be a more appropriate name for it, with sub-categories. 'Mixed jurisdictions', as presented in the Palmer project, could be a sub-group within the sub-category of various crosses between common law and civil law.¹⁸ This would be a most exclusive group indeed, if numbers and percentages above were to be taken as meaningful.

Encounter and Combination

In any case it is a fact that 'the actual legal world is more to be seen as a world of "contaminations" than a world split up into different families', and 'practically every system, even in antiquity has grown through "contaminations"'¹⁹ as the practice of borrowing has always been the normal path of development. A comparative lawyer can detect cross-pollination and 'horizontal transfers' between systems at all times.

What is necessary today is a re-assessment of individual legal systems according to the old and new overlaps, combinations and blends, and of how the existing constituent elements have mingled and are mingling with new elements entering them. As noted in the 'Summary Overview' above, I propose a scheme that regards all legal systems as mixed and overlapping, overtly or covertly, and groups them according to the proportionate mixture of the ingredients. To do this, it is essential to look at the constituent elements in each legal system and to regroup legal systems on a much larger scale according to the predominance of the ingredient sources from whence each system is formed.

All legal systems are combinations and overlaps. Some such as the Dutch are combinations of Roman, French, German and indigenous laws, and some of Canon, Roman, French, Austrian and German laws and of *ius commune* such as the Italian. Then there are other combinations such as common law, religious law and indigenous customary laws as in countries such as India and Pakistan; and French, Socialist, Islamic and indigenous customary tribal laws as in Algeria. In fact, French, German and English common law are themselves all outcomes of overlaps of various ingredients. English law for instance, is becoming more and more an overlap of common law, various civilian systems and European law. Indeed, classical English common law itself was an overlap of Roman law, civilian ideas, canon law, equity and domestic common law.²⁰ Because layers may also shift their positions, the underlays and the overlays must be carefully distinguished. In Hong Kong, for example, English common law was the overlay until 1990, with Chinese customary law the underlay, but now, common law is becoming an underlay alongside Chinese customary law, both under a growing overlay of modern Chinese law. However, this re-thinking of legal systems may be seen as taking the expansion of the idea of 'mixed systems' a step too far.

¹⁸ For some suggestions see my Maps in the Annex to this study.

¹⁹ Monateri, PG (1998) 'The "Weak" Law: Contaminations and Legal Cultures' in *Italian National Reports to the XVth International Congress of Comparative Law*, Bristol 1998 (Milano, Giuffrè editore), 83 at 107.

²⁰ For contributions from Islamic and Talmudic laws into common law see the literature mentioned by Glenn, HP (2001) 'Are Legal Traditions Incommensurable?' (49) *American Journal of Comparative Law*, 133, at 141-142. Also see Glenn, HP (2005) *On Common Laws* (Oxford University Press).

The whole of South East Asia, with an abundance of off-shoots and sub-groups, profits mostly from such an approach. Two examples should suffice at this point. The first example is Thailand. Never a colony, since the end of the nineteenth century it has had in its modern texture a real mixture of sources such as English, German, French, Swiss, Japanese and American laws. These sit alongside historic sources in existence since 1283: rules from indigenous culture and tradition, customary laws and Hindu jurisprudence are still to be found in some modern enactments. In addition, Thai Codes were originally drafted in English and French and subsequently translated into Thai. Thailand's modern texture has been formed from many sources and the legal system of today still grapples with problems of translation and connotation. How then are we to categorise Thailand? How should this legal system be labelled?

Similar questions can be posed for Malaysia. First there was the 'native' law of the aboriginal inhabitants, which is still today regarded as positive law by courts. Then came layers of transplanted law: *adat* law (a number of Malay customs), Hindu and Buddhist laws, Islamic, Chinese, Thai laws, the English common law tradition coloured by Anglo-Indian Codes and the USA model. There are further influences in South East Asia: French, Dutch, German, Swiss, Portuguese and Spanish Civilian traditions, American, Japanese and Soviet laws.²¹ The region, says Harding,

has an abundance of legal traditions, practically all of them having been "received" or "transplanted" in one sense or another, and encompassing all of the world's major legal world views and systems. ... except perhaps for African law and Eskimo law.²²

What kind of a mixed system is this?

I have considered elsewhere four kinds of encounters between legal systems, legal cultures and socio-cultures:²³ those between systems of socio and legal cultural similarity, those between systems of socio-cultural similarity but legal cultural difference, those between systems of socio-cultural difference but legal cultural similarity, and those between systems of both socio and legal cultural difference. These encounters lead to overlaps, interrelationships, mixed and mixing systems and systems in transition. Law can always be approached as the product of a process of transposition.²⁴

When legal systems are considered as overlaps, combinations, marriages and offspring, terminology such as fertilisation, pollination, grafting, intertwining, osmosis and pruning can illuminate the processes of the birth of mixed systems.

The most significant theories explaining the birth of such systems however, come from linguistics: the 'family tree model' and the 'wave theory'.²⁵ The theory of the 'family tree model' of language development reflects an evolutionary approach and is the one generally used to explain ramification and divergence. The 'family tree' model (*stammbaum*)

²¹ Harding, *supra* note 14, at 42-43.

²² *Ibid* at 47.

²³ Öricü, E (1995) 'A Theoretical Framework For Transfrontier Mobility of Law', in Jagtenberg, R, Öricü, E and de Roo, A (eds) *Transfrontier Mobility of Law* (The Hague, Kluwer Law International), 5.

²⁴ The concept 'transposition', as in music, helps to highlight the crucial importance of the internal tuners who adjust the mix, adapting it to the new instrument, see Öricü, *supra* note 5.

²⁵ See for an exposition and analysis of these theories, Renfrew, C (1987) *Archeology and Language: The Puzzle of Indo-European Origins*, (London, Jonathan Cape), especially 105, 244-248. Also see Öricü, E, 'Convergence and Divergence: Theoretical Issues' in Antokolskaia, M (ed) *Convergence and Divergence of Family Law in Europe*, European Family Law Series, vol 18 (Morstel, Intersentia, 2007) 25-48. E (2007) 'Convergence...' in Antokolskaia, M (ed) ...

proposed by Augustus Schleicher in 1862,²⁶ assumed that resemblances arose from common origin (understood in terms of parenthood), and languages closely similar and linked were thought to have separated or diverged from each other, with original divergence and further subsequent divergence. The underlying human reality was first thought to be migration of peoples.²⁷ Thus, when speakers are no longer in contact, they drift apart linguistically, becoming isolated (evolutionary theory). The ‘family tree model’ is coherent but only takes into account one of the ways in which change, difference and diversity occur. Exclusive reliance on the ‘tree-model’ of development can only explain ramification and divergence. The model overlooks ‘the possibility that two languages may have passed through a period of common development, usually when their speakers occupied adjacent territories.’²⁸ In response, the ‘wave theory’ was developed.

The ‘wave theory’ or ‘wave hypotheses’, showing how changes spread like waves and disperse over a wide area, can also handle the equally important forces of convergence.²⁹ Introduced again in the 19th century by another German linguist, Johannes Schmidt in 1872,³⁰ the hypothesis was put forth that different linguistic changes spread like waves over a speech area thus leading to convergence. A subsequent wave may also move to areas not covered by the earlier wave. Schmidt drew lines (isoglosses) on a map to separate places where there were language differences, one isogloss enclosing one area with a particular linguistic form (divergence). Successive waves create a network of isoglosses. If however,

one dialect gains a political or commercial predominance of some sort over adjacent dialects, those nearest to this central dialect may give up their own peculiarities and come in time to speak only that central dialect.³¹

Following various local divergences (the tree model), the subsequent groupings would then have come about by the operation of the wave model. In this hypothesis, two or more closely related languages may each have features in common with their own neighbours that they do not share with each other. The relationships are far more complicated than any which could be conveyed simply by means of a ‘family tree’, as the ‘wave model’ caters both for convergence and divergence.

However, similarities do not always arise from genetic relationships, neither does resemblance necessarily indicate common origin. There can be ‘horizontal transfers’ between adjacent systems. ‘Horizontal transfer’ can also explain why a borrowed concept or institution does not always exactly retain its original meaning. Areas nearest or adjacent to the initial change will change first and may even give up their own peculiarities. Subsequent re-groupings may come about on the ‘wave model’ mentioned above.

It follows from the foregoing that a wave need not start from a fixed centre either. Developments can take place in steps with no one locale as the prime mover. It is not necessary to depict one as the donor and the other the recipient, though there may be ‘diffusion’, ‘infusion’ and even ‘suffusion’. There is no one localised homeland but ‘cumulative mutuality’ and interaction is in the essence. The ‘tree model’ and the ‘wave model’ can be used together to explain developments. As Renfrew says,

²⁶ Schleicher, A (1963) *Die Darwinsche Theorie und die Sprachwissenschaft* (Weimar). For the French edition see: *La Theorie de Darwin et la Science du Langage* in *Receuil de Travaux Originaux ou Traduit relatifs a L’Histoire Littéraire* 1 (Paris, Franck, 1968).

²⁷ Renfrew, supra note 25, 101-102.

²⁸ Ibid, 104.

²⁹ Ibid., 105.

³⁰ Schmidt, J (1872) *Die Verwandtschaftsverhältnisse der indogermanischen Sprachen* (Weimar, Böhlau).

³¹ Renfrew, supra note 25, 105.

it is, in fact, the resemblances between languages most distant from each other spatially which can least easily arise from the wave-like diffusion of an innovation, and are thus most likely to be the result, rather, of a relationship explicable in family tree terms.³²

Both on the ‘tree model’ and the ‘wave model’, a common ancestral origin is assumed. Yet, similarities can develop through time, by the process of convergence through contact. Therefore, common parentage is not in issue, since the ancestors could have been quite dissimilar, but through continuing contact, mutual influence and borrowing, the languages become significantly closer to each other, though never becoming identical. Thus waves cause diffusion and for dispersals to occur spontaneously through contact.³³

Replace the term ‘language’ by ‘law’, and one can see that this combined approach could indicate a way forward for an understanding of how legal systems function, change and develop; converge or diverge. These combined theories can cater for our understanding of mixed systems.

Civil law and common law would appear near, but not necessarily as the prime innovating centre, as it would of course be possible to go right back to the laws of Hammurabi, to Greek laws and beyond, even before considering Roman law, the ingredients of which possibly included elements of Hindu law through Egyptian and Greek channels. One sees that civil law and common law are but two of the ancestors, others being, according to one divide proposed by Patrick Glenn, Chthonic, Talmudic, Islamic, Hindu, and Asian.³⁴ Even then, Glenn says:

In looking at (only) seven legal traditions of the world, it has been impossible to avoid the existence of other recognizable legal traditions. Some might say the other legal traditions are minor ones, which complement or oppose the traditions which have been examined. This may or may not be accurate, since there are no well established criteria for distinguishing major from minor traditions. ... If the traditions in law which have been examined here ... appear presently as the major ones of the world, it may be that this is only a conclusion of first impression, and that there are other legal traditions ... which are still more profound and which await investigation, and recognition, as being of primary importance.³⁵

More important, in a later work, Glenn considers the relations of common laws of the world with each other. His claim is that common laws, tolerant to particular laws, were also tolerant of each other. Not being aggressive, they shared information. Thus interrelationship and interaction were crucial, and we know that interrelationship breeds mixedness.³⁶

According to Glenn, although the English common law and the *ius commune* have been widely discussed within the context of Europe, the fact that there were many more common laws and that these common laws themselves were in dynamic relationship, has been

³² Ibid, 111.

³³ A variant, ‘wave of advance model’, was also proposed to explain the random, unsystematic, slow, gradual and continuous convergence, as opposed to colonisation which also creates convergence, but through intentional and deliberate settlement. See Ammerman, AJ and Cavalli-Sforza, LL (1979) ‘The wave of advance model for the spread of agriculture in Europe’, in Renfrew, C and Cooke, KL (eds) *Transformations, Mathematical Approaches to Cultural Change* (New York, Academic Press), 275-294.

³⁴ Glenn, HP (2000) *Legal Traditions of the World* (Oxford, Oxford University Press).

³⁵ Ibid at 318-319.

³⁶ Glenn, 2005 supra note 20, at 119.

neglected. Through this interaction and because individual legal systems appropriated notions, rules, institutions and principles from these common laws, another explanation of mixedness emerges. Until the nineteenth century the numerous common laws of Europe -- French, German, Spanish, Dutch and English -- lived in constant interaction with the local particular and with each other. As these common laws expanded both within and outside Europe, particular laws they met appropriated them. There was constant contact and intermingling. Common laws were the main instrument of 'conciliation' of laws. We see this best in mixed systems. Claims of universality were reconciled with claims of particularity at a time when law was not seen as an exclusive product of the State. Even later, at a time of legal nationalism this continued to be the case. This understanding only challenges 'exclusivity' and supports 'expansion'.

We see that combinations have taken place between systems and sub-systems of different origins. When there are many overlaps and much cross-fertilisation, reciprocal influence, fusion, infusion, grafting and the like, it may be difficult to determine with exactitude the degrees of hybridity. The simple conclusion must be that there are various degrees of hybridity in the legal world arising from different levels and layers of crossing and intertwining. This should be the starting point for mapping mixed systems.

The 'family trees' approach I proposed is initially deconstructive, disintegrative and critical. It rests on the assumption of fluidity. Following deconstruction, the aim is to re-construct a more reliable map of the legal systems of the world.³⁷ Distinctiveness cannot be ignored. Even when comparative law is used as an instrument of integration in Europe, one must be aware of the virtues in 'distinction' and 'diversity'. In the 'family trees' approach 'distinctiveness' matters as well as similarity, whereas in classical classifications only 'similarity' mattered. The relevant degrees of distinction and similarity decide on the place of a legal system.

In this attempt at re-aligning legal systems and placing them on their genealogical trees, we must consider transpositions, reciprocal influences and cross-fertilisation both horizontally and vertically.

Only some of the offspring show clear signs of their different legal cultural, racial, ethnic and religious origins overtly. Most of such systems have already been grouped as 'mixed jurisdictions', and treated as *numerus clausus*. However, there are many other overt and covert mixtures that are the offspring of the same or of other combinations.

One can see complicated crosses even within the continent of Europe, such as those in Malta.³⁸ Here legal history began with the Phoenician settlement and continued with the Roman conquest bringing the *Corpus Iuris*. Then the Normans invaded and brought feudal law as applied in Spain, Naples and Sicily. The invasion of the Moors had direct influence on the Maltese language. The sovereignty of the Knights of St. John recognised local usage and issued declarations of private law drawing on laws of other countries, mostly Italian. Then came the French with their Napoleonic laws. Finally the British brought the common law. So here in Malta we see a good example of an eclectic Criminal Code drafted under a strong Italian influence but with pervasive English and Scottish impact, and a Commercial Code largely based on the French, with maritime law following English law. The 1873 Civil Code

³⁷ See, Örüçü, E (2004) *Enigma ...* supra note 1, Chapter 10:3. Also (2004) 'Family Trees ...' supra note 1, at 359. The question still remains however, whether this approach could go far enough to embrace legal pluralism and all layers of law such as the global, international, regional, transnational, inter-communal, territorial state, sub-state and non-state, in the mapping. See Twining, W (2000) *Globalisation and Legal Theory* (London, Butterworths), 136-141.

³⁸ Ganado, M (1996) 'Malta: A Microcosm of International Influences' in Örüçü, E, Attwooll, E and Coyle, S (eds) *Studies in Legal Systems: Mixed and Mixing* (London, Kluwer Law International), 225.

is predominantly based on the French and Italian Codes and also on the Municipal Code de Rohan, the Civil Code of Louisiana and the Austrian Civil Code. Canon law applies in family law where there is also the influence of English, German, Italian and French laws. Constitutional law is mainly British. The official languages are Maltese and English. The ingredients work cumulatively and interactively. Malta has now joined the European Union. What kind of new mixing can we expect? How is it possible to fit this mixture into any of the classical categories?

Sometimes, seeds are scattered even more widely leading to even more extreme and unexpected crosses. For example Turkey is a cross between Swiss, German, Italian, French and Roman laws, a covert Islamic law and local customary law, as well as more recently, European law and American law. This was brought about as a result of grafting, pruning, tuning and intertwining by an elite concerned with changing not only the law and legal culture but the people themselves and their way of life from the traditional to the modern by the introduction of radical social reform laws to accompany the forging of a new legal system by receptions from abroad.³⁹ Turkey aspires to European Union membership today. She is trying to assimilate many European Community directives and many of her laws are being re-aligned for a better fit with the EU *acquis communautaire*. One of the conditions is the 'improvement of the legal system' and further 'modernisation' of the law, 'modernisation' being understood to mean further elimination of 'traditional values'. These should all be regarded as imposed receptions. What does the future hold for this mixture?

History tells us that when legal systems of diverse socio- and/or legal-cultures meet, the diverse elements co-exist side by side in the resultant legal system,⁴⁰ hence 'mixed systems' ensue.⁴¹ Today, imposed receptions are frequently seen in the Central and East European States, and within the context of European integration. While the Continental civilian systems are trying to impose civilian type Codes on the English common law, the English common law is introducing the system of judge-made law to them. Whatever the means, the end result will be more transposition, more intertwining and mixing, and more new shoots.

Past receptions from civil law and Roman law into English law for instance, have been called 'sporadic receptions' or 'injections', with 'civil law based reasoning filtering into common law'⁴² ensuring that English law was constantly enriched. However, any rules based on Roman law or the later *ius commune* 'were immediately cut off from their roots', and 'assimilated into the specifically English framework, and given life outside their original context'. The resultant new law 'did not remain in dialogue with the old law from which it derived'; and 'once the borrowings are cut off from their roots they cease to be part of the same culture' as they grow in the new soil. Therefore, the influences were not systematic and the solutions did not remain the same. Nevertheless, these affected the growth of the 'English oak'.⁴³

³⁹ Öricü, E (2006) 'A Synthetic and Hyphenated Legal System: The Turkish Experience' (1) *The Journal of Comparative Law*, 27.

⁴⁰ See Öricü, 1995 supra note 23 and 2002, supra note 5.

⁴¹ Any one of the following terms may be appropriate for the analysis of a specific move and for the explanation of a specific growth: 'seepage', 'contaminant', 'irritant', 'underlay', 'overlay', 'cross-fertilisation', 'incremental reception', 'competing systems', 'hyphenated' legal systems, 'layered law', 'chance', 'choice', 'prestige', 'efficiency', 'elite' and 'historical accident'.

⁴² Ibbetson, DJ (1998) 'A Reply to Professor Zimmermann', in Watkin, TG (ed) *The Europeanisation of Law*, United Kingdom Comparative Law Series:18 (London, UKNCCL), 224 at 228.

⁴³ So regarded by Denning LJ (as he then was) in *Nyali Ltd. v Attorney General* [1955] 1 All ER, 646 (CA) at 653.

Our main work as comparative lawyers is now to deconstruct the conventionally labelled pattern of legal systems and reconstruct them with regard to origins, relationships, overlaps and interrelationships, and diverse fertilisers such as the social and cultural context, and the grafting and pruning used in their development. In this way the comparative lawyer can re-analyse legal systems, leaving ample space for newly forming growths, and new mixes.

Mixing Systems

We have already indicated that all legal systems are mixed. Only the ways of mixing and the character of the ensuing mixtures are different and the levels of combination and therefore the extent of the mix vary. The term 'mixed' is now much more frequently used and has acquired many different meanings: a 'combination of various legal sources', a 'combination of more than one body of law within one nation, restricted to an area or to a culture', 'the existence of different bodies of law applicable within the whole territory of a country' and 'legal systems that have never had a single dominant culture'.

Normally 'mixed' implies a historic fact, a reality and a 'local jurisdiction', especially as used in the concept 'mixed jurisdictions', whereas, as has been convincingly suggested, the emphasis should be on 'experiences in encounters' and therefore, the 'encounter' and the ensuing dynamic exchange should be highlighted.⁴⁴

Patrick Glenn, specifically referred to 'mixed jurisdictions' when he analysed the encounters between the various 'common laws' of the world, which he calls 'relational laws'. 'Appropriation of common laws' can form the basis of an explanation of mixedness. He sees 'mixed jurisdictions' as places of confluence of common laws, as 'ongoing interdependence'; places where we see an unsuccessful 'process of exclusive appropriation of one of the common laws'. However, Glenn also points out that 'with the increase in importance in the world of overlapping laws',⁴⁵ their significance may decline, possibly because more and more legal systems become mixed. Hence another reason for no exclusion but expansion.

Indeed, instances of mixing are complicated. They may be overt or covert, structured or unstructured, complex or simple, blended or unblended; and often difficult to define. When talking of 'mixed legal systems', the importance of the 'ongoing mixing' of legal systems must also be considered. In ongoing states of 'mix', a wide knowledge is required to fully analyse this phenomenon, since many systems are shifting and in transition, and new types of mixes are constantly coming into being. However, their future is uncertain.⁴⁶ How the legal elite reacts to the mix, handle it and tune the incoming legal elements and mould them into a legal system is crucial. In addition, systems differ as to how the mix is sustained, nurtured or killed.⁴⁷ In all these senses each system is unique. However, as well as having features that are unique, each has features shared with others and features common to all. This enables us to study mixed systems both separately and together.

A study of a legal system fifty years ago and again today may reveal considerable changes in its structure, context and conceptual infill and also in the attitude of lawyers, academics and people to it and its 'mix'. Sometimes 'mixedness' can be the manifestation of

⁴⁴Kasirer, N (2003) 'Legal Education as *Métissage*' (78) *Tulane Law Review*, 481 at 488.

⁴⁵Glenn, (2005) *supra* note 20 at 119.

⁴⁶In these new legal mixes the degree of success cannot be measured easily. Neither can 'success' be defined from a single standpoint. Pre-determined economic, social, cultural, religious or ideological ends are all factors by which success is measured. Efficiency, internalisation, cultural shift, and the actual use of the new legal structures can all be criteria for measurement.

⁴⁷du Plessis, J (1998) 'The promises and pitfalls of mixed legal systems: The South African and Scottish Experiences' (3) *Stellenbosch Law Review*, 338.

a transition, sometimes it can be the final outcome of the process. 'Mixedness' is usually a result of historical accident and accidents can lead to unexpected outcomes along unexpected paths.

Here we need a caveat. The existence of 'mixed legal systems', the creation of new mixes, and the present process of mixing may prove to be problematic for those who adhere to the definitive role of the cultural context. Unless one starts from the premise that 'mixedness is itself the culture', there is no easy way forward. Even if one does start from that premise, one has to probe into the generation of the 'mixedness'. This is related to 'horizontal transfer', the possibility of which in turn is refuted by those who state that 'legal transplants are impossible'.⁴⁸ So we can end at an impasse.

Since through cross-fertilisation and horizontal transfers all legal systems within the European Union will eventually mix to some degree, a study of legal systems already mixed can provide valuable lessons for these mixing systems, and the study of how they work is fruitful. In fact, mixed legal systems have always been the 'laboratories' of comparative lawyers, their 'vantage point'.⁴⁹ As already alluded to, today such systems have gained a special place in the process of European integration. Jan Smits says that mixed legal systems will provide 'inspiration' and that the experiences of South Africa, Scotland, Quebec and Louisiana are consequently of great importance for the future developments of European private law.⁵⁰

Mixed systems can be viewed along a spectrum. As a general observation, one can start with simple mixes⁵¹ where the blend is mainly between two Western traditions - the civilian and the common law. It is here we see the so-called 'mixed jurisdictions'. This blend is as to content and substance, and not necessarily as to structure, although some of these systems have codified their civil laws, such as that of Louisiana, and some have not, such as that of Scotland. Scotland for instance, is designated as a classical 'mixed jurisdiction', and has one of these simple mixed systems, a system 'mixed' only at the substantive level. Its history is unusual. The path of the migration of law from different sources into Scots Law was seepage, imitation, inspiration, voluntary reception and imposed reception. The starting point was Scots customary law, which was then overlaid by Anglo-Norman, canon, Roman and European civil laws and later in modern times by English law. Further, the system now has to absorb European Community law and European human rights law.

The Scottish mix resulted from the close cultural and political ties with the jurisdictions of both traditions 'at different stages of its history', rather than from the 'imposition of the common law upon a civilian system by a colonial power, as in Louisiana or South Africa'.⁵² The Scottish legal system has been regarded as being a system 'mixed from the very beginning',⁵³ with Scottish jurists creating the 'mix' by selecting 'the best' of the ingredients from various sources. Yet, the exact balance between the elements of this 'mix' in modern Scots law has long been, and still is, the subject of constant controversy.

⁴⁸ Legrand, P (1997) 'The Impossibility of "Legal Transplants"', 4 *Maastricht Journal of European and Comparative Law*, 111. and (2001) 'What "Legal Transplant"?' in Nelken, D and Feest, J (eds), *Adapting Legal Cultures* (Oxford, Hart Publishing), 55.

⁴⁹ Kasirer supra note 44 at 481.

⁵⁰ Smits, 1998 supra note 3 at 33, and 2001 supra note 4 at 9.

⁵¹ See for an analysis of mixed systems, Örüçü, 1995 supra note 24 and Örüçü. 1996 supra note 17.

⁵² Reid, E (2001) 'Comparative Law: Perspective from a Mixed Jurisdiction', in *HLS Cahier Nr.2 Methodology and its application* (Groningen, Facilitair Bedrijf), 49.

⁵³ Sellar, WDH (2004) 'Scots law – mixed from the very beginning? A tale of two receptions' (4) *Edinburgh Law Review*, 3. Also see Zimmermann, R (2004) 'Double Cross': Comparing Scots and South African Law' in Zimmermann, R, Visser, D and Reid, K (eds) *Mixed Legal Systems in Comparative Perspective* (Oxford, Oxford University Press).

The mixed legal systems that attract most attention in the European integration process are the simple ones, the ‘mixing bowl’ type,⁵⁴ with only a limited number of ingredients. For seekers of a new *ius commune*, one of the obstacles is that the ingredients to be blended or interlocked come from two different legal cultures - the common law and the civil law – and this, notwithstanding the variety that exists among the systems that belong to the so-called civil law tradition.

Nevertheless, we must not limit our view of the world of ‘mixing’ to the confines of the European Union or the Western world. When looked through the lens of history, we see that many of the mixes of the past were formed by strong movements of transmigration of legal institutions and ideas, mostly in the form of impositions, and of divergent linguistic, communal or religious traditions. Legal systems, like cake mixes, are constantly mixing, blending, melting, and then solidifying into new shapes as they cool down, while transposition and tuning take their effect. Special attention must be paid to legal-cultural convergence and non-convergence that may come about as a result of legal import, and to any ensuing socio-cultural non-convergence. In this context, cultural pluralism, clash of diverse cultures, and the consequences for the importing legal system are of particular contemporary interest and legal pluralism is another significant concern. All can be examined within the context of ‘mixed systems’.

As already observed, mixed systems can be visualised along a spectrum. At one extreme end of the spectrum is the position where the transmigration works smoothly, because of extensive similarities in structure, substance and culture and fine ‘tuning’ such as in Scotland (a simple mix).⁵⁵ At the other extreme is the position where transposition has not worked and the official legal system has ‘curdled’ and is dysfunctional, as is the case in Burkina Faso and Micronesia.⁵⁶ Between the two extremes lies a range of places.

When elements from socio-culturally similar and legal-culturally different legal systems come together forming mixed systems of the already mentioned ‘simple’ kind - the ‘mixing bowls’- the ingredients are still in the process of blending but in need of further processing if a ‘purée’ is to be produced. Next to ‘simple’ mixes come the ‘complex’ mixed systems, where the elements are both socio-culturally and legal-culturally different. I have called this type elsewhere the ‘Italian salad bowl’ where, although the salad dressing covers the salad, it is easy to detect the individual ingredients clearly through the side of the glass bowl.⁵⁷ A good example of this is Algeria. Then, there is what I called the ‘English salad plate’, the ingredients sitting separately far apart on a flat plate with a blob of mayonnaise at the side into which the different ingredients can be dipped before consumption. Examples of this are the Sudan and Zimbabwe -- legal pluralisms --, which lie towards the far end of the spectrum. The examples become more extreme along the path, ending in ‘curdling’, with a dysfunctional legal system, as already mentioned.⁵⁸

The composition of each mix depends on conditions such as the size of the transmigration, the characteristics of the legal movement, shared language, proximity to the model, the degree of success of transpositions and ‘tuning’, the element of ‘force’ or ‘choice’ inherent in the move and the social culture of the new environment.

⁵⁴ See for coining and explanation of such terminology, Öricü: 1995 supra note 23; and Öricü: 1996 supra note 16.

⁵⁵ This could also occur under the pressure of a ruling elite and the legal profession, as is the case of Turkey, a seemingly civilian covert mix.

⁵⁶ See Tamanaha, B (2001) *General Jurisprudence of Law and Society* (New York, Oxford University Press) at xi-xii.

⁵⁷ See supra note 16 and 23.

⁵⁸ For a picture of this spectrum, see *ibid*.

More complex mixes might appear in places where the legal system or the law is based on, or heavily determined by, religion or belief. They could also be in places where unexpected events are taking place. An example of this is Hong Kong, where in its relationship with China there is talk of 'one country two systems'. Transmigration of laws might occur between legal systems of both legal and socio-cultural diversity creating legal pluralism, a mixed or a hybrid system, or unexpected results under pressure from an '*élite dominante*'. Sometimes there are overlaps between these meanings and a place could have a 'complex' system in any or in all these senses. Such systems obviously defy the traditional theory of 'legal families', classical paradigms being totally inadequate.

Once she removes her Eurocentric spectacles, the comparative lawyer immediately sees that indigenous laws rarely consist of single homogenous systems. A number of indigenous legal orders and social orders can live side by side. To find, understand and represent such indigenous law can be difficult though, especially when some of it is unwritten and, some written but imperfectly translated. For example, in many Asian systems Western law was added to the religious laws of Hinduism, Buddhism, Confucianism and Islam, which themselves co-existed prior to colonisation. The mixture was also complicated by the fact that not all laws were applicable to all peoples, different parts of the population being classified as 'foreign Orientals', 'assimilated Asians', 'Europeans', 'non-natives' or 'natives'. In countries such as Indonesia, Taiwan and Malaysia, the resultant mixture continues to give rise to problems even today.

Thus, we see that transmigration of law has followed the paths of colonisation, re-settlement, occupation, expansion, and inter-relationship. The methods of these migrations were imposition, reception, imposed reception, co-ordinated parallel development, infiltration, imitation and variations and combinations of these. The consequences have been the birth of systems in transition and mixing, mixed jurisdictions, inter-related systems, evolving systems, layered-law, hyphenated legal systems, harmonisation, unification and standardisation. In all this there are different conceptual implications.

The clearest 'reciprocal influence' today is within the European Union, but transpositions from the Western legal traditions to the Central and East European legal systems, where a number of mixing systems are coming into being, are more significant. Outside Europe, there are other cross-fertilisations. So we see the birth of more 'complex' mixes, the blurring of the demarcation lines between the generally accepted classifications of legal families, and the emergence of new clashes between legal cultures themselves, and legal cultures and socio-cultures. This is mostly due to voluntary reception rather than colonisation and imposition as in the past, but there are some cases of imposed reception.

Systems are in transition and are experiencing fundamental upheaval. Some systems are re-shaping themselves in social, economic and legal terms with the help of outside models from competing systems. Others, in certain regions or groupings, are necessarily affected by reciprocal influences. Some others are affected by globalisation. Comparative lawyers need a fresh approach.

It has already been noted that Vernon Palmer suggested that we should be talking of a new 'third legal family' with the name 'mixed jurisdictions' to include a number of historically determined mixes, which he regards as sharing certain characteristics. This means that these systems 'are built upon dual foundations of common-law and civil-law materials', that is, there is a 'specificity of the mixture'; the mix is obvious to both insiders and outsiders, that is, 'obvious to an ordinary observer'; and the private-law sphere has 'the outward appearance of a "pure" civil-law system', whereas the public law sphere 'will appear to be typically Anglo-American', that is, there is a 'structural allocation of content'. Palmer regards

these as ‘the lowest common denominators of a mixed jurisdiction’⁵⁹ and talks of a ‘closed family’ of fifteen members, with seven of them studied in his work.⁶⁰

According to my analysis, the concept of ‘mixed jurisdictions’ is used by Vernon Palmer in a narrow and conventional sense, considering only co-existing and commingling between the civil law and the common law, that is ‘simple’ mixes - very few in number.⁶¹ It also disregards the impact of the ‘indigenous’ laws present in some of these very same systems. His is only a partial answer. As noted above, clearly not all ‘mixes’ can be pooled together and not all the existing members of such a family would have the same or similar ingredients. Though not all regarded as ‘mixed jurisdictions’, it would be difficult for example, to place Scotland, Quebec, Hong Kong, Thailand, Sierra Leone, Pakistan, Indonesia and Algeria, all mixed systems, into one family. Even if we were to accept Palmer’s claim that fifteen individual legal systems share certain characteristics to justify placing them together in a group as a ‘third family of mixed jurisdictions’, what of contemporary mixing systems and systems in transition? Palmer’s ‘third family’ may serve his purposes, but does not address the problems of understanding and analysing the world we live in today.

Another approach is offered by Anthony Ogus. He looks at mixed or ‘hybrid’ systems through the lens of a ‘law and economics’ scholar and places them into three categories.⁶² His first group includes those systems ‘where a culture was imposed by a colonialist power, but where a native culture persisted to some degree’. Here, the native culture ‘competes’ with the imposed culture. Ogus gives a number of African countries as examples. ‘Countries which have experienced successive colonialist or other occupation’ fall into his second category. In this category, each successive foreign culture has had a major impact on the legal culture and competes with the others. He chooses as examples of this category Quebec, Louisiana and South Africa. Countries ‘which experienced industrial and commercial development relatively late and where rulers recognised the need to look elsewhere for more sophisticated legal input than the domestic legal system could provide’ form his third category, the examples being Japan, Turkey and Greece.⁶³ He says that in this category ‘there were effectively “tenders” from several major legal cultures to supply the necessary set of specifications’. East European States using Western models for law reform are also regarded as falling into this category, though ‘in somewhat different circumstances’.⁶⁴

Some predictions for the future are also offered. Ogus is of the opinion that the three categories share characteristics that separate them from legal systems with one dominant culture. The expected outcome is that mixed systems will be ‘more efficient, and adapt more readily to changing external variables, than those with a single dominant culture’, though much depends on how the competition works. Of course, there is always the possibility that optimal selections may not be made from between the different ‘tenders’; the ‘rents’ to be

⁵⁹ Palmer, supra note 2 at 7-9. Also see Palmer, VV (2006) ‘Mixed Jurisdictions’ in Smits, JM (ed) Elgar Encyclopedia of Comparative Law (Cheltenham, UK; Northampton, MA, USA, Edward Elgar), 467-475, where he refers to a mixed jurisdictions as ‘Mixed jurisdictions as they are classically called, make up roughly 15 political entities, of which 11 are independent countries. Most (excluding Scotland and Israel) of these are the former colonial possessions of France, the Netherlands or Spain which were subsequently transferred to great Britain or the United States’. For a more extensive treatment see du Plessis, J (2006) ‘Comparative Law and the Study of Mixed Legal Systems’ in Reimann, M and Zimmermann, R (eds) *The Oxford Handbook of Comparative Law* (Oxford, Oxford University Press), 477-512.

⁶⁰ For the list of systems covered see supra note 3.

⁶¹ Zimmermann also regards Palmer’s use of the term in a technical sense, restricted. See Zimmermann supra note 53, 3.

⁶² Ogus, A (2001) ‘The Contribution of Economic Analysis of Law to Legal Transplants’, in: Smits, JM (ed), *The Contribution of Mixed Systems to European Private Law* (Groningen, Intersentia), 27.

⁶³ Zweigert and Kötz also regard Greece as a mixed system. See supra note 7, at 72.

⁶⁴ Ogus, supra note 62 at 37.

enjoyed by a particular foreign legal system may be too attractive for domestic lawyers trained in that system to resist. Despite such problems however, from the ‘law and economics’ point of view, the future is quite bright for mixed systems; they should, ‘unless obstructed by private interest groups allied to a particular culture, adapt more readily to efficient legal reform’.⁶⁵ Comparative lawyers need to consider what contribution does a ‘law and economics’ approach have in assessing ‘mixed systems’ over and above other approaches.

Concluding Remarks

Although not ‘mixed jurisdictions’ in Vernon Palmer’s sense, the examples referred to in this study are all certainly ‘mixed’ and ‘mixing’ systems, the various elements from different sources being woven into the tapestry of their laws, in various degrees. We know that all legal systems are born of different parentage, from marriages between systems and sub-systems.

It is difficult to determine the exact level of hybridity in each legal system. However, what is clear is that combinations of disparate legal and social cultures do give birth to mixed systems. Overlap, cross-fertilisation, reciprocal influence, horizontal transfer, fusion, infusion, grafting and the like all contribute to the coming into being of mixed and mixing systems. All are forever in flux, as are all legal systems. The various degrees of hybridity arise from various degrees, levels and layers of encounters, crossing and intertwining.

When there are clear signs of their different legal cultural, racial, ethnic and religious origins, it is naturally easier to handle such legal systems. As noted, some of these systems have already been grouped as ‘mixed jurisdictions’ and are treated as *numerus clausus*. Yet, as also pointed out, there are many other overt mixes with different origins. Furthermore, there are also covert mixtures, the results of the same or of other combinations. It is the covert and the ongoing mixes that really tease the comparative lawyer and it is the study of ‘mixedness’ that can illuminate the path towards the comprehension of the interaction of law and culture everywhere.

Let us end this study with a number of rough maps, thus expanding the concept of ‘mixidness’:⁶⁶

ANNEX

Map I

Mixed Systems

1. Simple mixes (hybrids with civil law and common law as their ingredient – mixed at substantive level – mixing bowl)

‘**Mixed jurisdictions**’: (numerous clauses -15 - as a concession to Vernon Palmer): Botswana, Lesotho, Louisiana, Mauritius, Namibia, the Philippines, Puerto Rico, Quebec, Sainte Lucia, Scotland, the Seychelles, pre-1996 South Africa, Sri Lanka, Swaziland, Zimbabwe.

Other simple mixes: Jersey, Malta, Cyprus.

⁶⁵ Ibid at 36-37.

⁶⁶ In each category only samples are given. Apart from the ‘mixed jurisdictions category’ none are numerous clauses. Compare with the Ottawa mapping at supra note 17.

2. Complex mixes (hybrids with civil law, common law, (socialist law), religious law and customary law in different combinations)

Complex mixes 1 (hybrids with civil law, common law and customary law: Cameroun, pre-1997 Hong Kong, Lesotho, Sri Lanka, post-1996 South Africa, Thailand, Vanuatu)

Complex mixes 2 (hybrids with civil law, common law and religious law: Israel, Jordan, Saudi Arabia, Somalia, Yemen)

Complex mixes 3 (hybrids with civil law and customary law: Burundi, Burkina Faso (dysfunctional), Chad, China, Ethiopia, Gabon, Korea, Japan, Mali, Niger, Rwanda, Taiwan, Togo)

Complex mixes 4 (hybrids with civil law and Islamic law: Algeria, Egypt, Iraq, Kuwait, Lebanon, Morocco, Mauritania, Syria, Tunisia)

Complex mixes 5 (hybrids civil law, Islamic law and customary law: Djibouti, Indonesia, Senegal)

Complex mixes 6 (hybrids with common law, religious law and customary law: Pakistan, India, Kenya, Nigeria, Uganda)

Complex mixes 7: (hybrids with socialist law, civil law, common law, customary law: post-1997 Hong Kong, China, Cuba, North Vietnam, North Korea)

3. Legal Pluralisms (Dualist systems with layers of law co-existing and applicable to different members of the population such as: The Sudan, Zimbabwe)

Map II

Mixed Systems

Systems in **Map I** could also be re-arranged according to the primary parentage such as:

The **French** Group: (e.g. Algeria, Andorra, Benin, Burkina, Burundi, Louisiana, Quebec, Mauritius, Mauritania, Morocco, Senegal, Seychelles, Sainte Lucia, Togo, Tunisia)

The **Dutch** Group (e.g. South Africa, Sri Lanka, Indonesia, Botswana, Lesotho, Swaziland)

The **Spanish** Group (e.g. Andorra, Belize, Bolivia, Louisiana, Puerto Rico, the Philippines)

The **Portuguese** Group (e.g. Angola, Goa + Diu + Daman (Goa Union Territory of India), Guinea Bissau, Macau, Sri Lanka)

The **British** Group (e.g. Burma, Belize, Bhutan, Hong Kong, Malawi, Scotland, South Africa, Seychelles, Tobago, Pakistan, India)

The **US** Group (e.g. Louisiana, Micronesia, Puerto Rico, the Philippines)

This Map however would be quite unwieldy when indigenous laws are considered and legal systems start appearing under more than one Group.

Map III

Mixed Systems

1. Overt mixes (all the mixed systems – unblended - cited under **Map I**)

2. Covert mixes (Systems that do not appear as mixed - blended)

Covert mixes 1 (Compounds – purée – blended - where the ingredients are from similar legal and social cultures: all civil law and common law systems considered as pure

which are combinations of Roman law, Canon law, various common laws and each other: France, England, Italy, The Netherlands, New Zealand, Spain, the USA (minus Louisiana))

Covert mixes 2 (Compounds – purée – blended - where elite or the political pressure is the prominent mixer, therefore unexpected outcome: Albania, Argentina, Belgium, Bulgaria, Cyprus, Croatia, Estonia, Hungary, Kazakstan, Martinique, The Former Yugoslav Republic of Macedonia, Russia, Turkey, Uzbekistan, Vietnam)

Map IV

Mixed systems

1. Unstructured mixes – (understood in a different way to Glenn, where civil law is not codified): Scotland, South Africa, Israel

2. Structured mixes (where civil law is codified): Quebec, Louisiana, Sainte Lucia

Map V

Mixing systems

1. Ongoing mixes (European systems covered by the regional organisations such as the EU and the ECHR mixing with each other and under the pressure of these organisations; African systems modernising and democratising)

2. Systems in transition (moving from one orientation to another: East and Central European systems, Russia, Ukraine)

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