# Christine Godt (ed.), Cross Border Research and Transnational Teaching under Lisbon, Wolf Legal Publishers 2013

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'Cross Border Research and Transnational Teaching under Lisbon' is the inaugural volume in the new Hanse Law School Series. This collective work was developed primarily from materials presented in May 2010 at the workshop "Hanse Law School in Perspective – Legal Teaching and Cross Border Research under Lisbon" celebrating the 10th anniversary of the founding of the Hanse Law School. An introduction by the editor nicely abstracts each article, and topics range from comparative legal theory to core private law issues and specific areas of public law. The introduction groups the 14 contributions into five chapters, although this structure is not reflected in the table of contents. The title is perhaps slightly misleading, as it might lead one to initially presume that the influence of the Lisbon Treaty on comparative legal research and transnational teaching is a common thread through the collection, which it is not. Instead, in the spirit of the lead article, this book seems to be actually about rethinking the role of comparative law throughout all phases and facets of legal education and the legal profession. The ultimate conclusion is that these diverse contributions support the argument – some albeit implicitly – that comparative law is undeniably important not only in legal education and research but also in practice.

The first chapter on comparative law and legal teaching features an outstanding article by *Franz Werro*, entitled *What is to be gained from comparative research and teaching? Thoughts for an ideal agenda*. This contribution finely articulates an approach to comparative research and education emphasising interdisciplinarity and recognition of diversity. The proposed methodology would integrate the comparative study of law across the legal curriculum from the beginning of the studies, through to advanced coursework – in general courses and in advanced seminars on specific topics. It is further suggested that in comparative research, the assumption of convergence should be abandoned in favour of an investigation into divergence. This perspective is supplemented by a commentary by *Gert Brüggemeier*, in which he describes the Hanse Law School as a model of non-parochial comparative teaching. The method is described as 'integrating comparative legal teaching right from the beginning and throughout the whole education,' enabling the recognition and understanding of legal diversity. The second full article in the chapter, *Strengthening the comparative method in European legal research: three suggestions*, argues that the need for comparative legal studies is no longer purely academic, but that it is now essential to legal practice, as well. Here, *Aurelia Colombi Ciacchi* focuses on six problems in contemporary European comparative law, ranging from the varying degree of influence of different legal systems, through preferences for legal unification, to issues regarding codes, constitutions, law in action, and empirical evidence. The author then suggests three means of miti-

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gating these problems, referring to the example of the project methodology of the *Common Core* project.[1]

A second chapter features comparative perspectives on two private law themes, starting with two articles regarding property law. In *The European Union development of European property law*, *Bram Akkermans* outlines the already existing body of European property law. According to the author, this often overlooked area of European law results directly from instruments covering third party rights, retention of title, and security rights as well as indirectly from instruments affecting emissions trading, marital property, and wills and succession. He argues that this field requires further research, as European property law is still too often considered as comparative property law. However, this approach is precisely the one successfully taken in the article that follows, contributed by *Alison Clarke* and *Christine Godt*. In *Comparative property law: collective rights within common law and civil law systems*, after outlining how collective property rights are distinguished from other forms of ownership under German law and English law, respectively, the co-authors juxtapose these perspectives with an interesting discussion about private property rights within the collective system in China. The reader is left with thought-provoking questions about possible lessons to be learned from the Chinese experience as common law and civil law systems strive toward the co-existence of collective and private property rights. In the third article in this private law chapter, *The Dutch and German notarial systems compared*, *Christoph U. Schmid* presents interesting comparative insights into the regulation of the notary professions in Germany and the Netherlands. After giving an overview of the split profession in Germany, the author argues that the anachronistic and inefficient German system should yield to a more market-based model. The system for regulating the notary profession in the Netherlands is then described, which features a unitary system without fixed fees, and the author considers the Dutch experience as a reference point for reforming the German system.

The bilingual series of articles in the chapter on constitutional law accentuates the international posture of the Hanse Law School, comprising one German language and two French language contributions. The first French language article by *Götz Frank & Gilles Lebreton*, entitled *La protection constitutionnelle des droits fondamentaux en France et en Allemagne: la montée en puissance des juridictions constitutionnelles*, compares the systems of constitutional protection of fundamental rights in France and Germany. After surveying the relatively fast implementation of the system for protection of fundamental rights in Germany and the more gradual development in France, the relationship of the courts in these systems to the respective legislatures is then examined. In the second French language contribution, *Diane de Bellescize* considers the influence of the European Court of Human Rights on French law. Her article, *L'emprise de la Convention Européenne des droits de l'homme sur la jurisprudence et la legislation françaises dans le domaine de la liberte d'espression* discusses the relationship between the rights of expression and personality rights under French press law, especially in the context of criminal prosecution for the alleged defamation of foreign heads of state.

In an exquisite German language article, *Gerhard Hoogers* suggests an instrument from Dutch constitutional law as a source of inspiration for the reform of federalism in Germany.

[1] On the project 'The Common Core of European Private Law' see *M. Bussani/U. Mattei*, The Common Core Approach to European Private Law, 3 Columbia Journal of European Law 1997-1998, p. 339; see also http://www.common-core.org/ (accessed on 17 Dec. 2013).

His article, *Eine alternative Förderalismusreform – das Konsens-Reichsgesetz als Muster für die Bundesrepublik?*, examines recent reforms of the governmental structure in each country – of the horizontal relationship in the Dutch system and of the vertical relationship in the German system. The author points to an 'exotic' instrument in Dutch law as the model for a consensual federal law for Germany, under which the German *Länder* could choose to transfer competence to the Federal parliament to adopt common rules in matters otherwise within the competences of the *Länder*. With its ingenious thesis, this outstanding article stands perhaps at the apex of the collection.

The excellent constitutional law chapter is followed by a short chapter on administrative law themes. Here, the momentum of the book wanes slightly, as the approach taken in the first article strays from the overall theme of the collection. In *Governance and public health*, *Friedhelm Hase* examines the public health care system in Germany, and the author concisely and persuasively argues for the need to reform the system of statutory health insurance towards a type of basic insurance. Unfortunately, the otherwise well-written article leaves this reader longing for a comparative perspective, as such a viewpoint is not offered. However, the relevance of this chapter to the themes of the greater collection is partly recovered by *Herman E. Bröring* in his fine article, *The quest for soft law as binding law contributing to European Integration*. Here, the author examines the integrative potential of soft law mechanisms in the face of the supremacy of national powers, considering the extent to which non-binding guidelines accommodate the political will of the member states. This discussion is brought to life through examples from the Dutch experience regarding expertise and standardisation soft law rules.

Finally, the volume regains its full momentum in a concluding chapter on Marine and Coastal Law. This series of engaging public law contributions begins with a contribution by *Till Markus*, entitled *The evolving conservation standards of EU marine environmental law and their effects on the common fisheries policy*. This article examines the relationship between EU conservation standards and the Common Fisheries Policy and analyses the effects of the recent EU Marine Strategy Framework Directive on the integration of marine environmental law. The second article of the chapter, *Who owns the North Pole? Concurrent claims of the Arctic shelf and the challenges for international law*, presents a thorough analysis of the regime in place regarding claims to the Arctic shelf. The author, *Thomas Heinicke*, then considers the further development of a more specified Arctic regime. Finally, *Ulrich Meyerholt* and *Wabbe de Vries* offer a locally and globally interesting report on issues relating to the Wadden Sea. Their contribution, *Costal protection planning in the Wadden area the role of facilitating legal systems* [sic], implores for the need of an interdisciplinary and international approach to coastal protection planning in the Wadden Area, with account taken of the national, cultural-historical, and scenic elements of the landscape. Overall, this marine-themed final chapter is certainly fitting of the Hanseatic namesake.

If the implicit goal of this first volume in the Hanse Law School Series is to promote the importance and future role of comparative law in education, research and practice, it mostly succeeds in doing so. Although the book could have benefitted from a synopsis to round out each chapter, most readers should be able nonetheless to find at least several of the diverse contributions to be engaging and informative. The overall assessment here is that the individual parts of this collection are perhaps greater than the sum, which is not meant pejoratively. The several praiseworthy articles alone are well worth the very reasonable EUR 24.95 for this book in paperback. Furthermore, the currency of the volume is not compromised by the slightly protracted time that has transpired since the conference presentations,

as the underlying theme of the relevance of comparative law across the legal landscape continues to gain traction, thus preserving the timeliness of this collection.

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