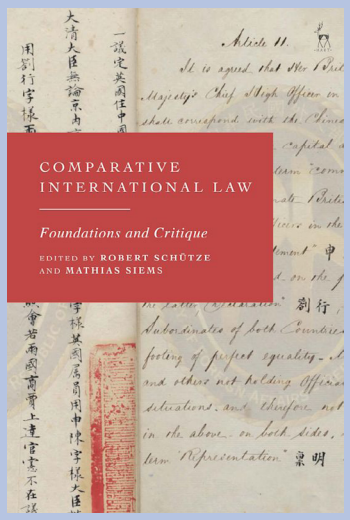
Comparative International Law: Foundations and Critique edited by Robert Schütze and Mathias Siems

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What does it mean to compare international law? This is the central question posed by this edited collection, which emerges from a collaborative project between the Durham Global Policy Institute and the European University Institute. The editors' ambition is to move beyond individual national case studies and interrogate instead whether distinct "legal families" of international law exist, and to explore the mechanisms of legal transfer—both vertical and horizontal—through which similarities between international systems are created (v-vi).

Yet the volume's opening chapters reveal a tension within this ambition. The introductory chapters offer taxonomies and historical reconstructions that seek to define and delimit the field; the regional chapters provide rich, often contradictory, case studies that resist such neat categorization; and the critical concluding section systematically questions whether the field's foundational premises can hold. The book's greatest contribution, I found, lies not in the framework it proposes, but in the tensions it generates: tensions that invite the reader to ask whether comparative international law is a discipline, a method, a convenience of language, or perhaps a critical practice that, by its very nature, resists neat definition.

Mathias Siems opens with a comprehensive state-of-the-art survey, tracing the rise of the term "comparative international law" through Google Scholar metrics and proposing a ten-category taxonomy divided into vertical and horizontal variants. This is, on its own terms, an instructive exercise, helpfully mapping the types of comparisons being undertaken and their subcategories. Yet one wonders whether the taxonomy risks mistaking a heuristic device for substantive reality. Siems acknowledges that critics challenge the relevance of broad country groupings (21), but he does not fully address the deeper worry: that the act of categorizing imposes a particular rationality onto messy, hybrid, and contested legal realities. Siems's categories undoubtedly organize an expanding literature, but it is less clear that they identify analytically distinct phenomena. The chapter's use of quantitative indicators of field emergence—Google and Google Scholar hits—reinforces this concern: is the taxonomy responding to a qualitative transformation in the study of international law, or to a proliferation of scholarship that now requires disciplinary management?

In Chapter 2, Robert Schütze's historical reconstruction recovers the work of William E Butler, whose international systems approach—focusing on regional or ideological families—Schütze champions as the proper foundation for comparative international law. Schütze traces this genealogy from Robert Ward in the eighteenth century through Butler's Hague Lectures in the 1980s, offering a historical account that corrects what he sees as the "historical amnesia" of the post-2011 scholarship (43). Yet Schütze's inheritance of Butler comes with formalist assumptions that shape his definition of the field. He endorses Butler's view that national approaches "should categorically be excluded" (46), though his own formulation is slightly more nuanced: comparative international law, he writes, concerns:

> the identification and analysis of similarities and differences among regional or specialized systems of international law (horizontal comparison) or between them and general international or national law (vertical comparison), whereby at least one unit of comparison is international or supranational in nature (48).

This is a methodological choice that privileges systems over actors, juridical order over practice, and doctrinal coherence over empirical diversity. Schütze's critique of the approach advanced by Anthea Roberts (Roberts & Koskenniemi 2017; Roberts & Ors 2018) follows from this framework: centring national courts and academics either presupposes one underlying universal international law or, in its constructivist form, risks denying international law's legal character (45). This is a substantive argument, but risks mischaracterizing Roberts' own pluralism: her project

is not to assume universalism, but to reveal the diversity of national interpretations; the dilemma Schütze poses is therefore, in part, of his own making.

Arguably, Schütze's own framework, by refusing to treat national receptions of international law as comparative international law proper, reproduces at the methodological level a boundary-making gesture that his historical narrative elsewhere teaches us to treat with suspicion. The irony is that the chapter makes visible the contingency of international legal systems—their emergence through empire, ideology, translation, coercion and institutional struggle—while its methodological conclusion tends to stabilize those systems as bounded juridical objects. The difficulty is not that Schütze ignores social construction; he plainly does not. Rather, once a formation is recognized as an international legal system, the comparative task becomes one of identification and comparison, rather than inquiry into the actors, practices and contestations through which such a system comes to be recognized as law.

His brief discussion of the Chinese empire (33-34) illustrates the risk. Drawing on John King Fairbank, Schütze presents a unified hierarchical order of "superordination-subordination" (34) underpinned by the emperor's universal supremacy. This view, while capturing the official ideology of the centre, flattens more complex realities on the peripheries, where rules were translated, negotiated, and at times contradicted. Post-Fairbank scholarship has challenged the totalizing implications of the Sinocentric model: border officials, local interpreters and regional actors adapted imperial norms in practice, producing hybrid legal practices that sat uneasily with the orthodox narrative aimed at domestic audiences (Kellam 2015: 18-29). A systems framework can therefore privilege the centre's juridical self-description over the contested practices through which inter-polity norms were actually produced. Indeed, as Part II of the volume later demonstrates, this exclusion of national approaches is difficult to maintain.

Taken together, the two introductory chapters reveal a central tension in the volume. Siems offers an expansive taxonomy of comparative international law, while Schütze proposes a narrower, historically grounded definition centred on international systems. Both approaches are valuable, but both stabilize the field: Siems by organizing its proliferating forms of comparison, Schütze by delimiting its proper subject matter. The volume's framework thus raises a deeper question: what must be organized, prioritized or excluded so that comparative international law remains recognizably international and recognizably law. At times, especially in

Schütze's reclassification of national approaches as comparative foreign relations law, this taxonomic impulse reads defensively: it preserves the normative autonomy of international law against collapse into comparative foreign relations law or national legal sociology. Yet the case for that defensive posture is not fully developed. As Saïda El Boudouhi later argues (chapter 8), drawing on Pierre Legrand, comparative law can "subvert the great positivist [formalist] machine by placing grains of sand in its cogs" (201, quoting Legrand). In chapter 10, Horatia Muir Watt develops the same point in decolonial terms: comparison always presupposes metrics, and those metrics frequently carry hidden assumptions about civilization, progress, legal maturity and alterity. These critical perspectives, to which I return below, show that the taxonomic ambitions of Part I are more politically charged than they first appear. The opening chapters leave this more disruptive conception of comparison largely unexplored.

Part II of the volume tests the framework announced in Part I and, in important respects, exceeds it. Its chapters do not simply populate that taxonomic framework; they compare different kinds of objects altogether: regional practices, national strategies, methodological traditions, hegemonic projects and juristic orders. The result is illuminating precisely because it is unruly: the case studies resist neat categorization, exposing the limits of Part I's conceptual architecture while also demonstrating what comparative analysis can achieve when freed from taxonomic constraints.

Kehinde Folake Olaoye (chapter 3) revisits the contested genealogy of "African international law" (AIL), from early twentieth-century dismissal by scholars such as Scott Brown through decolonization and contemporary regionalism. Olaoye acknowledges the colonial baggage of "African law" as an ethnographic construct but uses comparative method to identify distinctive regional practices in treaty ratification, custom and regional adjudication. The chapter's key move is away from the search for a singular, exceptionalist AIL toward plural "African approaches to Africa's international law problems" (70). In doing so, it both fits and unsettles Part I: Africa appears to offer the kind of regional field that a systems approach might accommodate, yet Olaoye shows that this field is constituted by overlapping continental, subregional, national and mixed legal traditions that do not resolve into a single coherent legal family.

Ríán Derrig's chapter on "American" international law is among the strongest contributions (chapter 4). Tracing American anti-formalism from classical pragmatism to the New Haven School and contemporary liberal internationalism, Derrig shows that the relevant unit of comparison is not

a geographical legal family but a methodological tradition: a pragmatic, policy-oriented and antiformalist style repeatedly mobilized in service of American power. Crucially, Derrig shows that anti-formalism has variable political valences: it may enable United States military projection in use-of-force debates, while the politics of formalism and antiformalism shift in expropriation and investment contexts. Derrig is therefore not comparing rules, institutions or states so much as epistemological styles. His chapter reveals that the politics of legal method are at least as salient as the geography of legal families.

Ge Chen and Ming Ma Du's chapter on China's contemporary approach (chapter 5) is instructive precisely because it does not fit the volume's framework. The authors adopt a national approach to international law, noting that the comparative international law movement has not widely extended to China and that a "scholarly withdrawal into national approaches" is more realistic when studying China (98). Yet China's reception and adaptation of international law are central concerns of comparative international law. The chapter thus exposes a boundary problem: China is indispensable to any comparative account of contemporary international law, but it enters through the national-approaches lens that Schütze would relegate to comparative foreign relations law. Substantively, Chen and Du trace China's trajectory from nineteenth-century recipient of Eurocentric international law, through Soviet-influenced socialist international law, to post-1978 engagement and Xi-era norm-shaping. They characterize China's contemporary approach as sovereignty-centred and instrumentalist: embracing international law where it advances interests, resisting norms that constrain sovereignty. The chapter's most interesting claim is that China's approach exceeds "authoritarian international law" and shades into an "international law+" project (120). Yet it also exposes a limitation of the Part I framework: its exclusion of national approaches means it cannot accommodate an analysis that straddles legal doctrine and official discourse.

In Chapter 6, Max H Mayer offers a dense intellectual history of nineteenth-century German international legal positivism and its construction of a distinctively European international law. He traces the shift from natural law universalism to its Hegelian synthesis in Johann Bluntschli. This tradition, he argues, did not simply restrict international law to Europe but redefined universality itself: European legal forms were presented as civilizations' historical culmination, while non-European societies were excluded and re-integrated only through a teleological narrative of future development under European tutelage. For Mayer, then, the European tradition is best understood not as one legal family

among others, but as a hegemonic project whose exclusions comparative international law now seeks to redress.

Bringing Part II to a close with chapter 7, Ayesha Shahid reconstructs the eighth-century juristic tradition of As-Siyar as a sophisticated body of law governing relations between Muslim and non-Muslim polities, covering treaty obligations, conduct of war, diplomatic immunity and peaceful dispute settlement. The chapter also considers the Organization of Islamic Cooperation and League of Arab States, noting their limited effectiveness in contemporary dispute resolution. It serves as a counterpoint to Eurocentric histories of international law, though its inclusion also raises the question of why some non-Western traditions are selected for comparative treatment while others remain absent.

If Part I sets out a project and Part II tests it against unruly cases, Part III systematically questions whether the project can hold.

El Boudouhi, in chapter 8, argues that comparative international law is, at best, a linguistic convenience: what is usually compared is not international law itself, but national receptions of international law, properly understood as comparative foreign relations law. When domestic judges refer to foreign case law in interpreting treaties, they are not necessarily doing comparative law in the scientific sense; they may simply be applying international law's own rules of recognition. The chapter's real contribution lies in its call for methodological discipline: a critical, reflexive approach to foreign law that exposes the choices available to judges. This is a more modest, but arguably more defensible, claim than the taxonomic project advanced in Part I.

Ugo Mattei and Avi Singh offer the volume's most polemical contribution (chapter 9). The authors argue that comparative international law is necessary because post-1991 claims of Western legal universalism suppressed alternative visions of international law, including Soviet international legal thought. Gaza, Ukraine and institutional paralysis are used as evidence of a terminal crisis in the existing order. The chapter concludes by identifying the Association of Brazil, Russia, India, China, South Africa, Egypt, Ethiopia, Indonesia, Iran, and the United Arab Emirates (BRICS) as a possible site of alternative international legal futures. The discussion of sovereign debt, investment law and economic sovereignty is suggestive, but BRICS often appears less as an object of sustained comparison than as a symbol of counter-hegemonic possibility. In doing so, it risks treating the weakening of Western hegemony as itself evidence of a more plural or emancipatory international law.

Muir Watt, in Chapter 10, offers a decolonial critique of the metrics that underwrite comparison, especially in private international law. Her central claim is that apparently neutral categories—"development", "progress", "*ordre public*"—carry embedded assumptions about time, civilization and hierarchy. The chapter is significant for the volume because it challenges the idea that comparison can be a merely technical exercise: every comparative project depends on metrics, and those metrics are never innocent. It therefore speaks directly to the book's opening taxonomies.

In Chapter 11, Petra Minnerop offers a constructive example of comparison beyond state-centred categories, using science as a *tertium comparationis* across global commons regimes. By comparing how treaties rely on "best available science", the chapter shows that comparative international law need not be organized around legal families or regional traditions, although it does not fully engage the critical questions about power and epistemology raised elsewhere.

Marta Infantino identifies global indicators and rankings as among the most consequential comparative exercises in contemporary global governance (chapter 12). Her chapter exposes a major blind spot in both comparative law and international law: lawyers have often ignored quantitative comparison precisely where it is reshaping legal and institutional behaviour most powerfully.

Jaakko Husa concludes by distinguishing global law as a universalizing normative field from global law as a process of legal globalization (chapter 13). The distinction is useful because it captures a tension running through the volume as a whole: comparative international law oscillates between description, critique and normative reconstruction without finally choosing among them.

Comparative International Law is a volume of considerable intellectual vitality, but its vitality lies precisely in its internal contradictions. The editors seek to impose order through taxonomy and historical definition; the contributors, at their best, reveal why that order remains elusive. The opening chapters set out a framework that is complicated by the regional case studies and further unsettled by the critical chapters in Part III.

Three observations follow. First, the volume demonstrates that the question of what comparative international law is cannot be separated from how one compares. Derrig (chapter 4) shows that comparing methodological traditions yields different insights from comparing geographic families; Muir Watt (chapter 10) shows that comparison always involves metrics; Infantino (chapter 12) shows that consequential

quantitative comparisons are already reshaping global governance whether lawyers acknowledge them or not. The volume does not resolve these methodological tensions, but it does illuminate them.

Second, the selection of traditions reveals the framework's limits. Mayer's account of European international law shows that Europe was not merely a legal family but a hegemonic project (chapter 6). Shahid's chapter on Islamic international law (chapter 7) demonstrates the importance of non-Western juristic traditions. But it also exposes a selectivity that is difficult to justify: Hindu, Buddhist, and Confucian legal traditions all developed substantive bodies of norms governing inter-polity relations, yet none receives sustained attention in the volume. This omission is particularly striking given that comparative law scholarship has long subjected the very taxonomy of religious legal families to searching critique (Huxley 2002: 8-16)—a critique that the volume's taxonomic ambitions might benefit from engaging. This omission extends beyond religious traditions: why China but not Japan, India or Southeast Asia? Most strikingly, Indigenous legal orders remain largely outside the volume's map, despite their significance in areas such as traditional knowledge, genetic resources, environmental governance, climate law and free, prior and informed consent.[1] No edited collection can be fully comprehensive, but a taxonomic project that seeks to define the field might benefit from reflecting on its own exclusions and their implications for how comparative international law is conceived.

Third, the volume's greatest contribution may be that it leaves unresolved the question it poses. It invites the reader to ask whether comparative international law is a discipline, a method, a convenience of language, or a site of contestation over what counts as law and who gets to compare it. On the evidence of this collection, it is all of these things simultaneously. The lack of resolution is not a weakness, but a productive condition of inquiry.

For anyone interested in these debates, the volume offers an indispensable map of the field's fault lines, even if its own boundaries remain contested. It is most valuable not for the framework it proposes, but for the questions it leaves open: questions that will likely occupy the field for some time.

[1] See, eg, the 2024 World Intellectual Property Organization (WIPO) Treaty on Genetic Resources and Traditional Knowledge; the Nagoya Protocol on Access and Benefit-sharing; and the Inter-American Court's decision in *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001). The Whanganui River settlement in Aotearoa New Zealand—which granted legal personhood to a river—similarly illustrates how a domestic legal innovation can influence international discussions on the rights of nature.

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