

# Literatur

## Buchbesprechungen

**von Sachsen Gessaphe, Karl August Prinz:** Rechtsvergleichung. Ein Studienbuch. – München: C.H. Beck 2025. XLI, 369 S. (Juristische Kurz-Lehrbücher.) – ISBN 978-3-406-54878-9 | DOI 978-3-406-83359-5.

Reviewed by **Michael Bogdan\***

The ambitions and the main points of departure of this new textbook on comparative law, written by a professor at the FernUniversität in Hagen (Germany), are indicated by its title and summarized in its preface. The book is published within the framework of a series whose name, translated into English, is “concise legal textbooks”, so that the purpose can be assumed to be mainly pedagogical. The focus is said to be on comparisons of private law, and the proclaimed principal approach is functionalist, even though the author already in the preface admits that functionalism is not the only correct method that can be used.

The text is divided into four chapters. The first and last chapter are very short: the 18 pages of the first chapter are of an introductory nature and deal with the very concept of comparative law, whereas the 10 pages constituting the last chapter more or less illustrate how the creation of a contract is regulated in different – but in many respects similar – ways in French, Italian, Austrian, Swiss, English, and American law and in the UN Convention on Contracts for the International Sale of Goods (CISG).

The core of the book is thus found in chapters 2 and 3. Chapter 2 addresses in 100 pages what can be called the general part of comparative law, in particular its aims, uses, and methods, as well as the theories behind the various attempts to systematically divide legal systems into groups (in English usually called families of law; in German also known as *Rechtskreise*, literally “legal circles”). The author presents and explains not only the prevailing flexible functionalist method, which he himself adheres to, but also the principal methods employed by the main critics of functionalism, including the unconvincing extremist positions of some of them. As pointed out by the author, part of this exaggerated criticism seems to be directed less against the functionalist method as such (or the caricature thereof) than against anything the critics perceive as “mainstream”.

The most voluminous chapter is chapter 3, comprising more than 220 pages, where the author describes the main features of three of the principal “legal circles”, namely Germanic (mainly German, Austrian, and Swiss) law, Romanic (mainly French, Italian,

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and Dutch) law, and the common law (mainly English and US law). There is very little mention of other legal systems, such as Islamic or Far-Eastern law, except in connection with the diffusion beyond Europe and North America of the law originating from the above-mentioned European countries. This can be seen by some as an expression of blameworthy Eurocentrism, but it may also be regarded as a sign of respect towards legal systems that – I assume – are less accessible to the author, for example due to the language of the primary sources. Many other comparatists, including this reviewer, have committed the sin of teaching and writing about a foreign legal system solely based on secondary or even tertiary sources of information. This naturally increases the risk of misunderstandings, but it is sometimes, depending on the ambition and purpose of the study, outweighed by practical necessity and a lack of alternatives. Many of today's young lawyers and law students will during their professional careers come into contact with Islamic or Chinese law and will find some basic knowledge of these legal systems and cultures valuable. A total "cultural immersion" into a foreign legal system, where the comparatist feels and thinks as an insider rather than as an external observer, is in any case extremely difficult to achieve, in particular if he or she has the ambition to cover more than one foreign legal system. However, the author's understanding of the main legal systems covered by chapter 3 was facilitated by the fact that all of them, including his own law, are laws of countries having a developed market economy, the rule of law, and a Western type of political democracy.

The presentation of the three "legal circles" is done with great care and pedagogical talent, selecting with an almost surgical precision those facts, rules, and issues that are of greatest interest and practical value from the point of view of an average beginner in the field. This is not an easy task, especially in view of the author's ambition to provide a textbook that at the same time is concise and avoids the risk of dangerous oversimplifications. The author uses numerous examples, cross-references, and summaries to make the text simple and reader-friendly, but he does not dodge even those rather complicated legal principles and concepts that frequently give a headache to foreign jurists, such as the German *Abstraktionsprinzip* regarding transfer of property or the English concept of equity as opposed to common law.

The text covers the fundamental features of substantive private law, as well as the basic elements of the law of civil procedure, the organization of courts, legal professions, and even legal thinking. As far as my limited knowledge permits, I can confirm that the information provided in the book is correct. The value of this information is increased by the fact that pursuant to the preface, it represents the state of the law as of March 2025. For teachers of general comparative law courses, aiming at acquainting the students, even if only summarily, with half dozen major legal systems, it is practically impossible to keep pace with the latest legal developments in all of them. A book of this kind is therefore a true blessing, and one can only hope that the author will find the energy and patience to produce frequent new editions in the years to come.

There is no doubt that this excellent book constitutes a very valuable addition to the existing literature on comparative law. Its usefulness goes beyond its self-proclaimed pedagogical purpose, since much of the author's argumentation can also be seen as a contribution to the ongoing academic debate. This naturally applies more to the meth-

odological discussion in chapter 2 than to the very valuable but mostly descriptive chapter 3. I can highly recommend the book to both students and teachers of comparative law courses, as well as to writers dealing with the theoretical aspects of comparative law.