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Book Review

Sue Farran, Esin Örucü and Sean Patrick Donlan. *A Study of Mixed Legal Systems: Endangered, Entrenched or Blended*. Farnham ; Burlington: Ashgate, 2014, ISBN (Hb) 978-1-4724-4177-5, £78.99.

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Throughout history, shifts in the domination of kingdoms, empires and states over each other have left marks hard to erase. One of those marks appears in the legal systems of certain territories that have been influenced or shaped after different legal orders that we can call “parent systems”. Parent systems tend to make large-scale implants in those territories, hence when two or more collide, the result is a mixed system, which can be identified by the fact that it shares traits of the parent systems.

A Study of Mixed Legal Systems: Endangered, Entrenched or Blended, edited by Sue Farran, Esin Örucü and Sean Patrick Donlan, collects nine studies about mixed systems all over the world. From large jurisdictions like Quebec or Scotland, to microjurisdictions like the isle of Jersey or the Seychelles, all of these chapters deal with a series of common factors in order to determine the current situation of the system and its perspectives for the future. In this sense, the notions of *endangered*, *blended* and *entrenched* appear as a way to describe the state of affairs in each jurisdiction.

Following the conceptualization made by the editors in the introductory overview, the typology that distinguishes between endangered, blended and entrenched systems is based on the perceived stability of their mixity. Thus, an entrenched system appears as one where the elements of the mixture are stable, without great risk of losing that balance. The editors insinuate that this stability is not synonymous with total permanence, because every system tends to change, specially the mixed ones. So, an entrenched system is firmly established in a position of strength in the face of possible internal or external risks.

On the other side of the spectrum, we find the endangered systems. The concept appears to be not entirely appropriate, because as the editors recognize, it suggests the idea of a threat on something that deserves protection. Obviously, we need to stress that a mixture is not a value in itself and the danger can purport something better for the system. In this sense, I would say that being endangered seems to be a state where the system that is unstable faces the “threat” of getting stable. The problem is for the mixture, because the subsequently acquired stability can lead to the disappearing of one of the elements that makes that mixture.

Finally, the concept of blended seems to be the more problematic. In the editors’ concept, a blended system is one where the mixity is no longer apparent, especially to those outside the system. In that case, the system cannot be tagged as mixed, because it simply lacks the difference between its elements. With this in mind, the

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heuristic value of the concept can be to serve as a measure to identify former mixed systems in a stage of homogenization of its legal components. In this case, a blended system should appear as a *sui generis* specimen that was successful in sublimating its internal differences.

The book is structured in nine chapters, covering nine different jurisdictions that are considered to be mixed. Each chapter deals with some key factors proposed by the editors, namely, the history of the jurisdiction which created the mixity, the main events that marked its derive from the parent system or the moment when it became endangered; the significance of language; the influence of legal education and legal profession; the role of geographic proximity or distance from other systems, and the influence of regional or international memberships or agencies in shaping the law. Additionally, two small chapters at the beginning and at the end are used to introduce the works and to sum up some ideas.

These factors show us whether the system is entrenched, endangered or blended, and the editors have arranged the chapters to facilitate this recognition. Thus, Scotland opens the book as an endangered jurisdiction, following Guyana, Philippines, Jersey, Mauritius, Seychelles, Quebec, Saint Lucia and, finally, Cyprus as the main contender for the title of blended system. This order has two exceptions, Seychelles and Saint Lucia are placed after Mauritius and Quebec for being closely connected to them, breaking this progression from endangered to entrenched/blended that follows the book.

The layout of each chapter, following this descriptive way through shared factors, reveals deeply useful for drawing conclusions from the comparative point of view, because although the various articles can be read individually, is together where we can appreciate the dialogue between them. An example of this is the interpretation we can make of the situation of mixed systems inherited by post-colonial states like the Philippines, Guyana and St. Lucia. In both cases the colonial heritage has been felt in a virtual disappearance of Spanish, Dutch and French civil laws in the hands of common law. As Pacífico Agabin points out in his article on the Philippines, is the adequacy of common law with capitalist trade, which explains its diffusion as a facilitating device of colonial practices. It is interesting to note that the colonial heritage is equally heavy, regardless of the scale of the jurisdiction, with the Philippines and Guyana being two states of medium length and Saint Lucia a microjurisdiction. In all these cases, the result is an unbalanced mixture that seems headed for a total disappearance of the civilian component or its reduction to small institutions that are interpreted with the reasoning of common law

Similarly, the dialogue between chapters can be established at different levels, even those not specifically covered by the editors. The best example of this assertion appears when we find that in most cases, the mixture operates generally at the level of private law and not public law. It is in this area where battles are fought, with a predominance of civil law in family issues and common law in the commercial field. Upon this, we can draw the importance of codification as a means of survival, resistance and even predominance of civil law versus common law. Note the Scottish case, lacking a civil code and besieged by the system of neighboring England, while in Quebec the new code of 1994 has opened an era where civil law begins to prevail over its common law competition. In between, Saint Lucia looks at Quebec with the idea of drafting a new code that would restore balance in its legal system. Mauritius, on the other side, drafted a French-written code that is a key part of its law-patriation movement that followed the Independence. Not in vain, the post-codification Mauritius's system is described as one of the most stables in the book.

The consequences of codification as a way to reinforce the civil component in private law appears clearly in one of the factors proposed by the editors, namely, the legal writing. Whereas Quebec produces an enormous amount of doctrine based on its codes, even exporting this doctrine to other jurisdictions like Saint Lucia, Scots law deals with the problem of producing a small doctrine focused on its civil roots.

Obviously, legal writing does not need a code to work on, that is the case of Jersey, where its Institute of Law, created on 2008, is contributing to a renaissance of its civil law component, digging in non-codified sources. However, the fact that a civil code constitute "though law", is precisely because of the difficulties that common law mechanisms have to modify a code in the short term, and thus, a code offers a solid base upon which legal commentators can develop a full body of doctrine.

To sum up, the book delivers a collection of works based on legal systems that appears to have many things to say to each other, despite their external differences. The exposition of each chapter following some key factors proposed by the editors is convincing, since it allows the reader to extract conclusions and make correlations even from secondary or not fully covered topics, as codification. Additionally, the focus on the system's stability serves to evaluate future situations for non-mixed systems that could derive from current phenomena like globalization and transnationalization of law, which are pervading and modifying areas or legal institutions through the entire world. In this sense, the present book constitutes a great tool for analyzing, from a comparative perspective, the long-term effects of mixing legal systems, offering us a multidisciplinary way, through history, language, legal practice and legal writing, to analyze and determine the potential stability or collapse of those mixtures.