



## A study of mixed legal systems: endangered, entrenched, or blended, edited by S. Farran, E. Örüçü, and S.P. Donlan, Farnham and Burlington, Ashgate (Juris Diversitas Series)

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**A study of mixed legal systems: endangered, entrenched, or blended**, edited by S. Farran, E. Örüçü, and S.P. Donlan, Farnham and Burlington, Ashgate (Juris Diversitas Series), 2014, xiv + 256 pp., US\$ 112.46 (hardcover), ISBN 978-1-4724-4177-5

This edited volume offers a number of detailed and fascinating case studies of mixed legal systems (i.e., mixed systems of common law and civil law) from across the globe: Cyprus, Guyana, Jersey, Mauritius, the Philippines, Quebec, Saint Lucia, Scotland, and Seychelles. It explores the question of the extent to which the elements of these mixed systems may be seen to be “entrenched”, “endangered”, or “blended.” The studies include colourful histories of the jurisdictions, of their complex relationships to parent legal systems, and of language, legal education, and legal actors. They explore how legal change happens, question whether some systems are at greater risk than others, and detail various strategies aimed at accelerating or counteracting change.

*A Study of Mixed Legal Systems* is part of the *Juristas Diversitas* series which, rooted in Comparative Law, focuses on the interdisciplinary study of legal and normative hybrid systems and movements. The renowned editors of this volume have earned their spurs in in the field of comparative law. Besides being experts in that field, Sue Farran also has published a lot on the island countries of the South Pacific, Esin Örüçü has published articles and books on mixed legal systems, and Seán Patrick Donlan’s areas of expertise are legal history, legal philosophy, and legal education. The formidable range of expertise and interests of the three co-authors is abundantly reflected in this volume. The book has its origins in a symposium held in Glasgow in June 2013, entitled “Endangered Mixed Legal Systems”, which evolved into this volume that contains contributions of nine legal scholars on a broad spectrum of jurisdictions, ranging from those “at-risk” to those whose hybrid character is entrenched.

The collection of case studies is analysed by the editors in introductory and concluding chapters. As the introduction makes clear, the underlying purpose of this volume is to explore different models of mixing and the challenges these systems face. There is a special focus on the history of these systems, the significance of language, the influence of legal education, and their relationship to parent legal systems (p. 1). The basic premise of this collection is that all modern legal traditions are hybrid, and that their mixed character evolves over time (p. 2). Thus, a recurring question throughout this volume concerns whether these mixed systems evolve in such a way that they might lose their mixed identity, and if so, if some systems are more at risk than others (p. 3). A close reading of the book reveals that hybridization may take many forms, and that any mixed legal system is unique in terms of its evolution, survival, or susceptibility to threats against its integrity. It, therefore, is difficult to either provide a satisfactory definition of “mixed legal systems” or to pinpoint the moment when mixed systems become endangered (p. 246). The editors call attention to the need to dispel the dense fog that enshrouds such critical issues.

The nine case studies of the different mixed legal systems vary in several ways: in size, geographic location, the extent of their hybridization, and the degree to which they are endangered. In the chapter on Scotland (by Sue Farran), attention is drawn to historical external and internal forces – specifically those events that have threatened the survival of Scottish law as a distinct legal system. It is shown that common law is becoming more prominent compared to its historical roots in the civilian tradition. Christine Topin-Allahar’s chapter on Guyana (a Dutch colony until 1814, and under British sovereignty until it gained independence in 1966) presents a case in which historical and other influences have resulted in a legal system with both Roman and Dutch elements. This distinctive Guyanese legal system is currently endangered. Not because of a certain

recognition of customary law of its indigenous people alongside the formal legal system, as one might suggest. Instead, the Guyanese system is threatened by the structure of the judicial system itself, and because the legal practitioners who are administering the law are being educated in common-law jurisdictions in the UK and the Caribbean. Chapter three, on the Philippines, by Pacífico Agabin, presents an instance in which common law slowly came to supersede civil law concepts almost entirely. In the Philippines, where the industrial colonizer, the United States, replaced the feudal colonizer, Spain, it is the role of American judges, the shift to the English language, and the case-by-case introduction of common law that has come to imperil the civil law tradition.

In contrast to the first three chapters, which present instances in which the common law element of the mixed legal system has been strengthened, the case of Jersey discussed in Chapter four (by Philip Bailhache) discusses a mixture that, while not imminently threatened, is certainly vulnerable. The original Norman customary law that prevailed in Jersey, mixed with elements of French law and English law, evolved to a mixed legal system that displays both strengths and vulnerabilities. The next chapter, on Mauritius (by Tony Angelo), provides an example of a strong mixed legal system. With legal codes in French and an official language of English, Mauritius retains a unique mixed legal system, moving towards blending its elements. In contrast, the case of Seychelles, which is discussed in Chapter six (by Mathilda Twomey), is an example of an unstable balance where civil law traditions have slowly eroded. Although potentially a classic mixed legal system with clear-cut separation of the common law in public law on the one hand, and the French civil law in private law on the other, the strength of that mix is under siege as a result of the language of the Civil Code being changed to English.

Chapter seven on Quebec (by Sophie Morin) presents a legal system that seems well entrenched, or that at the very least as not endangered. Although in historical perspective this has not been always been the case, nowadays the status quo of a mixed legal system is hardly questioned in Quebec. Like Quebec, Saint Lucia was a French colony, with French law, before it was captured by the British. Chapter eight (by Jane Matthews Glenn) shows how the Civil Code in Saint Lucia has been under pressure of common law concepts and how the future direction of the law still seems uncertain. The final case study in Chapter nine is that of Cyprus (written by Achilles Emilianides). It provides the reader with an example of a system radically different from those previously discussed. In contrast to classic mixed legal systems, the present-day private law was derived in Cyprus from common law, while public law was derived from the civilian tradition. Although there are challenges and possible constraints, the Cypriot system does not seem to be seriously endangered, and its laws of heterogeneous precedence co-exist and blend in a unique way.

From the standpoint of legal pluralism, a number of important questions arise. The volume implicitly embraces legal monism as a point of departure. Thus, the hybridization discussed here is that which comprises “common law and civil law systems”. In the Introduction and the Conclusion, it is suggested that mixing could involve elements other than those of Western-based legal systems. Yet the case studies presented in the book do not deal with such mixing. In other words (with the welcome exception of the Guyana chapter), legal pluralism is simply excluded from the discussion. Given the particular geographic locations of the case studies, it is fair to ask what role religious law or customary law played in the historical development of these national legal systems and their mixing. How do contemporary mixed legal systems deal with political and legal demands from citizens with regard to indigenous and/or religious rights? In short (as the editors

themselves suggest in their concluding remarks [p. 245]), these cases might also be profitably studied from the dual perspective of mixed legal systems *and* legal pluralism.

This book's collection of interesting case studies of hybrid legal systems not only provides us useful insights regarding the ongoing process of mixing in general, but also in reference to the particular cases presented. It, therefore, is an important addition to the literature on mixed legal systems and comparative law in general, and will undoubtedly prove a boon to further research.

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