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**Japanese Comparative Law and
Foreign Influences: a Preliminary Analysis**

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Abstract

IT *Questo articolo presenta un'analisi quantitativa di testi e manuali giapponesi di diritto comparato, valutando i modelli e l'importanza delle influenze straniere su di essi. I risultati dello studio sono in linea con le aspettative. Nel corso dell'analisi sono emersi diversi problemi metodologici, come il numero esiguo di fonti e la difficoltà di rintracciare criteri formali per analizzare rigorosamente i dati raccolti. L'articolo si chiude con un'analisi degli ostacoli che rendono complessa l'analisi quantitativa in questo ambito.*

EN *This paper presents a preliminary quantitative survey of Japanese comparative law books and textbooks and evaluates the patterns and the extent of foreign influence on them. The results of the inquiry were in accordance with the expectations. In the course of the analysis various methodological problems surfaced, such as the exiguous number of sources and the difficulty of finding formal criteria to analyse and process formally the data found. The hurdles to performing quantitative research about such topics are discussed.*

Keywords: comparative law, textbooks, Japan, quantitative research.

JAPANESE COMPARATIVE LAW AND FOREIGN INFLUENCES: A PRELIMINARY ANALYSIS

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1. Introduction

This paper will present a survey of the most important Japanese comparative law books in the Japanese language, assessing the patterns and the extent of foreign influence (Sections 3.1 and 3.2) on them. Besides this bibliographical survey, this paper will measure the influences of foreign jurisprudence on Japanese comparative law textbooks (section 3.3).

In the course of this analysis various methodological problems surfaced, and they are discussed in Section 4.1. Among these, the most important problems were the exiguous number of sources and the difficulty of finding formal criteria to analyse and process formally the data found in the course of analysis: this poses high hurdles to performing quantitative research about this matter. The findings are presented in Section 4.2.

2. Methodology of the research

2.1 Scope of the Analysis

This study analyses a corpus of comparative law books and textbooks in the Japanese language, selected through the database search engine of the University of Tokyo Library, OPAC¹.

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*** Names are cited according to the Western custom: First name, Family name. The macron on the long vowel (e.g.: in “*ho*” of “law”) is not marked.

¹ <https://opac.dl.itc.u-tokyo.ac.jp/opac/>

The first part of this analysis will present the four Japanese books having as their title the exact words “*hikaku ho*”², and Section 3.2 will present a broader corpus of materials, providing the reader with a concise description of the most important ones.

In section 3.3 I perform a more detailed analysis on a more limited set of materials: I select from the corpus in section 3.2 the sources that could be regarded as comparative law textbooks for undergraduate or young graduate students, and I analyse the references to non-Japanese materials cited in the footnotes and in the bibliography.

References to foreign materials are clearly a very important signal of the influence of foreign jurisprudence, and this is for two reasons. On the one hand, references signal the influence of the referenced source, and more generally of the scholarship of that country. Especially in Japan, references to foreign literature tend to have an important meaning, as they are oftentimes identitarian statements about the author’s relationship with a certain school and a group of scholars. Besides being a signal of the past influence on the author, references and citations in textbooks tend to exert an influence projected in the future on the readers, especially undergraduate students and junior scholars, especially because textbooks are used in a period when this influence is more likely to carry momentum and exert its effects over a long time span.

Works analysed in section 3.2 are limited to sources held in the libraries of the University of Tokyo network; works analysed in sections 3.1 and 3.3 are not limited to the materials held in the libraries of the University of Tokyo and represent possibly all sources in the Japanese language responding to the search criteria.

2.2 Problems and Shortcomings

This research encounters the following limitations and shortcomings.

First, the search of the materials analysed in section 3.2 has been carried out on one network of libraries only, i.e. the libraries of the University of Tokyo. The library network of the University of Tokyo is among the largest in Japan³, but there is the possibility that some sources might have been overlooked.

² *Hikaku ho* is the standard translation of “Comparative law”. In Japanese, it is written by means of three Chinese characters (“*kanji*” in Japanese). The first two *kanji* mean “compare” (*hikaku*), while the last is the *kanji* of “law” (*ho*). Due to the characteristics of the Japanese language, and in particular to the convention of not having spaces between words, the expression may appear like a single word.

³ The books registered in the network are more than 2,658,000. The library of the Faculty of law holds more than 744,000 books. Source: staff of the library, personal communication, data about the libraries in the Tokyo University Network, http://www.lib.u-tokyo.ac.jp/koho/gaiyo/stat_h23.pdf.

A second limit of this research lies in the keywords used to search and select the materials. As mentioned above, only books including the expression “*bikaku ho*” in the title, either as exact expression (Sect. 3.1), or as a part of the title (Sect. 3.2) have been analysed. This query may not have allowed or a thorough recognition of all the Japanese comparative law books, and some valuable works dealing substantially with comparative law issues might have been ignored here⁴. However, an *ad hoc* choice of the sources to include in or exclude from the corpus, based on a discretionary, case-by-case assessment of their content would have introduced more methodological and practical problems than it would have solved. For instance, two important categories of materials excluded were the 39 books edited and published so far by the Waseda University Institute of Comparative Law of Waseda University, and the 82 books published by the Institute of Comparative Law in Japan of Chuo University⁵.

Last, this study had to address a series of problems related to the analysis of the references and footnotes carried out in Section 3.3. A fundamental issue was related to the discrepancy between the various styles of citation. Some works have very few footnotes, while others have many: comparing materials following different patterns of citation bears little meaning, and this analysis was therefore not performed. Moreover, in sources where footnotes are abundant, the same work may be cited repeatedly many times, raising the problem of how to count the citation: shall it be counted as one citation only, or as many? I presented two sets of results: in the first, a source is counted only when its full title is cited, while it is not counted when it is cited through expressions such as “[Author], op. cit.” or “[Author], aaO” and equivalent expressions. The second set of results is based on the count of every citation, including multiple, recurring and repeated citations of the same reference works.

Citations have been sorted according to the language in which the title of the work appears, which is most likely the language of the text⁶, and not to the

⁴ For example, sources following the comparative approach but focusing on particular branches of law have not been examined in this paper for two reasons. A first, formal reason is that for the syntactical structure of the Japanese language, the qualifier (e.g. “family” or “constitutional” in “comparative family law” or “comparative constitutional law”) must be inserted between *bikaku* and *ho* (e.g., in the two aforementioned examples the corresponding Japanese expression is “*bikaku kazoku ho*” and “*bikaku kenpo*”), therefore these sources cannot be found with the query I used. More refined queries, e.g. using wildcards were not reliable, in particular because they gave too many “false positives” as results. A second, and more substantial reason is that in this study I decided to focus on books and textbooks dealing with the general theory of comparative law, leaving out of the inquiry sources focusing on specific topics.

⁵ The materials were however analysed in case the words “*bikaku ho*” appeared in the title of the book.

⁶ A detailed check of all the works cited, in order to verify the match between language of the title and of the text has not been performed.

nationality of the author⁷. In the case of references to sources citing other sources (e.g. “Author X, Work Y, cited in Author A, Work B”), both the citing source and the cited source have been counted as two distinct sources. Translations have been counted according to the language in which they appear, and not to the language of the original work. Therefore, for example, references to English-language works by Italian scholars have been counted as English citations; the citation of a Japanese author translated in French has been counted as a French reference. Citations of Japanese-language sources, including translations of foreign works⁸, have not been counted. Also, generic references to journals, to legal dictionaries or encyclopaedias, and references to laws or legal provisions have not been accounted for.

All sources are cited in Japanese in the Appendix.

3. Analysis of the results

3.1 – Works Titled “Comparative Law”

The first category of materials analysed is books in Japanese, the title of which is the exact expression⁹ “*bikaku ho*” [comparative law].

This search gave only 4 results. Of them, one is a “false positive”, as it is a Chinese translation of a Japanese comparative law textbook (source no. 2, translation of source no. 43). Another is a Japanese-language textbook (source no. 4), but it is not an original work, being the translation of an English textbook. The complete list is as follows:

1. TADASHI TAKIZAWA, *Comparative Law*, Tokyo, 2009.
2. MASAO OOKI, *Comparative Law (translated into Chinese by Yu Han and Keibun Shu)*, Beijing, 1999.
3. MASAO FUKUSHIMA (auth.), MICHITSU KAINO AND OTHERS (eds.), *Comparative Law*, Tokyo, 1995.
4. HAROLD C. GUTTERIDGE, *Comparative Law (in Japanese, translation supervised by Mizuta Yoshio)*, Tokyo, 1964.

There are only 2 original Japanese sources in Japanese language, the book by Takizawa (source 1) is the only source of this group that can be considered as a comparative law textbook. It will be analysed in closer detail in Section 3.3.

⁷ About this choice and related problems, see Section 4.2.

⁸ This will be the subject of future inquiries.

⁹ In the search page of the University of Tokyo Library OPAC, I selected this search key by selecting “Title of the book (exact form)” [shomei (kanzen kei/katachi)] from the pull-down menu.

The volume edited by Kaino and others (source no. 3) is volume no. 6 of the complete collection (in 9 volumes¹⁰) of articles, papers and other works (including unpublished papers) of the Japanese legal scholar Masao Fukushima. This is the volume collecting the works on comparative law, and it is divided into three sections: I. Reception of law and comparative law; II. Capitalist law and socialist law¹¹; and, III. Surveys of customs and comparative law.

3.2 – Works Containing “Comparative Law” in Their Title

The query used to select the sources of this Section was the following: “books” and “Japanese books” in the “type of materials” field, keywords “*hikaku ho*” as “non-exact title words”, and “Social Sciences” as “subject”.

The results of the search were 234 books.

Since the keywords *hikaku ho* were selected as “non-exact title word”, not all the sources contained the words as a part of their cover title; in some cases *hikaku ho* appeared in the extended title field, i.e. as author or editor. As mentioned above, in the case of 39 sources, *hikaku ho* appears in the name of the editor and publisher of a series of books dedicated to comparative law issues: the Waseda University Institute of Comparative Law. In 82 cases *hikaku ho* appears in the name of the publisher of another series of comparative law books: the Institute of Comparative Law in Japan of Chuo University.

Of the 109 sources remaining, only 59 were Japanese comparative law materials in the Japanese language.

The oldest Japanese book containing the words “*hikaku ho*” in its title is the Japanese version of the book of Lord Thomas Mackenzie “Studies in Roman law, with comparative views of the laws of France, England, and Scotland”, translated in Japanese by Teiichiro Matsuno and Teiji Ito, with the title “*Ra-Ei-Futsu-So kakkoku hikakuho riron*” (Theory of laws comparing Rome, France, England, and Scotland), published in 1891.

Some sources combine the reference to comparative law with a reference to comparative cultural studies. An example of this pattern is the book by Koresuke Yamauchi, *Hikaku ho kenkyū daiikkan – Hoboron to hobunka* (Comparative Law Research Vol. 1 – Methodology and Legal Culture), volume no. 79 of the series of the Institute of Comparative Law in Japan of Chuo University. It is divided into three parts: a first part on methodology, a second part on legal culture (both written in Japanese), and a third part in German on the scientific dialogue between Japanese and German law. This does not seem a textbook suitable for undergraduate classes, and it should be no surprise that

¹⁰ The subjects of the 9 volumes are as follows: I. Japanese modern legal history; II. Family; III. Land system; IV. Civil law (land, registration); V. Socialist law; VI. Comparative law; VII. Law and history and society and 1; VIII. Law and history and society and 2; IX. Regional system.

¹¹ This section includes works by other scholars.

the sources cited in the footnotes are overwhelmingly German: in parts I and II, written in Japanese, I counted around 60 references to German sources while the references to English sources are two in number, and there is just one reference to a source in French.

Another example of the tendency to stress the importance of culture in comparative law is the book by Tsuyoshi Kinoshita, *Hikaku ho bunka ron* (Theory of Comparative Law & Culture). This work addresses mostly methodological issues and tackles the relationship between the comparative analysis of law and the comparative analysis of culture. It is mainly focused on the Western legal families, and the core of the work is the comparison between the Western and the Asian legal families: in particular between Japanese legal culture and the Japanese legal system. The text does not have footnotes, or a list of sources¹², and despite its insights it cannot be considered a comparative law textbook suitable for use by students or young scholars.

The last source worth mentioning in this category is Mitsuzo Shibata's *Hikaku ho bunka no ba to shite* (Comparative law as the place of culture), focused mainly on Roman law.

Some sources have a structure divided sharply between a first part focusing on the general theory of comparative law, and a second part addressing case studies or more specific topics. This is the case in *Hikaku ho kara hikaku kenpo he* (From Comparative Law to Comparative Constitutional Law) by Takeshi Takagi: its first part deals with the methodology and the general theory of comparative law, while the second part is an in-depth comparative study of constitutional law, with particular attention to the French legal system.

The remaining sources can be divided into two broad categories.

The first category is that of collections of papers: some are collections of conference papers, others are so-called Festschriften, and there are also collections of the complete works of distinguished authors.

Among these, it is worth mentioning Kiyoshi Igarashi, *Gendai hikaku hogaku no shoso* (Various Aspects of Modern Comparative Law Studies). This book gathers the papers written by Igarashi after the publication of *Minpo to hikaku ho* (Civil Law and Comparative Law). The text is organized into 5 parts: 1. The actual situation of comparative law studies; 2. The formation and development of Law in Western Europe 3. The disappearance of the Socialist Legal Family 4. Asian Law and Japanese Law 5. Final Chapter. The book includes papers on different topics, as well as book reviews, comments on

¹² In 2004 professor Masao Ooki claimed that several parts of this book were in fact plagiarized from his book. The university where Kinoshita was teaching at that time (Chuo University in Tokyo) set up an internal commission to investigate the matter. While the commission could not find clear evidence of plagiarism, Prof. Kinoshita and the university agreed on a 3-month voluntary suspension from office, and the publisher apparently pulled the book from stores. The book is now only available on the second-hand book market.

other works, and a translation from German of the inaugural lecture of Prof. Gerfried Fischer on public order in East and West Germany, held on July 6 1995, at Martin Luther University in Halle-Wittenberg. Despite the importance of the studies appearing in this work, this also cannot be considered a textbook for an undergraduate course in comparative law. Also, an analysis of the sources cited here would not be meaningful, because of the miscellaneous nature of the papers featured in this book.

The second category is that of monographic studies on very specific subjects. Examples of the latter group are the white papers *Comparative law research on the work-life balance* and *Comparative Law Research on the Legal Concept of "Worker"* edited by the Japan Institute for Labour Policy and Training, *The Reinstatement of the Universal Comparative Law: European Civil Procedure and Comparative Law* by Yukio Kaise, *The Scope of the Public Medical Insurance: Fundamental Inquiries under the Guide of Comparative Law* by Eri Kasagi, *Act Against Violent Groups, Annotated: Explanation Article by Article and Comparative Law Research* edited by the Japanese Federation of Bar Associations, *A Comparative Law Study of the Legal System of Labour Relations* by Hiroyori Tsukamoto, *A Comparative Law Study on Arbitration – Dealing with Complaints: Aiming at a General System of Justice* and *A Comparative Law Study on Legal Aid – Lawyer's Insurance* by Takeshi Kojima, and *Comparative Law of the Property of Factories* by Saburo Kuwata.

These sources are also clearly not textbooks. The reference materials cited in the notes or in the bibliography are related to the subjects treated in the books, and no meaningful comparison can be performed on these data.

3.3 - *The Japanese Comparative Law Textbooks*

In this section I present the analysis of the Japanese comparative law textbooks¹³. I counted the references to foreign materials, in order to measure the influence that foreign scholarship exerted on such an important category of sources.

¹³ The oldest source in the Japanese language presenting comparative law to a Japanese audience in a systematic manner is the translation, supervised by Yoshio Mizuta and published in 1964, of H.C. Gutteridge's famous comparative law textbook "Comparative Law: an Introduction to the Comparative Method of Legal Study & Research". It replicates faithfully its structure and its contents. The final part of the book features an additional chapter by Yoshio Mizuta about the works and the significance of Gutteridge's scholarship. Being a translation of an English book, this cannot really be considered as the first original Japanese textbook on comparative law.

I. Kiyoshi Igarashi, Hikakuho Nyumon (Introduction to Comparative Law), 1968.

This is the oldest original Japanese comparative law textbook. As the title suggests, it is an introductory book. Its 206 pages are divided into 8 chapters: 1. Introduction to Comparative Law, 2. The Development of Comparative Law, 3. Legal Systemology and Japanese Law, 4. Continental Law and Common Law, 5. The Function of the Sources of Law in the Contemporary Continental Systems, 6. Capitalist Law and Socialist Law, and 7. A Signpost to Comparative Law, 8. Three “Comparative Law”.

The book does not present a bibliography but there are endnotes for each subchapter. The references are balanced among materials in French, German and English, with a preponderance of the former two over the latter. I counted 54 full citations of French sources, 43 of German sources and 31 of English sources. Including the repeated citations, the count is the following: 79 French sources, 57 German sources and 50 English sources. Besides these, I found 2 references to materials in Italian and one reference each to sources in Spanish and Russian.

It must be also noted that the final chapter of the book consists of a review of three major comparative law textbooks of the time: Adolf Schnitzler’s *Vergleichende Rechtslehre*, H.C. Gutteridge’s *Comparative Law*, and P. Arminjon, B. B. Nolde, M. Wolff’s *Traité de droit comparé*. The author states that he did not review René David’s *Traité élémentaire de droit civil comparé* because Prof. Ishizaki had previously presented it to the Japanese scholarly community in the *Comparative Law Journal*.

Overall, this book shows an important influence by European continental jurisprudence: 101 of 132, i.e. 76% of, simple citations, and 130 of 190, i.e. 68% of, citations in total. This influence however is not exclusive and does not leave out of sight the contribution of English jurisprudence, which accounts for slightly less than a quarter of the works cited (31 citations of 132) and for slightly more than a quarter of all citations (50 citations of 189).

The 1972 edition shows only minor changes.

II. Masao Ooki, Hikakuho kogi – Droit compare (Comparative Law Lessons – Droit Comparé), 1992.

This is the comparative law textbook written by one of the leading Japanese comparative law scholars of the 20th century.

Its structure resembles closely that of the most influential European comparative law textbooks at the time of publication: David’s *Les grands systemes de droit contemporains* or Zweigert’s & Kötz’ *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts*¹⁴. The text is 388 pages long: of

¹⁴ It should be pointed out that Ooki was in 1974 the translator into Japanese of Zweigert and Kötz *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts*.

these, the first 165 pages address the history and the method of comparative law, and the problems of systemology (chapters 1 to 5). Chapter 6 (pp. 169 to 283) is divided into three subchapters, analysing the process of codification in the Continental legal systems, in the socialist systems (subchapter I and II), and in the common law (subchapter III). The final part of the book (chapter 7, pp. 287 to 388) is a comparative analysis of legal education and of several aspects related to the legal professions in France, in Germany, in the common law and in the socialist systems.

The book has a large number of footnotes. Reference to previously cited sources adopt the style of the original language of the source. Therefore, despite the text being in Japanese, the footnotes abound with expressions like “David, *supra* note 12, p. 56 et seq.” for references to French materials, “Dawson, *supra* note 1, pp.446-48, p.494” for English, and “Wieacker, aaO (Anm. 5), S. 118ff. (2. Aufl., S. 225ff.)” for references to sources in German. This is actually a tendency quite common in the Japanese literature analysed in this paper.

I counted 126 full references to German sources, 101 to French and 93 to English. I also found 32 references to Russian sources, and one to an Italian source. However, the total number of footnotes is higher, since many footnotes contain references to works already cited: 168 are references to German sources, 160 to French, 125 to English and 7 to Russian. It should be noted, however, that in some cases sources are cited in full also when they have been already cited in precedence; I was not able to determine the reason for this inconsistency. In total I counted 294 references to German sources, 261 references to French, 218 to English, 39 to Russian and one to an Italian source.

The prominence of German sources is slightly surprising, as the subtitle of the book in Latin characters is the French expression “Droit comparé”: usually the subtitle is an important identitarian statement about the school to which the author belongs and therefore it often reveals the foreign models that influenced the work or the author. On the basis of the book cover one would expect a more profound influence of the French jurisprudence, instead of the prevalence of sources in German language. However, the overall impression after the examination of the sources is that of an equilibrium among the foreign sources of influence. It is also possible that the author used deliberately the French expression on the cover of the book to balance the greater weight of German sources in the text.

III. Kahei Rokumoto, Ho Shisutemu I – Hikakuho Shisutemuron (Legal Systems I – Theory of Comparative Legal Systems), 2002.

Kahei Rokumoto was professor of Sociology of Law at the University of Tokyo from 1970 to 1999. This was the textbook of the continuing education course in Comparative Law taught by Rokumoto and offered via television

through the so-called “*Hoso Daigaku*” (Broadcast University) programs of the national broadcaster, NHK. It is therefore a textbook written for a wide body of readers who do not necessarily have a previous familiarity with the law.

It is made up of 300 pages, divided into 15 chapters: 1. Comparing legal systems; 2. The Japanese legal system (I); 3. The English legal system; 4. The legal system of the U.S.A.; 5. The German legal system; 6. The French legal system; 7. The Italian legal system (chapter written by Koichiro Yamaguchi); 8. The legal systems of Europe and America – Discussion I; 9. The Korean legal system; 10. The Chinese legal system; 11. The Thai legal system; 12. The Legal systems of Malaysia and Vietnam; 13. The legal systems of Asia – Discussion II; 14. The Japanese legal system (II); 15. Conclusion and perspectives.

This book is simple, clear and gives priority to the actual presentation of the legal systems over the analysis of methodological questions. Among the books and textbooks examined here, this is the source covering the widest number of legal systems: besides the Japanese legal system, another 10 jurisdictions are presented. The structure of the chapters follows more or less consistently the same pattern: of most jurisdictions, after a brief historical introduction, the author presents the system of government, the structure of the courts, the patterns of legal education, the paths of access to the legal professions and their structure.

The works cited in each chapter are works in Japanese, works in English or in other languages such as German or French, and sometimes sources of the country analysed in the chapter. In the case of the chapters addressing more general issues (e.g. the opening chapter 1 and the last chapter 15), the sources cited are so few that it is not possible to draw meaningful conclusions. This is the detailed breakdown of the sources:

1. Comparing legal systems: 12 Japanese, 1 French;
2. The Japanese legal system (I): 8 Japanese;
3. The English legal system: 14 English, 8 Japanese;
4. The legal system of the U.S.A.: 14 Japanese, 7 English;
5. The German legal system: 6 Japanese, 2 German, 2 English;
6. The French legal system: 11 Japanese, 4 French, 2 English;
7. The Italian legal system (chapter written by Koichiro Yamaguchi): 7 Japanese, 7 Italian, 4 English;
8. The legal systems of Europe and America – Discussion I: 3 Japanese, 1 English;
9. The Korean legal system: 8 Japanese, 6 English;
10. The Chinese legal system: 11 Japanese, 4 English;
11. The Thai legal system: 10 Japanese, 4 English, 1 German;
12. The Legal systems of Malaysia and Vietnam: 6 English, 5 Japanese (Malaysia), 4 Japanese, 2 English (Vietnam);
13. The legal systems of Asia – Discussion II: no sources;
14. The Japanese legal system (II): 10 Japanese;
15. Conclusion and perspectives: 3 Japanese, 1 English.

There is no general bibliography.

IV. Tadashi Takizawa, Hikakuho (Comparative Law), 2009.

This book is 214 pages long, and it is divided into three parts: Part 1 “Fundamental Theory of Comparative Law” (p. 16-53); Part 2 “Actual Situation of the Legal Systems of the World (Theory of Legal Systems) (p. 56-167); and Part 3 “Evolution of the Legal Systems of the World” (p. 170-194).

It focuses mostly on the problems related to methodology and to the definition of the boundaries of comparative law, and gives scant attention to the analysis of foreign legal systems. Despite this dogmatic approach, it can be considered as a genuine comparative law textbook aimed not only at specialists but also at young scholars. The importance of the methodological part is in line with the tendency of Japanese comparative law to give priority to issues of method over the actual study of foreign legal systems, possibly because more detailed analysis of foreign legal systems can be carried out in specific studies and courses. In other words, comparative law lies at a meta-, theoretical level while inquiries on foreign legal systems are not conceived as exercises in comparative law, but as simple studies of foreign law.

The text does not have footnotes, but presents a bibliography in the final pages. There are three types of references at the end of the book. The first is an introduction (“*tebiki?*”) to comparative law materials, and these are presented divided by language, subject and type of material. The structure and number of sources is reproduced below:

1 - Bibliography in Japanese on comparative law

(1) Guidebooks (3 sources)

(2) Books

A. On jurisprudence (3 sources)

B. Collections of essays (14 sources)

C. Collections of essays in honor (5 sources)

D. Collections of essays in celebration of (11 sources)

E. Laws compared (7 sources)

F. Comparative law symposia on general theory of comparative law (6 sources)

(3) Articles (the Author states that there are too many sources to cite, therefore they're omitted. Some are cited in the general bibliography of the book)

2 - Bibliography in Japanese on Foreign law

(0) General (3 sources)

(1) Anglo-American Law (8 sources)

(2) German Law (6 sources)

(3) French Law (5 sources)

- (4) Soviet-Russian Law (5 sources)
- (5) Chinese Law (7 sources)
- (6) Korean Law (3 sources)
- (7) Other (9 sources)

3 - Journals in Japanese on comparative and foreign law (11 sources)

4 - Bibliography in European languages

- (1) In English (9 sources)
- (2) In French (8 sources)
- (3) In German (4 sources)
- (4) In Italian (5 sources)
- (5) In Spanish (2 sources)

The second set of bibliographical data is the actual bibliography of the book. It cites almost exclusively sources in the Japanese language published in Japanese journals. The references are mainly to articles or books by Japanese authors, but there are also some sources by Western authors translated into Japanese. The latter include one article by each of the following comparative law scholars: Saleilles (translated by Oki), Rotondi (translated by Noda and Kosuga), Kötz (translated by Murakami), Lambert (translated by Oki), Ascarelli (translated by Noda), Tunc (translated by Inamoto), Ancel (translated by Yamaguchi), and two articles by Del Vecchio (translated by Noda). The only sources cited in the Latin alphabet are three articles written in French by the Japanese scholar Ichiro Kitamura.

The third set of data is the index of the names cited in the book. All names are cited in Chinese characters in the case of Japanese or Chinese names, or in katakana and Latin characters, and their nationality is written in parenthesis after the name. Many of the names cited are undoubtedly names of legal scholars (e.g.: Lambert, Wigmore); other are names of scholars or historical characters that, despite not being comparative law scholars or not scholars at all, had nonetheless an influence on the history and development of the law (e.g.: Napoleon, Marx); finally, some are names of historical figures quite remotely, if at all, connected with the law (e.g.: Darwin, Tolstoi), or mythological figures, like Minos or Lycurgus. In order to avoid the methodological headaches and the inevitable arbitrary choices related to how to sort properly into categories some of the people cited, I present here the raw data without distinctions as to their connection with comparative law. References of some authors point to several pages (for instance, David's entry refers to 19 locations of the book, Zweigert's entry to 12), therefore I counted separately the number of authors and the number of total references.

I found 130 non-Japanese names cited, and 80 Japanese names. The majority of the references to non-Japanese are to French (28), then German (25) and then to English names (15). Other names belong to the following

countries: USA (11 names), China (10) Greece (6 names, including Minos and Lycurgus), Russia/USSR (6), Italy (4), Spain (3), Frankish Kingdom (3 names: Charlemagne, Clovis and Pepin), Ancient Rome (2), Austria (2) and one name each for Sweden, Holland, Turkey, Romania and Switzerland. As mentioned before, some names are cited many times in the book. Total references to French authors point to 76 locations in the book, German to 49, English to 23, American and Chinese to 17 each¹⁵.

V. Kiyoshi Igarashi, *Hikakuho Handobukku (Comparative Law Handbook)*, 2010.

The most recent comparative law textbook I found is the *Hikakuho Handobukku (Comparative Law Handbook)* by Kiyoshi Igarashi.

The word “handbook” in the title hints, by the author’s own admission on the first page, at the Oxford Handbook of Comparative Law and at the work by Orucu and Nelken, “Comparative Law: A Handbook”. The author, one of the most prominent and prolific Japanese comparative legal scholars, admits that the 350 pages of this paperback cannot compete with those works, but at the same time states that his previous works (“Introduction to Comparative Law” and “Various aspects of Modern Comparative Jurisprudence”) were becoming out-dated and that a new standard textbook was needed. In line with the Japanese tradition, a large portion of the book deals with issues of methodology.

The book is divided into 6 chapters: 1. The Significance of Comparative Law; 2. The Development of Comparative Law; 3. The Object of Comparative Law; 4. The Methodology of Comparative Law; 5. On the Theory of Legal Families; and 6. Unification of Private Law and Comparative Law.

This work as well has plenty of footnotes. I counted 184 full references to English sources (50%), 117 to German (33%) and 63 to French (17%). References to already cited sources were 62 for English sources, 34 for German and 15 for French.

In total, I found 246 references to English literature (51%), 151 to German (32%) and 78 to French (16%).

¹⁵ As for the other countries, the list is the following: Russia/USSR 9, Greece 6, Italy 6, Romania 6, Austria 4, Frankish Kingdom 3, Ancient Rome 3, and one location each for Sweden, Holland, Turkey and Switzerland.

4. Conclusions

This preliminary analysis led to two orders of conclusions.

4.1 *A Methodological Quandary*

A first set of conclusions, and probably the most significant, is related to the methodological conundrums that arose during this research. The fundamental question and the starting point of this paper was identifying and defining the markers of influence of foreign jurisprudence on a certain legal system, and finding a meaningful way to use and analyse these data.

An initial problem is how to define, in a clear and non-contradictory manner, criteria to associate a paper, a work or a scholar with a legal system, a legal family or a legal tradition, in a way that the results could be analysed quantitatively. The choices made in this paper have been stated in Par. 2, and were centered on the language of the source, but they cannot be considered satisfactory. While it may be convincing to consider a paper in English by an English author about English law as an expression of the English jurisprudence, and a work citing such paper as “influenced” by it, things become less clear-cut in the modern academia, especially in the area of comparative legal studies, where it is common for scholars to travel, research abroad and publish in languages that differ from their native tongue. For instance, should a paper written in English by an Italian scholar be considered as an expression of the English or of the Italian legal science? The answer is not obvious: it can be in fact an expression of the latter, in which the English language is only a means to transmit the ideas and reach a wider audience. What if the aforementioned Italian scholar wrote the paper during a one-year research period at an institution in England? What if the research period was instead at an institution in Germany? What if the period was considerably longer? Many factors affecting this situation can be postulated, and after considering all the potential variables, the possibility of giving a clear-cut answer to the issue of how to associate language (or even less so, nationality of the scholar) and legal scholarship based on formal criteria, leaving out any discretionary, qualitative evaluation by a human agent, appears quite remote.

Another complex problem comes from the citations of Japanese language translations of foreign works. Translations are arguably honest signals of foreign influence on a certain legal system. In this paper, such references have not been taken into consideration. The main reasons are threefold: a substantial reason, i.e. translations are essentially different from foreign works in foreign languages, and therefore they cannot be analysed together; a formal reason, i.e. the limited scope of this preliminary analysis was focused on citations of materials in non-Japanese languages and the search focused on sources cited in non-Japanese characters; and a practical reason: the data would have been considerably less, providing very little insight.

In conclusion, this research shows how the problems of collecting and processing data constitute a high hurdle to the feasibility of quantitative research in this area and on these topics.

4.2 Survey Results

The second set of conclusions can be summarized as follows: this analysis did not come to unexpected conclusions.

This may be due in part to the limited number of sources analysed here. More interesting and significant results may be achieved through the analysis of a wider selection of materials, including articles in journals, but this effort would likely require a highly time-intensive and error-prone activity. The digitalization of the archives, and improvements in the technologies related to the recognition of printed text and text mining could reduce dramatically the time and effort required to acquire the data and provide a more meaningful output.

The data collected reveal an overall picture in which the influences on comparative law scholarship come from a wide spectrum. Japanese comparative law scholars, despite the obvious and unavoidable differences between their works, tend to use foreign sources in a balanced way, and this study did not find in the materials analysed a clear preponderance of sources in any of the three most prominent scholarly languages, namely English, German and French.

In Igarashi's *Introduction to Comparative Law*, the first Japanese comparative law textbook, the majority of citations are of French sources (79), but the number is not so far from that of German (57) and English (50) citations. Moreover, an important part of the book is dedicated to the analysis of the French, English and German sources, with a fair balance among the space reserved for the three areas.

Since Igarashi's works cover a time span of 40 years, it is the only case allowing for a diachronic comparison, and it is possible to see a trend towards a greater influence of English sources. In the first edition of his *Introduction*, French and German sources were the major works cited with 97 citations in total, or 77% of all the citations to foreign jurisprudence, while only 28 were the references to sources in English. Igarashi's last work overturns this picture: in his *Handbook*, the greatest number of citations is of English sources (136), almost on a par with German (114). Combined, they account for 80% of the references to foreign sources, while only 66 (20%) are the citations of French works.

This can be seen as a sign that also Japan is gradually embracing English as the *lingua franca* of comparative legal studies, while the influence of sources in French is in decline.

These results, however, as stated before, should be taken not just with a grain, but with a full teaspoon of salt. The works examined here are important,

but they account for but a small part of the scientific production of Japanese comparative law scholars. A more extensive research should be carried out to achieve more wide-reaching conclusions. An analysis of articles in the major Japanese legal journals could provide better results, but the feasibility of such analysis depends upon advances in the technologies related to text recognition and processing.