NETWORKS, DIALOGUE OR ONE-WAY TRAFFIC?
AN EMPIRICAL ANALYSIS OF CROSS-CITATIONS
BETWEEN TEN EUROPEAN SUPREME COURTS

Martin Gelter and Mathias Siems

FACULTY OF LAW
MAASTRICHT UNIVERSITY

JANUARY 2011

The paper can be downloaded without charge from the Social Science Research Network at http://www.ssrn.com
NETWORKS, DIALOGUE OR ONE-WAY TRAFFIC?
AN EMPIRICAL ANALYSIS OF CROSS-CITATIONS
BETWEEN TEN EUROPEAN SUPREME COURTS

Martin Gelter* and Mathias Siems**

Abstract

Today, according to Anne Marie Slaugther, “judges see each other not only as servants and representatives of a particular polity, but also as fellow professionals in an endeavour that transcends national borders.” This statement was made in the context of transnational litigation but it may also reflect a more general trend. Such interaction may take place in various forms. There is some direct transnational cooperation between supreme court judges, but in our project we focus on cross-citations as a form of influence. To be sure, the citation of a foreign court does not necessarily mean that foreign ideas were really a decisive consideration for the outcome of a case. Still, cross-citations can show to what extent courts use foreign law as a justification for a judicial decision.

In this short paper, which is part of a wider research project, we present and analyse some of our findings on cross-citations between ten European supreme courts. We managed to get access to the full text of almost all decisions of these supreme courts for the period between 2000 and 2007. It total we considered 636,172 decisions and found 1,426 cross-citations. The paper is structured as follows: first, we summarise the data considered and the search methodology used. The next two parts present different ways to visualise these data: on the one hand three types of bar charts, and on the other hand two network-presentations of the cross-citations between the ten courts. Subsequently, we examine the relationship between incoming and outgoing citations, in particular whether some of our countries may be regarded as “the core” and the others as “the periphery”. Finally, possible policy implications, in particular in the context of the European Union.

Keywords: cross-citations, supreme courts, citation networks, judicial dialogue, network analysis, comparative law, comparative civil procedure

* Associate Professor, Fordham Law School, US, and Research Associate, European Corporate Governance Institute.

** Professor of Law at the University of East Anglia, UK, Research Associate at the Centre for Business Research of the University of Cambridge, UK, and Invited Fellow at the Maastricht European Private Law Institute (M-EPLI), the Netherlands. We thank participants of the workshops of the highest courts project of the Hague Institute for the Internationalisation of Law (Bologna, November 2009 and Utrecht, January 2011) for helpful comments. The usual disclaimer applies.
1. Introduction

Do supreme courts from different countries interact with each other, for instance, by way of reading and citing each other’s case law? Previous research often found that courts rarely look abroad.¹ However, in a globalizing world, even in law, which has traditionally been a prerogative of the sovereign nation-state, some cross-border interaction seems likely. For instance, at the most basic level, the development of a “one-way traffic” situation is conceivable, when a court of a relatively small jurisdiction closely follows the jurisprudence of a larger one.² With the development of a more intense interaction, this may become a dialogue if the latter jurisdiction begins to take some interest in the case law of the former country. Going further, if countries belong to the same group of countries (for instance, the EU or the same legal family), it may be the case that the communication between supreme courts forms part of a formal or informal network.³

Such interaction may take place in various forms. There is some direct transnational collaboration and communication between supreme court judges,⁴ but this article we will focus on cross-citations as a form of influence. To be sure, the citation of a foreign court does not necessarily mean that foreign ideas were really a decisive consideration for the outcome of a case. Still, cross-citations can show to what extent courts use foreign law as a justification for a judicial decision, may it as a positive or negative example. In the project from which this article derives,⁵ we have collected data on how often and in which circumstances ten European supreme courts cite each other. We managed to get access to the full text of almost all decisions of these supreme courts for the period between 2000 and 2007. It total we have considered 636,172 decisions and we have found 1,426 cross-citations.

⁴ See e.g., the Network of the Presidents of the Supreme Judicial Courts of the EU http://www.network-presidents.eu. See also Claes and de Visser, supra note 3.
⁵ See also section 2 below.
Our study is part of a general trend to use quantitative methods in order to compare court proceedings and judgements across countries. For instance, the World Bank’s Doing Business Report employs various indicators in order to measure “the efficiency of the judicial system in resolving a commercial dispute”. The European Commission for the Efficiency of Justice (CEPEJ) “has undertaken a regular process for evaluating judicial systems of the Council of Europe’s member states”. The Netherlands Council for the Judiciary has assigned a study to “design and implement a method to periodically compare the judiciary system of the Netherlands with that in other countries”. And, at universities, a recent project of the University of Oxford has collected data on the costs and funding of civil litigation in various jurisdictions, and a handbook of three Dutch universities has developed a methodology for measuring access to justice. Needless to say that such quantitative research can always be challenged as being a rather simplistic way of comparing how courts actually work. In the following we will therefore not only report our results but also indicate where and to what extent the counting of cross-citations has its limitations.

The remainder of this article is structured as follows: Part 2 summarises the data considered and the search methodology used. Part 3 presents bar charts on cross-citations. Network representations of the data follow in Part 4 and in Part 5 we distinguish between outgoing and incoming citations. Part 6 concludes.

6 Starting with Blankenburg and Bruinsma in the 1980s. For a summary of their research see Erhard Blankenburg, “Civil Litigation Rates as Indicators for Legal Culture”, in David Nelken (ed.), Comparing Legal Cultures, Aldershot: Dartmouth, 1997, pp. 41-68.
11 See http://www.measuringaccesstojustice.com/
2. Population and search methodology

Table 1 presents the list of countries and courts examined, the databases used, and the subject matter jurisdiction of the ten supreme courts. It is also indicated how many decisions the supreme courts have published between 2000 and 2007 and how this translates into the number of decisions per 1,000 inhabitants.

Table 1: Countries and courts

<table>
<thead>
<tr>
<th>Country</th>
<th>Population 2004</th>
<th>Name of supreme court</th>
<th>Database used</th>
<th>Subject matter jurisdiction of court</th>
<th>Total number of reported decisions 2000-2007</th>
<th>Decisions per 1,000 inhabitants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>8,174,762</td>
<td>Oberster Gerichtshof</td>
<td>RIS</td>
<td>Civil law (including employment and social law), criminal law</td>
<td>28,868</td>
<td>3.53</td>
</tr>
<tr>
<td>Belgium</td>
<td>10,348,276</td>
<td>Cour de cassation, Hof van Cassatie</td>
<td>Court website</td>
<td>Civil law (including employment, law), criminal law</td>
<td>24,053</td>
<td>2.42</td>
</tr>
<tr>
<td>England and Wales</td>
<td>53,057,000</td>
<td>Court of Appeal</td>
<td>Westlaw</td>
<td>All areas of law</td>
<td>25,855</td>
<td>0.49</td>
</tr>
<tr>
<td>France</td>
<td>60,424,213</td>
<td>Cour de cassation and court website</td>
<td>Legifrance17 and court website18</td>
<td>Civil law (including employment, law), criminal law</td>
<td>107,396</td>
<td>1.78</td>
</tr>
<tr>
<td>Germany</td>
<td>82,424,609</td>
<td>Bundesgerichtshof</td>
<td>Beck Online19</td>
<td>Civil Law (excluding employment and social security law), and Criminal Law</td>
<td>22,950</td>
<td>0.28</td>
</tr>
</tbody>
</table>


16 http://www.courdecassation.fr/ (for selected opinions of the avocat general).
17 http://www.westlaw.co.uk (Law Reports and Official Transcripts).
18 http://www.beck-online.de.
<table>
<thead>
<tr>
<th>Country</th>
<th>Population</th>
<th>Court</th>
<th>Court website</th>
<th>General Jurisdiction</th>
<th>Total Decisions</th>
<th>Decisions per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>3,969,558</td>
<td>High Court</td>
<td>Bailii(^{20}) and Court web-site(^{21})</td>
<td>All areas of law (but not criminal appeals)</td>
<td>2,357</td>
<td>0.59</td>
</tr>
<tr>
<td>Italy</td>
<td>58,057,477</td>
<td>Corte di cassazione, Corte Suprema di Cassazione</td>
<td>De Jure(^{22})</td>
<td>All areas of law (with the exception of constitutional matters)</td>
<td>196,876</td>
<td>3.39</td>
</tr>
<tr>
<td>Netherlands</td>
<td>16,318,199</td>
<td>Hoge Raad</td>
<td>Court website(^{23})</td>
<td>Civil, criminal and tax law</td>
<td>9,073</td>
<td>0.56</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>[36,020](^{24})</td>
<td>[2,20]</td>
</tr>
<tr>
<td>Spain</td>
<td>40,280,780</td>
<td>Tribunal Supremo</td>
<td>Court website(^{25})</td>
<td>All areas of law (with the exception of constitutional matters)</td>
<td>190,174</td>
<td>4.72</td>
</tr>
<tr>
<td>Switzerland</td>
<td>7,450,867</td>
<td>Bundesgericht</td>
<td>Court website(^{26})</td>
<td>All areas of law</td>
<td>27,570</td>
<td>3.70</td>
</tr>
</tbody>
</table>

In an accompanying paper we describe the choice of countries and courts in detail.\(^{27}\) In this paper we also clarify that our project does not aim to examine why, according to Table 1, not only the absolute number of cases but also the decisions per capita are very disparate. It would be the topic of a separate empirical study to explore this question. For instance, it likely matters that there are differences in subject matter jurisdiction. Moreover, many further factors may influence the number of supreme court decisions, such as appeal requirements and procedures, but also ease of access to lower courts, availability of self-help and out-of-court settlement, differences in substantive law, legal culture etc.\(^{28}\)

\(^{20}\) [http://www.bailii.org/ie/cases/IEHC/](http://www.bailii.org/ie/cases/IEHC/).
\(^{22}\) [http://dejure.giuffre.it/](http://dejure.giuffre.it/) (commercial database used with University of Bologna subscription).
\(^{24}\) Number of decisions according to the annual reports; see Jaarverslagen, available at [http://www.rechtspraak.nl/Gerechten/HogeRaad/Over+de+Hoge+Raad/Publicaties/](http://www.rechtspraak.nl/Gerechten/HogeRaad/Over+de+Hoge+Raad/Publicaties/) (number civil law decisions 2000-2007: 478, 489, 488, 490, 466, 452 463 475; criminal law: 2901, 3.066, 3.271, 3.003, 2.870, 3447, 3137, 3076; tax law: 797, 797, 789, 1.058, 1.083, 1084, 978, 863).
\(^{28}\) Gelter and Siems, *ibid*. 
The actual data used in our project are the cross-citations between these ten courts. We managed to get access to the full text of (almost) all decisions of these supreme courts for the period between 2000 and 2007. In order to locate citations to foreign courts covered by our study, we compiled an extensive list of search terms. Then, in all countries, we first looked at the actual decisions. Where they were available, we also included opinions by the reporting judge or the general advocate. Inclusion of these documents was necessary because in some countries the legal justification of a decision that in other systems would be found in the decisions themselves, will appear only in the opinions of the reporting judge or advocate general.

We checked all citations and classified them according to the reason why foreign courts have been cited: (a) case history and jurisdictional issues; (b) an underlying European or international legal basis; and (c) purely comparative reasons. Citations of type (a) are the ones a court usually cannot avoid. This type of citation is not exactly what we were looking for because such citations have no bearing on a possible transnational dialogue between the courts, or the influence of foreign legal arguments. Therefore, the following parts only report the total number of citations of the categories (b) and (c), which have in common that judges have freedom of choice which foreign court (if any) to cite.

3. Bar charts of cross-citations

There are different ways how our data can be displayed. In this part we present bar charts that show how often the ten “citing courts” have made reference to the ten “cited courts”. Figure 1 is based on the absolute number of cross-citations. Figure 2 shows the

---

29 Exception: the Netherlands (see Table 1).
30 Usually, this was straighth-forward. However, for the citations of the High Court of Ireland to the Court of Appeal of England and Wales we had to rely on a random sample of decisions because citations to English courts may not always reveal whether the cited court is really the Court of Appeal (for details see Gelter and Siems, supra note 27).
31 Opinions of the general advocates were included for Belgium and the Netherlands. For France we only got access to selected opinions of the general advocate and the reporting judge. For details see Gelter and Siems, supra note 27.
32 For further details see Gelter and Siems, supra note 27.
34 For this point see also Gelter and Siems, supra note 27.
cross-citations per all decisions of a particular court and Figure 3 the cross-citations per all of its cross-citations.\(^{35}\)

**Figure 1: Absolute number of cross-citations**

It can be observed that the citations from Austria to Germany and from Ireland to the England (and Wales)\(^{36}\) dominate the picture: Austria has cited Germany 459 times, and Ireland has cited England 452 times. The other relationships trail behind these two by one order of magnitude: 58 and 45 citations from the Netherlands and Switzerland to Germany, 41 citations from Belgium to France, and 34 citations from Austria to Germany.

---

\(^{35}\) Abbreviations: AUT = Austria; BEL = Belgium; CH = Switzerland; ENG = England and Wales; FRA = France; GER = Germany; IRE = Republic of Ireland; ITA = Italy; NL = Netherlands; SPA = Spain.

\(^{36}\) In the following the term “England” is always to be read as referring to “England and Wales”.
A problem with Figure 1 is that it does not consider that the total number of supreme court decisions varies widely between the ten countries (see Table 1, above). Figure 2 tries to rectify this problem, but without much success since the distribution of the ten bars in Figure 2 is even more unequal than in Figure 1. The High Court of Ireland has cited the Court of Appeal of England and Wales in about 19% of all of its decisions, well ahead of the next relationships – Austria and Netherlands to Germany in 1.6% and 0.6% of all of decisions of this court. This could make sense because of differences between common law and civil law countries: when common law countries cite each other, this is not to seen as an “import” of foreign law, but as a way to identify the common legal rules and principles (the “common law is a whole”). The fact that the England does not cite Ireland very frequently may be regarded as a rare exception since it can be shown empirically that the Court of Appeal of England and Wales frequently cites courts from Australia, Canada, New Zealand and the US. However, a closer view has to lead the conclusion that Figure 2 is not the most helpful presentation of our data. It is not clear to what extent the number of cross-citations is affected by the total

37 Örücü, supra note, at 415. A possible caveat may be that this mainly concerns the relationships between Commonwealth countries since US law has diverged from many traditional common law rules. See Siems, supra note 33, at 164-5.
38 Siems ibid.
number of decisions. One might suspect that cross-citations typically occur in the most important cases, in which there will be an appeal to the respective supreme court in every country. Thus, theoretically, the total number of decisions need not affect the number of cross-citations.

Moreover, there are many other factors than the total number of decisions that may determine whether and how often foreign courts are cited. On a general level, it likely matters who the supreme court judges (and advocates generals) are: for instance, how in each country judges are trained, appointed and promoted, and what “judicial mentality” they have. It also matters how (and for which audience) judgements are drafted: while, for example, common law judges or the courts in German-speaking countries often write comparatively long opinions, French decisions tend to be short in written in an idiosyncratic formulaic style. Furthermore, a low number of citations may simply reflect differences in citation style between the ten courts: in some countries it may be completely acceptable (or even expected) if judges or advocate generals look for inspiration from other countries and indicate such findings in their opinions, whereas in other countries there may be a social or legal restrictions to cite foreign law.

Thus, in order to control for such unobserved differences between citing courts, Figure 3 is based on the citations per all cross-citations of this particular court. In contrast to Figures 1 and 2, this figure cannot be used in order to compare the differences in the total number of cross-citations (by definition, this is always 100%). Yet, Figure 3 is the most informative way of showing which of the cited courts each of the citing courts prefers to cite.


It can be seen that seven out of the ten courts have a favourite court accounting for more than 50% of its foreign citations. These are the Irish citations to England (98%), the Austrian ones to Germany (94%), the Spanish ones to Germany (88%), the German ones to Austria (83%), the Belgian ones to France (70%), the Swiss ones to Germany (70%) and the Italian ones to France (67%). In contrast to this, the citations of the English, French and Dutch supreme courts are more evenly split. In an accompanying paper we have used regression analysis in order to determine which factors account for these differences in cross citations. We found that language skills, membership in the same legal family, cultural, political and economic indicators, and the population size of the cited country all matter for which countries are cited. The most important of these factors are language skills, with the possible policy implication that countries should provide English translations of their supreme court decisions.\footnote{See Gelter and Siems, supra note 27.}
4. Network presentation of cross-citations

Network analysis has become increasingly popular in the last three decades.\(^{45}\) It started in sociology but it has also been used in politics, economics, business, psychology, anthropology and, more recently, law.\(^{46}\) The main interest of social network analysis is to identify, visualise, compare and analyse the relationships between individuals or entities. In the terminology of network analysis the individuals are called “nodes” and the relationships are called “ties” or “edges”.

In the present case the “nodes” are the 10 countries and the “ties” are the cross-citations between them. In Figure 4 all ties with more than five cross-citations (one way) are displayed. The strength of the ties, the size of the arrow heads and the closeness of the countries in the chart\(^{47}\) is determined by the logarithm of the absolute number of cross-citations. We have used the logarithm of the citations since a network presentation with the absolute numbers would not have been very revealing: Austria and Germany, and Ireland and England would have merged to one dot each, whereas the other pairs of countries would only have been connected by very thin lines. Thus, the logarithmic transformation has the advantage that it reduces the high numbers more than he lower ones, making the range of values more manageable.


\(^{47}\) To be precise, this uses the technique of “multi-dimensional scaling” (adjust to the nearest Euclidian), available in the network programme Ucinet.
The first point to observe from Figure 4 is that we have no unconnected parts. In particular, it is worth noting that common and civil law countries, and Francophone, Germanophone and Anglophone are not completely unconnected. Two countries, the Netherlands and Germany, are in the centre of the network since they are connected with five other countries. More isolated are Italy, Ireland and Spain which are just connected with one of the other countries.

Almost all the arrow heads of Figure 4 show in one direction only (an exception is, for instance, the tie between the Netherlands and England). Thus, in terms of the direction of cross-citations (see 1., above), there seems to be mainly “one-way traffic”. However, as noted already (see 3., above), the problem is that many unobserved factors influence the decision of whether a particular supreme court cites foreign courts at all. As in the previous part, it is therefore preferable to consider the citations per the total number of cross-citations of this court.
Figure 5: Network based on citations per all cross-citations of a particular court

Figure 5 displays all ties which denote more than 4% of all cross-citations of this court. Ireland is again relatively isolated. Germany and France are in the centre since they are cited by many other countries, confirming that big countries are cited more often than smaller ones (see 3., above). It is also interesting to see that there are triangles between Italy, France and Belgium on the hand, and Austria, Germany and Switzerland on the other, indicating the relevance of common languages and legal cultures (see already 3., above). Finally, Austria and Germany are connected by a clear dual-headed tie because both courts are the favourite cited courts of each other. This seems to be different for the other relationships. Thus, again (see 1., above), we do not appear to find evidence of a judicial dialogue. Yet, this should not be our final word on this issue because the following part will provide a more sophisticated treatment of the association between outgoing and incoming citations.

48 For a similar observation see Daphne Barak-Erez, “The Institutional Aspects of Comparative Law”, 15 Columbia Journal of European Law 477 at 487 (“Courts find it easier to learn from precedents which have been formulated within their so-called ‘legal family’ (…) or their legal culture understood in the broad sense.”).

49 To be sure, this is different from the absolute numbers (see Figure 1, above) because there are 459 citations from the Austrian supreme court to the German one, but only 34 citations from the German to the Austrian one.
5. Outgoing and incoming citations

Table 2 reports the correlation between the nine outgoing and incoming citations of each of the ten courts, as well as the correlation between all ninety outgoing and incoming citations. The correlation coefficients of the absolute data (1) are problematic since unobserved factors influence the decision of the supreme courts of whether they cite any foreign court at all (see 3. and 4., above). Thus, the option which uses the cross-citations per all cross-citations of the court in question (2) is again preferable.

Table 2: Correlation between outgoing and incoming citations

<table>
<thead>
<tr>
<th></th>
<th>(1) Basis: absolute number of cross-citations</th>
<th>(2) Basis: cross-citations per all cross-citations of a particular court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0.995**</td>
<td>0.999**</td>
</tr>
<tr>
<td>Belgium</td>
<td>0.113</td>
<td>0.790*</td>
</tr>
<tr>
<td>England</td>
<td>0.191</td>
<td>0.210</td>
</tr>
<tr>
<td>France</td>
<td>0.231</td>
<td>0.310</td>
</tr>
<tr>
<td>Germany</td>
<td>0.992**</td>
<td>0.570</td>
</tr>
<tr>
<td>Ireland</td>
<td>0.999**</td>
<td>0.999**</td>
</tr>
<tr>
<td>Italy</td>
<td>-0.167</td>
<td>0.970**</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0.130</td>
<td>0.224</td>
</tr>
<tr>
<td>Spain</td>
<td>-0.145</td>
<td>-0.145</td>
</tr>
<tr>
<td>Switzerland</td>
<td>-0.060</td>
<td>0.328</td>
</tr>
<tr>
<td>All countries</td>
<td>0.054</td>
<td>0.367**</td>
</tr>
</tbody>
</table>

Note: **significant at the 0.01 level (two tailed)
* significant at the 0.1 level (two tailed)

It follows from Table 2, model (2), that, overall, courts do “return the favour” because there is a statistically significant positive relationship between incoming and outgoing citations. Austria, Ireland and Italy have very high correlation coefficients which can be explained by the fact that Austria, as well as Italy, almost only cites and is cited by France, and that Ireland almost only cites and is cited by England. With the exception of Spain, however, the other countries too have positive correlation coefficients.

Of course, the previous parts have also shown that some countries are more “popular” (in terms of citations) than others, and that there are also differences in the frequency of citing foreign courts. So, despite positive correlation coefficients in Table 2, outgoing and incoming citations are not perfectly symmetrical to each other. Again, network analysis comes to our help, because it enables us to identify the core outgoing and in-
coming countries. This is done by way of a core-periphery model.\textsuperscript{50} Such a model presupposes that, in terms of the present study, some countries are more popular outgoing and others are more popular incoming countries. Consequently, we cannot use the percentage form of our dataset (see Figures 3 and 5, above) since, here, by definition, all outgoing citations of each court add up to 100%. Thus, despite its aforementioned problems, Table 3 is based on the absolute numbers of cross-citations (similar to Figure 1, above). The “**”, “***”, and “****” denote whether there are single, double or triple-digit citations between two courts. The core cited and citing courts are in the shaded field.

\textbf{Table 3: Blocked Adjacency Matrix of 2-Mode Categorical Core-Periphery Model}

<table>
<thead>
<tr>
<th>Cited courts</th>
<th>ENG</th>
<th>FRA</th>
<th>GER</th>
<th>BEL</th>
<th>AUT</th>
<th>IRE</th>
<th>ITA</th>
<th>NL</th>
<th>SPA</th>
<th>CH</th>
</tr>
</thead>
<tbody>
<tr>
<td>NL</td>
<td>**</td>
<td>**</td>
<td>**</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BEL</td>
<td></td>
<td>**</td>
<td></td>
<td>*</td>
<td>**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH</td>
<td></td>
<td></td>
<td>**</td>
<td></td>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FRA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>**</td>
</tr>
<tr>
<td>AUT</td>
<td>*</td>
<td>*</td>
<td>***</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IRE</td>
<td></td>
<td>***</td>
<td></td>
<td>*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ITA</td>
<td></td>
<td></td>
<td></td>
<td>***</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ENG</td>
<td></td>
<td></td>
<td>**</td>
<td></td>
<td></td>
<td></td>
<td>*</td>
<td>**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GER</td>
<td></td>
<td></td>
<td>**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>**</td>
<td>*</td>
</tr>
</tbody>
</table>

It follows from Table 3 that England, France and Germany are the core incoming countries, and that the Netherlands, Belgium and Switzerland are the core outgoing ones. This is an interesting result. England, France and Germany are often regarded as the three “origin countries” whose legal systems have heavily influenced legal systems all around the world.\textsuperscript{51} Thus, it does not come unexpected that these countries are most

\textsuperscript{50} For a technical definition see Hannemann and Riddle, supra note 45, at Ch. 17.

important in terms of incoming citations, with France and Germany are slightly ahead of England, possibly, because six out of seven of the remaining countries are civil law jurisdictions. The main explanation for the core outgoing countries seems to be linguistic diversity: Belgium and Switzerland are multilingual countries, and the Dutch advocate generals frequently cite English, French, German and Dutch materials in their original languages. Thus, these judges and advocate generals may be more cosmopolitan than the ones of the other countries, as reflected in a high number of citations to different foreign courts.

6. Conclusion

A few years ago, Anne Marie Slaugther contemplated that nowadays “judges see each other not only as servants and representatives of a particular polity, but also as fellow professionals in an endeavour that transcends national borders.” This statement was made in the context of transnational litigation, but it may also be a reflection of a more general trend. In this article, we have reported findings on cross-citations between ten European supreme courts. We observe some one-way traffic, some dialogue and some networks. We were also able to identify why we do not observe considerable interaction between all of these supreme courts: there is a higher propensity to cite courts from the same legal tradition and the same language group. We also find that bigger jurisdictions are cited more frequently than smaller ones. Given these constraints, we would not expect legal systems to freely pick and choose the most efficient solution (however defined), as it had been suggested by Ugo Mattei.

Cross-citations are important because they show to what extent courts use foreign law as a justification for a judicial decision. We do not argue that these citations have actually resulted in legal transplants. Indeed, a comparative analysis may also be used to explain the differences and reinforce national solutions rather than leading to uniformity. Still, frequent cross-citations are evidence of some diffusion of ideas. In this respect, our data may be seen as an empirical confirmation of Daphne Barak-Erez’s observation that “learning from other legal systems has always been a major technique in the development of law”.  

---


54 Canivet, supra note 1, at 1395.


56 Barak-Erez, supra note 48, at 478.
Of course, there can also be dialogue between supreme courts that is not reflected in cross-citations. Supreme-court judges are increasingly involved in transnational networks with the aim to foster collaboration and communication.\textsuperscript{57} It may also be the case that in Europe exchange of ideas often happens “across the corner” with the ECJ, its advocate generals and the ECHR as “intermediaries”.\textsuperscript{58} A further caveat is that we do not know how much foreign case law may matter behind the scenes as far as judges or advocate generals do not mention it explicitly in their opinions.

This leads to the further questions whether more cross-citations are desirable and, if yes, how judges can be induced to look to their foreign peers for inspiration more often. It is highly controversial whether courts should use foreign case law.\textsuperscript{59} Mere cross-citations, however, should as such not raise big concerns for detractors of the use foreign precedent, since they do not imply that courts actually approve foreign decisions and consider them as persuasive or even binding authority. Moreover, it is submitted that where foreign jurisprudence is considered, courts and advocate generals should make this transparent in order to enable parties (or the legal community in general) to challenge the bases of their opinions.\textsuperscript{60}

Within the EU, there are good arguments to believe that a transnational dialogue between judiciaries would be desirable to foster the development of an “ever closer union” of intertwined legal systems, and to create a thriving market of legal ideas that judges can draw from, much like it exists among the legal systems of the individual US states. Overt cross-citations are of course only one element of such a market, but given their publicity, they are surely less problematic than less transparent ones. There is no easy way to increase the number of cross citations in Europe. Books and websites\textsuperscript{61} have certainly made foreign case law more easily accessible (without guaranteeing that the use of ideas from foreign legal systems will be overt and open to public scrutiny). But, naturally, a global community of judges must also “share the common values and principles that constitute the normative understandings of a community”.\textsuperscript{62} This is more difficult to achieve, though, at least in Europe we may already observe a gradual convergence in legal mentalities.\textsuperscript{63}

\textsuperscript{57} See \textit{supra} note 4.


\textsuperscript{60} Similar Canivet, \textit{supra} note 1, at 1398 (“Because the methods of courts ought in all circumstances to be transparent, it is obvious that the comparative analysis which the judge intends to include among the elements under examination ought to be contradictory and explicit”).


\textsuperscript{62} Slaugther, \textit{supra} note 52, at 215.