PIER GIUSEPPE MONATERI AND MAURO BALESTRIERI, QUANTITATIVE METHODS IN COMPARATIVE LAW, EDWARD ELGAR, CHELTENHAM AND NORTHAMPTON, MA, 2023, PP. 185.

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Quantitative Methods in Comparative Law by Monateri and Balestrieri is a timely and thought-provoking research in the "transformative potential of data-driven decision-making". "Quantification", both authors contend, "has fundamentally altered the way we perceive and interact with the world" (p. 1). I could not agree more with them. Such changes have been facilitated by what I have termed the *scientific state of mind*, i.e. a fideistic attitude, according to which progress and economic development can only be achieved through quantitative methodologies.[1] Such a quantitative frame, which "Measur[ed] the Immeasurable" and "Turn[ed] Law into Numbers", made this shift possible.[2]

As far comparative law is concerned, several scholars have joined hard sciences in employing such quantitative approaches; and "there is […] a growing field of empirical legal studies, applying statistical methods to legal questions."[3] "The mathematical turn in law"[4] has resulted in a "complex interplay between comparative law methodologies and numbers", which Monateri and Balestrieri critically navigate. The results of their analysis are clear cut: numerical comparative law is a driver for legal change, as it allows scholars

[1] Cf M. Nicolini, 'Praising the World "by Geometrical Terms": Legal Metrics, Science and Indicators in Swift's Voyage to *Laputa*', P*ólemos*», 13(2), 2019, pp. 327-348.

[2] M. Siems, "Measuring the Immeasurable: How to Turn Law into Numbers", in *Does Law Matter? On Law and Economic growth,* eds. Michael Faure and Jan Smits (Cambridge: Intersentia 2011), pp. 115–136.

[3] M. Siems, *Comparative Law* (3rd edn; Cambridge: CUP 2022), p.180.

[4] D. Restrepo Amariles, "Legal Indicators, global law and legal pluralism: an introduction," *The Journal of Legal Pluralism and Unofficial Law*, 47.1 (2015): 9–21, 14.

to assess legal systems in terms of economic *performativity* and *friction* through indicators and rankings.

In chapter 1 (*Quantitative genealogy: the rise of numerical comparative law*), Mauro Balestrieri investigates the origins of this quantitative state of mind. He shows us that the use of quantitative analysis in law has a long pedigree; at the same time, its employ also has had several detractors. From Marxist studies to postcolonial critiques, indeed, scholars have traditionally pointed to its reductionist, engineering- and accounting-related approach to the law. Balestrieri suggests adopting a more nuanced attitude, examining the *genealogy* of quantitative studies (its emergence inside the Western legal tradition), as well as its *phenomenology* (the way genealogy impacts the present, also creating "spaces of meaning that are produced inside the logic of the legal method": p. 7). The chapter thus considers the epistemic turn in the law that occurred during the Renaissance, where "pantometry" (or universal measurement) gained traction as a way of grasping real-world knowledge. It is not coincidence that the very term "pantometry" was firstly use in a book by the English scientist Leonard Digges in 1571. Balestrieri accurately demonstrates the existing connections between European Reformation, the quantitative epistemic turn, and the common law, which are particularly apparent in Francis Bacon's development of a true rational (and quantitative) framework applicable both in legal studies and natural sciences: "Law, after all, is a 'human' way of measuring reality" (p. 20).

The heuristic value of mathematics and statistics in law and public policy were subsequently developed in the writings of several other authors, such as William Petty (1623-87), whose *political arithmetic* was conceived as a tool for strengthening governments, their policies and sovereignty. On the continent, Balestreri's perambulation touches upon Leibniz, whose "algebraic" approach to the law reduced it into "a rational and predictable scheme … in order to elucidate any perplexity … that may arise" in adjudication processes" (p. 30). It then assesses Nicholas I Bernoulli's contribution to the numerical study of the law, whose aim was to use probability and conjectures scientifically to make law (and human life) less unpredictable". It is a real process of "scientification of the world" (p. 38) that also saturated the Thibaut-Savigny debate in 19th-century Germany: logic, geometry, and numbers were caused legal taxonomies to be used with the same precision as mathematics (p. 43).

In chapter 2 (*The metric legality: jurimetrics, legal cybernetics, and governance by indicators*), Mauro Balestrieri extends the perambulation to the use of the geometric method in the 20th- and 21st-century legal thought. This scientific reappraisal of the law is assessed through the works of Langdell (1826-1906) and Loevinger (1913-2004). The latter, in particular, is famous for inaugurating the so-called *jurimetrics*, which is nothing else than the study of legal issues by applying scientific standards to gain predictability. In jurimetrics,

Balestreri explains, “is not only the concept of law that is being deeply debated but the idea of ‘justice’ itself” (p. 56). The chapter then deals with computing machines as a means of formulating judgements and deciding lawsuits, as well as with the legacies of legal realism. The possibility of testing comparative-law theories according to empirical findings is then dealt with the highly contentious process of data verification that falls under the “Law and Finance” banner and the “incorporation of quantitative studies into the practical and academic training” of legal scholars (p. 69). Inaugurated by La Porta in 1998, such an epistemic turn is patent in the rise of global legal indicators as a means of assessing the through non-democratically accountable standards. This shift from the legal to the economic sphere is even more apparent as far as the rule of law is concerned: as it promotes efficient institutional changes, the rule of law now deals with *governance*, and not with *government*. Within global contexts, the rule of law has become the driver promoting good governance, as well as the “guiding light” ensuring elevated economic performance. Yet, the rule of law is neither the by-product of global international law nor has it been supposed to act as a politico-economic driver. Before it became the shibboleth of global governance, it had a different legal meaning: it traditionally set constraints on political power in order to protect the rights and freedoms of the individuals. Now, by contrast, the rule of law expresses a performance measure, which evaluates the efficiency of the legal systems and their attractiveness towards international investments: the more efficient the system, the more likely the investment, and the higher the economic return.

Again, it is matter of quantification, as Pier Giuseppe Monateri highlights in chapter 3 (*Thinking law with numbers: models of legal quantification*). As he explains, the whole history of ideas of trapped in the quantitative-qualitative dichotomy, or – which is the same thing – in the “circle of political epistemology”: within it, “the choice of methods depends on the (political) results it produces, as opposed to a corroboration of the results on the basis of an independent choice of the method itself” (p. 87). Monateri is right when stating the there is a sort of recursivity in the use of quantitative and qualitative methods – and recursivity is dependent upon the question of how we can better interpret the social world. It is the very rationale (and purpose) of the law which is at stake: is it so much to decide cases (and deal with the demand of justice) or to avoid disputes? The idea of the law we now have is evidently likened to how we process empirical data and measure reality. Yet, it has been correctly argued that “through numerical representation, one always loses some aspects of the reality:”[5] indicators might also deliberately omit data and variables, notwithstanding their relevance in real-words assessments. This was what effectively

[5] R. Rottenburg and S.E. Merry, “A World of Indicators: The Making of Governmental Knowledge through Quantification,” in *The World of Indicators. The Making of Governmental Knowledge through Quantification*, eds. Richard Tottenburg et al. (Cambridge: CUP 2015), pp. 1–33, 8.

happened within the “Law and Finance Debate”, which aimed to establish “a firm relationship, in functional terms, between legal institutions and empirical observable variable, through mathematical regression” (p. 107). The link between law and economic performance has a huge impact on classifications; and the ranking of legal systems depends on their performativity, which is rooted in their legal origins. The Western legal tradition is dominant, and, within it, the common law prevails over the civil law. In fact, the common law is said to ensure elevated economic performances. The thorough application of such approach in the World Bank’s *Doing Business Reports* is critically revisited by Monateri, who examines Law and Finance’s desired aim to trigger frictionless and business-friendly legal domestic environments. Law and regulation are indeed considered types of “friction”, which ought to “be designed in a way that minimizes these frictions while still achieving their intended social and economic goals” (p. 119).

Law as friction is then examined in chapter 4 (*Quantitative frictional analysis of political order*), where Pier Giuseppe Monateri applies it within the context of government formation. The chapter is a thorough application of how transnational costs saturate the constitutional systems in, among others, Italy (purely parliamentary), the UK (Cabinet parliamentary), and the USA (purely separational). Imprecise, as it is, even in comparative-law terms, this tripartite scheme has been perused to assess quantitatively timing and decision-making procedures that impact the formation, duration, and action of governments (p. 132), also encompassing legislative-making processes (p. 137-38) and judicial activity (pp. 139-48). What Monateri infers from this numerical exercise is an allegedly imbalance between “the amount of time devoted to electing government” and “the amount of time actually devoted to government action” (p. 148). Compared with autocratic regimes, democracy has higher transactions costs and produces friction, and the “measure of their functioning in terms of the variables of representation and political efficiency” are thus turned into “technologies of governments”, i.e. a parameter without taking into account that these transaction costs are inherent to their thick/thin democratic commitment. What this focus on data collection approach sets aside is their political substance and values, as well as the participation of the general public in the evaluation of their own society and institutions, not to mention the societal and cultural contexts within which these transaction costs occur. This reductionist numerical approach is undeniably indifferent to the qualitative inherent features of the politico-constitutional system: “it simply measures the friction associated with particular constitutional arrangements, whatever the ideology of those systems” (p. 150 and 152).

In this respect, the book generalises the idea of law as friction. If the “the purpose of legal rules is to prevent rather than resolve conflicts”, it proposes a pattern within which the law can become frictionless: the measure of its performativity lies in its ability of satisfying the social demand for justice, irrespective of its cultural environment and the ideology

underpinning its society. There are hints of universalism in this predicament: both authors assume that it is possible to set up a legal system *bonne à tout faire* and capable of managing complexity and, at the same time, of satisfying the social demand for justice by dealing with the unpredictable. How this might be attained is unclear, though: if I understand Monateri and Balestreri correctly, quantitative methodologies might help us to "model a complex system as a graph and then use graph algorithms to analyze and understand the behavior of the legal system" (p. 155). The book seems to assume that quantitative legal reforms and time will be the right medicine to unpredictability: "quantitative methods should at least lead us to an improved consciousness of the reality of the political-economic process" – I add: the process underpinning the legal system – compared to our ideological pipe dreams" (p. 166).

Yet, as a comparative lawyer, I still have a strong preference for thick democracies (and their related transaction costs), as well as for the pluralism of our world, which comparative law keeps up grasping irrespective of algorithms and graphs.

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