JAAKKO HUSA (ED), A RESEARCH AGENDA FOR COMPARATIVE LAW, CHELTENHAM AND NORTHAMPTON, MA, EDWARD ELGAR, 2024, PP. 224

Por

MATTEO NICOLINI
Università di Verona (Italia) – Newcastle University (UK)

matteo.nicolini@univr.it

Revista General de Derecho Público Comparado 37 (2025)

1. There are always hints of melancholy when we comparative lawyers review books dealing with methodological issues. What we usually do is evoke (at least in our minds) the splendour of the discipline, which is typically related to its origins and early academic development. Gone are those days, though; and our constant refrain is that comparative law is in a state of flux with – which is worse – an uncertain future. To console ourselves, we mildly criticise the excesses of Eurocentrism displayed at the 1900 Congress of Paris, its related colonial attitude, and, more generally, we condemn the way legal transplants westernised the non-Western world. Redolent, as it is, the *belle époque* of comparative law is also reflected in our academic malaise, i.e. the debate on its very character. Does it possess a genuine scientific approach? Is it true that 'developing and applying a comparative method' will 'cure legal science from its methodological disease'? (p. 3). Or is comparative law destined to remain a badly assorted admixture of methodologies *bonnes à tout faire*? Is it possible to reconcile its *identity* (which is still rooted in the splendour of the past) with a sort of disciplinary porosity caused by the changes and chances of our fleeting world?

A further step is to lament over the explosion of publications in our field, especially when these are the academic outputs of (what we consider) self-appointed comparative scholars and itinerant contributors to the discipline. 'The comparatist of today is being overwhelmed by the quantity of publications and data available on the internet. One cannot obtain an overview just by following the leading journals'.[1]

Besides 'scientification' and 'scholarly abundance' (p. 1), a further concern is shared by our epistemic community, that is, the way globalisation impacts on legal scholarship, in

[1] Jaakko Husa, 'Comparative law's pyrrhic victory?' (2023) 30 Maastricht J Eur Comp L 680, 681.

general, and comparative legal scholarship, in particular. Our community has always been committed to the 'sustainable diversity' and 'legal biodiversity' of our discipline.[2] Despite our attentiveness to both phenomena, we have made ample, and somehow indiscriminate, recourse to the methodological attitude we comparativists term the *universalist approach*.[3] We must be held somewhat accountable for such a state of affairs, inasmuch as this approach has been part of comparative law since its beginning. What worries us is that the universalist approach has fallen prey to the epistemic community of global lawyers. In encouraging, and therefore *generalising*, the recourse to generalisations, global legal scholarship has converted the latter into a wide-reaching set of legal devices, and 'legal globalisation is … transforming legal culture on a global scale'.[4]

Our feeling is that we are haunted by a methodological curse. Relegated to the margins of the legal discourse, comparison is 'outdated';[5] its methodology is replaced 'with more modern and trendy jurisprudential doctrines and theories of international or global law'; and the 'We are all comparatists now' banner downgrades it from 'a unique distinct method' to 'a mere variant of legal research'.[6] At the other extreme, there is the quest for interdisciplinarity, which we sometimes embrace uncritically to justify how comparative 'stuff' is useful also for non-legal scholars.[7] This also triggers tensions and identity crises among comparative scholars. The discipline 'has drawn ideas and methodologies from non-legal fields' at a steady pace; but our feeling is that the 'world of law … has become more complicated for a unified discipline to seize'.[8] Let alone for comparative law, which is journeying through sundry methodologies *à la recherche* of its core business.

---

[2] Sustainable diversity is in HP Glenn, "Sustainable Diversity in Law" (2011) 3 Hague J on the Rule of Law 39 and *Legal Traditions of the World. Sustainable Diversity in Law* (5th edn, OUP 2014). For 'legal biodiversity' see Matteo Nicolini, 'Law and the Humanities in a Time of Climate Change' (2020) 26 Cardozo Electronic L Bull 1.

[3] For a concise discussion see Matteo Nicolini, 'Methodologies of Comparative Constitutional Law: Universalist Approach' in Matteo Nicolini, 'Methodologies of Comparative Law: Universalistic Approach', in Max Planck Encyclopaedia of Comparative Constitutional Law (2nd edn; OUP 2023) Available at: https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e50?rskey=BJebA8&result=1&prd=MPECCOL (accessed on 14 May 2025).

[4] Jaakko Husa, *Advanced Introduction to Law and Globalisation* (Edward Elgar 2018), 32.

[5] See NV Demleitner, 'Combating legal ethnocentrism: Comparative law sets boundaries' (1999) 31 Arizona State Law Journal 737. See also Mathias Siems, 'The end of comparative law' (2007) 2 J Comp L 133 (on the four challenges to comparative law: 'the disregard', 'the complexity', 'the simplicity', and its 'irrelevance' in a converging/global legal reality).

[6] Respectively: Marcus Galdia, *Legal Linguistics* (Peter Lang 2009), 274; Mathias Siems, *Comparative Law* (3rd edn; CUP 2022), 121.

[7] Jaakko Husa, *Interdisciplinary Comparative Law. Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd* (Edward Elgar 2022), 8.

[8] Husa (n1), 683.

2. I have written elsewhere that the epistemological underpinning of our discipline is traceable back to its pluralistic character, in terms of both disciplinary and methodological construction. Owing to its geographical qualities,[9] comparative law has traditionally exhibited a peculiar attentiveness to the real world. Our discipline can figure out the world in its complexity because of its 'ability to grasp [it] intellectually'[10] with its methodological pluralism.[11]

The methodological approaches available in comparative law are often mixed and jointly applied, fitting into a wide range of truly interdisciplinary intellectual projects. They also represent a toolkit capable of enhancing critical thinking. Playing with words, interdisciplinarity is part of the disciplinary construction of comparative law. It unavoidably prompts us to run counter to the autonomy (and closure) of doctrinal law, thus opening it up to fruitful conversations with the world lying outside mainstream legal academia. As an empirical field of legal research, comparative law is therefore engaged with the real world – and this means being interdisciplinary.

Having abandoned the narrow viewpoint of legal doctrine, comparative law has, at least in my opinion, a new major task. The world is out there to be regulated and explored; in addition, it has to challenge the epistemologically internal point of view of doctrinal law.

This is our challenge for the future.

3. In editing A *Research Agenda for Comparative Law*, Jaakko Husa joins this conversation. His collection is closely related to one of his most recent essays, namely *Comparative law's pyrrhic victory* (2023). There, he takes part in the debate by adopting a singular posture. 'For me', he writes, 'comparative law has no future. This may sound harsh and perhaps even shocking, but what I am arguing is that instead of one future there will be many futures'.[12] Husa is arguing, as we shall see in the last section of my book review, that comparative law does not possess a univocal and settled paradigm; and that we can no longer reiterate the past without taking into account what the future holds for us. We feel unable to methodologically grasp the complexity of our contemporary era, and this redolently forces us to retreat and lull ourselves in 'the earlier layers of scholarship … [which] are alive and kicking with various degrees of success' (p. 3). And with various degrees of platitudes, too. In Husa's words, the main issue is and remains pluralism: 'There will be many sorts of comparative studies that are based on different theoretical

[9] Matteo Nicolini, '"Writing the Earth and Representing the World": The Cartographical Ambitions of Comparative Law' (2024) 19 J Comp Law 79.

[10] Alastair Bonnett *What is geography?* (SAGE 2008), 32.

[11] On methodological pluralism in comparative law see Roberto Scarciglia, *Methods and Legal Comparison: Challenges for Methodological Pluralism* (Edward Elgar 2023), 135.

[12] Husa (n1), 687.

assumptions and use different sorts of methodologies'; 'comparative law is not merely one discipline' but 'an open-ended matter'; 'those who work with epistemology and methodology, need to adapt and improvise'.[13] I think that Jaakko Husa and I concur in what I stated above, i.e. that comparative law is already able to engage with the real world out there.

I know that a predicament like this might sound unpalatable for lawyers (even for comparative lawyers!) that might prefer to adhere to formalism, i.e. a less engaging way of doing (comparative) law. I remind them that the world out there (not my wishful thinking) encourages us to leave our comfort zones. The current state of affairs has raised 'new challenges, but it has also opened new horizons for the comparative study of the law' (p. 6).

'This is a victory, not a defeat'.[14]

I totally subscribe to this predicament. Comparative law can face new challenges to the (comparative, doctrinal, and methodological) study of the law arising from our troubled and messy world.

4. Together with a brief, albeit dense, introductory Chapter, Husa's *Research Agenda for Comparative Law* comprises 9 chapters and a short coda. The chapters are authored by prominent scholars with backgrounds in comparative law, global legal history, anthropology of law, and knowledge communication. Each author has been called to disclose and explore 'new horizons' for comparative law, taking into account its interdisciplinary ambitions. The book opens up these new avenues through – please forgive the pun – a thorough comparison between comparative law and legal history. As Thomas Duve explains in Chapter 2 (*Regimes of knowledge production in comparative and global legal history: past, present and future?*), both disciplines are experiencing the same challenges. We are facing growing complexity in how knowledge is being produced in a more global (and less Westernised) world. Like comparative law, legal history is the child of the 19th-century and the European nation-state: its 'methods and practices of knowledge production … have remained remarkably stable', the concept of law 'largely unquestioned', and its 'analytical framework' has engaged with authors who had been working on the same problem centuries ago' (p. 18-19). These approaches have been challenged only recently; Duve mentions the critical reading of legal history with its focus on non-state (and unofficial) law; the internationalisation of research groups; the process of digitalisation; and the relevance of legal histories beyond the West. This has led to an increased porosity of disciplinary boundaries and – which is worse – an 'information overload' that is threating

[13] Husa (n1), 688.

[14] Ibid.

knowledge production with its 'metadata, digital infrastructures … as well as "big history".' (p. 27). Duve's convincing proposal is to replace 'legal knowledge' production with the 'knowledge of normativity'. Perhaps the proposal is unpalatable for Western (formalistic) lawyers, but it is really relevant when it comes to capturing 'the importance of social norms, conventions, routines, and performances in producing' the law in our post-Western world (p. 32).

Further (interdisciplinary) insights are provided by Fernanda Pirie in Chapter 3 (*From the local to the global: anthropological approaches to legal comparison*). Legal scholars' reluctance to face the future is often caused by the lack of knowledge of the variables making up the law in action of a given legal system. Anthropology offers fresh perspectives on how these variables percolate through the operational rules of the system. It indeed assesses (and compares) empirical cases, interprets 'social practices and assumptions' underpinning the same system (p. 47), discloses the widespread use of 'legalism' (i.e. the 'tendency … to formulate and appeal to abstract categories and explicit rules in [the] description and organization of social life': p. 49) and 'scholasticism' (i.e. legal experts that 'pursue projects of abstract jurisprudence': p. 51) across cultures. What anthropology teaches us is a deep understanding of the law or – which is the same thing – its underlying social forms, beliefs, and values, by gathering 'fragments of social life that recurs across cultures' (p. 59). In a world of normativities, we should depart from the mainline concept of law – and, if necessary, we should start improvising.

5. A further set of chapters assesses how adopting a pluralistic methodology strengthens comparative law as a discipline. Chapters 4 (*Decolonial comparative law: FAQ*) by Ralf Michaels and 5 (*Legal education and comparative law: an epistemological agenda*) by Geoffrey Samuel provide further bricks for the construction of the theoretical framework building towards the future. Ralf Michaels's chapter is arranged as if he were replying to a set of Frequently Asked Questions (FAQs). The literary genre chosen is per se a novelty in legal literature; Michaels is perhaps frontally challenging academic formalism. The FAQs-format indeed reflects the bureaucratic (and excessively simplified) format used on the internet and by research councils when releasing grant schemes and funding opportunities. If the purpose is to disorient the formalist lawyer, Michaels is indeed successful. It is a way through which the whole legal thinking can be stirred up and decolonised. And this brings us to decolonial comparative law, which is 'simultaneously a field and a process and a praxis and an option' (p. 62). Not only is it a way of clearing up comparative law from the fouling of the past, but it can also contribute to *decolonising the law through comparative law*. It is a predicament that is consonant with the concepts expressed in the previous chapters, provided that the concept of coloniality ('a political and economic structural relation of hierarchy and subjugation, and an epistemic dimension that

naturalizes and justifies this hierarchy': p. 65)[15] is also referrable to every ideology replacing the former ones. Any form of knowledge production asserting itself as an absolute is a new form of coloniality.

Knowledge production is also the recurring theme in Geoffrey Samuel's Chapter. Comparative law and legal education 'demand knowledge that stretches beyond the frontier of the discipline of law' (p. 89). Samuel navigates the civil law/common law divide examining how legal education has developed in both traditions. If I understand him correctly, his 'impertinent question' ('does legal education enjoy a rich … intellectual credibility when compared with other university disciplines?': p. 102) has to do with our ability, as lawyers, to grasp the world intellectually: 'much of what doctrinal law teachers say has been said before, often by a Roman or medieval jurist' (p. 104). The risk we are facing is the loss of pluralism; a robot judge, Samuel puts it, which is better than humans at grasping the law, unavoidably will make comparative law redundant: 'how can we compare when law has become a singular and unique notion?' (p. 108).

In Chapter 6 *('By your powers combined': the elucidatory role of comparative socio-legal research*), Jennifer Hendry introduces us to a renewed analysis of the 'socio', the 'context-related', as well as the 'legal culture'/'legal pluralism' banners in comparative law. Admittedly, it is difficult to seize the precise meaning of these expressions, which indeed cross over normativies with their porosity and flexibility. But Hendry manages to navigate the socio-legal approaches to the law in a satisfactory way. These are indeed tales of encounters with all the concerns and existential doubts affecting our discipline: 'law and society are co-extant, co-constitutive, and interconnected' (p. 126).

Likewise, in Chapter 7 (*For comparative legal studies*), Michael Palmer adopts the same 'expanding vision': we should do (comparative) legal studies and not (comparative) law. The banner reflects what we are already doing and will also be doing in the foreseeable future of our discipline: we must consider 'the many processes of change that have taken place in the globe' (p. 129). Our comparative 'stuff' is broader than the law; we indeed 'learn for broader reasons' and we are called to clarify why 'a social product' – which is the law – 'often requires externally based explanations' (p. 130-31). I agree with him: legal studies do not weaken our research agenda. Quite the opposite: they strengthen it. And also open 'new theoretical perspectives'. Comparative legal studies decolonise the law inasmuch as they treat doctrinal law as 'a type of political ideology' – not as the absolute truth (p. 135). 'The broad, angle view of comparative legal studies' has the strength to shape 'the legal discourse of the contemporary world' (p. 154).

[15] For more on this concept see Lena Salaymeh & Ralf Michaels, 'Decolonial Comparative Law: A Conceptual Beginning' (2022) 86 Rabels Zeitschrift für Ausländisches und Internationales Privatrecht / Rabel J Comp Int Private L 166.

6. The final chapters are devoted to assessing hugely differentiated topics. In Chapter 8, Jan Engberg explores the relations between language and comparative law (*Why languages (as input for knowledge construction) are central objects in comparative law*). In Chapter 9 Catalina Goanta reflects on *Comparative law and cyberspace*. Finally, in Chapter 10, Qiao Liu explores Chinese law (*Comparative law and Chinese legal tradition: through the lens of judicial precedent*). At first sight, the topics might seem patchy and unrelated; yet a *fil rouge* links them all. The issue is, again, that of knowledge production in (and, I add, the issue of legitimisation of) comparative law. Jan Engberg focuses on language because comparison is always a comparative 'study of their communicative interactions' (p. 159). It is an intriguing perspective, since the law is a 'discipline that constructs its respective object and thus creates its own independence' (p. 161). When we manufacture a discipline, we build both a body of knowledge and an epistemic community. At the same time, we project our knowledge onto the world with the aim of making it 'objective'. Law, language, and knowledge are therefore pivotal 'when leaving the security of the known culture and charting the unknown waters' of future comparative legal studies (p. 175).

In Chapter 9, Catalina Goanta opens up comparative law to a new nomic setting, i.e. cyberspace.[16] I agree with her that cyberspace is a place; perhaps it is indeed a sui generis space, but it hasn't lost its territorial matrix.[17] Concepts like borders, sovereignty, and jurisdiction still pop up there, as John Perry Barlow's 'Declaration of Independence of Cyberspace' (2016) *a contrario* confirms. Being a space that has to be made meaningful and appropriated by humans, cyberspace does make room for legal pluralism through a 'multitude of legal orders' (p. 186) and normativies (such as the ToS of platforms and social media organizations: p. 184). Comparative law has a role even there (p. 195).

Qiao Liu's Chapter illustrates how the plurality and complex nature of comparative law intertwines as far as Chinese law is concerned. With this, we do not assume that the legal history of China has not been addressed by comparative lawyers. There is indeed a vast literature that explores it. What the Chapter aims to do is to fill the gap in how the Chinese legal tradition and the law of the PRC now interrelate. Qiao Liu undertakes an intriguing examination of the concept of 'precedent'. Statutes under the Qing Dinasty were infused with the philosophy of particularism, and not universalism, which meant providing 'differentiated solutions according to the personal status … of individuals … the specific and concrete were prioritised' (p. 202). Precedents acted as sub-statutes, complementing

[16] 'Nomic setting' refers to legal spaces as social constructs that become legally relevant 'by way of inscription or assignment of legal meanings': see David Delaney, *The Spatial, the Legal and the Pragmatics of World-Making. Nomospheric Investigations* (Blackwell 2010), 59.

[17] See Matteo Nicolini, *Legal Geography. Comparative Law and the Production of Space* (Springer 2022), Ch 8.

the narrowly tailored provisions of the Qing code; and 'this tradition of extracting rules was preserved and has continued to the present day' (p. 206) through 'judicial interpretations and guiding cases of the SPC' (p. 211). Qiao Liu's Chapter comes full circle with Fernanda Pirie's one, disclosing the widespread use of 'legalism' and 'scholasticism' across cultures *sub specie* judicial precedent.

7. In Chapter 11 (Conclusion: *A Research Agenda for Comparative Law*), Jaakko Husa provides us with some cursory final thoughts about the future of comparative law. As said earlier, there is 'no paradigm'; and the edited collection intends neither to be 'normative', nor 'to hide the diversity of the field', nor to construct a new paradigm and by doing so restrict the number of possible futures' (p. 217). He then lays forth his four theses: 'there is *no one-size-fits-all'* in our discipline; 'the comparative study of law means necessarily studying *law in context*'; it 'requires an awareness of its *intellectual baggage*'; finally, comparative law has to be '*interdisciplinary*' (p. 217-8).

Like him, I do not intend to propose a new paradigm. But also like him, I think that 'the "new future" [of our discipline] seems to hold great promises of theoretically and methodologically diverse comparative law' (p. 291). Which means that we should at least promote a paradigm shift and become truly *subversive*. We must change our mood and revitalise our pristine empirical, and problem-based, approach; at the same time, we must remain vigilant, and we should keep the door of the law open to a constant conversation with the world, which really helps us to stretch our thinking into the future.

To this extent, *A Research Agenda* is therefore a timely exercise in comparative legal reimagination. It helps us to stir up our disciplinary ambitions. In so doing, we should give rise to a new organising principle in comparative law, which reflects 'the view that, as conceptions of justice change over time, so too should' our methodologies and mindset.[18]

And this, I argue, may forestall the inception of new forms for doing comparative law.

[18] Richard Mullender, 'Context, Contingency and the Law of Negligence (or from Islands to Islands of Time)' (1997) 29 *Bracton Law Journal* 23, 27.

BIBLIOGRAPHIC REFERENCES

Bonnett Alastair, *What is geography?* (SAGE 2008).

Delaney David, *The Spatial, the Legal and the Pragmatics of World-Making. Nomospheric Investigations* (Blackwell 2010).

Demleitner NV, 'Combating legal ethnocentrism: Comparative law sets boundaries' (1999) 31 Arizona State Law Journal 737.

Galdia Marcus, *Legal Linguistics* (Peter Lang 2009).

Glenn HP, 'Sustainable Diversity in Law' (2011) 3 Hague J on the Rule of Law 39.

Glenn HP, *Legal Traditions of the World. Sustainable Diversity in Law* (5th edn, OUP 2014).

Husa Jaakko 'Comparative law's pyrrhic victory?' (2023) 30 Maastricht J Eur Comp L 680.

Husa Jaakko, *Advanced Introduction to Law and Globalisation* (Edward Elgar 2018).

Husa Jaakko, *Interdisciplinary Comparative Law. Rubbing Shoulders with the Neighbours or Standing Alone in a Crowd* (Edward Elgar 2022).

Mullender Richard, 'Context, Contingency and the Law of Negligence (or from Islands to Islands of Time)' (1997) 29 *Bracton Law Journal* 23.

Nicolini Matteo Nicolini, 'Law and the Humanities in a Time of Climate Change' (2020) 26 Cardozo Electronic L Bull 1.

Nicolini Matteo, '"Writing the Earth and Representing the World": The Cartographical Ambitions of Comparative Law' (2024) 19 J Comp Law 79.

Nicolini Matteo, 'Methodologies of Comparative Constitutional Law: Universalist Approach' in Matteo Nicolini, 'Methodologies of Comparative Law: Universalistic Approach', in Max Planck Encyclopaedia of Comparative Constitutional Law (2nd edn; OUP 2023) Available at: https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e50?rskey=BJebA8&result=1&prd=MPECCOL.

Nicolini Matteo, *Legal Geography. Comparative Law and the Production of Space* (Springer 2022).

Salaymeh Lena & Michaels Ralf, 'Decolonial Comparative Law: A Conceptual Beginning' (2022) 86 Rabels Zeitschrift für Ausländisches und Internationales Privatrecht / Rabel J Comp Int Private L 166.

Scarciglia Roberto, *Methods and Legal Comparison: Challenges for Methodological Pluralism* (Edward Elgar 2023).

Siems Mathias, 'The end of comparative law' (2007) 2 J Comp L 133.

Siems Mathias, *Comparative Law* (3rd edn; CUP 2022), 121.