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Introduction

A New Handbook for Comparative Law in a Global Context

Mathias Siems and Po Jen Yap***

ABSTRACT

This chapter introduces the aims and scope of this handbook. In this handbook, we seek to showcase the diverse perspectives offered by contributors from all over the world concerning topics of comparative law. We begin by outlining the proposition that one's culture and identity shape what we do and how we think, but we also suggest that understanding law in a global context requires us to transcend a radical scepticism about the comparative law enterprise and also avoid exclusionary 'identity politics'. We proceed by explaining the structure of the handbook and summarising the key contents of each chapter in the handbook.

A. INTRODUCTION

Comparative law is a common topic of research and teaching in many universities around the world, and the twenty-first century has even been termed the 'era of comparative law'.[1] Reflecting this trend, we have witnessed in recent years the publication of several new general books on comparative law.[2] With regard to handbooks specifically, many specialised handbooks deal with specific topics of comparative law,[3] along with general handbooks of comparative law

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[1] Esin Örücü, *The Enigma of Comparative Law* (Leiden: Martinus Nijhoff, 2004), p. 216.

[2] For some of the recent books published in English: Jaakko Husa, *Introduction to Comparative Law* (Oxford: Hart Publishing, 2nd ed., 2023); Mathias Siems, *Comparative Law* (Cambridge: Cambridge University Press, 3rd ed., 2022); Simone Glanert, Alexandra Mercescu and Geoffrey Samuel, *Rethinking Comparative Law* (Cheltenham: Edward Elgar, 2021); Uwe Kischel, *Comparative Law* (Oxford: Oxford University Press, 2019); Catherine Valcke, *Comparing Law* (Cambridge: Cambridge University Press, 2018); Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Oxford: Hart Publishing, 2014).

[3] For example, Irene Calboli and Jane C. Ginsburg (eds), *The Cambridge Handbook of International and Comparative Trademark Law* (Cambridge: Cambridge University Press, 2020); Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford: Oxford University Press, 2012); Emma Less and Jorge E. Vinuales (eds), *The Oxford Handbook of Comparative Environmental Law* (Oxford: Oxford University Press, 2019); Peter Cane, Herwig C. H. Offman, Eric C. Ip and Peter L. Lindseth (eds), *The Oxford Handbook of Comparative Administrative Law* (Oxford: Oxford University Press, 2020); Research Handbooks in Comparative Law by Edward Elgar, see www.e-elgar.com/shop/gbp/book-series/law-academic/research-handbooks-in-comparative-law-series.html (accessed 19 February 2023).

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such as the second edition of the *Oxford Handbook of Comparative Law* and the third edition of the *Elgar Encyclopedia of Comparative Law*.[4]

These handbooks have advanced the study of comparative law. Notably, they apply different methods of studying comparative law (going beyond the traditional functional approach) and consider different areas of law (going beyond comparative law's traditional focus on private law topics). These are welcome developments which this *Handbook* embraces. However, the existing handbooks also have a major limitation, namely that the vast majority of their contributors are drawn from universities in Europe and North America, leading to an underrepresentation of authors from Latin America, Africa, Asia and Australasia.

This *Handbook* therefore seeks to broaden the geographical representation of contributors to all continents of the world.[5] Geographical representation is relevant and important for studying comparative law because many of its core concerns relate to different ways of understanding 'law', not just conceptually but also how it operates in practice. For example, as comparative law delves into topics such as legal culture, legal transplants and law's role in social and economic development, it is possible that authors from different parts of the world would approach these topics from different perspectives – and these different perspectives would therefore be crucial for comparative law to consider.

This introductory chapter is structured as follows. Section B examines the proposition that one's culture and identity shape what we do and how we think, while Section C explains why understanding law in a global context requires us to transcend a radical scepticism about the comparative law enterprise and avoid exclusionary 'identity politics'. Section D summarises all the chapters in the book and Section E concludes.

B. CULTURE AND IDENTITY MATTERS: WHO WE ARE SHAPES WHAT WE DO AND HOW WE THINK

Differences and similarities between cultures are frequently examined in popular and academic writings.[6] There can be a fine line between identifying certain cultural differences and risking cultural stereotypes (e.g., using terms such as 'East' and 'West' as 'fixed cultural entities'[7]). In this regard, research on cross-cultural psychology has sought to unpack the assumptions by using empirical data to analyse whether there are indeed differences or similarities between cultures.

A prominent line of cross-cultural psychological research focusses on the differences between 'Western' and 'non-Western' (in particular: 'Eastern') cultures,[8] while others identify

[4] Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford: Oxford University Press, 2nd ed., 2019); Jan M. Smits et al. (eds), *Elgar Encyclopedia of Comparative Law* (Cheltenham: Edward Elgar, 3rd ed., 2023, forthcoming). Further examples are Mauro Bussani and Ugo Mattei (eds), *The Cambridge Companion of Comparative Law* (Cambridge: Cambridge University Press, 2012); Pier Giuseppe Monateri (ed.), *Methods of Comparative Law* (Cheltenham: Edward Elgar, 2012); Esin Örücü and David Nelken (eds), *Comparative Law: A Handbook* (Oxford: Hart Publishing, 2007). There is also the *International Encyclopedia of Comparative Law* (Tübingen: Mohr Siebeck), a multi-volume work published since the 1960s.

[5] In today's world, identities of academics are of course often mixed. Thus, we take into account the countries of the authors' current university affiliations and also their countries of origin and experience.

[6] For the former see, for example, websites on 'business etiquette' in different countries: for example, www.commisceo-global.com/resources/country-guides (accessed 19 February 2023). For the latter see the following footnotes.

[7] On this point, as related to the debate on 'orientalism' (see also Section C, below): Thomas Coendet, 'Chinese Law: 6½ Trajectories' (2021) *Ancilla Iuris* 137.

[8] Joseph Henrich, *The WEIRDest People in the World: How the West Became Psychologically Peculiar and Particularly Prosperous* (New York: Farar, Straus and Giroux, 2020); Richard E. Nisbett, *The Geography of Thought: How Asians and Westerners Think Differently . . . and Why* (New York: The Free Press, 2003).

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sub-variations (e.g., Western, Eastern European, Middle Eastern, Sub-Saharan African, Latin American, Southern Asian and Eastern Asian cultures).[9] There are also other typologies that distinguish, for instance, between 'progress-prone' and 'progress-resistant' cultures,[10] between 'authority-ranking', 'egalitarian', 'market-pricing' and 'torn' cultures,[11] and between 'tight' and 'loose' cultures vis-à-vis social conformity.[12]

Some of this literature also observes that the extant psychological research is limited because the psychological experiments have mainly been conducted with the most accessible participants, namely, European and North American university students.[13] In particular, one may note that this group of participants – abbreviated as 'WEIRD', that is 'Western, educated, industrialised, rich and democratic' – may be viewed as rather peculiar when compared with other cultural groups. In the words of one of the main authors of that study:

> When cross-cultural data were available from multiple populations, Western samples typically anchored the extreme end of the distribution. They were psychologically weird.[14]

Some psychological studies also relate psychological variations between groups to differences in the legal systems, for example, 'tight nations' tend to have harsher laws and fewer political rights and civil liberties.[15] In the comparative law literature too, some scholars suggest a possible causal relationship between psychological orientation and legal perspectives. For example, it has been suggested that 'an English judge is not only a judge; she is also English',[16] that the national character of the Germans accounts for their preference for rigid rules[17] and that the higher degree of over-optimism among Canadian as compared to Japanese consumers may explain the two countries' different levels of consumer protection.[18] Moreover, it is equally possible that laws and legal changes can shape behaviour, and some literature also suggests that legal rules can be internalised by individuals and the society, and that institutions can change the perception of one's identity.[19]

[9] Vivian L. Vignoles et al., 'Beyond the "East–West" Dichotomy: Global Variation in Cultural Models of Selfhood' (2016) 145 *Journal of Experimental Psychology* 966 (also emphasising variations within these regions).

[10] Mariano Grondona, 'A Cultural Typology of Economic Development' in Lawrence E. Harrison and Samuel P. Huntington (eds), *Culture Matters: How Values Shape Human Progress* (New York: Basic Books, 2000), p. 44.

[11] Martin J. Gannon and Rajnandini Pillai, *Understanding Global Cultures* (Los Angeles: Sage, 6th ed., 2015).

[12] Michele J. Gelfand, *Rule Makers, Rule Breakers: How Tight and Loose Cultures Wire Our World* (New York: Scribner, 2018).

[13] Joseph Henrich, Steven J. Heine and Ara Norenzayan, 'The Weirdest People in the World?' (2010) 33 *Behavioral and Brain Sciences* 61; Henrich, above n. 8.

[14] Henrich, above n. 8, p. xii.

[15] Michele J. Gelfand et al., 'Between Tight and Loose Cultures: A 33-Nation Study' (2011) 332 *Science* 1100. See also Henrich, above n. 8, pp. 395–415 (Western notions of government and law evolved due to their 'fit' with Western psychology in medieval and early modern Europe).

[16] Pierre Legrand, *Fragments on Law-as-Culture* (Deventer: W.E.J. Willink, 1999), pp. 73–4. Elsewhere, Legrand also relates this point to forms of 'standpoint epistemology', Pierre Legrand, 'The Same and the Different' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003), p. 240 at pp. 297–8.

[17] Pierre Legrand, 'Against a European Civil Code' (1997) 60 *Modern Law Review* 44 at 47.

[18] Giesela Rühl, 'Behavioural Analysis and Comparative Law: Improving the Empirical Foundation for Comparative Legal Research' in Hans-W. Micklitz, Anne-Lise Sibony and Fabrizio Esposito (eds), *Research Methods in Consumer Law: A Handbook* (Cheltenham: Edward Elgar, 2018), pp. 477, 495.

[19] Frederick Schauer, 'Comparative Constitutional Compliance: Notes towards a Research Agenda' in Maurice Adams and Jacco Bomhoff (eds), *Practice and Theory in Comparative Law* (Cambridge: Cambridge University Press, 2012), pp. 212, 225; Ashutosh Varshney, 'Ethnicity and Ethnic Conflict' in Carles Boix and Susan C. Stokes (eds), *The Oxford Handbook of Comparative Politics* (Oxford: Oxford University Press, 2007), pp. 274, 289–90.

This literature builds upon recent developments in the humanities which emphasise that we are all shaped by our own preconceptions and the language we use to describe them.[20] Thus, our growing awareness of cultural differences in turn leads, for example, to an interest in 'epistemologies of the South'.[21] Yet, the factors that shape one's identity are not limited to cultural factors. In the literature, it is sometimes also noted that, at the individual level, identities are often complex, and thus one's specific 'lived experience' is bound to play a key role in the way we understand the world. In the words of Pierre Legrand:

> Any individual embodies a seemingly infinite declension of ascertainable cultural formations, each allegiance engaging only a part of one's energies and concerns. Thus, one can be a labor lawyer in Marseille while also being a feminist, a native of Alberta, a fluent speaker of Hungarian, a militant of Amnesty International, a breeder of siamese cats regularly entering international competitions, and a lifelong member of the *Parti socialiste*.[22]

A further complication is that there are divergent views on whether authors should openly express their individuality and group identity (race, gender, etc.) in their professional or academic legal writings.[23] Indeed, the following section will suggest that giving consideration to group identities should not be radicalised in such a way as to impede the understanding of law in a global context.

C. BEYOND RADICAL SCEPTICISM OF COMPARATIVE LAW AND EXCLUSIONARY IDENTITY POLITICS: UNDERSTANDING LAW IN A GLOBAL CONTEXT

Some comparative lawyers express a 'radical scepticism' about the individual's ability to research and understand foreign law. For example, Pierre Legrand contends that a lawyer from a civil law country 'can never understand the English legal experience like an English lawyer'[24] and that, as we cannot escape our 'prejudicial fore-structure' in interpreting a legal text, a researcher is necessarily only able to provide his or her own 're-presentation' and 'invention' of foreign law.[25] Similarly, Günter Frankenberg is sceptical as to whether we can 'go native' and understand foreign legal cultures, suggesting that any comparatist needs to both accept that other law is truly foreign and do justice to the singularity of every legal system.[26] Elsewhere Frankenberg warns that such comparisons may not end well:

[20] Eric C. Schneider, 'Deconstructing Principles Foundational to the Paradox of Freedom: A Comparative Study of United States and German Subversive Party Decisions' (1995) 34 *DePaul Law Review* 621 at 627.

[21] Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (London: Boulder, 2014); Boaventura de Sousa Santos, *The End of the Cognitive Empire. The Coming of Age of Epistemologies of the South* (Durham: Duke University Press, 2018); Boaventura de Sousa Santos, *Law and the Epistemologies of the South* (Cambridge: Cambridge University Press, 2023).

[22] Pierre Legrand, 'Jameses at Play: A Tractation on the Comparison of Laws' (2017) 65 *American Journal of Comparative Law* 1.

[23] Cf. Franz Werro, 'How to Engage in Legal Comparison: A Reaction' in Samantha Besson, Lukas Heckendorn Urscheler and Samuel Jubé (eds), *Comparing Comparative Law* (Geneva: Schulthess, 2017), pp. 166, 171–5 (on the greater willingness of authors to express their individuality in common law jurisdictions than in civil law ones).

[24] Pierre Legrand, 'European Legal Systems Are Not Converging' (1996) 45 *International and Comparative Law Quarterly* 52 at 78.

[25] Pierre Legrand, 'Foreign Law As Self-Fashioning' (2017) 12 *Journal of Comparative Law* 6 at 30, 32.

[26] Günter Frankenberg, *Comparative Law as Critique* (Cheltenham: Edward Elgar, 2016), pp. 70, 72, 225. Previously, Günter Frankenberg, 'Critical Comparisons: Re-thinking Comparative Law' (1985) 26 *Harvard International Law Journal* 411.

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> [T]he tragic comparatist seems to be well aware of the limits and defects of her home law and her intellectual situation. Confined to the borders of a national legal regime and the parochial nature of the corresponding legal education, the tragic self dresses casually and bemoans a state of 'consecrated ignorance' of foreign laws and of her own alienation.[27]

There is also a line of scholarship that draws a connection between cultural distinctiveness and 'identity politics'. Contemporary identity politics suggest that there are power imbalances between social identity groups (white/black, male/female, straight/gay, etc.) and the powerless 'oppressed' group would need to recalibrate their relationship with the powerful 'oppressors'.[28] Applied to the comparative law enterprise, this divide may potentially lump everything associated with the 'West' (or the 'Global North') – including Western law, Western-type legal institutions and also Western legal scholars – with 'oppression'. For example, such a view may surface in statements that perceive comparative law as 'orientalist' and 'Eurocentric' in the way it presents, or disregards, non-Western legal traditions.[29] By way of illustration, consider a recent article which promotes non-Western rhetorical practices 'to improve communication, enhance persuasion, and envision new forms of community building', while the status quo is depicted as follows:

> the Western approach of empirically infusing everything with ranking, order, and neatness creates a toxic mindset that has been used to reach legal conclusions that ignore the lived reality of many people.[30]

It is not possible to discuss both above-mentioned views in detail here, but it is noteworthy that they transcend the axiomatic proposition that 'culture and identity matters', and both perspectives also pose the risk of 'essentialising' group identities.

To elaborate, the 'radical scepticism' of one's ability to understand foreign law may divide nations into groups of 'us' versus 'them', which may seem at odds with a 'legal culture of modernity' or even 'world legal culture' transcending national borders and legal families, which we may observe in cities around the world today.[31] A related question is whether any individual can become competent in the law of a foreign country. A sceptic may argue that our own cultural background will always shape our legal thinking, as is the case with how our native languages affect the way we learn a foreign one.[32] However, one may note an important difference: native language is acquired as an infant, while law is studied when we are adults. In the latter case, we can be more optimistic about our ability to learn new legal cultures. If legal

[27] Günter Frankenberg, 'Stranger Than Paradise: Identity and Politics in Comparative Law' (1997) *Utah Law Review* 259 at 266 (footnotes omitted).

[28] See, for example, Christopher T. Stout, *The Case for Identity Politics: Polarization, Demographic Change, and Racial Appeals* (Charlottesville: University of Virginia Press, 2020); Kwame Anthony Appiah, *The Lies That Bind: Rethinking Identity* (New York: Liveright, 2018); Francis Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment* (New York: Farrar, Straus and Giroux, 2018); Mark Lilla, *The Once and Future Liberal: After Identity Politics* (New York: Harper, 2017).

[29] Cf., for example, Teemu Ruskola, 'Legal Orientalism' (2002) 101 *Michigan Law Review* 179; Sherally Munshi, 'Comparative Law and Decolonizing Critique' (2018) 65 *American Journal of Comparative Law* 207 at 226. For different ways of understanding the term 'eurocentrism': Sarah M. H. Nouwen 'Exporting Peace? The EU Mediator's Normative Backpack' (2022) 1 *European Law Open* 26 at 27.

[30] Lucille A. Jewel, 'Comparative Legal Rhetoric' (2021) 110 *Kentucky Law Journal* 107 at 114.

[31] Lawrence M. Friedman, 'Is There a Modern Legal Culture?' (1994) 7 *Ratio Juris* 117; Lawrence M. Friedman, 'Erewhon: The Coming Global Legal Order' (2001) 37 *Stanford Journal of International Law* 347.

[32] Kirk W. Junker, 'A Focus on Comparison in Comparative Law' (2014) 52 *Duquesne Law Review* 69 at 89. Similarly, from the perspective of 'standpoint theory': Maria Salvatrice Randazzo, 'Chthonic Legal Traditions: A Standpoint Legal Research Paradigm for Comparative Analysis on Australian Indigenous Legal Orders' (2019) 3 *Udayana Journal of Law and Culture* 1.

culture is viewed as 'mental software', it is indeed plausible that our 'mental programming' can integrate and accommodate different and new cultural perspectives.[33] Thus, while there is no denying that preconceptions may influence our preliminary understanding, this does not mean that it is impossible for one to learn new things. Consequently, in our view, legal systems should not be seen as 'closed frameworks' that foreigners can never enter[34] and 'borders of legal systems should not be seen as borders of knowledge acquisition'.[35]

With respect to the literature on 'identity politics', the general drawback is that group-based politics downplay both human commonalities and individual responsibilities for past actions.[36] It also clashes with liberal values as far as it takes the position that some persons 'lack standing to speak on certain matters' because they belong to a particular identity group.[37] For topics of comparative law in particular, it can be misleading to draw a clear line to demarcate distinct legal traditions, given that 'every legal system contains imported elements',[38] that law's evolution 'has always been externally influenced',[39] and that 'the layering of domestic sources over foreign ones will eventually camouflage many distant origins'.[40] Indeed, it can be potentially beneficial for laws to draw ideas from a mix of different legal traditions. This comparative experience stands in sharp contrast to exclusionary forms of identity politics, which imply a 'zero sum game' where there can only be 'winners' and 'losers'.

To conclude, we agree with only some of the epistemological and normative statements advanced in the aforementioned literature on the viability of comparative law and the role identity politics play in it. It is correct to point out our limitations when we seek to understand 'the foreign'. We also agree with it insofar as it argues that comparatists need to treat the other (i.e., other laws and cultures) with respect and be aware of our own preconceptions. But in doing so, comparatists should neither be universalist (i.e. assuming that the other is the same as oneself) nor essentialist (i.e. assuming that the other is fundamentally different).[41]

We suggest that our proposed position can be associated with a cosmopolitan perspective.[42] Cosmopolitanism rejects the view that there is an irreconcilable gap between 'us' and 'them', which would make it impossible to understand foreign ideas and cultures. Rather, it 'presents an

[33] Jan M. Smits, 'Legal Culture as Mental Software, or: How to Overcome National Legal Culture?' in Thomas Wilhemsson, Elina Paunio and Annika Pohjolaine (eds), *Private Law and the Many Cultures of Europe* (The Hague: Kluwer Law International, 2007), p. 133. See also Mathias Siems, 'Foreign-Trained Legal Scholars in the UK: "Irritants" or "Change Agents"?' (2021) 41 *Legal Studies* 373 at 383.

[34] Anne Peters and Heiner Schwenke, 'Comparative Law Beyond Post-Modernism' (2000) 49 *International and Comparative Law Quarterly* 800 at 816.

[35] Jaakko Husa, *Advanced Introduction to Law and Globalisation* (Cheltenham: Edward Elgar, 2018), p. 45.

[36] Thus, this challenges the contemporary strain of 'common enemy identity politics' by favouring a 'common-humanity identity politics'; for these terms, see Greg Lukianoff and Jonathan Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* (New York: Penguin, 2018), pp. 53–78.

[37] Quoting a speech by Barack Obama, see http://time.com/5341180/barack-obama-south-africa-speech-transcript/ (accessed 19 February 2023), who also rejects such restrictions on who is allowed to speak.

[38] Ugo Mattei, Teemu Ruskola and Antonio Gidi, *Schlesinger's Comparative Law* (New York: Foundation Press, 7th ed., 2009), p. 240.

[39] Margit Cohn, 'Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom' (2010) 58 *American Journal of Comparative Law* 583 at 628.

[40] H. Patrick Glenn, 'Are Legal Systems Incommensurable?' (2001) 49 *American Journal of Comparative Law* 133 at 141.

[41] See also recent research monographs: Daniel Bonilla Maldonado, *Legal Barbarians: Identity, Modern Comparative Law and the Global South* (Cambridge: Cambridge University Press, 2021); Veronica Corcodel, *Modern Law and Otherness: The Dynamics of Inclusion and Exclusion in Comparative Legal Thought* (Cheltenham: Edward Elgar, 2019); Emma Patrignani, *Otherness, Pluralism and Context – Underground Issues in Comparative Legal Studies* (Ph. D. thesis, University of Lapland, 2017).

[42] Following Siems, above n. 2, pp. 454–6.

openness to other peoples, cultures and experiences', accepting the potential for an integration of one's own and foreign (legal) cultures.[43] However, cosmopolitanism is not naïve in simply assuming that the same tools will work everywhere in the world. Thus, researchers with a cosmopolitan spirit should be curious about exploring diverse ways of understanding a particular field and should explore the use of new methods to expand their intellectual horizons.

D. STRUCTURE OF THIS *HANDBOOK*

Existing general handbooks of comparative law[44] often have chapters on specific areas of law (comparative contract law, comparative criminal law, etc); on specific countries (comparative law in Germany, France, etc., or German law, French law, etc.); and on the relationship between comparative law and other disciplines (comparative law and history; comparative law and politics etc.). In contrast, we structure this *Handbook* differently. The four main parts of this *Handbook*, consisting of eight to nine chapters each, are structured according to more general themes: 'methods of comparative law', 'legal families and geographical comparisons', 'central themes in comparative law' and 'comparative law beyond the state'.

Part I on the 'Methods of Comparative Law' begins with Chapter 2 by Jaakko Husa on 'Traditional Methods'. This chapter sets the scene by outlining what the traditional methods of comparative law usually entail, namely a generic research process of comparative law, the functionalist methodology and concepts of universalism. Husa also provides critical reflections on these traditional concepts, thus offering a segue into the subsequent chapters in this part. In Chapter 3, Jean-Louis Halpérin explores 'Historical-Jurisprudential Methods', which also have a long history in comparative law. Specifically, Halpérin examines critical and constructive approaches to comparative law through the lens of legal history and underscores how those approaches may facilitate a deeper analysis of legal dynamics. In Chapter 4 on 'Critical Methods', Thomas Coendet analyses critical comparative law specifically. Herein, critique is conceptualised as an attitude that requires comparative lawyers to (re-)position themselves vis-à-vis the received methodological tools and themes currently in vogue, and this chapter also addresses concepts such as legal relativism, decolonialism and orientalism.

Chapter 5 by Qian Xiangyang on 'Culture and Comparative Law Methodology' also reflects on some scholarship on critical comparative law. But Qian does so by suggesting that a misunderstanding of culture is responsible for many missteps in comparative law. For example, he challenges research that presents over-generalised notions of a country's culture, while he also proposes that cultural elements should be approached objectively. Also related to culture, Chapter 6 by Łucja Biel addresses the topic of 'Linguistic Approaches'. She notes that insights from legal linguistics and legal translation studies have recently become part of comparative law methodology. She provides examples of how this integration can be achieved, notably suggesting that linguistic approaches should be triangulated with other comparative law methods and supported by empirical research. Turning to empirical methods, Chapter 7 by Petra Mahy, Richard Mitchell, John Howe, Ingrid Landau and Carolyn Sutherland deals with 'Qualitative Fieldwork'. It highlights how qualitative fieldwork methods have the potential of providing valuable insights into the relationships between laws and cultures across different nation-states

[43] Sheldon Pollock, 'Conundrums of Comparison' (2017) 1 *KNOW: A Journal on the Formation of Knowledge* 273 at 282 (referring to Hegel's 'wahrhaften Grundcharakter').

[44] See Section A, above.

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and other social organisations. In doing so, the chapter also discusses how these methods relate to socio-legal comparative law and comparative socio-legal studies.

Moving closer to the social sciences, Chapter 8 by Olive Sabiiti provides an in-depth analysis of 'New Institutional Economics' and how it can contribute to innovative, interdisciplinary approaches to understanding comparative law. In particular, it suggests that 'institutions' provide an easily understandable *tertium comparationis* for studies of comparative law. In Chapter 9 on 'Empirical Methods', Mathias Siems discusses research that applies quantitative methods to questions about the relationship between law and society. In particular, it presents how the studies' aim of drawing conclusions from causal connections between variables can contribute to normative approaches to comparative law. Chapter 10 by Hanwei Ho, Patrick Chung-Chia Huang and Yun-chien Chang on 'Machine-Learning Methods' presents another discussion of quantitative methods. But here, the focus is on the way machine-learning methods can make use of empirical comparative law data sets. The authors illustrate this by providing a step-by-step guide to evaluating and developing legal family theories using machine-learning algorithms.

Part II discusses 'Legal Families and Geographical Comparisons' in alphabetical order of the topics. It commences with the two traditional legal families in comparative law, namely the 'Civil Law' in Chapter 11 by Andrea Ortolani and the 'Common Law' in Chapter 12 by Shivprasad Swaminathan. While Ortolani focusses on the origins, development and spread of the Civil Law tradition, Swaminathan addresses the history of the Common Law and highlights the core features of this tradition.

In Chapter 13, Ngoc Son Bui discusses the 'Confucian Legal Tradition'. He argues that this tradition is closely connected to Confucian precepts and principles, and he explains its historical evolution from formation and consolidation to transnationalisation and modernisation. Chapter 14 on the 'Former Soviet States of Eastern Europe, Caucasus and Central Asia' by Andrey Shirvindt also has a strong historical dimension as it traces the evolution of the laws of the Russian Empire, the Soviet Union and the former Soviet states today. Analysing changes in legal methodology and the role of private law in these countries, the chapter examines their distinctive features in today's world. A further interesting variation of the Civil Law tradition is presented in Chapter 15 on 'Latin America' by Isabel Zuloaga and José Manuel Díaz de Valdés. It explores the current landscape of Latin American legal systems from both private and public law perspectives, and it discusses key trends while scrutinising their distinctiveness and success.

In Chapter 16 on the 'Middle East and North Africa' (MENA), Radwa S. Elsaman provides an overview of the fundamentals of the MENA region's legal systems. It compares them with 'Western' legal traditions while also addressing the role of Islamic law that underpins the legal systems of the MENA countries. Chapter 17 on 'South Asia' by Rehan Abeyratne also underscores how traditions can overlap. He focusses on developments in the public law as shaped by the Common Law in India, Bangladesh, Pakistan and Sri Lanka. Yet, he also illustrates how episodes of unchecked judicial or executive domination are a unique feature in these jurisdictions. Chapter 18 on 'Sub-Saharan Africa' by Charles Manga Fombad also explains how laws passed during the colonial period still impact these legal systems today. However, by drawing on recent constitutional reforms, the chapter concludes by highlighting how, despite the persistence of the common/civil law dichotomy, some distinct sub-regional features have emerged, such as a special mix of Roman-Dutch/English common law operating in southern Africa.

Part III of this *Handbook* is entitled 'Central Themes in Comparative Law'. It begins with two chapters that address aspects of comparative law's darker past and remaining legacies today.

In Chapter 19 on 'The Tradition of Comparative Law: Comparison and Its Colonial Legacies', Helge Dedek discusses the emergence of comparative law in the nineteenth century, highlighting the diffusion of the comparative method from biology and philology to other academic disciplines. It also suggests that we need a context-sensitive recovery of the discipline's institutional and discursive history. Chapter 20 by Roger Merino on 'Decolonial Theory and Comparative Law' addresses the relationship between the colonial question and comparative law in detail. Specifically, Merino proposes strategies to decolonise comparative law, for example, by considering indigenous and local people as norm makers rather than mere norm takers or beneficiaries in the human rights debates.

The subsequent four chapters deal with two interconnected key concepts of comparative law today: legal transplants and legal convergence. Chapter 21 by Margit Cohn is entitled 'Legal Transplants: A Theoretical Framework and a Case Study from Public Law'. It employs a series of typologies to comparatively study the nature and use of legal transplants. Cohn further illustrates her arguments by examining closely the 'margin of appreciation' doctrine applied in public law, and she makes the case that this is an example of a 'warped' transplant that has been erroneously classified by some systems as domestic in origin. In Chapter 22 on 'Legal Transplants: A Case Study of Private Law in Its Historical Context' by Gerardo Caffera, Rodrigo Momberg and María Elisa Morales, the authors explain how the concept of legal transplants can be used in an applied historical manner. Specifically, they illustrate how South American private law has been inspired by other sources but has also provided new creative solutions. Legal transplants can lead to legal convergence, or not. Chapter 23 on 'Convergence and Divergence in Public Law' by Po Jen Yap and Chapter 24 on 'Convergence and Divergence in Company Law' by Hatice Kübra Kandemir underscore the limitations that may remain. In the chapter by Yap, he highlights how Taiwan and South Korea are converging with the West on constitutional jurisprudence, while China and Singapore remain outliers and are in divergence from this cosmopolitan constitutional project. Kandemir's chapter observes that certain good corporate governance principles are recognised throughout the EU and many modern jurisdictions around the globe. Yet, it also highlights how in Turkish law, variations due to legal culture and institutional development have led to some divergence in shareholder protection.

In Chapter 25, 'Law and Development', Yong-Shik Lee and Andrew Harding address the underexplored interrelationship between law and development and comparative law, and they also present a general theory that bridges the two disciplines. Chapter 26 by M. Bashir Mobasher and Haroun Rahimi addresses 'Divided Legal Systems: Understanding Legal Systems in Conflict-Prone Societies'. Specifically, it investigates the history and institutions of the plural legal systems of Afghanistan and how it is a leading example of a divided legal system. Chapter 27 by Ada Ordor, Nojeem Amodu and Victor Amadi is on 'Legal Pluralism and Commerce'. It illustrates how legal pluralism is an embedded key component of comparative law and how, in African legal systems, customary arbitration and supra-regional norms interact with domestic laws.

Finally, in Part IV, we turn to 'Comparative Law Beyond the State'. It starts with 'Comparative International Law' in Chapter 28 by Danielle Hanna Rached and Conrado Hubner Mendes. This chapter argues that comparativism plays a crucial role in international law – notwithstanding the use of common rules and advancement of shared aspirations under international law – as countries may adopt very different approaches, doctrines and procedures of domesticating international law. In Chapter 29 on 'Transnational Regulation' by Victor V. Ramraj, the author also underscores how state laws are not the only unit of study in comparative law today as

transnational non-state regulators and other hybrid and inter-governmental regulators have emerged and are conferred with a variety of rule-making powers. Chapter 30 by Rene Urueña on 'Quantitative Forms of Legal Governance' also deals with a transnational form of governance, namely through the growing use quantitative indicators. He focusses on the need to contest and resist these indicators, rather than merely criticise their accuracy.

In Chapter 31 on 'Comparative International Arbitration Law', Shahla Ali discusses a different application of transnational law. She examines how far different comparative law methods (traditional, historical, linguistic, socio-legal, empirical, economic) can be, and have been, applied to comparative arbitration studies. In Chapter 32, Tom Gerald Daly discusses 'Cross-Border Judicial Dialogue' – another important illustration of how comparative law operates beyond the state. This chapter seeks to enhance understanding on how judicial dialogue takes place through African and Latin American perspectives. The author examines what this dialogue means in the Global South context by comparing the different patterns and facilitating conditions occurring in these regions, including the development of regional integration projects. Regional integration is also the focus in Chapter 33 by Armin Cuyvers on 'Comparing Regional Law'. Among others, it discusses how one can validly compare laws in regions with vast different histories, cultures, geographies, languages and economies, without falling prey to eurocentrism or colonialism.

Chapter 34 by Yuko Nishitani on 'Comparative Conflict of Laws' presents another perspective on the impact of globalisation and regionalisation on the law. While noting conflict of laws trends in Europe and America, her main focus is to assess the recent developments and discussions in other parts of the world, as well as globally. Chapter 35 by Anthony C. Diala on 'Comparative Indigenous Law' also deals with countries' struggles to manage multiple legal orders. It does so by showcasing how African legal frameworks reflect the values of indigenous laws in Kenya, Nigeria, Somaliland and South Africa. Last but not least, Chapter 36 is entitled 'Comparative Legal Education' and is authored by Tan Cheng-Han, Alan Koh, Topo Santoso, Umakanth Varottil and Jiangyu Wang. The authors discuss trends and developments in legal education in various countries of Asia. This chapter presents a case study of how received Western laws remain relevant in Asia, while also noting the profound influence of factors such as the teaching of transnational law subjects, transnational rankings, and transnational scholarly communities engaged in teaching and research collaboration.

E. CONCLUSION

A key aim of this *Handbook* is to showcase the diverse perspectives offered by contributors from all over the world. When we were planning this *Handbook*, a senior academic warned us that it would be difficult to find suitable contributors from the Global South. However, our experience has proved otherwise, as we have managed to curate a chorus of voices from all over the globe. In planning the *Handbook*, the authors were also asked to select themes, topics and methods that are of relevance to comparative law today, and they were afforded a high degree of autonomy to approach their chosen topic. Did this strategy work? Of course, it is ultimately for our readers to evaluate this. At the very least, we hope we have demonstrated that it is feasible to gather a truly global group of contributors to critically reflect on key themes pertaining to comparative law today.

Finally, what general insights on comparative law as a discipline have we learned from this collective endeavour? We suggested earlier in this chapter that a cosmopolitan perspective of comparative law celebrates both the diversity of cultures – without being exclusionary – while

remaining optimistic about our collective effort to understand law in a global context.[45] This means we fully accept that there is bound to be a diversity of methods and approaches within comparative law. Nevertheless, while comparative legal scholars can and should be concerned about the way local contexts impact comparative law, it is equally legitimate and important for us to find commonalities that bridge the divide between legal traditions or geographies. In closing, we would offer our profound gratitude to all our contributors in the *Handbook*, and we also look forward to future handbooks on related topics adopting a similar approach.

[45] Section C (final paragraph), above.

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