PIER GIUSEPPE MONATERI, ADVANCED INTRODUCTION TO COMPARATIVE LEGAL METHODS, EDWARD ELGAR, CHELTENHAM AND NORTHAMPTON, MA, 2021, PP. 125.

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In his *Advanced Introduction to Comparative Legal Methods*, Pier Giuseppe Monateri supplies us with a compelling analysis of how comparative legal methodology should be reappraised in our contemporary era. As he states in the *Preface*, what motivated him to write the book was the bulk of "several different and conflicting projects" that still make up comparative law, as well as its lack of an "identifiable theory" (p. vii; for more on these projects see also Chapters 1 and 5).

I assume that Monateri grasps the point when pointing to this lack of an identifiable theory: "Even if the discipline is pursued solely for knowledge's sake", he adds, "what is knowledge without a theory?" (p. x). Instead of delivering its own general theory, comparative-law scholarship has usually revolved around two main concerns[1]. On the one hand, scholars have deployed legal taxonomies when comparing (and contrasting) sundry jurisdictions around the world. On the other, they have pointed to the dissemination of ideas, mainly through transplants and borrowings.

Monateri is conscious that the aforementioned concerns often intertwine, thus triggering "the ambiguity that characterizes the discipline", which "attempts both to supplant national legal histories and to become a tool to shape the future, through the recognition of how well or badly an institution performed in other jurisdictions" (p. viii). This ambiguity also triggers inconsistencies: how is it indeed possible to reconcile *identity* and the "solidity" of traditions with their porosity to *changes* prompted by borrowings, transplants, and inventions of innovative legal solutions through experimentations? (see

[1] On present-day comparative law as a science with "no one-size-fits-all methodology or theory", see L. Siquilini-Cinelli, J. Husa, "The Philosophies of Comparative Law: Introduction", *Critical Analysis of Law: An International & Interdisciplinary Law Review*, Vol. 8, 2021, p. 2.

also pp. 98-99) This ambiguity and its related inconsistency explains why "the recurrent themes in the discipline have almost always remained the same" (p. viii).

Comparative lawyers have been trapped in this identity-change dilemma since the establishment of comparative law as an academic discipline. It is striking that *identity* also refers to the boundaries of comparative law, which are difficult to draw. These are usually demarcated on methodological grounds. thorugh *the very process of comparison*. Not only does this make its boundaries fuzzy, but it also allows scholars to constantly redraw them. And this accounts for the "several variations in which comparative law is presented in the academic literature".[2]

The juxtaposition between identity and change reflects a further dilemma related to comparative law, which scholars have traditionally addressed in terms of either science or methodology. In acknowledging such dilemma as the *caput mortuum* of comparative legal research, Monateri reframes the research question as follows: "differentiation among legal systems requires a theory, because similarity and difference are not pure facts, but rather depend on the framework employed to assign a weight to different variables" (p. x). It does not come as a surprise that the expression legal tradition is now preferred to that of *legal family*. As he explains, "similarities and differences underlined in comparative analysis are … the outcome of a process of selection of certain traits as relevant for the assertion of identify and of others as irrelevant" (p. ix). Lawyers select their "canonical texts" destined to acquire a "particular status of representing the core values and principles that constitute the tenets of one tradition" (pp. ix; see also pp. 63-66). Perhaps the most intriguing example Monateri supplies is related to the strategic use of legal history when "manufacturing the roots of a Western legal family", namely that of civil law (p. 51). In the nineteenth century, this led to a narrative aiming at creating common, and therefore universalising, legal history for the whole of mankind owing to the "outstanding role played by Rome" and by Roman law, whose "specific status" overshadowed the importance of all other legal traditions of the world (pp. 55-57).

Monateri correctly argues that the concerns mentioned above address comparative law in terms of a history of identity, difference, and proposals for legal reforms. Yet, the "nobility of its aims" (p. x) has been applied to establishing rankings among jurisdictions, which in turn are servient to uphold the superior *legitimacy* of some legal systems as regards other traditions.[3] To a broader extent, Monateri is right when he states that the history of comparative law "has never been fully transnational" (p. ix). Comparative legal concepts have been elaborated, within a limited set of Western legal systems, in relation to single national traditions and then exported (and made applicable) to different legal

[2] M. Siems, *Comparative Law*, 3rd ed., CUP, Cambridge, 2022, p. 6.
[3] P.H. Glenn, *Legal Traditions of the World. Sustainable diversity in law*, 4th ed., OUP, Oxford, 2014, p. 366.

environments by having resort to functionalism and universalism. Concealed under the surface of its alleged superiority, the influence exerted by Western legal systems on recipients located beyond the West has been seldom reciprocated. This approach, also known as *legal imperialism*, is aimed at protecting sectional interests; among the others, the so-called "neo-imperialist" agenda "lurking behind the façade of universalist values".[4] To put it bluntly, legal imperialism entails a "one-sided exportation of legal rules and concepts" and establishes "legal" and cultural control over the *inferior* countries.[5]

As it considers only those functions present in both the superior legal system and the recipients of the proposed transplant, the law seems to be naturally universal. To describe this strategic application of comparative law, I suggest using the verb "to naturalise", which points to the processes whereby the necessity of adopting the law of the superior legal system becomes "common sense". Accepting that even discrete institutions may fulfil equivalent functions, functionalism allows "superior" legal systems to replace local legislation in recipient countries (p. 4-7). The process is functional to both common financial language and a global market regulation. How this occurs is due to pressure from economic models, which aim to make laws so as to reflect the semantics of economic values and objective (pp. 102-109).

Monateri sidesteps the identity-change dilemma by suggesting that "a premise of a theory could lie in the capacity of comparative law to study the different role that law-making elites assume in the legal process of different jurisdiction" (p. x). His is a theory of comparative law that aims to disclose its strategic use in promoting legal change and from the outside; at the same time, it discloses the ideological use (and misuse) of our discipline: "We could consequently state that the style of mood of a given tradition reflects the prevalence of one sort of elite over the others" (p. xi).

Throughout the *Advanced Introduction*, Monateri probes the subversive character of comparative law and sheds new light on the strategic use of comparative by world elites. In Chapter 1 (*Comparative law as a discipline*), the birth and evolution of our discipline examined as strategic tools to detecting "common patterns in law" (p. 6). Universalism is attained through functionalism and structuralism, which operate in macro- and micro-comparison respectively. The use of functionalism is servient to ranking jurisdictions and gives way to "strategic comparison".[6] Instead of "bringing together two radically different

[4] S. Khilnani *et al*., "Introduction. Reviving South Asian Comparative Constitutionalism", in *Comparative Constitutionalism in South Asia*, eds. S. Khilnani *et al*. (OUP India, New Dehli, 2013), p. 11.

[5] U. Mattei, "Three Patterns of Law: Taxonomy and Change in the World's Legal Systems", *American Journal of Comparative Law*, Vol. 45, 2007, p. 6. See also M. Nicolini, "Methodologies of Comparative Constitutional Law: Universalist Approach", *Max Planck Encyclopedia of Comparative Constitutional Law*, OUP, Oxford, 2020.

[6] G. Frankenberg, "Critical Comparisons: Rethinking Comparative Law", *Harvard International Law Journal*, Vol. 26, 2005, p. 423.

legal traditions" (pp. 7 and 16), this disseminates the "mature" and "rationally superior" *Western legal tradition*, which now prevails over the sundry legal traditions of the world. Likewise, global governance favours new waves of universalism with the aim of making legal systems converge towards common/universal standards, which again downgrade differences, highlight commonalities, and accentuate the tenets of the superior legal systems to be transplanted. The new general theory of comparative law "will once again require unbundling the discourse that claims that a form of 'transnational' [i.e. universal] knowledge can spring from comparison" (p. 17). If globalisation poses new challenges and aims to establish a new universalism, "the comparatist should be aware of underlying biases that might exist … when comparing regulatory systems" transcending legal cultures (p. 21).

Chapter 2 (*Comparative law and legal geography*) reappraises the classification of legal families and their grouping "into a relatively small number of legal-political organizations" (p. 22). Monateri considers the classification of legal systems and families in terms of double ranking. On the one hand, mapping the law is functional to establish a clear hierarchy between legal families; on the other, it replicates the competition within legal families. The *Western legal tradition* is dominant, and, within it, the *common law* prevails over the *civil law*. Legal cartography is servient to geopolitics, whereby European powers were able to shape African, American, Oceanian, and Asian legal cartographies. By classifying the legal systems of the worlds, Europe "westernised" the world and superimposed its own *geopolitics of law* onto it. Monateri discloses the ideological and colonial use of comparative law underpinning several legal cartographical achievements. Esmein, Lévy-Ullman, Sauser-Hall, Wigmore, Martínez-Paz, Arminjon-Nolde-Wolff, David, Zweigert-Kötz, classified legal families in order to "implement national strategies of legitimation" (p. 33), "serve projects of differentiation and hegemony" (p. 30), affirm a Eurocentric approach to legal studies (p. 34), and relegate legal traditions (such as the African and the Far Eastern ones) at the margins of comparative legal studies. In the 1980s, Schlesinger and Berman aimed to establish the grandiose idea of the Western legal tradition, where the United States were seen "as the culminating point of Western legal history", whose democratic values asserted Western legal geopolitics as regards the USSR (p. 40). In the aftermath of the Cold War, the spirit of neoliberalism has triggered a new layer, where comparison has become functional to creating economic development. The law is a political instrument in the hands of the global holders of capital (p. 46). The link between law and economic performance has a huge impact on classifications. The ranking of legal systems depends on their performativity, which is rooted in their legal origins. (p. 44). Measured, as they are, through numerical indicators, legal systems now fall under numerical comparative law.

In Chapter 3 (*Comparative law and legal history*) the strategic use of comparative law is related to the establishment of the canonical texts in legal culture. Comparative law should thus act as a scientific approach demonstrating that the "law is not autonomous but remains affected internally by the historical-political-religious context, the 'culture' compact, in which it operates" (p. 49). As Monateri highlights, the "mainstream use of comparison and legal history has helped create the narrative of the Western legal tradition" (p. 50). As said above, the book reappraises this narrative is mainly by focusing on the misuse of the Roman roots of continental legal systems, which also means "a strategy of exclusion of non-Europeans from the foundation of the worlds order" (p. 53). In particular, the narrative was created by denying interactions with (and borrowings from) inferior legal cultures, such as "African-Semitic model"; loans "from Egypt or from the Middle East", indeed, "clearly [represented] a break with the original Roman tradition" (p. 59) and its "ever-renewing" character that shows its "continuity and greatness" (p. 67).

Chapter 4 is dedicated to *Comparative law and legal theory* and examines the strategic use of comparative law through three strands of legal thought. The strategy of Classical Legal Thought (1850-1914) revolved around the law as a science, as a system ensuring spheres of autonomy to social agents, as well as a reflection of liberal political orders. Being scientifically elaborated, the law (mainly private law) was a formally neutral tool and therefore generalisable. This triggered a "global" mode of thought with universal substance: "what was globalised was a particular political conception of legal institutions, a legal-political arrangement of the world that could be expressed in different legal styles" (p. 76). I add: different-but-superior Western legal styles. The raise of the social in legal thought (190-1968) paved the way to a less formalistic and pedantic approach to the study of the law. The focus on method disclosed the new role played by lawyers as promoters of social change: this became "a form of narrative description of what the scholar or the judge should do" (p. 79). This reversal of the role of the law and the lawyer is patent how the constitutionalisation of the law transformed private law. Unlike in the liberal order, property, contract, and tort "were transformed in instruments of policy and policy analysis." In the field of tort law, for example, this entailed dismissing the idea of tort as an individual fault and making it a "tool for judicial re-elaboration of social rules and the implementation of constitutional values" (p. 82). The third strand of legal though coincides with neoliberalism, free market ideology, the economic analysis of the law, the private ordering of society, the rule of law, and the universal discourse on human rights. It is an admixture of values, conceptions, and principles where "contradictory visions of the universe" (p. 84) are homologated under the "good governance" banner. As Monateri acutely states, "if all the world is to be ruled by [these] Western visions of the rule of law and human rights, it is rather obvious that this diversity of legal-political regimes needs to

be homologated" (p. 85). Neoliberalism is a universal political ideology that clearly affects comparative law. We are living in an era of new formalism; the law is now moulded by the global holders of capital, which use legislation to attain their own goal, which is "the efficiency of the business cycle" (p. 89).

The interventionism of neoliberal approaches to comparative law is addressed in Chapter 5 (*Comparative law and legal reforms*). Unlike classic non-interventionist liberal politics, it supports legal reforms through the strategic use of comparative law. This is now applied to the search for the legal system that is best suited to regulate the contemporary era of globalisation. The use of comparative law now correlates the performance of legal systems with their origins. In so doing, the interaction between comparative law and economics is "supposed to provide an explanation in economic terms for the similarities and differences … in the various legal traditions" (p. 98). This approach has also triggered the use of quantitative approaches in comparative law going beyond traditional strategic uses. The assumption that it is possible to explain similarities and differences among jurisdictions, and also to code, measure, and rank them. The outcome is the use of comparative law as a tool of legal changes. In economic terms, the legal origins of a given legal system both account for its economic performativity and the necessity of its dissemination. Particularly in the field of legal investor protection, "direct investments in a country are useless for the purpose of growth if the legal environment of that country is not already fit for investments" (p. 103). Theories like that purported by La Porta et al. also question the "same nature of the law, as an exportable and adaptable tool or as the particular outcome of a unique historical process" (p. 111).[7]

The *Advanced Introduction to Comparative Legal Methods* is therefore a pivotal contribution to the intellectual and never-ending project of comparative law, which has employed a variety of methods to generate a variety of strategic uses and ideological reconstructions of the relationships between the sundry legal systems of the worlds. But, Monateri argues, it is also fit to deploy a new legal analysis "that can resist these ideological representations" (p. 111), and therefore reshape otherwise familiar legal tensions, like those purported by the increasing use of quantitative methods. Monateri's book is an invaluable addition to our field, because he provides anyone researching comparative law with a further strategic device, i.e. the staging of the comparative-law methodology within a broader context so as to nurture our legal engagement with the real world avoid bracketing our research in ideological reconstructions imposed from above. This "new hermeneutic of the real" can indeed "foster the comparative law of the future"

[7] R. La Porta *et al.*, "The Economic Consequences of Legal Origins", *Journal of Economic Literature*, Vol. 46, 2008, pp. 285-332.

and encourage us to probe its subversive character in a constant conversation with the world at large (p. 111).