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Introduction: Comparative Comparative Law

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Comparative law is a tool of political struggle—a source of authority for some and a basis of resistance for others. However, it is not always perceived this way. More commonly, it is a thought of as a method, however imprecise. Its practitioners regularly assert transcendent functions or common problems thought to exist across legal systems. However, these methodological and ontological directions are only part of the picture. Comparing laws and legal systems occurs in many different fields of discursive exchange. This wider variety draws on alternative images of “comparative law,” different stakes specific to the situation, and particular modes of knowledge production and persuasion. As such, an apt description of comparative law’s multiplicity may be best captured by the reference to comparative comparative law. In other words, varieties of legal comparativism in different arenas—and not simply a unified transnational field—better signifies its multiple valences and uses in the global political economy.

This issue is dedicated to exploring the multiple fields of comparative law. We are thrilled to count among our contributors a group of highly accomplished scholars: Helena Alviar García on granting rights to rivers in Colombia; Marie-Claire Belleau on comparative bricolage in Quebec’s legislative drafting of mediation laws; María Elena Cobas Cobiella on the comparative socialism of the Cuban Civil Code; Camilla Crea on constitutional interpretive politics of Italian abortion rights and conscientious objectors to them; Bianca Gardella Tedeschi on the institutional dynamics of comparative law teaching in Italian law schools; Michele Graziadei on the paradigm of urban commons; Ronaldo Macedo on the constitutional

* Professor of Law, Florida International University College of Law.
6 Michele Graziadei, *Urban Commons in Italy*, 18 FIU L. Rev. 821 (2024).
techniques of principles interpretation and interest-balancing in Brazil;\(^7\) and, Dina Waked on global South stakes in the debate on transnational anti-trust law.\(^8\) All of these demonstrate the multiplicity of comparative fields, the different actors and stakes at issue, and the alternative distributional outcomes which comparativism helps generate.

Indeed, comparative law has a long-standing, if not always transparent, relationship to governance and policy. In the early twentieth century, a focus on comparative legislation promoted private law uniformity. Then sociological functionalism admitted a range of variation but within presumably uniform social functions across societies. Legal family classifications divided the world into properly legal and non-legal jurisdictions, echoing the erstwhile distinction by international lawyers between civilized nations and not. More recently, these same classifications have served to profess best practices in corporate law and financial regulation. Moreover, the mushrooming field of comparative constitutional law presents common techniques for governance in very different places, in a way, however, that minimizes epistemological differences among societies. No less, the exponential development of quantitative indicators herald a unified roadmap for greater economic development and the rule of law.

The methods and ideas have varied over time and across issues. But the general authority of comparative law remains central to legal practitioners and policy makers. Its power has been instrumental in consolidating not only “best practices” but also worse-practices and “legal failure.” Comparative law can serve to isolate certain laws and legal regimes, as either non-law, failing, or simply needing change. Analyses and diagnoses of legal underdevelopment, for example, can serve to point out underperforming systems. They are, as a result, slated to be scrapped or thoroughly reformed in the image of better legal families, best legal practices, or higher ranked and presumably successful law.

At the same time, this issue aims to show that comparative knowledge production does not simply serve the enterprise of a global legal hegemony. Within the field, numerous approaches present resistance to the uniformizing and singular hegemony of dominant positions. Various strands of comparativism labor to create alternative spaces for law and public policy. These pursue a variety of disciplinary and analytic foundations. Postcolonial and decolonial scholars explicitly revindicate a delinking—to greater or lesser extent—from colonial European and U.S. legal paradigms. Difference comparativists raise the epistemic particularities that law necessarily takes

\(^7\) Ronaldo Porto Macedo, Jr., *The Spree of Principles and the Abuses of the Balancing Doctrine in Brazil*, 18 FIU L. Rev. 847 (2024).

across legal communities—even with respect to those bound by common histories and traditions. Law and development critics challenge the faulty comparative law upon which development formulas are often built. Culture focused comparativists demonstrate the multiple uses to which comparative law is put, quite idiosyncratically, in specific legal communities.

All of this demonstrates a proliferation of comparative law. A proliferation that goes well beyond the narrow story often retold of the field—one of early twentieth century legal positivism, later boosted by sociological functionalism, yet currently languishing because of methodological imprecision and uncertain purpose. Instead, the multiplicities of comparative law are protean and directly interrelated with questions of public policy, distribution, and global governance.

Enjoy the issue!