THE CONTINUING RELEVANCE OF COMPARATIVE LAW AND COMPARATIVE LEGAL STUDIES

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Abstract: This collection of papers has been brought together to explore and illustrate the contemporary relevance of comparative law and comparative legal studies. This brief introduction sets the scene and considers some of the pervading themes and approaches of this area of legal scholarship, drawing attention to those that are well-established and those that are breaking new ground.

As an introduction this paper also sets out the international "smorgasbord" of delights that this collection offers, highlighting the diverse perspectives of the contributing authors and emphasising the continuing relevance and importance of comparative legal study and the rich diversity this approach to law constantly offers.

Keywords: *Comparative Law; comparative legal studies; contributors*

I. An Overview of Comparative Legal Studies

From rather humble beginnings, comparing legislation and confined to private law areas, comparative law has come a long way within just over a century. The history of comparative law runs parallel with the history of ideas, and the earliest comparative law work is found in Greece. However, the discipline was properly born in 1900, and the areas covered, the methods used, the projects involving the comparative approach in many of its forms, the increasing number of comparative law journals and associations formed have all burgeoned in the twentieth century. Our discipline, in addition to all areas of law, extends in our century to other disciplines, existing in partnership with history, anthropology, sociology, economics, politics and, most recently, information technology. How extraordinary that the question of the uses of comparative law and comparative legal studies still continues to excite and involve us in the twenty-first century. We are delighted that we were invited to edit this special edition of the *Journal of International and Comparative Law* and could chose as our special theme "The Relevance of Comparative Legal Studies in the Twenty First Century", which

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allows us to cast our nets far and wide. We are also extremely grateful to those colleagues who contributed to this collection and put up with a number of editorial email exchanges over an extended period of time. We thank them for their patience and for the richness of their contributions.

From the end of the Second World War to 1990, we see world-mindedness with increasing awareness of the interaction of legal systems and the appearance of new supranational organisations such as the European Community making the work of comparatists indispensable. Broadening of legal education in order to equip future lawyers with understanding of other legal systems gained momentum in this era. It was also in this era that scepticism regarding the value of comparative law among practitioners and judges was disarmed. The impact of the Soviet revolution of 1917, its aftermath in East and Central Europe and the two World Wars on comparative law was immense, as many émigré scholars contributed to its flourishing in the United Kingdom, the United States of America and elsewhere.[1]

Being supranational, comparative law called for international co-operation. Hence, the *Association Internationale des Science Juridiques* affiliated to the United Nations Educational, Scientific and Cultural Organization; the International Faculty for the Teaching of Comparative Law with its seat in Strasbourg and the International University of Comparative Sciences in Luxemburg were established. The Encyclopaedia of Comparative Law was published under the supervision of the *Association Internationale des Science Juridiques* and continues to be regularly updated. The Inter-American Academy of International and Comparative Law was set up in the United States of America. The study of foreign laws rather than the international unification of laws was regarded as the best means of ensuring world peace. Normative studies flourished, mostly in private law and commercial law.

The place, role and methodology of comparative law began to change yet again after 1990, with the fall of the socialist systems in Europe and the change of balance both within Europe and between the so-called West, Asia and Africa.

Although the twenty-first century might be regarded as the time when comparative law reaches new levels, this is also when it is being challenged yet again and regarded in a number of different lights.

Today comparative law has expanded into "comparative legal studies", as sociologists and anthropologists are pushing it to get involved in context: economic, social, cultural and religious. The more comparative law becomes involved with context, the closer it moves towards the sociology of law, and the name "comparative legal studies" becomes more appropriate. The theoretical basis of comparative law is being questioned. The methods used have multiplied — see for example the paper by Martha Infantino in this collection. Its well-established tools, such as "functional equivalence" and "common core" research, are criticised, although still widely used — as illustrated by the papers authored by Katharina

1 Also see Esin Örücü, "Something Old, Something New in Comparative Law" (December 2015) 2.2 *Journal of International and Comparative Law (JICL)* 323–336.

Boele-Woelki, Maarit Jänterä-Jareborg and Ádám Fuglinszky. Comparative law has owed its prominence, since the latter part of the last century, to its place and role in the European Union (EU) integration process and legal harmonisation projects, and Eurocentrism, which has historically been the dominant approach of comparatists. This trend is challenged from a number of quarters, as are positivistic, normative private law inquiries — the field of interest of most twentieth century comparatists. Though not necessarily an either/or, there are now those who regard comparison as culturally/contextually oriented (among which contexts economy plays a predominant role) — see for example the paper by Jule Mulder — and those who are involved in functionalist rule comparisons, often called the mainstream comparatists — see the papers by Jens Scherpe, Maarit Jänterä-Jareborg and Ádám Fuglinszky. In the last decade, comparative law has been widely criticised for lacking in theory and being Euro-centric — see for a departure from this, the contribution by Mohamed Badar and Mohammed Sabuj, black letter law and private law oriented. The criticism comes mainly from legal theorists of various shades, international lawyers, sociologists of law, anthropologists of law and some comparatists who are not necessarily private lawyers but who are interested in law and society and do not regard comparative law solely as a tool for the practice of law, as well as economists. However, there are still those who see merit in the study of normative rules alone, alongside those who believe that law can only be studied in context to be meaningful. Research into culture, tradition, identity, distinctiveness, difference and legal pluralism compete with mainstream comparative black-letter-law research. In fact, comparative law has been at a crossroad for some time now.

In comparative law discourse, controversies of comparative law — and there are many — are synchronic, never ending, never totally resolved and ever multiplying. This was the case in earlier years and is still the case today. The controversies of comparative law start with the name (comparative law/comparative legal studies) — see in this collection, the paper by Olivier Moréteau — continue with the subject (it does not exist/ it is the most sophisticated branch of social science), the content (merely a method/ the only approach to law), the methods (there is only one: either functionalism or contextualism/there are many on a sliding scale) — see the different approaches in the collection of Jule Mulder, Katharina Boele-Woelki, Ádám Fuglinszky, Maarit Jänterä-Jareborg and Lukas Heckendorn — and end in the issues, theoretical and otherwise, discussed: legal families (civil law + common law = the world/mixed systems/extraordinary places) — see the contribution by Mohamed Badar and Mohammed Sabuj, which encourages us to think outside these boxes, convergence/divergence (stressing either similarities or differences) — see Jens Scherpe's paper; translate/do not translate — an issue considered by Olivier Moréteau in his paper; transplant (transposition/transplants are impossible) — considered in detail in Ádám Fuglinszky's paper and the paper by Elspeth Attwooll, Noreen Burrows and Esin Örücü); normative inquiries/ cultural immersion — taken up by Jule Mulder; common core/better law — see the contribution of Katharina Boele-Woelki; private law/public law and hybrids

of these — see Lukas Heckendorn's contribution on Business and Human Rights and metaphors (they are useful/they are misleading and an apology for lack of theory) — see the paper by Elspeth Attwooll, Noreen Burrows and Esin Örücü.

As is evident from the papers in this collection, although the future of comparative law is firmly established, it is in the process of renewing its image by being involved in areas other than private law, in regions other than the Western world (previously covered by so-called regional or area studies), in embracing a multi-disciplinary approach that befits our globalising age where understanding the "other" has become the *sine qua non* of understanding ourselves, in using new research tools and methods — see in this collection the papers by Martha Infantino and Lukas Hekendorn — and as a tool itself to serve populist (and perhaps politically attractive) sentiments — see the paper by Maarit Jänterä-Jareborg.

A critical overview today moves us on to contemporary and burgeoning areas of, and new directions and new territories for, comparative law — such as the convergence/non-convergence debate, law in context (culture, religion and economics), cultural distinctiveness and diversity, globalism versus localism, legal families and mixed systems, competition between legal systems, looking beyond the western world, the use of comparative law by judges, the role of comparative law in law reform activities and harmonisation, public law comparisons in both constitutional law and administrative law, a new common law in human rights, the "common core" and the "better law" approaches and comparative law for international criminal justice. A number of other topics — some theoretical such as the post-modern critique of comparative law and theories about peoples' practices, of different groups of actors of the law and beyond legal rules and some substantive topics such as alternative dispute resolution, e-commerce, environmental law, bio-ethics and food safety — are also becoming prominent in comparative law research today.

To mature from the days when even its very existence was questioned to becoming a much sought-after discipline is no mean feat. We have to thank keen and curious scholars with vision and interest in the complexity of the world we live in for this achievement. However, a number of issues are still raised by comparative law target audiences. What is the difference between comparative law and comparative legal studies, and does it matter? Are we comparatists or comparativists, or are these interchangeable terms? What makes a comparatist, or are there too many possible combinations of characteristics to make it impossible to arrive at a definition? How is comparative law knowledge acquired — for thoughts on this, see the contributions by Lukas Heckendorn and Ádám Fuglinszky. Does going beyond Europe actually enlarge our understanding of aspects of law? Certainly, the contribution by Mohamed Badar and Mohammed Subaj suggests so. Should one take a narrow approach and start with a study of a part of a particular legal system before looking at other jurisdictions, and is this the only path for gaining precision? Should all generalisations stem from comparisons? Can one effectively theorise without working through examples? Is the explanation of differences the

real aim of comparative law research? When is similarity relevant? How far can comparatists recognise and develop the concept of legal pluralism? How can co-existing laws and their interrelationships be analysed? Can disorder be ordered? Can one actually categorise laws? Can one explain the laws of one people in terms of the laws of another people, especially by utilising solely western legal concepts? The contribution by Maarit Jänterä-Jareborg highlights the dangers of doing so. Having mastered one's own law, should one live in another country for a while, study the law there, become totally acquainted with the legal environment and only then proclaim to have become a comparatist? There is also some scepticism concerning the functions of comparative law.

One way of achieving "deep-level comparative law", a "critical" approach, is by linking comparative law with legal philosophy and taking a more jurisprudential approach rather than a technical one and by stressing that what is important is looking at the ideas underlying positive law. Thus, whether one is looking for differences or indeed similarities, one should "go deeper". Depth is the crucial point of departure.

Another slant on the "critical" approach is to regard law as embedded in culture. Towards the end of the twentieth century, the view of law-as-culture became a prominent feature of comparative law literature — even dividing the community of comparatists into two camps. Law-as-culture assumes that the mutual influence of law and culture, understood broadly, shapes differences between legal systems — see Jule Mulder's paper. However, in multi-cultural societies and mindful of the movement of peoples and cultures, such an approach may simply mean that a dominant legal culture leaves little room for a more pluralistic approach. The extreme position even negates the usefulness of comparative law research. In any case, in order to carry out this kind of research, the comparatist must be embedded into the "milieu and social setting" that shapes the lawmaker and the interpreter of the law. In this context, we can also refer to the connection between law and religion, and tradition. Depending on the society one is dealing with, a cultural and anthropological perspective might be required.

Law can also be regarded as "story telling", a view developed by the political left and radical feminism. Again here "immersion" into the societies concerned is a prerequisite; a functional approach alone will not do. Richard Hyland, for example, calls this approach "the interpretive method", drawing a parallel between comparative law and comparative literature.[2] John Bell also uses the term "immersion", suggesting that we should understand legal systems on their own terms, taking "the insiders view on legal systems".[3] With advances in information

2 Richard Hyland, *Gifts: A Study in Comparative Law* (Oxford: Oxford University Press, 2009).

3 John Bell, "Reflections on Continental European Supreme Courts" in Guy Canivet , Mads Andenas and Duncan Fairgrieve (eds.), *Independence, Accountability and the Judiciary* (British Institute of International and Comparative Law, 2006) pp.253–263.

technology and knowledge transfer, it might be argued that today this "immersion" can be virtual rather than actual — see the contribution by Lukas Heckendorn.

In addition to all this, the most important question seems to have become What is "law", and from the perspective of comparative law, should we be referring to "laws" (plural) — see Olivier Moréteau's paper.[4] The answer to this last question is vital, especially in approaching complex hybrids and legal pluralisms. The challenge is to perceptions of law being made up of rules made by rulers, in other words just "state law". Ádám Fuglinszky, in his paper, for example, highlights the importance of looking at what happens once law is made, ie, how is it interpreted and applied. If law is plural, that is more than just state law, then, the claim is that legal rules are also about morality and ethics (natural law) and about social norms and customs (always present wherever people live) and increasingly the acceptance that international law and human rights (new natural law) must be considered as forms of law. Thus, state law or "official law" is not the only form of law in existence. All the above must co-exist, and legal positivism must compete with forms of natural law and sociocultural norms.

The more we are involved in studying hybridity in jurisdictions, the more we start regarding law as legal pluralism. Here, the underlying assumption is that the state is not the only actor that can make law, and the social order is typically based on a variety of sources of normativity. The significance of this is clearly evidenced in the papers by Jens Scherpe and Maarit Jänterä-Jareborg. When this view is pursued, the mainstream comparatist's job becomes rather daunting, as a deeper knowledge of the societies under survey becomes more significant, but more taxing. Such an approach brings with it challenges to the mainstream comparatists.

All the above can be regarded as various approaches to "deep-level comparative law" overlapping with "critical comparative law". The interest here is more in the differences between legal systems that some have claimed are irreconcilable.[5] We should also mention the "law-as-politics" approach, indicating mainly that political attitudes determine the views of comparative lawyers.[6] Certainly, the contribution by Ádám Fuglinszky suggests that it is often difficult to separate these two elements.

A new field of study emerged in the last decade, the so-called "transnational law", indicating that law transcends national states. EU law, international law and the law of international organisations, the transposition of such laws into domestic law and the problems created therein and how domestic legal systems implement

4 Tamahana writes: "What is law? Is a question that has beguiled and defied generations of theorists … Despite a continuous conversation about the character and nature of law ever since (the ancient Greeks), theorists have not been able to agree on how to define or conceptualize law". BZ Tamanaha, "Law" in SN Katz (ed.), *Oxford Encyclopedia of Legal History* (New York: Oxford University Press, Vol.4, 2009) p.17.

5 Pierre Legrand, *Fragments on Law-as-Culture* (Deventer: Willink, 1999). Siems sees this approach doing more harm than good; see Mathias Siems, *Comparative Law* (Law in Context Series) (Cambridge: Cambridge University Press, 2nd ed., 2014 and 2018) p.114.

6 Duncan Kennedy, "Political Ideology and Comparative Law" in Mauro Bussani and Ugo Mattei (eds.), *Cambridge Companion to Comparative Law* (Cambridge: Cambridge University Press, 2012) pp.35–56.

these rules have widened the scope of comparative law towards new fields. This is demonstrated in the papers by Lukas Heckendorn and Mohamed Badar and Mohammed Subaj. These developments cover both the private and the public sphere.

In the last decades of the last century and the beginning of this century, we suddenly see a crowding of the bookshelves with comparative law of a different kind, covering materials that reflect the developments occurring in our field, with integrated approaches providing a clearer and more meaningful comparative picture. Embracing more fully, the methods of other social sciences can also prove to be useful — see in this regard the contribution by Martha Infantino.

Some of the new approaches, the so-called post-modern developments seen above, such as deep-level comparative research, critical comparative research, socio-legal methodology, and global comparative law, are more appropriate for the study of law today.

Socio-legal approaches to comparative legal studies, which use quantitative data, qualitative data or a mixture of both, also replace the formal understanding of "law" (traditional comparative law) with a socio-legal one and use the term "legal culture", looking at how law and society are linked in a causal way.

In fact, many laws are not even based on geographical boundaries such as "Gypsy law" of the Roma people, the laws of the Quaker communities or Islamic law, which can be regarded as a variant of hybridity. Does this mean that we should be supporting "combined comparative legal studies" and always work with proper sociologists, anthropologists, psychologists or economists as the case may demand? Hence, the present generation of comparatists may have to rethink how they approach the comparative study of law. How far should they engage with other disciplines? If comparative lawyers cannot work alone, then should they replace or supplement legal, historical and philosophical approaches with concepts and methods taken from political science, economics, sociology, anthropology, or even business studies, geography, literary theory or psychology? How can we as comparatists assist the growth of a new generation of comparatists? What can we offer them? How can a continuous desire to look for comparative inspiration be fostered?

We would like to reiterate that the title of this special issue of the *Journal of International and Comparative Law*, "The Relevance of Comparative Legal Studies in the Twenty First Century", was chosen to encourage scholars who are dealing in one way or another with comparative law studies, directly or indirectly, to be involved so as to show the readers the far-flung borders of comparative legal studies today. Comparative legal studies can be regarded as a big tent covering a number of different kinds of scholarship. This special issue presents us with a fine opportunity to follow the story of comparative legal studies to the present day. The contributions in this issue are witness to the continuing relevance of comparative legal studies in the twenty-first century. They collectively form a symphonic panorama of what is and indicate what is yet to come. Maybe the most important and true mission of comparative law and comparative legal studies is to inspire the curious mind, ever searching to understand more.

II. Views from the Symphonic Panorama

Since "in the beginning is the word", the sequence of the papers in this Special Issue should also reflect this. The reader is invited first to consider what is it that we are talking about. Looking into the basics and their meaning of comparative law for our century, Olivier Moréteau in his contribution analyses what the words in "comparative law" mean. In this context, he touches on the corpus and process of comparison, discovering otherness, immersion, language, translation, communicating by building systems and a neutral language. He indicates that comparative law is on the move; that comparatists today go beyond the written and unwritten norms and also address social context (the do's) central to the development of custom, so that, therefore, the term comparative law may be too narrow, particularly when considering non-western societies, and that a broader term should be substituted. The suggestion is "legal comparatism" as a synonym to "comparative law". Moréteau speaks in defence of the functional method in comparative law and yet points out that the current trend is to embrace diversity and go beyond. "The challenge for generations to come is to develop a specialty language for legal science" with neutral words. This contribution is a wide-ranging *tour de force*, considering the comparative process as intimately connected to our cognitive abilities.

Following on from this broad analysis offered by Moréteau is Jule Mulder's contribution. Rejecting functional equivalence as the methodological tool for comparative analysis in her field, she puts forth a broader cultural, economic and political context in which the comparative analysis of the topic of consumer vulnerability and the vulnerable consumer should be carried out. This paper does not carry out a comparison of vulnerability as such but investigates how the concepts of vulnerable consumer and consumer vulnerability should be analysed within European Law comparatively. It is suggested that case law analysis within national contexts should be taken as a starting point within the broader field of consumer protection. Jule Mulders's proposal is to use a culturally informed comparative method teasing out multi-layered national narratives. The harmonisation process within the EU would be thus enhanced.

A more function-based approach is also alive and well. An illustration of how one of the comparative law methodologies, functional equivalence, is put to use and is still pertinent today is indicated by the work of the Commission on European Family Law (CEFL). Over a period of 14 years, the Commission has been using the functional equivalence as their comparative law methodology in establishing Principles of European Family Law in the fields of family law, starting with divorce (in 2004) and then maintenance between spouses, parental responsibility, property relations between spouses and *de facto* unions in 2019. Katharina Boele-Woelki in her paper takes stock of the work of the Commission after almost twenty years of its establishment commenting on its composition, meetings, the topics chosen, the working methods, the results, conferences and the European Family Law Series.

This paper deals with harmonising family law in Europe through comparative research-based models and drafting of the Principles. In this process, six steps are followed: deciding on the fields of study, questionnaire (functional approach), national reports (covering law both in the books and in practice), dissemination, drafting principles (common core and better law) and publishing. The impact of the Commission's work is obviously difficult to measure. Yet, "when the prospects of harmonising family law in Europe are discussed in the field of family law, which have been addressed by the CEFL Principles, these model laws are taken into account" usually as starting points of research and can be used as a source of inspiration for law reform of specific national family laws. In this regard, the paper points out that some of the Principles have inspired law reform in Portugal, Norway, the Czech Republic, the Netherlands and Estonia.

Wide use of comparative law and legal transplants are presented as having been vital in the process of codification and re-codification in Central European countries by Ádám Fuglinszky through his choice of past and present codifications in Hungary, Romania and the Czech Republic. Recognising a significant gap in current comparative literature, Ádám provides a thorough historical analysis in these three jurisdictions by considering the development of civil law codifications in these regions. The huge role played by legal transplants becomes astonishingly obvious in these movements. Fuglinszky calls this research applied comparative law and makes a plea for more applied comparative law research, highlighting its vital importance. He also points out that the success and the usefulness of the transplanted codes depend on the experience, language skills, academic curiosity and preferences of the scholars involved and continued engagement with *ex post facto* comparative research to inform the interpretation and application of transplants.

Recommending to all jurisdictions undertaking law reform, Jens Scherpe stresses the importance of taking a comparative view of the area needing reform, though not necessarily going down the route of transplants. This he does in the context of registered partnerships and family recognition beyond marriage. First, in this paper, different approaches for registering partnerships are analysed, starting with the registered partnership as an alternative to marriage and then looking at it beyond conjugality. Following this, marriage for same-sex couples is considered under the options of abolition of registered partnership and retention of registered partnership. We see that a number of legal systems have opted for some of these variations. "Either or" seems to be the preferred system for both groups in some legal systems. Finally, the paper assesses the choice made by England and Wales, where a new dilemma was created by allowing same-sex couples in civil partnerships to be able to opt for marriage, but no civil partnership for opposite-sex couples was allowed. Scherpe is critical of this approach, finding it both discriminatory and against equality. Although recently things are changing here too, still, Scherpe says that this new approach of allowing opposite-sex couples the option of civil partnership, thus making both groups equal, lacks a considered approach, being a

knee-jerk reaction to developments. The contribution of comparative law is stressed once again for all contemporary law reforms.

Then, the collection turns to some recent trends in comparative legal studies. One of the most recent and burgeoning areas of comparative law is quantitative comparative law, and Martha Infantino illustrates the use of this method in the area of indicators for states' performances. Although mainstream comparative law does not regard such initiatives as part and parcel of comparative law proper by either ignoring projects such as global indicators comparing states' legal performances or criticising them, the author claims that this new technology for comparing laws offers an opportunity for a lawyer for self-learning. The paper analyses three global indicators, Freedom in the World Index, Corruption Perceptions Index and Doing Business Reports, and offers an alternative paradigm that would also counter criticisms aimed at classical comparative law. Quantitative comparisons have a healthy future as a new trend in comparative legal studies. Infantino's paper calls this recent trend "the quantitative revolution" and draws attention to lessons to be learnt by classical mainstream comparative law. Global legal indicators promote an ideological agenda allowing an open space for critique rather than what comparatists do on the whole: offering purely descriptive and, at times, prescriptive suggestions. Infantino calls on comparatists to "learn new techniques, styles, approaches and something more about themselves" and not live in "scientific isolationism".

Also illustrative of twenty-first century developments is the contribution by Lukas Heckendorn Urscheler who asks whether the abundance of information on foreign law, as the availability of online information increases, made an impact on comparative law? The field of inquiry he delves into is "Business and Human Rights". The accountability of corporations for the effects of their activities on people and the environment is a very topical issue that cannot be handled just by the law of contracts or torts. Lukas studies the regional and the local actors. The uses of online information relied on by international organisations, civil societies and States are analysed. Comparative law has changed with the information age, and the relationship between information and insight and facts and knowledge has become essential. It follows that comparative law is a tool for legal reform and that the self-perception of the comparative lawyer is changing. He argues that it does not seem realistic or appropriate any more to see the comparative lawyer as a neutral cultural mediator.

A well-known method of comparative law is making use of metaphors. The paper looking at European laws in the United Kingdom as cultivars is the work of a comparatist, Esin Örücü; a European lawyer, Noreen Burrows and a jurisprudent, comparatist and European lawyer, Elspeth Attwooll. The paper takes its inspiration from horticultural metaphors and analyses equal treatment and the rights of residence of EU citizens in the United Kingdom before and after Brexit, regarding EU laws as cultivars. Other horticultural metaphors such as runners, cuttings and layering for the laws, and cultivators and gardeners for the actors,

are used to illustrate the status of EU laws in the United Kingdom. The United Kingdom is regarded here as an allotment, soon to be tended by new gardeners and under-gardeners and with new fertilisers. The two case studies, equal treatment and the rights of residence of EU citizens in the United Kingdom form the core of this paper and are considered and assessed as they were before Brexit, after Brexit and Brexit in any form. The paper starts with a detailed exposition of the metaphors used, and then this introduction converses with the case studies making a gradual revelation of the message of the piece, thus marrying a theoretical and fanciful starting point with the harsh realities of the two areas studied.

The contribution by Maarit Jänterä-Jareborg illustrates how private international law reforms using comparative law as a tool can have a serious impact on the recognition of foreign marriages. Within the "spirit of the day", reform in one European State can have a "signal effect" on the others, and both private international law and comparative law can be used to legitimise controversial amendments that produce unpredictable outcomes that fall short of protecting the vulnerable. The paper concentrates on the Nordic States and specifically Sweden. Marriages conducted abroad seem to fall victim to rules of recognition under reconstruction as a result of populist reactions to migration, refugee waves and "values conflict". The areas considered are child marriage, marriage by proxy and polygamy. Here, we see yet another use of comparative law: helping States to pay lip service to populism.

We see a novel approach in the Comparison of Islamic law of rebellion and the approach taken by Public International Law in the next contribution. Mohamed Badar and Mohammad Sabu offer the former as a complement to the latter. Islamic law is shown to have potential to become such a complement. This paper offers an analysis of the Islamic law of rebellion and the rules of internal armed conflict juxtaposed with armed conflict dealt with by Public International Law. State sovereignty and use of force by the state to oppose the right of internal rebellion against an unfair ruler, self-determination and humanitarian law are all laid on the table to be dissected in a search for international humanitarian law. A comparison of the rules of Islamic law and the rules of Public International Law is undertaken. The reader is first offered an historical overview of the Islamic Law of rebellion. Then, the inadequacy of the rules of Public International Law in dealing with internal and religiously justified rebellion is critically considered. A solution is proposed by the suggestion that rules of Islamic law in this respect could offer a panacea. Following an in-depth view of both regimes, the authors suggest a modern legal framework of justified rebellion. This is a refreshing contribution, and although perhaps aspirational rather than pragmatic, it concludes this collection on a very useful and thought-provoking note.

Reading the contributions in this Special Issue, we see that comparative law and the broad literature base of the past century that it draws upon have fired the imagination of contemporary researchers. Some old fields are approached with new vigour and in new ways, and some new fields are approached in classical

ways. The range of topics, even in the confines of a Journal issue, indicates the place of comparative legal studies in the life of law. Some old friends such as legal transplants appear in new guises, while some novel and burgeoning areas and methods are considered. In combination these contributions are evidence that comparative law in its many forms is indeed on the cusp of a new age. All in all, we hope the reader finds in this issue an exciting potpourri, a symphonic panorama.