

Empirical Comparative Law

This short methodological manifesto investigates the *Weltanschauung* behind empiricism in comparative legal studies, which is part of a bigger picture aimed at establishing a true science of law.

Apart from this introduction, the thesis consists of three chapters and a final closure.

The first chapter, *The Empirical Zeitgeist of Comparative Legal Studies*, reflects on the structural stalemate experienced by comparative law at the outset of the new millennium, mainly due to the centennial underdevelopment of its methodological foundations, which resulted in an inevitable saturation of traditional scholarship.

It gives account of the renewed interaction of legal scholars with germane sciences and of the entry in the game of scholars from other vocational fields, which fostered different streams of empirical scholarship.

The main claim of this chapter is that those streams are only fractions of a full figure: they belong to the same genus, blossomed under the auspices of a newly established analytical structure. Nonetheless, notwithstanding the shaking of critical mass which characterized the enterprise, comparative scholars have always devoted little if no attention to the establishment of a unitary methodological framework. This suggests that there is a possibility of producing cutting-edge scholarship by exploiting the virtuous spiral triggered by new methodological waves and that opportunities to produce valuable works are abundant to those who want to refute methodological orthodoxy.

The second chapter, *On Methods: The Empirical Comparative Scholar As Janus Bifrons*, is devoted to the design of comparative research, declined in its qualitative and quantitative

components. First, it establishes what can be termed as “empirical”, and how do we contextualize it in comparative legal studies.

Then, it gives account of the fact that the observational attitude embedded in comparative legal scholars makes them more prone to empirical analysis than what can be initially believed.

Further, it claims that the reductionism inherent to a linguistic backwash misleadingly identifying empirical analysis as a mere investigation of quantitative properties, in contrast with the investigation of qualitative properties, is wrong because an authentic empirical approach needs to be strongly grounded in both of the cultures.

It therefore reviews the features, pitfalls and potentials of the two cultures and discusses how triangulation, methods mixing and interdisciplinary cherry-picking can play a key role in building an integrated infrastructure of empirical comparative studies.

Finally, the chapter ends with the main claim that comparative scholars will find their long craved methodology not by replacing traditional comparative law, but rather by tackling and strengthening it with the multilayered complementariness of the qualitative and quantitative traditions, so to generate a scholarship which gains theoretical perspective via integration with observational evidence.

In this sense, the scholar can be identified as *Janus Bifrons*, two-headed roman god which makes of unity within separation its inner strength.

The third chapter, *At The Caravanserai: Frontiers And Goals Of Empirical Comparative Law*, revisits our journey and warns the reader from taking the empirical comparative enterprise with a “just do it” or “just don’t” approach. The scholarship requires to be handled, safeguarded and promoted with attention. Also, it must be not identified as and the one and only possible epiphany of comparative legal studies. Yet, it may humbly serve to those who want to take advantage of technology and update their methodological toolkits for dealing

with a brand new wide array of open questions, which can in turn serve as a methodological guide towards a better understanding, reform and unification.

The chapter then discusses some potential new directions: a deeper attention to longitudinal studies, the introduction of behavioral analysis, the identification of field-specific tools and the creation of an integrated jargon.

It claims that the fact that different solutions are used in order to address functionally equivalent problems reveals that, all in all, there is not a single best rule which can fit all of the legal systems into which it is imported or exported.

Efficiency is just one the possible *tertia comparationis*, against to which different legal systems can be measured. Comparative scholarship can however assess the performance of legal rules on the basis of alternative polarities such as fairness, thus linking the ideal optimum to moral values more than to economic notions.

This consideration makes us aware of the intrinsic degree of political ideology embedded in empirical comparative research, which exerts a considerable potential in influencing public policy. The scholarship shall therefore be directed towards a better understanding, unification and reformation of legal systems.

Hence, comparative legal scholars shall assume a subversive role in respect to the legal establishment, as with regard to the means and ends they advocates for, as for their approach to the scholarship. They shall (re)gain a role as social engineers, soaking into the basic tenet of humanist academia: the construction of an *homo universalis*, moved by an unquenchable thirst for knowledge and an imaginative mind. A scholar who takes on his shoulders a rounded education in order to achieve the polymathic traits which enables him to acquire solid skills in different fields and methods. Such personalities being around, technology will have a long and difficult task in getting ahead of human beings.