

DOTTORATO DI RICERCA IN DIRITTO E ECONOMIA
XXVII CICLO

Empirical Comparative Law

Tutor
Chiar.mo Prof. Roberto Pardolesi

Candidato
Avv. Valerio Cosimo Romano

A.A. 2014/2015

A sledgehammer breaks glass but forges steel.

(L. Trotsky)

TABLE OF CONTENTS

ACKNOWLEDGMENTS	6
------------------------------	---

INTRODUCTION	7
---------------------------	---

CHAPTER I

THE EMPIRICAL ZEITGEIST OF COMPARATIVE LEGAL STUDIES

I. A STRUCTURAL STALEMATE.....	12
--------------------------------	----

II. A SHIFTING PARADIGM.....	16
------------------------------	----

III. FRACTIONS OF A FULL FIGURE.....	29
--------------------------------------	----

IV. CONCLUSION: PAST IS PROLOGUE.....	37
---------------------------------------	----

CHAPTER II

ON METHODS:

THE EMPIRICAL COMPARATIVE SCHOLAR AS JANUS BIFRONS

I. INTRODUCTION: WHAT COUNTS AS “EMPIRICAL”?.....	39
---	----

II. QUALITATIVE METHODS.....	50
------------------------------	----

III. QUANTITATIVE METHODS.....	57
--------------------------------	----

IV. TRIANGULATION, METHODS MIXING AND INTERDISCIPLINARY CHERRY-PICKING.....	63
---	----

V. JANUS BIFRONS.....	66
-----------------------	----

CHAPTER III

AT THE CARAVANSERAI:

FRONTIERS AND GOALS OF EMPIRICAL COMPARATIVE LAW

I. AT THE CARAVANSERAI.....	69
-----------------------------	----

II. FRONTIERS.....	70
--------------------	----

III. AN “IDEAL” LAW?.....	74
---------------------------	----

IV. UNDERSTANDING, UNIFICATION AND REFORM.....	76
--	----

V. THE EMPIRICAL COMPARATIVE SCHOLAR: HOMO UNIVERSALIS.....	78
---	----

CONCLUSIONS	80
--------------------------	----

REFERENCES	83
-------------------------	----

AKNOWLEDGMENTS

This thesis has been planned and composed in my years as Ph.D. student at LUISS Guido Carli, as well as in the period spent at Harvard Law School as Visiting Researcher. Parts of it have been presented at the VS/VR Colloquium of Harvard Law School in 2013 and at 10th Conference of Law and Economics held at La Sapienza University in 2014. Prof. Peer Zumbansen, Prof. Massimiliano Vatiello, Netta Barack Corren and all the participants to the abovementioned seminars provided extremely useful comments and suggestions.

During my Ph.D. years my supervisor, Prof. Roberto Pardolesi, became a second father to me. My devotion to him goes enormously beyond the gratitude for his academic guidance and support.

I am also extremely grateful to Prof. Holger Spamann for his patient and constant availability during my visiting at Harvard Law School.

Last but not least, I thank my parents for their personal support throughout the years.

All errors, omissions and imperfections must of course be attributed to myself only. Time is always a tyrant. This thesis is still a work in progress, let us say a *reasoned outline*, submitted for the sole purpose of fulfilling my doctoral requirements. Therefore, I expect to expand upon and ameliorate it in the near future, as the topic deserves to.

INTRODUCTION

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.

Rome, 25 April 2015

Valerio Cosimo Romano

CHAPTER I

THE EMPIRICAL ZEIGEIST OF COMPARATIVE LEGAL STUDIES

SUMMARY: I. A structural stalemate. – II. The shifting paradigm. – III. Fractions of a full figure. – IV. Conclusion: past is prologue.

I. A STRUCTURAL STALEMATE

At the outset of the new Millennium, comparative law experiences a structural stalemate. While some proclaim its triumph¹ and others write its obituary², legions struggle in the midst, attempting to revitalize a scholarship doomed by a centennial underdevelopment of methodological foundations³. In fact, comparative scholars had started to denounce the

¹ R. Sacco, *One Hundred Years of Comparative Law*, 75 *Tulane Law Review*, 2001, p. 1159; E. Örucü, *The Enigma of Comparative Law*, Leiden, 2004.

² M. Siems, *The End of Comparative Law*, *J. of Comp. Law*, Vol. 2, 2007, pp. 133-150; R. Hyland, *Evening in Lisbon*, in *Festschrift für Claus-Wilhelm Canaris zum 70 Geburtstag*, 2007, p. 1175.

³ This becomes even more remarkable when one takes into consideration that comparative law itself might be regarded as a method. For a reference to comparative scholars' disappointment, see A. Riles, *Wigmore's Treasure Box: Comparative Law in the Era of Information*, 40 *Harvard International Law Journal* pp. 221-283, 1999; W. Ewald, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 *U. PA. L. Rev.* 1889, 1891, 1995; R. B. Schlesinger et al., *Comparative law*, 1988, p. 311; M. Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 *TIL. EUR. & Civ. L. F.* 49, 1996.

absence of a scientific approach already at the beginning of the 20th century⁴, at the first Congress of Comparative Law held in Paris. A generation later, the problem was still echoing under the trees of Harvard Yard⁵. It was only with the *Grands Systèmes* projects⁶ of the second half of 20th century - which provided materials for doctrinal debates on single aspects of law which lasted for decades - that the academic focus diverted from the methodological question. Unreceptive of the Darwinian lesson⁷, this loop of classifications and reclassifications resulted in a progressive saturation of traditional scholarship⁸.

⁴ R. Saleilles, *Conception et objet de la science du droit comparé*, in *Proceeds of Paris Congress*, p. 167; G. Tarde, *Le Droit comparé et la sociologie*, in *Congres International de Droit Comparé tenu a Paris du 31 juillet au 4 août 1900, procès-verbaux des seances et documents*, 1905, p. 439.

⁵ Roscoe Pound, *What May We Expect From Comparative Law?*, 22 *A.B.A. J.* 56, 1936 p.70; ID., *Comparative Law in Space and Time*, 4 *Amk. J. Comp. L.* 70, 1955.

⁶ R. David, *Traité élémentaire de droit civil comparé: introduction a l'étude des droits étrangers et la methode comparative*, 1950; P. Arminjon, B.B. Nolde, M. Wolff, *Traité de Droit Comparé Tome I*, 1950; K. Zweigert, H. Kötz, *Introduction to comparative law*, 1977.

⁷ After Charles Darwin, modern science (re)discovered that taxonomies are not the mirror of an *ordo naturalis*, but rather a facilitating convention in the systematization of available information.

⁸ It is interesting to note that, according to T. Kuhn, *The logic of scientific discovery*, University of Chicago Press; 2nd edition, 1970, p. 71, the proliferation of different versions of a same theory is usually a symptom of its crisis.

Yet, the primigenial issue had not been addressed. Notwithstanding the fact that the usefulness of analytical reasoning and data collection had been recognized well before⁹ and exhortations to “look out of the cave”¹⁰ did certainly not lack, comparative law was still missing a solid empirical ground, is to say a systematic investigation of facts by either a quantitative or a qualitative method, or both¹¹.

⁹ A. Nussbaum, *Die Rechtstatsachenforschung. Ihre Bedeutung fuer Wissenschaft und Unterricht*, Tubingen, 1914; F. Beutel, *Some Potentialities of Experimental Jurisprudence as a New Branch of Social Science*. U. of Neb. Press, 1957; R. Pound, *Comparative Law in Space and Time*, 4 Amk. J. Comp. L. 70, 1955; ID., *What May We Expect From Comparative Law?*, 22 A.B.A. J. 56, 1936; ID., *The Place of Procedure in Modern Law*, 1 S. W. L. Rev. 59, 1917; M. Rosenberg, *Foreword to Dollars, Delay and the Automobile Victim; Studies in Reparation for Highway Injuries and Related Court Problems*, 1968. More recently see R. Sacco, *Legal formants: A Dynamic Approach to Comparative Law*, 39 Am. J. Comp. L. 1, 25-26, 1991; U. Drobnig, *Soziologische Forschungsmethoden in der Rechtsvergleichung in Rechtssoziologie und Rechtsvergleichung*, 1977, p. 91.

¹⁰ H. E. Yntema, *Comparative Legal Research: Some Remarks on "Looking out of the Cave"*, *Michigan Law Review* Vol. 54, 7, 1956, pp. 899-928.

¹¹ N. W. Hines, *Empirical Scholarship: What Should We Study and How Should We Study It?*, AALS Newsletter, Feb. 2005; M. Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, Am. J. of Comp. L. Vol. 50, 4, 2002, pp. 685-686. For a fascinating catalogue of the many shapes of empirical legal researchers see S. Seidman Diamond, *Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton*, 2002 U. Ill. L. Rev., p. 806. M. Suchman, E. Mertz, Elizabeth, *A New Legal Empiricism? Assessing ELS and NLR*, in *Annual Review of Law and Social Science* Vol. 6, 2010, pp. 555-579;

At the same time, the world turned global. Technology experienced an astonishing exponential progression. Interdisciplinary studies, which share empiricism as a unifying theme¹², took the lead of the legal debate with the declared aim of reshaping the understanding of legal theory. Information became a massively collectible, storable and accessible commodity. New computational techniques, tools and hardware were developed in virtually every scientific field in order to produce (or as a result) of deeper and more sophisticated analyses¹³, resulting in a global trend that sees legal studies confronting and interfacing other sciences like never before. As a natural outcome, some advocated a more comprehensive systematization¹⁴ of this interdisciplinary approach. The stepping stones for the emergence of a new paradigm of comparative legal studies¹⁵ were finally being built.

¹² McAdams, T. Ulen, 2002 U. Ill. L. Review, p.791. Arguing that legal history can benefit from economics and statistics, D. Klerman, *Statistical and economic approaches to legal theory*, 2002 U. Ill. L. Rev., p. 1167. A certain lack of empiricism in law and economics is instead denounced by J. Getman, *Contributions of Empirical Data to Legal Research*, 35 J. Legal Educ. 489, 1985.

¹³ T. Kuhn also recognized in its masterpiece *The logic of scientific discovery*, op. cit., the key-role that technology can play in the development of new sciences.

¹⁴ T. Ulen, *A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law*, 2002 U. Ill. L. Rev., 4, p. 876.

¹⁵ For sake of clarity, comparative legal studies are hereby defined as an open subject, identified as comprising of transnational inquiries about the

II. A SHIFTING PARADIGM

Actually, a paradigm shift had already started to flow underground. Piled up with research questions that could not have been addressed with traditional tools, more and more scholars had gone hunting into germane sciences. Delving into the multicolored botany of economics, informatics and public policy, it took them little time to figure out that legal systems are huge repositories of data and metadata, strictly intertwined with macroeconomic factors as well as with individual incentives. Moved by the smooth singing of the early birds, other scholars from different vocational fields had then joined the hunt, carrying their toolboxes equipped with techniques borrowed from economics (econometrics), technology (software-based metrics) and public policy (agenda setting).

postulates, the implementation, the existence and the effects of legal norms at both a micro and macro level. Comparative legal research is also implicit in all of the studies which technically fall within the range of other disciplines, but propose an investigation of legal topics in a comparative fashion.

For a first discussion of “*implicit comparative law*”, see M. Siems, *Comparative Law*, Cambridge University Press, 2014 and R. A. Macdonald, K. Glover, *Implicit comparative law*, *Revue de Droit: Université de Sherbrooke* 43, 2013. See also H. Spamann, *Empirical comparative law*, 11 *Annual Review of Law and Social Science*, forthcoming 2015.

Now, one might wonder why (with the exception of few isolated cases¹⁶) this *empirification* of comparative legal studies did not occur before. Potential explanations are manifold: first, the uncertainty on the same mission and methods of the discipline; second, the relatively scarce demand for quantitative work, which has always been alien to legal scholars¹⁷; third, the persistence of a systemic lack of data and techniques to process such information¹⁸. At the end, it comes as no surprise that the enterprise resulted in “*a path littered with the carcasses of earlier failed starts*”¹⁹.

¹⁶ Isolated adventures to convey comparative legal studies toward an empirical analysis appeared before, but lacked fortune. See Merryman and Clark for their *Comparative Law - Western, European and Latin American Legal Systems*, 1978, which frequently employs a quantitative approach explicitly referring to “*quantitative comparative law*”.

¹⁷ This is not anymore true: especially in the U.S. law schools show the clear trend of hiring scholars from other fields or lawyers who got their Ph.D. in other neighboring fields. For a theoretical discussion, read T. Ulen, *Op. Cit.*, p. 900; H. M. Kritzer, *The (nearly) forgotten early empirical legal research* in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010, p. 897. For a quick empirical proof, have a look at the resumes of the Faculty at Stanford Law School.

¹⁸ H.M. Kritzer, *Op. Cit.*, p. 895. See also W. Landes, *The Empirical Side of Law & Economics*, *U. Chi. L. Rev.*, 2003, pp. 167-180.

¹⁹ The evocative picture belongs to M. Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 *U. Ill. L. Rev.*, 819, at 820.

If we except what can be regarded as a proto-empiricist agenda²⁰, the first systematic - yet not comparative in nature - attempts to pursue empiricism in modern law are to be traced in the realist turn occurred during the '30s²¹. Legal Realism, born to supplant the nineteenth century's doctrine centered on legal formalism, aimed at studying law as an applied science and contextualizing it in society, producing efficiency-based analyses through the lenses of rigorous techniques and objective descriptions finalized to the attainment of accurate results.

Unlike their predecessors, legal realists were also motivated by normative ends, by way of investigating law as it *ought* be via the assessment of what law actually *is*²². However, despite having realized the value of comparative studies²³ and many of its praetorians being themselves valiant comparative

²⁰ Such as Roscoe Pound's sociological jurisprudence, which aimed at improving institutions via a systematic study of the actual effects of the law.

²¹ In *Jurisprudence on parade*, 39 Mich. L. Rev. 1154, 1940-1941, one of the champions of Legal Realism, Hessel Yntema, reconducts the origins of the movement to two academic works: Llewellyn's article *A Realistic Jurisprudence – The Next Step*, 30 Colum. L. Rev. 431, 1930, and J. Frank's *Law and the modern mind*, Transaction Publishers, 1930.

²² J.B. Fischman, *Reuniting 'Is' And 'Ought' In Empirical Legal Scholarship* in *University of Pennsylvania Law Review*, 162(1), 2013.

²³ See as example Citation: W. Cook, *Scientific Method and the Law*, 13 A.B.A. J. 303, 1927 at 309: *'In this connection would be made studies in legal history, and comparative law, so that we may take advantage of the experience of other*

scholars²⁴, realists failed in providing a sound theoretical framework relevant for normative analysis²⁵.

This shortfall determined a progressive draining of the scholarship already at the end of '60s, which left on the field a spurious germination of movements (Critical Legal Studies, Law & Society, Behavioral Analysis of Law *et cetera*). However, these studies still lacked of a comparative nature.

The end of the Century saw a new blossoming of modern empirical legal studies, in correlation with the development of new computational tools, led by two similar yet differentiated movements, namely Empirical Legal Studies (ELS) and New Legal Realism (NLR), both aimed towards

times and other peoples in solving similar problems.” Or H.E. Yntema, *Comparative Legal Research: Some Remarks on "Looking out of the Cave"*, Michigan Law Review Vol. 54, No. 7, 1956, at 899-928: “Under these conditions, it is obvious that scientific study of law must primarily consist of comparative observation and analysis; indeed, even if the existing experimental knowledge of how law operates were far less fragmentary than it is-and I for one do not see how the need and significance of such knowledge could be overstated-it would still have to be comparative, if only to make sure that what happens in Ann Arbor is duplicated in Ruritania. In this sense, comparative law is another name for legal science”. See also H.E. Yntema, *American Legal Realism In Retrospect*, 14 Vand. L. Rev. 317, 1960-1961, especially at 323.

²⁴ Llewellyn served as one of the principal drafters of the Uniform Commercial Code (UCC), Yntema helped establishing the American Journal of Comparative Law, and stressed the failure of realism to develop comparative analyses.

²⁵ J.B. Fischman, *Op. Cit.*

prescriptive ends, but the first more quantitative oriented and the other more sociological.

ELS, in contrast with the rejection of doctrine that characterized the first realists, proposes that the same doctrine be treated as an hypothesis and empirically tested with the help of new quantitative techniques. ELS' nature can be considered conservative: it adopts new techniques of analysis but formulates its own conjectures from within the realm of law, and not from the outside. In contrast, NLR casts its attention on a methodological diversity often borrowed from social sciences, without employing all the quantitative paraphernalia of ELS²⁶ and is therefore to be considered an innovative enterprise. An intrinsic limit of these scholarships, however, is that both of them rarely derive the *ought* from the *is*²⁷. From such premises new research streams gained momentum in comparative legal studies, the most structured being *Comparative Law & Economics*, the *Legal Origins movement* and the *Doing Business reports*.

With the exception of few forerunning works²⁸, Comparative Law & Economics shows up in the early 1990s²⁹. Its study was then boosted by

²⁶ M. Suchman, E. Mertz, Op. Cit.

²⁷ J.B. Fischman, Op. Cit.

²⁸ Exceptions are S. N. S. Cheung, *Transaction Costs, Risk Aversion, and the Choice of Contractual Arrangements*, 22 *Journal of Law and Economics* 23,

two academic works: a monograph by Ugo Mattei³⁰ and three volumes edited by Gerrit De Geest and Roger van den Bergh³¹.

The academic output then expanded to an extermineate catalog³² which ranges from contracts to criminal procedure, passing through labor law

1969; J. H. Merryman, D. Clark, L. M. Friedman, *Law and social change in Mediterranean Europe and Latin America: A handbook of legal and social indicators for comparative study*, Stanford, 1979; S. Levmore, *Rethinking Comparative Law: Variety and Uniformity in Ancient and Modern Tort Law*, 61 *Tulane Law Review* 235, 1986.

²⁹ S. Levmore, W. J. Stuntz, *Remedies and Incentives in Private and Public Law: A Comparative Essay*, 1990 *Wis. L. Rev.* 483, 496-99, 1990; U. Mattei, R. Pardolesi, *Law and Economics in Civil Law Countries: a Comparative Approach* in *International Review of Law and Economics* 265, 1991; D. North, *Institutions, Institutional Change and Economic Performance*, *Int'l Rev. of L. and E.*; F. Easterbrook, D. Fischel, *The Economic Structure of Corporate Law*, Harvard University Press, 1991; J. Finsinger, T. Hoehn, A. Pototschnig, *The Enforcement of Product Liability Rules: A Two-Country Analysis of Court Cases*, 11 *International Review of Law and Economics* 133, 1991; M. Roe, M. Ramseyer, and R. Romano, *Some Differences in Corporate Structure in Germany, Japan, and the United States*, 102 *Yale Law Journal* 1927, 1993; H. Schäffer, A. Rácz, eds. *Quantitative Analyses of Law: Comparative Empirical Study: Sources of Law in Eastern and Western Europe*, Akadémiai Kiadó, 1990.

³⁰ U. Mattei, *Comparative law and economics*. University of Michigan Press, 1997.

³¹ G. de Geest, R. van den Bergh (eds), *Comparative Law and Economics*, in *The International Library of Critical Writings in Economics* series, Cheltenham: Edward Elgar, 2004.

³² For a comprehensive literature review see N. Garoupa, and T. Ginsburg, *Economic Analysis and Comparative Law*, 2009; M. Bussani, U. Mattei (eds.) *Cambridge Companion To Comparative Law*; N. Garoupa, M. Pargendler, *A Law and Economics Perspective on Legal Families* in *The Methodologies of Law and*

and antitrust, up to the point that someone - maybe a little bit too optimistic - has already identified even a “*second wave*”³³.

The gist of this scholarship is that economic efficiency serves as a benchmark against which legal systems can be measured³⁴. Scholars in this field believe that the analytical tools provided by economics (efficiency *in primis*) can be used to build ideal models which can be used as *tertia comparationis* in order to establish the proximity of a given system to an ideal optimum, or which system is more efficient in respect to a given aspect. In so doing, efficiency assumes itself a comparative meaning³⁵ and a legal system is able to increasingly select more efficient rules through a

Economics, T. Ulen, ed., Edward Elgar, 2013. Very critical M. Siems, *Measuring the Immeasurable: How to Turn Law into Numbers*, in M. Faure, J. Smits (eds.) *Does law matter? On law and economic growth*, Intersentia, 2011, p. 115 according to whom “*the studies of implicit benchmarking are open to the challenge that they mislead the reader: they claim to measure the quality of legal rules in an objective way but in reality they only show how much countries deviate from a particular legal model, such as the US one*”.

³³ G.K. Hadfield, *The Second Wave of Law and Economics*, 46 U. Toronto L.J. 181, 1996; Adhesively R. Michaels, *The Second Wave of Comparative Law and Economics?*, University of Toronto Law Journal, vol. 59, no. 2, 197-213, 2009.

³⁴ U. Mattei, A. Monti, *Comparative Law and Economics: Borrowing and Resistance*, Global Jurist Frontiers 01/2001; R. Pardolesi, M. Granieri, *The Future of Law Professors and Comparative Law*, in The Digest. National Italian American Bar Association Law Journal 1-26, 2013.

³⁵ U. A. Mattei, L. Antonioli, A. Rossato, *Comparative Law and Economics*, in B. Bouckaert, G. De Geest, (eds), *Encyclopedia of Law and Economics*, vol. I, Cheltenham, Edward Elgar, 2000.

review processes which progressively discard inefficient rules via periodical reviews³⁶.

According to Comparative Law & Economics' scholars, efficiency can also justify divergences. In fact, different countries can develop different solutions for the same legal problem that are equally efficient. This explains legal transplants: a legal rule gets transplanted whenever it increases the efficiency of the receiving system³⁷.

For sure, a great merit which can be ascribed to this scholarship is that, in contrast with the Chicago School that has traditionally imposed its dominion on Law & Economics without having a deep historical and comparative perspective, Comparative Law & Economics provided such a facet³⁸. Unfortunately, Comparative L&E has (up to now) failed to establish a comprehensive and coherent methodological framework to

³⁶ F. Parisi, V. Fon, *The economics of lawmaking*, Oxford University Press, 2009.

³⁷ U. A. Mattei, L. Antonioli, A. Rossato, *Op. Cit.*

³⁸ R. Michaels, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 57 *American Journal of Comparative Law* 765-795, 2009.

validate or falsify the proposed theories³⁹, so it certainly needs further technical refinement⁴⁰.

Up to the 1990s, the economic analysis of law had casted its attention on how norms influence the individual incentives and the behavior of microeconomic players. In 1997, “*Law and Finance*”, the well-known seminal paper written by a group of economists collectively known under the acronym LLSV⁴¹, reversed the perspective by operating comparisons at a macro level.

LLSV pose that legal rules and regulation differ remarkably among States; that this difference is due to a great extent to legal origins, the most important divide being between common law and civil law; that these differences can be quantified and present a basic historical divergence: whereas civil law is policy implementing, common law is market supporting. Since law “matters” for economic and social development and

³⁹ See C. Rogers, *Gulliver's Troubled Travels, or the Conundrum of Comparative Law*, in 67 *George Washington Law Review* 149, 1998.

⁴⁰ M. Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, *The Am. J. of Comp. Law* Vol. 50, 4, 2002, pp. 671-700.

⁴¹ R. La Porta, F. Lopez-de-Silanes, A. Shleifer, and R. W Vishny, *Law and Finance*, 106 *Journal of Political Economy* 6, 1998, p. 1113-1155.

common law is believed to be more efficient in doing so, it follows that the latter fosters growth.

Needless to be said, this finding light the fuse for a bone-crushing polemic with civil law scholars⁴². But if we leave apart the legitimate parochialisms, it becomes clear that the value of LLSV's contribution does not rest in its contingent findings, which are limited in scope to the relationship between law and finance. Rather, it is remarkable that it employs quantitative methods to address comparative law problems under a macroeconomic eye.

Needless to be reported, Law and Finance has not been exempted from a multitude of technical as well as cultural criticisms (*inter alia*, overreliance on ordinary least squares regression⁴³, omitted variable bias⁴⁴, coding problems⁴⁵, concerns on the use of proxies⁴⁶, overestimation of the

⁴² See N. Garoupa, C. Gómez Ligüerre, *The Syndrome of the Efficiency of the Common Law*, Boston University International Law Journal, Vol. 29, No. 2, 2011.

⁴³ See K. Pistor, *Rethinking the Law and Finance Paradigm*, BYU L. Rev., p. 1647, 2009.

⁴⁴ See J.D. Angrist & J.-S. Pischke, *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 J. Econ. Persp. 3, 2010.

⁴⁵ H. Spamann, Holger, *The "antidirector rights index" revisited*, 23.2 Rev. of Fin. Stud., 467-486, 2010.

dualism between civil law and common law⁴⁷, multicollinearity, reductivity of binary variables, western-centricity of the analysis *et cetera*).

All these critiques are brilliantly captured in a trenchant paper⁴⁸ in which, using LLSV's approach, the Author examines the relation between legal protections and soccer success and finds out that French origin was significant, thus coming to the conclusion that "*perhaps teams from countries with systems based on the French model [...] perform well due to the remaining vestiges of the Napoleonic Code [...]. Or maybe – just maybe – some other forces are at work.*". Another trivial correlation is then found by whom (in a less satirical fashion) finds out that French civil law countries deforest less than English common law ones⁴⁹. Despite the infamous jokes, Law and Finance

⁴⁶ J. Reitz, *Legal Origins, Comparative Law, and Political Economy*, American Journal of Comparative Law, Vol. 57, No. 3, 2009; J.B. Fischman, *Op. Cit.*

⁴⁷ In this respect, it is symptomatic that one of the most prominent Authors of *grands systèmes* classifications, Hein Kötz, acknowledged that legal families are nothing more than "*a didactical tool*". See H. Kötz, *Abschied von der Rechtskreislehre? [Farewell to the Theory of Legal Families?]*, 6 Zeitschrift Für Europäisches Privatrecht 493, 1998. Yet, the divide does remain relevant for civil procedure, which is still different among these legal families. See R. Michaels, *Op. Cit.*

⁴⁸ M. West, *Legal Determinants of World Cup Success*. Michigan Law and Economics Research Paper No. 02-009, 2002.

⁴⁹ S. Marchand, *Legal Origin, Colonial Origins and Deforestation*, Economics Bulletin, vol. 32(2), 2002, pp. 1653-1670.

remains a fundamental piece of scholarship as it paved the way for the development of quantitative macro-comparison.

Another stream of empirical comparative legal studies is represented by the Doing Business reports issued by the World Bank since 2004, and their collateral projects⁵⁰. In particular, the report measures and compares the ease of doing business in more than 130 countries. The project is led by Simeon Djankov, a frequent coauthor with LLS, and relies strongly on the legal origins hypothesis to advocate for reforms in low-performing Countries. As it has been highlighted, a fundamental difference with the Legal Origins thesis stands in the fact that while its conclusions are mostly descriptive, the Doing Business enterprise is instead openly evaluative⁵¹. The report suffered from critiques as well. A first criticism regards its innate tendency to neglect fairness and justice in favor of deregulation⁵².

⁵⁰ The United States Agency for International Development, the Canadian International Development Agency, the UK Department for International Development, name just a few; the Inter-American Development Bank, European Bank for Reconstruction and Development, Asian Development Bank, African Development Bank; other multilateral financial institutions like the World Bank; United Nations Development Program. the National Center for State Courts, the Federal Judicial Center.

⁵¹ Ralf Michaels, *Op. Cit.*

⁵² As an example, the use until 2008 of EWI, the “employing workers indicator”, has been very controversial because it captured the ease of hiring and firing a worker, thus stimulating a race to the bottom.

A second criticism regards the insufficient knowledge of the law, especially law in action.

Third, the Reports have been also charged of a simplistic use of rankings, which fostered countries to enact useless reforms in order just to climb positions⁵³.

Fourth, the use of indicators⁵⁴ and the fact that they are based on *perceived* law more than *actual* law. The scope of the project is also very narrow, since it only regards the relationship between law and business (which might not even be considered as belonging to legal analysis) and can be questioned under political grounds: indeed, it represents a neoliberal project aimed at supporting *laissez faire* markets at an institutional level⁵⁵. Thus, it suffers of the uniqueness of its premises and of its public policy suggestions.

⁵³ See Ralf Michaels, *Op. Cit.*

⁵⁴ See T. Almeida Cravo, *What's in a label? The aid community's representations of success and failure in Mozambique and Guinea-Bissau*, Ph.D. thesis, Cambridge University, 2012; T. Krever, *Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense*, *Third World Quarterly*, Vol. 34, 2013.

⁵⁵ T Krever, *Op. Cit.* On the inherent political connotation of empirical research, see M. McConville. *Research methods for law*, Edinburgh University Press, 2007.

As we will appreciate in a while, when we will reconstruct the current scenario, all of the empirical streams that have been just described are only tangential to our research. In fact, notwithstanding the shaking of critical mass which followed these new scholarships, little if no attention has been devoted in establishing a unitary methodological framework. The idiomatic elephant is being missed in the room⁵⁶.

III. FRACTIONS OF A FULL FIGURE

One shall not miss the forest for the trees. The abovementioned projects are only fractions of a full figure: they belong to the same *genus* of empirical analysis of comparative law⁵⁷, in both its quantitative and qualitative declinations.

In Kuhnian terms, this three *species* share the essential characteristics of a paradigm. First, their achievement was sufficiently unprecedented. Second,

⁵⁶ M. Siems, *Comparative Law - Who is the Elephant in the Room?* (Book Review of 'Comparative Law: A Handbook', Özücü and Nelken, eds.), *Edinburgh Law Review*, 12, 2008, pp. 334-336.

⁵⁷ Also referred to as being a category of leximetrics, the quantitative measurement of law. On the point see M. Siems and S. Deakin, *Comparative Law and Finance: Past, Present and Future Research*, in *Journal of Institutional and Theoretical Economics (JITE)* 166, 2010; R. D. Cooter and T. Ginsburg, *Leximetrics: Why the Same Laws are Longer in Some Countries Than Others*, U. Ill. Law & Econ. Research Paper LE 03-012, 2003; H. Spamann, *Large-Sample, Quantitative Research Designs for Comparative Law?*, *Am. J. Comp. L.* 57.4, 797-810, 2009.

it was sufficiently open ended to leave all sorts of problem open⁵⁸. Third, the overlapping of old methods and new methods denotes a reconstruction of the field from new fundamentals⁵⁹.

It follows that the envisaged approach has to be considered evolutionary more than revolutionary⁶⁰. It is nothing else than the usual developmental pattern of science, which blossoms under the auspices of a newly established analytical framework.

Resistance is structurally positive⁶¹: by resisting, the incumbent paradigm tests the strength of the entrant. At that point, it is all a matter of breakpoints. As society does, also scholarship advances coffin by coffin.

Hessel Yntema carves this phenomenon in his brilliant prose: “*None are more requited by friendly admonition or polemic animadversion than those who venture into the lonely and unbeaten paths of science. And criticism is a grateful form of recognition, for it betrays a degree of apprehension, which promises that even those who*

⁵⁸ T. Kuhn, *Op. Cit.*, p. 10.

⁵⁹ T. Kuhn, *Op. Cit.*, p. 85. In *Criticism and the Growth of Knowledge*, 1970; I. Lakatos further highlighted that new ideas are almost always conceived ad-hoc and then progressively extended.

⁶⁰ T. Ulen, *A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law*, in *University of Illinois Law Review*, No. 4., 2002, p. 886.

⁶¹ Resisting on the validity of a paradigm by premising the very same paradigm is never advisable. See T. Kuhn, *Op. Cit.*, p. 94.

come to scoff may perhaps remain to pray”⁶². Now, one may wonder about the existence of a real necessity for new analytical tools. And in fact, a well-known scholar⁶³ unearthed a Nietzschean caveat: the reduction of all qualities to quantities would be *Unsinn*, nonsense⁶⁴.

He is right. Mere reductions are perfectly useless and indeed disruptive: complementariness shall be the polar star, for we should not forget that each methodology, be it qualitative or quantitative in its inner nature, comes out with important limitations⁶⁵. To the maximum extent possible, we do not want to stumble over such fallacies. Instead, by helping ourselves with a twofold unitary method, we want to drive the potential pitfalls of our research out of its results.

⁶² E. Yntema, *The Rational Basis of Legal Science*, 31 Colum. L. Rev. 925, 1931. The author further adds p. 935 that “*It is inevitable that a nascent empirical legal science, now at the threshold of its endeavors, should be put to its formal justification, before it can be in fact proved. It is altogether advantageous that it should be so. Necessarily, the event will decide the issue of the scientific movement in law, but in the meantime differences of opinion can be clarified or even perhaps shown to be the unfortunate progeny of misunderstanding or verbal ambiguity*”.

⁶³ P. Legrand, *Econocentrism*, 59 U. Toronto L.J. 215, 2009.

⁶⁴ F. Nietzsche, *The Will to Power*, W. Kaufmann (ed.), New York: Vintage, 1968 at 304 §564 “*Die Reduktion aller Qualitäten auf Quantitäten ist Unsinn*”.

⁶⁵ For a first analysis of the need for methodological integration see L.B. Nielsen, *The Need For Multi-Method Approaches In Empirical Legal Research*, in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010.

Indeed, in announcing that the two methodologies should be intended as complementary⁶⁶ we are automatically letting Comparative Law gain theoretical and practical perspectives from their integration⁶⁷.

As an eclectic philosopher of science puts it out, “*an experience without theory is just as incomprehensible as is (allegedly) a theory without experience: eliminate part of the theoretical knowledge of a sensing subject and you have a person who is completely disoriented and incapable of carrying out the simplest action*”⁶⁸.

Let us make the example of a case study. Taken in itself, and because of the irrelevance of the sample, it would not be sufficient for proving true any general hypothesis. However, we can use it to generate a theory which we can later test with the collection of the appropriate data. Or, *vice versa*,

⁶⁶ R. Schlesinger et al., *Comparative law: cases, text, materials*. Foundation Press, 1970, p. 40: “*thus becomes an important auxiliary method for the social scientist just as the latter’s findings in turn are used as indispensable tools by those shaping law and policy in our society*”.

⁶⁷ R. Schlesinger et al., *Op. Cit.*, p. 39: “*The reformer who strives to improve the law may resort to social science methods in order to gather empirical data demonstrating the unsatisfactory effects of an existing rule. But when he seeks to explore the probable effects of proposed alternative solutions, the methods of social science have to be supplemented by those of comparative law.*”. See also H. Spamann, *Op. Cit.*; J. Reitz, *Legal Origins, Comparative Law, and Political Economy*, *Am. J. of Comp. L.*, Vol. 57, No. 3, 2009; T. Eisenberg, *The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns*, Cornell Legal Studies Research Paper, 2010.

⁶⁸ P.K. Feyerabend, *Against Method: Outline of an Anarchistic Theory of Knowledge*, Verso Edition, London, 1978, p. 137.

we can start from the aggregate analysis of a given feature, elaborate a theory, and then check the robustness of our conjecture. We can design quantitative work as preceded by qualitative exploratory work, do the contrary⁶⁹, or even use mixed structures (qualitative – quantitative – qualitative; quantitative – qualitative – quantitative), but what really matters is that we work on two levels of an unitary analysis which allows us to gather and process large data sets by quantitative means and to gain in-depth narrative from qualitative analysis⁷⁰, adopting the different methodologies to the different goals pursued by our analysis.

A scientific inquiry into comparative law can be indicted under many different grounds. First of all, it can be argued that legal phenomena are not susceptible of exact measurement. Law - one might argue - consists of an inherently normative, ideal world that has no correspondence with reality, while empirical research is instead *inherently descriptive*⁷¹, and intuition alone cannot suffice to relate observable data to normative claims. Actually, this is the reason why legal scholarship needs to build the

⁶⁹ L.B. Nielsen, *Op. Cit.*, at 955.

⁷⁰ See J.W. Cioffi, *Legal Regimes and Political Particularism: An Assessment of the Legal Families Theory from the Perspectives of Comparative Law and Political Economy*, *Byu L. Rev.* 1501, 2009, especially pp. 1532 and 1533.

⁷¹ J. B. Fischman, *Op. Cit.*

conceptual framework that can bridge the gap between ‘is’ and ‘ought.’ Indeed, developing such framework will require a sustained agenda that integrates empirical methodologies with legal theory⁷², in order to let key assumptions be identified and transformed into hypotheses amenable to the rigors of empirical testing⁷³, which can in turn generate effective policy recommendations. In effect, even if data themselves have no intrinsic normative significance, every respectable empirical study builds upon normative premises. It is just that they are formulated as measures⁷⁴ and not as propositions. Holding data constant, the more credible the measure, the more effective the policies⁷⁵.

Obviously, “*justifying a metric requires two steps. First, one needs a theory of the good. [...] Second, one needs to relate observable phenomena to the measure of goodness. When good or bad outcomes are directly measurable—such as when the outcomes of a medical trial are “survival” and “death”—the results will be self-interpreting and no deeper theory is needed*”.

⁷² J. B. Fischman, *Op. Cit.*

⁷³ M. Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, U. Ill. L. Rev., 2002, p. 827.

⁷⁴ J. B. Fischman, *Op. Cit.*

⁷⁵ J. B. Fischman, *Op. Cit.*

Empirical analysis can therefore build a scientific infrastructure of comparative legal studies by notably reducing the innate subjectivity of law so to let sound theories emerge from constant testing against experience⁷⁶, in order to reveal features of law that are obscure to the common sense⁷⁷.

Another possible criticism is that law is inherently not predictable⁷⁸. This myth is as old as the attribution of thunderstorms to the wrath of God: legal outcomes have become always more and more predictable, on the one side because of the scaffolding provided by doctrine, precedents and praxis, and on the other side because of the emergence of legal certainty as a human right. It is all a matter of investigating and properly identifying the hidden regularities of legal doctrine⁷⁹.

Also, acquiring fluency in empirical analysis allows the interpreter to investigate her hypotheses via an “*endless process of testing and retesting*”⁸⁰, rather than confining it in the hyperuranium of her mind. This implies that she

⁷⁶ M. A. Glendon et al., *Comparative Legal Traditions*, 2d rev. ed., 1994.

⁷⁷ D. Galligan, *Legal Theory and Empirical Research* in *Oxford Handbook Of Empirical Legal Studies*, P. Cane, H. Kritzer (eds.), Oxford University Press, 2010;

⁷⁸ “*If it be not so, are not lawyers consummate charlatans?*”. H. Yntema, *Legal Science and Reform*, 34 *Columbia Law Review* 2, 1934, p. 209.

⁷⁹ H. Dagan, *Reconstructing American Legal Realism & Rethinking Private Law Theory*, Oxford University Press, 2013, p. 45.

⁸⁰ B. Cardozo, *The nature of the judicial process*, 1921, p. 179.

can design legal questions differently, so to obtain different answers, that would have never been captured otherwise. She can unveil aspects that were before diaphanous to a traditional analysis.

In addition, being by definition universally testable, the empirical approach speaks the *lingua franca* needed to elucidate the quandaries of the polycontextual law⁸¹ originating from a legal world reshaped by globalization. A last objection might derive from an innate skepticism towards the use of unconventional tools which are alien to the legal academia. Bearing well in mind that “*technique is noticed most markedly in the case of those who have not mastered it*”⁸², scholars shall understand that toolkits belonging to different disciplines are not in contrast with each other but shall be carefully and appropriately handled, only after intensive training and proper digestion. Indeed, the very same chisel can make an artist or a butcher. Given that the scholar learns how to use her knives, the problem becomes cultural more than technical.

⁸¹ V. Grosswald Curran, *Comparative Law and the Legal Origins Thesis: '[N] On Scholae Sed Vitae Discimus'*, American Journal of Comparative Law, Vol. 57, 2009.

⁸² L. Trotsky, *Literature and Revolution*, 1923, ed. William Keach, Chicago 2005, p. 168.

IV. CONCLUSION: PAST IS PROLOGUE

In sum, we have highlighted the structural stalemate experienced by comparative legal studies, heightened by the progressive saturation of traditional scholarship originating from the loop of taxonomies occurred in connection with the *Grands Systèmes* of the last Century.

As a result, more and more legal scholars have resorted to germane sciences. At the same time, scholars from other vocational fields have joined the game carrying their toolboxes and techniques. Surprisingly, notwithstanding the consequential shaking of critical mass, comparative scholars has up to now devoted little if no attention to the establishment of an unitary methodological framework. In fact, one shall not miss the big picture: all these of these streams belong to the same genus of empirical measurement of comparative law, articulated in both its quantitative and qualitative components. The overlapping of old and new methods also denotes a reconstruction of the field from new fundamentals: it is nothing else than the usual developmental pattern of science, which blossoms under the auspices of a newly established analytical structure. This suggests that it is still possible to produce cutting-edge scholarship by exploiting the virtuous spiral triggered by such new research streams, and that, even if a universal formula does not - unsurprisingly - exist, opportunities to

produce valuable works are abundant to those who want to refute methodological orthodoxy. And what is past becomes prologue⁸³.

⁸³ Borrowed from W. Shakespeare, *The Tempest*, Act 2, Scene I.

CHAPTER II

ON METHODS: THE EMPIRICAL COMPARATIVE SCHOLAR AS JANUS BIFRONS

SUMMARY: I. What counts as “empirical”? - II. Qualitative methods - III. Quantitative methods - IV. Triangulation, methods mixing and interdisciplinary cherry-picking. - V. *Janus Bifrons*.

I. INTRODUCTION: WHAT COUNTS AS “EMPIRICAL”?

In V. Palmer’s worlds “*method is now identified by the ‘techniques’ by which comparisons are carried out*”⁸⁴. Before proceeding further, we thus need to define the object of our study, *id est* what counts as empirical, and how do we contextualize it in the comparative legal setting⁸⁵.

⁸⁴ V. Palmer, *From Lerotboli to Lando: Some Examples of Comparative Law Methodology*, in 53 Am. J. of Comp. Law, 262, 2005.

⁸⁵ For a general discussion of the topics which will come to relevance in this chapter, see: J. Angrist, J.-S. Pischke, *Mastering Metrics: The Path from Cause to Effect*, Princeton University Press, 2014; Id., *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 J. Econ. Persp. 3, 2010; M. Armer, A. Grimshaw (eds.), *Comparative social research: methodological problems and strategies*, Wiley, 1973; H. Brady, D. Collier (eds.), *Rethinking social inquiry: diverse tools, shared standards*, 2010; H. Brady, *Do Two Research Cultures Imply Two Scientific Paradigms?*, 46.2 Comp. Pol. Stud. 252-265, 2013; A. Bryman, *Social research methods*, Oxford University Press, 2012; H. Chodosh, *Comparing Comparisons: In Search of Methodology*, 84 Iowa L. Rev. 1025, 1998-1999; W.

Cook, *Scientific Method and the Law*, 13 A.B.A. J. 303, 1927; J. Creswell, *Research design: Qualitative and quantitative research approaches*, 1994; Id., *Research design: Qualitative, quantitative, and mixed methods approaches*, Sage publications, 2013; L. Epstein, G. King, *The rules of inference*, 69 U. Chi. L. Rev. 1, 2002; Id., *Building an Infrastructure for Empirical Research in the Law*, 53 J. Legal Educ. 311, 2003; L. Epstein, A. Martin, *An introduction to empirical legal research*, Oxford University Press, 2014; W. Firestone, *Meaning in method: The rhetoric of quantitative and qualitative research*, 16.7 Educational researcher 16-21, 1987; D. Galligan, *Legal Theory and Empirical Research* in *Oxford Handbook Of Empirical Legal Studies*, P. Cane, H. Kritzer (eds.), Oxford University Press, 2010; B. Geddes, *How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics*, 2 Pol. Analysis 131, 1990; J. Gerring, *How good is good enough? A multidimensional, best-possible standard for research design*, 64.3 Political Research Quarterly 625-636, 2011; J. Getman, *Contributions of Empirical Data to Legal Research*, 35 J. Legal Educ. 489, 1985; G. Goertz, J. Mahoney, *A tale of two cultures: Qualitative and quantitative research in the social sciences*, Princeton University Press, 2012; J. Goldsmith, A. Vermeule, *Empirical methodology and legal scholarship*, Un. Chic. L. Rev. 153-167, 2002; J. Greene, *Engaging critical issues in social inquiry by mixing methods*, 56.6 American Behavioral Scientist 755-773, 2012; R. Hastie, *The Challenge to Produce Useful "Legal Numbers"*, 8.1 Journal of Empirical Legal Studies 6-20, 2011; D. Ho, D. Rubin, *Credible causal inference for empirical legal studies*, 7 Annual Review of Law and Social Science 17-40, 2011; K. Howe, M. Eisenhart, *Standards for qualitative (and quantitative) research: a prolegomenon*, 19.4 Educational researcher 2-9, 1990; T. Jick, *Mixing qualitative and quantitative methods: Triangulation in action*, Administrative Science Quarterly 602-611, 1979; G. King, R. Keohane, S. Verba, *Designing social inquiry: Scientific inference in qualitative research*, Princeton University Press, 1994; R. Lawless, J. Robbennolt, T. Ulen, *Empirical methods in law*, Aspen Publishers, 2010; S. Mathison, Sandra, *Why triangulate?*, 17.2 Educational researcher 13-17, 1988; J. Maxwell, *Using numbers in qualitative research*, 16.6 Qualitative Inquiry 475-482, 2010; M. Mcconville, *Development of empirical techniques and theory in research methods for law*, in M. McConville, W Chui (eds.), *Research methods for law*, Edinburgh University Press, 2010; L. Nielsen, *The Need For Multi-Method Approaches In Empirical Legal Research*, in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010; C. Ragin, *The comparative method: Moving beyond qualitative and quantitative strategies*, Univ. of California Press, 2014; J. Robbennolt, *Evaluating Empirical Research Methods: Using Empirical Research in Law and Policy*, 81 Neb. L. Rev. 777, 2003; H. Spamann, *Large-Sample*,

We have already briefly touched upon the issue in the previous chapter, reporting that the empiricism is based upon a systematic investigation of facts by either a quantitative or a qualitative method, or both.

Empirical analysis does not come as a novelty for the legal academia⁸⁶, nor it does so for comparative legal studies, which imply field observations at an ontological level.

If it is true - as it is, indeed - that contemporary legal scholars cannot remain confined in an ideal ivory tower, but have instead to go outside and look at how the law in action performs at a given point in time and space, it is even more true that this attitude is even more pronounced in comparative legal scholars, who have always recognized that their enterprise requires them to backpack their own domestic knowledge and venture into the exploration of new lands, languages and times⁸⁷, with at least the same strive for curiosity and understanding which characterizes the mythical protagonist of the Flammarion engraving.

Quantitative Research Designs for Comparative Law?, 57.4 Am. J. Comp. L. 797-810, 2009; Id., *Empirical comparative law*, 11 Annual Review of Law and Social Science, forthcoming 2015.

⁸⁶ In two distinguished scholar's words, "[a]lthough the term "empirical research" has become commonplace in legal scholarship over the past two decades, law professors have in fact been conducting research that is empirical—that is, learning about the world using quantitative data or qualitative information—for almost as long as they have been conducting research." L. Epstein, G. King, *The rules of inference*, 69 U. Chi. L. Rev. 1, 2002.

⁸⁷ The role of diachrony is to be briefly discussed in the following chapter.

Thus, it is not surprising to recognize that comparative legal scholars are the natural anthropologists of law, as their *afflatus* towards comparison inevitably requires them to look out of their own world, manifesting an ethnographic attitude which is empirical in nature.

This being premised, it is evident that the comparatists' natural tendency to refer to what they observe even before their theoretical ponderings makes them more prone to empirical analysis than what we had originally believed.

Notwithstanding the above, maybe also because of the relative youth of comparative law as an autonomous subject, up to now empiricism has not been one of the main features of their theoretical framework. This separation is made evident even by semantic questions.

Indeed, first of all, we must relocate ourselves out of a linguistic backwash. In fact, empirical analysis has often too misleadingly being identified as a mere investigation of properties which are quantitative in nature (i.e. refer to quantifiable processes of measurement), as often plainly contrasted to qualitative properties (which are mainly built upon logic). However, this reductionism proves immediately to be wrong⁸⁸: an authentic empirical approach shall be strongly grounded in both of the cultures. And this

⁸⁸ Nonetheless, great part of empirical comparative legal studies is quantitative in nature.

constitutes the main reason why, despite the quantitative culture being often the one most referred to when commonly speaking about empiricism, in order to discern between the two approaches, the use of numbers is certainly not a good proxy⁸⁹.

To make it clear, qualitative studies often contain references to numbers and measures⁹⁰ inasmuch as quantitative studies often require deeply grounded logical premises.

Sometimes, indeed, qualitative studies have to rely on what has been termed as “*quasi statistical findings*”, i.e. terms indicating the recurrence of a given event. Therefore, the conclusions built on such tools are nothing more than “*hidden inferences*”, obtained via rigorous logical processes. Disentangling the two is therefore an extremely grievous enterprise. For this reason, rather than of “*paradigms*” one shall investigate the two aspects referring to them as “*research designs*”, both built upon the formulation of an hypothesis, subsequent observations and the final statement of a certain claim.

⁸⁹ See J. Maxwell, *Using numbers in qualitative research*, 16.6 Qualitative Inquiry 475-482, 2010 and R. Lawless, J. Robbennolt, T. Ulen, *Empirical methods in law*, Aspen Publishers, 2010.

⁹⁰ This view is challenged by H. Becker, *Field work evidence*, in H. Becker, *Sociological work: Method and substance*, New Brunswick, 1970. The Author argues that even qualitative researchers often adopts quantitative claims in a verbal fashion.

Unsurprisingly, recent years have seen a dramatic increase in the attention paid by social sciences to research designs⁹¹. Insofar, however, this renewed interest has been neglected by comparative law, which has rather focused on analyzing the data gathered from *grands systèmes*.

The following pages will therefore to provide a general overview in order to lay out the methodological foundations of our analysis.

⁹¹ See J. Gerring, *How good is good enough? A multidimensional, best-possible standard for research design*, 64.3 *Political Research Quarterly* 625-636, 2011 and L. Epstein, G. King, *op. cit.*: “The tradition of including some articles devoted exclusively to the methodology of empirical analysis—so well represented in journals in traditional academic fields—is virtually nonexistent in the nation’s law reviews. As a result, readers learn considerably less accurate information about the empirical world than the studies’ stridently stated, but overly confident, conclusions suggest.”.

Another (long) quote from the same Authors comes very handy: “But empirical research, as natural and social scientists recognize, is far broader than these associations suggest. The word “empirical” denotes evidence about the world based on observation or experience. That evidence can be numerical (quantitative) or nonnumerical (qualitative); neither is any more “empirical” than the other. What makes research empirical is that it is based on observations of the world. At the same time, the current state of empirical legal scholarship is deeply flawed. [...] the articles devoted to methodology in these disciplines—is virtually nonexistent in the nation’s law reviews. a whole field cannot count on others with differing goals and perspectives to solve all of the problems that law professors may face. Quite the opposite: scholars must have the flexibility of mind to overturn old ways of looking at the world, to ask new questions, to revise their blueprints as necessary, and to collect more (or different) data than they might have intended. It may be that, after amassing the evidence for which the design calls, the scholar finds an imperfect fit among it, the main re-search questions, and the theory. Rather than erasing months or even years of work, the investigator certainly should return to the drawing board, design more appropriate procedures, or even recast the original research question. Indeed, often when researchers find that data turn out to be inconsistent with a hypothesis, they immediately see a new hypothesis that apparently explains the otherwise anomalous empirical results.”.

In effect, pinpointing two interesting quotes can give us some starting coordinates. According to Donald Rubin, “*design trumps analysis*”⁹² but, as Steve Jobs rebates, “*design is not about how things look, but it is about how things work*”⁹³.

So we end up waking in the consciousness that there are no paradigms at war, but that different methodologies are virtually construed on different research designs, which are selected depending on the degree of confidence of their users on that methodology, and may well serve to diverse functions⁹⁴. The field of our game is thus represented by the methodological fields: our green pastures.

In the preceding lines we have briefly highlighted that there is a factual convergence between the two designs. We shall now ask ourselves how to distinguish the two, also in order to highlight and contrast the respective main features, with a particular eye for what becomes relevant for comparative legal scholars.

In primis, we can ask ourselves whether the “*explanatory versus descriptive*” dualism can be a good theoretical divide. And we shall almost immediately

⁹² D. Rubin, *For objective causal inference, design trumps analysis*, *Annals of Applied Statistics*, 808-840, 2008.

⁹³ Watch <https://www.youtube.com/watch?v=sPfjQmpg5zk>.

⁹⁴ For a discussion of which, see *infra*.

say that no, this would not be a good criterion: empirical comparative research can well be either descriptive or inferential, or both. In particular, descriptive research may provide us all the information needed in order to examine the object(s) of our comparison, and inferential research can show us the causal relationships behind a given problem.

Then, we can ask ourselves whether dividing the two methods in a theoretical (quantitative) versus theoretical (qualitative) analysis can be good divide. The answer is already implied in our previous analysis. That would not be the case. The empirical paradigm, which relies on both the designs, encompasses theories as well as methods⁹⁵. Any numerical analysis needs a theoretical underpinning, and any theory needs at least some data in order to be falsified.

We can now ask ourselves whether a more factual element like the size of the sample can be useful in order to discern between the two. That is again not the case. Indeed, in comparative studies (albeit this may seem counterintuitive) the size of the sample is always destined to remain relatively small, and reliable general patterns may not be evident despite measuring almost any of the available units of observation. This is the

⁹⁵ L. Epstein, A. Martin, *An introduction to empirical legal research*, Oxford University Press, 2014, p. 1.

reason why, in order to be able to establish robust causal relationships advanced tools are almost always necessary⁹⁶.

So, in the end, what is the empirical comparative studies' main feature? The answer is given to us by Arthur Conan Doyle in *The Adventure of the Copper Beeches*: “Data! Data! Data! I can't make bricks without clay!”.

Data are thus the distinctive feature of empirical comparative law, as well as the basis upon which the design of a given research is based, both *ex ante* (depending on their availability) and *ex post* (as of their results). Data indeed represents both the testing tool for theoretical hypotheses and their final evidence.

One common belief for not establishing a sound empirical methodology of comparative legal studies is that they would require data which are not available or are qualitatively too weak⁹⁷. This is another false myth which shall be immediately uncovered.

Plainly put: the systemic lack of data for comparative analysis is a false problem. First, all data accumulated in the past with the extensive researches on *grands systèmes* are available and can be of great help, also in a diachronic perspective. Second, we now have all the technical tools and

⁹⁶ M. Siems, *Comparative Law*, Cambridge University Press, 2014

⁹⁷ Also in regard to weak data, see *infra*.

the information flows needed to collect massive quantities of data (the so called and overhyped “big data”). Third, nowadays data are often available for free, and even in case they are not, they can be traded, as a robust market for data⁹⁸ exists.

Notwithstanding, it can be conceded that sometimes data might not be available for many units of observation (*id est* countries, regions or topics) and this is certainly an issue to be taken into due account⁹⁹.

Indeed, the major danger is that the availability of data “*determines what we as scholars can actually study*”¹⁰⁰, and this is certainly risky¹⁰¹.

Having briefly outlined our general framework, we shall now review the features, pitfalls and potentials of the two methods for the study of comparative law. We will first address the qualitative method because as it is the most traditional for legal analysis, and then the quantitative, which is considered to be more progressive.

⁹⁸ E. Warren, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 1 Wisc. Law Rev., 2002, p. 3.

⁹⁹ H. Spamann, *Empirical comparative law*, 11 Annual Review of Law and Social Science, forthcoming 2015, p. 2.

¹⁰⁰ P. Lepaulle, *The Function of Comparative Law*, 35 Harvard Law Review 838, 1921-1922.

¹⁰¹ Also on this topic, see *infra*.

We will then see how triangulation¹⁰², methods mixing and interdisciplinary cherry-picking can play a key role in building an integrated infrastructure of empirical comparative studies.

The main claim of this chapter is that comparative scholar will find its long craved methodology by identifying itself in a true *Janus Bifrons*, the two-headed roman god which makes of unity within separation its strength.

Indeed, the multilayered complementariness of the qualitative and quantitative *capita* will be able to generate a scholarship which gains theoretical perspective via integrating itself with observational evidence so to reinforce the idea of comparative law as a science¹⁰³.

This approach, however, is not called for in order to replace “traditional” comparative law (which as a subject stands apart from the methods that we use for assessing it) but rather to tackle and strengthen it on a different methodological premise.

In this view, the use of both methods, in particular the less travelled quantitative one, shall be not be intended as alternative to a traditional

¹⁰² The term “triangulation” designates the combination of quantitative and qualitative methodologies used to supplement, enhance and test the validity of the results in the study of the same phenomenon, moving from the assumption that any inherent bias would be canceled out. For an in-depth analysis see N. Denzin, *Triangulation 2.0*, 6.2 Journal of Mixed Methods Research 80-88, 2012.

¹⁰³ H. Chodosh, *Comparing comparisons: in search of methodology*, 84 Iowa L. Rev. 1025, 1998-1999.

study of comparative law, but rather as one of its extensions. We are about to discover why and how.

II. QUALITATIVE METHODS

As anticipated, this paragraph will briefly review and highlight some of the main features, potentials and pitfalls of qualitative studies, drawing a parallelism with quantitative whenever be useful.

The key point and main contention of this paragraph is that the inner nature of qualitative analysis in comparative studies is their ability to provide a foundation for an integrated analysis.

As anticipated, qualitative analysis is the analysis typically performed by “*traditional*” comparative legal scholars. Therefore, in our investigation, we will discuss it first.

The first self-evident feature of what goes into the hotchpotch of qualitative analysis, is that it is mainly built on logic and verbal reasoning. This feature gives to the researcher the opportunity to indulge in dialogical, historical and sociological digressions. Notwithstanding what above, especially in recent times, qualitative research design has also been built upon numerical¹⁰⁴ premises¹⁰⁵. Realism, especially at the end of the

¹⁰⁴ J. Maxwell, *op. cit.*.

last Century, supported the idea that the use of quantitative evidence in comparative works could have been the only way for building an objective, perfectly measurable and aseptic scholarship, able to provide a sound explanation for every *iota* of the legal world. Something a little bit too optimistic, maybe.

In contrast, traditional comparative scholars found that their reasoning was perfectly grounded on scientific premises and saw no need for complementing their findings with quantitative alchemy.

In addition, they often transferred their own ideologies in their writings, making it carefully to avoid the employment of quantitative tool because (generally) less maneuverable¹⁰⁶.

On technical grounds, reliable and complete datasets were also very difficult to be obtained. In more recent times, however, there has been an attempt by some traditional researchers to make qualitative research

¹⁰⁵ Nonetheless, this methodological stream has always been considered (at least) controversial by the mainstream doctrine.

¹⁰⁶ On the other side, we shall not forget that “*When qualitative researchers do publish politically uncomfortable results, a common response is to argue that because these results are not numerical, they are, therefore, “anecdotal,” and can be dismissed*”. J. Maxwell, *op. cit.*, p. 475.

scientific by imposing themselves measurements and benchmarks¹⁰⁷, thus supporting the inclusion of numbers their research.

The initial mistrust can be contrasted with another consideration: it is likewise shocking that for such a long time it has been believed that a single case, albeit representative of a certain tendency, could rise to a generalizable conclusion. Mere speculations based on single laws or judgments, which are deprived of any empirical evidence, frequency or pattern serve indeed almost to nothing more than filling academic reviews with wasted ink.

In addition, it can be said that comparing all the countries on a qualitative basis might be a daunting enterprise as much as trying to operate quantitatively even in a world where the players of the game are a finite and relatively small number, since data availability might be (and often is) a problem for some of them¹⁰⁸.

Therefore, the “N-players” problem plays a fundamental role in the research design to be selected by the researcher.

¹⁰⁷ G. King, R. Keohane, S. Verba, *Designing social inquiry: Scientific inference in qualitative research*, Princeton University Press, 1994.

¹⁰⁸ Certain states might have disappeared, other might be in transition, other might not exert an effective control on their territories and population.

On the other side, however daunting the task, the existence of a relatively small number of players advantages an observational study.

In fact, the ideal of empiricism in comparative studies would be to possess detailed observations on all the subjects of a given study in order to be able to proceed to an atomistic comparison. However, this level is credibly not attainable. And indeed, we have anticipated that it is not the size of the sample which constitutes the line of demarcation between empirical and not empirical scholarship.

From these premises, it can already be inferred that a comparative scholarship characterized by qualitative research only would be severely limited: the scholar might only conduct few in-depth analyses and might miss the big picture, thus ending up not being able to provide a sound general explanation or, worst of the cases, grounding his findings on the explanation given to individual cases, hence assigning a particular weight to outlier observations.

On the other side, the analysis of single countries can provide counterexamples of what resembles a necessary causal relationship¹⁰⁹.

This being sad, it appears that the main use of the qualitative tradition in comparative legal studies is mostly suited for case studies rather than for

¹⁰⁹ H. Spamann, *Empirical comparative law*, 11 Annual Review of Law and Social Science, forthcoming 2015.

cross-case analysis, which comes instead of help when analyzing central tendencies¹¹⁰.

Case studies have indeed advantages that cannot be easily replicated when large samples are used, since the former allow for a better degree of knowledge regarding context-specific attributes¹¹¹ that may be less relevant (or completely irrelevant) in the latter. Moreover, they are less dependent on the availability of data.

From the perspective of comparative law methodology case studies also have the distinct advantage of accounting for the fact that different legal systems may address the same problem in different ways: “*by simply asking whether a particular legal provision exists or does not exist in another legal system, large*

¹¹⁰ For a general discussion, see once again G. Goertz, J. Mahoney, *A tale of two cultures: Qualitative and quantitative research in the social sciences*, Princeton University Press, 2012.

¹¹¹ According to H. Chodosh, *Comparing Comparisons: In Search of Methodology*, 84 Iowa L. Rev. 1025, 1998-1999, “*Many disagreements can emerge from the choice of comparative variables. Any two or more phenomena may have a multiplicity of potentially comparable attributes. It may be neither desirable nor practical to compare all of these attributes simultaneously, if at all. Therefore, it is reasonable that comparisons are commonly more selective than configurative. Comparisons tend to focus on a particular subset of variables, while ignoring others. Notwithstanding their significance, these comparative variable choices are infrequently explained or justified*”.

*n-studies commits what is regarded as a cardinal error in comparative institutional analysis: they assume that there is only a single solution to a problem*¹¹².

Indeed, the same question might be solved in different identically-functional ways by every single legal system.

Case studies also do not require the researcher to identify a single parameter, variable or benchmark for all the objects of its study countries (such as time, languages, spaces), yet keeping a certain degree of confidence in general comparability.

This constitutes also a challenge, since “*the findings from qualitative work tend to be less generalizable because they are context specific*”¹¹³ and may detect “*causal and other explanatory mechanisms that statistical correlation cannot capture*”¹¹⁴.

Without such mechanisms, “*anecdotal evidence supplies a risky foundation upon which to form generalizations*”¹¹⁵.

¹¹² K. Pistor, *Rethinking the Law and Finance Paradigm*, *BYU L. Rev.*, 1647, 2009, p. 1664.

¹¹³ G. Shaffer, T. Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 *Am. J. of Int'l Law* 1, 2012.

¹¹⁴ J. Goldsmith, A. Vermeule, *Empirical methodology and legal scholarship*, *Un. Chic. L. Rev.* 153-167, 2002.

¹¹⁵ M. Heise, *The Importance of Being Empirical*, 26 *Pepp. L. Rev.* 807, 1998.

The last disadvantage of qualitative studies over quantitative is that they cannot be replicated¹¹⁶ and therefore checked.

Concluding on qualitative analysis, we must register that this method cannot stand *per se*, *in se* and *ex se*, but must be used as a foundation for quantitative analysis, which – as we will see in a moment – is currently benefiting of all the technical refinements and funding opportunities connected with data gathering and analysis.

Qualitative work is thus important for generating theories which can be tested on quantitative grounds, without losing of sight the dynamics of social contexts. However, as we will see thereafter, triangulation, methods mixing and interdisciplinary cherry picking will enable the researcher to “*compare different kinds of data from different sources to see whether they corroborate each other*”¹¹⁷.

¹¹⁶ T. Jick, *Mixing qualitative and quantitative methods: Triangulation in action*, Administrative Science Quarterly 602-611, 1979.

¹¹⁷ G. Shaffer, T. Ginsburg, *op. cit.*.

III. QUANTITATIVE METHODS

A slightly longer passage is needed in order to address the issues related to quantitative analysis. That “*legal systems depend heavily on useful numbers and calculations*”¹¹⁸, does not come as a surprise.

Legal systems are indeed filled with quantification (damages, penalties, years of conviction). Therefore the reliance of legal systems upon measurement is self-evident. Quantitative legal analysis comes out in various flavors, some harder (causal inference), some lighter (descriptive statistics), and quantitative methods¹¹⁹ such as statistic and econometrics characterizes themselves by definition as tools of cross-case analysis, juxtaposed to within-case analysis, which – as we have seen above - involves the analysis of individual observations¹²⁰.

However, a fundamental caveat towards quantitative analysis is immediately necessary. We are prone to believe that empirical scholarship can more easily discern the normative from the descriptive and yet

¹¹⁸ R. Hastie, *The Challenge to Produce Useful “Legal Numbers”*, 8.1 Journal of Empirical Legal Studies 6-20, 2011.

¹¹⁹ For a review of the features of quantitative methods, once again see G. Goertz, J. Mahoney, *op. cit.*.

¹²⁰ Quantitative approaches will therefore (generally) be a little more suitable for addressing macro-questions.

maintain its neutrality. However, in the own fortunate words of one the forefathers of Law and Economics , one can “*torture the data, and it will confess to anything*”¹²¹.

This is true under many aspects. First of all, the aspect of measurement (i.e. the comparison of a given object with some predetermined standard).

One first difficulty stems from the fact that we have to learn how to measure and then fix an appropriate unit of measurement¹²², thereafter conceptualizing our measure so that it can capture the underlying data.

Indeed, the same measure which we take as a benchmark, indicator¹²³ or parameter means nothing unless we assign it a certain value. Before that, “*everything about the object of study is lost except the dimension or dimensions being measured*”¹²⁴.

¹²¹ Ronald Coase, as cited in G. Tullock, *A Comment on Daniel Klein's 'A Plea to Economists Who Favor Liberty'*, Eastern Economic Journal, 2001.

¹²² “*Although numerical summaries can be convenient and concise, and are by definition precise, measurement need not involve numbers- as is often the case in qualitative research. Categorizations, such as "tall," "medium," and "short," or "Catholic," "Protestant," and "Jewish," are reasonable measures that can be very useful, assuming researchers sufficiently define the standard for measurement so that they (or others) can unambiguously apply it*” L. Epstein, G. King, *op. cit.*.

¹²³ *Id est*, quantitative measures of the performance of legal systems K. Davis, *Legal indicators: the power of quantitative measures of law*, 10 Annual Review of Law and Social Science 37-52, 2014.

¹²⁴ L. Epstein, A. Martin, *op. cit.*.

Assigning values determines however that we abstract to a certain extent. When we do it, however, it becomes unavoidable our research question becomes “*lightly or heavily scented with the values of those whose hands who are on the switch*”¹²⁵. How can we then be sure that such measure stays reliable and valid¹²⁶? The concepts of reliability, equitability and predictability in relation to “legal numbers” can be tricky, and has up to now being an untraveled venture.

This is really unfortunate, since establishing an appropriate measure entails careful measurement procedures and attention on the quality of the produced numbers.¹²⁷

Therefore, the problem stands also in bringing the right metrics to the law: the better the measure, the stronger the conclusions which we can infer. The difficulty for comparative scholars in designing and collecting consistent measurements has been well recognized because of the earlier failures in collecting and coding the data.

¹²⁵ L. Friedman, *The Law and Society Movement* Author, 38 *Stan. Law Rev.* 3, 1986, p 763.

¹²⁶ For a general discussion on reliability and validity, see L. Epstein, G. King, *op. cit.*

¹²⁷ R. Hastie, *op. cit.*.

In particular, coding is the process of transforming the attributes and properties of observations into standardized, analyzable forms able to achieve “*a close fit between the facts and the concept (validity) in a reproducible, consistent manner (reliability)*”¹²⁸. Of course, there are different methods for sampling and coding data. This gives a hint of the fact that coding law is always bound to a certain degree of subjectivity, in particular when it involves different legal systems as the comparative scholarship.

This construction not shared by every author. Some argue that another caveat in the use of quantitative methods is related to hidden biases.¹²⁹ Researchers may well (consciously or unconsciously) look for the observations that best fit their theories, thus creating a procrustean bed’s problem.

Another serious concern relates to weak data, *id est* data which encourage weak or flawed inferences, that are statistically insignificant, or that are of extremely limited value and may be therefore misused. And this raises a second-level question: what if weak data are the only one which can be

¹²⁸ H. Spamann, *op. cit.*.

¹²⁹ “*In addition, qualitative work may be viewed as untrustworthy because it reflects the normative predispositions of the observer or those the researcher interviews*”. G. Shaffer, T. Ginsburg, *op. cit.*. See also B. Geddes, *How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics*, 2 Pol. Analysis 131, 1990.

extrapolated from the available resources? Some argue that such data shall be nonetheless reported, because should they prove consistent with other more grounded data, obtaining a double proof might always be useful¹³⁰.

Another tricky question is, as an example, whether optional rules shall be included in the analysis or not (thus counting only default and mandatory rules)¹³¹.

Another danger is that of reducing potential evidence to the amount of collected evidence. This aspect may be certainly critical for drawing the correct conclusions.

Finally, a last caveat shall be raised against the rhetorical use of numbers, directed to making a claim appear more rigorous than it actually is. This may well happen also when we restrict our analysis to a given point in time, which may only reveal short-term trends.

¹³⁰ “*Sometimes reporting weak or preliminary data can spur further, more solid research. This may outweigh concerns about potential misunderstandings of the data. And sometimes weak data is just one data point among many. Then, the risk that the data will be misused is smaller*”, in D. Schwartz, *Should Empirical Legal Scholars Have Special Responsibilities?*, <http://concurringopinions.com>, May 8, 2013.

¹³¹ On this specific question, one can argue that optional rules shall be taken into account when analyzing a given system because they are available to the “consumer”, *id est* the users.

Coming to the advantages of quantitative methods, we can immediately report that these are able to process large amounts of data, immediately “*narrowing down the set of plausible theories*”¹³².

They can also be aggregated and disaggregated¹³³ at the different levels needed (as an example, at a micro or macro level¹³⁴). Aggregated data will therefore identify hidden patterns¹³⁵ and suggest generalizable conclusions, whereas disaggregated data may serve for subgroups of observations. Data can be engineered both for comparing the policies of a number of countries, and for measuring the reaction of economic agents to exogenous changes in legislation¹³⁶.

Additionally, numbers typically add precision to statements¹³⁷ testing hypotheses against large datasets with refined techniques which may be

¹³² H. Spamann, *op. cit.*.

¹³³ However, this is not always possible.

¹³⁴ Analysis at macro or micro level shall not be confused with the analysis public or private comparative law.

¹³⁵ W. Firestone, *Meaning in method: The rhetoric of quantitative and qualitative research*, 16.7 Educational researcher 16-21, 1987.

¹³⁶ B. Luppi, F. Parisi, *Quantitative Methods in Comparative Law*, in Minnesota Legal Studies Research Paper, 2012.

¹³⁷ “*However, they do this at the cost of stripping away everything but the quantitative information and are thus necessarily complementary to qualitative information rather than substituting for it*”, see J. Maxwell, *op. cit.*.

unavoidable in order to establish robust causal relationships¹³⁸. All in all, “*numbers provide less shelter than words*”¹³⁹. What is more, differently from data obtained via qualitative methods, quantitative data present the advantage of being replicable¹⁴⁰.

Lastly, they have an easier stand for communicability, as they are a standardized form of evidence.

IV. TRIANGULATION, METHODS MIXING AND INTERDISCIPLINARY CHERRY-PICKING.

In our review of the features, pitfalls and potentials of qualitative and quantitative methods, we have highlighted that much of the analysis to be conducted depends on the question to be assessed, which in turn is influenced by the availability of data.

In order to build an integrated infrastructure of empirical comparative studies, comparative scholars may resort to different integrated techniques

¹³⁸ M. Siems, *Comparative Law*, Cambridge University Press, 2014.

¹³⁹ M. Heise, *The Importance of Being Empirical*, 26 Pepp. L. Rev. 807, 1998.

¹⁴⁰ G. Mitchell, *Empirical legal scholarship as scientific dialogue*, 83 North Carol. Law Rev., 2004.

such as triangulation¹⁴¹, *id est* the “*employment of multiple methods and data sources in order to enhance the validity of findings*”¹⁴², methods mixing, *id est* the combination of qualitative and quantitative tools to various degrees and interdisciplinary cherry-picking, *id est* the use of tools and techniques borrowed from other disciplines.

As said above, a first opportunity available to comparative scholars for an improvement of the validity of their findings is triangulation. This method allows the researcher to cross-test its findings and thus cancel out potential biases and dismiss rival explanations. The result is that the validity of findings is self-reinforced via different processes.

Methods mixing¹⁴³, as we have highlighted above, is instead valuable especially for multilayered analyses: qualitative studies suit as a foundation to quantitative studies, which in turn gives breadth to the former and

¹⁴¹ The concept of triangulation was first introduced in a paper published by Webb et al. in 1966 and then extensively discussed in 1978 by Denzin. According to Denzin, triangulation comes in four forms: data triangulation, investigator triangulation, theoretical triangulation and methodological triangulation.

¹⁴² S. Mathison, *Why triangulate?*, 17.2 Educational researcher 13-17, 1988.

¹⁴³ With regard to mixing methods, see J. Greene, *Engaging critical issues in social inquiry by mixing methods*, 56.6 American Behavioral Scientist 755-773, 2012. K. Howe, M. Eisenhart, *Standards for qualitative (and quantitative) research: a prolegomenon*, 19.4 Educational researcher 2-9, 1990; T. Jick, *Mixing qualitative and quantitative methods: Triangulation in action*, Administrative Science Quarterly 602-611, 1979.

provide valuable tools for defining the variables needed for testing and controlling for the hypotheses, finally synthesizing the findings in a generalizable, logically coherent, theory¹⁴⁴.

This methodological dialogue resulting from the overlapping of traditions on the one side generates a deeper understanding of social phenomena, and on the other side assures that the scholar can go fishing into teeming waters.

Indeed, generating research on the sole basis of looming questions discounts an high risk of answering to useless questions, which is like on the one side having stockpiles of ink without a tool for making use of it, while on the other side having a fancy pen without ink.

Lastly, interdisciplinary cherry-picking can be useful in that it allows the scholar to selectively borrow useful tools from other fields and readapt them to the needs of her scholarship.

In the end, “[...] *it would be unfortunate in this field to reproduce the hierarchies of methodology that have plagued other disciplines like sociology and political science*”¹⁴⁵.

¹⁴⁴ See H. Brady, D. Collier (eds.), *Rethinking social inquiry: diverse tools, shared standards*, 2010; H. Chodosh, *Comparing Comparisons: In Search of Methodology*, 84 Iowa L. Rev. 1025, 1998-1999; G. King, R. Keohane, S. Verba, *Designing social inquiry: Scientific inference in qualitative research*, Princeton University Press, 1994.

Nonetheless, triangulation, methods mixing and interdisciplinary cherry-picking have their own problems, the main one being that in order to be practiced, they require expertise in the respective techniques. And this is the reason why the on methodological grounds empirical comparative legal scholar shall become a Janus Bifrons.

V. JANUS BIFRONS

We shall shore ourselves out of the tyranny of single methods: empirical comparative analysis needs support from both *capita* of the same coin¹⁴⁶, which (at least in comparative legal studies) have always been unfortunately considered as separate and conflicting¹⁴⁷.

In recent times H. Brady and D. Collier have depicted the general status of legal empiricism as follows: “*the past decades have seen the emergence of an impressive spectrum of new techniques from quantitative analysis as well as strong resurgence of interest in developing and further refining the tools of qualitative*

¹⁴⁵ Comment posted by by L. Nielsen on Robert Nelson’s article on *Combining Quantitative and Qualitative Methods in Socio-legal Research*, <http://www.elsblog.org>, 22 June 2006.

¹⁴⁶ In this sense, see W. Twining, *The Idea of Juristic Method: A Tribute to Karl Llewellyn*, 48 U. Miami L. Rev. 119, 1993.

¹⁴⁷ See V. Palmer, *op. cit.*. M. Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 Til. Eur. & Civ. L. F. 49, 1996.

research¹⁴⁸. The empirical turn of legal analysis thus aligns with a credibility revolution¹⁴⁹ in empirical economics, which is focused on research designs¹⁵⁰.

It is therefore expected that now more than ever in the past, there should be a methodological dialogue between the two, directed towards their reunion under an empirical agenda aimed at rebutting the idea that in social sciences “*there is not a set of principles that unifies scientific work*”¹⁵¹ and foster cooperation between colleagues with different skills and traditions, in the consciousness that not all of the analytical goals of the legal comparative enterprise can be achieved simultaneously by simply “*putting qualitative flesh on quantitative bones*”¹⁵² and vice versa. Indeed, every discipline has specific methodological problems which are “*unique to the*

¹⁴⁸ H. Brady, D. Collier (eds.), *Rethinking social inquiry: diverse tools, shared standards*, 2010, p. 125. See also G. Shaffer, T. Ginsburg, *op. cit.*; U. Mattei, A. Monti, *Comparative Law and Economics: Borrowing and Resistance*, 1.2 Global Jurist Frontiers, 2001.

¹⁴⁹ J. Angrist, J.-S. Pischke, *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 J. Econ. Persp. 3, 2010.

¹⁵⁰ See also J. Gelbach, J. Klick, *Empirical Law and Economics*, 2014.

¹⁵¹ G. Goertz, J. Mahoney, *op. cit.*, p. 220.

¹⁵² H. Brady, D. Collier (eds.), *Rethinking social inquiry: diverse tools, shared standards*, 2010, p. 106.

*special concerns in that area*¹⁵³. Comparative law makes no exception. Therefore, integration requires the modification to a certain extent of the methods which have been used up to now, with the primary end of producing testable predictions for the falsification of logically deductible theories.

In this way, comparative law will be able to regenerate itself and find unexplored corners of law or corners to be enlightened in a different way in order to reexamine previously inferred theories: “*the list of legal research questions that would benefit from empirical analysis already staggers and continues to grow*”¹⁵⁴.

We shall now ask ourselves what are our frontiers and our goals, but first we need to rest from our journey. The caravanserai is finally waiting for us.

¹⁵³ H. Kritzer, *The (nearly) forgotten early empirical legal research* in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010, p. 902.

¹⁵⁴ M. Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, U. Ill. L. Rev., 2002, p. 827.

CHAPTER III

AT THE CARAVANSERAI: FRONTIERS AND GOALS OF EMPIRICAL COMPARATIVE LAW

SUMMARY: I. At the caravanserai. - II. Frontiers - III. -An “ideal” law? - IV. Understanding, reform and unification. - V. The empirical comparative scholar: *homo universalis*.

I. AT THE CARAVANSERAI

Our journey through the emerging empirical comparative literature led us to an intermediate destination, which can also be regarded as the new starting point from which to resume the analysis. Like the caravans in the desert we shall now rest a bit from our travel: the caravanserai is waiting for us.

At this point, it should be already clear that the empirical comparative enterprise cannot be taken with a “*just do it*” versus “*just don’t*” do it approach¹⁵⁵.

¹⁵⁵ “Economists, as well as other social scientists, have also tried to measure legal rules and institutions. Their approach is often a ‘*just do it*’ one, implicitly assuming that the complexity of the law does not prevent it from being turned into numbers. Many legal academics, by contrast, have the attitude of ‘*just don’t do it*’, for instance, bluntly saying that ‘*law is about things that are not quantifiable*’”. M. Siems, *Measuring the Immeasurable: How to Turn Law into Numbers*, in M. Faure, J. Smits (eds.) *Does law matter? On law and economic growth*, Intersentia, 2011.

The scholarship must 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: simply put, it is not. Empirical analysis is not the promised land of comparative scholars.

Many will happily keep running the traditional analysis that they have been conducting for many of their academic years.

Yet, empirical comparative studies may humbly serve to those who want to take advantage of technology and update their methodological toolkits, employing the new tools which allow us to inject life into what we had considered a byproduct of traditional research, data, as well as into the older blunt tools of the past. This is light of enabling the scholars to deal with a brand new wide array of open questions which can serve as a methodological guide towards a better understanding, reform and unification.

II. FRONTIERS

We have now reached the pillars of Hercules of the scholarship, and shall now briefly discuss (at least some) potential new directions. A first topic located at the frontiers of comparative empiricism there are longitudinal

studies. Our claim is that the analysis of comparative law has often missed one of its fundamental axes: time¹⁵⁶.

However, a diachronic perspective in empirical works becomes inevitable, as descriptive research necessarily deals with data that have been collected in some moment of the past¹⁵⁷ and, in ascertaining the effects of a given rule, explanatory research cannot disregard its evolution over time.

Nonetheless, too often comparative scholar have made use of cross sectional research, which just examines data at a single point in time. On the contrary, they have often neglected time series, which serve for contrasting the observed phenomenon over time, in order to find out its hidden patterns and trends and hence overcome the structural limitations of static models.

¹⁵⁶ For a brief discussion of the topic see R. Cooter, T. Ginsburg, *Why the same laws are longer in some countries than others*, U. Ill. Law & Econ. Research Paper LE 03-012, 2003, esp. p. 23 and 24.

¹⁵⁷ See D. Klerman, *Economic Analysis of Legal History*, in USC Class Research Paper No. 14-15, 2014; M. Siems, *Statistische Rechtsvergleichung*, in *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, 354-390, 2008, esp. p. 390.

A second topic regards the role of behavioral analysis, intended as the understanding of the mechanisms which regulate human behavior, especially in respect to judgment and decision making.

It has been correctly observed that comparative scholars are “*already capitalizing on research in behavioral economics by using this research’s insights on how people actually behave – as opposed to mere hypothesized behavior – as a basis for evaluating the effectiveness (or efficiency) of supranational rules or doctrines*”¹⁵⁸.

Therefore, it is relevant to ask ourselves whether (at least some) the methodological pitfalls of comparative law might be solved with the help of behavioral insights.

First of all, behavioral analysis can give us a better idea of the cultural variables embedded in human behavior at both a macro and a micro level and hence express measures which are more respondent to the needs of regulation (or de-regulation) than the synthetic variables employed by current empirical projects¹⁵⁹.

¹⁵⁸ J. DE CONINCK, *Reinvigorating Comparative Law through Behavioral Economics? A Cautiously Optimistic View*, 7.3 Review of Law & Economics, 2011, p. 712.

¹⁵⁹ See *supra*, chapter I, para. II.

Because of the fact that cultural variables are located outside of legal systems, they can also be considered more neutral and therefore provide an aseptic and reliable description of functional problems.

A third possible frontier is that of identifying field-specific tools¹⁶⁰ which can be especially suitable for comparative legal studies.

Tools that - moving from the consciousness that legal systems provide many different solutions to the same problem - will be able to identify functional equivalents and overcome the boundaries imposed by the knowledge of the researchers conducting the study¹⁶¹.

Lastly, it seems unavoidable the creation of an integrated jargon which deconstructs legal notions, assures that all of their founding elements are represented among the components¹⁶² and reduces terminological differences amongst jurisdictions by attributing a more pragmatic and uniform signification of the concepts being considered¹⁶³.

¹⁶⁰ On the need of which, see U. Mattei, A. Monti, *Comparative Law and Economics: Borrowing and Resistance*, 1.2 Global Jurist Frontiers, 2001.

¹⁶¹ K. Pistor, *Rethinking the Law and Finance Paradigm*, BYU L. Rev., 1647, 2009.

¹⁶² See J. Vanderlinden, *Comparer les droits*, Kluwer Belgique 1995.

¹⁶³ For a discussion of which see R. Sacco, *One Hundred Years of Comparative Law*, 75 Tulane Law Review, 2001.

III. AN “IDEAL” LAW?

Let us recall part of our previous cogitations. The consideration that different solutions are used in order to address functionally equivalent problems reveals us that, all in all, there is not a single best rule¹⁶⁴ which can fit all of the legal systems into which it is imported.

As different countries make use of different metrics (kilograms and pounds; meters and yards), and yet manage to trade with each other at a global level, it is likewise not necessary that a single measure is established in respect to all the countries for comparisons to take place.

Indeed, a one-sized model which can be used for each country does not exist. Even if we formulate a given problem in the most neutral of possible languages, still we cannot obtain an universally workable single solution. This is because most of the questions are contingent to the spatial and temporal framework within which they emerge¹⁶⁵.

¹⁶⁴ B. Luppi, F. Parisi, *Quantitative Methods in Comparative Law*, in Minnesota Legal Studies Research Paper, 2012.

¹⁶⁵ R. Michaels, *The Second Wave of Comparative Law and Economics?*, 59 University of Toronto Law Journal 2, 197-213, 2009, p. 204.

Certainly, a *good* rule may be identified from the fact that it remains in force: legal systems perpetuate the selection of increasingly more efficient rules¹⁶⁶.

Efficiency, however, is just one the possible benchmarks (or *tertia comparationis*¹⁶⁷), against to which different legal systems can be measured¹⁶⁸.

By using efficiency as a benchmark, we can isolate the variables which contribute to or detract from the relative efficiency of those systems and solutions, and discuss the benefits or drawbacks of those variables¹⁶⁹ in order to develop a model, test and falsify it.

¹⁶⁶ F. Parisi, V. Fon, *The economics of lawmaking*, Oxford University Press, 2009, p. 97.

¹⁶⁷ Other Authors such as Chodosh, *op. cit.*, p. 1107, use prototypes of law as “*efficient tertia comparationis*”.

¹⁶⁸ According to K. Pistor, *Rethinking the Law and Finance Paradigm*, *BYU L. Rev.*, 1647, 2009, “*by simply asking whether a particular legal provision exists or does not stem, large n-studies commit what is widely regarded as a cardinal error in comparative institutional analysis: they assume that there is only a single solution to a problem*”. See also N. Jansen, *Comparative Law and Comparative Knowledge*, in Mathias Reimann & Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law*, 2006, p. 305.

¹⁶⁹ C. Rogers, *Gulliver's Troubled Travels, or the Conundrum of Comparative Law*, 67 *George Washington Law Review* 149, 1998.

Comparative scholarship can also assess the performance of legal rules on the basis of alternative criteria. For example, an hypothetical polarity can be created in relation to the concept of fairness¹⁷⁰.

The same meaning of *fair* remains of course more than debatable. However, the main point of this construction would be to link the ideal optimum to moral values more than to economic notions¹⁷¹.

IV. UNDERSTANDING, UNIFICATION AND REFORM

The reflection on fairness outlined above makes us aware of another necessary aspect of empirical comparative research, is to say that it embeds

¹⁷⁰ For an analysis of fairness in law and economics, see L. Fennell, R. McAdams, *Fairness in Law and Economics: Introduction*, in *Fairness in Law and Economics* (Lee Anne Fennell and Richard H. McAdams eds.), Edward Elgar, 2013 and T. Ulen, *Law and economics, the moral limits of the market, and threshold deontology*, in *Law and Economics: Philosophical Issues and Fundamental Questions*, 2015.

¹⁷¹ For a discussion of values in comparative law see J.B. Fischman, *Reuniting 'Is' And 'Ought' In Empirical Legal Scholarship* in *University of Pennsylvania Law Review*, 162(1), 2013, p. 158: “*In any of these pursuits, however, the importance of the research must be assessed by reference to values. This is not to say that empiricists must personally take controversial positions in normative debates; one can acknowledge the viewpoints held by others without endorsing them. It is not too much to ask, however, that empirical research proceed in a conscious recognition of the values it intends to serve, and that scholars make efforts to clarify how their findings relate to the values that motivated their research*”.

a certain degree of political ideology¹⁷²: indeed, institutions can influence the outcome of comparative research by “*placing constraints on what can be done [...], persuading researchers to undertake only policy relevant research, that is defining the problem in terms seen as appropriate by the dominant institution; and requiring research findings to be expressed in terms of variables over which the institution has a measure of control*”¹⁷³.

The self-reinforcing spiral from institutions to legal rules and from rules to institutions exerts a considerable potential in influencing public policy¹⁷⁴.

The willingness to climb a ranking can lead to dangerous race to the bottom among countries, carried out by means of wrong or useless reforms, which may well end up in neglecting the real needs of a definite

¹⁷² “*Empirical law and economics can provide a useful guidance for the calibration of policies and the design of legal institutions*”, see B. Luppi, F. Parisi, *Quantitative Methods in Comparative Law*, in Minnesota Legal Studies Research Paper, 2012. See also M. McConville, *Development of empirical techniques and theory in research methods for law*, in M. McConville, W Chui (eds.), *Research methods for law*, Edinburgh University Press, 2010, esp. p. 224 and M. Heise, *The Importance of Being Empirical*, 26 *Pepp. L. Rev.* 807, 1998.

¹⁷³ See M. McConville, *Development of empirical techniques and theory in research methods for law*, in M. McConville, W Chui (eds.), *Research methods for law*, Edinburgh University Press, 2010, esp. p. 213.

¹⁷⁴ L. Gordon, *The Empiricists Legal Scholars at the Forefront of Data-Based Research*, 2010, <https://stanfordlawyer.law.stanford.edu/2010/05/the-empiricists>.

legal system, as it has been the case for certain aspects of the *Doing Business* reports¹⁷⁵.

The empirical comparative scholarship shall therefore aim towards (i) a better understanding of *status quos* ; (ii) a reduction of the differences of legal concepts, ideally directed to their unification and (iii) a series of reforms ameliorative of legal systems¹⁷⁶.

V. THE EMPIRICAL COMPARATIVE SCHOLAR: HOMO UNIVERSALIS

Comparative legal scholars shall therefore assume a subversive role in respect to the legal establishment¹⁷⁷ both with regard to the means and ends they advocate for, and both with regard to their approach to the scholarship.

¹⁷⁵ See *supra*, chapter I, para. II. See also M. Siems, *Statistische Rechtsvergleichung*, in *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, 354-390, 2008, esp. p. 390.

¹⁷⁶ Since these three goals are conceptually autonomous, they may also be pursued independently of each another.

¹⁷⁷ G. Fletcher, *Comparative Law as a Subversive Discipline*, in *Am. J. Comp. Law*, 683-700, 1998.

They shall (re)gain a role of social engineers¹⁷⁸, developing an integrated methodology built upon synergism between different disciplines. In the future, comparative scholars will be able to justify their existence as a species only and if they will be able to better their understanding of the world as it is and as it ought to be.

This is not an easy task: nowadays we live in a world which presents many more complexities than it used to be in the past.

Therefore, scholars must soak into themselves the basic tenet which characterized humanist academia during Renaissance: the construction of an *homo universalis*. One who delves into complex bodies of knowledge with an unquenchable thirst for knowledge and an imaginative mind. A scholar who goes takes on his shoulders a rounded education in order to achieve the polymathic traits which enable 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.

¹⁷⁸ R. Pardolesi, M. Granieri, *The Future of Law Professors and Comparative Law*, in *The Digest*. National Italian American Bar Association Law Journal 1-26, 2013.

CONCLUSIONS

Finally, we note down the impressions of our journey. We can start with a quote which wraps it up pretty well: “*The new legal empiricism could yet falter and fade, as have other legal empiricism before it. The new legal empiricism could also triumph, emerging as both a dominant force within the legal academy and a valid, methodologically rigorous, and conceptually rich social science in its own right. Or the new legal empiricism could become a niche venture*”¹⁷⁹. A plain truth.

In sum, this work has highlighted the hand protruded by empiricism to comparative legal studies - by nature an anti-dogmatic enterprise¹⁸⁰ -in order for them to regain traction as an autonomous scholarship. Notwithstanding, this work has also given accounts of the limitations of the armchair empiricism fostered by “*the new almighty producers of global law, the international institutions of global governance*”¹⁸¹.

Also, it has reported the uncertainties shadowing its methodologies and goals. Empirical scholars shall thus beware of dogmatism in realist’s

¹⁷⁹ M. Suchman, E. Mertz, *A New Legal Empiricism? Assessing ELS and NLR*, in Annual Review of Law and Social Science Vol. 6, 2010.

¹⁸⁰ R. Pardolesi, M. Granieri, *The Future of Law Professors and Comparative Law*, in The Digest. National Italian American Bar Association Law Journal 1-26, 2013.

¹⁸¹ U. Mattei, A. Monti, *Comparative Law and Economics: Borrowing and Resistance*, 1.2 Global Jurist Frontiers, 2001, p. 15.

clothing, as data can lie (or be used for lying) and yet keep a glaze of plausibility.

Indeed, by way of empirical analysis scholars are now enabled to harmonize their theories with their observations, but must not forget that data have to be handled carefully in order to keep the analysis effective.

Therefore, the leading role in this enterprise does not rest on the scholarship, but rather on its scholars. It is up to them to crave for becoming polymaths in order to exert their dominion on sciences, and not let science exert its dominion on them.

How to do it effectively is suggested by a champion in the subversion of reactionary hegemonies: “*educate yourselves because we’ll need all our intelligence. Agitate because we’ll need all our enthusiasm. Organize yourselves because we’ll need all our strength.*”¹⁸².

Education, activism and organization: if the scholars will abide to these prescriptions, we are optimistic that also for comparative legal studies “*legal empiricism’s current incarnation will not merely survive; it will flourish*”¹⁸³.

¹⁸² A. Gramsci, *L’Ordine Nuovo*, I, 1 May 1919 (translated from Italian).

¹⁸³ M. Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, U. Ill. L. Rev., 2002, p. 849.

REFERENCES

- T. ALMEIDA CRAVO, *What's in a label? The aid community's representations of success and failure in Mozambique and Guinea-Bissau*, Ph.D. thesis, Cambridge University, 2012.
- J. ANGRIST, J.-S. PISCHKE, *Mastering Metrics: The Path from Cause to Effect*, Princeton University Press, 2014.
- J. ANGRIST, J.-S. PISCHKE, *The Credibility Revolution in Empirical Economics: How Better Research Design Is Taking the Con out of Econometrics*, 24 J. Econ. Persp. 3, 2010.
- M. ARMER, A. GRIMSHAW (eds.), *Comparative social research: methodological problems and strategies*, Wiley, 1973.
- P. ARMINJON, B. NOLDE, M. WOLFF, *Traité de Droit Comparé Tome I*, 1950.
- F. BEUTEL, *Some Potentialities of Experimental Jurisprudence as a New Branch of Social Science*. U. of Neb. Press, 1957.
- H. BRADY, D. COLLIER (eds.), *Rethinking social inquiry: diverse tools, shared standards*, 2010.
- H. BRADY, *Do Two Research Cultures Imply Two Scientific Paradigms?*, 46.2 Comp. Pol. Stud. 252-265, 2013.
- A. BRYMAN, *Social research methods*, Oxford University Press, 2012.
- M. BUSSANI, U. MATTEI (eds.) *Cambridge Companion To Comparative Law*, 2012.

S. CHEUNG, *Transaction Costs, Risk Aversion, and the Choice of Contractual Arrangements*, 22 *Journal of Law and Economics* 23, 1969.

P. CANE, H. KRITZER (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010.

B. CARDOZO, *The nature of the judicial process*, 1921.

L. CARSON, *Restoring Law in Comparative Law and Economics*, available at SSRN: <http://ssrn.com/abstract=2297660>.

J. CIOFFI, *Legal Regimes and Political Particularism: An Assessment of the Legal Families Theory from the Perspectives of Comparative Law and Political Economy*, *Byu L. Rev.* 1501, 2009.

Y. CHANG (ed.), *Empirical Legal Analysis: Assessing the Performance of Legal Institutions*, Routledge, 2013.

H. CHODOSH, *Comparing Comparisons: In Search of Methodology*, 84 *Iowa L. Rev.* 1025, 1998-1999.

W. COOK, *Scientific Method and the Law*, 13 *A.B.A. J.* 303, 1927.

R. COOTER AND T. GINSBURG, *Leximetrics: Why the Same Laws are Longer in Some Countries Than Others*, *U. Ill. Law & Econ. Research Paper LE 03-012*, 2003.

J. CRESWELL, *Research design: Qualitative and quantitative research approaches*, 1994.

ID., *Research design: Qualitative, quantitative, and mixed methods approaches*, Sage publications, 2013.

H. DAGAN, *Reconstructing American Legal Realism & Rethinking Private Law Theory*, Oxford University Press, 2013.

R. DAVID, *Traité élémentaire de droit civil comparé: introduction à l'étude des droits étrangers et la méthode comparative*, 1950.

K. DAVIS, *Legal indicators: the power of quantitative measures of law*, 10 *Annual Review of Law and Social Science* 37-52, 2014.

G. DE GEEST, R. VAN DEN BERGH (eds), *Comparative Law and Economics*, in *The International Library of Critical Writings in Economics* series, Cheltenham: Edward Elgar, 2004.

J. DE CONINCK, *Reinvigorating Comparative Law through Behavioral Economics? A Cautiously Optimistic View*, 7.3 *Review of Law & Economics* 711-736, 2011.

N. Denzin, *Triangulation 2.0*, 6.2 *Journal of Mixed Methods Research* 80-88, 2012.

U. DROBNIG, *Soziologische Forschungsmethoden in der Rechtsvergleichung* in *Rechtssoziologie und Rechtsvergleichung*, 1977.

T. DUNNING, *Natural experiments in the social sciences: a design-based approach*, Cambridge University Press, 2012.

F. EASTERBROOK, D. FISCHER, *The Economic Structure of Corporate Law*, Harvard University Press, 1991.

T. EISENBERG, *The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns*, Cornell Legal Studies Research Paper, 2010.

L. EPSTEIN, G. KING, *The rules of inference*, 69 U. Chi. L. Rev. 1, 2002.

ID., *Building an Infrastructure for Empirical Research in the Law*, 53 J. Legal Educ. 311, 2003.

L. EPSTEIN, A. MARTIN, *An introduction to empirical legal research*, Oxford University Press, 2014.

W. EWALD, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 U. PA. L. Rev. 1889, 1995.

L. FENNELL, R. MCADAMS, *Fairness in Law and Economics: Introduction*, in *Fairness in Law and Economics* (Lee Anne Fennell and Richard H. McAdams eds.), Edward Elgar, 2013.

P. FEYERABEND, *Against Method: Outline of an Anarchistic Theory of Knowledge*, Verso Edition, London, 1978.

J. FINSINGER, T. HOEHN, A. POTOTSCHNIG, *The Enforcement of Product Liability Rules: A Two-Country Analysis of Court Cases*, 11 International Review of Law and Economics 133, 1991.

W. FIRESTONE, *Meaning in method: The rhetoric of quantitative and qualitative research*, 16.7 Educational researcher 16-21, 1987.

J. FISCHMAN, *Reuniting 'Is' And 'Ought' In Empirical Legal Scholarship* in *University of Pennsylvania Law Review*, 162(1), 2013.

G. FLETCHER, *Comparative Law as a Subversive Discipline*, in *Am. J. Comp. Law*, 683-700, 1998.

L. FRIEDMAN, *The Law and Society Movement* Author, 38 *Stan. Law Rev.* 3, 1986, p 763.

J. FRANK, *Law and the modern mind*, Transaction Publishers, 1930.

D. GALLIGAN, *Legal Theory and Empirical Research* in *Oxford Handbook Of Empirical Legal Studies*, P. Cane, H. Kritzer (eds.), Oxford University Press, 2010.

N. GAROUPA, T. GINSBURG, *Economic Analysis and Comparative Law*, 2009.

N. GAROUPA, M. PARGENDLER, *A Law and Economics Perspective on Legal Families* in *The Methodologies of Law and Economics*, T. Ulen, ed., Edward Elgar, 2013.

N. GAROUPA, C. GÓMEZ LIGÜERRE, *The Syndrome of the Efficiency of the Common Law*, 29 *Bost. Un. Int. L. J.* 2, 2011.

B. GEDDES, *How the Cases You Choose Affect the Answers You Get: Selection Bias in Comparative Politics*, 2 *Pol. Analysis* 131, 1990.

J. GELBACH, J. KLICK, *Empirical Law and Economics*, 2014.

J. GERRING, *How good is good enough? A multidimensional, best-possible standard for research design*, 64.3 *Political Research Quarterly* 625-636, 2011.

J. GETMAN, *Contributions of Empirical Data to Legal Research*, 35 *J. Legal Educ.* 489, 1985.

M. GLENDON ET AL., *Comparative Legal Traditions*, 2d rev. ed., 1994.

G. GOERTZ, J. MAHONEY, *A tale of two cultures: Qualitative and quantitative research in the social sciences*, Princeton University Press, 2012.

L. GORDON, *The Empiricists Legal Scholars at the Forefront of data-Based Research*, 2010, stanfordlawyer.law.stanford.edu.

J. GOLDSMITH, A. VERMEULE, *Empirical methodology and legal scholarship*, Un. Chic. L. Rev. 153-167, 2002.

A. GRAMSCI, *L'Ordine Nuovo*, I, n. 1, 1 May 1919.

D. GREEN, D. THORLEY, *Field experimentation and the study of law and policy*, 10 Annual Review of Law and Social Science 53-72, 2014.

J. GREENE, *Engaging critical issues in social inquiry by mixing methods*, 56.6 American Behavioral Scientist 755-773, 2012.

V. GROSSWALD CURRAN, *Comparative Law and the Legal Origins Thesis: '[N] On Scholae Sed Vitae Discimus'*, 57 Am. J. of Comp. L., 2009.

G. HADFIELD, *The Second Wave of Law and Economics*, 46 U. Toronto L.J. 181, 1996.

R. HASTIE, *The Challenge to Produce Useful "Legal Numbers"*, 8.1 Journal of Empirical Legal Studies 6-20, 2011.

M. HEISE, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, U. Ill. L. Rev., 2002.

ID., *The Importance of Being Empirical*, 26 Pepp. L. Rev. 807, 1998.

N. HINES, *Empirical Scholarship: What Should We Study and How Should We Study It?*, AALS Newsletter, Feb. 2005.

R. HYLAND, *Evening in Lisbon*, in *Festschrift für Claus-Wilhelm Canaris zum 70 Geburtstag*, 2007.

D. HO, D. RUBIN, *Credible causal inference for empirical legal studies*, 7 Annual Review of Law and Social Science 17-40, 2011.

K. HOWE, M. EISENHART, *Standards for qualitative (and quantitative) research: a prolegomenon*, 19.4 Educational researcher 2-9, 1990.

N. JANSEN, *Comparative Law and Comparative Knowledge*, in Mathias Reimann & Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law*, 2006.

T. JICK, *Mixing qualitative and quantitative methods: Triangulation in action*, *Administrative Science Quarterly* 602-611, 1979.

G. KING, R. KEOHANE, S. VERBA, *Designing social inquiry: Scientific inference in qualitative research*, Princeton University Press, 1994.

D. KLERMAN, *Statistical and economic approaches to legal theory*, U. Ill. L. Rev., 2002.

ID., *Economic Analysis of Legal History*, USC Class Research Paper No. 14-15, 2014.

H. KÖTZ, *Abschied von der Rechtskreislehre?* [Farewell to the Theory of Legal Families?], 6 *Zeitschrift Für Europäisches Privatrecht* 493, 1998.

T. KREVER, *Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense*, 34 *Third World Quarterly* 2013.

H. KRITZER, *The (nearly) forgotten early empirical legal research* in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010.

T. KUHN, *The logic of scientific discovery*, University of Chicago Press; 2nd edition, 1970.

I. LAKATOS, *Criticism and the Growth of Knowledge*, 1970.

W. LANDES, *The Empirical Side of Law & Economics*, *U. Chi. L. Rev.*, 2003.

R. LA PORTA, F. LOPEZ-DE-SILANES, A. SHLEIFER, R. VISHNY, *Law and Finance*, 106 *Journal of Political Economy* 6, 1998.

R. LAWLESS, J. ROBBENNOLT, T. ULEN, *Empirical methods in law*, Aspen Publishers, 2010.

P. LEGRAND, *Econocentrism*, 59 *U. Toronto L.J.*, 215-222, 2009.

P. LEPAULLE, *The Function of Comparative Law*, 35 *Harvard Law Review* 838, 1921-1922.

S. LEVMORE, *Rethinking Comparative Law: Variety and Uniformity in Ancient and Modern Tort Law*, 61 *Tulane Law Review* 235, 1986.

S. LEVMORE, W. J. STUNTZ, *Remedies and Incentives in Private and Public Law: A Comparative Essay*, 1990 *Wis. L. Rev.* 483, 496-99, 1990.

J. LINDGREN, *Predicting the Future of Empirical Legal Studies*, 86 *B.U. L. Rev.* 1447-1460, 2006.

K. LLEWELLYN, *A Realistic Jurisprudence – The Next Step*, 30 *Colum. L. Rev.* 431, 1930.

R. MACDONALD, K. GLOVER, *Implicit comparative law*, *Revue de Droit: Université de Sherbrooke* 43, 2013.

S. MARCHAND, *Legal Origin, Colonial Origins and Deforestation*, 32 *Economics Bulletin* 2, 2002.

S. MATHISON, Sandra, *Why triangulate?*, 17.2 *Educational researcher* 13-17, 1988.

U. MATTEI, *Comparative law and economics*. University of Michigan Press, 1997.

U. MATTEI, R. PARDOLESI, *Law and Economics in Civil Law Countries: a Comparative Approach in International Review of Law and Economics* 265, 1991.

U. MATTEI, L. ANTONIOLLI, A. ROSSATO, *Comparative Law and Economics*, in B. Bouckaert, G. De Geest, (eds), *Encyclopedia of Law and Economics*, vol. I, Cheltenham, Edward Elgar, 2000.

U. MATTEI, A. MONTI, *Comparative Law and Economics: Borrowing and Resistance*, 1.2 *Global Jurist Frontiers*, 2001.

J. MAXWELL, *Using numbers in qualitative research*, 16.6 *Qualitative Inquiry* 475-482, 2010.

M. MCCONVILLE, *Development of empirical techniques and theory in research methods for law*, in M. McConville, W Chui (eds.), *Research methods for law*, Edinburgh University Press, 2010.

J. MCGINNIS, R. PEARCE, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 *Fordham Law Review* 3041, 2014.

J. MERRYMAN, D. CLARK, *Comparative Law - Western. European and Latin American Legal Systems*, 1978.

J. MERRYMAN, D. CLARK, L. M. FRIEDMAN, *Law and social change in Mediterranean Europe and Latin America: A handbook of legal and social indicators for comparative study*, Stanford, 1979

R. MICHAELS, *The Second Wave of Comparative Law and Economics?*, 59 *University of Toronto Law Journal* 2, 197-213, 2009.

R. MICHAELS, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 57 *American Journal of Comparative Law* 765-795, 2009.

G. MITCHELL, *Empirical legal scholarship as scientific dialogue*, 83 *North Carol. Law Rev.*, 2004.

A. NIBLETT, R. POSNER, A. SHLEIFER, *The Evolution of a Legal Rule*, *Journal of Legal Studies*, 2011.

L. NIELSEN, *The Need For Multi-Method Approaches In Empirical Legal Research*, in Peter Cane & Herbert M. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*, Oxford University Press, 2010.

F. NIETZSCHE, *The Will to Power*, W. Kaufmann (ed.), New York: Vintage, 1968.

D. NORTH, *Institutions, Institutional Change and Economic Performance*, *Int'l Rev. of L. and E.*

A. NUSSBAUM, *Die Rechtstatsachenforschung. Ihre Bedeutung fuer Wissenschaft und Unterricht*, Tubingen, 1914.

P. OHM, *Computer programming and the law: a new research agenda*, 54 *Vill. L. Rev.* 117, 2009.

E. ÖRÜCÜ, *The Enigma of Comparative Law*, Leiden, 2004.

V. PALMER, *From Lertholi to Lando: Some Examples of Comparative Law Methodology*, in 53 *Am. J. of Comp. Law*, 262, 2005.

R. PARDOLESI, M. GRANIERI, *The Future of Law Professors and Comparative Law*, in *The Digest. National Italian American Bar Association Law Journal* 1-26, 2013.

F. PARISI, *Positive, Normative and Functional Schools in Law and Economics*, 18 *European Journal of Law and Economics* 259-272, 2004.

F. PARISI, V. FON, *The Economics of Lawmaking*, Oxford University Press, 2009.

F. PARISI, B. LUPPI, *Litigation and Legal Evolution: Does Procedure Matter?*, Public Choice (forthcoming).

B. LUPPI, F. PARISI, *Quantitative Methods in Comparative Law*, in Minnesota Legal Studies Research Paper, 2012.

K. PISTOR, *Rethinking the Law and Finance Paradigm*, BYU L. Rev., 1647, 2009.

R. POUND, *Comparative Law in Space and Time*, 4 Amk. J. Comp. L. 70, 1955.

ID., *What May We Expect From Comparative Law?*, 22 A.B.A. J. 56, 1936.

ID., *The Place of Procedure in Modern Law*, 1 S. W. L. Rev. 59, 1917.

G. PRIEST, *The Common Law Process and the Selection of Efficient Rules*, 6 Journal of Legal Studies 65-82, 1977.

C. RAGIN, *The comparative method: Moving beyond qualitative and quantitative strategies*, Univ. of California Press, 2014.

J. RAMSEYER, *Mixing-and-Matching Across (Legal) Family Lines*, Brigh. Y. Un. L. Rev. 1701-1712, 2009.

M. REIMANN, *The End of Comparative Law as an Autonomous Subject*, 11 Til. Eur. & Civ. L. F. 49, 1996.

ID., *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, Am. J. of Comp. L. Vol. 50, 4, 2002.

ID., *Comparative law and neighbouring disciplines*, The Cambridge Companion to Comparative Law, 2012.

ID., *The Progress and Failure of Comparative Law*, in 50 Am. J. of Comp. Law, 671, 2004.

J. REITZ, *Legal Origins, Comparative Law, and Political Economy*, 57 Am. J. of Comp. L. 3, 2009.

A. RILES, *Wigmore's Treasure Box: Comparative Law in the Era of Information*, 40 Harvard International Law Journal, 221, 1999.

J. ROBBENNOLT, *Evaluating Empirical Research Methods: Using Empirical Research in Law and Policy*, 81 Neb. L. Rev. 777, 2003.

M. ROE, M. RAMSEYER, AND R. ROMANO, *Some Differences in Corporate Structure in Germany, Japan, and the United States*, 102 Yale Law Journal 1927, 1993.

C. ROGERS, *Gulliver's Troubled Travels, or the Conundrum of Comparative Law*. in 67 George Washington Law Review 149, 1998.

M. ROSENBERG, *Foreword to Dollars, Delay and the Automobile Victim; Studies in Reparation for Highway Injuries and Related Court Problems*, 1968.

D. RUBIN, *For objective causal inference, design trumps analysis*, Annals of Applied Statistics, 808-840, 2008.

R. SACCO, *Legal formants: A Dynamic Approach to Comparative Law*, 39 Am. J. Comp. L. 1, 25-26, 1991.

ID., *One Hundred Years of Comparative Law*, 75 Tulane Law Review, 2001.

R. SALEILLES, *Conception et objet de la science du droit comparé*, in *Proceeds of Paris Congress*.

H. SCHÄFFER, A. RÁCZ, eds. *Quantitative Analyses of Law: Comparative Empirical Study: Sources of Law in Eastern and Western Europe*, Akadémiai Kiadó, 1990.

R. SCHLESINGER ET AL., *Comparative law: cases, text, materials*. Foundation Press, 1970.

J. SCHMIDHAUSER (ed.), *Comparative Judicial Systems: Challenging Frontiers in Conceptual and Empirical Analysis*, Elsevier, 2013.

D. SCHWARTZ, *Should Empirical Legal Scholars Have Special Responsibilities?*, <http://concurringopinions.com>, May 8, 2013.

S. SEIDMAN DIAMOND, *Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton*, U. Ill. L. Rev., 2002.

G. SHAFFER, T. GINSBURG, *The Empirical Turn in International Legal Scholarship*, 106 Am. J. of Int'l Law 1, 2012.

M. SIEMS, *Numerical Comparative Law – Do We Need Statistical Evidence in Order to Reduce Complexity?*, 13 Cardozo J. of Int. and Comp. L. 521-540, 2005.

ID., *The End of Comparative Law*, J. of Comp. Law, Vol. 2, 2007.

ID., *Comparative Law - Who is the Elephant in the Room?* (Book Review of 'Comparative Law: A Handbook', Örüçü and Nelken, eds.), Ed. L. Rev., 12, 2008.

ID., *Statistische Rechtsvergleichung*, in *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, 354-390, 2008.

ID., *Measuring the Immeasurable: How to Turn Law into Numbers*, in M. Faure, J. Smits (eds.) *Does law matter? On law and economic growth*, Intersentia, 2011.

ID., *Comparative Law*, Cambridge University Press, 2014.

M. SIEMS AND S. DEAKIN, *Comparative Law and Finance: Past, Present and Future Research*, J. of Instit. and Theor. Econ. 166, 2010.

H. SPAMANN, *Large-Sample, Quantitative Research Designs for Comparative Law?*, 57.4 Am. J. Comp. L. 797-810, 2009.

ID., *The "antidirector rights index" revisited*, 23.2 Rev. of Fin. Stud., 467-486, 2010.

ID., *Empirical comparative law*, 11 Annual Review of Law and Social Science, forthcoming 2015.

M. SUCHMAN, E. MERTZ, *A New Legal Empiricism? Assessing ELS and NLR*, in *Annual Review of Law and Social Science* Vol. 6, 2010.

G. TARDE, *Le Droit comparé et la sociologie*, in *Congres International de Droit Comparé tenu a Paris du 31 juillet au 4 août 1900, procès-verbaux des seances et documents*, 1905.

L. TROTSKY, *Literature and Revolution*, 1923, ed. William Keach, Chicago 2005.

W. TWINING, *The Idea of Juristic Method: A Tribute to Karl Llewellyn*, 48 U. Miami L. Rev. 119, 1993.

T. ULEN, *A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law*, U. Ill. L. Rev. 4, 2002.

ID., *Law and economics, the moral limits of the market, and threshold deontology*, in *Law and Economics: Philosophical Issues and Fundamental Questions*, 2015.

R. VACCA, *Il diritto sperimentale*, Fratelli Bocca, 1923.

J. VANDERLINDEN, *Comparer les droits*, Kluwer Belgique 1995.

E. WARREN, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 1 Wisc. Law Rev., 2002.

M. WEST, *Legal Determinants of World Cup Success*, Michigan Law and Economics Research Paper No. 02-009, 2002.

H. YNTEMA, *Jurisprudence on parade*, 39 Mich. L. Rev. 1154, 1940-1941.

ID., *Comparative Legal Research: Some Remarks on "Looking out of the Cave"*, 54 Michigan Law Review 7, 1956.

ID., *American Legal Realism In Retrospect*, 14 Vand. L. Rev. 317, 1960-1961.

ID., *The Rational Basis of Legal Science*, 31 Colum. L. Rev. 925, 1931.

ID., *Legal Science and Reform*, 34 Columbia Law Review 2, 1934.

K. ZWEIGERT, H. KÖTZ, *Introduction to comparative law*, 1977.

