

The Journal of Comparative Law: A New Scholarly Resource

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COMPARATIVE LEGAL STUDIES, A TOPIC FOR THE 21ST CENTURY

We are pleased to present the *Journal of Comparative Law*.¹ The journal will be published twice a year and will be refereed.

Comparative law has been in existence for a long time. It goes back via Montesquieu and the reception of Roman law into modern European legal systems to Aristotle (at least). Some trace its beginnings as a scholarly discipline to Lambert and Saleilles' foundation of the International Congress for Comparative Law in 1900, others to the foundation of the French Society of Comparative Legislation and the appointment of Sir Henry Maine as Professor of Historical and Comparative Jurisprudence in Oxford in 1869.

So why is a new publication necessary now?

Internationalising Trends

The simple answer to this question is internationalisation. Trends since the fall of the Berlin Wall have led to a broader recognition of the vital importance of comparative law. The result is that a field which, until recently, was (unjustifiably) regarded by many as arcane, has become central to the concerns of a growing number of legal scholars worldwide and an integral part of the work of many practitioners.²

Internationalising tendencies have been in existence for thousands of years. One such tendency, colonialism, was instrumental in spreading Western concepts of law

* Of the Editorial Board. This piece is the result of extensive discussions among Michael Palmer, Bill Butler and myself. I am very grateful for all the advice and support provided by Michael, Bill, and other colleagues, some of whom are mentioned below. The usual caveat applies. My intention is to provide a brief mission statement addressed to a general audience rather than an extensive discussion of the issues for specialists. Footnotes and references have, therefore, been kept to the absolute minimum.

¹ The terms 'comparative law' and 'comparative legal studies' are used interchangeably herein.

² 'Unjustifiably' because the benefits of comparative law are well known: 'academic study; law reform and policy development; a tool for research to reach a universal theory of law; the provision of perspective to students; an aid to international practice of the law; international unification and harmonisation – common core research; a gap-filling device in law courts; and an aid to world peace'. Örüçü, E (2000) 'Critical Comparative Law: Considering Paradoxes for Legal Systems in Transition' (June) *Electronic Journal of Comparative Law* (first published [1999] as No 59 in the series for the *Nederlandse Vereniging voor Rechtsvergelijking* Kluwer) text after note 10.

around the world. However, the depth and extent of at least two modern manifestations of internationalisation — globalisation and regionalisation — merit their classification as separately denominated phenomena. The present post-communist, high technology-based changes, which go by the name of globalisation, are much discussed, and 16 years on from 1989, despite its numerous critics, its pace shows no sign of abating. Regionalisation hits the headlines less, but is just as important.

These phenomena have produced a depth of change in municipal law and international legal practice not seen since the heyday of colonialism. 'Harmonisation'³ pressures grow and harmonisation efforts abound.

The precise processes producing such changes are many and various. As regards globalisation, they include inter-jurisdictional competition, numerous international conventions for the harmonisation of specialist areas, pressure to conform to standards laid down by international organisations like the International Monetary Fund, the World Trade Organisation and the World Bank, private international legal standards (for example, Incoterms), and international legal custom, such as has made New York and English law standard in international financial transactions. As regards regionalisation, the arrangements are of varying type and strength. The best known is the European Union, but others such as NAFTA and the Council of Europe (European Convention on Human Rights) are also very important.

The results of these trends also exhibit considerable variety, and apply to numerous legal areas, including commercial law, intellectual property law, human rights law, environmental law and public international law. In this context, the first image to come to mind is that of developing countries producing a flood of legislation based on Western models, but the law of developed economies is also affected. In the United Kingdom, for example, one of the stated aims of the Company Law Reform Project was to ensure that United Kingdom company law is internationally competitive in order to play its part in encouraging inward investment.⁴ Inter-jurisdictional competition of this sort also affects other important areas such as financial regulatory law and corporate governance.

These pressures all seem to be pushing towards more similarity among legal systems. Surely, then, as harmonisation takes effect, law will become increasingly homogeneous worldwide, and comparative law will dwindle in importance? In fact, the opposite is true, because internationalisation brings legal systems into closer contact with each other than ever before, but cannot remove all the differences between them.

One example of such contact is to be found in the European Convention on Human Rights, which creates an environment in which the legal cultures of other jurisdictions are of direct relevance for practising lawyers, increasing, rather than decreasing, the need for a knowledge of comparative law. Another example is that of international legal practice, where practitioners in many areas have to be multi-jurisdictional in their expertise.

There are various reasons for the failure to remove differences.

One is a conscious resistance to internationalisation. 'The processes of globalisation stir up old nationalisms, exacerbate cultural conflict, and encourage post-modern

³ In inverted commas because the word as used herein covers a whole range of processes in which varying degrees of homogeneity are sought.

⁴ See, eg, the 2005 United Kingdom White Paper *Company Law Reform* chapter 2, 'Setting the Scene'.

scepticisms about the universality of value or ideas.⁵ A striking example is the revival of Islamic law, leading to shari'a-inspired civil codes in the Gulf States, its predominance in Iran (with a Council of Guardians protecting the Islamic nature of the law) and most recently a ban on *riba* in Pakistan. Another example can be seen in the efforts of the Chinese government to construct a modern legal system with Chinese characteristics.

Another reason is that the forces of legal internationalisation are far from perfect. Some differences do diminish with harmonisation, but local conditions produce others, which are often subtler and require more sophisticated analytical tools in order to see beyond the similarity of black-letter law to the underlying, culturally-determined realities. It is one thing to receive law from somewhere else, but quite another to ensure that it is as effective in the host jurisdiction as in the place where it was conceived and developed. It is all very well to harmonise, but the need for it, the possibility of achieving it, and the difficulties of maintaining it, are far more controversial and difficult issues than they first appear.⁶ On the international practice front, the basic documentation may be the same worldwide, but local conditions are still important, perhaps because the question of enforcement of contractual obligations is always a local one, or because security, a locally based concept, has to be taken, or for some other reason.

More than ever before, then, 'any conception of law that is limited to the municipal law of nation states and, perhaps grudgingly, public international law, is extremely narrow and probably dangerously misleading'.⁷

A New Need for Comparative Legal Studies

This situation has produced a need for comparative legal knowledge unparalleled in history. It has become an 'essential instrument for legal understanding'.⁸

Examples of phenomena which require this knowledge abound. They include the legal reform programme of the World Bank;⁹ the resurgence of Islamic law, of particular topical importance as a result of the tragic events of recent years and the planned accession of Saudi Arabia to the WTO; and the vast increase in international transactions.

There has also been an unparalleled increase in the level of comparative legal knowledge among practitioners working in these areas. We have seen the emergence of the truly international law firm, with lawyers for whom comparative law is an integral part of their 'delocalised' daily work.¹⁰ Even if they are not always entirely successful, they have been obliged to expand their mentality beyond their own jurisdictional conditioning, and often acquire a good grasp of comparative law principles. One such practitioner writes: 'I am not a comparative law "professional" despite my possessing both common-law and civil-law degrees. [...] Yet, the comparative method is constantly

⁵ Twining, W (2000) 'Comparative Law and Legal Theory: The Country and Western Tradition' in Edge, I (ed) *Comparative Law in Global Perspective: Essays in Celebration of the Fiftieth Anniversary of the Founding of the SOAS Law Department* Transnational Publishers 21 at 65.

⁶ See, eg, Pierre Legrand's criticism of the European Civil Code project in 'Antivonbar' in this issue at 13.

⁷ Twining, W 'Comparative Law and Legal Theory' supra note 5 at 25.

⁸ See Örüçü, E (2002) 'Unde Venit, Quo Tendit Comparative Law' in Örüçü, E and Harding, A (eds) *Comparative Law in the 21st Century* Kluwer 1 especially at 15-16.

⁹ See <<http://www1.worldbank.org/publicsector/legal>>.

¹⁰ A term coined by Patrick Glenn: Glenn, HP (1993) 'Harmonization of Law, Foreign Law and Private International Law' (1) *European Review of Private Law* 47 at 54-55.

on my mind and creeps into my work'.¹¹ Comparative law has even penetrated that notoriously conservative arena, the English court system. See, for example, Lord Goff's opinion in *White v Jones*, which contains extensive reference not only to Commonwealth, but also to Continental, law.¹²

Such a situation requires scholarly analysis. However, although there has been a marked increase in academic interest and activity, significant problems remain.

The increase in activity is apparent in various ways. Conferences took place at the universities of Michigan and Utah in 1996, Hastings College, San Francisco in 1997, London and Tulane in 2000.¹³ Scholarly output¹⁴ and student interest in comparative law courses has increased.

However, comparative law is still far from the mainstream. Despite the increase in activity, legal academia as a whole has not caught up with developments since the 1980s. Indeed, the difference between the still parochial attitude of many academics and the cosmopolitan view of international practitioners is striking, a difference constantly borne out by the author's own experience. One need only compare the attendance at the comparative law section of an academic conference (ten or so colleagues) with the attendance at a presentation on Islamic law to a City of London firm (a packed meeting room). Further confirmation, if any is needed, comes from numerous conversations in which practitioners express their astonishment at how far academia lags behind practice, and the fact that in some areas practitioners who might well otherwise have relied on the academic world to produce scholarly work have been obliged to fill the gaps themselves.

More problems are to be found in the state of academic comparative law itself. William Twining describes it as 'subjected to mounting internal and external criticism' and refers to 'febrile introspection about the purposes, nature, and methods of comparative law'.¹⁵ Nora Demleitner writes that 'comparative law is in a state of disorientation'.¹⁶ In its 'classic' form,¹⁷ it is restricted in scope and insufficient for the needs of the present situation, consisting mainly of an introduction to legal systems focusing on the common law/civil law divide, and the domestic systems of a few Western jurisdictions, such as France and Germany, together with comparisons between certain areas of private law (particularly obligations) in those systems.

According to Esin Örüçü, the comparative law community has responded to criticisms of the 'old order' in four strands of contemporary research:

¹¹ Kozyris, P (1994) 'Comparative Law for the 21st Century: New Horizons and New Technologies' (69) *Tulane Law Review* 165 at 166. The author combines academia and practice.

¹² [1995] (2) *Appeal Cases* 207 at 252ff. See also Markesinis, B (2002) 'Foreign Law Inspiring National Law: Lessons from *Greatorex v Greatorex*' (61) *Cambridge Law Journal* 386, discussing *Greatorex v Greatorex* [2000] (1) *Weekly Law Reports* 1976.

¹³ The London conference was the Hart Workshop 2000 at the Institute of Advanced Legal Studies.

¹⁴ Monateri, PG (1998) 'Everybody's Talking: The Future of Comparative Law' (21) *Hastings International and Comparative Law Review* 825, cited in Örüçü, E (2000) 'Critical Comparative Law' supra note 2 text at note 9.

¹⁵ Twining, W (2005) 'Glenn on Tradition: An Overview' in this issue at 108.

¹⁶ Demleitner, N (1999) 'Combating Legal Ethnocentrism: Comparative Law Sets Boundaries' (31) *Arizona State Law Journal* 737 at 737.

¹⁷ This paragraph is drafted on the basis that comparative law is a distinct scholarly tradition which has self-imposed limitations. This may not be justifiable, and the limitations may simply be a result of the small number of comparatists.

comparative law and legal philosophy (comparative jurisprudence); comparative law and legal history (historical comparative law or historico-comparative perspective); comparative law and culture (comparative legal cultures and law and culture studies); and comparative law and economics.¹⁸

These new approaches are promising in many ways. However, they need considerable development, including work to bridge the gap between theoretical macro-comparative law and particularist micro-comparative law.

In these circumstances, the need to expand and deepen comparative legal studies in order to meet the much greater demands of the present day is clear. It is also clear that a new journal providing a forum for comparative law analysis, the exchange of ideas and other scholarly resources, will be of considerable utility. The number of outlets for comparative legal studies has not even kept pace with the increase of scholarly output to date; it is certainly insufficient to encourage the amount of activity which is necessary in view of the importance of the field.

CONTENT OF THE JOURNAL

The journal will aim to contribute to 'advancing our understanding of law from a global perspective'.¹⁹ In order to do so, the entire range and depth of the relevant issues need to be covered using techniques appropriate for the task. The journal has, therefore, adopted an inclusive understanding of 'comparative legal studies', unlimited in its geographical focus and range of legal topics, a viewpoint which stresses the importance of analytical, contextual and, where possible, multi-disciplinary work.

In addition, various resources will be provided, including 'conventional' reviews, notes of recent research (including notable journal articles), translations of sources (cases, legislation, etc), commentaries thereon, bibliographic information and the reprint of inaccessible material.

Sections of the Journal

The journal will contain the following sections:

- Articles;
- Research Commentaries;
- Reviews;
- Noted Publications;
- Sources (occasional);
- Bibliography (occasional);
- Other Voices (occasional); and
- Classics of Comparative Law (occasional).

¹⁸ Örucü, E 'Critical Comparative Law' supra note 2 at section 1.2 'Comparative Law: Facing New Trends'.

¹⁹ Twining, W (2005) 'Glenn on Tradition: An Overview' in this issue at 107.

Articles and Research Commentaries

Most articles will be between 7,000 and 14,000 words in length. However, an important feature of the journal is the publication of longer pieces. A low word limit can restrict or exclude some types of comparative law writing, such as directly comparative and contextual work. A higher limit may well encourage authors to write valuable pieces that would be difficult to place elsewhere.

The journal also welcomes, in its *Research Commentaries* section, short pieces of up to 2,000 words which deal with small but significant points.

When appropriate, an issue or part thereof will be devoted to a particular subject, along the lines of the francophone scholarship produced by the *Association Henri Capitant* and the *Société Jean Bodin*. It is proposed to organise symposia in this regard (contributions to be submitted through the normal channels).

Reviews and Noted Publications

The *Reviews* section will contain book reviews of the normal length and type. Review articles providing more in-depth critique will appear in the *Articles* section.

Noted Publications will contain brief comments on recent publications of interest, including articles.²⁰

Sources, Bibliography, Other Voices, and Classics of Comparative Law

Some comparative law scholarship and sources are difficult to find, either because they are in a language unfamiliar to the researcher, are published in a less well-known or unlikely outlet, or are out of print, making comparative law research more onerous than in other fields. An attempt will be made to alleviate these problems in these sections, as well as in the *Noted Publications* section.

The *Sources* section will contain translations of, and commentaries on, significant documents. One example of a source where such translations would be useful is Chinese case law, which is difficult to find and inaccessible to those without a knowledge of the Chinese language. The *Bibliography* section will contain bibliographical information, some of which will also be available on the journal website. In *Other Voices*²¹ and *Classics of Comparative Law*, unfamiliar and classic material will be reprinted, together with an assessment of that material in the light of current scholarship.

All these sections will appear on an occasional basis.

THE AMBIT OF COMPARATIVE LEGAL STUDIES

The factors discussed above have led the editorial team to adopt a broad definition of 'comparative legal studies', a definition which includes at least the following categories:

²⁰ We are very grateful to Professor Pierre Legrand for suggesting this section and for volunteering to undertake editorial responsibility for it.

²¹ The name was suggested by Pierre Legrand.

Theoretical Aspects of Comparative Legal Studies;
 Single-system Analysis;
 Directly Comparative Analysis;
 'Harmonisation', 'Legal Transplants' and Mixed Jurisdictions;
 Problems Arising from Trans-border Transactions and Events;
 Conflict of Laws;
 Divergent Approaches to Public International Law; and
 Comparative Law and Legal Theory.

Theoretical Aspects of Comparative Legal Studies

It goes without saying that a sound theoretical base is essential in any field. However, many scholars have identified a weakness in this area in comparative legal studies. According to William Butler, for example, comparative law 'atrophies in abstract methodological exegesis that mostly turns upon accepting one definition or another *a priori* about what comparative law is or should be'.²² We will, therefore, be particularly pleased to receive theoretical submissions.

Single-system Analysis

Single-system analysis consists of the study of phenomena within single systems, conducted from, or bearing in mind, the viewpoint of a lawyer trained in another system, a view from the outside, with a consequent comparative slant. Such an analysis may be of interest for various reasons. Perhaps it is a novel way of dealing with an issue or an object lesson in how not to solve the problem, or it constitutes a manifestation of the society of that jurisdiction, or it has more than local implications (for example, in environmental law). It will probably go some way towards the next category, directly comparative analysis, because some element of comparison is present, even if not explicitly enunciated.

Directly Comparative Analysis

Directly comparative analysis compares phenomena in one system with that of another system or systems. It is harder and more time-consuming than the single-system type, which is difficult enough in itself. Not only is there at least double the content, but usually the legal systems proceed on different assumptions. Those assumptions are hardly ever enunciated by the legal systems in question, and have to be deduced (at a considerable cost in terms of time and effort) in order to produce a third structure into which the two sets of rules can fit.

'Harmonisation', 'Legal Transplants' and Mixed Jurisdictions

These three topics are all venerable and, at the same time, of particular relevance in today's globalised and regionalised world. They can be regarded as separate areas of

²² See, eg, Butler, WE (2005) 'Russia, *Legal Traditions of the World* and Legal Change' in this issue at 142.

study for certain purposes, but they also overlap, the common factor being interaction between legal regimes.

As noted above, 'harmonisation' is enjoying unrivalled popularity. The list of harmonisation initiatives and other areas in which the concept is relevant is too long to set out here.²³ However, two vital and controversial issues are only rarely discussed by harmonisers. Is harmonisation desirable? Is harmonisation achievable? Comparative law is an essential tool for the analysis of both topics. All too often, though, it is regarded as a mere tool for the achievement of harmonisation. Many harmonisers do not even ask themselves these questions and proceed on the assumption that it is both necessary and possible.

The subject of 'legal transplants' (in inverted commas because the very name of the subject is controversial) has generated much debate, largely as a result of the huge modernisation and harmonisation drives of recent years. Will imported laws/legal concepts work? Will they work as planned? Will they work in the same way as they do in their home jurisdiction? These are all questions to which there are no easy answers.²⁴

The third area, mixed jurisdictions, has been the subject of attention by comparatists in recent years.²⁵ In a sense, the study of mixed jurisdictions is another way of looking at (established) transplants and is, therefore, of great topical significance for the same reasons. More broadly, there is an increasing realisation that all legal systems are to some extent mixed, not just those such as Scotland and South Africa, which are traditionally so regarded, and that mixing will be a key component of law in the future.²⁶ England and Wales is one example. It has been influenced by European Union law for over thirty years now and the impact of the European Convention on Human Rights may well prove to be even more influential. Other examples include the legal systems of Muslim-majority states, in which the relationship of Western to Islamic law is the most important issue today.

Problems Arising from Trans-border Transactions and Events

Comparative law is of obvious utility for the solution of problems deriving from trans-border legal phenomena. Take environmental law. The Amazonian river system flows through numerous countries, and the effects of polluting it do not stop at national borders. Or consider cross-border insolvency. When transnational corporations fail, the consequences have to be dealt with by numerous legal systems with fundamentally different attitudes towards the distribution of property on insolvency. Other examples include child abduction, immigration law and nationality law.

Conflict of Laws

Conflict of laws can be regarded as the reaction of a municipal system to private law problems arising out of problems produced by cross-border events, and similar

²³ See, generally, Foster, NHD (2002) 'Transmigration and Transferability of Commercial Law in a Globalised World' in Örüçü, E and Harding, A (eds) *Comparative Law in the 21st Century* Kluwer.

²⁴ For a summary, see *ibid* at 58-60.

²⁵ See, eg, Zimmermann, R, Reid, K, and Visser, D (eds) (2003) *Mixed Legal Systems in Comparative Perspective* Oxford University Press.

²⁶ Örüçü, E, Attwool, E, and Coyle, S (1996) *Studies in Legal Systems: Mixed and Mixing* Kluwer chapter 20.

difficulties can be encountered. If, for example, a transaction is not possible under the law of a particular jurisdiction (A), the parties may well submit it to the law of another jurisdiction (B), which does permit it. It may well be, however, that the transaction needs to be enforced in jurisdiction A, in which case the comparative law problem and the conflict of law action become inextricably intermingled. Inter alia, comparative law considerations may well determine the decision of the court as to whether or not to sanction the enforcement requested.

Divergent Approaches to Public International Law

One of the major manifestations of globalisation is the new force and importance of public international law, particularly in the fields of human rights, international criminal law, international trade law and international environment law. This too has a strong comparative dimension. One need look no further than the United Kingdom, where the incorporation of the European Convention on Human Rights could well reveal United Kingdom attitudes to the Convention at odds with those of other jurisdictions. On a broader scale, issues such as the Islamic attitude to family planning and the way in which child labour is regarded in some developing economies raise important questions about the degree to which international law can be 'received' and locally interpreted and applied. Also in the area of international treaties, those who draft such documents seem to assume too often that they can be implemented in a uniform manner. As noted above, comparative law may well show otherwise, as do, for example, the experiences of one member of the Editorial Board when assisting in the preparation undertaken by the People's Republic of China for the implementation of the International Covenant on Civil and Political Rights.

Comparative Law and Legal Theory

In all of the above topics legal theory is essential. At the same time, comparative legal studies needs to be one of the foundations of legal theory. 'General jurisprudence without comparative law is empty and formal; comparative law without general jurisprudence is blind and non-discriminating.'²⁷

Comparative Law and Legal Theory

The need of comparative law for legal theory can be seen in directly comparative analysis. The comparatist is forced to think jurisprudentially, using an intermediate degree of theorisation, moving beyond domestic categorisation to a more general conceptual structure into which both regimes can fit and comparison can take place.

For example, the study of the transfer of rights in English and French law can only be undertaken by abandoning the concepts of 'chose in action' and '*créance*' in favour of a general, non-system-specific idea of 'right'. If one broadens the comparison to include Islamic law, one realises that even that concept is Western, therefore insufficient for the

²⁷ Tur, R (1977) 'The Dialectic of General Jurisprudence and Comparative Law' *Juridical Review* 238 at 249 quoted in Twining, W 'Comparative Law and Legal Theory' supra note 5 at 71.

purpose, and that one must compare in a much broader and more contextual way in order to understand the differences and similarities.

More generally, the study of any legal system from the outside, whether in a single-system or directly comparative analysis, necessarily leads the scholar to challenge his/her assumptions and think more theoretically. In other words, comparative legal studies leads inexorably to jurisprudence.

Legal Theory and Comparative Law

Much jurisprudence can be criticised for having (usually unspoken) universalist pretensions, while remaining firmly anchored in Western law, or even in one legal system. To the comparatist, much of the writing seems parochial. Ideas of justice based on economic foundations are difficult to apply to Islamic law. A case law-based theory which ignores academic writing has a strange ring to a civilian lawyer. If one compares jurisprudence to other scholarly fields, this position seems indefensible. 'Any science, theoretical or applied, that would limit itself to one nation would be laughable.'²⁸ It might be argued that no jurisprudential analysis of rules or institutions with any claim to general application should be undertaken without comparative research, and internationalist trends have highlighted the need to connect the two disciplines. However, with a few notable exceptions they have interacted very little.

Also of note is the relative neglect of comparative legal theory, the implicit assumption being that 'our' jurisprudence is the only one worthy of attention.

Geographical and Systemic Coverage

Geographical regions covered include the 'classic' comparative law areas, Europe and North America. In Europe, topical issues include the interaction of European Union law with the legal systems of the member states, particularly those which have acceded recently, and the issues arising from Turkey's application for membership, as well as harmonisation and possible unification (including notably the project for a European Civil Code). Also of significance is the topic of the external relations of the EU. The United States, of course, provides the model of neo-liberal law and dominates the market in legal exports.

Going beyond these regions, although a considerable body of knowledge and expertise has grown up among specialist practitioners, with some notable exceptions relatively little academic analysis has been produced on the legal systems of post-Soviet jurisdictions in Central Asia and the points of convergence or divergence with other reforming or 'transitional' (ie ex-state socialist) jurisdictions (Eastern Europe, China, Vietnam). The area is one of considerable importance, both economically in its own right, as well as containing newly acceded and possible future member states of the European Community. The Middle East, Africa, Asia and Latin America contain some of the most economically significant, and fastest-changing, jurisdictions in the world today, including, for example, Brazil, Hong Kong and the rest of the People's Republic

²⁸ Kozyris, P (1994) 'Comparative Law for the 21st Century: New Horizons and New Technologies' (69) *Tulane Law Review* 165 at 167.

of China, Singapore, Japan, Saudi Arabia, Malaysia, India and Pakistan. Numerous vital issues arise, including the relationship between Western-inspired law and local traditions of Islamic law, Confucianism, and so on.

The situation is further complicated by other factors. Times have changed since the days of the comparative law pioneers, and the field has not caught up with various changes, such as the relatively unacknowledged maturity and individual personality of many systems traditionally regarded as derivative of the 'main' systems, and therefore lacking in interest; the increasing differences in some areas between some formerly very similar systems; and the need to recognise the role of non-Western legal orders.

In this variegated and uneven landscape, numerous issues are worthy of study, including the comparison of common law jurisdictions (a comparison of Australian, Canadian and UK company law, for example, is a fruitful topic) and the comparison of different interpretations of Islamic law.

Another area neglected by traditional comparative law is that of 'community law'. The old assumption that legal systems neatly regulate natural and legal persons on their territory is no longer defensible, if it ever was. Account needs to be taken of legal pluralism and of non-state legal orders, such as Islamic law in the United Kingdom, which coexist with the formal legal system and exert a very significant influence on the lives of many people, even if the formal legal system refuses to acknowledge this.²⁹

Topic Coverage

Numerous important areas need more research from a comparative standpoint.

One such is globalisation itself. As already noted, it is a major factor underlying the increased importance of comparative law in the contemporary world, it informs many areas of comparative legal study and affects all others to a greater or lesser degree. In addition, comparative law is a valuable tool in the search for an understanding of the phenomenon and its effects, both legal and beyond; and the relationship between the two is worthy of analysis.

With regard to specific areas of legal study, various areas are under-researched, such as comparative public law³⁰ and comparative company law (with the exception of some areas such as corporate governance and insolvency). Truly comparative commercial law scholarship, as opposed to purely descriptive work, is rare, despite its obvious importance and the great, and increasing, number of international conventions which attempt to standardise certain aspects of the field. Feminist legal action in the context of globalisation, legal pluralism and human rights do not often appear in the comparative literature. Yet all of these topics can benefit from being examined in the light of comparative law. To take human rights, for instance: the topic is becoming ever more politically sensitive, as some challenge the universal nature of internationally recognised human rights, and others suspect the motives of developed nations in areas

²⁹ See, eg, Santos, B de S (1995) *Toward a New Common Sense: Law, Science and Politics in Paradigmatic Transition* Routledge; Menski, W and Pearl, D (1998) *Muslim Family Law* (3rd ed) Sweet and Maxwell.

³⁰ Harding, A (2000) 'Comparative Public Law: a Neglected Discipline?' in Edge I (ed) *Comparative Law in Global Perspective: Essays in Celebration of the Fiftieth Anniversary of the Founding of the SOAS Law Department* Transnational Publishers.

such as the prohibition of child labour, often seen as a protectionist measure. In this area, comparative analysis is both of scholarly relevance and of practical importance.³¹

CONCLUSION

To quote William Twining again:

Is there any room for specialist scholars, courses, associations *and journals* in comparative law?

My brief answer is as follows:

There can no more be an autonomous sub-discipline of comparative law, set apart from legal studies, than there can be an autonomous discipline of jurisprudence or legal philosophy. But it does not follow that a sensible division of labour leaves no room for specialised 'comparatists' of different kinds, just as there are those who are viewed primarily as legal theorists or legal philosophers. Far from spelling the end of comparative legal studies as a focus of attention, a broadened conception increases their importance in many different ways.

We also need many scholars who can claim to have mastered more than one legal order. Furthermore, today nearly all legal studies are cosmopolitan in that legal scholars, and indeed law students, regularly have to use sources, materials and ideas developed in more than one jurisdiction and increasingly in more than one legal culture. They need to be equipped with at least the rudiments of coping with such material. So comparative method needs to be treated as a central element of 'legal method'.³²

Or, as Lord Goff put it: 'the hobby of yesterday [...] is destined to become the science of tomorrow'³³ — a science which will be promoted by the *Journal of Comparative Law*.

³¹ Many thanks to Professor Akmal Saidov for the comments which led to the amendment of this section.

³² Twining, W 'Comparative Law and Legal Theory' supra note 5 at 70 (emphasis added).

³³ Lord Goff (1997) 'The Future of the Common Law' (46) *International and Comparative Law Quarterly* 745 at 748.