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A review of *Comparative Legal History* , edited by Olivier Moréteau, Aniceto Masferrer and Kjell A Modéer, Edward Elgar Publishing, 2019, 512 pp., £175,50 (hbk), ISBN 9781781955215

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REVIEW ARTICLE

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Jaakko Husa*

To be, or not to be, that is the question[1]

I. Law, comparison, history

During the last couple of decades, the field of comparative legal history has gradually taken shape. Indeed, it is perhaps not an exaggeration to depict it as a fashionable subject, although the attraction has been felt more strongly among legal historians than among comparative lawyers. A pertinent example of the vitality of the field is this journal, which is also the official journal of the European Society for Comparative Legal History.[2] However, the recent scholarly commotion around the potential marriage of legal history and comparative law may be somewhat illusory. Admittedly, it would be a misapprehension to regard the recent elaboration of this emerging discipline as an actual novelty. On the contrary, comparative law and legal history have been bedfellows for a long time. For instance, one of the leading comparative lawyers of the twentieth century Ernst Rabel (1874–1955) was also a legal historian among other things. This was probably not purely incidental.[3]

Besides, Rabel is no exception since there have been always scholars that in one way or another marry comparative law and legal history. Perhaps one of the

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[1] *Hamlet* by William Shakespeare, Act 3 Scene 1. The Complete Works of William Shakespeare (CRW 2007) 403.

[2] In the first article of the journal, Comparative Legal History is described as an emerging discipline that poses many problems for researchers, David Ibbetson, 'The Challenges of Comparative Legal History' (2013) 1 *Comparative Legal History* 1.

[3] See Ernst Rabel, *Gesammelte Aufsätze Band IV Arbeiten zur altgriechischen, hellenistischen und römischen Rechtsgeschichte 1905–1949* (JCB Mohr 1971).

most significant embodiments of this scholarly wedlock was Sir Henry Maine (1822–1888), the first holder of the chair of comparative law at Oxford (est 1869). Maine published a classic in comparative law and legal history called *Ancient Law*,[4] in which he outlined a legal-sociological explanation for the difference between ancient Roman law and modern law. According to Maine, individuals in the ancient world were bound to the traditions of their own social groups, while the modern law of his time was characterised by individual autonomy. Maine was a kind of evolutionary who believed – as some legal comparatists may still do – in the idea that legal cultures continue to develop from simpler to more complicated.[5] Later, Alan Watson (1933–2018) reforged the connection between comparative law and legal history in his influential book *Legal Transplants*.[6] When first published in 1974, the book was met with both praise and stark criticism. Watson basically argued that the close connection between law and the society in which it operates was untenable; there was little correlation between a society and its legal system. No matter what one thinks of Watson's key argument, it is undisputed that he particularly emphasised the close relation between legal history and comparative law. For him, the study of legal transplants and interaction between historical connections was what comparative law was fundamentally about.[7]

The above-mentioned examples are by no means the only ones; comparative legal scholars have always been very much interested in legal history. The underlying idea has simply been that these fields are somehow beneficial to each other.[8] In essence, comparison and history present two sides of the same coin. This means that if and when legal history involves comparison, then legal comparison involves history.[9] This unadorned foundational idea has slowly developed in a more refined

[4]Henry Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas* (John Murray 1861).

[5]See Jaakko Husa, 'Evolutionstheorie und Makrorechtsvergleichung' (2016) 47 *Rechtstheorie* 397.

[6]Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993).

[7]Watson (n 6) actually saw comparative law as a form of legal history: 'Comparative Law is Legal History concerned with the relationship between systems'.

[8]See, eg, Mario Sarfatti, *Introduzione allo studio del diritto comparato* (Giappichelli 1933) 29–30 (history relevant as a part of legal philosophy and legal evolution); Pierre Arminjon, Baron Boris Nolde and Martin Wolff, *Traité de droit compare* (LGDJ 1950) vol 1, 32–34 (l'histoiré compareé du droit); Mathias Reimann, 'Rechtsvergleichung und Rechtsgeschichte im Dialog' (1999) 7 *Zeitschrift für Europäisches Privatrecht* 496; Jaakko Husa, *A New Introduction to Comparative Law* (Hart Publishing 2015) 34–6.

[9]These mirroring ideas were expressed by the English legal historian Frederic William Maitland (1850–1906), and by the Italian civilian and comparative lawyer Gino Gorla (1906–1992). See Frederic W Maitland, 'Why the History of English Law is Not Written' in HAL Fisher (ed), *The Collected Papers of Frederic William Maitland* (CUP 1911) vol 1, 488 and Gino Gorla, 'Diritto comparato', in *Enciclopedia del diritto* (Giuffré 1964) vol 12, 932.

direction. One of the key pioneers behind the rise of the comparative approach to legal history has been Reinhard Zimmermann who has underlined the role of comparison as an integral part of undertaking legal history research.[10] In the 2000s, it has become relatively commonplace to dedicate space for legal history in large volumes about comparative law. The *Oxford Handbook* has a chapter devoted to the relation between comparative law and legal history.[11] It explains, rather generally, how legal rules acquire their structure over time and underlines that this is the reason why a comparatist needs the help of history. Along similar lines, the *Elgar Encyclopedia*'s chapter represents a typical continental European approach by placing the role of Roman law and the accompanying *ius commune* tradition as its centrepiece.[12] In contrast, the *Cambridge Companion* deals with this relation in a broader section that deals not only with legal history but also with other neighbouring disciplines including study of foreign law, private and public international law, sociology of law, legal philosophy as well as newcomers such as transnational law, legal anthropology and law and economics.[13]

In voluminous handbooks on legal history, on the other hand, explicitly addressing comparative legal history seems to be a more recent habit.[14] This might simply be the case because comparative legal history may be described as an exceptionally arduous way to study law.[15] No wonder it is typically described as 'exceedingly difficult'.[16] In any case, comparative legal history is conceived by contemporary legal historians as a subject that is regarded as *one* possible methodology in legal history research.[17] Arguably, the most far-reaching argument concerning the relation

[10]See, eg, Reinhard Zimmermann, *Roman Law, Contemporary Law, European Law: The Civilian Tradition Today* (OUP 2001) that is based on the idea according to which legal history helps us to understand modern or contemporary law. For critical discussion, see Dirk Heirbaut, 'Comparative Law and Zimmermann's New ius commune: a Life Line or a Death Sentence for Legal History?' (2005) 11 *Fundamina – A Journal of Legal History* 136.

[11]James Gordley, 'Comparative Law and Legal History' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019) 754.

[12]Viola Heutger and Eltjo Schrage, 'Legal History and Comparative Law', in Jan M Smits (ed), *Elgar Handbook of Comparative Law* (2nd edn, Edward Elgar Publishing 2012) 505.

[13]Mathias Reimann, 'Comparative Law and Neighbouring Disciplines', in Mauro Bussani and Ugo Mattei (eds), *The Cambridge Companion to Comparative* (CUP 2012) 13.

[14]See, eg, Kjell-Åke Modéer, 'Abandoning the Nationalistic Framework', in Heikki Pihlajamäki, Markus Dubber and Mark Godfrey (eds), *The Oxford Handbook of European Legal History* (OUP 2018) 100; Günter Frankenberg, 'Critical Histories of Comparative Law' in Markus D Dubber and Cristopher Tomlins (eds), *The Oxford Handbook of Legal History* (OUP 2018) 43.

[15]Ibbetson (n 2) 1 gives an almost stultifying description: 'All legal history is difficult, in terms of both access to materials and the imagination that is needed to make sense of them, and comparative legal history is all the more so'.

[16]Mathias Reimann and Alain Levasseur, 'Comparative Law and Legal History in the United States' (1998) 46 *American Journal of Comparative* Law 1, 13.

[17]See David Ibbetson, 'Comparative Legal History: a Methodology', in Anthony Musson and Chantal Stebbings (eds), *Making Legal History: Approaches and Methodologies* (CUP 2012) 131.

between legal history and comparative law maintains that legal history and comparative law ought to merge into one discipline.[18] Indeed, the merging argument is not so radical as may seem at first sight if we regard the past as another country.[19]

We need not go so far as to seek to merge the disciplines but, if nothing else, we can register that comparative lawyers are clearly deeply interested in legal history, although legal historians might feel that this interest has been of a somewhat instrumental nature. Consequently, comparative legal scholars may sometime assign quite a modest role to legal history as a part of comparative law.[20] This is no surprise if we take into account that the intellectual history of comparative law in the twentieth century was, in part at least, about emancipating it from legal history and building a scholarly tradition of its own.[21] On the other hand, comparative lawyers may regard legal history and comparative law as twin sisters though describing their relationship as surprisingly complex.[22] Yet the underlying core idea is straightforward: legal history goes hand in hand with comparative law because 'the past often explains what may otherwise be obscure in the present'.[23]

In macro-comparative law scholarship, the role of history has been and remains important, as it is a part of how different legal families or traditions are demarcated and represented.[24] Moreover, we may even regard macro-comparative law as a dialogue between comparative law and comparative legal history.[25] That said, in mainstream comparative law scholarship the significance of history has been intrinsically downplayed because of the focus on contemporary systems, thus almost instinctively assigning history the role of an auxiliary sidekick.[26] Alternatively, at best, history plays a supporting role when comparative lawyers

[18]Heikki Pihlajamäki, 'Merging Comparative Law and Legal History: Towards an Integrated Discipline' (2018) 66 *American Journal of Comparative Law* 733.
[19]See, eg, Dereck Roebuck, 'The Past is Another Country: Legal History as Comparative Law' (1994) 3 *Asia Pacific Law Review* 9 (arguing that legal history is a subset of comparative law).
[20]Mathias Siems, *Comparative Law* (CUP 2014) 289–291 (connecting history with comparative qualitative data). See also Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Edward Elgar Publishing 2014) 10 ('Legal history has as its focus the past and not the present, often with the aim of explaining the present … ').
[21]See Stefan Vogenauer, 'Rechtsgeschichte und Rechtsvergleichung um 1900: Die Geschichte einer anderen Emanzipation durch Auseinanderdenken' (2012) 76 *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht* 1122.
[22]Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (3rd edn, OUP 1998) 8.
[23]Basil S Markesinis, *Foreign Law and Comparative Methodology* (Hart Publishing 1997) 26.
[24]See, eg, Gilles Cuniberti, *Grands systèmes de droit contemporains* (4th edn, LGDJ 2019) in which each legal family section starts with a brief historical presentation. See also H Patrick Glenn, *Legal Traditions of the World* (4th edn, OUP 2010) which builds on the idea of presence of the past, 4–12.
[25]See Thomas Duve, 'Legal Traditions: A Dialogue between Comparative Law and Comparative Legal History', (2018) 6 *Comparative Legal History* 15.
[26]Cf William Twining, 'Globalisation and Comparative Law' in Esin Örücü and David Nelken (eds), *Comparative Law: A Handbook* (Hart Publishing 2007) 69, 79.

seek to explain the differences and similarities they have discovered in their research.[27] This seems to be remarkably more modest than the quest for a global history of normativity.[28]

Despite growing interest and an increasing amount of scholarly writing on the subject, it is still not quite clear what comparative legal history is, nor what its relation is to comparative law and legal history. It seems to be transforming into something that we cannot yet fully grasp. Accordingly, when comparative study of law is divided according to traditional lines into study of law in time and space, comparative legal history seems to stagger in between two established fields not quite knowing where it belongs.[29] In the world of academia, this is not unheard of. Often, when an emerging discipline takes shape, there is an obvious risk of being caught between a rock and a hard place. Consequently, the kind of shape that comparative legal history takes is yet to be seen, as it does not yet occupy an established position in legal academia. The fresh research handbook *Comparative Legal History* (hereinafter CLH) edited by Olivier Moréteau, Aniceto Masferrer, and Kjell A Modéer aims to provide answers on this issue. This collection tackles the dilemma concerning the identity, nature and place of comparative legal history: is it a novel emerging discipline or more like an indispensable dialogue between two existing academic subjects?

This review article addresses the question of comparative legal history based on the research handbook. The opening quote of this review article from Shakespeare's *Hamlet* expresses the fundamental dilemma that is the driving narrative force behind this paper. Whereas Hamlet considers life and death and ponders a state of being versus a state of not being, being alive and being dead, the question for comparative legal history is: to be or not to be a discipline – that is the question. What follows depends on how this question is answered.

II. Four themes

The book differs from many comparative law and legal history handbooks that tend to be dauntingly thick volumes. Typically, comparative law and legal history handbooks contain well over a thousand pages. In that context, CLH stands out positively in the sense that it is not overly voluminous with its overall five hundred pages. The book is divided into four chosen sub-themes that concern theory and methods of comparative legal history (108 pages), legal sources (120 pages), legal institutions (152 pages) and codification (65 pages). The editors come from different

[27]Michael Bogdan, *Komparativ rättskunskap* (2nd edn, Norstedts juridik 2003) 69.
[28]Cf Katharina Isabel Schmidt, 'From Evolutionary Functionalism to Critical Transnationalism: Comparative Legal History, Aristotle to Present' in Markus D Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (OUP 2018) 263, 287–88.
[29]Comparative study of law as a study of law both in time and space ('comparaison dans l'espace et le temps'), see Jacques Vanderlinden, *Comparer les droits* (Story-Scientia 1995) 418–21.

backgrounds both geographically and legal-culturally. Moréteau is a French comparative lawyer who works in Louisiana, Masferrer is a Spanish comparative legal historian, and Modéer a Swedish legal historian. All the editors have extensive international scholarly experience and they certainly seem to form a very able group for editing a research handbook on comparative legal history. The authors of the eighteen chapters look like the list of usual suspects if we take into account that this is a book about comparative legal history.[30] In other words, many of the authors are well known among those who are already familiar with recent scholarship on comparative legal history. Not only is this book a display by scholars of comparative legal history; it is also proof that discussion of the discipline has gone well beyond the point when debating comparative legal history turned into a debate about Zimmerman.[31] This is another matter altogether although many of the authors do cite Zimmermann's scholarship.

The book starts with a separate introductory chapter written by the editors and divided into two parts. The first half deals with the emergence of comparative legal history and explains how the comparative approach to legal history has come to the situation in which it finds itself today.[32] The second half is more technical as it densely describes the structure and content of the volume.[33] The most interesting and perhaps most revealing part of the introductory chapter is how the editors see comparative legal history today: 'In the new millennium, comparative legal history has become a robust and dynamic somehow autonomous discipline within legal science'.[34] This statement, echoed in one form or another by most of the chapter authors, exposes how comparative legal history is regarded as a vigorous and energetic discipline that, nevertheless, is autonomous *only* somehow. In other words, the scholarly nature of comparative legal history is described as a fact and yet this basic notion is qualified by saying that the status of being an autonomous discipline is something that exists in a way that is not known or certain.[35] Therefore, one can assume that this research handbook is not only

[30]The editors characterise their field by saying that '[t]hough comparative legal historians are not legion, they exist in numbers and meet at continental or world conferences, developing valuable and comforting camaraderie and peer support' (CLH 9). Clearly, the authors in the book are regarded as part of this academic tribe. Furthermore, the birth of this volume is an undoubted outcome of such a conference as the acknowledgment (CLH xiv) states that the beginning of this volume can be traced back to summer 2013 in Lund ie the academic home base of Modéer. However, some of the papers have their origin in different conferences revolving around the *European Society for Comparative Legal History* and *Juris Diversitas* (founded in 2007, an interdisciplinary community for the study of legal and normative mixtures and movements).

[31]See Heirbaut (n 10) 138.

[32]CLH 1–15.

[33]CLH 15–28.

[34]CLH 13.

[35]Illustrating the field as 'autonomous somehow' is not mere words, as we can see when the editors describe the history of the comparative approach to law; their description could be

about cementing the theoretical grounding for the discipline but it is also about convincing the editors themselves that comparative legal history is indeed a research field worthy of being described as an autonomous discipline. Whereas Hamlet asks in his soliloquy whether it would be nobler to suffer all the terrible things that fate throws at him, or whether it is preferable to fight off troubles, and by doing so end them once and for all, the editors of CLH decide to fight off their troubles by taking steps towards constructing comparative legal history as an (almost) autonomous field.[36] The themes discussed embody, each in their own specific ways, taking a stand by seeking to cement a theoretical grounding for the discipline through discussing the specific themes. In a general sense, CLH can be conceived as an attempt to answer the question the editors pose: 'what it is that comparative legal history brings to legal science?'[37] Interestingly, many of the authors leave this question hanging in the air.

1. *Theory and methods*

This part of the volume consists of four chapters, which can be described in a very general sense as methodological. At least this is the thematic organisation that the editors use, although it does not necessarily give a fitting account of what is actually placed under this theme. Now, it is not argued that what is placed under this thematic heading would be academically substandard; rather, it is argued that this part of the volume is more akin to a search to establish the emerging discipline than it is to methodology.

Adolfo Giuliani's extensive chapter asks what comparative legal history is and seeks to provide a legal historian's answer.[38] Giuliani does not do comparative legal history or provide an account of its methodology but, rather, offers an interesting historical view of the thematic field based on an idea according to which legal historiography changes over time. The focus is on the decades 1930–60, which, according to Giuliani, saw a profound turn in European legal science. Yet, like any self-respecting continental European modern legal historian, he starts from von Savigny, discusses the French *Code Civil* (1804), addresses Bartolism and Leibniz before finally coming to Wieacker. Key points in Giuliani's learned chapter are movements against textualism, against purity, and against historicism. Finally, the chapter discusses the emergence of comparative elements in the study of legal history. In essence, Giuliani frames the rise of comparative legal

found in any extensive textbook on non-historically oriented comparative law (CLH 1–3). Moreover, the editors also trace back the usage of the expression 'comparative legal history' ie not comparative study of legal history as such (in a substantive manner) but explicitly the emergence of a specific expression, CLH 3–6.

[36] 'Whether 'tis nobler in the mind to suffer/The slings and arrows of outrageous fortune/Or to take arms against a sea of troubles/And, by opposing, end them?' Shakespeare (n 1) 403.

[37] CLH 10.

[38] CLH 30–77.

history as a repercussion against criticism of the black-letter law approach, disregard of law's context, and a misguided belief in linear and cumulative development.[39] Importantly, the argument maintains that legal historiography is useful in terms of understanding the present world of law: 'the rise of comparative legal history signals a deep change in the understanding of law and in the ways to write legal history'.[40]

The second chapter under this thematic heading is written by Seán Patrick Donlan and, much like Giuliani's chapter, although not as overly long, it actually has not that much to do with methodology.[41] Rather, it is a normative argument on the nature of comparative legal history concerning the issue of what comparative study of legal history *ought* to include, ie what kind of a scholarly outlook it should have as a specific form of studying law, understood in a very broad manner. Donlan's chapter does not confine itself to comparative legal history but makes a plea for broadening the research well beyond what many others would see as limits to the comparative study of legal history. He describes this expanded view by arguing that it 'ought to include the study of entanglement, embrace the study of more than *legal* and draw inspiration from beyond *history*'.[42] Donlan openly admits that this would mean considerable expansion of the subject but expansion would be needed because real life legalities or normativities tend to be complex. Primarily, comparative legal history should free itself from the grip of Western orientation and doctrinalism. In other words, Donlan would prefer to see comparative legal history as a historical study of legal hybridities, that is, a study of entanglement of legalities going beyond the legal as narrowly understood. Though both Giuliani's and Donlan's chapters make very interesting reading, they say rather little about the methodology or methodologies of comparative legal history. However, the third paper under this heading moves clearly in a methodological direction.

Dag Michalsen's chapter seeks to offer a methodological reflection upon comparative legal history in a manner that he labels as analytical.[43] In practice, the analytical approach means that Michalsen maps different types of intermittent methodological problems. This chapter is not so much interested in establishing the discipline of comparative legal history; hence, it regards comparative legal

[39]Interestingly, much contemporary comparative law scholarship starts from a criticism of legal positivism. See, eg, Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006) 7, who presents 'a methodological approach that integrates the social and ethical elements of law into a necessarily pluralist legal analysis to understand the pervasive role of law in its various social contexts'. The key point against legal positivism is that it is '[i]nsufficiently cornered about socio-cultural factors' 159.
[40]CLH 77.
[41]CLH 78–95.
[42]CLH 79–80.
[43]CLH 98–109.

history as first and foremost a research dimension highlighting methodological issues typical of much of legal history as a discipline. It is not difficult to understand why the special nature of comparative legal history is not distinctly underlined because the assumption is, rather, that '[c]omparative legal history is linked to a number of related academic disciplines'.[44] Of the linked disciplines, Michalsen stresses the connections between comparative law and legal history. The reason why this connection is of particular importance, according to his chapter, is that these disciplines both perform the abstract act of comparing, which in turn requires at least two distinct legal entities for comparison.

This chapter also discusses the aims of comparative legal history, the significance of relationships between past legal orders, as well as geographical factors that vary from local to global. Besides these, Michalsen addresses different forms of past legal entities, a variety of internal legal matters, and the theoretical nature of law that is historically compared. The main concluding point concerns the role of contexts of laws as Michalsen makes the methodological point that 'any legal historical comparison will be a contextually formed comparison'.[45] This chapter is notably level-headed as it focuses on clearly limited methodological issues, although the reader might be slightly surprised to see how limited a view Michalsen has on the methodological tools of comparative law, which, according to him, are developed mostly for the purpose of legal interpretation. This view is, frankly, somewhat outdated and does not really take into account more recent methodological developments in comparative law that have moved toward more pluralist views. It does not seem right to claim that the purpose of legal interpretation would have such a strong role for comparative law methodology of today.[46] Incidentally, this point comes clear in the following chapter.

Methodologically the most interesting chapter is Matthew Dyson's text dealing with methodological issues in a manner that is based on a thoroughly informed view of comparative law scholarship.[47] Dyson's chapter provides a detailed discussion on comparative methodology among comparative legal scholars, which is reflected on the study of legal history. Moreover, he is clearly fully aware of the inborne weaknesses and strengths of comparative law methodology discussion as he makes two relevant observations. First, '[m]ethodology should

[44]CLH 98.
[45]CLH 109.
[46]See, eg, Marieke Oderkerk, 'The Need for a Methodological Framework for Comparative Legal Research – Sense and Nonsense of "Methodological Pluralism" in Comparative Law' (2015) 79 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 589 and Mark Van Hoecke, 'Is There Now a Comparative Legal Scholarship?' (2017) 12 *Journal of Comparative Law* 271, review article of *An Introduction to Comparative Law Theory and Method* (2014) by Geoffrey Samuel, *Comparative Law* (2014) by Mathias Siems, and *A New Introduction to Comparative Law* (2015) by Jaakko Husa.
[47]CLH 110–38.

empower, not render powerless'.[48] Second, '[o]ther than jurisprudence, comparative law has perhaps the most detailed writings on legal method of any legal sphere'.[49] Now, Dyson's core point is to argue for sharing the tools that comparative law scholars and legal historians use in their research. In particular, he seeks a balance between disciplines – a task that appears to be fulfilled in his chapter.

Essentially, Dyson discusses and proposes a handful of methodological tips that draw from both legal history and comparative law. The starting point is nicely expressed by saying that even though these fields are interrelated and useful to each other '[t]he difficulty is not the will, but the way'.[50] The chapter recognises the inherent imbalance in the methodology by noting that comparative law scholars discuss and debate methodology much more than legal historians, who rather do research than talk about doing it. On the other hand, the level of detail in comparative law methodology scholarship allows Dyson to address such useful concepts as functionalism, legal culture and 'law in minds'. He makes several propositions based on drawing from the terms and debates of comparative law, focusing on transitional moments, looking outside narrow legal categories, taking path-dependence more effectively into account, and paying particular attention to – what he calls – 'pockets of inverted objects' that may exist within functioning systems. With this in mind, Dyson's key point comes close to Donlan's view according to which one should not conceive a legal system, or indeed law itself, narrowly but should look outside the boundaries of the legal doctrinal view.

2. *Legal sources*

Under this thematic heading are five chapters spanning from customary law to *ius commune* and legal education. Jacques Vanderlinden's chapter is a personal paper drawing on his long career and seeking to highlight the different meanings of the word 'custom' from the standpoint of legal pluralism.[51] The attempt to understand different meanings is also a tribute to Canadian legal scholar Roderick A Macdonald (1948–2014) and his scholarship on legal pluralism.[52] Vanderlinden distinguishes different possible usages of the word 'custom' and then looks at these forms through Macdonald's radical legal pluralism. This chapter contains much information and witty scholarship, that much is clear. However, one may ask if this kind of writing style would fit better in a *Festschrift* than in a research handbook. In any case, Vanderlinden tries to answer Macdonald's questions about

[48]CLH 120.
[49]CLH 113.
[50]CLH 110.
[51]CLH 140–66.
[52]See, eg, Rod Macdonald, 'Custom-Made-For a Non Chirographic Critical Legal Pluralism' (2011) 26 *Canadian Journal of Law and Society* 301 (cites a number of Vanderlinden's publications, see 309 n 26).

the meanings of the word 'custom' from an angle that shies away from a hierarchical understanding of law. The fact that this entertaining chapter feels like 'an invitation to chaos' is, nevertheless, intentional as Vanderlinden says that '[l]egal pluralism is a way of portraying legal and social phenomena in relation to one another and their full richness of detail; but it is not itself an analytical model'.[53] Despite being an interesting piece of scholarship this chapter says relatively little about comparative legal history because it seems to mix comparison and anthropological rather than comparative and historical.

Emily Kadens writes about the colonisation of custom in pre-modern Europe and uses discussion on the so-called new *ius commune* as her starting point.[54] Kadens's view is sceptical as it is based on micro level comparative legal history in which she compares two legal systems within a single society. The focus is on the decline of custom that is typically conceived, according to her, too simplistically. This chapter paints a picture in which customary law and university-trained Roman law clash internally. Essentially, the paper explains how views of law changed when individuals' understanding of law became something that was 'derived from books rather than from gatherings at the village green'.[55] Prior to 1200, custom was an important form of law but by the late seventeenth century it had almost disappeared in many regions as a living legal source. The chapter shows how trained jurists altered custom and turned it into something that resembled written learned law. Kadens' chapter fits well in a research handbook on comparative legal history although readers might feel slightly unhappy because her paper does not have any subheadings at all. Admittedly, this is not a serious rebuke.

Marie Seong-Hak Kim's chapter plays well together with Kadens's as it continues and broadens the comparative discussion on custom as a source of law.[56] Seong-Hak Kim compares East Asian and European legal histories by relying on the notion of custom that provides, according to her, an analytical tool through which studying two distant legal pasts side by side becomes viable. A key observation for the discussion in the chapter is that customary law was a foreign idea to the traditional East Asian sphere of law. Seong-Hak Kim relies on H Patrick Glenn's (1940–2014) evolutionary stages of custom in Europe: capture, reconstruction and marginalisation.[57] Her insightful analysis is clearly comparative legal history as she moves across time, space and legal cultural contexts. Importantly, East Asian law was mostly criminal law, not private law as in Europe; and at first there were no trained legal professionals. When custom as a source of law was recognised, it took place through the model of European

[53]CLH 166.
[54]CLH 167–85.
[55]CLH 169.
[56]CLH 186–211.
[57]H Patrick Glenn, 'The Capture, Reconstruction and Marginalization of "Custom"' (1997) 45 *American Journal of Comparative Law* 613.

learned law: 'Several hundred years later, a similar process took place in East Asia when the French Civil Code played the role of written reason in the modernization of Japanese law'.[58] Crucially, Seong-Hak Kim's paper shows how a comparative legal historical approach can be executed in a fruitful manner and, moreover, how it can help to cross not only the confines of time and space but also the confines of legal cultures.

Aniceto Masferrer and Juan A Obarrio continue the discussion revolving around learned law and reception of Roman law by juxtaposing *ius commune* and *ius proprium* in their thickly footnoted chapter.[59] They first discuss legal sources generally and their priority order, explaining how *ius commune* gained the role of subsidiary law from the Middle Ages. It is shown how 'Roman law became the subsidiary source of law in many jurisdictions, the more since it was understood as the only genuine *ratio scripta*'.[60] This chapter describes comparatively how Roman law gained the position of written reason. After the general part, the paper moves on to discuss and densely analyse the case of Spain through the kingdoms of the Spanish monarchy covering Catalonia, Valencia, Aragón, Majorca, Castile and its Latin American colonies, as well as Navarre. Masferrer and Obarrio offer a learned insight to views on legal sources in the Spanish legal sphere and by doing so they also provide an example of doing an internal legal historical comparison. On the other hand, although they offer interesting comparative information on the Spanish kingdoms, the overall view of how *ius commune*'s written reason came to win *iura propria* goes very much along paths familiar from standard legal historiography.[61] Moreover, Masferrer and Obarrio show how study of Roman law is inherently not bound by national borders, that is, Roman law scholarship has an inborne quality of being comparative, broadly understood, not just in the sense of comparative law scholarship.

The last chapter under the heading of legal sources has very little to do with legal sources as the author Dolores Freda compares legal education in England and Continental Europe between the Middle Ages and the early modern period.[62] Notwithstanding, there is no doubt that this paper does fit this research handbook. Freda leaves out legal education at Oxford and Cambridge because it was Roman-canon law and not the education given at the Inns of Court, which was far more relevant for legal practice. First this generously footnoted paper

[58]CLH 207. As Glenn (n 57) 619 notes: 'scholars, and there was great talent amongst them, had to recognize the normativity of that which they found, but felt they had no choice but to express it in a manner consistent with main-stream western thinking'.
[59]CLH 212–41.
[60]CLH 224.
[61]See, eg, Thomas Kuehn, 'A Late Medieval Conflict of Laws: Inheritance by Illegitimates in Ius Commune and Ius Proprium' (1997) 15 *Law and History Review* 243.
[62]CLH 242–60. For some reason ius commune is written with 'j' in this chapter, whereas in other chapters it is written with 'i'. However, later in the volume Taitslin (CLH 341) uses 'i' in Roman law context and 'j' in the common law context.

describes legal education at the Inns of Court, relying rather much on James Baker's scholarship, by explaining two main forms of legal education: readings and moots. Whereas readings were more like lectures the moots concentrated on the actual practice of legal pleading, or the professional life of a court lawyer. On the Continent, the two main forms of legal education were lectures and *quaestiones disputatae*, or legal questions that were debated. On both sides of the Channel, lectures had significant similarities although there were also differences as the universities relied on teaching by a *doctor* whereas at the Inns the key role was given to the *reader*. By comparing the models of legal education, Freda points out that legal education was not so dramatically different as we thought previously. Be that as it may, she notes that '[t]he prevailing doctrinal character of legal education on the Continent and the prevailing practical character in England appear undisputable'.[63] Yet some features were common to both English and Continental systems of legal education at that time.

3. *Legal institutions*

The first chapter under this thematic heading is Jean-Louis Halpérin's comparative and historical account of the triumph of judicial review.[64] This chapter is exceptional in the sense that it deals with public law, which is typically left out of these kinds of comparative law or legal history volumes, which tend to focus almost exclusively on private law. Halpérin addresses judicial review by comparing four kinds of births: American judge-oriented constitutionalism, the cautious interpretative culture of the French courts, the histories of judicial review in European countries and the birth of centralised judicial review. The chapter tells the American story by explaining key cases such as *Marbury v Madison* (1803) and *Lochner v New York* (1905). The French story starts from the second great revolution and explains why judicial review was not adopted in France. Interestingly, the explanation for the rejection is not a simple one because '[i]t was the political context, and not a rejection of the superiority of the constitution, that prevented the French higher judiciary from taking the same path as its American counterpart'.[65] Other European systems are addressed very briefly, followed by an explanation of the centralised review model. Crucially, Halpérin points out that the success story of judicial review has historical roots in the eighteenth century; hence, it is not such a recent phenomenon as one might assume. This chapter, although clearly comparative legal history, would fit well in any book about comparative constitutional law without necessarily being labelled as comparative legal history.[66] A similar issue – under which label? – also concerns the next chapter.

[63]CLH 259.
[64]CLH 262–83.
[65]CLH 272.
[66]See, eg, Eivind Smith (ed), *Constitutional Justice under Old Constitutions* (Kluwer 1995).

Paul Finkelman and Seymour Drescher deal interestingly with slavery from the standpoint of history of international law.[67] They use the intriguing metaphor of 'vampire' by depicting slavery as a thing that sucks out the lifeblood of slaves for the benefit of their masters, always ready to reappear in new guise. This chapter is an insightful and well-written paper that explains how slavery became to be regarded as deeply problematic and how this change in thinking eventually changed international law. In short, the story tells how the vampire of humanity was finally legally rejected. Yet, '[d]espite the publicly proclaimed universal consensus that slavery is a criminal violation of human rights, in parts of Asia and Africa slavery is still practiced'.[68] Now, the paper is undoubtedly good legal scholarship on the history of international law but it is not quite clear how it would amount to comparative legal history in any meaningful sense.[69]

Remco van Rhee discusses the superior courts in continental Europe and their procedure in civil law matters.[70] He addresses first the birth of the Romano-canonical procedure, which is relevant for the rise of new judicial procedures throughout Europe. The next step was the creation of superior temporal courts from the thirteenth century onwards. The chapter makes clear that the hierarchy of the courts is a surprisingly late invention, taking place only in the nineteenth century. From the viewpoint of evolution of procedural law, the next important phase was the reception of Romano-canonical procedure in the superior temporal courts, followed by the slowly growing importance of case law. However, the growing significance of case law was not a walk in the park: as van Rhee notes, '[u]ntil the end of the early modern period, the absence of reasons in judgments would continue to be problematic'.[71] Finally, procedure loses its pan-European – van Rhee uses the notion of 'cosmopolitan' – features alongside the national codifications of civil procedure, leading eventually to the birth of the superior courts of the nation state. This densely footnoted chapter is clearly comparative legal history. However, it is not so in a way that resembles comparative law scholarship's methodologies, but rather in the way that has been typical of the study of Roman law tradition in that it disregards borders without making specific comparisons based on clear comparative framework. That, however, does not imply any deficit in terms of the scholarly value of van Rhee's paper. The issue concerns scholarly placement: under which banner?

In her almost overly thickly footnoted chapter, Anna Taitslin focuses on the birth of the notion of possession and ownership in Roman law and of the notion

[67]CLH 284–317.
[68]CLH 316.
[69]Indeed, the history of international law seems to have become a field of its own – an evolving discipline much like comparative legal history. See, eg, Matilda Arvidsson and Miriam Bak McKenna, 'The Turn to History in International Law and the Sources Doctrine: Critical Approaches and Methodological Imaginaries' (2020) 33 *Leiden Journal of International Law* 37.
[70]CLH 318–40.
[71]CLH 334.

of possessory title at common law.[72] She looks at the common law possessory title and contrasts its conceptual framework with that of Roman law. Her starting point is in Roman law's possession and *dominium*; in the case of common law she assumes that 'common law did not embrace a strict distinction between possessory and proprietary remedies'.[73] The first part of this somewhat voluminous chapter discusses in detail the formation of concepts of ownership and possession at Roman law. The second part addresses possessory title at common law by explaining the evolution of remedies and other following common law doctrines such as the action for ejectment and disseisin at election.[74] In essence, Taitslin's paper seeks to answer the question why Roman law could not manage without a concept of ownership whereas common law did. An intrinsic comparison takes place between historical civil law and common law. Although the chapter contains a great amount of information it is not quite clear how comparison actually takes place because it is interwoven with the narrative in a manner that avoids explicit methodological discussion. Like van Rhee, Taitslin compares somewhat instinctively in a manner that seems to be typical of Roman law scholarship. Moreover, some readers might feel that her chapter would sit better in a volume about Roman law. At the same time, none of this is to say that she would not do comparative legal history. However, the following chapter is explicitly based on comparison.

Warren Swain's chapter addresses the formation of the law of contract in England and the French impact on this process.[75] Thickly footnoted and fluently written, this paper is an excellent example of the comparative legal historical approach as it highlights the surprising relationship between French law, as contained in the *Code Civil*, and English law.[76] Swain starts by briefly describing the road to codification in France and then quickly moves on to discuss how some of the underlying ideas found their way to English common law. A key character of this chapter is Robert-Joseph Pothier (1699–1772), whose work was largely incorporated in the French codification and an influential translation of his work on the law of obligations that was cited in the English courts in the nineteenth century. As Swain notes, it is surprising to see such an impact by a French doctrinal writer. In any case, lawyers and judges in nineteenth-century English common law were attracted because the French rules sometimes provided

[72]CLH 341–78.
[73]CLH 341.
[74]It must be said that this author found it difficult to fully follow Taitslin's train of thought. However, this may be because the substance of her chapter goes beyond this author's ken. Accordingly, it may not be fully justified to level too heavy criticism concerning the readability and understandability of this paper. Then again, perhaps one might expect a slightly more reader-friendly approach in a research handbook.
[75]CLH 379–99.
[76]See a more general comparative discussion, Geoffrey Samuel, 'Civil Codes and the Restructuring of the Common Law' in Duncan Fairgrieve (ed), *The Influence of the French Civil Code on the Common Law and Beyond* (British Institute of International and Comparative Law 2007) 91.

convenient solutions to practical legal problems: '[i]t was not unknown for 19-century English judges to draw on Civilian sources from outside the Common law'.[77] Swain argues that the key notions of (English) consideration and (French) *causa* were not that different – after all – during that period. This chapter is particularly interesting because it shows that there were intellectual bonds between civil law and common law in the nineteenth century before they were weakened in the following century and Pothier's English influence began to wane.

Kjell-Åke Modéer tells the story of how the intellectual wind turned from South to West and how this transformed Nordic legal cultures.[78] During its history before the twentieth century, Nordic legal culture received influences from the medieval *ius commune*, later *usus modernus*, the continental European codification movements, and German modern legal science. However, after World War II, the intellectual wind turned towards the West. Post-war Nordic countries – especially Sweden, Denmark and Norway – began to receive legal-ideological influences from the United States. Later, Sweden became the pioneer and model for other Nordic countries with its progressive welfare-state legislative reforms. North American influences were taken on board through personal relations in the sense that young Scandinavians typically spent a period studying law in the United States. There were also successful Nordic harmonisation efforts but after 1972 Nordic legislative enthusiasm seemed to – Modéer claims – somehow fade away.[79] Modéer's most important observation concerns the nature of the interaction between North America and Nordic legal cultures: 'it is largely a one-way interaction', which means that the impact comes from the West and the Nordics have been the receivers in this legal-cultural transformation process.[80] Although this chapter does not make explicit comparisons, it does tell how the Nordic legal cultures changed intellectually during the latter part of the twentieth century and how the South has come back to transform the law in the North (the European Convention on Human Rights and European integration through the European Union).[81]

[77]CLH 392.

[78]CLH 400–14. Modéer uses the notion 'Scandinavia'; however, this author prefers to use the notion 'Nordic'. Now, Denmark, Finland, Iceland, Norway, and Sweden are the five Nordic countries and they all have what one can label as common Scandinavian cultural roots. However, it is typical for Danes, Norwegians, and Swedes to refer to themselves as Scandinavians. Geographically the Scandinavian countries include only Norway, Sweden, Denmark and small bits of northern Finland. Accordingly, the notion 'Nordic' brings all five countries under the same conceptual umbrella.

[79]However, many other Nordic scholars would not see the situation concerning Nordic legal cooperation this darkly. See, eg, Pia Letto-Vanamo and Ditlev Tamm, 'Cooperation in the Field of Law' in Johan Strang (ed), *Nordic Cooperation: A European Region in Transition* (Routledge 2016) 93.

[80]CLH 413.

[81]See Ulf Bernitz, 'Nordic Legislative Cooperation in the New Europe – A Challenge for the Nordic Countries in the EU Perspective' (2000) 39 *Scandinavian Studies in Law* 29.

4. *Codification*

This thematic section is clearly much more unified and coherent than the other sections as it is held together with issues concerning codification or lack of it. The first chapter under this heading is by Dirk Heirbaut who compares historical and ongoing events, addressing relevant methodological problems at the same time.[82] This fluidly written and insightful paper makes a comparative parallel between nineteenth century Germany and the European Union of our time by focusing on their efforts at unifying and codifying private law. Heirbaut first describes the long codification process in Germany and goes on to explain why the German civil code is apt for historical comparison. Interestingly, he sees similarities in the failed European codification process and the successful German process as he explains: 'the work on the Civil Code was unique in that no one dominated the whole process. The German states, special interest groups, political parties and the *Reichjustizamt*, all played a role'.[83] Of course, there are also differences (lack of unified political will, lack of an idea of one people, lack of one language) although one crucial factor is surprisingly similar, namely the presence of legal professionals conceiving the process of codification as systematising the relevant technicalities of private law. Crucially, Heirbaut points out that it is easier to reach consensus on technical points than to go to concrete everyday issues. Altogether, this chapter successfully combines methodological discussion with substantive comparison. Indeed, it is one of the few chapters that seems to genuinely answer the call of the editors regarding the emergence of a novel field still rubbing shoulders with comparative law and legal history even if slightly reluctantly, as if feeling unease because of disciplinary intimacy with older established fields.

Agustín Parise deals with the conceptualisation of ownership by looking at it through three American civil law jurisdictions and their nineteenth century codifications.[84] This heavily footnoted (341 of them) and perhaps slightly too long paper starts from an assumption according to which 'American Civil Law Jurisdictions are a *comparativist's dream*'.[85] The focus is on the ownership paradigms of Louisiana, Chile and Argentina. In other words, Parise discusses the understanding of the legal basis of ownership and what it comprises. The chapter makes use of distinguishing first-generation (1825–1889) and second-generation civil codes. Importantly, the first-generation codes came to encapsulate the liberal paradigm of ownership. Louisiana was first in 1825, Chile second in 1857 followed by Argentina in 1871. The Louisiana code sought a balance between prudent liberalism and

[82]CLH 41–31.
[83]CLH 423. For a broader discussion, see Hans Micklitz, 'The Codification Mania and the Changing Nation State: a European Perspective' in Mary Keyes and Therese Wilson (eds), *Codifying Contract Law: International and Consumer Law Perspectives* (Ashgate 2014) 79 (points out that traditional private law has been inherently linked to nation state-building).
[84]CLH 432.
[85]CLH 433.

enlightened conservatism whereas the Chilean code was more inclined towards a new ownership paradigm welcoming French liberal doctrine, which seemed to be the case with the Argentinian code too. Crucially, these three codes had an impact on the other later civil codes in civil law jurisdictions in the Americas, although the Louisiana code was perhaps the most influential because it was the oldest. This chapter fits rather neatly in the volume and the reader need not disagree with Parise when he notes that studying civil law codifications in American civil law jurisdictions 'provided fertile ground for an exercise of comparative legal history'.[86]

The last chapter, written in a disciplined manner by Heikki Pihlajamäki, explains why private law was not codified in Sweden and Finland.[87] The comparative rationale is that Pihlajamäki contrasts continental European legal culture centred after the nineteenth century around codifications, and Nordic legal culture which is distinguished in comparative law literature from the rest of the Europe by a lack of private law codifications. Importantly, it is maintained that codification is not an unavoidable or self-evident feature of modernised legal European legal culture outside the sphere of common law. Whereas elsewhere in Europe the chaotic state of legal sources – brewed by the multifaceted *ius commune* tradition – and the need for national cultural symbols was decisive, in the North things were different. Simply, there was no urgent need to codify because there was no chaotic mess of legal sources. The Nordic legal mentality also lacked an epistemic urge to unify private law by codifying it. Moreover, the Nordic countries already had early codifications – compilations in fact – that could function as legal-cultural national symbols – Sweden (Finland also a part of the realm at that time) had the Law of the Realm of 1734, which continued its existence throughout the period of the Grand Duchy (1809–1917) and beyond. Pihlajamäki's central claim based on comparative observations is that codifications were not necessary in the North and, consequently, '[p]rivate law could just as well be modernised with the help of statutory law'.[88] In essence, the explanation for the lack of private law codification in Sweden and Finland is both comparative and historical.

III. To be or not to be a discipline?

CLH contains a mix of senior and emerging scholars; it has some highly interesting chapters; and there is an aspiration to pave the way for future research. In that sense, no doubt, the book fulfils the primary function of a research handbook. However, there is hardly any debate or interaction between chapters. Moreover, in some places, the reader might hope for stronger editing by the editors.

[86]CLH 463.
[87]CLH 465–81. Pihlajamäki uses the notions of Scandinavian and Nordic as synonyms.
[88]CLH 481.

Nevertheless, on the whole this is undoubtedly an impressive collection of learned papers in legal history and many of the papers do indeed also utilise more or less comparative approaches or at least comparative vocabulary. However, it is not quite clear if this research handbook actually defines what comparative legal history is as a separate field situated between comparative law and legal history. Frankly, though, that is no wonder since the issue itself is complicated and difficult to answer. There are many challenges as CLH itself demonstrates and, more or less, articulates. Therefore, to be or not to be a discipline is an Augean task to provide an answer for.

When describing the many challenges of comparative legal history, Ibbetson says that '[w]e cannot expect to get it all right at first, and along the way we shall meet our Maitlands, telling us to get our national legal histories sorted out first before moving on to any comparison'.[89] This undoubtedly expresses two points at the same time. First, it is a call to expand the study of legal history beyond national histories. Second, it is encouragement to do so by relying on a comparative approach familiar from comparative law. This double-edged message also contains an indirect answer to the question posed by the editors of CLH: 'what it is that comparative legal history brings to legal science?' In short, is comparison no more than a means to an end, a tool that enables legal historians to break free from the straitjacket of nationally oriented legal history? That said – and herein lies the problem – not all legal historians have been or are restrained by this epistemic and paradigmatic straightjacket. Crucially, Roman law has never been restricted by national legal history.[90] Much of this also applies to constitutional law scholarship, which has a long tradition of being comparative and historical at the same time, though with clearly a shorter pedigree than Roman law. Arguably, what really tells comparative legal history apart from its sister disciplines are two factors. First, comparative legal history gives a much more significant role to history than comparative legal scholars normally seem to do. Second, comparative legal historians assign a great role to comparison in two senses: the research frame is comparative as such in the sense that is built upon comparative viewpoints or the researcher discusses their approach extensively justifying their methodological choices (ie how they compare) in a more detailed manner than is normally the case in legal historical research.

The editors of this volume are clearly arguing that it is nobler to take arms against a sea of troubles and by opposing end them in terms of the emerging discipline of comparative legal history. They maintain that comparative legal history

[89]Ibbetson (n 2) 11.

[90]Interestingly, Winkel has recently pointed out that legal history and comparative law are not only similar on the level of method but also on the level of epistemology. However, Winkel does not speak specifically about comparative legal history but of Roman law, see Laurens Winkel, 'Legal Epistemology and Roman Law' in Seán Patrick Donlan and Jane Mair (eds), *Comparative Law – Mixes, Movements, and Metaphors* (Routledge 2020) 158, 168–9.

can be demarcated from comparative law and legal history, although only a few of the chapters in this volume provide full support for this attempt. Then again, it might be a fruitful idea to separate the two things. The question of the discipline of comparative legal history is different from that of the question of legal historical research benefiting from comparative methodologies developed within the field of comparative law. Even if we would not see a genuine place for comparative legal history as a distinct field we can, nevertheless, see much use for comparatively executed research in the field of legal history. This research handbook certainly shows the fruitful scholarship that comparative approaches can produce even though it might not manage to fully convince its readers that a distinct field must necessarily exist.

There is more to it. Now that comparative law has become more pluralistic and less black letter law-oriented than in the past and legal historians are opening up – beyond Roman law scholars – their previously nationally restricted research scope (so-called global legal history), it might be the case that the scholarly space left for an autonomous discipline of comparative legal history proves to be simply too narrow.[91] This is also what Pihlajamäki, in another context though, seems to argue for, namely giving more weight to international and transnational contacts and links when they are applicable so that, in a way, all legal history would eventually become comparative.[92] This seems to make sense if one looks it from the standpoint of the legal historian; however, this author doubts whether it excites great appeal among the ranks of comparative law scholars.[93] For instance, a rather recent growing trend that the movement around comparative legal history seems to leave unattended is the growing usage of quantitative methodology by comparative legal scholars.[94] Yet, none of this is to say that the challenges which comparative law and legal history are facing would not be of a similar nature due to transnationalisation.[95]

Finally, there is also one obvious risk if comparative legal history chooses to take arms against a sea of troubles and fight for its position as an autonomous discipline – it may fall into endless theoretical and methodological debate that makes methodology its main subject instead of legal historical substance, much as

[91] See, eg, Thomas Duve, 'Global Legal History – A Methodological Approach' (2016) *Max Planck Institute for European Legal History Research Paper Series* 2016–4, 1. Importantly, global legal history may refer to the attempt to write legal history differently from in the past, ie not attached to any given place or time. This would clearly undermine the need for a distinct comparative legal history.

[92] Pihlajamäki (n 18) 750.

[93] See for more detailed discussion, Jaakko Husa, 'Comparative Law and Legal History – A Match Made in Heaven?' (2018) 41 *Retfærd: nordisk juridisk tidsskrift* 55.

[94] See, eg, Ralf Michaels, 'Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law' (2009) 57 *American Journal of Comparative Law* 765 and Siems (n 20) ch 6 (Socio-legal Comparative Law).

[95] Cf Thomas Duve, 'Preface' (2018) 66 *American Journal of Comparative Law* 727.

comparative law scholarship has done.[96] The deceptive spider's web of infinite discipline-seeking-discourse is not a mortal coil that cannot be shuffled off but a choice of our own making.

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[96]See, eg, Robert Leckey, 'Review of Comparative Law' (2017) 26 *Social & Legal Studies* 3.