Roundtable for the Semiotics of Law – Panel on Comparative Law and Methodology

Francesco Petrosino[1]

The International Roundtable for the Semiotics of Law, held in the splendid setting of the Auditorium Antonianum from May 24th to 27th, 2023, represented a valuable opportunity for the working group, primarily composed of scholars from the Faculty of Law of the University of Trento, to revitalize a research thread focused on the study of comparative law.

The panel, where the outcomes of individual investigations were subsequently realized, bore the title "Comparative Law Methodology". The panel included interventions that were diverse in terms of content, but were marked by a common focal element. To put it more precisely, they shared a common methodological framework that underpinned all the presented works and materialized in the adoption of a *comparative law methodology*.

The reference to this term has indeed sparked a debate among scholars on the nature of comparative law methodology, including whether there are multiple interpretations and what it entails. Specifically, it raises questions about the implications of conducting legal research based on a comparative law axiological framework.

Therefore, on one hand, there are those who believe that comparative law is based on a specific methodological approach, each time grounded in certain guiding principles[2]. On the other hand, there are those who find it problematic to identify comparative law with a single methodological strategy. They argue that there is no "pure" method of comparison and that, instead, one can employ various approaches[3]. Despite the ongoing debate surrounding the method - or methods - of comparison, the research group's intention was to conceptualize comparative law not only as a scientific reference point, but also as a tool aimed at effectively managing the changes – and the challenges– arising from the continuous progress of the current social and economic context. A context that, moreover, must grapple with a process of globalization – both in economic terms and in

[1] *University of Trento (Italy), francesco.petrosino@unitn.it.*

[2] In this regard see K. ZWEIGERT, H. KÖTZ, *An Introduction to Comparative Law*, II ed, vol. I, Oxford, 1987, 31, where the authors specify that functionality is the core principle on which comparative law is based; R. SCHELSINGER, *Comparative Law. Cases – Text – Materials*, VI, New York, 1998, p. 47.

[3] Please remember in this regard the considerations of R. SACCO, P. ROSSI, *Introduzione al diritto comparato*, R. Sacco (dir. da) in *Trattato di diritto comparato*, Milano, 2019, 9, according to which a comparative reading based on a single and unique methodological approach leads to a narrow view of comparative law. Rather than focusing on the method, it would be preferable to consider that comparative law, in the practice of comparison, employs various "techniques," as well emphasized by V. V. PALMER, *From Lerotholi to Lando: Some Examples of Comparative Law Methodology*, 53 *Am. J. Comp. L.*, 2005, pp. 262-263 where he specifies that «Method is now identified by the "techniques" by which comparison is carried out. These techniques have thereby acquired the status of separate methods: thus, we have historical, functional, evolutionary, structural, thematic, empirical and statistical comparisons and all of these can be carried out from a micro or a macro point of view».

relation to legal systems – which calls for a critical response, that comparative legal science appears to be capable of providing.

It is evident, therefore, that if the goal of the working group was to highlight the use of comparative law as a valuable tool to address certain challenges that have emerged in individual legal systems due to global economic, social, and cultural phenomena, a foundational premise must be acknowledged. Specifically, the scientific approach of the modern comparativist needs to evolve in a renewed form, while also maintaining its foundational theoretical orientations. It should emphasize a comparative study attitude that is inclined to address the issues coming from the globalized scenario it must contend with[4], abandoning the veneer of excessive descriptiveness that has been criticized by comparatists and, more broadly, by the wider scientific community of law scholars[5].

Therefore, adopting such a perspective as a common research framework, the contributions presented during the Roundtable have unfolded along multiple guiding lines.

Indeed, on one hand, the first part of the panel focused on the interaction between comparative methodology and language, considering both natural language and legal language dimensions. In this regard, a portion of the studies focused on the relationship between the legal system of the European Union and its transposition into the legal systems of individual Member states. This bond was emphasized in the panel discussions through various approaches, all of which shared the necessary presence of comparative methodology as a tool for integration not only in terms of legal aspects, but also encompassing the linguistic and cultural ones.

The research perspective based on the combination of law and language primarily focused on the scenario of EU law. Particular attention was given to the phenomenon of hybridization affecting EU law, where different legal systems, languages, and cultures coexist. In such an environment, there is a risk that EU common legal concepts may be interpreted differently, even to the extent of losing their meaning and effectiveness. Therefore, the theoretical comparative trend, supported by the adoption of specific methods such as that of “the theory of legal formants”, needs to be upheld in order to ensure the consistent application of directives and regulations. In essence, to consolidate the so-called "European meaning," that is, a shared understanding of terminologies used in EU legislation among individual member states. Various solutions were put forward during the panel in response to such potential challenges. For instance, the emergence of "EU digital corpora" was highlighted, referring to documentary databases made available to legal practitioners to address interpretative problems related to the application of EU legislation. Additionally, an interdisciplinary perspective on EU law and European autonomous concepts, through the use of comparative law and semiotics was suggested too. This approach to EU law and concepts highlights that the interrelation between EU legislation and the normative forces grounding the practices of law in Europe is giving rise to common contexts of meanings in the European legal setting.

A second part of the panel, on the other hand, focused on the development of certain legal notions, particularly in the field of private law, through their connection to market and technology dynamics. In this regard, for example, the concept of property has been

[4] On the relationship between comparative law and globalization, see W. TWINING, *Globalization and Comparative Law*, in *Journal of European and Comparative Law*, 1999, II, 217; D. GERBER, *Globalization and Legal Knowledge: Implications for Comparative Law*, 75 *Tul. L. Rev*., 2001, p. 950.
[5] J. MAYDA, *Some Critical Reflections on Contemporary Comparative Law*, 39 *Rev. Jur. U. P. R*., 1970, p. 443.

extensively debated. It cannot be considered solely from the perspective of the owner and their sovereignty over tangible and intangible resources in the face of evolving production systems. Thanks to the evolution of property through the lens of *common goods*, various meanings and modes of resource management stemming from the use of goods can be appreciated. At the same time, the placement of the right to property in a technological context dominated by blockchain and distributed ledger systems leads to a rethinking of the boundaries of proprietary rights. It also prompts reconsideration of its relationship with the concept of *entitlement* – developed in common law legal scholarship – and with so-called obligation rights.

The technological background has also had an impact on contract law, particularly in terms of interpretation. The role of the interpreter has become increasingly complex with the advent of automated contract execution mechanisms (so-called smart contracts), necessitating the translation of natural language expressions into computer code.

Finally, in embracing a contemporary vision of comparison, the comparative method was examined both in terms of its legal nature and its anthropological dimension, which is closely related to its cultural aspect.

In particular, there was an effort to deepen the connection between Western legal systems and those of countries marked by a recent colonial past. This includes exploring the present-day reliance on legal models established by colonizers, with a particular focus on legal systems in the Horn of Africa region. Through this particular perspective, which draws on the appreciation of the so-called stratigraphic theory, a specific critique was aimed at a "Western-oriented" understanding of comparative legal science in the study of African legal systems.

From the brief overview focused on the content of the contributions presented during the Roundtable, particularly within the panel on comparative law and its methodology, one can draw a concluding reflection on the current state of legal comparison and on potential insights derived from the ongoing epistemological debate.

It is undoubtedly crucial to consider the connection between comparative law science and language in conducting comparisons and discerning points of convergence and divergence among distinct legal systems and uncovering the norm in complex and global environments. At the same time, comparative law is moving towards a broader horizon of meaning, aimed at finding a practical and appropriate solution not only to issues related solely to the meaning of common expressions across different legal systems, but also to guide the complex process of legal innovation in the face of the "developments" of modernity. These changes primarily refer to those related to the growth of markets, characterized by mass-produced and serialized production systems that are increasingly interconnected. They also include technological improvements that, as emphasized, require the application of a renewed legal language, which can and should be increased through the beneficial cross-pollination of various legal experiences. Lastly, comparative legal theory appears to be capable of facilitating a sort of cultural transition in which the Western legal tradition undertakes the challenging task of consolidating the rule of law – along with legal certainty and the protection of fundamental rights and freedoms – on a global scale, within other legal systems.