Book Review: Introduction to Comparative Law, 2nd edition, by Jaakko Husa

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A well-known pop single broke through the late 90s Hispanic America´s colorful Latin music environment: Bittersweet Symphony by The Verve. The sticky sound was suddenly popular among teenagers back in the day, even though we did not know the lyrics. We were attracted mainly by the singer´s attitude in the clip as he relentlessly walked the streets and, of course, the formidable and omnipresent string section.

As I read *Introduction to Comparative Law, 2nd edition*, by Jaakko Husa, I was fondly reminded of this clip with the undaunted, bold walk ahead by Ashcroft. With the northern Europe made-seal, the sound and the clip could completely cut through cultural differences and make a leading position in the top ten inside the vibrant, unmatched late-90s Latin pop scenario. For better, the same is going to happen with comparative law in Hispanic America: the holistic, antiformalist, interdisciplinary conceptions along with the plurality of methods, the dual methodological-disciplinary nature, and the exploration beyond the borders of auxiliary fields of knowledge and social sciences will finally settle at our native comparative law studies.

The purpose of this review is to briefly explore some of the main features in Jaakko Husa´s Introduction to Comparative Law from a Hispanic-American comparatist perspective, considering the cultural context and, above all, the global trends in the circulation of legal knowledge.

Ab initio, the author starts with a fair warning, in my opinion, the central thesis:

> However, the reader should remember that there are no generally accepted theoretical frames, established terminology, or aims set in comparative law[2].

Following this assertion, the author develops, in a detailed and organized manner, a comprehensive full set of a conceptual and methodological framework for comparative law still to gain traction south of the border. Some of these ideas include the need for basic studies about comparative law, the rejection of *prêt-a-porter* conclusions and solutions, the pragmatic approach with a needed adjustment to the current local context, the double effort to build an organized conceptual system of knowledge, and the same time stressing the importance of openness and inclusiveness; the integrative attention to the non-formalist approach to define, distinguish and characterize legal families and traditions around the world; and last but not least, the relevance granted to cultural data throughout the book.

1. *Orderly Exposition of Idea and the Distinction between Comparative Law and Comparative Law Studies*

The consistent and orderly exposition of ideas unfolds a much-needed understanding of the distinction between comparative law and theoretical comparative legal research, emphasizing the latter to provide a systematic framework without strangling the autonomy to pick methods. Concisely and clearly, the author surgically dissects two different phenomena. On one side, comparative law (German *Rechtsvergleichung*, French *droit comparé*) concerning the analysis of different sets of applicable law rooted in large-scale organized normativity, as labeled by the author himself. On the

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[2] J. HUSA, *Introduction to Comparative Law*, Oxford, 2023, 1.

other hand, comparative legal science (German *Vergleichende Rechtswissenschaft*, French *science du droit comparé*). This is important for Hispanic American comparatists because we still lack theoretical research on comparative law. Our efforts have been focused chiefly on comparing legislation from different countries or writing handbooks using early-century concepts[3].

Thereupon, the author offers a reasoned exposition of contents to draw the lines of boundaries in the science of comparative law, including the analysis of comparative legal research through phases and stages. In the same line of reasoning, Husa stresses the empirical, interactive, and interconnected nature of comparative law, the purposes of the researcher, and the use of research hypotheses as a *praesumptio* of formal correction in stand-by position until the final confirmation or rebuttal. It is also worth mentioning his advice on how to organize updated and in-point sources of research.

It is particularly innovative and relevant for Hispanic American comparatists the way the author lays the foundations to build an *ad hoc* methodological framework mixing insightful research features with the needed plurality of methods. As a result, the author lays down a *numerus apertus* catalog of research approaches for comparatists to be used in any cultural and epistemic context. *As per* the first component concerning the research process through phases, the author mentions the previous survey, the methodological decision-making process regarding the *tertium comparationis*, the thick description, and the explanatory phase. This is a massive deal for Hispanic-American comparatists because this leads our efforts of proper organization and research planning, and also fills a void in most of the comparative legal work in the region: the need for methodological and theoretical accountability to the audience and the scholar community. The basic premise to be considered is that legal research is such a severe activity (despite its social nature away from natural sciences) that researchers are ethically compelled to explain, in the most detailed form possible, the methodological grounds and path leading them to the conclusions.

2. Rejection of the Prêt-a-porter Fashion in Comparative Law

In broad terms, comparative law in Hispanic America still follows a *prêt-a-porter* fashion, dragging the long-standing obsession to build massive blackhole-styled conceptual systems able to swallow every category, term, or new idea. This is an outdated approach in comparative law based on the wrongful assumption that the great work made by the German *Pandektenrecht* theorists with the abstract category of the legal transaction (*Rechtliches Geschäft, Rechtsgeschäft, negotium juridicum*) and French exegetics scholars with the contract (*contrat*) can be somehow emulated or repeated. This is not feasible; simply put, not worth trying.

Given this, the author conveys a key idea: how important is to abandon every aspiration for this one-size-fits-all fashion and embrace a singularized research endeavor consistent with the scholar´s interests and the nature of the legal phenomenon under analysis. Thus, the author lays down a catalog of possible aims and purposes a researcher in comparative law may be driven to:

> The criteria for the comparison do not emerge from the study objects on their own. The scholar´s knowledge-interest is in a significant position […][4]

In a compelling way, Husa refers to the research interests -German *Erkenntnisinteresse*- to clarify that comparative law research must not be divorced from the researcher's purposes and possibilities. This idea is coupled with an open and inclusive classification of research aims: the integrative-harmonizing purpose, the contradictive purpose to pin down non-harmonizable differences, the pragmatic purpose

[3] This ancient formalist approach has been duly noticed and called out by a small number of authors who brought to the region the new theoretical approach to face legal comparison, ie Jorge Esquirol and Daniel Bonilla Maldonado.
[4] J. HUSA, *op. cit.*, 138.

to create knowledge starting from the description of similarities and differences -according to the German idea of *Auslandsrechtskunde*-; and the theoretical purpose of building new comparative law theory.

Tradition plays against the need for epistemic evolution. Law school *syllabi* and research protocols by undergraduate and graduate students in most of the Hispanic-American context still fall into this hackneyed formal comparison. Again, there is still a widely extended scholarly trend in the region to purport a comparative law analysis through the arbitrary and random selection of some jurisdictions or large-scale organized normativity without proper methodological accountability. Usually, these authors pick two neighboring countries in the same area or sub-region, mention the applicable law, and single out differences in the statutory wording without further reference to the social context[5].

This is the research landscape in a region characterized by the strong presence of indigenous traditions (a strong legal pluralist context widely recognized and cherished in their identity and legal effectiveness and validity by many constitutions) and a slow but almost unstoppable movement to the recognition of legal personhood extension to animals and environmental realities through new arguable categories like "non-human person" and "rights of nature." However, these regional trends reinforced by the global concerns still lack a solid methodological background in comparative law. Comparatists in the region still work with tools and ideas from the XIX century codification movement.

At this point, *Introduction to Comparative Law* invites us all to face global legal realities, quit the one-size-fits-all approach, and build our comparative research experience from a new perspective deeply rooted in our interests more than the formalistic description of differences in the statutory wording.

3. Particularly Pragmatic and Context-Adjusted Approach

More than 200 years have passed since the awakening of most Hispanic countries to independent republican life. The first hundred years were dedicated to the disaggregation of new countries out of regional chunks of land, settling border conflicts, affirmation of the Creole elite class, formation of the national culture, State, and an incipient institutional framework; and the definition of economic and productive features to characterize each country until the present day. The second hundreds of years did not add up much more: Hispanic America is not more prosperous, more productive, more inclusive, or more prone to entrepreneurship than it was in the first hundreds of years (exception made for the amount of economic growth related to the exponential demographic surge). This description is relevant because the author emphasizes the need for a pragmatist perspective while embracing a theoretical framework. The former supports the latter, and vice versa:

> If comparison is applied to "spice up" the study of the law in force in one´s own country with decorations from foreign law, the whole setting has something that is intellectually untenable: scholarly boasting with ingredients from foreign law does not serve any sensible aim; it is just a ritual relic of the legal thinking from the beginning of the twentieth century. In short, the study of foreign law needs to serve a meaningful purpose, whether academic or practical[6].

Again, entelechies are overshadowed by the real world. That is why the pragmatic perspective should be considered in our regional research experience. Concerning the realities of the social context under

[5] The lack of quantitative random studies, with a previous appropriate sample design to find curricular and research trends in Hispanic American comparative law is the hardest hurdle to achieve a comprehensive study on the subject. Current papers and research protocols are far away from the methodological diversity needed.
[6] J. HUSA, *op. cit*., 37.

research, allow me to mention the catalog of theoretical paradigms in comparative legal research set forth by the author as another huge step forward for Hispanic-American comparatists. This is probably the most needed feature for our regional legal academia to abandon the classical formalistic approach. The author, in an illustrative form, analyzes the functional comparison (pp. 122-130, 157-159, 190, 191), structural comparison (pp. 132-136), dynamic comparison (pp. 137, 138), systemic comparison (pp. 138-140) and the critical comparison (pp. 140-144). Every one of these items means, in my opinion, a compass to guide comparatists along the due process of methodological research accountability.

4. Open and Inclusive Conceptual Systematization of Comparative Legal Research Studies

Out of the many remarkable features in the book, it should be noted that the author stated that the book is not intended to go beyond an introductory survey. However, Husa has developed a well-balanced formula between general remarks and setting out an organized system for analysis. As a result of that, the author sets himself on an explicit and convincing path against using the same uniform for every comparative law research project. He invites us all to embrace methodological openness, a radial-expansive knowledge exposition style more than a pyramidal-hierarchized one.

We can mention, as very well-designed elements in his systematization of legal families, the plural definition of comparative law methods, emphasizing their inability to produce accurate results (pp. 102, 103); the needed link to basic-core disciplines (pp. 60, 61, 148); the usefulness of the *learning by approaching* (p. 215); a catalog of levels or stages in comparative legal research; the distinction between doctrinal, legislative, case and praxis comparison, among other features. As a significant part of these efforts to provide a systematized open and inclusive conceptual framework of analysis, the author describes the basic knowledge-interest (pp. 74, 75), the integrative knowledge-interest (pp. 75, 76), the contradictive knowledge-interest (pp. 75-80), the practical knowledge-interest (pp. 36, 37, 153, 246, 257, 258) and the theoretical knowledge-interest (pp. 247, 277).

5. Integral Non-Formalistic Analysis of Legal Families

I particularly praise the author for his updated conceptual analysis of legal families. This has been an overall issue since the beginning of the book, but we can find the best theoretical build-up on the subject in chapter 9, which is dedicated to macro-comparison. The author´s reasoning for a deeper analysis of legal families starts with his ubiquitous concept of organized large-scale normativity. Later, macro-comparison and micro-comparison are defined and distinguished[7].

Additionally, the author provides clear guidance on essential ideas like the diversity of methodological frameworks for macro-comparison (p. 107), the current status of sub-disciplines (pp. 127-129), valuable parameters for macro-comparison (p. 101), the classification of macro-constructs (pp. 234, 260) and its importance to reach the *initial knowledge threshold* (pp. 229, 247); the usefulness of classificatory efforts to understand our domestic law (pp. 247-249); the link to other categories like Weber´s ideal types -*idealische typus*- (p. 230); etc.

Comparatists in the region should also be aware of the dynamic nature of the legal family classification set forth by the author. That is to say, Hispanic American comparatists cannot overlook all the details provided and how the categories may constantly be evolving (i.e., the fundamental presence of Indigenous traditions, the colonial history fingerprints in mixed systems of law, etc). The classification of legal families is such a complex issue that it does not fit into the simple and Manichaean binary distinction between civil law and common law.

[7] J. HUSA, *op. cit*., 218, 100-106, 233.

6. To the Rescue of the Cultural Environment

In his book, Jaakko Husa also presents us Hispanic readers with a special gift, an analysis of the link between written law and the social context in comparative law, which produces a new normative experience resulting from such an interaction, ie. the living law. This concept is deeply rooted in Nordic and American legal realism. Through these ideas, the author warns us that comparative law cannot live without these realistic considerations.

In many different moments in the book, we find references and analyses related to the living law. The author holds that receptions, incorporations, and xenografts from foreign law into domestic legislation do not necessarily yield the expected results. Each institution, concept, or theoretical category in law behaves like an animal or vegetal species, producing a certain impact in every new specific ecosystem they are inserted into. This can be applied *mutatis mutandis* to receptions in comparative law. The constant visit to the category of living law and its relevance for comparatists probably stems from the importance Nordic countries grant to observation and scrutiny of social trends following legislation.

Sadly, this is not the case in most Hispanic countries, where comparative research moves forward dragging the divorce between socio-cultural dynamics and academic-legislative trends. The answer might be in the cultural and historical differences between both legal worlds concerning the praxis of advocacy. Additionally, the author launches the proposal for the rescue of anthropological, sociological, and ethical analysis (pp. 4, 61, 68). In the matter, allow me to further develop this idea through an abbreviated form of propositional logic:

Cultural context is the main variable when explaining different experiences in similar normative settings. Practical experience in law is different because the cultural context is also different, despite the similarities in the formal legal order. That is to say,

Being,

Ɛ = legal experience; describing the normative experience as lived by all the participants in the legal system: attorneys, judges, prosecutors, administrative officials, notaries, etc.

ν = domestic legal order; describing the structure of a specific domestic legal order; and,

σ = context; describing the social, economic, political, cultural, linguistic, religious, geographic, and climate-related extralegal set of factors converging in the domestic legal system of a specific country.

Then:

For the classic positivistic approach:

Ɛ = ν; the normative experience by the participants is equivalent to the legal domestic order´s structural design.

For different national legal systems:

$\epsilon_a = \upsilon_a$

$\epsilon_b = \upsilon_b$

…

$\epsilon_n = \upsilon_n$;

Whereas the normative experience in every different country is equivalent to the structural, legal design of the domestic law in that country.

For the cultural approach:

$\varepsilon = \nu + \sigma$;

The normative experience by the participants is equivalent to the domestic law´s structural design added to the impact of other contextual items: social, economic, political, cultural, linguistic, religious, geographical, and climate-related factors in the very same country:

$\varepsilon_a = \upsilon_a + \sigma_a$;

$\varepsilon_b = \upsilon_b + \sigma_b$;

…

$\varepsilon_n = \upsilon_n + \sigma_n$;

Hence, the normative experience in every country is equivalent to the domestic legal structure added to the contextual extra-legal factors and related to the specific country.

With all the previous data,

For the classic positivistic approach:

$if\ \nu_a \approx \nu_b$;
$then\ \mathcal{E}_a \approx \mathcal{E}_b$;

That is to say, if the domestic legal structures in two different countries are equivalent (never consider they can be the same; this is factually and legally impossible), then the normative experience by participants in both countries would be almost the same. Real-life experience in law proves that the latter proposition does not have a chance. The contextual variable needs to be inserted into the equation.

Then, **for the integral approach** considering extra-legal factors in the normative experience:

$if\ \nu_a \approx \nu_b$;
$and\ \sigma_a \neq \sigma_b$;
$then\ \mathcal{E}_a \neq \mathcal{E}_b$;

Meaning, that even in the case of similar domestic legal structures, the normative experience of the participants would be completely different because the contextual factors are different.

7. Conclusions

This book is handy for two reasons. First, it has proven helpful as the first coherent, comprehensive, yet pedagogical approach for researchers recently landing as *aficionados* in comparative law. Second, it has also proven helpful as a consultation text because it is synthetic, theoretically consistent, and comprehensive. The author does not wander unnecessarily, goes straight to the controversial points in every book chapter, and always carries the basic premise: methodological autonomy yes, arbitrary impositions by the researchers no.

It must be said that this book is mainly linked to a previous book in which the author set the records straight on an essential modern requirement of seriousness and *rigueur* in comparative legal research: interdisciplinarity demonstrated through the constant use of many tools out of an extensive toolbox of research methods, instruments and resources originated in many different fields of knowledge in social sciences[8]. Finally, I believe this is the handbook of reference for scholars, professors, and researchers aiming to get into comparative law along with its current challenges. Totally a recommended reading.

[8] J. HUSA, *Interdisciplinary Comparative Law*, Cheltenham, 2022.