AN INTRODUCTION TO COMPARATIVE LAW AND ITS RISE IN AN INTERCONNECTED WORLD

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Abstract - *The globalisation of the legal profession and the interrelationship of the legal world are among the significant factors behind the rise of comparative law nowadays, although multiple academic discussions remain open about it (Part I). As an academic discipline that analyses legal diversity worldwide to promote legal knowledge, legal advancement and legal harmonisation, comparative law should not be confused with other areas of law such as private international law (Part II). Thus, the object of comparative law is the study of legal phenomena in various legal environments, bearing in mind that national legal systems are unique according to their historical, political and social circumstances but at the same time shaped by shared legal traditions and thus classifiable among legal families (Part III). Although several methodologies have traditionally been observed, including the mainstream functional method, nowadays a combined methodology of different analyses and approaches is preferred to perform comprehensively comparative law (Part IV). Consequently, a holistic definition for comparative law as an academic discipline and as a legal horizon for the new generation of legal professionals is ultimately suggested in this working paper (Part V).*

Keywords – *Comparative law; scope of comparative law; legal diversity; legal systems; legal traditions; legal families; comparative method; definition of comparative law.*

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This **working paper** is the written output of a five-year teaching process and a couple of lectures on "*The rise of Comparative Law; A legal horizon for the new generation of legal professionals*" given by the author at the Government Law College, Mumbai University, and the Amity Law School, Amity University Gurugram, in February 2019 as adjunct professor at IE Law School. It has been conceived with learning purposes as a comprehensive introduction to comparative law for LLM students.

1. Introduction - Why is comparative law rising? The emergence of comparative law in an interconnected world

Among the main trends of the legal profession in the 21st century, including digitalization, changing-market realities, client-centred relationships or ethical awareness, globalisation is undoubtedly not only a central one but also the main drive of the rest. As stated in the 2019 "Report on the State of the Legal Market" by Georgetown Law and Thomson Reuters, that analysed the dominant trends impacting the legal market in 2018 and the key issues likely to influence the market, "the traditional law firm economic model was premised on the assumptions that (i) legal work was labor intensive, (ii) that only lawyers could provide the services required, and (iii) that law firms would control the design and delivery of legal services".[1] However, the new legal ecosystem is more complex and fiercer than ever, and the international factor is at the core of the current revolution that is transforming it, raising up (1) new legal competitors, (2) new legal suppliers, (3) new legal fields, (4) new dispute resolutions or (5) new digital tools.[2] Consequently, big legal firms are nowadays global brands, small and medium-sized law chambers are experiencing how their clients are demanding further legal advice in cross-border transactions and practitioners are required to expand their knowledge beyond their own national legal systems.

While the legal profession is facing the challenges of globalisation, the legal world is also experiencing the results of a continuous process of legal interrelationship. The codification within the European Union, where several legal traditions coexist but are gradually converging under a common EU legal umbrella, is a good illustration of it. The present age of internationalism and democratisation has also affected the harmonisation of legal systems worldwide through the impact of universal rights and the application of international conventions. The role of the states in the construction of a multilateral legal order and in the promotion of normativity in their bilateral relations has important legal effects not only within their own national legal systems, which are experiencing a process of legal harmonisation, but also in the international interaction of private actors that are increasingly bounded by new rules.

In a context where the legal profession is increasingly internationally oriented and the legal world is becoming more interrelated, the academia and the legal education has experienced an unprecedented need for comparative legal studies.[3] Interestingly, this rise of comparative law nowadays is directly proportional to the increase of the debates around it. In other words, the more scholars and practitioners have put their interest and activity into comparative law, the richer the legal discussions about comparative legal studies as an academic discipline are. However, as Nicholas HD Foster pointed out more than fifteen years ago, comparative law is still far from the mainstream. The existence of parochial attitudes in academia has created a situation in which "practitioners who might well

[1] The Center on Ethics and the Legal Profession at the Georgetown University Law Center and Thomson Reuters Legal Executive Institute. *2019 Report on the State of the Legal Market*. January 2019, 13.

[2] Further examples could be, consecutively, (1) global and virtual law firms, (2) legal process outsourcing (LPO), (3) international compliance, (4) international arbitration and conciliation, and (5) knowledge management systems.

[3] Although an important number of undergraduate law degrees and LLMs are comparative-oriented, their programmes lack a comprehensive introduction to comparative law and its methodology. While their students will learn the main subjects through a comparative approach, a holistic understanding of the object, scope, purpose and methodology of comparative law is mostly missing.

otherwise have relied on the academic world to produce scholarly work have been obliged to fill the gaps themselves". [4]

It is then reasonable to consider that comparative law is an academic discipline still "under construction" with multiple open academic discussions even in basic topics such as its *raison d'être.*[5] Although one of the results of comparative law initiatives is the harmonisation of law worldwide, it is almost impossible to reach consensus on a core definition about it.[6] However, a comprehensive approximation to comparative law by delimiting its main components is key to understanding what we compare, how we compare, why we compare and, thus, what comparative law is.

2. What is the position of comparative law within the legal world? An analysis of the scope of comparative law throughout its main elements

The coexistence of diverse and plural legal systems in the legal world is certainly within the roots of comparative law as well as the internationalisation process started at the beginning of the 20th century is in its origin as an academic discipline[7]. The beginning of a post-colonial legal emergence, the rise of a multilateral order and the growth of cross-border interactions, accelerated by the globalisation experienced at the end of the last century, expanded the need for a comprehensive knowledge of the legal variety existing worldwide. Within this diverse and interrelated international legal environment, the final goal of comparative law is to study diverse law worldwide in favour of legal understanding and awareness.

Since comparative law is an academic discipline that studies legal phenomena in different legal environments through specific methodology[8], the method is at the core of its activity. Comparative law does not perform a mere parallel description of foreign laws or applicable rules, it is a holistic analysis of the legal diversity worldwide that requires legal technique for its implementation. While studying law worldwide, some comparatists had traditionally focused on the differences with the aim of analysing various legal

[4] Foster (2006), 4.

[5] Dannemann (2007), 386-396.

[6] Tellingly, it is an onerous task to find a comprehensive and sole definition for comparative law in the main handbooks of this academic discipline: *The Oxford Handbook of Comparative Law* 2007 edited by Mathias Reimann and Reinhard Zimmermann; *Comparative Law, A Handbook* 2007 edited by Esin Örücü and David Nelken; *Elgar Encyclopedia of Comparative Law* 2012 edited by Jan M Smits; *The Cambridge Companion to Comparative Law* 2012 edited by Mauro Bussani and Ugo Mattei.

[7] Its origin as an academic discipline, despite previous notable works, could be established in the celebration in Paris of the *Congrès International de Droit Comparé* in 1900 and in the creation of the *Comparative Law Bureau* by the American Bar Association in 1907. The United States of America became a hub for comparative discussions in the mid-twentieth century thanks to the key role of the *American Association for the Comparative Study of Law* and the *American Journal of Comparative Law*. In Europe, academic meetings organised by national associations, such as the biannual meetings of the *Associazione Italiana di Diritto Comparato* where the *Theses of Trento* were formulated, have traditionally driven the comparative law debates. See Fauvarque-Cosson (2007), 42-44; Clark (2007), 194-196 and 206-209; Grande (2007), 117-120.

[8] This working paper follows NHD Foster's vision on legal comparison as the study of legal phenomena within legal systems; see Foster (2006), 7. For learning purposes, the scope of legal phenomena, the legal object that is going to be analysed, should be understood holistically from micro-comparison -a specific rule, right, legal problem or judicial challenge- to macro-comparison -an enactment, a sub-body of rules, a legal order or a legal system-. Similarly, the scope of legal environments, the diverse legal contexts worldwide where these legal phenomena are going to be analysed, should be understood comprehensively from diverse foreign and international law -comparing various legal systems, legal families or the international law system- to a state legal system -comparing different national legal systems or legal traditions that might coexist within-.

responses to general questions or specific problems, others have emphasised the similarities pursuing legal harmonisation and a third group had "sought to strike a balance between observing and analysing similarities and differences" for a better knowledge of diverse law worldwide, as Gerhard Dannemann explains[9]. Consequently, the analysis of the similarities, differences and interrelationships of diverse law worldwide forms the foundations of the comparatists' role.

The various purposes of implementing a comparative analysis might generate different legal outcomes or a combination of them. Therefore, comparative law generates legal knowledge, for example, (1) in the performance of comparative legal enquiries for the accurate application of foreign law by domestic courts or (2) in the analysis of the legal choices to select the most favourable law or jurisdiction. Comparative law also achieves the advancement of a legal system when a rule or institution (3) are improved by using, for instance, a better-law analysis or (4) are created *ex novo* via legal borrowing or legal transplant techniques. In a final case, comparative law reaches legal harmonisation or uniformity whether (5) on purpose, as a result of a unification agenda by an international body, (6) or not, as a natural convergence of interconnecting legal systems.[10]

A useful final exercise of delimiting the scope of comparative law could be proposed by means of a joint analysis with private international law, often and wrongly merged as a sole field. Mathias Reimann has observed that international private law and comparative law share a more "intimate relationship" than all other subjects[11], this close relationship being the main source of confusion and misunderstandings about them. Nonetheless, both deal with law worldwide but from different premises. On the one hand, private international law is based on legal conflict since its *raison d'être* is to solve legal disputes among private individuals involving a foreign element. On the other hand, since comparative law studies directly law worldwide, it is based on worldwide coexistence of legal diversity. These differences are also clear regarding their legal classification and outcome, while private international law is a body of procedural law to determine the choice of law, the choice of jurisdiction and the enforcement of foreign judgements, comparative law is an academic discipline that performs method-based legal analysis of the legal diversity worldwide to promote legal knowledge, legal advancement and/or legal harmonisation. Consequently, the role of a private international law scholar is to scrutinise the creation, application and development of conflict rules, whereas the role of a comparatist is to analyse the differences, similarities and interrelationships of diverse law worldwide through a specific method (Table 1).

[9] See Dannemann (2007), 384.

[10] Further examples could be, consecutively, (1) a comparative family law analysis of *Sharia* institutions, such as *talaq*, *mahr* or *iddah*, for their accurate application by courts, (2) a comparative business law analysis of the most favourable jurisdiction for the internationalisation of a company within South America, (3) a comparative constitutional better-law analysis for an optimal constitution-building process in Africa, (4) a comparative competition law borrowing from leading legal systems in a country where the field has never been regulated, (5) a comparative trade law analysis by the *United Nations Commission on International Trade Law (UNCITRAL)* proposing a new worldwide regulation on electronic commerce or (6) the convergence results in several Southeast Asian legal systems after a criminal law meeting by lawmakers on cyber-law. Nonetheless, a combination of advancement and harmonisation outcomes is usually reached when performing comparative law at a governmental level.

[11] Reimann (2007), 1364.

	Comparative Law	Private International Law
Classification	Academic discipline	Body of law
Origin	The coexistence of diverse, plural and interconnected law worldwide	The conflict created by the interaction of legal systems
Raison d'être	To analyse legal diversity worldwide in favour of legal awareness and understanding	To solve legal disputes among private individuals involving a foreign element
Legal Outcome	To promote legal knowledge, legal advancement and/or legal harmonisation	To determine the choice of law, the choice of jurisdiction and the enforcement of foreign judgements
Academic Role	To study the differences, similarities and interrelationships of diverse law worldwide through a specific method	To study the creation, application and development of procedural private rules

Table 1: Differences between comparative law and private international law.

These differences do not mean that they are not interconnected. Nonetheless, comparative law is used by private international lawyers not only to understand the legal framework affecting cross-boundary issues for a proper operation of conflict of laws, but also to promote the harmonisation of conflicting rules. The sustainable cohabitation of both areas within the legal world is beautifully explained by Reimann who considers that "(i)n a world consisting of different legal systems, comparative law provides a certain centripetal force but, at least in a global level, the centrifugal forces will always remain strong enough to create conflict and thus to guarantee a place for private international law"[12].

As an academic discipline, comparative law is not only focused on broad-ranging studies of legal environments but also on the analysis of subject areas in different legal environments by specialised comparatists. Therefore, separate branches of comparative law have been established in several areas, including comparative constitutional law, administrative law, civil law or criminal law, and in various specific sub-areas such as comparative sales law, tort law or succession law. The same branching happens in other academic disciplines such as legal history that studies the entire history of law but has also independent subjects such as labour law history or antitrust law history, not forgetting that there is also a history branch of comparative law as well as a comparative branch of legal history[13].

[12] Ibid, 1366.

[13] Per instance: History of Comparative Law in Hug (1932); Comparative Legal History in *The Journal of Comparative Legal History* with two issues per year edited by Heikki Pihlajamäki, University of Helsinki.

3. What do we compare? A non-Eurocentric typology of legal systems, legal traditions and legal families[14]

In a comparative law study, regardless of its purpose, the analysis should not only be restricted to various legal orders. The legal circumstances shaping those legal orders, that affect the way they are configured, implemented or developed, should also be acknowledged. If a comparative analysis is performed just by comparing rules, it will miss the *raison d'être* that these rules have within a society, among other features, altering the real meaning of the law. Consequently, legal rules should not only be compared by isolating them but also by acknowledging the legal system they pertain to. As NHD Foster explains, a legal system is "a coherent body of rules" along with the entirety "of the legal infrastructure which creates it, supports it and interprets it"[15]. Thus, it is necessary to differentiate between the legal order, formed by the coherent body of substantive and procedural rules -including judicial doctrine-, and the legal infrastructure, shaped by the main institutions, individuals and legal tools that facilitate the daily functioning of a legal order in a jurisdiction: the legislature that creates the norm, the judiciary that interprets it, and the legal ecosystem -the legal profession and the legal technology- that supports it.[16]

Since these legal systems are not alien to the cultural, social, linguistic or political framework of their countries, they have a key function in the organisation of their respective societies and in solving their specific problems and challenges. Nonetheless, each legal system has been shaped by different historical circumstances such as colonialism, religious cohabitation or neighbouring influences. This complex historical, political and social background affects not only the legal order of a country but also its legal infrastructure, how the judiciary, the legislature or the legal ecosystem are designed and organised and, thus, how their performances develop and expand their legal systems in a different way. These circumstances make legal systems unique from one country to the other, even though they may share the same features from a specific legal tradition.

Consequently, if the previous definition of a legal system, that is the legal order plus the legal infrastructure, would be considered as a formula for comparative law, a correlation factor could be added to acknowledge the pluralism of a legal system as this diversity will increase the number of legal features to be considered, thus, rendering it more challenging and difficult to analyse from a comparative perspective. In a plural legal system, formed by various legal traditions, different jurisdictions and a social and religious legal heterogeneity, the factors to be considered in a comparative analysis would be a sizable number, even though its legal order and its legal infrastructure could be relatively simple in its structure. Conversely, since the specificities of the legal order and the legal infrastructure of a uniform legal system could be unique enough to make it very

[14] There is no academic unanimity, nor a minimum understanding, on what a legal system is and how they should be classified under a legal-families typology upon common legal tradition features. Looking for a non-Eurocentric and holistic definition, this working paper follows, although with different approaches with learning purposes, Nicholas Foster's considerations for a definition of a legal system (n 16), Patrick Glenn's distinction between legal families and legal traditions (n 26), and Esin Örücü's approach to a comprehensive legal-families typology (n 29).

[15] Foster & Neo (2014), 10.

[16] The law of a country, for instance the Australian law or *Sharia* in Saudi Arabia, is different to their legal systems that are also formed by their legal infrastructure, creating together the Australian legal system or the Saudi Arabian legal system.

challenging to understand, this does not mean that only plural systems are legally complex.[17]

Each legal system is embedded by its country's history, politics and society and, therefore, the number of legal features to take into account in a comparative analysis would be proportional to the diversity of the country's historical, political and social features still in force. From a historical perspective, the legal system of a country occupied or colonised by different foreign powers throughout history, which legal traditions remain in that legal system to this day, would be more plural than the legal system of a country that has stayed historically independent and, therefore, without various interferences from foreign legal traditions.[18] From a political approach, the legal system of a federal country, where each territorial entity has its own laws and jurisdictions, would be much more plural than the uniform legal system of a unitary state.[19] From a social outlook, the legal system of a pluralistic country, territorially formed by several ethnical or indigenous groups with their own customary law, various religious communities with their own family laws and different social groups legally acknowledged, would be much more plural than the legal system of a secular country formed by just one ethnic group[20] (Figure 1).

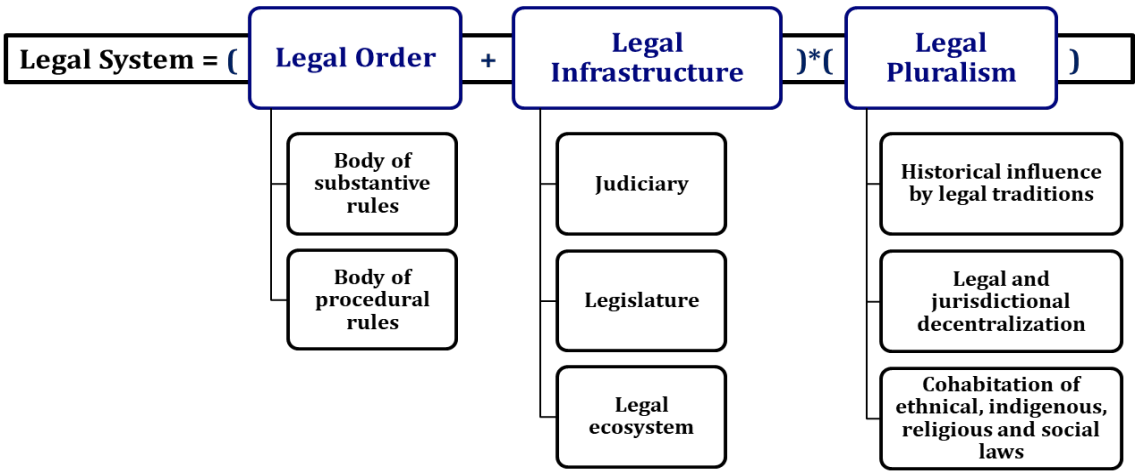


Figure 1: Definition formula of a legal system for comparative-law learning purposes.

[17] Continuing with the same example, the Saudi Arabian legal system, although its legal order is mainly based on *Sharia*, is indeed very complex not only because the legal peculiarities of the uncodified form of *Sharia* adopted by Saudi Arabia, but also because its specific interpretation, through the Hanbali legal school, and implementation in certain areas of law, through royal decrees.

[18] Bhutan, being a country that has mainly remained independent from Western colonial powers although influenced by English common law, has a legal system much more uniform than the one of Sri Lanka, a country colonised consecutively by the Portuguese, Dutch and British whose legal traditions are still in force in several legal fields.

[19] China, being a unitary regime, has a more uniform legal system than the federal democratic Canada, as well as the federal German legal system is more plural than the legal system of centralised France.

[20] The pluralistic Indian legal system, where certain territories are inhabited by indigenous groups with their own customary law, where religious communities preserve their family laws and where the society is historically stratified in a caste system legally acknowledged for its advancement, is more diverse than the legal system of the ethnically and socially almost homogenous Japan. Certainly, the pluralism generated by recent immigration does not have the same legal impact as the indigenous one, as it happens in the legal system of the USA where native Americans have recognized customary rights.

Although almost all sovereign states have their own state legal system that configures an apex judicial and legal system for all its territory[21], several national legal systems with their own and different laws, jurisdictions, legislatures and judiciaries may coexist under the common roof of a state legal system. Each legally and judicially autonomous territory would have its own legal system based on its own laws, own jurisdictions and own courts and procedures. Consequently, state legal systems could be classified as single legal systems composed of a sole legal system, where the state and the national legal systems are one, or as compound legal systems composed of several national legal systems that converge in a state apex system under the common umbrella of the laws and legal infrastructure of the State (Figure 2). Its relevance for comparative law is significant since its object, the same legal phenomena in different legal environments, does not necessarily imply foreignness but legal diversity.[22]

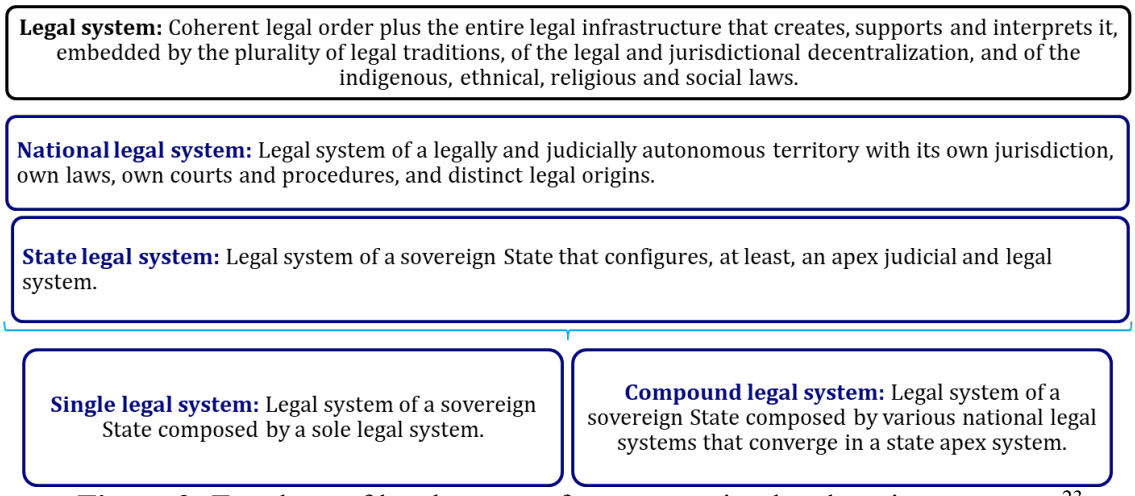


Figure 2: Typology of legal systems for comparative-law learning purposes.[23]

National legal systems are not independent units within the legal world, all of them are interrelated according to the legal traditions featuring them. Hence, legal families are frequently considered for further classifications of legal systems based on the common influence of the same legal traditions. As Patrick Glenn acknowledges, legal traditions have a "dynamic character" as an ongoing "normative force", opposite to legal families

[21] Among these exceptions we can include the Pakistani legal system. Gilgit-Baltistan (GB) and Azad Jammu and Kashmir (AJK) are self-governing jurisdictions administered by Pakistan where the Constitution of Pakistan is not of application and the Supreme Court has a very restricted jurisdiction. Until the constitutional status of GB and AJK is clarified, the Pakistani legal system is different from the GB and AJK's legal systems.

[22] The study of legal phenomena in various foreign legal systems is not the only object of comparative law. A legal phenomenon can be compared within various national legal systems coexisting within the same state legal system. Additionally, a legal phenomenon can also be compared within the sub-body of rules of a national legal system governed by personal law where several legal traditions meet. Finally, a legal phenomenon can also be compared within the international law system.

[23] This is a typology created for learning purposes to make a clear distinction between the legal system of sovereign states and national legal systems. An illustrative example of a compound legal system could be the one of the United Kingdom, which is formed by three national legal systems, England and Wales, Northern Ireland and Scotland, with their own jurisdictions, own laws, own courts and procedures, and distinct legal origins. However, these three national legal systems cohabitate under the umbrella of the state legal system with a common state jurisdiction, with its shared laws created by the Parliament and shared apex Supreme Court and procedures, despite certain exceptions in the case of Scotland. Furthermore, Spanish autonomous regions have their own parliaments, specific laws and specialised courts. However, jurisdictions, core civil and criminal laws and procedures, and the judicial system are common for the whole State. It should not be considered that they are judicially autonomous territories and, thus, the Spanish legal system is a single one.

that have a "static character" as "the law in force at a given moment".[24] National legal systems can be classified among various legal families, with common legal and judicial features, that are the result of the same combination of one or several legal traditions. Thus, legal traditions shape legal systems while legal families group them.

Legal traditions can be divided according to their evolution into standardised or non-standardised legal structures. Although Western-based legal traditions were influenced in their origin by the specificities of canon law and European cultural features, they have evolved into what could be considered as standard legal structures of substantive and procedural rules. In other words, their legal structures, that have been detached from the religious and cultural identity of the people, can be followed in other legal systems irrespective of religion or socio-cultural specificities. These two standardised Western-based legal traditions are common law and civil law. Their main distinct features, among others, are that the common law tradition, with an unclear distinction between private and public law, emphasises the importance of legal institutions and the doctrine of precedent created by case law. Civil law tradition, however, with a clear distinction between private and public law, emphasises the distinctive hierarchy of sources of law under a normative systematisation upon codes. Within both traditions, different sub-traditions with common features could be named, such as Napoleonic, Germanic, Nordic or Socialist/Chinese, among others, for civil law traditions, and English or Anglo-American for common law traditions.

The two non-standardised legal traditions related to religious and sociocultural practices are customary law and religious law. These legal traditions are inherent to the religion and the culture of the people and, therefore, they cannot be detached from them. Customary law is the traditional rules of indigenous groups based on established performative practice and thus different from one community to another although it can be influenced by neighbouring ones. Religious law is based on moral codes, including their interpretation and procedural rules, established by religious faiths. Although some of them are interconnected in their origins, such as the Abrahamic religions, they have undergone different and non-correlated evolutions. Religious law includes Muslim *Sharia*, Jewish *Halakha*, Hindu law or Catholic, Anglican and Orthodox canon law, among others. Since these non-standardised legal traditions have a key role in the shaping of non-Western national legal systems, they cannot be disregarded in a holistic acknowledgment of the legal world (Figure 3).

[24] Glenn (2007), 427-428.

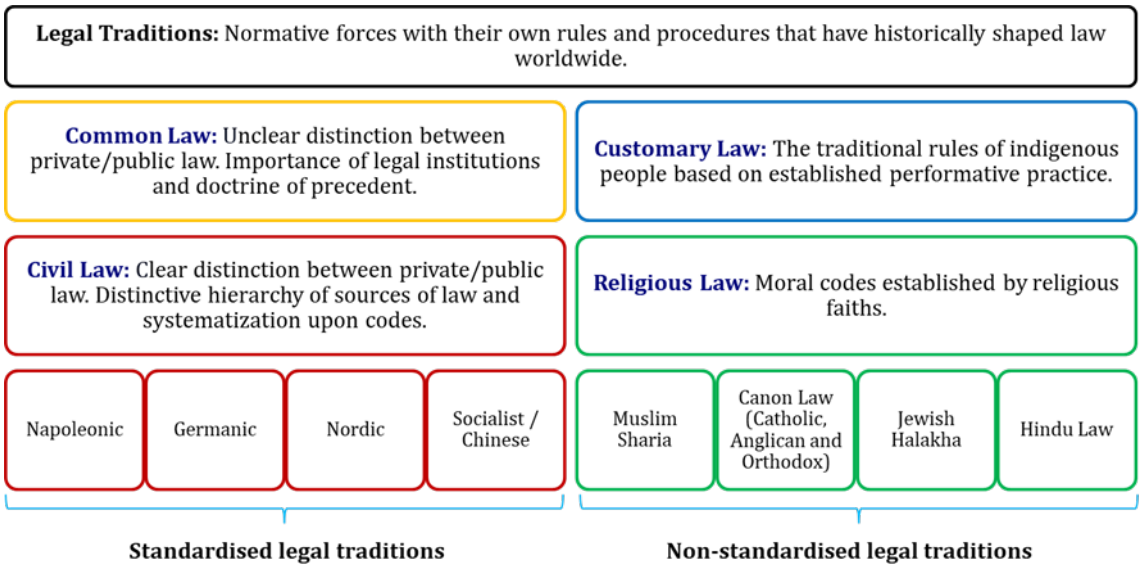


Figure 3: Typology of legal traditions for comparative-law learning purposes.

Since various legal traditions might coexist within a legal system, there is no complete correlation between legal traditions and legal families. African and Asian national legal systems are mostly formed by features of various legal traditions within their core system, municipal law (law of a specific legally autonomous territory), personal law or specific sub-body of rules. The study of these legal families should not be a goal *per se* for comparatists since in their treatment as a group the specific features of every system may be disregarded. However, acknowledging that national legal systems are shaped by legal traditions and classifying them according to legal families is useful to understand the main legal forces featuring them and also to accurately group them for an efficient choice of legal systems to be compared. Consequently, a holistic typology is needed to consider both the legal diversity worldwide beyond the Western systems and the importance of non-standardised legal traditions in the shaping of non-Western national legal systems.

Comparatists have frequently considered, along with civil and common law, the existence of mixed, dual or hybrid legal systems[25], while referring to a third group combining both standardised traditions in its core.[26] Moreover, with the goal of avoiding certain Eurocentrism, a holistic typology of legal families, that includes a combination of all traditions, has also been proposed by comparatists such as Esin Örücü.[27] By accepting a non-Eurocentric approach that differentiates among systems influenced by standardised and non-standardised legal traditions, three groups of legal families could be acknowledged with comparative-law learning purposes: simple families, complex families and hybrid families.[28] Simple families are those legal systems that are only

[25] Given the academic differences on their definitions and further uses, what in this paper is considered as families, might be named by some scholars as systems, traditions or jurisdiction.
[26] Palmer (2007), 1205-1218. See also Palmer (2012), 590-599; Plessis (2007), 477-512.
[27] Örücü (2007), 169-188; Örücü (2008), 1-18.
[28] This typology, created for learning purposes, aims to enable a comprehensive understanding of the legal diversity worldwide and an efficient choice of legal systems for a comparative analysis. It is based on a simplified version of Örücü's classification in certain concepts, structures and ideas. However, it understands differently other concepts such as the definition of standardised and non-standardised traditions, the classification among simple, complex and pluralistic families, the idea of combined systems and the notion of hybrid systems. For a complete map, religious law should be divided upon the different

composed of standardised legal traditions or non-standardised legal traditions but never a combination of them, complex families are those legal systems that are the result of a combination of standardised and non-standardised legal traditions at different levels, and hybrid families are those composed of different legal traditions that coexist in an ongoing legal transformation either with a pluralistic or political agenda.

Among simple families, we can differentiate between uniform and mixed systems. Uniform systems are those either uniquely formed by one of the legal traditions or formed by the two non-standardised traditions together. Mixed systems are those in which both civil and common law traditions coexist in legal harmony in its core system, as result of the historical influence of both traditions. Complex families can be subdivided between combined systems and complex mixed systems. Combined systems are those based on either civil law or common law systems but with components of non-standardised legal traditions within their core system, municipal law, personal law or specific sub-body of rules. Complex mixed systems are those mixed systems formed by both common and civil law traditions in its core system but also maintaining components of non-standardised legal traditions in their municipal law, personal law or specific sub-body of rules.

Hybrid families are differentiated based on the agenda that is creating their ongoing legal evolution. Systems in transition are the legal result of political changes that encompass a gradual legal transition in their core system from one legal tradition or sub-tradition to another yet to be fully implemented. Pluralistic systems are the result of a commitment on pluralism in those countries historically influenced by several legal traditions where the legal diversity of their people has been acknowledged after a constitution-building process and, thus, their legal systems are capable of respecting, supporting and promoting the laws of all communities and religions coexisting in their territory and of legally adapting themselves to the incessant challenges. While the political agenda will result in a significant change of the legal regime, the pluralistic agenda will generate a continuous interpretation and adaptation of the legal system due to the persistent legal overlapping (Figure 4).

Beyond national legal systems, traditions and families, comparative law could also focus on the legal environment created by international law. The international law system, formed by international conventions, treaties and jurisprudence and the supranational and national institutional infrastructure that supports it, could also be the object of a comparative legal analysis. Nonetheless, international law is differently interpreted and applied by international and national actors as well as international conventions and treaties may follow certain similar patterns as a result of a comparative analysis performed previously to their adoption.

religious families, as Örücü proposes, and civil law sub-families should also be acknowledged. However, the resultant intricate family-tree would distort the learning purposes of this working paper.

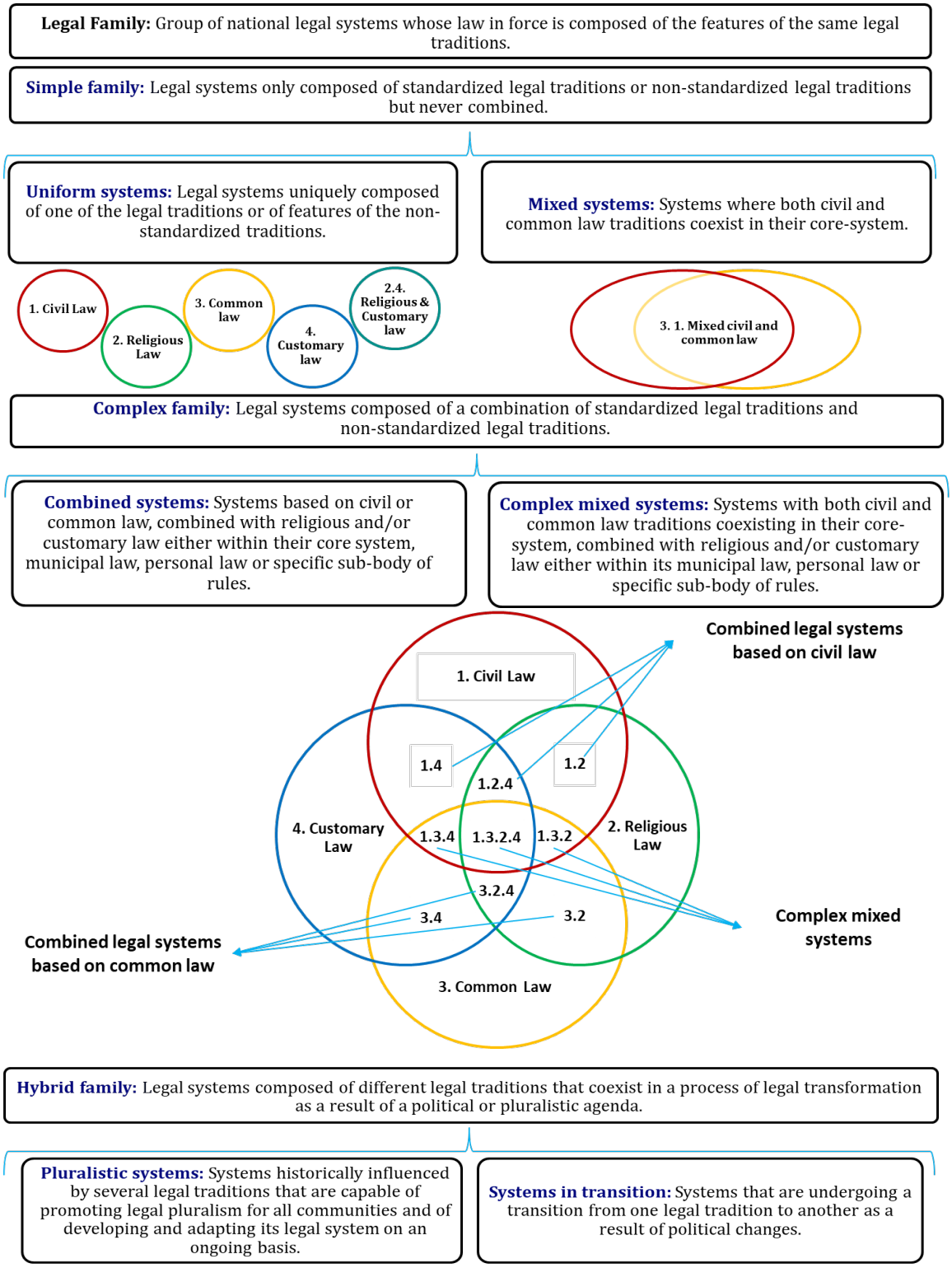


Figure 4: Typology of legal families for comparative-law learning purposes.[29]

[29] There are significant challenges in grouping national legal systems on different families because of the simplification it requires. Although arguably, some examples according to the suggested typology of legal families are the following ones. *Uniform systems:* (1) French legal system. (2) Saudi Arabian legal system (*Sharia*). (3) English legal system. (4) Even though unknown and far-fetched, it would be the legal system of an isolated non-colonized territory such as North Sentinel Island. (2.4) Ogaden's Somalia legal system (*Sharia and Xeer*). *Mixed systems:* (1.3) Quebecois legal system. *Combined systems:* (1.2) Tunisian legal system. (3.2) Bangladeshi legal system. (1.2.4) Jordan legal system. (3.2.4) Kenyan legal system. (1.4) Ecuadorian legal system. (3.4) Ghanaian legal system. *Complex mixed legal systems:* (1.3.2) Israeli legal

4. How do we compare? The predominance of a combining methodology

One of the main challenges for comparatists is related to the limitations of language, not only because the legal rules in most of the countries are in languages unfamiliar to the researcher but also because a useful translation requires to go beyond words to properly understand the legal concepts behind it. As Vivian Curran has well explained, in a comparative law context "translation is both de-coding and re-coding, identifying and constructing meaning"[30]. Furthermore, all languages have terminology limitations when translating the legal foreignness. While English is a language well equipped to define common law institutions, Latin or continental Germanic languages are better prepared to define civil law structures as Asian languages do in their own legal systems.[31] The work of comparatists could be even more difficult in those cases where a concept in a legal system may have no equivalent in other systems or may exist but referred to a different reality.

The comparative method is used to this legal language conundrum as well as to the legal foreignness and legal diversity. Hence, as Nicholas HD Foster stated, "nearly all legal studies are cosmopolitan in that legal scholars, and indeed law students, regularly have to use sources, materials and ideas developed in more than one jurisdiction and increasingly in more than one legal culture. They need to be equipped with at least the rudiments of coping with such material. So comparative method needs to be treated as a central element of 'legal method"[32]. The comparative method is indeed a far-reaching methodology in the legal environment where internationalised scholars and legal professionals' work. In this interconnected world, the continuous presence of alien legal traditions, foreign elements and interrelated legal systems create the necessity of using a legal method, such as the comparative method, with the capability to analyse different and diverse legal environments without disregarding their legal roots, contexts or purposes.

With the aim of performing such a complex legal analysis, there are many methodologies followed by comparatists. The functional method -or methods as Ralf Michaels explains-[33] was created by the great comparatist Konrad Zweigert. It has been the mainstream comparative law method for decades, and it has helped to ground the debate on comparative law methodology. The functional method is focused on different fundamentals that shape a complex methodology. Firstly, it is a social theory that understands the objects in the light of their functional relation to society. Secondly, it has a factual approach that focuses not on rules or doctrinal structures but on events and results. Thirdly, it is based on the consideration of a *tertium comparationis,* the identification of an invariant common element to be analysed, and a *praesumptio similitudinis,* the exclusive choice of those legal institutions that play similar functions in

system. (1.3.4) Cameroonian legal system. (1.3.2.4) Sri Lankan legal system. *Hybrid legal systems*; (Pluralistic) Indonesian legal system. (In transition) Ukrainian legal system -from Socialist to Germanic-.

[30] Curran (2007), 679.

[31] A simple, maybe limited but also illustrative example is the distinction between the words law in English and *droit* in French, representing consecutively a common law and civil law language. Both words define an area of law or a national body of rules. However, law may also mean a statute, a decree or an order, what in French would be *loi*, and a legal precedent, what in French would be *jurisprudence* although restricted to the judicial interpretation of law rather than related to the judicial-based normative principles or institutions that create case law. Furthermore, *droit* is also used to define individual and collective rights. Same structure follows in other civil law languages such as German (*recht/gesetz/rechtswissenschaft*) or Spanish (*derecho/ley/jurisprudencia).*

[32] Foster (2006), 12.

[33] Michaels (2007), 342.

their societies. Finally, it has an evaluative criterion by a better-law comparison that recognizes which is the best among several laws to fulfil its purpose. This functional method has been equally praised and criticised, as Michaels explains[34], and it has several functions, including understanding law, unifying law, building a new law or evaluating different systems.

Following Mark Van Hoecke's study, along with the functional method many others have appeared in the last decades that are shaped according to the legal criteria targeted.[35] (1) The structural method focuses on the structure formed by the main elements of the legal phenomena for a better legal knowledge. (2) The analytical method explores the logical relation among a set of basic concepts for a comprehensive representation of their legal implications. (3) The law-in-context method, that explains the historical, social, religious and cultural circumstances shaping the law, can be performed by different approaches including, among others, (3A) a historical approach considering the origins and reasons of why the law is as it is within a society, (3B) an institutional approach exploring the role played by certain institutions in the configuration of the law, or (3C) an empirical approach checking the effects and effectiveness of the law. Finally, (4) the common-core method identifies shared fundamentals in a sub-group of laws of several legal systems in view of a possible harmonisation (Table 2). [36]

	Major Comparative Law methods
Functional method	Analyses a factual situation in the light of its functional relation to society, under the consideration of a *tertium comparationis* and a *praesumptio similitudinis,* with an evaluative criterion.
Structural method	Studies the structure formed by the main elements of the legal phenomena with a knowledge criterion.
Analytical method	Explores the logical relation among a set of basic concepts with a legal significance criterion.
Law-in-context method	Explains the historical, social, religious and cultural circumstances shaping the law with a social-theory criterion.
Common-core method	Identifies shared fundamentals in a sub-group of laws in several legal systems with a harmonisation criterion.

Table 2: Major comparative law methods.

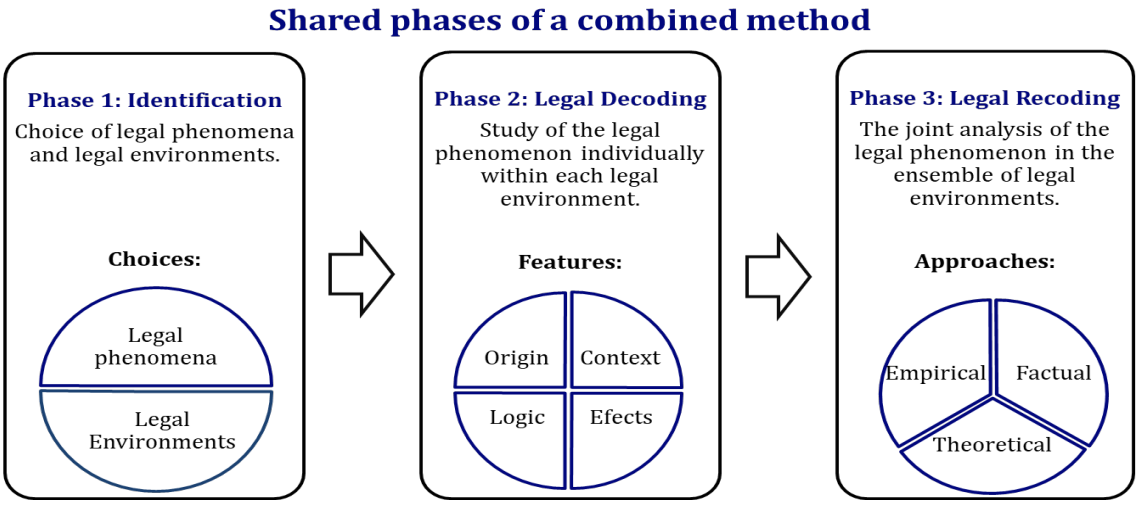
Since all these methods have their usefulness but also their limitations, the work performed recently by comparatists shows that the preferred method is a pragmatic combination that varies from one researcher to another.[37] However, common steps could be identified in these wide-ranging combined methodologies where method and purpose are always interconnected. A first step of identification, the choice of the legal phenomena and the legal environments to be analysed. A second step of legal decoding, the study of the legal phenomena in each legal environment individually. Finally, a third step of legal

[34] Ibid, 363-380.
[35] Hoecke (2015), 1-35.
[36] Further examples could be, consecutively; (1) a structural study of the transfer of ownership upon death in different legal traditions, (2) a logic study among liberties, privileges and immunities within the environmental rights of African communities living in protected areas, (3A) a historical study of restrictions on the liability for pure economic loss employed by common law systems, (3B) an institutional analysis of immigration law in Central America according to the reception of international policies, (3C) an empirical study of the efficiency of criminal law deterrence for honour killings in South Asia, and (4) the common core research of European labour law promoted by the EU with harmonisation purposes.
[37] Palmer (2005), 266.

recoding, the joint analysis of the legal phenomena in the ensemble of legal environments. Nevertheless, these steps are performed differently according to the various purposes and approaches that may be followed.

The choice of the legal phenomena and the legal environments would depend on the pre-existence of legal and territorial agendas. In the cases where there is no legal or territorial target predefined, a previous study of the legal phenomena to be considered or the specific environments to be analysed is required for its effectiveness. Once the legal phenomena and the legal environments are chosen, a comprehensive study of the legal phenomenon individually within each legal environment is commonly performed with multiple legal enquiries that usually include, among the various elements traditionally considered by comparatists, its origin, its context, its doctrinal base, its logic or its effectiveness. After constructing this conceptual map, where all features have been analysed separately, legal phenomena are approached in all environments together; theoretically, studying their structure and logical relations; empirically, studying their effectiveness and functionality; and/or factually, studying their common-core and similarities. Consequently, a theoretical approach is preferably used for an accurate generation of legal knowledge, an empirical approach for legal advancement or improvement, and a factual approach for legal convergence or harmonisation (Figure 5).

Figure 5: Shared phases of a comparative combined method.



5. Conclusion - Why do we compare? A holistic definition for comparative law as an academic discipline and a legal horizon for the new generation of legal professionals

As it has been already discussed, many reasons can be proposed to study comparative law in an interconnected world. The more obvious purpose is the provision of a toolbox of non-parochial legal concepts and far-reaching legal knowledge which helps to attain a better understanding of the differences and similarities among diverse legal systems worldwide and also of the role performed by several legal traditions in their shaping. Acknowledging these legal specificities of different legal systems, especially those beyond the Western world, serves to procure a more accurate and functional legal advisory. Furthermore, analysing together various legal systems helps to identify the different responses that national systems are giving to similar legal issues and controversies, promoting a better awareness of how legal systems are advancing. Comparative law is, thus, an excellent approach to put systems in context to foresee the legal challenges ahead and how a harmonisation agenda can face them. Finally, the ability

to perform a comparative law method is key for an effective and critical analysis of the cosmopolitan legal world of our days.

However, comparative law students are learning about a legal field still *under construction* where many debates remain open about it. Traditionally, comparative law has been defined as the study of the differences, similarities and interrelationships of different legal systems.[38] This definition could also be considered as a good description of the role played by comparatists, as already suggested in this working paper. However, for an accurate approximation to comparative law as an academic discipline, more key elements could be acknowledged in its definition, including its object, scope, methodology or purpose. Therefore, a holistic definition of comparative law as an academic discipline for learning purposes could be the following: comparative law is the method-based study of the same legal phenomena in different legal environments that promotes legal knowledge, legal advancement or legal harmonisation.

As already stated, the scope of legal phenomena should be understood comprehensively encompassing both micro-comparison -a specific rule, right, legal problem or judicial challenge- and macro-comparison -an enactment, a sub-body of rules, a legal order or a legal system-. Similarly, the scope of the diverse legal environments worldwide should be considered holistically from diverse foreign and international law -the comparative analysis of various national legal systems, different legal families or the international law system- to a specific diverse legal system -the study of a legal system either compound, comparing the different national legal systems that coexist within, or complex and hybrid, comparing the several legal traditions that meet within-. Since method and purpose are indeed interrelated, the criterion, either knowledge, advancement or harmonisation, should determine the method to be followed (Figure 6).

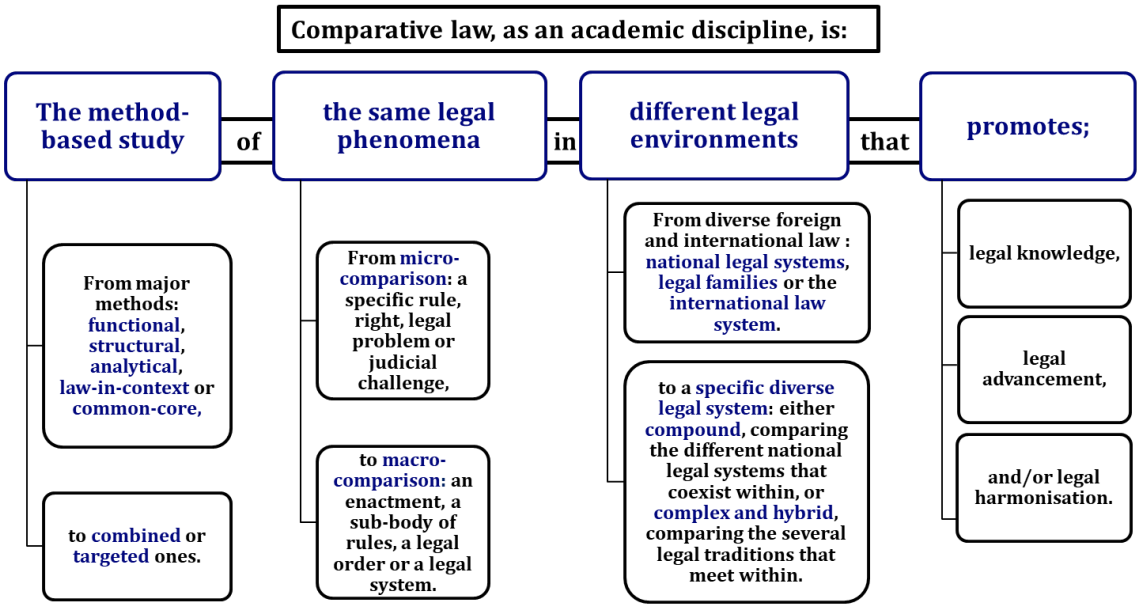


Figure 6: Definition of comparative law as an academic discipline.

The rise of comparative law nowadays is indeed a legal horizon for a new generation of legal scholars and professionals. Whether they realise it or not, all these members of the new legal generation will perform comparative law and, hence, they will

[38] This traditional definition of comparative law has been adopted by many legal dictionaries or legal encyclopaedias, such as the Merriam-Webster's Dictionary of Law, ed. 2011, that defines it as "the study of the differences, similarities, and interrelationships of different systems of law".

need the right legal education for doing it accurately. Given the enormous rise of transnational legal interactions generated by globalisation, the ability to perform comparative law is required to avoid negligent legal advice and inaccurate legal reasoning in many fields.[39] Certainly, the production of comparative analyses makes legal professionals open-minded and enriches not only their vision of the legal world but also their capacity to improve it. In an interconnected legal scene, learning about and performing comparative law is not only a consequence of internationalisation but also a duty for those legal experts who really want to make a difference in the legal world and beyond.

[39] Just to name a few of those professionals that might require an accurate knowledge of comparative law and the ability to perform it, among many others; the team of the legal department of a multinational company doing business in various legal systems; legal counsels in cross-border business transactions or in international incorporation of companies; State negotiators of an international convention and those who will implement it in their national legal systems; legal advisers on the reform of a national legal system or participating in a harmonisation conference; advocates analysing legal conflicts caused by personal law in multicultural societies or trying to make a legal argument through foreign cases; scholars considering better-law comparison for a specific sub-body of rules or judges using legal analysis of foreign cases in their judgements.

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