The Multicultural Classroom as a Comparative Law Site

Myriam Hunter-Henin[*]
(summer 2019 version)

TO BE PUBLISHED IN
"**The Multicultural Classroom As a Comparative Law Site: A United Kingdom Perspective**"
chapter 5 in Csaba Varga (Eds): Comparative Law and Multicultural Legal Classes: Challenge or Opportunity? Global Studies in Comparative Law, Vol. 46, Springer, June 2020

Abstract This chapter studies the impact of the recent multicultural approach to comparative legal studies on comparative law teaching, with a focus on British debates and literature. I will argue that the multicultural turn of (comparative) legal teaching, reflected for example on a greater diversity of teaching techniques, a greater emphasis on minority issues and law &… disciplines, responds to a multiplicity of motivations. Pedagogically, it is a response to the increasingly diverse backgrounds of students and their differing intellectual starting-points. Pragmatically, it is a means to boost students' employability and intellectual versality in a job market that now values "cultural awareness skills". Finally, conceptually, it is a tool designed to unravel the pluralistic nature of law. From these diverse drivers to the multicultural turn in (comparative) legal teaching, it is possible to identify similarities with other recent trends of globalisation and internationalisation of legal education. However, this article will submit that differences remain. Having analysed these differences, I will go on to argue and reveal that in them lie the core features of a multicultural approach to legal teaching and its intrinsic connections to comparative law, as the multicultural classroom itself becomes a comparative law site.
Key-words multiculturalism; legal pluralism; cultural awareness; global legal teaching; place-based education; deterritorialised teaching

1 Introduction[**]

[*]
Myriam Hunter-Henin
University College London, Laws, London, UK
e-mail: m.hunter-henin@ucl.ac.uk

[**] I am indebted to Jean-Frédéric Ménard for his research assistance and suggestions.

The link between culture, or cultural factors and Law, Comparative Law in particular, is not new.[1] The intuition that culture or cultural considerations could, if not redefine comparative law into the comparison of legal cultures,[2] at least refine the art of comparison[3] seems now settled,[4] even if controversies surrounding its implementation persist. Amongst these persisting difficulties are the problems caused by the elusive nature of culture. How are we to approach the culture(s) that will help us as comparatists explain differences or/and similarities between given institutions, cases or problems? Within culture, what are the appropriate distinctions, which may guide our investigations? Should we distinguish for example between general culture and legal culture? External legal culture, that is, according to Lawrence Friedman,[5] attitudes, beliefs and practices in relation to law are grounded in general cultural—as opposed to legal factors, but both combine to influence internal legal culture. Is the distinction between general and legal culture useful or likely to artificially separate law from its cultural roots, and detract the comparatist from the crucial examination of legal formants?[6] Searching for cultural embeddedness of comparative analysis, the connection between comparative law and culture does not necessarily carry a proposition that 'culture'[7] is the answer to comparative law; merely, that legal answers lie, in varying proportions and manners according to the institution, legal solution or problem under consideration, in cultural factors, legal or otherwise. Nor does the emphasis on the connections between culture and comparative law necessarily lead to an ossification and reification of culture. In any given attempt at comparison, the comparatist can disaggregate culture and study it in relation to one or more of its distinct components.[8]

The switch from "cultural" to "multicultural" suggests that it is the *coexistence* of different cultures rather than merely one or other particular aspect of culture or even a combination of several factors that explain law's responses. Comparing in a multicultural sense would therefore entail comparing how legal systems accommodate, more or less explicitly, the diversity of cultures. More forcefully, this turn from the "cultural" to the "multicultural" would entail a pluralistic conception of law itself, and a systematic attention to law's structural bias against minorities. What impact would this multicultural approach to comparative legal

[1] See, for example, Whitman (2003), 315; Bell (2002); Kahn (1999); Banakas (1994), 113; Curran (1998), 43.
[2] Varga (1992), xv.
[3] On the logics of comparison, Glenn (2001), 133; Merryman (1999).
[4] Sacco (1991b), 15.
[5] Friedman (2006), 189. See also the definition of legal culture given by Nelken (2004), 1, as ranging from "facts about institutions such as the number and role of lawyers or the way judges are appointed and controlled to various forms of behaviour such as litigation or prison rates, and, at the other extreme, more nebulous aspects of ideas, values, aspirations and mentalities. Like culture itself, legal culture is about who we are, not just what we do".
[6] Sacco (1991a).
[7] See for alternatives to legal culture, "legal ideology", Cotterell (1997), 13; law in action, Bruinsma (2003) or legal tradition, Glenn (2004). Legal tradition is usually seen as a wider concept than culture but at micro-level, it leads to a focus on ideas to the exclusion of social practices.
[8] Using Roger Cotterell's directives, the concept of legal culture when applied to a particular comparative exercise should therefore be split into its distinct components, Cotterell (2004), 9.

studies have on *comparative law teaching*? This is the question specifically addressed in this chapter, with a focus on British debates and literature. I will argue that the multicultural turn of (comparative) legal teaching, reflected for example on a greater diversity of teaching techniques, a greater emphasis on minority issues and law &… disciplines, responds to a multiplicity of motivations. Pedagogically, it is a response to the increasingly diverse backgrounds of students and their differing intellectual starting-points. Pragmatically, it is a means to boost students' employability and intellectual versality in a job market that now values "cultural awareness skills". Finally, conceptually, it is a tool designed to unravel the pluralistic nature of law. From these diverse drivers behind the multicultural turn in (comparative) legal teaching, it is possible to identify similarities with other recent trends of globalisation and internationalisation of legal education. However, this article will submit that differences remain. Whereas a multicultural focus of legal education will always highlight a "humanist" dimension, through a concern for minority rights and perspectives, globalisation of legal education sometimes favours instrumentalist interests exclusively. Whereas a multicultural approach to legal teaching will always underline the pluralistic nature of law, globalisation of legal training can be the vehicle of monolithic dominant legal models. Whereas a multicultural approach to teaching can occur at both undergraduate and graduate levels, globalisation is usually reserved for graduate programmes, as a corrective to an initial national education. Unlike globalised teaching, a multicultural approach to legal teaching does not draw arbitrary lines between the "global" and the "local" and acknowledges the importance of "place-based pedagogy"[9] and the embeddedness of legal concepts. Internationalisation of legal education, by bringing in more diversity within the student population, will often be an incentive to adopt a multicultural turn to legal teaching. However, if limited to unilateral flows of students towards elite Western (English-speaking) institutions, internationalisation of legal education may only reinforce dominant national models. From these differences between global legal education, internationalisation of legal education and a multicultural approach to legal teaching, I will tease out the core features of a multicultural approach to legal teaching and thereon, its intrinsic connections to comparative law.

The chapter will be structured as follows. Having analysed the multiple motivations and main manifestations for a multicultural turn in legal teaching (Section 2), I will examine the similarities and differences between the multicultural, the global and the internationalised classroom (Section 3), before ending with some remarks on the core shared features between the multicultural classroom and comparative law (Section 4).

[9] See infra.

2 Adjustments to the Increasingly Multicultural Body of Students

The topic of "comparative law in multicultural classes" is at the crossroads of several overlapping streams of contemporary scholarship in comparative law and socio-legal studies: internationalisation of legal education, globalisation of law, globalisation of legal education; legal pluralism; law as culture, to name but a few. One common thread is the changes, which an increased international mobility of the student population and of staff has provoked in legal education. The legal classroom itself has become a site of legal plurality through the overlap and interactions between the different types of legal experiences, cultures, conceptions and orders that the students bring with them. The theme of "multicultural classes and comparative law" would thus underline the need for comparative law to adjust to the different backgrounds and sensitivities of students. One prominent author who, in Britain, has called for adjustments to comparative law teaching in reaction to the multicultural composition of the classroom is Professor Werner Menski. Menski criticises the teaching of comparative law and the programme he offers to the School of Oriental and African Studies (SOAS) University of London has an alternative way.[10]

2.1 Menski's Kite Metaphor

Using the metaphor of a kite, Menski portrays the different standpoints of students confronted with a legal question. Each corner of the kite corresponds to a particular normative focal point: (1) religion/ethics/values; (2) socio-cultural norms and socio-economic arrangements; (3) state-centric laws of different kinds and the political arrangements sustaining them; and (4) various forms of international law and norms that claim predominance in today's world. As Menski explains, depending on their respective belief system, students will navigate quite differently across the corners of the kite.

> For example, a religious fundamentalist, starting from an ideological position that puts religion at the centre of his/her universe, would consider the various law-making elements in the sequence 1-2-4-3, because s/he probably hates the state, has reservations about 'Western' human rights ideology, and normally starts from a perspective of religious rootedness, which is also typically a very individualistic approach. We see here how decision-making processes are directly connected to what many scholars call now 'legal consciousness'.
>
> Going back to my exercise, human rights fundamentalists in my classes normally tend to start their legal analysis from corner 4, which generates a totally different sequence, probably 4-3-2-1. This happens because of their focus on modern values and individual rights. This appears as a messy patchwork of competing normativities between the local and the global and the tensions between those competing roles cause never-ending agony about decision-making.[11]

[10] Menski (2006a), 70–81.
[11] Menski (2013), 43.

What directives might follow from these insights for teaching purposes?[12] One immediate consequence would be that law teachers in general, and comparative law teachers in particular,[13] need to be aware of and sensitive to students' differing focal points. Were they to teach on the assumption that all students follow a 4-3-2-1 trail for example, as per the human rights fundamentalist, they would lose many students on the way and fail to make themselves understood in any meaningful profound way by a large fraction of their audience. A broader range of teaching techniques, designed to involve students and build upon their own experience; a constant shift of perspectives in handling case-studies or conceptual presentations; an inclusion of minority practices and voices through surveys, documentaries, scholarly articles and so on would therefore be welcome, even necessary, in order to speak to the non-human right fundamentalists.[14] Similar techniques can also address the more traditional divides known in Comparative Law, such as the divide between "Common Law" and "Civil Law" systems.[15] To quote an initiative of the London's Centre of Transnational Law:

> For example, an initial description of the contrast between the common law and the civil law traditions was provided through a student-led activity. First, we divided the class based on the origin of the students as civil or common law, and then asked each group to offer a list of features that, in their view and knowledge, characterised the other group. This was made operational by breaking each half into smaller groups and then comparing the results arrived at by them. Subsequently, three representatives of the other group would stand in front of their colleagues and confirm, refute or qualify, one by one, the elements in the list. These three representatives, although sharing the same legal family (common law or civil law), came from different countries themselves, which introduced more nuances into the exercise.[16]

If phrased in purely reactive terms, such adjustment of teaching induced by the internationalisation and multiculturalisation of the student population would seem to rely on purely pragmatic grounds..

2.2. Motivations for Adjustments

Antonio Platsas & David Marrani state that, in the UK, internationalisation of legal education rests primarily on instrumental justifications.[17]

---

[12] Shah (2003), 18.

[13] On the discussion of the specific importance of this multicultural turn for comparative law, see infra.

[14] For a list of the diversification of teaching techniques prompted by the multicultural classroom, cf. Hunter-Henin (2013). See Foblets, Bradney and Woodman (forthcoming).

[15] On this divide, see Legrand (2010), who argues that civil law and common law approaches are "irrevocably irreconciliable", representing different *mentalités*, cultural outlooks or worldviews. Comp. Markesinis (1997), 131, who argues that convergence is nonetheless possible.

[16] Arjona, Anderson, Meier and Robart (2015), 267.

[17] Platsas and Marrani (2016).

2.2.1 Instrumental Motivations

The diversification of teaching techniques would be a means of satisfying the expectations of a growing number of international students and hereby for universities of remaining globally attractive. The benefits for minority home students would materialise as a spin-off of the law faculties' strategies to enhance the global standing of the institution. Home non-minority students would equally benefit, both indirectly, from the prestige and opportunities flowing from the international reputation of their institution and from the acquired "cultural intelligence" skills, which employers and recruiters on the job market increasingly value.[18] Pedagogical and conceptual goals, albeit secondary to commercial interests, would nonetheless emerge from such an approach. The "cultural intelligence" conveyed to students would encourage them to question taken-for-granted assumptions and sharpen their critical eye towards their own national system. The abovementioned transnational teaching techniques within a multicultural classroom would serve as a corrective to an initial monolithic and national legal education.

> The problem with the traditional law-teaching approach is that it constructs a primary epistemic foundation for legal understanding, which is based on the one mother-system. This creates an implicit mono-epistemology, which makes lawyers regard their own system as 'normal' and other systems as 'not-normal' or, at least, something that is 'less-normal'.
>
> From this mono-epistemic platform, the law-student is first immersed in the one-approach-thinking, which later makes it difficult to epistemologically adapt to transnational pluralism and to genuinely accept different approaches.[19]

Beyond the pragmatic incentive of producing "better, more employable lawyers", one can therefore detect a conceptual and idealistic motivation for this multicultural adjustment to teaching.

2.2.2 Conceptual and Ideological Motivations

Conceptually, the claim is that by teaching to a multicultural audience and taking on board the diversity of their plural focal points, the law teacher would unravel the inescapably pluralistic nature of law.[20] Not just teaching techniques then, the way law is being taught, but the subject-matter itself, what is being taught, would take a new multicultural shape.

---

[18] Gidoomal, Mahtani and Porter (2001).
[19] Husa (2009).
[20] According to Menski (2006b), 13 and Ballard (2006), 29.

In its new pluralistic rendition, law teaching would moreover endorse an ideologically role: an emancipatory effect of minority voices. As Roger Ballard puts it,

> It is precisely through their rejection of the conventions of the dominant majority, together with their skilled and creative redeployment—both individually and collectively—of the alternative resources of their imported cultural traditions that the new minorities are not only beginning to circumvent racial exclusionism, but to do so with ever increasing success. [...] The ethnic colonies which are now such a salient feature of innerurban life, and whose very foundation lies in vigorous networks of mutual support and solidarity, provides clearest possible evidence of their vitality. […] Indeed the very power of ethnic resistance is its ideological autonomy: if there is one set of values around which one can confidently predict that vigorously resistant minorities will *not* predicate their activities, it is those which underpin their excluders taken-for-granted cultural presuppositions.[21]

This political and philosophical justification helps clarifying the extent to which the "multicultural classes" at the core of this chapter, and the adjustments they provoke, differ to the internationalisation, transnationalisation and globalisation of legal education teaching.

3 Terminological Clarifications

The purpose of this paragraph is to examine the interactions and distinctions between the multiculturalisation of (comparative) legal classes, the internationalisation of legal education, its transnationalisation and globalisation.

3.1 Globalisation

3.1.1 Categories of Globalisation in Legal Education

In the UK, the report produced by John Flood for the Legal Services Board in 2011[22] distinguishes four main categories of globalisation of legal education:

1. Importing foreign students to home law schools for LLM and research degrees;
2. Exporting domestic law schools' programmes to foreign countries, sometimes in conjunction with a host institution;
3. Creating global law schools that attempt to appeal transnationally;
4. Online law schools that could transcend borders but tend towards the local.[23]

It is striking that only the first category (to which one might add the importation of students into undergraduate programmes) will lead to a multicultural

[21] Ballard (1992).
[22] Flood (2011).
[23] Flood (2011), 6–7.

classroom and only the third category ties globalisation to the syllabus itself. What is of interest for our purposes is the extent (if at all) to which the multicultural classroom supports a globalisation of the legal syllabus itself. In a globalised legal syllabus, students would be presented an extremely wide range of comparative law options and international law subjects, taught by professors and lecturers from a wide variety of jurisdictions.[24] Should the multicultural classroom encourage the training of cosmopolitan graduates?[25] The danger inherent in such an approach to legal education is superficiality.[26] Students would be introduced to a wide range of subjects and become more broadly knowledgeable but there is a high risk that there would not be taught a method, a way of thinking. In other words, they would not be trained to think as lawyers. The fear is also that the claim that students might learn instead how to think like "global lawyers"[27] only hides forms of national (imperialistic) legal agenda.[28]

> In a sense, it becomes clear that nowadays, a global lawyer is someone who speaks English and is aware of the common law's fundamentals (amongst other things). So every trained lawyer in the UK may be considered to be a de facto 'global lawyer'.[29]

If being a global lawyer equates to being a lawyer trained in the UK or the US, the abovementioned virtues of "cultural intelligence" would be lost. There is therefore a tension between a globalisation of legal education exclusively enslaved to instrumentalist motivations and a more humanist perspective, to borrow Professor Jürgen Basedow's terms. [30]

> From the humanist perspective, globalisation certainly commands a change in education that confronts everyone with the economic reality and the cultural diversity arising from globalisation. The difference from the instrumentalist or market approach may be that the latter addressed a growing, but still limited, demand in society which may be satisfied by a change in education affecting only part of the student body, for example those specialising in comparative or international law. By contrast, the humanist approach would require changes in legal education across the board, that is for all students.[31]

Moreover, whereas the humanist perspective seeks to embrace diversity, the instrumentalist or market approach might actually stifle pluralism and reinforce dominant forms of legal thinking. To minimise the risk of imperialism, globalisation of legal education should, one might argue, only occur at post-graduate level, once students have acquired a sound legal training in a given

[24] See for example, Sexton (1996); Reisman (1996).
[25] Jutras (2000), 793; Frankenberg (1985); Van Hoecke and Warrington (1998).
[26] Valcke (2004).
[27] Valcke (2004).
[28] Flood (2007), 54.
[29] Platsas and Marrani (2016), 304.
[30] Basedow (2014), 10–11.
[31] Ibid.

national system. Indeed, instances of globalisation generally take place at this postgraduate level.[32]

Adjustments to comparative law teaching in the multicultural classroom might also, like globalisation of legal education, lead to a broadening of the courses on offer, and encourage a wider multiplicity of teaching staff. Crucial differences however remain between globalisation of legal teaching and teaching for a multicultural classroom.

3.1.2 Differences between Globalisation in Legal Education and Teaching for the Multicultural Classroom

There are notable differences between a global legal education and a multicultural turn in (comparative) law teaching. First, where the global legal syllabus might be accused to serve an elite minority and reinforce the dominance of certain national models, multicultural adjustments to legal teaching on the contrary seek to respond to the needs of potentially vulnerable minorities and raise the profile of normative frameworks which would otherwise be ignored by the dominant narrative in legal discourse. Secondly, and consequently, unlike globalised trends in legal teaching which (rightly) focus on postgraduate programmes, adjustments to multicultural classrooms occur both at undergraduate and postgraduate levels. Multicultural adjustments might even be arguably more necessary at undergraduate level, where social disadvantage might be more frequently encountered and susceptible to reinforce the vulnerabilities induced by minority traits, based on religion or ethnicity. Thirdly, given its focus on the multicultural diversity of students, whether they be domestic or international, multicultural adjustments in legal teaching avoid drawing problematic lines between "the global" and the "local".[33]

Too much emphasis on a global syllabus risks alienating the local. To use Professor William Twining's words,[34] a distinction is to be drawn between teaching how and teaching about. Students need to "think global but focus local". The local and the global are interconnected in many ways. Global phenomena are expressed locally and local phenomena have global implications. Multicultural adjustments to legal teaching seem more apt to take on board these complexities. In particular, a focus on the "multicultural", in contrast to the "global", seems ideally suited to the 'place-based pedagogy', praised by Kate Galloway.

> A place-based pedagogy facilitates students' awareness and understanding of where they are and their role in society, presupposing a connection with student's own experiences, implicitly related to place. […] Such a pedagogical approach may assist in addressing some of the more negative views of internationalization in the legal context, as well as opening the curriculum to localized or regional perspectives also. Because place is more

[32] Silver (2013).
[33] Galloway (2016), 18–19.
[34] Twining (2009), 368.

> than simply jurisdictional boundaries, this approach also draws on cultural context and therefore cultural competencies. It invites a comparative approach through understanding not only the student's immediate vicinity, but also the relationship between *here* and *there*. Drawing on student understanding of place and how that plays out in a both local, regional, national and international legal context has potential to integrate what might otherwise form discrete ideas or components of curriculum.[35]

This notion of 'place' allows distinctions between multicultural adjustments to legal education on the one hand, and the internationalisation of legal education or its globalisation or transnationalisation on the other.

3.2 Place-Based Legal Education or De-territorialised Education

As analysed in the previous section, the concept of place in legal teaching is vital in order to introduce students to the relational dimension of law. Globalisation of legal education in that sense presents the risk of uprooting legal solutions, legal actors and consequences of legal solutions from their contexts. The objection to such uprooting is not merely epistemological—namely that it presents an impoverished version of law, it is also moral. The moral critique accuses the global turn of eluding issues of law's legitimacy and depriving legal actors of spaces for contestation and recognition.[36] By contrast, transnational law and transnational legal education would approach law in a socio-legal perspective and restore the full richness and contextual complexity of law.[37] In that respect, transnational law would be closer to the multicultural turn and its pluralistic perspective on law[38] than to globalisation. Despite these theoretical stances, the impetus in both global and transnational law to look beyond the State[39] have left a lingering concern that both globalised and transnational aspirations would fail to reflect law's embeddedness fully.[40] In comparison to globalisation and transnationalisation, the internationalisation of legal education is more likely to escape the charge of dis-embeddedness. The "place" still matters in internationalised legal education but appears in the plural rather than the singular. Indicators of the internationalisation of legal education[41] include the proportion of academics who have received degrees from other jurisdictions, the mobility of students through exchange programmes and the number of non-home students. Law Faculties are highly internationalised places of learning. The statistics collected by UNESCO[42] for the period 2008–2012 reveal that the top three importers of foreign students are English-speaking, common law states (the

[35] Galloway (2016), 24–25.
[36] Jouannet (2011).
[37] For a definition of transnational law as a form of socio-legal pluralism, Scott (2009), 873.
[38] See Zumbansen (2010) and Berman (2007).
[39] Douglas-Scott (2013).
[40] Joerges and Falke (2011).
[41] Jamin and van Caenegem (2016).
[42] UNESCO Institute for Statistics (2016).

United States, the United Kingdom, and Australia), and together they host 35 % of international students worldwide. In the UK, this internationalisation in student admission matches the internationalisation of academics, with 74 % of the UK international law academics in the UNESCO data reported to have received their first law degree outside the United Kingdom.[43] In itself, the internationalisation of legal education may not necessarily generate genuine pluralism. The unilateral flow of student and staff towards Western universities inspires scepticism.

> Because students typically move toward core, Western states, transnational legal education often introduces or reconfirms a western orientation. As many of these students return home to practice or teach after their studies, these movements create pathways for ideas, approaches, and materials to move from core states to periphery and semi-periphery ones.
>
> These educational patterns reflect and reinforce some of the hierarchies and inequalities that characterize the international legal field more generally, including the disproportionate power of legal elites in core states to define the "international" in their own image and to transpose their national ideas, materials, and approaches onto the international plane. These patterns of difference and dominance are central to understanding the construction of international law as a transnational legal field and are at odds with the self-image of universality that the field likes to project.[44]

However, as these international flows of students and staff towards UK Universities (especially) produce a multicultural classroom, it is to be hoped that the teaching itself, anchored in the multicultural place of the classroom, induces a relational, enriching and critical perspective on law. In that light, the multicultural classroom itself becomes a comparative law exercise and comparative law site.

4 Concluding Remarks: The Multicultural Classroom and Comparative Law

The multicultural turn analysed in the preceding paragraphs, like the trends of globalisation and internationalisation detected, in contrast and parallel, affect legal education in general and not merely comparative law teaching. Yet, this paragraph will argue that the multicultural turn of legal teaching has deeper connections with comparative law than with other legal subjects and that the multicultural turn of legal teaching shares with comparative law consubstantial features which remain absent (or are only accidentally present) in trends of globalisation and internationalisation.

4.1 Comparative Law and Globalisation

[43] Platsas and Marrani (2016), 299–300.
[44] Anthea (2018), 3.

In the early 20th century, comparative law scholarship embraced the "spirit of the universal".[45] It neglected contextual considerations, paid little attention to diversity and embarked on projects of legal unification. Most comparatists committed to the search "of universal innate legal ideas",[46] derived from a supposedly common source,[47] and aimed at the development (or rediscovery) of a unified law, illustrative of the unity of the human condition and of the scientific method of reasoning.[48] Comparative Law was thus inspired by a global conception of law. Paradoxically however, the increased globalisation of legal practice and education, characteristic of later developments in the 20th century and 21st century, revealed the impossibility of these universal aspirations.[49] The rapidity of legal changes, the constant transfers and mutual influences provoked by globalisation stood at odds with the efforts in comparative scholarship to map out fixed (albeit repeatedly revised and complexified) categories of legal families, each representative of a broader universalistic concept of law.[50] It would fall outside of the bounds of this chapter to explain how comparative law scholarship has, more or less successfully, risen to the challenge of globalisation and incorporated flexibility and diversity in its approach.[51] What is important and interesting for my present purposes is that this process of globalisation, whilst affecting all legal disciplines, has a particular resonance for comparative law, which has been shaken in its very methodological and ideological commitments.[52] As Mathias Reinmann puts it, the very object of the comparison is now uncertain.

> Is it really the Germans with their *Bürgerliches Gesetzbuch* versus the Americans with their Uniform Commercial Code? Or is it rather the Germans and the Americans as members of the United Nations Convention on Contracts for the International Sale of Goods (CISG) versus the English who have not ratified it? Or is it perhaps the Germans and English as EU members (and thus signatories of the Rome Convention) versus the Americans? Or is it perhaps all these countries as members of the WTO (and thus beneficiaries of its free trade regime) versus those nations who are not?[53]

Some have even wondered whether globalisation trends, by opening up access to foreign laws and prompting the growth of transnational or international sources of uniform law, have not absorbed the goals traditionally assigned to the discipline of comparative law. "A new type of conflict of laws and not primarily comparative law may therefore be crucial in order to understand the legal systems

[45] Frankenberg (2019), 42.
[46] Del Vecchio (1909), 24, quoted by Zampetti (1949), 241.
[47] See how the approach to what constitutes a source of comparative law has shifted, Vogenauer (2006), 869.
[48] Lambert (1905), 47.
[49] Muir Watt (2006).
[50] Husa (2004).
[51] Sacco (2001).
[52] Muir Watt (2006).
[53] Reimann (2001), 1114, also quoted by Siems (2007).

of the world".[54] Comparative Law, however, is as much about understanding one's own system as it is a tool to understand the legal systems of the world. Comparative Law may not principally seek to portray the different legal systems of the world, but to unravel in the process any potential contradiction between a legal system's rationality (construed as above from a cultural perspective) and the operational reality of laws; the aim is to expose "*les modèles menteurs*"[55], or at least show its underlying tensions and compromises. Albeit not alone in this task,[56] comparative law is definitely ideally placed to fulfil this subversive role. [57] If seen as a critique,[58] focusing on methods,[59] comparative law will find in globalisation reasons to question and thrive, rather than decline. Globalisation comes with its own assumptions, which comparative legal studies can healthily challenge. One of them, for example, evident in the debates discussed in this chapter, is that globalisation is what happens "out there". Against this presupposition, the multicultural classroom is evidence that globalisation is what occurs here, in the class, through an inherently comparative approach to teaching.

4.2 The Classroom as a Comparative Law Site

Internationalisation/Globalisation is not a process which occurs in a deterritorialised, placeless universe, it is (also) happening in the classroom, through immigration, through student exchanges, etc. Emphasising the connections between the multicultural classroom and comparative law enables the comparatist to challenge the ethereal conception of law conveyed by some of the literature on globalisation.

> The law school is a site of production not only of lawyers, but also of law itself. Through decisions about faculty composition, student admissions, research, and curriculum, law faculties determine the knowledge, skills, and priorities that define and constitute the law to a greater extent than they have tended to acknowledge. The law school also transmits and assimilates the norms, behaviours, and ethics that shape the professional identity. There are implications to the claim that the law school establishes – or plays a significant role in establishing – the normative approach to law and lawyering.[60]

The multicultural turn in comparative law teaching, therefore, can go beyond teaching about multiculturalism and minority issues, or diversifying teaching techniques to suit the different backgrounds of students. Comparative law teaching can become a comparative law exercise in itself.

---

[54] Siems (2007).
[55] Sacco (1991b), 15.
[56] For the view that comparative law could play in Europe the role performed in the US by critical legal doctrines, Muir Watt (2000), 522. But for the opinion that comparative law could be taken over by critical legal studies, Markesinis with Fedtke (2009), 4.
[57] Fletcher (1998); Muir Watt (2000).
[58] Frankenberg (2019).
[59] Samuel (2014).
[60] Bhabha (2015), 93.

> First, we see the course itself as a site of law. Students will be challenged to notice how their approach to course materials and to the process of learning reflects the same intellectual activity as their approach to, and understanding of, law: students will be agents in the elaboration of the specific normative order constituted by their participation in the course.[61]

From that perspective, comparative law can be truly a discovery of the unknown, the other—whether they be other legal systems or other cultures and minority views within our own legal system. "*The traveller and the comparatist are invited to break away from daily routines, to meet the unexpected and, perhaps, to get to know the unknown*",[62] be it through an exchange programme, an extensive wide-reaching reading list or/and inside the multicultural classroom.

References

Anthea R (2018) Cross-border student flows and the Construction of International Law as a transnational legal field. UC Irvine Journal of International, Transnational, and Comparative Law. Symposium: The Globalization of Legal Education: A Critical Study 3(1):1–38

Arjona C, Anderson J, Meier F and Robart S (2015) What law for transnational legal education? A cooperative view of an introductory course to transnational law and governance. Transnational Legal Theory 6(2):253–286

Ballard, R (1992) New clothes for the emperor? The conceptual nakedness of Britain's race relations industry. New Community 18(3):481–492

Ballard R (2006) Ethnic diversity and the delivery of justice: The challenge of plurality. In: Prakash S and Menski WG (eds) Migration, diasporas and legal systems in Europe. Routledge Cavendish, London, p 29–56

Banakas EK (1994) The method of comparative law and the question of culture today. Tilburg Foreign Law Review 3:113–153

Basedow J (2014) Breeding lawyers for the global village: the internationalisation of law and legal education. In: van Caenegem W and Hiscock M (eds) The internationalisation of legal education: The future practice of law, Edward Elgar, Cheltenham, Northampton, p 1–17

Bell J (2002) French legal cultures. Butterworths, London

Berman PS (2007) Global legal pluralism. Southern California Law Review 80:1155–1238

Bhabha F (2015) Towards a pedagogy of diversity in legal education. Osgoode Hall Law Journal 52(1):59–108

Bruinsma F (2003) Dutch law in action. Ars Aequi, Nijmegen

[61] Macdonald and Glover (2013).
[62] Frankenberg (1985) 411.

Cotterell R (1997) The concept of legal culture. In: Nelken D (ed) Comparing Legal Cultures, Aldershot, Dartmouth, p 13–32
Cotterrell R (2004) Law in culture. Ratio Juris 17(1):1–14
Curran VG (1998) Cultural immersion: difference and categories in US comparative law. American Journal of Comparative Law 46:43–92
Del Vecchio G (1909) Sull'idea di uns scienza del diritto universale comparato. Estratto dalla Rivista italiana per le scienze giuridiche XLV(II–III), Fratelli Bocca, Torino
Douglas-Scott S (2013) Law after modernity. Hart Publishing, London
Fletcher GP (1998) Comparative law as a subversive discipline. American Journal of Comparative Law 46(4):683–700
Flood J (2007) Lawyers as sanctifiers: the role of elite law firms in international business transactions. Indiana Journal of Global Legal Studies 14(1):35–66
Flood J (2011) Legal education in the global context: challenges from globalization, technology and changes in government regulation. University of Westminster School of Law Research Paper No. 11-16. Available via SSRN ID 1906687 <https://papers.ssrn.com/abstract=1906687>. Accessed 28 July 2019
Foblets M-C, Bradney A, Woodman G (eds) (forthcoming) The trials and triumphs of teaching legal anthropology. Routledge, London and New York
Frankenberg G (1985) Critical comparisons: Re-thinking comparative law. Harvard International Law Journal 26(2):411–456
Frankenberg G (2019) Comparative law as critique, paperback 2nd edn. Elgar studies in legal theory, Edward Elgar, Cheltenham, Northampton
Friedman LM (2006) The place of legal culture in the sociology of law. In: Freeman M (ed) Law and Sociology. Oxford University Press, Oxford, p 185–199
Galloway K (2016) Getting back to our roots: global law schools in local context. In: Gane C and Hui Huang R (eds) Legal Education in the Global Context: Opportunities and Challenges. Routledge, London, p 17–30
Gidoomal R, Mahtani D and Porter D (2001) The British and how to deal with them. Doing business with Britain's ethnic communities. Middlesex University Press, London
Glenn HP (2001) Are legal traditions incommensurable? The American Journal of Comparative Law 49:133–145
Glenn P (2004) Legal cultures and legal traditions. In: van Hoeck M (ed) Epistemology and methodology of comparative law. Oxford University Press, Oxford, p 7–20
Husa J (2009) Turning the curriculum upside down: Comparative law as an educational tool for constructing pluralistic legal mind. German Law Journal 10(7):913–926
Husa J (2004) Classification of legal families today: Is it time for a memorial hymn? Revue internationale de droit comparé 56(1):11–38

Hunter-Henin M (2013) Teaching comparative law in order to understand law itself. In: Meulders-Klein MT and Klein A (eds), Law and Anthropology Workshop, Department of Law and Anthropology in Halle (Max Planck Institute for Social Anthropology), 27–28 November 2013
Jamin C and van Caenegem W (2016) (eds) The internationalisation of legal education. Springer, Basel
Joerges C and Falke J (2011) Introduction. In: Joerges C and Falke J (eds) Karl Polanyi: Globalisation and the potential of law in transnational markets. Hart Publishing, London, p 1–18
Jouannet E (2011) Qu'est-ce qu'une société internationale juste? Le droit international entre développement et reconnaissance. Pedone, Paris
Jutras D (2000) Énoncer l'indicible: Le droit entre langues et traditions. Revue Internationale de Droit Comparé 52(4):781–796
Kahn P (1999) The cultural study of law: Reconstructing legal scholarship. Chicago University Press, Chicago
Lambert E (1905) Conception générale, définition, méthode et histoire du droit comparé. Le droit comparé et l'enseignement du droit. In: Congrès international de droit comparé, tenu à Paris du 31 juillet au 4 août 1900, Procès verbaux, vol 1. LGDJ, Paris, p 26–61
Legrand P (2010) Antivonbar. Journal of Comparative Law 1:13–40
Macdonald RA and Glover K (2013) Implicit comparative law. Revue de droit de l'Université de Sherbrooke 43:123–192
Markesinis B (1997) Foreign law and comparative methodology: A subject and a thesis. Hart Publishing, Oxford
Markesinis B (Sir) with Fedtke J (2009) Engaging with foreign law. Hart Publishing, London
Menski WF (2006a) Comparative law in a global context: The legal systems of Asia and Africa. Cambridge University Press, Cambridge
Menski WF (2006b) Rethinking legal theory in the light of South–North migration. In: Prakash S and Menski WG (eds) Migration, diasporas and legal systems in Europe. Routledge Cavendish, 2006, London, p 13–28
Menski WF (2013) Governance and governability in South Asian family laws and in diaspora. The Journal of Legal Pluralism and Unofficial Law 45:42–57
Merryman J (1999) The loneliness of the comparative lawyer and other essays in foreign and comparative law. Kluwer Law International, The Hague
Muir Watt H (2000) La fonction subversive du droit comparé. Revue internationale de Droit comparé 52(3): 503–527
Muir Watt H (2006) Globalization and comparative law. In: Reimann M and Zimmermann R (eds) The Oxford handbook of comparative law. Oxford University Press, Oxford, p 579–607
Nelken D (2004) Using the concept of legal culture. Australian Journal of Legal Philosophy 29:1–26

Platsas AE and Marrani D (2016) On the evolving and dynamic nature of UK legal education. In: Jamin C and van Caenegem W (eds) The internationalisation of legal education. Springer, Basel, p 299–310
Reimann M (2001) Beyond national systems: A comparative law for the international age. Tulane Law Review 75:1103–1120
Reisman WM (1996) Designing law curricula for a transnational industrial and science-based civilization. Journal of Legal Education 46(3):322–328
Sacco R (1991a) Legal formants: A dynamic approach to comparative law. The American Journal of Comparative Law 39(1):1–34
Sacco R (1991b) La comparaison juridique au service de la connaissance du droit. Economica, Paris
Sacco R (2001) One hundred years of comparative law. Tulane Law Review 75:1159–1176
Samuel G (2014) An introduction to comparative law theory and method. Hart Publishing, London
Scott C (2009) Transnational law as proto-concept: Three conceptions. German Law Journal 10(6/7):859–876
Sexton JE (1996) The global law school program at New York University. Journal of Legal Education 46:329
Shah PA (2003) Preliminary reflections on teaching about ethnic minorities in law. The Law Teacher 37(1):18–35
Siems M (2007) The end of comparative law. The Journal of Comparative Law 2:133–150
Silver C (2013) Holding onto "too many lawyers": Bringing international graduate students to the front of the class. In: How many lawyers are too many lawyers: Perspectives, context and place. Oñati Socio-Legal Series 3(3):533–560. Available via SSRN <http://ssrn.com/abstract=2298682. Accessed 28 July 2019
Twining W (2009) General jurisprudence: Understanding law from a global perspective. Cambridge University Press, Cambridge
UNESCO Institute for Statistics (2016). Global flow of tertiary-level students. Available via http://uis.unesco.org/en/uis-student-flow. Accessed 24 July 2019
Valcke C (2004) Global law teaching. Journal of Legal Education 54(2):160–182
van Hoecke M and Warrington M (1998) Legal cultures, legal paradigms and legal doctrine: Towards a new model for comparative law. International Comparative Law Quarterly 47(3):495–536
Varga C (1992) Introduction. In: Varga C (ed) Comparative legal cultures. The New York University Press, New York & Dartmouth, Aldershot, Hong Kong, Singapore, Sydney, p xv–xxiv
Vogenauer S (2006) Sources of law and legal method. In: Reimann M and Zimmermann R (eds) The Oxford handbook of comparative law. Oxford University Press, Oxford, p 869–896

Whitman JQ (2003) The Neo-romantic turn. In: Legrand P and Munday R (eds) Comparative legal studies: Traditions and transitions. Cambridge University Press, Cambridge, p 315–326
Zampetti PL (1949) A filosofia giuridica di Giorgio del Vecchio. Rivista di Filosofia neo-scolastica 41(2):209–246
Zumbansen P (2010) Transnational legal pluralism. Transnational Legal Theory 1(2):141–189