

Comparative law in the global context

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In the closing decades of the twentieth century, the discipline of comparative law appeared to be on the wane, as it was largely subsumed under international law or transnational law, broadly conceived. As globalization took hold at the end of the Cold War and global or regional institutions such as the WTO, ICC, NAFTA, EU, AU, GCC, etc., proliferated, there was alarm at what was perceived as fragmentation of law. There was also an apparent scramble for the characterization or christening of the new or emerging system of norms or what Teubner described as “global bukowina.” It is suggested that what is really happening is the re-emergence or re-invention of comparative law.

As the centers of power, capital, production, influence etc., diversify from their core Eurocentric conceptions and manifestations, so it is imperative that the legal traditions and interests of other parts of the world be factored into legal formations, discourses and practices. Comparative law therefore is no longer limited to the comparison of common law with civil law or the Code versus precedent. Even then, the conventional history or origin of the European systems is challenged. It is argued that common law, for example, has Islamic origins. Contemporary comparative law now takes cognizance of Islamic law, Confucianism, traditions of Africa and the Orient. Hence, the adaptation of the principles of Islamic finance in London, Dubai, Kuala Lumpur and elsewhere, the adoption of sustainability principles in property law, obligations and international law, the practice of restorative justice in criminal law and the role of victims in punishment and sentencing, the institutionalization of mediation, conciliation and negotiations in family law, business law as well as in the curricula of Western Law Schools.

Contemporary comparative law also embraces international law in all its fragments. The relationship between international law and domestic law is no longer pristine or hierarchical. It is both horizontal and complementary. The strict application of monist and dualist theories has become quite obsolete or unrealistic.

It is for these reasons that the College of Law of Qatar University, under the leadership of Dean Hassan Okour, conceived and organized a conference on comparative law in 2012. The theme was “The Comparative Law Triangle: The Influence of Islamic Law, Civil law and Common Law on Each Other.” It brought together scholars in comparative law from Canada, France, Egypt, Germany, United States, United Kingdom and other jurisdictions who joined colleagues from Qatar University in deliberating on the modern issues of comparative law. Papers were presented on constitutional law, business law, criminal law, obligations and others, reflecting on the points of convergence and divergence in the various legal traditions. There were papers that also discussed international law and its relationship to domestic law, the ethics of legal advice leading to the financial crisis of 2008, the place of human dignity in constitution making as well as the pedagogy on comparative law as a discipline. The articles presented in this special issue of *International Review of Law* (IRL) were a selection from the papers presented at the conference. As the convener of the conference, I can testify to the rigor of the papers presented and the animated discussions and debates that followed the papers. It is my privilege and honor to present a selection of the papers to the wider global audience of the journal. In making the selection, the referees and editors were minded by both the rigor of the papers, their relevance to the region and their reflection of the four key panels of the conference – constitutional law, criminal law, obligations and business law.

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IRL is the flagship journal of Qatar, based at the College of Law, Qatar University, a journal which was itself a product of the emerging constellation in comparative legal scholarship. It is open access, making it freely available online to all who seek to deepen their understanding of law in all its multi-faceted forms. It is my hope that readers will see a reflection of this multiplicity in the papers herein published.