

Foreword

Located within the exciting new field of comparative legal studies as interdisciplinary critique, this book presents a genealogy of Western legal worldviews as incarnated in comparative law since its first claim to scholarly recognition through the work of Sir Henry Sumner Maine, writing from within the British colonial administration in mid-nineteenth century India.

In this respect the critical tone is given by the use of the periodization of contemporary legal history suggested by Duncan Kennedy in his seminal study of law's several (three) globalizations. Thus, Veronica Corcodel identifies within the visions of legal comparatists the same concerns and tensions apparent in Kennedy's three successive modes of legal thought in various areas of domestic substantive law. According to Corcodel's account, comparative legal scholarship served, at its colonial start, a political vision of liberal imperialism, moved to apologetic modernization during the era of the 'social' and now, most recently, with attendant ambivalences, purports to be transformative. Her first critical move is thus to lay bare the signification of evolving legal discourses and representations of the Other within or underlying successive projects for ordering or classifying the legal world.

This genealogy highlights the rarely observed governance implications of comparative legal thought, to the extent that it shows how the knowledge produced through various classifications of laws and legal systems participates very directly in non-coercive forms of domination. As the author rightly points out, comparative law is overwhelmingly perceived as a descriptive exercise; even when it ventures beyond the civil/common law divide in private law, it is not usually associated with global governance. Adopting this unusual angle opens the field to further connections that are, once again, rarely emphasized in comparative legal scholarship.

Thinking comparative law through the governance lens as an imperial project creates linkages with critical movements in both public and private international law that bring to bear a third world perspective on Western law's exclusions and biases, including its claims to universalize human rights. Here Corcodel draws upon an impressive critical-theoretical culture, using TWAIL theory, feminist jurisprudence, post-structuralism, critical anthropology, history or geography to deconstruct the underlying assumptions of traditional comparative legal scholarship that still have considerable purchase within mainstream teaching and studies.

This mixed interdisciplinary perspective sheds light on the invisible dynamics of inclusion and exclusion, of domination and subordination, inherent in comparative law projects. It shows up the exoticization and essentialization of the non-Western other and the symmetrical naturalization of the comparatist's own categories. It questions the relationship between culture and politics, collective identity and individual subjectivity, tradition and progress. It sees through the powerful claims of functionalism as the dominant contemporary mode of legal comparison and moots the idea of comparative law as a form of emancipatory politics.

This work is undoubtedly a gamechanger within comparative legal studies. The latter, it can be said, are now a player in their own right within critical legal thought. The subversive potential of this work lies in the way it brings in the various strands of critique from outside the discipline while demonstrating, conversely, the resources of comparative accounts of the law in understanding the assumptions of other legal fields in which alterity or interaction with foreign systems play a part.

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