

1. Introduction*

[Imperialist propensity] is not just a matter of Westerners who (would) not have enough sympathy for or comprehension of foreign cultures – since there are, after all, some artists and intellectuals who have, in effect, crossed to the other side . . . What is perhaps more relevant is the political willingness to take seriously the alternatives to imperialism.¹

PART I DELINEATING THE PROJECT

Over the last two decades or so, comparative law has been increasingly interested in debates on globalization and Eurocentrism, seeking renewal of legal theory and greater attention to diversity.² This book joins these efforts and seeks to infuse the field with new vigour by building on postcolonial approaches. Developed across different disciplines, these approaches have in common a concern over the ways in which ideas about the ‘non-West’ consol-

* Material for this chapter is drawn partly from Veronica Corcodel, ‘The Sacred and the Secular, the Market and the Family in Modern Comparative Law’, 7 *Jindal Global Law Review* 9 (2016).

¹ Edward W. Said, *Culture and Imperialism* xx (New York: Knopf, 1993).

² See e.g., Teemu Ruskola, *Legal Orientalism. China, the United States and Modern Law* (Cambridge, MA, London: Harvard University Press, 2013); Günter Frankenberg, *Comparative Law as Critique* (Cheltenham, UK, and Northampton, MA, USA: Edward Elgar Publishing, 2016); Vivian Grosswald Curran, ‘Cultural Immersion, Difference and Categories in U.S. Comparative Law’, 46 *American Journal of Comparative Law* 43 (1998); Pier Giuseppe Monateri, ‘Black Gaius. A Quest for the Multicultural Origin of the “Western Legal Tradition”’, 51 *Hastings Law Journal* 479 (2000); Horatia Muir Watt, ‘Globalization and Comparative Law’, in *Oxford Handbook of Comparative Law* (Mathias Reiman and Reinhard Zimmermann, eds, Oxford: Oxford University Press, 2006); Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006); Pierre Legrand, *Comparer les droits, résolument* (Paris: PUF, 2009); Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford: Oxford University Press, 2014); William L. Twining, ‘Comparative Law and Legal Theory: The Country and Western Tradition’, in *Comparative Law in Global Perspective* 21 (Ian Edge, ed., New York: Transnational Publishers Inc., 2000); Gunther Teubner, ‘Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergencies’, 61 *Modern Law Review* 11 (1998).

idate (neo-)imperial relationships.³ Taking seriously this political dimension of representations of the non-West, the book shows that Euro-American comparative legal thought is fraught with tensions between inclusion and exclusion, the particular and the universal, critiques and apologies for Western domination.⁴ This is the first comprehensive study of the history of comparative law from a postcolonial perspective.⁵

Postcolonial insights have been gaining increasing terrain in the field of public international law, especially in the Third World Approaches to International Law (TWAAIL) scholarship.⁶ The latter has examined the relationship between Western patterns of imperialism and international law, highlighting the field's assumptions and effects on the non-West. With a few important exceptions, postcolonial approaches have been largely ignored in comparative legal scholarship.⁷ They are, however, particularly relevant for a field that produces knowledge on world legal systems.

Part of the problem is a general sense that comparative law is not a significant site of production of ideas about the non-West.⁸ Ascribing this knowledge to the domain of anthropology or history, Euro-American comparatists generally see the field as mainly concerned about globally influential civil law and common law models.⁹ What they ignore, however, is that the portrayal of Western models as dominant is constituted in opposition to the non-West. In this sense, even such understandings of the field are animated by ideas about the non-West. This book puts these ideas in the forefront, showing their pervasiveness for the constitution of the meaning of the West.

The very recognition of comparative law as a field is sometimes questioned.¹⁰ However, there is an undeniable common professional interest running through comparative works. Indeed, their main objective is to analyse

³ The 'non-West' is understood here as a construction and should be read in the book as though it is in quotation marks to emphasize that it is a *representation*.

⁴ Comparative legal thought is understood in this book as a set of ideas, ways of thinking, assumptions and representations that animate comparative legal works.

⁵ For a historical analysis of comparative law from a critical – but not postcolonial – perspective, see David Kennedy, 'The Methods and the Politics', in *Comparative Legal Studies: Traditions and Transitions* 345–54 (Pierre Legrand and Roderick Munday, eds, Cambridge: Cambridge University Press, 2003).

⁶ For an introduction to TWAAIL scholarship and a bibliography, see James Thuo Gathii, 'TWAAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography', 3(1) *Trade Law and Development* 26 (2011).

⁷ An important exception is Ruskola, *Legal Orientalism*, supra note 2.

⁸ *Ibid.* at 19.

⁹ This is especially visible in the works of Raymond Saleilles and part of post-war comparative law. See infra Chapters 4 and 5.

¹⁰ See e.g., Mathias Reimann, 'The End of Comparative Law as an Autonomous Subject', 11 *Tulane European Civil Law Forum* 49 (1996); Djalil I. Kiekbaev,

foreign law for identifying similarities and/or differences between legal systems. Comparatists often approach this as a way of enhancing the scientific credibility of their scholarship. This is visible in all the works studied in this book, whose focus covers the period between the 1860s and the early 2000s. A great number of works are inevitably left out, but the chosen comparatists are generally acknowledged to have contributed in important ways to comparative law. Moreover, exhaustivity is both impossible and unnecessary for the main argument, which seeks to highlight the political significance of comparatists' constructions of the non-West.

Politics is used here interchangeably with 'governance', understood broadly as a set of power techniques that include non-coercive modes of domination.¹¹ In this vein, drawing from the postcolonial work of Edward W. Said, knowledge on the non-West is approached as a form of such domination, i.e. as embedded in historical and contemporary world configurations of power.¹² Nineteenth- and twentieth-century Western imperialisms are, in turn, approached as consolidated by ideas of the non-West and as casting shadow over contemporary knowledge and power relationships.¹³ In this sense, this work takes seriously the main contention of postcolonial thinkers that the creation of the liberal system of domination was justified and perhaps even driven by ideas of a 'civilized' or 'modern' West, defined in opposition to an 'uncivilized', 'barbarian' or 'traditional' non-West.¹⁴

An important implication of this approach is that the non-West is understood as a politically significant representation, and not as either a true or false depiction.¹⁵ It is a creation that serves to define the Western modern

'Comparative Law: Method, Science or Educational Discipline?', 7.3 *Electronic Journal of Comparative Law* (2003).

¹¹ Michel Foucault, 'Governmentality', in *The Foucault Effect: Studies in Governmentality* 100 (G. Burchell, C. Gordon and P. Miller, eds, London: Harvester Wheatsheaf, 1991).

¹² Edward W. Said, *Orientalism* (first published in 1978, London: Penguin Modern Classics, 2003); Said, *Culture and Imperialism*, supra n 1. See also Peter Fitzpatrick and Eve-Darian Smith, 'Laws of the Postcolonial: An Insistent Introduction 1', in *Laws of the Postcolonial* (Peter Fitzpatrick and Eve-Darian Smith eds, Michigan: The University of Michigan Press, 1999).

¹³ Said, *Orientalism*, supra note 12 at 11–15.

¹⁴ Said, *Culture and Imperialism*, supra note 1 at 9–10.

¹⁵ In this sense, this book does not make any claim about the 'real' characteristics of the non-West but approaches them as constructions. The author has already used this approach to analyse the works of Henry Maine and Edouard Lambert, as well as to reflect on the distinction between the secular market and religious family law; see Veronica Corcodel, 'The Governance Implications of Comparative Legal Thinking: On Henry Maine's Jurisprudence and Liberal Imperialism', in *Private International Law and Global Governance* 92 (Horatia Muir Watt and Diego Fernandez Arroyo,

identity. The latter's meaning arises from a definitional exclusion of imagined ostensibly different Others.¹⁶ In this sense, these constructions in the legal field are part of a larger story of the constitution and reproduction of the modern legal subject.¹⁷ In the same time, it is a story of Otherness, understood as a discursive production of the non-West.¹⁸ Far from being mere fictions, these representations have constitutive effects, i.e. they shape those who populate the non-West, limiting the ways in which subjects are imagined.¹⁹

This work does not aim at denigrating the field of comparative law, but at understanding better the ways in which it (re)produces knowledge on the non-West, what its stakes are and how to go about it. The objective is neither to suggest that such knowledge is untrue, but to analyse it as a construction that is made to look obvious and has governance implications. The following questions are addressed in this book: how is the non-West constructed in Euro-American comparative legal thought and what are the governance implications of such representations? How do these ideas change and how are they reproduced from one epoch to another, from one author to another? What are the preconceptions that make the production of such ideas possible? What elements fuel imperialist attitudes and/or challenge them?

To address these questions, the analysis starts with the nineteenth century, now commonly portrayed as the age of liberal imperialism.²⁰ By imperialism I mean broadly any processes, structures and attitudes of domination over distant peoples and territories, carried out through formal state power and/or through informal means.²¹ Both patterns are understood as part of a complex

eds, Oxford: Oxford University Press, 2014); Veronica Corcodel, 'The Sacred and the Secular, the Market and the Family in Modern Comparative Law', 7 *Jindal Global Law Review* 9 (2016); Veronica Corcodel, 'Comparative Law and Imperialism: Representations of Islamic Law in the Scholarship of Edouard Lambert', 19(1) *Yearbook of Islamic and Middle Eastern Law* 134 (2018).

¹⁶ Fitzpatrick and Smith, 'Laws of the Postcolonial', supra note 12; Sundhya Pahuja, 'The Postcoloniality of International Law', 46 *Harvard International Law Journal* 459 (2005).

¹⁷ For a similar remark, see Ruskola, *Legal Orientalism*, supra note 2 at 62.

¹⁸ The term 'discourse' is used here in the Foucauldian sense, as a historically contingent system that produces knowledge and structures social relations with effects of power. See Michel Foucault, *The History of Sexuality, Volume I: An Introduction* (trans. Robert Hurley, New York: Vintage, 1978); Colin Gordin, ed., *Power/Knowledge: Selected Interviews and Other Writings 1972–1977. Michel Foucault* (New York: Pantheon Books, 1980).

¹⁹ Ruskola, *Legal Orientalism*, supra note 2 at 54–6.

²⁰ See e.g., Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005).

²¹ For the definition of imperialism, see Said, *Culture and Imperialism*, supra note 1 at 9. For the distinction between 'informal' and 'formal' imperialism, see Martti

structure of world trade and commerce combined with investments of the 'centre' into the 'periphery', which went hand in hand with the liberal ideology of freedom in the sphere of exchange.²² This ideology, as postcolonial literature has argued, was defined in opposition to its allegedly inferior Others, justifying their domination. In the legal realm, liberalism implied a certain mode of thinking, including individualism, the distinction between private and public law, between the market and the family.²³

In the nineteenth century, comparative law was still under a process of formation, but some thinkers of this period are claimed as forefathers or founders of the field.²⁴ Sir Henry Sumner Maine, whose work is discussed in detail in this book, is one of them. The analysis of his scholarship is particularly interesting because of his position as a British colonial officer in India from 1862 to 1869. In this sense, the relationship between imperialism and ideas of the non-West is probably the most visible in his work. A proponent of laissez-faire liberalism, Maine also elaborated extensively on the legal foundation of this ideology. The features defended by him in the name of liberalism, such as clear and generalizable rules, individualism, the distinction between private and public law, are sometimes understood as delineating legal classicism.²⁵ This

Koskenniemi, 'Empire and International Law: The Real Spanish Contribution', 61 *University of Toronto Law Journal* 1 (2011).

²² Duncan Kennedy, 'Three Globalizations of Law and Legal Thought, 1850–2000', in *The New Law and Economic Development: A Critical Appraisal* 19, 29 (David Trubek and Alvaro Santos, eds, New York: Oxford University Press, 2006); Koskenniemi, 'The Real Spanish Contribution', supra note 21; John Gallagher and Ronald Robinson, 'The Imperialism of Free Trade', 6(1) *The Economic History Review* 1 (1953).

²³ Modes of legal thinking are understood here as ways of thinking in legal terms with a distinctive conceptual vocabulary, modes of reasoning, organizational schemes and typical arguments. Kennedy, 'Three Globalizations', supra note 22 at 22. For the features of nineteenth-century classical legal thought, see also Duncan Kennedy, 'Savigny's Family/Patrimony Distinction and its Place in the Global Genealogy of Classical Legal Thought', 58 *American Journal of Comparative Law* 811 (2010); Janet Halley and Kerry Rittich, 'Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism', 58 *American Journal of Comparative Law* 753, 771 (2010); Veronica Corcodel, 'The Sacred and the Secular, the Market and the Family in Modern Comparative Law', 7 *Jindal Global Law Review* 9 (2016).

²⁴ Comparatists often contend that the 1900 Paris International Congress of Comparative Law marked the formation of the field. The Congress was, however, preceded by a process in which comparison was increasingly used by authors like Henry Maine, Max Weber, Montesquieu and promoted by associations like the *Société de Législation Comparée*. See Annelise Riles, 'Introduction', in *Rethinking the Masters of Comparative Law* (Annelise Riles, ed., Oxford, Portland, OR: Hart Publishing, 2001).

²⁵ Kennedy, 'Three Globalizations', supra note 22.

vision, however, downplays his simultaneous conception of law as a means for achieving social change, a characteristic often attributed to the early twentieth-century turn to ‘social legal thought’.²⁶

Be that as it may, greater emphasis was put on the instrumental understanding of law by twentieth-century jurists who defined their projects against legal classicism. Among the comparatists who were part of this turn, this book focuses on Edouard Lambert, Raymond Saleilles, Ernst Rabel and Roscoe Pound. These jurists were chosen especially because of their importance in Europe and in the United States as ‘social’ legal comparatists. They used the idea of the ‘social’ to designate first and foremost an instrumental conception of law seeking to respond to the social transformations of their time. These included urbanization, industrialization and globalization of markets.²⁷ The examination of their works is also an inquiry into the continuities and discontinuities of the dynamics of inclusion and exclusion captured in Henry Maine’s work.

Post-World War II comparatists often claim to build on their predecessors’ insights, but there is a noticeable shift away from debates on governance choices in their works.²⁸ At least six post-war comparatists are generally recognized in the field as being at the head of a specific approach to comparative law: René David, Rudolf Schlesinger, Konrad Zweigert and Hein Kötz, Alan Watson and Rodolfo Sacco. Each of these scholars will be analysed for exploring the extent to which they reproduce and/or challenge the tensions captured in previous works.

While Henry Maine was the only comparatist to have directly participated in colonial administration, others also contributed in one way or another to legal reforms and education outside the West. René David, for instance, participated in the drafting of the Ethiopian and Rwandan civil codes. Roscoe Pound was a legal adviser to the then-ruling Kuomintang Party in China, the main opponent of Chinese communism. Edouard Lambert was involved in Egyptian legal education as a Dean of the Khedivial Law School and collaborated with Al-Sanhuri for drafting a new civil code. While these are all relevant elements, taking seriously postcolonial theories implies giving less importance to the biographical dimension and approaching comparatists’ ideas about the non-West as per se politically significant.

One of the main arguments of this book is that the definitional exclusion of the non-West, which is reproduced throughout the history of comparative legal

²⁶ See *infra* Chapter 3. The very existence of ‘pure formalists’ in the legal field is disputed. See Brian Tamanaha, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging* (Princeton, NJ: Princeton University Press, 2009).

²⁷ Kennedy, ‘Three Globalizations’, *supra* note 22 at 38.

²⁸ Kennedy, ‘The Methods and the Politics’, *supra* note 5 at 349–79.

thought, stands in tension with promises of inclusion of its particularities. In this sense, the field is reducible neither to exclusion nor to inclusion, and yet it contains both. Similar arguments have been made in relation to public international law, generally understood as a field concerned with relations between states.²⁹ Both fields' tensions between inclusion and exclusion go hand in hand with an interplay between the particular and the universal, albeit in different ways. International law promises inclusion in the world legal order if the Other becomes the same as the West, the latter representing a set of particular values that are posited as universal.³⁰ As a field whose main objective is to identify similarities and differences, comparative law's promise of inclusion derives from a concern of depicting the particular operation of national legal systems. This promise is simultaneously subsumed within putatively universal concepts that secure the understanding of Western legal systems as more advanced. These concepts include civilization, modernity or/and economic development.

Comparative law's dynamics of inclusion and exclusion, the particular and the universal, are understood as politically significant in at least three ways. First, in line with postcolonial insights, their construction is approached as part of a multitude of non-coercive techniques of domination that constitute and re-constitute subjectivities.³¹ In this sense, they produce certain representations that limit the self-perception of those who populate the non-West. Such effects cannot be separated from historical and contemporary (neo-)imperial configurations of power.

Secondly, and relatedly, these dynamics facilitate an often-unacknowledged tension between critiques of and apologies for Western patterns of domination, which is internal to comparative legal thought. This shows the critical potential of the field, but also its limitations. It will be argued that the field's way forward, if it is to take seriously postcolonial theories, is to mobilize strategically its own promises by destabilizing a set of taken-for-granted notions, like civilization, modernity and economic development. As Edward W. Said has put it, the issue is not merely a matter of having 'enough sympathy for or comprehension of foreign cultures', but rather of having the 'political willingness to take seriously the alternatives to imperialism'.³² Blindly positing as universal the notions that facilitate the understanding of Western legal systems as more advanced indicates the lack of such willingness.

²⁹ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* 4 (New York: Cambridge University Press, 2011).

³⁰ *Ibid.*, at 31.

³¹ For a similar approach to comparative law, see Ruskola, *Legal Orientalism*, supra note 2.

³² Said, *Culture and Imperialism*, supra note 1 at xx.

Finally, comparative legal ideas are often translated into other fields, such as public and private international law, which have their own contributions to Western patterns of domination.³³ The two were shown to consolidate a world political and economic order of unequal relationships between the West and its Others, both historically and more recently.³⁴ This often goes hand in hand with ideas of similarity and difference that also animate comparative legal scholarship, albeit in different ways. It is in this sense that comparative ideas can be understood as potentially translated into other fields, be it implicitly or explicitly.³⁵

To be sure, this work does not suggest that the solution to the issue of Otherness is a positive representation of the non-West. Reversing the oppositional scheme would imply idealizing the non-West, which would reproduce cultural essentialism in a different form. Moreover, this might lead to a blind legitimation of controversial practices, such as the suppression of dissent by autocratic political leaders.³⁶ Finally, positive portrayals of the non-West often incorporate elements that are used elsewhere to define its alleged inferiority or the superiority of the West.³⁷ In this sense, they reproduce the epistemology of Otherness, albeit in different ways.

PART II PRESENTING THE STRUCTURE

Chapter 2 focuses on the theoretical framework of this book. It explains in more detail why and how postcolonial approaches are both relevant and important for the field of comparative law. For these purposes, it draws from postcolonial literature, especially Edward W. Said, and critical comparative and international legal scholarship, including Teemu Ruskola, Sundhya Pahuja and Martti Koskenniemi. Contending that comparative law should be understood as a politically significant site of production of knowledge on the non-West, I also argue for an approach that embraces ‘inclusion’ and ‘exclusion’ as analytical

³³ See *infra* Chapter 2, part I.

³⁴ See e.g., Pahuja, *Decolonising International Law*, *supra* note 29; John Reynolds, *Empire, Emergency and International Law* (Cambridge: Cambridge University Press, 2017); José-Manuel Barreto, *Human Rights from a Third World Perspective: Critique, History and International Law* (Newcastle: Cambridge Scholars Publishing, 2013); Usha Natarajan et al., *Third World Approaches to International Law: On Praxis and the Intellectual* (London: Routledge, 2017); Horatia Muir Watt, ‘Hospitality, Tolerance, and Exclusion in Legal Form: Private International Law and the Politics of Difference’, 70(1) *Current Legal Problems* 111–47 (2017).

³⁵ See *infra* Chapter 2.

³⁶ Ruskola, *Legal Orientalism*, *supra* note 2.

³⁷ Teemu Ruskola, ‘Where Is Asia? When Is Asia? Theorizing Comparative Law and International Law’, 43 *UC Davis Law Review* 102 (2011).

lenses. This means *inter alia* leaving space for ambivalence in the analysis of comparative legal thought, which should be understood as an opportunity to reflect on the field's potential for developing a praxis of resistance.

To illustrate the importance of ideas of similarity and difference in patterns of Western domination, I give a few examples of how they operate in international legal arguments. At the same time, I argue that this strengthens the importance of approaching the production of similar ideas in the field of comparative law as politically significant *per se*. Finally, the chapter elaborates on the book's contribution both to comparative legal scholarship and to critical legal debates on law and imperialism.

Chapter 3 analyses the works of Sir Henry Sumner Maine, with a particular focus on his representation of India. His scholarship deserves special attention not only because it elaborates on British imperial policies, in which he was directly involved, but also because it remains under-examined in the legal field.³⁸ I examine the interplay between ideas of particularity and universality and put emphasis on the tension between inclusion and exclusion.

Often known for his putatively universal evolutionary thesis that societies moved from 'status to contract', Maine positions India at an inferior stage of development. Western societies, by contrast, are understood as 'progressive' because of their attachment to *laissez-faire* liberal ideology. I show that this stands in contrast with Maine's own critiques of universality of liberal legal ideas. I also emphasize a tension between his critiques of British policies' failure to recognize India's form of social organization, on the one hand, and apologies for British liberal reforms, on the other. In addition, the chapter argues that the critical potential of Maine's promises of inclusion is limited by a taken-for-granted notion of modernity paired with ideas about what constitutes a superior civilization. Confirming the liberal legal ideas whose universality he criticizes, Maine fails to seriously consider possible alternatives to liberal imperialism.

Chapter 4 focuses on early twentieth-century comparatists and argues that tensions between inclusion and exclusion also animate their works, albeit in different ways. These scholars criticize many features of the liberal legal order defended by Maine but do not altogether break away from them. Indeed, putting forward a 'social' conception of law, they also endorse to some extent nineteenth-century ideas, such as deductive thinking, certainty of

³⁸ While Maine is often seen as part of the nineteenth-century historical school, it is Friederich Carl von Savigny who has been mostly analysed in the legal field as the representative of this school. See Kennedy, 'Savigny's Family/Patrimony Distinction', *supra* note 23. An exception is Annelise Riles, 'Representing In-between: Law, Anthropology and the Rhetoric of Interdisciplinarity', 3 *University of Illinois Law Review* 597 (1994).

legal relations, the distinction between private and public law. Including these elements, the 'social' is posited as the most advanced stage in their putatively universal schemes of evolution, allegedly already reached by most Western legal systems.

The chapter contends that these ideas are shaped by a representation of the non-West as backward, compelled to fit into the Western model to be recognized as modern or civilized. Universalizing the Western path of evolution, they assume that the non-West should become liberal with the purpose of socializing this very way of thinking. At the same time, these comparatists criticize certain ideas of universality and sometimes formulate critiques of Western practices or attitudes in relation to Others. In this sense, they also promise inclusion of the particular. Lambert, for example, openly invites his students to destabilize Western representations of Islamic law. Early twentieth-century comparatists' promises are simultaneously subsumed within claims of non-Western backwardness. I argue that the critical potential of their ideas, while reaching further than those of Maine, is also limited by unchallenged notions of civilization and modernity, which idealize the Western path of development.

Chapter 5 analyses the works of post-World War II comparatists. With a more seemingly politically detached tone, most of these scholars distinguish themselves from evolutionary thinking while reproducing 'new' unacknowledged versions of it. Indeed, they continue to refer to modernity, which becomes increasingly associated with a taken-for-granted idea of economic development. The liberal ideological dimension of these comparatists' ideas appears in a more concealed way, in the sense that they do not openly display their position in relation to liberalism. In the same time, when they contend or assume a desirable Western-like transformation of the non-West, they implicitly refer to liberal legal ideas, which they themselves understand as reflected since the nineteenth-century move away from feudalism.

Under assumptions of a putatively universal path from the traditional/underdeveloped to the modern/developed, the particular meaning of the West arises from a definitional exclusion of the allegedly traditional non-West. In this sense, in a post-war context of decolonization, there is a certain continuity with the ideas produced by these comparatists' predecessors. The wave of decolonization implied *inter alia* the universalization of the nation-state as a form of socio-political organization, which was followed by a differentiation between states in terms of economic development.³⁹ The chapter argues that these comparatists' understandings of the particular and the universal are animated

³⁹ Pahuja, *Decolonising International Law*, supra note 29 at 50 (noting that between 1946 and 1997, some 64 former colonies became independent nation-states).

not only by an exclusionary dimension, but also by a promise of inclusion that emerges from critiques of evolutionary thinking and attitudes or practices of Western expansion.

Finally, the book concludes with a few tentative thoughts on comparative law's potential to develop a critical praxis of resistance. If the field is to take seriously postcolonial approaches, it should destabilize the meanings of notions like civilization, modernity and economic development, which are embedded in (neo-)imperial relationships. The objective is to complicate the distinction between the West and the non-West, by refraining from idealizing one or the other. This could be pursued through a strategic mobilization of its own promises of inclusion, while acknowledging the impossibility of choosing between the universal or the particular. These constructions go together as two sides of the same coin. Using them strategically would imply accepting the inevitable political significance of comparative legal knowledge and embracing its inescapable plurality.