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Luigi Moccia

LAW COMPARISON "INNER WORTHINESS". THE EXAMPLE OF ENVIRONMENTAL PROTECTION

Summary: 1. Comparative law as "borderless law" and law comparison as "stumbling stone". – 2. Comparison by "systems" and comparison by "foundations" of law: the "complexity challenge". – 3. The protection of the environment as an example of comparative law foundation. – 4. The environmental crisis: a short lexicon and environmental protection main features. – 5. Conclusion: in praise of law comparison and its "inner worthiness".

1. This essay stems from the need to reaffirm the formative (educational) value of law comparison, or the comparative (study of) law, beyond its consolidated structure as a disciplinary field conventionally built on the cornerstone of the world's legal systems, however implying at both macro and micro level the same paradigm, based on the oppositional logic (domestic/foreign) of these systems, categorized and classified in relation to their national stories and peculiarities.

For the sake of clarity, and well aware of the common place that to be a comparatist it means to be a "specialist" in "foreign law" or else in "others" legal culture – which sounds almost like an oxymoron, the discourse here developed, while recognizing comparative law as a scholarly discipline, it also acknowledges that in order to assert its formative (educational) value, law comparison should support an open attitude towards law knowledge (…and relative wisdom, may be), both methodologically and conceptually, to become a self-reflexive way of studying the law – one's own or in general, unlike a self-referential view limited to each specific legal system, discipline or sector. Undoubtedly, "specialization" leads to knowledge progress, but sometimes at the risk of getting lost in information (as reads a well know quote: *Where is the wisdom we have lost in knowledge?/Where is the knowledge we have lost in information?*)[1]. Most issues in today's world are multidimensional, i.e., consisting of a multiplicity of interconnected aspects and levels

[1] T.S. Eliot, *The Rock*, Londra, 1934.

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(concerning especially legal/normative regimes involved), escaping whatever boundary. Whereas at school and university we still learn to separate and distinguish, in the world's reality knowledge fields are related and linked to each other.

As I will try to argue, a self-reflexive attitude towards the study of law in a comparative mode aims to understand the law as reflected in the world's mirror, beyond the reverse and more conventional idea of a world reflected (and mapped) into self-standing "(id)entities" (always equal to themselves) like legal systems, families, cultures and traditions. By referring to an "open" idea of law as regards its conceptions and experiences throughout the world, comparative law lays in between national borders, as a "borderless" or "stateless" law, with the whole world as a homeland, so to say.

Well aware moreover of the question whether law studies should focus less on developing students' skills in legal reflection than on their training as (domestic law) practitioners, the above attitude also supports the view that comparative law stands out as an «essential tool of general culture for the jurist»[2]. To this regard, it would make sense a reappraisal of the old issue on what comparative law is/should be about, in terms of its defining characteristics. Not only as a matter of critical assessment on its developments[3], or else as announced obituary on the death of this field of studies[4], still and increasingly flourishing, however. But having regard to its denomination, to the extent that it suggests the idea of a specialized knowledge of law on the side of those jurists who are its specialists (formally and explicitly committed to comparative law), by considering rather the possibility – precisely because of its value as a way of thinking about law (one's own and in general) – that law com-

[2] «Instrument essentiel de culture générale pour le juriste»: R. David, *Le droit comparé, enseignement de culture générale*, in *Rev. intern. dr. comp.*, II, 1950, 4, pp. 683-684, further asserting that without comparative law and without history (as its "complement" and "homolog"), is not possible to go beyond the scope of a particular law and to rise to the universality that all true science postulates («s'élever à l'universalité que postule toute véritable science»). See also *infra* note 9, and accompanying text.

[3] M. Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, in *Am. J. Comp. L.*, 2002, p. 671 ss. More generally see also, e.g., E. Örücü, *The Enigma of Comparative Law Variations on a Theme for the Twenty-first Century*, Leiden, 2004.

[4] M.M. Siems, *The end of comparative law*, Working paper (ESRC Centre for Business Research), Cambridge, 2007.

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parison be proper to any law scholar[5], as well as law student, in today's world.

Indeed, given the great variety of law conceptions in terms of legal and normative experiences (including non-state and "informal" law), such experiences feature at the same time a universal and relative nature, as a phenomenon locally rooted but whose relevance – from a comparative viewpoint – goes beyond their territorial and/or cultural boundaries. All the more significant nowadays in relation to a world increasingly connected, complex and conflictual, where the blurring and overlapping lines between local and global escape from a "boundary" (national) logic, by adding (to territories, peoples and cultures) a global-local ("glocal") dimension[6]. Here basically understood as the new normal[7], with tensions, contradictions, asymmetries, inequalities, challenges and opportunities, resulting from and conditioning a shrinking world increasingly interconnected, interdependent, intercultural; where many normative issues (such as justice, democracy, human security, sustainable development, and not least environmental protection) can no longer be resolved at home without committing to do so at the international, transnational and global level as well. A plentiful scholarly literature discussing questions about law conceptions/experiences in our contemporary world with an eye to implications for the comparative (study of) law, could be taken into account. However, without pretending to scrutinize or summarize them here, it is sufficient to point out the fil rouge that seems to emerge, on the background of a multiplicity and

[5] J.H.H. Weiler, *"Editorial" to The European Journal of International Law*, 2014, XXV, 1, p. 2: «Like Monsieur Jourdain who discovered to his astonishment that he was speaking prose, we […] should not be surprised to discover that in one way or another, we are all comparativists» (with reference to public law scholars, but easily referable to law scholars in general).

[6] On the use and meanings of the term "glocal"/"glocalization" (less popular than global/ globalization) from the point of view of social/political sciences, see, for a panoramic review: H.H. Khondker, *Globalisation to Glocalisation: A Conceptual Exploration*, in *Intellectual Discourse*, 2005, 13, 2, p. 181 ss.; V. Roudometof, *Mapping the Glocal Turn: literature streams, scholarship clusters and debates*, in *Glocalism: Journal of culture, politics and innovation*, 2015.

[7] «globalization should be conceived as a relatively *long-term process* […] a constitutive feature of the modern world, and modern history includes many examples of globalization»: W. Scheuerman, entry "Globalization", in *Stanford Enc. Philosophy*, Winter ed., 2018.

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variety of issues concerning the study of law in today's world[8]. By highlighting, in line with a well-established approach as regards law comparison in particular, that legal education is more than ever called to take on the task to go beyond any conception of law which demeans its knowledge (science) to a matter of national or strictly local interest[9]. To this end, comparative law can play its role as a cultural factor of constant innovation, circulation, intersection and increase of critical knowledge in the field of law studies, challenging legal science in regard to its dogmas built under the influence of nationalism and positivism[10].

There are those who point out the «subversive» attitude of comparative law[11]; likewise crediting it with an «imaginative» potential[12]; if not evoking also the «disruptive role» that can be played by comparative law in times of globalization[13]. Even from high places of the judiciary, there are those who assert the value of law comparison as a "universal tool" for legal expertise, which has become «the common good of contemporary legal reasoning»[14]. Furthermore, it is acknowledged that law

[8] For an overview see, e.g., *German Law Rev.*, 2009, 10, 6-7, Special Double Issue on «Transnationalizing Legal Education», p. 629 ss.

[9] R. David, *Le Droit comparé. Droits d'hier, Droits de demain*, Paris, 1982, p. 6, reminding that if one wants to see in the law a "true science" («une veritable science: *ars aequi et boni*»), recourse to comparative law is necessary.

[10] R. Sacco, *La comparaison juridique au service de la connaissance du droit*, Paris, 1991.

[11] See G.P. Fletcher, *Comparative Law as a Subversive Discipline*, in *Am. J. Comp. L.*, 1998, 46, 4, p. 683 ss., defining comparative law as "cultural criticism", whose added value «is that it expands the agenda of available possibilities» (p. 695). In the same perspective, highlighting (potential) subversiveness of comparative law as a cognitive characteristic of its anti-dogmatic attitude to nationalist closure of (science of) law, H. Muir-Watt, *La fonction subversive du droit comparé*, in *Rev. int. dr. comp.*, 2000, 52, 3, p. 503 ss., points to comparative law as a privileged place («lieu privilégié») for reflection and critical knowledge on the law (p. 526).

[12] «Comparative law […] in all its diversity it reveals many different valuable ways of looking at the law», hence the chance «to instill in aspiring lawyers a sense of the authentic imagination comparative law can stimulate»: M. Adams, D. Heirbaut, *Prolegomena to the method and culture of comparative law*, in Id. (eds.), *The method and the culture of comparative law*, London, 2014, p. 1 ss.

[13] T.C. Kohler, *Comparative Law in a Time of Globalization: Some Reflections*, in *Duquesne Law Journal*, 2014, 52, 1, p. 114 (with reference to the concept of "disruptive innovation" or "disruption", originally used to describe specific cases of small business success in the market, which has been extended to describe such situations of disruptive induced change also in a socio-cultural context).

[14] «Un outil universel d'expertise juridique […] devenu le bien commun du raison-

comparison is no longer limited to the dichotomy between national law/foreign law[15], and that comparatists are facing with "a cross-border legal universe»[16], which implies a multilevel comparison including national, international, and supranational legal orders (such as the European Union law, being itself a legal system, albeit *sui generis*), thus placing the need for a "broader notion" of comparative law[17]. In parallel, it is noteworthy the de-territorialized dimension of law featuring the «emergence of a world in which territorial boundaries lose much of its meaning» (the «eclipsing Schmitt's *nomos*» of a boundary-based normativity), coupled with the rise of «multiple new spaces of normativity, which derive from the interaction between multiple levels of legal ordering»[18]. In particular, these normative spaces demonstrate to what extent the «mobility of the private actors is changing the concept of territoriality of law, the concept of choice of law, of public order or even the concept of legal order»[19]. This whole picture makes evident how the state ceases to be «the sole focal point of sovereignty» in a context in which it seems that sovereignty is not only deployed at other scales, between «infra- and supra-state public powers», but also redistributed between «powerful private powers»; thus suggesting a paradigm change from a "pyramidal" (hierarchical) model of territorial-based law to a space-based (horizontal) model of "network law"[20]. Moreover, it is to be acknowledged that this notion of "normative space", being less rigid

nement juridique contemporain»: J.-M. Sauvé, *Comprendre et réguler le droit globalisé ou comment dompter la Chimère?*, inaugural speech of the conference cycle «Droit comparé et territorialité du droit' Conseil d'État", 20 May 2015. See also A. Riles (ed.), *Rethinking the Masters of Comparative Law*, Oxford, 2001, in her "Introduction", p. 1, presenting comparative law as a «tool for thinking about legal problems».

[15] S. Cassese, *Beyond Legal Comparison*, in *Ann. dir. comp. st. leg.*, 2012, p. 387 ss.

[16] B. Fauvarque-Cosson, *Deux siècles d'évolution du droit compare*, in *Rev. int. dr. comp.*, 2011, LXIII, 3, p. 536.

[17] J.-S. Bergé, *L'application du droit dans un contexte global: questions de méthode*, in *Les Cahiers de droit*, 2015, 56, 2, p. 194.

[18] L. Lixinski, *Editorial: In Normative Spaces*, in *European Journal of Legal Studies*, 2008, 2, 1, (issue dedicated to emerging areas of law or new «spaces of normativity»), p. 6.

[19] G. Lhuilier, *Academic knowledge. Three views on global law and global legal theory*, in Aa.Vv., *Rethinking the Globalization of Law*, in *Les cahiers d'Ebisu*, Occasional Papers, 2013, 3, p. 56.

[20] «Droit en réseau»: F. Ost, M. van de Kerchove, *De la pyramide au réseau? Pour une théorie dialectique du droit*, Bruxelles, 2002.

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than that of legal system (or closed legal order), brings out the hypothesis of «communication between spaces»[21]. Taking into account that this spatial context, in contrast to the territorial one, it also reflects and grounds the more articulated and complex perspective of «global legal pluralism»[22], with respect to «hybrid legal spaces»[23].

To summarize, in a world of multilevel segmentation and fragmentation of legal systems resulting from a plurality of sources (including, besides formal laws, informal regulations such as soft law, standardized guidelines and codes of conduct), actors (including, besides international or supranational organizations, non-state ones such as multinational corporations, international non-governmental organizations and other private global players), together with a plurality of normative spaces from local to global (without forgetting the cyberspace, of course), law comparison has reached a very critical point. Where it becomes an opportunity, indeed a necessity, to change the point of view: no longer the (conventional) one based on the oppositional dichotomy national/foreign, internal/external, but the relational and inclusive one in terms of the complementarity between particular and common, by focusing on overlapping and crisscrossing issues having an intrinsic comparative relevance.

Not by chance, such a perspective change fits with the environmental crisis, insofar it brings out by analogy the difficult relationship of mutual implication between territorial diversity and planetary sustain-

[21] C. Girard, *Procès* équitable *et enchevêtrement des espaces normatifs (Réflexions sur la problématique générale)*, in H. Ruiz Fabri (dir.), *Procès* équitable *et enchevêtrement des espaces normatifs*, Paris, Société de legislation comparée, 2003, p. 22.

[22] See: M. Delmas-Marty, 4 volumes series *Les forces imaginantes du droit*, in particular, vol. I, *Le relatif et l'universel*, and vol. II, *Le pluralisme ordonné*, Paris, 2006; F. Snyder, *Economic Globalisation and the Law in the Twenty-First Century*, in A Sarat (ed.), *The Blackwell Companion to Law and Society*, New York – Oxford, 2004, p. 624 ss.; K. Günther, *Legal pluralism or uniform concept of law? Globalisation as a problem of legal theory*, in *NoFo*, 2008, 5, p. 5 ss.; W. Twining, *Normative and Legal Pluralism: a Global Perspective*, in *Duke Journal of Comparative & International Law*, 2010, p. 473 ss.; P.S. Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*, Cambridge, 2012; Id., *Can Global Legal Pluralism Be Both "Global" and "Pluralist"?*, in *Duke J. Comp. & Int'l L.*, 2019, p. 381 ss.; E. Melissaris, M. Croce, *A Pluralism of Legal Pluralisms*, 2017, in *Oxford Handbooks Online*.

[23] See: P.S. Berman, *Global Legal Pluralism*, in *Southern California Law Review*, 2007, 80, p. 1155 ss.; A.J. Sutter, *Of Bentō and Bagels. Globalization and new normative spaces*, in Aa.Vv., *Rethinking the Globalization of Law*, cit., p. 71 ss.

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ability, embedded each one in the other. Basically focused on the key-issue of the balancing between local and global.

The emblematic or, better said, paradigmatic example offered by the subject of the environmental protection highlights the difficulty of treating it according to the logic of national legal systems; given the obvious reason that environmental issues (at least many of them) have an ever more global relevance, both internally and externally to each country territorial boundaries, for the sake of humanity survival.

This difficulty is accentuated by the fact that the study of environmental law involves various topics and corresponding disciplinary sectors: from public law to private, constitutional, civil and even criminal law; as well as a variety of approaches, expanding on political, economic, scientific. historical and socio-cultural aspects. So as to result, at a terminological and conceptual level, as many distinct and problematic points of view on the subject. The name "environmental law" can therefore appear uncertain and somewhat ambiguous or misleading when applying it – just to give a rough idea – to keep together: the abatement of nuisances as well as the rational management of natural resources; the protection of health and food safety as well as the preservation of rural, urban and cultural heritage; the safeguarding of the environment in all its components concerning the quality of its resources, water, air and land, as well as the planet's ecosystem, that is the life altogether of humans, plants and animals; the obligations and duties of the state and public authorities, on the one hand, and, on the other, the fundamental rights of people to a healthy environment for the benefit of present and future generations. Such a summary list of topics essentially reflects moreover a variety of purposes and trends which characterize environmental law, including judicial decisions that in some cases affect regulatory measures and policy issues, on the basis of human rights and science-related arguments[24], while providing in other cases compensation

[24] As established, e.g., by the Dutch Supreme Court in the *Urgenda* case (2019), where the legal obligations of the state (on climate change due to greenhouse gas emissions) to protect the life and well-being of citizens in the Netherlands, on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in addition to the Dutch Constitution, 2008, art. 21), are assessed (on the basis of arguments that also take into account the scientific findings of the International Panel on Climate Change) with regard (however low the share of emissions attributable to the country) to the broader question of determining these obligations in relation to a "global problem": B. Mayer, *The State of the Netherlands v. Urgenda Foundation: Ruling of*

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and more traditional means of redress for loss and (risk of) damage through recourse to private (tort) law remedies[25]. Although in both cases the growth throughout the world of «climate change litigation» is noteworthy[26], precisely against the common background of the right to a clean or healthy environment[27].

All of this within the framework of a plurality of normative levels interconnected and linked with the various legal orders involved. Namely, the international one, where the environmental policy agenda, with its guide-lines and structured organizations, was first set up and developed. The supranational one, as in the case of the European Union, having a direct impact on the legal systems of its member states. Finally, the national (local) level, where some salient aspects, belonging and linked to the historical evolution and regulatory-institutional policies of each country and territory, become relevant in a context characterized by the interdependence and, however, the influences resulting from the first two levels, in terms of common principles, rules and concepts, aiming at a uniformity or harmonization of the discipline.

In addition, as evidenced by the spreading of a popular scientific literature, the environmental crisis, considered in its whole as the sum of distinct yet intertwined environmental problems[28], is strongly affected by the ever growing and pressing demands and concerns of the interna-

the Court of Appeal of The Hague (9 October 2018), in *Transnational Env. L.*, 2019, 8, 1, p. 168.

[25] K. Bouwer, *The Unsexy Future of Climate Change Litigation*, in *Journal of Environmental Law*, 2018, p. 483 ss.

[26] J. Setzer, R. Byrnes, *Global trends in climate change litigation: 2019 snapshot*, Policy report (London School of Economics and Political Science), London, 2019.

[27] As reported in UN Environment, *The Status of Climate Change Litigation – A Global Review*, May 2017, n. 3.2.2., a total of 177 countries recognize this right «through their constitutions, environmental legislation, court decisions, or ratification of an international agreement».

[28] It is worth highlighting that out of the 17 Sustainable Development Goals (SDG) set out in the UN 2030 Agenda for Sustainable Development, at least 7 of them are more directly related to environment: clean water and sanitation; clean energy; sustainable cities and communities; responsible consumption and production; climate action; life below water; life on land; broadly matching, moreover, a much longer list of environmental issues (including climate change mitigation and adaptation, pollution, water scarcity, energy transition and renewables, sustainable food model, loss of biodiversity, sustainable urban development and mobility, overpopulation and waste management, and others).

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tional scientific community, as regards risks of real ecological disaster that could hit our planet. Unsurprisingly, it was the voice of scientists who denounced the degradation caused by man's action on nature to the general public that prompted the rise of the first environmentalist movements[29]. As it was a scientist[30], once again, to make popular a word, Anthropocene, which has become a sort of logo for the promotion of an alliance and in some respects a cross-disciplinary contamination of physical sciences with human and social sciences[31]. This results in a broader knowledge of environmental risks supported by scientific circles, which pushes on the developing of a higher ecological awareness on the side of people, in a close interweaving of private and public, sectorial and general interests and responsibilities[32], including an active role as regards the rights of access to information, public participation in decision-making and justice in environmental matters, such as stated by Aarhus Convention (1998)[33].

A comparative law study about environmental protection, jointly with a multilevel and multi-sectoral articulation of the subject, it also presents the difficulty of its composite character both cross-disciplinary, resulting from a complex set of scientific and socio-humanist knowledge, and cross-cultural, because of the implications concerning a diversity of worldviews, which form in the whole its background or better saying its context. This study, then, seems to escape from the orbit of a

[29] Reference is to the American marine biologist and science writer Rachel Carson (1907-1964) and her well- known *Silent Spring* (1962) revealing to the public basic concepts such as the notion of an «ecological web of life», i.e., the highly integrated system of relations characterizing the «balance of nature», see R. Carson, *Silent Spring (40th Anniversary Edition)*, Orlando, Fla., 2002.

[30] Paul Jozef Crutzen, specialist in ozone decomposition phenomena and Nobel Prize laureate in Chemistry, 1995: see F. Pearce, *With Speed and Violence*, Boston (MA), 2007, p. 21.

[31] On the use and meaning of this term, see *infra* § 4.

[32] Reference is to so-called "citizen science", meaning «the public engagement of citizens who actively contribute to science, such as by providing experimental data and facilities for researchers», with an aim to foster «greater interaction between science, policy and society and thus more open, transdisciplinary and democratic research»: UNESCO, *Science Report: Towards 2030*, Paris, 2015, p. 7.

[33] Art. 1 (Objective), according to which these (individual) rights «shall be guaranteed» (by each signatory Part) in order to contribute to «the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being».

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classic (conventional) comparative law approach based on the categorization of law in terms of legal systems, posing the problem of its methodological and conceptual limits, by suggesting the need for a different approach, either complementing or, in case, replacing the conventional one, which takes on a point of view oriented towards the idea of spatiality rather than territoriality of law, within a global framework, i.e., holistically looked at in the mutually constitutive relationship of its parts with the whole[34].

The obstacle thus posed to a comparative analysis of a conventional type represents, on the other hand, the opportunity to make of such different approach a kind of "stumbling block", or "scandal" (according to the original Greek meaning of the term)[35].

Just to exemplify this notion of spatiality of law, without considering the historical experience of the *ius commune* (including *lex mercatoria*) developed on the European Continent (during the centuries of the early modern period) as a borderless (European) "common law"[36], acknowledged and used to complement local/national laws (a sort of first globalization of Western legal tradition, leaving aside the *ius gentium* or the common law of the peoples of the world in ancient times)[37], it suffices here to mention the European Union treaty provision stating that the

[34] L. Moccia, *Droit communautaire et droit européen*, in *Rev. int. dr. comp.*, 2014, 66, 3, p. 773 ss.; Id., *Le droit et le juriste européen: un point de vue comparé*, in Unidroit (ed.), *Eppur si muove: The Age of Uniform Law,* Roma, 2016, p. 434 ss.

[35] «*græce significat offendiculum, quod in via ponitur, ut pedem in illud impigendo cadamus*», entry *Scandalum*, Calepinus Septem Linguarum, 5th ed., 1741.

[36] See A. Duck (1580-1648), *De usu et Authoritate Juris Civilis Romanorum per Dominia Principum Christianorum*, first published in 1653, as regards the inclusion of the English (common) law in the legal framework and the cultural network of the liaison between the *gentes Europeas*, represented by the *ius commune* (especially Ch. 8, §§ VI-IX). For a historical comparative viewpoint on the matter, see: G. Gorla, L.Moccia, *A 'Revisiting' of the Comparison between 'Continental Law' and 'English Law' (16th to 19th Century)*, in *The Journal of Legal History*, 1981, 2, 2, p. 143 ss.; D.R. Coquillette, T*he Civilian Writers of Doctors' Commons. London Three Centuries of Juristic Innovation in Comparative, Commercial and International Law*, 3, Berlin, 1988; R.H. Helmholz, V. Piergiovanni (eds.), *Relations Between the Ius commune and English law*, Soveria Mannelli, 2009. For a critical view on the notion of *ius commune*, however highlighting its methodological value, from both a historical and comparative side, in a European as well as global perspective, see J.-L. Halperin, *L'approche historique et la problématique du jus commune*, in *Rev. int. dr. comp.*, 2000, 52, 4, p. 717 ss.

[37] H.J. Berman, *The Western Legal Tradition in a Millennial Perspective: Past and Future*, in *Louisiana L. Rev.*, 2000, 60, 3, p. 746.

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«Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States»[38]. A provision whose comparative approach clearly envisages the idea of a balance setting of common aims, rules and measures with respect to different national legal systems and traditions, by recurring to a "fuzzy logic" (according to some)[39], that is to a holistic approach applied to the relationship of national laws with the Union law, in order to shape a common normative space "beyond" (i.e., including) the diversity of national legal systems.

All this said, linking together the educational rationale of the comparative study of law with a wider point of view on law (local-plural, multilevel and globalized) in order to frame and motivate the paradigm shift from "systems" to "foundations" of comparison, it's time to trace the path of the discourse to follow.

Here below, I will present some arguments as regards this paradigm shift, by setting them out in the following paragraph (§ 2), to then address the issue of environmental protection generally understood as an example of foundation of law comparison (§ 3), further highlighting some of its peculiarities and main features from a comparative point of view (§ 4), in order to come to final remarks on the topicality of the comparative (study of) law, with an appraisal of its critical approach and inner formative value (§ 5).

2. To use by analogy an observation made in the late twentieth century, we are living in times of diffusiveness and pervasiveness of the «genre mixing» in the field by and large of social sciences[40]. Because of changes and resistance (resilience) to innovations, transformations and adaptation to them, which generate a sort of open-end circle of no longer/not yet, it seems that nothing is more than being beyond, than to be in between: i.e., to be without belonging. In the midst of complex realities where the borders double edges come into question from a comparative point of view in the sense of the resulting ambivalent relationship between internal/external, domestic/ foreign, local/global.

[38] Treaty on the Functioning of the European Union, art. 67,1.

[39] H.P. Glenn, *Legal Traditions of the World. Sustainable Diversity in Law*, 5th ed., Oxford, 2014, p. 368, p. 371.

[40] C. Geertz, *Blurred Genres: The Refiguration of Social Thought*, in *The American Scholar*, 1980, 49, 2, p. 165 ss.

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To describe this border-line condition, the image that can be used is that of law comparison as a bridge, meaning that bridges are structures inserted in a space above the territories they unite, from which it is possible to widen the glance from one point to another on the horizon, simultaneously.

Traditionally, the demand for a panoramic view (macro-comparison) of legal/normative experiences in the world was met through comparison by mapping and classing them according to a taxonomy of typified and categorized law systems. This approach has long established itself as a classic, consolidated and prevailing way of looking at law comparatively, so as to create a type of methodological as well conceptual path-dependency. Precisely, by building an overarching framework for macro-comparison as a kind of mental form whose structure also weighs heavily on the study of legal subjects (micro-comparison). To put it bluntly: once you start comparing to map legal systems, tracing their geographic contours as real entities delimited and fixed on a world map, you could end up making (or believing) this mapping as the very purpose of comparison: «mapping to compare», that is a cartographic exercise. Thus overturning the idea (and ideal) of the comparison of law aimed to look at law outside the borders, for the purpose itself of comparing it.

Without going into a centuries-old story of the attempts of composing a world legal map (what Leibniz among the first dreamed to do in the seventeenth century, by calling it the *theatrum legale mundi*, and since then left unfinished)[41], a basic contradiction in these attempts is noteworthy. It reveals itself in the paradox of two concurrent yet opposite comparative paradigms. The simplification, on the one hand, which aims to identify and typify world's legal systems in face of the recognition, on the other hand, of the rather elusive complexity of defining and understanding law as normative experience in a broader sense, being a sociocultural (arte)fact that in turn reflects a plurality/diversity of influencing and constitutive factors, which make any classification quite relative in its claim precisely to simplify that complexity. Clear evidence to this regard can be seen in the controversial notion/definition of legal families, cultures, and traditions[42], as well as in the so-called mixed legal

[41] J. Husa, *A New Introduction to Comparative Law*, Oxford, 2015, p. 251.

[42] For an extensive analysis of the matter, see contributions in *Ann. dir. comp. st. leg.*, 2013.

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systems reflecting a variety of combinations, in addition to legal transplants, circulation of legal models, transition processes (regime change), and more generally a legal hybridity featuring the past and present development of national laws across the world, so as to reshape a world map where all legal systems look mixed, in a way[43]. All in all, what is important here to highlight, from a comparative point of view, is that the multidimensional complexity of today's legal world matters more than the complicatedness of legal regimes. And the reason why to distinguish "complex" from "complicated" is precisely because the former (without being synonym of the latter) implies a cognitive leap in that complexity is not (simply) an assemblage of parts each with its own peculiar characteristics but the result of the interconnectedness and mutual interactions between its individual parts with the whole.

Indeed, the taxonomic approach to comparative law based on the legacy of territorial (closed) legal systems, it seems nowadays to stand uneasy and somewhat in contrast with a world's legal panorama where borders both physical and cultural become porous as well as problematic in face of the increasingly transnational, supranational, multidimensional, transversal, multidisciplinary and planetary dynamics of the contemporary world. Much more so, in consideration of the changing «spirit of laws», to use Montesquieu well-known expression still valid today to indicate that in order to catch such a spirit it is needed to look at the law with an eye on its "various relationships" with "various things"[44], i.e., on the mutual relations and influences between the parts and the whole, in any given context and, above all, in today's complex (connected and conflictual) world context. As if – to put it another way – to think about laws and institutions (the legal) is to think of them from what surrounds them: yesterday, history and geography of the different countries and territories; today, the fusion of the intertwining of the things of the world as a whole, both locally and globally (spatially).

[43] V. V. Palmer, *Mixed Legal Systems… and the Myth of Pure Laws*, in *La. L. Rev.*, 2007, 67, 4, p. 1205 ss. A model of reclassification regarding «all legal systems as mixed and overlapping» is proposed by E. Örücü, *Family Trees for Legal Systems: Towards a Contemporary Approach*, in M. Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law*, Oxford, 2004, p. 359 ss. See also E. Cashin Ritaine, S.P. Donlan, M. Sychold (eds.), *Comparative Law and Legal Traditions*, Zürich, 2010, in particular S.P. Donlan, *Comparative Law and Hybrid Legal Traditions. An Introduction*, p. 1 ss.; E. Örücü (ed.), *Mixed Legal Systems at New Frontiers*, London, 2010.

[44] Montesquieu, *De l'esprit des lois*, L.I, Ch. III.

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But to broaden one's look from this perspective, it means to change the conceptual and methodological (cognitive) point of view from which to observe (and perceive) reality. More precisely, it means adopting an alternative point of view to the national outlook, the one of the so-called «cosmopolitan vision»[45], better fitted to cope with a new paradigm of «complex thought» based on an inclusive logic of complementarity of opposites, rather than a dichotomous logic of mutual exclusion[46]. In line with the challenge posed by the need to ensure a horizontal (non-hierarchical) interaction (dialogue) between multiple legal and normative systems.[47]

From the point of view of (a theory of) comparative law, that possibility can be considered by reaffirming the educational (cultural) value of law comparison oriented towards an enhancement of the spatial dimension both in terms of diversity and commonality, i.e., of a relational inclusiveness of these two polarities, beyond the territorial dimension of the exclusive (closed) identity of legal systems.

What comes to the fore is then a new epistemological status of law comparison, understood not only as a method but as a way of knowing the law (one's own and in general), as regards normative spaces whose significance and relevance are characterized by the relations and mutual influences between the parts and the whole. Within an inter-connected and inter-dependent world context of both local and global issues, in respect to which law comparison can help to draw, together with information, also persuasive arguments as well as insights for reflection and inspiration, so as to be used for investigating and better framing such issues as much complex as they are common and however transversal to the experiences taken into consideration.

Here stands the possibility of a paradigm shift moving from comparison by "systems" to comparison by "foundations" of law. Law comparison, as a learning/teaching and research practice about law, can thus allow to deal with concepts, principles, rules and legal subjects in general worth to be understood as foundational, because of their worldwide

[45] U. Beck, *Cosmopolitan Vision* (transl.), Cambridge, 2006.

[46] E. Morin, *Seven complex lessons in education for the future* (Unesco publication translated from *Les sept savoirs nécessaires à l'éducation du futur*), Paris, 1999. On this "cognitive" approach se also M. Ceruti, *Il tempo della complessità*, Milano, 2018.

[47] K. Benyekhlef, *Une possible histoire de la norme. Les normativités* émergentes *de la mondialisation*, 2nd ed., Montréal, 2015, p. 814.

(spatial) relevance, adopting a paradigm of implication/distinction/conjunction of the parts with the whole featuring world reality and its «complexity challenge»[48].

All in all, this line of discourse can be thus summarized. Comparison can be to law as grammar is to language. If it is true that in the babel of a globalized multilingual/multilevel/multipolar world, to the extent that the territorial dimension of the nation-state is flanked, intersected or overlapped by the spatial dimension of market integration, flows and movements of people, diasporic communities, proliferation of new information/communication technologies, political and socio-cultural interrelationships, as well as by pressing goals in terms of both requirements and ideals to be achieved for a peaceful coexistence among peoples in the name of shared values and principles, embracing a decently healthy environment (human health included), there is a need to have certainly not the same language and even less the same law, but a way of thinking/studying and knowing the law with a cosmopolitan look that fits better the intricacy of local/global issues crossing over territorial borders as well as more traditional cultural barriers.

3. An emblematic, indeed paradigmatic example of comparison by foundations is that of the environmental protection which developed since the last decades of the twentieth century in a dominant way, throughout treaties and conventions, declarations of principle, constitutional reforms, sectoral laws, judicial decisions, soft law, creation of ad hoc management and regulatory agencies, at international, supranational (as in the case of the European Union) and national level.

Despite the diversity and variety of sectors and levels of regulation, also taking into account the multiple aspects (scientific, political-economic, ethical, historical and socio-cultural) that influence each legal system in this field, environmental protection has however a universal value and a conceptual unity that underline its founding character of a normative space of both global and local interest. Precisely this character makes it possible to study that subject in a dimension of common relevance beyond legal systems, with an approach capable of grasping

[48] E. Morin, *Seven complex lessons*, cit., p. 15: «*Complexus* means that which is woven together […] Complexity is therefore *the bond between unity and multiplicity* [italics added]».

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essential contents from which to develop an overall view on environmental protection as an object of study in itself comparative.

Of course, this brings out the issue of method. To this regard, by confirming the difficulty of a comparative law approach in environmental matters, it is observed – alongside a remarkable absence of the environmental subject in the general works on comparative law as a discipline of study – that «most of the existing work on comparative environmental law has been done by environmental lawyers, rather than by comparative law experts»; further, that existing comparative law methodologies «have been very rarely – if at all – used by comparative lawyers to understand matters relating to environmental protection»[49]. It is also to be mentioned the structural internormativity of environmental law matters[50], resulting from a significant interdisciplinary bond of a plurality and variety of standards and criteria (both substantive and procedural) that contribute (at the various levels) to the elaboration of a common stock of legally relevant principles and rules.

Therefore, keeping in mind what has been said so far, it can be acknowledged that the methodological issue about the comparative study of environmental law must be posed not (only) from the conventional point of view based on a world's map of legal systems, but (rather) from the real world in all its complexity.

First, from a point of view transversal to national legal systems, where the formalization (legalization) and juridification such as the elaboration and expansion of common rules, principles and standards is of particular importance faced with identical or similar problems.

Additionally, in a transdisciplinary way related to both natural and human sciences, as a type of law with strong dependence on scientific progress and technological innovations, as well as social transforma-

[49] J.E. Viñuales, *Framing comparative environmental law*, in E. Lees, J.E. Viñuales (eds.), *The Oxford Handbook of Comparative Environmental Law*, Oxford, 2019, secs. 1.1 and 1.2.9 (although acknowledging that «some of the methodologies… can indeed be relevant for comparative environmental law»).

[50] On internormativity, with reference both to the integration of non-legal standards into the legal system so as to be enshrined therein, and to the interaction between two or more normative (legal/non legal) systems, see A. Pomade, *Penser l'interdisciplinarité par l'internormativité. Illustration en droit de l'environnement*, in *Rev. interdiscip. etud. jurid.*, 2012, 68, 1, p. 85 ss. More generally, on the implication of internormativity with legal pluralism in the perspective of a post-modern law, see K. Benyekhlef, *Une possible histoire de la norme*, cit., pp. 769-772.

tions, in continuous expansion and with a long look, i.e., projected into the future. In terms not only of prevention, but in response to challenges and new needs dictated by changes which determine an unbalance or even an inversion of the relationship between man and nature, as a result of which man, once exposed to the risks and dangers of nature, became with his Promethean capacity to subjugate the planet a source of increasing risks and dangers for nature.

Finally, in an intercultural sense relating to cultures "other" than that of the West, such as the cultures of indigenous peoples[51]. With a critical eye on modern culture and society (with its Western origins) extended over a world horizon of rampant individualistic anthropocentrism as human «selfishness of the species»[52], faced with duties of responsibility and care for the Nature, itself considered – or better, worthy of being considered – a «subject of rights»[53], as part of a biocentric ecological culture. On the background moreover of a thematic matrix of the environmental protection represented by the relationship between man and nature as its main problematic core, featuring a plurality of differing as well competing worldviews, marked on a scale of oppositional values going from anthropocentrism to biocentrism.

Such different views – about the way of dealing with environment (built by man and natural) in relation to science, politics, economy, society, ethics, culture, and law, according to a multiverse perspective, as just said, transversal, transdisciplinary, intercultural – are however cen-

[51] See UN Conference on Sustainable Development, Declaration *Future We Want*, Rio 2012, A/RES/66/288, where it is stated that (n. 39): «We recognize that planet Earth and its ecosystems are our home and that "Mother Earth" is a common expression in a number of countries and regions, and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development». See also the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Resolution adopted by the General Assembly on 13 September 2007, recognizing that «respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment», by reference in particular to state obligation to provide that «appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact» (art. 32, 3).

[52] H. Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age*, Chicago, 1984, new ed. 1985.

[53] Exemplary in this respect the visionary contribution, at the time, of C.D. Stone, *Should Trees Have Standing? - Toward Legal Rights for Natural Objects*, in *Southern California Law Rev.*, 1972, 42, p. 450 ss. (reprinted in Id., *Should Trees Have Standing? Law, Morality, and the Environment*, Oxford, 2010).

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tered upon a common need to protect the environment, though declined in a variety of aspects and issues (including, e.g., ecosystems, Earth system, sustainable development, environmental justice, intergenerational solidarity, limits to growth, food security, public health, quality of life, human rights, nature rights, and so on).

Therefore it must not be lost sight, once again, of the complexity of the man-nature relationship, beyond the dichotomy between seemingly opposite paradigms, the one that «includes the human in nature» and the other one that «determines man's specificities by exclusion of the idea of nature». Indeed, both of them are expression of «an even deeper paradigm, the paradigm of simplification which, in the face of any conceptual complexity, prescribes either reduction (here, of the human to the natural) or disjunction», thus precluding the conception instead of the «uniduality (natural-cultural)» of the real world, made «of both implication and separation in the relation between man and nature»[54].

Hence the importance of a contextual approach, as a study means which leads to know the law according to or, better said, through the world, not the reverse: in other words, with a "cosmopolitan vision" (§ 2 above). In short, such approach postulates and at the same time reflects a paradigm shift. Whereby, because of the articulated global/local dimension of environmental protection, the focus is placed on the whole/parts relation, with regard to connecting lines and converging trends as well as diverging worldviews on the matter, seen in the common framework of the relevance of normative spaces interconnected or else communicating among them.

As regards environmental law, this is particularly true at the level of general principles and rules in terms of the constitutionalization of the environmental protection, with the emergence of so-called «environmental constitutionalism» based precisely on the fact that many countries have adopted constitutional provisions in this area[55]. These provi-

[54] E. Morin, *Seven complex lessons in education for the future*, cit., p. 8.

[55] On environmental constitutionalism, which goes back in its first version to the idea (and ideal) of the «ecological state» (see K. Bosselmann, *Im Namen der Natur: Der Weg zum* ökologischen *Rechtsstaat*, Munich, 1992), as a subject of comparative study of environmental protection from a global perspective, see: D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment*, Vancouver, 2012; J.R. May, E. Daly, *Global Environmental Constitutionalism*, Cambridge, 2014; L.J. Kotzé, *Arguing Global Environmental Constitutionalism*, in *Transnational Environmental Law*, 2012, 1, 1, p. 199 ss.; R. O'Gorman,

sions, as urged time ago in the World Conservation Strategy, aim to establish and strengthen «the obligation of the state to conserve living resources and the systems of which they are part, the rights of citizens to a stable and diversified environment, and the corresponding obligations of citizens to such an environment»[56]. While recognizing, of course, the importance of differences at the territorial level, from country to country and between different regions of the world, in terms of local histories, such as the prevailing natural, socio-political and economic conditions, as well as cultural conditions, including divergent legal traditions.

4. At the beginnings of this century in an appeal signed by 110 Nobel laureates, on the occasion of the Nobel Prize Centennial Symposium in December 2001, it was stated the following warning: «To survive in the world we have transformed we must learn to think in a new way». Learning to think differently to survive in the world that we – an increasingly numerous part of humans – have transformed, here is the "stumbling stone" (or "scandal"), i.e., the obstacle that the present time poses in order to achieve sustainable development as a guarantee for present and future generations.

To approach the question of the environmental protection according to law, especially in the case of comparative law, it is therefore necessary to start from certain broad cultural premises which form its scenario, while reflecting its main characteristics.

In this regard, a basic lexicon took hold, made up of terms not surprisingly of scientific derivation, underlying a possible uniform narrative, despite the diversity of the aspects involved.

Environmental Constitutionalism: A Comparative Study, *ibidem*, 2017, 6, 3, p. 435 ss. For an analysis centred on the distinction between "fundamental" environmental constitutionalism (based on constitutional provisions which protect the fundamental rights – of substantive and procedural law – of citizens to a quality environment) and "structural" one, also called "administrative" constitutionalism (concerning the transfer-distribution of powers and functions in environmental regulation between the different levels of government), see B. Hudson, *Structural Environmental Constitutionalism*, in *Widener Law Rev.*, 2015, 21, p. 201 ss.

[56] World Conservation Strategy – Living Resources Conservation for Sustainable Development, 1980 (document issued by the International Union for Conservation of Nature and Natural Resources), Section 11 («Improving the Capacity to Manage: Legislation and Organization»).

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One such term is Anthropocene.

This word made its first appearance in 2000, on the pages of a scientific sheet (the "Global Change" newsletter, within the "International Geosphere-Biosphere Programme"), in a short note, signed by Paul J. Crutzen and Eugene F. Stoermer[57]. The two authors with the explicit intention of drawing attention to the «central role of mankind» from a geological and ecological point of view proposed to use the term Anthropocene «for the current geological epoch». The proposal was presented like a manifesto to appeal addressed, in addition to the international scientific community, to political decision-makers and to public opinion in general[58].

In the aim to favoring the diffusion of such term within scientific circles and beyond, two subsequent articles signed and published by Crutzen as author and co-author, respectively, one in 2002 and the other in 2007[59], put emphasis on global change as the context of reference of Anthropocene. In this context, the Earth system is presented not only as "closed", in its finitude and limitation as regards the use (exploitation) of available resources, but as a unitary "whole" of components and processes resulting from the interaction on a global scale between biochemical cycles and flows that provide the necessary conditions for life on the planet. The actions and feedbacks generated within the system are just as important for its functioning as the biological and ecological forces and processes that are in turn an integral part of it, since they not only passively undergo changes in its physic-chemical components, but also contribute to it. Consequently, from this scientific approach derives a change in the conception of the world as a whole of nature and culture together. So

[57] P.J. Crutzen, E.F. Stoermer, *The Anthropocene*, in *IGBP Newsletter Global Change*, 2000, 41, pp. 17-18.

[58] «mankind will remain a major geological force for many millennia, maybe millions of years, to come. To develop a world-wide accepted strategy leading to sustainability of ecosystems against human induced stresses will be one of the great future tasks of mankind, requiring intensive research efforts and wise application of the knowledge thus acquired in the noösphere, better known as knowledge or information society. An exciting, but also difficult and daunting task lies ahead of the global research and engineering community to guide mankind towards global, sustainable, environmental management»: ivi, p. 18.

[59] P.J. Crutzen, *Geology of mankind - The Anthropocene*, in *Nature*, 2002, 23, p. 415 ss., reprinted in P.J. Crutzen, H.G. Brauch (eds.), *Paul J. Crutzen: A Pioneer on Atmospheric Chemistry and Climate Change in the Anthropocene*, 2016, Nobel Laureates 50, ch. 10; W. Steffen, P.J. Crutzen, J.R. McNeill, *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?*, in *Ambio*, 2007, 36, 8, p. 614 ss.

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that: «Human beings, their societies and their activities are an integral component of the Earth System, and are not an outside force perturbing an otherwise natural system»[60].

Moreover, the idea of a «science of the Earth system» is outlined in relation to a field of studies and research concerning life on the planet, as an integrated system that uniquely incorporates the physical, biological, chemical, human and social components of the terrestrial environment. Its epistemological relevance can be particularly appreciated in the light of new and more powerful hi-tech means of observation (such as satellites) as well as the collection, analysis and processing of big data on a computerized basis, in order to develop predictive models capable of carrying out realistic reconstructions of types of environments regarding either the most remote geological eras and scenarios in the deep future[61].

This explains the use of term Anthropocene in a deliberate – and somewhat provocative – way aimed to amplify its meaning on the geological scale of an epoch in the history of the Earth marked by the domination of man over nature. In this respect, the term became viral. Widely accepted among the socio-humanistic disciplines[62], for its communicative strength and suggestive value, it entered current language as a kind of icon of environmental culture[63]. It has been the subject of debate within the scientific community, where it has encountered resistance and objections[64], especially in the relevant geological field where the respective concept has remained, to date, without official recognition[65]. Above all, it has been successful at the level of popular sci-

[60] W. Steffen et al., cit., (n. 19) 7 (Box 1.1).

[61] W. Steffen, K. Richardson, J. Rockström et al., *The emergence and evolution of Earth System Science*, in *Nature Reviews Earth & Environment*, 2020, 1, p. 54 ss.

[62] An example to this regard is the online journal «The Anthropocene Review», published since 2014, whose «aims and scope» are thus stated: «a trans-disciplinary journal […] on all aspects of research pertaining to the Anthropocene, from earth and environmental sciences, social sciences, material sciences, and humanities […] Its overall aim is to communicate clearly and across a wide range of disciplines and interests, the causes, history, nature and implications of a world in which human activities are integral to the functioning of the Earth System».

[63] Y. Malhi, *The Concept of the Anthropocene*, in *Annual Rev. of Environment*, 2017, 42, secs. 25.1, 25.5.

[64] G. Visconti, *Anthropocene: another academic invention?*, in *Rendiconti Lincei Scienze Fisiche e Naturali*, 2014, 25, 3, p. 381.

[65] S.C. Finney, L.E. Edwards, *The "Anthropocene" epoch: Scientific decision or political statement?*, in *GSA Today*, 2016, 26, 3-4, p. 4 ss.

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ence literature and on the media[66], where it was cheered but also criticized[67].

With regard to law studies, the term Anthropocene began to circulate and to assert itself in various disciplinary fields from constitutional to private law, as a key to interpreting issues of general theoretical and interpretative scope, observed in a global perspective as, that is, a holistic paradigm of reflection, with a critical emphasis on traditional legal categories. as an interpretative key of environmental issues in a global perspective, i.e., according to a holistic paradigm of reflection with critical emphasis on traditional legal categories[68]. Its methodological-conceptual relevance appears significant especially in terms of comparative

[66] To be remembered, in this sense, the decisive contribution made to the dissemination of the term in the media and public opinion by the weekly "The Economist", which in March 2011 devoted its cover to the theme, with the title: «Welcome to the Anthropocene». In general, on the diffusion of the term in a multiplicity and a variety of contexts of discourse, scientific, political-philosophical, socio-economic, humanist, literary and artistic, see Y. Malhi, *The Concept of the Anthropocene*, cit., sec. 25.

[67] Critics of the Anthropocene concept include those who – while appreciating its provocative purpose, consisting in highlighting the perverse effects of the idea of progress pursued solely for the benefit of man (subject) compared to nature (object), believing that there are no limits to the exploitation of natural resources and even less the capacity of humans to use them – however consider that this concept can generate distortion and a false representation of a state of things attributable not to man and humanity in a general and equal way, but (mostly) to a part (only) of human population who – because of its capitalist model of exploiting natural resources, individualist lifestyle and consumption habits, plus its desire to dominate through forms of colonization and exploitation of vast regions of the world – bears the greatest responsibility. So as to invoke the concept of "Capitalocene", much more explicit as regards both the intention of denunciation and of the ecological alarm about such a state of things linked precisely to the capitalist/individualist socio-economic model of development: see J.W. Moore (ed.), *Anthropocene or Capitalocene? Nature, History, and the Crisis of Capitalism*, 2016, Oakland (CA).

[68] See, *e.g.*: N.A. Robinson, *Fundamental Principles of Law for the Anthropocene?*, in *Environmental Policy and Law*, 2014, 44, 1-2, p. 13 ss.; J.E. Viñuales, *Law and the Anthropocene*, in *C-EENRG Paper*, 2016, 4; A. Philippopoulos-Mihalopoulos, *Critical Environmental Law as Method in the Anthropocene*, in A. Philippopoulos-Mihalopoulos, V. Brooks (eds.), *Research Methods in Environmental Law: A Handbook*, UK-Northampton (MA), 2017, p. 131 ss.; E. Biber, *Law in the Anthropocene Epoch*, in *Georgetown L. J.*, 2017, 106, 1, p. 3 ss.; L. Kotzé, *Global Environmental Constitutionalism in the Anthropocene*, Oxford and Portland, 2016, and also Id., *A Global Environmental Constitution for the Anthropocene?*, in *Transnational Env. L.*, 2019, 8, 1, p. 11 ss.; Id, *Human rights and the environment in the Anthropocene*, in *The Anthropocene Review*, 2014, 1, 3, p. 252 ss.

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study of environmental protection as foundation of comparison, beyond legal (national) systems, by referring to the spatial dimension of multilevel normative areas, communicating with each other and, in any case, having a common interest of global importance.

In this respect, it is also worth mentioning the consolidated recourse to another word, Ecology, in the field of human and social sciences as well as in current usage. Again, this term derives from a scientific field where it originated in the second mid-19th century to designate the part of biology that studies the relational functions of organisms with the surrounding environment and between them. It then transited or, better said, was adopted in environmental movements mainly established in the United States since the 1960s, to indicate with an emphasis of social alarm the idea of pollution science linked to human destruction of nature. Thus calling into question the problem of the relationship more precisely of industrialized society of modern times with environment, posing it as a transversal issue that affects as well social sciences (human ecology)[69]. In addition, an ethic-philosophical understanding of the term, known by the name of «deep ecology»[70], proposes a vision – once again of scientific (biological) derivation – of the environment as a common habitat (biosphere) for all living species (human and non-human) based, in relation to the same moral value of each of these beings, on an equal right to life.

Such a substantive meaning of the environment as a self-standing reality named by its whole, as a living ecosystem referred to the entire Earth system, changes profoundly its more traditional generic (neutral) meaning almost devoid of specifically defined content, in which it was used until relatively recently (according to some until the 1950s) to designate only a "surrounding space"[71]. Nowadays, the environment designates the global network of life forms, processes and other components on our planet, i.e., the network of interconnection and interdependence of which the natural world is made, including human beings[72].

[69] For an overview of the developments in this field of study and its trends, see *Human Ecology Review*, Special Issue «Human Ecology – A Gathering of Perspectives: Portraits from the Past-Prospects for the Future», 2017.

[70] A. Naess, *The Shallow and the Deep, Long-Range Ecology Movement: A Summary*, in *Inquiry – An Interdisciplinary Journal of Philosophy and the Social Sciences*, 1973, 16, 1, p. 95 ss.

[71] P. Warde, L. Robin, S. Sörlin, *The Environment. A History of the Idea*, Baltimora, 2018.

[72] Reference is to "Gaia Theory" expounded by J. Lovelock, *Gaia. A New Look at*

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In the same furrow of contamination of the natural with social sciences and humanities, it can be mentioned the current of ecological thought known as Earth Jurisprudence, favoring the recognition of rights entitled to entities of nature[73]. According to a conception based on so-called «biocentric egalitarianism» borrowed from biology, which proposes a kind of reverse reading of the classic concepts of legal subjectivity (law of persons), starting from nature (biology) and a new morality thereupon based and affecting the idea of law itself traditionally understood as a product of man exclusively for humans. By a way of reasoning that brings together with arguments drawn out of a background of ancestral wisdom from ancient cultures, modern theories of quantum physics, which support the hypothesis consisting in the idea, also common to Eastern mysticism, of universal interconnection of all things and events in the world[74].

In summary, from this overview of terms and concepts concerning a holistic approach on the environmental crisis, what can be observed is a series of main features as regards environmental protection law as a subject that can be dealt in a comparative way beyond the logic (territorial and nationalistic) of legal systems, in a context of common spatial relevance, both local and global.

Such common features can be synthetized as follows: *a*) *multilevel*, i.e., relevant in different legal orders and corresponding regulatory fields (international, supranational as in the case of regional integration, national and local), also including normative spaces of interaction between a plurality of public and private actors and a variety of norms (soft law, codes of conduct); *b*) *interdisciplinary*, that is transversal to different legal sectors, as well as to scientific and humanistic disciplines; *c*) *borderline* (or else *inter-normative*), placed on the edge between scientific-technological advancements, economics, political and societal interests and concerns, standards and needs, therefore necessarily open on all these fronts and committed to their balancing through gover-

Life on Earth (first published in 1979), Oxford, 2000, according to which the Earth is a single living organism able as such to regulate itself in a condition of changing homeostatic balance between geophysical components and living beings (animals and plants) that give shape altogether to terrestrial environment.

[73] C. Cullinan, *Wild Law. A Manifesto for Earth Justice*, *Gaia Foundation*, 2nd ed., 2011,

[74] «Quantum theory thus reveals a basic oneness of the universe. It shows that we cannot decompose the world into independently existing smallest units»: F. Capra, *The Tao of Physics. An Exploration of the Parallels Between Modern Physics ad Eastern Mysticism*, Boulder (Colorado), 1975, p. 68.

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nance instruments, participation and consultation procedures and practices; *d*) *intercultural*, resulting from diversity and therefore involving a dialogue between cultures and forms of civilizations; e) *goal-oriented*, in search for common principles, promoting policies and achieving purposes aimed at the conservation and safeguarding of natural resources, sustainability and stewardship in their management, for the survival of the human species as an integral part – with other living species (animals and plants), and the whole terrestrial ecosystem – of a dynamic equilibrium in constant evolution, which requires to be governed and disciplined according to predictive criteria and precautionary principles.

Consequently, to study comparatively the environmental protection law as an example of foundation of law comparison, it means to reflect on one's own law and in general with an eye and in any case an awareness turned towards these aspects, individually or considered as a whole.

I would then pass on to my conclusions.

5. In the light of the above, bearing in mind the initial premise on the formative (educational) value of law comparison as an essential tool of general culture for the jurist, I would like to conclude with a praise that precisely underlines the merit of a cultural approach to legal knowledge, particularly useful as well as necessary in face of the challenges resulting from a world evermore connected, complex and conflictual.

As I tried to argue, it is possible to define the comparative study of law, and better still the study of law conceived comparatively, as a way to learn about legal experiences from a spatial point of view, looking at both universality and relativity of such experiences. Understood in this way, comparative law tends to adopt a holistic orientation which, without making it an exercise on legal omniscience or abstract universalism, focuses on what has (may have) an essential or fundamental importance. In order to frame matters of legal interest in a wider context able to bring out, beyond the peculiarities and differences, the common dimension or the global relevance of these matters. With a look, therefore, aimed at grasping the "spirit" of laws and institutions, in reference to their particular contexts of place and time, but observed from an open point of view on the world, for a critical understanding of one's own law and in general. So as to go beyond the borders of national (state) systems, to reflect on matters whose legal relevance gets more meaningful and deserves to be the subject of comparative study, the more such relevance lends itself to being framed in a context that shows and attri-

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butes it global value, that is, able to base a legal knowledge of common interest on these same matters.

Hence the paradigm shift from comparison by systems to comparison by legal foundations (one could add "contemporary", paraphrasing the title of a classic of modern comparison mentioned at the beginning: § 1). Taking up the thread of the discourse, we can ask: would this be the way to reorient and reposition the study of comparative law in the age of globalization?

"Supranational law", "uniform law", on the side of the internationalization of law (as a phenomenon more properly linked to the will of states based on treaties and conventions). "Global law", "transnational law", "legal pluralism", "normative spaces", "internormativity", "intercultural law", on the side of globalization (as a phenomenon that goes beyond the national state and crosses territorial borders, like any other border, characterized by a dimension of intertwining of legal/normative systems). And again, "European law" (as a *sui generis* law system of the European Union), «multilevel legal system». All these expressions are placed in a relationship of close connection with "comparative law". Each one, however, has its own epistemological status or, at least, its own frame of reference and related categories, sometimes not only, or immediately, of legal significance. Moreover, they seem to tend to confront, connect, interact and even compete with comparative law, questioning the current meaning and scope of the latter, in relation to the new and complex issues that, more or less directly, touch upon problems of legal education as well as the acquisition of professional skills regarding the knowledge and practice of law. That is to say, the formation of a jurist who seems to some extent increasingly deprived of his/her own national identity, while increasingly immersed in contexts characterized by a multiplicity of regulatory levels and with a marked pluralist profile.

After the season of anti-formalism – during the twentieth century – under the banner of a point of view different from legal positivism, comparative law faces today the reality of a "global" legal pluralism challenging the state paradigm, on the one hand, while increasing its complexity, on the other, throughout a plurality and diversity of legal regimes concurring and however applicable in the regulation of certain matters, alongside a growing cultural diversity of local/national communities and societies. It follows that a standardized classification of legal systems into sharply typed self-contained (and apparently coherent) entities is called into question by an evolutionary dynamic which

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transforms them into "complex systems", with emerging features that, under many respects, resist or oppose this simplified reductionist way of identifying them in terms of a world legal geography.

Indeed, the marked pluralist (complex) profile of today's legal systems, blurring the boundaries between them as conventionally established by law comparison claiming to map the world through the law, seems to point out to a reverse approach. Thus, the need to adapt comparative law studies to the era of globalization brings back to the fore the theme of the very vocation of comparison, which should be precisely that of presenting itself as a way of studying and knowing the law (one's own and in general) as a reflection in the mirror of the world context.

To briefly explain this idea of comparison as a «mirror of law», it is useful to refer to a scene from Shakespeare's *Julius Caesar*. The dialogue between Cassius and Brutus, when the former asks to the latter: «Tell me, good Brutus, can you see your face?», and Brutus replies: «No, Cassius; for the eye sees not itself, But by reflection, by some other things»; and Cassius by reinforcement, to convince him to join the conspiracy, argues: «Tis just: And it is very much lamented, Brutus, That you have no such mirrors as will turn Your hidden worthiness into your eye».

Without necessarily opposing against a consolidated doctrinal convention – the world map of legal systems – up to conspiring for its elimination as a kind of Caesar metaphorically speaking, the idea here evoked is about the need to search for the hidden worthiness of legal comparison by looking at law in the world mirror, i.e., the global context of the whole/parts relationship.

To say it otherwise, true as it is that the eye sees not itself, but by reflection, by some other things, a circumstance that also helps to clarify what "prejudice" really is which, as Montesquieu warned, does not consist in ignoring certain things, but in ignoring oneself (for not wanting to see)[75], it follows that knowledge of the law of any legal system, or in general, cannot, especially today, be acquired in a complete and critical way, but by reflection, by looking into the mirror of the world, that is, by comparison with other normative experiences in a broad sense.

Once again, having in mind the case of environmental protection and more generally the multi-faceted articulation of the environmental cri-

[75] *De l'esprit des lois*, in the "Préface": «J'appelle ici préjugés, non pas ce qui fait qu'on ignore de certaines choses, mais ce qui fait qu'on s'ignore soi-même».

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sis as a paradigmatic example of foundation of law comparison, what matters is the feasibility of this change of perspective from the world map of legal systems to a global view of topics having common relevance, despite the diversity of local situations and particular aspects.

The cross-border (spatial) approach thus conceived means taking diversity as well as commonality in law seriously, in terms of sustainability, as if it were a matter of taking care of a global legal ecosystem. On the one side, by objecting the vain search for uniform law models on a world scale, yet believing, on the other side, that in a world so much troubled with identity conflicts (potential and real ones) together with corresponding risks and challenges inducing fears and closing attitudes at local (national) level, it is worth developing an open (pluralist) legal mind-set fit to the complexity challenge. So as to re-think and re-evaluate legal comparison as an educational tool aimed to develop a critical attitude towards abstract categorizations, sharp dichotomies, in sum, against divisive boundaries, well aware of the importance of cultural diversity and legal pluralism together with the relational interdependence of legal systems, beyond the territorial dimension, which make them complex realities, like a mirror where to look to see the "hidden" or, one may say in our case, the "inner" worthiness of the comparative study of law.

Indeed, a study of the law mirrored in the world context – leaving aside the world legal map as a form of simplified and in this sense always unfinished (if not warped) conceptualization of the complexity of law experiences – can become beneficial in alternative and however in addition to the conventional approach premised on and conditioned by (as its starting point) legal systems classification (based on the idea of the exclusive-coherent identity of legal systems however mixed or complicated may be). Such approach, being expression of the methodological nationalism that dominated the field of legal science from the late nineteenth century to recent times, seems increasingly limited if not outdated facing the challenges as well the opportunities linked to the interconnectedness and interdependence between people and countries (including their legal systems), on a planetary scale.

Due to its character as a law suspended between borders, comparative law is the most exposed on the face of the challenge of complexity, imposed by the relationships of implication, distinction and conjunction between global and local, which characterize today's world. But, precisely for this reason, it also seems to be a right way of thinking, understanding and representing the global legal complexity, of which the environmental protection is and will be even more a paradigmatic example.

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A final tribute, therefore, to be paid to law comparison consists in the appreciation of its intrinsic formative, cultural and educational value, as a way, today more than ever required, for the advancement of legal studies.

Abstract

Due tesi di fondo, distinte ma strettamente correlate tra loro, sono al centro di questo saggio. La prima è che la globalizzazione, non solo economica e tecnologica, ma anche sociale e culturale, incidendo sul piano giuridico chiama in causa il diritto comparato per ripensarne e riaffermarne la propria vocazione di studio critico di problematiche ed esperienze giuridiche e normative, che si pone, al livello teorico, come modo autoriflessivo di conoscenza del diritto. La seconda tesi è che vi sono temi, come è il caso emblematico della tutela ambientale, che assumono carattere di "fondamenti" di comparazione giuridica, nel senso di rappresentare un paradigma di un nuovo statuto metodologico ed epistemologico di questo campo di studi, che invece di conoscere il mondo attraverso il diritto, alla maniera di classificazioni (tassonomie) dei sistemi giuridici, cerca di conoscere il diritto attraverso il mondo, nella sua dimensione "globale", al tempo stesso territoriale e spaziale, particolare e comune, relativa e universale, come polarità tra loro non oppositive, ma complementari.

Two basic theses, distinct but closely related to each other, are the focus of this essay. The first one is that globalization, not only economic and technological, but also social and cultural, by affecting the legal plan calls into question comparative law to rethink and reaffirm its own value of critical study of legal and normative issues and experiences, which poses itself, at the theoretical level, as a self-reflective way of knowing the law. The second one is that there are topics, as it is the emblematic case of the environmental protection, which take on the character of "foundations" of law comparison, in the sense of representing a paradigm of a new methodological and epistemological statute of this field of legal studies, which instead of knowing the world through the law, like the classifications (taxonomies) of world legal systems, it seeks to know the law through the world, in its "global" dimension, at once territorial and spatial, particular and common, relative and universal, as polarities that are not oppositional, but complementary.

Keywords

Legal education, comparative law, normative spaces, legal pluralism, comparative environmental law.

Educazione giuridica, diritto comparato, spazi normativi, pluralismo giuridico, diritto ambientale comparato.

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