

To Compare, or Not to Compare, That is the Question

On the Role of Comparative Law in Domestic Legal Scholarship

BIRKE HÄCKER*

The Stockholm Centre for Commercial Law, whose 25th anniversary this jubilee book marks, is not merely a leading Nordic research centre in the fields of commercial law and corporate governance and a hub bridging the gap between scholarship and legal practice. It is also a leading centre of academic cooperation, both within the Nordic region and internationally. I first got to know the SCCL and had the pleasure of collaborating with colleagues there as part of the vibrant and multi-layered exchange it maintains with the University of Oxford (mediated through the Institute of European and Comparative Law and Christ Church). Out of these activities grew a lasting connection which has since inspired new links between the SCCL and the University of Bonn. I take this opportunity to express my sincere gratitude to the SCCL and its members for their enthusiasm in building and maintaining scholarly links, for their support particularly of junior researchers, and especially for their academic friendship.

This contribution seeks to pick up some of the themes which have, over the years, emerged in conversations with members of the SCCL regarding the broader role comparative law can (or could potentially) play in domestic

* Birke Häcker holds a Schlegel Chair in Civil Law, Common Law and Comparative Law at the University of Bonn, where she is also Director of the Institute of International and Comparative Private Law. She was previously Professor of Comparative Law at the University of Oxford and Director of the Institute of European and Comparative Law. Her connection with the SCCL goes back to this time. She is a Visiting Fellow of the SCCL and in 2023 was fortunate enough to receive an honorary doctorate from the University of Stockholm. The present contribution is based on her inaugural lecture as *hedersdoktor*, delivered at the SCCL on 22 May 2024.

legal scholarship. In fact, its very title is owed to one such conversation.¹ The allusion to Shakespeare's *Hamlet* is fitting for two reasons. Firstly, being part of Hamlet's fourth soliloquy,² it is quite 'academic' in nature and reminiscent of the instruction in contemporary metaphysics Hamlet would have received as a student in the small German university town of Wittenberg. Secondly, though Shakespeare's plays are extremely sophisticated, full of allusions and written in a language that modern readers may struggle to understand, they are not only for specialists. Anyone visiting the Royal Shakespeare Theatre in Stratford-upon-Avon or the new Globe Theatre in London will find that his words in verse and prose, once spoken and interpreted by expert actors, become accessible and meaningful despite their complexity. Comparative law, too, is by-and-large a field for experts, yet the argument here is that there is great value in it even for protagonists who consider themselves ordinary domestic lawyers. In short, we should stop seeing comparative law as purely something 'off the beaten track' and embrace it as contributing to national scholarship both through specialist study and, more down-to-earth and at a much more easily accessible level, as a field that contains something for everyone.

1. Setting the Scene in Greater Detail

In a sense, the scene has already been set. Nothing rivals Shakespeare for stage effect: 'All the world's a stage, and all the men and women merely players'.³ Yet it is worth pondering the backdrop a little, narrowing it down to the actors in play as far as the present contribution is concerned.

First to the actors who are not centre stage here, namely courts and legislators. The value that a side-glance at other legal systems can bring to bodies charged with making and applying the law is well documented. A brief summary will therefore suffice.

All over the world, legislators past and present have sought inspiration and taken cues from other legal systems. Sometimes entire statutes or indeed codifications were 'transplanted' wholesale, such as when the influential *Code Napoléon* of 1804 followed his patron in conquering large swathes of conti-

¹ The idea of drawing on Shakespeare originally came from Kelly Chen during her time as Visiting Researcher at the Bonn Institute of International and Comparative Private Law.

² William Shakespeare, *The Tragedy of Hamlet, Prince of Denmark*, Act 3, Scene 1.

³ William Shakespeare, *As You Like It*, Act 2, Scene 7.

nental Europe.⁴ At other times, lawmakers cherry-picked rules and solutions more selectively. The drafters of the German *Bürgerliches Gesetzbuch*, for instance, systematically analysed the law applicable in the various territories that in 1871 had come together to form a new German Empire for which a uniform civil code was now needed. The 1992 reformed Dutch Code (*Nieuw Burgerlijk Wetboek*) bears testimony to decades of intensive comparative preparation. Recently, cross-border direct inspiration has begun to be superseded by politically more palatable indirect reception processes, drawing in particular on instruments such as the Principles of European Contract Law and the Draft Common Frame of Reference⁵. When, in the UK, the Law Commissions for England & Wales and for Scotland were set up in 1965, for the purpose of reviewing the law and advising on potential legislation going forward, they were expressly instructed ‘to obtain such information as to the legal systems of other countries as appears to the Commissioners likely to facilitate the performance of any of their functions’.⁶

Just as legislators may look abroad for solutions to the problems they are grappling with, so courts, too, can benefit from comparative reflection. Not being designated policy-makers, judges are inherently more constrained in drawing on foreign material than a parliamentary committee or an advisory body, but there are prominent instances of comparatists on the bench whose landmark contributions shaped their system. Among them were Lords Goff and Bingham in the (former) House of Lords.⁷ On the whole, when looking at judicial decisions, one tends to see references to foreign material more often between closely related systems than in respect of jurisdictions

⁴ The idea of ‘legal transplantation’ was first popularised (though probably not originally coined) by Alan Watson, *Legal Transplants: An Approach to Comparative Law*, Scottish Academic Press/University Press of Virginia, 1974.

⁵ Birke Häcker, *La Troisième Jeunesse du Code Civil: A German Lawyer Looks at the Reform of French Contract Law*, chapter 18 in John Cartwright/Simon Whittaker (eds), *The Code Napoléon Rewritten: French Contract Law after the 2016 Reforms*, Hart Publishing, 2017, 387 at 393.

⁶ Law Commissions Act 1965, section 3(1)(f). In practice, this provision is read as referring primarily to related common law systems around the world rather than to civilian jurisdictions, and it is implemented accordingly.

⁷ Regarding Lord Goff, see the various tributes paid to his influence on the development of English law in William Swadling/Gareth Jones (eds), *The Search For Principle: Essays in Honour of Lord Goff of Chieveley*, Oxford University Press, 2000. Regarding Lord Bingham, see esp. Mads Andenas/Duncan Fairgrieve, ‘There is a World Elsewhere’—Lord Bingham and Comparative Law, chapter 10 in Mads Andenas/Duncan Fairgrieve (eds), *Tom Bingham and the Transformation of the Law: A Liber Amicorum*, Oxford University Press, 2009, 831–866.

further apart (doctrinally rather than geographically speaking), and more often in smaller jurisdictions than in larger ones. Cross-citation of other countries' case law also appears to be particularly frequent where languages converge.⁸ This may explain the fruitful connection that has been shown to exist between Sweden and Denmark.⁹

Though lawmakers and courts are merely peripheral figures as far as the present contribution is concerned, two aspects should be noted up-front. One is that – unsurprisingly – both the legislature and the judiciary find engagement with foreign sources most useful where there is an immediate reward in terms of seeing a clear steer one way or the other. This makes closely related systems particularly attractive sparring partners, a point I will come back to later. The second aspect relates to the catalyst function of legal scholarship. Neither legislators nor judges are usually in a position themselves to conduct comparative legal research from scratch. They often rely on academics to provide at least the raw material with which they can work and ideally to propose what conclusions may be drawn from it. Reception is relatively easy where foreign sources are pre-digested and tested for 'fit' with the existing parameters of the receiving system.

All this shifts the focus onto the present protagonists: academics teaching and researching at domestic law schools. What, if any, is the value of comparative law to legal scholarship of the kind we pursue at universities and other research institutions? My argument – in a nutshell – is that comparative law is not merely an optional subject somewhere on the syllabus, a subject for specialists with a rather eccentric inclination. Properly understood, its remit is far broader. There exists an accessible and down-to-earth form of comparative law which everyone working in national legal scholarship can and should engage with. In fact, my argument is that many domestic scholars already engage with it, though often without realising.

2. The Spectrum of Comparative Legal Research

To assess the potential remit of comparative scholarship in all its facets, let us take a step back and consider from a point of principle how and why one might approach questions comparatively or even conduct in-depth comparative research at a university.

⁸ Mathias Siems, *A Network Analysis of Judicial Cross-Citations in Europe*, Law & Social Inquiry 48 (2023), 881–905, esp. at 900–901.

⁹ Siems, *supra*, n. 8, at 888 and 890 (figure 1).

Conventional wisdom essentially distinguishes two kinds of comparative scholarship properly so called: ‘pure’ and ‘applied’ comparative law. The term ‘pure comparative law’ appears to have been first coined by Ernst Rabel,¹⁰ possibly in allusion to Hans Kelsen’s ‘pure theory of law’.¹¹ It denotes an exercise in comparison for its own sake, regardless of the uses to which the resulting knowledge may be put. In the modern academic world of ‘impact’ assessments and competition for third party funding, the intrinsic value of such basic research is well worth emphasising. ‘Applied comparative law’, by way of contrast, denotes comparative research undertaken with some specific purpose in mind,¹² such as with the aim of finding a better or even the ‘best’ solution to a particular question or social problem. It involves an element of assessment, often in preparation of making concrete policy recommendations.¹³

While this is a helpful core distinction to start with, the types of comparative legal research scholars engage in can – and need to – be broken down further to reveal the full spectrum. This will also demonstrate that there is not necessarily a clear and bright dividing line between ‘pure comparative law’ and ‘applied comparative law’, or indeed between the field of ‘comparative law’ and what one might describe as ‘ordinary black letter law’. We can distinguish at least five categories of comparative legal research along a spectrum of intensity and ‘otherness’ – without thereby denying the fact that the boundaries between them are fluid.

Firstly, a scholar may examine a foreign legal system, or some particular aspect of it, with a view to learning more about its functioning, its institutions and/or structures. The motivation for doing so may be sheer academic curiosity or a highly practical reason, such as being summoned as an expert to inform a court on some matter of foreign law applicable by virtue of the relevant conflicts rules. Unearthing the desired information typically involves immersing oneself as deeply as possible in the target system in order to understand its operation and to gain an inside perspective of

¹⁰ Ernst Rabel, *Rechtsvergleichung und internationale Rechtsprechung*, *RabelsZ – Zeitschrift für ausländisches und internationales Privatrecht*, vol. 1, 1927, 5 at 6 fn. 1. But note that Rabel was writing before the first edition of Kelsen’s seminal work (*infra*, n. 11) had been published.

¹¹ Hans Kelsen, *Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik*, Deuticke, 1934.

¹² See, e.g., H.C. Gutteridge, *Comparative Law: An Introduction to the Comparative Method of Legal Study & Research*, Cambridge University Press, 1946, at 9.

¹³ Rabel, *supra*, n. 10, at 6 fn. 1.

the matter under consideration. This kind of exercise is labelled within the comparative law community by the German word *Auslandsrechtskunde*. *Auslandsrechtskunde* is often said to be distinct from ‘comparative law’ properly so called, or is at any rate seen as no more than a preliminary step towards it.¹⁴ Yet it would be wrong to suggest that the mere description of a foreign system cannot amount to comparative law unless there subsequently follows an express comparison. Anyone delving into a ‘foreign’ system will inevitably reflect on it by reference to his or her ‘home’ legal order. And anyone explaining one system to an audience trained in another will need to depict the target system in terms the audience can relate to and understand. The incidental realisations and learning effects that come with dipping into a ‘foreign’ legal order are themselves a product of comparative analysis. Similarly, depicting one system in a way that makes it accessible to an audience based in another is an exercise in ‘legal translation’ requiring much more than the relevant language skills. It is a form of comparative law in its own right.¹⁵

Connected with *Auslandsrechtskunde*, but going a step further, is the second type of comparative legal research we can identify along the spectrum. It consists of juxtaposing two or more legal orders for the sake of expressly comparing them and thereby revealing (overt or hidden) similarities and differences. This amounts to ‘pure comparative law’ in the spirit in which Rabel thought of it. In reality, of course, researchers often have in mind a particular domestic problem or question which piques their interest in exploring how other systems cope with the same issue. The fact that one has specific occasion to look elsewhere need not distract from the ‘purity’ of the exercise, yet it illustrates that the boundary with ‘applied’ comparative research can be fluid. Depending on what system or systems a scholar uses as comparator(s), this second kind of comparative law is indeed typically for specialists. Sophisticated foreign language skills as well as prior experience in handling the other system may be needed. More importantly, a robust methodological grounding is absolutely essential. The researcher undertaking this work has to be able to find a suitable framework for conducting the comparison (where two or more systems are ‘mapped’ one on top of the other, what ‘pegs’ are reliable

¹⁴ See, e.g., Konrad Zweigert/Hein Kötz, *An Introduction to Comparative Law*, 3rd edn., translated by Tony Weir, Oxford University Press, 1998, at 6.

¹⁵ This point is increasingly taken on board by modern comparatists: see, e.g., Mathias Reimann, *Comparative Law And Private International Law*, chapter 42 in Mathias Reimann/Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*, 2nd edn., Oxford University Press, 2019, 1339 at 1355.

enough to 'stabilise' the resulting picture?). The researcher must also be in a position to cope with areas where one of the systems is or appears unsettled, or where it has inexplicable 'blind spots', and he or she must know how to avoid pitfalls, such as falling for 'false friends' and similar misunderstandings.

Thirdly, somewhere between 'pure' and 'applied' comparative law lies the realm of traditional comparative law functionalism. This methodological approach, nowadays often identified with the seminal account given by Zweigert & Kötz,¹⁶ has become a key reference point (for better or for worse) to anyone engaged in comparative study.¹⁷ Put briefly, it starts by identifying particular social problems and then seeks to establish how these can be tackled most effectively: what works well and what doesn't work so well? Functionalism is thus closely associated with a 'toolbox' view of social regulation. Law being one such tool, potentially a very powerful one, it should be optimised to produce the best possible outcomes. There is a great deal one could say about functionalism more generally, its premises, strengths and problems – yet here is not the place to do so.¹⁸ Suffice it to note that full-blown functional studies seeking to uncover the 'best' possible solution to widespread social problems cannot confine themselves to examining two, three or even a handful of legal orders. They will have to undertake a large-scale survey of a whole range of different jurisdictions whose approaches to tackling the identical problem (ideally) vary significantly. As a scholarly endeavour, this is not something that can reasonably be shouldered by one person alone. It typically requires a group project involving collaborators from all over the world who contribute 'country reports' which subsequently feed into the functional assessment. The ensuing comparative analysis, on this approach, is one that avoids engaging with national concepts and doctrinal niceties in order to evaluate the various solutions purely by reference to the yardstick of functionality.¹⁹

¹⁶ See Zweigert/Kötz, *supra*, n. 14, chapter 3, esp. at 34–47.

¹⁷ See Ralf Michaels, *The Functional Method of Comparative Law*, chapter 13 in Reimann/Zimmermann, *supra*, n. 15, 345 at 346: 'The functional method has become both the mantra and the *bête noire* of comparative law. For its proponents it is the most, perhaps the only, fruitful method. For its opponents it represents everything bad about mainstream comparative law.'

¹⁸ The reader may instead be referred to Michaels, *supra*, n. 17, and other contributions in the same Handbook (Reimann/Zimmermann, *supra*, n. 17).

¹⁹ See Zweigert/Kötz, *supra*, n. 14, at 44: '[W]hen the process of comparison begins, each of the solutions must be freed from the context of its own system and, before evaluation can take place, set in the context of all the solutions from the other jurisdictions under investigation. Here too we must follow the principle of functionality: the solutions we

There are, of course, a number of other comparative approaches and methodologies which have been developed over the years. Some are related to functionalism, but less bent on replacing the 'inside' perspective with an outsider's point of view;²⁰ others are openly anti-functionalist and emphasise the deep cultural embeddedness of law as well as fundamental divergences in the 'mentalities' of lawyers from different legal orders. What they share with functionalism and the previous categories outlined above is the requirement – and indeed the assumption – that the person ultimately conducting the comparison should be experienced and well-versed in the handling of comparative material. Therefore, as far as the first three categories of comparative legal research are concerned, they truly are a specialist endeavour within a law school. However, the final two categories of comparative research have a much broader remit, potentially reaching right into the heart of ordinary domestic scholarship.

The fourth category of comparative research covers the frequent situation where scholars working on national law deliberately incorporate a side-glance at other legal systems not because they are interested in comparative law as such, but because they face a particular problem and are hoping to glean direct insights and inspiration from 'foreign' sources. In a sense, this exercise is the smaller sibling and domestic counterpart of functionalism. The choice of reference system to use for this exercise will be determined not so much (or at any rate not merely) by the researcher's own language skills or any relevant foreign legal experience, but by which system appears most promising in teaching domestic lawyers something useful. Often, the reference system will be dictated by the discourse in the relevant subject. Which is internationally or regionally the most influential jurisdiction in a given field, and what systems do people working in the field regard as 'front runners'? In corporate law, for instance, the US State of Delaware will be of particular interest because so many companies are incorporated there. In tax law, the United States and Germany are generally regarded as reference

find in the different jurisdictions must be cut loose from their conceptual context and stripped of their national doctrinal overtones so that they may be seen purely in the light of their function, as an attempt to satisfy a particular legal need.'

²⁰ Amongst these is the 'Common Core' methodology adopted by the so-called Trento Project. This project seeks 'to unearth the common core of the bulk of European Private Law': Mauro Bussani/Ugo Mattei, *The Common Core of European Private Law: Essays on the Project*, Kluwer, 2002, at 1. While originating in Trento, this project has now moved its regular meeting place to Stockholm and should therefore perhaps in future be called the 'Trento-Stockholm Project'.

points, partly perhaps on account of the sheer amount of tax literature generated there.²¹ And for insolvency law, the UK functions as a key benchmark, certainly within Europe. How, then, can domestic legal scholars acquire the ‘foreign’ knowledge they need for the purposes of their project, without specific comparative expertise of their own? Sufficient access to information, both in terms of breadth and depth, is essential. It explains why systems that operate in English or go to the trouble of translating their legal materials (especially statutes and cases) into English tend to be much more influential internationally than others. The accessibility problem further highlights the great usefulness of academic networks and personal links. Informal collaboration through ‘calling a friend’ or organising a research visit is in practice no less – and often arguably far more – important than elaborately bidding for a joint research project.

Fifth and last is the category of ‘comparative’ scholarship to which this chapter seeks to draw the audience’s special attention. It concerns the value of comparative law to academics working on purely domestic issues *without* expressly giving their research a comparative angle or even thinking of themselves as comparatists. (In many parts of the world, one would describe such lawyers as ‘ordinary black letter lawyers’, but this term may not be wholly appropriate in the Swedish context.) In order to make the case that here, too, comparative law plays a meaningful role, it is first necessary to dispel some myths and then to explain the distinct benefit of understanding one’s own legal system in a broader comparative context.

3. Some Myths Dispelled

One myth that needs to be dispelled is that there is of necessity a sharp and unbridgeable gap between national ‘black letter law’ (sometimes called ‘doctrinal’ law) and ‘comparative law’ as a separate field ploughed by experts, with its own vast methodological superstructure. The view that such a gap is inescapable rests on a number of unwarranted assumptions and is largely

²¹ It is famously rumoured that over half, and possibly even more than two thirds, of the world’s tax literature is in German – an assertion often heard in connection with calls for reform of the German system. Yet it has been shown that the rich production of German tax literature is owed less to the complexity of the German tax system than to the way the market for literature on tax law operates: Franz W Wagner/Susanne Zeller, *Deutschland als Weltmeister der Steuerliteratur? Fallstudie einer Legende*, *Perspektiven der Wirtschaftspolitik*, vol. 12, 2011, 303–316.

responsible for the perception that comparative law research is always ‘off the beaten track’.

It is, of course, true that there is a special methodology (indeed a range of methodological approaches, some mind-bogglingly complicated) one can read about in the comparative law literature. Yet the reason for this is that the relevant literature has to cater for comparisons between vastly different systems, in vastly different fields, with a whole series of vastly different aims. Comparative law functionalism in particular was developed because it provides the only viable yardstick for assessing which of diverse legal systems ‘best’ solves a particular social problem. If, however, the research question is *not* a functional one, but of a more ‘doctrinal’ kind, and if the systems being compared are actually quite closely related, then the functional approach is not necessarily suitable or appropriate.

A second myth is that a deep and meaningful engagement with ‘foreign’ systems is the hallmark of all comparative law. Yet this supposes too much. Scholarly expertise is never unlimited. Even specialists in comparative law are inevitably confined to working in the fields and systems they know about. Just because someone regards him- or herself as a ‘comparative lawyer’ does not make them into an expert in all areas of law or all jurisdictions. Conversely, just because many scholars would not describe themselves as ‘comparative lawyers’ does not mean that they cannot or do not engage in comparative reflections when it comes to their specialist fields using their existing legal skills. Common lawyers around the world routinely read each other’s work and discuss cases from other common law jurisdictions. This form of cross-jurisdictional engagement is so ubiquitous that universities in the Anglo-American sphere tend to reserve the term ‘comparative law’ for the exercise of looking across the common law/civil law divide and beyond. A similar phenomenon is evident in Nordic countries, where there is an intensive discourse (not merely academic, but also judicial and legislative) between lawyers from Sweden, Denmark, Norway, Finland and Iceland and where scholarly journals easily span all five jurisdictions. The two phenomena should rightly be described as, respectively, ‘comparative common law’ and ‘comparative Nordic law’. That would emphasise the fact that they are *real* forms of comparative law. Although both may be much less demanding in terms of language and methodology than the ‘specialist’ form of compara-

tive law to which the term is so often confined, they are often more immediately fruitful as well as being much easier to access.²²

4. Domestic Law in a Comparative Context

What, then, are the benefits of enriching the national ‘black letter’ perspective (or whatever the usual domestic approach may be)²³ with a more overtly acknowledged comparative angle? One is obvious, but not restricted to the specific ‘form’ of comparative law at issue here. Sometimes domestic scholars make suggestions for law reform based on inspiration they have found elsewhere. As Zweigert & Kötz – citing Rudolph von Jhering – observe, ‘only a fool would refuse quinine just because it didn’t grow in his back garden’.²⁴

Yet mostly the value of adopting a comparative angle lies elsewhere. Contextualising our own system as part of a matrix of (closely related) systems can teach us a great deal about it. It shines a spotlight on its specific strengths and weaknesses, exposes its ‘blind spots’ and at the same time helps us to see how we can improve the system *from within*. A colleague, whose encounter with comparative law was originally of just such a ‘contextual’ nature, put it very aptly thus: ‘Once you have seen something about your own system, you can never un-see it’.²⁵ If domestic lawyers become aware of the unspoken assumptions and implied connotations they have imbibed through their legal training, then they will be scrupulous in checking that (and how far) these are warranted before basing any firm conclusions on them. If they know where their system is an ‘outlier’ and where it broadly follows the ‘mainstream’, they will have a sense of direction when coming to a critical crossroads. Both alignment and deviation are then less haphazard matters of chance, but reflect better informed and more deliberate choices.

²² This is not to say that ‘comparative common lawyers’ and ‘comparative Nordic lawyers’ could not learn some useful lessons from ‘specialist’ comparative law. They certainly could. On the other hand, they will be able to dispense with those twists and complexities of traditional comparative law methodology which are primarily down to the great variety of, and large discrepancies between, different legal systems.

²³ In the case of Nordic systems, it may be more appropriate to speak of a domestic ‘functional’ perspective.

²⁴ Zweigert/Kötz, *supra*, n. 14, at 17, referring to Rudolph von Jhering, *Geist des Römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Part I, 99th edn., 1955, at 8–9.

²⁵ With special thanks to Elisabeth Ahlinder, who made this comment in the discussion following the lecture on 22 May 2024 (see the starred footnote on p. 39 above).

The great playwright, poet and polymath Johann Wolfgang von Goethe (the nearest German equivalent to Shakespeare) famously said that we ought to compare ourselves to others in order to know ourselves better,²⁶ and Thomas Mann (who admired Goethe) famously added that once we recognise – through comparison – who we are, we can truly become the person we are meant to be.²⁷ Transposed to the realm of law, surely that is what legal scholarship is all about!

5. A Summary in Three Theses

‘Brevity is the soul of wit’ is another well-known proverb originating in Shakespeare’s *Hamlet*.²⁸ In this spirit, it seems appropriate to present a summary in three short theses by way of conclusion:

Firstly, there is – and continues to be – a place for comparative lawyers in national law schools, irrespective of whether their scholarship consists of ‘basic’ research valuable for its own sake or whether it is of the ‘applied’ kind that can help support legislators engaged in law reform and even inform courts in the application of domestic law.

Secondly, conducting comparative research on jurisdictions quite far removed from one’s own is a wonderfully enriching scholarly experience, but takes a great deal of time and special expertise; it is therefore rightly regarded as a matter for specialists.

Yet thirdly and conversely, just because many scholars think of themselves as ‘ordinary’ domestic lawyers does not mean that they should not strive to obtain an awareness of where their system stands in relation to others by contextualising it comparatively, particularly against the backdrop of closely related systems. That, too, is an important and ‘real’ form of comparative law. It makes the academic players better on-stage actors in the theatre of law.

A very HAPPY 25th BIRTHDAY to the SCCL!

²⁶ Johann Wolfgang von Goethe, *Torquato Tasso*, Act 5, Scene 5: ‘Vergleiche Dich! Erkenne was du bist!’

²⁷ Thomas Mann, *Joseph und seine Brüder (Joseph in Ägypten)*, chapter ‘Von Josephs Keuschheit’: ‘Denn nur durch Vergleichung unterscheidet man sich und erfährt, was man ist, um ganz zu werden, der man sein soll.’

²⁸ Shakespeare, *Hamlet*, *supra*, n. 2, Act 2, Scene 2.