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Comparative law as *cherry picking* – How comparative law has been struggling with the possibility of *Systemdenken* and why there is comparative law beyond the functional and cultural turn

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The history of comparative law as a modern discipline is perhaps best understood by examining the 'System' that each comparative legal approach (e.g., functionalist, critical, etc.) constructs in order to overcome differences among jurisdictions. Such a *System* is based on the perception of law as a logical order governed by means of specific general principles, namely justice, legal certainty and – more importantly – a *tendency towards abstraction*. The latter is key to understanding why certain legal systems (common law, for instance), while sharing a notion of law based on the same axioms, have not engaged in *Systembildung*. If the abstract approach to law represents the key feature of *Systemdenken*, it is for that reason that the functional method, despite its claim of being undogmatic, has been criticised for being a "German legal/culture product" just as its underlying *Systemdenken* and, therefore, not suited to serve as a *general* approach to comparative law.

If law or legal thinking is hence not only inseparably intertwined with culture, but *is* culture, as some would claim, comparative law, cannot be treated any differently than a study of a foreign culture; an exercise that I would argue can only be accomplished by becoming one with the *other (culture)*. Becoming one with the other, however, while requiring an intense process of acculturation, is neither impossible nor undesirable but touches the very essence of the understanding of oneself. Only by engaging with the other in a *self-overcoming* manner, will one find out about one's own characteristics.

Unlike a local economist's or a local artist's impression of a specific legal problem, the foreign normative perspective, aiming at establishing and promoting a just order, proves not only to be of interest, but of *value* from the local legal perspective. Comparative law, however, must find a way of reconciling the normative value of law-as-such and the fact of law always being embedded in concrete (i.e., cultural) challenges. The different approaches in comparative law have mostly responded to these challenges by stressing the one or the other: Law's normative quality (or qualities) or the laws' cultural bondage.

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