



The World Picture *of* Comparative Law



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AND **O. V. Kresin**

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Oleksiy V. Kresin

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Chapter 1

Introduction

The chapters herein are partly based on reports made during a series of comparative law events – the International Symposium Drawing Legal Pictures: The Worldview and its Implication for the Purpose and Method of Comparative Law and International PhD Workshops Series Strategies in Comparative Legal Research, both held in May 2023 at Lausanne, Switzerland. They were organized and supported by: Swiss Institute of Comparative Law (ISDC); Centre of Comparative, European and International Law at the University of Lausanne (CDCEI UNIL); Koretsky Institute of State and Law, National Academy of Sciences of Ukraine; Association of Universities in Western Switzerland (CUSO); *The Journal of Comparative Law*; and the Swiss Society of International Law.¹

The Symposium pursued the idea that every discipline perceives and constructs the world in its own way: it conceptualizes and structures an aspect or a fragment of (perceived) reality and develops a research program and method(s) that are apt to develop this construction process, having in mind a specific vision or mission. One can call such disciplinary perception and construction a special world picture of a discipline.

In various ways the appropriate concept had been considered by Sir Isaac Newton, Immanuel Kant, the Humboldt brothers, Dilthey, Martin Heidegger, and others. Depending on different modes of scientific rationality, the world picture can be seen as the object, subject, or aim of a scientific discipline. In any case, even if not explicitly stated, this construction is a core issue of any discipline.

In law, various (sub)disciplines such as legal philosophy, legal theory, and comparative law have developed sundry (albeit often mutually influenced) interpretations of the world. One could

¹ A detailed account of these comparative law events was published in *The Journal of Comparative Law*, XVIII (2023), pp. 592-601. We express here our deep appreciation for the efforts of Lausanne colleagues involved in the organization of these activities: Dr. Lukas Heckendorn Urscheler (vice-director of the ISDC), Prof. Andrea Bonomi (ex-director of the CDCEI UNIL), Prof. Andreas Ziegler (director of the CDCEI UNIL, President of the Swiss Society of International Law), and others, including the members of research, library, and technical staff of the ISDC.

argue that there has been competition between the (sub)disciplines for the right or the possibility to define a world picture generally valid for discourse about law.

The Lausanne symposium was intended to create an awareness of the fundamental experience and potential that comparative law possesses when conceptualizing the “legal”. Relying on its rich experience, comparative law is well positioned to take into account current developments in the field when (re-)defining its world picture, in order to conceptualize perceptions of law in a truly global perspective. The symposium invited participants to discuss the dialectics of the Individual/unit (national and/or other legal systems), the Particular/common and the (non)existence of the General/global in the legal world as the material basis of a comparative law world picture.

Some core issues of the Symposium were reflected in the report of Dr. Lukas Heckendorn Urscheler. He pointed out that comparative law generally starts with the assumption that national law is the (main) “object” or “unit” of comparison. He expressed doubts as to whether the assumption still holds: there is great variety in comparative legal studies of “what” is compared, and the debates on classification of legal traditions/systems reflect a more open approach. In terms of origin and evolution, the notion of national states in the West contributed to the nationalization of law in nineteenth century; law previously had taken different (non-national) forms. In twentieth-century Europe, national law became a reality, and law finally became a “national” discipline, often considered as a system. This view, considered to be universal, disregarded the law of nations and non-Western realities, as well as the omnipresent interaction of State legal systems with other normative orders (religious and transnational norms, customary law, and others). These orders imposed limits on the concept of State law. Today, State law remains an important unit in legal development, but it is not necessarily fundamental for comparative law. In comparative law, there is growing awareness of this element, but profound paradigmatic shift has yet to occur.

The chapters herein, for the first time presenting the complex philosophical and historical vision of the world picture of law developed in comparative law (comparative jurisprudence), is considered by American, Cypriot, Italian, Moldovan, and Ukrainian scholars – Oleksiy Kresin, Mehman A. Damirli, Matteo Nicolini, Oleg Halabudenko, James Gordley, Michele Graziadei,

Marco Giraudo, Oleksandr and Denys Tykhomyrov, Oleksandr Tkachenko.

The second group of articles presents a vision of the spaces of legal ordering and legal interactions as addressed by American, Belarus, Italian, Mexican, Romanian, Ukrainian, and Uzbek researchers – Akmal Saidov, Aleksei Egorov, Hashmatulla Behruz, Serhiy Rabinovych, William E. Butler, Evhen Kharytonov, Olena Kharytonova, Manuel Gutan, Carmelo Massimo De Iuliis, and Jorge A. Sánchez Cordero.

Finally, the third block is dedicated to the issue of implementation of the elaborated comparative legal world picture in academia and legal practice: articles by scholars from Canada, Hungary, Romania, United Kingdom, and the West Indies – Geoffrey Samuel, Alexandra Mercescu, Csaba Varga, Catherine Valcke, and Asya Ostroukh.

A number of these chapters appeared in *The Journal of Comparative Law*, XIX, no. 1 (2024). Some have been subsequently revised, and others appear here for the first time. Seven chapters were translated by Professor Butler.

William E. Butler
Oleksiy V. Kresin

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