

Comparative Law in the Age of Governance

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Some 20 years ago, due to a more and more rapidly developing economic and legal integration both in Europe and globally, comparative law became a more generally applied research method and a tool for finding and understanding legal thought patterns. Comparative lawyers in fact lost their comfortable position as specialists and had to leave their ivory towers, as comparative law became a part of research (and sometimes) teaching in all fields of law. Once when more and more research was done, the comparative knowledge grew and comparative law gradually became a stepping stone for legal integration projects. The focus of comparative legal research was frequently on finding convergence and, if divergence was found, on finding ways to overcome this divergence. This tendency was the beginning of the changing nature of comparative legal analysis. Within the European Union comparative legal analysis is not done for the sake of l'art pour l'art, but for the sake of finding workable European solutions in areas where legal diversity is becoming a serious obstacle for legal harmonisation in the context of regional and global economic integration. Comparative law, after its initial stage as a specialisation in itself, having gone through a stage of becoming a generally accepted and used method for legal research, has entered a third stage of development: Awareness is arising that comparative law is no longer purely a method to understand how legal relations are governed (by whom, how and through which types of regulation) but, one step further, is more and more becoming an instrument of active intervention in the hands of those who want to achieve a purpose, e.g. to promote market integration or to justify the uniqueness, and hence the promotion as a leading model, of a particular legal tradition. This instrumentalisation of comparative law is, in my view, at the heart of the present approach to consider comparative legal analysis from the perspective of governance. European private law is, to me, a prime example. Legal integration within the European Union has, primary, a regulatory aim: to create an internal market. European private law is, therefore, a double edged sword with a traditional private law side and a regulatory side. Comparative law has become a method to both understand and create this double edged sword.