



Editors' Note: Engaging with Foreign Law and Comparative Law in Latin America

Claiming that comparative law has become increasingly relevant in legal research is hardly an overstatement. To a considerable extent, it is the result of academic efforts that, over the past century, have highlighted the challenges of comparing different legal systems. A growing literature is inviting us to take theoretical and methodological issues seriously.

Nevertheless, transforming comparative law into a proper discipline is still a work in progress. There is still no clarity on what it means to compare, nor is there agreement on the basic canon of knowledge that everyone in the field must have.¹ Moreover, Latin American legal scholarship has remained somewhat marginal to the debates.²

In 2020, a group of legal scholars created the Chilean Network of Comparative Law. This Network aims to encourage the Latin American academic community in general, and the Chilean academic community in particular, to play an active role in developing comparative law as a field of inquiry and to enter into a dialogue with the emerging comparative legal scholarship.³

We are therefore delighted to present this special issue devoted to comparative legal studies. It contains six contributions that invite us to rethink how we Latin Americans engage with foreign law. Fundamental questions of the discipline underlie all of them: What is the function of comparative law? Should the comparatist focus on differences or similarities? Is legal comparison descriptive or normative? Are rules or legal institutions transplantable? How is comparative law influencing legal change?

In the first article, Ernesto Vargas discusses the English trust. By describing it as a case of 'rights against rights', Vargas aims to overcome what he claims are inaccurate conceptualisations of the institution. Throughout his piece, Vargas shows that the conceptual structure is completely alien to Chilean law. The author warns that this needs to be considered in potential legislative processes seeking to transplant trust into the Chilean legal system.

In the second article, María Elisa Morales explores the influence of foreign law on some of the most recent developments in Chilean consumer law. More specifically, the author examines the legislative processes of two pieces of legislation dealing with the protection of consumers. Then, she explores how the Chilean lawmaker decided which foreign solutions to borrow, employing the metaphor of legal transplants as a conceptual framework.

The third piece takes us to the field of procedural law. Its author, Constanza León, offers a micro-comparative study on the *Recurso de Casación* in Chile and Spain. León draws

¹ REIMANN (2002), p. 685.

² SALAYMEH AND MICHAELS (2022), pp. 167-169.

³ VAN HOECKE (2017), pp. 271ff.

on the metaphor of legal transplants to claim that the Spanish notion of 'general interest' as a legal ground for initiating a cassation proceeding should not be borrowed by Chilean law.

Dealing with tax law, Patricia Toledo-Zúñiga and María Pilar Navarro-Schiappacasse explore the similarities and differences between the Chilean and Spanish General Anti-Avoidance Rule. By doing so, the fourth article of this special issue seeks to offer some general lessons stemming from the pros and cons of the Spanish approach to tax avoidance.

Nelson Rosas and Pablo Marshall introduce the Spanish-speaking audience to the functional model of legal capacity developed in the common law. After outlining the model's underlying ideas, these authors discuss how the model has been applied in three different jurisdictions: England and Wales in the United Kingdom, British Columbia in Canada, and Queensland in Australia.

In the closing piece of this special issue, Liliana Ronconi, Brenda Espiñeira, and Soledad Guzmán examine comprehensive sexuality education. Drawing on international human rights law arguments, these authors define the scope of the obligations by which States should be bound in this regard. Then, based on this, they critically assess the approach adopted by fifteen Latin American countries.

We want to thank the authors for sharing their thought-provoking articles with us and the reviewers for generously contributing to enrich this special issue. We also want to thank the Latin American Legal Studies team for their thorough work in preparing this special issue. Congratulations on getting the journal indexed in Scopus.

Guest Editors

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