

# Challenges in Comparative Constitutional Law Studies: Between Globalization and Constitutional Tradition

## Special Issue – Comparative Law

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Tradition is a matter of much wider significance. It cannot be inherited, and if you want it you must obtain it by great labour. It involves, in the first place, the historical sense (...) and the historical sense involves a perception, not only of the pastness of the past, but of its presence; the historical sense compels a man to write not merely with his own generation in his bones, but with a feeling that the whole of the literature of Europe from Homer and within it the whole of the literature of his own country has a simultaneous existence and composes a simultaneous order. This historical sense, which is a sense of the timeless as well as of the temporal and of the timeless and of the temporal together, is what makes a writer traditional. And it is at the same time what makes a writer most acutely conscious of his place in time, of his contemporaneity.

T.S. Eliot – 1921

### 1 Introduction: ‘On the Method of the Methodology of Comparative Constitutional Law’

In the last few decades, we have witnessed the renaissance of comparative constitutional law as a field of research. Despite such a flourishing, the methodological foundations and the ultimate *ratio* of comparative constitutional law are still debated among scholars, who are divided among many different methodological approaches. Moreover, even the most traditional approaches to comparative law are challenged by new phenomena, such as globalization, the migration of constitutional ideas (Choudhry 2002), and the so-called judicial dialogue (de Vergottini 2010; Cassese 2009; Mak 2013)<sup>1</sup> among courts all over the world. Are we

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1 For the specific dialogue within the European space see Martinico 2010, p. 258; Martinico & Fontanelli 2008, p. 1.

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witnessing a process of convergence of the systems of the world towards a global dimension of constitutional law? And if so, what is the role and the meaning of comparative constitutional law in the new changing contours of legal systems around the world?

In order to tentatively address such basic issues in the field of comparative constitutional law, going back to its foundation, the essence and the methods of comparative constitutional law, seems to be inevitable.

Comparing different constitutional systems is 'somewhat like travelling. The traveller and the comparatist are invited to break away from daily routines, to meet the unexpected and, perhaps, to get to know the unknown' (Frankenberg 1985, p. 11).

This statement captures the very essence of comparative law and therefore of its method: comparative constitutional law is essentially a relationship with someone who is different and unknown and who is the object of the comparative inquiry.

Not only is comparative constitutional law per se a matter of relationship, but the method of comparative law also has at its very heart a 'relational' nature.

As a traveller, you can discover the place you go through a map, especially a most detailed one, or by being introduced to the place by someone who is already familiar with the place and can bring you into the most meaningful and even remote corner of it. Even the comparatist can learn about a different system reading the texts (the 'maps') of a legal order, or being introduced by someone who can show him or her the coordinates of a given legal system.

The latter is the method I was introduced to by Prof Giovanni Bognetti, one of the most prominent comparative constitutional law scholars in Italy,<sup>2</sup> whom I had the privilege to know in person and who introduced me to the path of the method of comparative law. What makes Prof Bognetti's contribution invaluable to the study of the methodology of comparative constitutional law is the 'fruitful dialogue' and the 'constant harmony' between methodology and content in his research (Iacometti 2017, p. XV; Toniatti 2014, p. 161). In particular, his methodology was strongly rooted within the historical-comparative science of law, that is, a search for the historical truth of systems and the legal standards within the context in which they exist. Indeed, Bognetti, in his seminal book 'Introduzione al diritto costituzionale comparato' defines comparative constitutional law as the main link between the historical knowledge of the modern law and the history of the humankind in general and of its various civil realizations (Bognetti 1994). Comparative constitutional law is, in other words, a kind of mirror of the 'competing vision of who we are and who we wish to be as a political community' (Hirschl 2014, p. 139), reflecting the structural tension between universal-

2 He belonged to a generation of Italian scholars who inaugurated a series of seminal studies in comparative constitutional law in Italy (with G. Lombardi, A. Pizzorusso and G. de Vergottini) after the work of giants like G. Gorla, R. Sacco and M. Cappelletti (the 'founding fathers' of comparative law studies in Italy who, however, had a different background: legal history, private law and civil procedural law). On Giovanni Bognetti contribution, see Ferrari 2014.

ism and particularism, globalization and constitutional tradition.<sup>3</sup> It is along the thin line, between the global dimension of law and its particular roots linked to a given community, that today, more than ever, comparative constitutionalists must carefully walk.

This contribution aims to address some of the main contemporary methodological challenges faced by the studies of comparative constitutional law, following Prof Boggetti's journey, which goes from the study of classical topics of comparative constitutional law, such as federalism, separation of powers, rights protection, to the more challenging ones, such as globalization, the EU integration process and constitutional identity.

In this journey, we will assume as a general methodological premise Boggetti's distinction between two main categories of comparatists: the 'historical comparatist' and the 'practical' one. As we will see, they deal differently with methodological issues, because the ultimate purposes of each are different. Despite such structural differences among these different categories, the article argues that contemporary comparative constitutional scholars have to face these two common challenges: (1) integrating the classical 'horizontal' comparative method with a vertical one – regarding the international and supranational influences on constitutional settings – and (2) fostering an interdisciplinary approach to comparative constitutionalism, taking into account the perspective of the social sciences, as firmly suggested by Hirschl (2014, p. 166).

## 2 Comparative Constitutional Law: An Itinerary of Knowledge

The objects of comparative constitutional law have traditionally been the constitutions of modern States. The aim of comparative constitutional law is to study and confront the plurality of constitutional rules and to highlight similarities and differences in order to create models or ideal-types able to explain the ultimate values that underpin the constitutional agreements. Ultimately, if the aim of comparative law is to 'acquire knowledge of the different rules and institutions that are compared' (Sacco 1991, p. 6), comparative constitutional law is vested with a particular task: to acquire knowledge of the fundamental principles that forge the relationship between sovereign power and citizen's freedom in different constitutional systems.

Constitutions, in our understanding, are not static documents written in stone. They are 'living' creatures, which evolve over time in response to the emergence of new societal needs and new political wills, sometimes through formal changes, but more often through informal ones.

Assuming this dynamic status of constitutions – and of legal orders as a whole – constitutional comparatists cannot but work alongside political historians and political science scholars, all committed – although each of these with their pecu-

3 On the concept of tradition and its importance in comparative law studies, see Glenn 2014. Specifically on constitutional tradition, Pizzorusso 2008.

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liar and specific methods – with the task of objectively representing the moments of a given historical event. However, the comparatist will give specific attention to the ‘normative facts’, the principles defining the fundamental structure of the national legal order, both as originally conceived by the founding fathers and as applied by those who give effectivity to those norms (legislators, judges, legal scholars).

The study of formal constitutions according to this approach is just one of the aspects of the comparatist’s research. It needs to be complemented by other ‘formants’, as Rodolfo Sacco (1991, pp. 1-34 and pp. 343-401) defined each group or community, ‘institutionally involved in the activity of creating law’ (Monateri 2012, p. 7), in this way giving shape to a piece of the constitutional legal system. In the field of comparative constitutional law, we can identify different formants: the legislator, committed to the implementation of the formal constitution, the judges, who are trusted with task of interpreting the constitutional principles and the legal scholars (the doctrine) who might be relevant in influencing the states’ authorities and the society.<sup>4</sup> The comparatist has to look at the phenomenon he wants to study through the different lenses of all these formants and by taking into consideration the evolution determined by the activity of all of these actors in shaping the legal order, being also aware that ‘the number of legal formants and their comparative importance vary enormously from one legal system to another’ (Vespaziani 2008, p. 563). Moreover, a comparative analysis, to be successful, should also take into account the influence of the so-called ‘cryptotypes’ (Sacco 1991, pp. 385-386), implicit rules that deeply influence the concrete implementation of codified norms. Identifying a cryptotype (which is facilitated when an idea implicit in one system is explicit in another) may help to explain why, in different legal systems, identical statutes or scholarly formulas give rise to different applications, and, conversely, identical applications are produced by different statutes or different scholarly formulas (Sacco 1991, p. 385).

Given such a complex intersection between the ‘law in the books’ and the ‘law in action’, the constitutional comparatist has to take into account not only the formal constitution, but also the ‘living constitution’; and in doing so he cannot ignore the broader historical, cultural and economic context in which a constitutional system evolves.

This is a crucial methodological challenge: this perspective allows the comparatist to go beyond the merely classificatory exercise and to go deep in discovering the roots and the reasons why certain ideas developed in a given moment and the ultimate purpose of certain rules – similar or dissimilar – adopted in different legal systems over time. The comparison ultimately is fostered by the dialectic tension between different legal orders, which moves between the two poles of the ‘Untersheide’ and the ‘Gemeinsamkeiten’ (Ridola 2010, p. 245).

An example may clarify this perspective focused on the law in action. If we look at one of the most common concepts within the study of comparative constitutional law, the federal principle, comparative legal scholars have identified and classified

4 On the concept of formant, see Sacco 1991; Monateri 2012).

all the possible variants of federalism adopted at the constitutional level. Starting from the principle of dual sovereignty, developed by the American framers, legal scholars have made a sort of ‘distillation’ of the federal principle, identifying four main abstract models of vertical divisions of power: the federal, confederal, regional and unitary state.

These four categories are widely used in order to explain the different ‘forms of State’ we can trace and also the most recent trends within the organization of powers in a composite legal order.

However, it is well-known that such a categorization has been challenged by the recent and still ongoing processes of devolution of powers within multilevel systems of government and by the crisis of the traditional concept of sovereignty itself.

How can the comparatist deal with the emergence of new phenomena that cannot be classified with the traditional legal categories? Both the dynamic concept of legal systems and research about the ultimate values of the federal principle may work as cornerstones for the comparative inquiry.

Indeed, if we look at the federal principle not as a static, immutable category, but as a process – the federalizing process (Elazar 1987)<sup>5</sup> – we can also explain new processes involving the vertical distribution of powers not included within the classical categorization, such as, only to mention the most famous case, the division of powers within the European Union (Vanoni 2009). Confronted with these new phenomena the comparative methodology also must be rethought, for example, going beyond the classical ‘horizontal’ comparison to also embrace a vertical dimension of comparative law (Scarciglia 2015, p. 46)<sup>6</sup> in order to encompass the multiple interactions among legal orders in different legal contexts.

Moreover, in order to achieve a complete understanding of the federalizing process or similar phenomena (regionalism, devolution etc.) it is necessary to investigate the *raison d’être* of the federal principle itself. Going back to the origin of the federal idea, we can see that the federal principle has to do with the ‘need of people and polities to unite for common purposes yet remain separate to preserve their respective integrities’ (D. Elazar 1987, p. 33). As Bognetti argues,

‘the federal system – that adds a vertical division of powers to the horizontal one – breaks up the powers of sovereignty not to achieve – as one school of thought in our century argued through an “updated” interpretation – generic and changing pluralistic equilibria among social groups centred on geographic distribution or interests, but to establish, among those groups, and to better ensure the system of “separated” civil society, guaranteeing an orderly framework of political institutions that protect and favour civil society’. (Bognetti 2015, p. 160)

5 For a dynamic approach on federalism see also Friedrich 1968.

6 See also infra Section 4.

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In other words, federalism was primarily conceived as a tool in order to better protect individual rights from the power of the state. Looking through the lens of the ultimate value protected by the federal idea of the division of powers, we can better understand contemporary issues involving the vertical division of powers, not only in a new constitutional constellation (EU) but also in systems traditionally considered as a unitary or ongoing process of devolution. In this regard, a very recent case decided by the UK Supreme Court dealing with abortion rights is very interesting.<sup>7</sup> Basically, the appellant, a UK citizen usually residing in Northern Ireland, argued that it was unlawful for the Secretary of State of Health to have failed to make a provision that would enable women – in the situation of residence of the appellant – to undergo a termination of pregnancy under the National Health System (NHS) in England free of charge.

The Supreme Court held by a 3–2 majority that the Secretary of State was not compelled to provide abortion services to UK citizens usually residing in Northern Ireland, and that the respondent was entitled to respect the democratic decision of the devolved administration in Northern Ireland and to acknowledge the ability to purchase private abortions. According to the UK Supreme Court, it was basically a matter of devolved powers in fundamental rights protection, as it was, even if with partially different outcomes, for the US legal framework on abortion law.

The very nature of the federal idea definitively allows us to identify the legal value at stake, and to understand why a system, which is not *strictu sensu* federal, may share the same issues experienced by traditional federal states, even if reaching different outcomes.

As one can notice, the result of such an approach is basically a theoretical one, i.e. acquiring knowledge of the different institutions that are compared. But of course comparative constitutional law also has a practical impact in orienting and influencing the decision of the actors involved in applying and interpreting the law.

This kind of practical use of comparative constitutional law is particularly clear in the phenomenon called legal transplantation or even in the circulation of models, which is – fostered by globalization (Twining 1999) – one of the leitmotifs of contemporary constitutional law.

### 3 Comparative Constitutional Law as a ‘Round-Trip’

As a practical science, one of the most traditional uses of comparative law is to prompt and suggest to the legislator solutions or to verify proposals introduced in other legal orders facing the same challenges. With regard to the role of judges, the use of comparative law may foster judicial dialogue and the circulation of constitutional ideas and tools of adjudication, in particular in the field of rights protection (i.e. proportionality tests).

7 *R (on the application of A and B) v. Secretary of State for Health*, 14 June 2017, UKSC 41 on appeal from 2015 EWCA Civ. 771.

In this sense, the journey of comparative law is a round-trip, since, after knowing the law of the others, the jurist comes back to his home system with his new knowledge in order to bring new understandings and solutions to his own country's law.

Regarding the legislator, although each legislator is absolutely free to make use (or not) of comparative law and to choose those systems which may be useful for its own purposes, we witness an increased use of comparative law, especially within the first phase (the cognitive one) of the legislation-making process, thanks to the work of specific parliamentary commissions. This phenomenon is also fostered by the development of a net of inter-parliamentary cooperation and of a kind of 'dialogue among legislators' (de Vergottini 2015, p. 957).

It is noteworthy that within the legislative activity, the use of comparative law is limited to the cognitive moment of the decision-making process and it plays mainly an auxiliary role within the formation of the legislative intent.

More pervasive, at least in certain jurisdictions, is the use of comparative law by judges, especially of the supreme and constitutional courts.

The comparative argument is increasingly deployed by several supreme courts, being an interpretative tool at their disposal. Differently from the legislator, who uses comparative law simply in a descriptive way in order to prepare the text of the law, judges have started to use comparative law as one of the elements of constitutional interpretation. The so-called and debated 'judicial dialogue' is only the most evident phenomenon of such an interaction between courts belonging to different systems. The use of comparative law within the legal reasoning of the Court may vary widely: there are courts that massively use comparative law in their reasoning (the Supreme Court of South Africa, the Canadian Supreme Court), others that make only a parsimonious use of foreign law and still others that do not make – at least explicit – reference to foreign law (the Italian Constitutional Court). Despite this wide range of attitudes shown by Courts towards foreign law, judicial dialogue is one the most studied and wide-spread phenomena that characterize the so-called 'new constitutionalism'.

Such an interaction may lead to the use of comparative law in order to foster a certain interpretation of domestic law (substantive use of comparative law) or to introduce a new tool of constitutional interpretation (procedural use of comparative law).

With regard to the second category, one of the clearest examples is the widespread use of proportionality tests in jurisdictions where it was originally unknown, as in the United States, South Africa and Australia (Cohen Eliya & Porat 2013).<sup>8</sup> and also at the international level within the European Court of Human Rights (ECHR).

Even in these practical applications of comparative law, the question of knowledge per se and the method of comparative law is crucial.

Consider the case of legal transplant: the legislator who performs it, in order to be sure that the transplant works, has to be able to select the relevant cases and

8 See also Jackson 1999, p. 583.

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in doing so has to perfectly know not only the institution itself, but the cultural, political context in which that institution developed. He should also select legal systems as close as possible to the legal tradition of the domestic legal context. As Prof. de Vergottini (2015) argues, different from legal scholars, whose freedom of research can bring them to compare systems belonging to different traditions, judges and legislators (the practical jurists) are bound, when making reference to comparative experiences, by the issue of the homogeneity of the compared systems.

This specific constraint is typical for the practical jurist and not for the researcher, who is free to perform the comparison even with very different legal systems.

Even judges, when ruling on the basis of arguments offered by the comparative analysis, should not forget the link between a certain solution and the relevant economic, political and social contexts at the domestic level and at the comparative level.

In sum, the jurist committed to the practical application of comparative law has to travel in order to know the law of the others, but he always has to look back home, in order to find the best solutions that can be plausibly implemented in his national system. Comparative law is, in its very essence, a trip back home.

#### 4 Comparative Constitutional Law Facing Globalization: The Need for New Methodological Approaches

If comparative law is a round trip, how can it deal with globalization, as defined by Tushnet as ‘the convergence among national constitutional systems in their structures and in their protection of fundamental human rights’ (Tushnet 2009, p. 987)? In other words, how can the comparatist reconcile the strongly national attitude of constitutional law with the end of boundaries fostered by globalization processes? The dualism of globalization and comparative law may appear a kind of oxymoron: if globalization prompts uniformity between legal systems, comparative law loses its *raison d’être* as a science that looks at the differences and similarities in a selected legal system, trying to identify the drivers of differences and similarities.

This kind of antinomy is clearly expressed by Ugo Mattei, who, in a seminal article about the challenges of comparative law in the United States, argued that: ‘in a way, globalization is to general comparative law what the fall of the Berlin wall was for Soviet Union legal studies. It is a revolutionary moment which carries with it a great opportunity that we do not want to miss’. This is the ‘era of comparative law’ (1998, p. 714), a crucial moment of transition for comparative constitutional law, whose methodology needs to be reshaped and reoriented to face the complexity and the ever-growing interdependence among legal systems and legal orders.

Although the drivers and the effects of globalization apparently seem to undermine the *raison d’être* of comparative studies, on the contrary globalization offers a great opportunity to reshape the methodology of comparative law, forcing comparatists to deal with new phenomena of convergence among national constitu-



tional systems and with the development of public powers beyond the boundaries of the States, in the international and supranational arena.

Moving within this new 'space' of comparative constitutional inquiries – the global space – characterized by a level of unprecedented and apparent convergence especially in certain areas of the law, such as that of fundamental rights, the comparatist must be aware of the system's roots in order to really appreciate the meaning and the real impact of what apparently may seem to be a trend of convergence in a given system. As Jacco Bomhoff argues, with regard to cases of convergence in the use of the proportionality test by courts in judging fundamental rights, the comparatist should be careful in inferring convergence at a deeper level than superficial similarities in doctrinal forms (Bomhoff 2008).

Only through a deep knowledge of a system in terms of history, culture and economics can the real impact of a globalizing trend be properly assessed. In this regard, again Tushnet argues that 'there is no reason to think that the "top" with respect to any specific constitutional guarantee is the most robust protection offered anywhere in the world. Constitutional guarantees come with costs, some to other constitutional values; and the nation with the most robust protection of a particular guarantee may be giving insufficient weight to those other values' (Tushnet 2009, p. 987).

Again, even if globalization is an inevitable process, this does not mean that it will condemn comparative law to a sort of marginalization. On the contrary, this forces the comparative scholar to be aware of the importance of the cultural and historical roots of a given system in order to see how globalization affects the original values on which a system was based.

Under the point of view of the methodology, the apparent oxymoron between globalization and national identity might be faced by a new line of comparative inquiries; the first one is by complementing the traditional horizontal approach with a vertical approach of comparison. If the main literature of comparative constitutional law compares legal systems belonging to the same level – both national or both international – the ongoing process of globalization requires legal scholars to deal with a global dimension of the law (global law). Facing either 'an imposition of global rule at the national level or the adoption in a global sphere of principles and values of a domestic legal system' (Scarciglia 2015, p. 46), legal scholars are obliged to rethink the use of comparative methodology.

The new direction of comparative constitutional law we suggest here is that of the so-called 'vertical comparison', i.e. 'the comparison between systems, or legal institutions not belonging to the same level' (Scarciglia 2015) under a twofold perspective: a top-down approach, investigating the influence of international law at the domestic level, and a bottom-up approach dealing with the transposition of domestic law at the international level.

This approach to comparative constitutional law may combine 'the dynamic profiles of legal traditions with the transition from the traditional study of nation-states to that of epistemic communities' (Scarciglia 2015). In such a way, vertical comparison enables the comparatist to identify what Scarciglia has defined as the 'common zone of impact', the ever-growing intersection between the local and the

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global (rules, formants and institutions common to both sets and their respective influence).

Definitively through vertical comparison, comparative legal scholars are able to face global phenomena that affect national law, without giving up their peculiar aim to better know the evolution and development in ever-more-complex, living legal orders.

In order to deal with such a complexity, the second methodological issue we want to address here may help. Some years ago, Sacco argued that those who use comparative methods to study law have yet to realize that there are other comparative sciences; it ought to join forces with them, and it ought, if possible, to profit from their experiences.<sup>9</sup> A similar view was shared by Giovanni Boggetti, who emphasized the importance for a comparative constitutional scholar to take an inter-disciplinary approach, which he considered necessary in order to catch 'unusual but fundamental aspects of reality' (Boggetti 1994, p. 195). This methodological direction has been recently highlighted by the seminal book of Ran Hirschl, dealing with the need to open up and complement comparative legal research with other disciplines, such as economics, politics, sociology and history.

In our view, the transition from comparative law to comparative legal studies, 'toward a more holistic approach to the study of constitutions across polities' (Hirschl 2014, pp. 226, 283), as Hirschl conceives the use of other disciplines for comparative legal analysis, is key.

Central to this approach is the understanding that legal processes – and comparative law itself – are deeply influenced by sociopolitical and historical factors; only through a deep knowledge of such patterns can legal scholars give better reasons and predict the direction taken by the actors engaged in interpreting or enacting a certain constitutional set of rules and values.

An example drawn by Hirschl in his seminal book may help in understanding the importance of this shift in methodological approach. Looking at one of the most emblematic and studied legal phenomena of our contemporary time, judicial dialogue, Hirschl notes that the Israeli Supreme Court is used to making references to the decisions of other supreme courts, mainly belonging to the Western tradition (the United States, Canada, the United Kingdom, Germany), while ignoring the courts of those countries sharing with Israel more similar issues with regard to the relationship between religious identity and constitutional law.

The only way to understand this behaviour, according to Hirschl, is to rely on broader sociopolitical studies, which go beyond the mere study of cross-citations. This kind of research leads the comparatist to engage with more profound reasons that may influence this peculiar judicial behaviour, namely the cultural battle between a more modernizing, cosmopolitan worldview and a more traditional and orthodox one. The citation of Western countries' courts may be read as part of the strategy of the Israeli Court to foster the former view and not merely the functional way to cite from the most similar constitutional sets.

9 Sacco 1995, p. 5, quoted (in English) by Vespaziani 2008, p. 560.

The case of the Israeli Supreme Court clearly shows the particular contribution that comparative law can give: as Monateri argues, ‘a major task of comparative law can be to see how institutions are packed together with a consciousness to legitimate the governance of professional elites in a number of systems’ (Monateri 1997-1998, p. 845) and ‘to reveal the unofficial and critique those processes of meaning production as social and political realities, particularly in a world of “contaminations”’ (Idem.).

If comparative law is like travelling, the comparatist as a genuine traveller may wish to know as much as possible of ‘the other’ he is involved with, from history to traditional customs and the current sociopolitical context. Comparative law in the years ahead may make this step towards a wide comprehension of legal phenomena and towards more rigorous methodological patterns, also looking at the well-developed methodology of other social sciences.

## 5 Conclusions

Comparative constitutional law is a fascinating field of research, dealing with one of the most engaging human challenges: built-up legal orders that may face and govern the complexity of a given society. Looking at the differences and similarities developed by different legal systems, comparative legal scholars aim to better understand the ultimate reasons of certain institutional choices and their transformations over time, in a phrase the ‘constitutional life’ of a legal system. As Bognetti argued, ‘explored realistically in the light of its concrete historical development, the law of a system looks like a giant glacier in constant movement, perhaps slow, perhaps swift, depending on the moment, but not simply conforming to pre-established rules of development’ (Bognetti 1998, p. 45). Hence, comparative constitutional law also needs to be studied in this light, giving heed to the inevitable influence transformations – material or formal – in the form of the state have on the actual way in which constitutional powers are organized and fundamental rights are protected. We are in times of deep and particularly fast transformations of the contours of constitutional law and of its core features: on one hand the boundaries of nation states are becoming more and more porous under the pressure of globalization and transnational actors; on the other we are witnessing a strong revival of national identities and even of new kinds of ‘nationalism’. In light of such conflicting trends, what is the room for comparative constitutional inquiries? As Zumbansen argues, ‘the next step must be to bring together the evolving understanding of an emerging transnational legal-pluralist order with the insights into the necessity of grounding abstract concepts of any form of rights and legal regulation in concrete societal contexts’ (Zumbansen 2012, p. 203). In other words, in our challenging time, characterized by new and contrasting trends – of which globalization and the crisis of sovereignty are the most emblematic – the comparative constitutional scholar is vested with a particular and fundamental task: to better understand such profound transformations of our contemporary systems, and tentatively predict their evolution, looking at the future with a full awareness of the ‘past’ – because, like a poet, ‘he

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is not likely to know what is to be done unless he lives in what is not merely the present, but the present moment of the past, unless he is conscious, not of what is dead, but of what is already living' (Eliot 1921).

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