QUANTITATIVE LEGAL COMPARISONS:
NARRATIVES, SELF-REPRESENTATIONS AND
SUNSET BOULEVARDS

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Abstract: Quantitative legal comparisons embedded in global indicators comparing performance of states are probably the most outstanding comparative law product of the recent decades. Yet, these initiatives do not usually qualify as exercises in comparative law. Up to now, comparativists have either heavily criticised them or wholly ignored their existence.

The argument developed in this paper is that, by refusing to recognise global indicators as a new technology for comparing laws, comparativists have failed to notice the elephant in the room and have missed a good opportunity to learn from them. Through analysis of three global indicators — the “Freedom in the World” Index, the “Corruption Perceptions” Index, and the “Doing Business” reports — the paper aims to show that global quantitative legal comparisons, perhaps unintentionally, provide an answer to a number of criticisms that have been aimed at comparative law and offer an alternative paradigm for “doing things with comparative law” that deserves further attention.

Keywords: quantitative comparisons; numerical comparative law; global indicators; Freedom in the World Index; Corruption Perceptions Index; Doing Business reports; comparative law methodology; statolatry; perceptions of law; legal functionalism; functions of comparative law

I. Introduction

The editors asked contributors of this issue to “deal with new trends within the context of comparative legal studies”. This paper deals with what is currently considered a non-trend in the field of comparative law: the growth and success of quantitative comparisons embedded in global indicators comparing states’ legal performances.

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Global legal indicators\(^1\) are probably the most successful comparative law product of recent decades,\(^2\) at least if success is defined in terms of media coverage, scientific citations and real-world legal reforms’ effects.\(^3\)

These initiatives do not claim to be in comparative law, nor could they, according to the very few comparativists who have been prepared to acknowledge their existence.\(^4\) Most comparative lawyers have simply preferred to ignore them.\(^5\)

The argument developed here is that comparativists’ denial of this new technology for comparing laws closely resembles that of the triumph of “talking” pictures expressed by silent film star Norma Desmond in Billy Wilder’s movie “Sunset Boulevard”.\(^6\) While, as a self-proclaimed comparativist, I cannot fully share my colleagues’ frustration, criticism and hostility at global quantitative legal comparisons and I also think that, by refusing to include them within our contested vision of what “comparative law” is,\(^7\) we as comparativists are missing many opportunities to learn something from, and perhaps give something to, this

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\(^1\) There is no clear definition of what a (global) legal indicator is. We may tentatively define them as “measures, standards and rankings of the quality of law and legal institutions across the entire world, particular regions, or selected jurisdictions” (David Restrepo Amariles, “Supping with the Devil? Indicators and the Rise of Managerial Rationality in Law” (2017) 13 Int’l J L in Context 465, 466) or as quantitative initiatives that “collect variables that purport to measure a range of aspects of a country’s legal institutions or even specific aspects of a jurisdiction’s legislative and regulatory environment” (Tor Krever, “Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense” (2013) 34 Third World Q 131, 132).

\(^2\) Ralf Michaels, “Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law” (2009) 57 AJCL 765, 766 (“What is the most important development in comparative law you have never heard of? If you are a traditional comparative lawyer, chances are the answer is: the legal origins thesis and the Doing Business reports”) and Matthias M Siems, “The End of Comparative Law” (2007) 2 J Comp L 133, 144 (“The importance of these studies, and that of the World Bank’s Doing Business report, cannot be underestimated. This line of research is one of the most important trends in contemporary comparative legal and economic scholarship”).

\(^3\) For some evidence of the success of global quantitative legal comparisons, see Section III.

\(^4\) See, for example, Mauro Bussani and Ugo Mattei, “Diapositives Versus Movies — the Inner Dynamics of the Law and Its Comparative Account” in Mauro Bussani and Ugo Mattei (eds.), Cambridge Companion to Comparative Law (Cambridge: Cambridge University Press, 2012) pp.3, 5, who, referring to the World Bank’s Doing Business (DB) reports, note that “in our discipline no one would have dared (perhaps since Wigmore’s Panorama) to venture a comparison of so many legal systems in so little space knowing so little about any one of them”. See also Association Henri Capitant des Amis de la Culture Juridique Française, Les droits de la tradition civiliste en question. À propos des Rapports Doing Business de la Banque Mondiale (Paris: Société de législation comparée, 2006) pp.17, 31–32.


\(^6\) Sunset Boulevard (Paramount Pictures, 1950). As is well known, the movie centres on the delusional aging silent-film queen Norma Desmond, who plans a doomed comeback which culminates in murder. See britannica.com/topic/Sunset-Boulevard-film-1950 (visited September 13, 2019).

\(^7\) Speaking of “comparative law” as a monolithic discipline is quite naïve. Suffice it to recall the ongoing debates on methodology (and functionalism), systemology, micro versus macro, diachronic versus synchronic, contrastive versus integrative comparisons, opportunity of combining comparative law with historical and anthropological insights, to mention but a few. Yet, for the purpose of this paper, “comparative law” will stand for any form of non-quantitative and small comparative legal research.
new rapidly developing field. As this paper will hopefully show, global quantitative legal comparisons, perhaps unintentionally, cut through many of the Gordian knots that have animated debates and doubts about comparative law, and offer an alternative paradigm for “doing things with comparative law” that deserves further attention. While there might be many reasons for comparative law scholarship not to embrace the enthusiasm for global quantitative legal comparisons, there is all the reason to treat them as presenting a good opportunity to learn. Global quantitative legal comparisons, despite being highly problematic from many points of view, answer a number of critiques that have been brought through time to comparative law as we know it.

In the following sections, the paper therefore explores what global quantitative legal comparisons are and what they tell us about the state of art of comparative law, however defined. After locating global quantitative legal comparisons in the wider context of what has been called the “audit explosion” and providing some selective illustrations of what they are, the paper delves into their outstanding features, focussing on those that are of major interest for comparative law scholarship. Section V analyses who makes, and what competences are needed for making, global quantitative legal comparisons. Sections VI and VII investigate the focus of global quantitative legal comparisons — namely, states and their (written and perceived) rules. Sections VIII and IX examine global quantitative legal comparisons’ methodologies of inquiry and styles of presentation, as well as their understanding of what law and legal comparison are for. Finally, section X sums up what positions, beyond contempt and denial, are left to comparativists and what role comparativists might play in the emerging world of global quantitative legal comparisons.

II. The Quantitative Revolution

Global quantitative legal comparisons have not stemmed from developments within legal science. They are rather an offspring of a general paradigm shift towards quantification in social sciences and management practices that have occurred throughout the twentieth century. This paradigm shift, fuelled by the globalisation of American business-oriented and ranking-prone culture and by technological advancements in the standardisation, collection and treatment of mass data, has provided global élites with a robust faith in numerical control, besides the well-settled confidence in economic and financial data. A number of quantitative measurements of human-related activities — from population size to

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average wealth level, and from productivity to violence and to happiness — are increasingly relied upon and used as a technology for knowledge and governance.9

Until the 1970s, law was mostly untouched by these changes. At the beginning of the 1970s, legal scholars involved in the Stanford-based Studies in Law and Development (SLADE) project collected a massive amount of empirical data on a small sample of countries in order to investigate the relationship between law and development.10 As is well known, the project was swiftly discontinued: the information gathered was too much and too hard to manage. The lack of immediate results rapidly cooled down the enthusiasm of the scholars involved and, most importantly, of the development agencies that were funding the program.11 But in parallel, individuals and non-governmental organisations (NGOs) with an interest in global affairs began experimenting with global legal indicators, that is, with collection of data purporting to represent (often in numerical form), compare and rank performance of states with regard to an array of legal issues.12 These experiments have persisted.

In 1973, the New York-based NGO Freedom House (FH) published its first “Freedom in the World” report, assessing the condition of political rights and civil liberties around the world.13 In 1983, the British Amnesty International Campaigner Charles Humana distributed the first edition of his “World Human Rights Guide”, providing a survey of countries’ compliance with the standards set out in the 1948 UN Universal Declaration of Human Rights.14 In 1995, the Berlin-based NGO Transparency International (TI) launched its “Corruption Perceptions Index” (CPI), measuring perceived levels of corruption.15 In 1996, two World Bank (WB) economists inaugurated the “Worldwide Governance Indicators” series, exploring six dimensions of governance in every country of the world.16 Still at the WB, a team of economists of its Rapid Response Unit built upon the “legal origins” theory developed by the so-called LLSV group (from the initials of the proponents of the theory),17 and launched, in 2003, the “DB” reports to compare states’ investment

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12 For this definition, see Krever (n.1) 132.
13 See http://freedomhouse.org/content/our-history (visited 15 May 2019).
climate.\textsuperscript{18} In 2008 “World Justice Project,” an NGO sponsored by the American Bar Association, published the first edition of the “Rule of Law Index”,\textsuperscript{19} while in 2009, a University of Connecticut research team, led by development economist Sakiko Fukuda Parr, set up the “Social and Economic Rights Fulfillment” (SERF) Index for measuring economic, cultural, and social rights.\textsuperscript{20} All these projects and indexes are alive, and many of them have undergone a significant transformation.

The above are just some illustrations of global legal indicators; there are many others.\textsuperscript{21} It remains an open question whether these indicators could be classified as a source of law. Some authors emphasise that indicators are “not legal instruments as such”.\textsuperscript{22} Others claim that indicators “hold an intrinsic normative quality”.\textsuperscript{23} Still others even qualify indicators as “unconventional transnational norms”.\textsuperscript{24} While this is not the place to engage in that debate, what is worth stressing here is that, whatever their legal status, all these instruments have given rise to a substantial secondary literature. Secondary literature includes volumes and booklets complementing the indicators themselves and reporting original data and methodological caveats, as well as the thousands of works (mostly from statisticians, political scientists and economists) proposing refinements to an indicator or reworking the data provided.\textsuperscript{25} But this literature also includes critical scholarship, mostly represented by political science, international relations and anthropology studies, analysing the effects and drawbacks of relying upon indicators.\textsuperscript{26} Legal scholars have contributed to this critical strand of research: among them, many experts of law and development,\textsuperscript{27}

\begin{thebibliography}{99}
\bibitem{19} See https://worldjusticeproject.org (visited 15 May 2019).
\bibitem{20} See https://serfindex.uconn.edu/overview/ (visited 15 May 2019).

public international lawyers\textsuperscript{28} and a small number of comparativists.\textsuperscript{29} Yet, unlike their colleagues, comparativists have not discussed indicators in general. They have mainly focussed on the “legal origins” theory underlying the “DB” reports, perhaps because it came with an academic format and more clearly concerned their field of studies, devoting substantial efforts to demonstrating how deeply simplistic, biased and untenable were the theory’s methodology, assumptions and conclusions.\textsuperscript{30}

By concentrating on one global legal indicator and disregarding the phenomenon as a whole, comparativists have failed to notice the elephant in the room. Many reasons might explain comparativists’ neglect of global legal indicators as such: from the non-evident legal character of many indicators to the little interest traditionally paid by comparativists to the “global” sphere and to their distrust of large comparative exercises. But the fact remains that such large comparative exercises have enjoyed a success in academic and political circles so far unrivalled by any comparative law study.

### III. Some Illustrative Indicators

To fully understand what global quantitative legal comparisons have in common with (and might be educational for) comparative legal scholarship, it is useful to see in more detail some examples of how they are made and what they do. The paper offers three illustrations, scrutinising the already mentioned “Freedom in the World” Index (FWI), the “CPI” and the “DB” reports, always referring to the


latest available editions. All these indicators have seen significant changes, often responding to criticisms and comments.\textsuperscript{31}

The earliest of the three selected indicators is FWI, which evaluates states’ performances annually as far as rule of law and protection of political rights and civil liberties are concerned. States are given a score ranging from 0 to 100, with 0 being “least free” and 100 being “most free”. The final results are shown in a map with green–yellow–purple colours, in which green is good and purple is bad.\textsuperscript{32}

\begin{center}
\includegraphics[width=\textwidth]{Freedom_in_the_World_2019.png}
\end{center}

\textbf{Diagram 1: Freedom in the World Map}


Country scores are determined for FH by its in-house and external consultants with nearly 130 people assisting in the preparation of the 2019 edition. FH consultants use a publicly available questionnaire to find out how each country deals with electoral and political processes, free speech, labour rights, civil justice, protection of property and freedom of business. Consultants answer the questionnaire relying upon their personal knowledge and contacts, news media, official government statements, NGO reports, scientific articles and local visits. Answers are then translated into points, which are aggregated to assign a final score to each country. Unsurprisingly, the FWI has been subjected to much criticism, mostly focussed on its limited emphasis on civil and political rights, financial and ideological alignment with the views of the US government and obscure and heavily subjective methodology. Notwithstanding all such limitations, the FWI is often cited in academic writings to support arguments and test theories about democracy, development and economic growth. Most importantly, international organisations, such as the WB, and international donors, such as the US Millennium Challenge Corporation, use the FWI as one of the criteria to determine and evaluate aid distribution.

In 1995, a few years after the launch of the FWI, the Berlin-based NGO TI, founded by a German lawyer who had previously worked at the WB, published the first edition of its CPI. The CPI ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, and uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean. CPI’s results too are presented in a coloured map, with dark red meaning “highly corrupt” and light yellow meaning “highly clean”; a ranking of countries, from the least to the most corrupt, is also available.

35 See the website mentioned ibid.
37 Cf. Dutta (n.31) 429; Voigt (n.36) 20; Christiane Arndt and Charles Oman, Uses and Abuses of Governance Indicators (Paris: OECD, 2007) p.23 and Pistor (n.27) p.168.
38 Bush (n.36) 718–722 and Dutta (n.31) 430.
Scores are determined by the TI’s team by aggregating the results of many expert opinion-based indicators on levels of corruption in the public sector and the quality of the institutional and legal framework to fight corruption.\(^40\) In other words, CPI is a composite indicator, which collates data from different sources to come up with a score representing how corrupt a country is perceived to be. Needless to say, the CPI has not gone unchecked. Critical scholarship has highlighted a number of flaws underlying CPI’s conception and structure. Criticisms have mainly been as regards with issues such as the unreliability of experts’ opinions, the general weakness of perception-based surveys, the narrow conception of “corruption” the CPI embraces and chastising petty corruption by officials while turning a blind eye to corrupt activities of private businesses.\(^41\) Yet, CPI has proved to be a great success. It is

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credited with having solidified in the global agenda the idea that corruption is an obstacle to economic growth and having cemented the international consensus in the fight against corruption, paving the way for the adoption of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 and the UN Convention Against Corruption in 2003. While it is hard to establish a direct causal link between the CPI and specific legal reforms, legislative efforts against corruption (conceived à la CPI) have multiplied since 1995.

Stemming out from the WB’s long experimentation with assessing countries’ political and economic situation, the DB is the global legal indicator comparativists know best, although they tend to conflate it with the “legal origins” theory that inspired it. Since its first report in 2003, the DB ranks countries according to the business-friendliness quality of their regulatory environment, on the assumption that “good” laws are conducive to economic growth.

### Table 1.1 Ease of Doing Business Ranking

<table>
<thead>
<tr>
<th>Rank</th>
<th>Economy</th>
<th>EODB Score</th>
<th>EODB Score Change</th>
<th>Rank</th>
<th>Economy</th>
<th>EODB Score</th>
<th>EODB Score Change</th>
<th>Rank</th>
<th>Economy</th>
<th>EODB Score</th>
<th>EODB Score Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New Zealand</td>
<td>85.59</td>
<td>0.00</td>
<td>65</td>
<td>Colombia</td>
<td>69.24</td>
<td>+3.00</td>
<td>129</td>
<td>Barbados</td>
<td>56.78</td>
<td>0.00</td>
</tr>
<tr>
<td>2</td>
<td>Singapore</td>
<td>85.24</td>
<td>-0.27</td>
<td>66</td>
<td>Luxembourg</td>
<td>69.01</td>
<td>0.00</td>
<td>130</td>
<td>St. Vincent and the Grenadines</td>
<td>56.35</td>
<td>+0.01</td>
</tr>
<tr>
<td>3</td>
<td>Denmark</td>
<td>84.66</td>
<td>+0.59</td>
<td>67</td>
<td>Costa Rica</td>
<td>68.09</td>
<td>-0.47</td>
<td>131</td>
<td>Cabo Verde</td>
<td>55.95</td>
<td>+0.02</td>
</tr>
<tr>
<td>4</td>
<td>Hong Kong SAR, China</td>
<td>84.27</td>
<td>+0.04</td>
<td>68</td>
<td>Peru</td>
<td>68.83</td>
<td>+0.16</td>
<td>132</td>
<td>Nicaragua</td>
<td>55.64</td>
<td>+0.37</td>
</tr>
<tr>
<td>5</td>
<td>Korea, Rep.</td>
<td>84.14</td>
<td>+0.01</td>
<td>69</td>
<td>Vietnam</td>
<td>68.36</td>
<td>+1.59</td>
<td>133</td>
<td>Palau</td>
<td>55.59</td>
<td>+0.07</td>
</tr>
<tr>
<td>6</td>
<td>Georgia</td>
<td>83.28</td>
<td>+0.48</td>
<td>70</td>
<td>Kyrgyz Republic</td>
<td>68.33</td>
<td>+7.57</td>
<td>134</td>
<td>Guyana</td>
<td>55.57</td>
<td>-2.21</td>
</tr>
<tr>
<td>7</td>
<td>Norway</td>
<td>82.95</td>
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<td>71</td>
<td>Ukraine</td>
<td>68.25</td>
<td>+0.94</td>
<td>135</td>
<td>Mozambique</td>
<td>55.53</td>
<td>+1.78</td>
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<tr>
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<td>68.08</td>
<td>-0.17</td>
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<td>Pakistan</td>
<td>55.31</td>
<td>+2.53</td>
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<tr>
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<td>+0.32</td>
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<td>+6.22</td>
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<td>Macedonia, FYR</td>
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<td>+0.32</td>
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<td>Mongolia</td>
<td>67.74</td>
<td>+0.27</td>
<td>138</td>
<td>Cambodia</td>
<td>54.80</td>
<td>+0.41</td>
</tr>
</tbody>
</table>

**Diagram 3: Doing Business Table**


Thanks to the impressive resources available to the WB, the DB’s reports are based upon the answers to a questionnaire drafted by the DB team. The team is made up of roughly 60 people, mostly economists, working at the WB’s Washington DC headquarters. Every year, the team sends the DB questionnaire to approximately 13,000 lawyers and government officials around the world. The DB questionnaire investigates what would happen to a middle-size local enterprise based in the country’s largest business city in a series of circumstances articulated along

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43 Bukovansky (n.41) 72 and Pistor (n.42) 31.

44 Cooley (n.41) p.49; Urueña (n.28) 7; Arndt and Oman (n.37) p.48 and Pistor (n.42) 31.

11 dimensions: from obtaining a construction permit to getting electricity and from paying taxes to enforcing contracts. Questions range from purely factual, such as “how many days are needed to get electricity?”, to purely legal, such as “is there a specialized commercial court?”. Responses are evaluated, assembled, weighted and transformed into numbers by the DB team, producing a country’s ranking for each of the 11 dimensions. Ten of these scores are then aggregated to create the final “Ease of DB” score. In addition to ranking countries from the most business friendly to the least business friendly, each edition of the DB also identifies the top 10 reformers of the year, celebrating the countries that have reformed the most.

The limits of DB are well known: the DB has been criticised for its weaknesses such as the fragility of the “legal origins” theory and the US-centred bias of the DB’s questionnaire, the emphasis the latter puts on official and formal law only and the unreliability and unrepresentativeness of expert opinions. Further, many have questioned the validity of simplified assumptions the entire project is based on, such as that less regulation is always good, rules can be easily transplanted and there is one ‘right’ solution to every business legal problem. Notwithstanding such criticisms, the DB team estimates that, since the first edition of the DB, more than 10,000 articles using the DB’s data have been published online and in peer-reviewed journals; more than 60 countries have established teams, offices and even ministries devoted to improving their performances in the DB and more than 3,500 legal reforms have been carried out worldwide along DB’s lines.

46 Ibid., pp.73–124.
47 The dimension that is left out from the aggregate score is the one on labour market regulations. The DB team stopped using this sub-index as a component of the final score in 2009, following the harsh criticism by the International Trade Union Confederation and the International Labour Organization of the slippery slope towards deregulation that the sub-index favoured. On this story, cf. Debbie Collier and Paul Benjamin, “Measuring Labor Market Efficiency. Indicators that Fuel an Ideological War and Undermine Social Concern and Trust in the South African Regulatory Process” in Merry et al. (n.27) pp.284–316; Krever (n.1) 140–141 and Paul Benjamin et al., “The Cost of ‘Doing Business’ and Labour Regulation. The Case of South Africa” (2010) 149 Int’l Lab Rev 73–91.
48 See WB (n.45) pp.8–14.
51 See for instance Voigt (n.36) 19–20 and Michaels (n.2) 778.
53 WB (n.45) p.2.
55 WB (n.45) p.7.
Well-known are the cases of Georgia, Azerbaijan, and Rwanda, where the setting up of a national team focussed on the DB and the adoption of many DB-driven legal reforms have produced a corresponding ascent in the ranking.\textsuperscript{56} Competing in the DB’s “law reform Olympics”\textsuperscript{57} has become a popular sport.

IV. Global Quantitative Legal Comparisons: Features and Lessons

Social scientists have engaged in much debate on the soundness of the methodology and of the assumptions underlying global legal indicators, legitimacy of the institutions promoting them and their goals and their (intended and unforeseen) uses.\textsuperscript{58}

In view of limitation of space what this paper can do is to emphasise that comparativists might view global legal indicators as flawed, clumsy and simplistic: yet, they can be considered to be genuine comparative law exercises. After all, what global legal indicators do is not much different to what comparative law scholarship does: investigating legal rules, institutions and infrastructures in different settings.

Obviously, there remain some significant differences between global indicators and comparative law projects. Global legal indicators are made by research groups whose members are not trained comparativists, and usually are not even lawyers. They focus on a large number of states rather than on a limited set of legal systems, and on laws-in-the-books rather than on laws-in-action. They put substantial emphasis on the way in which rules are written and perceived, rather than applied. They embrace a strictly functionalist methodology and go to great lengths to package their results in a user-friendly format and to freely disseminate them on the web. Moreover, they always mix description with prescription. On the one hand, they purport to depict the state-of-the-art of legal affairs in all the countries in the world, but, on the other hand, they implicitly or explicitly embrace one model as the best possible one, pushing for worldwide harmonisation in that direction.

Only some or none of these features might be useful. Yet, the claim of this paper is that many of these features could provide comparativists with a source for reflection and even inspiration.


\textsuperscript{58} See the authors cited in n.26–n.28.
V. New Actors

One of the most striking features of global quantitative legal comparisons is that they are not made by lawyers, let alone by comparativists. While lawyers might participate as experts and reporters, they do not have a significant presence in the production teams engaged in the publication of global indicators and do not play a significant part in the shaping of the reports.

FIW’s and CPI’s analysts are mainly political scientists and also include historians, economists and human rights activists.59 The DB team, which relies upon lawyers to get the answers to its questionnaire, is overwhelmingly made up of developmental economists.60 Teams are typically large: roughly 60 people work for the DB and 130 for the FIW.61 Teams generally ensure gender and geographical balance,62 although team members have often pursued their studies in a limited circle of Global North academic institutions and are therefore part of an epistemic community which is much in line with that of Westernised professional élites.63 Teams often benefit from the input by internal and external consultants and from contributions made by those with knowledge of mathematics, statistics or econometrics.64 Finally, since the FIW, CPI and DB teams are drawn from the organisation endorsing the indicator, the report is published under the name of the organisation, with little credit given to the work done behind the scenes.

From a comparativist’s point of view, it is hard to accept that such large-scale legal comparisons are not the exclusive domain of trained comparativists and are actually made without their contribution. There is indeed little doubt that the comparativists’ absence might explain many of the fallacies affecting global legal indicators. Yet, despite this major omission, the peculiar authorship of the global legal indicators is not entirely to blame.

The keyword here is teamwork. For various reasons such as ego of law professors, the academic career path, levels of research funding and the structure of legal publishing industry, lawyers in general and comparativists in particular have historically shown a strong preference to work alone and not engage in team work.65 Exceptionally, there are large projects involving a number of people from different jurisdictions — such as the collective research projects undertaken under

60 WB (n.45).
61 See the websites in n.59 and n.60. It is not known how many of TPI staff are working on the CPI.
62 See n.58 and n.59.
auspices of the International Academy of Comparative Law. The majority of our work as comparativists is authored by one or two professors, who are more often than not male and are either European or North American.66

All of this might be perfectly legitimate, unavoidable and even desirable. Yet it is difficult to see why this way of working should per se be superior to researches carried out by large, multi-disciplinary, quasi-anonymised and gender and geographically diverse teams. One could observe that global legal indicators’ large teams are made possible by the resources available to those publishing global legal indicators. The observation, however, does not hold. While the DB is supported by a powerful and rich international organisation, this is not true of the FWI and CPI. The two NGOs that publish them are now supported by generous donors (eg, the US government for FH and the WB for TI), but many of these donors have stepped in only after, and partially because of, the publication of the organisations’ indicators.67 Having a large and diverse group of people involved in the production of global indicators appears to contribute in no small measure to their success, by minimising risk of bias and errors, which an individual comparativist or a small group of comparativists may be prone to.

VI. The State in the Spotlight

Global legal indicators are state centric. FIW, CPI, and DB all focus on states’ laws, covering all the sovereign states, from Afghanistan to Zimbabwe.

Global legal indicators’ statolatry derives from and reinforces the liberal, Western-driven faith in state institutions as “the primary locus of social control”.68 Statolatry is also instrumental to these indicators’ goal of leveraging states towards the adoption of a regulatory model that (invariably comes from the Global North, and) is advertised as the best possible one. Moreover, under the disguise of apparent egalitarianism, global legal indicators gloss over states’ vastly divergent capacities to exercise domestic and international agency69 and assign to them responsibility for success and failure,70 invariably naming, ranking and blaming non-Western states for not being as Westernised as they should be.

67 See Bukovansky (n.41) and Dutta (n.31) 458.
69 Broome, Homolar and Kranke (n.52) 516.
70 Ibid., 531; Sally Engle Merry (n.26) p.208 and Nehal Bhuta, “Governmentalizing Sovereignty: Indexes of State Fragility and the Calculability of Political Order” in Davis et al. (n.27) pp.132, 134.
Much criticism has been levelled against the assumptions underlying global legal indicators’ aims and efforts to push for reform in states which they consider to be lagging behind.\footnote{See the authors cited above (n.26–n.28).} This aspect is dealt with below. What matters now is the significance of indicators’ statolatry.

To most comparativists, indicators’ insistence on states and their laws might seem at best naïve, insofar as it foreshadows sub-national varieties and sources of law that do not emanate from state institutions. Yet, one cannot but note that State-centrism is not foreign to comparative law studies, which often take the form of state-to-state comparisons and fail to acknowledge the wide range of legal layers that — beyond and within the West — determine the daily life of law.\footnote{Frankenberg, The Innocence (n.66) 223.}

Further, what is worth stressing from the perspective of this paper is that global legal indicators’ attention to all States alike is a partial solution to the “biased selection” trap affecting much comparative legal scholarship. Comparativists working alone inevitably tend to focus on the jurisdictions they know best, although the criteria underlying the chosen boundaries of their research usually remain unexpressed.\footnote{Ibid.} The selection routinely rewards “systems, families, and regimes of Western law and legal culture”,\footnote{Hirschl (n.30) p.16; see also the authors quoted above (n.66).} “a small set of ‘usual suspect’ settings […] of the ‘Global North’”.\footnote{Hirschl (n.30) pp.16, 192, 193; Spamann (n.5) 802–803 and John Reitz, “Legal Origins, Comparative Law, and Political Economy” (2009) 57 AJCL 847, 853.} Moreover, comparativists are prone to draw conclusions from their spatially limited research whose significance goes well beyond the geographical reach of the testing.\footnote{Ibid.}

Global legal indicators too tend to privilege the Global North and to celebrate its values and practices. But they do so by formally considering all states’ experiences as equally relevant and by transparently displaying their alignment with the Western legal mindset. With all their limitations, formal equality and full transparency seem a more defensible approach than comparativists’ hidden selectivity.

VII. The Perception of Law

A corollary of global legal indicators’ state-centrism is that they apparently look into official, written “law-in-the-books” only. The most outspoken in this regard is the DB, which openly claims that “approximately two-thirds of the data embedded
in the DB indicators are based on a reading of the law”. It is not by chance that many have deplored the lack of attention given by the DB to the law as actually (not) applied and to rules governing people’s and business’ lives in the shadow of the state.

To tell the truth, other global legal indicators, such as the FWI and most evidently the CPI, are interested not so much in what state law is but what “perceptions” of state law are. To measure perceptions, the FWI and the CPI rely upon experts’ assessments and other opinion-based data. This aspect too has been criticised on the ground of the unrepresentativeness of experts’ judgments, of their high subjectivity and of the low correlation between experts’ perceptions and the phenomena purportedly under examination.

From the perspective of comparative law, these critiques seem reasonable. Indeed, comparativists too have often been criticised for their alleged superficiality, if not neglect, with respect to the unofficial layers of the law and the connected preference for focusing on more easily accessible and detectable “hard” legal materials, such as legislation and judicial decisions.

That is why comparativists have something to learn from global legal indicators’ emphasis on the perception of the law. Albeit unrepresentative, subjective and not necessarily reliable, opinions on perceptions have the potential to shed light on dimensions that — no matter what they are called: social norms, traditional laws, cryptotypes, legal cultures — are too often under-considered by comparativists themselves. As an attempt to capture unofficial, yet powerful features of living law, global legal indicators’ interest in the perceptions of law appears to be a promising tool for performing what is often portrayed as the core of comparativists’ work: to go beyond legal façades and to relentlessly dig into the deeply rooted foundations of legal systems.

VIII. Methodology and Style

In terms of methodology, global legal indicators seem to subscribe to a hyper-simplified and stylised version of comparative legal functionalism on the ground that all legal systems face the same problems and deal with them (or, alternatively, should deal with them) through the same set of rules. While the CPI investigates the content and the effectiveness of anti-corruption laws by collecting data from

77 WB (n.45) p.27.
78 See especially the authors quoted above (n.30).
79 See above, Section III.
80 Above, Section III.
81 See the authors quoted above (n.36 and 41).
82 See the authors quoted (n.72) as well as Peters and Schwenke (n.66) 832.
other indicators, the FWI and the DB rely upon a questionnaire. The questionnaire is answered by in-house and external analysts and reporters, and the answers are complemented with the aid of web searches and software tools for the analysis of mass online information. The most advanced technique is the one developed by the DB, whose questionnaire takes a factual standpoint and provides national reporters with detailed instructions as to the assumptions on which answers should be given. After collecting data, indicators’ teams review them and ultimately translate them into numbers and scores. The summaries of the collected results are typically presented in a user-friendly and captivating format, either through a country ranking, such as in the DB, or through interactive world maps with countries coded in different colours, as in the case of the FIW and CPI. When a new edition is ready, the indicator and some of its background materials are made available for free on a dedicated website.

Global legal indicators’ overly simplified approach to data research and collection is a key factor for explaining their ability to amass and treat on a yearly basis an enormous amount of information. Such an approach involuntarily mimics, albeit in a stylised and caricatural form, the way of working of many comparative law projects and researches. Many for instance have noticed the superficial resemblance between the DB’s methodology and the “Common Core” factual method developed by Schlesinger first, and then refined by Mauro Bussani and Ugo Mattei. Not surprisingly, indicators’ methodology has been subject to criticisms akin to those voiced by many against comparativists’ uses of functionalism.

If there is anything comparativists might learn from the methodology and style of global legal indicators, this lies on the dissemination side.

Global legal indicators have the ability to convey extremely complex judgments in a simplified, easily accessible form. Their simple comparisons presented in coloured maps provide readers with an easy-to-use tool to quickly grasp the gist of the study, which is itself very simple; some states are bad performers, while others

84 See Section III.
85 Section III.
86 Section III.
87 The aesthetics of global indicators is explored, among many others, by Broome, Homolar and Kranke (n.52) 516; Kevin E Davis et al., “Introduction. The Local–Global Life of Indicators: Law, Power, and Resistance” in Merry et al. (n.27) pp.1, 12; Merry (n.26) p.210 and Nehal Bhuta (n.70) pp.132, 156.
88 Speaking of LLSV studies, Detlev F Vagts, “Comparative Company Law — The New Wave” in Rainer J Schweizer et al. (eds.), Festschrift für Jean Nicolas Druey (Zürich: Schulthess, 2000) pp.596, 604 noted that “[O]rthodox comparative lawyers would have shrunk back from such an ambitious endeavor and if they had attempted, it would have wound up with a tome of 2000 pages and 6000 footnotes filled with caveats and qualifications that would have rendered it unreadable”.
89 See the researches mentioned in Section V.
are good. Indicators’ free availability online is a further factor in facilitating their dissemination.

Clearly, the teams producing global legal indicators are not constrained by academic career and legal publishing requirements, which historically have not encouraged open access publication. It is also clear that global legal indicators are addressed to a public that is different from, and much broader than, the one targeted by comparativists, who usually talk among themselves. It is clear that indicators pursue a political agenda rather than a scientific agenda, and that their packaging and aesthetics are subservient to amplifying the effect of “naming, blaming, ranking” states.

That being said, there is little doubt that their public relations strategy works well. This is not to advocate that comparativists should embrace a marketing mindset. Rather, the point is that a number of global legal indicators’ stylistic features and tactics of dissemination might be of some interest for comparativists too. Think of the use of illustrations and charts and of the idea of sharing content on the web in a user-friendly format. If transplanted into comparative legal studies, such features might help comparativists communicate beyond themselves without losing any of their scientific nobility.

IX. Comparative Law As a Means to an End

Underlying the FWI, the CPI and the DB is an optimistic and simplistic belief in the transformative power of the law. On the premises that “law matters”, indicators embrace an instrumental and causal vision of legal phenomena. Under this vision, “good” laws (where “good” means Western) allow entrepreneurial activity to flourish and, therefore, lead to economic growth, accidentally also promoting the wellbeing of the society at large. As a fundamental ingredient of the recipe for development, “good” laws are good everywhere and will lead everywhere to the same result.

From this perspective, global quantitative legal comparisons are both statistical tools for testing theories about law, growth and development, and nudging tools for spreading the adoption of the Western models embedded in these theories. In the world of global legal indicators, if law is a means of achieving an allegedly


93 On similar lines, see Michaels (n.2) 780 and Mathias M Siems, “Numerical Comparative Law: Do We Need Statistical Evidence in Law in Order to Reduce Complexity?” (2005) 13 Cardozo J Int’l Comp L 521, 534.

universal good, comparing laws is a means of fostering harmonisation towards that alleged good.

Many have questioned the accuracy and linearity of the above reasoning, as well as the appropriateness of indicators’ practice. A common criticism has for instance been directed at the direction of indicators’ causality, noting that it is far from established whether “good” laws (that is, in terms of global legal indicators: business-friendly laws) invariably produce economic growth.95

At first sight, the indicators’ vision of the law just mentioned seems to have little to share with comparativists’ vision (better to say: visions) of legal phenomena. Comparativists do not explicitly look at legal issues through causal questions,96 rarely pursue an ostensible program for reform97 and even more rarely present their research in a way clearly intended for a practical purpose.98

At a closer look, however, differences tend to blur. Comparativists too often present their research as being purely descriptive and yet mix them with prescriptive suggestions. Comparativists too have often a model in mind as the best possible one. Often, that model is the one they are most familiar with and almost invariably stems either from Western Europe or the United States. Often, a more or less implicit goal of comparative studies is to demonstrate the potential for progress through harmonisation along the lines of that model — in other words, to sustain a progressive narrative of universalism modelled after Euro-American standards.99 But comparativists do that covertly and, as some would say, even unconsciously.100 By contrast, global legal indicators are outspoken in promoting their ideological and political agenda. No matter how debatable the latter is, indicators’ transparency of purpose and clarity of goals create an open space for critique. The same cannot be said for the opaqueness surrounding comparativists’ aims.

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96 Hirschl (n.30) p.228; Whytock (n.91) 1892–897 and Spamann (n.90) 133.
98 Markesinis (n.92) pp.61–62.
X. The Way Ahead: Beyond Pride and Prejudice

This paper attempts to demonstrate that, contrary to the mainstream view, global legal indicators are a comparative law exercise. Global legal indicators have many features in common with comparativists’ studies and even offer creative answers to some of the doubts and critiques that have long affected our field. Global legal indicators remind comparativists of the unspoken assumptions that constrain their ways of narrating themselves and performing their work, of the hidden biases that influence the selection of the relevant themes and jurisdictions, of the limited self-awareness of their motives and aims and of the many options they have for enriching what they do — from engaging in inter-disciplinary work to cultivating statistical knowledge and from pursuing the virtues of simplification to putting more attention on packaging and disseminating research results.

All the above of course does not mean that global legal indicators are not capable of being improved: they certainly are. It is equally certain that comparativists have a major role to play in pinpointing possible improvements and in taking their knowledge about laws, transplants, legal culture and change to indicators’ tables. But the point is that we as comparativists could learn from the experience of global indicators no less than they can we learn from our own. We can learn new techniques, styles, approaches and something more about ourselves. We can also take indicators as an “extraordinary place” for study. Comparativists might, for instance, investigate which features of indicators are distinctive and which are shared, what makes them successful, what are their trajectories and effects, how they work as instruments for legal harmonisation and which processes of acceptance, adjustment and resistance they open up.

All the above of course implies that global legal indicators are here to stay. The current approach of comparativists — retrenching in a Norma Desmond-like refusal to accept the existence of new instruments and defending “truly” comparative law research against counterfeits — has the bitter taste of self-protection and scientific isolationism. As the paper tries to demonstrate, the space for comparativists’ role is still large, even if global legal indicators make it look small.

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101 To use the words of Örüçü (n.99) pp.468–471.