Recent Trends in Comparative Law in the United States

Whitmore Gray*

There has been some talk recently of a decline in interest in international and comparative law studies in the United States. Some people have spoken rather pessimistically about the focusing of attention (and research funds) on domestic problems. My own impressions are somewhat different. I think that there have indeed been some changes in interests and activities in the comparative law field over the past 20 years, but that most of them have been the natural result of a new generation of teachers and students.

Many of you have been participants in this period of development and change in comparative law studies in the U. S., either as graduate students or research scholars. Your collective experience, no doubt, would give a very broad perspective, and I hope we will have some time for remarks and discussion later.

I would like first, however, to speak from my own experience as student and teacher at the University of Michigan since 1954. The specific examples are drawn from a range of contacts at various schools, however, and it is my aim to give an overview of the general situation in the U. S. beginning in the 1950’s, describing the present situation, and then ending with some thoughts about the near future.

The period of the 1950’s was one of rapid development of teaching and research in the comparative law field in the United States. The Ford Foundation’s generous funding made it possible for many established scholars to expand their horizons through foreign study. For example, a professor of constitutional law or civil procedure had support for travel and research

*Professor of Law, University of Michigan Law School.
leave to become familiar with the German law in his field. Comparative articles began to appear in most U.S. law reviews as part of their regular subject matter, and the American Journal of Comparative Law was founded by a group of major law schools. Many European emigre scholars were active in teaching and research, along with a small group of Americans, and a number of Americans went to Europe to train themselves to continue this tradition. Their principal focus was European law, though there was already some broadening of interest—for example the extensive Harvard-Minchigan-Stanford Japanese exchange program.

Student interest in international and foreign law was high, fostered by a generally optimistic one-world feeling and great hopes for the United Nations. During this period, many American universities set up overseas study programs in Europe for undergraduates and, as a result, the general level of interest and ability in foreign languages rose considerably.

Looked at from the point of view of the law school curriculum, perhaps the expanded teaching of comparative law in this period was helping to fill the void at some schools caused by the decline in offerings in legal history and jurisprudence. In fact a number of the comparative law offerings were called something like comparative jurisprudence. One professor at a major school took some pains to inform his students that they would not learn anything practical from his comparative law course, that is, that it was not designed to give them a familiarity with any foreign legal system which might be of use to them as practicing lawyers.

By the mid-1960's some changes had begun to be felt. Money was being given to support research in domestic problems such as the environment, minority problems and legal services for the poor. A new generation of young teachers with foreign experience was appearing in the law schools, but many of them were not particularly prepared for, nor interested in teaching a European-oriented comparative law course. Many had had peace-corps experience as advisers or teachers in developing countries. Their inte-
rests ran toward interaction of the legal system and economic development rather than traditional comparison of doctrinal material. In addition, many of these teachers with foreign experience were at regional law schools where there was no tradition of comparative law teaching, so they did not inherit any certain type of comparative law course. In deciding what they might teach, they looked to the published materials, but since the two available casebooks were oriented to French and German law, many prepared their own teaching materials based on their individual experiences. Of course, in some cases they were not able to get faculty approval for such a course, or there were several people with such training so not all of them could teach a comparative course regularly. My observation was that in fact the percentage of faculty with foreign experience was sometimes higher at regional law schools during this period than at the national law schools.

At the same time the range of student interest broadened considerably. Many graduates of our various area studies programs were appearing in law schools, with not only interest in but good knowledge of a wide range of foreign countries and languages outside of Europe. During this period I had a number of students every year in my Soviet Law course who could work with Russian legal materials, and a few who had studied in the Soviet Union. This broadening of the backgrounds of students and faculty has produced some very striking results over the past 10 years. While I do not have the results of a careful survey to rely on, I am quite confident that the total enrollment in comparative law courses has continued to increase during this period. There may have been some decline in the number of comparative law seminars offered by senior people in various substantive fields, but this has been more than offset by imaginative courses by young faculty. Some of the "general" comparative courses have become focused on law and development, or have been given a foreign trade orientation, partly in response to student demands for courses which were relevant to actual problems. My own approach has been to focus on the operation of
the foreign legal system so as to provide information which will be of
interest to the lawyer who must deal with international problems, but also
to provide the basis for jurisprudential perspective for discussion of our
own system.

Comparative research during this period has also reflected the interests
and backgrounds of teachers, as well as the fashions in domestic interests.
There has been considerable interest in foreign legal aid, in women's
rights in other countries, in foreign accident compensation systems, etc.
The outlets for publishing comparative law material have now grown to
more than 20 specialized reviews, in addition to the regular all-subject law
reviews. While there has been a noticeable decrease in election of inter-
national law courses, student interest in comparative law has remained fairly
high. The most important thing to me, however, is that the level of pre-
paration of the best students has continued to rise. The law schools con-
tinue to get a very high proportion of the very good undergraduate students
going to graduate school, and in fact in recent years have gotten a large
number of students who have already completed masters or doctoral pro-
grams in various fields. For example, one of our recent graduates had a
master's degree in Chinese language and area studies before coming to law
school. (This student went on to become editor-in-chief of our law review
and to clerk for a Justice of the US Supreme Court, and I am happy to
add, came back to become a member of our faculty last year.) It is also
possible now for students to do summer school work abroad during their
time in law school at programs organized by US law schools and held in
Europe, Latin America and the Far East. These programs have helped
many students improve their language ability, as well as providing oppor-
tunity for practical contacts with practicing lawyers and the courts. I might
add that they have also provided opportunities for some faculty members
to get useful foreign experience, for many of these programs include some
teaching of regular American law courses by faculty from the U. S.
As to the future, I think the most significant factor in the continued development of comparative studies is the new trend in the US toward "academic" study of law. Many younger faculty are emphasizing the interrelation of law with other disciplines, and fortunately some actually have thorough training in these fields in additional to their law degree and experience. For example, at Michigan, we have law faculty members with Ph. D.'s in sociology, philosophy, and economics, in addition to those with formal training in history, foreign area studies, etc. For some years we have had a psychiatrist with a joint appointment in law and medicine, and have had joint courses with other departments in a number of fields.

In such a setting, there is obviously a role for comparative law studies. I might add, however, that of these "academic" law school faculty are somewhat critical of much of the comparative traditional doctrinal approach. They want information about foreign systems similar to that which they work with domestically, and that may lead us to field research such as interviews, reading newspapers as well as law books to get historical perspective on the development of legal institutions, etc. I for one think this is all to the good, and look forward to a new perspective in comparative work from this generation. The foreign law specialists have also formed ties with the rest of the university outside the law schools, either through area center programs or cooperation in teaching and research with individual professors, and these experiences have been mutually stimulating. Our academic horizons have increased to include not only sociology but anthropology of law, our geographical and cultural interests now range from Africa and New Guinea to traditional law of the American Indians, and our time perspective has opened up again to revive a full range of study from Roman law through English legal history and, most significantly, solid work with American legal history.

In these general remarks I have purposely refrained from including specific references to the field of Far Eastern law, for I thought that it would
be appropriate on this occasion to devote a final section of this talk specifically to this topic. As we celebrate the anniversary of this important Institute, it is perhaps the moment to take note of the extent to which interest in Korean law and that of the whole area has increased steadily over these past 30 years. I would like to comment briefly on faculty, students, teaching, research and activities in the US in this field.

We have been fortunate to have, as I mentioned, a steady supply of good students with language and area studies background in Asian countries, and some of these have already gone on to become law faculty members. While the numbers are still small in relation to the importance of the subject matter, we have specialists in Chinese, Japanese, Korean, Indian and other Asian legal systems at some of our major law schools. Every year, I see a number of very promising students coming to law school with excellent backgrounds, so the prospects for future additions are good. For example, I had the pleasure recently of serving on the Ph. D. committee of an anthropology student whose thesis was based on four years in Japan, two of them doing a field study of the grass-level work of the Japanese police, I am happy to say that he went on to law school, and will soon become one of those bright, young faculty prospects.

Those of you who have watched the rapidly-growing list of publications in the Asian law field over the last decade are already aware of what has happened. We are close to having a more extensive and up-to-date literature on Asia in English than we have on our traditional focus Europe. In addition, these publications illustrate what I mentioned earlier about the expanded scope of comparative work, for some of them are based on interviews, and much of the work is interdisciplinary.

Teaching of Asian law has also increased steadily, both through new courses taught by regular faculty members and through a steady stream of visiting teachers. It is now possible at a number of schools for the serious student to do as much work in Asian law as he can in European law. Some
schools have an introductory course in Japanese or Chinese Law, or some have an Asian law seminar-type offering covering these or other systems. At many schools it is possible to pursue a specific research interest for credit on an individual basis. In fact, the problem confronting the serious student is often one of lack of time rather than lack of opportunity. As many of you know, graduate study is not common for our best law students, so the time they have for comparative studies is during their already busy program of standard American law courses. There does not appear to be any prospect for radical change in this system, so the course offerings are likely to remain small and generally at a survey level.

One of the most important factors in the steady growth of interest in Asian law has been the steady stream of graduate students coming from Asia to American law schools during this period. While most of them have been concentrated at a few law schools, their contacts with American students there then carries over to other schools where those students go to teach. I certainly hope that this movement will continue—and that we can encourage a modest reciprocal flow of students and scholars from the US to Asian countries.

This general picture would not be complete without some mention of activities outside the law schools, for happily, comparative law in relation to the Asian countries has other firm bases of support. The interdisciplinary nature of much of the work brings in political scientists, historians, etc., as mentioned, and many of these are members of the Association of Asian Studies. Its Asian Law Committee has been remarkably active, and has sponsored symposia, compiled an extensive directory of persons interested in Asian law, and initiated a very helpful newsletter. In addition, the American Bar Association’s International Law Section has a Far Eastern Law Committee to serve the practicing bar. The Japanese-American Society for Legal Studies publishes its excellent specialized journals *Law In Japan* and *Amerika Hō*, as well as its recent significant bibliography, and
has now also begun publication of a newsletter.

All in all, I think the comparative law field in the US has gone through a healthy period of reassessment and change. The Asian law field was served as a healthy stimulus and model for some of these developments. I hope that opportunities for international contacts such as this meeting will continue to increase, and that we will see continued growth in the role of comparative law research and teaching.