

# Metodi e sfide nel diritto comparato

September 22nd, 2022

## 2. At the Crossroad of Comparative Law: the Relationship of law with Other Sciences

Roberta Aluffi, Anne Griffiths, Giorgio Resta  
Discussant: Roberto Caso

I will try to make some connections between the presentations of Roberta Aluffi, Anne Griffiths and Giorgio Resta.

All three papers investigate past and future of comparative law through the lens of power. Power of the West ahead of the power of the Rest (of legal traditions).

Cultural and institutional power of a scientific community that recognizes itself in a discipline (the law) ahead of the power of other communities and disciplines (history, linguistics, anthropology, economics, data science etc.).

In this perspective, each author suggests specific solutions:

- a) Roberta Aluffi, on the wake of Rodolfo Sacco's studies, implies that comparative law has to dialogue with anthropology to overcome the Western centric framework and take into proper account religion;
- b) Anne Griffiths proposes to apply an anthropological methodology to comparative law: contextualization;
- c) Giorgio Resta urges for an historical investigation of the interdisciplinary paradigm shifts of comparative law (linguistics, economics, data science etc.).

All these solutions are very relevant and useful. But I would like to emphasise that their successful outcomes also depend on the institutional architecture of universities and faculties of law.

As Giorgio Resta points out, we are facing a profound crisis in university. Public funding is decreasing (at least in many Western countries). In the social sciences and humanities this trend is even more evident (cf. Martha Nussbaum "Not for profit" 2010)<sup>1</sup>. But the problem is bigger. The university is deeply transforming its nature: from a no-profit institution it is turning into a private company. As you may know, the literature on this is very huge.

This said, I would like to shed light on one particular aspect of the commercialization of university. The way we build a discipline, or interdisciplinary investigation, depends on how we shape our scientific communication system. Modern science was born as open, public

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<sup>1</sup> M. Nussbaum, Not for Profit: Why Democracy Needs the Humanities, Princeton University Press, 2010.

science. It was traditionally based on a complex communication system grounded on scientific publications (book, journals, catalogues, indexes etc.), publishers, libraries, bookstores etc. Today in the digitized world all the communication functions are instead in the hands of few big platforms (scientific publishers or data analytics companies like Elsevier and Internet platforms like Google)<sup>2</sup>.

Last year, Karen Maex, during her speech on 8 January 2021 for the 389th Dies Natalis of the University of Amsterdam, denounced that the future of university and democracy was at risk. Maex has brought to attention the fact that large private companies (in particular, giant Internet platforms) play an increasingly important role in the life of universities that decrease their degree of autonomy and freedom<sup>3</sup>.

“Since the 1980s, the pre-eminent role libraries held during the era of paper has gradually been eroded, initially by the development of advanced knowledge systems in commercial publishing. Instead of owning works in their collection, as in the days of printed editions, now university libraries only have licences granting rights of use. Publications on university research in effect have to be ‘bought back’ through subscriptions to expensive journals in order to make them available through university libraries. That means publishers get to decide who has access to knowledge.

This has enabled commercial academic publishers to gain the upper hand. What makes this especially worrisome is that their role is limiting that of libraries as free and open arenas for research.

Open access is bringing about yet another shift. Publishers are responding by seeking alternative ways to retain their power and profit margins, such as by charging for open access publications in renowned journals or for impact analyses. [...]

In addition to supplying data storage and search functionalities and information gathering, those same companies also play a considerable role in steering wider public discussions. In doing so, they draw no distinction between scientific information and, for instance, political or other interests. And, just as in other sectors, their consolidation of functions and buying up of other businesses is leading to a concentration within the market. [...].

What applies to the future of democracy applies equally to the future of universities and of independent education and research as vital building blocks for the organisation of knowledge. We cannot simply leave the future of knowledge to the corporate boardrooms”.

Maex’s speech is informed by some criticisms of the current neoliberal world, and it refers, in particular, to Shoshana Zuboff’s work on surveillance capitalism.<sup>4</sup> But another source mentioned in the speech is the analysis of Claudio Aspesi et al. for SPARC on the application of surveillance capitalism to the world of university and research.<sup>5</sup>

2 B. Brembs et al. [2021], Plan I – Towards a sustainable research information infrastructure, Zenodo, Jan. 21, 2021 <<https://zenodo.org/record/4468511#.Yyy5OCFBz9E>>.

3 Karen Maex, *Protect independent and public knowledge*, University of Amsterdam, 8 January 2021 <<https://www.uva.nl/binaries/content/assets/uva/nl/over-de-uva/speech-karen-maex---dies-2021.pdf>>.

4 Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (1<sup>st</sup> edn Public Affairs 15 January 2019).

5 Claudio Aspesi et al., *SPARC Landscape Analysis* (2019) <<https://doi.org/10.31229/osf.io/58yhb>>. See also Jeffrey Pooley, ‘Surveillance Publishing’, (2022) 25(1) *The Journal of Electronic Publishing*, 39, doi:

Against this backdrop, studying the relationship between (comparative) law and other disciplines perhaps also means to explore and reconsider the role of private companies (Tech Giants) in shaping the interdisciplinary dialogue.

I believe we should develop our research in this field, and I wonder what the panelists think on this regard.

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