Decolonizing Comparative Law

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Sherally Munshi, *Comparative Law and Decolonizing Critique*, 65 **Am. J. Comp. L.** 207 (2017), available at SSRN.

In her magisterial essay, *Comparative Law and Decolonizing Critique*, Sherally Munshi invites us to undertake a "decolonizing critique" of comparative law, which entails reflecting about "our responsibility towards and recognition of difference" and "the relevance of comparative study to the societal exigencies of our particular moment." The occasion for the essay is a special issue of the *American Journal of Comparative Law* dedicated to Pierre Legrand's book-length article *Jameses at Play* in which he identifies two irreconcilable strands of comparative legal studies—positivism and culturalism—advocating for the latter.

Munshi's reading of Legrand is but a stepping stone for a momentous contribution to the debate over the raison *d'être* of comparative law. She proposes an "alternative approach" that "might play an important role in decolonizing and democratizing legal thought." Her vision is one of a "broadly expanded comparative law, one that assumes a leading role in addressing an entrenched Eurocentrism in legal discourse while providing hospitable ground for a variety of critical and interdisciplinary projects, especially those that might join in the effort to decolonize higher education and to project alternative, more equitable forms of coexistence."

How are comparativists to achieve these goals? Munshi suggests that they look to another comparative discipline—comparative literature. In the 1960s, comparative literature underwent its own process of self-examination and transformation by turning to critical theory, freeing itself from the imperative to compare and becoming "one of the most compelling sites of intellectual production in the university." Munshi, whose Ph.D. in English and Comparative Literature focused on the experience of Indian immigrants to the United States in the early twentieth century, is well-positioned to see the field's own learning over time.

Based on this example, she proposes four exit strategies for comparative legal scholars. First, they could abandon the practice of comparison itself, adopting instead a worldly orientation, or alternatively embracing "the notion that *all* study is comparative." Second, given that comparative legal scholarship "remains resolutely Eurocentric," offering "painfully little discussion about legal cultures outside of Europe," comparativists could decenter Europe and broaden the cultural scope of the discipline. Third, they could shed the nation-centered model of comparison "to explore the many relationships that minoritized subjects forge with one another across national boundaries." As Munshi's work illustrates, this approach may involve probing "the foreignness that lies *within* a nation's borders," as in her brilliant article on Dinshah Ghadiali, one of several Indian immigrants threatened with denaturalization in the 1920-30s on the ground that they were not "white persons." Fourth, comparative law could move to a "relational" approach to race and racism so as to uncover the colonial roots of contemporary nation-state and racial forms.

The good news is that a growing number of comparative law scholars trained and/or based in the United States and Europe are experimenting with these exits, or variations thereon, expanding the field's frame of reference beyond its usual topics and geographic areas, including by giving voice to minority communities. For instance, Tanya Hernández' research exposes how racial hierarchies in Latin American countries are both "obscured and elucidated" by a depiction of the United States as colorblind. Premised on the insight that being a mother is often what subordinates women, Julie Suk has embarked on a project to reframe constitutional gender equality in the United States by reference to motherhood protections in post-war European Constitutions. Anne Peters has pioneered a new branch of comparative legal research, known as "global animal law," which treats animal interests as having intrinsic legal value in a way that is transboundary, that is, that challenges not only the legal human-animal boundary, but also nation-state

boundaries. In my own study of white French judges and prosecutors' unwillingness to reflect on racial and sexual diversity in their profession, I have also benefited from what Munshi calls "minor comparativism"—her term for a self-reflexive orientation that "sets the official image of a particular state *against* the reflection of its minority subjects."

The question remains whether these haphazard efforts are sufficient even to begin comparative law's decolonization. Should comparative legal studies undergo a process of institutional reform similar to that which transformed comparative literature fifty years ago? I read Munshi's article as a compelling plea for law schools actively to recruit faculty with expertise beyond European legal cultures and languages and to alter their curricula to include her broadly expanded conception of comparative law. Her diagnosis also calls for academic organizations such as professional associations and journals to support and promote scholarship that breaks with the discipline's Eurocentric and colonial roots. That her own work has been published in the *American Journal of Comparative Law*, the foremost U.S. peer-reviewed journal dedicated to the field, should give us hope that some movement is underway. For the change to be broad and deep, though, those of us who subscribe to her views need to sustain it in our daily thinking, teaching, mentoring, conference organizing, and of course, writing.

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