The Future of Comparative Law: Public Legal Systems

Clifford Larsen
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By CLIFFORD LARSEN*

I. Introduction

Anyone who has studied or taught comparative law knows the difficulties involved in that undertaking. One must become a sociologist, political scientist and anthropologist, as well as lawyer, who understands not only his own legal system and a foreign legal system generally, but also the precise area of legal study involved. Not surprisingly, most comparative law scholars limit themselves to the study of a few substantive areas of comparison.

By contrast, the range of Rudolf Schlesinger's comparative law inquiry clearly indicates just how monumental a scholar Professor Schlesinger was. In his long career, Professor Schlesinger published in the fields of formation of contracts generally, documentary letters of credit, codification of commercial law, protection of goodwill against unfair competition, monopolies in Germany and America, basic principles of law as standards of law in arbitration, comparative criminal procedure, conflicts of laws, comparative legal services for the poor, proof of foreign law, the civil law system of notaries, the teaching of foreign law, foreign exchange controls and the common core of legal systems, among others.¹ His textbooks are a main comparative law teaching resource. Thus, before interdisciplinary study became popular, Professor Schlesinger was practicing the concept in his research and writing.

Most notably, Professor Schlesinger was a leader in the area of comparative private law. In this focus, he followed in the great tradition of Jhering and others, who created modern comparative law in

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the first half of the nineteenth century. Indeed, since that time, private law research has dominated the field of comparative law. This domination has its roots in the pre-nineteenth century European experience. Until the nineteenth century, attorneys, judges and jurists in western European countries that shared the Roman law tradition followed the centuries-old practice of citing the jurisprudence and legal writings from any continental European countries with a similar legal heritage. The enactment of the Code Napoleon in 1803 changed that tradition, however, by creating a truly national law that alone determined private law rights and duties of a country’s citizens. In turn, the legal profession began to focus more exclusively on domestic legal affairs, rather than on the laws and jurisprudence from beyond that State’s borders.

Given this new national focus, the need arose for comparativists to analyze the varying development of private law codes in different continental countries. These private law codes were particularly important due to the absence, in many countries, of stable national constitutions in the American sense. It was the national private law code that guaranteed such important principles as the freedom to contract and the applicability of the same law to all classes of people.

To this day, comparative law continues to focus largely on private law concepts. Comparativists seek to compare and to contrast different nations’ private law, and where appropriate, to engage in harmonization of private law principles. Many excellent comparative law scholars continue to perform valuable work in traditional private law subjects such as contracts, torts and conflicts of laws. This work has influenced legislation and court decisions in many countries. In addition, it is at least partially responsible for the achievement of such notable successes as the enactment of the Uniform Commercial Code in the United States, the creation of international treaties such as the Convention on the International Sale of Goods and the international migration of successful private law entities such as the limited liability company. As international commerce continues to expand, the usefulness of this private law scholarship can only increase.

Unfortunately, comparative law’s focus on private law has led to

2. For example, France had seven constitutions in a 25-year period around the turn of the nineteenth century. See Gerhard Casper, Changing Concepts of Constitutionalism: 18th to 20th Century, 1989 Sup. Ct. Rev. 311, 317.

a neglect of public law issues. Although a few scholars, such as Professor Schlesinger, have addressed public law issues, many have not. In fact, a reader looking at mainstream comparative law literature would hardly know that the twentieth century is facing legal issues different from those prevalent in the nineteenth century. Comparative law textbooks rarely discuss public law issues in any depth; instead, they focus largely on important private law and "anatomy of the legal system" subjects such as basic contract and tort law principles, litigation methods and procedural law, the structure of the judicial system and of the legal profession, Roman law sources of civil law and the spread of private civil law concepts around the world. The same generalization holds true for legal journals: they tend to print primarily private law and "legal structure" articles.

On its face, this neglect is hardly justifiable because, at least since the end of the nineteenth century, public law has grown in importance. It has grown in importance relative to private law, as Western societies have developed more established bodies of jurisprudence in traditional private law fields. It also has grown in importance absolutely, in the sense that it has played an ever-increasing role in the life of the average citizen and of Western countries as a whole. Since the rise of strong national States, public discussion and debate have focused increasingly on the relationship between the State and the individual, especially on the redistributive role the State plays in society.

Perhaps most important for comparative law scholarship, public law remains significantly different even among countries that share a common legal culture. In the United States, the State, especially the federal government, has long been viewed with mistrust, if not with downright hostility. "Get government off the backs of the people" is a concept as pervasive in America today as it was at the time of the American Revolution. By contrast, most continental European countries welcome State participation not only in various sectors of the economy, but also as a guarantor of a fair division of wealth

4. One notable exception in this context is Kenneth L. Port's *Comparative Law: Law and the Legal Process in Japan* (1996), which discusses not only some of these traditionally private law topics, but also constitutional law, competition law, criminal law, human rights and minority issues, administrative law and labor relations.

5. For example, a review of the issues of some of the major American comparative law journals over the past twenty years indicates that a majority of the articles therein address private law and "legal structure" issues, rather than public law and public legal system topics.
among individuals and areas of the country. Public legal systems often reflect these different approaches. Thus, while comparative private law scholarship remains indispensable, the distinctive feature of comparative law in years to come could well be that of public law. Such a focus would recognize that, at the beginning of the twenty-first century, public law issues are at the forefront of Western legal systems and characterize differences among Western countries.

Some of these public law issues relate to concepts of individual constitutional rights. Thus, comparative constitutional law research sometimes focuses on similar types of rights that different countries interpret differently. For example, in the abortion law context, both the United States and Germany recognize a woman's privacy right, but German law also recognizes the right of the unborn to human dignity and thus to state protection. In other instances, comparative constitutional law scholars consider how countries take a completely different approach to individual public law rights. Thus, American constitutional law often views rights in the relatively limited sense of freedom from government interference. By contrast, German law looks to constitutional principles such as human dignity and the free development of the personality in finding positive rights that include a state obligation to create certain living conditions for each citizen.

II. Legal Systems Deserving of Comparative Law Research

Comparative public law that focuses exclusively on individual rights ignores a major part of the public law spectrum, however. Since the rise of the administrative state, public law systems have arisen that exert a major influence on the lives of every citizen, virtually from the cradle to the grave. These systems are worthy of analysis, perhaps as an example of a direction in which the United States may consider moving, perhaps as an experience that America may wish to avoid, and certainly as examples of systems that put perspective on our own approach to system issues and problems. Yet, despite the efforts of a handful of scholars, American comparative law has paid relatively little attention to foreign systems. Some of the many legal systems regarding which additional comparative law research could be useful include the following:

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A. School Systems

American school systems are in a period of upheaval. Although the U.S. Supreme Court has refused to find unconstitutional traditional state school finance mechanisms that lead to great disparities among school districts, state courts are beginning to uphold challenges, based on state constitutional provisions, to financing of public school systems. Several states, and even private philanthropic groups, are experimenting with school voucher programs in order to give parents a choice, reward successful schools and challenge underachieving ones. Yet many claim that such a policy will only skim off the best students from weaker schools, thus creating an even greater gap between schools. Many states are experimenting with "charter" schools, schools that are publicly funded but privately run. The federal government has called for increased federal funding for schools, as well as the creation of national education standards. Yet many state governors and Republican members of Congress resist more federal authority in a traditionally state-governed area.

Despite high per capita spending, American twelfth-grade students rank among the lowest in the developed world (even interpreting that term broadly) in mathematics and the sciences. Here too, both citizens and government members are clamoring for action. The education law of Western countries that fare better in international comparison differs significantly from the U.S. system. For example, both German and French education law provide for education funding that leads to far less variance in the quality of schools than is the case in the United States. In addition, many German states provide for both college preparatory schools and vocational schools. Despite our own system's shortcomings and other countries' superior performance in secondary education, comparative law has

paid relatively little attention to foreign education law.

On the other hand, the United States has many private and state universities that are well-equipped by international standards. This result was achieved in part by using a legal structure that allows state universities to charge fees that are low compared to those at private universities but quite high in comparison to foreign state universities. As a result, the cost of sending a child to college is a major factor in the financial planning of many American families. What are the legal ramifications of state (and federal) law that provide an internationally-low tax rate, yet allow charging of significant fees for the use of public institutions?

B. Pension Systems and Social Security

Over the past several decades, U.S. law (especially tax law) has allowed the individual worker to play a greater role in establishing his own pension fund. The public social security system, by contrast, serves to provide only a minimum pension. There have also been calls for privatizing the social security system, such that individuals could opt out of it. Some argue that the investment of funds that now go into social security would lead to significantly higher returns for the worker; others respond that such a system would unfairly benefit high-income earners and whites. By contrast, many Western countries still mandate a more traditional state-sponsored pension system, at least in part as a method of redistributing wealth. How do these legal systems compare?

C. Health Care and Care of the Aging

Profound changes are also at work in health law, where the range of policies and issues under discussion is broad. For example, at the beginning of his first term of office, President Clinton proposed a new system of health care. For various reasons, this plan was never enacted. Since then, the United States has seen a significant increase in the number of people who get their health coverage from health maintenance organizations (HMOs). In light of claims that patient care is suffering due to the pressures that HMOs place on both patients and health care professionals, their legal regulation has also increased. In addition, some thirty-five million Americans have no

14. One highly publicized example is the passage of both federal law and state
health coverage at all, making them dependent upon charity institutions and all levels of government. As a partial response to this problem, President Clinton recently announced moves to expand children's medical care.\(^{15}\)

In addition, the United States has no global elder care system that covers all necessary home and hospital nursing services. Yet another issue is the great rise in doctors' disability claims, which some experts warn is a sign of increasing dissension in the ranks of the medical profession. At least some of this dissension is a result of the changes brought about by HMOs.\(^{16}\)

Other Western countries are addressing similar problems due to the skyrocketing cost of medical care. Germany and France, among others, have introduced legal reforms in recent years in order to address health care cost problems. Unlike the United States, both of these countries continue to support a national health service that provides coverage to all residents and is the main source of medical care in the country. In addition, Germany instituted a mandatory system of old-age insurance. For a variety of reasons, these countries have life expectancy rates superior to those of men and women in the United States. What are the relative merits of each system, and what would be the legal implications of any attempt to borrow from foreign models?

\textbf{D. Systems Regarding Family Law Issues, Including Parental Leave, Adoption and Foster Care}\(^{17}\)

According to a 1998 U.N. survey of 152 countries, the United States is one of only six countries that does not have a national policy requiring paid maternity leave.\(^{18}\) In addition, the Clinton administration recently recommended to Congress that federal spending on

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\item \(^{15}\) See Clinton Announces Moves to Expand Children's Medical Care, \textit{WASH. POST}, Feb. 19, 1998, at A09.
\item \(^{17}\) Although family law is usually considered a private law field, the enactment of a statutory system mandating family leave policies would be more appropriately characterized as a public legal system.
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child care be increased, so that more working parents could continue working during the early years of their children's lives. This approach is radically different from that taken by western European countries, where national laws provide not only for paid maternity leave, but frequently guarantee a mother (or father) the right to take up to three years off from work after the birth of a child. Rather than encouraging parents to return quickly to work, the law provides an incentive for the parent to take time off to be with the child. The mother or father then has a right to return to his or her previous job.

What are the ramifications of these systems? Although comparativists have considered some of the relevant foreign statutes, the issue is not being pursued with the vigor that one would expect when considering an issue that affects millions of working parents.

E. Land Use Systems

Except for a few areas regulated by national law, a central feature of land use policy in the United States is its great variation among states and within states.¹⁹ How do foreign nations use constitutional principles and legislation in this field, and what have been the results? Have these systems solved problems still prevalent here? For example, U.S. cities are often seen as one of the main failures of domestic land use and social policy at all levels.²⁰ Despite the revival of some cities, such as Pittsburgh, during the virtually uninterrupted economic upswing of recent years, many city centers remain dangerous, especially at night. Whites (nowadays, poor whites) continue to flee to the suburbs, creating greater racial segregation as minorities remain within the cities.²¹ In surrounding areas, problems of long commuting times and lack of green space continue unabated.

Certainly, no foreign system has a panacea that would allow the United States to solve the problems of its cities overnight.²² However, many western European city centers are alive in the evening, and, by American standards, relatively safe. Green space for recreation near cities remains. What has been the cost of such foreign land

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¹⁹. There are some states, however, such as Washington, Oregon and California, that have significant state-level laws.
²². For example, although French cities are safe by American standards, many problems occur in the “satellite cities” established outside of larger metropolitan areas.
use policies? Is the result less freedom for the individual or fewer of the single-family homes that so many Americans desire? Especially in an area in which at least some states are reconsidering their basic land use principles, comparative law could provide some guidance and perspective.

F. Criminal Law Systems

Of all Western countries, the United States has by far the highest crime rate. In reaction to the crime problem and the problem of disparate sentences being handed down for the same crime, the federal government and individual states passed sentencing guidelines and minimum sentencing laws. In response to the national drug usage problem, the federal government created new categories of crimes designed to deter illegal drug activity. In reaction to problems such as pedophile recidivism, both the federal government and many states passed "Megan's law" statutes, which require convicted pedophiles, upon release from prison, to notify the community of their presence. As a result of these and other factors, the United States has some 1.8 million people behind bars and 5.5 million people on probation, in jail or prison or on parole. This latter figure represents almost three percent of the country's adult population. These statistics are extraordinarily high by Western standards. Given these figures, could comparativists perform more useful work in determining what approaches other Western systems take in their criminal justice systems, and whether those approaches are desirable and compatible with U.S. constitutional concepts?

G. Systems of Government Structure, Such as Federalism

Over the past thirty-five years, the United States has experimented with several different approaches to federalism. During the Johnson administration, the country embarked on the Great Society

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Program. The Nixon, Ford and Carter years saw general revenue sharing. Presidents Reagan and Bush moved the country to less federal involvement in state and local affairs and financing. President Clinton signed legislation transferring much of the responsibility for aid to the indigent to the states, yet he has also supported a greater federal role in education policy. In the meantime, the U.S. Supreme Court handed down a number of federalism decisions, leading some to surmise that federalism will be the Court’s next great agenda.

Other federal States must address the same issues, including the power of constituent units, their relative wealth, the federation’s role in directing the distribution of wealth around the country and the role that constituent units should play in relation to one another (i.e., cooperation or competition). What have been the results of other federations’ constitutions, laws, and jurisprudence in this regard?

H. Environmental Regulatory Regimes

Despite the great increase in significance of environmental law in recent years, comparative analysis of national systems’ environmental regulation is still in its infancy. A comparative analysis of foreign efforts to address air, water and soil pollution certainly could be of use to domestic policy makers attempting to solve domestic environmental problems. In addition, comparative environmental systems analysis could aid multinational efforts to harmonize environmental law. Parties to multilateral conferences could better understand the approach that other countries take to environmental regulations, permitting negotiating proposals and final products to be drafted in a manner acceptable to all participants.

In addition to these public law systems, government regulation of private law “system” providers may provide a fruitful source of comparative law inquiry. These systems include infrastructure systems such as water, electricity, natural gas and telephone services. At the time of this writing, these systems are in a state of flux in many Western countries. For example, European countries are in the process of privatizing many industries that for decades were monopolies of the State. Finally, public law regulation of many other types of industries, such as banking, environmental systems, insurance and a host of others, plays a major role in the legal structure of every Western country. What lessons does foreign regulation of these systems have for the United States?
III. Why Research Often Ignores Public Law Systems

As noted above, much of current American comparative law literature places relatively little emphasis on these public law systems issues, despite their omnipresence in the political debates of the day. Despite his strong private law interests, Professor Schlesinger did consider public law and legal systems issues, such as criminal law systems and public systems of legal services for the poor. Why is it that many other comparative law scholars (especially American comparative law scholars) do not study foreign legal systems? In addition to the historical reasons mentioned above, there may be several others:

A. Public Law as Too Culturally-Based

Private law addresses relationships—business relationships, family relationships, etc.—that are arguably similar in all Western cultures. By contrast, public law is sometimes seen to express more directly the history, tradition and culture of each individual nation. Since public law reflects different national characters, the argument goes, comparative public law simply might not be as useful an enterprise. Yet the current surfacing in many Western countries of the same problems stemming from public legal systems clearly reveals that this approach is not correct, at least in reference to public legal systems issues in general. Despite differences in national history and culture, nations may be willing to consider foreign models, and comparative lawyers could do more to support such efforts.\textsuperscript{26}

B. No Short-Term Commercial Necessity

Few short-term commercial interests exist that encourage comparative legal systems research. Private law, by contrast, often reflects commercial needs. For example, investors and others are very interested in determining how foreign law interprets joint venture contracts. Public legal systems—as important as they are in determining the long-term competitiveness of countries through their influence on the creation of a skilled labor force and provision of infra-

\textsuperscript{26} There are some instances in which the United States and individual states at least considered foreign public legal systems as a source of ideas for new legislation. Examples include the review by Washington state officials of the German land use planning law and the consideration by the U.S. Congress of the Canadian health care system. Yet American comparative law scholars, as a group, played a relatively little role in this process. By contrast, in Germany, comparative lawyers are much more integrated into the process of government consideration of foreign law systems during the development of domestic policy.
structure—do not generate the same type of short-term interest.27

C. Divide Between Law and Public Policy

The traditional divide between law and public policy in the United States could be another reason for American neglect of foreign legal systems.28 American law school courses that address public legal systems topics often focus on individual rights issues and issues of how that field of law interacts with the courts. For example, a major health law textbook dedicates over 300 of its first 450 pages to issues of professional liability, rights of the patient to confidentiality and the tort system for medical injuries. Only thereafter does the text address the health care “system” as such. It devotes thirty-five pages to all government health care programs and another thirty-five to uninsured patients.29 The text dedicates some seven pages (out of more than 1,200) to the concept of national health insurance. While public policy schools and specialists may focus more on systems, these individuals and institutions often do not have the legal training necessary to engage in a complete discussion of foreign law issues. As a result, American comparative law suffers from a dearth of scholarship in these public legal fields.

D. America as a Common Law Country

American lawyers generally, and American comparativists by extension, are the inheritors of the common law system. With the exception of law in a very few states, we have few true “codes” in the civil tradition sense of a comprehensive statement of the law.30 Traditional American legal training is based upon the case method. We approach the law as the accumulation of a series of cases that define

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27. To the extent that public structures have immediate commercial impact, they too receive greater comparative study. Thus, comparative research is done on topics such as securities regulation.

28. There may be some exceptions to this general rule. For example, law schools and law professors often address federalism issues, i.e., issues related to the structure of the public system of government. However, this American focus does not often spill over into the comparative analysis of other federal legal systems.

29. See Barry R. Furrow et al., Health Law: Cases, Materials and Problems (2d ed. 1991). The text does dedicate, in a separate chapter on health care cost control, some twenty pages to payment of physicians under government programs and fifteen pages to providers such as HMOs. Interestingly, the third edition of this casebook devotes four pages (two on England and two on Germany) to foreign health care systems. Barry R. Furrow et al., Health Law: Cases, Materials and Problems 747-51 (3d ed. 1997).

30. Louisiana, and to some extent California, are exceptions to the general rule.
and give structure to the law, often with a focus on individual rights. This background is hardly one that leads to a focus on any legal systems, much less foreign ones. Thus, even American comparativists sometimes structure their textbooks around cases rather than around concepts or systems. By contrast, legal comparativists from the civil tradition are raised on the concepts of codes and systems. Thus, it is little wonder that those comparativists tend to be readier to engage in cross-legal system analysis than are their common law counterparts.

E. American Focus on Local and State, Rather Than National Systems

In comparison to foreign law, U.S. law focuses more on state and local issues than on national systems.31 For Americans, “comparative” law often means looking to the laws not of foreign countries, which function according to different basic principles, but to the laws of the several states. The U.S. states ostensibly act as “laboratories,” so that other states can benefit from their legal experimentation.32 Foreign legal systems are often viewed as just that—foreign—and thus not particularly relevant to the American experience.

A corollary to this point, which applies to both public and private comparative law analysis, is that the size and geographical location of the United States do not promote comparative law scholarship. Most continental European countries share borders with several other countries, and many if not most of the citizens of those countries have some contact with their neighbors. Such contacts occur through a wide range of activities. For example, the system of “twinning” cities in different European countries leads to exchanges of students, athletes and city officials, among others, from those cities and towns. Similarly, many Europeans travel or work in other European countries. Thus, there are frequent opportunities for citizens to experience foreign schools, health care facilities or tax policies.

By contrast, many Americans leave the United States for only a limited time, if at all. The borders with Canada and Mexico are thousands of miles away for many U.S. citizens. Thus, foreign law, and

31. This focus is due, in part, to the federalist structure of the United States, but even in comparison to those of other federations, the U.S. constituent units are quite strong and thus command greater attention.

32. As political scientists have noted, however, states do not intentionally act as laboratories; rather, they try to solve their own problems. The result is that states often have little incentive to share their solutions with other states, which are unaware of successful solutions. See PETERSON, supra note 20, at 35.
foreign legal systems especially, simply do not have the immediacy with which foreign law in Europe is invested.

**F. Difficulty of Generalization in the Public Systems Arena**

Over the past sixty years, many private law fields have experienced a significant amount of convergence among the American states. While the passage of the Uniform Commercial Code, the American Law Institute's draft laws and the Restatements of the Law, for example, have not eliminated all differences among the laws of the U.S. states in the relevant private law fields, it is probably fair to say that divergences are not as great as they once were. By contrast, U.S. state public systems continue to vary radically, not only from state to state but from locality to locality. One need only consider state school systems, tax systems, environmental law or welfare systems to find great differences in public law. Thus, one major issue becomes: what is the basis for comparing the "American" system and a foreign law system. The great diversity among U.S. public law systems creates an initial stumbling block: one must either find common principles among the U.S. states so as to establish a base of comparison with the foreign system, or one must address the foreign system and the differences among the U.S. state laws.

**G. Less Law School Professor Interaction with the "Practice" of Public Law**

Many American law professors are active in national and state bar committees, Association of American Law School committees, restatement projects and other endeavors primarily in the field of private law. By contrast, probably somewhat fewer professors are active on a professional level with the political process, which may well play a greater role in public legal systems law than it would in established private law fields such as contracts law. Thus, there are perhaps fewer American comparative law professors who can bring to their research the expertise that comes from active collaboration in the process of creating law.

**H. Lack of Avenues for Systems Research**

Comparative lawyers pursuing private law research usually require a relatively limited number of research tools. Especially in the case of research in civil law jurisdictions, these materials include major treatises and judicial decisions in a relatively closely circum-
scribed area of the law. By contrast, comparative legal systems research requires legal materials in a broad range of areas. For example, if a researcher wishes to consider public regulation of the educational system, that researcher must consider national constitutional law; state constitutional law (if one is considering a federal state); federal and/or state administrative law; federal, state and local tax sovereignty generally; and the fiscal arrangements for schools, all in addition to federal, state and local law directly relating to schools. Few of even the best American research law libraries contain the materials needed to perform such research, thus requiring the comparative public law specialist to spend considerable time overseas.

Even when these materials are available, there are, in comparison to private law fields, relatively few public law reference works that can orient the comparative systems researcher within the field. Similarly, few foreign law schools offer courses that would provide expert guidance to foreigners getting their bearings in these fields. Thus, the public law researcher must gain familiarity with larger portions of the foreign law library than is the case with private law research. If the research is being performed in a country where English is not the official language, the researcher will probably need even more facility with that language than is the case with the more limited inquiry into one private law field.

I. Style and Length of Foreign Systems Scholarship

Comparative private law scholarship often addresses a single issue within a private law field, the parameters of which are well-known or long-established. By contrast, comparative public systems scholarship must, by its nature, address an entire system. This systems analysis approach creates certain difficulties that relate specifically to the publication of research results.

First, articles that analyze systems in any depth at all tend to be longer than private law articles. The result can be greater difficulty in placing these articles in reputable law reviews, especially those not dedicated exclusively to comparative and international law. Even journals that specialize in comparative law, however, often publish articles thirty-five pages or fewer in length. It is difficult, to say the least, to analyze a foreign system, much less to make any serious conclusions about it, in that page length. This problem is exacerbated if the researcher attempts not only to analyze a foreign system but also to compare that law to another system.

In addition, these comparative systems articles violate the “stan-
standard" law review article format in at least two ways. First, a foreign systems piece may focus on analyzing a foreign system in detail. In so doing, the author may not make the recommendations that are perhaps more typical of private law scholarship (beginning even at the level of law student notes) or more appropriate in response to a case or line of cases. Serious comparative systems scholars realize that many factors—legal, historical and cultural, among others—go into the creation of a legal system. Simple conclusions regarding the desirability of a system tend to be merely simplistic.

Second, with the exception of certain technical fields such as tax, articles that law review editors consider for publication frequently discuss one particular case or a series of cases. By contrast, the comparative systems article—especially those addressing civil law jurisdictions—often cite cases secondarily, if at all. Thus, comparative systems articles do not have the same “look and feel” as do many other law review articles.

The comparative systems researcher can eliminate these problems, of course, by publishing books, rather than articles. That route brings its own hurdles, however. Junior scholars are discouraged from undertaking such major projects. Even senior faculty may run into constraints, such as the limitation on summer research grants that makes them available for research that leads to publication of an article but not for research that leads to the publication of a book.

**IV. Conclusion**

Public law systems are a rich source for comparative law research because most major Western societies struggle with similar problems and structures to which public systems attempt to respond. Especially in the Western world, societies are similar enough, and share enough of a common legal culture, to facilitate comparison. Yet these societies are also varied enough to give each national legal system some perspective on its own approach to public law issues. Thus, public law research could be especially fruitful for American law scholars, since the United States often takes a significantly different approach to public law issues than do continental European countries.

Yet comparative public systems research need not always focus on differences; it can also focus on similarities. Comparative public law scholars may find, in some cases, that different nations are indeed following, for better or worse, similar paths. This research is also
valuable, for it may reassure a system—perhaps against internal challenge—that it has chosen a workable course.

In all cases, comparative public systems research helps answer questions such as how the ideals of democracy, justice and general welfare are interpreted and applied in ostensibly similar societies. Professor Schlesinger showed the way in this regard by focusing not only on private law but also on public legal systems topics. It is now for the next generation of scholars to follow in this path by complementing the traditional private law focus of comparative law with increased study of public law, and especially of public legal systems.