

# FROM COMPARISON TO COLLABORATION: EXPERIMENTS WITH A NEW SCHOLARLY AND POLITICAL FORM

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## I INTRODUCTION

In both the anthropology of law and comparative legal studies, the comparative paradigm is increasingly eclipsed by a new overarching motif for research and practice: collaboration. Examples abound in anthropology, in which some of the most sophisticated anthropologists of the contemporary are now focusing on new forms of cross-disciplinary collaboration as scholarly ventures that displace traditional forms of comparative scholarship.<sup>1</sup> In legal studies, likewise, collaboration is at once a necessary legal skill to be imparted at law schools,<sup>2</sup> a new research methodology,<sup>3</sup> and a new answer to old legal

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1. See, e.g., *FIELDWORK IS NOT WHAT IT USED TO BE: LEARNING ANTHROPOLOGY’S METHOD IN A TIME OF TRANSITION* (James D. Faubion & George E. Marcus eds., 2009); Douglas R. Holmes & George E. Marcus, *Collaboration Today and the Re-Imagination of the Classic Scene of Fieldwork Encounter*, 1 *COLLABORATIVE ANTHROPOLOGIES* 81 (2008); Joanne Rappaport, *Beyond Participant Observation: Collaborative Ethnography as Theoretical Innovation*, 1 *COLLABORATIVE ANTHROPOLOGIES* 1 (2008); Deepa S. Reddy, *Caught in Collaboration*, 1 *COLLABORATIVE ANTHROPOLOGIES* 51 (2008); Annelise Riles, *Introduction* to *DOCUMENTS: ARTIFACTS OF MODERN KNOWLEDGE* 1 (Annelise Riles, ed., 2006).

2. See, e.g., JANELLE ORSI, *PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES* (2012); Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 *J. ENVTL. L. & LITIG.* 1 (2012).

3. See, e.g., Eric Chuk et al., *Creating Socially Networked Knowledge Through Interdisciplinary Collaboration*, 11 *ARTS & HUMANITIES IN HIGHER EDUC.* 93 (2011).

problems.<sup>4</sup>

These developments in the legal academy mirror a number of quasi-utopian initiatives proliferating from the corporate world,<sup>5</sup> to the world of NGOs and international human rights, to popular culture.<sup>6</sup> Whether it is teams of strangers working together over long distances to build the latest gadget, or anonymous consumers brought together through cell phone applications to share reviews of those gadgets, our culture now celebrates collective work outside of traditional institutional structures enabled by new forms of Internet-based communication. From the academy to the arts, collaborative work is imagined as more creative, and more valued, than work produced individually or within institutions. Collaboration even holds out the promise of replacing old forms of political and social conflict with “win-win scenarios.”<sup>7</sup> The image of these projects is one of fulfilled, empowered people, in charge of their own destinies, operating without the usual burdens of institutional relations (from office politics to unequal access to resources). Above all, collaboration is the new answer to seemingly intractable social and economic problems. Collaboration is assumed to transcend cultural, political and economic divides and thereby to produce new kinds of economic and social value. One recent legal commentary epitomizes this euphoria:

The world's economic and ecological meltdowns demand that we now redesign our livelihoods, our enterprises, our communities, our organizations, our food systems, our housing and much more. This glorious reinvention has already begun, and many refer to it as the “sharing economy,” the “cooperative economy,” the “grassroots economy,” or just the “new economy.”<sup>8</sup>

This enthusiasm for *collaboration*<sup>9</sup> coincides with a marked loss of

4. See, e.g., YOCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* (2006); Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273 (2004).

5. See *Synthetic Overview of the Collaborative Economy*, P2P FOUNDATION 51 (Apr. 2012), <http://p2p.coop/files/reports/collaborative-economy-2012.pdf>.

[C]orporate platforms create the possibility for users to share their own creative work, or what they have found, but no common code or knowledge base is created. The platforms are owned by corporations, and the attention and behavioral data are sold to advertisers. Regulations over these platforms are established by the corporate owners. Apart from generic platforms such as Facebook, Twitter, YouTube, Flickr, there are many specialized platforms including for creative work that is shared under ‘sharing licenses’ such as the Creative Commons licensing scheme.

*Id.* at 51.

6. See, e.g., CRAIG WARKENTIN, *RESHAPING WORLD POLITICS: NGOS, THE INTERNET, AND GLOBAL CIVIL SOCIETY* (2001); Jonathan Bach, *Link, Search, Interact: The Co-Evolution of NGOs and Interactive Technology*, 21 THEORY, CULTURE & SOCIETY 101 (2004).

7. See, e.g., HAZEL HENDERSON, *BUILDING A WIN-WIN WORLD: LIFE BEYOND GLOBAL ECONOMIC WARFARE* (1996); Gary Hamel, Yves L Doz and Coimbatore K Prahalad, *Collaborate with your Competitors and Win*, 67 HARV BUS. REV. 133 (1989).

8. Kassan & Orsi, *supra* note 2.

9. See e.g., IAN CONDRY, *THE SOUL OF ANIME: COLLABORATIVE CREATIVITY AND JAPAN'S MEDIA SUCCESS STORY* (2012); Oihab Allal-Cherif & Maira Salvator, *Collaboration as an Anti-Crisis Solution: The Role of the Procurement Function*, 41 INT'L J. OF PHYSICAL DISTRIBUTION & LOGISTICS MGMT 860 (2011); Chris Mahoney, *The Collaborative Economy*, 15 EXECUTIVE SPEECHES 1 (2001).

confidence, and even interest, in *comparison*.<sup>10</sup> As many comparative lawyers have commented in recent years, at this very moment of intensive globalization, comparative law ironically is a field in decline, if not outright crisis.<sup>11</sup>

Yet, despite the loss of excitement around comparison as a lens of legal analysis, collaboration, as an alternative, sounds like something of a let-down. On the one hand, comparatists and anthropologists have always collaborated with their interlocutors in the production of knowledge.<sup>12</sup> On the other hand, the euphoria about global collaboration as a methodology<sup>13</sup> in fields from corporate management theory<sup>14</sup> to political activism may strike many scholars as somewhat shallow and even naïve. Like happiness or health, collaboration would seem to be something no one can really be against but about which very little can be said. Why and how would collaboration become anything specifically meaningful, let alone ethical, for the comparative lawyer?

As the ubiquity of collaboration as a new form of market activity suggests, the wider context for this inquiry is a new configuration of global market relations and their political implications. The emergence of a “new economy” requires that comparative lawyers ask new questions about their role—what is the value of scholarly interventions in this particular political and economic climate? What kind of response does this emerging economy demand? What opportunities does it present for the kind of progressive, cosmopolitan legal agenda that has long animated comparative law?

This article responds to the emergence of collaboration as a template for social and political life in a particular way. In part II, it describes the ubiquity of collaboration as an emerging modality of economic and legal organization as a response to an epistemological crisis—a loss of faith in expertise after the demonstrated failure of existing paradigms of market activity and regulation.

10. See e.g., Symposium, *New Approaches to Comparative Law*, 1997 UTAH L. REV. 545 (1997); James Gordley, *Is Comparative Law a Distinct Discipline?*, 46 AM. J. COMP. L. 607 (1998); Ugo Mattei & Mathias Reimann, *Introduction to Symposium, New Directions in Comparative Law*, 46 AM. J. COMP. L. 597 (1998).

11. See Annelise Riles, *Introduction: The Projects of Comparison*, in RETHINKING THE MASTERS OF COMPARATIVE LAW 1, 2–3 (Annelise Riles ed., 2001) (describing “a certain ubiquitous angst about the disciplinary identity of comparative law today—a lingering question about what makes comparative law unique vis-à-vis other academic disciplines, form the anthropology or sociology of law to comparative politics, or jurisprudence, and a sense of being at a loss about the way forward”).

12. See, e.g., LUKE LASSITER, *THE CHICAGO GUIDE TO COLLABORATIVE ETHNOGRAPHY* (2005); Kiven Strohm, *When Anthropology Meets Contemporary Art: Notes for a Politics of Collaboration*, 5 COLLABORATIVE ANTHROPOLOGIES 98, 98 (2012).

13. See, e.g., Oihab Allal-Chérif & Salvator Maira, *Collaboration as an Anti-Crisis Solution: the Role of the Procurement Function*, 41 INT’L J. PHYSICAL DISTRIBUTION & LOGISTICS MGMT. 860 (2011); Morten T. Hansen & Nitin Nohria, *How to Build Collaborative Advantage*, 46 MIT SLOAN MGMT. REV. (Fall 2004); Stephen Kelly, *The Function and Character of Relationship Benefits: Transferring Capabilities and Resources to the Small Firm*, 14 J. SMALL BUS. & ENTERPRISE DEV. 602 (2007).

14. See, e.g., Ron Basu, *New Criteria of Performance Management: A Transition From Enterprise to Collaborative Supply Chain*, 5 MEASURING BUS. EXCELLENCE., no. 4, 2001, at 7; Hansen & Nohria, *supra* note 13, at 22; Chris Mahoney, Sr., *The Collaborative Economy*, 15 EXECUTIVE SPEECHES, Apr./May 2001, at 1.

Part III then turns to the scholarly implications of the rise of the collaborative economy. It contrasts collaboration with an earlier logic of comparison and accounts for the demise of the latter and the rise of the former in terms of their relationship to changing economic forms. Part IV then addresses the key question of how comparative law as a discipline, and progressive cosmopolitan scholars as committed individuals, might respond to these developments. This part engages with developments within anthropology, and particularly feminist anthropology, as a source of inspiration. Part V works through these claims in concrete terms through the example of a collaborative project in engaged comparative law I am directing, known as Meridian 180.<sup>15</sup> Part VI concludes with one insight from the Meridian 180 experiment: the central problem of interest in things unfamiliar or foreign, and how it is generated in this sharing economy. This new focus on interest and disinterest in things foreign in turn illuminates the linkages of the kinds of new projects I advocate here for the tradition of comparative law. It also enables us to see exactly how a new kind of comparative law might respond to the transformations of the collaborative economy.

## II

### THE COLLABORATION ECONOMY

From Airbnb,<sup>16</sup> the online service that allows ordinary individuals to rent out their homes for the night, to travelers who seek to bypass the hotel chains, to Uber,<sup>17</sup> a service that links up people wishing to make extra money as drivers with those seeking a ride, the corporate world is full of examples of new economic collaborations among strangers outside the usual economic structures. Enabled by information technologies, these new economic collaborations claim a certain ethos of friendliness that is slightly more personalized than the ordinary financial transaction. Likewise, the most exciting innovations in policy turn on collaboration of various kinds,<sup>18</sup> from public-private partnerships<sup>19</sup> and

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15. See generally MERIDIAN 180, <http://www.meridian-180.org> (last visited Jan. 26, 2015).

16. See e.g., Kurt Matzler, Viktoria Veider & Wolfgang Kathan, *Adapting to the Sharing Economy*, 56 MIT SLOAN MGMT REV. 71 (Winter 2015) (“Well-known examples of successful startups built on collaborative consumption systems include Airbnb Inc., a San Francisco-based online accommodations marketplace, and Zipcar, a car-sharing brand that is now part of the vehicle rental services company Avis Budget Group Inc., based in Parsippany, New Jersey.”).

17. See e.g., Pierre-Dimitri Gore-Coty, *How Uber is Revving Up European Consumer Choice*, WALL STREET JOURNAL, Sep. 17, 2014, <http://www.wsj.com/articles/how-uber-is-revving-up-european-consumer-choice-1410979717>.

18. See Bronwen Morgan & Declan Kuch, *Activism, Sustainability and the Sharing Economy*, (unpublished manuscript) (on file with author).

The “sharing economy” has risen to prominence in recent years as recession, outsourcing, environmental depletion and alienation drive workers and consumers into new forms of economic action. . . . Narrower understandings [of the “sharing economy”] focus on ways in which information technology is used to empower individuals or organisations to distribute, share and re-use excess capacity in goods and services. We would, however, situate the sharing economy on a spectrum “between activism and enterprise,” with the intention of unsettling what might otherwise be seen as an intuitively dichotomous relationship between these two

crowdsourcing,<sup>20</sup> to “peer review” as a norm-generating tool and an alternative to legal enforcement.<sup>21</sup> Often these collaborations are self-consciously transnational: they aim to break down barriers of locality and allow, say, a foreigner arriving in an unfamiliar city to stay in an individual’s home as if they were friends,<sup>22</sup> or again, European polic makers to transcend national conflicts over the implementation of European Union (EU) directives and to work together in a more constructive way.<sup>23</sup>

It will not surprise anthropologists and comparative lawyers that these transnational collaborations face tremendous technical and political challenges.<sup>24</sup> Indeed, Uber and Airbnb have become extreme examples of the possible abuses of the collaboration model.<sup>25</sup> Yet, in more routine forms of collaboration, between, say, workers located in different places, within different institutional settings, this form of engagement turns out to be hard to do. In response, an entire industry of collaboration management consultants has popped up to solve these difficulties.<sup>26</sup> And yet, the faith remains. As two

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sets of practices.

*Id.*

19. See Christine Harrington & Z. Umut Turem, *Accounting for Accountability in Neoliberal Regulatory Regimes*, in PUBLIC ACCOUNTABILITY: DESIGNS, DILEMMAS AND EXPERIENCES 195 (2006) (critiquing the fantasy that public–private partnerships can better solve policy problems).

20. See, e.g., JEFF HOWE, *CROWDSOURCING: WHY THE POWER OF THE CROWD IS DRIVING THE FUTURE OF BUSINESS* (1st paperback ed. 2009); Daren C. Brabham, *Crowdsourcing as a Model for Problem Solving: An Introduction and Cases*, 14 CONVERGENCE 75 (2008).

21. See, e.g., Charles F. Sabel & Jonathan Zeitlin, *Learning From Difference: The New Architecture of Experimentalist Governance in the EU*, 14 EUR. L.J. 271 (2008); Michael Wilkinson, *Three Conceptions of Law: Towards a Jurisprudence of Democratic Experimentalism*, 2010 WIS. L. REV. 673 (2010); cf. Edward F. Greene & Joshua L. Boehm, *The Limits of “Name-and-Shame” in International Financial Regulation*, 97 CORNELL L. REV. 1083 (2011) (critiquing the limitations of peer review as a regulatory method); Annelise Riles, *Is New Governance the Ideal Architecture for Global Financial Regulation?*, MONETARY & ECONOMIC STUDIES 65 (Nov. 2013) (“Comparative research in other fields suggests that [new governance] methods are most effective when the problem they seek to address is very narrowly tailored. In such cases, peer review can be more focused, and discussions in supervisory colleges can be more specific and meaningful.”).

22. See, e.g., Stuart Miller, *A Crash Course in Airbnb*, N.Y. TIMES, Jan. 2, 2015, [http://www.nytimes.com/2015/01/04/travel/a-crash-course-in-airbnb.html?\\_r=0](http://www.nytimes.com/2015/01/04/travel/a-crash-course-in-airbnb.html?_r=0).

23. See, e.g., Charles F. Sabel & Jonathan Zeitlin, *supra* note 21.

24. See, e.g., Ruth Buchanan & Sundhya Pahuja, *Collaboration, Cosmopolitanism and Complicity*, 71 NORDIC J. INT’L L. 297 (2002) (describing the challenges of collaboration among international legal academics in the Global North and the Global South).

25. See, e.g., Ellen Barry & Suhasini Raj, *Uber Banned in India’s Capital After Rape Accusation*, N.Y. TIMES, Dec. 8, 2014, <http://www.nytimes.com/2014/12/09/world/asia/new-delhi-bans-uber-after-driver-is-accused-of-rape.html>; Lisa Fleisher, *Uber Shuts Down in Spain After Telcos Block Access to App*, WALL STREET JOURNAL, Dec. 31, 2014, <http://blogs.wsj.com/digits/2014/12/31/uber-shuts-down-in-spain-after-telcos-block-access-to-its-app/>; Michael Stothard, *Paris Plans UberPop Ban Amid Taxi Protest*, FINANCIAL TIMES, Dec. 15, 2014, <http://www.ft.com/cms/s/0/3f9bcc7e-8438-11e4-bae9-00144feabdc0.html#axzz3RB1hM100>.

26. See, e.g., CHRISTIAN MADSBJERG & MIKKEL RASMUSSEN, *THE MOMENT OF CLARITY: USING THE HUMAN SCIENCES TO SOLVE YOUR TOUGHEST BUSINESS PROBLEMS* (2014); Graeme Wood, *Anthropology Inc.*, THE ATLANTIC (Feb. 20, 2013, 9:09 PM), <http://www.theatlantic.com/magazine/archive/2013/03/anthropology-inc/309218/>.

commentators in the Harvard Business Review blog recently put it, in the corporate world, collaboration is “at risk of simply becoming a new form of ‘greenwashing.’”<sup>27</sup>

What defines collaboration? In the management consultancy language, collaboration must be some form of collective activity directed towards a well-defined purpose. Every partner to the collaboration must understand his own relationship to this purpose, and a focus on this purpose gives the collaboration energy and form. This kind of goal-oriented collaboration makes foreignness comfortable since all differences align towards a common goal. Total strangers working outside of any formal instrumental structure except for the confines of the Airbnb application and the limited rules it establishes for users can work together to rent an apartment for the night as long as they share *this* clear purpose. Thus, in this view, collaboration that has no purpose is nonsense. Here, if you do not share a common goal, it must not be collaboration. As University of California, Berkeley management professor Morton Hansen puts it, collaboration without a purpose is “bad collaboration,” and “[b]ad collaboration is worse than no collaboration.”<sup>28</sup>

In a recent catalog of emerging forms of Internet-based participation, a group of science and technology studies-inflected scholars have proposed that we understand such projects by focusing on the concept of social and economic value.<sup>29</sup> Every such project, no matter how novel or diverse, has some concept of value, they argue, and we can gain clarity about these projects by asking what value is for each. For example, in the Airbnb case, the transaction produces economic value for both sides (rent for the property owner and savings relative to the price of a hotel for the renter) and there might also be additional forms of cultural or social value attached to getting to know a stranger or living like a local by staying in someone’s home. Value for these scholars is some output that can only be created *through* the collaborative exercise. One can thus empirically observe what value is through the project’s definition of its own goals, legal responsibility, execution of assignments, resource management, and so on.<sup>30</sup> Although the authors are trained in informatics, computer science, and the social studies of technology, they argue that, despite the new technologies usually involved, these collaborations are actually best understood by asking conventional questions in the sociology of institutions—how is authority defined and exercised, what counts as valuable output, and what are the rights and obligations of institutional participants, for example.<sup>31</sup>

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27. Paul Ellingstad & Charmian Love, *Is Collaboration the New Greenwashing?*, HBR BLOG NETWORK (Mar. 12, 2013), <http://blogs.hbr.org/2013/03/is-collaboration-the-new-green-1/>.

28. MORTEN HANSEN, *COLLABORATION: HOW LEADERS AVOID THE TRAPS, BUILD COMMON GROUND, AND REAP BIG RESULTS*. (2013).

29. See Adam Fish, Luis F.R. Murillo, Lilly Nguyen, Aaron Panofsky & Christopher M. Kelty, *Birds of the Internet*, 4 J. CULTURAL ECON. 157, 167 (2011).

30. See *id.* at 168.

31. See *id.* at 161 (following Weber’s sociology of organizations).

The authors' understanding of value correlates closely with the emphasis on instrumental purpose as the core identity and legitimizing function of collaborations in the celebrations in management studies of the collaborative economy, described above. Yet the shift from a management discourse of purpose to an economic language of value leads us to think about collaboration as a market form. It leads us to ask a question that they do not ask: why the collaborative economy now? What does the emergence of collaboration as a template for social and political life, as well as market activity, tell us about the nature of the present moment?

The common story is an optimistic one—we are simply discovering new and better ways of doing things. Here, collaboration represents an innovation on other outmoded forms of social and economic organization. This optimistic story is sometimes infused with a certain tone of desperation, as in the claim that new collaborative ventures may offer a source of livelihood for people in a situation in which traditional jobs are disappearing with no prospect for their return.<sup>32</sup> Yet there may also be a darker explanation. As I have argued elsewhere based on fieldwork among regulators of the global economy,<sup>33</sup> in the post-financial-crisis era, politicians, publics, and financiers have increasingly lost faith in the neoliberal vision of market-coordinated societies, institutions, nations, and individuals.<sup>34</sup> The market no longer is the obvious answer to social problems. At the same time, however, in the aftermath of the devastating critiques of the legitimacy of state action and the abandonment of any illusion that technocratic policymaking is a science immune from politics, the technocrats who inhabit state institutions lack confidence in both the efficacy and legitimacy of their own judgments. The state does not have all the answers either. This condition corresponds more generally to a crisis in expertise—a sense among all stakeholders that the experts cannot really be trusted and that they don't really know what they are doing.<sup>35</sup> The public and the experts have increasingly lost faith in the old “hierarchy of knowledge”<sup>36</sup> in which experts could be trusted to

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32. See Kassan & Orsi, *supra* note 2, at 6 (describing collaboration as a way to “shift away from our reliance on jobs” in a “post-jobs economy”).

33. See Annelise Riles, *Market Collaboration: Finance, Culture, and Ethnography After Neoliberalism*, 115 AM. ANTHROPOLOGIST 555 (2013).

34. See, e.g., Eric Helleiner & Stefano Pagliari, *The End of an Era in International Financial Regulation? A Postcrisis Research Agenda*, 65 INT'L ORG. 169 (2011); cf. Susan Hyatt, *What was Neoliberalism and What Comes Next?*, in POLICY WORLDS: ANTHROPOLOGY AND THE ANALYSIS OF CONTEMPORARY POWER 105 (Cris Shore, Susan Wright & Davide Pero eds. 2012).

35. See DOUGLAS HOLMES, *ECONOMY OF WORDS: COMMUNICATIVE IMPERATIVES IN CENTRAL BANKS* 7 (2014) (quoting Claudio Borio, deputy head of the Monetary and Economic department and direct of research and statistics at the Bank of International Settlements (BIS): “The crisis has shaken the foundations of the deceptively comfortable central banking world . . . . Postcrisis, many certainties have gone. Price stability has proven no guarantee against major financial and macroeconomic instability”); SHEILA JASANOFF, *THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS* (1998); ANNELISE RILES, *COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS* (2011).

36. See ULRICH BECK, *WORLD AT RISK* 33 (2009) (describing assumptions about the superiority of the expert over ordinary ways of knowing).

know best.

Under such conditions, those in charge are understandably eager to “collaborate”—to share the responsibility and the burden of knowing how things work or how to get the job done—if only to insulate themselves from criticism, if not in hopes that “the wisdom of crowds”<sup>37</sup> might be better than their own. When government regulators no longer have the confidence that they can build institutions that will bolster a well-functioning market, they may turn to public-private partnerships as a kind of alternative to rule-making and planning.<sup>38</sup> When corporations lose confidence in the ability of market mechanisms to deliver a stable global production chain based on long-term labor relations, they may turn to crowdsourcing as an “anti-crisis solution.”<sup>39</sup> When individuals lose confidence in their own judgment about what product, or flavor of ice cream, or law school is best for them, they may turn to collaboratively crowdsourced rankings to tell them what they should think. From this point of view, although collaboration is often celebrated as a means of democratizing the tools of entrepreneurship—turning each of us into a potential landlord, or cellphone application inventor, or investor, or political activist—it can also be seen as symptomatic of a certain abdication of the spirit of both entrepreneurship and economic planning.

Yet whatever critiques of collaboration we might have seem somewhat beside the point: the train has already left the station. Collaboration is everywhere in the economy and in wider culture. From primary school ethics to scholarly projects, it is the right answer at the moment (who would dare to be against collaborating?) This includes the academy. In the next part, I turn to the specific implications of the rise of collaboration in law schools for how legal scholarship manages globalization and the transnational nature of law—problems once predominantly the province of comparative law.

### III

#### FROM COMPARISON TO COLLABORATION IN COMPARATIVE LEGAL STUDIES

The developments described in the previous part are already profoundly affecting the legal academy. Law schools everywhere are rushing to teach young lawyers how to collaborate effectively in their practice: collaboration has become a necessary professional skill.<sup>40</sup> The collaborative economy has also been heralded as a possible source of legal employment at a time when there

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37. See, e.g., JAMES SUROWIECKI, *THE WISDOM OF CROWDS* (2005).

38. See, e.g., Harrington & Turem, *supra* note 19 (2006).

39. Oihab Allal-Che'rif & Salvator Maira, *Collaboration as an Anti-Crisis Solution: The Role of the Procurement Function*, 41 INT'L J OF PHYSICAL DISTRIBUTION & LOGISTICS MGMT 860 (2011).

40. See, e.g., Norman Dorsen, *Achieving International Cooperation: NYU's Global Law School Program*, 51 J. LEGAL EDUC. 332 (2001) (on the conception of the New York University's Global Law School Program and its mission to attract foreign students in support of a “globalized” collaborative university setting).



are fewer jobs for lawyers representing large corporate clients.<sup>41</sup> But, at a more general level, collaboration is en vogue: from collaborative teaching across national boundaries, to collaborative research methodologies, to law review articles that trumpet collaboration as a social good and evaluate legal doctrines in terms of their ability to promote collaboration, it is something that everyone seems to do.

This push for transnational collaboration also correlates with a declining enthusiasm for comparative scholarship.<sup>42</sup> Who needs to read a scholarly comparison of legal institutions in India and the United States when one can simply incorporate an Indian legal thinker into one's project collaboratively?<sup>43</sup> The excitement is no longer about being cosmopolitan; it is about building collaborative relationships that displace the need for cosmopolitanism altogether. Foreignness itself is obviated by the framework of collaboration, and with it, the need for comparison.

Increasingly, there is a view that, in order to understand what one needs to know about foreign law, there is no need for fine-grained comparative descriptions—one can simply use a web search engine to consult a collectively produced online database.<sup>44</sup> In a world in which everyone is an expert of a kind, and solutions are produced through various degrees of crowdsourcing rather than through scholarly knowledge work, there is increasingly little need for comparative legal expertise.

In fact, the challenge is not unique to comparative law. One important dimension of collaboration is that it enrolls citizens, consumers, and workers in

41. See, e.g., Reena SenGupta, *Alliances Shift Up a Gear*, FINANCIAL TIMES, Oct. 4, 2013, <http://www.ft.com/intl/cms/s/0/665912e2-2a3c-11e3-9bc6-00144feab7de.html#axzz3RHdAyQd5>.

42. See ROY WAGNER, *LETHAL SPEECH: DARIBI MYTH AS SYMBOLIC OBTUATION* (1978) (on obtuation as the processual form of trope).

43. An example of this impulse is the movement away from citations to comparative legal scholarship in court opinions at the same time as a rise in study tours for judges and the growth of international associations for judges of different countries. See generally Kenneth Anderson, *Through Our Glass Darkly: Does Comparative Law Counsel the Use of Foreign Law in U.S. Constitutional Adjudication?*, 52 DUQ. L. REV. 115, 116 (2014) (“[A] distinct intellectual climate had taken hold, particularly among influential academic legal elites as well as some U.S. Supreme Court Justices, that foreign law ought to have a role to play—perhaps a significant one—in the interpretation and adjudication of U.S. constitutional questions”). On initiatives, such as the Intensive Study Program, that support study tours for judges and the growth of international associations for judges of different countries, see Muhammad Amir Munir, *South Asian Chapter of CJEI—A Blueprint for Establishing a Regional Judicial Education Body in South Asia*, LAW AND JUSTICE COMMISSION OF PAKISTAN/NATIONAL JUDICIAL POLICY MAKING COMMITTEE, SUPREME COURT OF PAKISTAN, ISLAMABAD 1 (2012).

The CJEI has taught us not only to share information and experiences, but also to inculcate good relations at personal level with judges, magistrates and judicial educators of other jurisdictions. It brings judiciaries nearer to each other and allows the institution of judiciary in each jurisdiction to seek input from other relevant judiciary whenever required and wherever relevant.

*Id.*

44. See, e.g., Legal Information Institute, *Who We Are*, (Feb 9, 2014), [http://www.law.cornell.edu/lii/about/who\\_we\\_are](http://www.law.cornell.edu/lii/about/who_we_are).

autointerpretation.<sup>45</sup> Collaboration is premised on the assumption that anyone and everyone can potentially join in the collaboration. And what this group produces will make sense on its own—it will not need further expert analysis. For example, a company need no longer use marketing experts to predict consumers' desires if they can rely on vast data collection about consumer behavior through cell phone applications and frequent consumer surveys to get the aggregate consumer to interpret for herself what she wants. The model here is crowdsourcing: one needs no special expertise in order to feed oneself into the process of knowledge production. The best expert is the aggregate of the ordinary individual.

As collaboration displaces scholarly expertise more broadly, the legal academy is increasingly left without an overt role in either the training of lawyers or the production of valuable knowledge about the law. No wonder there is so much talk of the fact that legal education does not provide value for money<sup>46</sup> or that scholarly articles are boring or irrelevant compared to blog posts.<sup>47</sup> What is perceived as most needed in such a condition (although academics are by no means the only or even the best suited providers) are not comparative analyses of the law per se but *methods* for collaborating across legal jurisdictions and professions.

Note that a collaboration in this view is something that has a kind of dual nature: it is both a description (an output such as an “objective” evaluation of a consumer product) and an institution (such as the community of people who come together to produce that evaluation). In other words, it crosses what were once different scales of social life—the social “realities” out there and the descriptions of those realities someone (such as an expert comparatist) might produce. The effect is that what were once two different spheres of activity—the descriptive (the province of the academy) and the institutional (the so-called “real world”)—have collapsed into one another. We will return to this point in the next part.

In order to understand why and how collaboration displaces comparison as a dominant template for legal thought, as well as how comparative lawyers

45. See Annelise Riles, *Market Collaboration: Finance, Culture, and Ethnography After Neoliberalism*, 115 AM. ANTHROPOLOGIST 555, 562 (2013).

46. See, e.g., Sean Patrick Farrel, *The Lawyer's Apprentice: How to Learn the Law Without Law School*, N.Y. TIMES, July 30, 2014, <http://www.nytimes.com/2014/08/03/education/edlife/how-to-learn-the-law-without-law-school.html?action=click&pgtype=Homepage&version=Most-Visible&module=inside-nyt-region&region=inside-nyt-region&WT.nav=inside-nyt-region>; Steven Davidoff Solomon, *Debating, Yet Again, the Worth of Law School*, N.Y. TIMES, July 18, 2013, <http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/>.

47. See, e.g., Adam Liptak, *The Lackluster Reviews that Lawyers Love to Hate*, N.Y. TIMES, Oct. 21, 2013, [http://www.nytimes.com/2013/10/22/us/law-scholarships-lackluster-reviews.html?\\_r=1&](http://www.nytimes.com/2013/10/22/us/law-scholarships-lackluster-reviews.html?_r=1&); Adam Wagner, *Making Law Accessible to the Public*, THE GUARDIAN, July 26, 2011, <http://www.theguardian.com/law/2011/jul/26/tort-law-access-legal-aid>; John Schwartz, *This is Law School? Socrates Takes a Back Seat to Business and Tech*, N.Y. TIMES, Aug. 1, 2014, <http://www.nytimes.com/2014/08/03/education/edlife/socrates-takes-a-back-seat-to-business-and-tech.html>.

might respond to the current moment, it is necessary to look more carefully at what collaboration displaces—comparison. How did comparison work? And why was it so successful in its time?

#### A. What Was Comparison? Science, Professional Training, and Policy Relevance in Legal Scholarship

For many years, one of the most fundamental problems of legal thought was comparison<sup>48</sup>—the challenge of understanding the foreign. This colossal intellectual project demanded a range of sophisticated methodological debates about how best to understand and describe the foreign, from fieldwork to functionalist analysis. It encompassed philosophical questions on whether an understanding and proper description of things foreign was indeed possible, and debates about how various theories of translation, fiction, and the like might step in to overcome the inherent challenges. It produced an expansive archive of knowledge of foreign law and many debates about the preferability or cross-cultural viability of certain legal techniques over others. And of course it produced a cadre of trained comparatists, in conversation with one another through disciplinary associations, journals, and research travel on the human and institutional relationships that made such understanding of foreignness meaningful.<sup>49</sup> A key problem, in other words, was making sense of the foreign in terms of the familiar and vice versa.

Postwar comparative law was championed by cosmopolitan émigrés aiming to build the legal institutions and intellectual paradigms that would prevent another world war. In the generation that followed, these scholars found a practical niche in state building and legal reform projects that accompanied decolonization and development. In this venture, comparative law drew scholarly vitality from a vibrant interdisciplinary conversation with legal anthropology.<sup>50</sup>

This comparative project turned on a subtle and implicit relational economy of three passions, three commitments, three forms of *raison d'être*. First, comparative law had to stake a claim for itself as scholarship (as “legal science”).<sup>51</sup> Comparatists solidified their project, politically speaking, by

48. See, e.g., JOHN L. COMAROFF & SIMON ROBERTS, *RULES AND PROCESSES: THE CULTURAL LOGIC OF DISPUTE IN AN AFRICAN CONTEXT* (1981).

49. See TIMOTHY CHOY, *ECOLOGIES OF COMPARISON: AN ETHNOGRAPHY OF ENDANGERMENT IN HONG KONG* (2011); MARILYN STRATHERN, *PARTIAL CONNECTIONS* 51–53 (Updated ed., Rowman & Littlefield 2004) (1991) (describing the aesthetic devices used by modern Euro-Americans for making sense of difference, such as relations of text to context and parts to whole); MARILYN STRATHERN, *THE GENDER OF THE GIFT: PROBLEMS WITH WOMEN AND PROBLEMS WITH SOCIETY IN MELANESIA* 340–44 (1988) (describing how modernist anthropology makes sense of the foreign by decontextualizing local constructs and recontextualizing these in analytical frameworks).

50. See Annelise Riles, *Comparative Law and Socio-legal Studies*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 775 (Mathias Reimann & Reinhard Zimmerman eds., 2006).

51. See Annelise Riles, *Introduction: The Projects of Comparison*, *supra* note 11, at 8–10 (Annelise Riles ed., 2001).

grounding it in functionalist social science.<sup>52</sup> The relationship to an equally functionalist anthropology gave comparative law academic respectability, scholarly credentials.<sup>53</sup> Here, the joint emphasis of ethnographers and comparative lawyers was on the techniques of serious academic comparison: in this modernist proto-scientific methodology, empirical data and theory were distinct enterprises. Research took place in one initial time period (we might call it T-1), and generated data. Then, in a later time period (we might call it T-2), the data was removed to an intellectual context in which one generated analysis.<sup>54</sup> Engagement with one's intellectual peers presumed a basis for familiarity—a shared theory of law, a shared epistemology, even a shared political agenda—which one did not share with the foreign subjects about whom one wrote.

It should be noted that there was always one problem with the comparative lawyer's appropriation of anthropology. The problem was comparison. Comparative lawyers liked big broad comparisons—they wrote books about the functional similarities and differences between civil law regimes and common law regimes,<sup>55</sup> for example, or about the functions of legal transplants in all societies and all historical periods.<sup>56</sup> Functionalist anthropologists in contrast emphasized social context and hence for the most part refused such broad

52. See Ralf Michaels, *The Functional Method of Comparative Law*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 339, 381 (Mathias Reimann & Reinhard Zimmermann, eds., 2006) (“[L]aw is a normative discipline for which teleology may be useful or even necessary. Of course, this requires the construction of a more robust functional method.”).

53. See, e.g., JEROME FRANK, LAW AND THE MODERN MIND 15 (1930) (quoting Malinowski on how the paternal figure and law mirror one another as social principles of legitimate power); JEROME HALL, COMPARATIVE LAW AND SOCIAL THEORY 104, 105 (1963) (analyzing functionalism and its ties to twentieth-century jurisprudence and anthropology); M.B. HOOKER, LEGAL PLURALISM: AN INTRODUCTION TO COLONIAL AND NEO-COLONIAL LAWS 11–12 (1975).

[T]he information adduced in ethnographic description is collected on the basis of sociological theory, and the problem, as already indicated, is the relation between this and the generality of theory of and about law. We might well expect tensions between anthropology and jurisprudence on this point, but even within the generality of sociological theory there are wide areas of disagreement. Perhaps we can illustrate an aspect of this by referring to a current dispute in the ethnography of law, on the question of what constitutes a suitable language for legal description. This is usually discussed in the context of the work of Bohannan and Gluckman, where the former is said to be unwilling to use non-native categories of legal thought but the latter, while agreeing that these must be fully explicated, prefers the use of Western categories not only for purposes of understanding but also for comparative study.

*Id.*

54. See STRATHERN, PARTIAL CONNECTIONS, *supra* note 49, at 17–18 (“Anthropological exegesis must be taken for what it is: an effort to create a world parallel to the perceived world in an expressive medium (writing) that sets down its own conditions of intelligibility. The creativity of the written language is thus both resource and limitation.”).

55. See, e.g., JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATINA AMERICA (3d ed. Stanford, 2007).

56. See e.g., ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW (1993); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MODERN LAW REVIEW 11 (1998).

comparisons on the theory that one could say very little about “the civil law” in general without a deep contextual analysis of its uses, meanings and applications in each locale.<sup>57</sup>

Second, comparative law had to claim a contribution to professional training—to the molding of law as a practice. Comparative lawyers argued forcefully that comparative analysis was crucial to skillful legal practice—whether by lawyers, bureaucrats, or judges—when confronted with disputes with cross-cultural dimensions.<sup>58</sup>

Third, comparative law had to show that its insights could contribute to the needs of policymakers like colonial administrators, UN officials, national bureaucrats, law reformers, or judges facing new legal problems.<sup>59</sup> Comparative lawyers firmly maintained that comparative knowledge was relevant to projects like designing new legal institutions in the developing world or negotiating trade agreements among developed nations.

The legitimacy and excitement of comparison, as a project, inhered in the way these three very different kinds of *raison d'être*—science, professional training, and policy relevance—subtly coexisted and remained in mutual play. For example, the study of legal pluralism was not only a serious scholarly project with scientific ties to legal anthropology,<sup>60</sup> but also one that contributed

57. See, e.g., Sally Falk Moore, *Legal Systems of the World: An Introductory Guide to Classifications, Typological Interpretations, and Bibliographic Resources*, in LAW AND THE SOCIAL SCIENCES 11 (Leon Lipson & Stanton Wheeler, eds., 1986).

58. See, e.g., Roscoe Pound, *What May We Expect From Comparative Law?*, 22 A.B.A. J. 56, 59 (1936) (“We can get something for the purposes of today from comparison of rules of law as we find them in different systems, chiefly in that such comparison teaches us to be slow in assuming that there is but one necessary and inevitable rule of law possible for one given state of facts.”). For a more recent formulation, see George A. Bermann, *The Discipline of Comparative Law in the United States*, 51 REVUE INTERNATIONALE DE DROIT COMPARÉ 1041 (1999); George P. Fletcher, *Comparative Law as a Subversive Discipline*, 46 AM. J. COMP. L. 683, 690 (1998) (“[T]he study and teaching of law as an academic subject would seem to cry out for the broadest perspective possible. That perspective would seem to come from understanding the way in which law develops and functions in legal cultures other than our own.”). See also JOHN H. WIGMORE, *KALEIDOSCOPE OF JUSTICE: CONTAINING AUTHENTIC ACCOUNTS OF TRIAL SCENES FROM ALL TIMES AND CLIMES* vi (1941) (“[I]n any study of our own present-day methods, it may help us to have in mind the extraordinary variety of ways in which the same objective of Humanity has been sought throughout all times and climes.”).

59. See, e.g., RENÉ DAVID, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ: INTRODUCTION A L'ÉTUDE DES DROITS ÉTRANGERS ET A LA MÉTHODE COMPARATIVE* 3 (1950); KONRAD ZWEIGERT & HEIN KÖTZ, *INTRODUCTION TO COMPARATIVE LAW* 11 (Tony Weir, trans, Oxford Univ. Press 3d. rev. ed. 1987).

Everyone has now come to realize that the law must protect the customer against standard terms of business which unfairly affect his rights and liabilities. . . But only in the last twenty years have lawyers fully realized that protection against standard terms of business is a *general* problem which in principle affects all contracts.

*Id.*

60. See, e.g., HOOKER *supra* note 53, at 53–54 (1975). Hooker writes:

The essential lesson taught us by legal ethnography is that comparative study is an exercise in jurisprudential exploration which has a twofold task. First, to describe the ways in which ethnographic fact and its resulting sociological categories are descriptive of legal phenomena which we have otherwise known of for some centuries as obligation, liability, or right. Second, we have to determine the proper categories for study within the legal process itself, and legal

to colonial and postcolonial law and development projects.<sup>61</sup> It was also a kind of ethical and professional practice that, once taught, made lawyers or judges more sensitive to the needs and perspectives of their constituents and therefore better able to perform their tasks.

The decline of comparative law in the legal academy<sup>62</sup> over the last twenty years is perhaps related to the way comparatists found themselves pulled in different directions by these different wagers. Today, some comparatists gravitate towards the scholarly side,<sup>63</sup> others towards practical, policy-relevant work.<sup>64</sup> The moment at which one was able to energetically argue for the inseparability of these three dimensions of comparison seems to have passed.

## B. Adventure and Challenge in Legal Scholarship

Yet what motivated the greatest comparatists was often something subtly different. These individuals had a taste for the cosmopolitan adventure.<sup>65</sup> And although comparative lawyers had perfected arguments for their discipline's indispensability, the meaning of the work for the individuals involved was often elsewhere in the intellectual community they brought into being around the work, and in more elusive, less concrete forms of impact—enriched lives, broadened perspectives, or a strongly felt sense of cause.<sup>66</sup> In the heady days of comparison, the triad of science, professional training, and policy relevance often masked another version of itself—intellectual adventure, vocation, and political action.

Consider, for example, the career of Masaji Chiba, the venerable Japanese

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ethnography has demonstrated for us the primacy of process and determined its boundaries in respect of certain special systems.

*Id.* See also Ugo Mattei, *The Comparative Jurisprudence of Schlesinger and Sacco*, in *RETHINKING THE MASTERS OF COMPARATIVE LAW*, *supra* note 11, at 243.

61. See, e.g., PETER FITZPATRICK, *LAW AND STATE IN PAPUA NEW GUINEA* (1980).

62. See, e.g., George A. Bermann, *The Discipline of Comparative Law in the United States*, 51 *REVUE INTERNATIONALE DE DROIT COMPARÉ* 1041 (1999); Ugo Mattei & Mathias Reimann, *Introduction to Symposium, New Directions in Comparative Law*, 46 *AM. J. COMP. L.* 597 (1998); P.G. Monateri, "Everybody's Talking": *The Future of Comparative Law*, 21 *HASTINGS INT'L & COMP. L. REV.* 825 (1998); Mathias Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 *TUL. EUR. & CIV. L.F.* 49 (1996).

63. See, e.g., *LAW, ANTHROPOLOGY, AND THE CONSTITUTION OF THE SOCIAL: MAKING PERSONS AND THINGS* (Alain Pottage & Martha Mundy eds., 2004).

64. See, e.g., Hannibal B. Travis, *President Obama's "Pivot" to Jobs: Lessons from Comparative Law and America's Rivals*, 3 *POVERTY & PUB. POL'Y* 1 (2002).

65. See Annelise Riles, *Encountering Amateurism: John Henry Wigmore and the Use of American Formalism*, in *RETHINKING THE MASTERS OF COMPARATIVE LAW*, *supra* note 11, at 94.

66. See Annelise Riles, *Introduction*, in *RETHINKING THE MASTERS OF COMPARATIVE LAW*, *supra* note 11, at 6.

They actively campaign[ed] to become a part of the mainstream academy and its curriculum. Both academics and amateurs, at times political radicals and at others conservative, figures caught between familiar and distant legal worlds, these comparativists seem defined by a constant task of translation—to themselves as much as to others.

*Id.*

legal pluralist,<sup>67</sup> and vociferous critic of comparative law's Eurocentric focus.<sup>68</sup> Chiba chastised Euro-American legal pluralists such as M.B. Hooker<sup>69</sup> for remaining too bound to Western jurisprudential categories even as they emphasized pluralism.<sup>70</sup> He emphasized rather the cultural particularity of Western law, and especially the culturally specific Western practice of claiming for its categories universality.<sup>71</sup> His history of the Japanese absorption of Western legal ideas and of the coexistence of these with Japanese customary law<sup>72</sup> provided a reflexive perspective on legal transplants at a moment of obsessive transplantation from the West after the end of the Second World War.

The starting premise of Chiba's comparative legal work was the simple functionalist anthropological insight that what counts as law, or should count as law, may be radically different in different contexts.<sup>73</sup> For example, in his work on contract law, Chiba began with an odd question: Why do Japanese people work hard?<sup>74</sup> His answer, based on interviews and observation, as well as legal analysis, was that the indefiniteness of Japanese contract law was supplemented

67. See, e.g., MASAJI CHIBA, *LEGAL PLURALISM: TOWARD A GENERAL THEORY THROUGH JAPANESE LEGAL CULTURE* (1989).

68. See, e.g., RENÉ DAVID & JOHN E.C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW* 4 (3d. ed., Steven & Sons 1985) (1964).

69. See CHIBA, *supra* note 67, at 38–39.

The notion of “legal pluralism” came to be thus used in consideration of cultural pluralism in law, which was most persuasively discussed by M.B. Hooker. In his book in 1975, Hooker clearly pushed forward the idea of cultural pluralism in the law of non-Western countries. . . . Western jurisprudence came to recognize the necessity to pay due respect for other systems of law culturally different from Western law. This would be without doubt a remarkable milestone in the history of Western jurisprudence. At the same time, a new question arises: Can Western jurisprudence truly appreciate non-Western legal situations? We are here required to examine the cultural character of jurisprudence as understood by the Western as well as the non-Western scholars.

*Id.*

70. See Masaji Chiba, *Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-Western Law*, 33 J. LEGAL PLURALISM 197, 198 (1993) (“Their empirical method was truly different from the normative one of the orthodox jurisprudence, but the perspectives of both disciplines were not so different in that they had the tendency to isolate law from the rest of the total culture in society.”).

71. See CHIBA, *supra* note 67, at 4 (“[L]egal pluralism must be questioned and discussed not limited to non-Western society but extended to Western society as well. At present, most of those who know the word and facts of legal pluralism seem to understand it as a special phenomenon in non-Western society.”).

72. See *id.* at 131, 153 (describing his “Three-Level-Structure of Law” model of Western law and expanding its conception and application to account for the interactions of transplanted “modern” law and “indigenous” law in non-Western situations such as Japan).

73. See Chiba, *supra* note 70, at 199.

[O]ur study is meaningful only when it treats the existing non-Western law as a whole which is pluralistically constructed of not only state law but other kinds of official law such as religious law or tribal law, and furthermore, unofficial law in various forms, whether supporting or conflicting with official law.

*Id.*

74. See, e.g., CHIBA, *supra* note 67, at 82 (providing an analysis of “Japanese work-oriented spirit of labor” as an “unofficial legal postulate”).

by the definiteness of particular social and institutional relationships.<sup>75</sup> And yet, despite his insistence on the importance of custom, Chiba remained a sharp critic of some aspects of Japanese custom, including the treatment of women, laborers, and tenants.<sup>76</sup>

I first met Professor Chiba at a coffee shop in Shinjuku, when he was already eighty years old. His hopefulness, energy, and sparkle was arresting. After that we met often, and when I returned to the United States, he made me a gift of a *dousojin*, a small clay spirit to be placed near the entry way of my house to guard against evil spirits. “You will need this in America,” he told me.

Chiba’s own biography, as he told it to me, was something as follows. As a young man during World War II, he studied philosophy of law at Tohoku University. Upon graduation, he joined the research seminar of Professor Takeyoshi Kawashima, the father of Japanese sociology of law and importer of American legal realism to Japan.<sup>77</sup> After the war, everyone was interested in all things Western—hence there was a need for comparative law as the society sought to modernize, westernize, and democratize under the watchful eye of American occupation forces. Yet Chiba was fascinated not with things foreign but with Japanese customary law. He insisted that one could not evaluate or support the new legal transplants without understanding “what was going on in the villages” as he put it, a forsaken place that elite Japanese intellectuals wanted nothing to do with. “I was ostracized, treated as crazy,” he told me. In 1965, Chiba traveled to the University of Minnesota to work for an extended period of time with E. Adamson Hoebel, the anthropologist who collaborated with Karl Llewellyn on *The Cheyenne Way*.<sup>78</sup> At that time, very few Japanese legal scholars had serious training in another discipline.<sup>79</sup>

Late in his career, Chiba developed a strong interest in collaborative

75. *Id.* at 81. Chiba writes:

How can such an indefinite conception function to delineate an indisputable boundary between conflicting claims as definitely as expected of a legal standard? According to my preceding study, I have found a kind of conceptual scheme working interveningly as a functional complement to the indefinite conception of individual rights in order to have Japanese perceive on all occasions definite patterns of behavior to be legally approved. The functional complement of Japanese should be “the particular relationships between the parties concerned.”

*Id.*

76. *See, e.g., id.* at 115 (arguing that the legitimacy of formal law serves as a form of check on the regressive aspects of custom).

77. *See generally* TAKEYOSHI KAWASHIMA: A THEORY OF THE LAW OF OWNERSHIP (1949) (using sociological and philosophical concepts to theorize the similarities and differences between everyday law and state law in modernity). *See also* Eric A. Feldman, *Law, Culture, and Conflict: Dispute Resolution in Postwar Japan*, Public Law Research Paper 07-16 (2007) (elaborating on the significance of Kawashima’s work).

78. KARL N. LLEWELLYN & E. ADAMSON HOEBEL, *THE CHEYENNE WAY: CONFLICT AND CASE LAW IN PRIMITIVE JURISPRUDENCE* (2002).

79. Chiba translated Hoebel’s *The Law of Primitive Man*. *See* E. ADAMSON HOEBEL, *HOJINRUIGAKU NO KISO RIRON* [The Law of Primitive Man: A Study in Comparative Legal Dynamics] (Masaji Chiba & Fumi Nakamura, trans., 1984) (1954).



scholarship involving scholars from throughout Asia. These cross-disciplinary teams conducted fieldwork together in Sri Lanka, Thailand, and elsewhere in Asia.<sup>80</sup> A generation of Japanese legal anthropologists and comparative lawyers came to know each other and their Asian counterparts intimately through these projects and still talk about them with great fondness. But most comparative lawyers, myself included, considered these projects as somehow less serious than his theoretical work on legal pluralism. These collaborations were perceived as the kind of stuff that would occupy the time of a scholar in semiretirement.

Chiba's work belongs to an era that is drawing to a close. His strong view of cultural difference and cultural authenticity is no longer viable in an era of cultural hybridity and interconnectedness and in the aftermath of anthropological critiques of the culture concept.<sup>81</sup> His faith in science as a way of navigating between the twin pitfalls of self-deprecation and ethnocentricity no longer convinces us.

Yet there is another dimension to the work that remains fresh to this day. In particular, I want to draw attention to one of Chiba's most original comparative observations about what he called Western law—its ability to resist challenge from the outside. Chiba identified two key devices. One was challenge-absorbing mechanisms, such as the way abstract principles are supplemented by legal ideas, like justice or equity, that can be adapted to absorb challenges.<sup>82</sup> Another was challenge-rejecting mechanisms, such as the distinction between facts and norms—whereby a challenge that the facts do not fit the law is met by an assertion that law is just a system of norms impervious to politics, economics, ethics, religion, and so on.<sup>83</sup> Here, Chiba takes not simply law but legal theory and legal theorists as the object of comparison. And he does what the best of

80. See, e.g., Masaji Chiba, *Law and Culture in Sri Lanka: A Research Report on Asian Indigenous Law*, RESEARCH GROUP ON ASIAN INDIGENOUS LAW (1984); see also SURIRANKA NO TAGENTEKI HOTAISEI (LEGAL PLURALISM IN SRI LANKA: TRANSPLANTATION OF WESTERN LAW AND COUNTERACTION OF INDIGENOUS LAW) (Masaji Chiba ed. 1988).

81. See GEORGE E. MARCUS & MICHAEL M.J. FISCHER, *ANTHROPOLOGY AS CULTURAL CRITIQUE: AN EXPERIMENTAL MOMENT IN THE HUMAN SCIENCES* 3–4 (2d. ed. 1999).

Experimental strategies to alter the standard forms of anthropological accounts are expressing, on one hand, a new sensitivity to the difficulty of representing cultural differences, given current, almost overriding, perceptions of the global homogenization of cultures, and on the other, a sophisticated recognition of the historical and political-economic realities which, while not denied, have been elided or finessed in much past writing.

*Id.*

82. See CHIBA, *supra* note 67, at 46 (“The more abstract and therefore the more apart from social realities is the concept, the more qualified the concept becomes for application to wider social realities.”).

83. *Id.* at 46–47.

The purpose of the [“separation of norm from fact”] principle is primarily understood as limiting law to a specifically authorized formal system of norms, banishing all the other phases and their outcomes of human social lives from the world of law with the label of fact. As an implication every connection of law with, or interference in, law by the world of fact, however substantially relevant to the law and its application it may be, is cut off, rejected and invalidated.

*Id.*

comparative law can do—he gives us both a new vantage point on our own legal system and a new agenda for political critique.

The enduring contribution of Chiba's work, I want to suggest, was precisely the challenge—the way Chiba's work challenged and continues to challenge both the Japanese and “Westerners” alike. There are two senses to the idea of the challenge. One is challenge as a confrontation or critique of others, and the other is challenge as a “test of one's abilities or character,”<sup>84</sup> that transforms or extends one's own potentialities and generates the responsiveness to curiosity that makes an eighty-year-old man's eyes sparkle. The idea of the challenge gives us a different vision of comparative law's disciplinary mission and energy. It demands that we ask what it means to be a challenge in our own time. My answer would include: to make scholarship that in its form and content is responsive to the current moment—its particular versions of challenge-absorbing and challenge-rejecting mechanisms; to be intellectually adventurous and ambitious—to take intellectual and professional risks; and to be more intellectually and professionally generous—open to the interventions of younger scholars and of ideas not phrased in the language of power.

Yet, before we become too nostalgic for comparison, it is necessary to ask why comparison was the master tool for so many decades. What was the social or political niche that it filled?

Like collaboration, comparison was also a key template for thought far beyond the legal academy, and especially in the increasingly global economy. In brief, comparison played a special role in a market economy founded on coordination through the institution of price.<sup>85</sup> During this period, the market was accepted as the ideal means of human, institutional, mechanical, scientific, national coordination. Yet it necessitated certain key building blocks or supports. One such building block was the legal architecture that provided the ground rules for market transactions, such as the institution of private property.<sup>86</sup> Yet another key building block was the production, translation, and

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84. *Challenge*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/30298?rskey=aYtFte&result=1&isAdvanced=false#eid>, (last visited Jan. 12, 2015).

85. See generally Friedrich Hayek, *The Use of Knowledge in Society*, 35 THE AMERICAN ECONOMIC REVIEW 519, 527 (1945). Hayek writes:

It is more than a metaphor to describe the price system as a kind of machinery for registering change, or a system of telecommunications which enables individual producers to watch merely the movement of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes on which they may never know more than is reflected in the price movement.

*Id.*

86. See FRIEDRICH HAYEK, VOLUME 3: THE POLITICAL ORDER OF A FREE PEOPLE 43 (1979).

The effectiveness of the market order and of the institution of several property rests on the fact that in most instances the producers of particular goods and services will be able to determine who will benefit from them and who [will] pay for their costs. The conditions that the benefits due to a person's activities can be confined to those willing to pay for them, and withheld from those not willing (and, correspondingly, that all harm done has to be paid for), is largely satisfied so far as material commodities in private possessions are concerned: ownership of a particular movable subject generally confers on the owner control over most of

serving up of commensurable *difference*—the kind of difference that price could coordinate.

This was the job of comparison: describing and organizing—objectifying<sup>87</sup>—difference. Comparison played a very practical role in market transactions. How could arbitrageurs profit on the difference between the price of oil in one market or another without a comparative understanding of the legal, cultural, and economic institutions that determined price in each place to begin with?<sup>88</sup> Coordination through price demanded comparative thinking. Sometimes this actually required practical comparative legal work—an expert legal analysis of the similarities and differences between two jurisdictions’ approaches to a particular legal rule. But in a more general sense, the fact that the market functioned on comparison gave comparison legitimacy as an intellectual device. The very ubiquity of comparative thought in the world legitimated its scholarly applications as well. The postwar development of comparative techniques for legal scholarship reflected a broader template for postwar political and economic life.

### C. From Comparison to Collaboration

Today, in contrast, there is an increasing loss of faith in the coordinative power of price, or the ability of liberal legal institutions (tended by professional lawyers) to produce a well-functioning market. It is the collaborative economy, not the neoliberal economy, that captures attention. Today, also, it is not comparison but collaboration that powerfully conjures this potent triad of science, policy, and pedagogy.<sup>89</sup> Like comparison a generation ago, collaboration is now at once a scholarly method, a necessary professional skill, and a policy-relevant practice.

As we saw, academic comparative work reflected a wider social interest in comparison grounded in the role of comparative thought in the neoliberal economy of the time. But with the loss of faith in that neoliberal economic model and the rise of a collaborative economy, a different kind of epistemology

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the beneficial or harmful effects of its use. . . . In some instances the conditions which the market requires in order to perform its ordering function will be satisfied only with respect of some of the results of activities of the individuals. These will on the whole still be effectively guided by the price mechanism, even though some of the effects of these activities will spill over on other who either do not pay for the benefits they receive or are not compensated for damage done to them.

*Id.* See also HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 48 (2000) (“just as a lake needs a hydroelectric plant to produce usable energy, assets need a formal property system to produce significant surplus value”).

87. See WEBB KEANE, *SIGNS OF RECOGNITION: POWERS AND HAZARDS OF REPRESENTATION IN AN INDONESIAN SOCIETY* 14 (1997) (arguing that objectification requires comparison—an operation in which a “new event can be recognized as an instance of something that is already known”).

88. See HIROKAZU MIYAZAKI, *ARBITRAGING JAPAN: DREAMS OF CAPITALISM AT THE END OF FINANCE* (2013) (describing how financial arbitrageurs produce difference in order to arbitrage it).

89. I have written elsewhere about why collaboration now captures the imagination in this way. See Riles, *supra* note 45, at 555.

and a different scholarship ensues. There is less need for academics to compare in order to facilitate coordination since the starting point of collaboration is no longer commensurable difference. In fact, in an era in which truths from market wisdom to political wisdom emerge out of collaboration among ordinary people only loosely connected institutionally, whose sheer number and diversity substitutes for their lack of demonstrated expertise, there is less need for expert scholarly descriptions of social phenomena altogether.

#### IV

#### RESPONDING TO COLLABORATION: LESSONS FROM THE ANTHROPOLOGICAL EXPERIENCE

The last two parts described how the terms of academic conversation have shifted as a result of changes in how people think about and act within markets. The key point was a grim one for comparative lawyers: the world has changed in a way that has made comparative scholarly moves seem somehow beside the point, irrelevant, *uninteresting*. We will return to the implications of this lack of interest in comparative law in the conclusion.

And yet even if comparative law is no longer able to conjure up interest, the misunderstanding of foreignness, the global potential for violence, and even the desire for adventure that first motivated an earlier generation's passion for comparison as an intellectual and ethical project certainly have not abated. In many countries around the world, citizens are increasingly turning inward, drawn more towards nationalism than the promise of cosmopolitanism. Despite the demonstrable globalization of law, there is still a remarkable lack of teaching about things foreign, or about how to encounter or deal with foreignness in legal practice, in mainstream law school classes. In other words, although collaboration pushes the fundamental problem comparative law sought to address to one side, it does not resolve it. Indeed, even the most flat-footed management consultant will aver that collaboration does not in fact obviate foreignness or eliminate the need for the kind of reflexive understanding of one's own condition that enables empathy for the situation of others.

And yet before we launch an attack on the parochialism of the legal academy or turn our energies to a critique of collaboration, we might pause to take stock of how deeply the collaborative impulse has already defined our own lives as scholars and as economic and political actors. Each one of us is already engaged in myriad collaborative ventures, personal and professional, technical and institutional, scholarly and activist. When we do this, we are likely to come to appreciate that the very ubiquity and mundanity of collaboration discourse and practice in law, markets and policy means that we are all already collaborators in all the possible senses of the term.<sup>90</sup> Hence a response to

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90. Nicholas Atkin, *The Home Fronts: Europe at War, 1939–1945*, in *A COMPANION TO EUROPE 1900–1945* 456, 463–64 (Gordon Martel, ed., 2011). Atkin writes:

collaboration cannot simply be critique from outside—it must entail doing something with and within this template. If there is no “outside” to collaboration, we must abandon the pretense of being outside or above the current cultural moment and find some move within the form, so to speak—some way to turn collaboration “inside out.”<sup>91</sup>

It is here that the recent anthropological experience with collaboration may provide a useful guide. In anthropology, the movement from comparison to collaboration has a somewhat different genealogy. It emerges out of the changed conditions and purposes of ethnographic research in the context of decolonization and the critiques anthropologists leveled at their own traditional disciplinary practices in the 1980s and early 1990s. In response to this crisis of ethnographic authority, anthropologists began to explore new methodologies. They began to produce more self-reflexive accounts of how ethnographic texts were written that challenged the notion of the singular ethnographic author and acknowledged the role of anthropologists’ subjects in constructing the ethnographic narrative.<sup>92</sup> These developments grew into an appreciation that the “others” anthropologists once studied were in fact cotheorists and even “para-ethnographers,”<sup>93</sup> not simply subjects of research. Anthropologists began to jettison the heroic image of the data-gathering fieldworker. As Paul Rabinow put it, “in anthropology, it ought to be time . . . to sacrifice the *individualism* as the subject position that has been at the core of anthropology’s approach to research, publication, pedagogy, and above all, thinking.”<sup>94</sup> It followed also that anthropologists were not simply objective observers but participants, implicated in the governance structures they described.

In response, a new activist anthropology<sup>95</sup> explicitly aimed to include anthropologists’ subjects in both the research design and research collection process, and to make anthropological tools available to disempowered social groups who might use this research in social struggles. Anthropologists also

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It was not necessary to be ideologically committed to the New Order in order to engage in collaboration broadly defined . . . . It was the Germans, too, who encouraged “cultural” collaborators—artists, writers, and musicians—who had to balance their commitment to writing and performance with the circumstances of occupation . . . . As David Littlejohn suggests, “collaboration” ranged from volunteering for the SS to buying a postcard of Pétain.

*Id.*

91. ANNELEISE RILES, *THE NETWORK INSIDE OUT* 18 (2001) (“The necessity of the exercise stems from the way in which it is already known from the start. The achievement, then, lies not in the discovery of new knowledge but in the effort to make what we already know analytically accessible.”).

92. WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY (George E. Marcus & James Clifford eds., 1986) (problematizing the way anthropologists have traditionally described other cultures).

93. Douglas Holmes & George E. Marcus, *Cultures of Expertise and the Management of Globalization: Toward the Re-functioning of Ethnography*, in *GLOBAL ASSEMBLAGES: TECHNOLOGY, POLITICS, AND ETHICS AS ANTHROPOLOGICAL PROBLEMS* 235 (Aihwa Ong & Stephen J. Collier eds., 2005) (coining the term “paraethnography” to signify modes of knowledge production that resemble ethnography practiced by other kinds of social actors such as central bankers).

94. PAUL RABINOW, *THE ACCOMPANIMENT: ASSEMBLING THE CONTEMPORARY* 202 (2011).

95. See, e.g., Stuart Kirsch, *Sustainable Mining*, 34 *DIALECTICAL ANTHROPOLOGY* 87 (2010).

began to “study up”<sup>96</sup> —to consider how ethnography of elites and powerful actors in their own societies could contribute to progressive social change.

At the same time, when anthropologists turned to studying elites such as scientists, lawyers, or financiers, they encountered busy, educated people who would not tolerate “being studied” but might be interested in working collaboratively with a visiting researcher on an account of their world.<sup>97</sup> Hence collaboration of one kind or another became a necessary aspect of fieldwork among elites. Yet what was born out of necessity soon was discovered to be a source of innovation and insight. As Douglas Holmes and George Marcus write, “Working amid and on collaborations significantly shifts the purposes of ethnography from description and analysis, inevitably distanced practices for which it has settled, to a deferral to subjects’ modes of knowing, a function to which ethnography has long aspired.”<sup>98</sup>

This experience is particularly relevant for the turn to collaboration as a way of managing foreignness in which, as explained above, representations have collapsed into the social and economic worlds they once described, leaving comparative lawyers, as the producers of expert descriptions of social and legal differences, with little to do.<sup>99</sup> From the point of view of the anthropological experience with collaboration, comparative lawyers might ask whether the separation of the world of things foreign from the scientific description of that world embodied in the old modality of comparison is really something worth being nostalgic about. Perhaps there are other templates for intellectual adventure, vocation, and political action altogether.

In recent years, anthropologists of science have taken these purposeful conflations of the subject of study and the authorial voice a step further by collaborating institutionally with scientists, or by attempting to emulate the way scientists collaborate. For example Chris Kelty has experimented with organizing a collaborative team of anthropologists of science on the model of how the Linux open software project is produced.<sup>100</sup> These projects have not always been successful. Paul Rabinow’s account of what, by his own terms, was a failed collaboration with scientists is refreshingly honest in its description of his own slippage from ethnographer of the collaboration into angered participant

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96. Laura Nader, *Up the Anthropologist—Perspectives Gained from Studying Up*, in REINVENTING ANTHROPOLOGY 284 (Dell H. Hymes ed. 1972) (coining the phrase “studying up” for the ethnography of elites whose economic or social status is greater than that of the ethnographer).

97. As George Marcus writes, “Many fieldworkers today are simply not free in a practical sense to impose the classic conditions of fieldwork, or the difficulties of so doing are quite different from those related in classic accounts.” George E. Marcus, *Introduction*, in FIELDWORK IS NOT WHAT IT USED TO BE: LEARNING ANTHROPOLOGY’S METHOD IN A TIME OF TRANSITION 1, 11 (James D Faubion & George E Marcus eds., 2009).

98. Douglas R. Holmes & George E. Marcus, *Collaboration Today and the Re-Imagination of the Classic Scene of Fieldwork Encounter*, 1 COLLABORATIVE ANTHROPOLOGIES 81, 81–82 (2008) (citations omitted).

99. See *supra* notes 41–43 and text accompanying notes.

100. See, e.g., Christopher Kelty, *Collaboration, Coordination and Composition: Fieldwork after the Internet*, in FIELDWORK ISN’T WHAT IT USED TO BE (James Faubion & George Marcus ed., 2008).

who viewed the scientists as political enemies rather than coconstructors.<sup>101</sup> The ethnographic art lies in the ability to notice and pursue the remarkable opportunities for provoking a certain kind of intersubjective experiment—and then reflecting on them creatively after the fact in the service of cultural insight. Yet when anthropologists dive into collaboration, and the subject of study becomes such mundane and even infuriating decisions such as how to run a meeting, what to say in an email, or how to design a web page, they often seem to lose their ethnographic instincts.

Yet these projects hold out one simple parallel lesson for comparative lawyers: the divide between the foreign and the familiar, between the objects of study and the expert who describes them, between T-1 and T-2, is no longer plausible. The parallel suggests an alternative explanation of the collapse of comparative law into collaboration rooted more in an epistemological shift away from positivist social science than in the academic implications of changing market forms.<sup>102</sup> Just as anthropologists, forced to confront a changed world, found that their new collaborative methods ultimately produced more interesting insights, it may be that collaboration will be good for comparative law after all.

Yet how can comparative lawyers turn collaboration into something of scholarly and ethical value? Here, the collaborations of the anthropology of science do not provide a highly successful role model. As mentioned above, these have not in fact been wildly successful. Feminist anthropologists however may serve as a better role model for they have long gone beyond simply recognizing that collaboration is a crucial aspect of their own expertise by experimenting with how conversation and political action is possible across political and cultural differences.

Motivated initially by political solidarity with the women they encountered in the field,<sup>103</sup> feminists engaged in ethnographic collaborations not simply to

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101. See RABINOW, *supra* note 94, at 164.

At SynBERC there was an inner circle, an old boys club . . . . Many of the decisions made were relatively petty, and if one insisted, one could usually find out what happened. In a word, the situation was more banal than evil . . . . I understood that this lack of transparency was not simply a calculated strategy directed at excluding those of us not in the biosciences but rather a habitual way of dealing with subordinates, information, and potential competitors. That begin said, analytic clarity goes only so far, and this exclusion was irksome, given that I was a principal investigator in the project.

*Id.*

102. Although numerous traditions of scholarship would understand epistemological and material conditions as linked. See, e.g., Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY: WITH TWO LECTURES BY AND AN INTERVIEW WITH MICHEL FOUCAULT* 87 (Graham Burchell, Colin Gordon, & Peter Miller, eds., 1991).

103. See STRATHERN, *PARTIAL CONNECTIONS*, *supra* note 49, at 23.

At stake for feminist as opposed to other scholars is the promotion of women's interests, that is, the promotion of a single perspective. In the end, the "interests" are not so much those internal to the construction of knowledge—the canons of an adequate description—as ones external to it. They come from the social world of which we are also part.

produce descriptions but also to build a set of relationships between women, both in the field and in the academy. Feminists paid attention to the ethical, political, and intellectual opportunities that inhered in these relations as such, not simply as a means to the end of description or expert representations.<sup>104</sup> For feminist anthropologists, creativity and scholarly ethics never inhered solely in description. Indeed, this was why the wider discipline of anthropology was slow to accept feminist anthropology as legitimate—to some, it seemed more “activist” than “scientific.” The feminist model for comparative law at this moment, then, might be the following: scholarly work need not take the form of a description at all. It might take the form of a relation. What if, in an era in which descriptions have collapsed into institutions,<sup>105</sup> scholarship took the form of an institution rather than a text, for example?

There is a second and more important lesson for comparative law in feminist anthropology, concerning what to do when one is already “inside” the forms one finds problematic, such as collaboration. In order to grasp this point, recall that midcentury functionalist anthropology, unlike midcentury functionalist comparative law, eschewed broad-brush cross-cultural comparisons in favor of deep contextual analyses.<sup>106</sup> As Marilyn Strathern has written, this created a challenge for feminist anthropology.<sup>107</sup> Specifically, anthropologists were committed to a holistic and deeply contextual approach to description (in contrast to an older brand of “classical” anthropology that organized societies according to typologies).<sup>108</sup> Yet feminists took a far more muscular comparative approach that treated “the problem of women” everywhere as comparable. Feminists even classified entire societies based on “the status of women.”<sup>109</sup> The feminist brand of comparison was actually quite similar in this respect to

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*Id.*

104. See, e.g., FAYE GINSBURG, EPILOGUE: PRO-DIALOGUE, in *CONTESTED LIVES: THE ABORTION DEBATE IN AN AMERICAN COMMUNITY* (1998). See also Micaela di Leonardo, *Introduction Gender, Culture and Political Economy: Feminist Anthropology in Historical Perspective*, in *GENDER AT THE CROSSROADS OF KNOWLEDGE: FEMINIST ANTHROPOLOGY IN THE POSTMODERN ERA 1* (Micaela di Leonardo ed., 1991).

105. See *supra* notes 29–31 and text accompanying notes.

106. MARILYN STRATHERN, *THE GENDER OF THE GIFT*, *supra* note 49, at 8.

107. See *id.* at 22.

108. See *id.* at 5–6. Strathern writes:

We have considerable information about the distinctiveness of these particular cultures and societies but much less idea why we acquired it. For the holism of the monograph rests on its internal coherence, which creates a sense of autonomous knowledge and of its own justification. Consequently, the terms within which individual monographs are written will not necessarily provide the terms for a comparative exercise.

*Id.*

109. Strathern notes:

A presumption of natural similarity between all the members of one sex comes to justify the ethical stance that the same questions must be asked of their conditions everywhere: to do less would be to treat some as less. In universalizing questions about women’s subordination, then, feminist scholarship shares with classical anthropology the idea that myriad forms of social organization to be found across the world are comparable to one another.

*Id.* at 31.



midcentury comparative law, which also organized and ranked societies according to whether they “did” or “did not” have certain modern legal institutions. As both a feminist and anthropologist, Strathern sought to come to terms with the contradiction between these two views of comparison. As an anthropologist, she recognized the limitations of broad-brush comparisons. As a feminist, she recognized their political utility. More than this, to be a feminist entailed thinking in this broad way about gender. She could not disavow this kind of comparison. This is what she meant when she labeled comparison a “problematic term.”

I raise this example because comparative lawyers now face an analogous dilemma with respect to collaboration: whatever critical concerns we might have about collaboration as a template for scholarly or political life, it is already too much a part of our practice. To be a scholar, or indeed a social actor today, is to engage in collaboration. It is our problematic term.

Strathern responded to this dilemma by noticing what work these comparisons actually did for feminists. Specifically, these comparisons enabled relationships among feminists themselves: “One position evokes others,” and hence, “[t]he positions are created as dependent upon one another . . . . Feminism lies in the debate itself.”<sup>110</sup> That is, comparison was valuable to her, as a feminist, not because it was “true” but because of the relations among feminists it made possible. This led her to think of the problem in a surprising way: rather than rejecting comparison or replacing it with some other term, Strathern staged an experiment in “the way one might hold analysis as a kind of convenient or controlled fiction.”<sup>111</sup> Her innovative book *The Gender of the Gift* experiments with broad-brush comparison as a form of working fiction—acknowledged repeatedly as such, while still untenable at many levels, but to which she would submit her inquiry, in order that something surprising might turn up in her encounter with others. In a sense, this is all she could do, since as a committed feminist she too inhabited the form of comparison that was so problematic to the late-modernist anthropologist.

Fiction is actually a familiar and highly effectual legal technique. As I have discussed elsewhere, the law is supremely skilled at treating one thing “as if” it were another, all the while understanding very well that it is not.<sup>112</sup> When we

110. *Id.* at 24.

111. *Id.* at 6.

112. See Annelise Riles, *Is the Law Hopeful*, in *HOPE IN THE ECONOMY* (Hirokazu Miyazaki & Richard Swedberg eds., forthcoming).

A legal fiction is a legal conclusion—an act of judgment—that takes the form of a factual statement: It is a theory presented as if it were a fact. What we have then is a double “As if”: the As if of fact (the subjunctive assertion of a factual claim that is known to be false—the woman merges into her husband) turns on the As if relationship of judgment to fact itself—the legal conclusion that takes the form of a fact. And here we have the trick of the device: for if the legal conclusion takes the form of a fact, the fact that is known by all to be false, also becomes, in a sense, by operation of law, true.

*Id.* See also Annelise Riles, Karen Knop & Ralf Michaels, *From Multiculturalism to Technique: Feminism, Culture, and the Conflict of Laws Style*, 64 STAN. L. REV. 589 (2012).

assert that a corporation is a person, for example, we are acting as if it is a person for specific and limited legal purposes, and to great social and economic effects. The implication of all this for comparative law is the following: recognizing that collaboration is our “problematic term”—that we are already inside collaboration—what if we responded by playing with collaboration as a kind of legal “fiction”?

This is the set of intuitions behind the project I now will describe: Meridian 180. First is the feminist notion that scholarly work need not take the form of a description but might take the form of a set of relationships. For example, what if, in an era in which textual descriptions of foreign laws have collapsed into new collaborative arrangements in the world that obviate the need for description, scholarly description also took the form of a new institutional arrangement? Second, what if, rather than critiquing collaboration from the outside, we treated it as a “convenient or controlled fiction”<sup>113</sup> for action, one that proceeds from a recognition of its deeply problematic nature? Such an experiment might have difficulty being recognized as serious comparative law scholarship, just as feminist anthropology was at first denounced as unscholarly and incomprehensible. But it might also contribute something of value to the current moment just as comparative law contributed to a critical cosmopolitan perspective for postwar legal studies.

## V

### MERIDIAN 180

In March of 2011, in the immediate aftermath of the Great Tohoku Earthquake and nuclear accident at Fukushima, Japan, a transnational group of legal scholars, anthropologists, economists, practicing lawyers, government officials, securities firm employees, a postmodern theologian, a few artists, and a smattering of others, began to talk about one surreal aspect of the crisis: the constant misreadings across linguistic groups and different forms of expertise with a stake in the crisis, the points of disconnect within national discourses about the crisis, and the thinness of the transnational understanding of what was going on.<sup>114</sup> The crisis at Fukushima and its unfolding regional and international

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113. See *supra* note 111 and accompanying text.

114. To quote the mission statement of Meridian 180:

Why Meridian 180?

The current state of the Asia-Pacific dialogue, especially among leaders at the international level but also among experts and professionals, is impoverished compared to the magnitude of the challenges that those in the region confront. Almost daily, we observe situations arising in which experts in different fields, or representatives of different linguistic, cultural or national groups, misunderstand one another because they operate on the basis of unrecognized biases and blind spots—and thus, miss opportunities for creative alternatives to given political stalemates. Misunderstanding and miscommunication escalate potential for discord and conflict, and for serious errors in policy-making.

We recognize that the world is on the verge of a “global reset” in politics, economic and financial relations, social justice, and environmental conditions, in which given paradigms, political alliances, and modes of expert discourse no longer hold. Accordingly, our mission is

consequences seemed to crystallize and confirm an inchoate sense many of us had that our own conversations—among intellectual elites in different countries, and also across disciplinary boundaries—were simply far too thin to address the needs of the political moment.<sup>115</sup>

In thinking about the causes of this disconnect, it seemed that many of these could not be adequately addressed by traditional scholarly methods.<sup>116</sup> Some obvious causes were persisting language difficulties, or the logistical problems and costs associated with getting busy people to spend substantial amounts of time together so that they could reach a deeper understanding of one another's positions.<sup>117</sup> But there were others too. First was a degree of lack of comfort or trust.<sup>118</sup> Second was a lack of interest in investing time in such a conversation. On both sides of the Pacific and beyond, certain stereotyped assumptions about how others think led many of us to dismiss misunderstandings as the product of a lack of scholarly sophistication, or a certain political or cultural narrowness elsewhere.<sup>119</sup>

We organized ourselves as Meridian 180, named after the 180th meridian, the international date line that separates East from West and that is also the antimeridian, the paradigmatic point of inversion of the Prime Meridian, the paradigmatic orientation. Three years on, this collaboration of scholars, policymakers, and professionals in Asia-Pacific, the United States, and throughout the rest of the world interested in new ways of thinking about law and markets now includes over 650 invited members.<sup>120</sup> We meet in person once or twice a year as funding allows, and, in the interim, online.

Unlike most of what is on the Internet, our conversations are private among

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one of preparedness. Rather than take a retrospective view, we seek to anticipate and prepare intellectually and politically for future environmental disasters, political/military conflicts, and serious problems of social justice in the region by assembling a unique group of creative thinkers and building relationships among them that can be mobilized at times of need.

*Why Meridian 180?*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/why-meridian-180> (last visited Feb. 23, 2015).

115. See generally Eudes Lopes, *Forum Summary: What Role Can Intellectuals and Professionals Play in Crises like Japan's Natural and Nuclear Disasters?* (Sept. 14, 2012), <http://www.meridian-180.org/node/731>.

116. See generally *About Meridian 180*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/about> (last visited Feb. 23, 2015).

117. See generally *What Makes Us Different*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/what-makes-us-different> (last visited Feb. 23, 2015).

118. See generally *Why Meridian 180?*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/why-meridian-180> (last visited Feb. 23, 2015).

119. See generally *Our Members*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/participants> (last visited Feb. 23, 2015).

120. Meridian 180 is governed by a "Core Idea Group" (CIG) comprised of three anthropologists working in the anthropology of the contemporary, a senior U.S. government lawyer and policymaker who has completed all the requirements for a Ph.D. but the doctoral dissertation in anthropology, an Australian international lawyer working on globalization and data politics in the critical legal studies tradition, a Chinese constitutional theorist, a Japanese labor economist, and a Korean financial lawyer turned university executive. See generally *Core Idea Group*, MERIDIAN 180: TRANSFORMING THE TRANSPACIFIC DIALOGUE, <http://meridian-180.org/en/core-idea-group> (last visited Feb. 23, 2015).

the participants. The conversations are serious, detailed, substantive, and focus on the unknowns, the contradictions, the points at which members are not sure what to think.<sup>121</sup> Members participate in whichever of four core languages they are most comfortable with, and comments are translated quickly by young legal scholars educated in two or more legal cultures. Our mode of operation is under the radar rather than headline-grabbing. Although we post summaries of our discussions on our website and produce quasischolarly publications based on our discussions, we have no Twitter account and have so far rebuffed the journalists who have expressed an interest in following the project.

And I want to add one further point, because of the pervasiveness of the ideology that collaborative dialogue somehow produces itself<sup>122</sup>: this field site, like all others, is hard work. The conversations are sustained through elaborate, if rickety, social and institutional scaffolding constantly in need of replacement and repair. There are people to hire and to fire, students to recruit, and members and potential members who need to be inspired and motivated. It is a field full of “glitches” in the science and technology studies sense of the term<sup>123</sup>—mistranslated documents, miscommunicated messages, institutional turf battles, people who misread one another’s intentions, and technologies that mislead, fail to inspire, or break down altogether. For me, the ethnographic experience of Meridian 180 most often presents itself as a long list of problems and to-dos.

#### A. From Texts to Relations

Certainly, at first glance, this project does not resemble anything one would conventionally label comparative law. In the traditional genre, comparative law takes law or lawyers as its subject (comparative *law*).<sup>124</sup> Here, rather than comparing *sites* of law—legal norms, doctrines, or institutions—Meridian 180 engages those who would traditionally be the *objects* of those sites (lawyers, regulators, and legal scholars) as thinking *cosubjects*.<sup>125</sup> In this respect, the project responds directly to the social and epistemological conditions described in the previous parts. It exploits the recognition that we are all on the “inside” of

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121. Our online conversations take the form of “forums” launched by a member with a short essay laying out a particular intellectual or political quandary.

122. See, e.g., ANNELESE RILES, *THE NETWORK INSIDE OUT* (2001) (providing a critique of this ideology).

123. See BRUNO LATOUR & STEVEN WOOLGAR, *LABORATORY LIFE: THE CONSTRUCTION OF SCIENTIFIC FACTS* (1986) (on network stability as an achievement, not something that can be assumed). See also, Casper Bruun Jensen, Review, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets*, 7 *EAST ASIAN SCIENCE, TECHNOLOGY AND SOCIETY: AN INTERNATIONAL JOURNAL* 517, 522 (2013) (on glitches as points in which sociotechnical networks begin to crumble and dissipate); Sergio Latorre, *Legal Technicalities in Conditions Of Political Conflict: The Case Of Land Tenure Disputes In Colombia* (unpublished J.S.D. dissertation, Cornell Law School) (on file with author).

124. See, e.g., Nils Jansen, *Comparative Law and Comparative Legal Knowledge*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 305, 306 (Mathias Reimann & Reinhardt Zimmerman eds., 2006) (arguing that comparative law is a special branch of comparative studies focusing on law).

125. See generally Miyazaki, *supra* note 83 (discussing informants as thinking subjects),

collaboration and that the distinction between the experts and the rest has collapsed. It pushes that recognition to its next logical step: a conversation in which various forms of experts and nonexperts, foreigners to one another in many ways, are literally on the inside of the project together.

Moreover, law is not always the explicit subject of the conversation. Forum topics include some standard comparative law topics such as the meaning of the rule of law,<sup>126</sup> or the relationship between law and culture,<sup>127</sup> but also topics such as “democracy in an age of shifting demographics,”<sup>128</sup> and even “the meaning of happiness.”<sup>129</sup> Some of our discussions stretch the sociolegal impulse to focus on law in action<sup>130</sup> to the point to which some may ask, where is the law? Perhaps some readers may read it as more of an institutional or activist project than a serious scholarly project. Although Meridian 180 has some of the indicia of scholarship (we produce edited books based on conference proceedings, for example) it also has many of the indicia of the problematic collaborations analyzed in part III. And yet, ironically, because of its collaborative nature, the project is quite literally at law’s institutional center: Meridian 180’s institutional home is a law school with a long tradition of comparative law,<sup>131</sup> where it is embraced as both expanding and enriching the academic vision—giving the legal academy a new kind of scholarly reach—while also providing professional training in cross-cultural collaboration to emerging lawyers entering into a highly globalized world of practice.

Yet, inspired by the feminist anthropological insight that scholarship might be as much about the relations it sets into motion as it is about the descriptive outputs, I do want to claim this experiment in collaborative legal theory-making in four languages as a postreflexive form of comparative law. Meridian 180 departs from traditional comparative law and meets feminist anthropology where it becomes a modality of *relating to* the Other, not of *describing or translating the Other* (although the latter must happen along the way, or after the fact, just as the old comparative descriptions and translations depended

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126. See Tomohiro Saito, Michelle Min & Hanna Ko, *Forum Summary: Rule of Law Anew—Comparison Across Countries*, available at <http://meridian-180.org/en/forums/forum-summary-rule-law-anew-comparison-across-countries> (This discussion attempted to break down the concept of the rule of law into its essential components in order to clarify its ongoing relevance across jurisdictions.).

127. See Toru Yamada, *Forum Summary: Law and Cultural Complexity*, available at <http://meridian-180.org/en/forums/forum-summary-law-and-cultural-complexity> (This discussion unpacked the different taken-for-granted starting points for jurisprudential debates across the Pacific rim.).

128. See Michael Lee, *Forum Summary: Is Democracy Sustainable in an Aging Nation?*, available at <http://meridian-180.org/en/forums/forum-summary-democracy-sustainable-aging-nation>.

129. See Elise de Vido, *Forum Summary: What is Happiness?*, available at <http://meridian-180.org/en/forums/forum-summary-what-happiness>.

130. See generally STEWART MACAULAY, LAWRENCE M FRIEDMAN, & ELIZABETH MERTZ, *LAW IN ACTION: A SOCIO-LEGAL READER*. *LAW IN ACTION: A SOCIO-LEGAL READER* (2007).

131. Meridian 180 is a project of the Clarke Program in East Asian Law and Culture at Cornell University Law School, in partnership with the Ewha Women’s University School of Law in Seoul, Korea.

upon personal and professional relations along the way and after the fact). It responds to the dominant form of the moment—collaboration—by recasting that form in terms of the feminist commitment to relations rather than textual outputs per se.<sup>132</sup>

#### B. From Expert Purposes to Amateurism as a Controlled Fiction

If, as suggested above, Meridian 180 has many indicia of the kinds of collaborations celebrated today, there is also something askew about this particular collaboration: from its inception, we have had no common purpose to which each could contribute her respective expertise. Although we have a range of “projects,” from addressing the consequences of war memory in the Asia-Pacific region to rethinking the intellectual architecture of global finance, our overall goals remain oddly unarticulated. Our collaboration requires our members to take the risk of acting the absurd in the terms of management theories of collaboration described in part II: doing without clear purpose, together. Rather, from the moment of the project’s inception in the shadow of the awareness of the many failures that had led to the crisis at Fukushima, we have been living, side by side, a moment of encounter with the limits of each of our own cultures and forms of expertise.<sup>133</sup>

One term for this might be amateurism—the act and subject position of doing something without any actual economic or political purpose. In fact, amateurism is another buzzword of the new collaborative economy. Consider the musings of journalist, author, and Tony Blair advisor Charles Leadbeater:

The 20th century witnessed the rise of professionals in medicine, science, education, and politics. In one field after another, amateurs and their ramshackle organisations were driven out by people who knew what they were doing and had certificates to prove it. The Pro-Am Revolution argues this historic shift is reversing. We’re witnessing the flowering of Pro-Am, bottom-up self-organisation and the crude, all or nothing, categories of professional or amateur will need to be rethought.<sup>134</sup>

The model here is again crowdsourcing: nonexperts can be mobilized toward some shared economic or political purpose. Yet Meridian 180 works in precisely

132. Cf. Julia Elyachar, *Phatic Labor, Infrastructure, and the Question of Empowerment in Cairo*, 37 AMERICAN ETHNOLOGIST 452, 453 (2010) (using Bronislaw Malinowski’s terminology of “phatic communion”—activities that create ties “for their own sake, rather than for the purpose of conveying information”).

133. See Annelise Riles, *Market Collaboration: Finance, Culture, and Ethnography after Neoliberalism*, 115 AMERICAN ANTHROPOLOGIST 555, 564 (2013).

What distinguished the collaboration from most networks, virtual communities, deliberative experiments, or political pressure groups, many of which are also cross-disciplinary or transnational, is that we began from the standpoint of our sense of loss of any sense of the proper questions to be deliberated: we were not collaborating toward some common goal, to which each could contribute their respective expertise. We were simply living, side by side, this moment of our loss of expertise and, with it, our perspective on where we might be going.

*Id.*

134. Charles Leadbeater, quoted in *Synthetic Overview of the Collaborative Economy*, P2P FOUNDATION at 56 (April 2012), available at <http://p2p.coop/files/reports/collaborative-economy-2012.pdf>.

the opposite way. It does not organize a crowd of nonprofessionals to contribute something useful or economically valuable toward some professional purpose. Indeed, our very professional and expert members, people whose professional lives are defined by purpose and by the added value they create everywhere in the economy, are self-consciously acting—as professional thinkers, lawyers, or financiers—without a clearly defined economic or political purpose.<sup>135</sup>

My own fieldwork among lawyers shows that nonpurposeful play is a critical tool of innovation among sophisticated legal professionals.<sup>136</sup> But I first learned of the importance of amateurism as a modality of cosmopolitanism from reading an earlier generation of comparative lawyers who cheerfully embraced the identity of the amateur cosmopolite (one replaced in the postwar era by the identity of the sober and professionalized social scientist).<sup>137</sup> What was missed in this later critique of the earlier amateur comparativism was the sense of pleasure, adventure, and comparison for its own sake, rather than in the service of some professional purpose.<sup>138</sup>

Yet there is also something different about the amateurism of Meridian 180 from the festive romps through exotic societies of those grandfather figures of comparative law. What is different is that on the surface it looks like purposeful collaboration. It is here that we deploy the second insight of feminist anthropology described in the previous part, the notion that one might take a “problematic term” as a “convenient or controlled fiction.” In Meridian 180, we act “as if”<sup>139</sup> we are seriously collaborating toward some other end—some

135. See, e.g., Gregory Lastowka and Dan Hunter, *Amateur-to-Amateur: The Rise of a New Creative Culture*, POLICY ANALYSIS NO. 567 3 (2006) (“The amateur-to-amateur trend in information practices calls into question the notion that the commercial incentive provided by copyright is the exclusive or preeminent way in which we encourage individuals to create useful content.”).

136. Professional lawyers in the financial markets engage in a great deal of work that has no clear instrumental or pecuniary purpose (drafting documents that most likely will never be used, organizing study groups that most likely will never result in publications, etc). See ANNELISE RILES, *supra* note 35 (2011).

137. See Annelise Riles, *Wigmore’s Treasure Box: Comparative Law in the Era of Information*, 40 HARV. INT’L L J 221 (1999); Riles, *supra* note 65.

138. See *id.* at 229.

What comparativists share, as much as a body of knowledge, a set of methods or techniques, or even common research questions, is a *passion* for looking beyond, an empathy for differences but also for similarities, a *faith* in the self-transformative task of learning, and an interest in the *form* of knowledge itself.

*Id.*

139. The epistemology of “as if” builds on nested analogies in an effort to reason through a particular genre of knowledge. In this mode, the legitimacy of an argument is not validated by its objective truth per se, but by the power of the interpretive context that the analogical form illuminates. Thus, the “as if” epistemology is constantly erasing its own specificity and foregrounding the relevance of a broader template of knowledge. See HANS VAHINGER, *THE PHILOSOPHY OF AS IF: A SYSTEM OF THE THEORETICAL, PRACTICAL AND RELIGIOUS FICTIONS OF MANKIND* (1911).

The basis for this method is as follows: since laws cannot include within their formulae all particular instances, certain special examples of an unusual nature are treated as if they belonged to them . . . . The a priori method of establishing laws must necessarily be supplemented by purely inductive observations of the logical procedure within the sciences themselves.

output, such as a better description of legal differences, legal reform proposals, consultation among policymakers, or book publications. Just as Marilyn Strathern could not disavow broad-brush comparisons of the condition of women in different locales because of her commitments to feminist politics in which such comparison had played a crucial role, the project does not explicitly disavow the reading of it as simple, mundane, instrumental cross-disciplinary and cross-national collaboration because such a reading is ethnographically significant—it is in tune with the moment we seek to understand and experiment with. And yet the ultimate purpose remains undefined.

I personally feel the anxiety and discomfort of maintaining this absurd pose whenever I must explain the project to outside constituencies such as university administrators or potential donors. From this point of view, the project may appear as disorganized, self-contradictory, and even unserious. A collaboration without a well-defined purpose is an impossibility, a contradiction, and a mess. Yet there is a feminist point to the madness. The feminist ethnographic method, here, is to redeploy the very conventional nature of the collaboration, as a “controlled fiction.”<sup>140</sup>

## VI

### CONCLUSION

The context for this argument is a moment after the demise of area studies, after the loss of faith in neoliberalism, after the end of culture and price alike as explanatory devices, in which comparison and critique as modalities of intellectual work have been superseded by something darker—collaboration. The premise is that as economic forms shift, so does the nature of legal theory. As the nature of economic value is transforming, so is the value of scholarly work. The premise of Meridian 180 is that this condition also presents a unique methodological and ethical opportunity and challenge. Meridian 180 steps in to reclaim what is lost in the move from comparison to collaboration in comparative legal studies by engaging with what collaboration comes to mean in feminist anthropology in particular. Following the comparatist Masaji Chiba, I want to suggest that the project is an heir to comparative law in the way that it clarifies, and produces, challenges.<sup>141</sup> What we are discovering through this postcomparative legal experiment, in other words, is what the challenges in and to the collaborative form might be—we are discovering new problems for theorization and action.

#### A. Becoming Interested

So what are the findings of this experiment with the collaborative form? Although the project is still ongoing, one key insight brings us back to Chiba's

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*Id.*

140. See STRATHERN, *supra* notes 49 & 111.

141. See *supra* Part III.B.



emphasis on comparative law as challenge, and to the way comparative law itself no longer generates interest as it once did.

The Meridian 180 project has faced many challenges. But one of the greatest of these is simply the challenge of generating and sustaining interest in the project among ourselves—as overcommitted and exhausted professionals and intellectuals. Amateurism is by definition a commitment based on interest alone.<sup>142</sup> How do we generate commitment to something in which the purpose remains undefined? How else is interest generated than through purpose—how does one member’s provocation manage to elucidate a response on behalf of others, for example?

On the face of it, this finding seems absurd. As we saw, a legitimate collaboration in the common understanding should be about producing value—adding value somewhere, somehow. It should not be about generating interest in the collaboration itself. Yet, in fact, interest is a largely unstated but ubiquitous challenge in the collaborative economy. If one thinks for a moment about collaborations one is involved in, many of these ultimately collapse, or just peeter out, not for lack of technology or resources, but for simply a lack of sustained collective interest.

The depth and complexity of the challenge of generating and sustaining interest would not have surprised Professor Chiba, who long ago suggested that Western legal scholars’ lack of interest in things that do not fit within existing paradigms is one of Western law’s crucial “challenge rejecting mechanisms.”<sup>143</sup> The problem is also not uniquely “Western” however: our Asian colleagues also often define the significance of their careers and their work in terms of participation in national professional hierarchies and networks and have little time or energy for negotiating a new set of foreign relationships. Meridian 180’s members experience constant misunderstandings about what one another conceive of as a live theoretical question, and they routinely lack the professional tools or intellectual handles for appreciating novelty in one another’s work.

The generation of interest in things foreign has long been an underacknowledged yet constant purpose of comparative legal studies. And yet generating such an interest among legal academics and the thinking public at large was a passion—a mission, even—of many of the great postwar comparatists.<sup>144</sup> Today, as then, we need more subtle, creative, and careful genres

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142. See P2P FOUNDATION, *supra* note 5, at 58 (quoting Chris Anderson’s claim that amateurs “choose to spend their time on what they do, and they go exactly where their passions, interests, knowledge and personality takes them—no further. If they lose interest they move on and are replaced by someone bursting with fresh energy”).

143. See CHIBA, *supra* note 67, at 46.

144. See, e.g., RUDOLF B. SCHLESINGER, HANS W. BAADE, PETER E. HERZOG & EDWARD M. WISE, *COMPARATIVE LAW: CASES, TEXT, MATERIALS* (1970). Ugo Mattei captures one example of this excitement in his exposition of Rudolf Schlesinger’s Cornell Common Core Project:

Schlesinger has been a creative and influential innovator. In the early sixties, at Cornell, he

of empathy and intellectual appreciation across national boundaries, disciplinary boundaries, and the boundary between the academy and the professions. What if the central problem of comparative law shifted from how to describe foreign legal systems to how to elucidate interest, commitment, and response to things foreign and unfamiliar? What if comparative lawyers were seriously to experiment with the techniques for creating empathy and interest in things foreign? Ironically, such a focus would have very direct relevance, in many areas in which comparative law prides itself on having an impact, from transnational business relations, to international movements for social change, to cooperative arrangements between national regulators in international affairs, to relations among academic institutions. In the postwar era, interest was produced through the aesthetic techniques of pluralism. Yet how is interest produced today, after the collapse of comparison, of sameness and difference, of culture, and of globalization? Here is a serious scholarly question.

Meridian 180 has not by any means unlocked the formula for generating interest in otherness. But the controlled fiction of collaboration has allowed us to closely observe the process of persons *becoming interested*. Most members start off with little commitment to the project. Most commonly, they sign on because of a personal relationship to another member, and with no intention of giving the discussions more than a glance every once in a while. They cannot see how this project could be useful to them. We make the barrier to initial commitment high by emphasizing again and again—in violation of management consultants' number one rule that one must show people "what is in the organization for them"—that they will gain nothing at all from their involvement—neither visibility nor prestige nor income. New participants are also typically troubled by the lack of "outputs" or "deliverables." This all seems like talk for talk's sake.

Sometimes, somehow, this changes. Perhaps a new member decides to intervene in an online conversation—something that they usually experience as risky and anxiety producing.<sup>145</sup> Do they have anything worthy to contribute to the conversation? How will their views be received by such an illustrious but diverse membership? Once someone takes such a risk, he or she usually feels committed in some sense to see how that risk will play out, and perhaps also becomes more empathetic toward and curious about other people's risky moves. Or sometimes the risk entails just spending the time (a professional's most valuable resource) to read through the dense and often difficult online discussions. And perhaps the individual in question discovers something

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launched and carried out, with exceptional organizational and fundraising skills, a collective enterprise, known as the Cornell Common Core Project whose results have been published in two monumental volumes on the issue of the formation of contracts.

See Ugo Mattei, *The Comparative Jurisprudence of Schlesinger and Sacco*, in *RETHINKING THE MASTERS OF COMPARATIVE LAW*, *supra* note 11, at 243.

145. RABINOW, *supra* note 94, at 203 (noting "willingness to take risk is the parameter of our discussion").

surprising or unexpected through this reading, such that the interest feeds itself further.

Of course plenty of others never become interested at all. But what people mention in retrospect is that this process of becoming interested is in some way self-transformative, and becomes meaningful purely on that basis. It also becomes the catalyst for further action: a scholar resolves for the first time to attend academic conferences overseas, or a government bureaucrat sees new intellectual value in his mundane day to day work. Here the challenge of interest links to the second sense of challenge in Chiba's work—self-challenge as a technique of self-cultivation.

## B. Transforming Value

This focus on transformations in participants' own subjectivity may seem quite far from the transformations in the nature of economic value in the global economy with which we began. Remember that for all its seeming novelty, the collaborative economy is actually premised on a very old fashioned idea of economic value as organizing purpose and with it, a simple notion of human motivation. Is there an alternative kind of value being produced in this project then? If so, that would be a quite transformative response to the rise of the collaborative economy indeed.

It may be useful to think about this question by way of analogy to another global sharing economy, the renowned Kula exchange of valuable objects among inhabitants of islands separated by hundreds of miles,<sup>146</sup> as studied by another feminist anthropologist, Nancy Munn.<sup>147</sup> Based on fieldwork among the Massim people, one group of participants in the Kula network, Munn describes how the exchange of words, objects, and persons, both among neighbors and with the inhabitants of far-away islands, engenders transformations of "space-time" not entirely unlike the way a cell phone application brings users from far away places into collaborative proximity. The gift of a canoe literally brings far away places into close proximity while the gift of cooked food to the kin of one's daughter brings events from the past into present memory and hopes for the future into present consciousness.

Yet for Munn, the issue in these local and global exchanges is not the production or *addition* of value, as it is in the more standard definitions of the collaborative economy explored in part II, but rather the *transformation* of value in the context of the obligations of reciprocity that gifts engender. She documents how, for example, a gift of cooked food (one kind of value)

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146. See, e.g., FRANCESCA MERLAN & ALAN RUMSEY, *KU WARU: LANGUAGE AND SEGMENTARY POLITICS IN THE WESTERN NEBILYER VALLEY, PAPUA NEW GUINEA* (1991); Nancy Munn, *Constructing Regional Worlds in Experience: Kula Exchange, Witchcraft and Gawan Local Events*, 25 *MAN* 1 (1990); Andrew Strathern, *Gender, Ideology and Money in Mount Hagen*, 14 *MAN* 530 (1979); STRATHERN, *THE GENDER IN THE GIFT*, *supra* note 49.

147. NANCY MUNN, *THE FAME OF GAWA: A SYMBOLIC STUDY OF VALUE TRANSFORMATION IN A MASSIN SOCIETY* (1992).

transforms into contributions of labor in the building of canoes (another kind of value), which in turn transforms into a canoe which is presented to one group's affines to satisfy prior marriage-related debts, then passed on by the canoe's receivers to their own affines to satisfy other prior debts, and finally placed into service as a means of transportation to far away islands where further episodes of gift exchange await.<sup>148</sup> For Munn, value is better conceived as the transformation of "space-times" of interaction, obligation, and memory.<sup>149</sup> In these exchanges, Munn argues, the relative value of an action is determined by the extent to which it extends its own space-time. For example, an exchange of gifts in the context of a marriage ceremony sets in motion a series of further exchanges and relations that last for the lifetime of the married couple and beyond, while the complex interisland circulation of valuables in patterns of generalized exchange create a space-time of global proportions.<sup>150</sup> The efficacy and identity of Kula exchange inheres not in some clear and shared purpose or value to which all contribute but rather in the way one kind of value is endlessly transformed into another, and the social relations that ensue.

The conditions of the present on which we experiment collectively are, as I have already suggested earlier, economic conditions in which the nature of value itself is not a given but is undergoing profound transformation. As Munn suggests, the seeming expansion of space-times experienced within collaborative projects such as Meridian 180 is in fact an effect of transformations in the very nature of economic value, after the collapse of price as the primary tool of value coordination. In Meridian 180, we are participating in this transformation, in an experimental sense, by transforming value of our own.

Munn's ethnography is particularly relevant on one point: she notices that transformations of "space-time"—transformations, aggrandizements of value—are always accompanied by transformations of the self. Bodies become stronger or weaker, persons become more energetic or more sleepy, as they engage in

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148. See *id.* at 17. Munn writes:

[C]ertain media—in particular, the body and other important elements (such as Gawan canoes and kula shells, which can be shown to have bodily and anthropomorphic associations in Gawan symbolism)—exhibit qualisigns of the positive or negative value generated by acts, notably by acts of food transmission (and other acts involving constraints on eating) and consumption.

*Id.*

149. See Nancy Munn, *The Cultural Anthropology of Time: A Critical Essay*, 21 ANN. REV. OF ANTHROPOLOGY 93, 107 (1992) ("[T]hrough the body's immersion in activity rhythms (including verbal action) it becomes imbued with 'a whole relationship to time.' Spatiotemporality is thus constituted as part of the actor's habitus, held in bodily memory.").

150. See MUNN, *supra* note 147, at 122–23.

The spatiotemporal transformation initiated by the cooked food gift (and its immediate payment) thus brings into being long-term cyclic exchanges that are expected to last as long as the marriage (whether terminated by divorce or the death of one of the spouses), or until the death of one of the partners to the exchange.

*Id.*

such transformations.<sup>151</sup> Perhaps this discovery makes the focus, within Meridian 180, on *becoming interested* a little less absurd. To say that we value our own collective interest in the project, then, is recursive but quite apposite to the extent that value transformation is, as Munn argues, also self-transformation. Rabinow makes this explicit when he claims that collaborative fieldwork must also entail “transformative work on the self.”<sup>152</sup>

The seemingly trivial experience of Meridian 180 as a long list of to-dos is indicative of something feminists have long understood: the constitutive quality of collaboration. Scholarship in the modality of collaboration is not simply description in the service of law-building done elsewhere, by others, in another space-time so to speak. Rather, collaboration becomes its own kind of constitutional moment, a different form of politics—one that is constitutive of a new set of ethical, social, political, and institutional relations, albeit one deeply implicated in the economics of the moment, just as pluralism was for a previous generation.

The challenge of comparative legal studies once inhered in gathering information, knowing and understanding foreign legal institutions, and then writing about things foreign from the perspective of domestic law. The challenge for an era of collaboration, in contrast, is a far more dangerous but also transformative one: to stage challenges that transform value by producing change in the nature of the interlocutors—transformations of the self. In such projects, intellectual adventure, vocation, and political action come together once again, in a different way. All three are on the “inside,” so to speak. The policy world is not something we “impact” with our outputs; its members are already within, with all the challenges that ensue. Description and theorizing come together also in the conversations and the endless institutional and social scaffolding work that sustains them. Most of all, we find in the risks of this exchange a transformative power—a power of collective self-transformation.

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151. *See id.* at 74.

[Gawans] envision consumption as producing nothing but sleep, a bodily state that the speaker contrasted with the kula shells and fame producible through the overseas transmission of food. On the face of it, this comment connecting eating and sleeping may seem unremarkable . . . . [H]owever it reflects an underlying nexus of meanings that are important in understanding value transformation on Gawa.

*Id.*

152. RABINOW, *supra* note 94.