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The Legal Metaverse and Comparative Taxonomy: A Reappraisal

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The present Article revisits my "Three Patterns of Law: Taxonomy and Change in the World's Legal Systems"—published in this very Journal *a quarter century ago—which acknowledged the ideological nature of the law versus politics distinction and posited taxonomy as a means for understanding law. The original article classified law into professional law, political law, and traditional law, and heralded the tentative and dynamic natures of such classification. The two purposes of the present Article are to (i) reflect on legal transformations that have since occurred as reactions to global geopolitical, technological, and economic changes, and (ii) interrogate whether epistemological assumptions that produced the Three Patterns of Law hypothesis still hold. The question the present Article poses is whether a fourth pattern of law is now necessary to capture the new technological state of affairs and the new geopolitical balances of power: in particular, should a rule of smart law be introduced? This Article surveys some of the relevant legal transformations capable of impacting the mapping of each legal pattern to a given geography. Because the Internet (like law, religion, tradition, or language) is an informative-normative system that has produced a new frontier of development, and because of its ubiquity, I have used it as a test for the current viability of the hypothesis. I conclude that it is too early to add a fourth pattern of law; but it is,*

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perhaps, too late to avoid a pattern of no law taking over global hegemony by substituting algorithms for lawyers.

Introduction

A quarter century ago, I penned an article entitled "Three Patterns of Law: Taxonomy and Change in the World's Legal Systems."[1] At that time, I perceived the article to be an overdue rethinking of general legal taxonomy after the end of the Cold War. I was suggesting less of an ethnocentric taxonomy, in order to replace René David's partition—dominant since the 1950s—of the legal world into three families: civil law, common law, and socialist law, with a residual classification named "other conceptions of the law and the social order." My intention was to have comparative legal taxonomy reflect global transformations that had occurred during the almost half-century since the partition's elaboration. Nineteen-fifty indeed, was the year in which professional comparative law attained scholarly maturity, with publication of such classics as David's[2] and Rudolf Schlesinger's;[3] Konrad Zweigert and Hein Kötz's[4] would follow later.

I also thought it was the moment to lobby for equal dignity and subjectivity to the systems contained in the residual classification.[5] I no longer believed the grammar of our discipline could be taught solely by comparison of the three seminal families stemming from Western Cold War comparative law.[6] I suggested a dynamic model, based on the observation that there are three main forms of social constraints: politics, professionalized law, and tradition/religion. I thought that these three omnipresent rulemaking circuits coexisted in a dynamic fashion, and in each territorial system one of them acquires a relatively stable hegemonic status. In that article, as well as in the greater part of my ensuing scholarship in comparative law, I acknowledged and pointed out the unavoidably ideological nature of the law vs. politics distinction, something emphasized by critical legal studies in the United States.[7] Such awareness did not preclude

1. Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 Am. J. Comp. L. 5 (1997).

2. René David & John E.C. Brierley, Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law (John E.C. Brierley trans., The Legal Classics Library 1988) (1964) (a completely revised version of René David & John E.C. Brierley, Traité élémentaire de droit civil comparé (1950)).

3. Rudolf B. Schlesinger et al., Comparative Law: Cases–Text–Materials (1950).

4. Konrad Zweigert & Hein Kötz, An Introduction to Comparative Law (Tony Weir trans., 3d ed. 1998).

5. For a must-read external perception on the biases of comparative law, see Laura Nader, *Whose Comparative Law? A Global Perspective*, *in* Comparative Law and Anthropology 28 (James A.R. Nafziger ed., 2017).

6. See, more recently, Ugo Mattei, *The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline*, 65 Am. J. Comp. L. 567 (2017).

7. *See* Ugo Mattei, *Comparative Law and Critical Legal Studies*, *in* The Oxford Handbook of Comparative Law 805 (Mathias Reimann & Reinhard Zimmermann eds., 2d ed. 2019).

comprehension of possible counter-hegemonic functions of professionalism in the law as in other fields (such as medicine), and of the way in which the diffusion of power thus produced did affect certain legal systems more than others. Being governed by the rule of law rather than of men thus developed as a performative self-perception in Western settings. In engaging with taxonomy, I was also already thoroughly aware that classification is never an end in itself. Rather, it represents a means for understanding law, like other theoretical tools such as notions of legal pluralism, of layered complexity, and many more that mature comparativists can deploy without one excluding the others.[8]

Countries sharing the same hegemonic pattern of law can be dynamically classified into families: a "rule of professional law" (divided in a civil law and a common law subfamily), a "rule of political law" (divided in socialist developing and transitioning subfamilies), and a "rule of traditional law" (divided in a religious and a far eastern family). Systems over time, and because of political circumstances, can always transition from one hegemonic pattern of law into another, so the dynamic taxonomy is always tentative and adaptable.

The tripartition proposed in my "Three Patterns of Law," which I summarize below for the benefit of new readers (see Figure 1), was a Weberian scheme,[9] rudimentarily depicted as a triangle with extremes at the vertices (United States for professional law; Cuba for political law; Saudi Arabia for traditional law), and every other system in the family occupied the half side towards the dominant feature (e.g., China on the side between rule of politics and tradition; Italy between professional law and political; Russia between political law and professional law; Japan between traditional and professional).

The 1997 article was successful by the standards of a core comparative law article: 587 citations so far in the Google Scholar database and translated and excerpted in a dozen languages.[10] Yet, just like the previous dominant taxonomy, between the rule of professional law, the rule of political law, and the rule of traditional law, the article may be strained after twenty-five years because of tectonic geopolitical transformations.[11]

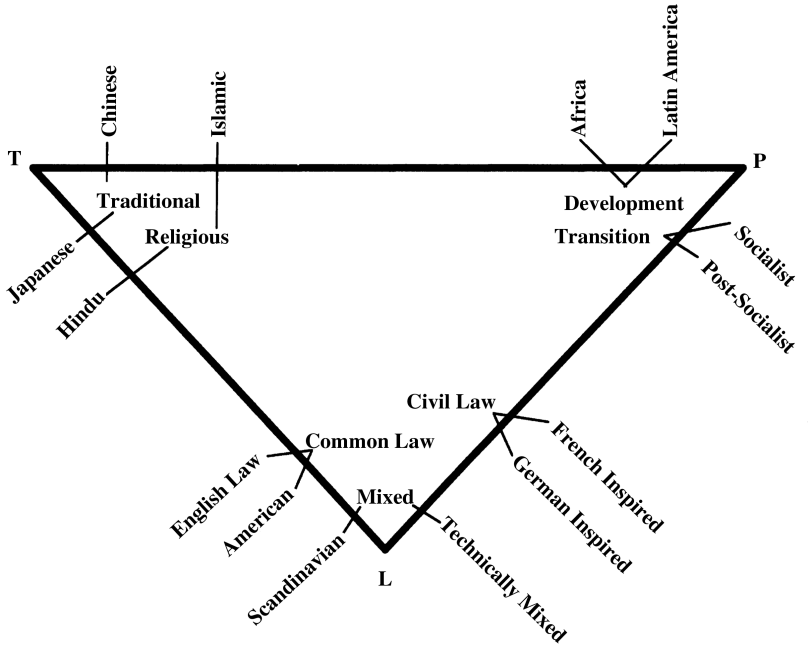
8. *See* Schlesinger's Comparative Law (Ugo Mattei, Teemu Ruskola & Antonio Gidi eds., 7th ed. 2009); Ugo Mattei, *Some Realism About Comparativism: Comparative Law Teaching in the Hegemonic Jurisdiction*, 50 Am. J. Comp. L. 87 (2002).

9. *See* Max Weber on Law and Economy in Society (Max Rheinstein ed., 1954).

10. *See, e.g.*, Elisabetta Grande, Rodrigo Míguez Núñez & Pier Giuseppe Monateri, *The Italian Theory of Comparative Law Goes Abroad*, 1 It. Rev. Int'l Comp. L. 5 (2021).

11. For a recent discussion on some of the same epistemological predicaments that had motivated me to approach taxonomy, see George Mousourakis, *Legal Traditions, Legal Cultures and Families of Law*, *in* Comparative Law and Legal Traditions: Historical and Contemporary Perspectives 131 (George Mousourakis & Matteo Nicolini eds., 2019).

FIGURE 1. GRAPHIC PRESENTATION OF THE THREE PATTERNS OF LAW.



> Taxonomy reflects the legal culture of a given legal system, it is the product of the interaction of the legal tradition and of the new sensibilities. Its aging calls for its replacement. As we know from other branches of learning, as well as from our own experience as legal scholars, even if an older hypothesis has lost its explanatory and predictive functions, the task is to develop a new hypothesis in order not to abandon the process of hypothesizing.[12]

The present Article has a dual purpose. The first is to reflect on legal transformations that have occurred during the last quarter century, as reactions to global geopolitical, technological, and economic changes. Using the approach suggested in "Three Patterns of Law," I demonstrate that some of such transformations can be considered macro-comparative revolutions, capable of displacing certain legal systems from one family into another. Certain unexpected phenomena of convergence may also emerge. The second purpose is more ambitious and theoretical: the article interrogates whether epistemological assumptions that produced the "Three Patterns of Law" hypothesis still hold. The question it poses is whether a *fourth* pattern is now necessary to capture the new technological state of affairs and the new geopolitical balances of power emerging in this era of constant emergency. In

12. Mattei, *supra* note 1, at 5.

particular, should a *rule of smart law* be introduced to complete the picture, and to what extent would this be useful, desirable, and generative? Could we suggest that such a fourth pattern may become so universally pervasive to defeat the very sense of comparative legal taxonomy, to the point of closing forever this entire line of scholarship?

This Article will not survey (let alone respond to) the critical insights the academic community has devoted to my 1997 hypothesis. Far too rich and nuanced has been such debate, which humbles me.[13] Most critiques came from scholars, specialists of one legal system or another, who have not appreciated where I have classified their particular system.[14] I demur to such critiques, and I restate below what I wrote in one of the footnotes:

> My ignorance forecloses a more detailed exploration and is responsible for many misjudgments on the nature of each legal system that I am attempting to classify. Some of my choices are based mostly on intuition and sensibility rather than on measuring devices unavailable at this point. . . . Thus, many of my readers may challenge and feel little sympathy for my choices. However, I must clearly state at the outset that the actual content of the taxonomy and the choices I make are aimed mostly to clarify my taxonomy and I am not particularly fond of any one of the dubious ones that I have entered.[15]

The 1997 article was generally well-received, and I have used it to teach comparative law almost every fall at University of California College of the Law, San Francisco, as well as in countless shorter classes at other institutions around the world. It never fails to generate lively discussions in cosmopolitan circles. I have also used the taxonomy to revise, together with Teemu Ruskola and Antonio Gidi,[16] Schlesinger's classic casebook on comparative law even if injection of new materials has not yet been successful to render appealing a course on general comparative law in the modern law school environment, an environment becoming increasingly less critical in its approach.

The notion that the territorial basis of the article is obsolete in a world of globalized legal transactions—in which much law is not produced by a state system but rather by transnational, often privatized,

13. For some of the best known participants to this discussion, see, e.g., Common Law, Civil Law and the Future of Categories (Janet Walker & Oscar G. Chase eds., 2010); Lukas Frederik Müller, *The Taxonomy of Legal Systems Under Effect of Globalization: Classification of China and the United States*, 16 Glob. Jurist 51 (2016); Jaakko Husa, *Classification of Legal Families Today: Is It Time for a Memorial Hymn?*, 56 Revue Internationale de droit comparé 11 (2004); Jaakko Husa, *Legal Families*, *in* Elgar Encyclopedia of Comparative Law 382 (Jan M. Smits ed., 2006); Csaba Varga, *Taxonomy of Law and Legal Mapping: Patterns and Limits of the Classification of Legal Systems*, 51 Acta Juridica Hungarica 253 (2010).

14. *See, e.g.*, Giorgio Fabio Colombo, *Japan as a Victim of Comparative Law*, 22 Mich. State Int'l L. Rev. 731 (2014).

15. Mattei, *supra* note 1, at 17.

16. *See* Schlesinger's Comparative Law, *supra* note 8.

regulation—has emerged many times in classroom discussions. Those suggestions, advanced early on by Mathias Reimann, have motivated some of the reflections that I include below.[17]

I. Looking Back a Quarter Century

The history of the past twenty-five years has been characterized by a number of radical constitutional moments.[18] The recent commemoration at the University of Stockholm of Schlesinger's death presented to me an occasion to look back; I tried to summarize some of the changes as they happened at the core of the rule of professional law, the hegemonic U.S. system that suddenly began tacking towards the rule of political law at the beginning of the twentieth-first century:

> Professor Schlesinger was a lucky man. He was able to enjoy the peak of legal scholarship in the US, contributing much to its global impact. He believed that continental Europe, once a crib of legality, could function, once hybridized with the common law tradition, as a robust guarantee that the horrors he escaped would not return.
>
> Rudi never saw the brutal decline of the rule of law in the US after September 11, 2001. He never saw political partisanship hijacking the US Supreme Court. He could not even imagine the politically correct morphing into cancel culture closing the American mind. He never saw war once again in the heart [of] Europe. He did not have to witness propaganda taking over knowledge and understanding, not only in the media but also in many mainstream scholarly circles. Nor did he have to witness the generalized disrespect of values, such as dignity and even formal equality, in interpreting the logic of emergency to force millions of unwilling citizens in Europe into submitting to forms of electronic control of their sanitary status in violation of the Nuremberg code. What would Rudi have thought in front of these legal horrors visited upon us?
>
> Rudi Schlesinger died without seeing the decline of the very idea of Western law, as a rational and dialectical way to solve conflicts, substituted by the rise of devices of prediction and surveillance based on the logic of algorithms. I cannot imagine a critical and inquisitive mind like Rudi's accepting the logic of de facto conditionality, "take-it-or-leave-it", the

17. *See* Mathias Reimann, *Beyond National Systems: A Comparative Law for the International Age*, 75 Tulane L. Rev. 1103 (2001).

18. The obvious reference for the notion of "constitutional moments" is Bruce Ackermann, We the People: Foundations (1991). Comparative constitutional law should attempt to find tools capable to deal with such dynamism. *See* Günter Frankenberg, *Comparing Constitutions: Ideas, Ideals, and Ideology: Toward a Layered Narrative*, 4 Int'l J. Const. L. 439 (2006); Günter Frankenberg, Comparative Constitutional Studies: Between Magic and Deceit (2018).

> blackmail that has domesticated our fundamental sense of justice and freedom of choice over the Internet, where it is absolutely normal that the rules are made by the platforms and that might is right.
>
> In thinking back to Rudi and to his teaching, a quarter of a century since his death, I feel nostalgia for a pattern of legal civilization that is gone and will not return. I also wonder, looking towards the global future, if the torch of legal hegemony is not passing into the hands of cultures that have only paid lip service to the ideology of the rule of law. Systems, such as that of China, are providing to Western, perhaps already a Western despotism in the making, institutional devices of economic control capable of cheaply substituting law as a controlling process.[19]

In retrospect, there was some optimism (as well as, perhaps, some bias) behind construction of the rule of professional law as a genuine infusion and convergence between common law and civil law towards deeply rooted rational values and principled decision making, capable of claiming technical supremacy while yielding to democratic political decision making.[20] The pattern of legal professionalism stemming from the great convergence of common law and civil law that seemed achieved at the "end of history"[21] was something more and different from the time-honored idea of a mixed legal system.[22] It was the formidable notion that legal knowledge and techniques could actually work as circuits of professional control (or of power decentralization for those that believe with Lasky that in the law form is substance) over the discretionary or arbitrary nature of political decision making. While in the common law such form of rational control was mainly in the work of courts of law, legal doctrine being just a secondary matter, in the civil law this professional control of rationality was traditionally the domain of academic doctors.[23]

In the century of U.S. hegemony,[24] both judiciary and academia played this role of professional check in the United States, with the growth of academic influence beginning with the New Deal.[25] Due

19. Ugo Mattei, *Foreword: A Lucky Man: On a New Edition of Professor Schlesinger's Memoir*, *in* Rudolf B. Schlesinger, Memories, at vii, xii–xiii (Ugo Mattei & Andrea Pradi eds., 2022).

20. *See, e.g.*, Cornel West, *The Role of Law in Progressive Politics*, 43 Vand. L. Rev. 1797 (1990).

21. *See* Francis Fukuyama, The End of History and the Last Man (2006).

22. *See* Esin Örücü, *What Is a Mixed Legal System: Exclusion or Expansion?*, 3 J. Comp. L. 34 (2008). See also, for Scandinavian law, Koray Güven, *The Distinctive Features of Scandinavian Law and the Problem of Locating It Among the Legal Families of the World*, 78 Istanbul L. Rev. 99 (2020).

23. *See, e.g.*, John P. Dawson, The Oracles of the Law (1968); Raoul C. van Caenegem, Judges, Legislators and Professors: Chapters in European Legal History (1987).

24. *See* Ugo Mattei, Comment, *Why the Wind Changed: Intellectual Leadership in Western Law*, 42 Am. J. Comp. L. 195 (1994).

25. *See, e.g.*, Grant Gilmore, The Ages of American Law (2d ed. 2015).

to post-World War II equilibrium, Western Europe followed suit enhancing the role of the judicial process through constitutional adjudication. Thus, many countries were able to develop as a dominant feature the rule of professional law squarely belonging to a family of legal systems increasingly dominated by common law style and by, in particular, the U.S. model. Indeed, articulation of legal notions, such as "political question" and "separation of church and state," rendered U.S. law the quintessential model, where the two traditional divorces (law/politics and law/religion) have been perfected. For a long period of time the political question doctrine (unavoidably fuzzy) was deployed by the judiciary to remain perceived as "the least dangerous branch," keeping *partisan* politics outside of the courtroom in the most contentious issues.[26] This was why I situated U.S. law at the very vertex of the rule of professional law, serving as an example for those countries that, in the process of legal globalization, would attempt to attain such an apparently desirable state of affairs.

However, with *Bush v. Gore*,[27] the case that decided the 2000 U.S. presidential election with a *partisan* Supreme Court decision, the solidity of the hegemony of professional law in the U.S. started to shake.[28] It took September 11 and the profusion of politically motivated emergency legislation that followed the picturesque and murderous declaration of war on terror by George W. Bush to make critical scholars wonder about the resilience of the rule of professional law.[29] As noted in one book[30] published in the aftermath of the 2008 economic crisis (that closed the Bush presidency and opened the Obama one), an *anti*-law movement, fueled by bipartisan corporate investment in political processes and in the ideological apparatuses of the state, was transmogrifying U.S. law.[31] U.S. foreign policy became increasingly aggressive throughout the Obama terms, tarnishing not only international law but also the U.S. legal model's international prestige.

Meanwhile, judicial appointments *to* and behavior *by* the Supreme Court became increasingly partisan so to threaten its independence and make it less insulated from the effects of "occasional ill humours in the society."[32] Upon closer look, all but every one of the twenty-first

26. *See* ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS (2d ed. 1986).

27. 531 U.S. 98 (2000).

28. *See BUSH V. GORE*: THE QUESTION OF LEGITIMACY (Bruce Ackerman ed., 2002).

29. *See, e.g.*, BRUCE ACKERMAN, THE DECLINE AND FALL OF THE AMERICAN REPUBLIC (2013); Bruce Ackerman, *Response: This Is Not a War*, 113 YALE L.J. 1871 (2004); DAVID COLE, ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM (2003).

30. *See* ROBERT WEISSMAN & JOAN CLAYBROOK, THE CORPORATE SABOTAGE OF AMERICA'S FUTURE AND WHAT WE CAN DO ABOUT IT (2023).

31. *See* UGO MATTEI & LAURA NADER, PLUNDER: WHEN THE RULE OF LAW IS ILLEGAL (2008).

32. THE FEDERALIST No. 78, at 559 (Alexander Hamilton) (Cynthia Branthley Johnson ed., 2004).

century nominees, in sharp distinction with that longstanding tradition, obtained Senate confirmation with tiny majorities—even resorting to exceptional procedures like the "nuclear option"—with the resulting partisan climax in *Dobbs v. Jackson Women's Health Organization*[33] and in *New York State Rifle & Pistol Association Inc. v. Bruen*.[34] On the opposite front, practically no serious theoretical critique of liberal constitutionalism developed in legal academia, due to the triumph of identity politics and to the sympathy of the dominant liberal elite towards the first African-American President. When Donald Trump was elected, U.S. academic critiques focused on factors of personal esthetics and no political economy of deep legal transformations was attempted. When Trump, in spite of his pro-corporate policy, lost support of the big corporate sector and the presidency to Joe Biden, it became apparent that the continuity of Bush to Obama had been interrupted only by a short parenthesis in which the United States did not engage in global projects of democracy exportation through military force. In a sense, Obama was to the post-September 11 surveillance state what Bill Clinton had been to the Reagan revolution. Obama made the anti-law transformations of the corporate surveillance state stable, permanent, and bipartisan. The impact of this political state of affairs (of substantial corporate-dominated continuity, and brutal partisan rhetorical division) on the prestige of the U.S. judicial professionalism has been devastating.

Another important factor, at the heart of the rule of professional law, occurred in Europe, the laboratory for the convergence between civil law and common law that was making Rudi Schlesinger so optimistic about a bright future for international law. I refer to Brexit, which left the European Union bereft of its most important common law jurisdiction. British law, and especially English law, had played an important role in determining that *gradual convergence*, as Basil Markesinis called it.[35] After Brexit the most practical part of dialogue between common law and civil law has remained without a very important voice in Brussels's lawmaking activity (both in the European Commission and in the Court of Justice of the European Union (CJEU)), and the hegemony of Germany and countries in its orbit has no real counterpart. French legal culture has been marginal in the new European legal culture's expressing itself in English, and has never been able to exert a serious influence upon Brussels.[36]

33. 597 U.S. 215 (2022).

34. *Id.*

35. The Gradual Convergence: Foreign Ideas, Foreign Influences, and English Law on the Eve of the 21st Century (Basil Markesinis ed., 1994). For a critical reading of convergence, see Ugo Mattei & Luca G. Pes, *Civil Law and Common Law: Toward Convergence?*, *in* The Oxford Handbook of Law and Politics 267 (Gregory A. Caldeira, R. Daniel Kelemen & Keith E. Whittington eds., 2008).

36. *See* Martijn W. Hesselink, The New European Legal Culture (2001).

Brexit,[37] whose tectonic importance was witnessed by the tremendous investment by corporate elites in trying to avoid the victory of *Yes* in the referendum called by Cameron (this "mistake" was the killer of his political career),[38] had a large cultural, not merely political, impact so that several commentators have suggested the very existence of a new post-Brexit language and culture.[39] England was once again, as in the era of De Gaulle, an outcast in Europe, banished from the control room in Brussels. What followed has been its retreat into the transatlantic axis, and a consequent disengagement from the dialogue with civil law countries on the making of law. The new European legal culture suffered a hard blow. Rather than being able to develop original solutions to supply legal professionalism and, therefore, to originate a "new legal common sense"[40] made of an array of novel legal ideas—perhaps coming from central, southern, and eastern nuances—European law increasingly became a semi-peripheral imitation of U.S. legal style, incrementally mainstream in Germany and other northern countries.[41] In particular, the obsessions with financial efficiency and market competition became the dominant vehicle of cultural hegemony through austerity and neoliberalism of several northern countries (Netherlands in particular), darling to corporate elites because of their generous tax regimes.[42] Again, mainstream academia proved itself incapable of resisting co-optation by generous European grants, which has marginalized critical thought[43] and determined pecuniary research agendas and career choices by the younger legal generation.

Severed from a common law system like that in Great Britain, which has always displayed fundamental traits making hybridization possible, European legal culture proved incapable of originality. Its loyalty to the U.S. legal hegemony is not different from the political one to North-Atlantic Treaty Organization (NATO). Both are due to the chronic incapacity to devise original solutions to compensate, within the West, the decline of the U.S. capitalist model to the capitalist-socialist hybrid model of China.[44]

37. *See, e.g.*, 1–3 THE LAW AND POLITICS OF BREXIT (Federico Fabbrini ed., 2017–2021).

38. *See* ANDREW GLENGROSS, WHY THE UK VOTED FOR BREXIT: DAVID CAMERON'S GREAT MISCALCULATION (2016).

39. *See, e.g.*, LANGUAGES AFTER BREXIT: HOW THE UK SPEAKS TO THE WORLD (Michael Kelly ed., 2018); BREXIT AND LITERATURE: CRITICAL AND CULTURAL RESPONSE (Robert Eaglestone ed., 2018).

40. *See* BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW LEGAL COMMON SENSE (3d ed. 2020).

41. On the notions of center, periphery, and semi-periphery, the obvious reference is IMMANUEL WALLERSTEIN, THE CAPITALIST WORLD-ECONOMY (1979).

42. *See* CLARA E. MATTEI, THE CAPITAL ORDER: HOW ECONOMISTS INVENTED AUSTERITY AND PAVED THE WAY TO FASCISM (2022).

43. *See, e.g.*, Raju J. Das, *The Marginalization of Marxism in Academia*, LINKS INT'L J. SOC. RENEW (Feb. 5, 2020), https://links.org.au/marginalization-marxism-academia.

44. *See, e.g.*, David Harvey, *Anti-Capitalist Chronicles: Whither China?*, MONTHLY REV. FOUND. (Feb. 8, 2022), https://mronline.org/2022/02/08/anti-capitalist-chronicles-whither-china. For Chinese hybridity from the perspective of the law, see TEEMU

II. Global Shift to the Rule of Political Law?

The pandemic has witnessed a marginalization of professional law throughout the Western block.[45] Italy, Austria, Germany, France, Australia, and Canada have each demonstrated an unwillingness to protect its citizens' individual choices related to freedom and personal privacy.

Italy, a country that already in 1997 was exhibiting a tendency to make dominant the rule of political law,[46] witnessed a reluctance by the judiciary (and, so far, refusal by the Constitutional Court) to intervene in unprecedented violations of labor law, freedom of movement, freedom of religious practice, freedom of political manifestation, freedom of expression, and privacy law, perpetrated outside of any proportionality, coherence, or rationality. Even parliamentary opposition to mandatory use of the "green pass," a surveillance technology denounced for its cancellation of privacy in everyday life, has been extinguished. Outside of any precedent, opposition members of Parliament refusing to provide a green pass have been precluded access to Parliament. When three different lawsuits by MPs were filed in Constitutional Court, challenging the government in a classic conflict between constitutional powers falling squarely within the Court's jurisdiction, the lawsuits were rejected without granting a hearing! The sudden dissolution of the Italian Parliament outside of respect of all constitutional formalities in July 2022, substantially precluding any opposition to organize against the incumbent parties for an election scheduled in late September, and an unprecedented campaign in August when Italy is on vacation, has been the final blow to the credibility of the President of the Republic and of the Constitutional Court as institutions designed to preside over and guarantee the rule of law. A large majority of Italian legal scholarship has been remarkably absent and fearful of criticizing such decline of respect for democracy and legality.[47] The result is that in Italy both the circuits of professional legal control over arbitrary decision making by the political power have failed to perform. At this point, keeping Italy within the domain of the rule of professional law would be quite difficult. The once-admired Italian style, renowned by the masterly description of John Henry Merryman,[48] has merged with many other

Ruskola, Legal Orientalism: China, the United States, and Modern Law (2013). *See also* Ignazio Castellucci, *Rule of Law with Chinese Characteristics*, 13 Ann. Survey Int'l Comp. L. 35 (2007).

45. *See* Ugo Mattei, Liu Guanghua & Emanuele Ariano, *The Chinese Advantage in Emergency Law*, 21 Glob. Jurist 1, 28–36 (2021).

46. *See* Mattei, *supra* note 1, at 14–16.

47. *See generally* Ugo Mattei, Il Diritto di Essere Contro: Dissenso e Resistenza nella Società del Controllo (2022); Luciano Canfora, La Democrazia dei Signori (2021).

48. Mauro Cappelletti, John Henry Merryman & Joseph M. Perillo, The Italian Legal System: An Introduction (1967); The Italian Legal System: An Introduction (Michael A. Livingston, Pier Giuseppe Monateri & Francesco Parisi eds., 2d ed. 2015).

countries—especially in Latin America and Central Eastern Europe—that while playing lip service to professionalism embrace dominant features of political law.

Indeed, COVID's omnipresence has also scourged the commitment to professionally guaranteed systems of individual rights (a fundamental feature of the rule of professional law) by certain common law jurisdictions. The violent manners in which Australia and Canada, for example, have handled resistance to compulsory vaccination—Australia by deportations and administrative incarceration;[49] Canada by deployment of a never-before-used 1988 emergency law to quash popular protests by truck drivers[50]—demonstrate that many of the core systems of the rule of professional law might need relocation.

We can see a tendency of the pattern of political law to become dominant in countries that before the beginning of the twenty-first century were the core, not to say the crib, of the rule of professional law. The corporate-cozy anti-law movement in the United States, which before the beginning of this century might have emerged in relatively marginal reforms such as the cap of punitive damages in tort law, the increasing difficulty to certify classes, and the increasing role of compulsory alternative dispute resolution (ADR), became much more powerful with the post-September 11 war on civil liberties, especially against Muslims.[51] The pro-corporate anti-law movement received a strong structural platform in 2010 (forgetting earlier cases such as *Kelo v. City of New London*[52]) with the infamous Court decision in *Citizens United*,[53] in which protection of the corporate right of free speech has effectively shifted the balance of power from government to corporations.[54] Corporate entities can now control the legislative process by showering politicians with campaign cash. It is now difficult for U.S. law to maintain equilibrium and rationality in a legislative process captured incrementally by private interests. In order to challenge laws and "legal reforms" emerging from the democracy deficit exacerbated by *Citizens United* would require a judiciary insulated from political influence, which is increasingly rare. The extension of corporate intellectual property rights without resistance from the judiciary appears to confirm this point.

49. *See, e.g.*, *What Human Rights Are at Particular Risk of Being Restricted During a Pandemic?*, AUSTL. HUM. RTS. COMM'N (2022), https://humanrights.gov.au/about/covid19-and-human-rights/what-human-rights-are-particular-risk-being-restricted-during-pandemic. *See also* David J. Carter, *The Use of Coercive Public Health and Human Biosecurity Law in Australia: An Empirical Analysis*, 43 UNSW L.J. 117 (2020).

50. *See Canada Convoy Protest*, WIKIPEDIA (2022), https://en.wikipedia.org/wiki/Canada_convoy_protest.

51. *See* MATTEI & NADER, *supra* note 31.

52. 545 U.S. 469 (2005).

53. Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

54. *See* ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS 324–95 (2018).

Legal academia itself increasingly follows corporate money, endowing centers for law-and-technology or law-and-medicine as in the past for law-and-economics. Law school deans' scrambling for rising rankings by *US News & World Report* demotes the status of non-Bar courses, marginalizes critical thought, and tames heterodox positions to abide to this powerful corporate soft law; social justice lawyering, for example, may be a vanishing vocation among 2Ls and 3Ls. Without doubt, the rule of professional law is in crisis.

III. Some Transformations Outside of Professional Law Hegemony

The last twenty-five years have also witnessed transformations in the domain of the rule of traditional law.[55] The failures of attempts to export through war the rule of professional law (packaged with democracy building) in Afghanistan, Yemen, and Somalia have been clear. In Iraq, Libya, and northern Syria, radicalization of Islam (and the whole saga of ISIS) has been a direct consequence of wars on secular leaders Saddam, Gaddafi, and Assad and of the resulting decline of the Baathist party. In large sectors of these territories (Mali, Burkina Faso, and parts of Nigeria) Islamic law is again the only system capable of effectiveness, regaining clear hegemony over legal systems that were developing important secular traits based on professionalism.[56] The rule of professional law seems also to be losing terrain in countries like India, Pakistan, and Indonesia in favor of an expansion of traditional systems of dispute settlement. In Israel, the coherence between the tenets of the rule of professional law and the illegal occupation of Palestinian territory, including a fierce system of apartheid, has not been reached in these last twenty-five years.[57] Recently the International Court of Justice rejected Israel's attempt to have the case of genocide in Gaza brought by South Africa rejected. The Court, with overwhelming majorities, found that the violent retaliation by Israel to the events of October 7, 2023, might eventually be proven a genocide and requires the granting of immediate remedies. It is very difficult, within the rule of professional law, to maintain a state that engages in illegal occupation, apartheid, and possibly genocide.

On the other hand, the phenomena of urban concentration and of massive internal migration, together with another quarter-century of rapid economic growth under Chinese-style "socialism," have produced

55. *See, e.g.*, Ann Elizabeth Mayer, *Islamic Law as a Cure for Political Law: The Withering of an Islamist Illusion*, 7 Mediterranean Pol. 117 (2002).

56. For a recent fascinating proposal, with implications for taxonomy, in approaching "global south countries," see Lena Salaymeh & Ralf Michaels, *Decolonial Comparative Law: A Conceptual Beginning*, 86 Rabel J. Comp. Int'l Priv. L. 166 (2022).

57. *See, e.g.*, Ugo Mattei, *Comparative Law, Geopolitics, and the Conflict in Palestine: Disciplined Disengagement and the Commons Solution*, 18 Glob. Jurist 1 (2018).

a very proactive role of the modern political and legal organization[58] with a demise of traditional law.[59]

As for systems that were transitioning from political law to professional law, in particular some of the Central European new annexations to the European Union and NATO, the repositioning has not been clear cut.[60] Granted, the mirage of the "rule of law" (which is the universalistic version of professional law) has remained constant in all transatlantic attempts to seduce oligarchies into Western capitalism, sometimes—like in Afghanistan, Iraq, Ukraine—playing an important role in selecting them. In certain settings, however, the willingness of local leadership to yield to Brussels "values" has been quite limited, especially by countries that, coming from the Warsaw Pact, were not willing to swallow more self-interested propaganda. Hungary and Poland, for example, albeit members of the European Union, have been reluctant to respect some of the symbols of the current "free world" like sexual preferences as identity politics or to submit their sovereignty to Brussels.[61] Paradoxically, such countries, whose constitutional courts have been resisting CJEU constitutional supremacy, have been targeted by EU conditionality programs (that are blackmail, the opposite of the law) aimed at reinstating certain requirements of the rule of law narrative. The strong reactions of local governments have been radicalization and more concentration of power towards structures of the rule of political law. But the situation is by no means clear because the local constitutional courts, already established before the fall of the Berlin Wall, have a long tradition of high professionalism and integrity. It does not appear that Brussels's deploying (in a clear display of double standards) anti-law measures, such as conditionality, can set the standards for belonging to the rule of professional law.

South Africa, with its need to overcome apartheid within a context of a Black majority, has been fertile ground to develop legal professionalism. In spite of increasing social inequality, the genuine commitment of South Africa to legality and rejection of apartheid is witnessed by its ICJ action against Israel referenced above. The country had just promulgated its own Constitution at the time my "Three Patterns of

58. *See* Nobuyuki Yasuda, *Comparative Law and Globalization in Asian Perspectives: Two Proposals of Methodological Framework*, *in* THE INDIAN YEARBOOK OF COMPARATIVE LAW 2018, at 3 (Mahendra Pal Singh & Niraj Kumar eds., 2019).

59. *See, e.g.*, Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 306 (2019); IGNAZIO CASTELLUCCI, RULE OF LAW AND LEGAL COMPLEXITY IN THE PEOPLE'S REPUBLIC OF CHINA 119*ff.* (2012).

60. *See, e.g.*, Katalin Kelemen & Balázs Fekete, *How Should the Legal Systems of Eastern Europe Be Classified Today?*, *in* INTERNATIONAL CONFERENCE FOR THE 10TH ANNIVERSARY OF THE INSTITUTE OF COMPARATIVE LAW 2014, at 197 (A. Badó et al. eds., 2015).

61. *See, e.g.*, Gábor Halmai, *The Making of "Illiberal Constitutionalism" With or Without a New Constitution: The Case of Hungary and Poland*, *in* COMPARATIVE CONSTITUTION MAKING 302 (David Landau & Hanna Lerner eds., 2019).

Law" was published. As the U.S. Constitution reflects the idea, articulated in *Federalist* Nos. 10 and 52, that minorities (property-owning colonists) required legal protection against the majority of the "have nots" in the form of a judiciary protecting fundamental economic rights, so too in post-apartheid South Africa has a similar arrangement been reached. Rule of professional law in the form of rights protection vests in a highly professionalized court of law.

To me, these are the major transformations that in the last twenty-five years have strained the three patterns of law taxonomy or at least determined changes that can be seen as moments of systemic relevance for pushing a system from one side to another of the triangle. Again, these suggestions have no pretense whatsoever of being complete.

IV. Global Technological Transformations: Towards Smart Controlling Processes

From a technological perspective, the last twenty-five years have experienced transformations at a speed never before witnessed in human history. In 1997, we were barely using the Internet. The domain name Facebook emerged online that year, when connections were made via modems attached to phone wires. Smartphones did not yet exist, and for the first time the antenna was taken away on a new generation of cellular phones. Today, humans spend more time online than not; Facebook has more users than China has inhabitants; and technological devices have radically transformed and infiltrated each and every aspect of human life.[62]

The Internet is a frontier that has expanded through the development of its own practices that pay lip service only to any sort of professional law. Just as at the Far West frontier in early America, "might makes right" at the Internet frontier and the strong impose law on the weak. Granted, there has been a façade of legal professionalism on the Internet (so-called Internet law), tackling things like online privacy or the right to be forgotten. Intellectual property has also maintained a role online, and certainly there is some professional legal business to transact there. However, as in the case of privacy, the capacity of intellectual property actually to "bite" and to cope with tech evolutions exploiting the speed advantage of technology over law is quite limited. There is a need to understand the political economy of the technological frontier and of its impact on the motherland—the "offline" world—to ascertain how technological transformation impacts global legal taxonomy today.

62. *See* Nicolas Carr, The Shallows. How the Internet Is Changing the Way We Think, Read and Remember (2010); Yuval Noah Harari, Homo Deus: A Brief History of Tomorrow (2016); Adam Greenfield, Radical Technologies: The Design of Everyday Life (2018).

The fact of the matter, after twenty-five years of Internet ubiquity, is that virtual space cannot be considered separate from the material one, either economically or politically. This observation opens the door to a variety of issues that are relevant from the perspective of taxonomy. From the point of view of political economy, we must observe that the development of professional law has been intermingled with the structure of both real-life capitalism and real-life socialism. Whether it is the economic substratum to determine a legal superstructure or the other way around, with the law to determine the evolution of capitalism (both market and state),[63] there is no question that modernity is a legal project with its own mythopoeic narratives,[64] and that capitalism must develop within legal institutions of extraction and accumulation.[65] Without property rights, freedom of contract, limited liability, etc., the "great transformation" described by Karl Polanyi[66] could not have happened.[67]

Professional law has served a double purpose: both a friend and a foe to capital accumulation: a friend as an indispensable tool;[68] a foe as a device of limitation and control of its excesses (think about the Sherman Act or punitive damages in tort law). It was only because of the might stemming from being an indispensable friend of capital accumulation that the professional lawyer (structurally distinguishable from the religious authority or from the politician) had some taming effects on the worst aspects of capitalist exploitation of humans and the environment. Think also about the discussion on native subjectivity in

63. *See* Frederick Engels, *Engels to Conrad Schmidt* [Oct. 27, 1890], *in* 49 MARX & ENGELS COLLECTED WORKS: LETTERS 1890–92, at 57, 60–61 (Boris Tartakovsky et al. eds., Peter Ross et al. trans., Lawrence & Wishart 2010) (commenting on the perennially controversial model of base/superstructure: "In a modern state not only must the law correspond to the general economic situation and be its expression, it must *of itself* constitute a *coherent* expression that does not, by reason of internal contradictions, give itself the lie. And to achieve this, the fidelity with which economic conditions are reflected is increasingly thrown to the winds."). *See also* Nicos Poulantzas, *Marxist Examination of the Contemporary State and Law and the Question of the "Alternative," in* THE POULANTZAS READER: MARXISM, LAW AND THE STATE 25 (James Martin ed., Gregory Elliott trans., Verso 2008); Stuart Hall, *Rethinking the "Base and Superstructure" Metaphor* [1977], *in* SELECTED WRITINGS ON MARXISM 62 (Gregor McLennan ed., 2021).

64. *See* Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) (explaining that "[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live." *Id.* at 4–5).

65. *See, e.g.*, ROSA LUXEMBURG, THE ACCUMULATION OF CAPITAL (Agnes Schwarzschild trans., Routledge 2003) (1913); MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1870–1960: THE CRISIS OF LEGAL ORTHODOXY (1994); MICHAEL E. TIGAR & MADELEINE R. LEVY, LAW AND THE RISE OF CAPITALISM (2000).

66. KARL POLANYI, THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME (1967).

67. *See generally* JOHN H. COMMONS, LEGAL FOUNDATIONS OF CAPITALISM (1934); ELLEN MEIKSINS WOOD, THE ORIGIN OF CAPITALISM: A LONGER VIEW (2002).

68. *See, e.g.*, KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY (2019).

Salamanca with the famous debate between Bartolomé de las Casas and Juan Ginés de Sepúlveda.[69] Of course, no power would care about natural law prescriptions to respect the Indians if the same law were not necessary for making plunder effective and smooth.[70] The same can be said for slavery abolition in the United States.[71]

Now it appears that legal professionalism is no longer necessary for capital accumulation online.[72] This does not mean there is no presence of law on the Internet frontier. But it's one thing to be necessary, and quite another to be present. The manner in which law schools solicit corporate money to establish their "Law & Tech" programs might evidence such decline of law towards irrelevance. This begging by legal professionals was never necessary in the formation of capitalism, when alliance of business and law was mediated through professional fees rather than alms.[73]

Attend also the outcome of the debate between Evgeny Pashukanis and Andrei Vyshinskij in order to understand what we mean by a political economy of necessary professionalism.[74] While Bolshevism could dream of a world free from law and its capitalist incrustations, the need of the New Economic Policy (NEP) made clear that this was not a possibility given the material conditions in the newly born USSR.[75] Legal professionalism, in the form of socialist legality,[76] was an unavoidable pattern (merged within the rule of political law) in the Soviet economic miracle of the thirties.[77] A similar hypothesis can be advanced for China beginning in the aftermath of the Cultural Revolution, with its thirty-year incremental movement towards Western-style rule of law, culminating in 2001 entry to the World Trade Organization (WTO). Some legal professionalism, perhaps in a more bureaucratic form like earlier experimented in Japan, seems like a necessity in the

69. *See, e.g.*, David M. Lantigua, Infidels and Empires in a New World Order: Early Modern Spanish Contributions to International Legal Thought (2020).

70. *See* Mattei & Nader, *supra* note 31.

71. *See* Robert Cover, Justice Accused: Antislavery and the Judicial Process (1984).

72. *See* Mattei, Guanghua & Ariano, *supra* note 45, at 35–46; Ugo Mattei, *The Death of Law*, 23 Glob. Jurist 1 (2023).

73. *See, e.g.*, Daniel R. Coquillette, The Civilian Writers of Doctors' Commons, London: Three Centuries of Juristic Innovation in Comparative, Commercial and International Law (1988).

74. *See* Lon L. Fuller, *Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory*, 47 Mich. L. Rev. 1157 (1949). *See also* Mattei, *supra* note 6.

75. *See generally* Rudolf Schlesinger, Soviet Legal Theory: Its Social Background and Development (1945).

76. The interaction between Soviet legality and the Western legal evolution is explored in John Quigley, Soviet Legal Innovation and the Law of the Western World (2007).

77. C.L.R. James, Grace C. Lee & Pierre Chaulieu, Facing Reality 28 (1974) (noting that, in the United States, "[t]he Depression made everybody. . . recognize the capitalist economy as a system functioning according to laws which were outside the control of human beings. In that sense, political economy first came into existence in the United States with the Depression.").

transformation of use value into exchange value—or of commons into capital—which is the essence of modern growth through extraction, accumulation, and concentration of power.[78]

We must acknowledge that, with the development of artificial intelligence (AI) and expansion of the Internet frontier of capital accumulation, humankind has entered an uncharted territory of accumulation without need for professional lawyers' playing their traditional role. It is worth reformulating this statement: For the first time since its beginnings, capitalism does *not* require law to function as a machine of accumulation and exploitation. Tremendous capital can be accumulated just by using coding, artificial intelligence, smart contracts, and the many techniques of technological exclusion (passwords and others) that each of us experiences daily online.[79]

If we examine the structure of the Internet frontier, there are two points worth emphasizing. To begin with, the idea that the Internet has worked as a structural vehicle of globalization, in a logic that per se defeats the idea of countries and jurisdictional boundaries. It is doubtful whether this image of a structurally globalizing force is correct for the virtual frontier as a space belonging to everybody who wishes to inhabit it; certainly, this is not true of material space. What matters for us here is that the Internet frontier has its own law, but we cannot say prima facie whether, as an economic, political, or social territory, it is ruled by the common law, the civil law, or any other recognizable family of legal systems, nor whether it is governed by any pattern of law at all.

Similarly, the American frontier at the origins of capitalist expansion had its own logic that placed it far, sometimes very far, removed from the legal origins of the settlers.[80] However, one cannot say that there were no spheres of influence, including those legally determined by the Pope, between the Portuguese, the Spaniards, the Dutch, or the British. Some legal professionalism was necessary, and, because of characteristics of legal professionalism, the frontier ended up reflecting the family of origins. Thus, Latin America was placed under the civil law (as was Indonesia), while the United States, Canada (other than Québec), Australia, New Zealand, and Hong Kong featured the common law.

On a deeper level, one could wonder how the relationships of political power developed by genocidal empires and conquerors could be considered law to begin with. Nevertheless, the material frontier has shown a path from an original moment of *no law*, of brutish de

78. *See* FRITJOF CAPRA & UGO MATTEI, THE ECOLOGY OF LAW: TOWARD A LEGAL SYSTEM IN TUNE WITH NATURE AND COMMUNITY 45–84 (2015).

79. *See*, *e.g.*, JARON LANIER, WHO OWNS THE FUTURE? (2013).

80. *See* GEORGE LEE HASKINS, LAW AND AUTHORITY IN EARLY MASSACHUSETTS: A STUDY IN TRADITION AND DESIGN (1968). *See also* WILLIAM CRONON, CHANGES IN THE LAND: INDIANS, COLONISTS, AND THE ECOLOGY OF NEW ENGLAND (1991); Eric T. Freyfogle, *Book Reviews: Land Use and the Study of Early American History*, 94 YALE L.J. 717 (1985).

facto relationship of violence, into *law* considered as a system that no matter its original sins has created some principled patterns of conflict resolution enforced by largely autonomous institutions that legitimize themselves with an idea of general interest, beyond the law of the jungle. One of the three patterns of law, professionalism, ultimately became capable of imposing its hegemony on all others (in certain contexts where genocide was more effective: the United States, Canada, Australia, New Zealand) so that the colonial frontier could be classified in comparative legal taxonomies, when comparatists, centuries later, engaged in that kind of scholarly exercise. The law travelled from the motherland to the colonies.

Only later, after experimentation with legal transformations necessary for primitive accumulation[81] in the frontier, did colonial law morph into the image of capitalism, returned to the motherland where the local conditions would have made impossible an earlier development. Ideas such as absolute bourgeois private property, full freedom of contracts, and standards of reasonableness appropriate for newly born industrial conditions, although theoretically elaborated from Jean Domat to William Blackstone, could not have been applied in Europe because of feudal incrustation and resistance without prior colonial experimentation[82] and political revolution.

In spite of the platitude of the Internet as an arena without frontiers, the virtual space displays its areas of influence determined by language, and some of the dominant global players reflect such areas of influence. China, for example, has the so-called BATs: Baidu, Alibaba, and Tencent; Russia demonstrated the importance of reestablishing sovereign control over the Internet, through switch-off devices and alternative networks. It would be difficult to deny that large subcontinental powers, especially when endowed with a common language, can control the virtual space corresponding to their territorial interests. The Internet frontier displays today a porous, unstable, and rapidly transforming scenario, analogous to the scenario of the early colonial age (when the Pope granted spheres of influence) or during the scramble for Africa that led to World War I.

In spite of such analogies, the technological conditions under which the Internet has developed into a post-modern frontier do not make the colonial story completely reproducible.[83] On the one hand,

81. *See* 1 Karl Marx, Capital: A Critique of Political Economy 915 (Ben Fowkes trans., Penguin Books 1990) (commenting on the linkage between primitive accumulation and capitalism: "The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of black skins, are all things which characterize the dawn of the era of capitalist production. These idyllic proceedings are the chief moments of primitive accumulation.").

82. *Id.* at 925 ("[T]he veiled slavery of the wage-labourers in Europe needed the unqualified slavery of the New World as its pedestal.").

83. For a deep and insightful discussion, see Michael B. Likosky, The Silicon Empire: Law, Culture and Commerce (2018).

the Internet frontier shows a new enclosure movement, making it similar to the capitalist frontier of the Americas but simultaneously challenging the myth of an open space. On the other hand, while in the Far West exclusion, secured at gunpoint through violence, soon morphed into some pattern of law (e.g., Homestead Acts) to guarantee stability, nothing similar is in sight on the Internet frontier.[84]

There is no need for law to exclude, enclose, and grant stability within a full de facto logic of conditionality, enforced by simple technological tools. Conditionality, ultimately a take-it-or-leave-it logic that can also be dubbed blackmail, has nothing to do with the ideas or ideologies that make law different from brute power. There is no need, within the logic of conditionality, to discuss principles and ideas such as the distinction between *ius* and *lex*, *li* and *fa*, or socialist legality and autocratic rule. Under conditionality, a leader of the Global South strapped for cash because of international debt obligations has no choice. She will have to privatize water if she wants her country to receive financing. "No water privatization? No loan. Take it or leave it!"

The logic of the "enclosed Internet" is conditionality everywhere designed into the very structure of the platforms. Over the Internet, all rules are created and enforced by their creator, not by a different circuit, by a different pattern of law. It is a fully de facto relationship, the opposite of *any* pattern of law. You need to communicate via Zoom? You must submit your data and give formal consent. "No consent or data to offer? No Zoom communication. Take it or leave it!"

There is absolutely no evidence that such conditions will change. The system seems to work smoothly, with its technologies of exclusion clear and unchallenged, in the hands of Facebook, Amazon, Google, Baidu, Tencent, etc. Its political economy has been dubbed surveillance capitalism.[85] Predicting and anticipating potential future decisions comprise the imperative determining capital reproduction today. Actual behavior, a condition that has historically happened and can be ascertained through a process of search for the truth—that traditionally concerns the law—is actually irrelevant in the logic of prediction.

The Internet frontier is a place of de facto exclusion of potentially undesirable individuals, those unprepared to surrender personal data to corporate masters, bad customers who refuse to be transformed into commodified objects of mysterious trade. The imperative of prediction is based on quick guesses rather than methodical ascertainment of relevant facts, the latter typified by the judicial process.[86] What

84. Even early "no law" on the frontier was not completely so: see, e.g., the classic JOHN PHILLIP REID, LAW FOR THE ELEPHANT: PROPERTY AND SOCIAL BEHAVIOR ON THE OVERLAND TRAIL (1980).

85. SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER (2019).

86. *See* BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS: THE STORRS LECTURES DELIVERED AT YALE UNIVERSITY (1949) (1921); AHARON BARAK, THE JUDGE IN A DEMOCRACY (2006).

corporate executives on the Internet frontier have to do is attract a user to a service, seize her data, and track her laptop or cell phone to acquire as much timely information as possible about her spending (and other) behaviors and locations, in a process we might define in dialectical terms avant-garde accumulation. All of this unfolding in the domain of guesses of future behavior, traditionally irrelevant for the law, as well as within a relationship of mere factual power, can be considered a pattern of *no law* if compared with the three patterns I described a quarter century ago.

V. The Pattern of No Law Leaves the Frontier

If any tendency is to be detected on the Internet frontier, it is not some pattern of legality incrementally substituting the law of the jungle as happened at the colonial frontier in response to the needs of economic development. What we may be seeing today is precisely the opposite, with the de facto logic of privatized exclusion conquering the motherland in the form of the many devices that capture our data and allow us to access spaces or services.

This scenario offers another step in the direction of a general convergence towards some form of new technological end of history (also known as the "Great Reset"), where the distinction between what is real and what is virtual is difficult to ascertain.[87] The experience of every individual is determined by online communication devices, since each one of us can directly experience only a limited amount of the information we rely upon. In this scenario, which already shows the world as a metaverse (the ongoing war in Ukraine shows how there is no truth, only war narratives), not only does legal taxonomy lose any residual sense but even law itself might be eclipsed, to be replaced by cheaper smart algorithms.

In "Three Patterns of Law," I wrote that any normative system capable of providing incentives sufficient to determine everyday human behavior can be considered as a pattern of law. Does this statement include technological control, so that aside from professional law, political law, and traditional law, a fourth pattern of "smart law" should be introduced? In the affirmative, can a rule of smart law, hegemonic online, be considered in the process of expanding offline, thereby competing for hegemony with the other patterns and perhaps ultimately becoming a universal family of legal systems?

The logic of smart control and exclusion is based on behavioral predictions stemming from obscure algorithms that are beyond the comprehension of most of us. This logic is enforced by de facto machine-generated exclusion. This structure makes it difficult to propose smart

87. *See* Klaus Schwab & Thierry Malleret, COVID-19: The Great Reset (2020); Glenn Beck & Justin Trask Haskins, The Great Reset: Joe Biden and the Rise of Twenty-First-Century Fascism (2022).

"controlling processes" as a pattern of law.[88] Granted, the other patterns, especially professional and traditional law, are ultimately beyond public understanding. In the famous sixteenth-century case *Prohibitions del Roy*,[89] Sir Edward Coke talks of an artificial logic of the law that can be understood only with rigorous, disciplined professional study, thus being beyond the comprehension of even the King (who cannot sit on the court dispensing justice in his name).[90]

Algorithms, however, especially with the powerful computer processors now available, can go far beyond human comprehension even of the very professionals who have developed them. The capacity of AI to draw connections from apparently disconnected sets of big data makes quite illusory the possibility to explain what happens once data are surrendered (or plundered). This is why the acclaimed European General Data Protection Regulation (GDPR) on privacy requiring understandable explanations is false consciousness. More generally, it is the very logic of a pattern of law, as a system based on what historically happened (did the defendant break the law, be it professional, political, or traditional?), to be at odds with a controlling process based on predictions on what is likely to happen in the future. No matter how accurate the predictions might be, such logic of pure expectation would be a *pathology*, even within a pattern of political law, degenerating it into arbitrary and brute power. The structure and the *physiology* of smart controlling processes are the ultimate pathology for any pattern of law.

I reject the possibility and even the desirability of considering smart controlling processes as a *pattern of law* in equal standing with the other three. Arbitrary non-cognizable power and violence are certainly capable of influencing human behavior but cannot be considered patterns of law. Indeed, the "law of the jungle," or the "law of the Far West," or the "law of the stronger" are just metaphorical uses of the term *law* whose main purpose is to convey the idea of a lawless society. As usual, things are neither clear cut nor simple. A condition of *no law*—such as under Khmer Rouge terror, during the Rwanda genocide, or in the Palestinian territories occupied by Israel, or in any war scenario where the effectiveness of international law is tenuous at best—is different from what happens on the Internet frontier where order is maintained through prediction, exclusion, and the technological power to exclude de facto. In a sense, policing online is not a matter of illegality, a condition that precludes any social order,

88. I use this seminal notion developed by Laura Nader, *Controlling Processes: Teaching the Dynamic Components of Power*, 38 CURRENT ANTHROPOLOGY 711 (1997).

89. Prohibitions del Roy, 12 Co. Rep. 65, 77 Eng. Rep. 1342 (K.B. 1608).

90. *See* CATHERINE DRINKER BOWEN, THE LION AND THE THRONE: THE LIFE AND TIMES OF SIR EDWARD COKE (1552–1634), at 291–306 (1957); THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW (5th ed. 2001). On the symbolic and theoretical relevance of the "artificial perfection of reason," see Gerald J. Postema, *Classical Common Law Jurisprudence* (pt. II), 3 OXFORD U. COMMON L.J. 1 (2003).

but of *a*-legality, a condition that maintains order in a manner that does not require law.

Control through technological devices is possible as long as individuals can be traced, like when using smart devices or driving cars, through an obligatory sort of "registration plate." A smart system, therefore, in order to take over spaces other than the virtual frontier, must trace everybody in every moment of her life, when she produces relevant data by living fragments of her life. Control can reach beyond the data left when connected from a registered device if it can develop into a sort of Internet of bodies, which imposes on everybody a sort of compulsory digital license plate, always with us, so that all our lives (online and offline) can be surveilled.[91] This logic requires continuous monitoring of the personal license plate to harvest valuable data. This diffused gathering of data can be done by endowing, as in Italy now, every waiter, shopkeeper, postal worker, train or bus attendant with an Internet-connected device and obliging her to scan a customer's personal quick response (QR) code. The scanning of the QR code can also be used to initiate a bank transaction, access a post office service, or take a university exam.

The transition of smart control from the Internet frontier to the real world already happens in China and South Korea, through the use of QR codes rather than cash, or of social credit systems (*shehui xinyong tixi*) capable of tracing every social interaction or market transaction.[92] Countries endowed with an apparently robust pattern of professional law, such as Italy, Israel, and France, which have deluded themselves with ideas such as the right to privacy, are experimenting with smart controlling processes, such as the green pass QR code, under the emergency logic of tracing COVID transmissions. Not to mention facial recognition through drones, already massively deployed by police forces in many countries.

Soon, through so-called wearable (or even implantable) devices like smart watches, clothes, glasses, or shoes, there will be a shift from the Internet of things to the Internet of bodies that will make every controlling process remarkably cheap. Even if such a controlling process allows the organization of a very ordered society, it is difficult to consider this, especially when the capture of data is left in private corporate hands, as a *pattern of law*. Perhaps in the future they will become so, reaching some sort of principled legitimacy (like that of the lawyer, the priest, or the politician) and the coder and the computer scientist will become the dominant oracles of the law. For the time being, I prefer to consider this fourth pattern as a pattern of *no law* which is, at least in countries thus far belonging to the rule of

91. *See* Zuboff, *supra* note 85; *see also* Stefano Rodotà, La vita e le regole: Tra diritto e non diritto (2009).

92. *See* Daithí Mac Síthigh & Mathias Siems, *The Chinese Social Credit System: A Model for Other Countries?*, 82 Mod. L. Rev. 1034 (2019).

professional law, in deep contradiction with some of the foundations of the very idea of principled legality, *ius* determined by a decision maker that is not motivated by its own interest but rather by some commonwealth.

Smart controlling processes are the enemies not only of principled decision making but also of individual rights. Rights cannot be conditioned by some external vision of how they should be exercised in order to be maintained. The Italian citizen with no green pass cannot enter public spaces, not only schools or theaters but also, with the pure logic of punishment and humiliation, outdoor spaces such as restaurants. She cannot travel on public transportation, thus experiencing a condition akin to apartheid under *Plessy*'s[93] separate-but-equal doctrine. She cannot work and is suspended from compensation like a prisoner held in contempt of court. Today, it is vaccination refusal; tomorrow, it might be violation of consumption standards, or not having paid a mortgage on time; the day after tomorrow, it might be having read a banned book or having followed a certain educational program or failing to behave as a good citizen or consumer. When the green pass expires, so will the rights it conditions, like the weekly ski pass. You can access every facility during its validity. It is disturbing to see fundamental constitutional rights being treated like having fun on the slopes!

Formal equality, privacy, transparency in the sources of law, personal dignity, and autonomous choices, being accountable for facts that can be proven in a court of law and not for some prediction based on our previous behavior, are all tenets of professional law. All three patterns of law share an aspect that, though ideological, is still a powerful vehicle of legitimacy: the rules are based on rationales other than profit for the rule maker. This is not the case for corporate-controlled smart conditionality.

VI. Morphing into a Rule of Smart Law?

Technology, just like law,[94] is not neutral and is structurally auto-poietic.[95] Unlike law, nevertheless, it is openly serving the private purpose and the "sole and despotic" whim of the organization that can determine the algorithm or switch off the machine. Its self-reproduction can be manipulated at any single point, in complete obscurity, whenever it is not consistent with the interests of the powers that be.[96] Every pattern of law, not only the professional, grants some

93. Plessy v. Ferguson, 163 U.S. 537 (1896), *overruled by* Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954).

94. The classic reading remains Gunther Teubner, Law as an Autopoietic System (1993).

95. *See* Humberto R. Maturana & Francisco J. Varela, The Tree of Knowledge: The Biological Roots of Human Understanding (1987).

96. *See* Adam Greenfield, Radical Technologies: The Design of Everyday Life (2017).

predictability and rationality, and makes it clear when power overwrites the script.

Comparative law is not the domain of judgment, and taxonomy is much more about understanding than prescribing and desirability. Be it law or anti-law, not only has smart technology transformed several legal institutions and fields,[97] but it has also deeply impacted the foundations of many legal systems. It has probably helped China to emancipate itself from professional law dependency and conditionality that determined its entrance in the WTO. In China, smart controlling processes, politically aligned by the structure of a Leninist party, within a social culture traditionally grounded on duties rather than insisting on rights, are less disruptive of established dogmas of the social order than at the core of professional law. Here, in the West, smart controlling processes work to transfer political power from the official government disciplined by a constitutional scheme towards corporations and their quarterly profit targets as demanded by Wall Street securities analysts.

Left in the hands of competitive capitalists determining the political process through spectacular elections, smart technology in the West becomes a weapon in a war for capturing customers in blatant violation of individual rights of privacy and self-determination. Moreover, in a legal organization, such as the Chinese, with deep roots in traditional village societies, there is little space for privacy, a Western notion better fit to individualized societies. China deploys a coherent narrative in spite of the brutality of cultural revolution in evolving from the rule of traditional law to the rule of political law. Such pattern of continuity emphasizes collective responsibility rather than individual rights. In such a scenario, smart controlling processes, oblivious of individual privacy, have no need to hide, as they do in capitalist organizations obsessed by privacy and individualization. Smart controlling processes may display a different sense within the cooperative logic of the plan, which characterizes the rule of political law as it has characterized socialist law before, that being within the competitive logic of private market capitalism. Effective computerized predictions based on massive data collection can today substitute market prices in creating information, thus overcoming the notorious problems of Soviet-style planning in deciding what to supply in the absence of market signals on the demand side.[98] This might offer an explanation of the Chinese advantage that is generating a shift of global economic hegemony after more than a century of U.S. domination.[99]

97. *See, e.g.*, Anna Beckers & Gunther Teubner, Three Liability Regimes for Artificial Intelligence (2022); Algorithms and Law (Martin Ebers & Susana Navas eds., 2020).

98. *See* F.A. Hayek, Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy (1998); Ludwig von Mises, Theory and History: An Interpretation of Social and Economic Evolution (2007).

99. *See* Jinting Deng, *Should the Common Law System Welcome Artificial Intelligence? A Case Study of China's Same-Type Case Reference System*, 3 Geo. L.

China is not impaired by a contradictory narrative between the law and technologies of control, which are the cutting edge of current institutional transformations. In the West, without the political logic of planning, data gathering is just another form of fierce competition among poorly regulated economic actors seeking capture and electoral rigging. This is why smart logic can be a pattern of law or a pattern of no law according to its political capacity to tame and limit the fierce rule of the stronger economic actors.

Smart controlling processes can become a fourth pattern of law only if they can be emancipated from the arbitrary power of the organization in control of the technology. Perhaps the future will present us with some institutional devices capable of accountability, predictability, and a decent degree of transparency to AI decisions that have transformed physical territory into an integrated metaverse where ascertainment defers to predictive guesses.

VII. A Unified Smart Frontier or a Plural Echo Chamber of the Metaverse?

A strong centralized political entity, such as China, deeply rooted in the rules of traditional law and of political law,[100] might transform smart technology into a powerful support for its social organization. Ultimately, the Chinese territory might become an integrated online/offline space where smart devices may turn into even more powerful machines of capital accumulation. These technological planning capabilities may be deployed, like Leninist strategy, to redistribute capital and advance socialism after the current age of accumulation (which we may interpret as a long NEP begun in 1978).

Countries priding themselves on being respectful of individual freedoms protected by professional law face a conundrum when they embrace surveillance capitalism. For populations that have difficulty distinguishing between online and offline lives, AI and its constructed spatial universe are much cheaper than law to accumulate capital. The flip side of this financial goal (arguments for money saved and efficiencies increased are irresistible for capitalism) is the disregard for individual privacy and self-determination—ultimately freedom—which is a side effect that the Western world is not eager to suffer.

What we witness in the West is a general denial of the Chinese advantage. This permits the super-rich lords of the metaverse to amass mega-fortunes, without assuming responsibility that comes from acknowledging that territory is now integrated with virtual space. If

Tech. Rev. 223 (2019). This is perhaps the first article published in a Western law journal in which Chinese law is proposed as a "context of production" rather than "of reception." These are clear signals of possible changes of legal hegemony mediated by the smart frontier.

100. For a solid account of the Chinese legal tradition and evolution, free from Euro-American-centric pre-comprehensions and biases, see Ruskola, *supra* note 44.

smart logic pervades the territory, then rules cannot be written by the stronger counterparty to a private transaction in a self-serving manner and imposed as conditionality on billions of people. In the core of the West no attempt is on the horizon to transform a pattern of corporate anti-law (ideologically maintained on a virtual frontier of freedom) into a principled discussion on the tradeoffs between liberty and AI in governing the Western metaverse. This fundamental tension is due to the structural antithesis between professional law and smart surveillance tools, which cannot exist if they must respect privacy and individual subjectivity.

These predicaments explain the Chinese advantage. Rather than facing decline, Western oligarchies, especially at the World Economic Forum Summit in Davos and in other organizations of Western hegemony, deploy a sort of universalist narrative aimed at displacement of local economies in favor of a global "Great Reset": a moment in which human prosperity will be guaranteed by a new cognitive revolution, in which AI would ultimately determine the global economy outside of old legal rigidities. With no private property or state sovereignty, the Great Reset will be able to tackle any issue, from overpopulation to ecological catastrophe to new pandemics, deploying a system of depoliticized governance in the hands of institutions philanthropic in spirit such as the World Health Organization (WHO). This universalistic vision, little more than an update to the logic of the end of history, writes a script for many global actors but suffers from unrealistic self-perception typical of every echo chamber. The Great Reset, presented as the unavoidable evolution of capitalism in the new technological conditions, would create a sort of Lockean *tabula rasa* covered by universal rules of a New World Order. It is not within the province of this Article to discuss the merits of such a vision. From a geopolitical perspective, we should observe that these are not entirely new suggestions in the Western block, and that many New World Orders (and disorders) are possible.

Already by the late twentieth century, scholars observing the progressively increasing influence of transnational legal regimes on local legal systems were suggesting that the era of territorial comparative law might be concluded under the unifying impact of international law.[101] Where there is uniformity and universalism there is no space for comparison; if there is no possibility to compare, no taxonomy is useful. Time has proven that in the case of the law, which shares characteristics with language and culture, uniformity can never be so deep as to render it useless to compare. Paradoxically, the idea that international law really is *international* (and thus meaning the same thing to all nations) has been called into question.[102]

101. *See* Reiman, *supra* note 17.

102. *See* Boris N. Mamlyuk & Ugo Mattei, *Comparative International Law*, 36 Brook. J. Int'l L. 385 (2011). *See also* Comparative International Law (Anthea Roberts et al. eds., 2018).

As in the case of international law, the assumption that the Internet creates a frontier of uniformity can be interrogated, and that is what we do in this present Article. We have observed that the aggregate of offline and online experiences in different parts of the world can be considered a legal metaverse, both material and virtual, which is the product of a circular relationship between the online and offline,[103] between what humans can experience only virtually through information media and what they experience in person. Because such circular relationship is determined by a variety of factors that are not designed in the communication technology, depending much on the manner material power can affect the scope and limits of the Web in a given territory (including control of hardware), the need for taxonomy as an instrument to understand different systems is alive and well. It is useful, for instance, to compare transitioning towards surveillance devices in such different families as those ruled by political law and by professional law.

Western systems have left this transition to big data in the hands of corporations in control of the political process, or of governments trying to capture sensitive data of their populations to transfer such data into corporate hands as collateral for some private "investment" (a better description being *extraction*). In those countries at the core of professional law smart technology is merely another weapon for profit-driven corporate competition to conquer the minds of citizens transformed into consumers and objectified as data. Smart controlling processes in such contexts may be considered a phenomenon of continuity in the corporate-induced anti-law movement aimed at dismantling every obstacle to unlimited accumulation of capital. A pattern of *no law*. A counterforce to legality that can cost the hegemony of professional law (as has already occurred in Italy) but that may ultimately morph into a Western despotism where neither rule of political law nor rule of traditional law can offer protection against brutal exploitation in the private interest.

Thus, smart controlling processes—according to the political contexts in which they are deployed—can be viewed on the one hand as a pattern of *no law*, a counter-weapon used by economic power to limit accountability or, on the other hand, they could morph into a promising pattern of law capable of guarantying responsible political planning (recall Rosa Luxemburg's slogan during World War I, "Socialism or barbarism!"[104]). The issue remains whether the virtual space of the Internet is a unified territory governed by the logic of *no law* or

103. This is a modern manifestation of the philosophy of internal relations. The philosophy of internal relations, simply stated, is that everything is related in space and across time. *See* BERTELL OLLMAN, DANCE OF THE DIALECTIC: STEPS IN MARX'S METHOD (2003).

104. Rosa Luxemburg, *What Does the Spartacus League Want?* (Dec. 14, 1918), *in* THE ROSA LUXEMBURG READER 349–57, 350 (Peter Hudis & Kevin B Anderson eds., Ashley Passmore et al. trans., Monthly Rev. Press 2004).

whether we can spot areas of influence reflecting the taxonomic conditions of the motherland.[105] Is the Internet really universal (where there is universalism there is no taxonomy)? Or should we instead consider the Internet as a virtual frontier connected with different political spheres of influence, resulting in an acoustically separated (echo chamber) metaverse?

If we are ready to challenge the universalistic metaphor of the Internet as a space of no boundaries, then we can view the virtual frontier as an expansion of national territories determined by differences in language. Political territorial boundaries, necessary when frontiers were overseas lands to be colonized, are now substituted by cognitive boundaries, which express themselves in different languages. We would then have a Chinese, a Russian, a Western, and an Arabic frontier that, rather than unifying humankind, produce large echo chambers determining modes of thought and regimes of knowledge.

If this is the case—if what is obviously so different in Beijing, Moscow, New York, Riyadh—where dominant truths are reflected by the Internet, perhaps a future taxonomy of legal systems when smart controlling processes, expanding beyond the Internet to transform any social experience into a metaverse, can only be based on *language*, grouping together the systems that access the same portion of the Internet, thus entering the same metaverse if not the same echo chamber (if we admit that pluralism can survive). We are not yet there, but there are 1.5 billion Mandarin speakers (on top of those accessing the frontier in Russian, Castilian, or Arabic) and new flexible taxonomies may soon be needed for legal systems morphed into smart controlling processes deploying different languages.

A final point is to be considered in the critique of separation between virtual frontier and material world. If it is true today that the virtual space cannot be considered separate from the physical one, because our cognitive experience is already shaped by a global metaverse of communication, then the Internet, far from being a universal frontier open to all, is a space of political and cultural influence that must be maintained by geopolitical players. That is why it is so promising and useful a material approach that looks into the Internet frontier, ultimately as an aggregate of megaservers, gigantic cables, and rapidly evolving wireless communication devices, which must be located somewhere, which are expensive and energy consuming, and on which a majority of humankind is dependent.[106]

105. *See* Raul Lejano et al., A Phenomenology of Institutions: Relationality and Governance in China and Beyond (2019).

106. *See, e.g.*, Roxana Vatanparast, *Data Governance and the Elasticity of Sovereignty*, 46 Brook. J Int'l L. 1 (2020); Roxana Vatanparast, *The Infrastructures of the Global Data Economy: Undersea Cables and International Law*, 61 Harv. Int'l L.J. Front 1 (2020).

In such a scenario of rapid transformation, taxonomy is still a relevant tool for an informed comparison of legal systems. Comparative law has never been more politicized, nor more energized, than it is today.[107] Governments and mainstream media have been systematically reporting that harsh measures taken against the pandemic are followed universally by civilized nations, in order to convey a sense of necessity of their remaining in power. This has happened in each and every echo chamber into which global law has been divided. Truth is the first victim of war. A good taxonomy can provide intellectual stability to reflect on what is today an urgent question: Is it reality that shapes law, or is it law that shapes reality?

Conclusions

I published "Three Patterns of Law" twenty-six years ago, which is a short-to-medium time period for legal evolution and a Jurassic epoch for technological transformation. In this present Article, I have surveyed some of the relevant legal transformations capable of impacting the mapping of each legal pattern to a given geography. Because the Internet—like law, religion, tradition, or language—is an informative-normative system that has produced a new frontier of development, and because of its ubiquity, I have used it as a test for the current viability of the three patterns of law hypothesis.

The impact of the Internet, just like that of transnational norms production, is extremely strong on the law. The logic of the smart frontier is that of conditionality, and of prediction rather than that of ascertainment of truth. It is a de facto logic of power, a counter-principle to the idea of law, so I suggest there is no place (yet) for a fourth pattern of smart law.

Nevertheless, the dominant narrative of the Internet, as that of international and transnational law before it, is universal and perhaps universalizing, thus conveying a sense of uniformity that discourages comparison and taxonomy. As this has proven *not* to be true for international law, now the object of robust comparisons between different interpretations and styles, the Internet frontier can only have a limited unifying potential and, rather than discouraging taxonomy, it makes its taxonomy more nuanced and dynamic. It is, I believe, too early to add a fourth pattern of law; but it is, perhaps, too late to avoid a pattern of no law taking over global hegemony by substituting algorithms for lawyers.

107. For the political nature of such encounters, see Samuli Seppänen, *After Difference: A Meta-Comparative Study of Chinese Encounters with Foreign Comparative Law*, 68 Am. J. Comp. L. 186 (2020).