**Valentina Vadi, *Analogies in International Investment Law and Arbitration*. Cambridge University Press, 2015. 320 pp. £110.**

It is hard to exaggerate the importance of the concept of analogy in the recent debate on international investment law. Ripe with unique characteristics and afflicted by as many challenges, the field naturally invites comparisons with other, more developed areas. And yet, while analogies may help us make sense of the field, the way they are chosen and employed is not devoid of consequences. This proposition constitutes the underlying assumption of Valentina Vadi’s *Analogies in International Investment Law and Arbitration* and is but one of the reasons why this study is particularly timely.

The author, a Professor of International Economic Law at the University of Lancaster, sets out to investigate the role that comparative reasoning plays in in international investment law and arbitration, with a view to assessing whether it may contribute to alleviate the system’s legitimation problem. To this end, the book does not restrict itself to providing a thorough exposition of current practice: as the author acknowledges, other studies have answered questions concerning the type, reasons, and advocates of the analogies that are commonly drawn in international investment law and arbitration. Rather, this work focuses on the process of making analogies in this field and its peculiarities, critically assessing the phenomenon and pushing for the adoption of a sound methodology.

The book is structured around a *pars generalis* and a *pars specialis*, comprising three chapters each. Accordingly, the former is devoted to building a theoretical framework for the latter, and does so by presenting the main features of comparative law and international investment law and connecting the two fields.

Chapter 1 is devoted to comparative law methodologies. It is not, however, a short primer on the topic, but rather a bespoke—though learned—discussion of their ‘merits and limits’ (19), instrumental to their correct application to the field of investment law. To this end, Vadi starts by examining several different approaches, focusing on the functional and cultural ones to highlight their respective virtues and flaws. The chapter goes on to discuss the concept of analogy, ingeniously exploring, in keeping with the continental tradition, the two distinct profiles of *analogia legis* and *analogia iuris*. There is much to be commended in the choice of doing so, for indeed, as the author contends, ‘[c]omparative reasoning lies at the heart of international law and takes place in a number of areas’, be they the identification of custom, the adjudication of disputes, or treaty-making (41). Hence the convincing conclusion that a robust methodology is vital to any study aimed at investigating the topic.

The remainder of of Part I is devoted to applying this approach to international investment law. Chapter 2 continues to set the stage by providing a sketch of the field, mapping its hybrid features and unique issues. In this context, analogies mainly come in to play conceptualization of investment treaty arbitration, which Vadi discusses by reference to a number of comparators—such as public international law tribunals, commercial arbitration, and the related models of public and global administrative law. As the author stresses, these paradigms, clashing or otherwise, are descriptive in nature, not normative. Yet, they represent a useful lens to understand the problems afflicting international investment law, and possibly provide an answer to the dissatisfaction towards it by enhancing the relevance of the public good in a system inherently skewed in favour of investors.

The significance of comparative reasoning in the context of investment law is finally examined in depth in Chapter 3. This lengthy section starts by defining and addressing the fields of comparative investment law, which the author defines as ‘aimed at studying and comparing different legal frameworks regulating foreign investment at the national levels’, and comparative arbitration law. Coherently, Vadi concludes that neither has received the scholarly attention it deserved, discussing the important role of comparative reasoning for scholars working on international investment law, a function made all the more important in light of the status of academic literature as a subsidiary source of international law (84-5). Crucially, the chapter goes on to elucidate the significance of comparative reasoning in the phenomenon of judicial borrowing. It is well known that there is no doctrine of precedent in international law, let alone one of ‘external precedent’, but international tribunals in general, and those tasked with investment disputes in particular, consistently refer to prior decisions and awards. Such practices no doubt perform a gap-filling function, foster dialogue between adjudicators, and ultimately advance the development of the system. And yet, one sees clearly how neither the choice of analogies, nor the way they are carried out are harmless, especially in those contexts where a reference to the national law or culture seems mandated. Accordingly, Vadi discusses different types of borrowing (of prior arbitral awards, or to the jurisprudence of other international or national courts) and the incentives that drive them, ranging from a need for greater clarity, a quest for consistency and predictability, the perceived need of legitimation, and—more questionably—self-empowerment: the latter case, exemplified by the reliance of ICSID tribunals on precedents of the International Court of Justice with a view to declaring their provisional measures binding, serves as a cautionary tale on the possible risks of ‘an ideology of free decision-making’ (104). The following section considers comparative reasoning in the context of treaty interpretation. Vadi contends that it could, for example, improve the canons of teleological and evolutionary interpretation by providing a more complete understanding of certain legal concepts—property being the classic example. By the same token, the author considers general principles of law, discussing how the comparative approach that should guide their identification.

Part II of the book abandons the abstractions of the preceding chapter to discuss the topic in a more practical dimension. Chapter 4 is devoted to ‘micro-comparisons’, that is, understanding how international investment law has legal borrowed elements from other systems by focusing on specific issues. Once again, the section follows a linear subdivision, considering how and for which questions investment tribunals have referred to previous arbitral awards, decisions of other international courts (those of the ICJ and the WTO Panels and Appellate Body in particular), as well as judgments of regional and national courts. The chapter does not restrict itself to presenting data and providing a principled analysis of current practice, but explores the uncharted territory of the methodology (or, in some cases, the lack thereof) employed by international tribunals in their references.

Chapters 5, in turn, considers macro-comparisons—an approach that is, at the same time, different from and complementary to the one adopted in the preceding section. The question here is which model, among the various ones to which it has been analogised, may be the most beneficial for a international investment law and arbitration, from a scholarly viewpoint and in its practice. The inquiry is directed at fundamental aspects: accordingly, the discussion steers from individual issues to paradigms, which may prompt for ‘different approaches to concrete problems’ by providing a different lens through which to examine’ the same structural issues concerning the relationship between investors’ and states’ rights’ (220-21). Vadi takes into account a number of traditionally proposed models, such as commercial arbitration, human rights law, public international law, and—most interestingly—public law. Within the analysis of this last paradigm lies one of the most interesting sections of the book, a case study considering the concept of proportionality to assess the ‘migration of constitutional ideas’ (195). As the author contends, the example illustrates the difficulty of transplanting ideas from a system to another, as a number of compelling objections (concerning structural features, legitimacy concern, as well cultural arguments) can be made against the application of proportionality in international investment law (195-207).

Finally, Chapter 6 draws conclusions as to the merits and perils of employing analogical reasoning. The former, the author contends, have to do with the ‘maieutic role’ of international arbitrators, who, while neither pure adjudicators nor proper lawmakers, exercise choices when they bring latent rules of law to light by relying on general principles of law (230). It is easy to understand the appeal in relying of a comparative methodology for the identification of any such principles, though questions remain as to how to proceed. For indeed arbitral tribunals are found to have been inconsistent in their application of comparative methods—a dangerous practice with major consequences for the legitimacy of the system. As Vadi stresses, comparisons must be done with care. Badly chosen comparators may re-politicise investment disputes, or may be wholly unreflective of the peculiarities of the host county, and references to national law may dilute international law obligations: all of these may well undermine the system’s legitimacy. The conclusion, adopted in the preceding chapter, that public international law is still the best paradigm to which international investment law may be analogised, is confirmed here. On the one hand, investment law, is a creature of international law, and and one of its components; on the other hand, the ‘shared belief that international law is legitimate and deserving of compliance’ may provide additional support for the system’s questioned legitimacy (239).

But such a choice, as Vadi argues bringing the book to a close, neither means that other paradigms are irrelevant, nor implies that comparative analysis is useless: quite the contrary, it has the potential to mitigate the perceived lack of legitimacy of the investment system through the incorporation of pluralistic approaches (247). In other words, comparative approaches are only beneficial if they are backed by solid methodology. To this end, the author sets out a number of criteria that should, irrespective of a choice between functionalist or cultural approaches, guide the use of comparative reasoning: for example, comparisons should be express, not implied, the selection of comparators justified, their understanding accurate. Ultimately, the the fundamental question is whether analogies ‘serve outcomes in compliance with international law’ (251).

There is much to be praised in this book. Its claims, supported by ample and accurate research, are compelling and its approach quite innovative. If some minor criticism may be levelled, it would perhaps be addressed at what may be perceived as pre-emptive defensiveness against dogmatic objections—most notably, the initial qualification of arbitral and judicial decisions as ‘subsidiary means for the determination of the rules of law’ in Chapter 4, which, while formally correct, seems slightly out of place (138-9). Further, the very linear and systematic book plan, in which different issues are clearly isolated in different chapters, might at times seem to dilute the force of the arguments. This latter, minor flaw is, however, unavoidable, and springs from the need to engage with the prior scholarly and judicial analysis of the phenomenon discussed in the book. In this regard, the author’s treatment of the issues has the important merit of showing that the discussion of analogies and paradigms is not to be disparaged as an inconsequential academic pursuit, but has implications of some magnitude.

In conclusion, this is a timely and valuable study, which will—and, what is more important, *should*—appeal to both practitioners and scholars. Through a masterfully crafted analysis, Vadi guides the readers into the intricacies of this topic, investigating the tension between the concept of legal culture and the ‘invisible college of international lawyers’, ultimately reminding the members of the latter that the way they reason has important consequences.

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