From Comparison to Collaboration: Experiments with a New Scholarly and Political Form

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I

INTRODUCTION

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

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Despite the loss of excitement and even faith in comparison as a lens of legal analysis, at first, collaboration, as an alternative, sounds like something of a let-down: on the one hand, comparatists and anthropologists have always been collaborating with their interlocutors in the production of knowledge. On the other hand, so many disciplines we might wish to differentiate from our own—from management theory to political activism—celebrate collaboration as a methodology. Like happiness, or healthiness, collaboration would seem to be something no one can really be against, but about which very little can be said. Why and how would collaboration become anything specifically meaningful, let alone ethical, for the anthropologist or the comparative lawyer?

In this article, I query the emergence of collaboration as a template for social and political life in a particular way. First, I question its ubiquity as an emerging modality of legal anthropology and comparative law, which, as we will see, has implications for the ways in which these two fields might come together at this moment. Second, I proceed from the assumption that the very ubiquity and mundanity of collaboration discourse and practice in law and policy suggests that we are all already collaborators, in all the possible senses of the term, and hence that a response to collaboration cannot simply be critique from outside—it must entail doing something with and within this template. I work through these two claims through the example of a collaborative intellectual project I am directing, known as Meridian 180.

II
FROM COMPARISON TO COLLABORATION IN COMPARATIVE LEGAL STUDIES

My teachers’ generation knew a very different relationship between legal anthropology and comparative law. Postwar comparative law, championed by cosmopolitan émigrés aiming to build the legal institutions and intellectual paradigms that would prevent another war, found a practical niche, in the generation that followed, in state building and legal reform projects that accompanied decolonization and development. In this venture, comparative law drew scholarly vitality from a vibrant interdisciplinary conversation with legal anthropology.

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10 See Annelise Riles, *Comparative Law and Socio-legal Studies*, in *The Oxford Handbook of Comparative Law* 775 (Reimann, Mathias and Reinhard Zimmerman, eds. 2006).
For many years, the most fundamental problematic of both comparative law and the anthropology of law was comparison\textsuperscript{11}—the challenge of understanding the foreign, the philosophical question of whether this was indeed possible, the methods of translation, fiction, fieldwork, functionalist analysis and the like for addressing practically the challenge of understanding, and the discursive tools, the legal techniques, the disciplinary tropes and the human and institutional relationships that made such understanding meaningful.\textsuperscript{12} The key problem in other words was making sense of the foreign in terms of the familiar and vice versa.

This comparative project turned on a subtle and implicit relational economy of three passions, three commitments, three forms of raison d’être necessary to comparative law’s vitality. First, comparative law had to stake a claim for itself as scholarship (as “legal science”).\textsuperscript{13} These comparatists solidified their project, politically speaking, by grounding it in functionalist social science.\textsuperscript{14} The relationship to an equally functionalist anthropology gave comparative law academic respectability, scholarly credentials.\textsuperscript{15} Here the joint emphasis of

\textsuperscript{11} See, e.g, JOHN L. COMAROFF, AND SIMON ROBERTS, RULES AND PROCESSES: THE CULTURAL LOGIC OF DISPUTE IN AN AFRICAN CONTEXT (1981).


\textsuperscript{13} See Annelise Riles, Introduction, RETHINKING THE MASTERS OF COMPARATIVE LAW 1, 8-10 (Annelise Riles, ed. 2001).

\textsuperscript{14} See Ralf Michaels, The Functional Method of Comparative Law, in OXFORD HANDBOOK OF COMPARATIVE LAW, supra note 10, at 381 (“law is a normative discipline for which teleology may be useful or even necessary. Of course, this requires the construction of a more robust functional method.”)

\textsuperscript{15} See e.g., M. B. HOOKER, LEGAL PLURALISM: AN INTRODUCTION TO COLONIAL AND NEO-COLONIAL LAWS 11, 12 (1975) (“The information adduced in ethnographic description is collected on the basis of sociological theory, and the problem, as already indicated, is the relation between this and the generality of theory of and about law. We might well expect tensions between anthropology and jurisprudence on this point, but even within the generality of sociological theory there are wide areas of disagreement. Perhaps we can illustrate an aspect of this by referring to a current dispute in the ethnography of law, on the question of what constitutes a suitable language for legal description. This is usually discussed in the context of the work of Bohannan and Gluckman, where the former is said to be unwilling to use non-native categories of legal thought but the latter, while agreeing that these must be fully explicated, prefers the use of Western categories not only for purposes of understanding but also for comparative study.”); Quoting Malinowski on the paternal figure and law mirroring each other as the essence of the social principle and legitimate power, see JEROME FRANK, LAW AND THE MODERN MIND 15 (1930) (“In all communities where the father is head of the family, the mother comes to ‘represent the nearer and more familiar influence, domestic tenderness, the help, the rest and the solace to which the child can always turn,’ writes Malinowski in a recent anthropological study. But ‘the father has to adopt the position of the final arbiter in force and authority. He has gradually to cast off the role of tender and protective friend, and to adopt the position of strict judge, and hard executor of law.’”); for an analysis of functionalism and its ties to twentieth-century jurisprudence and anthropology, see also JEROME HALL, COMPARATIVE LAW AND SOCIAL THEORY 104, 105 (1963) (“The hope of nineteenth-century scholars of discovering stages of social evolution by use of ‘the comparative method’ did not materialize; and when Malinowski engaged in anthropological research, he sought functions in the correlation of existing practices or institutions and social needs—that is, the perspective shifted from genetic to theoretical explanation. ‘Function’ acquired various meanings: description of facts as opposed to barren conceptualism, the efficiency of an instrument to achieve a given end, manifest and latent consequences of social actions, correlations between various institutions, ‘relation to the social structure to the existence and continuity of which it makes some contribution,’ and still others.”)
ethnographers and comparative lawyers was on the techniques of serious academic comparison: in this modernist proto-scientific methodology, empirical data and theory were distinct enterprises. Research took place in T-1, and generated data. Then in T-2, the data was removed to an intellectual context in which one generated analysis. Engagement with one’s intellectual peers presumed a shared theory, or political agenda, or a research target, and an epistemology (a space for familiarity), which one did not necessarily share with the foreign subjects about whom one wrote.

Second, comparative law had to claim a contribution to professional training—to the molding of law as a practice. Comparative lawyers argued forcefully that comparative analysis was crucial to skillful legal practice—whether by lawyers, bureaucrats or judges—when confronted with disputes with cross-cultural dimensions.¹⁶

Third, comparative law had to show that its insights could contribute to the needs of policy-makers (colonial administrators, UN officials, national bureaucrats, law reformers, judges facing new legal problems, etc.).¹⁷ Comparative lawyers firmly maintained that comparative knowledge was relevant to such projects as designing new legal institutions in the developing world, or negotiating trade agreements among developed nations.

The legitimacy and excitement of comparison, as a project, inhered in the way these three very different kinds of raison d’être—science, professional training and policy relevance—subtly coexisted, remained in mutual play. For example, the study of legal pluralism was not

¹⁶See e.g., Roscoe Pound, What May We Expect From Comparative Law?, 22 A.B.A. J. 56, 59 (1936) (“We can get something for the purposes of today from comparison of rules of law as we find them in different systems, chiefly in that such comparison teaches us to be slow in assuming that there is but one necessary and inevitable rule of law possible for one given state of facts.”) For a more recent formulation see George P. Fletcher, Comparative Law as a Subversive Discipline, 46 THE AMERICAN JOURNAL OF COMPARATIVE LAW 683, 690 (1998) (“One can understand why lawyers and judges pay little attention to foreign law. They have a job to do, and except for a few international commercial disputes, the job of winning and rationalizing decisions is defined by reference to domestic legal sources. But the study and teaching of law as an academic subject would seem to cry out for the broadest perspective possible. That perspective would seem to come from understanding the way in which law develops and functions in legal cultures other than our own.”); see also George A. Bermann, The Discipline of Comparative Law in the United States, 51 REVUE INTERNATIONAL DE DROIT COMPARÉ 1041 (1999); For an early demonstration and defense of the comparative method see JOHN H. WIGMORE. KALEIDOSCOPE OF JUSTICE: CONTAINING AUTHENTIC ACCOUNTS OF TRIAL SCENES FROM ALL TIMES AND CLIMES VI (1941) (“In any study of our own present-day methods, it may help us to have in mind the extraordinary variety of ways in which the same objective of Humanity has been sought throughout all times and climes.”)

¹⁷See e.g., KONRAD ZWEIGERT AND HEIN KÖTZ. INTRODUCTION TO COMPARATIVE LAW 11 (1987) (“Everyone has now come to realize that the law must protect the customer against standard terms of business which unfairly affect his rights and liabilities... But only in the last twenty years have lawyers fully realized that protection against standard terms of business is a general problem which in principle affects all contracts.”); see also, RENÉ DAVID, DROIT CIVIL COMPARÉ: INTRODUCTION A L’ÉTUDE DES DROITS ÉTRANGERS ET A LA MÉTHODE COMPARATIVE 3 (1950).
only a serious scholarly project with scientific ties to legal anthropology, but also one that contributed to colonial and postcolonial law and development projects, in addition to a kind of ethical and professional practice that, once taught, made lawyers or judges more sensitive to the needs and perspectives of their constituents and therefore better able to perform their tasks. The decline of comparative law in the legal academy over the last twenty years in my view has something to do with the way comparatists found themselves pulled in different directions by these different wagers. Today, some comparatists gravitate towards the scholarly side, others towards practical policy-relevant work, but the moment at which one was able to energetically articulate an argument for the inseparability of these three dimensions of comparison seems to have passed.

Yet what motivated the greatest comparatists was often something subtly different. These individuals had a taste for the cosmopolitan adventure. And while comparative lawyers had perfected arguments for their discipline’s indispensability, the meaning of the work for the individuals involved was often elsewhere—in the intellectual community they brought into being around the work, and in more elusive, less concrete forms of impact—enriched lives, broadened perspectives, lawyers, government officials and scholars with a particular cause. In the heady days of comparison, the triad of science, professional training and policy relevance often masked another version of itself—intellectual adventure, vocation and political action.

Consider, for example, the career of Masaji Chiba, the venerable Japanese legal pluralist, and vociferous critic of comparative law’s Eurocentric focus. Chiba chastized Euro-

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18 See e.g., Hooker supra note 15 at 53, 54 (1975) (‘‘The essential lesson taught to us by legal ethnography is that comparative study is an exercise in jurisprudential exploration which has a twofold task. First, to describe the ways in which ethnographic fact and its resulting sociological categories are descriptive of legal phenomena which we have otherwise known of for some centuries as obligation, liability, or right. Second, we have to determine the proper categories for study within the legal process itself, and legal ethnography has demonstrated for us the primacy of process and determined its boundaries in respect of certain special systems’’); See also Ugo Mattei, The Comparative Jurisprudence of Schlesinger and Sacco, in Rethinking the Masters of Comparative Law 243 (2001).


21 See, e.g., Hannibal Travis, President Obama’s ‘Pivot’ to Jobs: Lessons from Comparative Law and America’s Rivals, 3 Poverty & Public Policy 1 (2002).

22 See Annelise Riles, Encountering Amateurism: John Henry Wigmore and the Use of American Formalism, in Rethinking the Masters of Comparative Law, infra note 99, at 94.


American legal pluralists such as MB Hooker\textsuperscript{25} for remaining too bound to Western jurisprudential categories even as they emphasized pluralism,\textsuperscript{26} and Japanese scholars for being too enamored with Western jurisprudential categories. He emphasized rather the cultural particularity of Western law, and in particular the culturally specific Western practice of claiming for its categories universality.\textsuperscript{27} His history of the Japanese absorption of Western legal ideas and of the coexistence of these with Japanese customary law\textsuperscript{28} provided a reflexive perspective on legal transplants at a moment of obsessive transplantation.

The starting premise of Chiba’s comparative legal work was the simple modernist anthropological insight that what counts as law, or should count as law, may be radically different in different contexts.\textsuperscript{29} For example, in his important work on contract law Chiba began instead with an odd question: “why do Japanese people work hard?”\textsuperscript{30} His answer, based on interviews and observation, as well as legal analysis, was that the indefiniteness of Japanese contract law was supplemented by the definiteness of particular social and institutional relationships. And yet despite his insistence on the importance of custom, Chiba remained a sharp critic of some aspects of Japanese custom, including in particular the treatment of women, laborers, and tenants.

I first met Professor Chiba at a coffee shop in Shinjuku, when he was already eighty years old. His hopefulness, energy, and sparkle was arresting. After that we met often, and when I

\textsuperscript{25} See CHIBA supra note 23 at 38, 39 (“The notion of ‘legal pluralism’ came to be thus used in consideration of cultural pluralism in law, which was most persuasively discussed by M.B. Hooker. In his book in 1975, Hooker clearly pushed forward the idea of cultural pluralism in the law of non-Western countries…Western jurisprudence came to recognize the necessity to pay due respect for other systems of law culturally different from Western law. This would be without doubt a remarkable milestone in the history of Western jurisprudence. At the same time, a new question arises: Can Western jurisprudence truly appreciate non-Western legal situations? We are here required to examine the cultural character of jurisprudence as understood by the Western as well as the non-Western scholars.”)

\textsuperscript{26} See Masaji Chiba, Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-Western, 33 JOURNAL OF LEGAL PLURALISM 198 (1993) (“Their empirical method was truly different from the normative one of the orthodox jurisprudence, but the perspectives of both disciplines were not so different in that they had the tendency to isolate law from the rest of the total culture in society.”)

\textsuperscript{27} See CHIBA supra note 23 at 4 (“Legal pluralism must be questioned and discussed not limited to non-Western society but extended to Western society as well. At present, most of those who know the word and facts of legal pluralism seem to understand it as a special phenomenon in non-Western society.”)

\textsuperscript{28} Chiba expounds his “Three-Level-Structure of Law” model of Western law and expands its conception and application to account for the interactions of transplanted “modern” law and “indigenous” law in non-Western situations such as Japan. See e.g., CHIBA supra note 23 at 131, 153 (“The amoeba-like way of thinking as a diffuse legal postulate characteristic of Japanese people has been identified as enabling the people to choose official law or unofficial law alternatively so as to adapt themselves to changing circumstances while maintaining their individuality and identity in the enjoyment of individual rights.”)

\textsuperscript{29} See Masaji Chiba, Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-Western, 33 JOURNAL OF LEGAL PLURALISM 199 (1993) (“Our study is meaningful only when it treats the existing non-Western law as a whole which is pluralistically constructed of not only state law but other kinds of official law such as religious law or tribal law, and furthermore, unofficial law in various forms, whether supporting or conflicting with official law.”)

\textsuperscript{30} For an analysis of “Japanese work-oriented spirit of labor” as an “unofficial legal postulate” see e.g., CHIBA supra note 23 at 82.
returned to the United States he made me a gift of a *dousojin*, a small clay spirit to be placed near the entry way of my house to guard against evil spirits. “You will need this in America,” he told me.

Chiba’s own biography, as he told it to me, was something as follows. As a young man during World War II, he studied philosophy of law at Tohoku University and upon graduation joined the research seminar of Professor Takeyoshi Kawashima, the father of Japanese sociology of law and importer of American legal realism to Japan. After the war, everyone was interested in all things Western—hence there was a big job for comparative law as the society sought to modernize, westernize and democratize under the watchful eye of American occupation forces. Yet Chiba was fascinated rather with Japanese customary law. He insisted that one could not evaluate or support the new legal transplants without understanding “what was going on in the villages” as he put it, a forsaken place that elite Japanese intellectuals wanted nothing to do with. “I was ostracized, treated as crazy,” he told me.

In 1965, Chiba traveled to the University of Minnesota to work for an extended period of time with E. Adamson Hoebel, the anthropologist who collaborated with Karl Llewellyn on *The Cheyenne Way*. At that time, very few Japanese legal scholars had serious training in another discipline. Chiba translated Hoebel’s *The Law of Primitive Man*.

Late in his career, Chiba developed a strong interest in collaborative scholarship involving scholars from throughout Asia. These teams conducted fieldwork together in Sri Lanka, Thailand and elsewhere in Asia. But most comparative lawyers, myself included, had long considered these projects as somehow less serious, the stuff that would occupy the time of a scholar in semi-retirement.

Chiba’s work is paradigmatic for our purposes because it belongs to an era that is drawing to a close. His strong view of culture difference and authenticity is no longer viable in an era of cultural hybridity and interconnectedness and in the aftermath of anthropological critiques of the culture concept. His faith in science, as a way of navigating between the twin pitfalls of self-deprecation and ethnocentricity, no longer convinces us.

Yet I want to draw attention to one of Chiba’s most original comparative observations about what he called Western law—its ability to resist challenge from the outside. Chiba identified two key devices—challenge absorbing mechanisms, such as the way abstract principles are supplemented by legal ideas such as justice or equity that can be adapted to absorb

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challenges,\textsuperscript{36} and challenge rejecting mechanisms, such as the fact/norm distinction whereby a challenge that the facts do not fit the law is met by an assertion that law is just a system of norms impervious to politics, economics, ethics, religion, and so on.\textsuperscript{37} Here, Chiba takes not simply law but legal theory and legal theorists as the object of comparison, and he does what the best of comparative law can do—he gives us both a new vantage point on our own legal system and a new agenda for political critique.

I want to suggest that the enduring contribution of Chiba’s work was the challenge—the way it challenged, and continues to challenge, both Japanese and “Westerners” alike. There are two senses to the idea of the challenge—challenge as a confrontation or critique of others, and challenge as a “test of one’s abilities or character”\textsuperscript{38} that transforms or extends one’s own potentialities and generates the responsiveness to curiosity that makes an eighty year old man’s eyes sparkle. The idea of the challenge gives us a different vision of comparative law’s disciplinary mission and energy. It demands that we ask, what does it mean to be a challenge in our own time? My answer would include: to make scholarship that in its form and content is responsive to the current moment—its challenge absorbing and challenge rejecting mechanisms; to be intellectually adventurous and ambitious—to take intellectual and professional risks; and to be more intellectually and professionally generous—open to the interventions of younger scholars and of ideas not phrased in the language of power.

III

WHY COLLABORATION NOW?

Today, in contrast, it is not comparison but collaboration that powerfully conjures this potent triad of science, policy and pedagogy. Collaboration is a scholarly method that is also a necessary professional skill and a policy-relevant practice: Law schools everywhere are rushing to teach young lawyers how to collaborate effectively\textsuperscript{39} in their practice. The most exciting innovations in policy, likewise, turn on collaboration of various kinds—from public-private

\textsuperscript{36} See CHIBA supra note 23 at 46 (“The more abstract and therefore the more apart from social realities is the concept, the more qualified the concept becomes for application to wider social realities.”)

\textsuperscript{37} See CHIBA supra note 23 at 46, 47 (“The purpose of the [‘separation of norm from fact’] principle is primarily understood as limiting law to a specifically authorized formal system of norms, banishing all the other phases and their outcomes of human social lives from the world of law with the label of fact. As an implication every connection of law with, or interference in, law by the world of fact, however substantially relevant to the law and its application it may be, is cut off, rejected and invalidated.”)


partnerships\(^{40}\) to harnessing the power of crowdsourcing,\(^{41}\) to “peer review” as a norm generating tool and an alternative to legal enforcement.\(^{42}\) Collaborative opportunities also obviate the need for comparative scholarship: Who needs to read a scholarly comparison of legal institutions in India and the United States, or for that matter, who needs ethnographic research, when one can simply incorporate an Indian legal thinker into one’s project collaboratively?\(^{43}\) The excitement is no longer about being cosmopolitan; it is about building collaborative relationships that obviate the need for cosmopolitanism altogether. Foreignness itself is obviated by the framework of collaboration, and with it, the need for comparison.

These developments in the legal academy mirror a number of conventional quasi-utopian initiatives proliferating from the corporate world\(^{44}\) to the world of NGOs and international human rights,\(^{45}\) in which internet-based communication is assumed to transcend cultural, political and economic divides, and conflict is replaced with “win-win scenarios.”\(^{46}\) As two commentators in the Harvard Business Review blog recently put it, in the corporate world, collaboration “is at risk of simply becoming a new form of ‘green washing’.”\(^{47}\)

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\(^{40}\) See Christine Harrington & Z Umut Turem, Accounting for accountability in neoliberal regulatory regimes, In PUBLIC ACCOUNTABILITY: DESIGNS, DILEMMAS AND EXPERIENCES 195 (2006) (critiquing the fantasy that public-private partnerships can better solve policy problems).


\(^{43}\) See generally, Mathias Siems, The End of Comparative Law, 2 JOURNAL OF COMPARATIVE LAW 133 (2007); Kenneth Anderson, Through Our Glass Darkly: Does Comparative Law Counsel the use of Foreign Law in U.S. Constitutional Adjudication?, 52 DUQUESNE UNIVERSITY LAW REVIEW 115 (2014). An example of this impulse is the movement away from citations to comparative legal scholarship in court opinions at the same time as one sees a rise in study tours for judges and the growth of international associations for judges of different countries. See e.g., Tony Mauro, Calling a Bad Day in Court Malpractice?, LEGAL TIMES (July 20, 1998) at 7; Court of Justice of the European Union. A delegation from the Supreme Court of the United States visits the Court of Justice of the European Union, PRESS RELEASE NO 15/14 (Feb. 12, 2014).


\(^{45}\) See, e.g, Craig Warkentin, Reshaping World Politics: NGOs, the Internet and Global Civil Society. (2001); Jonathan Bach, Link, Search, Interact: The Co-Evolution of NGOs and Interactive Technology, 21 THEORY, CULTURE & SOCIETY 101 (2004).

\(^{46}\) See, e.g., Gary Hamel, Yves L Doz and Coimatore K Prahalad, Collaborate with your Competitors and Win, 67 HARV BUS REV 133 (1989); HAZEL HENDERSON, BUILDING A WIN-WIN WORLD: LIFE BEYOND GLOBAL ECONOMIC WARFARE (1996).

It will not surprise anthropologists and comparative lawyers that these transnational collaborations—among teams building the latest gadget or consumers sharing reviews of those gadgets, or academics or artists creating the newest work—face tremendous challenges, technical and political. An entire industry of collaboration management consultants has popped up to solve these difficulties. And yet the faith remains. This is the kind of intellectual endeavor serious academics most likely would want to differentiate from the ethics and outcomes of scholarship.

I have written elsewhere about why comparison was once the master tool and why collaboration now captures the imagination in this way. In brief, comparison played a special role in a market economy founded on coordination through the institution of Price. The market was the perfect means of human, institutional, mechanical scientific, national coordination. Yet it necessitated certain key building blocks, or supports. One such building block was the legal architecture that provided the ground rules for market transactions, such as the institution of private property. Yet another key building block was the production, translation, and serving up of commensurable difference—the kind of difference that price could coordinate. This was the job of comparison: describing and organizing—objectifying—difference. Comparison played a very practical role in market transactions: how could arbitrageurs profit on the difference between the price of oil in one market or another without a comparative understanding of the legal, cultural and economic institutions that determined price in each place to begin with, and a

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56 See WEBB KEANE, SIGNS OF RECOGNITION: POWERS AND HAZARDS OF REPRESENTATION IN AN INDONESIAN SOCIETY 14 (1997) (arguing that objectification requires comparison—an operation in which a “new act is recognized as an instance of something known”).
confidence that comparative analysis could provide a true answer to such a question? Yet comparison need not be so directly applied—coordination through price demanded comparative thinking and hence the very ubiquity of comparative thought legitimated the scholarly development of comparative techniques. Comparison was a legible term: if a scholar were to say he or she was ‘doing a comparative study’, that was an understandable, and indeed respectable claim.

But in the post-financial crisis era, politicians, publics, and most of all financiers have lost faith in this neoliberal vision of coordinated societies, institutions, nations and individuals. And yet, in the aftermath of the devastating critiques of the legitimacy of state action on the one hand, and the abandonment of any illusion that technocratic policy-making is a science immune from politics on the other, the state is weak and the technocrats who inhabit its institutions lack confidence in both the efficacy and legitimacy of their own judgments. I have argued that in the aftermath of a loss of confidence in coordination, governments, corporations and individuals are turning to what I term “data politics” as an alternative: when government regulators no longer have the confidence that they can build institutions that will bolster a well-functioning market that can coordinate social activity through price, for example, they turn to massive data collection as a kind of alternative to rule making and planning. When corporations lose confidence in the ability of market mechanisms to deliver a stable global production chain based on long-term labor relations, they turn to crowdsourcing as an “anti-crisis solution”.

In a collaborative economy, in which there is a loss of faith in the coordinative power of price, and the market is no longer sustained entirely by liberal legal institutions (tended by professional lawyers) but begins to collapse into data politics, a different kind of epistemology and a different scholarship ensues. There is less need for academics to compare in order to facilitate coordination since the starting point of collaboration is not commensurable difference. But there is more than this. One important dimension of data politics, I have suggested, is that it enrolls citizens, consumers, and workers in auto-interpretation. For example, the producers of consumer products, or of advertisements for those products, have lost confidence in their ability to predict consumers’ desires and so they rely on endless data collection through cell phone apps and incessant consumer surveys to get the aggregate consumer to interpret for herself what she wants. A collaboration then is both a description and an institution—it crosses what were once different scales of social life. The effect is that what were once two different spheres of activity—the descriptive (the province of the academy) and the institutional (the so-called “real world”)—have collapsed into one another.

In a world in which everyone is already an expert, solutions are produced through crowdsourcing rather than knowledge work and there is no need for fine-grained comparative

59 Riles, supra note 35 at 559.
61 See Riles, supra note 35 at 562.
descriptions, the legal academy is left without an overt role. No wonder there is so much talk of the fact that legal education does not provide value for money or that scholarly articles are boring or irrelevant compared to blog posts. What is needed in such a condition (although academics are by no means the only or even the best suited providers) is not comparative analyses but methods for collaborating per se. My explanation for why, for better or for worse, is there so much interest in collaboration now, across multiple fields, then, is that collaboration is to data politics what comparison once was to Price.

And yet the misunderstanding, the violence, and even the desire for adventure that first motivated an earlier generation’s passion for comparison as an intellectual and ethical project certainly has not abated. Indeed, even the most flat-footed management consultant will aver that collaboration does not in fact obviate foreignness; does not eliminate the need for reflexive understanding. Let me quote the mission statement of our project Meridian 180:

_Why Meridian 180?

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

We recognize that the world is on the verge of a “global reset” in politics, economic and financial relations, social justice, and environmental conditions, in which given paradigms, political alliances, and modes of expert discourse no longer hold. Accordingly, our mission is one of preparedness. Rather than take a retrospective view, we seek to anticipate and prepare intellectually and politically for future environmental disasters, political/military conflicts, and serious problems of social justice in the region._

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by assembling a unique group of creative thinkers and building relationships among them that can be mobilized at times of need.\textsuperscript{64}

IV

FROM COMPARISON TO COLLABORATION IN ANTHROPOLOGY

For anthropology, the movement from comparison to collaboration has a somewhat different genealogy. It emerges out of the changed conditions and purposes of ethnographic research—from “writing culture”\textsuperscript{65} to “studying up”\textsuperscript{66} to activist\textsuperscript{67} and applied anthropology.\textsuperscript{68} All of these developments are premised on an appreciation that, on the one hand, the “others” anthropologists once studied are in fact co-theorists authors and even “para-ethnographers”, not simply subjects of research, and on the other hand, anthropologists are not simply objective observers but participants, implicated in the governance structures they describe and critique.

As George Marcus writes, “Many fieldworkers today are simply not free in a practical sense to impose the classic conditions of fieldwork, or the difficulties of so doing are quite different from those related in classic accounts.”\textsuperscript{70} These changed conditions have nudged anthropologists to jettison the heroic image of the data-gathering fieldworker. As Paul Rabinow puts it, “In anthropology, it ought to be time…to sacrifice the individualism as the subject position that has been at the core of anthropology’s approach to research, publication, pedagogy, and above all, thinking.”\textsuperscript{71} Rabinow takes this a step further to claim that collaborative fieldwork must also entail “transformative work on the self”.\textsuperscript{72}

The emergence of collaboration as a modality of scholarship takes this conflation of the subject of study and the observer in legal anthropology to its next logical and creative step. As Douglas Holmes and George Marcus write,


\textsuperscript{65} Writing Culture: The Poetics and Politics of Ethnography (George E. Marcus & James Clifford, eds. 1986) (problematizing the way anthropologists have traditionally described other cultures).

\textsuperscript{66} Laura Nader, Up the Anthropologist—Perspectives Gained from Studying Up, in Reinventing Anthropology 284 (Dell H. Hymes ed. 1972) (coining the phrase “studying up” for the ethnography of elites whose economic or social status is greater than that of the ethnographer).

\textsuperscript{67} See, e.g., Stuart Kirsch, Sustainable Mining, 34 Dialectical Anthropology 87 (2010).


\textsuperscript{69} Holmes, Douglas, and George E. Marcus, Cultures of Expertise and the Management of Globalization: Toward the Re-functioning of Ethnography. In Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems 235 (Aihwa Ong and Stephen J. Collier, eds. 2005) (coining the term “paraethnography” to signify modes of knowledge production that resemble ethnography practiced by other kinds of social actors such as central bankers).

\textsuperscript{70} George E. Marcus, Introduction, in Fieldwork Is Not What It Used To Be: Learning Anthropology’s Method in a Time of Transition 1, 11 (James D Faubion & George E Marcus eds. 2009).

\textsuperscript{71} Paul Rabinow, The Accompaniment: Assembling the Contemporary 202 (2011).

\textsuperscript{72} Id. at 74.
For us "collaboration" represents not some new or revamped practice to be added to the repertoire of methodological tools available to an ethnographer; rather we view collaboration as central to what we have termed a refunctioning of ethnography.…Key to this refunctioning is drawing on the analytical acumen and existential insights of our subjects to recast the intellectual imperatives of our own methodological practices, in short, the para-ethnographic practices of our subjects. Working amid and on collaborations significantly shifts the purposes of ethnography from description and analysis, inevitably distanced practices for which it has settled, to a deferral to subjects' modes of knowing, a function to which ethnography has long aspired. This act of deferral, as a distinctive methodological premise that we have derived from our relationship with David "Bert" Westbrook, a legal scholar who has written a book on this relationship, is thus generative of different collaborative configurations by which, we believe, the architecture of a refunctioned ethnography gains coherence.73

Yet if many anthropologists now recognize that collaboration is a crucial aspect of their own expertise, feminist anthropologists have long done something more. Feminists, motivated initially by political solidarity with the women they encountered in the field, engaged in ethnographic collaborations not simply to produce descriptions—but to produce a set of relations between women, both in the field and in the academy. Feminists paid attention to the ethical, political and intellectual opportunities that inhered in these relations as such, not simply as a means to the end of description or expert representations.74

Their work is particularly relevant for the contemporary crisis in comparative legal studies where, as explained above, representations have collapsed into the social and economic actions they once described, leaving comparative lawyers, as the producers of expert representations of social and economic differences, with little to do.75 For feminist anthropologists, creativity and scholarly ethics never inhered solely in description. In fact, feminist anthropology might be imagined as a project of achieving the kind of collapse of representations and the world that now plagues comparative law. From this point of view, comparative lawyers might ask whether the separation of representations and institutions embodied in the old modality of comparison is really something worth fighting for or being nostalgic about. Perhaps there are other templates for intellectual adventure, vocation and political action altogether.

One particularly suggestive text on this point is Marilyn Strathern's The Gender of the Gift,76 a text written at the height of the twentieth century dominance of comparison and comparability as formats for scholarship. If the problem of our moment is what to do once


75 See supra notes 40-42 and text accompanying notes.

comparison has failed, at the time Strathern wrote, comparison itself was the problem. Specifically, as a late modernist anthropologist, Strathern was committed to a holistic and deeply contextual approach to description (in contrast to an older brand of anthropology that organized societies according to typologies). In that late modernist contextual approach, any comparison is by definition always somewhat suspect for the way it leaves out crucial aspects of each specific case. Yet as a feminist anthropologist, Strathern sought to come to terms with the muscular comparative lens of feminist theory and activism which saw “the problem of women” everywhere as comparable, and even compared entire societies based on “the status of women” in each:

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

There is a parallel here between this midcentury feminist brand of comparison and midcentury comparative law which also organized and ranked societies according to whether they “had” legal institutions of X or Y variety. And if this aspect of feminism struck Strathern as methodologically dated, she responded by noticing anthropology and feminist theory’s shared commitment to collaboration. In the case of feminist theory, collaboration inerred in the relationship among feminists themselves: “One position evokes others” and hence, “The positions are created as dependent upon one another. . . . Feminism lies in the debate itself.”

Could this kind of feminist collaboration in which “one position invokes others” serve as a way of circling back to the incompatibility between feminists’ insistence on, and anthropologists’ rejection of, comparison? Rather than rejecting comparison or replacing it with some other term, Strathern staged an experiment in “the way one might hold analysis as a kind of convenient or controlled fiction.” Working through comparison, this term that was both deeply problematized by one intellectual community and deeply embraced by another, she treated comparison as a form to which she might fictionally submit, in order that perhaps something surprising might turn up side by side. In a sense, this is all she could do, since as a committed feminist she too inhabited the form of comparison that was so problematic to the modernist anthropologist.

There is an analog between Strathern’s problem and my own. Strathern’s problem was the contrast between feminism and modernist anthropology in an era in which comparison was king: where feminism demanded an extreme, muscular form of comparability, modernist

See id. at 5-6 (“We have considerable information about the distinctiveness of these particular cultures and societies but much less idea why we acquired it. For the holism of the monograph rests on its internal coherence, which creates a sense of autonomous knowledge and of its own justification. Consequently, the terms within which individual monographs are written will not necessarily provide the terms for a comparative exercise.”)

Id. at 31.

Id. at 24.

Id. at 6.
anthropology’s contextual commitments allowed for almost none. Analogously, my problem, in a moment at which comparison has been displaced by something else—collaboration—is that for anthropology collaboration is a register of excitement and endlessly renewable possibility, while comparative law encounters the rise of collaboration as a crisis.

If Strathern wagered that the shared, if differently situated political commitments of feminists and anthropologists to collaboration might demand that she inhabit the form that troubles her—comparison—in my case, conversely, the political commitments of comparative lawyers to making the unintelligible visible in an era in which the message is that all we need to do is collaborate suggests that a comparison of law and anthropology might yield a new wager for our time.

This is the set of intuitions behind the project I now will describe, Meridian 180. First, the feminist notion that scholarly work need not take the form of a representation: what if, in an era in which representations have collapsed into institutions, scholarship took the form of an institution, for example? Second, what if, rather than critiquing collaboration from outside, we treated it as a “convenient or controlled fiction” for scholarly action, one that proceeds from a recognition of its deeply problematic nature? From this standpoint, collaboration might offer a vision of how ethnography might engage, and change, the law in the intellectual space once occupied by comparison.

Yet to make sense of the project in this retrospectively theorized way gives it too much of the feel of the planned project. All of this remained implicit for some time. Let me begin again, therefore.

V

MERIDIAN 180

In March of 2011, in the immediate aftermath of the Great Tohoku Earthquake and nuclear accident at Fukushima in Japan, a group of legal scholars, anthropologists and economists, some practicing lawyers, some government officials and some investment bank and securities firm employees, a postmodern theologian, a few artists, and a smattering of others, began to talk about one surreal aspect of the crisis: the constant misreadings, the points of disconnect, the thinness of the transnational understanding of what was going on. The crisis at Fukushima and its unfolding regional and international consequences seemed to crystallize and confirm an inchoate sense many of us had that our own conversations—among intellectual elites in different countries, and also across disciplinary boundaries—were simply far too thin to address the needs of the political moment.

In thinking about the causes, it seemed that many of these could not be adequately addressed by traditional scholarly methods: some obvious ones are persisting language difficulties, or the logistical problems and costs associated with getting busy people to be able to spend substantial amounts of time together so that they could reach a deeper understanding of one another’s positions. But there are others too. First, there is a degree of lack of comfort or trust. Second, perhaps among some colleagues, there is a lack of commitment to investing large

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81 See supra note 57 and accompanying text.
amounts of time for such a conversation. On both sides of the Pacific and beyond, certain stereotyped versions of academic debate elsewhere lead many of us too quickly to dismiss misunderstandings as the product of a lack of scholarly sophistication in other traditions.\(^83\)

We organized ourselves as Meridian 180, named after the 180\(^{th}\) meridian, the international date line that separates East from West and that is also the anti-meridian, the paradigmatic point of inversion of the Prime Meridian, the paradigmatic orientation. Three years on, this collaboration of scholars, policymakers and professionals in Asia-Pacific, the United States and around the world interested in new ways of thinking about law and markets broadly conceived now includes over 600 invited members. We meet in person once or twice a year as funding allows, and in the interim, online. Our online conversations take the form of “forums” launched by a member with a short essay laying out a particular intellectual or political quandary. Unlike most of what is on the Internet, our conversation is private to the participants in the way that live conversations are limited to those who participate in them. The conversations are serious, detailed, substantive, and require concentration to follow. Members post and read comments in whichever of our four core languages they are most comfortable with, and comments are translated quickly by young legal scholars educated in two or more legal cultures and posted simultaneously in all four languages. Meridian 180 is governed by a “Core Idea Group” (CIG) comprised of three anthropologists working in the anthropology of the contemporary, a senior US government lawyer and policymaker who has completed all the requirements for a Ph.D. but the doctoral dissertation in anthropology, an Australian international lawyer working on globalization and data politics in the critical legal studies tradition, a Chinese constitutional theorist, a Japanese labor economist and a Korean financial lawyer turned university executive.\(^84\) Our mode of operation is under the radar rather than headline grabbing. Although we post summaries of our discussions on our website, and produce quasi-scholarly publications based on our discussions we have no Twitter account and have so far rebuffed the journalists who have expressed an interest in following the project.

And I want to add one further point, because of the pervasiveness of the ideology that dialogue somehow produces itself\(^85\): This field site, like all others, is hard work. The conversations are sustained through elaborate, if rickety social and institutional scaffolding constantly in need of replacement and repair. There are people to hire and to fire, students to recruit, members and potential members who need to be inspired and motivated. It is a field full of “glitches” in the Science and Technology Studies sense of the term\(^86\)—documents mistranslated, messages miscommunicated, institutional turf battles, people who misread one another’s intentions, technologies that mislead, or fail to inspire, or break down altogether. For me, the ethnographic experience of Meridian 180 most often presents itself as a long list of problems and to dos.

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\(^83\) Note to editors: the Meridian website is currently being redesigned so pages are shifting around. I will add cites to this paragraph in a few weeks when the pages are set.


\(^85\) For a critique of this ideology, see, e.g., ANNELISE RILES, THE NETWORK INSIDE OUT (2001).

\(^86\) See generally ANNELISE RILES, COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS 61-64 (2011); SERGIO LATORRE, LEGAL TECHNICALITIES IN CONDITIONS OF POLITICAL CONFLICT: THE CASE OF LAND TENURE DISPUTES IN COLOMBIA 58 (JSD DISSERTATION, CORNELL LAW SCHOOL 2012).
A. From Texts to Relations

Now, one reaction a reader may have, in hearing this description, is, ‘Is this a serious academic project at all, or is it more of an institutional, or activist project?’ And indeed, although Meridian 180 has some of the indicia of scholarship (we produce edited books based on conference proceedings for example) it also has many of the indicia of the problematic collaborations analyzed in Part III, and these scholarly outputs are something of an afterthought.

Another reaction a reader may have is, ‘is this really relevant to comparative law or the anthropology of law or vice versa?’ In the traditional genre, comparative law takes law or lawyers as its subject (comparative law). But rather than studying sites of law to be compared—legal norms, doctrines or institutions—Meridian 180 engages those who would traditionally be the objects of those sites (lawyers, regulators and legal scholars) as thinking co-subjects. Moreover, law is not always the explicit subject of the conversation. Forum topics include some standard comparative law topics such as the meaning of the rule of law, or the relationship between law and culture, but also topics such as “democracy in an age of shifting demographics,” and even “the meaning of happiness.” Some of our discussions stretch the socio-legal impulse to focus on law in action to the point to which some may ask, where is the law? And yet ironically the project is quite literally at law’s institutional center, even when it does not place law at the center: Meridian 180’s institutional home is a law school, where it is embraced as both expanding and enriching the academic vision—giving the legal academy a new kind of scholarly reach—while also providing professional training in cross-cultural collaboration to emerging lawyers going into a highly globalized world of practice.

Yet inspired by the feminist insight that ethnography is as much about the relations as it is about the representational outputs I do want to claim this experiment in collaborative legal theory-making in four languages as a post-reflexive form of comparative law. Collaboration departs from traditional comparative law because it is a modality of working with the Other, not of describing or translating the Other (although the latter must happen along the way, or after the fact, just as the old comparative descriptions and translations depended upon collaboration.

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87 See, e.g., Nils Jansen, Comparative Law and Comparative Legal Knowledge, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 305, 306 (Mathias Reimann & Reinhardt Zimmerman, eds. 2006) (arguing that comparative law is a special branch of comparative studies focusing on law).
88 On informants as thinking subjects, see generally Miyazaki, supra note 37.
94 Meridian 180 is a project of the Clarke Program in East Asian Law and Culture at Cornell University Law School, in partnership with the Ewha Women’s University School of Law in Seoul, Korea.
along the way and after the fact). It responds to the dominant form of the moment—
collaboration—by recasting that form in terms of the feminist commitment to relations and not in
textual outputs per se.  

B. From Purposes to Amateurism

Yet there is something askew, something amiss about this collaborative exercise: From its
inception, we have had no common purpose, to which each could contribute their respective
expertise. Although we have a range of “projects,” from addressing the consequences of war
memory in the Asia-Pacific region to rethinking the intellectual architecture of global finance,
our goals remain oddly unarticulated. Rather, we are living, side by side, a moment of crisis in
our own expertise.

In the management consultancy language, collaboration must be towards a well-defined
purpose. Every partner to the collaboration must understand their own relationship to this
purpose, and a focus on this purpose gives the collaboration energy and form. This kind of goal-
oriented collaboration makes foreignness comfortable since all differences align towards a
common goal. Collaboration that doesn't have a purpose is nonsense—if you don’t share a
common goal, it is not collaboration. As UC Berkeley Management Professor Morton Hansen
puts it, collaboration without a purpose is “bad collaboration,” and "Bad collaboration is worse
than no collaboration." From this point of view, ours is a very bad collaboration indeed. Our
collaboration requires our members to take the risk of acting the absurd in bureaucratic and
market terms: doing without purpose, together.

One term for this might be amateurism—the act and subject position of doing something
as if one were an expert (scholar, legal professional etc.) and yet without any actual economic or
political purpose. In fact, amateurism is another buzzword of the new collaborative economy.
Consider the musings of journalist, author and Tony Blair advisor Charles Leadbeater:

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

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

96 See Annelise Riles. Market Collaboration: Finance, Culture, and Ethnography after

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

98 Charles Leadbeater, quoted in Synthetic Overview of the Collaborative Economy, P2P
FOUNDATION at 56 (APRIL, 2012). Available at http://p2p.coop/files/reports/collaborative-
Yet Meridian 180 does not organize a crowd of non-professionals to contribute something useful or economically valuable toward some professional purpose. Rather, our amateurism lies in the way that our very professional and expert members are self-consciously acting—acting as professional thinkers, lawyers, financiers—without a clearly defined economic or political purpose.99

In fact as I show elsewhere, amateuristic mimicry of expert and professional work by professionals themselves is a critical tool of innovation among sophisticated legal professionals.100 But I first learned the importance of amateurism from reading an earlier, and now generally discredited generation of comparative lawyers who cheerfully embraced the identity of the amateur cosmopolite (one in the modernist era replaced by the identity of the sober and professionalized social scientist).101 These scholars’ early comparisons had long been dismissed by modernist comparative lawyers as “amateuristic,” in much the way feminist talk of the “problem of women” had to be dismissed for Strathern—precisely because the comparisons were too vast. Yet as I have argued elsewhere, what is missed in this critique is another dimension of this early comparative work: the sense of pleasure, adventure, comparison for its own sake, rather than in the service of some professional purpose.102

Yet there is also something different about the amateurism of Meridian 180 from the festive romps through exotic societies of those grandfather figures of comparative law. In Meridian 180, even as collaboration itself is the point, we act “as if”103 we are seriously collaborating toward some other end—some output, such as a better description of legal differences, or legal reform proposals, or consulting among policy makers, or book publications. Just as Strathern could not disavow broad brush comparison because of her commitments to a feminist politics in which such comparison has played a crucial role, we do not explicitly disavow the reading of the project as simple mundane instrumental cross-disciplinary and cross-national collaboration because such a reading is ethnographically significant—it is in tune with the moment we seek to understand and experiment with. It is an impossibility, a contradiction, a mess. Yet there is a feminist point to the madness. The feminist ethnographic method, here, is to redeploy the very conventional nature of the collaboration, as a “controlled fiction”104.

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

100 Professional lawyers in the financial markets engage in a great deal of work that has no clear instrumental or pecuniary purpose (drafting documents that most likely will never be used, organizing study groups that most likely will never result in publications, etc). See ANNELISE RILES, COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS (2011).

101 See Annelise Riles, Wigmore’s Treasure Box: Comparative Law in the Era of Information, 40 HARV. INT’L L J 221 (1999); Riles, supra note 22.

102 Id. at 229 (“What comparativists share, as much as a body of knowledge, a set of methods or techniques, or even common research questions, is a passion for looking beyond, an empathy for differences but also for similarities, a faith in the self-transformative task of learning, and an interest in the form of knowledge itself.”)


104 STRATHERN, supra note 57.
I personally feel the anxiety and discomfort of maintaining this absurd pose whenever I must explain the project to outside constituencies such as potential donors. From this point of view, the project appears disorganized, self-contradictory, unserious. More than once I have lost my nerve and slipped into promising deliverables before my colleagues on the CIG manage to pull me back toward a more disciplined ethnographic stance.

I take some comfort from the fact that I am not alone here. Indeed, when they dive into collaboration, anthropologists often seem to lose their ethnographic instincts. Paul Rabinow’s recent account of what, by his own terms, was a failed collaboration with scientists is refreshingly honest in its description of his own slippage from ethnographer of the collaboration into angered participant who viewed the scientists as political enemies rather than co-constructors.\textsuperscript{105} He, like me, so often fails to notice the remarkable opportunities for provoking a certain kind of intersubjective experiment—the opportunities for ethnography—that inhere in such mundane and even infuriating decisions as how to run a meeting, what to say in an email, or how to design a web page. The ethnographic art is in recognizing, and skillfully acting upon, such opportunities, and then reflecting on them creatively after the fact in the service both of cultural insight and devising further moves in the game.\textsuperscript{106}

C. A Challenge: Interest

This brings us back to Chiba’s emphasis on comparative law as a challenge. As mentioned above, our project has faced many challenges. But one of the greatest of these is simply to generate and sustain interest in the project among ourselves—as overcommitted and exhausted professionals and intellectuals. Amateurism is by definition a commitment based on interest alone.\textsuperscript{107} How to generate commitment to something that has no clear sense of purpose? How does one member’s provocation manage to elucidate a response on behalf of others? The depth and complexity of the challenge would not have surprised Chiba, who long ago suggested that, in the case of Western legal academics, the lack of interest in things that do not fit within

\begin{footnotesize}
\begin{enumerate}
\item See Rabinow, supra note 49.
\item Anthropologists have traditionally had a somewhat tongue in cheek term of art for subjects that defeat our ethnographic sensibilities. We call them ethnographic black holes. Tony Crook, for example, writes of the particular area of Melanesia in which he conducted fieldwork as a “black hole” and “graveyard” for anthropological careers. See Tony Crook, Exchanging Skin: Making a Science of the Relation Between Bolivip and Barth, 53 Social Analysis 94 (2009); and Thomas Hansen and Arjun Appadurai each describe modern urban Indian life in the same terms. See Thomas Blom Hansen, Predicaments of Secularism: Muslim Identities and Politics in Mumbai, 6 J Royal Anthr Inst 255 (2000); Arjun Appadurai, Theory in Anthropology: Center and Periphery, 28 Compar. Stud. in Soc. & Hist 356 (1986). Sherry Ortner likewise critiques the thinness of ethnographies of resistance movements in terms of “the failure of nerve surrounding questions of the internal politics of dominated groups and of the cultural authenticity of those groups” and “the set of issues surrounding the crisis of representation—the possibility of truthful portrayals of others (or Others) and the capacity of the subaltern to be heard….Taken together the two sets of issues converge to produce a kind of ethnographic black hole.” Sherry B Ortner, Anthropology and Social Theory: Culture, Power, and the Acting Subject 62 (2006).
\item See P2P Foundation, supra note 26 at 58 (quoting Chris Anderson’s claim that amateurs “choose to spend their time on what they do, and they go exactly where their passions, interests, knowledge and personality takes them—no further. If they lose interest they move on and are replaced by someone bursting with fresh energy.”)
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existing paradigms is one of Western law’s crucial “challenge rejecting mechanisms.” The problem is of course not uniquely “Western”: our Chinese and Japanese colleagues, as much as our American ones, often define the significance of their careers and their work in terms of their participation in national professional hierarchies and networks and have little time or energy for negotiating a new set of relationships. We face constant misunderstandings about what disciplinary or cultural others conceive of as a live theoretical question, and we lack the tools or handles—the necessary background into existing professional or intellectual conventions—for appreciating novelty in others' work.

Following Chiba, however, I want to suggest that the project is an heir to comparative law in the way that it clarifies, and produces, challenges. What we are discovering, through this post-comparative legal experiment, in other words, is what the challenges in and to the collaborative form might be—what we are discovering are new problems for theorization and action. In fact, interest is a largely unstated but ubiquitous challenge in the collaborative economy: if we think for a moment about collaborations we have been involved in, many of these ultimately collapse, or just peeter out, not for lack of technology, or even resources, but for lack of sustained collective interest.

The generation of interest in things foreign has long been an underacknowledged yet constant purpose of comparative legal studies. And yet we know that generating such an interest among legal academics and the thinking public at large was a passion—a mission, even—of many of the great post-war comparatists. Today as then, perhaps more than anything else comparative law might contribute, we need more subtle, creative, and careful genres of empathy and intellectual appreciation among legal colleagues across national boundaries, disciplinary boundaries, and the boundary between the academy and the professions. What if the central problem of comparative law moved from how to describe foreign legal systems to how to elucidate interest, commitment and response to things foreign and unfamiliar? What if comparative lawyers were seriously to experiment with the techniques for creating empathy and interest in things foreign? Ironically such a focus would have very direct policy relevance, in many areas in which comparative law prides itself on having an impact, from transnational business relations to international movements for social change to cooperative arrangements between national regulators in international affairs, to relations among academic institutions. In the modernist era, interest was produced through the technique of pluralism. Yet how is interest produced today, after the collapse of comparison, of sameness and difference, of culture, and of globalization? Here is a serious scholarly question.

We in Meridian 180 have not by any means unlocked the formula for generating interest in otherness. But the controlled fiction of collaboration has allowed us to observe the process of persons becoming interested. Most of our members start off with little commitment to the

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108 *See* CHIBA supra note 23 at 46.

109 *See*, e.g., RUDOLF B SCHLESINGER, HANS W BAADE, PETER E HERZOG AND EDWARD M WISE, *COMPARATIVE LAW: CASES, TEXT, MATERIALS* (1970); Ugo Mattei captures one example of this excitement in his exposition of Rudolf Schlesinger’s Cornell Common Core Project (“Schlesinger has been a creative and influential innovator. In the early sixties, at Cornell, he launched and carried out, with exceptional organizational and fundraising skills, a collective enterprise, known as the Cornell Common Core Project whose results have been published in two monumental volumes on the issue of the formation of contracts.”) *See* Ugo Mattei, *The Comparative Jurisprudence of Schlesinger and Sacco, in RETHINKING THE MASTERS OF COMPARATIVE LAW* 243 (2001).
project. Most commonly, they sign on out of commitment to a personal relationship to another member, and with no intention of giving the online discussions more than a glance every once in a while. They can’t see how this project could be useful to them. We make this barrier to initial commitment as high as we can by emphasizing again and again—in violation of management consultants’ number one rule that one must show people “what is in the organization for them”—that they will gain nothing at all from their involvement—neither visibility, nor prestige, nor income. These participants are also typically troubled by the lack of “outputs” or “deliverables.” This all seems like talk for talk’s sake.

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

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

D. Transforming value

In a recent catalog of emerging forms of internet-based participation, a group of Science and Technology Studies-inflected scholars have proposed that we understand such projects by focusing on value. Every such project, no matter how novel or diverse, has some concept of value, they argue, and we can gain clarity about these projects by asking what value is for each. Value for them is some output that can only be created through the collaborative exercise, and one can observe what value is by focusing empirically on goal setting within the project, legal responsibility, how tasks are assigned and executed, who has control over resources, and so on. Although the authors are trained in informatics, computer science and the social studies of technology, they put these elements to the side and focus rather on conventional questions in the sociology of institutions—how is authority defined and exercised, and what are the rights and obligations of institutional participants, for example.

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110 Cf. RABINOW, supra note 49 at 203 (“willingness to take risk is the parameter of our discussion”).
111 See Adam Fish, Luis F.R. Murillo, Lilly Nguyen, Aaron Panofsky & Christopher M. Kelty, Birds of the Internet, 4 J CULTURAL ECON 157, 167 (2011).
112 See id. at 168.
113 See id. at 161 (following Weber’s sociology of organizations).
The authors’ understanding of value correlates closely with the emphasis on instrumental purpose as the core identity and legitimizing function of collaborations in the management studies celebrations of the collaborative economy described above. Yet the shift from the institutional language of purpose to the economic language of value suggests a different point of conversation between comparative law and anthropology. The authors’ language of attention to value in the context of long distance and socially attenuated online transactions is reminiscent of anthropologist Nancy Munn’s account of how Massim people exchange words, objects and persons both among neighbors and with the inhabitants of far away islands with whom they participate in the renowned Kula exchange.¹¹⁴

For Munn also, the issue in these local and global exchanges is value. Yet Munn’s emphasis is not on the attainment, or production of value, as in Fish et. al., but on its transformation in the context of the obligations of reciprocity that gifts engender. She documents how, for example, a gift of cooked food (one kind of value) transforms into contributions of labor in the building of canoes (another kind of value), which in turn transforms into a canoe which is presented to one group’s affines to satisfy prior marriage-related debts, then passed on by the canoe’s receivers to their own affines to satisfy other prior debts, and finally placed into service as a means of transportation to far away islands where further episodes of gift exchange await.

With each transformation there is also a transformation of “space-time,” Munn argues—the gift of a canoe literally brings far away places into close proximity while the gift of cooked food to the kin of one’s daughter brings events from the past into present memory and hopes for the future into present consciousness. Where for Fish et. al. value is the functional equivalent of purpose, for Munn, value is better conceived of as “spatiotemporal transformation”—the transformation of “space-times” of interaction, obligation and memory. In these exchanges, Munn argues, the relative value of an action is determined by the extent to which it extends its own space-time: an exchange of gifts in the context of a marriage ceremony for example sets in motion a series of further exchanges and relations that last for the lifetime of the married couple and beyond, while the complex inter-island circulation of valuables in patterns of generalized exchange create a space-time of global proportions. The efficacy and identity of Kula exchange inheres in some clear and shared purpose or value to which all contribute but rather in the way one kind of value is endlessly transformed into another, and the social relations that ensue.

Munn’s ethnography is particularly relevant on one point: she notices that transformations of “space-time”—transformations, aggrandizements of value—are always accompanied by transformations of the self. Bodies become stronger or weaker, persons become more energetic or more sleepy, as they engage in such transformation. Spatiotemporal transformation, Munn concludes, is transformation of the self. Perhaps this discovery makes the focus, within Meridian 180, on becoming interested a little less absurd. The conditions of the present on which we experiment collectively are, as I have already suggested, economic conditions in which the nature of value itself is not a given but is undergoing profound transformation. As Munn suggests, the seeming expansion of space-times experienced within collaborative projects such as Meridian 180 are in fact effects of transformations in the very nature of economic value, after the collapse of price as the primary tool of value coordination.

We are participating in this transformation, in an experimental sense, by transforming value of our own. To say that we value our own collective interest in the project, then, is recursive but not absurd to the extent that value transformation is, as Munn argues, also self-transformation.

VI

CONCLUSION

The context for this argument is a moment after the demise of area studies, after the end of neoliberalism, after the end of culture and price alike as explanatory devices, in which comparison and critique as modalities of intellectual work have been superseded by something darker—collaboration. The premise is that as economic forms shift so does the nature of legal theory. As the nature of value is transforming, so is the value of scholarly work. If the challenge of comparative legal studies once inhered in gathering information, knowing and understanding foreign legal institutions, then writing about things foreign from the perspective of domestic law, the challenge for an era of collaboration, in contrast, is a far more dangerous, but also transformative one: to stage challenges that transform value by producing change in the nature of the interlocutors—transformations of the self.

The premise of Meridian 180 is that the confluence of anthropological and comparative legal concerns—the way in which each, for different reasons, collapses into collaboration—presents a unique methodological and ethical opportunity. Meridian 180 steps in to reclaim what is lost in the move from comparison to collaboration in comparative legal studies by engaging with what collaboration comes to mean in the anthropology of the contemporary.

The seemingly trivial experience of Meridian 180 as a long list of to dos points to something feminists have long understood and yet many of the best collaborative anthropologies still fail to treat with significant ethnographic care: the constitutive quality of collaboration. Scholarship in the modality of collaboration is no longer simply description in the service of law-building done elsewhere, by others, in another space-time so to speak. Rather collaboration becomes its own kind of constitutional moment, a different form of politics—one that is constitutive of a new set of ethical, social, political, institutional relations, albeit one deeply implicated in the economics of the moment, just as I have argued pluralism was for a previous generation.

In such projects, intellectual adventure, vocation and political action come together once again, in a different way. All three are on the “inside”, so to speak. The policy world is not something we “impact” with our outputs; its members are already within, with all the challenges that ensue. Description and theorizing come together also in the conversations and the endless institutional and social scaffolding work that sustains them. Most of all, we find in the risks of this exchange a transformative power—a power of collective self-transformation.