The Nature of Comparing

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1 Introduction

Prof van Erp has explained that studies in comparative property law have, until recently, been rather rare and the number of studies is still relatively small.[2] He blames this on "technocratic conservatism"[3] where property law is seen as "a set of national, fairly rigid, and technical legal rules, either in statutory or case law format, which are largely of a mandatory character, thus limiting the parties' freedom to shape their legal relations, at least as these relations may have an effect *vis-à-vis* third parties."[4] This view has led to a static approach to comparative property law with a focus on the differences between the Common law and Civil law countries. Prof van Erp states that the differences are "seen as an historical accident that has led to the existence of two leading traditions in property law, coherent within themselves but difficult to reconcile."[5]

Prof van Erp disputes this view of property law as a "petrified legal area"[6] through showing how a "dynamic approach to property law using an open-critical comparative analysis can open our minds and help us to find creative and workable solutions."[7] He does this by exploring the issues of recognising new objects of property rights and new types of property rights, drawing on examples such as digital data and CO2 emission rights, as well as innovations in moveable and immoveable security rights. Prof van Erp places this analysis within the context of national, regional and global developments, which challenge existing property law conceptions and require a change in mentality.[8]

One of the reasons that a change of mentality is necessary, according to Prof van Erp, is a growing awareness of climate change, which he states "will, no doubt, have

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[1] Lecturer in Private Law, University of Glasgow.

[2] S. van Erp, 'Comparative Property Law' in M. Reimann & R. Zimmermann (Eds.), *The Oxford Handbook of Comparative Law*, 2nd ed., Oxford, Oxford University Press, 2019, pp.1032 and 1037. Prof van Erp does note, however, that comparative property law has been at the heart of scholarship on mixed legal systems.

[3] *Ibid*. p.1037.

[4] *Ibid.* p.1032.

[5] *Ibid.* p.1037. There are exceptions noted by Prof van Erp including Y. Emerich, *Droit commun des biens: perspective transsystématique*, Cowansville, Yvon Blais, 2017, which has now been published in English with amendments as Y. Emerich, *Conceptualising Property Law: Integrating Common Law and Civil Law Traditions*, Cheltenham, Edward Elgar, 2018.

[6] S. van Erp, 'Comparative Property Law' in M. Reimann & R. Zimmermann (Eds.), *The Oxford Handbook of Comparative Law*, 2nd ed., Oxford, Oxford University Press, 2019, p.1032.

[7] *Ibid*. p.1050.

[8] *Ibid*. pp.1054-1057.

enormous consequences on ownership questions regarding natural resources."[9] In this contribution, I wish to explore this issue in a broader context. In particular, I wish to investigate what the role of environmental factors could be in comparative property law projects and how this may encourage us to re-consider our approach to comparative property law. This is upon the background that humanity is currently having an unprecedented impact on the natural world and the way we are using natural resources is unsustainable.[10] Therefore in this contribution, I will investigate the "nature" of comparing.

2 Static Comparative Property Law

As noted by Prof van Erp, the static approach to comparative property law is focused on the Common law and Civil law divide. Some claim this to be the "most fundamental and most discussed issue in comparative law".[11] This issue is a product of a wider attempt to categorise the world's legal systems into legal families. Ironically, in the context of the argument contained in this contribution, the attempt at classification was apparently originally inspired by the Linnaean taxonomy of animals, plants and minerals with the result of the comparative lawyer as zoologist.[12]

Many different taxonomies of legal families have been suggested over time, and these taxonomies have also regularly been subject to criticism.[13] The factors taken into account to produce the classifications have been listed by Prof Husa as including the history of a legal system, level of codification, process of judicial reasoning, influence of religion or political systems on law, structure of the court system, and so on.[14] Perhaps unsurprisingly, there is a focus on the structure and content of the positive law that comprises the legal system, and the influences on this system. An interesting omission is external factors to the legal system such as the geography, climate, or biodiversity in a jurisdiction.[15]

The limitations of the concept of legal families, including that is it reductionist and does not reflect the plurality of influences on different legal systems, have resulted in the suggestion that the taxonomy is only useful as a starting point.[16] At the beginning of a research project, legal families can be used in order to select legal systems to

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[9] *Ibid.* p.1037.

[10] *See* Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 'Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services', 2019. Available here: <https://ipbes.net/global-assessment> (accessed 14 November 2020).

[11] U. Mattei, *Comparative Law and Economics*, Ann Arbour, University of Michigan Press, 1997, p.70. This claim can, of course, be disputed.

[12] M. Siems, *Comparative Law*, Cambridge, Cambridge University Press, 2014, p.72.

[13] *See* the table provided in M. Siems, *Comparative Law*, Cambridge, Cambridge University Press, 2014, p.76, table 4.1, and summary of the criticisms pp.80-93.

[14] J. Husa, 'Legal Families' in J. M. Smith (Ed.), *Elgar Encyclopaedia of Comparative Law*, 2nd ed., Cheltenham, Edward Elgar, 2012, pp.492-493.

[15] K. Zweigert & H Kötz, *Introduction to Comparative Law*, 3rd ed., Oxford, Clarendon Press, 1998, p.64. In the past, race has been used as a factor for consideration. However, this is now rightly rejected. *See* M Siems, *Comparative Law*, Cambridge, Cambridge University Press, 2014, p.77.

[16] J. Husa, 'The Future of Legal Families', Oxford Handbooks Online, 2016.

investigate more deeply. This is indeed often the way in which legal families are used for comparative property law projects, where the jurisdictions chosen are seen to be representatives of a particular family.[17] In the context of a European comparative property law project, the systems of France, Germany and England maybe initially selected - representing the Romanistic, Germanic and Common law legal families.

The stumbling block which the comparatist then encounters is the doctrinal dissimilarity between Civil and Common law systems in relation to property issues – the irreconcilability referred to by Prof van Erp above. One of the fundamental differences between Common law and Civil law systems is the conceptualisation of ownership. Generally, Civil law systems consider ownership to be the most comprehensive and complete right a person can have in a thing.[18] Subordinate real rights are strictly defined and grant only limited and partial rights in a thing, which are derivative of the ownership right. In contrast, Common law systems have adopted the concept of relative title, with no single, absolute right that is superior to all other competing claims. Furthermore, there has been the influence of legal realism in Common law systems, which has disaggregated property entitlements into a bundle of rights, which can be held by various people, and these rights are relations between people, rather than rights directly in a thing.[19] Although important scholarly work has been done on how to overcome these differences, including Prof van Erp's work,[20] the divide still dominates comparative property law.

This focus on doctrinal differences can direct attention away from consideration of the broader implications of property law in a comparative project. For example, when exploring eviction in a comparative context, Prof van der Walt argues that both Common law and Civil law systems attach "the qualities of power and centrality to individual or private property because of its importance for economic liberalism as a social system; the doctrinal differences are technical remainders that should not detract attention from the rhetorical and ideological similarities."[21] I would argue that the current focus on doctrinal questions in comparative property law projects indeed

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[17] *See* S. van Erp & B. Akkermans (Eds.), *Cases, Texts and Materials on National, Supranational and International Property Law*, Oxford, Hart Publishing, 2012.

[18] Described in S. van Erp, 'Deconstruction and Reconstruction of European Property Law: A Research Agenda' in E. Cashin Ritaine (Ed.), *Legal Engineering and Comparative Law*, Geneva, Schulthess, 2008, p.113.

[19] These differences are summarised in A. J. van der Walt, *Property in the Margins* Oxford, Hart Publishing, 2009, pp.32-36.

[20] Such as S. van Erp, 'Comparative Property Law' in M. Reimann & R. Zimmermann (Eds.), *The Oxford Handbook of Comparative Law*, 2nd ed., Oxford, Oxford University Press, 2019; S. van Erp & B. Akkermans (Eds.), *Cases, Texts and Materials on National, Supranational and International Property Law*, Oxford, Hart Publishing, 2012; S. van Erp, 'Deconstruction and Reconstruction of European Property Law: A Research Agenda' in E. Cashin Ritaine (Ed.), *Legal Engineering and Comparative Law*, Geneva, Schulthess, 2008; S. van Erp, 'European and National Property Law: Osmosis or Growing Antagonism', 6th Walter van Gerven Lecture, Groningen, Europa Law Publishers, 2006. *See also*, for example, B. Akkermans, *The Principle of Numerus Clausus in European Property Law*, Antwerp, Intersentia, 2008 and L. van Vliet, *Transfer of Movables in German, French, English and Dutch Law*, Nijmegen, Ars Aequi Libri, 2000.

[21] A. J. van der Walt, *Property in the Margins* Oxford, Hart Publishing, 2009, p.37.

has a role in obscuring larger conceptual issues. In this contribution, I suggest that an important issue which is under-investigated due to a doctrinal focus is the relationship between property law and environmental factors.

To illustrate this point, I will give two examples. In the book *Lawscape: Property, Environment, Law*, Australian scholar Nicole Graham investigates the abstract conceptualisation of property rights and how this creates a blindness to social and environmental consequences. [22] Graham demonstrates this by analysing the imposition of English property laws to England's colonies. She argues that English property laws were the product of particular social and environmental conditions. Important factors were a temperate climate with a high rainfall, which were perceived as being capable of supporting intensive and productive agriculture. These laws were then transposed to arid regions of Australia and the USA, as well as to areas in Canada with a sub-artic climate. She states:

> From the earliest days of their colonisation, there was an incongruity between the English ideology of property and its practicability in different environmental contexts. The climates and geographies of other countries did not always support intensive agriculture and/or pastoralism without substantial and ongoing changes to the landscape and hydroscape to render English land use practices possible and productive. Property law in the colonies was not responsive to its local environment…Colonial land law was inappropriate – literally out of place.[23]

Graham argues that property law becomes maladapted when it is disconnected with place, or in other words dephysicalised. A focus on doctrinal questions of comparative property law does not reveal these important observations.

Another example can be found in the Mixed Jurisdiction of Louisiana. Mixed Jurisdictions have been perceived by some comparative property lawyers as potentially overcoming the Common law/Civil law divide mentioned above. [24] Further, there has been interest between the members of various Mixed Jurisdictions to investigate developments in other Mixed Jurisdictions, with some projects including Louisiana.[25] Despite being a State in the USA, Louisiana has a Civil Code,

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[22] N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011. See also N. Graham, 'Dephysicalised Property and Shadow Lands' The University of Sydney Law School, Legal Studies Research Paper Series, No. 19/84, December 2019.

[23] N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011, p.88. Graham also explores the use of property concepts in the dispossession of Indigenous peoples in the process of colonisation in Ch. 4.

[24] *See*, for example, J. Smits (Ed.), *The Contribution of Mixed Legal Systems to European Private Law*, Antwerp, Intersentia, 2001. On Mixed Jurisdictions generally see K.G.C. Reid, 'The Idea of Mixed Legal Systems', *Tulane Law Review*, Vol. 78, 2003, pp. 5-40.

[25] *See*, for example, V. V. Palmer and E. Reid (Eds.), *Mixed Jurisdictions Compared: Private law in Louisiana and Scotland*, Edinburgh, Edinburgh University Press, 2009.

which has been influenced by both French and Spanish law, among other sources.[26] Articles of this Code are arguably maladapted to the environmental context of Louisiana. The coastal region of the State is dominated by swampland and marshland, which are among the most valuable ecosystems in the world, and yet which in recent years have become increasingly submerged due to the encroaching waters of the Gulf of Mexico.[27] There are on-going property law disputes regarding ownership and access to these newly submerged lands.[28] The relevant provisions of the Civil Code regarding the Division of Things into common, public and private things,[29] and the provisions on alluvion,[30] do not provide clear solutions to these disputes, and seem inappropriate to both the particular geography of this coastal region and the accelerating physical transformations taking place. Once again, a focus on doctrinal issues would miss this important controversy in Louisiana's property law.

3 The Nature of Comparing

In what ways could environmental factors be an important element in comparative property law projects? Despite the view that environmental law and property law are enemies,[31] both are components of the system of laws and policies that governs the human relationship with natural resources.[32] Furthermore, property law has an impact on the environment that it seeks to regulate. As stated by Peter Burdon, "all tangible items of property are (in one way or another) derived from nature and our property choices have very real and immediate impacts on our community and the environment."[33]

An example Graham gives to demonstrate the impact property law can have is the enclosure movement in England between the mid-18th century and the beginning of the 19th century. This process of individual appropriation, facilitated by law, had significant ecological effects, and changed the relationship between people and the land.[34] The same can be said of the Highland Clearances in Scotland in the same

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[26] J. W. Cairns, *Codification, Transplants and History: Law Reform in Louisiana (1808) and Quebec (1866)*, New Jersey, Talbot Publishing, 2015.

[27] *See* T. E. Törnqvist *et al.*, 'Tipping points of Mississippi Delta marshes due to accelerated sea-level rise', *Scientific Advances*, Vol. 6, 2020.

[28] *See* Report of the Public Recreation Access Task Force to the Louisiana Legislature, 31 January 2020. Available at: <http://www.dnr.louisiana.gov/assets/Legal/PublicRecAccessTFReport.pdf> (accessed 14 November 2020). *See also* J. Mestayer, 'Saving Sportsman's Paradise: Article 450 and Declaring Ownership of Submerged Lands In Louisiana', *Louisiana Law Review*, Vol. 76, 2016.

[29] Arts. 448-456 of the Louisiana Civil Code.

[30] Arts. 499-506 of the Louisiana Civil Code.

[31] *See* V. Sagaert, 'Property Law, Contract Law and Environmental Law: Shaking Hands with the (Historical) Enemy' in S. Demeyere & V. Sagaert (Eds.), *Contract and Property with an Environmental Perspective*, Antwerp, Intersentia, 2020.

[32] P. Taylor and D. Grinlinton, 'Property Rights and Sustainability: Towards a New Vision of Property' in D. Grinlinton & P. Taylor (Eds.), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges*, Leiden, Martinus Nijhoff Publishers, 2011, p.9.

[33] P. D. Burdon, *Earth Jurisprudence: Private Property and the Environment*, Abingdon, Routledge, 2015, p.45.

[34] N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011, Ch. 3.

period, which has continuing ecological consequences.[35] Graham also argues the imposition of English land laws and land use practices on Australia, resulted in physical transformations of the land.[36] This has reflections in contemporary practices, and she highlights the discourse of the Australian farmer "battling the land" as evidencing over-exploitation of the particular natural features of certain areas.[37] Therefore, property laws can have significant environmental consequences and in carrying out a comparison between legal systems and evaluating different property regimes, we could consider these consequences. When comparing property laws, we could consider questions such as: In what ways does property law regulate natural resources? How does this reflect a perception or ideology of the natural world? How are natural resources used or exploited in that jurisdiction? What effects does this have?[38]

Conversely, the particular environmental conditions of a jurisdiction may result in different legal responses. For example, some take the view that when a resource becomes increasingly scarce, more defined private property rights develop over that resource.[39] This, it is argued, explains the system of prior appropriation in relation to water in the arid Western States of the USA in contrast to the system of riparian rights in the Eastern States.[40] However, this argument has also been subject to critique[41] and other studies show greater control by the state in times of water scarcity, which restricts property rights.[42] Much remains to be explored here through comparative study.

As Prof Robinson states: "Alpine montane legal systems will necessarily be distinct from the management of coastal zones in their environmental problems, forms of land tenure, economic development pressures; it is no surprise that, as a result, different

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[35] *See*, for example, discussion in C. Warren, *Managing Scotland's Environment*, 2nd ed., Edinburgh, Edinburgh University Press, 2009; R. A. Dodgshon, 'The Scottish Highlands before and after the Clearances: an ecological perspective' in D. Whyte and A. J. L. Winchester (Eds.), *Society, Landscape and Environment in Upland Britain*, Society for Landscape Studies, 2005, and T. C. Smout, *Nature Contested: Environmental History in Scotland and Northern England since 1600*, Edinburgh, Edinburgh University Press, 2000.

[36] N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011, pp.123-130.

[37] *Ibid*, pp.181-189.

[38] To engage in such projects may require interdisciplinary research teams. I have argued elsewhere that interdisciplinary work would be beneficial to property law research, *see* J. Robbie, 'Moving Beyond Boundaries in Pursuit of Sustainable Property Law' in B. Akkermans & G. van Gijck (Eds.), *Private Law and Sustainability*, The Hague, Eleven, 2019.

[39] H. Demsetz, 'Toward a Theory of Property Rights' *The American Economic Review*, Vol. 57, 1967, p.347.

[40] T. L. Anderson and P. J. Hill, 'The Evolution of Property Rights: A Study of the American West', *Journal of Law and Economics*, Vol. 18, 1975, p.163.

[41] *See* C. M. Rose, 'Energy and Efficiency in the Realignment of Common-Law Water Rights', *Journal of Legal Studies*, Vol. 19, 1990, p.261.

[42] *See* overview of the arguments in D. Schorr, 'Water Rights' in G. Graziadei & L. Smith (Eds.), *Comparative Property Law: Global Perspectives*, Cheltenham, Edward Elgar, 2017 and I. Kissling-Näf & S. Kuks, *The Evolution of National Water Regimes in Europe: Transitions in Water Rights and Water Policies*, Dordrecht, Kluwer Academic Publishers, 2004.

types of environmental legal means can and should be structured for such places."[43] Therefore, in comparative property projects, we could ask: In what ways do external features to the legal system, such as geography, climate and biodiversity, influence property rules? How do different jurisdictions deal with abundance and scarcity of resources? Can any common patterns be discerned? Do countries take paradigms which have been perceived to function well for certain resources and use these paradigms for other resources? What happens when laws that are the product of particular environmental conditions are transplanted to other environments?[44]

Considering environmental factors in this way may open up different possibilities for the exploration of similarities and differences between jurisdictions. Instead of choosing England, France and Germany – the traditional representatives of the various legal families – it could be fruitful to look at two countries with an abundance of a natural resource and one dealing with scarcity. The comparatist could investigate a legal system which allows people to hold water rights in relation to a river, and a legal system where a river itself is recognised as having legal personality.[45] Such projects would transcend the doctrinal Civil law/Common law divide and allow us to investigate more effectively how property law responds to and governs the natural environment, and what consequences this governance has.

4 A Nature-Based Approach to Comparative Property Law?

Taking the argument of the importance of environmental factors to comparative property law even further would be to consider the possibility of nature-based comparative property law. This would mean allowing natural features, species and habitats to determine the legal systems for investigation. Prof Robinson again states: "If the jurisdictions compared each have the same migratory species resident in their lands, airs and waters, the comparison of land use systems to maintain habitat can be made. Similarly, when studying aquifer protection and maintenance, the comparative analysis begins with the location of those jurisdictions where the aquifers are situated."[46]

We are currently losing crucial components of the natural world at an alarming rate, with extinction levels around 100-1000 times higher than in pre-human times.[47] This has significant negative consequences for humanity, which will only worsen if we do

[43] N. A Robinson, 'Comparative Environmental Law: Evaluating How Legal Systems Address Sustainable Development', *Environmental Policy and Law*, Vol. 27, 1997, p.340.
[44] Graham's argument here is that they become 'maladapted'. *See* N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011, p.206.
[45] *See*, for example, A. de Vries-Stotijn, I. van Ham & K. Basteijer, 'Protection through Property: From Private to River-held Rights', *Water International*, Vol. 44, 2019, p.736; E. O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance*, Abingdon, Routledge, 2018; C. Rodgers, 'A New Approach to Protecting Ecosystems: The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017', *Environmental Law Review*, Vol. 19, 2017, p.266.
[46] N. A Robinson, 'Comparative Environmental Law: Evaluating How Legal Systems Address Sustainable Development', *Environmental Policy and Law*, Vol. 27, 1997, p.340.
[47] European Commission, 'An Advocacy Toolkit for Nature: Biodiversity Loss, Nature Protection and the EU Strategy for Nature', 2020, p.4.

not take any action.[48] Therefore, considering how to best protect nature deserves dedicated attention. In the European context, nature-based comparative property law could be fruitful as there is a common framework for nature protection within the European Union under the Wild Birds[49] and Habitats Directives.[50] The Wild Birds and Habitats Directives require Member States to take measures to maintain or restore natural habitats, as well as populations of wild flora and fauna, including all wild birds naturally occurring in the EU.[51] For the purposes of these Directives, Europe has been divided into eleven biogeographical regions – including Alpine, Boreal and Mediterranean – to provide reference areas for large-scale ecological analyses.[52] A product of these Directives has been the creation of Natura 2000, the largest co-ordinated network of protected areas in the world, which currently covers 18% of the EU's territory.[53] Many of the Natura 2000 sites cross national boundaries in order to fulfil the aspiration to create a "coherent European ecological network of special areas of conservation".[54]

The impact of these Directives has rarely been investigated from the point of view of property law, but it is clear that the implementation of the Directives in the Member States has an effect on the exercise and content of property rights in relation to particular sites, which can vary from country to country.[55] The framework of the Directives could lead to a focused purpose for the comparison – how has property law changed and how is it functioning in relation to these protected areas? A small-scale comparative property law project could investigate a particular transboundary Natura 2000 site, and consider the property law response in relation to the site on either side of the border. A large-scale project could consider a natural feature such as the Alps, which stretch over the EU countries of France, Italy, Germany, Austria and Slovenia, and well as the non-EU countries of Switzerland and Liechtenstein. The mountain range contains rich biodiversity and a multitude of Natura 2000 sites.[56] In these

[48] *Ibid*., pp.5-7.

[49] Directive 2009/147/EC on Conservation of Wild Birds.

[50] Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora.

[51] *See generally* D. Langlet and S. Mahmoudi, *EU Environmental Law and Policy*, Oxford, Oxford University Press, 2016, Ch. 15.

[52] *See* the map of the regions provided by the European Environment Agency. Available at: <https://www.eea.europa.eu/data-and-maps/figures/biogeographical-regions-in-europe-2> (accessed 14 November 2020).

[53] European Commission, 'EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives', COM/2020/380, p.4. The EU has a goal to increase the total area of protected areas to 30% of the EU's land mass and also to provide strict protection to areas of very high biodiversity value or potential by 2030.

[54] Art. 3(1) of Directive 92/41/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora. A. Aragão, 'Transboundary Nature Conservation: Are there no Boundaries within the Natura 2000 Network?' in C-H. Born, *The Habitats Directive in its EU Environmental Law Context*, Abington, Routledge, 2015.

[55] *See* A. Garcia-Ureta, 'The ECJ Jurisprudence on Nature Protection and Ownership Rights' in G. Winter (Ed.), *Property and Environmental Protection in Europe*, Groningen, Europa Law Publishing, 2016; G. Winter, 'Property Rights and Nature Conservation' in C-H. Born, *The Habitats Directive in its EU Environmental Law Context*, Abington, Routledge, 2015.

[56] *See* the range of information on the Alpine Biogeographical Region here:

projects we could ask: What has been the property law response to the management of these crucial areas of Europe's natural environment? How do the property laws differ in various countries with respect to these important areas? In what ways are these laws similar? Are any laws more effective than others in maintaining or restoring the natural habitats or species?

Investigating these questions would be in accordance with the aims of the EU Biodiversity Strategy for 2030, which promotes cooperation across borders among the Member States, and between EU Member States and other countries.[57] Researching these issues also recognises that natural features, species and habitats do not respect national boundaries. "Like the rivers, which flow freely across borders, species run, fly, swim, crawl or go with the wind, across borders."[58] To contribute to tackling the issue of biodiversity loss and promote nature conservation, our research methodologies should reflect this reality of the natural world.

5 Conclusion

Prof van Erp's research encourages us to see beyond the traditional Common law/Civil law divide in comparative property law. His work also challenges us to change our mentality in order to contribute to solving some of the world's most pressing problems. Being inspired by his arguments, in this contribution, I have sought to explore how comparative property law projects could consider environmental factors or even adopt a nature-based methodology. Again, within the spirit of Prof van Erp's scholarship, I have investigated the possibility of this type of research in the context of EU law. In doing so, I have developed the argument of Prof van Erp that we need a dynamic approach to property law using an open-critical comparative analysis.

The arguments in this contribution are founded on the acceptance that the transition to sustainability is one of the most pressing challenges facing humanity. We must adapt to living within the Earth's resources. Property law can, and should, have a positive role in this transition. Nevertheless, this transition will not be an easy one, and will require changes to the existing methodologies, logic, assumptions and working practices of the discipline.[59] Involving the environment in comparative property law projects could be a valuable step in the process of the transition to sustainability. As Graham states:

<https://ec.europa.eu/environment/nature/natura2000/platform/knowledge_base/134_alpine_region_en.htm> (accessed 14 November 2020).

[57] European Commission, 'EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives', COM/2020/380, p.5.

[58] A. Aragão, 'Transboundary Nature Conservation: Are there no Boundaries within the Natura 2000 Network?' in C-H. Born, *The Habitats Directive in its EU Environmental Law Context*, Abington, Routledge, 2015, p.247.

[59] *See also* J. Robbie, 'Moving Beyond Boundaries in Pursuit of Sustainable Property Law' and B. Akkermans, 'Sustainable Property law – Towards a Revaluation of Our System of Property Law' in B. Akkermans & G. van Gijck (Eds.), *Private Law and Sustainability*, The Hague, Eleven, 2019 and J. Robbie & E. van der Sijde, 'Assembling a Sustainable System: Exploring the Systemic Constitutional Approach to Property in the Context of Sustainability', *Loyola Law Review*, 2020 (forthcoming).

> Integrating the material conditions and consequences of law into law's logic and operation are not only helpful, but vital, to authoritative and sustainable people-place regulation. If we want to know how to reshape our property law, we have to look no further than the landscape because it is the landscape that reveals our place in the world and the opportunities and limits of our connection with it.[60]

If it is the landscape, containing all its natural features, species and habitats, which provides the limits to the law, perhaps this is where we need to begin our property law research.

[60] N Graham, *Lawscape: Property, Environment and Law*, Abingdon, Routledge, 2011, p.206.