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Beyond the Surface: the Use of Qualitative Comparative Analysis (QCA) in Comparative Legal Research*

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Abstract

This paper discusses Qualitative Comparative Analysis (QCA) as a tool to conduct *systematic comparison* in legal research. Developed by sociologist Charles Ragin in the late 1980s, QCA is a set-theoretic, case-oriented technique that combines the strengths of qualitative and quantitative methods. Unlike traditional comparative legal analysis, which often remains descriptive, QCA identifies combinations of variables (*conditions*) that are *sufficient* or *necessary* to explain a specific outcome. Its twofold capacity of working with a medium number of cases (medium-N) and accounting for the complexity of social phenomena makes it particularly well suited to comparative law (especially comparative public law), where researchers frequently seek to explain variations among legal systems. We provide a conceptual overview of QCA and its development, evaluate its relevance and application in comparative law, and critically engage with the opportunities and limitations it presents.

Keywords

QCA; Qualitative Comparative Analysis; Systematic comparison; Empirical legal methods; Comparative law; Legal methodology.

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* Although the article was jointly conceptualized by the authors, Alberto Nicòtina wrote paragraphs 2, 5 and 6, while Lidia Bonifati wrote paragraphs 3 and 4. Introduction and conclusion are common thoughts of the authors.

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SUMMARY: 1. Introduction. – 2. Epistemologies of comparative law and the notion of causality. – 3. Purpose and functioning of Qualitative Comparative Analysis (QCA). – 4. Applications in legal research. – 5. Limitations and critiques. – 6. Integrating QCA in a multi-method legal research design. – 7. Conclusion: embracing methodological pluralism (with caution).

1. Introduction

Since around forty years now, legal scholarship is undergoing a quiet methodological revolution.[1] This is particularly true in the field of comparative law.[2] While for a long time comparative legal studies relied predominantly on descriptive (institutional, legislative and case-law) analyses and doctrinal reasoning, scholars today are increasingly turning to empirical and systematic methods and addressing deeper questions of causation and context.[3] Qualitative Comparative Analysis (QCA) is timidly emerging as a notable innovation in this landscape. Originally developed by sociologist Charles Ragin in the 1980s, QCA is a set-theoretic, case-oriented method that bridges qualitative and quantitative approaches.[4] Its appeal lies in moving comparative analysis "beyond the surface": from mere description of similarities and differences across legal systems towards an *explanation* of why those similarities and differences exist through *systematic* cross-case comparison.

[1] Daniel E Ho and Larry Kramer, 'Introduction: The Empirical Revolution in Law' (2013) 65 Stanford Law Review 1195, 517.
[2] Mathias Siems, 'New Directions in Comparative Law' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2019).
[3] Mark Van Hoecke, 'Methodology of Comparative Legal Research' [2015] Law and Method.
[4] Charles C Ragin, *The Comparative Method: Moving beyond Qualitative and Quantitative Strategies* (University of California Press 1987).

Based on our own experience of early-career legal scholars employing QCA, this paper examines the current use and further potential of QCA in comparative law studies. It provides a conceptual overview of QCA and its development, evaluates its relevance and application in comparative law, and offers a critical assessment of the opportunities and limitations it presents. In doing so, we situate QCA within broader methodological debates and reflect on its capacity to enable dialogue between legal scholars and (other) social scientists.[5] Our aim is not only to introduce QCA to legal scholars, but also to critically engage with how they could employ it to tackle some research questions that more "traditional" methods of law fail to address. At the same time, our analysis will also cover the shortcomings and potential misuses of this method in the specific context legal research.

The discussion proceeds along the following six parts. Section 2 situates QCA amidst different epistemological approaches in comparative law and how they deal with causality questions. Section 3 outlines the purpose and functioning of QCA, explaining how it works and in what it differs from the "traditional" comparative legal method. Section 4 addresses general methodological critiques of QCA, while Section 5 showcases some existing applications of QCA by both legal and non-legal scholars to investigate legal phenomena. Section 6 deals with the specific challenges of including QCA in a multi-method legal research design. Finally, we conclude with a reflection on how QCA can be further integrated into the toolkit of legal researchers to move "beyond the surface" and reveal underlying patterns in a way that still acknowledges the complexity of legal phenomena.

2. Epistemologies of comparative law and the notion of causality

The recent appearance of QCA in legal scholarship has come against a backdrop of long-standing debates about how to compare and understand different legal systems. In general terms, what many legal scholars have been pointing out over the past two decades is the lack of a precisely-defined and agreed upon comparative legal method. Leading voices in both private and public law have expressed unease with the "traditional" legal researchers' toolkit.

Private law scholar Marieke Oderkerk, for instance, argues that comparative legal methodology only points to possible explanatory factors (like economic, political, or cultural

[5] In this paper we will not join the discussion on whether or not law is to be considered a social science. Our reference here is merely descriptive, as we wish to point out that QCA could be used as a common methodological ground for legal scholars to collaborate with political scientists, sociologists, anthropologists among others.

elements) but does not provide the tools to rigorously analyze them.[6] Traditionally, comparative legal studies would identify candidate factors behind a legal difference – for example, attributing divergence in tort law to "cultural attitudes" or "economic structure" – but would fall short of systematically testing those factors. To explain differences and similarities between legal systems, she argues, lawyers "should make use of methods and techniques taken from other disciplines such as politics, sociology, statistics and economics".[7]

As far as comparative public law is concerned, Ran Hirschl in particular has been among the most influential voices. In his book *Comparative Matters*, Hirschl contends that "the future of comparative constitutional studies lies in relaxing the sharp divide between constitutional law and the social sciences".[8] He notes a renaissance in comparative constitutional law, yet laments that its "comparative" dimension as a method remains under-theorized. About ten years earlier, in a 2005 article on case selection in comparative constitutional law, the same author observed that while interest in comparing constitutional systems was rising, the field "remains under-theorized and lacks a coherent methodology".[9] Fundamental questions of why and how to compare were often neglected, and even "leading works continue to lag behind the social sciences in their ability to trace causal links among pertinent variables".[10] Legal scholarship, he argued, too often overlooks basics like controlled comparison and systematic case selection, thereby missing the chance to make or test causal claims.

At the same time, other scholars expressed concerns that an overly positivist drive for causal inference might oversimplify the richness of legal phenomena. For instance, in responding to Hirschl, Armin von Bogdandy cautioned that at the core of legal research should be not much the explanation, but the construction and maintenance of the normative meaning of legal phenomena: in his words, the "hermeneutical understanding of intersubjective phenomena".[11] As it will soon become clear, we believe that these two viewpoints do not necessarily exclude each other.

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[6] Marieke Oderkerk, 'The Need for a Methodological Framework for Comparative Legal Research Sense and Nonsense of "Methodological Pluralism" in Comparative Law' (2015) 77 The Rabel Journal of Comparative and International Private Law 590.
[7] ibid 619.
[8] Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 6.
[9] Ran Hirschl, 'The Question of Case Selection in Comparative Constitutional Law' (2005) 53 The American Journal of Comparative Law 125, 125.
[10] ibid.
[11] Armin Von Bogdandy, 'Comparative Constitutional Law as a Social Science? A Hegelian Reaction to Ran Hirschl's Comparative Matters' (2016) 49 Verfassung in Recht und Übersee 278, 285.

Suffices it to say for the moment that the disagreement between the two scholars actually exemplifies a long-standing debate on the role and purpose of comparative law. From a historical point of view, a first distinction that is useful to make is between "legislative comparative law" and "scholarly or theoretical comparative law".[12] Both are believed to have originated in 19th-century Germany: the first with the practical aim of unifying and codifying German law, and the second, under the impulse of Anselm von Feuerbach, to combat the "parochialism" of German legal scholarship and to distil a "universal legal science".[13]

Soon, different epistemological approaches started to emerge. Earlier studies followed classificatory or historical aims, grouping legal systems into so-called "families" and distinguishing for instance Romano-Germanic and socialist systems[14] or, more successfully, civil law and common law systems. Still today, this exercise is not uncommon in both comparative private and public law studies. Comparative constitutional lawyers made a distinct contribution to this process focusing for instance on "distinctive features of constitutional development in a region"[15] due to prior occupation or colonization, shared ethno-cultural heritage, or other geopolitical aspects.

Next to mere diachronic or synchronic classification, important divergences exist between scholars adopting functionalist, contextualist and normativist approaches, especially in how they deal with causality. Functionalists, like Zweigert and Kötz, hold that legal systems can be compared by identifying how each solves similar societal problems.[16] They believe that, while the task of comparative law is to describe similarities and differences, "to discover the causal relationships between law and society (…), to discover the causal patterns from which one can infer whether and under what circumstances law affects human behaviour and is affected by social change" is a matter for legal sociologists, and therefore falls outside the scope of comparative law.[17]

Contextualists, like Pierre Legrand, on the other hand, oppose the idea that legal norms operate independently from the social context and believe that "the comparatist must adopt a view of law as a polysemic signifier which connotes cultural, political, sociological, historical,

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[12] Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Tony Weir tr, 3rd revised edition, Oxford University Press 1998) 51.
[13] ibid.
[14] René David, *Les grands systèmes de droit contemporains* (Dalloz 1964).
[15] Vicki C Jackson, 'Comparative Constitutional Law: Methodologies' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) 56.
[16] Zweigert and Kötz (n 12).
[17] ibid 10.

anthropological, linguistic, psychological and economic referents".[18] As a consequence, investigating the causal roots of legal phenomena is, in their view, certainly pertinent, but "for comparatists-at-law, plausible explanations can be more profitable, and hence preferable, to causal demonstrations".[19] This is because, in their view, "comparative analysis of law is best apprehended as a hermeneutical investigation aiming to achieve understanding about the life of the law and life-in-the-law through the elucidation of meaning".[20]

Similarly, normativists, like von Bogdandy, are more interested in the theoretical side of legal inquiries, employing the comparative method to refine, support or clarify their analysis. When it comes to causality, they see comparative law as "not oriented towards isolatable relations of cause and effect, but rather towards an understanding which arises from a synthesis of a multiplicity of elements in their manifold relationships".[21]

In this context, QCA enters the scene as a promising tool. While it does investigate the causal roots of legal phenomena, the notion of causality it espouses is not that of natural sciences but rather that of social sciences. The difference is remarkable. As Alexander Goldenweiser clarified already in 1938,

> *"in the natural sciences, [causality] aims at generalization, the formulation of laws ever more and more abstract; in the social sciences, it aims at particularization, a conceptual demarcation of wholes with reference to other wholes. (...) There is never a question here of a something with general and repeatable characteristics (as in a laboratory experiment) which can and will recur under certain determined conditions. What is involved, on the contrary, is something specific, with unique spatial and temporal coordinates. Although comparison and other heuristic devices will be employed in an effort to understand it, it can only be understood as what it is, in its specificity, individuality and wholeness, like the subject of a biography".*[22]

Fundamentally grounded on this premise, QCA exemplifies the kind of method that Hirschl envisioned to "move toward the next level of comparative inquiry: causal inference

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[18] Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 Maastricht Journal of European and Comparative Law 111, 116.
[19] Pierre Legrand, 'Comparative Legal Studies and the Matter of Authenticity' [2009] Journal of Comparative Law 365, 387.
[20] ibid.
[21] Von Bogdandy (n 11) 285–286.
[22] Alexander Goldenweiser, 'The Concept of Causality in the Physical and Social Sciences' (1938) 3 American Sociological Review 624, 630.

through controlled comparison".[23] At the same time, rather than aiming at constructing the overly simplistic and pointlessly replicable analytical framework feared by Von Bogdandy, it searches for the explanation of complex social phenomena in a nuanced, case-aware manner. Its functioning is the subject of the next section.

3. Purpose and functioning of Qualitative Comparative Analysis (QCA)

Qualitative Comparative Analysis (QCA) has been introduced as a new research approach in 1987 by Charles Ragin, when he published *The Comparative Method*.[24] The aim of the new proposed approach was to be comparative and case-oriented in nature, combining the strengths of qualitative and quantitative research methods. In particular, it should be noted that QCA is considered to be the "methodological tool most directly associated with set theory".[25] Before reviewing the basic functioning of QCA, it is crucial to first define what set-theoretic methods are, since it is at the core of the understanding of QCA as an approach and as a technique.

3.1 Understanding set-theory

According to Schneider and Wagemann, all set-theoretic methods share three main features.[26] First, set-theoretic methods work on data which are membership scores of cases in sets. This is a first crucial point to underline, since sets and variables are not synonyms. On the one hand, a set is a collection of objects (or cases) sharing a common property which allows to define the membership to that set in terms of inclusion and exclusion, establishing both a qualitative and quantitative difference in data. A variable is a characteristic that may assume different values, that can generally be measured through standard mathematical operations. To exemplify such a difference, we could refer to the distinction between the set of "rich countries" and the variable of "wealth". In fact, in the set "rich countries", a membership to the set is established on the basis of a threshold which determines the inclusion or exclusion from the set, whereas "wealth" refers to a property that can be measured and assumes different values, but it is not defined in terms of inclusion-exclusion. When referring to the notion of sets, it could be easy to perceive set membership as binary, or crisp sets, in which cases are assigned full

[23] Hirschl (n 12) 126.
[24] Ragin (n 4).
[25] Carsten Q Schneider and Claudius Wagemann, *Set-Theoretic Methods for the Social Sciences: A Guide to Qualitative Comparative Analysis* (1st edn, Cambridge University Press 2012).
[26] ibid.

membership or non-membership. For example, France is clearly a member of the set "European countries", whereas the US is a non-member of the same set. However, not always phenomena can be described in dichotomic terms. For example, could Turkey or Belarus be considered as members of the set "European countries"? In this case, partial set membership, or fuzzy set, is needed to fully capture the complexity of reality.

The second feature of set-theoretic methods is that social phenomena are conceptualized in terms of set relations, and more specifically in terms of necessity and sufficiency. Recalling Schneider and Wagemann's example, NATO members are democracies, but not all democracies are NATO members (e.g., Sweden and Japan are not part of NATO). In other terms, being a democracy is necessary to be a NATO member but is not sufficient. Therefore, in set-theoretic terms we can establish that the set of NATO members is a subset of the set of democratic countries, while in turn the set of democratic countries is a superset of the set of NATO members.

Finally, the third feature is that the main focus of set-theoretic methods is on causal complexity, namely the analysis of set relations. Causal complexity can be understood in terms of equifinality (i.e., alternative factors can produce the same outcome), conjunctural causation (i.e., the combination of various sets produces the outcome), and asymmetry (i.e., the non-occurrence of the outcome cannot be derived from the explanation of the occurrence of the outcome).

More specifically, QCA as a set-theoretic method combines the presence of three elements: it aims at causal interpretation of social phenomena; it makes use of truth tables to visualize and analyze central features of causal complexity (such as equifinality, conjunctural causation, necessity, sufficiency); it uses the principle of logical minimization to express the empirical information in a more parsimonious manner. Moreover, it is crucial to distinguish two aspects of QCA, as a data analysis technique and as a research approach. As a research approach, QCA refers to the process before and after the so-called "analytic moment", involving the collection of data, the definition of case selection criteria, the specification of concepts, in an iterative process between ideas and evidence. While referring to QCA as a technique, we refer to the aforementioned analytic moment, namely the data analysis based on the truth table and the process of logical minimization. If QCA as an approach is time- and energy-consuming, because it involves the structuring of the research design and the interpretation of the results of the analysis in terms of causal complexity and causal inference, QCA as a technique is

considerably less time-consuming since it is performed by appropriate software's. The most user-friendly, developed by Charles Ragin and Sean Devay, is *fsQCA*.[27] Moving to the functioning of QCA, the following three main steps can be distinguished.

3.2 Preliminary phase

The first steps in QCA involve the building of the research design, defining the research question(s) in the framework of set theory. This means defining the conditions and the outcome as sets, so that the universe of cases can be crafted, and raw data can be collected. However, the most important step before the analytic moment is the so-called calibration of the conditions and the outcome. Calibration is the process of assigning set membership scores to cases using empirical information.[28] Schneider and Wagemann suggest that in order to be fruitful, calibration requires a series of elements:

> *"(1) a careful definition of the relevant population of cases; (2) a precise definition of the meanings of all concepts (both the conditions and the outcome) used in the analysis; (3) a decision on where the point of maximum indifference about membership versus non-membership is located (signified by the 0.5 anchor in fuzzy sets and the threshold in crisp sets); (4) a decision on the definition of full membership (1) and full non-membership (0); (5) a decision about the graded membership in between the qualitative anchors".*[29]

3.3 Analytical phase

Once this process of calibration is concluded, the resulting data matrix will be used in the analytic phase, which consists in the search for necessary and sufficient conditions or combinations of conditions to produce the outcome, making use of *Boolean algebra*. A condition X is defined as necessary if, whenever the outcome Y is present, the condition is also present.[30] Put differently, the outcome cannot be achieved without the condition ("Y implies X" or "X is a superset of Y"). As a mirror image of necessity, a condition X is considered sufficient if, whenever it is present across cases, the outcome Y is also present in these cases.[31] This means

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[27] fsQCA Version 4.1 (June 2023). Available at https://sites.socsci.uci.edu/~cragin/fsQCA/software.shtml
[28] Schneider and Wagemann (n 25) 32.
[29] ibid.
[30] ibid 69.
[31] ibid 57.

that there should not be a case that shows the condition but not the outcome ("X implies Y" or "X is a subset of Y").

Another crucial step during the analytic moment is the representation of empirical evidence in the so-called *truth table*, namely the matrix in which each row expresses logically possible configurations of conditions. The truth table is constructed following three steps. First, the logically possible configurations of conditions (i.e., the rows of the table) are equal to 2^k, where k is the number of conditions (e.g., in case of 4 conditions, the table will have $2^4 = 16$ rows). Second, each case is assigned to a truth table row in which it has the highest membership scores, denoting the presence of the conditions. In case of crisp sets this is straightforward because each case is either full member or full non-member, while for fuzzy sets usually the anchor to define membership to the truth table row is set at any score higher than 0.5. Third, for each row the outcome value is defined, and it is 1 for all rows that are sufficient for the outcome, and 0 otherwise.[32]

Once the truth table is constructed, it is possible to identify the sufficient conditions by logically minimizing the truth table. Using *Boolean algebra*, the process of logical minimization ensures that the configurations of conditions are simplified while remaining logically equivalent to more comprehensive formulas, differing only in the degree of complexity.[33] These formulas are called "solutions".

3.4 Interpretative phase

QCA's output consists of three different "solutions": *complex*, *parsimonious* and *intermediate*. The combinations of conditions they contain may differ, "but they are always equal in terms of logical truth and never contain contradictory information".[34] The parsimonious solution, in particular, includes only the conditions that are defined as "prime implicants", i.e. those that are included in every solution in the truth table,[35] whereas the complex and intermediate solutions include those conditions that, together, are sufficient to determine the outcome.

[32] ibid 91–103.
[33] ibid 115.
[34] Nicolas Legewie, 'An Introduction to Applied Data Analysis with Qualitative Comparative Analysis' (2013) Vol 14 Forum Qualitative Sozialforschung / Forum: Qualitative Social Research No 3 (2013).
[35] Ibid.

For a long time, QCA methodologists have debated on how to interpret the results. The debate is not of particular interest in this context, as it pertains to what the focus of QCA should be, without clarifying the meaningfulness of the QCA results any further. In short, two schools of thought emerged: one the one side, scholars like Thiem[36] and Baumgertner[37] find that the only relevant solution for a "pure" causality assessment are the "parsimonious" ones, with the consequence that "researchers who employ complex or intermediate solutions in empirical analyses thus always risk moving (much) further away from the truth rather than closer".[38] On the other side, other scholars such as Dușa[39] and Rutten[40] defend the position according to which social phenomena being highly complex in nature, it is not really interesting to look for "prime implicants" only, but rather the focus (and main goal) of QCA should be to look at the bigger picture, and speak of "robust sufficiency" instead.

Out of this debate, Schneider and Wagemann limit themselves to warn researchers that "the most parsimonious solution risks resting on assumptions about logical remainders that contradict theoretical expectations, common sense, or both",[41] and "the conservative (or complex) solution often tends to be too complex to be interpreted in a theoretically meaningful or plausible manner".[42] That is why the results of each solution weight differently within the analysis. No scholar doubts that the parsimonious solution is, in principle, the most reliable in terms of logical minimization. Therefore, when interpreting the results, the parsimonious

[36] Alrik Thiem, 'Beyond the Facts: Limited Empirical Diversity and Causal Inference in Qualitative Comparative Analysis' (2022) 51 Sociological Methods & Research 527; Alrik Thiem, 'The Logic and Methodology of "Necessary but Not Sufficient Causality": A Comment on Necessary Condition Analysis (NCA)*' (2021) 50 Sociological Methods & Research 913; Alrik Thiem, 'Beyond the Facts: Limited Empirical Diversity and Causal Inference in Qualitative Comparative Analysis' [2019] Sociological Methods and Research 10 <https://doi.org/10.1177/0049124119882463>; Alrik Thiem, 'Improving the Use of Qualitative Comparative Analysis for Inferring Complex Causation in Development and Planning Research' (2018) 8 Journal of Water, Sanitation and Hygiene for Development 622; Alrik Thiem, 'Conducting Configurational Comparative Research With Qualitative Comparative Analysis: A Hands-On Tutorial for Applied Evaluation Scholars and Practitioners' (2017) 38 American Journal of Evaluation 420.

[37] Michael Baumgartner, 'Qualitative Comparative Analysis and Robust Sufficiency' (2022) 56 Quality & Quantity 1939; Michael Baumgartner and Alrik Thiem, 'Often Trusted but Never (Properly) Tested: Evaluating Qualitative Comparative Analysis' (2020) 49 Sociological Methods & Research 279; Alrik Thiem and Michael Baumgartner, 'Back to Square One: A Reply to Munck, Paine, and Schneider' (2016) 49 Comparative Political Studies 801.

[38] Thiem, 'Beyond the Facts' (n 36) 535.

[39] Adrian Dușa, 'Critical Tension: Sufficiency and Parsimony in QCA' (2022) 51 Sociological Methods & Research 541.

[40] Roel Rutten, 'Uncertainty, Possibility, and Causal Power in QCA' (2023) 52 Sociological Methods & Research 1707.

[41] Schneider and Wagemann (n 25) 175.

[42] Ibid.

solution should constitute the starting point of analysis, to be complemented, if case knowledge requires it, with the intermediate solution.

The necessity and sufficiency statements resulting from the analysis are assessed and explained on the basis of the theoretical framework, checking whether they are confirmed or contradicted the previous expectations. Then, it is possible to perform additional robustness tests, to check for relevant unaccounted structures in the data, and to do within-cases analyses both for typical and deviant cases. When discussing the results, it is important to have a clear understanding of the notions of "consistency" and "coverage" that are peculiar to QCA.

"Consistency" refers to the degree to which one or more conditions (or configurations) are related to the outcome[43]. A further important parameter of reference in QCA is represented by the "coverage", that provides "a measure of empirical relevance"[44] indicating how many cases are consistent (in the sense clarified above), i.e. for how many cases it is possible to find one or more configurations that are able to explain the outcome. In general terms, for a QCA to be successful having a complete coverage is not strictly needed, as "some paths with a high coverage can be theoretically uninteresting or even trivial".[45] This is because more than focusing on the individual cases, QCA is more concerned with assessing the theoretical significance of the configurations.

In any case, QCA results must be interpreted in the light of the purpose, scope and nature of each individual research.

4. Limitations and critiques

Since the publication of *The Comparative Method*, QCA has spurred a lively methodological debate around its limitations and possibilities. Marx, Rihoux and Ragin identified five main issues that were criticized by opponents.[46] The first concerned *case sensitivity*, namely the fact that QCA is too sensitive to individual cases, as the inclusion or exclusion of a single case could change the results. Conversely, where critics see this as a weakness, proponents of QCA interpret it as a unique strength since this means that each case matters and can lead to the discovery of another causal explanation of social phenomena. Then,

[43] Legewie (n 34).
[44] Ibid.
[45] Carsten Q Schneider and Claudius Wagemann, 'Standards of Good Practice in Qualitative Comparative Analysis (QCA) and Fuzzy-Sets' (2010) 9 Comparative Sociology 397, 20.
[46] Axel Marx, Benoît Rihoux and Charles Ragin, 'The Origins, Development, and Application of Qualitative Comparative Analysis: The First 25 Years' (2014) 6 European Political Science Review 115.

another crucial issue revolved around *the use of dichotomic variables*, deemed a measurement too crude for many social sciences concepts. This criticism was met by the argument that working with crisp sets had the main advantage of "the elegance of simplicity",[47] and that gradualism should not be pursued at all costs. Nonetheless, as already recalled, fuzzy sets were later introduced to appreciate a more nuanced understanding of set membership. Another methodological debate focused on the *limitations on the number of conditions* that QCA can reasonably take into account. This is due to the fact that a large number of conditions implies an even larger number of truth table rows, leading to a situation in which no reduction is possible. However, proponents of QCA replied that this argument is applicable also to other research approaches, having equal restrictions on the number of variables.

The fourth debate concerned *the static nature of QCA*, namely its inability to include a time dimension or sequence of variables in the analysis. The lack of longitudinal perspective towards the analysis meant that conditions were measured in a precise moment in time, as in traditional cross-sectional research. However, proponents of QCA responded to this criticism by arguing that the time dimension could be "injected" in the conditions themselves.[48] Regarding the inability to include a sequence of conditions, techniques were developed in order to allow for a sequencing of conditions. Finally, another issue involved *the assumption of case independence*, namely that cases do not influence each other. However, this assumption is not unique to QCA, but is present in all variable-oriented techniques. The relevance of case independence depends largely on the research question, and there are a few ways to proceed. For example, conditions taking into account interrelatedness can be included, or further in-depth follow-ups can be done to reveal the nature and significance of the interrelatedness between cases.[49]

5. Applications in legal research

Despite the criticisms above, over the past two decades, QCA has rapidly gained traction in social sciences. In 2013, Rihoux et al. mapped over 310 studies across disciplines, published

[47] ibid 122.
[48] ibid 123.
[49] ibid.

between 1984 and 2011, that employ QCA.[50] Through a non-systematic topic-based literature review, in this Section we show how this trend has invested legal scholarship too.

QCA's appeal in legal scholarship lies in its ability to move beyond case studies and handle complex causal questions across a medium-*N* of cases (usually up until 100). Comparative law scholars often try to derive generalisable results from case studies, while the actual population of cases under analysis is wider. An example is European Union law, where scholars often need to analyse a given phenomenon across a selection of the 27 member States: these are too many for purely qualitative analysis to account for, yet too few for conventional statistics to yield robust results. Here, QCA can offer precision and analytical leverage that neither small-*n* case studies nor large-*N* statistics alone can provide. Below, we showcase some legal studies employing QCA by research subject.

5.1 EU Law and Integration

As early as 2006, and therefore in the pre-Lisbon era, political scientists Frank Schimmelfennig and colleagues employed QCA to examine the EU "constitutionalisation" process through the comparative analysis of 66 intergovernmental decisions adopted between 1951 and 2004.[51] Their crisp-set analysis tested the "constitutionalisation hypothesis", which predicted that treaty reforms expanding parliamentary power or human rights protections depended on a combination of political salience, normative coherence, actor consistency, and publicity. The results revealed two dominant pathways: high salience of the EU's democratic deficit alone could drive integration, while in less salient moments progress required the rare alignment of resonance with norms, coherence of demands, consistency of member-state preferences, and publicity of negotiations. In other words, either urgency or unanimity could explain constitutional advances. The findings confirmed core mechanisms of supranational integration theory, such as normative spillover and institutional path dependence, while also highlighting that differentiated integration often followed when salience was lacking, as only a few states or issue areas advanced.

More recently, Alberto Nicòtina investigated the *constitutional strategies in the face of multi-level governance*, i.e. the strategic behaviour of national constitutional actors when

[50] Benoît Rihoux and others, 'From Niche to Mainstream Method? A Comprehensive Mapping of QCA Applications in Journal Articles from 1984 to 2011' (2013) 66 Political Research Quarterly 175.
[51] Frank Schimmelfennig and others, 'Conditions for EU Constitutionalization: A Qualitative Comparative Analysis' (2006) 13 Journal of European Public Policy 1168.

responding to the challenges coming from the implementation of EU law at the national level.[52] To this purpose, he first analysed the *constitutional design in the face of multi-level governance*, i.e. the way in which constitutional norms deal with EU integration process, whether valuing more the "openness" towards EU law incorporation or the "integrity" of the national constitutional order. He then calibrated conditions such as the presence or absence of an authoritarian past, the political clout of Eurosceptic parties, citizens' trust in the EU and the economic dependence from the single market, showing how different combinations of these conditions explain the "openness" or "integrity" constitutional design in different cases. The analysis shows that in post-authoritarian countries where citizens tend to trust the EU and Eurosceptic political parties are not widely supported, the constitutional framework in place is not much concerned with protecting the "integrity" of the national constitutional system, with the result that an "open" constitutional design can be observed. By contrast, other post-authoritarian countries, such as Germany, adopt an "integrity" approach because of their strong domestic economy and the low trust in EU institutions, despite the relatively low significance of Eurosceptic parties.

5.2 Comparative Constitutional Change

In recent years, QCA has also been applied to study why constitutions change at different rates and what motivates the adoption of asymmetrical constitutional arrangements. Werner Reutter's analysis of German *Länder* constitutions sought to explain why some subnational constitutions have been amended far more frequently than others despite operating within the same federal framework.[53] His fuzzy-set QCA created a *Constitutional Changeableness Index* and tested conditions such as the number of effective parties, constitutional rigidity, and socio-economic structures. The results suggested that subnational constitutional change is not simply a by-product of consensus democracy. Rather, the presence of majoritarian elements, such as a low number of effective parties, consistently emerged as a core condition for frequent amendments. Constitutional change was thus facilitated when fewer veto players were present and hindered in fragmented party systems with rigid amendment rules. This finding complicates

[52] Alberto Nicòtina, 'Constitutional Strategies in the Face of Multi-Level Governance: An Empirical Legal Theory of EU Integration' (PhD Thesis, University of Antwerp 2024).
[53] Werner Reutter, 'The Changeableness of Subnational Constitutions: A Qualitative Comparative Analysis' (2019) 54 Government and Opposition 75.

assumptions about Germany's uniformly consensual politics by revealing how different political configurations within the federation yield different levels of constitutional dynamism.

Maja Sahadžić extended this configurational logic to multinational federations, exploring why some adopt asymmetrical constitutional arrangements while others preserve symmetry.[54] Her analysis, conducted with intermediate-*N* QCA across a range of divided societies, included conditions such as ethno-territorial cleavages, secessionist pressures, centralized versus decentralized party systems and international involvement in constitutional drafting. The findings demonstrated that asymmetry is never produced by a single cause, but rather by multiple combinations of conditions: in some cases, strong regional identities combined with international mediation produced entrenched asymmetry, while in others peace settlements or constitutional flexibility encouraged differentiated autonomy. Importantly, Sahadžić also found that asymmetry could bring destabilization when coupled with weak rule-of-law institutions, showing that asymmetry's stability depends on institutional reinforcement.

Building on this work, Lidia Bonifati's systematic QCA of 16 multi-tiered systems deepened the perspective by constructing fuzzy-set measures of degrees of asymmetry and testing conditions such as minority-protection clauses, fiscal autonomy, constitutional rigidity, and federal chamber strength.[55] Her results reveal how different countries reached similar levels of asymmetry through divergent combinations of conditions, for instance, post-conflict peace agreements or longstanding federal flexibility. Bonifati thus produced a nuanced typology of constitutional asymmetry, demonstrating that stability or instability arises from specific bundles of legal-institutional features.

5.3 Regulatory Implementation and Compliance

QCA has also been used to investigate the implementation of, and compliance with, regulatory frameworks both across and within jurisdictions. Yanwei Li and Liang Ma, for instance, looked into the regulation of ridesharing in China, examining its different implementation in 25 major cities.[56] Their outcome was the stringency of local regulation, calibrated from very strict to very permissive, and their conditions included unemployment

[54] Maja Sahadžić, *Asymmetry, Multinationalism and Constitutional Law: Managing Legitimacy and Stability in Federalist States* (Routledge, Taylor & Francis Group 2021).
[55] Lidia Bonifati, 'Comparative Constitutional Design for Divided Societies: A Model to Explain Constitutional Asymmetries' (PhD Thesis, University of Antwerp and University of Bologna 2023).
[56] Yanwei Li and Liang Ma, 'What Drives the Governance of Ridesharing? A Fuzzy-Set QCA of Local Regulations in China' (2019) 52 Policy Sciences 601.

rates, public transport quality, traffic congestion, taxi industry resistance, and administrative rank. The analysis identified seven distinct pathways: stringent regulation arose either from taxi strikes combined with congestion or from high-status cities with good public transport and little need for ridesharing, while permissive regulation resulted from high unemployment combined with poor public transport or from weaker political incentives to intervene. Here again, no single condition was decisive; instead, local regulatory strategies emerged from the interplay of social, economic and political pressures.

Andreas Corcaci extended the method to national compliance with international and EU environmental law in two distinct studies. A first study from 2023 investigated the implementation of decisions about environmental conflicts beyond the nation state by proposing "resolution mechanisms" as an umbrella concept for both court judgments and managerial non-compliance procedures.[57] He argued that effective national implementation hinges on conjunctural combinations of actor preferences, perceived legitimacy, and the strength of the enforcement design. From this he derived two rival–complementary pathways—one managerial, one enforcement-oriented—anticipating equifinal routes to the same outcome: either high perceived legitimacy paired with positive domestic preferences fosters implementation in the presence of softer managerial tools, or strong sanctioning capacity compensates for negative preferences when legitimacy is mixed or contested.

In another 2025 QCA study, Corcaci investigated the national implementation of EU law in the field of environmental and social policies.[58] He developed a concept-structural model that translates decades of qualitative findings into set-theoretic conditions of enforcement pressure, technical assistance, administrative capacity and institutional legitimacy. The analysis revealed that compliance can be secured through different strategies: a coercive path combining sanctions and high state capacity, a cooperative path combining external support with legitimacy, or hybrid approaches phased over time. He also showed that compliance cannot be reduced to enforcement alone but depends on context-specific configurations of "carrots-and-sticks" and institutional trust.

5.4 Human Rights Protection

[57] Andreas Corcaci, 'Implementing Decisions on Environmental Conflicts Beyond the Nation State: A Concept Structural Outline' (2023) 6 Nordic Journal of European Law 98.
[58] Andreas Corcaci, 'Implementation in the European Union. A Concept Structural Meta-Study of Environmental and Social Policy' (2025) 33 Journal of Contemporary European Studies 494.

Human rights research has increasingly turned to QCA to understand why some states protect rights more effectively than others. Axel Marx and Jadir Soares were among the first to introduce QCA into this field, demonstrating how the method can capture causal complexity in the specific field of freedoms of association and assembly.[59] Their illustrative analysis considered democracy, economic development, treaty ratification, and national human rights institutions, showing that no single condition guaranteed rights protection and that treaties, in particular, only mattered when combined with strong domestic institutions. Their main contribution was methodological, encouraging scholars to adopt configurational analysis to study legal rules in combination reinforcing or impairing social conditions.

Building on this foundation, Pablo Castillo-Ortiz examined the institutional determinants of rights and rule-of-law protection in Europe, analysing why some states adopted Kelsenian constitutional courts while others relied on supreme courts.[60] His crisp-set analysis included conditions such as legal tradition, timing of democratization, and party system fragmentation. The results indicated that post-authoritarian transitions combined with civil law traditions tended to produce strong constitutional courts, whereas common law democracies often avoided them. Although focused on institutional design, his findings too show how judicial fundamental rights protection depends not only on institutional frameworks, but also on their embedding in favourable political and historical contexts.

Broader is, by contrast, the scope of Emmanuel Adewusi and Özker Kocadal's QCA study on human rights protection across 76 states in the European Union and in the African Union.[61] Their conditions included international treaty ratification, national human rights institutions, rule of law, and GDP per capita. The analysis revealed distinct regional patterns: in Europe, rights protection was often secured through a combination of high GDP, rule of law, and treaty commitments, while in Africa, high GDP and rule of law were paramount regardless of treaties. Across all successful configurations, however, the presence of a national human rights institution was nearly necessary, signalling the importance of institutionalized oversight.

[59] Axel Marx and Jadir Soares, 'Applying New Methodological Tools in Human Rights Research. The Case of Qualitative Comparative Analysis' (2016) 20 The International Journal of Human Rights 365.
[60] Pablo Castillo-Ortiz, 'Qualitative Comparative Analysis (QCA) as an Empirical Method for International Law' in Rossana Deplano and Nicholas Tsagourias (eds), *Research Methods in International Law* (Edward Elgar Publishing 2021).
[61] Emmanuel Oluwatosin Adewusi and Özker Kocadal, 'A Comparative Analysis of Human Rights Protection in European Union and African Union Countries: An fsQCA Approach' (2022) 19 Uluslararası İlişkiler Dergisi 23.

Conversely, low GDP alone or the absence of rule of law combined with weak institutions were sufficient to explain low protection.

5.5 Legal Mobilization and Litigation

Finally, QCA has been applied to understand variations in litigation outcomes and legal mobilization. Thomas Laux, for instance, applied QCA to the diffusion of equal pay regulations across OECD countries, treating this legal innovation as a contingent outcome shaped by both actors and context.[62] His crisp-set QCA examined conditions such as the strength of women's movements, the role of labour unions, international norm diffusion, and political openness. The findings indicate that neither women's movements nor unions alone sufficed to institutionalize equal pay; rather, each had to combine with favourable structural conditions, such as alignment with international norms or left-wing political support. Legal innovation thus emerged through different equifinal pathways, showing that strong civil society movements always needed the right political or international environment to succeed.

Huina Xiao and Chunyan Ding investigated environmental NGOs in China, analysing 175 public interest lawsuits filed between 2009 and 2019.[63] Their fuzzy-set QCA calibrated six conditions: organizational capacity, political embeddedness, political endorsement, court access, legal stock, and alliances, against the outcome of strategic versus symbolic mobilization. The results identified four distinct modes: allied mobilization, in which capable NGOs acted with government endorsement; progressive mobilization, where strong NGOs and alliances gradually expanded litigation without explicit endorsement; steered mobilization, in which politically embedded but weaker NGOs followed state guidance; and symbolic mobilization, where weak NGOs filed token suits in hostile environments. These findings demonstrated that even under authoritarianism, legal mobilization exists and depends on organizational and political conditions.

Philip Kretsedemas turned to U.S. asylum cases, using crisp-set QCA to examine appellate decisions in 2017.[64] He assessed conditions such as circuit-level jurisprudence, partisan composition of panels, judge gender, and whether courts recognized a specific doctrine

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[62] Thomas Laux, 'Qualitative Comparative Analysis as a Method for Innovation Research: Analysing Legal Innovations in OECD Countries' (2015) 40 Historical Social Research 79108.
[63] Huina Xiao and Chunyan Ding, 'Explaining the Variations in Legal Mobilization of Environmental Nongovernmental Organizations in Authoritarian China: A Fuzzy Set Qualitative Comparative Analysis' (2023) 45 Law & Policy 181.
[64] Philip Kretsedemas, 'Explaining Asylum Law Using Qualitative Comparative Analysis' (2024) 13 Laws 53.

(the "nexus requirement") in asylum law. The analysis revealed that case outcomes depended primarily on legal and institutional factors, especially circuit-level decision-making patterns and findings on nexus, rather than on judges' partisan or demographic attributes. While earlier statistical research had emphasized political biases, his QCA showed that such biases operated only within the constraints of prevailing legal standards and institutional cultures. The implication is that strategic litigation success depends less on individual judge profiles than on how legal reasoning interacts with local legal-cultural traditions.

As we will show in the next Section, this is a particularly telling feature: in law, as in any other research field, QCA does not substitute, but rather builds upon case knowledge and discipline-specific theory.

6. Integrating QCA in a multi-method legal research design

One of the most promising uses of QCA in legal scholarship is that it bridges the gap between traditional doctrinal (hermeneutics, case studies, case-law analysis, legal theory-building) and empirical methods. Rather than replacing legal reasoning, QCA can complement it. While QCA can be used in isolation, we believe that it could make a stronger contribution to legal scholarship when embedded in a multi-method research design, i.e. when used in combination with doctrinal legal research.

Some scholars have noted that QCA is explicitly designed to "bridge the qualitative (case-oriented) and quantitative (variable-oriented) research gap".[65] By combining case-level nuance with systematic cross-case comparison, QCA lets legal researchers harness context-rich knowledge (the legal-interpretive side of inquiry) alongside the pattern-finding strengths of empirical analysis. As one reviewer observes, using mixed methods and cross-case techniques provides "new means for making a substantive contribution"[66] by helping scholars better understand complex phenomena that no single method could illuminate on its own.

In short, QCA enables the research to use familiar legal materials (cases, legislation, etc.) but to evaluate them through the set-theoretic logic that social scientists use to test hypotheses. Similarly to what happens when legal scholars employ other empirical methods with which

[65] Deborah Cragun and others, 'Qualitative Comparative Analysis: A Hybrid Method for Identifying Factors Associated With Program Effectiveness' (2016) 10 Journal of Mixed Methods Research 251, 251.
[66] Johannes Meuer and Christian Rupietta, 'A Review of Integrated QCA and Statistical Analyses' (2017) 51 Quality & Quantity 2063, 2064.

they are more familiar, such as interviews, QCA requires adjusting the research design by following an iterative process that could (or perhaps even should) include some back-and-forth.

6.1 An Iterative Mixed-Method Strategy

A productive way to leverage QCA in legal research is in an iterative loop with case studies. In this strategy, researchers alternate between qualitative deep-dives and QCA. A typical process might be divided into the following three main phases:

- *Phase 1 (Qualitative hypothesis-building)*: Conduct doctrinal or historical analyses of a few key cases to surface possible causal factors and generate hypotheses. This draws on the comparatist's contextual expertise and ensures that the conditions included in QCA reflect legal understanding and theory. Keeping in mind the typical QCA research question here is of course central: *what (combinations of) factors can explain the outcome?* In this phase, a (legal) literature review shall guide the question: *what explanatory factors have already been put forward in literature to explain the outcome?*
- *Phase 2 (Run the QCA)*: Following the steps outlined above, use the strongest among the candidate explanatory factors as *conditions*, calibrate them and the outcome and run the QCA. Some hypotheses will be supported (e.g. QCA shows that courts with both a strong ruling ideology and public protest tend to liberalize law), while others may fail (perhaps a suspected factor never appears in a consistent solution). QCA may also reveal unexpected configurations, suggesting new factors or nuances worth exploring in more detail. It is possible that the process fails (no meaningful configuration) or that it reveals configurations that cannot be legally interpreted in a meaningful way: this is the indicator that something went wrong with the previous step and the conditions taken into account are not supported by adequate legal knowledge.
- *Phase 3 (Interpretation of the results)*: Even when pertinent, QCA configurations are far from being self-explanatory. An essential phase of a QCA, particularly in a field with no previous large use of the method, is that of interpretation. Legal doctrinal framing of QCA results is essential for "making sense" of the configurations uncovered by the analysis. In this sense, QCA is a qualitative method that is not

different from case-law analysis or theory building: it can provide an empirical dimension to doctrinal interpretation, but cannot make up for lack of legal-analytical depth.

If used carefully, this mixed design defends the researcher against both field-entrenched criticisms (i.e. criticisms from legal scholars pointing out that the analysis does not accurately account for the real-world application of the legal solution/description provided in the study) and criticisms relating to over-generalization of an abstract pattern. In this last regard, many legal scholars explain similarities and differences in comparative law by resorting to vague notions such as "legal culture": through a precise calibration of the conditions, QCA enables the researcher to measure the phenomenon under analysis, providing a clearer depiction of the dynamics at play.

At the same time, social sciences research increasingly relies on QCA in combination with quantitative methods. Meuer and Rupietta reviewed many examples where QCA and statistical methods are combined, highlighting how each bolsters the other's robustness and scope.[67] In a similar way, nothing prevents bolder legal scholars to do the same. In that case too, concluding the analysis with a legal-interpretative framing can bolster the impact on doctrinal legal debates and, from there, on legislative and judicial decision-making.

6.2 Bridging Hermeneutics and Causal Explanation

QCA also bridges a classic divide in comparative law between *Verstehen* (understanding the legal world on its own terms) and *Erklären* (explaining patterns by general theory). By its very nature, QCA requires both. To calibrate cases into Boolean sets, a scholar must grasp each case's context deeply (reading case law, statutes and doctrinal debates to decide, for example, whether abstract notions such "constitutional rigidity" was present). Then the scholar uses those coded profiles across cases to explain why some combinations of factors lead to the outcome.

This dual effort enriches understanding. Legal scholars often justify QCA conditions with doctrinal history or theory (e.g. "the legal literature discussed above shows that the post-authoritarian feature has a relevant influence on the national constitutional design"[68]). After QCA, discussion of a solution may re-enter the narrative: perhaps all cases in a solution experienced a judicial crisis after a scandal, explaining why judicial independence emerged as

[67] Meuer and Rupietta (n 66).
[68] Nicòtina (n 52).

key. In this way the language of analysis shifts fluidly from the particular (legal narrative) to the comparative (set-theoretic configuration) and back, yielding a more holistic account of the phenomenon under analysis.

The legal QCA studies discussed above illustrate this blend. For example, a QCA study of asylum decisions combined sociopolitical variables (politics of judges) with case-law factors, finding that certain jurisprudential criteria were the decisive factors in panel decisions.

In other words, a "raw" QCA alone is not able to deliver meaningful results in the context of a legal study. An understanding of QCA's *complex causality* as *complex and empirically-grounded explanatory framework for a given legal phenomenon* is probably a more accurate depiction of the goal of QCA in legal research.

6.3 Interdisciplinary Collaboration and Dialogue

The third virtue of a multi-method legal research design including QCA is its capacity to represent a common ground for legal scholars to build collaborations with other scholars, especially in the social sciences. These forms of interaction and collaboration result in rigorous works on issues like how different courts respond to similar challenges, or how international obligations are domestically implemented across countries. In this way QCA becomes a common language for discourse: it speaks the variable/combinatorial idiom familiar in social science, yet its inputs and/or outputs can be fully grounded in legal doctrine. This lowers interdisciplinary barriers: it is often easier for an empirical researcher to read a QCA table of solutions than a purely narrative law review article, and easier for a lawyer to interpret a verbal description of configurations than a matrix of regression coefficients.

Even within law, QCA is not so much removed from traditional legal reality. When reviewing a paper on QCA, legal positivists and interpretivists can still debate calibration choices and meaningfulness of the outcome. In this spirit, QCA should neither be viewed as a universal solution nor dismissed as a fad. Instead, it should be used where it adds value. So far, QCA-based studies in law have yielded tangible insights on diverse topics (asylum adjudication, constitutional reform, regulatory change, etc.) that might have been missed by narrower methods. That is the ultimate test of the bridge: it should lead to new understanding of law. The evidence so far is encouraging, but the method's lasting place depends on scholars continuing to apply it thoughtfully, explain and justify their coding and calibration, and invite critique from all sides.

7. Conclusion: embracing methodological pluralism (with caution)

In this paper, we discussed QCA as novel import in comparative legal research. Our analysis, and in particular the literature review of legal studies featuring QCA, show that it can no longer be regarded as a marginal import into legal scholarship. Combining the rigor of systematic set-theoretic comparison with the contextual sensitivity of doctrinal analysis could become the "new normal" in legal research.

QCA has already proved capable of producing novel insights across a wide spectrum of legal (sub)domains, from constitutional change and regulatory implementation to human rights protection and legal mobilization. In describing this evolution, we also pointed out that QCA does not displace traditional legal methods but rather complements them, anchoring empirical patterns in the interpretive frameworks that remain at the heart of legal scholarship.

Just as law cannot be reduced to a commentary of legal texts, QCA too cannot be understood as a sort of oracle that determines causation in legal phenomena. The value of the method lies precisely in its iterative integration: doctrinal insights guide the construction of conditions, QCA identifies configurations of causal relevance, and qualitative interpretation reconnects these findings to the normative fabric of law. Used in this way, QCA fosters interdisciplinary dialogue while remaining anchored to the specificity of legal reasoning.

The role of QCA in comparative legal research is therefore twofold. First, it offers scholars a systematic tool for handling configurational complexity in medium-N research designs, filling a methodological gap between case studies and large-N statistics. Second, it encourages a reflexive awareness of research design, pushing legal scholars to articulate case selection, calibration criteria and causal assumptions with greater transparency.

Yet, these benefits come with caution: QCA is not a universal solution, and its results are only as robust as the theoretical and doctrinal choices that underpin them. In this sense, QCA should be judged not by its novelty but by its contribution to understanding law in context. If applied carefully and critically, it could become a normal, even routinary, tool in the comparatist's toolbox.