

The governance of migration: a comparative and multidisciplinary approach

Scuola Superiore Sant'Anna

JM Module on "Migration, asylum and rights of minors"

27 novembre 2019

Dr. Paola Pannia

Post-doc researcher - Università degli Studi di Firenze

OUTLINE

MIGRATION AND THE COMPARATIVE
METHOD: ADOPTING A “FLEXIBLE
APPROACH”

AN EXAMPLE OF LEGAL RESEARCH
ON MIGRATION: THE SIRIUS PROJECT

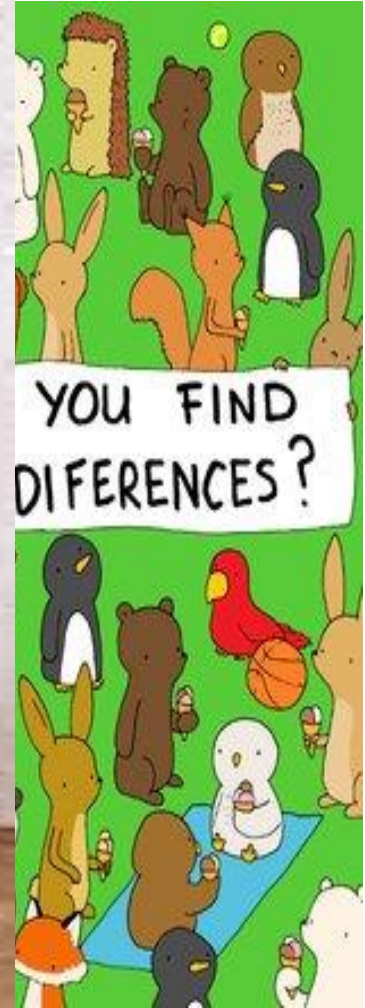
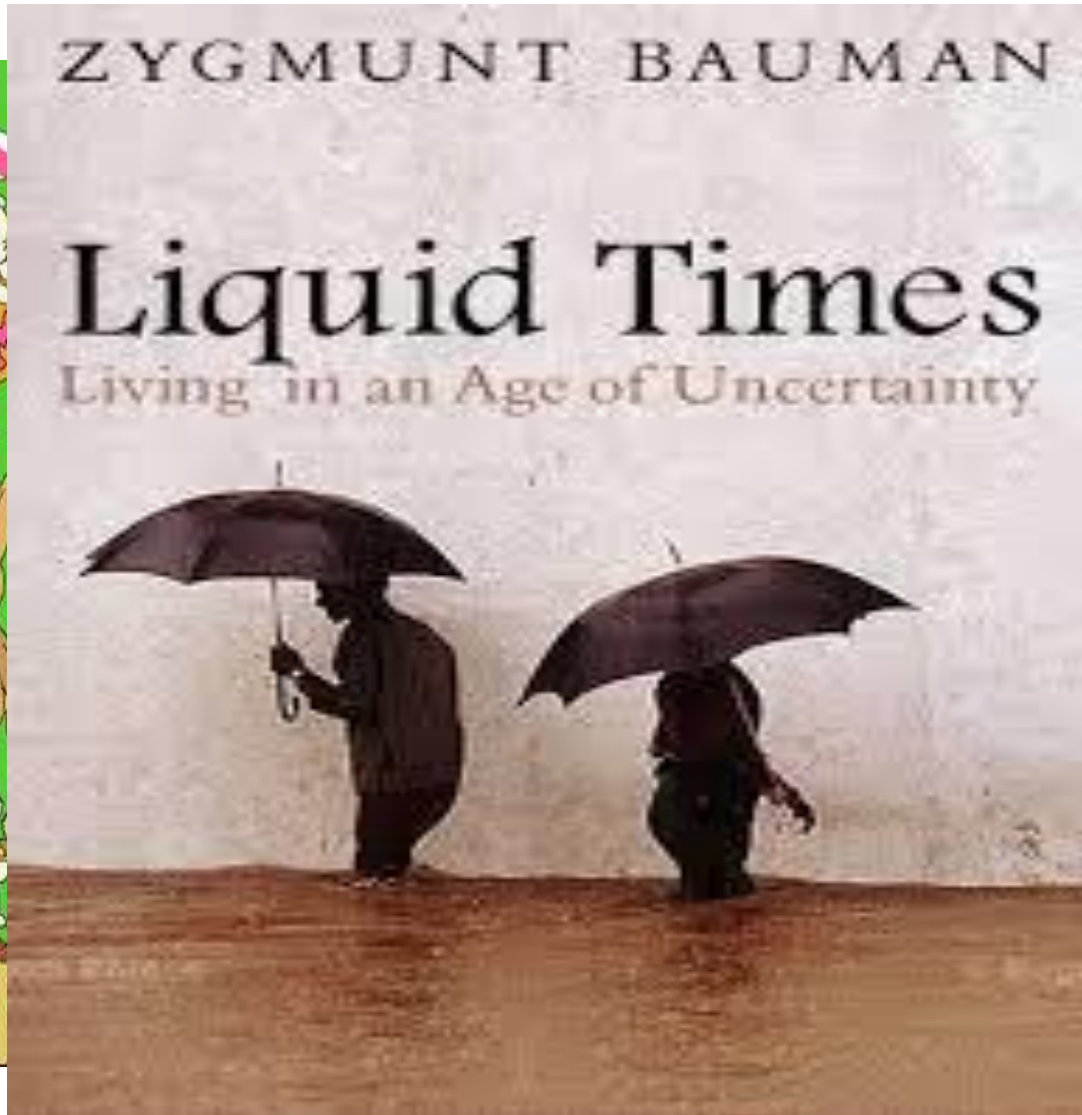
LAB: “A METHOD OF FREE CHOICE”

The comparative method

METHOD: meta "in pursuit or quest of" (see meta-) +
hodos, literally "a path, track, road,"
➔ a way to go along the road



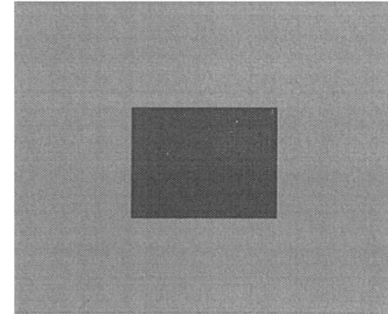
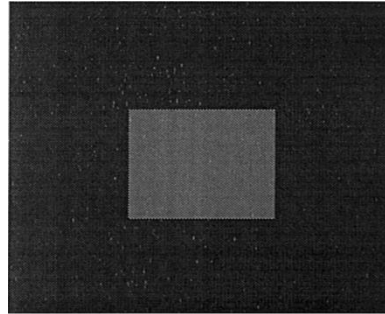
Rethinking comparative law in “an age of uncertainty”



Prospect theory: heuristic and bias



Daniel Kahnemann
Nobel per l'economia
2002



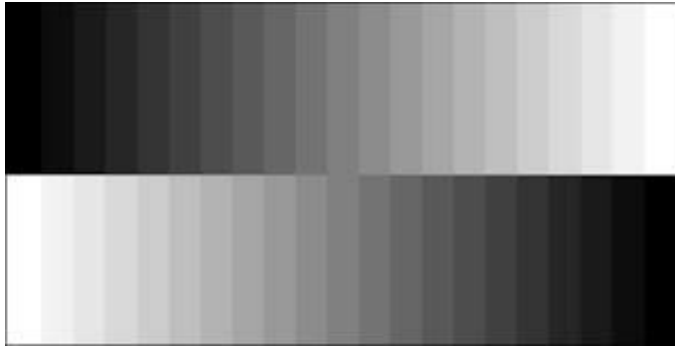
The importance of the
context

Rethinking comparative law in “an age of uncertainty”



AVOIDING COMPARISON

A different conceptual framework



Source (Amico di Meane, 2018)

Interdisciplinarity

Dynamism

Flexibility

Legal status and the
profiling process

→ To analyse the
transformation of legal
phenomena

There is no ultimate and definitive method

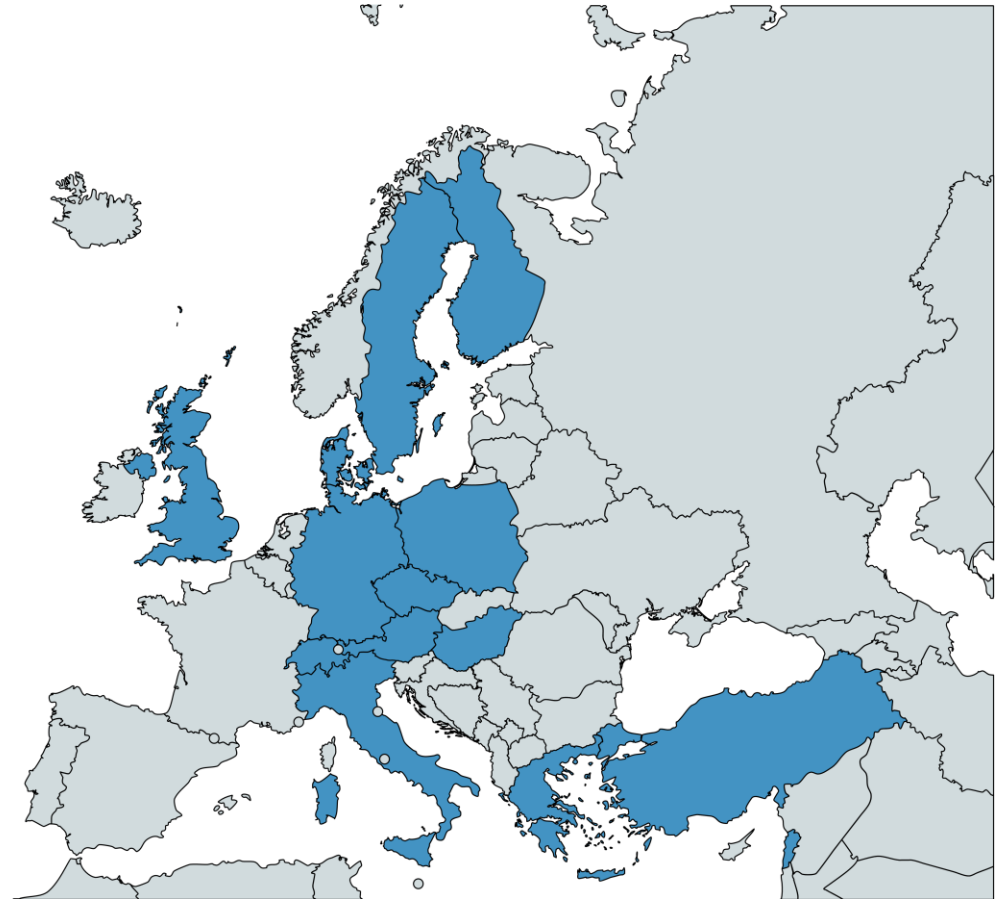
Methods can be combined and adapted

As a way of example: trends on immigration policies across EU states

HOW SELECTED EU STATES RESPONDED TO RECENT MIGRATION FLOWS?

THROUGH WHICH TOOLS?

WITH WHICH OBJECTIVES?



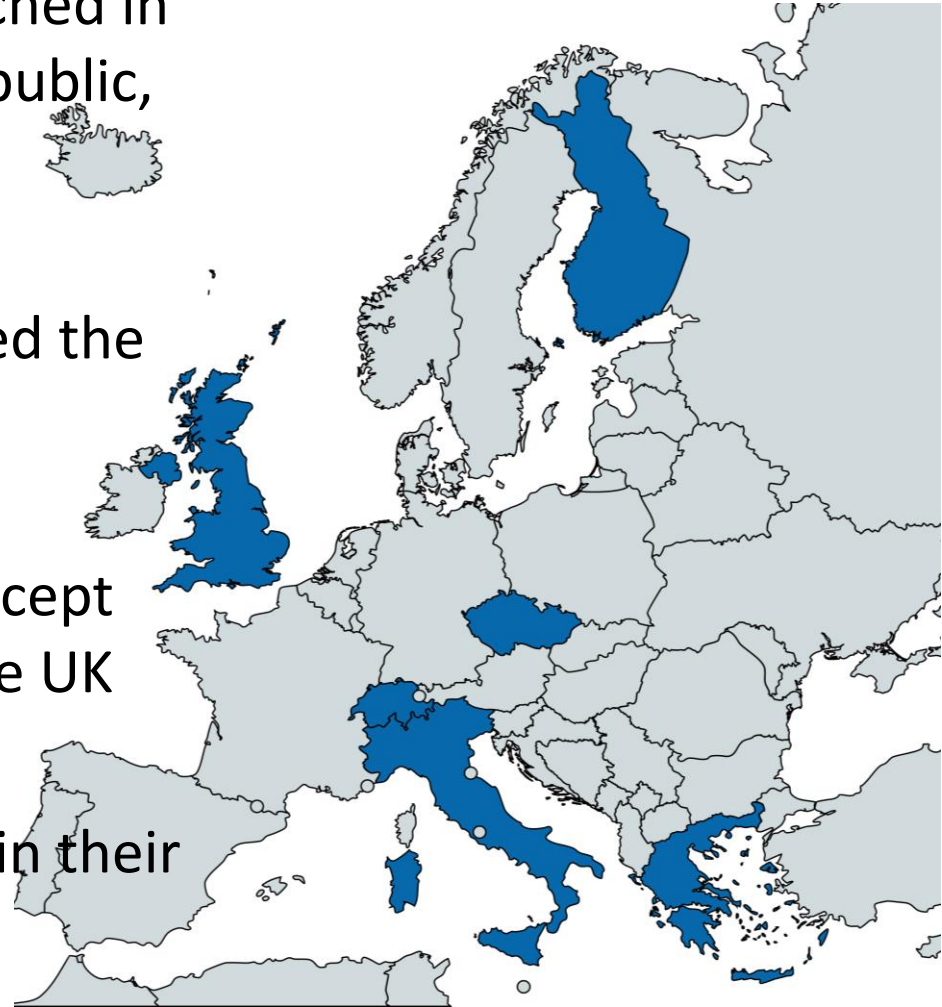
SIRIUS

Skills and Integration of Migrants,
Refugees and Asylum Applicants
in European Labour Markets

RESPOND

The legal framework

- The right of asylum is entrenched in the Constitution of Czech Republic, Italy and Finland
- All these countries have signed the 1951 Geneva Convention
- All are bound by the CEAS, except Switzerland, Denmark and the UK
- Most incorporated the ECHR in their Constitution



SIRIUS

Skills and Integration of Migrants,
Refugees and Asylum Applicants
in European Labour Markets

The complex interplay among migration policies and narratives



**MORNING
FOCUS**

"PACK YOUR BAGS"

ITALIAN INTERIOR MINISTER: SICILY CAN'T BE EUROPE'S REFUGEE

The complex interplay among migration policies and narratives



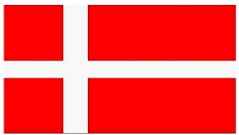
UK Immigration Act 2014



Making Eu states a «less attractive» destination: laws aimed at creating a «*hostile environment*»

HIGHLY SIMBOLIC LAWS

The so-called “jewellery law”



Denmark Bill No. 87/2016



THE PARADIGM SHIFT
Law L 140, 2019

“When you are a refugee and come to Denmark, you can be granted our protection. But when there is peace you must go home”.

(Mette Frederiksen, Denmark prime minister, June 2019)

The downgrading of rights

- **SOCIAL RIGHTS:**

In Italy (art. 13 Decreto sicurezza 113/2018) unsecure access for asylum seekers, in Greece unsecure access for MRAS



- **FAMILY REUNIFICATION:**

In Denmark (Law L 140/2019) and Finland: insecure access to this right for refugees



In Sweden and Germany: suspension of the right for beneficiaries of subsidiary protection

“make sure that the society does not have to pay for foreigners residing in Finland”

Other evidence of a «hostile environment»: complex and overgrown legislation

- Continuous and swift legal changes
- Secondary laws (less democratic control)
- Stratified legal framework, difficult to both be correctly and consistently implemented and duly interpreted and applied
- Increase of the discretionary power of single offices and individuals
- Jeopardization of legal enforcement and guarantee of fundamental rights

In Denmark, from 2002 to 2011, the Aliens Act was changed 57 times, and since 2015, more than 85 times

In the UK, 12 acts of parliament approved in the last 20 years. Between 2014 and 2016, 79 orders and rules promulgated



Narrowing the access to EU countries

Preventing or restraining the access to international protection

- Physical barriers (i.e. the 12Km wall in the Evros area)
- Procedural barriers: hotspots and procedures provided by the EU asylum acquis

where an application is likely to be unfounded or there are serious national security or public order concerns, Member States can introduce shorter, but reasonable, time limits for certain procedural steps, without prejudice..

(recital 20, APD recast)

Selecting migration legal pathways

- Favouring the access to high-skilled workers and investors
- Reducing the access to low-skilled workers

The hotspots approach and “il foglio notizie”

THE 2015 ITALIAN ROADMAP

Negli hotspots «avrà luogo una prima differenziazione tra le persone richiedenti asilo/potenziati ricollocabili e quelle in posizione irregolare.»

PROCEDURE OPERATIVE STANDARD 2016

vengono condotte “interviste iniziali di screening”, inserendo in un modello specifico le informazioni raccolte, ovvero le generalità e “la motivazione che ha indotto la persona a lasciare il suo paese.”

Circolare Ministero Interno,
2016

Accesso Alla Procedura

http://www.asgi.it/wp-content/uploads/2016/01/2016_Ministero_Interno_accesso_asilo_garanzie_modalita.pdf

VENUTO IN ITALIA PER:

- ◆ LAVORO
- ◆ RAGGIUNGERE I FAMILIARI
- ◆ FUGGIRE DALLA POVERTÀ
- ◆ FUGGIRE PER ALTRI MOTIVI
- ◆ RICHIEDERE ASILO POLITICO

M

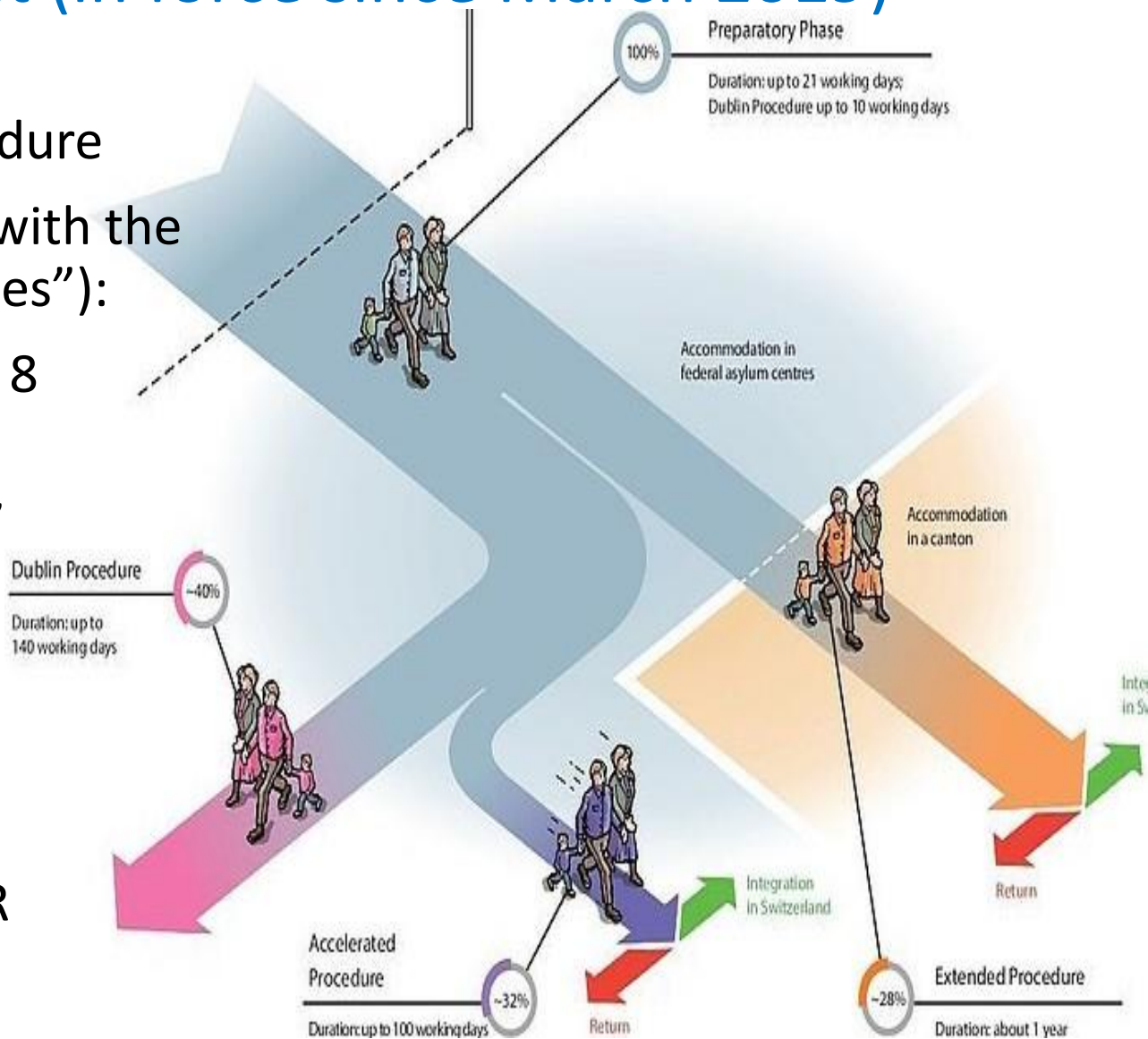


Asylum procedure in Switzerland: amendments to the Asylum Act (in force since March 2019)

Accelerated procedure
(intended to deal with the so called “easy cases”):

- Decision within 8 working days
- Appeal within 7 working days

SPEEDING UP PROCEDURES... OR RETURNS?



Caught in a legal and social limbo

In breach of the fundamental axiom of legal certainty and predictability, the legal status of migrants and asylum applicants is based on uncertainty



LAB: “ A METHOD OF FREE CHOICE”

DESIGN A RESEARCH PROJECT ON MIGRATION USING A
FLEXIBLE COMPARATIVE METHOD

- WHAT?
- HOW?
- WHY?



MAIN REFERENCES

- Amico di Meane, Tommaso. 2018. Beyond the pedagogical beauty of dichotomy. Comparative Law methodology in liquid times. In *Normative Pluralism and Human Rights. Social Normativities in Conflict*, eds. Kyriaki Topidi, 9 – 60. New York.
- Hirschl, Ran. *Comparative matters: the Renaissance of Comparative constitutional law*, Oxford, 2014.
- Husa, Jaakko. Methodology of Comparative Law today: from paradoxes to flexibility?, in *Revue Internationale de Droit Comparé*, 58(4), 2006, pp. 1095-1117.
- Geddes, Andrew and Peter Scholten. 2016. Analysing the politics of Migration and Immigration in Europe. In *The Politics of Migration and Immigration in Europe*, eds. Andrew Geddes and Peter Scholten, 1 - 21. SAGE Publications
- Menski, Werner. 2006. *Comparative Law in a Global Context. The Legal Systems of Asia and Africa*, Cambridge.
- Network of Legal Empirical Scholars (NoLesLaw) Special Issue, *European Journal of Legal Studies*, 11: 2, 2019.

THANK YOU!

paola.pannia@unifi.it



SIRIUS – Skills and integration of migrants, refugees and asylum applicants in European Labour markets: <https://www.sirius-project.eu/sirius-project>

RESPOND – Multilevel Governance of Mass Migration in Europe and Beyond : <http://www.crs.uu.se/respond/>