

Pontifícia Universidade Católica do Paraná
Escola de Direito
Programa de Pós-Graduação em Direito

Course Title (Masters & Doctorate): Introduction to Negative Comparative Law.

Course Abstract: This course offers an in-depth introduction to Brazilian law students as regards the negative theory and practice of comparative law. In advance of the course, participants are strongly encouraged to read Pierre Legrand, *Como ler o direito estrangeiro*, transl. by Daniel Wunder Hachem (São Paulo: Editora Contracorrente, 2018), 136 pp. (ISBN 978-85-69220-40-4).

Duration: 4 weeks (24 hours).

Instructor: Pierre Legrand (<pierre_legrand@mac.com>).

Mode of Instruction: This course consists of 8 lectures on site, each lasting 3 consecutive hours, with opportunity for comments and questions. All reading materials (except the book indicated *supra*) can be downloaded from <www.pierre-legrand.com> at the page “PUCPR”.

Course Outline

Most courses in law school are about local law. This course is different: it focusses on foreign law. Obviously, foreign law matters to all local lawyers operating on the international scene, for example in international business or in international arbitration. And just as evidently, foreign law can be very important within local law also. Quite apart from the evident matters of law reform and legal scholarship, a huge quantity of legal situations arising locally involve foreign law. Think of a contract entered into in Johannesburg governed by Swiss law or of a deceased person from Vancouver bequeathing real estate in France or of the victims of a massive chemical explosion in India suing in U.S. courts. More controversially, there are those (including, prominently, a number of supreme court justices in countries as diverse as Brazil, Canada, and India – not to mention the United Kingdom and the United States) who claim that, in an age of so-called “globalization” when local law is more interconnected with foreign law than ever before, local law ought to derive normative inspiration from foreign law, for instance in constitutional litigation. Assuming that foreign law can or must act as persuasive authority locally, this course applies itself at length (and critically, indeed negatively) to the construction of “knowledge” about foreign law. What are the epistemological issues to which a local lawyer must be attuned in getting to “know” foreign law? What must be done in order to optimize meaningful understanding of foreign law? As regards such matters, various theoretical topics are addressed from a resolutely indisciplined perspective and some case-studies are considered. No prior knowledge of foreign law or of a foreign language (or of another discipline) is required or postulated.

Learning Objectives

The principal aims of this course are to:

- Understand and negatively assess the rationales underlying comparative interventions in law.
- Understand and negatively assess the salient theoretical pitfalls attendant upon the comparison of laws.

- Understand and negatively assess the protocolar choices required to be made by comparatists-at-law.
- Understand and negatively assess the principal ideologies and discourses within the field of comparative law.
- Conduct negative comparative research about law.

First Week

- **Session 1 — 22 April (3 hours) + Session 2 — 23 April (3 hours)**

Title: **Preamble / Comparison as Differentiation**

Summary: This meeting offers a preamble regarding comparison and comparative law. It then presents comparative law as the differential process that it necessarily is, sixfold.

Preamble (Comparison and Comparative Law)

Comparison as Differentiation

A. Six Differences – and Two General Observations

i. Laws and Worlds: Ellul [Document 1]

ii. Laws *inter se*: Leibniz and Tarde [Document 2]

iii. Understanding and Laws: Gadamer, Heidegger, and Derrida [Document 3]

- A Note on Gadamer [Document 4]
- A Note on Heidegger [Document 5]
- A Note on Derrida [Document 6]

iv. Inscription and Laws (Word/World): Legendre, Derrida, and Beckett [Document 7]

v. Language and Laws: *L'Etranger/Die Verwandlung* [Document 8]

- Simone Glanert and PL, "Foreign Law in Translation: If Truth Be Told..." [Document 9]

vi. Comparatists *inter se* (At the Bodleian – or Elsewhere)

vii. Goodman, Foucault, Derrida, Breyer, and Glendon (PL, summarizing PL, *Negative Comparative Law: A Strong Programme for Weak Thought* [Cambridge University Press 2022], pp. 233-35 [Goodman, Foucault, Derrida]) [Document 10]

viii. The Case for Empowerment

B. Not Badiou, but Steiner [Documents 11 and 12]

C. Three French Examples

i. The Headscarf [Document 13]

ii. The Burkini [Document 14]

- Kimberley Brayson, “Of Bodies and Burkinis...” [Document 15]

iii. The Handshake [Document 16]

D. This and That [Document 17]

- PL, “The Guile and the Guise...” [Document 18]

E. Borges and A Note on Incommensurability [Documents 19-20]

Second Week

▪ **Session 3 — 28 April (3 hours)**

Title: **Comparison as Invention**

Summary: This meeting presents comparative law as the inventive process that it necessarily is.

A. The Glenn Controversy [Documents 21, 22, and 23]

B. How to Read [Document 24]

C. A Note on Invention [Document 25]

D. Invention, Applied – Female Dress [Document 26]

E. Invention, Applied Again – “King Lear” (and Derrida) [Document 27]

F. Gadamer, Heidegger, and Beckett – Rots [Document 28]

G. A Note on Entitlement [Document 29]

▪ **Session 4 — 30 April (3 hours)**

Title: **Comparison as Enculturation**

Summary: This meeting presents comparative law as the encultured process that it necessarily is, twice.

A. The Double Bind

i. Comparatists

a. Acosta [Document 30]

b. Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law*, 3d ed. (Tony Weir transl., Oxford University Press 1998) [Document 31] + Document 32

ii. Law-Texts

a. Religious Dress

i. French Judicial Decision – *Ghazal* [Document 33]

ii. US Judicial Decision – *Cheema* [Document 34]

iii. Canadian Judicial Decision – *Multani* [Document 35]

b. Termination of Contract (France) [Document 36]

B. Culture, Then [Documents 37 and 38]

[*contra*: Zweigert & Kötz – Document 39 / Michaels *et al.* – Document 40]

Third Week

▪ **Session 5 — 5 May (3 hours)**

Pôr em dia.

▪ **Session 6 — 7 May (3 hours)**

Title: **Positivism, Its Deposition – and the Case for a Strong Culturalism**

Summary: This meeting addresses the orthodox approach to the theory and practice of comparative law and offers an alternative.

A. The Orthodoxy's History and Its Theory [Documents 41, 42, 43, and 44]

B. From Descartes to Heidegger (Through Davos) [Documents 45 and 46]

Fourth Week

▪ **Session 7 — 12 May (3 hours)**

Summary: This meeting addresses the orthodox approach to the theory and practice of comparative law and offers an alternative (cont'd).

C. From Method to Tracing, With Derrida [Documents 47, 48, 49, and 50]

D. Tracing, Applied and Contested [Documents 51 and 52]

▪ **Session 8 — 14 May (3 hours)**

Title: **After All**

Summary: This meeting allows for a general conclusion and a "Q&A" session.

A. My Equipment [Document 53]

B. Endgame [Document 54]