



# Introduction to Comparative Law. Paradigms and Methods

## Lecturers:

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## Description

### What is this course about?

The course aims to provide an introduction to the main approaches and methods in comparative law. The course will follow the development of comparative legal methods from their first comprehensive elaboration to contemporary issues in comparative law methodology. We will read major texts on the topic and discuss practical legal problems in each class. Those who complete the course will have a general overview of the problems of comparative law methodology, and will be familiar with several classical texts.

### Who should take this course?

This is an advanced course. It is aimed at student who are in the final two or three years of their legal studies and take a strong interest in comparative law. It can be also useful for those who are aiming for a legal career at an international law firm, contemplating post-graduate studies either at an LLM or PhD program.

On the other hand, no one should be intimidated by the topic or the outline. This is not an exclusive class aimed at those who spend their free time reading about German tort reform and will end up being Supreme Court judges. This is a pretty run-of-the mill comparative law class built on classical and widely cited texts, which is perfectly enjoyable for every student with a good command of English and an understanding of the major concepts of criminal law and civil law.



### **Requirements**

As the conversation in the class will unfold through the discussion of practical legal problems, it is essential that the participants are familiar with basic concepts and legal institutions of criminal law and civil law.

### **Materials**

All relevant literature (required and recommended) is available in the reader, which is accessible on the moodle page of the course. As the course progresses, I will make the ppt presentations and/or outlines also available there.

### **Attendance Policy**

Regular attendance is required.

### **Assignments**

Students will be required to read the compulsory reading material. The recommended readings are aimed at students with particular interest in the topic. The reading of this is voluntary. There will also be assignments for short student papers on a voluntary basis on select topics and materials. These will be discussed at the beginning of the course. A completed assignment relieves the student from the requirement to submit an essay at the end of the term.

### **Exam, Evaluation and Grading**

In order to complete the course, students will be required to submit an essay. Submission deadline is the end of the term. Topics and further details, including a detailed grading policy will be made available on the moodle page of the course at the beginning of the term. The grade received for the essay will constitute the final grade, except for those who have completed an assignment during the course. The latter will be graded based on the assignment.

### **Textbook**

You do not need to have a textbook for this course. However, if you wish to use one as a general reference, I recommend the following two:

*Siems, Mathias: Comparative Law. Cambridge University Press, Cambridge, 2014.*

*Husa, Jaako: A New Introduction to Comparative Law. Hart Publishing, 2015.*

For more ambitious students, as well as for those who are already working on their master thesis or their dissertation I would suggest checking out *Samuel, Geoffrey: Introduction to Comparative Law. Theory and Method. Hart, Oxford, 2014.* This book is aimed at more advanced readers well-versed in social theory and is an extremely helpful reference for developing comparative PhD research projects.



## Themes and Literature

### 1. *Introduction. Wither Theoretical Comparative Law?*

No reading

### 2. *The Chinese Encyclopedia Legal Systems? Structural Comparative Law*

Required reading:

David, René (1985): Major Legal Systems in the World Today. Stevens and Sons, London. pp. 1-33.

Recommended reading:

Konrad Zweigert, Heinz Kötz (1998): An Introduction to Comparative Law. Oxford University Press, Oxford. pp. 63-75.

Patrick Glenn (2010): Legal Traditions of the World. Oxford University Press, Oxford, pp. 1-61.

Ugo Mattei (1997): Three Patterns of Law. Taxonomy and Change in the World's Legal Systems. American Journal of Comparative Law. 45. Nr. 5. pp. 5-41.

### 3. *The Functionalist Heritage. Theory and Method*

Required reading

Konrad Zweigert, Heinz Kötz (1998): An Introduction to Comparative Law. Oxford University Press, Oxford. pp.7-47.

Rudolf B. Schlesinger (1969): Formation of Contracts. A Study of the Common Core of Legal Systems: Introduction. Cornell International Law Journal. Vol. 2: Issue 1. 1-71.

Recommended reading

Ralf Michaels (2006): The Functional Method of Comparative Law. in: Matthias Reimann, Reinhard Zimmermann (szerk.): The Oxford Handbook of Comparative Law. Oxford University Press, pp. 338-382.

Gordley, James (2011): The Philosophical Origins of the Modern Contract Doctrine. Oxford University Press, pp. 1-10.

Josef Esser (1990): Grundsatz und Norm in der richterlichen Rechtsfortbildung. Mohr Siebeck, Tübingen pp. 31-52; 346-381.



#### 4. *Case Study: Two Concepts of Privacy*

Required reading:

Whitman, James Q (2004): *The Two Western Cultures of Privacy: Dignity versus Liberty*. Faculty Scholarship Series, Yale Law School. Paper Nr. 649.

Recommended reading:

Gordley, James (2007): *When is the Use of Foreign Law Possible? A Hard Case: The Protection of Privacy in Europe and the United States*. In *Luisiana Law Review*. Vol.67. pp. 1073-1101.

#### 5. *Beyond Functionalism: Critiques of “Functionalist Orthodoxy”*

Required reading

Günter Frankenberg (1985): *Critical Comparison: Re-thinking Comparative Law*. *Harvard International Law Journal*. Vol. 26. Nr. 2. pp. 411-455.

Recommended reading

George P. Fletcher (1987): *The Universal and the Particular in Legal Discourse*, *Bingham Young University Law Review*. Vol. 1987. Nr. 2. pp. 335-351.

Jonathan Hill (1989): *Comparative Law, Law Reform and Legal Theory*. *Oxford Journal of Legal Studies* Vol. 9, Nr. 1. pp. 101-1

#### 6. *Saving Functionalism from Itself*

Required reading:

Richard Hyland (2009). *Gifts. A Study in Comparative Law*. Oxford University Press, Oxford, pp. 63-125.

Recommended reading:

Rodolfo Sacco (1991): *Legal Formants: A Dynamic Approach To Comparative Law*. *The American Journal of Comparative Law*, Volume 39, Issue 1. pp. 1-34

Mauro Bussani, Ugo Mattei (1997): *Common Core Approach to European Private Law*. *Columbia Journal of European Law*. Fall/Winter 1997-1998. pp. 339-355.

#### 7. *Legal Culture. Core Concepts and Theories*

Required reading

David Nelken (2004): *Using the Concept of Legal Culture*. *Australian Journal of Legal Philosophy*. Flight. 29. pp. 1-26.

Roger Cotterell (1997): *The Concept of Legal Culture*. in: David Nelken (ed.): *Comparing Legal Cultures*. Dartmouth, Aldershot, pp. 13-33.



Lawrence Friedman (1997): The Concept of Culture: A Reply. in. David Nelken (ed.): Comparing Legal Cultures. Dartmouth, Aldershot, pp. 33-41.

### **8. *Legal Culture: Law and Society and Anthropological Perspectives***

#### Required reading

Silbey, Susan S (2010): Legal Culture and Culture of Legality. In: Grindstaff, Laura; Lo, Ming-Cheng; Hall, John R. (eds): Routledge Handbook of Cultural Sociology. Routledge, London. pp. 470-479.

#### Recommended reading:

Engle-Merry, Sally (2010): What is Legal Culture? An Anthropological Perspective. In: American Journal of Comparative Law. Vol. 40. pp. 40-58.

### **9. *Case Study: Rule of Law as Culture? Rule of Law and Legality in Authoritarian Regimes***

#### Required reading:

Meierheinrich, Jens (2018): *The Remnants of the Rechtsstaat. An Ethnography of Nazi Law*. Oxford University Press, Oxford. pp. 225-253. (The chapter “Authoritarian Rule of Law”)

#### Recommended reading:

Moustafa, Tamir, Ginsburg, Tom (2008): *Introduction: The Functions of Courts in Authoritarian Regimes*. In: Ginsburg, Tom; Moustafa, Tamir (eds): Rule by law. The Politics of Courts in Authoritarian Regimes.

### **10. *Beyond Culture: Methods and Research Design in Socio-Legal Comparative Law***

#### Required reading:

Creutzfeldt, Naomi; Kubal, Agnieszka; Pirie, Ferdanda (2016): Introduction: Exploring the Comparative in Socio-Legal Studies. International Journal of Law in Context, Vol. 12. pp. 377-389.

#### Recommended reading:

Györy, Csaba (forthcoming): An American Crime. The Prohibition of Insider Trading in a Comparative Perspective. e University Press. pp. 23-38.



### ***11. Legal Transplants as a Challenge to Comparative Law***

Required reading

Pierre Legrand (1997): The Impossibility of "Legal Transplants". Maastricht Journal of European & Comparative Law pp. 111-138.

Recommended reading

Alan Watson (1978): Comparative Law and Legal Change, Cambridge Law Journal. Vol. 37. 313-336.

Otto Kahn-Freud (1974): On Uses and Misuses of Comparative Law. The Modern Law Review. Vol.37. pp. 1-27.

Gunter Teubner (1998): Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Differences. Modern Law Review, Vol. 61, pp. 11-32.

### ***12. Institutional Perspectives: the Legal Origins Thesis and Its Critiques***

Required reading

La Porta, Rafael; Lopez de Silanes, Florencio; Shleifer, Andrei; Vishny, Robert W. (1998): Law and Finance. in: Journal of Political Economy, Vol. 106. Nr. 6. December 1998. pp. 1113-1155.

Recommended reading:

Pistor, Katharina (2009): Rethinking the Law and Finance Paradigm. In: Bingham University Law Review Vol. pp. 1647-1670.

Siems, Matthias (2005): What does not work in comparing securities laws. International Company and Commercial Law Review. pp. 300-305.

### ***13. Critical Perspectives: Comparative Law and the Question of Power***

Required reading:

Mattei, Ugo (2013): A Theory of Imperial Law: A Study of US Hegemony and Latin Resistance. In: Global Jurist Frontiers. Vol. 3. pp. 1-31.

### ***14. Conclusion: Towards a Pragmatic Approach in Com***

Required reading:

Van Hoecke: Methodology of Comparative Legal Research. In: Law and Method Vol. 12. 1-35.