

INSTITUT D'ETUDES POLITIQUES DE PARIS (SCIENCES PO.)

ECOLE DE DROIT

MASTER «DROIT ECONOMIQUE»

COMPARATIVE LEGAL REASONING

PIERRE LEGRAND

ACADEMIC YEAR 2018-2019

Preamble

Focusing on the work of English judges, also making reference to U.S. courts — some of the most influential judicial agents in the world —, this course offers a comparative introduction to legal reasoning through a detailed examination of 12 judicial decisions. It aims to answer such basic questions as "how do judges think?" and "how do judges construct legal knowledge?". Thoroughly deconstructive, the course consistently draws on insights from other disciplines (such as philosophy, anthropology, literary criticism, and linguistics). By the end of the programme, the student will have acquired the kind of knowledge making it possible for her/him critically to engage with the practice of English and U.S. courts and to revisit the practice of French judges.

Outline and Readings

(All documents below can be downloaded from the page
<Comparative Legal Reasoning> at <www.pierre-legrand.com>.)

Introduction: Alterity-at-Law

Adams v. New Jersey Steamboat Co., 45 N.E. 369 (N.Y. 1896).

McBoyle v. United States, 43 F.2d 273 (10th Cir. 1930), 283 U.S. 25 (1931).

More Than One Model

Civ. 3d, 17 December 1997, D.1998.111 [in French and in English translation].

Fitzpatrick v. Stirling Housing Association, [2001] 1 A.C. 27 (H.L.).

Facticity

Rowe v. Herman, [1997] 1 W.L.R. 1390 (C.A.).

Penny v. Wimbledon Urban District Council, [1899] 2 Q.B. 72 (C.A.).

One Case at a Time

Lloyds Bank Ltd v. Bundy, [1975] 1 Q.B. 326 (C.A.).

National Westminster Bank v. Morgan, [1985] 1 A.C. 686 (H.L.).

"Expanding from the Facts"

Donoghue v. Stevenson, [1932] A.C. 562 (H.L.).

Grant v. Australian Knitting Mills, [1936] A.C. 85 (P.C.).

The Matter of Rules

Cambridge Water Co. Ltd v. Eastern Counties Leather plc, [1994] 2 A.C. 264 (H.L.).

Excerpts from the House of Lords Decision in *Cambridge Water Co. Ltd v. Eastern Counties Leather plc*.

Law As Politics

District of Columbia v. Heller, 554 U.S. 570 (2008).

Optional Additional Reading

Pierre Legrand, *Le Droit comparé*, 5th ed. (Presses Universitaires de France ["Que sais-je?"], 2015);

Pierre Legrand and Geoffrey Samuel, *Introduction au common law* (La Découverte ["Repères"], 2008).

Note: Those who prefer to conduct their optional additional reading in English can select from the following texts.

Comparative Law

Pierre Legrand, "Siting Foreign Law: How Derrida Can Help", (2011) 21 *Duke Journal of Comparative and International Law* 595-629;

Id., "Foreign Law: Understanding Understanding", (2011) 6/2 *Journal of Comparative Law* 67-177;

Id., "The Same and the Different", in Pierre Legrand and Roderick Munday, ed., *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press, 2003), pp. 240-311;

Common-Law Tradition

Geoffrey Samuel, *A Short Introduction to the Common Law* (Elgar, 2014);

Peter Goodrich, *Reading the Law* (Blackwell, 1986);

Frederick Schauer, *Thinking Like a Lawyer* (Harvard University Press, 2009);

Karl N. Llewellyn, *The Bramble Bush* (Oxford University Press, 2008 [1960]);

Hein Kötz and Konrad Zweigert, *Introduction to Comparative Law*, 3d ed. transl. by Tony Weir (Oxford University Press, 1998), pp. 180-275;

H. Patrick Glenn, *Legal Traditions of the World*, 5th ed. (Oxford University Press, 2014), pp. 236-86.

Assessment

A three-hour open-book examination (computer allowed) will be administered at the end of the semester. This examination will include one question assuming a personal and critical appreciation of the course and of the reading materials.