

**Pontifícia Universidade Católica do Paraná**

**Escola de Direito**

**Introduction to Comparative Law**

Professor Dr Dr Pierre Legrand

May 2018

### **Abstract**

Whether postcolonial or neocolonial or decolonial or indeed excolonial, contemporary societies are of diasporic communities and migrant groups, and the world is of cultural interfaces and legal interconnections. Lawyers thus face a specific historical moment in response to which they must mobilize a conjunctural critical theory and practice with a view to intervening effectively in the multifaceted contingency of a singular, ever-emerging political configuration, at once unprecedented and unrepeatable. Hence the relevance of foreign law, the significance of comparative law, and the importance of comparatists-at-law.

This introductory course to comparative law raises four threshold questions for comparatists-at-law. Why take an edifying interest in foreign law to the point of being prepared to ascribe normative purchase to foreign law locally? What challenges do comparatists-at-law face as they proceed to seek to acquire meaningful knowledge of the foreign? What theoretical model have mainstream comparatists-at-law favoured with a view to optimizing the interpretive yield that any encounter with foreign law is meant to generate? Given this orthodox framework's ascertainable epistemic shortcomings, how can the comparative enterprise be conducted differently — deconstructively — thus making itself deserving of enhanced credibility? These discussions are supplemented with two illustrations contrasting the classical and actualized approaches to the examination of foreign law. Both examples emphasize the proposed alternative strategy's decisive heuristic edge.

### **Outline**

#### **I. The Point of It All (or Going Glocal)**

1. Pierre Legrand, "On the Singularity of Law", (2006) 47 *Harvard International Law Journal* 517.

#### **II. Challenges**

2. Jorge Luis Borges, "Averroës' Search", in *Collected Fictions*, transl. by Andrew Hurley (New York: Penguin, 1998 [1947]), pp. 235-41.

3. Martin Heidegger, "A Dialogue on Language", in *On the Way to Language*, transl. by Peter D. Hertz (New York: Harper Collins, 1971 [1959]), p. 45.

4. Alain Badiou, *Ethics*, transl. by Peter Hallward (London: Verso, 2001 [1993]), pp. 18-29.

### **III. The Lay of The Field**

5. Konrad Zweigert & Hein Kötz, *Introduction to Comparative Law*, 3d ed. transl. by Tony Weir (Oxford: Oxford University Press, 1998), pp. 1-62 & 356-63 (Selected Excerpts).

6. Konrad Zweigert & Hein Kötz, *Introduction to Comparative Law*, 3d ed. transl. by Tony Weir (Oxford: Oxford University Press, 1998), pp. 1-62 & 356-63 (Full Text).

### **IV. Foreign Law, Other-Wise**

7. Pierre Legrand, "Siting Foreign Law: How Derrida Can Help", (2011) 21 *Duke Journal of Comparative & International Law* 595.

8. Tracing Foreign Law: The French Statute on Religious Dress at School (Detail).

### **V. Applying**

9. James Q. Whitman, "The Two Western Cultures of Privacy: Dignity Versus Liberty", (2004) 113 *Yale Law Journal* 1151.

10. James Gordley, "When Is the Use of Foreign Law Possible? A Hard Case: The Protection of Privacy in Europe and the United States", (2007) 67 *Louisiana Law Review* 1073.

### **VI. Applying, Once More**

11. *Bodum USA, Inc. v. La Cafetière, Inc.*, (2010) 621 F.3d 624 (U.S. Court of Appeals, 7th Circuit).

12. Pierre Legrand, "Proof of Foreign Law in U.S. Courts: A Critique of Epistemic Hubris", (2013) 8/2 *Journal of Comparative Law* 343.