

University of San Diego School of Law

Summer 2018

Comparative Law

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First Readings

(All reading materials can be downloaded from www.pierre-legrand.com. Kindly go to the page of the website entitled “Comparative Law”.)

First Class : Monday, 4 June
Second Class: Tuesday, 5 June
Third Class: Wednesday, 6 June
Fourth Class: Thursday, 7 June
Fifth Class: Monday, 11 June

The first five classes will seek to address the items listed on the course outline under “Preliminaries”; section I (“Foreign Law at Home”); and section II (“(Epistemic) Challenges”).

Begin with “Preliminaries”. Familiarize yourself with the French statute and the French judgment, and observe how “they” do things differently elsewhere. Then, situate yourself vis-à-vis the *New Zealand Herald* cartoon and the photograph taken on a beach in Nice (France) on 23 August 2016 nearly three weeks after a municipal ordinance had been enacted effectively prohibiting women from wearing the so-called “burkini”. These two images capture many of the issues (and much of the tension) that the course will address.

Set against the complex dynamics between globalization and pluralism, there is a vehement debate in the United States regarding the normative relevance of foreign law locally. Consider Richard Posner’s short essay. What are his best three arguments against foreign law being invoked by US judges? Then, read Vicki Jackson’s response. What are her best three arguments in favour of foreign law? Assuming we are to join Jackson’s camp — as appears reasonable for students of “comparative law” — what are the three major (epistemic) challenges in the study of foreign law that Borges’s, Heidegger’s, and Badiou’s texts illustrate? Now, examine the excerpt from Steiner’s autobiography and assess the major lesson he is trying to impart. Can Steiner and Badiou be reconciled? Can Steiner be applied to the issue that Shweder and Oba analyze, or are there limits beyond which Steiner will not help even the most enthusiastically-minded legal cosmopolitan? What is Shweder’s message concerning legal/cultural regulation? And what is Oba’s argument? Then, consider

the Glenn materials. There are three documents to be found under the heading “Speculation, All”. These texts basically consist of various reviews (or excerpts) regarding Glenn’s *Legal Traditions of the World*.

The cast of characters is as follows. Richard Posner is a distinguished U.S. legal academic, most famously associated with the law-and-economics movement, and was a judge on the U.S. Court of Appeals for the Seventh Circuit from 1981 until 2017. Vicki Jackson teaches law at Harvard. Jorge Luis Borges (1899-1986), an Argentine writer, remains one of the best-known storytellers and essayists of the XXth century. Alain Badiou (1937-) is a leading contemporary French philosopher. Martin Heidegger (1889-1976) continues to be regarded as one of the most important — and controversial — thinkers in the history of German philosophy in particular and of modern philosophy in general. George Steiner (1929-) is a well-known U.S. (although French-born and European-based) professor of comparative literature and a literary critic. Richard Shweder is an anthropologist at the University of Chicago. Abdulmumini Oba teaches law at the University of Ilorin in Nigeria. Patrick Glenn was for many years a law professor at McGill University in Montreal, Canada, and a world-famous comparatist.