This course is structured around three key problematics.

Firstly, the course addresses the place of foreign law on the U.S. legal scene against the background of globalization [SECTION I]. While foreign circumstances are more present than ever in cases coming before U.S. appellate courts on account of increasing economic, political, and institutional interdependence on the world stage, there is strong resistance, cutting across conservative/liberal lines, on the part of many U.S. judges, commentators, and legislative assemblies to the practice of U.S. cross-references to foreign law. What must be the normative reach of foreign law in the United States? Arguments from constitutionalism and democracy are examples of the claims that will be canvassed.

Secondly, the course considers various interpretive hurdles necessarily arising from any U.S. legal interaction with foreign law [SECTIONS II-V]. How much understanding of foreign law must a U.S. lawmaker, judge, teacher, or lawyer achieve before advertence to it becomes legitimate? For example, how “cultural” must U.S. legal analysis of foreign law make itself in order to prove creditable? Can U.S. understanding of foreign law ever manage to avoid ethnocentric bias? Is the fact that foreign law exists in a foreign language an obstacle to meaningful U.S. knowledge? Are there methodological keys that can optimize the acquisition of foreign knowledge? Such questions will be approached from an interdisciplinary perspective.

Thirdly, the course investigates selected topics allowing for practical and in-depth familiarization with the difficulties and opportunities attendant upon the interplay between U.S. and foreign law [SECTION VI]. The treatment of privacy laws in Europe and in the United States and proof of foreign law in U.S. courts are among the illustrations that may be examined.
Outline and Readings

I. FOREIGN LAW AT HOME

II. (EPISTEMIC) CHALLENGES

A (MAJOR) CONSTRAINT

A (CONSTANT) DANGER

A TEMPTATION

FOR DIFFERENCE (WITHIN LIMITS?)

SPECULATION, ALL

III. THE ORTHODOXY (BECAUSE ONE MUST)

IV. A HISTORY OF CRITIQUES, BRIEFLY

V. AFTER “FALSE EXITS”: CRITIQUE, OTHER-WISE

VI. SELECTED TOPICS

   A. Privacy Laws (France/Germany/United States)
   
   B. Human Rights: A Case of the Glocal
   
   C. Making Sense of Home
   
   D. Proof of Foreign Law in U.S. Courts
   
   E. Europeanization of Law, or Uniformization Interrupted
   
   F. Econometrics

SUPPLEMENTARY READING (OPTIONAL)
I. FOREIGN LAW AT HOME


(Additional references include *Kirtsaeng v. John Wiley & Sons* (2013); *Lozano v. Alvarez* (2014); *Lawrence v. Texas* (2003); *Bowers v. Hardwick* (1986); *Roper v. Simmons* (2005); *Graham v. Florida* (2010); Laurence Tribe; Teemu Ruskola; Mary Ann Glendon; Bruce Ackerman; Cass Sunstein; Steve Calabresi; Eugene Volokh; various Supreme Court Justices speaking/writing extrajudicially; and some state legislative assemblies.)

II. (EPISTEMIC) CHALLENGES

A (MAJOR) CONSTRAINT


A (CONSTANT) DANGER


A TEMPTATION


FOR DIFFERENCE (WITHIN LIMITS?)


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

SPECULATION, ALL


III. THE ORTHODOXY (BECAUSE ONE MUST)


IV. A HISTORY OF CRITIQUES, BRIEFLY


V. AFTER “FALSE EXITS”: CRITIQUE, OTHER-WISE


23. Martin Heidegger & José de Acosta: Excerpts.


27. L’Etranger (and Its Englishes)/Die Verwandlung (and Its Englishes, Too).


31. Tracing the French Statute on Religious Dress at School (Detail).


VI. SELECTED TOPICS

A. Privacy Laws (France/Germany/United States)


B. Human Rights: A Case of the Glocal


C. Making Sense of “Home”


D. Proof of Foreign Law in U.S. Courts

44. Bodum USA, Inc. v. La Cafetière, Inc., 621 F.3d 624 (2010).


E. Europeanization of Law, or Uniformization Interrupted


F. Econometrics


SUPPLEMENTARY READING (OPTIONAL)

55.“Law’s Translation, Imperial Predilections and the Endurance of the Self”, (2014) 20/3 The Translator 290.


Assessment

The assessment will take the form of a final “take-home” examination worth 100% of the grade. This examination will consist of one question. Your answer should number 10 pages of double-spaced text in 12-point standard typeface within the usual margins. It must feature a reasonable number of references to class materials. If you so wish, you may also mention other documentation. You are at liberty to refer to your class notes by indicating, if possible, the day of the corresponding class. All references can be included in the body of the text or presented by way of footnotes. You need not follow any particular citation model. Typescripts will be anonymized before they are sent to the instructor for marking. For the sake of fairness to other students, typescripts that are submitted late or fail to meet the requirements will be penalized at the instructor’s discretion.

The final examination will be circulated at the end of class on Wednesday, 14 March 2018. It is drafted as a 3-hour examination and will be due on Monday, 19 March 2018.