

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

ECOLE DE DROIT

MASTER «DROIT ECONOMIQUE»

COMPARATIVE LEGAL REASONING

PIERRE LEGRAND

ACADEMIC YEAR 2022-2023

Abstract

Focusing on the work of U.S. and English judges — some of the most influential judicial agents in the world — this course offers a comparative introduction to legal reasoning through a detailed examination of a dozen judicial decisions or so. 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 U.S. and English courts and to revisit the practice of French judges.

Outline and Readings

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

Timelessness (On Epistemology)

A Brief Excursus on the Comparison of Laws.

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).

South Bay United Pentecostal Church v. Newsom, 590 U.S. ____ (2020).

Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. ____ (2020).

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.).

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

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

Timeliness (On Abortion)

Roe v. Wade, 410 U.S. 113 (1973).

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

Dobbs v. Jackson Women's Health Organization, ___ U.S. ___ (2022).

Optional Additional Reading

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

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

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

The 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.

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.

Assessment

A three-hour open-book examination (computer and internet access 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.