

UNIVERSITE DE FRIBOURG

FACULTE DE DROIT

LLM IN CROSS-CULTURAL BUSINESS PRACTICE

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BUSINESS BEYOND BORDERS

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This survey course addresses four overarching clusters of themes in order to assess the current state of play for business operating beyond the nation-state even as the nation-state continues to provide a compelling legal framework: the articulation of the global, the local, and the glocal; the matter of understanding foreign law; the salient epistemological differences between the civil-law and common-law traditions; and the practice of comparative law.

Outline and Readings

**(All documents below can be downloaded from
<www.pierre-legrand.com> at the page <LLM (U. Fribourg)>.)**

Friday, 27 September

I The Global, the Local, and the Glocal

Cf. Jan Nederveen Pieterse, 'Global Culture, 1990, 2020', (2020) 37 *Theory, Culture & Society* 233, p. 234: 'I have become more careful about using "global".' In particular, Nederveen Pieterse, long a prolific scholar of globalization and chair of global studies at his Californian university (UC Santa Barbara), has stopped using global 'in the sense of global convergence': Ibid. For him, '[t]he global turn is a plural turn': Id., p. 237. He concludes: 'Goodbye centrism, universalism, convergence thinking': Id., p. 238.

Cf. Jan Nederveen Pieterse, *Connectivity and Global Studies* (Springer, 2021), p. 57. 'We say "state" but the state in Morocco carries a different meaning than in France'.

II Understanding Foreign Law

A. Why Compare ?

B. Six Differences – and Two General Observations

- i. Laws and Worlds: Ellul [Document 1]
- ii. Laws *inter se*: Leibniz and Tarde [Document 2]
- iii. Understanding and Laws: Gadamer, Heidegger, and Derrida [Document 3]
 - A Note on Gadamer [Document 4]
 - A Note on Heidegger [Document 5]
 - A Note on Derrida [Document 6]
- iv. Inscription and Laws (Word/World): Legendre, Derrida, and Beckett [Document 7]
- v. Language and Laws
- vi. Comparatists *inter se* (At the Bodleian – or Elsewhere)
- vii. Goodman, Foucault, Derrida, Breyer, and Glendon (PL, summarizing PL, *Negative Comparative Law: A Strong Programme for Weak Thought* [Cambridge University Press 2022], pp. 233-35 [Goodman, Foucault, Derrida]) [Document 8]
- viii. The Case for Empowerment

C. Not Badiou, but Steiner [Documents 9 and 10]

D. Three French Examples

- i. The Headscarf [Document 11]
- ii. The Burkini [Document 12]
 - Kimberley Brayson, “Of Bodies and Burkinis...” [Document 13]
- iii. The Handshake [Documents 14-15]

E. This and That [Document 16]

- PL, “The Guile and the Guise...” [Document 17]

F. Borges and A Note on Incommensurability [Documents 18-19]

Saturday, 28 September

III The Common-Law Tradition Is Different

Adams v. New Jersey Steamboat Co., 45 N.E. 369 (N.Y. 1896) [Document 20]

McBoyle v. United States, 43 F.2d 273 (10th Cir. 1930), 283 U.S. 25 (1931)
[Documents 21-22]

Civ. 3d, 17 December 1997, D.1998.111 (in French and in English translation)
[Document 23]

Fitzpatrick v. Stirling Housing Association, [2001] 1 A.C. 27 (H.L.) [Document 24]

IV The Practice of Comparative Law (Circling Back)

Yes, there are Chicago clients sitting in a Starbucks coffee-shop just off Gran Via in Madrid and drinking an Italian espresso made from Brazilian coffee beans served to them by a Dutch barista on a student exchange programme at the Complutense to the sound of Piaf's *La Vie en rose*. But upon arrival at the Madrid state-built and state-controlled international airport, these Chicago clients had to show their passport to the Spanish police authorities and were only allowed direct entry on Spanish territory on terms set by Spain. For certification purposes, the hotels where they are staying – that they reached through the state-of-the-art motorways built and run by the state – are accredited by the Spanish Ministry of Industry, Commerce, and Tourism (*Ministerio de Industria, Comercio y Turismo*) and are regulated under Spanish law. As they address the servers, the US clients experience the lag in communication – what takes place a negotiation rather than a dialogue. Alas, the Madrid Starbucks features neither John's favourite 'Crispy Grilled Cheese on Sourdough' nor Mary's beloved 'Cinnamon Caramel Cream Nitro Cold Brew'. However, there is a very tasty 'Tarta Matcha' that they had never come across. Also, the seating area is much larger than what they experienced in Chicago – but then Spaniards do like to drink their coffee sitting down and making the moment one of conviviality. At the coffee-shop, the commercial lease is governed by state law as are employment contracts, all documents being official in Spanish only. The coffee-shop itself is subject to regular state inspections in order to ensure compliance with all manner of health standards. In the process, the coffee-shop uses water supplied under the supervision of state sanitary authorities. Upon import, the Brazilian coffee beans had to undergo state inspection quite apart from the goods being subject to taxes and customs duties enforced by the state. As for the Dutch barista, who is recovering from a brief emergency hospitalization in the local state hospital and who cycles to work taking advantage of an expansive network of lanes recently constructed under the aegis of the Ministry of Public Works and Transport (*Ministerio de Fomento*), she will get a Spanish state university certificate as part of her state Dutch degree. All her law teachers in Spain are indeed accredited by the state, and they all teach one or other aspect of Spanish law. Meanwhile, the Piaf song is governed by copyright law enforceable in state courts where only lawyers accredited under state law could plead before judges, who are state judges, in line with state civil procedure law.

Optional Additional Reading

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

Günter Frankenberg, *Comparative Law as Critique* (Elgar, 2016);

Paul W. Kahn, *Making the Case* (Yale University Press, 2016);

Victor Roudometof, *Glocalization* (Routledge, 2016);

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

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