

Pontifícia Universidade Católica do Paraná

Escola de Direito

Programa de Pós-Graduação em Direito

Title of the Course (Masters & Doctorate): Introduction to Comparative Law.

Instructor: Professor Dr Dr Pierre Legrand (<pierre_legrand@mac.com>).

Summary of the Course: This course will offer an in-depth introduction to Brazilian law students as regards the theory and practice of comparative law. In advance of the course, participants are strongly encouraged to read Pierre Legrand, *Como ler o direito estrangeiro*, transl. by Daniel Wunder Hachem (São Paulo: Editora Contracorrente, 2018), 136 pp. (ISBN 978-85-69220-40-4).

Period: from 5 May 2021 to 25 May 2021.

Mode of Instruction: This course will be offered via the “Zoom” platform. All reading materials (except the book indicated *supra*) can be downloaded from <www.pierre-legrand.com> at the page “PUCPR”.

Course Outline

First Week

▪ **Session 1 — 5 May (2 hours)**

Title: Comparative Law, Controversy, and the US Supreme Court, For Example.

Summary: This meeting will present comparative law. It will also illustrate the high political stakes at play through a reference to the debates for and against comparative law that have animated the US Supreme Court.

Readings

PL, “Law’s Translation, Imperial Predilections and the Endurance of the Self”, (2014) 20/3 *The Translator* 290, pp. 301-05 only [“Constitutionalism Enisled”].

Richard Posner, “No Thanks, We Already Have Our Own Laws”, *Legal Affairs*, July/August 2004, pp. 40-42.

▪ **Session 2 — 6 May (2 hours)**

Title: Some History (But Not Too Much).

Summary: This meeting will situate comparative law with reference to salient historical events and institutional initiatives. The focus will be on Europe and the United States.

Reading

PL, “*Das Zeitalter der Rechtsvergleichung — And Its Long Shadow*”, 60 pp. [unpublished].

Second Week

- **Sessions 3, 4, and 5 — 11, 12, and 13 May (2 hours x 3)**
Title: The Mainstream Strategy — Positivism (and Its Deficiencies)

Summary: These meetings will introduce and critically probe the most influential theoretical and practical model at work within comparative law.

Readings

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

The Disciples: James Gordley, *The Philosophical Origins of Modern Contract Doctrine* (Oxford: Oxford University Press, 1991), p. 1; Michael Bogdan, "On the Value and Method of Rule-Comparison in Comparative Law", in Heinz-Peter Mansel *et al.* (eds), *Festschrift für Erik Jayme* (Munich: Sellier, 2004), pp. 1233-42; David S. Law, "Generic Constitutional Law", (2005) 89 *Minnesota Law Review* 652, pp. 659-61; Vicki C. Jackson, *Constitutional Engagement in a Transnational Era* (Oxford: Oxford University Press, 2010), pp. 1 & 178-83.

Third Week

- **Sessions 6, 7, and 8 — 18, 19, and 20 May (2 hours x 3)**
Title: Other Than That — Law as Culture

Summary: These meetings will introduce and develop an alternative approach to the theory and practice of comparative law.

Readings

PL, "Comparative Legal Studies and the Matter of Authenticity", (2006) 1 *Journal of Comparative Law* 365, pp. 374-93.

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

Fourth Week

- **Session 9 — 25 May (2 hours)**
Title: A Case Study

Summary: This meeting will address an example illustrating the paradigmatic conflict between culturalism and positivism. The debate will show the cultural advantage.

Readings

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

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.