Comparative Law

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Abstract

Most courses in law school are about U.S. law. This course is different as it focuses on foreign law. Obviously, foreign law matters to all U.S. lawyers operating on the international scene, for example in international business or in international arbitration. And just as evidently, foreign law is very important within national law. Indeed, a huge quantity of legal situations in the U.S. involve foreign law (whether it be a contract entered into in New York governed by German law or a deceased person from San Francisco bequeathing real estate in France or the victims of a massive chemical explosion in India suing in U.S. courts). More controversially, there are those (including a number of U.S. Supreme Court Justices) who claim that, in an age of globalization when the U.S. is more interconnected with the rest of the world than ever before, U.S. law ought to derive inspiration from foreign law, for instance in constitutional litigation involving the death penalty or the rights of sexual minorities. This course will apply itself to this debate and discuss to what extent foreign law can or must act as persuasive authority. It will also consider two primordial questions. First, how could a U.S. lawyer get to know foreign law despite all the cultural differences arising across laws? Secondly, to what extent is meaningful understanding of foreign law possible? As regards these issues, various theoretical topics will be raised from an interdisciplinary perspective and some case-studies will be considered.

Outline and Readings

(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”.)

A PREAMBLE


INTRODUCTION


PART I: THE ORTHODOXY


PART II: A CRITIQUE


Excerpts from Martin Heidegger, Being and Time, transl. by Joan Stambaugh (Albany: State University of New York Press, 1996 [1927]).


Jacques Derrida: Biographical Note and Excerpts from Various Publications.


PART III: THE CRITIQUE, IN EFFECT

A. More Theory


B. Translation


C. Culturalism v. Positivism [Scholarship]


D. Culturalism v. Positivism [Scholarship (2)]


E. Culturalism v. Positivism [Adjudication]

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


F. Culturalism v. Positivism [Adjudication (2)]

