

Prof. Dr. H. Dedek, LL.M.

Current Issues in Comparative Law

Course description and instructions

Goals:

The seminar aims at giving student who had a first exposure to comparative law to familiarize themselves further with topics of current relevance in this field of study, and at giving students the opportunity to deepen their knowledge in an area of their interest. This course is a research seminar; students will have the opportunity to study and discuss a topic of their choice in depth from various methodological perspectives. Students can either pick a topic from the list of suggested topics (see below). These topics are either a) of a general, introductory nature or b) invite the student to exemplify a certain issue by introducing a specific important case.

Format:

The course will be taught in a **one-week block**. It is open to **undergraduate students** and **graduate students**. For location and hours, please refer to the Faculty website.

Assessment:

- **Student Presentations (in English, ca. 20-30 min);**
- **Short written summary of the presentation (ca. 1000 words, in English), due Wednesday, April 24th, 17h** (please submit electronically to Ms Marzia Gavillet at marzia.gavillet@unil.ch, cc'ing me at helge.dedek@mcgill.ca)

Students who enroll in this course (6 ECTS credits) will be assessed on the basis of **a presentation and their oral participation in the class discussion. In their presentation, students will introduce and discuss their chosen topic. Presentations should be between 20 and 30 minutes long.**

Language of instruction: The seminar will be held in **English**.

I am aware, of course, of the fact that this will be a presentation and short text in a language that is a foreign language for most of you. I shall take this into account when assessing your presentations and contributions. Just take it as a risk-free opportunity to challenge yourself! I am confident that we will succeed in creating an atmosphere of relaxed and respectful collegiality in which all students feel comfortable participating.

How to register and to choose a topic

If you are interested in participating, please email Ms Marzia Gavillet at marzia.gavillet@unil.ch. Once your eligibility is confirmed, you will need to choose a topic. You can either choose one of the suggested topics from the list (see instruction below).

The list of suggested topics emerges from my experiences in the daily practice as the editor-in-chief (together with Prof. Franz Werro, Georgetown/Fribourg) of the *American Journal of Comparative Law*. As one of the leading publications in the field worldwide, the journal receives hundreds of submissions from all over the globe, spanning a great variety of topics and methodological choices, making it a unique indicator of the issues currently occupying the minds of comparatists around the world. The list is accessible here – go to

[GOOGLE DOCS](#)

(or paste into your browser the following hyperlink:

https://docs.google.com/document/d/1YkQLH_cFDSODUodeG3ETqqV4o3--oPym1dMIs7y0WOU/edit?usp=sharing)

and follow the instructions!

Introduction to the Topics:

Comparative law started out in the nineteenth century as a project closely related to rather ambitious macro-theories comparing languages and cultures. From this background emerges the tradition of **Macro-Comparativism, which is the focus of the first set of topics on the list**, a tradition that groups the laws of the world together as “families” or “traditions”. We shall focus on this taxonomy, which is currently heavily criticized, and use the “common law tradition” as an example.

In the 20th century, ‘comparative law’ became ‘functional’ in a double sense, both in its underlying method and in its instrumentalist goal of legal harmonisation. Whereas the ‘ethnological’ comparatists had studied non-European legal cultures and particularly fields such as family, filiation, and inheritance, the focus in the early twentieth century began to shift to the laws of the industrialized nation-states and subject areas that were of import for the harmonisation of laws as a means to facilitate trade and the global mobilisation of capital, namely contract law, commercial law, and corporate law. This preoccupation has become accepted as an almost canonical or “classical” understanding of Comparative Law. **This aspect will be the focus of the second set of topics. How do we best compare, and is harmonization of laws desirable? What does BREXIT mean, in particular, for the project of a European Private Law?**

From the 1980s onwards, functional comparative law began to elicit criticism from within the discipline. The discipline of comparative law thus arrived at a crisis point and was compelled in the decades that followed to engage in an extensive methodological self-inspection. At the same time, other disciplines were responding to the challenges of *globalisation, internationalisation, and the legacies of colonialism*. Again, the introductory topics in this **third set of topics** will allow us to understand and contextualize these issues; **concrete case examples will about the conflict of state law with religious and indigenous law with the “official” state law.**

Introductory Literature:

- Anaya, 'Indigenous Law and Its Contribution to Global Pluralism', (2007) 6 *Indigenous L.J.* 3.
- Assier-Andrieu, 'Brève théorie culturelle du droit', in Dedek and Van Praagh (eds), *Stateless Law* (2015), 83.
- Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (2002)
- de Sousa Santos, *Toward a New Legal Common Sense* (2nd ed 2002)
- Duxbury, *The Nature and Authority of Precedent* (2008).
- Edlin, *Common Law Theory* (2007).
- Glenn, *Legal Traditions of the World* (5th ed 2014).
- La Porta, Lopez-de-Silanes and Shleifer, 'The Economic Consequences of Legal Origins', (2008) 46 *Journal of Economic Literature* 285
- Legrand, 'European Legal Systems Are Not Converging' (1996) 45 *International & Comparative Law Quarterly* 52
- Legrand, 'Antivonbar' (2006) 1 *Journal of Comparative Law* 13.
- Menski, 'Beyond Europe' in Örüçü and Nelken (eds), *Comparative Law: A Handbook* (2007), 189
- Michaels, 'The functional method of comparative law', in Reimann and Zimmermann (eds), *Oxford Handbook of Comparative Law* (2006) 339.
- Munshi, 'Comparative Law and Decolonizing Critique', in Werro and Dedek (eds), *What We Write About When We Write About Comparative Law*, (2017) 65 *American Journal of Comparative Law* (Special Issue), 207.
- Nelken, *Comparing Legal Cultures* (1997).
- Nelken, 'Using legal culture: purposes and problems' (2010) 5 *Journal of Comparative Law* 1.
- Örüçü, 'Family Trees for Legal Systems: Towards a Contemporary Approach', in Mark Van Hoecke (ed), *Epistemology and Methodology of Comparative Law* (2004), 359.
- Ruskola, 'Legal Orientalism' (2002) 101 *Michigan Law Review* 179.
- Samuel, *An Introduction to Comparative Law Theory and Method* (2014).
- Siems, *Comparative Law* (2014).
- Siems, 'Varieties of legal systems: towards a new global taxonomy' (2016) 12 *Journal of Institutional Economics*, 579.
- Twining, *Globalisation and Legal Theory* (2000).
- Richardson, Imai, and McNeil, *Indigenous People and the Law: Comparative and Critical Perspectives* (2009).
- Valcke, *Comparing Laws* (2018).
- Zweigert and Kötz, *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts* (1996)
- Zumbansen, 'Transnational Legal Pluralism', 10 *Transnational Legal Theory* 141
- Zumbansen, 'What Lies Before, Behind, and Beneath a Case? Five Minutes of Transnational Lawyering and the Consequences for Legal Education' in Dedek and Van Praagh (eds), *Stateless Law* (2015), 215.