

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

Current Issues in Comparative Law

Course description and instructions

Goals:

The seminar aims at giving student who already 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) or propose a topic of their choosing to the instructor.

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

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; a written version is not required.**

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

I am aware, of course, of the fact that this will be a presentation 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 you need to choose a topic. You can either choose one of the suggested topics from the list (see instruction below) or propose a topic of your own choosing. In the latter case, please contact the instructor at helge.dedek@mcgill.ca, cc'ing Ms Gavillet. Proposals for topics could be variations of the topics

suggested in the list or could also be topics that engage in concrete comparison in an area of your interest (for example contract law, criminal law, constitutional law, etc).

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 – access the

[LIST OF TOPICS](#)

(a google doc) and follow the instructions!

Some Background

Comparative law started out in the nineteenth century as a project closely related to rather ambitious macro-theories – (proto-)anthropological (Albert Hermann Post’s legal ethnology), philosophical (Jürgen Kohler’s neo-Hegelianism, reminiscent of Gans’s ‘universal history’), and historical (Maine’s and Vinogradoff’s historical comparative jurisprudence that, by definition, was tied to a comparative and anthropological project). In the intellectual history of academic legal scholarship, however, these approaches led genealogically not to the modern understanding of comparative law, but to the development of other disciplines such as legal sociology and legal history. Anthropology and post-colonial studies have continued to carry the legacy of ‘ethnological’ comparative law forward in the twentieth and twenty-first centuries, while also critiquing it in important ways.

Meanwhile, ‘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 industrialised 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 school of comparativism spread from the Continent to the UK and the USA, especially through the work of the generation of famous émigré jurists such as Ernst Rabel, perceived by many as the spiritus rector of functional comparativism, who had to flee from Nazi persecution.

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, similar to that of doctrinalism in the face of the Realist critique; comparative law was compelled in the decades that followed to engage in an extensive methodological self-reflection – a ‘[f]ebrile introspection’, as William Twining has called it (‘Glenn on Tradition: An Overview’ (2006) 1 JCL 107, 108). At the same time, other disciplines were responding to the pressing challenges of the age: globalisation, internationalisation, transnational law. Several disciplines lay claim to specific expertise with regard to the challenge of globalisation. How can comparative legal studies benefit, and how can it contribute?