



Comparative Law Workshop: from Functionalism to Legal Cultures

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Course description

This course is dedicated to the latest methodological developments in comparative legal scholarship. Besides introducing the students to such issues such as comparative law functionalism or a comparative study of legal cultures it also intends to help the students in developing their own research interests and skills. Regular attendance is required and the assessment will be based on course participation as well as on an individual essay/presentation.

Learning objectives

- to have a comprehensive outlook on the latest developments in comparative law scholarship;
- to study the complexity of the concept of legal culture;
- to introduce students to the world of comparative legal studies;
- to develop the students' methodological sensitivity and research skills.

Learning outcomes:

- the students will be familiarised with the latest developments in comparative law scholarship;
- the discussion of methodological issues will help the students to develop their own research skills;
- the students will be able to critically study the interactions among national legal orders and cultures as well as among national legal orders and supranational legal orders;
- the students will be able to use the highly debatable concept of legal culture in comparative law inquiries.

Structure of the classes

introductory discussion – presentation by the teacher – group discussion based on specific class assignments – closing reflection



Course schedule

Class 1. Introduction

Personal and professional introduction. Discussion of the course syllabus and course requirements.

Class 2. Basic issues

Basics of the use of comparative method in legal scholarship, a (very) short history of modern comparative law thinking, the logical schema of comparison in the view of Viktor Knapp.

Reading:

Balázs Fekete: *Paradigms in Modern European Comparative Law*. Hart, Oxford 2021. 1-8.

Class 3. Functionalism in comparative law

Basic tenets of functional comparative law. The ideas of Rabel. Zweigert's understanding of comparative law functionalism. Frankenberg's criticism. The successes of functionalism: the *Ius Commune Casebooks* project.

Reading:

Geoffrey Samuel: *An Introduction to Comparative Law Theory and Method*. Hart, Oxford and Portland, Oregon, 2014. 65–78.

Class 4. The cultural approach in comparative law

The basic issues of culturalism in comparative law. The birth of the modern concept of legal culture (Friedman); the necessity of empathy in comparative law, cultural comparative law as hermenutics.

Reading:

Geoffrey Samuel: *An Introduction to Comparative Law Theory and Method*. Hart, Oxford and Portland, Oregon, 2014. 108–120.

Class 5. Beyond the functional/cultural axis

Do we really need a methodological consensus in comparative law? The “toolbox” approach of Van Hoecke. The six possible method of comparative legal studies: functionalism – analytical – structural – law-in-context – historical – common core.

Reading:

Mark van Hoecke: Methodology of Comparative Legal Research. *Law and Method*, 2015/2. 1–35.

<https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf>



Class 6. The concept of legal culture as developed by Lawrence M. Friedman

The emergence of the concept of legal culture in the American legal scholarship, Friedman's oeuvre, the role of legal culture, internal and external legal culture, the modern legal culture, criticism.

Reading:

Lawrence M. Friedman: *The Legal System. A Social Science Perspective*. Russel Sage, New York, 1975. 193-222.

Class 7. How to use the concept of legal culture in legal studies?

The early history of the reception of legal culture in international legal scholarship. Legal culture as background and legitimization, legal culture as a starting point for creative analyses, the difference between popular legal culture and professional legal culture, problems of using legal culture in legal scholarship.

Reading:

Lawrence M. Friedman: Law, lawyers and popular legal culture. *Yale Law Journal*, 1989. 1579-1606. or

Balázs Fekete: Inconsistencies in the use of legal culture in comparative legal studies. *Maastricht Journal of European and Comparative Law*, 2018/5. 551-564.

Class 8. Comparing European legal cultures: perspectives and problems

The seminal study of Gibson and Caldeira on the comparative study of European legal attitudes, how to assess their findings 25 years later? Can the differences between two legal culture explain the relevance of legal behaviour? Pathbreaking answers from Blankenburg.

Reading:

Erhard Blankenburg: The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany. *Law and Society Review*, 1994/4. 789–808. or

James L. Gibson-Gregory A. Caldeira: The Legal Cultures of Europe. *Law and Society Review*, 1996/1. 55–86.

Class 9. Style in legal scholarship?

May an act or a judgement have any kind of style? The concept of style in the interpretation of Zweigert. The idea of judicial style. The comparison of various judicial styles (English, French, ex-Soviet, and Hungarian).

Reading:



Bernard Rudden: Courts and Codes in England, France and Soviet Russia. *Tulane Law Review*, 1974. 1010-1028.

Class 10. The issue of legal transplants and legal convergence

The concept of legal transplants and its ways. The circulation of Western legal models in the former socialist area. Is there any kind of convergence between civil law and common law? Pro and con arguments.

Reading:

Mathias Siems: *Comparative Law*. Cambridge University Press, Cambridge, 2014. 233–242.

Class 11. Individual research project discussion

Class 12. Closing of the course: Presentation of individual research project outcomes and group discussion

Assessment

course participation and essay writing or individual research project presentation (10 mins) on the last class