

## TEACHING COMPARATIVE LAW, COMPARATIVE LAW TEACHING

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### 1 Teaching comparative law - Some Dutch (Utrecht) experiences

#### 1.2 Important prerequisites: command of foreign languages

The teaching of comparative law is especially fruitful in an environment where the language of the legal systems under review is directly accessible to both teachers and students. In this respect the Dutch Universities are in an advantageous position. Most Dutch students (still) have at least a passive knowledge of English, French and German and are therefore able to read and use "first-hand" legal materials from (some of) the main legal systems in Europe, as well as from the systems of the Common Law family. The teachers of comparative law also have a command of at least several languages.

#### 1.2 *The first step: A general introduction to foreign legal systems; how to get the flavour?*

The teaching of comparative law can take the form of lectures and tutorials for the purpose of providing general introductions to the main legal systems of today's world in order to contribute to the general education of future lawyers. This can be considered as a possible means to open up the minds of the "unspoiled" to legal conceptions and approaches that are absent in the national legal culture. These introductions should preferably be given by teachers with first-hand knowledge of the foreign systems on which they are lecturing; they should have lived and studied there, or, even better, be nationals of the jurisdictions involved. In the General Course on Comparative Law at our University we aim to provide general introductions to American, English, French, German and Russian law by the native teachers we have at our disposal. We consider it important to get the flavour of foreign legal systems from those who know these systems from the inside. We also try to deal with private law, penal law and public law separately, by using teachers who are specialists in those fields. As teaching materials we include films and videos to illustrate specific items or to discuss foreign legal issues that are in the news. Attention is given to Islamic law as well, by a specialist who has a command of the Arabic language.

#### 1.3 *The second step: The methodology of comparative law; how to compare?*

Comparative law teaching should provide students with the necessary tools for carrying out comparative law research. What method, if any, should be used in order to carry out comparative research successfully? At our University we consider it to be of the highest importance that students are not thrown in at the deep end but are

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rather acquainted with the various methodological steps that could and should be taken in the process of comparison. Therefore, in the General Course on Comparative Law this aspect plays an essential role.

The methodology presented contains the following elements and subsequent steps:

1. The preliminary stage: the question of the *tertium comparationis* or the comparability of the items of comparison; is comparison possible?
2. The selection of the items for comparison. What should be compared?
3. The selection of the legal systems for comparison.
4. First stage of the research: determining the similarities and differences.
5. Comparative synthesis.
6. Second stage of the research: explanation of the similarities and differences.
7. Third stage of the research: evaluation of the results

#### 1.4 *The third step: do it!*

The next step is to have the students embark on their own comparative research. The tools have been provided and now they can take the plunge. We usually ask the students in question to limit their research to one foreign legal system, and exclusively to use sources (legislation, case-law and handbooks) in the language of that system. The aim is to make the students familiar with small-scale comparative research into the primary sources of the system. The foreign system chosen should be compared to the Dutch system, either simultaneously, or successively. The foreign sources can be obtained from the Internet as well from our library that has a large collection of foreign legal materials at its disposal.

Thus the General Course on Comparative Law makes available to the students the combined expertise of the various teachers, most of whom have ample experience in comparative research and have been wholly or partly educated in foreign legal systems.

The students obtain a certain degree of consciousness about the various legal systems of the world as well as experience in small-scale comparative research.

The fact that our teachers and students can read foreign languages and that we have teachers from various foreign legal systems is of course very beneficial for teaching and studying comparative law.

#### 1.5 *Specialist courses: European contract law, European tort law, European property law, European family law, civil procedure in Europe*

Next to the General Course in Comparative Law the University of Utrecht, as well as some other Universities in the Netherlands, offers courses directed towards the legal integration of the national systems of private law within the European Union. The students are encouraged to "think European" with respect to the various fields of private law; contract, tort, property and family law as well as civil procedure are taught on a comparative basis and ample attention is paid to existing initiatives and proposals within the European Union to harmonize or even unify these fields of law,

such as the Lando Commission's Principles of European Contract Law, the Storme Commission's Principles of Civil Procedure and various other initiatives. These courses are taught in English and are particularly popular with the "Erasmus-students" from other European universities.

Here, the aim is to open up the minds of Dutch and foreign students alike towards the harmonization or even unification of national legal systems on the basis of determining the "better law"; not necessarily the law of one of the European countries, but a combination of the best solutions which may be found within the European legal systems.

A synopsis of these various courses is presented in an Introductory Course on European Private Law. In this course European legal history, the formation of a *ius commune* based on Roman law during the previous centuries, is also taken into consideration.

## 2 Comparative law teaching

### 2.1 *Comparative law teaching and multiplicity of cultures*

The teaching of comparative law can and should make the students aware of the relativity of the legal concepts and methods of their national system but should not induce or tempt them to over or underestimate the latter. For students from the civil law tradition exposure to the concepts and methods of the common law tradition is of great interest and relevance, but should and generally will not stimulate them to look at their own tradition with particular pride or scorn. Legal systems and cultures differ, just as persons differ, but we can learn from each other's mistakes as well as from each other's good points. Understanding the basis and concepts of Islamic law is one thing, and very useful in a multicultural society in particular, but it should not lead to any emotional rejection or even condemnation. In this respect the teacher's attitude is of the highest importance. It is not difficult to create a caricature of foreign legal conceptions and practices. However, a comparative law teacher should be aware of his responsibility in this respect and not be tempted to embark on this road so. Expose and explain, but try not to judge too critically, for that might easily lead to totally unwarranted chauvinism and narrow legal parochialism.

### 2.2 *Comparative law and globalization*

Multinational law firms (these days mostly linked with the large English and American law firms) operating in The Netherlands, and in Europe in general, expect from the young lawyers they employ, next to various other skills, not only a good command of the English language, but in addition a fair knowledge of English/American legal terminology and legal concepts, in particular the key-concepts of English/American contract law. In international transactions there is a growing tendency to agree to submit contracts to English law or to the law of New York (or some other state in the US) and to submit all disputes arising from the contract to the exclusive jurisdiction of the Commercial Courts in London or to a court in the US. Evidently there is a need to provide the future generation of lawyers

operating in multinational firms with the basic skills concerning English/American contract law. However, the majority of students leaving university will be otherwise employed. It therefore seems more appropriate to leave this specific training to the multinational firms. However, due to the fact that the English language is rapidly becoming the *lingua franca* of lawyers all over the world, English/American legal terminology (next to the English language) should become a compulsory subject in all law faculties. In this respect it is important that the English language, as a means of communication by lawyers operating internationally, should become detached from the specific notions inherent to the Common Law and that a specific "legal English" should be gradually formed and internationally accepted.

2.3 *Comparative law teaching: what can it achieve?*

- a. Does comparative law teaching lead to real practical applications or is it primarily an academic discipline?

Comparative law teaching should not only familiarize the students - and thus open up their minds - to other systems and concepts, but should also prepare them for practical application. It should teach them a systematic method for comparative research. This methodological aspect should not be underestimated or neglected. Comparative law is not and should not be considered to be a distinct category within the law; once the method has been mastered it can be applied in all fields of law. In Europe where the process of legal integration is in full swing it is no longer possible to study any field of law without comparison with other legal systems. Comparative law has become a standard feature of legal research, not only for students and scholars, but also for law-makers on the national and on the international (European) level. Comparative research is in high demand; no new laws are drafted on the national level without reference to the solutions in other countries and the European Commission is becoming more and more dependent on information about the national legal systems of the member states when drafting new regulations. Comparative law teaching thus has an important mission to fulfil and certainly has and will continue to have an impact on the national jurisdictions in Europe.

- b. Can comparative law teaching help to create the "Global Lawyer"?

"Global lawyers" should not only master the basic notions of the various legal systems in the world but should also master (some of) the main languages. Comparative law teaching can only help with the first requirement. For the second requirement serious language education at college-level is a must. However, the shift in most European countries in secondary education is towards concentrating on the English language and neglecting languages like French and German. Perhaps the future global lawyer will be sufficiently equipped with a good mastery of the English language only, including the newly emerging "legal English" that has been dissociated from the specific notions of the common law.

- c. Do law schools have to change their "national" curriculum ?

Future lawyers should be able to meet the challenges of a world of legal integration and globalization. A wholly "national" curriculum does not fulfil this aim. Universities in Europe are gradually shifting towards a more "internationally-centred" curriculum. The practice at the University of Utrecht to teach contracts, torts, property and family law (also) on a comparative (European) basis can serve as an example for this new development. May other universities draw inspiration from it!