Prof. Dr. Alexander Trunk

Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term (WS) 2018-2019

http://www.eastlaw.uni-kiel.de
Tasks of comparative law
(repetition)

• Scientific function
• Forensic-practical function
• Legislative function

Problem of guiding interests and expected outcomes, in particular in case of „legal transplants“/processes of „reception“ of foreign law
Legal literature

• Overview monographs (e.g. Zimmermann/Reimann, Zweigert/Kötzt), „Casebooks“, introductions into the law of particular countries, comparative studies on specific topics

• Law journals: e.g. British International and Comparative Law Quarterly, American Journal of Comparative Law, (German) Zeitschrift für vergleichende Rechtswissenschaft, (Austrian) Zeitschrift für Rechtsvergleichung, Revue internationale de droit comparé, …

• Internet!! LexisNexis, Westlaw, HeinOnline, Garant.
Revue internationale de droit comparé
Welcome to Westlaw International

Lawyers and legal professionals in more than 60 countries worldwide turn to Westlaw International for legal, news and business information every day. Designed to support the increasing global needs of the world's legal and business community, Westlaw International delivers content from internationally renowned and trusted sources via the latest and most intelligent online technology. Key highlights include:

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<th>Cases</th>
<th>Over 1,000 Journals and Law Reviews</th>
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<td>- United Kingdom from 1865</td>
<td>- Harvard Law Review</td>
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<td>- United States (Federal &amp; State) from 1658</td>
<td>- European Competition Law Review</td>
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<td>- European Union from 1952</td>
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<td>- Australia from 1903</td>
<td>- McGill Law Review</td>
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<td><strong>Statutes</strong></td>
<td><strong>News</strong></td>
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<tr>
<td>- United Kingdom Statutes from 1267 (fully consolidated)</td>
<td>- New York Times</td>
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<td>- United States Code (fully annotated)</td>
<td>- Financial Times</td>
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<td>- Comprehensive European Union Legislation</td>
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<td>- Economist</td>
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<td>- Transcripts from major news channels</td>
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Jurisprudence in the field of comparative law

- Jurisprudence in different countries as object of comparative research. *Internet! Translation?*
- Foreign or comparative law in national or international jurisprudence: e.g. ECJ. „IPRspr.“ (German courts), law journals.
- See also „IPG“ (expert opinions of German universities on foreign law) and comments on jurisprudence.
Common portal of case law

About the Portal
The meta-search engine of National Case Law was created by the Network of the Presidents of the European Supreme Courts. It has been released in April 2007 and allows to simultaneously query several search engines.

Reproduced and adapted from the original language editions of the Eurovoc Thesaurus (Edition 4.3) European Communities, 2009 Responsibility for the reproduction and adaptation lies entirely with the Network of the Presidents of the Supreme Judicial Courts of the European Union.

Search Instructions

- Make sure you are entering your search words with the right language.
- The language can be changed at the bottom of the page.
- Use the quotes, the meta-search engine is still in development stage.
- So every term has to be entered between quotes e.g. "torture" and "kidnapping".
- Research Assistance
Veröffentlicht im Auftrag des Deutschen Rates für Internationales Privatrecht von Prof. Dr. Dr. h. c. Jürgen Basedow, Prof. Dr. Dagmar Coester-Waltjen und Prof. Dr. Heinz-Peter Mansel

**IPG – Gutachten zum internationalen und ausländischen Privatrecht**
Institutions for comparative law

- Universities
- Research institutes (e.g. Max Planck Institutes)
- Scientific and practitioners‘ associations
- International organizations (e.g. UNCITRAL, Unidroit, EU)
Historical sketch

• Aristoteles, Platon
• Middle Ages: universalist legal orders
• Modern Ages: natural law doctrine; rise of comparative law in the 19th century:
  = Comparative law as an instrument of legal politics (e.g. AGHGB 1861)
  = 1846 Chair of comparative criminal law at Paris Sorbonne University
  = 1869 foundation of the Société de législation comparée
  = J. Story, W. Burge, W. Mittermaier, J.-J. Foelix
• Intensive use of comparative law since mid 20th century (UN suborganisations, EU and others).
SAMUELIS REYHERI, JC. 
IN UNIVERSITATE CHRISTIAN-ALBERTINA
ANTECESSORIS, CODICIS ET MATHEMATUM
PROFESSORIS,
HISTORIA JURIS UNIVERSALIS,
IN QUAE GENUINS
JURIUM NATURE, GENTIUM ET CIVILUM
PRINCIPIIS PRÆEMISSIS,
JURIS DIVINA ET HUMANA,
ALLEINE HABITURE
IMPÉRIORUM, REGNORUM, PRINCIPATUM
ET REIPS. PUBLICAM
JURIS, ET JURIS CONSULTI
RECENSENTIUS,
ECVM
PERSONARUM ET JURIS TEXTUM
INDICIBUS.
ANN. MDCCCLXXI.

Typus Bartholdi Reutheri, Academ. Typogr.
Joseph Story

Ernst Rabel

René David

Katharina Boele-Woelki
President of Int’l Academy of Comparative Law
Neighbouring disciplines

• History of law
• Sociology of law
• Economic analysis of law
• Legal politics (e.g. unification of law)
• Private international law (including procedure)
• Others, e.g. legal ethnology, legal philosophy
Methods of comparative law:

*tasks of comparative law*

- Scientific function
- Forensic-practical function
- Legislative function

Problem of guiding interests and expected outcomes, in particular in case of "legal transplants"/processes of "reception" of foreign law
Methods of comparative law

• **Necessity:** Cognizance of the foreign law. If possible work in original languages. Make use of legislative materials, Internet.

• **Object of comparative research:**
  - Comparison of legal norms – comparison of legal practice
  - Macrocomparison - microcomparison: „Legal families (Rechtskreise)“

• **Core elements of comparison:** „functional“ approach. Knowledge of one‘s own law as a precondition. Precaution with use of seemingly well-known „own“ legal terms or legal structures.
Steps of comparison

1) Formulate the research question
2) Find the applicable legal norms or jurisprudence. *Quote exactly!*
3) **Common elements**
4) **Differences**
5) Which are the **underlying** (possibly diverging) **values**?
6) Make your **own evaluation**
7) **Consequences**, e.g. proposal de lege ferenda