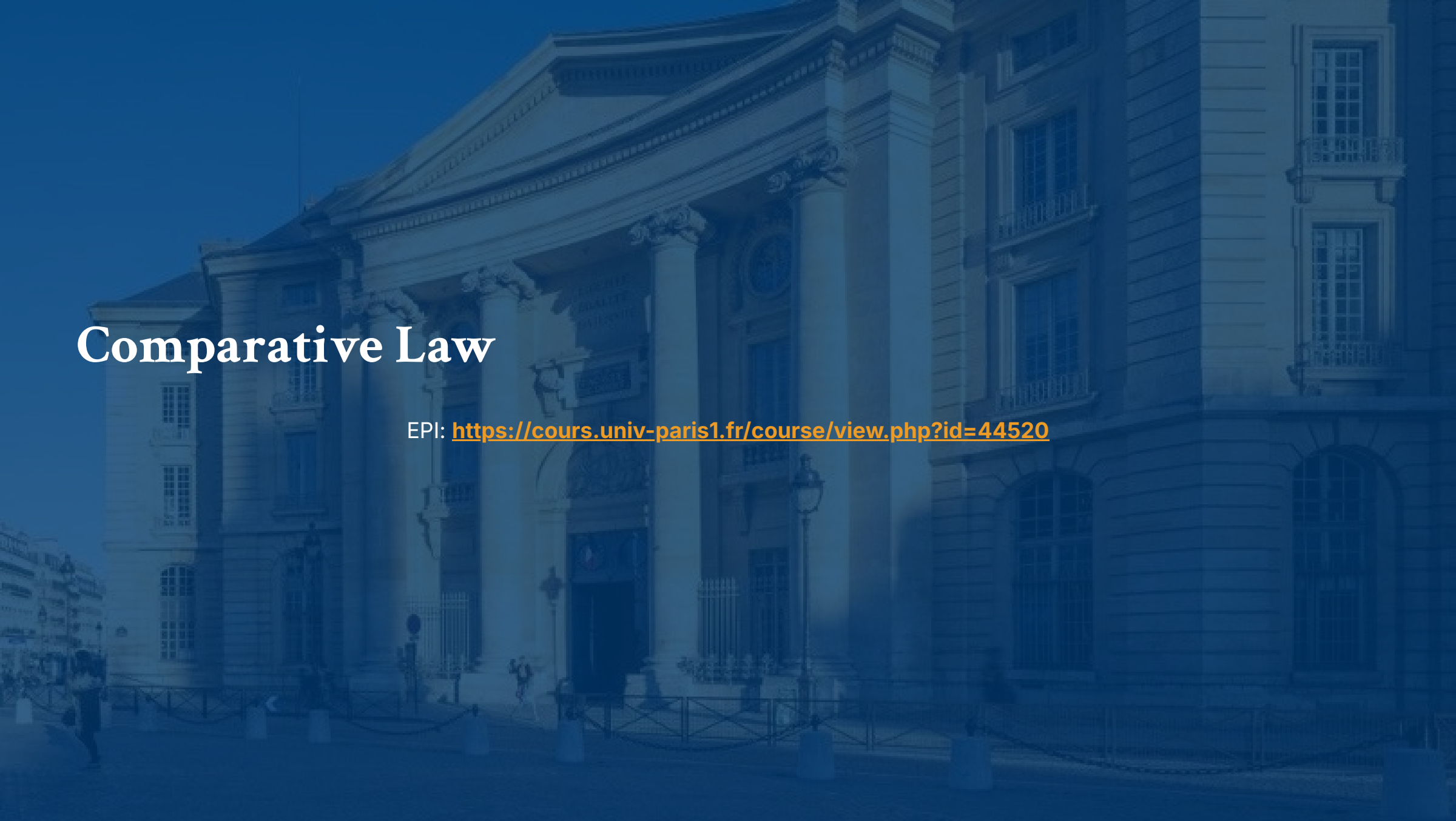


Comparative Law

EPI: https://cours.univ-paris1.fr/course/view.php?id=44520

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Course Structure

Introduction

What is comparative law? Why study it and who practises it?

Chapter 1: Legal Translation

The challenges of translating legal concepts

Chapter 2: Culture and Law

The role of cultural factors in comparative law

Chapter 3: Rule of Law

Comparative study across different jurisdictions



Introduction

What is Comparative Law?

Definition

Components of Comparative Law

Distinction from Related Fields

- Legal Theory
- Legal History
- Sociology of Law
- International Law

History of Comparative Law

Vocabulary, Concepts, and Recurring Themes

General Bibliography



What is Comparative Law?

> « The study of differences and similarities between legal systems »
>
> — Professor Laithier, oral remarks during a defence

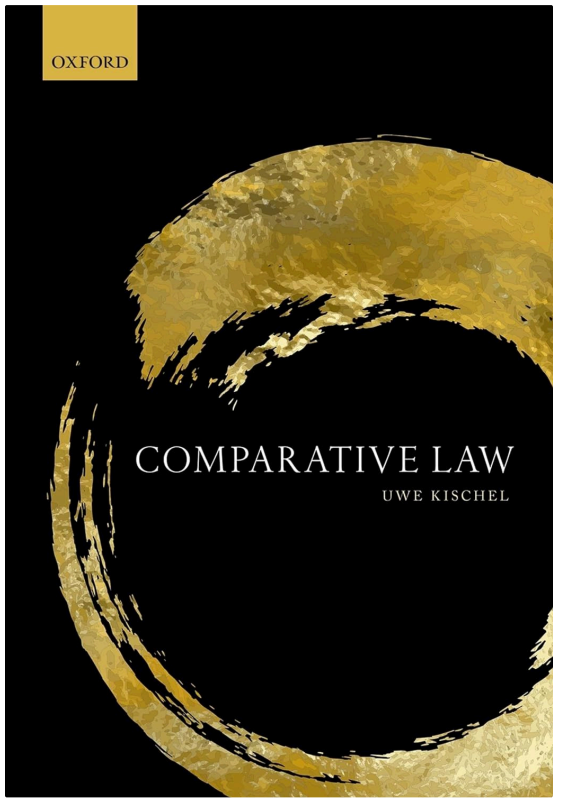
Sources

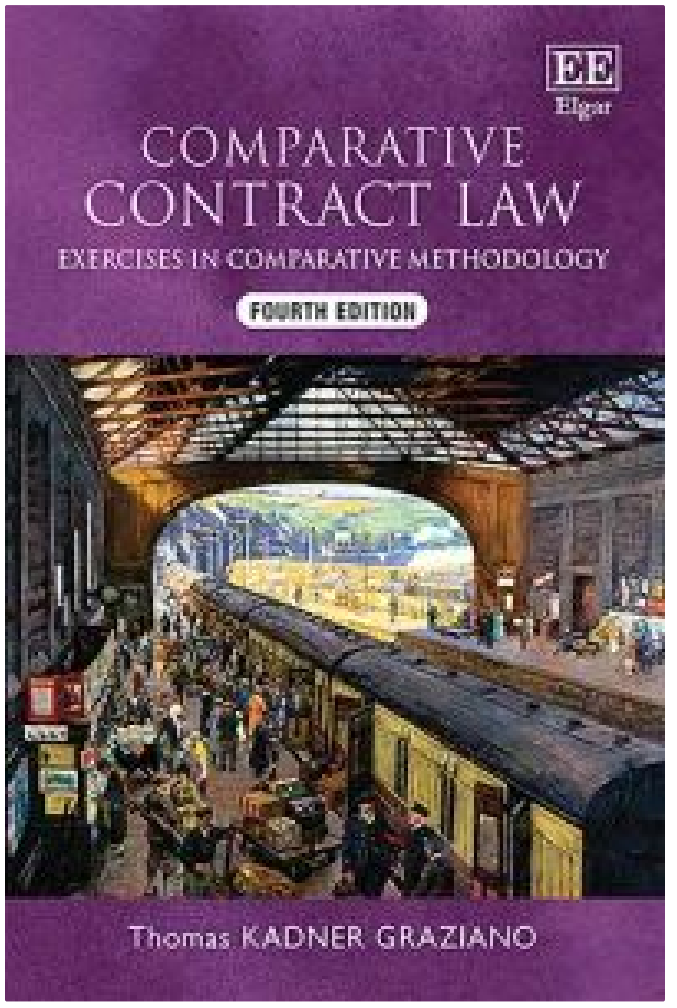
R. Hyland in *A Companion to Philosophy of Law and Legal Theory* (1996), p. 184

D. Kennedy in *Comparative Legal Studies: Traditions and Transitions* (2003), p. 355

J. Husa, *A New Introduction to Comparative Law* (2015), p. 147

Components of Comparative Law





General Part

How to conduct comparative studies

Theoretical framework and methodology

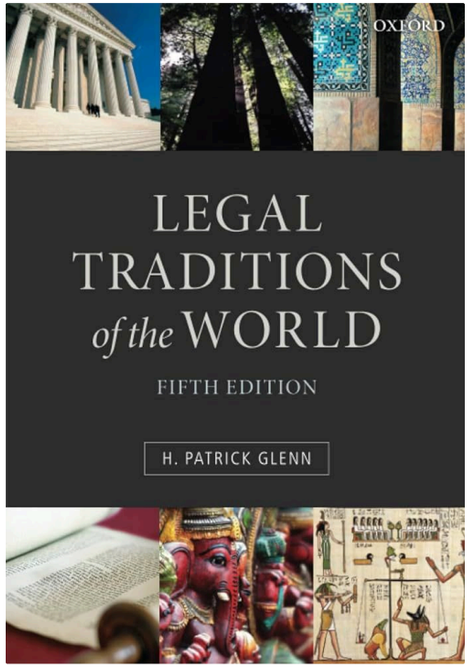
Special Parts / Comparative Studies

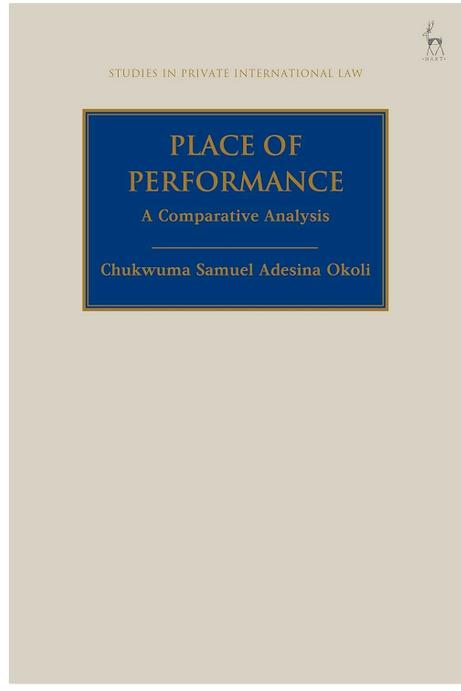
Results of comparative research

Specific topics and conclusions

Comparative law encompasses both reflexive methodology and practical application.

The Scope of Comparison





Macro-comparison

Analysis of entire legal systems or major families of law.

Approaches focusing on legal cultures and institutional structures.

Micro-comparison

Examination of specific legal rules, institutions, or problems.

Targeted comparative research on precise areas or solutions.

The Cujas Library: general works and introductions to "legal families" or "legal orders" are grouped together on the same bookshelves.



Distinction With Neighbouring Disciplines



Legal Theory

Legal theory defines the nature of law; comparative law, on the other hand, explores existing legal systems.



Legal Sociology

Legal sociology analyses the interactions between law, institutions, and society; comparative law concentrates on the legal rules themselves.



Legal History

Legal history studies past legislation; comparative law focuses on contemporary systems.



International Law

International law establishes uniform rules for states; comparative law studies their differences.

Legal Theory: The Notion of 'Legal Order'

The starting point of this module is to define comparative law as the study of differences or similarities between legal orders. Two questions:

- Does Comparative Law have to study **state** legal orders ?

- How should 'legal order' and 'the law' be defined?

"Legal Orders" as Objects of Study

Comparisons within a Legal Order

In a centralised system	In a federal system
Comparing different branches of law (e.g., liability regimes before French civil and administrative courts); Comparing the interpretation of the same provision by different authorities; Etc.	Comparing state laws with each other (e.g., comparing the approach of US states regarding "tortious interference with inheritance"); Comparing state laws with federal law (e.g., in German law, comparing the legal definition of an "administrative act" in the law of the *Länder* and federal law).

In both cases, the legal order tends towards a certain coherence. Substantial differences or similarities can be easily explained.

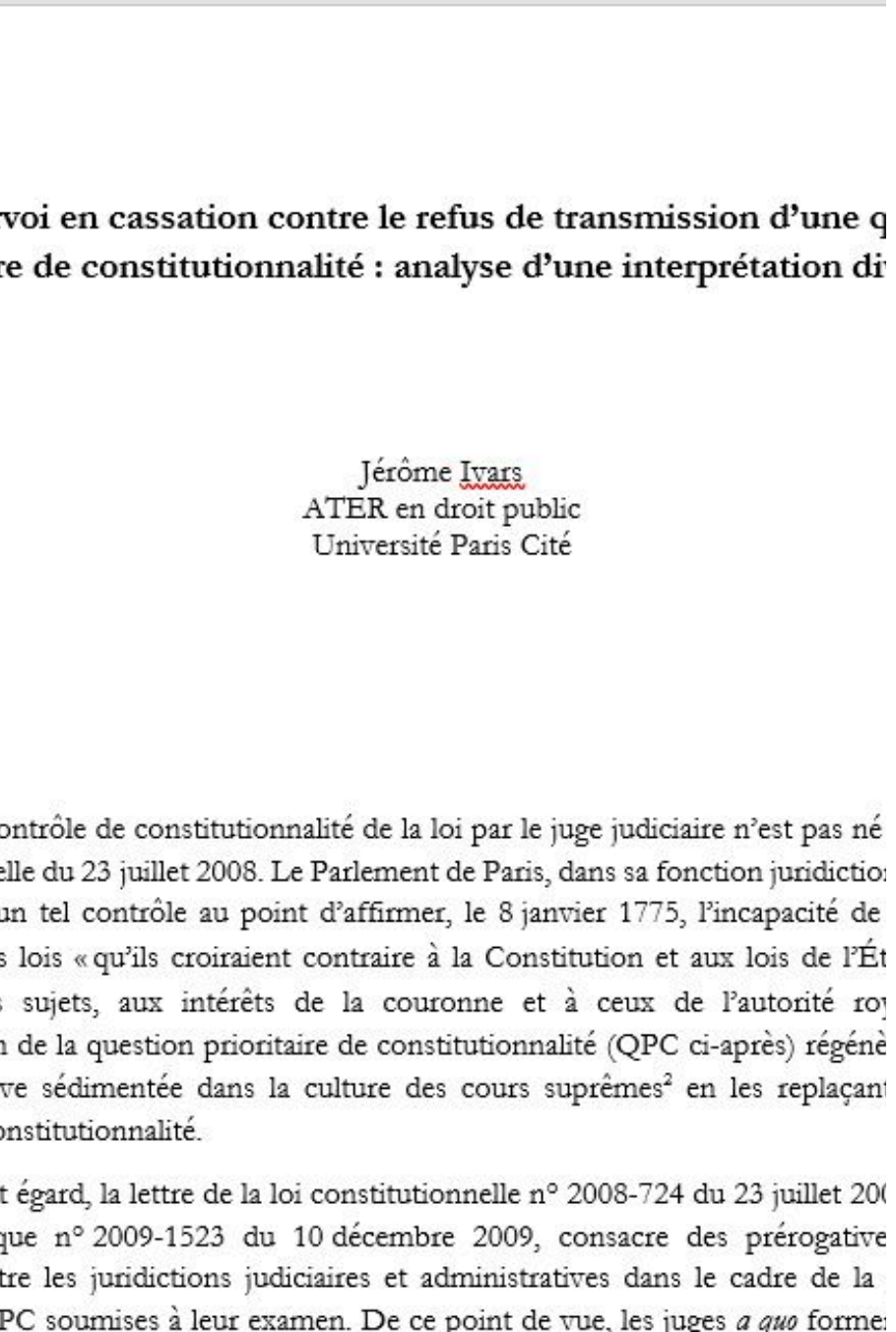
Comparisons with Non-State Law

In the positivist sense, law is (or becomes) state law as soon as it is applied by state authorities, regardless of its actual origin. Customs, for example, are state law insofar as they are applied by state courts, even if they were not elaborated by the state legislature.

Comparison plays a preponderant role in **the development and promotion of non-state bodies of law**. Scientific codifications, such as the UNIDROIT Principles of International Commercial Contracts, are based on the results of comparative research. They can, in turn, serve as models for national reforms.

Religious law, at least canon law and Islamic law, has exerted a formative influence on current state laws. It can be studied independently or as a source of inspiration for these state laws.

Transnational legal orders, such as the *lex mercatoria*, are controversial; their content is primarily derived from comparisons of judicial practices.



rvoi en cassation contre le refus de transmission d'une q
re de constitutionnalité : analyse d'une interprétation di

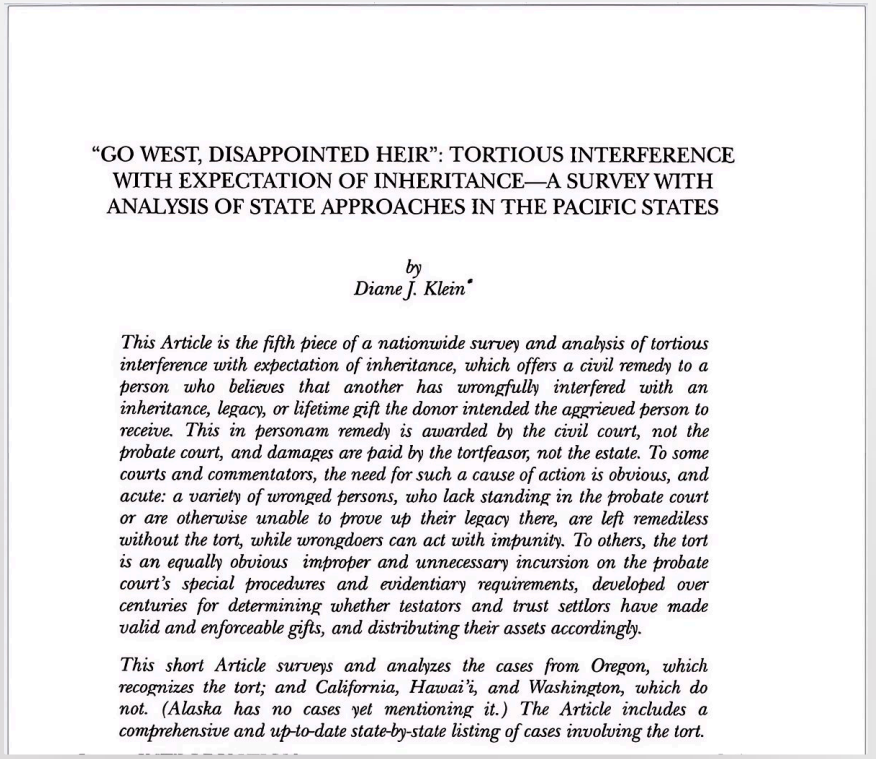
Jérôme Ivars
ATER en droit public
Université Paris Cité

ontrôle de constitutionnalité de la loi par le juge judiciaire n'est pas né
elle du 23 juillet 2008. Le Parlement de Paris, dans sa fonction juridictio
un tel contrôle au point d'affirmer, le 8 janvier 1775, l'incapacité de
s lois « qu'ils croiraient contraire à la Constitution et aux lois de l'Ét
sujets, aux intérêts de la couronne et à ceux de l'autorité ro
n de la question prioritaire de constitutionnalité (QPC ci-après) régénè
ve sédimentée dans la culture des cours suprêmes[2] en les replaçan
onstitutionnalité.

t égard, la lettre de la loi constitutionnelle n° 2008-724 du 23 juillet 20
que n° 2009-1523 du 10 décembre 2009, consacre des prérogative
tre les juridictions judiciaires et administratives dans le cadre de la
PC soumises à leur examen. De ce point de vue, les juges *a quo* forme

Comparison within a Legal Order

A comparative analysis of how the *Conseil d'État* and the *Cour de cassation* deal with appeals lodged against decisions of lower courts refusing to refer to them "priority preliminary rulings on constitutionality" (*questions prioritaires de constitutionnalité,* QPC).



"GO WEST, DISAPPOINTED HEIR": TORTIOUS INTERFERENCE WITH EXPECTATION OF INHERITANCE—A SURVEY WITH ANALYSIS OF STATE APPROACHES IN THE PACIFIC STATES

by
Diane J. Klein[*]

This Article is the fifth piece of a nationwide survey and analysis of tortious interference with expectation of inheritance, which offers a civil remedy to a person who believes that another has wrongfully interfered with an inheritance, legacy, or lifetime gift the donor intended the aggrieved person to receive. This in personam remedy is awarded by the civil court, not the probate court, and damages are paid by the tortfeasor, not the estate. To some courts and commentators, the need for such a cause of action is obvious, and acute: a variety of wronged persons, who lack standing in the probate court or are otherwise unable to prove up their legacy there, are left remediless without the tort, while wrongdoers can act with impunity. To others, the tort is an equally obvious improper and unnecessary incursion on the probate court's special procedures and evidentiary requirements, developed over centuries for determining whether testators and trust settlors have made valid and enforceable gifts, and distributing their assets accordingly.

This short Article surveys and analyzes the cases from Oregon, which recognizes the tort; and California, Hawai'i, and Washington, which do not. (Alaska has no cases yet mentioning it.) The Article includes a comprehensive and up-to-date state-by-state listing of cases involving the tort.

Comparison Within a Legal Order

Tortious interference with the expectation of inheritance: A matter left to state law in the US

> **Each state must determine for itself** whether the value of providing a remedy in civil court for disappointed heirs (and punishing those who injure them) warrants the inevitable incursion on the exclusive jurisdiction of the probate court represented by the tort.

The European Union Context

CJEU 19 May 2026, C-350/24:

"A court of a Member State, when interpreting and applying the law of another Member State which implements a directive, must observe the principle that national law be interpreted in conformity with EU law."



Oliver Wendell Holmes Jr.

> "The prophecies of what the courts will in fact do, and nothing more pretentious, are what I mean by the law."

Justice Holmes (1841-1935)





The Broader Perspective of H.L.A. Hart

> "The primary functions of law as a means of social control are not to be seen in private litigation or prosecutions, which represent vital but none the less ancillary provisions for the system's failures. They are to be seen in the diverse ways in which law is used to control, guide, and plan life outside the courts."

H.L.A. Hart (1907-1992)



Hans Kelsen's *Pure Theory of Law*

> "We have two kinds of interpretations which must be clearly distinguished: the interpretation of law by the applying organ, and the interpretation of the law by a private individual and especially by the science of law (*Rechtswissenschaft*)."

Hans Kelsen (1881-1973)

How Definitions Shape Comparative Research

Your theoretical conception of law fundamentally influences comparative methodology and findings. Consider these examples:



Holmes's Predictive Approach

The **'prophecies of what the courts will do'** lead to a primary focus on judicial decisions and case law. Research adopts the perspective of legal practitioners, emphasising practical outcomes rather than formal rules. Comparative analysis concentrates on patterns of application and judicial behaviour.



Hart's Theory of Social Control

The **'life outside the courts'** demands a broader analytical perspective, encompassing regulatory frameworks, compliance mechanisms, and the constitutive role of law in society. Comparative research examines how legal systems shape social behaviours beyond dispute resolution.



Kelsen's Different Kinds of Interpretation

The distinction between **authentic interpretation and scientific interpretation** creates a clear analytical division between official jurisprudence and academic legal science (*Rechtswissenschaft*). Comparative analysis must consider these two levels and their relationship across systems.

These definitional choices can determine the sources you examine, the questions you pose, and how you interpret comparative findings.

Legal Theory & Comparative law

The Symbiotic Relationship

Comparative Law Serving Legal Theory

- **Test of Universal Applicability:** A robust legal theory must apply across different legal systems and cultural contexts.
- **Empirical Validation:** Many theoretical propositions can only be tested through the comparative analysis of multiple jurisdictions.
- **Cultural Sensitivity:** Comparative data reveals whether theoretical claims reflect universal legal principles or particular cultural presuppositions.

Legal Theory Serving Comparative Law

- **Analytical Framework:** Theoretical concepts provide a structure for comparative analysis.
- **Interpretive Tools:** Legal theory offers methods for understanding observed differences and similarities.
- **Evaluation Criteria:** Theoretical principles help to assess the efficacy and coherence of different legal approaches.

Logical Conclusion: There is no clear relationship of precedence between the two fields.

Roscoe Pound: Sociological Jurisprudence

Roscoe Pound (1870-1964) exemplifies the integration of comparative law and legal theory.

Sociological Jurisprudence

Pound advocated studying 'law in action' rather than 'law in books', emphasising the importance of examining how legal systems actually function in social contexts.

Comparative Methodology

His work systematically compared American and European legal traditions, particularly examining how different systems balanced individual rights with social interests.

Theoretical Contributions

He developed influential theories about law's social functions, the balancing of interests, and the evolution of legal systems—all grounded in comparative observation.

Pound's legacy demonstrates that the most influential legal scholars often excel in both comparative analysis and theoretical synthesis, using empirical observation to refine conceptual understanding.

Comparative Law and Legal History

Temporal Comparison

Legal historians engage in 'comparison over time', examining the evolution and transformations of legal systems. This temporal dimension provides crucial context for understanding contemporary legal differences.

Historical Evidence

Comparativists frequently utilise historical examples to illustrate patterns of legal development. Their synchronic analysis often gains depth through a diachronic historical perspective.

Mutual Enrichment

Comparative research ultimately contributes to historical understanding by revealing patterns of legal change and continuity across different societies and periods.

Methodological Integration

Leading academics such as **Patrick Glenn** and **Reinhard Zimmermann** have promoted the use of historical methodology as a foundation for comparative research, arguing that understanding legal traditions requires an appreciation of their historical development.