

CONTEMPORARY CHALLENGES TO THE TEACHING  
OF COMPARATIVE LAW/  
LES DÉFIS CONTEMPORAINS  
DE L'ENSEIGNEMENT DU DROIT COMPARÉ

# **Ius Comparatum – Global Studies in Comparative Law**

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CONTEMPORARY CHALLENGES  
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DROIT COMPARÉ

Ceremony of 16 May 2022  
in Honour of 5 Great Comparatists/  
Cérémonie du 16 mai 2022 en l'honneur  
de 5 grand(e)s comparatistes

*Edited by*

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## PRÉFACE/PREFACE

Le 16 mai 2022 l'Académie internationale de droit comparé a rendu hommage à cinq grand(e)s comparatistes. C'était la seconde fois dans l'histoire de l'Académie qu'un tel événement se tenait, et il a eu lieu à Paris. Les noms des comparatistes célébré(e)s à l'occasion de cette cérémonie sont connus de celles et ceux qui ont déjà foulé le terrain du droit comparé : Ewoud Hondius des Pays-Bas, Esin Öricü de la Turquie et du Royaume-Uni, Vernon Valentine Palmer des Etats-Unis d'Amérique, Jorge Sánchez Cordero du Mexique et Elisabeth Zoller de France.

Pour l'occasion, ils et elles ont été invité(e)s à donner leurs visions sur les défis contemporains de l'enseignement du droit comparé. Pour l'évènement à Paris, une discussion ouverte a de nouveau été préférée à la place d'une succession traditionnelle de discours. Nous pouvons dire que nous avons – comme pour la première édition de la cérémonie organisée en mai 2017 – assisté à deux heures de divertissement intellectuel du plus haut niveau.

On 16 May 2022 the International Academy of Comparative Law paid tribute to five great comparatists. This was the second time in the history of the Academy that such an event was held, and it took place in Paris. The names of the celebrated comparatists are well known by anyone who has ever set foot in the field of comparative law: Ewoud Hondius from the Netherlands, Esin Öricü from Turkey and the United Kingdom, Vernon Valentine Palmer from the United States, Jorge Sánchez Cordero from Mexico and Elisabeth Zoller from France.

On this occasion, they were asked to give their visions about the contemporary challenges to the teaching of comparative law. For the event in Paris, an open discussion was again preferred over a traditional sequence of speeches. We can say that – just as on the occasion of the first edition of the ceremony organised in May 2017 – we were treated to two hours of high-level intellectual entertainment.

Les éloges des cinq personnalités ainsi célébrées par l'Académie ont été prononcés par des personnes entretenant des liens privilégiés et de longue date avec nos invités d'honneur : Barbara Pozzo d'Italie, Sue Farran du Royaume-Uni, Joël Monéger de France, Maria Chiara Malaguti d'Italie et Wanda Mastor de France. Leurs cinq éloges ont été suivis de brèves réponses de nos célébrités du droit comparé, qui se sont alors immédiatement engagées dans un riche débat modéré par Gary Bell.

L'enseignement du droit comparé demeure à ce jour une des principales préoccupations du Bureau de l'Académie. Le regrettable constat que nous dressions il y a maintenant près de cinq ans dans l'avant-propos de l'ouvrage faisant suite à la première cérémonie s'impose toujours : « à ce jour, le droit comparé demeure encore trop souvent absent des curriculums académiques. Lorsqu'il est présent, il est le plus souvent marginalisé et relégué au rang d'options à choisir parmi tant d'autres. Ce qu'il faudrait tout naturellement, c'est inclure une dimension comparative dans chaque cours. Ainsi, enseigner le droit purement national d'une juridiction ne semble tout simplement plus, dans l'écrasante majorité des cas, suffisant. C'est l'inclusion d'une dimension comparative, et de surcroît, ouverte au droit non-national, qui s'impose ».

The laudatios of the five personalities celebrated by the Academy were delivered by people maintaining privileged and long-standing ties with our honoured guests: Barbara Pozzo from Italy, Sue Farran from the United Kingdom, Joël Monéger from France, Maria Chiara Malaguti from Italy and Wanda Mastor from France. Their five laudatios were followed by brief replies delivered by our celebrities of comparative law, who then immediately engaged in a rich debate, moderated by Gary Bell.

The teaching of comparative law remains to this day one of the main concerns of the Executive Committee of the Academy. The regrettable observation that we made almost five years ago in the foreword to the book following the first ceremony is still verified: "to this day, comparative law is still too often absent from academic curricula. When it is present, it is most often marginalized and relegated to the rank of options, to choose from among many others. What should naturally be included is a comparative dimension in each course. In this regard, teaching the purely national law of a jurisdiction simply does not appear, in the overwhelming majority of cases, to be sufficient. It is the inclusion of a comparative dimension, and moreover, open to non-national law, which is essential".

L'Académie redouble d'efforts pour essayer de faire changer les mentalités. Nous espérons que le double atelier sur l'enseignement du droit comparé organisé par l'Académie à l'occasion de son Congrès général à Asunción en 2022 a contribué à réveiller les consciences.

La place du droit comparé dans la formation juridique demeure un défi constant. Nous sommes loin d'avoir identifié les réponses et les solutions parfaites à des questions telles que *quoi, quand* et *comment*. Mais à tout le moins la collecte de différentes perspectives facilite la discussion. C'est pourquoi le sujet doit être mis à l'ordre du jour encore et encore. À Paris et à Asunción, les participant(e)s ont confirmé l'urgence de repenser la place du droit comparé dans l'enseignement du droit. Pour autant, il est également apparu clairement que des changements institutionnels plus profonds sont sans doute nécessaires. Les initiatives individuelles sont utiles, mais, de manière réaliste, elles ne peuvent faire face aux défis sur notre route. Vous trouverez ci-dessous une liste de certains des problèmes clés et cruciaux identifiés à ces occasions.

- L'enseignement du droit comparé doit être adapté au profil des étudiant(e)s (année d'étude, nationalité/parcours/langue(s) parlée(s)).

The Academy is stepping up its efforts to try to change mentalities. We sincerely hope that the double workshop on the teaching of comparative law, organized by the Academy at its General Congress in Asunción in 2022, has helped to raise awareness.

The place of comparative law in legal education remains a constant challenge. We are far from having identified the perfect answers and solutions to questions such as *what, when* and *how*. But at least the collection of different perspectives helps to facilitate the discussion. That is why the topic must be put on the agenda again and again. In Paris and in Asunción, the participants confirmed the urgent need to rethink the place of comparative law in the teaching of law. At the same time, what also became clear is that deeper institutional changes are necessary. Individual initiatives are helpful but, realistically, could only do little with the current challenges on our road. Below is a list of some of the key and crucial issues identified on these occasions.

- The teaching of comparative law must be adapted to the profile of students (year of study, nationality/background/language(s) spoken).

- L'enseignement du droit comparé doit faire appel aux outils technologiques qui aident déjà chaque juriste dans son travail quotidien. Les étudiant(e)s doivent être capables de maîtriser ces outils qui permettent accessoirement une collecte aisée de données pour l'analyse de droit comparé.
- Les cours de droit comparé devraient être particulièrement nécessaires pour les étudiant(e)s empêché(e)s de se rendre dans d'autres juridictions au cours de leurs études (obstacles linguistiques, financiers ou autres).
- Une réflexion doit être engagée pour savoir s'il est encore utile d'enseigner le droit comparé en tant que matière optionnelle autonome et si le droit comparé devrait être intégré dans les éléments fondamentaux et obligatoires du curriculum. Nous constatons qu'à cette occasion, les avis divergent largement.
- Une réflexion doit être engagée quant au moment opportun pour initier les étudiant(e)s au droit comparé. Nous notons à nouveau qu'à cette occasion, les avis divergent largement.
- Une formation approfondie en droit comparé devrait être proposée notamment dans le cadre des études doctorales.
- The teaching of comparative law should make use of the technological tools which already help every lawyer in their daily activities. Students should be able to master the available tools which incidentally allow for an easy collection of data for comparative law analysis.
- Comparative law courses should be particularly necessary for students prevented from travelling to other jurisdictions during their studies (linguistic, financial or other barriers).
- A reflection needs to be engaged as to whether it still makes sense to teach comparative law as a stand-alone optional course and how comparative law should be integrated in mandatory core components of the curriculum. We note that on this occasion, the views largely differ.
- A reflection needs to be engaged as to the appropriate time to introduce students to comparative law. We again note that on this occasion, the views largely differ.
- Extensive comparative law training should be offered in particular in the framework of doctoral studies.

\* \* \* \* \*

\* \* \* \* \*



La cérémonie organisée à Paris a pour but de célébrer le dévouement de toute une vie aux études comparées. Nous sommes heureux que l'organisation de cet événement devienne une nouvelle tradition à l'Académie.

The ceremony organised in Paris aimed to celebrate the lifetime devotion to comparative studies. We are pleased that the organisation of such an event is now becoming a new tradition at the Academy.

Katharina Boele-Woelki

Ancienne Présidente de l'Académie / Former President of the Academy

Diego P. Fernández Arroyo

Ancien Secrétaire général de l'Académie / Former Secretary-General of the Academy

Alexandre Senegacnik

Secrétaire général adjoint de l'Académie / Deputy Secretary-General of the Academy



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EWOUND HONDIUS

BIOGRAPHIE/BIOGRAPHY

Ewoud Hondius (1942) was born and raised in Princeton, NJ, and at the *Eerste Vrijzinnig Christelijk Lyceum* in The Hague. He read law in Leyden and New York (Columbia). He received a doctorate from Leyden and honorary degrees from Edinburgh and Leuven. He is Emeritus Professor of European Private Law at the University of Utrecht. Previously, he was a Visiting Professor in Baton Rouge (Louisiana State University), Cambridge (Trinity College), Ghent, Hamburg (Bucerius University), Kyoto (Ritsumeikan University), Münster, Paris I, Pisa (Scuola Superiore Sant' Anna), Stellenbosch and Sydney. He was a member of the Commission on European Contract Law (Lando Commission). He has written or edited several books on private and consumer law (*Standaardvoorwaarden*, 1978; *Towards a European Civil Code* (1994); *Extinctive Prescription*, 1994; *Precontractual Liability*, 1991; *Precedent and the Law*, 2007; *Unexpected Circumstances in European Contract Law*, 2011 (with Christoph Grigoleit); *Towards Clarity and Plain Language*, 2007; and *Coronavirus and the Law in Europe*, 2021 (with Marta Santos Silva, Andrea Nicolussi, Pablo Salvador, Christiane Wendehorst and Fryderyk Zoll)).

He has been a part-time judge in the District Court of Rotterdam and the Court of Appeal of Amsterdam. He is a membre titulaire of the International Academy of Comparative Law and member of the Royal Netherlands Academy of Sciences. He was the founder of several law reviews, such as the *European Review of Private Law*.

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## ESİN ÖRÜCÜ

## BIOGRAPHIE/BIOGRAPHY

Esin is Turkish/British, born in 1940 in Istanbul, Turkey. She went to a Turkish primary school and then to the English High School for Girls in Istanbul, the American College for Girls (now Robert College) in Istanbul (BA, 1961), followed by the Faculty of Law, University of Istanbul (LLB, 1965). She was a Research Fee Student, 1968–1969, at the London School of Economics and gained her doctorate in 1970 from the Faculty of Law, University of Istanbul, where she also obtained her Docent degree (Higher doctorate) in 1975. During the years 1966–1976 she was a member of academic staff at the Faculty of Law, University of Istanbul. Esin left Turkey in 1976 and moved to the University of Glasgow, where she worked first as a Senior Lecturer and then as a Professor. She was also a Professor part time at Erasmus University Rotterdam, the Netherlands for 25 years. Currently she is Professor Emerita of Comparative Law, University of Glasgow, School of Law since 2005; Honorary Senior Research Fellow, University of Glasgow, School of Law since 2008; Professor Emeritus of Comparative Law, Erasmus University Rotterdam, Faculty of Law since 2005; Member of the International Academy of Comparative Law since 2003; and a member of JURIS DIVERSITAS. Esin has a Dr.h.c. from Uppsala University, 2009.

Formerly Esin was Professorial Research Fellow, University of Glasgow, School of Law, 2006–2007; Visiting Professor of Turkish Family Law, Amsterdam Free University, 2007–2018; Visiting Professor, Okan University, Istanbul, 2008–2018; Visiting Professor of Comparative Law, Yedi Tepe University, Istanbul, 2003–2008; Professor of Comparative Law, University of Glasgow, School of Law, 1992–2005 (though teaching until 2010); Professor of Comparative Law, Erasmus University Rotterdam, Faculty of Law, 1981–2005; Professor of Comparative Law Theory (occasional), European Academy of Legal Theory, Brussels, 2004–2006; Visiting Professor of Turkish Law, University of Utrecht, Faculty of Law, 2000–2005; Visiting Professor of Turkish Law and Culture, SOAS, London, until 2010; Honorary Guest Professor and Examiner in Turkish Law, Faculty of Social Sciences and Faculty of Law, Leiden University, 1986–1999; Vice-Chair of the Scottish Association of Comparative Law, until 2015; the first Convener of the Comparative Law Subject Section of SLS (1998–2006); Council Member of the UKNCCL until 2015; Member of the Editorial Advisory Board for the Series ‘Current Controversies in Law’ by Cavendish Publishing; Member of the Editorial Advisory Board of the *Journal of Comparative Law*; and the Reporter for Turkey to *European Public Law* until 2016. During all this time her research interests were comparative law methodology; transmigration of laws and transpositions; mixed jurisdictions; legal systems and legal cultures and convergence and divergence between legal systems and cultures; problems of the recipient systems in legal export/import; and Turkish law, culture and language.

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## VERNON VALENTINE PALMER

### BIOGRAPHIE/BIOGRAPHY

Vernon Valentine Palmer is the Thomas Pickles Professor of Law at Tulane University and the Co-Director of the Eason Weinmann Center for International and Comparative Law. Professor Palmer received his J.D. law degree from Tulane with Law Review honors and his Master of Laws degree from Yale University where he was a Sterling Fellow. He earned his doctorate in law (D.Phil) from Pembroke College, Oxford University.

Dr. Palmer's research focuses upon the interactions between the civil law and common law traditions, particularly the historical influence of these traditions upon Louisiana and other 'mixed' legal systems. His study entitled *Mixed Jurisdictions Worldwide* is the first comprehensive assessment of the characteristics, commonalities and diversities of the mixed jurisdictions. His scholarly publications now run to more than 12 books and 50 articles and his international service has been substantial. As constitutional consultant, he advised the Kingdom of Lesotho (Southern Africa) concerning its return to democratic rule after a period of dictatorship. He became a principal drafter of Lesotho's present constitution and he also advised the Republic of Madagascar on the drafting of that country's constitution. He has also taught extensively outside of the United States, notably in Paris, Strasbourg, Lausanne, Martinique, Barcelona, Trento, Geneva, Fribourg, Hamburg and Tokyo. For several academic years he held the title of *professeur associé* at the Sorbonne.

Professor Palmer has been honored as a *Chevalier dans l'Ordre des Palmes Académiques* for his contributions to French culture. He was also inducted as a Chevalier in the *Légion d'Honneur* in recognition of eminent services rendered to France. In 2012 Paris/Dauphine University conferred an honorary doctorate upon him. Dr. Palmer is president and founder of the first international society devoted to mixed legal systems – the World Society of Mixed Jurisdiction Jurists – and is a titular member of the International Academy of Comparative Law, which has recognized him as one of five great comparatists in the world.

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## JORGE SÁNCHEZ CORDERO

### BIOGRAPHIE/BIOGRAPHY

Jorge Sánchez Cordero is Abiturient and fellow of the European Law Institute, and a Member of the American Law Institute and of UNIDROIT's Governing Council since 1984. He was elected three times as Vice-President and appointed for the period 2023–2024 and is currently a member, of the Permanent Committee, and served as President of the Unidroit National States' General Assembly (2020–2021). Dr Jorge Sánchez Cordero is a legal practitioner and notary public in Mexico City. He is a former Judge and the founder of the Mexican Electoral Federal Court. He has been the Mexican representative at several diplomatic conferences and has served as the Chair and Co-Chair of different working groups (UNESCO/UNIDROIT). He has been nominated as an emeritus consultant of the Mexican Ministry of Foreign Affairs. He is also a Member of the Committee on Participation in Global Cultural Heritage Governance of the International Law Association and a Member and former Vice-President of the International Academy of Comparative Law (IACL). He is Vice-President of the Executive Committee of the International Association of Legal Science of UNESCO and a Member of the Board of Directors of the International Cultural Property Society. He is a scientific member of the Société Internationale pour la Recherche sur le Droit du Patrimoine et le Droit de l'Art (ISCHAL) and an Honorary Member of the Royal Spanish Academy of Legislation and Jurisprudence. He is a member of the Board of Scholars at Risk American Initiative.

He has been awarded Silver Medals by the National Autonomous University of Mexico (UNAM) and the Henri Capitant Association (HCA). He was also awarded a Gold Medal by the Mexican government. He undertook his PhD dissertation from the Panthéon-Assas University in France (*très honorable avec félicitations du jury*). He won the Mexican National Prize for Journalism in 2008 and was made a Chevalier (*Ordre National du Merit*) for his contributions to human cultural heritage). In 2022 he was awarded a Gold Medal by the Mexican National Endowment of Arts and was made the President Ad Honorem of the Mexican Branch of the HCA. He has been recognised by the IACL as a prominent comparatist.

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\* Some of his books have been translated into different languages: Russian, Mandarin Chinese, Japanese, Arabic and Mayataan (the lingua franca of the Mayan languages), among others.

## ELISABETH ZOLLER

### BIOGRAPHIE/BIOGRAPHY

Agrégée de droit public en 1980, Elisabeth Zoller commence sa carrière de professeur aux facultés de droit de Nantes et d'Angers où elle enseigne le droit international et le droit communautaire. En 1984, détachée aux États-Unis pour poursuivre une recherche sur les contre-mesures, elle enseigne le droit international et le droit européen à l'Université Cornell (1984–1985), puis, après un passage par les Nations-Unies où elle exerce des fonctions de conseil juridique, les droits de l'homme et les règles du commerce international à l'Université Rutgers (1984–1988). Elle rejoint alors l'Université de Strasbourg où elle dispense des enseignements de droit international à la Faculté de droit ainsi qu'à l'Institut d'Etudes politiques jusqu'en 1994.

Elue à l'Université Paris II Panthéon-Assas en 1995, elle est chargée du cours de droit constitutionnel de 1<sup>e</sup> année jusqu'en 2005, date à partir de laquelle elle se consacre au droit comparé, en particulier, aux droits des systèmes de *common law*. En 2005, le Président de l'Université la charge de créer un master « Droits de *common law* » qu'elle transforme en 2013 en un master de droit public comparé, lui-même complété sur le plan de la recherche par le Centre de droit public comparé, issu du Centre de droit américain qu'elle avait créé en 1997. Elle prend sa retraite en 2018 et depuis, consacre ses travaux de recherche et d'écriture aux États-Unis.

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