

# CERTIFICATE COURSE

ON

# EUROPAN CIVIL LAW SYSTEM (AS COMPARED TO THE COMMON LAW SYSTEM) AND THE TWO EUROPEES





## Centre for Comparative Public Law

*presents*

*One-Week Certificate Course*

*on*

# **European Civil Law system (as compared to the Common law System) and the Two Europes**

### **About the University**

Himachal Pradesh National Law University, Shimla is one of the premiere law educations imparting higher educational institutions in India. It was established in 2016 and has been since working towards adding to the overall pool of academic excellence in the nation. The University has established many Centres of Excellence in varied fields and Centre for Comparative Public Law is one among them.

### **About the Centre for Comparative Public Law**

The principal objective of the Centre for Comparative Law is to undertake studies and investigations in core areas of public law and advanced jurisprudence as well as comparative private law, and comparative legal systems. The primary means proposed to be employed for undertaking such investigations include but are not limited to - conducting specific courses, training programmes and seminars in comparative constitutional law and comparative legal systems, conduct field studies to catalogue pluralism in societies, etc.

The Centre in its endeavour of comparative studies and promoting excellence in the academic field organises events that not only help the students but equally benefit the institution, writ large. In this objective, the Centre is inviting Prof. Paul de Hert, Professor, Vrije Universiteit, Brussels, Belgium, for lecture series and a Certificate Course. The tenure of the visit of the Professor in the University campus is from 02-10-2023 to 13-11-2023. Prof. Paul will be delivering lectures on the interface between common law and civil law and other topics within the broad framework of comparative public law.

### **About the Resource Person: Prof. Paul de Hert**

Paul De Hert is a legal scholar and studied law, philosophy, and religious sciences (1985-1992). De Hert is full professor and Vice-Dean of the Faculty of Law & Criminology at the Vrije Universiteit Brussel (VUB) and director of the Brussels Fundamental Right Research Centre (FRC). He is also associated professor at Tilburg University.





He is board member of scientific journals such as The Inter-American and European Human Rights Journal and Criminal Law & Philosophy. He is a member of the board of the Flemish Human Rights NGO (*Liga voor de Rechten van de Mens*) and served as Chief Editor of their legal journal *Tijdschrift voor Mensenrechten* between 2010 and 2018. He is co-editor in chief of the *Supranational Criminal Law Series (Intersentia)* and the *New Journal of European Criminal law (Sage)*. De Hert's work addresses problems in the area of privacy & technology, human rights and criminal law. A rights-based approach combined with a concern for theory is the common denominator of all his work. In 2023 De Hert was appointed as a Member to the Scientific Committee of the European Union Agency for Fundamental Rights (FRA) based in Vienna for a (renewable) five-year term.

Prof. Hert is a visiting Professor, Centre for Comparative Public Law, HPNLU, Shimla.

### **About the Director, Centre for Comparative Public Law: Prof. Chanchal K. Singh**

Dr. Chanchal Kumar Singh is a graduate in Political Science (Hons.) from BRA Bihar University, Muzaffarpur, Bihar (India), LL.B., LL.M. from the University of Delhi (India), and Ph.D. from the same University. Prior to joining HPNLU, Shimla, he taught at the Faculty of Law, University of Delhi for nine years. He teaches Constitutional Law, Legal Philosophy, Comparative Public Law, Law, and Justice in a Globalising World, Administrative law, Legal Systems, and Judicial Process and Administration.

He has delivered lectures/talks at various institutions such as Directorate of Training (UTCS)-Delhi, NACEN- Faridabad, colleges of Delhi University, Training Program(s) organized by the National Commission for Women; presented papers in several national and international seminars/conferences; published research articles/papers in reputed law journals including the *Journal of Indian law institute*; Journals published by the University of Delhi. He is the founder editor of *Shimla Law Review- SLR*, (ISSN-25821903) and *HPNLU Law Journal* (ISSN: 2582-8533) published by Himachal Pradesh National Law University, Shimla. Previously, he has been editor of the *Journal of Law Teachers of India -JOLTI* (ISSN 2231-1580) published by Law Centre-I, Faculty of Law, University of Delhi.



## About the Course

Law as a component of social control is not a result of whimsical abstractions but represents, if not completely, a common thread that binds the social order in any given society at any given point in time. Law has its origins from varied sources and these sources are further attributable to the historical developments and paradigm shifts that any society witnesses. These historical developments can be traced within the broad framework of how social control has operated in society and they, in turn, shape the legal tradition of the communities. Legal and cultural traditions have impacts on multiple levels and they mould the legal system of any society.

In terms of the developments that have influenced global discourse on legal traditions, two major categorization is generally discernible – civil and common law traditions.<sup>1</sup> The most fundamental point on which the two legal traditions differ is the codification of law, the former being codified and the latter not so.<sup>2</sup> This subsequently has a deeper impact on the manner of development of laws under the two traditions and in turn it also has impact on the scholars, lawyers, and judges, etc., who make the legal system functional. If not always, often, a divide is created between the two approaches, but there are points of convergence between the two traditions, and these convergences bring with it the possibility of knowledge exchange between the two traditions.<sup>3</sup>

However, the knowledge exchange is possible, in the stead, of top-down approach to bottom-up approach whereby the students who enter into the field of education of law are acquainted with the possible convergence between the two traditions. There is a pedagogical intervention that has immense role to play in the meagre quest to the *possibility of knowledge exchange between the two traditions*.

Another important context in which this discourse becomes important is the changing scope of comparative law. The nature of comparative studies has seen a major shift from being mere descriptive to one of practical application, and one that provides solutions to the problems that maybe controlled by laws.<sup>4</sup> Further, the prerogative of comparative public law is not mere description but exploration and prescription. As Ludwik Ehrlich writes –<sup>5</sup>

*Law exists for men and through men; human psychology and human ideas make up the law; and constantly changing conditions determine men's thoughts and men's actions. We must give up all*

---

<sup>1</sup> See generally G.W. Paton, A TEXTBOOK OF JURISPRUDENCE (2011); Glanville Williams, LEARNING THE LAW (2019).

<sup>2</sup> G.W. Paton, A TEXTBOOK OF JURISPRUDENCE 119-22 (2011); See generally William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 LOUISIANA LAW REVIEW 678 (2000).

<sup>3</sup> Caslav Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, 32 VUWLR 817 (2001).

<sup>4</sup> G.W. Paton, A TEXTBOOK OF JURISPRUDENCE 41-3 (2011).

<sup>5</sup> Ludwik Ehrlich, *Comparative Public Law and the Fundamentals of its Study*, XXI (7) COLUMBIA LAW REVIEW 623 (1921), at 646.



*hope of seeing one consistent and perfectly logical legal system for all countries, or even for any one country.*

Therefore, the comparative studies within the pedagogical frame need to be adopted for ensuring that the divide between the two legal traditions is bridged and solutions for the societies identified.

### **Objectives of the Certificate Course**

This course has been designed with the prime objective of taking one step towards exploring the lessons that can be learnt and drawn from the civil law traditions for the common law tradition that is followed in India.

The following delineation of objective puts the point into perspective –<sup>6</sup>

1. To understand the logic of civil law tradition.
2. To understand the stance, scope, and role played by the judiciary in civil law tradition.
3. To understand how Europe has imbibed civil law tradition and the lessons therefrom.
4. To understand the nuances of the criminal law under the two legal traditions.
5. To understand cooperative federalism within the context of data protection and the civil law tradition approach adopted by Europe.

### **Modalities for the Certificate Course**

**Eligibility** – All Students of HPNLU, Shimla pursuing Undergraduate Five Years Integrated Programme can apply.

**No. of Seats** – 100 Seats are open for the Course on the first-come-first serve basis.

Cap for Number of Seats per Year –

1. First Year – 20
2. Second Year – 20
3. Third Year – 20
4. Fourth Year – 20
5. Fifth Year – 20

### **Mode of Selection –**

- The first-year students shall be selected on first-come-first-serve basis.
- The students from second (2<sup>nd</sup>) year onwards shall be selected on the basis of their CGPA.
- The Centre reserves the right to admit students for the course.

---

<sup>6</sup> These objectives should be read in conjunction with the overall curricula of the certificate course and the topics that will be covered therein.



**Attendance** – The Certificate Course consists of twelve (12) hours classes. All classes will be conducted between 4:00 PM to 6:30 PM. For successful completion of the course all classes are mandatory.

**Note:** No extra academic attendance shall be applicable.

All participants shall be given a certificate, to this effect, on successful completion of exam and fulfilment of requirement of 33% marks in the examination.

***Mode of Exam and Pattern of Questions –***

The exam shall consist of 50 objective type questions and the time duration shall be 30 minutes.

**Registration Process**

Please register by clicking the link [here](#).

The admission into the course is based on first-come, first-serve basis.

**Contact for further details**

Mr. Ayush Bhardwaj

Mo. No. – +91-9306561243

Mr. Mudavath Sreenu Naik

Mo. No. – +91-8712105813

Ms. Abhavya Rathore

Mo. No. – +91-8894694661

Mr. Varin Sharma

Mo. No. – +91-9772793777



All queries may be directed to – [ccpl@hpnlu.ac.in](mailto:ccpl@hpnlu.ac.in)



*Patron-in-Chief*

**Justice Mamidanna Satya Ratna Sri Ramachandra Rao**

*Hon'ble Chief Justice  
High Court of Himachal Pradesh*

*Patron*

**Prof. (Dr.) Nishtha Jaswal**

*Hon'ble Vice-Chancellor  
HPNLU, Shimla*

Organising Team

<b>Prof. Chanchal K. Singh</b> <i>Director, Centre for Comparative Public Law</i>	
<b>Dr. Mritunjay Kumar</b> <i>Coordinator, Centre for Comparative Public Law</i>	<b>Mr. Aayush Raj</b> <i>Co-Coordinator, Centre for Comparative Public Law</i>
<b>Mr. Bineet Singh</b> <i>Member, Centre for Comparative Public Law</i>	<b>Ms. Renuka Jaggi</b> <i>UGC-JRF Research Scholar, HPNLU, Shimla</i>
<u>Students' Team</u>	
<b>Mr. Ayush Bhardwaj</b> <i>Enrolment No. – 1020220020</i>	<b>Ms. Chanchal Sharma</b> <i>Enrolment No. –</i>
<b>Ms. Ishita Kumar</b> <i>Enrolment No. – 1020220034</i>	<b>Ms. Navya Chadha</b> <i>Enrolment No. – 1020220064</i>
<b>Mr. Sreenu</b> <i>Enrolment No. – 1020212225</i>	<b>Ms. Abhavya Rathore</b> <i>Enrolment No. – 1120212271</i>
<b>Mr. Varin Sharma</b> <i>Enrolment No. – 1120202102</i>	

## Course Details

### **CERTIFICATE COURSE ON European Civil Law System (as compared to the Common law System) and the Two Europes: Lectures on Europe, European Civil Law system, and Common Law System**

#### **Course 1 The Two Europes**

*Monday 30/10/2023- Prof. Paul De Hert*

*One hour lecture starting at 4 PM*

Europe is a practical laboratory for legal integration in many respects. It has not one but two regional organisations functioning with a different logic. Topics of the discussion are also the militant democracy tools Europe possesses to fight rule of law backsliding, or mass human rights violations in its member countries: In relation to fundamental rights, the EU's bill of rights, the so-called Charter of Fundamental Rights will be addressed: Most recently, the EU turns to subjective, more or less human rights as point of departure for EU legislation and jurisdiction. Seen from overseas it is rather challenging to come to terms with the distinction of the EU and the Council of Europe also embracing countries like Turkey and until recently Russia, being mirrored by the jurisprudence of the EU court in Luxemburg and the human rights court in Strasbourg. The interrelation of these two courts, as well as the national constitutional courts (like the German Constitutional and Supreme Courts) is a further topic of this class.

Attention is also paid to the changes of legal education in Europe and its many advantages for students to obtain study credits in other European countries.

[-https://studentbriefs.law.gwu.edu/ilpb/2022/03/04/proposition-for-greater-european-human-rights-protections-eu-should-accede-to-the-european-convention-on-human-rights/](https://studentbriefs.law.gwu.edu/ilpb/2022/03/04/proposition-for-greater-european-human-rights-protections-eu-should-accede-to-the-european-convention-on-human-rights/)

[-https://studentbriefs.law.gwu.edu/ilpb/2022/11/14/putting-big-tech-in-its-place-how-the-european-union-is-controlling-internet-behemoths/](https://studentbriefs.law.gwu.edu/ilpb/2022/11/14/putting-big-tech-in-its-place-how-the-european-union-is-controlling-internet-behemoths/)

#### **Course 2 Introduction to the Logic of Civil Law Systems**

*Monday 30/10/2023-Prof. Paul De Hert*

*One hour lecture starting at 5 PM*

What is Comparative Law? What makes a 'Legal System'? What is understood by the European Civil Law tradition? How does the judiciary as a third branch reviews decisions and laws emanating from the two other branches? How does the judiciary see its role?

[-https://www.law.cornell.edu/wex/legal\\_systems](https://www.law.cornell.edu/wex/legal_systems)

[- https://studentbriefs.law.gwu.edu/ilpb/2021/12/08/online-content-regulation-an-international-comparison/](https://studentbriefs.law.gwu.edu/ilpb/2021/12/08/online-content-regulation-an-international-comparison/)

- Dainow, Joseph. "The Civil Law and the Common Law: Some Points of Comparison." *The American Journal of Comparative Law*, vol. 15, no. 3, 1966, pp. 419–35. *JSTOR*, <https://doi.org/10.2307/838275>. Accessed 20 Sept. 2023.

#### **Course 3 Common Law and Civil Law legal Systems Compared**

*Thursday 02/11/2023- Prof. Chanchal Kumar Singh*

*One hour lecture starting at 4 PM*

In this lecture, the difference between common law and civil law systems shall be compared with respect to criminal justice administration.

Readings:

- (1) William Forsyth, *The History of Lawyers* (1849).
- (2) Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003 (Malimath Committee Report)- p. 87-150
- (3) Rajeev Dhavan (ed.), *Law and Society in Modern India* (1993).
- (4) Fali Sam Nariman, *India's Legal System* (2006).
- (5) Visheshwar Dayal Kulshreshtha, *Landmarks in The Constitutional History of India* (1981).
- (6) Masaji Chiba, *Asian Indigenous Law: An Interaction with Received Law* (1986). Chap 1.

#### **Course 4 Reception of Common Law in India: Exploring Indigenous values in Indian Constitution Saturday 04/11/2023**

*One hour lecture starting at 4 PM- Dr. Mritunjay Kumar*

- (1) Rajeev Dhavan (ed.), *Law and Society in Modern India* (1993).
- (2) Upendra Baxi, *Sociology of India Law* (1997).
- (3) Chanchal Kumar Singh, *State and Equality from Sadacara to Bazaar, Shimla Law Review* (2018).



- (4) Chanchal Kumar Singh and Mritunjay Kumar, *Hindu Law, Legal System, and Philosophy*, Shimla Law Review (2021).
- (5) Marc Galanter, *The Displacement of Traditional Law in Modern India* (1968).
- (6) Masaji Chiba, *Asian Indigenous Law: An Interaction with Received Law* (1986). Chap 5.
- (7)

Web Links:

[https://www.researchgate.net/publication/345317955\\_State\\_and\\_Equality\\_from\\_Sadacara\\_to\\_Bazaar\\_2018\\_Shimla\\_Law\\_Review](https://www.researchgate.net/publication/345317955_State_and_Equality_from_Sadacara_to_Bazaar_2018_Shimla_Law_Review)  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3880806](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3880806)

### **Course 5 Inquisitorial Criminal Law Compared to Common Law Criminal Law**

*Monday 6/11/2023- Prof. Paul De Hert*

*One hour lecture starting at 4 PM*

At the heart of inquisitorial procedure is an official inquiry. A government official is tasked with investigating both inculpatory and exculpatory evidence. For serious crimes, this official may be either an investigating judge or a prosecutor. It's important to keep in mind that in civil law systems, prosecutors are trained as judges and are part of the body of magistrates. The job of a judge in an inquisitorial system is explicitly to find the truth—not, as in a common law system, to resolve a case according to procedural rules. The difference is powerful.

- T. Decaigny & P. De Hert, 'You can change the colour of your hair, not your hair. Converging is what inquisitorial and adversarial systems rarely do' in C. Kelk, F. Koenraadt, D. Siegel & F. Kristen (eds.), *Veelzijdige gedachten. Liber amicorum Chrisje Brants*, Den Haag, Boom Lemma Uitgevers, 2013, 235-244

- <https://studentbriefs.law.gwu.edu/ilpb/2021/10/21/the-inquisitorial-advantage-in-criminal-procedure/>

- <https://studentbriefs.law.gwu.edu/ilpb/2021/11/18/the-inquisitorial-advantage-in-criminal-procedure-part-ii-the-defendant-as-a-source-of-information/>

- <https://studentbriefs.law.gwu.edu/ilpb/2022/01/24/the-inquisitorial-advantage-in-criminal-procedure-part-iii-adjudicating-pleas/>

<https://studentbriefs.law.gwu.edu/ilpb/2022/10/27/a-look-at-the-united-states-and-italys-criminal-justice-system-pretrial-rights-and-detainment/>

- <https://studentbriefs.law.gwu.edu/ilpb/2022/10/27/a-look-at-the-united-states-and-italys-criminal-justice-system-pretrial-rights-and-detainment/>

### **Course 6 European Data Privacy, Brexit and European Cooperative federalism**

*Wednesday 8/11/2023- Prof. Paul De Hert*

*One hour lecture starting at 4 PM*

The European Union's approach to data privacy is based on individual dignity, "In the EU, data protection is a fundamental right anchored in interests of dignity, personality, and self-determination." Unlike the United States, where the word "privacy" is not mentioned in the Constitution, the European Union has a treaty, the European Convention of Human Rights, which explicitly mentions the right to privacy. The Charter of the Fundamental Rights of the European Union, article 8, Dec. 18, 2000, states that, "1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority." Therefore, the European Union may arguably have a more comprehensive or robust set of principles addressing data privacy than other countries.

On May 25, 2018, the General Data Protection Regulation (GDPR), the data protection law of the European Union, became effective in the European Union. The GDPR has become a model for many other countries' data protection laws.

- <https://studentbriefs.law.gwu.edu/ilpb/2022/03/15/concerns-of-data-privacy-enforcers-post-brexit/>

<https://studentbriefs.law.gwu.edu/ilpb/2023/02/28/privacy-vs-free-speech-challenges-with-adopting-the-european-unions-right-to-be-forgotten-in-the-united-states/>

<https://studentbriefs.law.gwu.edu/ilpb/2022/03/22/regulating-biometric-identification-in-india-lessons-learned/>

-P. De Hert, 'EU sanctioning powers and data protection. New tools for ensuring the effectiveness of the GDPR in the spirit of cooperative federalism' in S. Montaldo, F. Costamagna, A. Miglio (eds.), *EU law enforcement: The evolution of sanctioning powers*, Routledge, book series Researches in EU law, London: Routledge, 2021 (338p.), 291-324