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The Normative Relevance of Foreign Law

The practice of comparative law assumes the normative relevance of foreign law within a local legal order. Is this postulate well-founded? But how to justify foreign law's normative impact? And how much normative strength is acceptable? Constitutional adjudication in the U.S. Supreme Court — one of the world's most influential legal agents — provides a rewarding opportunity to explore these complex issues and to investigate their far-reaching legal/political implications.

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Wiley's v. Kirtsaeng (U.S. Supreme Court, 2012): "First-sale doctrine".

Lozano v. Alvarez (U.S. Supreme Court, 2014): The court "shall order the return of the child, *unless it is demonstrated that the child is now settled in its new environment*"; "equitable tolling".

"American Laws for American Courts", or "ALAC".

Roper v. Simmons (U.S. Supreme Court, 2005): "[W]hile *not controlling* [the case's] outcome", foreign law "provid[es] respected and significant *confirmation* for [the Court's] own conclusions" (Kennedy J.).

Habermas: A constitution allows a people to "clarify the way they want to understand themselves as citizens of a specific republic, as inhabitants of a specific region, as heirs to a specific culture, which traditions they want to perpetuate and which they want to discontinue, how they want to deal with their history, with one another, with nature, and so on" (Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State", transl. Shierry W. Nichol森, in Amy Gutmann, ed., *Multiculturalism: Examining the Politics of Recognition* [Princeton U.P., 1994], p. 125).

Choudhry notes the "[t]he identity-affirming possibilities of comparative engagement" (Sujit Choudhry, "How To Do Comparative Constitutional Law in India", in Sunil Khilnani, Vikram Raghavan, and Arun K. Thiruvengadam, eds, *Comparative Constitutionalism in South Asia* [Oxford U.P., 2013], p. 48).