

LS 139 Comparative Perspectives on Norms and Legal Traditions

Spring 2014

Tues-Thurs 11:00-12:30

Professor Laurent Mayali

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Readings will be posted on bcourse

Office Hours Tues: 1:30 -2:30 and Thurs 1:30-3:00 (Boalt Hall North Addition # 429)

Class requirements: 2 short papers and one final paper.

Paper topics will be based on class reading material and discussion.

Final grade Breakdown:

- final paper (6-7 pages) 45%
- 2 short papers (3-4 pages) 35%
- Section 20%

1st paper due date: 20TH February

2nd paper due date: 3rd April

Final Paper due date : 13th May

What is Comparative Law? Definition, Methodology, Tools and Objectives.

Readings:

1-23 *Steiermark, A description of European nations*

Pierson v. Post Supreme Court of New York, 1805, 3 Cai r. 75

Definition ;Alan Watson, Konrad Zweigert, Geoffrey Hazard, Arthur von Mehren, John Reitz and others..

1-28 *L. Backer, Harmonizing law in an era of globalization: convergence, divergence and resistance: 10-13.*

Thomas Fischer, What's wrong with globalization? 3-18 and 137-168.

Legal Tradition, Legal Culture, Legal Families, and Legal Systems.

Rene David-John Brierley, Major Legal systems in the world today, 17-29.

Konrad Zweigert and H. Kötz, Legal families of the world, 63- 73.

Peter de Cruz, Convergence and Divergence of legal systems

Customary Law: Definition, authority, and interpretation: Traditional Norms and Legal Systems.

Readings:

1-30 *A. Dundes Renteln-A, Dundes, Folk Law, What is Folk Law? 1-4*

J.P.B. De Josselin de Jong, Customary Law: A confusing Fiction, pp. 111-117

Peter Oberech , The place of customary law in democratic societies, The role of customary law in sustainable development, pp. 338-340.

2-4 *Abdulumuni Oba, The future of customary law in Africa , pp. 58-80.*

African Customary Law: Judicial Proverbs (Zaire)

Nigeria, Supreme Court, Idundun v. Okumagba, 8 October 1976.(excerpts)

Kenya, Court of Appeal, Nairobi, S.o. v. L.A.M., 12 May 2006. (excerpts)

Ouganda, Court of Appeal, Kampala, Rwabinumi v. Bahimbisomwe, 25 August 2006. (excerpts)

Natural Law, International Legal Order and States' Laws.

Readings:

- 2-6** *Sophocles, Antigone, 364-507.*
Aristotle, Nichomachean Ethics, I.
Cicero, On the Laws I.10
Gratian, Decretum, Distinctio I and 5
Thomas Aquinas, Summa Theologica I-II, Quaestio 90,
- 2-11** *Hugo Grotius, (1583-1645) On the Law of War and Peace, Book I chap. 9-14.*
Samuel von Pufendorf (1632-1694) Of the Law of nature and Nations, Book II
Chap. 1-

Constitutional Culture and Society.

Readings:

- 2-13/18** Walter F. Murphy, Constitutions, Constitutionalism, and Democracy, in
Constitutionalism and Democracy, ed. D. Greenberg et alii, pp. 3-20.
*Preambles of the Constitutions from : USA-Spain-Germany-France-Ireland-Italy-
Greece-Portugal- Switzerland, Argentina- Brazil- Bolivia- Columbia- Paraguay-
South Africa- Zambia- Namibia- Rwanda- Congo-Madagascar - Mauritania-
Koweit- Oman-Libya- Syria – India, South Korea-China-Taiwan-Tibet-Japan-
Thailand-Belarus-Bosnia-Bulgaria-Estonia-Lithuania-Russia-Croatia-*

The Civil Law Tradition:

Readings:

- 2-20** *John H. Merryman, The Civil Law Tradition, pp. 20-25 and 34-47.*
Alan Watson, The Making of the Civil Law, pp. 179-189.
David Johnston Roman Law in Context: The Sources of Roman Law. 12-27.
Roman Law, The Digest and the Institutes of Justinian (525-535) , Foreword,
The promulgation of the Digest, Book I Title I Justice and Law.
- 2-25** *The Medieval Ius Commune : Medieval Jurists: Azo, Accursius, Bartolus and*
Baldus (12th-14th century) Commentary on the legislative powers of the emperor.
1-4.
Franz Wieacker, The Beginnings of European Legal Science, pp. 28-46.

The Formation and the Nature of the Common Law: Expansion and Diffusion.

Readings

- 2-27** *S.F.C. Milsom, Historical foundations of the common law, 11-36*
Allan Hutchinson, Evolution and the Common Law, pp. 1-15.
- 3-4** *Hoffer, Law and people in colonial America, 1-26.,*
Paterson, Common Law in the South Pacific, pp. 22-31

Legal Codes and the development of the Nation-State.

Readings

- 3-6** *John H. Merryman, The civil Law tradition: Chap. 5: Codes and Codification.*
Peter van den Berg, The politics of European codification: codification and the
formation of national states, pp. 264-275. 3-12
- 3-11** *Franz Wieacker, The Natural law Codes, 257-275.*

Konrad Zweigert Hein Kotz, *The French Civil Code, The German Civil Code*

Law, Political Culture and Codification in Central and Latin America.

Readings:

- 3-13** *Treaty between Spain and Portugal concluded at Tordesillas; June 7, 1494 Ratification by Spain, July 2, 1494., Ratification by Portugal, September 5, 1494. Garcilaso de la Vega, The Royal Commentaries of Peru, Trans. Paul Ricavi, London, 1688, Book I, chap. 13-15, Book II, chap. -7., Simón Bolívar, An Address of Bolivar at the Congress of Angostura (February 15, 1819);*
- 3-18** *Rogelio Perdomo-Lawrence Friedman, Latin legal cultures in the age of globalization, pp. 1-17*
Jorge A. Vargas , The Legal Significance of Codes in Mexico; Honduras, Civil Code, preliminary title;
The Civil Code of Columbia, art. 1-20 Jaime Gil Sanchez, The Legal System of Colombia, 1-12.
Mexico Federal Civil Code, Preliminary provisions; Sergio Lopez-Ayllon, The rule of law and legal changes in Mexico, 285-339.

[Spring Break: 3-25 to 3-29]

Religious Law: Concept and Legal system. Canon Law, Sources and Institutions

- 3-20** *John Paul II, Apostolic Constitution, Sacrae Disciplinae Leges; John Coughlin, Canon Law, pp. 17-48*
Gratian, Decretum, Distinctions 3 and 4. Pontifical Decretals and the Formation of the Corpus Iuris Canonici. Decretists' and Decretalists' schools.
- 4-1** *Harold Berman, The Canon Law of Crimes, Law and revolution, 185-198. Silvio Ferrari, Canon law as a religious legal system, in pp. 49-57,*

Religious Law: Concept and Legal system: Islamic Law.

- 4-3** *Majid Khadduri, Nature and Source of Islamic Law, 5-21; Ahmed Akgündüz,, Introduction to Islamic law: Shari'ah, fiqh and Islamic law, pp. 19-37*
- 4-8** *Sami Zubaida, Law and power in the Islamic world, The politics of the Sharia in Iran, pp. 182-219. Preamble to the constitution of Iran*
Preambles to the constitutions of Iraq, Pakistan, Afghanistan and Tunisia (draft)

Religious Law: Concept and Legal System. Jewish Law

- 4-10** *N.S. Hecht, An introduction to the history and sources of Jewish law, pp. Steven Resnicoff, Understanding Jewish Law*
Moshe Silberg, Talmudic Law and the modern state, pp 1-10 and 49-60
- 4-15** *Bernard Jackson, Judaism as a religious legal system, pp. 34-45*

David Wermuth, Human Rights in Jewish Law: Contemporary Juristic and Rabbinic Conceptions, 1125-1132.

Religious Law : Concept and Legal System. Buddhist Law and Hindu Law.

- 4-17** Andrew Huxley, *Buddhist Law as a religious system?* pp. 127-144
Werner Menski, *Hindu Law as “religious” system*, pp. 108-125

Socialist law: Public Order, State’s Ideology and Legal Rules.

Public Interest and Private Rights.

- 4-22** Konrad Zweigert, Hein Kotz, *Introduction to Comparative Law, The Socialist Legal Family*, 293-305.
Gianmaria Ajani, *Formalism and Anti-formalism under Socialist Law The Cuban Constitution. Chap. I. Political, social and economic foundations of the State.*
Cuban Civil Code. Preliminary provisions.
- 4-24** Viet Nam Constitution, chapter I, Art. 1- 12.
People Republic of China, *Constitution: art. 1- art. 12.*
He Hua-Hui, *The special characteristics of the Constitution of the People’s Republic of China, Law in East and West*, 443- 462.
Jianfu Chen, *China and the Rule of Law, Law, Legal culture and politics in the 21st century*, 250-272
Randall Peerenboom, *Legal thought and legal development in the People’s republic of China 1949-2008.*,

African Legal Pluralism and the Law Making process: Customary Law, Statutory Law and Administration of Justice.

- 4-29** N. Rouland, *Legal Anthropology, traditional legal systems*, 151-63.
Gordon Woodman, *A survey of Customary Laws in Africa in search of lessons for the future*, 9- 30
- 5-1** Yash Ghai, *Constitutions and Governance in Africa, Law and Crisis in the 3rd world*, 51-75.
Ali Mari Tripp, *Women’s movements, Customary law, and land rights in Africa: The case of Uganda*, 9-18

Reading Week: 5-6 to 5-10