Professor Laurent Mayali  
LS 139  Comparative Perspectives on Norms and Legal Traditions  
M-W-F 9:00-10:00 ; lmayali@law.berkeley.edu  
Readings will be posted on bspace  
Office Hours Wednesday 10:30-12:30

Introduction.
What is Comparative Law? Definition, Methodology, Tools and Objectives.
Readings:
1-25  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.
1-30  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.

Customary Law: Definition, authority, and interpretation: Traditional Norms  
and Legal Systems.
Readings:
2-1  A. Dundes Renteln-A, Dundes, Folk Law, What is Folk Law? 1-4  
Martin Chanok, The place of customary law in democratic societies, The role  
of customary law in sustainable development, pp. 338-380.
2-6  K. Brown, Reconciling customary law and received law in Melanesia, pp. 49-70.

Natural Law, International Legal Order and States’ Laws.
Readings:
2-8  Sophocles, Antigone, 364-507.
Aristotle, Nichomachean Ethics, I.
Gratian, Decretum, Distinctio I and 5  
Thomas Aquinas, Summa Theologica I-II, Quaestio 90,
Samuel von Pufendorf (1632-1694) Of the Law of nature and Nations, Book II  
Chap. 1-

Constitutional Culture, Individual Rights and Public Order.
Readings:
2-13/20  Walter F. Murphy, Constitutions, Constitutionalism, and Democracy, in  
Preambles of the Constitutions from : USA-Spain-Germany-France-Ireland-Italy-  
Greece-Portugal- Switzerland
The Civil Law Tradition:  
-The Legacy of Roman Law. From Byzantium to the Medieval “Ius Commune” and the Rise of the Early Modern State.
Readings:
Roman Law, The Digest and the Institutes of Justinian (5250535) , Book I Title I  
Justice and Law.  
2-27 Medieval Jurists: Azo, Accursius, Bartolus and Baldus (12th-14th century)  
Commentary on the legislative powers of the emperor. 1-4.  

Readings
3-1 S.F.C. Milsom, Historical foundations of the common law, 11-36  
3-4 Hoffer, Law and people in colonial America, 1-26.,  
3-6 Paul McHugh, Aboriginal societies and the common law, pp. 1-23  
Dan Paterson, The application of common law and equity in countries of the  

Legal Codes and the development of the Nation-State.  
Readings
3-8 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  

Law, Political Culture and Codification in Central and Latin America.  
Readings:
3-15 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  
3-18 Simón Bolívar, An Address of Bolivar at the Congress of Angostura (February  
15, 1819);  
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;

Mexico Federal Civil Code, Preliminary provisions; Sergio Lopez-Ayllon, The rule of law and legal changes in Mexico, 285-339.

Religious Law: Concept and Legal system. Canon Law, Sources and Institutions
3-22 John Paul II, Apostolic Constitution, Sacrae Disciplinae Leges; John Coughlin, Canon Law, pp. 17-48

Religious Law: Concept and Legal system. Islamic Law.
4-5 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
4-10 Preambles to the constitutions of Iraq, Pakistan, Afghanistan and Tunisia (draft)

Religious Law: Concept and Legal System. Jewish Law
4-12 N.S. Hecht, An introduction to the history and sources of Jewish law, pp.
4-15 Steven Resnicoff, Understanding Jewish Law
Moshe Silberg, Talmudic Law and the modern state, pp 1-10 and 49-60
4-17 Bernard Jackson, Judaism as a religious legal system, pp. 34-45

4-19 Andrew Huxley, Buddhist Law as a religious system? pp. 127-144
4-22 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.
4-24 Konrad Zweigert, Hein Kotz, Introduction to Comparative Law, The Socialist Legal Family, 293-305.
The Cuban Constitution. Chap. I. Political, social and economic foundations of the State.


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.


N. Rouland, Legal Anthropology, traditional legal systems, 151-63.


Yash Ghai, Constitutions and Governance in Africa, Law and Crisis in the 3rd world, 51-75.


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)

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

Reading Week: 5-6 to 5-10

Grade Breakdown
20% Section
30% Mid-term Paper (4-5 pages) due 4-1
50% Final Paper (6-7 pages) due 5-13