

**Professor Laurent Mayali**

**LS 139 Comparative Perspectives on Norms and Legal Traditions**

**M-W-F 9:00-10:00 ; [lmayali@law.berkeley.edu](mailto: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*  
*Alan Watson, An Approach to Customary Law, 141-157.*  
*Martin Chanok, The place of customary law in democratic societies, The role of customary law in sustainable development, pp. 338-380.*
- 2-4** *Customary Justice: From Program design to Impact evaluation. pp. 17-30.*
- 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,*
- 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, Individual Rights and Public Order.**

*Readings:*

- 2-13/20** *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*

- 2-15 Argentina- Brazil- Bolivia- Columbia- Paraguay- South Africa- Zambia- Namibia- Rwanda- Congo-Madagascar - Mauritania- Koweit- Oman-Libya- Syria - India
- 2-20 South Korea-China-Taiwan-Tibet-Japan-Thailand-Belarus-Bosnia-Bulgaria- Estonia-Lithuania-Russia-Croatia-

### **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:*

- 2-22 John H. Merryman, *The Civil Law Tradition*, pp. 20-25 and 34-47.  
Alan Watson, *The Making of the Civil Law*, pp. 179-189.
- 2-25 David Johnston *Roman Law in Context: The Sources of Roman Law. 12-27. 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 (12<sup>th</sup>-14<sup>th</sup> 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*

- 3-1 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.,
- 3-6 6Paul McHugh, *Aboriginal societies and the common law*, pp. 1-23  
Dan Paterson, *The application of common law and equity in countries of the South Pacific*, *Journal of Pacific studies* (1997) 1-11 and 22-31.

### **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
- 3-11 Franz Wieacker, *The Natural law Codes*, 257-275.
- 3-13 Konrad Zweigert Hein Kotz, *The French Civil Code, The German Civil Code*

### **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 Ricavi, London, 1688, Book I, chap. 13-15, Book II, chap. -7.,
- 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;*

*The Civil Code of Columbia,art. 1-20 Jaime Gil Sanchez, The Legal System of Colombia, 1-12.*

**3-20** *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*

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

**4-1** *Gratian, Decretum, Distinctions 3 and 4. Pontifical Decretals and the Formation of the Corpus Iuris Canonici. Decretists' and Decretalists' schools.*

**4-3** *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.**

**4-5** *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*

*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.**

**4-19** *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.*

*Cuban Civil Code. Preliminary provisions.*

**4-26** *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 21<sup>st</sup> 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** *Abdulumuni Oba, The future of customary law in Africa, 58-80.*

*Yash Ghai, Constitutions and Governance in Africa, Law and Crisis in the 3<sup>rd</sup> world, 51-75.*

**5-3** *Paul Kuruk, Customary Water Laws and Practices : Nigeria, 1-17.*

*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)*

### **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