COMPARATIVE LAW IN A GLOBAL PERSPECTIVE

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Course description

The course introduces and analyzes comparative law in a global perspective, providing students with an overview of the most important legal traditions of the world.

The first part of the course focuses on the meaning of comparative law and introduces basic concepts, such as those of legal traditions, legal transplants and legal pluralism, considering legal globalization as one of the most important developments for contemporary legal studies.

The second part deals with the core of the Western legal traditions analyzing the Common law & Civil law archetypical divide. It also analyses mixed legal systems, their distinctive traits and growing importance for comparative legal studies. The meaning of democracy and human rights as Western or universal values is investigated as well in this part of the course.

The third cycle broadens the course’s comparative spectrum to some of the most important non-Western/non-European legal traditions (Sub-Saharan, East-Asian, Talmudic, Islamic and Latin American) and questions the possible reconciliation of legal diversity on a global scale.

The course will provide students with the opportunities to:

1. Better appreciate how cultural, social and historical factors dialogue and interrelate with the development of legal structures, doctrines, and substantive rules;
2. Approach the study of some of the major legal traditions of the world and their contemporary relevance;
3. Acquire tools for understanding the impact of globalization on legal and political structures;
4. Enhance argumentative and legal analysis skills via class discussion and exchange.

Course Requirements

The course will be conducted in a seminar format, having students taking part of the responsibility for leading the common discussion. Prior to each lecture, students are requested to read the materials identified at the beginning of the course and available on-line (or via Dropbox). During lectures, students are expected to comment on the texts that they were requested to read, encouraging critical thinking, active participation and thought-provoking exchanges in class.
Grading and Assessment

Grades will be based on:

- **Class participation (20%)**
  Class participation is a really meaningful part of the final grade. Students are expected to be familiar with the readings and be prepared for each class.

- **Discussion Paper (30%)**
  Each student will choose one of the topics listed in the syllabus among the “Assignments” (second week). S/he will prepare a short discussion paper (1-2 pages) focusing on a concrete case-study able to illustrate the assigned topic and the dynamic interaction between legal traditions and contemporary legal developments/trans formations. The discussion paper will be briefly presented and analyzed in class (5-10 min) with the aim of triggering the common discussion.

- **Comparative Legal Research (50%)**
  The final comparative legal research will focus on one or more comparative legal issues freely chosen by students and agreed upon with the supervisor. Creativity and critical analysis are really important for writing a good essay. For a successful essay, students should be able to clearly structure their reasoning, correctly cite sources and materials, and be able to bring good arguments to support their ideas.

Required Texts

- Mauro Bussani and Ugo Mattei, *The Cambridge Companion to Comparative Law*, CUP 2012 (Bussani and Mattei)

All other readings will be available through Dropbox

Assignments and Announcements

This two-week course will take place over the period June 17-29, 2019, meeting five times per week (8.30 – 13.00). It will meet from Mon-Friday during the first week (17-21/6) and from Tuesday-Saturday over the second week (25-29/6).

Reading assignments will be drawn from the syllabus below. Assignments are listed by session. In principle, the order by which materials are listed corresponds to the order they will be discussed during class hours.
Course Syllabus

Part I

The Meaning of Comparative Law in the Contemporary Legal “Brave New World”

• Session I - 17 June (8.30 – 13.00)

*What Comparative Law Is and Is Not (2h)*

- Mathias Reimann, *Comparative Law and Neighboring Disciplines*, in Bussani and Mattei, 13-34

Optional Reading


*Comparative Law and Legal Pluralism (2h)*


- Mauro Bussani, *Comparative Law Beyond the Trap of Western Positivism*, in Tong-Io Cheng and Salvatore Mancuso (eds.), New Frontiers of Comparative Law, Lexisnexis, 2013, 1-9


• Session II - 18 June (8.30 – 13.00)

*Comparative Law and Legal Globalization (4h)*


II Part
Western Legal Traditions

• Session III – 19 June (8.30 – 13.00)

  *The Civil Law Tradition (4h)*


  - *The Structure of the Legal Profession* (excerpts the Education of Civil lawyers Damaska - The Legal Profession vs the Legal Professions – Merryman), pp. 53 – 63


• Session IV – 20 June (8.30 – 13.00)

  *The Common Law Tradition and Mixed Jurisdiction (4h)*


  - JH Merryman, On the convergence (and divergence) of the civil law and the common law, Stan. J. Int'l L., 1981


• Session V – 21 June (8.30 – 13.00)

  *Democracy and Human Rights: Western or Universal legal values? (4h)*


*Optional Reading:*

### Part III

**Comparative Law Across Legal Traditions**

- **Session VI – 25 June (8.30 – 13.00)**

  *The Chthonic and African (Sub-Saharan) Legal Traditions* (4h)


  - Rodolfo Sacco, *The Sub-Saharan Legal Tradition*, in Bussani and Mattei 313-339

  **Assignment**
  Contemporary legal issues: The re-emergence of traditional justice systems in Sub-Saharan Africa

- **Session VII – 26 June (8.30 – 13.00)**

  *The East Asian Legal Tradition* (4h)

  - Teemu Ruskola, *The East Asian Legal Tradition*, in Bussani and Mattei, 257-276


  **Assignment**
  Contemporary legal issues: Political Hinduism and Minority Rights

- **Session VIII – 27 June (8.30 – 13.00)**

  *The Islamic Legal Tradition* (4h)


**Assignment**
Contemporary legal issues: Transformations and Revivals of Sharia Law

- **Session IX – 28 June (8.30 – 13.00)**

  *The Talmudic Legal Tradition* (4h)

  **Assignment**
  Contemporary Legal Issues: Israel as a Jewish State

- **Session X – 29 June (8.30 – 13.00)**

  *Legal Hybridity in Latin America and the Reconciliation of Legal Diversity* (4h)

  **Assignment**
  Contemporary legal issues: Latin America’s current challenges

Optional Readings: