

COMPARATIVE LAW IN A GLOBAL PERSPECTIVE

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Course description

The course approaches comparative law and legal studies from a genuine global perspective.

It provides students with an overview of the most important legal traditions of the world, questioning state-centered paradigms and investigating current legal transformations.

The first part of the course focuses on the meaning of comparative law and introduces fundamental 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, through concrete case studies and via class debates.

The third cycle broadens the course's comparative spectrum, approaching some of the most important non-Western/non-European legal traditions (Sub-Saharan, East-Asian, Hindu, Talmudic, Islamic and Latin American), while investigating possible reconciliations 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 present relevance and vitality;
3. Acquire tools for understanding the impact of globalization on legal and political structures and the limits of State-centered legal paradigms;
4. Appreciate culturally pluralist perspectives on law, while acquiring a comparative legal method and a global understanding of the contemporary legal transformations;
5. 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.

In the second week (Session V) the class will be divided in groups and each student will be requested to argue in favor OR against the thesis of the universality of democracy/human right...but regardless to her/his personal opinion about it ☺ The idea is to engage in a meaningful class debate on one of the core topics of the course, while learning to appreciate the reasons of “the others”.

- ***Discussion Paper (plus/minus)***

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 (MAX 750 words) focusing on a concrete and recent (2019-2023) case-study able to illustrate the assigned topic and the dynamic interaction between legal traditions and contemporary legal developments/transformations. The goal will be to demonstrate how “alive” legal traditions still are (eg. Contemporary legal reforms/important judgments/constitutional amendments etc.).

The discussion paper will be uploaded on the common folder 24h before the course and then briefly presented and analyzed in class (5-10 min) with the aim of triggering the common discussion.

- ***Comparative Legal Research and Group Presentation (80%)***

The final comparative legal research will focus on “Latin America’s current challenges”. The class will be divided in groups. Each group will work on a common research project, which will be presented as a formal lecture in class (two last sessions), in a peer-to-peer exchange exercise. Each student will then write her/his own contribution to the group assignment (max 1500 words, excluded footnotes and bibliography). Creativity and critical analysis are really important for writing a good essay. Students should be able to clearly structure their reasoning, correctively cite sources and materials, and be able to bring good arguments to support their ideas.

Required Texts and Assignments

Mauro Bussani and Ugo Mattei, *The Cambridge Companion to Comparative Law*, CUP 2012 (Bussani and Mattei) and H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014

All other readings will be available through Dropbox

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**

What Comparative Law Is and Is Not (1h30h)

No mandatory readings

Optional Reading

- Günther Frankenberg, *Critical Comparisons: Re-thinking Comparative Law*, 26 Harv. Int’l L. J. 411, 426-440 (1985)
- Mathias Reimann, *Comparative Law and Neighboring Disciplines*, in Bussani and Mattei, 2012, 13-34

Comparative Law and Legal Pluralism (1h30h)

- S.E. Merry, *Legal Pluralism*, 22 L. & Soc. Rev. 869-879, esp. 889-890 (1988) (skim)
- Mauro Bussani, *Comparative Law Beyond the Trap of Western Positivism*, in Tong-Io Cheng and Salvatore Mancuso (eds.), *New Frontiers of Comparative Law*, Lexisnexus, 2013, 1-9
- B. D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 L. & Soc. Inq. 383–420 (2006)

- **Session II**

Comparative Law and Legal Globalization (3h)

- Günther Frankenberg, *Constitutional Transfer: The IKEA Theory Revisited*: 8 Int’l J. Con. L. 563-579 (2010)
- Wade Channell, *Lessons Not Learned: Problems with Western Aid for Law Reform in Post-communist Countries*, Carnegie Papers, (2005)
- V. Volpe, *Drafting Counter-majoritarian Democracy. The Venice Commission’s Constitutional Assistance*, in “Heidelberg Journal of International Law”, Vol. 76, No. 4, (2016), pp. 811 – 843.

II Part

Western Legal Traditions

- **Session III**

The Civil Law Tradition (1h30)

- H. Patrick Glenn, A Civil Law Tradition: The centrality of the Person, Ch. 5, in H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014
- *The Structure of the Legal Profession* (excerpts the Education of Civil lawyers Damaska - The Legal Profession vs the Legal Professions – Merryman), pp. 53 – 63

Optional Reading

- James Q. Whitman, *The Two Western Cultures of Privacy: Dignity v. Liberty*, 113 Yale L. J. 1151-1171, 1202-1219 (2003-2004)

The Common Law Tradition and Mixed Jurisdiction (1h30h)

- H. Patrick Glenn, A Common Law Tradition: The ethic of Adjudication, Ch. 7, in H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014
- William Tetley, *Mixed Jurisdictions: common law vs civil law (codified and uncodified)*, Rev. dr. unif. 1999 – 3, pp. 591 – 618

Optional Reading

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

- **Session IV**

Human Rights: Western or Universal legal values? (1h30)

- A. Peters, *The Importance of Having Rights*, Heidelberg Journal of International Law, 81, (2021) pp. 7 – 22.
- A. Sen, *Human Rights and Asian Values*, Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy, Carnegie Council on Ethics and International Affairs (1997), 7-31
- R. Kapur, Human Rights in the 21st Century: Take a Walk on the Dark Side, in Sidney Law Review, 2006, pp. 665 – 687, available at http://sydney.edu.au/law/slr/slr28_4/Kapur.pdf

Optional reading

- Jack Donnelly, *The Relative Universality of Human Rights*, Human Rights Quarterly, Vol 29, 2007, pp. 281-306

Human Rights: Western or Universal legal values? The case of sexual mutilations (1h30)

- Rassbach, *Religious male circumcision*, University of Illinois Law Review, 2016, pp. 1347-1360
- F. Ammaturo, *Intersexuality and the 'Right to Bodily Integrity': Critical Reflections on Female Genital Cutting, Circumcision, and Intersex 'Normalizing Surgeries' in Europe*, Social & Legal Studies 2016, Volume 25, n°5, pp. 591–610
- B. D. Earp, *Female genital mutilation and male circumcision: toward an autonomy-based ethical framework*, Medicolegal and Bioethics, Dove Press, 2015, pp. 89-104

Recommended Documentary

- The Cut: Exploring FGM, Al Jazeera - <https://www.youtube.com/watch?v=TWIzaD4-y4>

- **Session V**

Democracy: Western or Universal legal value? (3h)

- S. Cassese, *Global Standards for National Democracies*, Inaugural Lecture, EUI, Academic year 2010-2011
- M. Bussani, *Democracy and the Western Legal Tradition*, in M. Bussani and U. Mattei (eds.), *The Cambridge Companion to Comparative Law*, CUP: Cambridge, 2012, 384- 396
- V. Volpe, *The Importance of Being Earnest. The United Nations and Democracy-Promotion*, in F. Fiorentini – M. Infantino (eds.), *Mentoring Comparative Lawyers: Methods, Times, and Places. Liber Discipulorum Mauro Bussani*, Springer, 2019, pp. 219 – 235.
- **CLASS DEBATE: Universality YES or NOT? (50/50)**

Part III

Comparative Law Across Legal Traditions

- **Session VI**

The Chthonic and African (Sub-Saharan) Legal Traditions (3h)

- H. Patrick Glenn, *A chthonic Legal Tradition: To recycle the world*, Ch. 3, H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014
- Rodolfo Sacco, *The Sub-Saharan Legal Tradition*, in Bussani and Mattei 313-339

Assignment

Contemporary legal issues: The re-emergence of traditional law in Sub-Saharan Africa and the global rediscovery of the Chthonic Legal Tradition

- **Session VII**

The East Asian Legal Tradition (1h30)

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

Assignment

Contemporary legal issues: Confucianism and East-Asian Legal developments

The Hindu Legal Tradition (1h30)

- H. Patrick Glenn, A Hindu Legal Tradition: The law is King but which Law? Ch. 8, H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014

Assignment

Contemporary legal issues: Political Hinduism and legal transformations in India

- **Session VIII**

The Islamic Legal Tradition (1h30)

- H. Patrick Glenn, An Islamic Legal Tradition: The Law of a Later Revelation, Ch. 6 in H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014

Optional reading

- Ghislaine Lydon, *Inventions and Reinventions of Sharia in African History and the Recent Experiences of Nigeria, Somalia and Mali*, *A Journal of African Studies*, 40(1), 2018 (skim)

Assignment

Contemporary legal issues: Transformations and Revivals of Sharia Law

The Talmudic Legal Tradition (1h30)

- H. Patrick Glenn, A Talmudic Legal Tradition: The perfect author, Ch. 4, H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014

Assignment

Contemporary Legal Issues: Israel as a Jewish State?

- **Sessions IX - Monday and X Tuesday**
Class Presentations

Assignment

Contemporary legal issues: Latin America's current challenges

Readings:

Legal Hybridity in Latin America and the Reconciliation of Legal Diversity

- Diego López-Medina, *The Latin American and Caribbean Legal Traditions*, in Bussani and Mattei, 344-366
- H. Patrick Glenn, *Reconciling Legal Traditions: Sustainable Diversity in Law*, Ch. 10 in H. Patrick Glenn, *Legal Traditions of the World*, OUP, 2014

Optional Readings

- Jorge L. Esquirol, *The Impact of Transnational Comparativism on Law in Latin America*, in Mauro Bussani & Lukas Heckendorn Urscheler (eds.), *The Impact of Foreign and International Law on National Legal Systems. Comparisons in Legal Development* (2016)
- Anne Peters, Heiner Schwenke, *Comparative Law beyond Post-Modernism*, in *The International and Comparative Law Quarterly*, Vol. 49, No. 4 (Oct., 2000), pp. 800-834