

COMPARATIVE LAW

Professor William J. Aceves
Office 302
515-1589
wja@cwsl.edu

Fall 2005
Tue./Thur. 2:40 - 3:55
Multi Media Room

Introduction

Comparative law has a rich tradition. Indeed, the comparative approach was used in Plato's *The Republic* and Aristotle's classic work *Politics*. In *Politics*, Aristotle reviewed over 150 constitutions of Greek and other city-states to identify (what he believed to be) the best form of government. The comparative approach can also be found in such classic works as Thomas Hobbes' *Leviathan*, John Locke's *Two Treatises of Government*, and Alexis de Tocqueville's *Democracy in America*.

The field of comparative law is quite diverse. It includes the study of macro-level systems such as international law and European Union law. It also includes the study of micro-level systems such as common law and civil law approaches, Islamic law, and indigenous legal systems. Despite this diversity, the goal of comparative law remains constant – to provide a basis for critical comparisons between legal systems.

Comparative law is unique among law school courses because it is a method of study rather than a body of rules. For this reason, it has been described as “an intellectual activity with law as its object and comparison as its process.” Its underlying methodology involves the use of comparative analysis – that is, how to look at diverse norms, rules, and institutions from a comparative perspective. Because it provides a point of comparison, the study of comparative law is useful to students, practitioners, legislators, and judges.

This course has several goals. It seeks to teach students about the comparative method. It then seeks to introduce students to a number of different legal systems. Through this course, students will gain a greater awareness of the diversity of law and legal institutions. They will also gain a better understanding of the U.S. legal system.

Course Requirements

Students have the option of taking a final exam or writing a research paper. The research paper may be submitted as a scholarly writing paper or as a non-scholarly writing paper. This option must be indicated at the beginning of the semester. Scholarly writing papers have different requirements than non-scholarly writing papers. Students writing papers must submit a brief summary, bibliography, and outline of their proposed work. Rough drafts are also required. The

paper is due on the last day of final exams. The final exam or research paper will count for 60% of the course grade.

Students are also required to prepare a ten page litigation memorandum on a topic that will be distributed to the class. The memorandum will count for 20% of the course grade.

Class participation is an integral component of this course. Class participation includes the following: (1) attendance; (2) punctuality; (3) preparation; and (4) professionalism. Students are expected to attend class regularly, to be punctual, and to be fully prepared to discuss the readings. Accordingly, class participation will count for 20% of the course grade.

Course Materials

Required:

COMPARATIVE LAW COURSE READER

Course Readings

I. An Introduction to Comparative Law

Introduction

-John C. Reitz, *How To Do Comparative Law*, 46 AM. J. COMP. L. 617 (1998)

The Comparative Method Applied to Domestic Problems

- Greenspan v. Slate, 12 N.J. 426 (1953)
- Knight v. Florida, 528 U.S. 990 (1999)
- Roper v. Simmons, 125 S. Ct. 1183 (2005)

The Hazards of Comparative Law

-In re Disciplinary Action Curl, 803 F.2d 1004 (9th Cir. 1986)

An Introduction to Comparative Politics

- Jennifer Widner, *Comparative Politics and Comparative Law*, 46 AM. J. COMP. L. 739 (1998)
- Ricardo Hausmann, *Prisoners of Geography*, FOREIGN POL'Y. 45 (Jan/Feb 2001)
- Lawrence E. Harrison, *Culture Matters*, NAT'L INTEREST 55 (Summer 2000)

II. Foreign Law in U.S. Courts

Pleading and Proof of Foreign Law

- Fitzpatrick v. International Railway Company, 252 N.Y. 127 (1929)
- Federal Rule of Civil Procedure 44.1
- California Evidence Code §§ 450-460
- First Nat'l City Bank v. Compania De Aguaceros, S.A., 398 F.2d 779 (5th Cir. 1968)

Other Considerations: Forum Non Conveniens, Antisuit Injunctions, the Act of State Doctrine, and Public Policy

- Nemariam v. Federal Democratic Republic of Ethiopia, 315 F.3d 390 (D.C. Cir. 2003)
- Kaepa, Inc. v. Achilles Corporation, 76 F.3d 624 (5th Cir. 1996)
- Quaak v. Klynveld Peat Marwick, 361 F.3d 11 (1st Cir. 2004)
- W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., 493 U.S. 400 (1990)
- Tahan v. Hodgson, 662 F.2d 862 (D.C. Cir. 1981)

III. Macro Level Studies

Public International Law

An Overview of International Law

-Steven Ratner, *International Law: The Trials of Global Norms*, FOREIGN POL'Y 65 (Spring 1998)

Case Study: Vienna Convention on Consular Relations

- Breard v. Greene, 523 U.S. 371 (1998)
- Torres v. State of Oklahoma, PCD-04-422, slip op. (Okla. Cr. May 13, 2004)
- Medellin v. Dretke, 2005 U.S. LEXIS 4344 (2005)

Case Study: The International Criminal Court

- Rome Statute of the International Criminal Court, , *entered into force* July 1, 2002, U.N. Doc. A/Conf.183/9, *reprinted at* 37 I.L.M. 99 (1998)

European Union Law

An Overview of European Union Law

- Eric Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 AM. J. INT'L L. 1 (1981)

Case Study: The ECJ and European Integration

- Van Gend en Loos [1963] E.C.R. 1
- Costa v. ENEL [1964] E.C.R. 585

IV. Micro Level Studies

Common Law and Civil Law

An Introduction to the Common Law

- Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000)
- Hart v. Massanari, 266 F.3d 1155 (9th Cir. 2001)

An Introduction to the Civil Law

- Rivera v. Flav-O-Rich, 876 F. Supp. 373 (D.P.R. 1995)
- United States v. Acosta-Martinez, 252 F.3d 13 (1st Cir. 2001)

Islamic Law

An Introduction to Islamic Law

- Frank E. Vogel, *The Trial of Terrorists Under Classical Islamic Law*, 43 HARV. INT'L L.J. 53 (2002)

Case Study: The Rushdie Affair

-SALMAN RUSHDIE, *THE SATANIC VERSES* 3-10; 110-115; 123-126 (1988)

Indigenous Law

An Introduction to Indigenous Rights

-Convention Concerning Indigenous and Tribal Peoples in Independent Countries, entered into force Sept. 5, 1991, reprinted in 28 I.L.M. 1382 (1989)

Case Study: Native Americans

-Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 JUDICATURE 126 (November-December 1995)

-State of Washington v. Guthrie, 77 Wn. App. 678 (1995)

-Carole Goldberg, *Indian Law into the Twenty-First Century: Overextended Borrowing: Tribal Peacemaking Applied in Non-Indian Disputes*, 72 WASH. L. REV. 1003 (1997)

V. Comparative Law in Context

Criminal Law

-Brom McKillop, *Anatomy of a French Murder Case*, 45 AM. J. COMP. L. 527 (1997)

-Averill v. United Kingdom, 31 E.H.R.R. 36 (2001)

Constitutional Law

-Rasul v. Bush, 124 S. Ct. 2686 (2004)

-A (FC) and Others (FC) v. Secretary of State, 2002 UKHL 56 (2004)

VI. The Convergence of Law

The Theory of Convergence

-Francis Fukuyama *The End of History?*, 16 NAT'L INTEREST 3 (Summer 1989)

-John Reitz, *Doubts About Convergence: Political Economy as an Impediment to Globalization*, 12 TRANSNAT'L L. & CONTEMP. PROBS. 139 (2002)

Convergence: American Style

-R. Daniel Kelemen & Eric C. Sibbitt, *The Globalization of American Law*, 58 INT'L ORG. 103 (Winter 2004)

Alternatives to Convergence

-Samuel Huntington, *The Clash of Civilizations?* 72 FOREIGN AFF. 22 (Summer 1993)

-Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFF. 22 (Nov/Dec 1997)