

Comparative Law

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Spring 2010
Mon/Wed. 1:05 a.m. –
2:30 p.m.
Multimedia Room
Office Hours: Mondays
2:45 p.m. - 5 p.m.

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*. There has been scholarship on the influence that the Iroquois played on the specific individuals now called the "Founding Fathers" and the similarities shared with the structure of the Iroquois Confederation, probably completed by 1525, by the U.S. Constitution. We trace humankind's attempt to weaves together a "mosaic of history".

The field of Comparative Law is quite diverse. It includes the study of macro-level systems such as international law, the law of the North American Free Trade Agreement and other bilateral and regional trade agreements around the globe (numbering more than 300) as well as 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 shall write 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. Please speak with your Legal Skills professors concerning the requirements and citation formats. Students must submit a brief summary, bibliography, and

outline of their proposed work by 5 p.m. on Monday, March 1, 2010 and be prepared to present it during class time for twelve to fifteen minutes starting March 12, 2010. The paper is due by 5 p.m. on Monday, April 26, 2010. The paper must be printed and submitted to Faculty Support Services (225 Cedar Street, 3rd floor) and date/time stamped there. The final paper will count for 60% and the presentation 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. Each student will present his/her paper topic for ten to fifteen minutes in March. There are push points as part of the grading system in this course.

Course Materials

Required:

COMPARATIVE LAW COURSE READER

Course Outline and Readings

I. An Introduction to Comparative Law

Monday, January 4, 2010 *Introduction to the Course/Discussion of Course Themes*

Required Reading:

Course syllabus

Wednesday, January 6, 2010 *Comparative Law – Legal Anthropology or Legal Science?*

Required Reading:

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

Friday, January 8, 2010 *The Comparative Method Applied to Domestic Problems*

Required Reading:

Greenspan v. Slate, 12 N.J. 426 (1953)

Knight v. Florida, 528 U.S. 990 (1999)

Roper v. Simmons, 125 S. Ct. 1183 (2005) (excerpts)

Monday, January 11, 2010 *Film: Our Brand is Crisis*

Wednesday, January 13, 2010 *Film: Our Brand is Crisis - Class Discussion*

Monday, January 18, 2010 No class – Martin Luther King Day

Wednesday, January 20, 2010 *An Introduction to Comparative Politics*

Required Reading:

Ricardo Hausmann, *Prisoners of Geography*, FOREIGN POL'Y. 45 (Jan/Feb 2001)

Lawrence E. Harrison, *Culture Matters*, NAT'L INTEREST 55 (Summer 2000)

Lecture on Scholarly Writing Requirement by Professor Roberta Thyfault.

Monday, January 25, 2010 *Comparative Law and Politics in Bolivia*

Lecture by Professor Nancy Postero, UCSD Department of Anthropology

II. Macro Level Studies

Wednesday, January 27, 2010 *Public International Law*

Required Reading:

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

James M. Cooper, *Justice continues to be trumped by the concern for world order*, GLOBE AND MAIL, July 2, 1993, A14.

Simon Chesterman, *An International Rule of Law?*, 56 AM. J. COMP. LAW 331 (2008).

Friday, January 29, 2009 *The International Criminal Court and War Crimes Tribunals*

Guest Lecture by Professor Michael Scharf, Case Western University School of Law; Start time is 12:10 p.m. in the Moot Court Room

Monday, February 1, 2010 *International Criminal Procedure*

Guest Lecture by Professor Justin Brooks.

Required Reading:

Massieu v. Reno, 91 F.3d 416 (3d Cir. 1996); United States v. Alvarez-Machain, 504 U.S. 655 (1992); Sosa v. Alvarez-Machain, 124 S.Ct. 2739 (2004); United States v Noriega, 117 F.3d 1206 (11th Cir. 1997).

Wednesday, February 3, 2010 *International Legal Practice in San Diego*

A Lecture by J. Anthony Girolami, Girolami, A.P.C.

Monday, February 8, 2010 *Public International Law: Institutions*

Wednesday, February 10, 2010 *Introduction to the European Union and European Integration*

Required Reading:

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

Van Gend en Loos [1963] E.C.R. 1

Costa v. ENEL [1964] E.C.R. 585

Monday, February 15, 2010 No class

Wednesday, February 17, 2010 *World Trade Organization Dispute Resolution*

Required Reading:

John Ragosta, et al., *WTO Dispute Settlement is Flawed and Must be Fixed*, 37 INT'L LAWYER 697 (2003).

Monday, February 22, 2010 No class

Wednesday, February 24, 2010 No class

Monday, March 1, 2010 *NAFTA Chapter 19 and 20 Dispute Resolution and Chapter 11 Investment Dispute Resolution*

Required Reading:

Daphne Eviatar, *The NAFTA Edge*, AMERICAN LAWYER, 80 (October 2005).

Wednesday, March 3, 2010 *Legal Systems Without Enforcement: NAFTA Side Agreements (on Labor and the Environment)*

Required Reading:

Stephen Zamora, *The Americanization of Mexican Law: Non-Trade Issues in the North American Free Trade Agreement*, 24 LAW & POLICY IN INT'L BUS. 391 (1993).
Metales y Derivados, North American Commission for Environmental Cooperation Final Factual Record, SEM-98-007, Feb. 7, 2002, found at <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf>

Friday, March 5, 2010 *Intellectual Property Piracy and the E-Bay Dispute: A Comparison of French, German and U.S. Approaches*

A Lecture by Professor Gerlinde Berger-Walliser, ICN Business School, University of Nancy, France. Note: This lecture is to be held in LH2 (Lecture Hall 2) and shall commence at 12 p.m.

III. Micro Level Studies

Monday, March 8, 2010 *The Common Law/U.S. Legal Culture*

Required Reading:

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

Wednesday, March 10, 2010 *An Introduction to the Civil Law Tradition*

Required Reading:

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)

Friday, March 12, 2010 *Student Presentations of Works in Progress*

Monday, March 15, 2010 *Student Presentations of Works in Progress*

Wednesday, March 17, 2010 *Class postponed to Wednesday, March 24, 2010*

Monday, March 22, 2010	<i>Student Presentations of Works in Progress</i>
Wednesday, March 24, 2010	<i>Student Presentations of Works in Progress</i>
Monday, March 29, 2010	<i>Student Presentations of Works in Progress</i>
Wednesday, March 31, 2010	<i>Student Presentations of Works in Progress</i>
Monday, April 5, 2010	<i>Student Presentations of Works in Progress</i>
Wednesday, April 7, 2010	<i>Student Presentations of Works in Progress</i>

V. The Convergence of Law

Monday, April 12, 2010	<i>Convergence and Alternatives for a New International Economic Order</i>
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Required Reading:

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

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

ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 21 (2nd, edition, 1993).

Declaration on the Establishment of a New Economic Order, Adopted by the U.N. General Assembly, May 1, 1974. G.A. Res. 3201 (S-VI), 6 (Special) U.N. GAOR, 6th Spec. Sess. Supp. No. 1, at 3, U.N. Doc. A/9559 (1974); reprinted in 3 I.L.M. 715 (1974). Acuerdo para la aplicación de la alternativa bolivariana para los pueblos de nuestra América y el tratado de comercio de los pueblos ("ALBA"), April 29, 2006 found at

<http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=516>.

Agreement between the President of the Bolivarian Republic of Venezuela and the President of the Council of State of Cuba, for the Application of the Bolivarian Alternative for the Americas, Dec. 14, 2004 Found at <http://www.mltoday.com/Pages/NLiberation/Cuba-VenezPact.html/>.

The Battle for Latin America's Soul, ECONOMIST, May 20, 1996, at 11.