



Academic Year 2016-2017  
Syllabus  
Legal Traditions and Comparative Law  
CFU 12  
Proff. M. Papa, A. Buratti, H. Ibrahim

### Course Description

The course provides an introduction to the study of law. Through a comparative approach, the course deals with the legal systems of the World and the system of sources of law, the private and public law fundamental institutions in the western World, the constitutional framework of democratic political systems and the patterns of protection of human rights in the national and supranational scenario.

The Course is divided into three modules:

- 1st Module, Introduction to the Legal Systems, Prof. Massimo Papa, 4 CFU
- 2nd Module, Comparative Constitutional Law, Prof. Andrea Buratti, 4 CFU
- 3rd Module, Introduction to Human Rights and Social Justice, Prof. Hauwa Ibrahim, 4 CFU

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### 1st Module

#### Introduction to the Legal Systems (Prof. M. Papa)

The course will provide an introduction to the principles, categories, institutions and vocabulary of law. The comparative approach is aimed at providing awareness of the diversity existing in the legal traditions of the World, as well as of the relationships existing between legal systems, history and culture.

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| Topic 1 | Legal systems and legal traditions in the World |
| Topic 2 | Private Law and Public Law                      |
| Topic 3 | Sources of law                                  |
| Topic 4 | The Civil Law tradition                         |
| Topic 5 | The Common Law tradition                        |
| Topic 6 | The Islamic Law tradition                       |

### Teaching Method

Lectures and analyses of materials (case law and historical documents).

### Textbook and Materials

1. P. Glenn, *Legal Traditions of the World*, Oxford Univ. Press, 5<sup>th</sup> Edition, 2014.

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### 2nd Module

#### Comparative Constitutional Law (Prof. A. Buratti)

The course analyzes the origins, the goals and the development of western constitutionalism, as well as the structure and the transformations of the constitutional law of the western World.

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| Topic 1 | Theoretical Roots of Modern Constitutionalism. Ancient and modern constitutionalism. |
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| <b>Topic 2</b> | English Constitutionalism: the relationship with the Common law legal system, the claim for separation of powers and fundamental rights.   |
| <b>Topic 3</b> | The Rise of Constitutionalism in the Age of Revolutions: French and American Revolutions constitutionalism, common patterns and different paths                                      |
| <b>Topic 4</b> | American Constitution: constitutional rigidity, the judicial review of the legislation, federalism. The process of democratization.  |
| <b>Topic 5</b> | Constitution and State in XIXth Century: liberal constitutionalism in Europe, law and the Constitution.  |
| <b>Topic 6</b> | American contemporary constitutionalism: Congress and the Presidency, transformations in the interpretation of federalism and constitutional rights (the role of the Supreme Court). |
| <b>Topic 7</b> | European Constitutions in Post-Second World War: fundamental rights, forms of government, regionalism, sources of law.   |
| <b>Topic 8</b> | Worldwide expansion of Western Constitutionalism.  |
| <b>Topic 9</b> | Open Constitutional State: the development of the European Union legal order and its institutions.   |

### Teaching Method

The main aim of the Course is to improve student's capability to use the methods of comparative analyses in Constitutional Law.

Concepts and Expertise given by the Course will develop student's legal knowledge, and will provide them with the skill to grasp other legal issues.

The Course asks students to learn a Legal Lexicon. Students will have the possibility to have an open and interactive exchange of views with the Professor, and will be required to read documents and legal materials to be discussed together with the Professor and other Colleagues.

### Textbook and Materials

1. Andrea Buratti, *Western Constitutionalism. An Introduction*, Giappichelli, 2016.

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## Third Module (Prof. H. Ibrahim) Introduction to Human Rights and Social Justice

Student will learn how the theory and concept of "justice" – both substantive and procedural – merges with practice to provide the core skills necessary to become an effective and thoughtful human rights advocates. Advocates from around the world widely employ human rights norms and discourse in their struggle for social justice. Introduction to Human Rights and Social Justice will introduce the concepts, issues and methodologies that underlie human rights work.

This course explores ideas about how to make human rights issues more relevant in global governance. We will introduce human rights and justice issues in the field of international law and organizations, examining the history of ideas and legal doctrines; institutional and administrative structures developed over the last century. The course will offer perspectives and training on a variety of skills relevant to the work of human rights advocates. Students will work on skills modules of Common/Civil and Sharia law; fact-finding, negotiation, coalition-building, and community-based advocacy.

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| <b>Topic 1</b> | <b>Human Rights &amp; Social Justice.</b><br><b>Reading List:</b><br>Advocates for Human Rights reports 2016<br>Matthew Robinson, <i>What is Social Justice?</i>  |
| <b>Topic 2</b> | <b>Idea of Law</b><br><b>Reading List:</b><br>Shirley Robin Letwin, <i>On the History of the Idea of Law</i> , Cambridge University Press, 2005<br>Dennis Lloyd, <i>Idea of Law</i> , Penguin UK (October 1991)<br><i>Theories of Law: Natural Law, Legal Positivism, The Morality of Law</i><br>Dworkin's "Third Theory of Law" Legal Realism and Critical Legal Studies |

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| <b>Topic 3</b>  | <b>Administrative Institutions and Human Rights</b><br><b>Reading List:</b><br>Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Eighth session, New York, 14 - 25 August 2006  |
| <b>Topic 4</b>  | <b>Making Human Rights relevant in Global Governance</b><br><b>Reading List:</b><br>Daniel Albahary: International Human Rights and Global Governance: The end of national Sovereignty and the emergence of a Suzerain World Polity?<br>Matthew S. Weinert, Making Human: World Order and the Global Governance of Human Dignity (Configurations: Critical Studies of World Politics), University of Michigan Press (February 20, 2015)             |
| <b>Topic 5</b>  | <b>Gender and Identity</b><br><b>Reading list:</b><br>Naomi Sawelson-Gorse, Women in Dada: Essay on Sex Gender and Identity, MIT Press, (2001)<br>Catherine Baters, Masculinity, Gender and Identity in the English Renaissance Lyric Cambridge University Press, 2007  |
| <b>Topic 6</b>  | <b>Crime, Race, Poverty and Human Rights</b><br><b>Reading List:</b><br>Discrimination, Inequality, and Poverty—A Human Rights Perspective<br>Thomas Jones, Human Rights: Group Defamation, Freedom of Expression and the Law of Nations (International Studies in Human Rights) November 11, 1997<br>Michael Rowe, Race & Crime  |
| <b>Topic 7</b>  | <b>Guest Speaker—Dr. Denis Mukwege, European Parliament Sakharov Laureate 2014, from Congo</b>  |
| <b>Topic 9</b>  | <b>Narratives of Justice and Injustice</b><br><b>Reading List:</b><br>Yaacov Bar Siman Tov, Justice and Peace in the Israeli-Palestinian Conflict<br>Alan M. Dershowitz, The Genesis of Justice: Ten Stories of Biblical Injustice...   |
| <b>Topic 10</b> | <b>Religious, Cultural Rights and Basic Human Rights</b><br><b>Reading list:</b><br>Makau Mutua, Human Rights: A Political and Cultural Critique  |
| <b>Topic 11</b> | <b>Human Rights Advocacy Skills</b><br><b>Reading List:</b><br>Renu Mandhane, A Guide to developing and demonstrating expertise in international human rights advocacy during law school<br>Edited by George J. Andreopoulos, Richard Pierre Claude, Human Rights Education for the Twenty-First Century  |
| <b>Topic 12</b> | <b>Building campaigns and messaging for a Human Right Advocate</b><br><b>Reading List:</b><br>Hilary Coulby, Aylin Akendiz, Myria Andoniadou, Iris Charalambidou and Serif Tuncel, Advocacy and Campaigning Course Toolkit, Cyprus 2008<br>Edited by G. Andreopoulos, Z. Arat, The Uses and Misuses of Human Rights: A Critical Approach to Advocacy  |
| <b>Topic 13</b> | <b>Universal Declaration of Human Rights as well as other declarations and protocols?</b><br><b>Reading List:</b><br>United Nations General Assembly Resolutions?<br>Fact Sheet No.2 (Rev.1), The International Bill of Human Rights<br>United Nations Publications, 2007, Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR.<br>Regional instruments: Africa, Middle East, Asia, Americas |

## Topic 14

### Are Human Rights Universal or Culturally Relative

#### Reading List:

Tom O'Connor, Debating Human Rights – universal or relative to culture?  
Manisuli Ssenyonjo, International Human Rights Law: Six Decades After the UDHR and Beyond, Routledge, 2016—pg. 35

#### Teaching method:

We will focus on certain pressing human rights challenges around the world, in collaboration with leading international and local human rights advocates. I hope to invite, via Skype, both victims and human rights defenders into the classroom. Students will have the opportunity to ask these survivors' questions and document and then analyze their findings. With guidance, this analysis will be turned into the building blocks for their own campaigns and messaging on their chosen human rights issue.

Students will also be building leadership skills crucial for a career in human rights, exploring ways to set human rights agendas, mobilize constituencies and work in partnership and collaboration with communities. The class will examine the various dimensions and limitations of human rights advocacy, including strategic, ethical, and tactical challenges. Some of the questions we will ask include: what are the different ways that human rights can be used? In developing strategies for meaningful change, how do advocates decide which tactics to use and when?

Requirements include regular class attendance and active participation in discussion. Students are required to be in class, read required books, journals, and other course materials and write a 5-7-page paper at the end of the course.

The class motto is: Participation — fact-finding—investigation—media— negotiation—critical reflection— advocacy—litigation—advancing justice.

View: documentary on court under common, civil, jury: *Visconti, Rocco and His Brothers & Lee, Do the Right Thing*.

Students will write at the end of our 5th class, a paper (1-2 pages) based on these issues:

- i) Intersection of law and human rights
- ii) Skills modules— Common Or Civil Or Sharia laws
- iii) Coalition-building or Community-based advocacy
- iv) Setting a human rights agenda
- v) Professional or Ethical responsibility of a human rights lawyer

#### Textbook and materials

All reading pointed out in the Topics schedule should be done before commencement of class.

Students may wish to read more of the following as well:

- William Burnett Harvey: African Law and Basic Institutions - A Search for Perspectivem, Indiana University School of Law – Bloomington (1964)
- Hauwa Ibrahim: Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Court, American Bar Association, Chicago, 2012.

Additional reading may be handed out during the semester

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#### Assessment:

**First Module:** A written/oral pre-exam will take place after the end of the classes. Students who don't pass the pre-exam will take the exam at the moment of the Final.

**Second Module:** Grade Breakdown: Mid-Term Written Exam on the topics covered in class (30%); Final Oral Exam to be held in the date of the Final exam (70%).

Students who won't pass or take the mid-term exam will take the whole exam (written and oral) at the moment of the Final. Mid-term exams remain valid even in case of not passing the Final.

**Third Module:** Grade Breakdown: Class Participation (20%); Class Presentation (20%); Weekly Reading Responses (20%); Final essay (40%).

**Final:** The final mark for the Exam of Legal Traditions and Comparative Law will be the average of the grades obtained in the three Modules: it will be determined on the date of the final exam.

Students who pass only one or two out of the three modules within the first 2 exams of the winter session, can complete the exam in September. Grades obtained remain valid or can be rejected, in which case the module exam will have to be retaken in full.

**Office hours**

- Prof. Papa receives students on appointment ([massimo.papa@uniroma2.it](mailto:massimo.papa@uniroma2.it))
- Prof. Buratti receives students at the Department of Law, on Wednesday, 10 a.m., or on appointment ([burattiandrea@hotmail.com](mailto:burattiandrea@hotmail.com))
- Prof. Ibrahim receives students after classes. Mailto: [hauwana@yahoo.com](mailto:hauwana@yahoo.com)

**NOTE:** Since the course is provided for a limited number of students, **Erasmus students** who would like to attend this course and take this exam need to contact the Secretariat of Global Governance by e-mail [global.governance@uniroma2.it](mailto:global.governance@uniroma2.it) for registration.