



Academic Year 2024-2025

Syllabus

Legal Traditions and Comparative Law

CFU 12

R. Cardilli, S. Porcelli, A. Buratti

Course Description

The course provides an introduction to the study of law in the global scenario. Through a historical and comparative approach, the course deals with the (i) legal systems of the World and the system of sources of law, (ii) the private and public law fundamental institutions in the World, (iii) the Roman foundations of legal institutions, (iv) the fundamental concepts of law and their historical development, (v) the Chinese legal tradition, (vi) constitutionalism in the framework of the Nation State and the constitutional framework of contemporary democratic political systems, (vii) the development of the European legal space.

The course is divided into two modules:

- **1st Module**, *Harmonization of Law, Roman Foundation of Private Law, Chinese Law*
Prof. Riccardo Cardilli and Prof. Stefano Porcelli – 6 CFU
- **2nd Module**, *Comparative Constitutional Law*
Prof. Andrea Buratti – 6 CFU

1st Module

Harmonization of Law, Roman Foundation of Private Law, Chinese Law
(Prof. Riccardo Cardilli and Prof. Stefano Porcelli)

The course provides an introduction to the study of Harmonization of Law. It also analyses the role of Roman Law in the European and World legal systems as a fundamental value of the legal tradition. Fundamental Ideas as Equality, Liberty and Democracy, Persons and Family, Contract and Obligation, Property and their historical development, heritage and succession will be analyzed.

A 2 CFU module on Chinese Law will be provided. This module aims to provide an introduction to Chinese law and its history. It is thus intended to bring the student closer to the new legal reality of the People's Republic of China. A critical capacity in the student is attended, capable of dissolving the ideological knots of Chinese law also through the dialogue it interweaves with the European legal tradition. The student must be able to read, comment and discuss the sources distributed during the lessons in Chinese, always with a translation in English opposite, developing a capacity for independent judgment and criticism through new and original perspectives.

The module aims to offer students also an introductory framework on the history of Chinese law and its encounter with the civil tradition based on Roman law, up to the creation of the Civil Code of the Peoples' Republic of China (2021).

Topic 1	Legal Families, Legal systems, Legal Areas and Legal Traditions in the World
Topic 2	Law and Globalization: Historical Universal Models vs. Nation State-Law
Topic 3	Harmonization of Law, Roman Law and Modern Legal Systems
Topic 4	Liberty and Democracy of Ancients vs. Liberty and Democracy of Moderns
Topic 5	Community Values vs. Legal Individualism: Towards a New Paradigm of Legal Thinking
Topic 6	Chinese Law: <ul style="list-style-type: none"> a) Traditional chinese law; b) First modernization: Chinese law in the nineteenth and twentieth centuries before the Maoist revolution; c) Maoist period and juridical nihilism; d) Second modernization: 1978-2018 China's way to social transition using the law; e) 2021: the new Civil Code of the People's Republic of China

Teaching Method

Lectures and analyses of materials.

Textbook and Materials

- Pdf materials distributed during the lectures.
- P. Stein, *Roman Law in the European history*, Cambridge, 1999.

2nd Module

Comparative Constitutional Law (Prof. Andrea Buratti)

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

Topic 1	Theoretical Roots of Modern Constitutionalism. Ancient and modern constitutionalism.
Topic 2	English Constitutionalism: the relationship with the Common law legal system, the claim for separation of powers and fundamental rights.
Topic 3	The Rise of Constitutionalism in the Age of Revolutions: French and American Revolutions constitutionalism, common patterns and different paths
Topic 4	American Constitution: constitutional rigidity, the judicial review of the legislation, federalism. The process of democratization.
Topic 5	Constitution and State in 19th Century: liberal constitutionalism in Europe.
Topic 6	American contemporary constitutionalism: Congress and the Presidency, transformations in the interpretation of federalism and constitutional rights (the role of the Supreme Court).
Topic 7	European Constitutions in Post-Second World War: fundamental rights, forms of government, regionalism, sources of law.
Topic 8	Worldwide expansion of Western Constitutionalism.
Topic 9	Open Constitutional State: the development of the European Union legal order and its institutions.

Teaching Method

The main aim of the course is to develop and 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

- Andrea Buratti, *Western Constitutionalism. History, Institutions, Comparative Law*, Third Edition, Springer, 2023. **Purchase at discount price for students is available at the website of the Publisher (with the discount code BURATTI26).**
<https://www.giappichelli.it/novita/western-constitutionalism-9791221101683>
 - *Legal Glossary*. Notes provided by the teacher.
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Assessment

First Module: A written mid-term Exam on Topics 1, 2 and 3 of the Syllabus will take place. A Final oral exam will take place, embracing all the other Topics of the Syllabus. Students who won't pass or take the mid-term exam will take the whole exam at the moment of the Final exam.

Second Module: A final written and oral Exam will be held in the date of the Final exam.

Final: The final mark for the Exam of Legal Traditions and Comparative Law is the average of the grades obtained in the two Modules: it will be determined on the date of the final exam. For the dates of the Final Exam, see programme website: Exams page.

Students who pass only one out of the two modules within the first 2 dates of the Winter session, can complete the exam in Fall (September) session.

PLEASE TAKE CLEAR NOTE: THIS IS THE ONLY GLOBAL GOVERNANCE EXAM WHERE YOU WILL BE ALLOWED NOT TO NECESSARILY PASS ALL THE DIFFERENT PARTS OF THE EXAM IN THE SAME (FIRST OR SECOND) EXAM SESSION.

Grades obtained remain valid or can be rejected, in which case the module exam will have to be retaken in full. The grades obtained in the modules are not valid beyond the Fall (September) Session.

Non-attending students

Attendance and active participation to the classes is strongly expected in this course. Students who do not attend at least 80% of the classes will be considered as non-attending.

Erasmus Students

Erasmus students are welcome in this course. As in all the Global Governance programme courses, Erasmus students are requested to contact the secretariat for the registration to the course. Please take note that dates for early Final-exams won't be considered.

NOTE: If you are an Erasmus or a non Global Governance student who would like to attend one or more courses in the Global Governance programme, please be aware that, **before enrolling in the course**, you should have read the code of conduct and the procedural rules characterizing our programme. We assume that, if you enroll in the course, **you have read and accepted all Global Governance values and rules**. Notice that attendance is expected from the very first lesson and you need to attend at least 80% of the course to be considered an attending student.

Description of the methods and criteria for testing learning

The examination assesses the student's overall preparation, ability to integrate the knowledge of the different parts of the program, consequentiality of reasoning, analytical ability and clarity of presentation, in accordance with the Dublin descriptors (1. knowledge and understanding; 2. applying knowledge and understanding; 3. making judgements; 4. learning skills; 5. communication skills).

The examination will be graded according to the following criteria:

Unsuitable: important deficiencies and/or inaccuracies in the knowledge and understanding of the topics; the topics are exposed in an incoherent manner and with inappropriate language.

18-20: barely sufficient knowledge and understanding of most of the topics, with some missing items; sufficient capacity for analysis; the topics are sometimes exposed in an inconsistent manner and with inappropriate/technical language;

21-23: basic knowledge and understanding of most of the topics; ability to analyze and synthesize correctly with sufficiently coherent logical argumentation, with possibly some inaccuracy in the technical language.

24-26: good knowledge and understanding of most of the topics; good analytical and synthetic skills with rigorously expressed arguments, though with possibly a few inaccuracies in the technical language.

27-29: complete knowledge and understanding of the topics; good capacity for analysis and synthesis. Arguments presented in a rigorous manner and with appropriate/technical language, with only minor inaccuracies.

30-30L: very good level of knowledge and thorough understanding of topics. Excellent analytical and synthetic skills and independent judgement. Arguments expressed in an original manner and in appropriate technical language.

Teachers' Office Hours

- Prof. Cardilli receives students on appointment (cardilli@uniroma2.it)
- Prof. Buratti receives students on appointment (burattiandrea@hotmail.com)