



Syllabus
Legal Traditions and Comparative Law
CFU 12
Prof. R. Fiori, R. Cardilli, A. Buratti, H. Ibrahim

Course Description

The course provides an introduction to the study of law: through a historical and comparative approach, the course deals with the Roman foundations of law, the development of the legal systems of the world, the private and public law fundamental institutions in Western world, and the constitutional frame of democratic political systems.

The Course is divided into three modules:

- 1st Module, Roman Foundations of the Civilian Tradition, Prof. Roberto Fiori and Riccardo Cardilli, 4 CFU
- 2nd Module, Comparative Constitutional Law, Prof. Andrea Buratti, 4 CFU
- 3rd Module, Introduction to West African Legal Systems, Prof. Hauwa Ibrahim, 4 CFU

1st Module
Roman Foundations of the Civilian Tradition

Topic 1	Ancient and modern ideas of law
Topic 2	Roman law
Topic 3	Civilian tradition
Topic 4	Legal systems and legal orders
Topic 5	Universal Power v. National Power
Topic 6	Harmonization of law, universal values and supranational jurisdiction

Teaching Method

The teaching method will consist of lectures in class.

History of law and comparative law play an important role in understanding the interactions among legal systems and the relations between legal systems and legal orders.

History of law is the study of the roots and principles that have shaped the contemporary legal orders and is helpful in understanding how legal systems could be recognized.

Comparative law is the study of the differences and similarities among the legal institutions of different countries, and involves especially the study of the systems of Common law, Civil law, Socialist law, Islamic law, Hindu law, and Chinese law.

Roman law has a considerable importance in the study of Civil law and its interaction with other legal systems, since it is the foundation of the civilian tradition and therefore of the modern civil codes. Moreover, in the most recent times, the process of European integration and the effort to create uniform European rules has largely renewed the interest in the *ius commune* that for centuries has been in force in Europe on the basis of Roman law: as a common denominator of the European legal culture, the Roman legal tradition has been recognized as an important factor in the developing of the contemporary European identity.

Textbook and Materials

- A) Students notes and materials provided during lessons. Those who are not able to attend classes, can study on: Peter Stein, *Roman Law in European History*, Cambridge University Press, 1996.
- B) R. Zimmermann, *Roman Law, Contemporary Law, European Law. The Civilian Tradition Today*, Oxford Univ. Press, 2001 (selected chapters).

2nd Module
Comparative Constitutional Law

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 XIXth Century: liberal constitutionalism in Europe, law and the Constitution.
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 improve student's capability to use methods of comparative analyses in Constitutional Law.

Didactical Method is based upon the analyses of materials and classes prepared by Professor, as well as upon the study of Documents, Jurisprudence, Constitutional Texts and Case-law Studies.

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

C) *Comparative Constitutional Law: An Introduction* (Notes provided by the Professor).

D) M. Tushnet, *Advanced Introduction to comparative Constitutional Law*, Elgar Publ., 2014.

E) R. Schütze, *An Introduction to European law*, Cambridge Univ. Press, 2012 (first and second part).

Third Module
West African Legal Systems

Topic 1	Introductions: Why West Africa: Legal Systems & Institution, thoughts about West Africa, history, people & cultures.
Topic 2	Indigenous, traditional, cultural, religious and legal institutions: what are the relationships, if any between the indigenous system and the 'secular' or colonial systems? Two test case: Republic of Liberia and Islamic Republic of Mauritania.
Topic 3	The 'Civil Law System' Algeria (The Algerian legal system is based on French and Islamic law) Benin (based on French civil law and customary law)- Burkina Faso (based on the French civil law system and customary law) -- Guinea-Bissau (Portuguese Civil law system; the Constitutional Tribunal reviews the constitutionality of legislation)- Ivory Coast (French civil law system, customary law and judicial review).
Topic 4	Mali (derives from French civil law and customary law, and provides for judicial review of legislative acts in a Constitutional Court); Morocco (Based on Islamic law and French and Spanish civil law system; Togo (based on French civil law and local customary law), Tunisia (based on French civil law system and Islamic).

Topic 5	The Common Law System: Gambia (Legal system based on English common law, Islamic law, and customary law and the Portuguese laws) -- Ghana (received Anglo-Saxon common law, statutory law, and other documents.); Nigeria (Based on English common law, Islamic Sharia law, Customary and Traditional Laws)-- Sierra Leone (Based on English law and customary laws indigenous to local tribes).
Topic 6	Islamic Legal System: Rule of law, equity and democratization.
Topic 7	How law will drive change in societies, through structures and institutions such as investment in infrastructures, education, health and the economy-- Trade vs. Aid?
Topic 9	Comparative legal systems -- basic structure of two major legal systems in the modern Western world: the civil law tradition and the common law tradition. Each of these systems will be reviewed in terms of its history, culture, legal structures, legal actors and their roles, sources of law and judicial process -- similarities and differences between these systems and the Italian legal system -- widen perspective to better understand, appreciate, and function within our legal system – We may invite an Italian Lawyer to class.
Topic 10	<p>Human Rights. Do religious and cultural rights have priority over basic human rights, as argued by some African nations? Which comes first? What human rights statements have precedence over others? Religious and cultural rights have priority over traditional definitions of human rights, how are the benefits of human rights realized? Are human rights universal or are they culturally relative and applicable only under certain cultural environments? Are human rights the product of the period of Western enlightenment or are there universal human rights? How can the issue of cultural relativism be resolved so that the conflict over the legal practices of other cultures that violate human rights declarations and covenants be resolved? Can the issue of cultural relativism be resolved so that respect for other cultures does not result in sanctioning of practices seen as harmful?</p> <p>Rethinking Human Rights: What do lawyers have to contribute to the debate on human rights? In what ways are lawyers and human rights mutually relevant? What recommendations can be made to contribute to the further development of the UN Universal Declaration of Human Rights as well as other declarations and protocols? Do the various protocols and documents on human rights reflect principles based upon knowledge of this African region? Should human rights standards be imposed from outside or should the focus be on helping local interest groups within a society or country work for their development? Under what conditions is one or the other approach most effective? What are the directions in which the definition of human right should evolve? What institutions might replace nation state and its role in human rights? What are the frontiers for future legal research, teaching, and practice of human rights?</p>

Teaching method

This Module will introduce West African Legal Systems by examining (1) pre and post colonial histories and theories including the role and fate of indigenous legal, political, and cultural institutions; colonial laws and institutions; current challenges of peace and security; sustainable development, rule of law, equity and democratization; (2) how law will drive change in societies, through structures and institutions such as investment in infrastructures, education, health and the economy; and (3) the components for a new future. The course will "dissect" particular challenges unearthed in multiple legal systems, and suggest solutions as to how the region with its vast human and natural resources could dismantle oppressive and divisive structures that hinder economic development. We will then assess and evaluate paradigms that can be used to create trust in the local leadership, and press for accountability, transparency, and a full disclosure of the activities of governance.

The course will conclude by proposing how West African governments and peoples can adopt people-centered policies, promote national harmony, and adopt processes that are inclusive of the poor, powerless, voiceless, and illiterate in all stages of policy making and implementation. A regional white paper will address how the region can promote democratic values, justice, and the rule of law. Ultimately, the goal is to suggest solutions that will shape an inclusive, just and sustainable future. The course will be flexible and inclusive.

All required readings should be completed in advance. In addition to regular participation in discussions, each student is expected to serve (on one occasion) as a discussant, focusing on all or some portion of the

readings. A sign-up sheet will be circulated at the beginning of the course. In addition, students are to prepare one-page weekly responses to the readings for the three weeks. A final 7-10 pages double-spaced paper with appropriate footnotes will address a proposal on a blue print on creative solutions to the country assigned.

Textbook and materials

- H. Ibrahim, *Practicing Shariah Law: Seven Strategies for Achieving Justice in Shariah Court*.

Further Readings (articles provided by Professor):

- Where there are no Ten Commandments
- African International Courts and Tribunals
- In the name of the prophet
- Additional readings may be handed out during the semester.

Assessment

First Module: the assessment of the first module is based on a written mid-term exam (70%), which will be held at the end of the Module, and an oral final exam (30%), which will be held at the end of the semester together with the final exam of the second Module. Mid-term exam will cover materials sub A), final exam will cover materials sub B). In case of students not passing the mid-term, all the exam (written and oral) will be taken at the final exam.

Second Module: the assessment of the first module is based on a written mid-term exam (50%), which will be held at the end of the Module, and a final oral exam (50%), which will be held at the end of the semester together with the final exam of the first Module. Mid-term exam will cover materials sub C) and D), final exam will cover materials sub C) and E). In case of students not passing the grade of mid-term, all the exam (written and oral) will be taken at the final exam.

Third Module: The final grade of the Module will be based on Class Participation (10%); Class Presentation (20%); Weekly Reading Responses (20%); Final essay (50%).

Assignments

Students should prepare brief oral presentations of 10 minutes that should serve to orient the class discussion of the day's readings. It is important to be brief and selective, and to raise issues rather than attempt a lengthy summary of the readings. Where appropriate, students may wish to prepare brief written handouts to accompany their presentations. Presentations should address one or two broad overarching themes that arise in the assigned text(s) or they may focus in more detail on shared or divergent perspectives that emerge in as few as two separate readings. While it may be useful to point out differences in approaches to empirical data, or to signal aspects of the readings that require clarification, presentations should focus especially on the ways in which authors choose to conceptualize relevant issues. You should ask: what are the general assumptions that underlie competing approaches, and to what degree are they essential to the broader arguments put forth in the articles/books in question? What do you perceive to be some of the principal strengths or weaknesses of these assumptions, and/or the kinds of data that reinforce or undermine their plausibility? We will provide Questions, Issues, and Dilemmas at the end of each weekly reading assignment in order to help us think about some of the larger issues related.

Reading Responses

These should be short one or maximum two pages responses to the readings. Each response paper should assume that the reader is unfamiliar with the subject matter and therefore should outline what the publication is about, how it fits into a larger debate, and what strengths and weaknesses they have in the reviewer's eyes. A good model for how to organize a review of multiple works can be found in the review sections in academic journals. Please send your reading responses to me via e-mail.

Final Essay

The final requirement is completion of a 7-10 pages double-spaced page research paper with appropriate footnotes and, at the end, a full bibliography. Papers should not merely describe some series of historical events, but pose an explanatory problem or puzzle about them, assess relevant theories, and elaborate an explanatory argument. Feel free to be creative in your approach on for the "Blue Print" of 'your country'. Paper should be send to me via email, within the deadline pointed out by Professor.

Course Requirements

Students are required to do all course reading and write a 7-10 page paper.

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

Office hours

- Prof. Fiori receives students at the Department of Law. Office hours may change during the academic year: they are showed on the website DidatticaWEB (didattica.uniroma2.it)
- Prof. Cardilli receives students at the Department of Law, on Tuesday, 11 a.m.
- Prof. Buratti receives students at the Department of Law, on Wednesday, 10 a.m., or on appointment (burattiandrea@hotmail.com)
- Prof. Ibrahim receives students after classes. Mailto: hauwana@yahoo.com