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## **Comparative Law: The Western Legal Tradition 218.01 Spring 2015**

Welcome, co-comparatists to be. I am looking forward to discussing comparative law with you, I hope you are, too.

### **Comparative Law as a Discipline**

Comparative Law is a discipline unlike most other legal disciplines. Comparative law is not a body of rules and principles like, for example, contract law or tort law. Its name in other languages does a better job at explaining what is at stake: the comparison of laws, or, more broadly, the understanding of law through comparison. Thus, in comparative law we deal with foreign legal orders: we try to understand them on their own terms, and we compare them to each other as well as to our own legal order.

This has two consequences. First, there is no canon of comparative law, and different courses differ widely in their coverage. Second, although comparative law is of eminent practical relevance and focus, the field is somewhat more theoretical than others; it focuses on methods of understanding law. Comparative law knowledge is not the knowledge of existing different laws, but rather, knowledge of how to understand and deal with such laws.

### **Comparative Law as a Course**

Comparative law includes three elements: macro-comparison (the understanding of whole legal systems and families of such systems), micro-comparison (the understanding of specific legal rules or solutions), and method/theory. The course attempts to integrate all three in an approach that is explained, in some more detail, in a separate document called “Teaching Comparative Law—An Integrated Approach”.

Keeping this in mind, our course has three components. First, we will take the concept of a “**Western legal tradition**” seriously. We will try to find out what defines this western legal tradition, in which sense it may make sense to lump certain legal orders (the French, the US, etc.) together under this heading. At the same time we will try to understand how different traditions exist within this “Western legal tradition”, most notably the ominous “**common law**” and “**civil law**” traditions. We will need to delve into legal history for this, but we will also look for contemporary features.

A second focus will go beyond the focus on the West. We will look at **non-Western traditions**, in particular Islamic Law and its role in the world today. Rather than focus on some imagined pure Islamic law, we will attempt to understand how Islamic law and Western law permeate each other, both in Islamic countries and in the West. And we will look a little at the impact of **globalization** on the different legal systems in the world, and especially at developments towards convergence and uniform law.

A third focus will go to the **practical use** of comparative law. Can courts use foreign materials? Can the political branches find inspiration in foreign laws? How relevant is comparative law for practicing lawyers? (Very much so, I argue.) We will emphasize this over and over in the course, and assemble our insights in the end.

All of these aspects deal with substance. However, the main purpose of a general course like this one is to teach you not just substance, but method and tools:

- how to understand and deal with foreign laws
- how to use insights from comparative law for understanding and critiquing your own law
- how to turn both these first two aspects into a deeper understanding of what “law” actually is.

### **Course Materials:**

There is no satisfactory course book on the market, so we will work with private materials. Materials for all sessions will be available on sakai, under “Resources”. In addition, a full course pack will be sold at the usual location.

### **Schedule:**

The class meets Mondays and Wednesdays from 1:45 – 3:05 p.m in room 4047. We meet for the first time on Monday, January 12. There will be no class on Martin Luther King Day. We will need to reschedule the classes currently scheduled for February 2 and 4; I will give further information on this..

You are expected to attend all class meetings. If you know you will need to be absent, please email me in advance. If you miss a session unexpectedly, please email as soon as possible afterward. More than one unexcused absence may affect your grade.

### **Evaluation:**

There will be a final exam. The exam will consist of several questions, and I may give you a choice between questions. Part of the exam will consist of a hypothetical, part will ask more theoretical questions.

I reserve the right to change your final grade by up to .5 based on your class participation.

I give an optional midterm exam. The grade for the midterm does not count towards the final exam, but writing it, and getting my response, gives you a chance to see what I look for in an exam.

**Office hours:**

I will have office hours on Mondays 3:15-4:45, and in addition by appointment.

**Course Outline****I. Basics**

- 1) Introduction
- 2) Legal Traditions
- 3) Civil Law
- 4) Common Law

**II. Western Law 1: Sources of Law / Tort Law**

- 5) Codification 1: Civil Law (France and Germany)
- 6) Codification 2: Common Law
- 7) Precedent in Civil law and Common law

**II. Western Law 2: Legal Argument / Tort Law**

- 8) Tort and Delict 1: Sports Accidents
- 9) Tort and Delict 2: Wrongful Birth

**III. Western Law 3: Comparative Methods / Courts and Civil Procedure**

- 10) Civil Procedure 1: Introduction
- 11) Civil Procedure 2: Functional Comparison
- 12) Civil Procedure 3: Cultural Comparison
- 13) Civil Procedure 4: Convergence and Unification
- 14) Civil Procedure 5: Evaluation / Better Law
- 15) Civil Procedure 6: Legal Transplant
- 16) Civil Procedure 7: Legal Unification

**IV. Beyond the West 1: The “Developing” World**

- 17) Legal Colonialism and Postcolonialism
- 18) Legal Pluralism
- 19) Law and Development

**V. Beyond the West 2: Islamic Law**

- 20) Law and Islam 1: Religious Garb
- 21) Law and Islam 2: Islamic Banking
- 22) Law and Islam 3: Divorce

**VI. Transnationalization and Globalization**

- 23) European Union Law
- 24) International Law
- 25) Constitutional Interpretation
- 26) Wrap-Up