

Comparative Law Seminar -- Law 439
Antonin Scalia Law School at George Mason University
Spring 2023.

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Some sessions will use zoom due to external speakers.

Welcome to Comparative Law

This course offers an introduction to comparative legal systems. The course will survey the two main legal families, in particular civil and common law. It will also look briefly at mixed legal systems. The second part of the course looks at specific areas of the law from a comparative perspective, namely comparative judicial politics. The final part of the course looks at recent developments in comparative law and economics, particularly the legal origins literature and the controversial relationship between law and development.

Student Learning Outcomes

By the end of the semester, you should understand the main differences between the civil law and the common law legal families. You should also have a sense of where comparative law is going, namely the extent to which there is convergence or divergence across developed economies. Finally, you should be able to identify the impact of the legal origins' literature in legal policymaking.

Office Hours: Office hours will be: Thursday, 2.00-3.15pm. I am usually available for shorter questions immediately after class. (I may adjust office hours later in the semester if that time does not prove to be convenient.) I am also generally available via appointment, email, or some other platform such as zoom. Group requests get priority over individual requests.

Email Communication: Students must use their MasonLive email account to receive important University information, including communications related to this class. I will not respond to messages sent from or send messages to a non-Mason email address.

Casebook and Course Materials: As background reading and short overview, I recommend “A Primer on the Civil Law System” by James G. Apple and Robert P. Deyling, available here [AD in the reading list]:

<https://www.fjc.gov/sites/default/files/2012/CivilLaw.pdf>

Another source I recommend for the first part of the course is:

“Comparative Legal Traditions in a Nutshell” by Mary Ann Glendon, Paolo G. Carozza and Colin B. Picker (Thomson West, 2015, 4th Edition) [GCP in the reading list].

You should use the power point files as pre-class reading materials rather than class support materials. They contain extensive specific information about jurisdictions not covered in detail by other reading sources.

For the second part of the course, you should read [“Comparative Judicial Politics” by M. J. Volcansek \(Rowman & Littlefield, 2019\)](#) [MJV in the reading list].

The last part of the course focuses on comparative law and economics and will be based on the opening chapters of [“Trends in Comparative Law and Economics” by N. Garoupa \(Anthem Press, 2021\)](#) [NG in the reading list]. I will make them available on TWEN.

Supplemental materials will be posted on TWEN.

Class Preparation: You should prepare for class by reading and thinking carefully through the assigned material. You are expected to be prepared for class. I will assume familiarity with the assigned reading. Since we are going to be a small group, discussion will play a very important role. Speaking in front of a small audience should not be a major problem.

Some general guidelines are as follows: (1) you should attend class in a manner consistent with Law School policies, (2) quality of participation is weighed much more heavily than quantity, (3) failure to prepare for class is the easiest way to assure a downward participation adjustment.

Grading: The primary assignment for this class will be the writing of a substantial term paper that fulfills the Law School writing requirement. You should plan to have your paper topic chosen and approved no later than Week 5 of the semester and you should plan to have an outline of your paper by Week 10. You should choose your paper topic in consultation with me and must receive approval for me for the topic you choose.

The written papers should be typed, double-spaced, with one-inch margins. The final paper must be between 5,000-7,000 words, not including footnotes. Each paper must be your own independent work. If you turn your assignment in late, there will be a significant negative effect on your grade. Please email the paper to me directly by the last day of the semester (April 28, 2023) or submit a copy to the Records Office. I prefer that the electronic document be sent in either a pdf or Word format.

Please note that, per Law School policy, the professor cannot grant deadline extensions for final papers; requests must be submitted to the Director of Student Academic Affairs. If students would like general feedback on initial drafts of the final paper, I am willing to review final paper drafts if students send the draft before the last week of classes (April 16, 2021).

Final course grade can be adjusted by a single increment either upward or downward (e.g., from B to B+) based on class participation.

Syllabus is Preliminary and Subject to Change: I may deviate from the tentative syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. Please make sure you are signed up to receive updates via TWEN.

Intellectual Property: The professors teaching Economics for Lawyers at Scalia Law own all course content we create (e.g., PPT slides), regardless of form (electronic, print, audio/video, etc.), including recordings of class sessions, office hours, and other meetings. You are forbidden to use them with, or distribute them to, anyone other than your classmates in this course.

Class Recording Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me.

Academic Integrity: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Classroom Accommodations: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by

upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

General Academic Regulation: [Available here.](#)

University Life: University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

READING ASSIGNMENTS

I. Introduction to Comparative Law

GCP [1-17]

II. The Common Law: Overview

GCP [175-337]; AD [33-38], MJV [30-33]

III. The Civil Law: Overview

GCP [19-174]; AD [3-32]; MJV [23-30,42-49]

IV. Mixed Legal Systems

MJV [33-41, 127-149]

Additional suggested reading:

U. Mattei and L. G. Pes, "Civil Law and Common Law: Toward Convergence?," Oxford Handbook of Law and Politics (2008).

V. Comparative Judicial Politics

(A) Introduction

MJV [1-22]

Additional suggested reading:

J. Ferejohn, F. Rosenbluth, and C. Shipan, "Comparative Judicial Politics," Oxford Handbook of Comparative Politics (2009).

(B) Rule of Law & Judicial Independence

MJV [71-100]

Additional suggested reading:

R. Bill Chavez, "The Rule of Law and Courts in Democratizing Regimes," Oxford Handbook of Law and Politics (2008).

G. Vanberg, "Establishing and Maintaining Judicial Independence," Oxford Handbook of Law and Politics (2008).

(C) Lawyers and Access to Justice

MJV [51-70]

(D) The Globalization of Constitutional Review

MJV [101-126]

Additional suggested reading:

T. Ginsburg, "The Global Spread of Constitutional Review," Oxford Handbook of Law and Politics (2008).

B. G. Garth, "The Globalization of the Law," Oxford Handbook of Law and Politics (2008).

(E) Transplants

T. S. Goldbach, "Why Legal Transplants?," Annual Review of Law and Social Science (2019).

(F) The Impact of Courts & Judicialization of Politics

MJV [151-168]

Additional suggested reading:

R. Hirschl, "The Judicialization of Politics," Oxford Handbook of Law and Politics (2008).

(G) The Legitimacy of Courts

MJV [169-187]

(H) Secularism

Suggested reading:

J. Habermas, "Religion in the Public Sphere," European Journal of Philosophy (2006).

J. Fox and D. Flores, "Religion, Constitutions, and the State: A Cross-National State" *Journal of Politics* (2009).

(I) Federalism

Suggested reading:

D. Halberstam, "Comparative Federalism and the Role of the Judiciary," *Oxford Handbook of Law and Politics* (2008).

P. Beramendi, "Federalism," *Oxford Handbook of Comparative Politics* (2009).

A. Lijphart, "Division of Power: The Federal-Unitary and Centralized-Decentralized Contrasts," *The Patterns of Democracy* (2012).

(J) Emergency Governance

Suggested reading:

K. L. Scheppelle, "Legal and Extralegal Emergencies," *Oxford Handbook of Law and Politics* (2008).

(K) Courts in Authoritarian Regimes

Suggested reading:

T. Moustafa, "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* (2014).

(L) Populism and Comparative Law

Suggested reading:

B. Bugarcic, "Could Populism be Good for Constitutional Democracy," *Annual Review of Law and Social Science* (2019).

N. Lacey, "Populism and the Rule of Law," *Annual Review of Law and Social Science* (2019).

VI. Comparative Law and Economics

(A) Introduction

NG [5-20]

N. Garoupa and T. S. Ulen, "Comparative Law and Economics: Aspirations and Hard Realities," *American Journal of Comparative Economics* (2021).

(B) Law and Development: Does Law Matter?

NG [21-28]

La Porta et. al., "Economic Consequences of Legal Origins," *Journal of Economic Literature* (2008).

PRELIMINARY CALENDAR

DATE	TOPIC
Jan 19	Introduction. The Common Law Tradition.
Jan 26	The British Constitution. The British Legal System.
Feb 2	Other Common Law Jurisdictions: Australia, Canada, NZ, Ireland, Israel, Singapore, South Africa, India & Jordan.
Feb 9	The Civil Law Tradition. The French and German Constitutions.
Feb 16	The Civil Law System. Other Civil Law Jurisdictions (I): Italy, Spain, Belgium, Scandinavian countries, Hungary, Poland, Japan & South Korea.
Feb 23	Other Civil Law Jurisdictions (II): Brazil, Mexico & Argentina, Turkey, Morocco, Iran, Thailand & Angola, Russia & China. Mixed Jurisdictions & Supranational Jurisdictions and International Courts.
Mar 2	Introduction to Comparative Judicial Politics; The Rule of Law & Judicial Independence; Globalization of Constitutional Review & Legal Transplants.
Mar 9	Lawyers & Access to Justice; The Impact of Courts & Judicialization of Politics
Mar 23	Judicial Behavior in Europe (Keynote zoom speaker: Katalin Kelemen)
Mar 30	Judicial Behavior in Latin America (Keynote zoom speaker: Rebecca Reid)
Apr 6	Secularism & Legitimacy of Courts; Federalism & Emergency Governance; Courts in Authoritarian Regimes & Populism and Comparative Law
Apr 13	Judicial Behavior in Former Socialist Countries (Keynote zoom speaker: Maria Popova)
Apr 20	Comparative Law and Economics; Legal Origins; Law and Development: Does Law Matter?