

Comparative Law Seminar -- Law 439
Antonin Scalia Law School at George Mason University
Spring 2024

Nuno Garoupa
Professor of Law & Faculty Director of Graduate Studies
Phone: (703) 993 8184
E-mail: ngaroup@gmu.edu
Office: 324

Some sessions will use zoom.

Welcome to Comparative Law

This course offers an introduction to comparative legal systems. The course will survey the method of comparative law as well as the main legal families, in particular civil and common law. It will also look briefly at mixed legal systems. The final part of the course looks at recent developments in comparative law and economics, particularly the controversy over legal and colonial origins.

Student Learning Outcomes

By the end of the semester, you should understand the main differences between civil law and 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 legal systems. Finally, you should be able to identify the impact of comparative law 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: This is a paper-based seminar. All papers as well as supplemental materials will be posted on TWEN.

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 as background reading 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].

I will complement background materials with occasional power point files. They should be used 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.

Paper Presentation: Each class is based on paper discussion. Each paper will be assigned to a discussion leader. The discussion leader is responsible for summarizing the paper at the beginning of the class, and later motivating and moderating the debate.

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.

Substantial Paper: 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 22, 2024) or submit a copy to the Records Office. I prefer that the electronic document be sent in either pdf or Word format.

Please note that, per Law School policy, I 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 15, 2024).

Grading: Final course grade is based on the substantial paper (65%) and on leading the discussion in class (35%). It can be adjusted by a single increment either upward or downward (e.g., from B to B+) based on more general 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 sign up to receive updates via TWEN.

Intellectual Property: The professors teaching Comparative Law 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 on 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 <https://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 (Jan 18)

Background:

GCP [1-17]

Discussion:

Mathias Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, 50 *Am. J. Comp. L.* 671 (2002).

II. The Method of Comparative Law (Jan 25)

Discussion:

John C. Reitz, *How to Do Comparative Law*, 46 *Am. J. Comp. L.* 617 (1998).

Gerhard Dannemann, *Comparative Law: Study of Similarities or Differences?*, in *OxHCL* (2019).

III. Comparative Law and Legal History (Feb 1)

Discussion:

James Gordley, *Comparative Law and Legal History*, in *OxHCL*(2019).

Roger Cotterrell, *Comparative Law and Legal Culture*, in *OxHCL* (2019).

IV. Legal Families (Feb 8)

Discussion:

Mariana Pargendler, *The Rise and Decline of Legal Families*, 60 *Am J. Comp. L.* 1043 (2012).

H. Patrick Glenn, *Comparative Legal Families and Comparative Legal Traditions*, in *OxHCL* (2019).

V. The Common Law: Overview (Feb 15)

Background:

GCP [175-337]; AD [33-38]

Discussion:

Lord Goff, *Future of the Common Law*, 46 *I.C.L.Q.* 745 (1997).

VI. The Civil Law: Overview (Feb 22)

Background:

GCP [19-174]; AD [3-32]

Discussion:

Rett R. Ludwikowski, Latin American Hybrid Constitutionalism, 21 B.U. Int'l L.J. 29 (2003).

VII. Mixed Legal Systems (Feb 29) – zoom session

Discussion:

Vivian Grosswald Curran, Romantic Common Law, Enlightened Civil Law: Legal Uniformity and the Homogenization of the European Union, 7 Colum. J. Eur. L. 63 (2003).
Jacques du Plessis, Comparative Law and the Study of Mixed Legal Systems, in OXHCL (2019).

VIII. Convergence of Legal Systems (Mar 14) – zoom session

Discussion:

Charles H. Koch Jr., Envisioning a Global Legal Culture, 25 Mich. J. Int'l L. 56 (2003).
Ugo Mattei and Luca G. Pes, Civil Law and Common Law: Toward Convergence?, in OXHLP (2008).

IX. Legal Transplants (Mar 21)

Discussion:

Maximo Langer, From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure, 45 Harv. Int'l. L. J. 1 (2004).
Toby S. Goldbach, Why Legal Transplants?, 15 Annu. Rev. Law Soc. Sci. 583 (2019).

X. Customary Law & Religious Legal Systems (Mar 28)

Discussion:

T. W. Bennett, Comparative Law and African Customary Law, in OXHCL (2019).
James Q. Whitman, Comparative Law and Religion, in OXHCL (2019).

XI. Comparative Law in the U.S. (Apr 4) – zoom session

Discussion:

Vivian Grosswald Curran, Cultural Immersion, Difference and Categories in U.S. Comparative Law, 46 Am. J. Comp. L. 43 (1998).
David S. Clark, Development of Comparative Law in the United States, in OXHCL (2019).

XII. Comparative Law and Economics (Apr 11)

Discussion:

Nuno Garoupa and Mariana Pargendler, A Law and Economics Perspective on Legal Families, 7 Eur. J. Legal Stud. 36 (2014).
Nuno Garoupa and Thomas S. Ulen, Comparative Law and Economics: Aspirations and Hard Realities, 69 Am. J. Comp. L. 664 (2021).

XIII. Legal Origins (Apr 18)

Discussion:

Rafael La Porta et. al., Economic Consequences of Legal Origins, 46 J. Econ. Lit. 285 (2008).

Anu Bradford et. al., Do Legal Origins Predict Legal Substance?, 64 J. L. Econ. 207 (2021).