LEARNING OBJECTIVES:

This course develops a critical perspective on U.S. law through an exploration of the legal traditions, institutions, and cultures of Europe.

The course is has four main objectives. The first is to develop students’ familiarity with the history of the Western legal tradition, including the history and debates about the aims and methods of comparative law. The contrasts between the common-law and civil-law traditions will be exposed through an introduction to Roman law, its reception in Continental Europe, and its evolution in the French and German civil codes. Some attention will be paid to the different and evolving understandings of the nature of law and judging reflected in these historical developments. The second objective will be to understand and explain the important institutional differences between contemporary American and European legal orders, as manifested in civil procedure, criminal procedure, constitutional review, administrative regulation, the judiciary, and the legal profession. Third, through the study of selected problems, students will gain an appreciation for the distinctiveness of U.S. law’s approach in some domains as well as areas of convergence across legal systems. The final objective is to understand the influence of supranational law – particularly that of the European Union and the European Convention on Human Rights -- on domestic legal orders in European countries.

REQUIRED TEXTS


“C” = Canvas. “C” indicates materials, usually in PDF format, on the course site on Canvas.

Numbered Reading Assignments

Reading assignments for the entire semester are listed on the reading assignment list that appears at the end of this syllabus. We will cover one numbered reading assignment per class. I will not tell you what to read for the next class; please assume that you should prepare the next numbered reading unless I explicitly announce otherwise. Occasionally, I may modify the reading assignment, in which case I will make an announcement in class as well as on the course website. Stay tuned.

COURSE REQUIREMENTS AND EXPECTATIONS

Final Examination

Your grade for the course will be based on a 3-hour in-class open-book final examination. I will provide more guidance about what to expect and how to prepare for the final examination as the semester progresses.
**Attendance and Class Participation**

Attendance and class participation are a required and essential part of this course. It is understood that students will miss a few class sessions due to illness and other compelling reasons. You are otherwise expected to be present and to participate on a regular basis. You do NOT need to inform me when and why you expect to be absent or unprepared for any particular class session. But if your circumstances require you to miss more than a handful of classes, you should arrange to speak with the Dean of Students.

**Laptop Policy**

Students may NOT use laptops, cell phones, or other electronic devices during class. Recent studies indicate that students absorb more information and learn better when they are not typing and staring at computer screens.

**Class Discussion**

I will cold-call on students with no advance notice. When you are called on, the purpose is to engage in a collective dialogue or conversation in which we are trying to understand, articulate, and challenge various lines of thinking. It is NOT a quiz to make sure you have done the reading (although doing the reading is usually necessary to successful participation). The focus should not be on getting the right answer (often there won’t be one right answer), but rather, on constructing arguments, one step at a time. When called on, please do your best to engage the question, even if you are uncertain about your response or where we will end up. Speak loudly and clearly.

As time permits, I will also call on volunteers who have their hands up to make a comment or question. I encourage all of you to volunteer frequently. But do keep in mind that I will not be able to call on all the students who have their hands up, and inevitably, some questions will go unanswered during class time. If the class discussion has moved on to another subject without your having had the opportunity to speak, please save your question or comment for office hours or e-mail it to me after class.

**Preparation for Class**

Due to the nature of this course, we will be reading a wide range of materials – cases, statutes, regulations, policy papers, and scholarship by legal academics as well as by political scientists, historians, and sociologists. Many of these materials will be from outside the United States and will have different styles, which we will discuss. They will present challenges that will feel different from those encountered in other classes.

After you read the assigned readings, you should try to articulate what you would say if you had to write an op-ed about the materials you have just encountered. Concretely, I offer 3 tips for getting the most out of the readings and being well-prepared for class discussion (and eventually for the exam):

1. If you are reading a case, make sure you understand the facts and procedural posture.
2. For any scholarly texts, be able to articulate the author’s main argument and write down 2-3 questions or critiques of the argument. I will not ask to see any of your writings, but I will regularly ask students what the author’s main argument is, and what data or evidence the author uses to support the argument, whether or not the argument makes sense.
(3) For any foreign legal materials, ask yourself whether there is a relevant American counterpart, and if so, what it might be and why. If not, why not?

**Student Pages**

I regard the class as a community, so it is vital for me to get to know everyone in the room. To facilitate this, I require each student to submit one page on the Student Pages Assignment Dropbox on the course canvas site. The page could be your resume, or a written description of yourself and your career trajectory and/or your interest in the topics studied in this course. Please submit it ASAP and no later than Friday, February 3, 2017. You are also strongly encouraged to attend office hours at least once before the semester is over.

**Office Hours and E-mail**

My office is in Room 939. My regularly scheduled weekly office hours will be on Tuesdays at 10 am to 12 pm.

My e-mail address is jsuk@yu.edu. Please feel free to ask questions and make comments by email. In cases where the question is likely to be of interest to other students, I will respond orally in class or through an announcement on the course website or collective email.
READING ASSIGNMENTS

Comparative Law: What is it? Why do it?

1. In advance of the first class, please watch the documentary film by Michael Moore, Where To Invade Next (2016). The DVD is on reserve at the Cardozo Library. The film is also available for rental ($3.99) on Amazon Instant Video or ITunes.

2. TB 1-62

The Civil Law Tradition

3. From Roman Law to the French and German Civil Codes, TB 65-91

4. Constitutional Frameworks: TB 93-114


7. Legal Education and Legal Profession: TB 181-212

8. Judges and Scholars: TB 212-28

9. Sources of Law and Interpretation: TB 279-301; 317-30


11. Contrasts with the Common Law Precedent and Judicial Style: TB 665-703

Civil Justice: Procedure and Institutions (incorporate the English materials in)

12. Civil Procedure in Continental Europe
   TB 229-47

13. Comparative Political Economy of Civil Litigation
    Robert Kagan, Adversarial Legalism ch. 6 (2001)(C)
    Karlsgodt, World Class Actions chs. 10, 17 (C)
    EU Class Action Materials (C)

Criminal Justice: Procedure and Institutions (incorporate the English materials)

14. Criminal Procedure in Continental Europe
    TB 247-71; 903-25
Films: *L’Affaire Delnatte; The Shooting of Big Man*

15. Plea Bargaining
   TB 925-943

16. Punishment
   Film: *Le film de Tour de France Cycliste Pénitentiaire*

**Comparative Private Law**

17. The Abuse of Right Doctrine
   Abuse of Right: Schlesinger’s Comparative Law 974-90 (Mattei, Ruskola & Gidi eds. 2009) (C)

18. Tort Damages
   Michael G. Faure, Accident Compensation, in *Elgar Encyclopedia of Comparative Law* (Smits ed. 2006) (C)
   Siewert Lindenberg, Damages (in tort), in *Elgar Encyclopedia of Comparative Law* (Smits ed. 2006) (C)

19. Standard Form Contracts: TB 757-76


**Social and Economic Regulation: Selected Topics**

21. The Constitution and Judicial Review
   The Example of Abortion: TB 795-837

22. Marriage and the Family:
   Comparative Materials on Same-Sex Marriage (C)

23. Work

24. Consumerism and Producerism
The Role of Supranational Legal Regimes
