

7xx  
Comparative Criminal Procedure  
(Tentative) Course Outline  
Spring 2004

Professor William C. Heffernan

Assigned Text:  
Craig Bradley, *Criminal Procedure: A Worldwide Survey*  
(Durham, NC: Carolina Academic Press, 1999)

*Week Topic and Assignment*

- 1      Constructing a Framework for Comparison  
      Bradley text: an analysis of Bradley's categories for comparison  

I.      The Terms of Debate
  
- 2      Preliminary Considerations  
      J.R. Spencer, "Introduction" to Mireille Delmas-Marty and J.R. Spencer, eds.,  
      *European Criminal Procedures* (Cambridge: Cambridge University Press, 2002),  
      pp. 1-37  
      Mirjan Damaska, "Evidentiary Barriers to Conviction and Two Models of  
      Criminal Procedure: A Comparative Study," 121 *U. Pa. L. Rev.* 506 (1973)
  
- 3      The Issues at Stake  
      John H. Langbein, "The Criminal Trial before the Lawyers," 45 *U. Chi. L. Rev.*  
      263 (1978)  
      Albert W. Alschuler, "Implementing the Criminal Defendant's Right to Trial:  
      Alternatives to Plea Bargaining," 50 *U. Chi. L. Rev.* 931 (1983)
  
- 4      A Heated Exchange  
      Abraham S. Goldstein and Martin Marcus, "The Myth of Judicial Supervision in  
      Three 'Inquisitorial' Systems: France, Italy, and Germany," 87 *Yale L. J.* 240  
      (1977)  
      John H. Langbein and Lloyd L. Weinreb, "Continental Criminal Procedure:  
      'Myth' and Reality," 87 *Yale L. J.* 1549 (1978)
  
- 5      Attempts at More Sober Analysis  
      Richard S. Frase, "Comparative Criminal Justice as a Guide to American Law  
      Reform: How the French Do It, How We Can Find Out, and Why Should We  
      Care?" 78 *Cal. L. Rev.* 539 (1990)  
      Richard S. Frase and Thomas Weigand, "German Criminal Procedure as a Guide  
      to American Law Reform: Similar Problems, Better Solutions?" 18 *B. C. Int'l. &  
      Comp. L. Rev.* 317 (1995)

- 6 A Detour: Asian Criminal Procedure  
 Daniel H. Foote, "The Benevolent Paternalism of Japanese Criminal Justice," 80 *Cal. L. Rev.* 317 (1992)  
 Teemu Ruskola, "Legal Orientalism," 101 *Mich. L. Rev.* 179 (2002)

## II. Specific Comparisons

- 7 Search and Seizure  
 Thomas Weigand, "Using the Results of Audio-Surveillance as Penal Evidence in the Federal Republic of Germany," 24 *Stan. J. Int'l. Law* 21 (1987)  
 Craig Bradley, "The Exclusionary Rule in Germany," 96 *Harv. L. Rev.* 1032 (1983)
- 8 Confessions  
 Mark Berger, "Reforming Confession Law British Style: A Decade of Adverse Inferences from Silence," 31 *Col. Hum. Rights L. Rev.* 243 (2000)  
 Stephen C. Thaman, "Miranda in Comparative Perspective," 45 *St. Louis U. L. J.* 589 (2001)
- 9 Plea Bargaining and Victims' Rights  
 Joachim Herrmann, "Bargaining Justice—a Bargain for German Criminal Justice?" 53 *U. Pitt. L. Rev.* 755 (1992)
- 10 Fact-Finding: Lay and Professional Judges  
 John H. Langbein, "Mixed Court and Jury Court: Could the Continental Alternative Fill the American Need?" 1981 *Am. Bar Found. Res. J.* 195

## III. Human Rights Claims Cognizable in Domestic Law

- 11 An Introduction to the European Convention on Human Rights  
 Richard S. Kay, "The European Human Rights System as a System of Law," 6 *Col. J. of European Law* 55 (2000)
- 12 Cultural Relativism and Human Rights  
 Chris Brown, "Universal Human Rights: A Critique," 1 *The Intern. J. of Hum. Rights* 41 (summer 1997)  
 Michael Freeman, "Universalism, Communitarianism and Human Rights: A Reply to Chris Brown," 2 *The Intern. J. of Hum. Rights* 79 (summer 1998)  
 Declan O'Sullivan, "The History of Human Rights across Regions: Universalism vs. Cultural Particularism," 2 *The Intern. J. of Hum. Rights* 22 (autumn 1998)  
 Stephen C. Thaman, "Is America a Systematic Violator of Human Rights in the Administration of Criminal Justice?" 44 *St. Louis U. L. J.* 999 (2000)  
 Taku Tamaki, "China and International Human Rights Norms: Making Sense of Different Approaches," 6 *The Intern. J. of Hum. Rights* 114 (autumn 2002)

- 13     Judicial Review of Domestic Law under the European Convention  
*Hermann Amann v. Switzerland* (Feb. 2000), 21 *Human Rights L. J.* 221 (2000)  
*Aurel Rotaru v. Romania* (May 2000), 21 *Human Rights L. J.* 231 (2000)  
*Sultan Khan v. the United Kingdom* (May 2000), 21 *Human Rights L. J.* 241  
(2000)
- 14     Torture: The European Convention and Beyond  
Jastine Barrett, "The Prohibition of Torture and International Law," 5 *The Intern.  
J. of Human Rights* 1 (spring 2001) and 1 (summer 2001)  
Ardi Imseis, "Moderate Torture on Trial: The Israeli Supreme Court Judgment on  
General Security Service Interrogation Methods," 5 *The Intern. J. of Human  
Rights* 71 (summer 2001)

**Third paper due**