



THE WEST AND THE REST IN COMPARATIVE LAW
2008 Annual Meeting of the American Society of Comparative Law
October 2-4, 2008

U.C. Hastings College of the Law www.uchastings.edu
Co-organized by:
The International University College of Turin www.iuctorino.it

This conference aims at unveiling the “master narrative” of the Western Legal Tradition as reflected in the comparative study of law. In particular, we will explore how we perceive ourselves in relation to “the other”, i.e. what once was known as the radically different legal cultures. Very often our description of the other is deeply revealing of our own “self portraits”, something that we need to better understand. To be sure, in order to properly compare, we should get rid of as many stereotypes as possible both about our own Western identity and about that of the rest. Only by doing so may we avoid comparing actual legal entities with imaginary ones.

In order to walk this path of a thorough and perhaps disturbing mirror understanding, the conference will give special attention to what can be seen as subaltern areas of the world, where all sorts of “legal intervention” projects are in place or will be in place in the foreseeable future. These are areas where there is much need to distinguish the reality from the mythology especially if we keep engaging in projects of legal transplantation. In so doing we should be able to take into consideration the “power dimension” of legal comparison, a perspective abundantly neglected in our discipline thus far. The main focus will therefore be on the idea of “rule of law” and its alternatives.

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The American Society of Comparative Law 2008 Annual Meeting scholarly program has been organized by:

George Bisharat, UC Hastings College of the Law
Ugo Mattei, UC Hastings College of the Law
Anna di Robilant, Boston University
Mathias Reiman, University of Michigan

This event is dedicated to the memory of the great Bay Area Comparative legal scholars, both having served in the faculty at Hastings, late Professors Rudolf Schlesinger and Stefan Riesenfeld.

Rudolf Schlesinger (1909-1996)

Legal scholar, author, and professor, Rudolf B. Schlesinger achieved fame for his groundbreaking work in the study of international legal systems. Schlesinger was known as the dean of comparative law. His arrival in the field during the early 1950s helped to give it both greater legitimacy and popularity in legal academia. *Comparative Law: Cases-Texts-Materials* (1950), written while Schlesinger taught at Cornell University, became a staple of law school curricula that entered its sixth edition in the late 1990s. He also wrote important studies of civil procedure and international business transactions and directed the ten-year international research project that pioneered the "common core methodology" today widely used in Europe.

Born in Munich, Germany, in 1909, Schlesinger fled Nazism before World War II to live in the United States. He already had earned his degree in law from the University of Munich in 1933. He developed a background in finance while working in a Munich bank where he helped German Jews transfer their assets out of the country in order to escape persecution. In 1938, with the Nazi party gaining strength, Schlesinger emigrated and promptly enrolled at Columbia Law School, earning his degree in 1942. He briefly practiced financial law, was a professor at Cornell from 1948 to 1975, and upon retirement from Cornell joined the faculty of the Hastings College of Law at the University of California.

Schlesinger had an enormous impact on U.S. and European legal studies. Foremost was his pioneering 1950 book on comparative law, which ultimately influenced two generations of readers. In 1955, working on behalf of the New York Law Revision Commission, he examined the important question of whether to codify commercial law. His study, *Problems of Codification of Commercial Law* (1955), anticipated the subsequent development of the [Uniform Commercial Code](#). In 1995 the *American Journal*





of Comparative Law published a tribute to Schlesinger that praised the brilliance of his "heroic work" and noted that its influence went beyond U.S. law: "Today's serious efforts to find and develop a unitary European private law is, consciously or unconsciously, a continuation of Schlesinger's effort."

Stefan Riesenfeld (1908-1999)

Stefan Albrecht Riesenfeld was an international law expert who taught at the University of California and helped frame the Constitution for West Germany after World War II. Professor Riesenfeld, a native of Germany, officially retired and was granted emeritus status in 1976 but continued to teach at Boalt Hall, the law school at Berkeley until 1998.

Speaking German, French and Italian and with two European law degrees to his credit, he learned English only while studying at Boalt Hall in the 1930's. He nonetheless graduated on time and near the top of his class in 1937 and went on to receive a doctorate in law at Harvard University three years later.

He joined the faculty at Berkeley in 1952 as a professor of law after teaching at Harvard and the University of Minnesota.

He wrote or edited 32 books dating to the 1940's, including most recently "Creditors' Remedies and Debtors' Protection: Cases and Materials" (4th ed., 1986; with a 1990 supplement), "Parliamentary Participation in the Making and Operation of Treaties: A Comparative Study" (1994), and, with Robert B. Krueger, "The Developing Order of the Oceans" (1986).

A native of Breslau -- now Wroclaw, Poland -- Stefan Riesenfeld received law degrees from the University of Breslau in 1932 and the University of Milan in 1934. Having a Jewish grandparent, he grew leery at the Hitler's rise and moved to Italy before the Nazis took power in Germany in 1933.

Professor Riesenfeld was one of the last surviving founders of comparative international law in the United States, he was an authority on property law, creditors' recourse and bankruptcy, administrative law and legal history in a career of more than 60 years.





Thursday October 2nd

7:00 pm–9:00 pm Wine and Cheese Welcome Reception
Sky Room, 100 McAllister, 24th Floor

Friday October 3rd

Louis B. Mayer Hall, 198 McAllister

8:00 am Continental Breakfast

8:30 am Welcome by Dean Nell Newton and Professors Joel Paul and Ugo Mattei

9:00 am Opening Keynote Laura Nader, U.C. Berkeley

Morning Sessions: These panels will have a more analytical focus. They will assess the state of affairs between the West and the Rest and analyze the reasons behind the current (mutual) perceptions.

9:30 am Panel I How the Rest Sees the West.

How are we in the West perceived by actors from other (non-Western) legal cultures in the age of (post?) modernity? As a model, a threat, an inevitable (post-colonial?) evil?

Chair: Mitchel Lasser, Cornell.

Panelists: Faiz Ahmend (U.C. Berkeley)
Anna Maria Merico (Arizona)
Monica Eppinger (U.C. Berkeley/Yale)

11:00 am Coffee Break

11:30 am Panel II How the West sees the Rest.

How have we, in the West, traditionally perceived other (non-Western) legal cultures - as alien and exotic ("oriental"), as models (e.g., of legal harmony), or as backwards (in need to learn from us)?

Chair: Radhika Rao, U.C. Hastings

Panelists: Jorge Esquirol (Florida)
Haider Ala Hamoudi (Pittsburg)
Teemu Ruskola (Emory)
Wadie Said (South Carolina)

1:00 pm Lunch: Keynote Speaker Richard Buxbaum, U.C. Berkeley



Afternoon Sessions: These panels will approach the relationship between the West and the Rest from a more normative perspective. Once we overcome the traditional biases vis-à-vis each other and embrace a more humble position, what can the West and the Rest learn from each other?

2:30 pm Panel III Can the Rest Learn from the West?

The panel will focus, inter alia, on the issue of legal transplants, i.e., legal exports from the West to the Rest. Is the adoption of Western notions helpful or harmful, and in what particular contexts? How can we avoid that these exports become dysfunctional?

Chair: Vernon Palmer, Tulane

Panelists: Thomas Kelly (North Carolina)
 Maximo Langer (UCLA)
 Inga Markovits (Texas)

4:00 pm Coffee Break

4:30 pm Panel IV Can the West Learn from the Rest?

The panel will focus on the shortcomings of the Western model of legality based on a professionalized, individualistic and highly formalistic approach to justice. Can the West develop today a form of legality which is relational rather than based on litigation as a zero sum game, learning from face to face social organizations in which individuals understand the law?

Chair: Anna di Robilant, Boston University

Panelists: Eric Feldman (Penn)
 Nico Howson (Michigan)
 Jed Kroncke (Yale)
 Jeff Redding (St. Louis)

6:00 pm Cocktails: Keynote Speaker Alan Watson, Georgia

7:00 pm Annual ASCL Dinner
 Alumni Reception Center, 200 McAllister, 2nd Floor

9:00 pm Movie: "Le bon élève. Le Mali e^t Nous"

This movie discusses legal economic and social transformations of Mali, one of the poorest countries in the World, under the pressure of globalization.

Produced by Bloq Out, Paris, 2006. The subject is by Elisabetta Grande, Ugo Mattei and Luca Pes and directed by Paolo Quaregna. Its duration is 50 minutes, with English subtitles.



Saturday October 4th

Louis B. Mayer Hall, 198 McAllister

9:00 am Continental Breakfast

9:30 am Annual Business Meeting of the American Society of Comparative Law

12:00 pm Lunch

1:30 pm Panel V Middle East - The great clashes between the West and the Rest.

Is the law part of the problem or can it be part of the solution?

Chair: Leti Volpp, U.C. Berkeley

Panelists: Hadar Aviram (U.C. Hastings)
Karima Bennoune (Rutgers-Newark)
George Bisharat (U.C. Hastings)
Tom Ginsburg (University of Chicago)
Asifa Quraishi (Wisconsin)

3:00 pm Final discussion and remarks.

