Comparative Legal Institutions
Political Science 617

Fall 2008
TR 1-2:15 – 5206 Social Sciences

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COMPARATIVE LEGAL INSTITUTIONS

Course Description: All political systems are grounded in law. Yet law is far from identical across geographic borders, not only in terms of its substance but also in terms of the sorts of institutions that make up the legal system. In this course we will consider how the role of law varies around the world. We will examine the variation in the structure and role of basic legal institutions. We will assess the possible explanations for these variations – are they best explained by longstanding cultural traditions or by more contemporary political concerns (or perhaps a combination of both). We will consider the influence of globalization – are countries increasingly being pressured to change their laws and legal institutions in order to gain admittance to trade alliances and to attract investment. During the course of the semester, we will study how law has been used by various regimes to achieve their goals and to address prior societal wrongs, and discuss the circumstances under which this instrumental use of law may be appropriate.

Course Requirements: Students are expected to attend class regularly and to take part in class discussion. There will be mid-term and final examinations. There are two types of writing assignments. Students are required to write 3 short essays (3-4 pages) reflecting on the readings for class sessions (the “Readings Papers”). Students will be divided into 7 groups (A - G). Most of the classes are coded with one of these letters. Students will be expected to submit essays on the days that correspond to their group and to be prepared to discuss the readings in class. Readings Papers must be turned in at the beginning of the class period for which the readings being discussed are assigned. In addition, students are required to write an essay (6-7 pages) reflecting on the themes of the course (the “Reflection Paper”). The Reflection Paper will be based on an outside book that deals with issues of comparative law. More details about the Reflection Paper as well as a list of books that may serve as a basis for it will be provided later in the semester and are available on the course website. Students interested in receiving honors credit must meet with the instructor during the first two weeks of the semester to agree on additional assignments.

Grades: Final grades will be calculated on the following basis: final exam (25%), mid-term exam (25%), Readings Papers (15%), Reflection Paper (20%), class participation (15%).

Readings: The 3 books listed below are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is available for purchase from the Copy Center at the Law School (located on the ground floor of the law school). The cost is $26.65.
Part 1: Categorizing Legal Systems – Culture & Politics

September 2: Introduction – How do we understand the role of law?

September 4: Comparing How People Experience Law
Shaw, “Moscow Hit with Burst of Road Rage,” Moscow Times, 8 July 2008

A September 9: Western Legal Traditions – Common and Civil Law
Merryman, The Civil Law Tradition, pp. 1-5, 20-33, 56-60, 80-85 (skim 6-19, 48-55)
Kagan, Adversarial Legalism, pp. 6-16
Li v. Yellow Cab Co. of California, 13 Cal.3d 804 (1975)
La Mutualité Industrielle v. Epoux Charles, 1982 D.J. 449 (+ key code sections)

B September 11: Non-Western Legal Traditions
Polgreen, “Nigeria Turns from Harsher Side of Islamic Law,” NYT, 1 Dec 07, p. A1 [available on course website]
“A Lesson from Mattel,” China Post, September 30, 2007

C September 16: Repressive Law
Müller, Hitler’s Justice, pp. 27-35
Lobban, White Man’s Justice, pp. 160-92

September 18: Repressive Law in Action
Film: “A Trial in Prague”
Kavan, Love and Freedom, pp. xi-xv, 55-65, 87-97, 103-14, 164-82

September 23: Autonomous Law (“Rule of Law”)
Nonet and Selznick, Law & Society in Transition, pp. 53-72
Fuller, The Morality of Law, pp. 33-41
D  September 25: Responsive Law: Possible or Utopian?

E  September 30: Legal Development – Theory and Reality
North, *Institutions, Institutional Change and Economic Performance*, pp. 121-30

Part 2: Basic Rights – Variations in How They Are Framed and Understood

F  October 3: Human Rights – Universal or Culturally Specific?
Henkin, *The Age of Rights*, pp. 11-29
Donnelly, *Universal Human Rights in Theory & Practice*, pp. 72-76
African Charter on Human and Peoples’ Rights: [http://www1.umn.edu/humanrts/instree/z1afchar.htm](http://www1.umn.edu/humanrts/instree/z1afchar.htm)
Williams, “Trying to Put a Face to the Name of Evil,” *New York Times*, 4 May 2008

G  October 7: Setting Up the Framework: The Role of Constitutions
German Basic Law, arts. 1-19: [http://www.iuscomp.org/gla/statutes/GG.htm](http://www.iuscomp.org/gla/statutes/GG.htm)
US Constitution, Bill of Rights: [http://www.usconstitution.net/const.html](http://www.usconstitution.net/const.html)
1977 USSR Constitution, part II:
http://www.departments.bucknell.edu/russian/const/77cons02.html
1977 USSR Constitution, arts. 173-174:
http://www.departments.bucknell.edu/russian/const/77cons07.html#IX
1999 Nigerian Constitution (esp. arts. 5, 10 & chapter VII):
http://nigeriaworld.com/focus/constitution/
Iwobi, “Tiptoeing Through a Constitutional Minefield: The Great Sharia Controversy in Nigeria,”
Flow-chart of Nigerian judicial system
Afghan Constitution:
http://www.afghan-web.com/politics/current_constitution.html

**October 9: Midterm Exam**

**Part 3: Resolving Disputes – Formal and Informal Institutions**

**October 14-16: Resolving Disputes – The Basic Dynamics**
Merry, *Getting Justice and Getting Even*, pp. 37-47
Film: “The Story of Qiu Ju”

**A October 21: Informal Mechanisms of Resolving Disputes**
Feifer, *Justice in Moscow*, pp. 103-29
Pathak, “The Obstacles to Regulating the Hawala: A Cultural Norm or a Terrorist Hotbed?”
Sherwin, Verman, Figueira, “Perceived Advantages and Disadvantages of International Arbitration”
Check out the website of the International Court of Arbitration: http://www.iccwbo.org/court/

**B October 23: Judicial Independence – What Does It Mean?**
Lubert, 61 *Law & Contemporary Problems* 59-74
Hodak, “Judges in the Culture Wars Crossfire,” *ABA Journal*, October 2005
Masood, “Suspension of Jurist Unleashes Furor Against Musharraf,” *New York Times*, March 15,
2007
Letter from Pakistan’s Former Chief Justice, January 30, 2008

C October 28: Courts – Common Law
Guarnieri & Pederzoli, The Power of Judges, pp. 78-88

D October 30: Courts – Civil Law & Islamic Law
Merryman, The Civil Law Tradition, pp. 86-90, 121-22
Blankenberg, “Changes in Political Regimes and Continuity of the Rule of Law in Germany,” in Courts, Law & Politics in Comparative Perspective, pp. 256-65
Burnham & Maggs, Law and Legal System of the Russian Federation, pp. 50-51, 62-64, 73-81, 394-7
Bowen, “Fairness and Law in an Indonesian Court,” in Dispensing Justice in Islam (2006), pp. 117-41
“Indonesia,” Legal Systems of the World, pp. 706-9,

Part 4: The Players: Judges, Lawyers & Juries

E November 4: Judges – How and Why People Become Judges
Abraham, The Judicial Process, pp. 54-63, 99-100 (skim 63-90)
Ulc, The Judge in a Communist State, pp. 5-19, 61-69

F November 6: Judicial Retention and Accountability

G November 11: Lawyers – Institutional Choices and Their Consequences
Merryman, The Civil Law Tradition, pp. 102-11
A

**November 13: Juries and Other Types of Lay Decision-Makers**


Feifer, *Justice in Moscow*, pp. 80-83

Abdullaev, “A Jury Is Better Than a Judge,” *Moscow Times*, June 1, 2006


B

**November 18: Judicial Review – The US Model**

Abraham, *The Judicial Process*, pp. 186-269 (ok to skim 228-33, 240-47)


C

**November 25: Judicial Review – The European Model – In Europe & Elsewhere**

Guest Speaker: Alexei Trochev, Law & Society Fellow, UW Law School


D

**December 2: Judicial Review in Practice**


Mora v. McNamara (U.S. 1967)

Chechnya Case (Russia 1995)

Socialist Reich Party Case (West Germany 1952)

Hungarian Benefits Case (1997) (plus commentary by Sajo)

Egyptian Veiling Case (1996)

E

**December 4: Using Legal Mechanisms to Deal with the Past**
Landsman, “Alternate Responses ...” 59 Law & Contemporary Problems 81-93
List of truth commissions: http://www.usip.org/library/truth.html
Rwanda: http://69.94.11.53/default.htm
Documentaries: “Gacaca: Living Together Again in Rwanda” & “The Pinochet File”

December 4: Reflection Papers Due in Class (late papers not accepted)

December 9: Criminal Process – Civil & Common Law
Abraham, The Judicial Process, pp. 104-11
Merryman, The Civil Law Tradition, pp. 124-32
Documentary: “Indictment”

December 11: Criminal Process – Repressive Law & Islamic Law
Kaminskaya, Final Justice, pp. 65-157

Friday, December 19: Final Exam – 2:45pm to 4:45pm