Legal Pluralism

Definition: Two or more legal systems coexisting in the same "social field"
- "Social field": a social setting (country, region, community, clan, organization)
- Multiple normative orders
- Cultural pluralism: society in which groups maintain their distinct identities and cultural practice
- Melting pot vs. mosaic

Significance of Legal Pluralism
- The "constitutive" role of law
  - loi and droit
  - Recht and Gesetz
- Law frames how we think about the world
  - Segregation laws in the U.S.
  - Apartheid in South Africa
  - Limitations on rights of women in 19th Century U.S.
- Legal pluralism involves competing or alternative frames
Early Manifestations

- **Personal principle**
  - Different bodies of law within a geographic area apply depending upon the group to which an individual belongs

- **Legal domains**
  - Religious vs. state law
  - Personal status issues vs. impersonal relations

Law in Colonial Societies

- **Customary law of the indigenous people(s)**
  - Different law applied to indigenous people and colonists for personal status issues
  - Indigenous groups permitted to govern internal affairs according to customary law
  - Relationship between indigenous people and colonists governed by colonial power’s law

Partial Imposition of European Law

- Impossible to fully impose European law
  - Lack of trained personnel
  - Would create resistance

- Indigenous law retained where it did not conflict with interests of colonial power
  - "Customary Law" as colonial power’s restatement or adaptation of indigenous or traditional law
  - Indigenous law was typically oral rather than written

- Major point of conflict over land ownership
Legal Reform
- Ottoman empire had a legal system based heavily on Islamic Law
  - Islamic law has a lot to say about the status of women, and that status is distinctly subservient to men
- Turkey discarded Ottoman-based law in favor of a modern civil code (1926)
  - Changed legal status of women
  - Little impact on actual status of women
  - Most people continued to follow pre-existing norms

Legal Pluralism in the U.S.
- Dual sovereignty
  - Federalism
  - Federal supremacy
  - Limited domains for federal law
- Dual court system
  - 51 distinct court systems in the U.S.
  - Some types of cases can be brought in either system
- States may grant rights not granted by U.S. Constitution

Tribal Courts
- Tribal sovereignty
  - Inherent sovereignty of Indian nations to "make their own laws and to be ruled by them." (Williams v. Lee)
- Formal tribal court systems
  - About 275 tribes and Alaskan native groups
- Returning to traditional means of resolving disputes
  - Peacemaking
  - elders’ councils
  - sentencing circles.
Globalization and Legal Pluralism

- Supra-national courts in Europe
  - European Court of Justice
  - European Court of Human Rights
  - Europe as a federal system
- International treaties bring new obligations
  - Role of NGO’s (Nongovernmental Organizations)
  - Change to legal discourse
  - Change to legal consciousness