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 a short essay (4-5 pages) reflecting on the readings for class sessions (the “Readings Papers”). 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. A schedule for this assignment will be posted on the course website. Two cautionary notes: (1) these essays must be turned in at the beginning of the class period for which the readings being discussed are assigned, and (2) students will be expected to participate actively in the class discussion on the day the essay is due. The grade for participation (10%) will be determined largely based on performance on this day.

In addition, students are required to write an essay (6-7 pages) reflecting on the themes of the course (the “Reflection Paper”) that will be due in class on November 24, 2015. 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 for the course must consult with the instructor by September 15, 2015, to set up additional assignment(s).

Grades: Final grades will be calculated on the following basis: final exam (30%), mid-term exam (25%), Readings Paper (10%), Reflection Paper (25%), class participation (10%).

Readings: Students should purchase all of the books listed below. They are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is posted on the course website. Students interested in obtaining a hard copy of this reader should contact the Law School Copy Shop (copyshop@law.wisc.edu). The cost is $46.


Part 1: Categorizing Legal Systems – Culture & Politics

September 3: Comparing How People Experience Law
Shaw, “Moscow Hit with Burst of Road Rage,” Moscow Times, 8 July 2008

September 8: 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)

September 10: Islamic Legal Traditions

September 15: Mixed Legal Traditions
van Notten, The Law of the Somalis, pp. 3-10, 137-144, 175-186
“Send Me a Number,” Economist, January 5, 2008

September 17: Repressive Law
Müller, Hitler’s Justice, pp. 27-35
Lobban, White Man’s Justice, pp. 160-92
September 22: Autonomous Law (“Rule of Law”)
Nonet and Selznick, Law & Society in Transition, pp. 53-72
Fuller, The Morality of Law, pp. 33-41

September 24: Group Exercise on the “Rule of Law”

September 29: Responsive Law: Possible or Utopian?
Nonet and Selznick, Law & Society in Transition, pp. 16, 73-113

October 1: Repressive Law in Action
Film: “A Trial in Prague”
Kavan, Love and Freedom, pp. xi-xv, 55-65, 87-97, 103-14, 164-82

October 6: Legal Development – Theory and Reality
Weber, Max Weber on Law in Economy and Society, pp. 5-9
North, Institutions, Institutional Change and Economic Performance, pp. 121-30
Part 2: Basic Rights – Variations in How They Are Framed and Understood

**October 8: 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

**October 13: 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](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](http://www.departments.bucknell.edu/russian/const/77cons07.html#IX)
Afghan Constitution:
Alekozai & Nazar, “A Decade After Adoption Afghan Constitution is Yet to be Implemented,” gandhara, rferl.org, August 19, 2015

**October 15: Midterm Exam**
Part 3: Resolving Disputes – Formal and Informal Institutions

October 20-22: Resolving Disputes – The Basic Dynamics
Merry, Getting Justice and Getting Even, pp. 37-47
Film: “The Story of Qiu Ju”

October 27: Informal Mechanisms of Resolving Disputes
Gulliver, “Dispute Settlement Without Courts: The Ndendeuli of Southern Tanzania,” Law in Culture and Society, pp. 24-49
Feifer, Justice in Moscow, pp. 103-29
Lev, “Judicial Institutions and Legal Culture,” in Culture and Politics in Indonesia, pp. 285-86
Check out the website of the International Court of Arbitration: http://www.iccwbo.org/court/

October 29: Judicial Independence – What Does It Mean?
Lubert, 61 Law & Contemporary Problems 59-74
Hodak, “Judges in the Culture Wars Crossfire,” ABA Journal, October 2005

November 3: Courts – Common Law

November 5: 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
**November 10: Courts – Islamic & Mixed Judicial Systems**


Flow-chart of Nigerian judicial system


**Part 4: The Players: Judges, Lawyers & Juries**

**November 12: Judges – Systems of Selection and Retention**


Ulc, *The Judge in a Communist State*, pp. 5-19, 61-69


**November 17: Lawyers – Institutional Choices and Their Consequences**

Merryman, *The Civil Law Tradition*, pp. 102-11


Abraham, *The Judicial Process*, pp. 91-100


**November 24: Observing a Civil Law Court in Action** [this would be ideal on 24 Nov]

Documentary: “10th District Court” (an inside look at the French legal system)

**November 24: Reflection Papers Due in Class** (late papers not accepted)
Part 5: Procedural Variations

December 1: Judicial Review in Comparative Context
Friedman, *American Law*, pp. 178-82

December 3: Judicial Review under Authoritarianism

December 8: Judicial Review in Practice
Mora v. McNamara (U.S. 1967)
Freedom of Movement (Russia)
Socialist Reich Party Case (West Germany 1952)
Hungarian Benefits Case (1997) (plus commentary by Sajo)
The Turban Case (Turkey 1996)

December 10: Using Legal Mechanisms to Deal with the Past
Documentary (in class): “Gacaca: Living Together Again in Rwanda”
Landsman, “Alternate Responses ...” 59 *Law & Contemporary Problems* 81-93
The ICC and Sudan: Questions & Answers

December 15: Criminal Process – Civil & Common Law
Documentary (in class): “Indictment”
Merryman, *The Civil Law Tradition*, pp. 124-32
December 11: Criminal Process – Repressive Law & Islamic Law
Kaminskaya, Final Justice, pp. 65-157

Wednesday, December 23: Final Exam – 12:25pm to 2:45pm