COMPARATIVE LAW

Course Description: As we look around the world, law exists in every country. But law does not work in the same way in every country. In this course, we will be exploring how law differs as we move across geographic boundaries. Our exploration will include a number of different legal traditions. Not just our own common law system, but also civil law, Islamic law, Hindu law, and Far Eastern law. We will ask how societal expectations of law change depending on its historical legal tradition and whether globalization is having the effect of blurring these distinctions. We will explore the basic legal institutions – such as constitutions, courts, judges, juries, regulations, lawyers – in a variety of contexts. We will ask how the role of lawyers shifts depending on the institutional and cultural contexts. Our focus will be less on the details of the substantive law of any single country and more on the underlying institutional infrastructure.

Course Expectations:

Writing Assignments: There are four types of writing assignments. More information about these assignments is available on the course website.

- Readings Papers: Students are required to write 3 short essays (3-4 pages) reflecting on the readings for class sessions (the “Readings Papers”). A schedule will be prepared to divide up the courses among the students. Though students should do all the readings and be prepared to discuss the material in class, on the days when a student is “on,” s/he will be expected to submit a “Reading Paper” in which s/he reacts to the assigned material. Readings Papers must be turned in at the beginning of the class period for which the readings being discussed are assigned.

- Research Memo or Research Paper: Law students are required to prepare a succinct memo (6-8 pages) using non-U.S. English-language legal sources (in English translation) in response to hypothetical legal problem set in China. If students have foreign language proficiency, then they can propose their own topic. Those students who want to satisfy their requirement for advanced legal writing through this class will have to turn in two drafts of the paper. Non-law students are required to write a substantial research paper (20-25 pages) on a topic to be mutually agreed-upon by the student and the instructor. Due by Friday, December 6th, at 5pm.

- Report on Public Lecture: Students are required to attend a public lecture on campus that focuses on law or legal issues in a non-U.S. setting and to write an essay (4-5 pages) reflecting on the topic of the lecture and their reaction to the argument made by the lecturer. The essay needs to incorporate at least one outside source, such as a newspaper article, law review article, or foreign regulatory or statutory material. Reports must be submitted within two weeks of the date of the lecture attended.
• **Reflection Essay:** In lieu of a final exam, students are required to write an essay that responds to a question posed with the goal of synthesizing the themes of the course.

**Attendance:** Students are expected to attend class regularly and to take part in class discussions and group exercises. Please notify the professor by email before class if you are going to be unable to attend and detail the reason. Failure to attend class regularly will be taken into account in the class participation portion of the grade. The class participation grade will be based primarily on the level of participation on the days when students turn in their Readings Papers. In addition to a grade on the paper itself, students will also receive a grade for their participation effort. We will also have several in-class exercises for which attendance and participation is expected.

**Grades:** Final grades will be calculated on the following basis: Readings Papers (30%), Research Memo/Paper (25%); Report on Public Lecture (10%); Reflection Essay (15%); Class Participation (20%).

**Readings:** The bulk of the readings are available in a Course Reader. The remainder are in *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, by John H. Merryman and Rogelio Perez-Perdomo, 3d ed. (Stanford Univ Press, 2007).
**Part 1: Comparing Legal Traditions – Culture, Politics & Institutions**

**September 3: Comparing How People Experience Law**
Shaw, “Moscow Hit with Burst of Road Rage,” *Moscow Times*, 8 July 2008
Timmons and Kumar, “India Steadily Increases Its Lead in Road Fatalities,” *New York Times*, June 7, 2010

**September 5: Western Legal Traditions – Common and Civil Law**
Sample provisions on sources of law from civil law countries (Austria, Spain, Iraq)
Kagan, *Adversarial Legalism*, pp. 6-16
Opinion of the German Rechtsgericht in the Matter of G., Defendant-Appellant v. St., Plaintiff-Respondent, 1st Civil Division, RGZ 103, 82, 1921
McCutcheon v. MacBrayne Ltd., 1 W.L.R. 125 (1964)

**September 10: Islamic Legal Traditions**
Guest Speaker: Professor Asifa Quraishi-Landes, Law School

**September 12: Mixed Legal Traditions**
van Notten, *The Law of the Somalis*, pp. 3-10, 137-144, 175-186

**September 17: The Impact of Colonialism on Pre-existing Legal Traditions**
Guest Speaker: Professor Mitra Sharafi, Law School
Agnes, "The Supreme Court, the Media and the UCC Debate in India" in *The Crisis of Secularism in India*, pp. 294-315

**September 19: Finding the Law for Non-US Jurisdictions – Group Project**
See course website for assignment.
Part 2: Comparing Legal Systems

September 24: The “Rule of Law”: Comparing Conceptual Understandings of ROL DONE
Fuller, *The Morality of Law*, pp. 33-41, 46-90

Non-Law Students: Deadline for Submitting Topic for Research Paper

** Paragraph on “Rule of Law” Due to Hendley’s email (khendley@wisc.edu) by 5pm on Wednesday, September 25

September 26: Group Exercise on the “Rule of Law”
ABA Rule of Law Initiative: [http://www.abanet.org/rol/](http://www.abanet.org/rol/)

Fathi, “Many Try To Run, But Few Will Be Allowed,” *New York Times*, May 9, 2009

October 1: Evaluating Indicators of How Law Works
DONE

Check out the World Bank’s website assessing the level of the “rule of law” in countries around the world: [http://info.worldbank.org/governance/wgi/mc_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp) [this page allows you to plug in the countries or regions of the world that most interest you]

Take a look at the World Bank’s “Doing Business” project. Then read the critiques of it. [http://www.doingbusiness.org/](http://www.doingbusiness.org/)
[http://www.doingbusiness.org/rankings/](http://www.doingbusiness.org/rankings/) [explore the various indicators]
Fauvarque-Cosson and Kerhuel, “Is Law and Economic Contest? French Reactions to the *Doing*

Check out the World Justice Project which endeavors to measure rule of law around the world: [http://worldjusticeproject.org/](); [http://worldjusticeproject.org/rule-of-law-index]

Check out the indices on corruption on the Transparency International website: [http://www.transparency.org/policy_research/surveys_indices/cpi]

Check out the indices on law-related issues on the Global Integrity website: [http://www.globalintegrity.org/report]

**October 3: Institutionalizing the Rule of Law Around the World**

DONE

Guest Speaker: Melissa Hooper, Director, ABA field office in Moscow (via skype)


Puckett, “‘We’re Very Apolitical’: Examining the Role of the International Legal Assistance Expert,” *Indiana Journal of Global Legal Studies,* vol. 16, pp. 293-310, 2009


**Part 3: Basic Rights – Variations in How They Are Framed and Understood**

**October 8: International Law**

Guest Speaker: Professor Alexandra Huneeus, Law School

Damrosch, Henkin, Murphy, Smit, *International Law: Cases and Materials,* pp. 2-54

**October 10: Constitutions and Constitutionalism**

Guest Speaker: Professor Alexei Trochev, Political Science, Nazerbaev University, Kazakhstan


US constitution: [http://www.usconstitution.net/const.html](http://www.usconstitution.net/const.html)

German constitution (Basic Law): [http://www.iuscomp.org/gla/statutes/GG.htm](http://www.iuscomp.org/gla/statutes/GG.htm)


1977 USSR Constitution, part II: [http://www.departments.bucknell.edu/russian/const/77cons02.html](http://www.departments.bucknell.edu/russian/const/77cons02.html)
Part 3: Resolving Disputes – Formal and Informal Institutions

October 15: Supranational Courts [readings available on course website]
Guest Speaker: Alexandra Huneeus, Law School

October 17-22: Resolving Disputes – The Basic Dynamics
Film: The Story of Qiu Ju

October 24: 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. 103-129
Miller, “Negotiating with Modernity: Amish Dispute Resolution,” 22 Ohio State Journal on Dispute Resolution, pp. 477-80, 493-509
October 29: Judicial Independence – What Does It Mean?

October 31: Courts – Common Law & Civil Law
Merryman, The Civil Law Tradition, pp. 86-90, 121-22
Bogdan, Concise Introduction to Comparative Law, pp. 104-110, 142-145
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

Non-Law Students: Deadline for Submitting Outline & Bibliography for Research Paper

November 5: Courts – Islamic Law & Mixed Systems
Flow-chart of Nigerian judicial system

November 7: Judges – Systems of Selection and Retention
Ulc, The Judge in a Communist State, pp. 5-19, 61-69

November 12: Judicial Review in Comparative Context
Stone Sweet, On Law, Politics, & Judicialization, pp. 184-208
http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/iran_power/html/guardian_council.stm
November 14: Judicial Review in Practice
Socialist Reich Party Case (West Germany)
Communist Party Case (Russia)
Lustration Case (Czech and Slovak Republics)
The Turban Case (Turkey)
On War Crimes and Crimes Against Humanity (Hungary)

** For those seeking advanced writing credit: First Draft of Research Memo Due in Class

November 19: Lawyers
Merryman, *The Civil Law Tradition*, pp. 102-11
Schlesinger’s *Comparative Law*, pp. 629-654, 684-706

November 21: Case Study – The Chinese Legal Profession
Guest Speaker: Professor Sida Liu, Department of Sociology

November 26: Politicized “Justice”
Film: “A Trial in Prague”
December 3: Juries & Other Forms of Lay Participation in Decision-Making
Abdullaev, “A Jury Is Better Than a Judge,” Moscow Times, June 1, 2006
Feifer, Justice in Moscow, pp. 80-83

December 5: Administrative Law – Variations in Regulatory Schemes
Guest Speaker: Professor John Ohnesorge, Law School
Law in Japan: A Turning Point, pp. 276-301

** November 6 – 5pm: Final Draft of Research Memo or Research Paper Due in Hendley’s Law School Mailbox by 5pm on Friday, December 6, 2013.

** November 6 – 5pm: Final deadline for submitting Reports on Public Lectures. They are due within two weeks of the event attended. If the event is towards the end of the semester, then you must complete the essay by December 6th.

** December 14 – 4pm: Deadline for Submitting Reflection Paper to the Front Office of the Law School (5th Floor)