

**Legal Studies & History 510:
LEGAL PLURALISM
Prof. Mitra Sharafi
Spring 2011**

Class Time: TTh 9.30-10.45am
Class Location: Social Sciences 5231
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Phone: (608) 265-8428
Office: Law 6112 (*Directions: the Law Building is halfway up Bascom Mall on the left. When you enter from Bascom Mall, turn right and take the elevators or stairs to the sixth floor. Other routes will not necessarily lead to 6112.*)
Office Hours: W 4.30-6pm or by appointment
Course Page: Moodle course page accessible via UW Law School Moodle webpage: <http://moodle.law.wisc.edu/> or via Learn@UW link on right side of UW-Madison website (under “My UW-Madison”)

Course description:

This course explores the vibrancy and diversity of rule-based systems that may be called law. The common law—the dominant type of state legal system in Anglophone jurisdictions—is only one flavor of law. Normative orders also exist beyond the state or government. Like the law of the state, these other orders have rules, ways of enforcing them, and adjudicatory bodies that resolve disputes among their members. These systems appear in the clan, tribe, club, school, ethnic group, religious community, profession and corporation. The course covers a wide array of non-state actors and orders, drawing upon legal history and legal anthropology. We will examine everything from medieval English “forest law” to mafia law, the Tokyo tuna court to dispute resolution among orthodox Jewish diamond traders, and Australian aboriginal customary law to immigrant norms in Euro-American contexts. The course compares adversarial and conciliatory models of dispute resolution, along with fault- and no-fault-based systems. We will also explore institutional and justice-based arguments for and against the recognition of non-state law by the state, and strategies to move between legal orders through forum shopping. Interlegality, or relations between coexisting legal orders, is another key theme of the course. We will grapple with relationships of conflict and competition between legal systems, and with the possibility of other relations, including symbiosis, imitation, convergence, adaptation, avoidance, subordination and destruction. This course explores normative systems that most law-school courses ignore.

Course Grades & Requirements:

Your final grade will be based upon the following:

- **Midterm exam (20%):** in-class exam on **T, March 8, 2011**
- **Short paper (20%):** this short essay will present one particular case study on legal pluralism. You will choose to write about a normative system (ideally non-state) that has

been covered in class or not. You must identify your topic via the sign-up screen on our Moodle course page, and must confirm that no classmate has claimed the same topic. (If there is a conflict, the student who signed up earliest will have the stronger claim to the topic.) If in doubt about potential overlap with another student, please discuss your topic idea with me.

You must *declare your topic* (via our Moodle course page) by midnight on **Th, March 24**.
You must *submit your paper* (via our Moodle course page) by midnight on **Sunday, April 10, 2011**.

- **Final exam (40%):** take-home exam.
Questions will be distributed on the last day of class (Class 30): **T, May 5, 2011**.
Your answers are due (via our Moodle course page) by 4.45pm on **T, May 10, 2011**.
(Please note that our official exam time is T, May 10, 2011, 2.45pm-4.45pm, but that we will not be having a sit-down exam during that time.)
- **Class participation (including attendance) (20%):** you are expected to attend all classes and to contribute regularly to class discussions.

Format of Written Work:

Your short paper and final exam must be typed in 12-point font with 1-inch margins. Both must be double-spaced and submitted via our Moodle course page.

Course Materials:

All readings for the course are included in the course reader, available at the Copy Center (not the Bookmart) on the 2nd floor of the UW Law School (on Bascom Mall).

Technology:

- Laptop use in class: Because I appreciate the value of having typed course notes, I permit students to use laptops in class. However, I consider in-class internet use to be unacceptable. Being on the internet during class is distracting to your classmates and disrespectful to me. If it appears to me that you are online during class, I will factor this into your participation grade.
- Recording devices: Students may record the class for their own study purposes if they obtain prior permission from me. Such recordings are not to be made available to anyone outside of our class.

Academic Misconduct:

- The stakes: You have a lot to lose if found to have committed academic misconduct. Misconduct during your undergraduate years may be recorded and submitted to future potential employers and institutions for post-graduate study. If you plan to apply to law school or grad school, you should realize that your academic misconduct could prevent

you from being accepted, or from pursuing your desired profession later (e.g. practicing law). It is therefore critical that you familiarize yourself with UW's policies and procedures governing academic misconduct: <http://students.wisc.edu/saja/misconduct/UWS14.html>

- **Plagiarism:** Any intentional attempt to claim the work or efforts of another person without authorization or citation constitutes academic misconduct. This includes cutting and pasting text from the web without quotation marks or proper citation, or paraphrasing from the web (or any other source) without referring to the original. I take such actions seriously. If I suspect that you have plagiarized, I may penalize you in grading your assignment. Alternatively or in addition, I may pursue disciplinary measures.
- **Other forms of misconduct:** Because I grade on a curve, any cheating by classmates will affect your grade directly. If you believe that a classmate is cheating or committing any other kind of academic misconduct, report it to me.

Course Reading Schedule:

LEGAL PLURALISM: THE BIG PICTURE

- **T, Jan. 18, Class 1: Introduction**
Film: "Courts and Councils: Dispute Settlement in India"
(UW-Madison documentary, 1981)
- **Th, Jan. 20, Class 2: Big Ideas in Legal Pluralism**
 - Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22 (1988) 869-96
- **T, Jan. 25, Class 3: Legal Pluralism & Alternative Legal Sources**
 - K. N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman: University of Oklahoma Press, 1941), 3-19
 - Maung Htin Aung, *Burmese Law Tales: The Legal Element in Burmese Folklore* (London: Oxford University Press, 1962), tales no.8, 30, 54, 56, 60, 62
 - *Levin v Halston* (1977) 91 Misc. 2d 601-2
- **Th, Jan. 27, Class 4: Legal Pluralism & Alternative Modes of Proof**
 - Gray Cavender, "A Note on Voodoo as an Alternative Mechanism for Addressing Legal Problems," *Journal of Legal Pluralism and Unofficial Law* 27 (1988) 1-18
 - Inge Kleivan, "Song Duels in West Greenland—Joking Relationship and Avoidance," *Folk* 13 (1971) 9-25
 - "Inuit Song Duels from the Canadian Arctic" from Norbert Rouland, "Les modes juridiques de solutions des conflits chez les Inuit," *Etudes Inuit Studies* (1979) vol.3 supp. issue (trans. by M. Sharafi), 1-2

LEGAL PLURALISM IN ANGLO-AMERICAN LEGAL HISTORY

- **T, Feb. 1, Class 5: Legal Pluralism in English Law**
 - Christopher McNall, Karl Otto Scherner, Johanna M. Baboukis and Michael Lobban, "Law Merchant" in Stanley N. Katz, ed., *Oxford International Encyclopedia of Legal History* online edition, 1-5
 - R. H. Helmholz, "Ecclesiastical Law in English Common Law," in Stanley N. Katz, ed., *Oxford International Encyclopedia of Legal History* online edition, 1-6
 - N. G. Jones and William G. Ross, "Equity," in Stanley N. Katz, ed., *Oxford International Encyclopedia of Legal History* online edition, 1-8
 - Charles Dickens, *Bleak House* (London: originally published 1852-3), "Ch.1: In Chancery," 1-5

- **Th, Feb.3, Class 6: Legal Pluralism and Local Law Ways**
 - David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), "Introduction," 3-11; "East Anglia to Massachusetts," 13-17, 189-96; "Borderlands to the Backcountry," 605-12, 759-71

LEGAL PLURALISM WITHIN THE STATE

- **T, Feb. 8, Class 7: Maneuvering between Jurisdictions**
 - Lawrence M. Friedman, "A Dead Language: Divorce Law and Practice before No-Fault," *Virginia Law Review* 86 (2000), 1497-1536

- **Th, Feb. 10, Class 8: Colonialism & the Personal Law System**
 - Scott Alan Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35:2 (2001), 257-80, 312-13

IDEOLOGICAL COMMUNITIES

- **T, Feb. 15, Class 9: Anti-Law**
 - Allan E. Shapiro, "Law in the Kibbutz: A Reappraisal," *Law & Society Review* 10: 3 (Spring 1976), 415-38

GUEST CLASS

- **Th, Feb. 17, Class 10: Family Law and Pluralism in India with Prof. Narendra Subramanian (McGill University, Montreal)**
 - Narendra Subramanian, "Family Law and Cultural Pluralism" in Stanley Wolpert and Raji G. C. Thomas, eds., *Encyclopedia of India* (Detroit: Charles Scribner's Sons, 2006), 1-6

- Narendra Subramanian, "Making Family and Nation: Hindu Marriage Law in Early Postcolonial India," *Journal of Asian Studies* 69:3 (2010), 771-98

COMMERCIAL COMMUNITIES

- **T, Feb.22, Class 11: Merchants**
 - Eric A. Feldman, "The Tuna Court: Law and Norms in the World's Premier Fish Market," *California Law Review* 4 (March 2006), 313-69
- **Th, Feb. 24, Class 12: Minority Trading Communities**
 - Barak D. Richman, "How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York," *Law and Social Inquiry* 31 (2006), 383-418

VIOLENT COMMUNITIES

- **T, March 1, Class 13: Feuds & Vendetta**
 - William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990), "Ch.6: Feud, Vengeance, and the Disputing Process," 179-220
- **Th, March 3, Class 14: Lynch Law**
 - Andrea McDowell, "Criminal Law beyond the State: Popular Trials on the Frontier," *Brigham Young University Law Review* (2007), 327-77
- **T, March 8, Class 15: *In-class Midterm Exam (20%)***
- **Th, March 10, Class 16: Mafia Law**
 - Film Clips: "The Godfather" (1972)
 - Peter Reuter, "Social Control in Illegal Markets" in Donald Black, ed., *Toward a General Theory of Social Control, vol.2* (Orlando: Academic Press, 1984), 29-58
 - "Mafia's 'Ten Commandments' Found," *BBC News* (UK) (9 Nov 2007), 1-2 (online edition)
- **Sat., March 12 - Sunday, March 20: Spring Break**

RELIGIOUS COMMUNITIES

- **T, March 22, Class 17: Jewish Law**
 - "Rabbinical Courts: Modern Day Solomons," *Columbia Journal of Law and Social Problems* 6 (1970), 49-75
- **Th, March 24, Class 18: Christian Communities in the US**
 - Carol Weisbrod, "Utopia and the Legal System," *Society* (January-February 1988), 62-5

- Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-century America* (Chapel Hill: University of North Carolina Press, 2002), “The Laws of God and the Laws of Man,” 1-15; and “The Logic of Resistance,” 97-116 (with accompanying notes at 239-41, 263-8)
- **Th, March 24: *Short Paper topic must be declared by midnight tonight (i.e. at the end of today) via our Moodle course page**
- **T, March 29, Class 19: Guest class— Faith Healing and Law in America with Prof. Shawn F. Peters (School of Education, UW-Madison)**
 - Shawn F. Peters, *When Prayer Fails: Faith Healing, Children, and the Law* (Oxford: Oxford University Press, 2008), “Ch.1. ‘Pointless and Preventable’: An Overview of Religion-Based Medical Neglect of Children,” 3-25
 - Shawn F. Peters, “Don’t protect reckless behavior,” *Milwaukee Journal Sentinel* (28 Nov. 2009), 1-3
- **Th, March 31, Class 20: Islamic Law**
 - Bernard Weiss, *The Spirit of Islamic Law* (Athens, GA: University of Georgia Press, 1998), “Ch.1: The Formation of Islamic Law,” 1-23
 - Sheikh Yusuf al-Qaradawi and others, “Fatwa on American Muslims in the US Military” (27 Sept. 2001), 1-3

CUSTOMARY LAW OF INDIGENOUS, NOMADIC & OTHER PEOPLES

- **T, April 5, Class 21: Indigenous Customary Law in Australia & North America**
 - Tony Swain and Garry Trompf, *The Religions of Oceania* (London: Routledge, 1995), “Ch.1: Tradition,” 19-47
 - Rob Riley, “Aboriginal law and its importance for Aboriginal people: observations on the task of the Australian Law Reform Commission” in Bradford W. Morse and Gordon R. Woodman, eds., *Indigenous Law and the State* (Dordrecht: Foris, 1987), 65-70
- **Th, April 7, Class 22: South Asian Customary Law**
 - Melvyn C. Goldstein, “Brothers share wife to secure family land,” CNN News “Article 14,” 90-3 [reprinted from *Natural History* (March 1987)], 39-48
 - Gerald D. Berreman, “Himalayan Polyandry and the Domestic Cycle,” in Manis Kumar Raha, *Polyandry in India* (Delhi: Gian, 1987), 179-97
- **Sunday, April 10: *Short Paper (20%) due by midnight tonight (i.e. at the end of today) via our Moodle course page**
- **T, April 12, Class 23: Legal Pluralism in Afghanistan**
 - Thomas Barfield, “Culture and Custom in Nation-Building: Law in Afghanistan,” *Maine Law Review* 60:2 (2008), 347-73

- **Th, April 14, Class 24: The Customary Law of Nomads**
 - Walter O. Weyrauch and Maureen Anne Bell, "Autonomous Lawmaking: The Case of the 'Gypsies'" in Walter O. Weyrauch, ed. *Gypsy Law: Romani Law Traditions and Culture* (2001), 11-21, 27-48, 85-7
 - Gillian Flaccus, "Two Gypsy clans' feud over fortunetelling offers rare glimpse into insular culture," *Deseret News* (7 Dec 2007), 1-3

IMMIGRANT COMMUNITIES

- **T, April 19, Class 25: Introduction to Immigrant Communities & Customs**
 - Sebastian Poulter, "Foreign Customs and the English Criminal Law," *International and Comparative Law Quarterly* 24:1 (Jan. 1975), 136-40
 - Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (London: Glasshouse Press, 2005), 43-66
 - Maxine Frith, "Revealed: the diversity that defines a nation," *The Independent* (UK) (21 Nov 2007)
- **Th, April 21, Class 26: Guest Class—Big Questions in Legal Pluralism with Prof. Marc Galanter (UW Law School)**
 - Joshua Cohen, Matthew Howard, and Martha C. Nussbaum, eds., *Is Multiculturalism Bad for Women? Susan Moller Okin with Respondents* (Princeton: Princeton University Press, 1999):
 - Susan Moller Okin, "Is Multiculturalism Bad for Women?" 9-24
 - Azizah Y. Al-Hibri, "Is Western Patriarchal Feminism Good for Third World/Minority Women?," 41-46
 - Bhikhu Parekh, "A Varied Moral World," 69-75
 - Joseph Raz, "How Perfect Should One Be? And Whose Culture is?," 95-9
- **T, April 26, Class 27: The Cultural Defense**
 - Alison Dundes Renteln, "The Use and Abuse of the Cultural Defense," *Canadian Journal of Law and Society* 20: 1 (2005), 47-67
- **Th, April 28, Class 28: The Sharia Debates**
 - Kathleen M. Moore, *The Unfamiliar Abode: Islamic Law in the United States and Britain* (Oxford: Oxford University Press, 2010), "Ch.4: Britain's Fear of Shari'acracy," 103-28
 - Faisal Kutty and Ahmad Kutty, "Shariah Courts in Canada, Myth and Reality" (online at Media Monitors Network website), 1-3
 - Susan Bourette, "Can tolerant Canada tolerate sharia?" *The Christian Science Monitor* (10 Aug. 2004), 1-2
 - Dahlia Lithwick, "How do you solve the problem of Sharia? Canada grapples with the boundaries of legal multiculturalism," *Slate* (10 Aug. 2004) (online edition), 1-3

- **T, May 3, Class 29: The Sikh Debates**
 - G. S. Basran and B. Singh Bolaria, *The Sikhs in Canada: Migration, Race, Class and Gender* (Oxford: Oxford University Press, 2003), 14-29
 - “Operational Circular: Head Protection for Sikhs Wearing Turbans” (UK), 18 November 2004, 1-3
 - Audrey Gillan, “‘Proud to be Welsh and a Sikh’: Schoolgirl wins court battle to wear religious bangle,” *The Guardian* (UK), 30 July 2008, 1-3
 - Don Macpherson, “Student’s kirpan survives latest court challenge,” *The Gazette* (Montreal), 18 April 2009, 1-2
 - Kavita Chhibber, “The Sikhs: In the Shadows of 9/11,” *Little India* (USA), 5 April 2005, 1-10

- **Th, May 5, Class 30: Final Review—Legal Pluralism in Current Events**
 - readings TBA; to be posted on our Moodle course page
 - ***Final Exam questions to be distributed today**

T, May 10: *Take-home Final Exam (40%) due by 4.45pm today via our Moodle course page (Please note that our official exam time is T, May 10, 2011, 2.45pm-4.45pm, but that we will not be having a sit-down exam during that time.)