Course information: TTh 9.30-10.45 • Sewell Social Sciences 6203 • Moodle course webpage (accessible via UW Moodle webpage): https://courses.moodle.wisc.edu
(You must be registered for the course to have access to the course page.)

Instructor’s contact information: sharafi@wisc.edu • (608) 265-8428 • Office Hours: T 3.30-5pm or by appointment • Office: Law 6112 (Upon entering the Law School from Bascom Mall, turn right and go to the sixth floor)

Course description: This course explores the vibrant and diverse world of dispute resolution systems in the past and present. The common law—the dominant type of state legal system in Anglophone jurisdictions—is only one kind of law. Non-state normative orders also exist. Like the law of the state, these other orders have rules, ways of enforcing these rules, 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 Icelandic feuds to mafia law, the Tokyo tuna court to dispute resolution among orthodox Jewish diamond traders, and Australian aboriginal customary law to the Kurdish Peace Committee in London. 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.
Course Grades & Requirements:

Your final grade will be based upon the following:

- **Midterm exam (20%)**: in-class exam on **T, March 4, 2014**. This will be a closed-book exam, written on blue books.

- **Short paper (20%)**: you will analyze one particular Legal Pluralism case study in this short research essay (6-8 pages). You will write about a normative system (ideally non-state), assessing both its rules and its adjudication mechanism. Please identify your topic via the sign-up screen on our Moodle course page (max. one student per topic). I will provide a list of potential topics on the website, but you may also choose a topic that is not on the list if you obtain my prior approval.

  You may sign up via our Moodle course page any time during the one week after the opening of the list at **7pm on Th, Jan.30, 2014**.

  You must declare your topic via our Moodle course page **by midnight on Th, Feb.6, 2014**.

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

  You must submit your paper by **midnight on Sunday, April 6, 2014**. Up to 48 hours after the deadline, late papers will be accepted with a 5-point penalty (the paper will be graded out of 100 points) for every 12 hours that the paper is late. Late papers submitted after midnight on Tuesday, April 9, 2013 will not be accepted.

- **Final exam (40%)**: we will have a closed-book final exam on **Wednesday, May 14, 2014 at 5.05pm-7.05pm** (location TBA).

- **Class attendance (10%)**: Coming to class is essential. This means arriving punctually and staying until the end of class. Arriving more than 15 minutes late or leaving more than 15 minutes early counts as an absence from that day’s class. Arriving late (=5-15 minutes late) more than three times constitutes chronic lateness and will cause your attendance grade to suffer. I will take attendance at the beginning of each day’s session. Unless you are missing class for medical reasons (and have provided me with documentation), missing a class will count as an absence. **You will automatically fail the class if you have more than six unexcused absences** (i.e. without medical documentation).
• **Class participation (10%)**: you are expected to contribute regularly to class discussions. If you are uncomfortable speaking in class, you should come to see me during office hours in order to express your thoughts on course materials in an alternative setting. Your performance in our two “LP Desert Island” in-class exercises on T, Feb.11 and Th, April 10 will also contribute to your participation grade.

**Course Materials:**

All readings for the course are available electronically through our Moodle course website. It is imperative that you secure access to our website. Please contact me if you have any difficulty logging on: sharafi@wisc.edu

**Technology:**

- **Laptop ban**: For pedagogical reasons, I do not allow the use of laptops or other electronic devices (like iPads and smartphones) in class. In order to ensure a full and engaged learning experience, the use of any type of electronic device in class is prohibited unless required for properly documented medical reasons and/or arranged through the McBurney Center. Any recordings made of our class (using the medical/McBurney exception) shall be for students' own study purposes. Such recordings shall only be made with prior permission from me and are not to be made available to anyone outside of our class.

**Academic Misconduct:**

- **The stakes**: You have a lot to lose if you commit 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.

**Disabilities or other medical issues:**

- If you have a disability, a learning difficulty or other medical condition that you feel may affect your work in our course, please let me know (with documentation) as early as possible during the semester. Any such discussions will remain confidential. The McBurney Disability Resource Center offers special facilities through which students may take exams (for instance, with time and a half), so it is important that you let me know of any special support you may require: [http://www.mcburney.wisc.edu/](http://www.mcburney.wisc.edu/)

**Course Reading Schedule:**

**LEGAL PLURALISM: THE BIG PICTURE**

- **T, Jan. 21, Class 1: Introduction**  
  Film: “Courts and Councils: Dispute Settlement in India”  
  (documentary produced by the UW Center for South Asia, 1981)

  [(optional) see online guide at [http://www.southasia.wisc.edu/sales.html](http://www.southasia.wisc.edu/sales.html)]

- **Th, Jan. 23, Class 2: Big Ideas in Legal Pluralism (LP)**

  Reading Questions: How have scholars of legal pluralism shifted their focus and approach over time? Identify the two key periods or flavors of Legal Pluralism scholarship described by Merry.

- **T, Jan.28, Class 3: LP’s Diversity— from micro to macro**

  Qs: (1) On Reisman: What is microlaw, according to Reisman, and why do social conventions surrounding the practice of standing in line count? Identify the basic principle and exceptions that form a part of this practice. How are these social norms enforced? (2) What informal rules of etiquette (that rise to the level of microlaw) have you observed
in your own social interactions? Do you find some of these norms unreasonable? If so, why? Have you seen social rules change over the course of your own life, or differ in another society? What happens when there are disputes over microlaw? (3) What kinds of informal rules and dispute resolution systems exist in online communities?

• **Th, Jan. 30, Class 4: LP & the Aims of Dispute Resolution**

  **Qs:** The readings suggest that the line dividing the following may not always be distinct: (a) dispute settlement and therapy; (b) dispute settlement and performance arts. Are you convinced? Should state law embrace or discourage this blurring of domains?

• **Th, Jan. 30 from 7pm+: *Sign-up for short paper topics begins on our Moodle course page. You have one week to declare your topic.*

• **T, Feb. 4, Class 5: LP & Property beyond the state**

  **Qs:** Why do derby girls not use the formal legal system to enforce their property claims over their names? Why is this informal mechanism of regulation so effective?

• **Th, Feb. 6, Class 6: LP & Value Systems**

  **Qs:** (1) In what ways did the early kibbutz distinguish itself and its values from societies beyond? How have life and dispute resolution among kibbutzim changed since the 1940s-50s? (2) How did the early kibbutz’s distinct values come to be enshrined in dispute resolution within the kibbutz? When were these systems effective in settling disputes? When were they less so, and why?
• **Th, Feb.6:** *Short Paper topic must be declared by midnight tonight (i.e. at the end of today) via our Moodle course page*

• **T, Feb.11, Class 7: LP Desert Island 1 (in-class exercise)**
  - Read the problem (to be distributed in class in advance and posted on our Moodle course page) and prepare answers for class discussion according to your assigned group

**LP & MOBILITY**

• **Th, Feb. 13, Class 8: Forum shopping 1—Marriage and State Law in the US (and beyond)**

  **Qs:** According to Lawrence Friedman’s history of American divorce law, where would you want to go to get an easy divorce? What types of arguments would you have to make to succeed in those jurisdictions? How did other states’ courts react?

• **T, Feb. 18, Class 9: Forum shopping 2—Marriage and State Law in South Asia (and beyond)**
  - Map of British India and Indian Ocean region (circa early 20th c.)

  **Qs:** (1) How did the behavior of strategic litigants in colonial India look similar to that of strategic American litigants in the same period (late 19th-early 20th c.)? How did it differ? (2) Describe the personal law system. How did forum shopping within this system differ from forum shopping between territorial jurisdictions?

**COMMERCIAL & ATHLETIC COMMUNITIES**

• **Th, Feb.20, Class 10: Merchants 1—Introduction**

  **Qs:** The Tsukiji tuna court in Tokyo, Japan is famous among merchants’ courts. In what ways does it operate differently from most state courts? In what ways does it meet the particular needs of traders who buy and sell fish?
• T, Feb. 25, Class 11: Merchants 2—Minority Trading Communities

  Qs: How do orthodox Jewish diamond traders function so efficiently and effectively in their trade? Consider the risks specific to the diamond trade, the role of trust between traders, and the role of ethno-religious community membership

• Th, Feb. 27, Class 12: Merchants 3—Guest Speaker Prof. Stewart Macaulay (UW Law School) on LP and Merchants in the US

  Qs: Given Macaulay’s findings, why do business people ever make formal written contracts? Why do we ever see contract law suits? What does all of this suggest for theories about the rule of law?

• T, March 4, Class 13: *In-class Midterm Exam (20%): this will be a closed-book exam, written on blue books

• Th, March 6, Class 14: Sports 1—LP & Violence in Sports

  Qs: “As with religion, the state should not interfere with sports through the criminal law. The state should respect the autonomy and internal rules and institutions of both systems.” Respond to this statement, focusing on sports (we will discuss religion in depth in future classes). Where do you position yourself on the spectrum from “strongly agree” to “strongly disagree”? Why?

• T, March 11, Class 15: Sports 2—LP & Drugs in Sports
Qs: (1) On McLaren: Why have institutional independence and strict liability on doping been controversial areas for the Court of Arbitration for Sport? Identify cases that put both issues in the spotlight. (2) On “Entre Nous”: What non-state and state-based rules and institutions were involved with allegations that Lance Armstrong used banned substances? What counter-narratives has Armstrong advanced to describe his behavior and the use of performance-enhancing drugs in competitive cycling? Are you convinced?

VIOLENT COMMUNITIES

• Th, March 13, Class 16: The Feud

  Qs: Although the blood feud may look like pure, unstructured violence, scholars have argued that in many times and places, the feud has been governed by rules. What were the basic rules of the medieval Icelandic feud? How and where does the feud or vendetta continue to exist today?

• Sat., March 15-Sunday, March 23: Spring break

• T, March 25, Class 17: The Duel

  Qs: What social functions did dueling play in Spanish-speaking Latin American societies during the late 19th-early 20th century? What were the rules, and who were the key players? What arguments were made in favor of and against dueling? How did the state attempt to discourage the practice, when it tried at all?

• Th, March 27, Class 18: Mafia Law
  Film Clips: “The Godfather” (1972)
  o “Mafia’s ‘Ten Commandments’ Found,” BBC News (UK) (9 Nov 2007), 1-2 (online edition)
**Qs: Under what circumstances has the mafia historically provided dispute resolution services? Has it been efficient and effective? If so, why and how?**

**RELIGIOUS COMMUNITIES**

- **T, April 1, Class 19: Jewish Law**
  - Nancy Davidson, “Born-Again Kosher,” *Gastronomica: The Journal of Food and Culture* 4:3 (204), 73-4

  **Qs: (1) On religious law generally: How is religious law different from bodies of law that do not derive their authority or legitimacy from religious sources? What benefits and disadvantages are conferred upon legal systems that claim to be of divine origin?** (2) **On Jewish law specifically: what special institutions have administered Jewish law throughout its history? What made them different from the state courts of the host societies in which Jews lived? Identify some key rules applying to the consumption of food in Jewish law. What are some ways these rules have been explained or justified? Which type of explanation do you find most convincing?**

- **Th, April 3, Class 20: Islamic Law**
  - Sheikh Yusuf al-Qaradawi and others, “Fatwa on American Muslims in the US Military” (27 Sept. 2001), 1-3

  **Qs: (1) On Weiss: (a) in the Islamic legal tradition, what is the status of legal scholars or jurists, as compared to judges or qadis? How would you describe their relationship with state or political authorities generally? (b) Why does Weiss argue that "sharia" means more than just law? What else does it include, by his account? (2) On Fatwa: Are Muslim members of the US armed forces permitted to fight against other Muslims in Afghanistan or elsewhere, according to the fatwa's interpretation of Islamic law? Why or why not?**

- **Sunday, April 6: *Short Paper (20%) due by midnight tonight (i.e. at the end of today) via our Moodle course page***
• T, April 8, **Class 21: Christianity and Law**
  o “Enemy Camp 2010”: transcript of interview with Patrick Wall on “This American Life,” National Public Radio (pp.1-10); or listen to the interview online (Act One: Confession, 21 min.): [http://www.thisamericanlife.org/radio-archives/episode/404/enemy-camp-2010](http://www.thisamericanlife.org/radio-archives/episode/404/enemy-camp-2010)

  **Qs:** (1) On Weisbrod: how did religious Utopian communities in the 19th-century US interact with contract law in state courts? What types of parties usually won contractual disputes? (2) On Gordon: What arguments were made for and against Mormon polygamy in the 19th-c. US? What conceptual points of intersection existed between debates over polygamy and slavery? (3) On Wall interview: How did Patrick Wall acquire his knowledge of canon law (the ecclesiastical law of the Catholic Church) and how did he ultimately use it? How might the story of priestly sex abuse be a story about legal pluralism?

• Th, April 10, **Class 22: LP Desert Island 2 (in-class exercise)**
  o Read the problem (to be distributed in class in advance and posted on our Moodle course page) and prepare answers for class discussion according to your assigned group

**CUSTOMARY LAW OF INDIGENOUS, NOMADIC & OTHER PEOPLES**

• T, April 15, **Class 23: Indigenous Customary Law in Australia & North America**

  **Qs:** Some readers find the Berndts’ account of Aboriginal culture to be condescending and neo-colonial in tone. Others find Riley’s article to be so angry that it is polemical and impracticable in its recommendations
for the future. Do you agree with either characterization? Why or why not? Consider narratives of the colonial encounter and demands for action. How do discussions of indigenous peoples’ rights and history differ or seem similar in Australia and the US?

- **Th, April 17, Class 24: South Asian Customary Law**

  Qs: What are the various explanations proposed by scholars for Himalayan fraternal polyandry? In other words, in what ways may it make sense for one woman to be married to several brothers?

- **T, April 22, Class 25: Legal Pluralism in Afghanistan**

  Qs: (1) Afghanistan is often characterized as lawless. What does Barfield say? Do you agree? (2) Distinguish Islamic law from customary norms in the context of Afghanistan. In what ways do these systems occasionally conflict?

- **Th, April 24, Class 26: Roma Law**
  - Gillian Flaccus, “Two Gypsy clans’ feud over fortunetelling offers rare glimpse into insular culture,” *Deseret News* (7 Dec 2007), 1-3

  Qs: Describe the substantive rules of Roma law, including key tenets of purity and pollution laws. How do dispute resolution processes occur among the Roma? What types of sanctions exist? What is the Roma view of the state and its legal system?
IMMIGRANT COMMUNITIES

• **T, April 29, Class 27: Introduction to Immigrant Communities & Customs**

  **Qs:** (1) How would you describe the relationship between Kurdish communities and the state historically in the Middle East? How would you characterize the relationship between London’s Kurdish population and the state in the UK? In what ways are these two relationships similar and different? (2) Identify notable features of the Kurdish Peace Committee’s methods and case load. When is the KPC effective? When is it less so?

• **Th, May 1, Class 28: The Cultural Defense**

  **Qs:** What are the arguments in favor of reducing a conviction from murder to manslaughter (thereby reducing the sentence) on the grounds that the accused was responding to some culturally provocative act? What are the arguments against the cultural defense? Which side do you find more convincing? Why?

• **T, May 6, Class 29: The Sikh Debates**
  - “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
  - Optional: Judy Keen, "Authorities search for motive in Sikh killings" (including video clips, 2min.26sec.)
Qs: How should state law accommodate minority religious practices (or not) in controversies over the Sikh turban and kirpan? Are there important differences between these two types of conflicts (i.e. turban vs kirpan), or do you see them as turning upon the same fundamental questions? Are there important conceptual similarities or differences between the Sikh turban debates and controversies over Islamic dress for women?

- **Th, May 8, Class 30: Final Review—Legal Pluralism in Current Events**
  - readings TBA; to be posted on our Moodle course page

  Qs: What LP course themes can you trace in the readings for Class 30? Do any of the readings question or complicate ideas from our course? Do they suggest practical solutions to any of the challenges identified in class? Do you see trends developing in current events that either embrace or resist the idea that law exists beyond the state?

**Wednesday, May 14, 2014 at 5.05pm-7.05pm: Closed-book Final Exam (40%)**

*(location TBA)*