**COMPARATIVE LEGAL SYSTEMS**

Political Science 390 TTh 11:30-12:45

Spring 2012 Elizabeth Hall 316

This course is designed to introduce students to ways of comparing legal traditions, institutions, personnel, and norms. Studying law from a comparative perspective raises the most fundamental questions about the values underlying national legal systems, about the relationship between law and social change, and about the impact of the design of legal institutions on legal behavior. It also illustrates the diverse ways of thinking about the appropriate role of law in resolving disputes, encouraging commerce, ensuring order, and providing justice. We shall be sensitive in the course to both the pressures for convergence, which are inspired by globalization and the common challenges facing modern societies, as well as the pressures for divergence, which derive from the distinct histories and cultures in which individual legal systems are imbedded.

Most of the reading in the course will be in two textbooks that can be purchased in the bookstore. Additional reading will be available on Blackboard.

John Head, *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*

Harry Dammer and Jay Albanese, *Comparative Criminal Justice Systems* (4th Edition)

Assessment in the course will be based on a midterm examination (25%), a final examination (30%), a short research paper (25%), and class attendance and participation (20%).

Students are encouraged to see me during office hours on Monday and Wednesday from 3 to 4 and Tuesday and Thursday from 1:30 to 2:30 in Elizabeth Hall 332. I should also be available immediately after my 2:30 Tuesday/Thursday class, which means at 3:45 those days. My telephone extension is 7576 and the e-mail address is "ehuskey@stetson.edu".

Statement on Plagiarism. Stetson has an official policy regarding plagiarism and other forms of academic dishonesty in the Student Code of Conduct, and plagiarism in this class will bring serious sanctions, which may lead to a failure for the course and the reporting of the

violation to the University Honor Council. If you use someone else's work - their words, ideas, art work, music, web pages, software, or some other expression - you must acknowledge the author or creator. Failure to do so is **plagiarism**.

Statement on Accommodations. If you anticipate barriers related to the format or requirements of this course, and if you determine that disability-related accommodations are necessary, please register with the Academic Resources Center (822-7127; [www.stetson.edu/arc](http://www.stetson.edu/arc)). You and the ARC staff can plan how best to coordinate your accommodations.  You may notify me of your eligibility for reasonable accommodations, but are not required to do so.

**Comparative Legal Systems**

**Page 2**

**I. INTRODUCTION**

The Study of Comparative Legal Systems: Scope and Methods

Assignment: Maureen Howard, "A Lesson from Amanda Knox, US Student Jailed in Italy," Huffington Post, April 8, 2010.

Head, pp. xix-xxi, 4-39.

**II. THE CIVIL LAW TRADITION: HISTORY AND PRACTICE**

The First Life of Roman Law

Assignment: Head, pp. 42-72.

The Second Life of Roman Law

Assignment: Head, pp. 72-110, 139-147.

Sources of Law and the Legal Profession

Assignment: Head, pp. 152-199

Courts and Criminal and Civil Procedure

Assignment: Head, pp. 199-231.

**III. THE COMMON LAW TRADITION: HISTORY AND PRACTICE**

Courts and Remedies in Competition in English Legal History

Assignment: pp. 330-372, 378-382.

Sources of Law and the Legal Profession

Assignment: pp. 433-448

Courts and Criminal and Civil Procedure

Assignment: Head, pp. 448-454.

Dammer and Albanese, pp. 145-174.

**Comparative Legal Systems**

**Page 3**

**IV. WHAT HAPPENS WHEN CIVIL LAW AND COMMON LAW MEET COMPETING LEGAL TRADITIONS?**

Islamic Law, the Shari'a, and the Competition between European and non-European Traditions

Assignment: Head, pp. 232-239, 372-378.

Dammer and Albanese, pp. 53-57, 83-87.

Asifa Quraishi, "Who Says the Shari'a Demands the Stoning of Women? A Description of Islamic Law and Constitutionalism" (Unpublished paper, University of Wisconsin Law School, 2008).

Civil Law, Common Law, and Islamic Law in Indonesian Legal Reform

Assignment: Robert Strang, "'More Adversarial, but not Completely Adversarial': Reformasi of the Indonesian Criminal Procedure Code," *Fordham International Law Journal*, vol. 32, issue (2008), pp. 188-231.

Arskal Salim, Dynamic Legal Pluralism in Indonesia: The Shift in Plural Legal Orders of Contemporary Aceh, Max Planck Institut For Social Anthropology, Working Paper no. 110 (2009).

Law and Legal Reform in Communist Countries

Assignment: Eugene Huskey, "A Framework for the Analysis of Soviet Law," *Russian Review*, vol. 50, issue 1 (1991), pp. 53-70.

Eugene Huskey, "The Bar's Triumph or Shame? The Founding of the Chambers of Advocates in Putin's Russia," in Sharlet and Feldbrugge (eds). *Public Policy and Law in Russia*, pp. 149-167.

**V. THE CHINESE LEGAL TRADITION: HISTORY AND PRACTICE**

Confucianism, Legalism, and Dynastic Chinese Law

Assignment: Head, pp. 456-506

Modern Chinese Legal Development

Assignment: Head, pp. 506-535.

The Rule of Law in Thick and Thin Versions

Assignment: Head, pp. 539-574.

The Legal Profession and Legal Institutions

Assignment: Head, pp. 574-590

**Comparative Legal Systems**

**Page 4**

Influences on Contemporary Chinese Legal Development

Assignment: Head, pp. 605-644.

**VI. COMPARING CRIMINAL JUSTICE SYSTEMS**

Seven National Legal Systems

Assignment: Dammer and Albanese, pp. 61-91

Head, pp. 317-324.

Policing and Law Enforcement

Assignment: Dammer and Albanese, pp. 92-116.

Systems of Criminal Procedure: A General Comparison

Assignment: Dammer and Albanese, pp. 117-144.

Systems of Criminal Procedure: Two Trials (O.J. Simpson and Amanda Knox)

Assignment: Head, pp. 255-317

Systems of Criminal Procedure: The Chinese Case

Assignment: Head, pp. 590-605.

Comparing Criminal Sanctions

Assignment: Dammer and Albanese, pp. 175-222

**VII. CONCLUSIONS**

Convergence or Divergence in Legal Development: Diffusion and The Effects of Globalization

Assignment: William Twining, "Diffusion of Law: A Global Perspective,"

**Final Exam**

**Monday, May 7, 2-4pm**