COURSE DESCRIPTION:

It is a frequent and commonly held assumption that law stands independent of and above the culture, history, environment, and biology of a given society. From such a perspective, the “Law” is often viewed as a force imposed upon a particular society, rather than a product and expression of that society at a particular moment in history. However, when legal systems are examined cross-culturally and across the span of time, a different and more nuanced picture emerges. In this course, students will examine diverse historical, ethnographic, and literary materials as they relate to multiple and diverse legal systems. Students will read, discuss, and research numerous topics in an effort to better understand the commonalities and differences of various legal systems. Students will study “traditional, transitional, and modern legal systems.” As explained in more detail in the syllabus below, the course examines a broad spectrum of topics including: violence, feud, war; touches on a broad spectrum of legal systems, including the systems of ancient Hebrew, Islamic, ancient Greek, Native American, Medieval, Canon, modern North American, modern European, and tradition-based legal systems of indigenous peoples.

COURSE OBJECTIVES:

The course will provide an introduction to comparative legal studies. The course covers topics involving the evolution of legal systems, as well as legal theory.

In addition, the course examines examples of diverse legal systems across culture and history through study of secondary and original sources.

Within the above framework, students will investigate diverse legal topics which, in many cases, expressly relate to racial, gender, sexual, and religious identity across various legal cultures.

REQUIRED READING MATERIALS:

- Please Note: The instructor is quite cognizant of the expense of textbooks and will make every effort (within the law) to ensure that students obtain materials as inexpensively as possible. No interested student should be dissuaded from taking the course due to concerns over the cost of materials. In addition, although there are numerous required readings, the selections will be, in general, quite short and the amount of reading required per week will average approximately 40 pages.

- Selections from the following:
  - Brad Asher, Beyond the Reservation: Indians, Settlers, and the Law in Washington Territory, 1853-1889;
  - Sadakat Kadri, The Trial: A History, from Socrates to O.J. Simpson;
  - E. Adamson Hoebel, The Law of Primitive Man: A Study in Comparative Legal Dynamics;
- Franz Kafka, *In the Penal Colony*;
- Karl Llewellyn & Hoebel, *The Cheyenne Way*;
- Lawrence Wright, *Remembering Satan: A Tragic Case of Recovering Memory*;
- Christopher Boehm, *Blood Revenge: The Enactment and Management of Conflict in Montenegro and Other Tribal Societies*;
- John Boswell, *Same-Sex Unions in Pre-Modern Europe*;
- James Axtell, *The White Indians of Colonial America*;
- John Murrin, *Elites and Electorates: Some Plain Truths for Historians of Colonial America*;
- Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*;
- Laura E. Gomez, *Manifest Destinies: The Making of the Mexican American Race*;
- Wael B. Hallaq, *An Introduction to Islamic Law*;
- Michel Foucault, *To Discipline and Punish*;
- *Plessy v. Ferguson*, 163 US 537;
- *The United States v. Amistad*, 40 U.S. 518;
- *Reynolds v. United States*, 98 U.S. 145;
- Orlando Patterson, *Slavery and Social Death*;
- John Phillip Reid, *In a Defiant Stance: The Conditions of Law in Massachusetts’s Bay, the Irish Comparison, and the Coming of the American Revolution*;
- John Phillip Reid, *Policing the Elephant*;
- Thomas Aquinas, *Summa Theologicae*;
- Aristotle, *Nichomachian Ethics*;
- Oliver Wendell Holmes, *The Path of the Law*;
- Cadwalder Colden, *The History of the Five Indian Nations*;
- John D. Lawson, *American State Trials*;
- Utah Code Annotated, 76-7-101;
- Michael Gray, *Drug Crazy*;
- Matthew O. Jackson and Massimo Morelli, *The Reasons for Wars – an Updated Survey*;
- *The Holy Bible, Genesis 34; Exodus 20*;
- Betram Wyatt-Brown, *Southern Honor: Ethics & Behavior in the Old South*;
- *Pace v. Alabama*, 106 U.S. 583;
- Alabama Supreme Court Reports (19th Century selections);
- E.L. Ganshof, Feudalism;
- Heide Goettner-Abendroth, Matriarchal Societies: Studies on Indigenous Cultures Across the Globe;
- Allan Mazur, Biosociology of Dominance and Deference;
- P.C. Maxwell-Stuart, Witch Beliefs and Witch Trials in the Middle Ages;
- Code of Hammurabi;
- Corpus Juris Civilis;
- Bronislaw Malinowski, Crime and Custom in Savage Society;
- Mechel Sobel, The World They Made Together: Black and White Values in Eighteenth-Century Virginia;
- Montesquieu, Spirit of Laws;
- Spencer, The Complete Works of Herbert Spencer;
- Maine, Ancient Law;
- Marx, Selected Essays;
- Durkheim, The Division of Labor and Society;
- Dicey, Lectures on the Relation Between Law and Public Opinion

READINGS AND SCHEDULE:

Week 1: Introduction
- Handouts in Class

Week 2: Social Dominance
- Mazur, Social Dominance

Week 3: Violence, Feud, and Reciprocity
- Courtwright, Violent Land;
- Malinowski, Crime and Custom;
- Axtell, The White Indians;
- Boehm, Blood Revenge;
- The Holy Bible, Genesis 34;
- Van Kirk, Many Tender Ties

Week 4: War and Peace
- Jackson & Morelli, The Reasons for War;
- Walzer, Just and Unjust Wars;
- Video choice: Judgment at Nuremberg or Richard III (either version)

Week 4: Introduction to Legal Systems
- Malinowski, Blood Revenge;
- Sobel, The World They Made Together;
- Reid, Policing the Elephant;
- Asher, Beyond the Reservation;
- Kadri, The Trial
Week 5: Introduction to Legal Theory
- Montesquieu, Spirit of Laws;
- Spencer, The Complete Works of Herbert Spencer;
- Maine, Ancient Law;
- Marx, Selected Essays;
- Durkheim, The Division of Labor and Society;
- Dicey, Lectures on the Relation Between Law and Public Opinion;
- Holmes, The Path of the Law;
- Hoebel, The Law of Primitive Man

Week 6: Property
- Rousseau, Discourse on Inequality;
- Locke, Two Treatises of Government;
- Hobbes, Leviathan;
- Ganshof, Feudalism;
- Cronan, Changes in the Land;
- Goettner-Abendroth, Matriarchal Societies

Week 6: Law and Identity
- Boswell, Same-Sex Unions;
- Gomez, Manifest Destinies;
- Utah Code Ann. 76-7-101;
- Reynolds v. United States;
- Bowers v. Hardwick;
- Kitchen v. Herbert;
- Brown v. Herber

Week 7: Law and Identity, continued
- Plessy v. Ferguson;
- Loving v. Virginia;
- Alabama State Court Reports;
- Axtell, The Indian Peoples of Eastern America;
- Patterson, Slavery and Social Death;
- Davies, Inventing Human Rights;
- Video choices: The Merchant of Venice; To Kill a Mockingbird; Amistad

Week 7 and 8: Sources of Law
- Hallaq, An Introduction to Islamic Law;
- The Holy Bible, Exodus 20;
- Code of Hammurabi;
- Corpus Juris Civilis;
- Lewellen & Hoebel, The Cheyenne Way;
- Aquinas, Summa Theologiae;
• Murrin, Elites and Electorates;
• McDonald, Novus Ordo Seclorum

Week 9: Due Process
• Kadri, The Trial;
• Reid, Policing the Elephant;
• The Bill of Rights

Week 10: Mobs, Revolt, and Revolution
• Friedman, Crime and Punishment in American History;
• Reid, In a Defiant Stance;
• Gough, The Terror in the French Revolution

Week 11: Crime and Social Deviance
• Friedman, Crime and Punishment in American History;
• Maxwell-Stuart, Witch Beliefs and Witch Trials;
• Lawson, American State Trials;
• Simpson, Cannibalism and the Common Law;
• Gray, Drug Crazy;
• Wright, Remembering Satan

Week 12: Lawful and Lawless Enforcement
• Friedman, Crime and Punishment in American History;
• Kadri, The Trial;
• Wyatt-Brown, Southern Honor

Week 13: Punishment
• Foucault, Discipline & Punish;
• Kadri, The Trial;
• Friedman, Crime and Punishment in American History;
• Kafka, In the Penal Colony

Week 14: Power and the Law
• Cover, Violence and the Word

GRADING PROCEDURES AND ASSIGNMENTS:

Class time will primarily focus on discussion regarding weekly readings and videos. Class preparation and participation will comprise 40% of a student’s grade. In addition, each student will be required to assist the instructor in preparing and directing a class discussion, which will form the basis of 10% of the student's grade. The remaining 40% will be based on a substantial research paper based upon both secondary and original sources. Within the first few weeks of class, a student will be expected to complete a reasonably detailed outline of the paper on a topic of their choosing, with references to the secondary and source materials on which they expect to rely. The instructor will review
the outlines with each student individually and provide the student with direction as to topic refinement, and further research and analysis. By midterm, students will be expected to submit a first draft including citations to references and sources. The instructor will review drafts and provide each student with written comments and suggestions for further improvement. The final draft of the paper will be due upon completion of the course.

Plagiarism: “Plagiarism” means the intentional unacknowledged use or incorporation of any other person’s work in, or as a basis for one’s own work offered for academic consideration or credit for public presentation. Plagiarism includes, but is not limited to, representing as one’s own, without attribution, any individual’s words, phrasing, ideas, content of expression (Student Code, p. 3).

IMPORTANT DATES:

OFFICE HOURS:

“The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD). CDS will work with you and the instructor to make arrangements for accommodations.” All written information in this course can be made available in alternative formats with prior notification to the Center for Disability Services.

Some of the readings, lectures, films or presentations may include material that may conflict with the core beliefs of some students. Please review the syllabus carefully to see if the course is one that you are committed to taking. If you have a concern, please discuss it with me at your earliest convenience. For more information, please consult the University of Utah’s Accommodation Policy, which appears at: www.admin.utah.edu/facdev/accommodations-policy.pdf.