

Comparative Economic Analysis of Legal Systems

ECON 378

St. Olaf College

Meeting time: Tu: 1:20pm-2:45pm; Th: 2:15-3:35pm; Room: HH 429

Course prerequisites: ECON 261 and/or ECON 262 and either ECON 263 or STAT 272

Instructor: Colin Harris

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Office location: Holland Hall 303

Office hours: Tu: 11:10-11:30am, *2:50-4:30pm; Wed: 1:00-3:20pm; Th: †11:00-12:30pm, 3:40-4:30pm; or by appointment (zoom).

Teaching assistant: Macro Ibarra Bibriezca (ibarra3@stolaf.edu)

Course description: Every society faces the same fundamental problem: how do you structure the rules in a way that encourages cooperation and reduces conflict? And yet, the solution to this problem ('law') differs dramatically across time and space. The Azande tribe in Central Africa, for example, relied upon the soothsaying power of a poisoned fowl to determine guilt or innocence. Medieval courts in Europe instead used trial by fire, calling upon God to shield the innocent and punish the wicked. In imperial China, the fate of those sentenced to death was determined by a force that can rival gods and oracles, random draw. And in the 17th century, the power of the ecclesiastical courts was extended far beyond humans to cover vermin of all type as crickets, beetles, and weevils were assigned defense lawyers and even granted leniency for their failure to appear in court, a luxury these same courts did not always grant to those accused of witchcraft. How should we make sense of these seemingly senseless laws and practices? Given the universality of the problem, how do we explain observed variation in how the rules are structured and enforced?

This course will explore legal systems vastly different from our own. We will use the tools of economics to explain the peculiarities, similarities, and the relative successes or failures of different systems of law. The objective of this course is not for you to learn the history of diverse groups and times (although hopefully you will). Instead, the objective is for you to understand how the economic approach to understanding human behavior is both universal and necessary for explaining the structure and the consequences of a legal system. You will then be tasked with applying the economic way to thinking to a legal phenomenon or institution that interests you.

Why focus on the unfamiliar and bizarre? If you can see the value of economics in explaining legal institutions which have historically and contemporarily been written off as 'irrational', 'ignorant', or just plain 'weird' and 'unexplainable'—in other words, situations for which the application of economics has been denied—then it is relatively easy to see the relevance of economics for understanding more familiar and contemporary legal systems. If you can understand and appreciate the hard or marginal case, you can understand the familiar case.

The course is designed to prepare you to do this in four ways:

(1) The assigned readings demonstrate how to apply the economic way of thinking and represent an expert example of how economics can be used to understand a legal system. The material we read and discuss in class will act as a model for how to think about questions you are interested in. Our in-class discussions will focus less on the historical details of each case and instead highlight what is common throughout all cases—applied economic theory. What counts as an economic explanation (oppose to a non-economic

* These office hours will end at 3:20pm on 9/14, 9/28, 10/5, 10/19, 11/2, 11/16, and 12/7.

† These office hours will not take place on 10/6, 11/10, and 12/8.

explanation)? How do you test a theory? What data are needed to test the theory? How do you rule out alternative explanations?

(2) While the assigned readings model how to think like an economist about questions of law, not all are useful for models of how to write an academic journal article. Further, reading only final, published versions of a research project does not necessarily inform you about how to engage in the research process yourself. As such, in addition to our readings and in-class discussions on applied topics, we will discuss the research and writing process itself, including tips about coming up with a research question, how to write a proposal, how to outline and structure a paper, how to find and collect data, and a crash course in empirical methods, among other things.

(2) You will propose three project ideas for the final research paper. Each should provide a proposed economic explanation of some legal phenomenon and act as an opportunity to practice applying economics to questions of law. We will explore your proposals in groups to discuss what works, what could be improved, plausible alternative explanations, and ways to test your explanation that would rule out the alternatives.

(4) You are tasked with completing an original research project culminating in a final paper in the format of an academic journal article in economics. The final paper is an opportunity for you to fully apply what you've learned in a concrete way. Unlike the proposals, the final paper will require you to create new knowledge by actually going through the process of testing your theory. Think of the final paper as taking your favorite proposal and running with it wherever it takes you. Your explanation does not have to end up being correct. In fact, throughout your exploration you may find evidence that renders your theory false. This is all part of the discovery process as you learn to think like an economist.

By the end of the course, my hope is that you will have developed a deep understanding of economic theory, an appreciation of the universality and necessity of economic explanations, and the ability to apply economics to contemporary and historical topics which interest you.

Required textbooks:

‡1. Peter Leeson (PL), *WTF?! An Economic Tour of the Weird*.

§2. David Friedman (DF), *Legal Systems Very Different from Ours*.

Required journal articles:

Academic articles will also be used throughout the course. These will be on Moodle.

Textbook on writing:

**1. Deirdre McCloskey. *Economical Writing*.

Grading: Your final grade will be determined by your entry essays, reflection summaries and questions, participation in class discussions, and the various components of writing an academic journal article. Instructions and examples for these assignments will be posted on Moodle.

‡This is a pop-version of academic journal articles. You may choose to read the relevant academic articles in place of the book if you would like. These articles will be on Moodle. The academic articles can serve as a model for your final paper; the book version cannot.

§This book can be found on Amazon or for free online: <http://www.daviddfriedman.com/Legal%20Systems/LegalSystemsContents.htm>. The online version is not as polished as the print version, but all the core material is there.

**We will not actively discuss this book in class. However, it is highly recommended for short tips on how to improve your writing.

Your final grade will be calculated as followed:

Entry essays (1 and 2):	2%
Reflection summaries and discussion questions:	13%
Participation:	10%
Three project proposals:	7%
Thesis statement:	10%
Paper outline and model paper:	2%
Literature review:	5%
First draft:	10%
Peer review:	4%
Academic journal article (final draft):	35%
Presentation:	2%
Final grade:	100%

Entry essays: You will be tasked with two entry essays on a given topic. The entry essays should be no more than a page long. More information will be provided in class.

Reflection summaries: Before each class period you will submit a reflection summary on the assigned readings. You may format this reflection any way you wish. However, the essay should include (at a minimum) three things: (1) a (brief) summary of the main thesis for *each* paper, (2) a short reflection on the thesis and overall paper, and (3) some discussion questions. Examples of reflection essays that contain all three parts but in different format styles are on Moodle. These will be read by me but graded by the TA. You will not receive points for the day if your reflection summary does not indicate having read *each* paper assigned.

Participation: You are expected to participate in the classroom discussion. Participation is assessed based on the overall quality of your contribution, not how many times you contribute.

This is a reading and discussion intensive class. If you are not able to be prepared to read, reflect, and discuss the readings each day, you should consider taking a different class.

Project proposals: You are tasked with providing three project proposals. Your proposals should (1) introduce the phenomenon, including context and why it is important, (2) suggest an *economic* theory which could explain the phenomenon, (3) design a possible test of the theory, and (4) state what evidence or data would be necessary to test the theory. If the topic of interest is a historical legal institution which is no longer practiced, you may also want to discuss what might have changed to cause the institution to dissolve. If it is a contemporary legal institution, you may want to discuss what might have changed to allow the new institution to develop. Abstracts should not exceed one page.

Your proposed theory does not have to be correct. Nor does your ideal data have to be readily available. However, your theory does have to be an *economic* theory and your test would have to work *if* the necessary data was available.

We will discuss the proposals and provide/receive feedback in small groups. You will then submit the revised proposals to be graded. After the proposals are graded, you are required to meet with me to discuss the feasibility of the proposals and approve a topic for your final paper.

The topic of the final paper does not necessarily have to come from one of the three proposals; however, you should write the proposals about topics you are considering for your final paper.

Academic journal article (research paper): You are tasked with completing a research project. The research project must: (1) be original, (2) be approved by me, (3) provide an *economic* explanation of a phenomenon using economic *theory*, (4) provide a test of the theory using empirical evidence^{††}, and (5) be formatted in the style of a standard academic journal article in economics.

There are two primary approaches to “Law and Economics.” The first uses economics to understand how changes in legal rules affect human behavior. The second uses economics to explain the structure and variation of the legal rules themselves. You may choose to research a question in either approach.

The final draft of the paper should be around 15-29 pages in length, double-spaced and in a standard 12-point font.

Instructions for the individual components of the research project will be posted on Moodle.

Important due dates for the research project:

Three project proposals for peer discussion:	9/27
Revised project proposals for grading:	9/29
Meeting with me about your topic:	9/29-10/10
Thesis statement:	10/11
Paper outline and identification of model paper:	11/1
First draft:	11/17
Peer review:	11/29
Final draft:	12/20
Presentation:	12/6, 12/8, 12/13

Grading scale:

A+: 100-98	A: 97-93	A-: 92-90	B+: 89-88	B: 87-83	B-: 82-80
C+: 79-78	C: 77-73	C-: 72-70	D: 69-60	F: <60	

Distinction in economics: Contingent upon meeting other requirements, performing well in this course could help you obtain distinction in economics. For more information, please read the economics department's distinction policy by visiting <https://wp.stolaf.edu/economics/distinction-policy/>.

Disability services: If you have already registered with Student Accessibility Services (SAS) and have your letter of accommodations, please meet with me early in the course to discuss, plan, and implement your accommodations in this course. In general, you will be responsible for arranging an alternative testing location with SAS for the exams. Please see: <https://wp.stolaf.edu/academic-support/dac/>

^{††}Most of you will test your theory using econometrics. However, that is not the only form of empirical evidence that is acceptable, feasible, or appropriate for some projects.

Schedule:

September 13: *The economic approach*

WTF?! - xi-p. 6, "Waiting in the Lobby" and "Your Favorite Acronym"

Becker, "The Economic Approach to Human Behavior"

Hudik, "Two Interpretations of the Rational Choice Theory and the Relevance of the Behavioral Critique"

Mercuro and Medema, "Fundamental Building Blocks of the Chicago Approach"

Harris et al., "The Binding Force of Economics"

Leeson, "Economics is not Statistics (and vice versa)"

September 15: *Assumptions*

Lichback – "Rational/Social Choice Theory"

[Focus on pages 7-26; 30-34; 39-43] M. Friedman, "The Methodology of Positive Economics"

Alchian, "Uncertainty, Evolution, and Economic Theory"

Becker, "Irrational Behavior and Economic Theory"

Leeson, "Do We Need Behavioral Economics to Explain Law?"

[Optional – suggests how to incorporate behavioral findings in standard optimization/RCT models] Rabin, "Incorporating Limited Rationality into Economics"

September 20: *Implications and Efficiency*

Staten and Umbeck, "Economic Inefficiency: A Failure of Economists"

Boettke et al., "Saving Government Failure from Itself"

Leeson, "Logic is a Harsh Mistress"

Stigler, "Law or Economics"

Demsetz, "Information and Efficiency: Another Viewpoint"

September 22 – Entry Essay 2 Due: *Advice on the research process; how to structure a paper/argument.*

September 27: *Peer discussion on project proposals*

September 29 – Project Proposals Due: *Common Law and Civil Law*

Priest, "The Common Law Process and the Selection of Efficient Rules"

Glaeser and Shleifer, “Legal Origins”

[Skim – main point, legal origins matter] La Porta, Lopez-de-Silanes, and Shleifer, “The Economic Consequences of Legal Origins”

Shughart, “Gordon Tullock’s Critique of the Common Law”

Zywicki, “Spontaneous Order and The Common Law: Gordon Tullock’s Critique

[Optional – common law performs worse than civil law in terms of imprisonment] D’Amico and Williamson, “Do Legal Origins Affect Cross-Country Incarceration Rates?”

October 4: *Crime and Punishment*

Becker, “Crime and Punishment: An Economic Approach”

D. Friedman, “Why not hang them all? The virtues of inefficient punishment”

LSVDFO, Ch. 1, “Imperial Chinese Law”

Levitt and Miles, “Economic Contributions to the Understanding of Crime”

Benson et al., “Estimating Deterrence Effects: A Public Choice Perspective on the Economics of Crime Literature”

October 6: *Optimal Enforcement - Information, Evidence, and Cost Savings*

WTF?! – Ch. 2; Academic versions: “Ordeals” and “Sassywood”

Alchian and Demsetz, “Production, Information Costs, and Economic Organization”

Stigler, “The Optimum Enforcement of Laws”

Becker and Stigler, “Law enforcement, Malfeasance, and Compensation of Enforcers”

Fegely, “Policing and Economic Calculation”

October 11 – **Thesis State Due: *The Coase Theorem and Enforceable Contracts***

WTF?! – Ch. 3; Academic version: “Wife Sales”

Coase, “The Problem of Social Cost”

McCloskey, “The So-Called Coase Theorem”

Barzel, “Transaction Costs: Are They Just Costs?”

Acemoglu, “Why not a political Coase theorem? Social conflict, commitment, and politics”

October 13: *Crash course in empirical methods and data collection*

October 18: No Class

October 20 – Paper Outline and Model Paper Due: *Law, Legislation, and the State*

Hayek, “Law, Legislation, and Liberty, v. 1, Ch. 4, 5, 6”

Boettke and Leeson, “Introduction: ‘The Economic Role of the State’”

October 25: *The Economics of Anarchy*

Olson, “Dictatorship, Democracy, and Development”

Leeson, “Anarchy Unbound Introduction”

Ostrom, “Reflections on the Commons” and “A Framework for Analysis of Self-Organizing and Self-Governing CPRs” (Ch. 1 and 6 of *Governing the Commons*).

Buchanan and Tullock, “The Calculus of Consent Ch. 4, 5, 6”

[Optional – Survey of the literature] Powell and Stringham, “Public Choice and the Economic Analysis of Anarchy: A Survey”

October 27: *When the State is infallible – God, Religion, and the State*

LSVDFO, Ch. 4, “Jewish Law”

LSVDFO, Ch. 5, “Islamic Law”

LSVDFO, Ch. 6, “When God is the Legislator”

Schulz et al. “The Church, Intensive Kinship, and Global Psychological Variation”

Kuran, “The political consequences of Islam's economic legacy”

November 1 - Literature Review Due: *When you don't trust the State*

Leeson and Williamson, “Anarchy and Development: An Application of the Theory of Second Best”

Coyne, “Order in the Jungle Social Interaction Without the State”

WTF?! – Ch 4.; Academic version: “Gypsies”

LSVDFO, Ch. 2, “Romani Law”

LSVDFO, Ch. 3, “The Amish”

November 3: *When you don't trust the State... or each other*

LSVDFO, Ch. 7, “Pirate Law”; Supplementary: Leeson, “An-arrrgh-chy: The Law and Economics of Pirate Organization”

LSVDFO, Ch. 8, “Prisoners' Law”; Supplementary: Skarbek, “Prison gangs, norms, and organizations”

LSVDFO, Ch. 9, “Embedded and Polylegal Systems”

Harris, “Institutional Solutions to Free-riding in Peer-to-Peer Networks, A Case Study of Online Pirate Communities”

Bhaskar et al., “The economic functioning of online drugs markets”

November 8: *When there is no State to trust*

WTF?! – Ch. 5.; Academic version: “God Damn”

LSVDFO, Ch. 10, “Saga-Period Iceland”

Harris and Kaiser, “Burying the Hatchet”

Posner. “A Theory of Primitive Society, with Special Reference to Law”

Leeson, “Trading with Bandits”

November 10: *When there is no State part II*

LSVDFO, Ch. 11, “Somali Law”

LSVDFO, Ch. 12, “Early Irish Law”

LSVDFO, Ch. 13, “Comanche, Kiowa and Cheyenne: The Plains Indians”

Benson, “An Evolutionary Contractarian View of Primitive Law: The Institutions and Incentives Arising Under Customary Indian Law”

November 15: *Alternatives to State-Law*

WTF?! – Ch. 6; Academic version “Oracles”

LSVDFO, Ch. 15, “England in the Eighteenth Century”

LSVDFO, Ch. 16, “Athenian Law: The Work of a Mad Economist”

Benson, “The Spontaneous Evolution of Commercial Law”

Hasnas, “The Obviousness of Anarchy”

November 17 - First Draft Due: *Contestation, conflict, and beliefs*

WTF?! – Ch. 7; Academic version “Vermin Trials”

Leeson, “Witch Trials”

Leeson, “Human Sacrifice”

Allen and Lantinova. “The Ancient Olympics as a Signal of City-State Strength.”

Nunn and Sanchez de la Sierra, “Why Being Wrong can be Right: Magical Warfare Technologies and the Persistence of False Beliefs”

November 22: *Conflict and Feuds*

WTF?! - Ch. 8; Academic version “Trial by Battle”

LSVDFO, Ch. 14, “Feud Law”

Volckart, “The Economics of Feuding in Late Medieval Germany”

Schwartz, Baxter, and Ryan, “The Duel: Can These Gentlemen be Acting Efficiently?”

LSVDFO, Ch. 17, “Enforcing Rules”

LSVDFO, Ch. 18, “The Problem of Error”

November 24: No Class

November 29 – Peer Review Due: peer review

December 1: *Summing up*

LSVDFO, Ch. 19, “Making Law”

LSVDFO, Ch. 20, “Guarding the Guardians”

LSVDFO, Ch. 21, “Ideas We Can Use”

December 6: Presentations

December 8: Presentations

December 13: Presentations

December 20: Final Paper Due