



Welcome to Comparative Law and Social Science

**2012 Summer Institute of International and
Comparative Law Paris, France**

**Professor Valerie Hans
Cornell Law School**

My Background



- Professor at Cornell Law School
- Conduct research in law and social science
- Research specialty: the jury
- Regularly teach Social Science and the Law to law students
- My course examines the development of the field of systematic social science study of law and legal institutions
 - The course examines how social scientists testify about their research as experts for one of the parties in the US adversary system
 - But course is focused primarily on US legal context for the use of social science

My Social Science and Law course at Cornell Law School

http://courses2.cit.cornell.edu/sociallaw/index.html

Cornell University Law School Social Science and Law

SEARCH: go

Search this site Cornell more options

Home Topics Student Projects Expert Videos About This Site

INTRODUCTION

Welcome to the Social Science and Law web site. I developed this site as part of the Social Science and Law course I offer regularly at Cornell Law School. As a social scientist teaching in a law school, I'm interested in exploring how social science is used - and sometimes misused - in legal cases. I hope you find this site useful.

Regards,
Valerie Hans

Welcome to
Social Science and Law

IN THE NEWS

In *Brown v. Plata*, the US Supreme Court upheld a district court order mandating

FEATURED VIDEO

Wal-Mart v Dukes (U.S. S. Ct. 2011) sparks debate about "social framework" analysis

8:50 PM
6/28/2012

Overview of Law and Social Science: A Comparative Perspective

- We take as a jumping-off point the many claims about the use of experts, including social science experts, in common law adversarial systems.
- Our focus will be on one idea – but one with multiple dimensions and implications.
- We will compare the use of scientific experts in common law adversary systems with the typical approaches taken in civil law jurisdictions.



Sequence of Topics

- Comparative context – how does our topic of expert evidence relate to other differences in common law and civil law countries?
 - Historical perspective – how was expert knowledge first incorporated into legal decision making?
 - How is social science evidence admitted in legal cases?
 - Admissibility of expert testimony offered by the parties in adversary common law system is governed by a number of key rules and legal decisions.
 - This provides a major contrast with civil law, in which judges simply appoint individual experts to provide their expert views and opinions.
-

A sampling of social science topics used in law, and that we will discuss in class

- Forensic evidence
 - Syndrome evidence
 - Battered woman syndrome; battered child syndrome; so-called “abuse excuses”
 - Post-traumatic stress disorder
 - Combat
 - Rape trauma syndrome
 - Eyewitness testimony
 - Confessions
 - Predicting dangerousness
 - Duty to warn; stop and frisk laws
-

How Do Decision Makers Handle Social Science Evidence?

- Professional judges, lay judges in mixed courts; juries
 - Do they understand it?
 - Do they appreciate its strengths and its limitations?



Guest Lecturers

- Mandeep Dhami, Reader in Forensic Psychology and Director of the Postgraduate Programme in Forensic Psychology at University of Surrey
 - She will contrast common law and civil law treatment of forensic experts and discuss the problem of wrongful convictions in both systems



Guest Lecturers

- University of Vienna law professor and practicing lawyer Peter Lewisch
 - He has studied the Austrian jury system, and written a book about the subject
 - He will discuss continental approaches to fact finding, including the mixed court, and how they handle experts



Your insights and knowledge will also contribute to our understanding of the use of social science in law!

- Those who were enrolled in the course at the beginning of June were asked to bring a case from your home jurisdiction in which social science was used in a legal case.
 - I look forward to sharing what you've brought to Paris about how social science is used in your different home jurisdictions.
 - I will post all the material to our course website.
-

At the conclusion of our course:

- We should have a good understanding of how social science expertise is used in legal cases.
 - We will be able to evaluate claims about the superiority of adversary versus court-appointed experts.
 - We will have a good basis for discussing reforms of the legal system for better employment of social science in law.
-

Any questions??

**Your backgrounds and
interests in law and social
science?**



Comparative Context for Social Science in Law

**Comparative Law and Social Science
2012 Summer Institute of International and
Comparative Law Paris, France**

Professor Valerie Hans, Cornell Law School

Expert witnesses of any kind cannot be studied in isolation.

- Many other aspects of procedure and law frame and regulate the use of expert witnesses.
 - Historical traditions in different countries shape preferences for legal procedures, including the role and use of experts.
 - Important social, political, and moral values are associated with different procedures.
 - Thus, to understand social science expertise and how it is used in different countries, we must consider the broader historical, social, and political contexts of different legal cultures.
-

Adversarial vs Inquisitorial Procedure

■ Adversarial

- Two adversaries have responsibility for developing the evidence. The decision maker is passive, and does not develop evidence, so as to avoid biased or premature decision making.

■ Inquisitorial

- This procedure is organized as official inquiry, where the decision maker develops much of the evidence, guided by the parties, as well as makes the decision.
-

Mirjan Damaska, in The Faces of Justice and State Authority, proposed a two-factor framework for comparative law:

- Structure of government – character of procedural authority
 - Hierarchical ideal – bureaucratic, professional officials use technical standards; desire for uniformity; reliance on rules
 - Coordinate ideal – nonprofessional decision makers, undifferentiated standards; responsibility for proof rests with the parties
 - Legitimate function of government – purpose to be served by the administration of justice
 - Reactive state – citizens pursue own goals
 - Active state – justice administration implements policy goals
-

Cultural values provide critical support for different procedural arrangements.

- Hierarchical, activist state – requires trust in the state, cultural values supportive of a strong government
 - Coordinate, reactive state – supported by values of individualism, laissez-faire attitudes, populism
-

	Hierarchical approach	Coordinate approach
Reactive state	France?	USA Romney
Activist state	Turkey Trinidad	Canada USA Obama

Kagan

- Adversarial legalism

- “The assertion of claims, the search for controlling legal arguments, and the gathering and submission of evidence is dominated not by judges or governmental officials but by disputing parties or interests, acting primarily through lawyers.” [from Kagan reading]
- Decision making authority is fragmented; hierarchical control is relatively weak

- Bureaucratic legalism

- “legal authority and decisionmaking is hierarchically organized and disputants and their lawyers play a more restrained role.” [from Kagan reading]
-

Kagan is doubtful that globalization pressures will lead European legal systems to become “Americanized”

- Tenacity of European national political systems and legal cultures are at odds with these American practices:
 - Partisan selection of judges
 - Use of juries
 - Lawyer-dominated fact-gathering
 - Aggressive lawyering
-

Application to use of experts

- Oscar Chase notes the American reluctance to adopt judicial appointment of a single expert is deeply connected to cultural values.
 - American discomfort with political hierarchy, suspicion of authority
 - American cultural preference for pluralism
 - Reality is seen as uncertain, contingent, subject to debate.
 - Experts who disagree illustrate the contingent nature of reality in a pluralist state.
 - Appreciation of pluralism may be linked to heterogeneity of USA.
-

Langbein:

- Argues that the German method of judicial appointment of experts is superior, that it avoids partisan coaching and slanting of testimony
 - Yet, the judicial appointment of experts is also connected with other aspects of the legal system
 - Judicial management of case more generally – judges are more knowledgeable about the case from the start, and guide the collection of evidence, so know what sort of expertise is required
 - In turn this is related to the fact that German judges get the case at the start, and there is no “discovery” period preceding a formal trial.
-

In sum:

- Different approaches to the use of social science evidence in the courtroom are linked to broad cultural ideas, norms, and values
 - Countries differ in their cultural and attitudinal support for:
 - hierarchical decision making
 - trust in government and the judiciary
 - belief in the possibility of the neutral expert
-