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PSC 420.01: Comparative Legal Systems

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All civil societies govern themselves by some form of law. The philosophical foundations and methods of application of these laws vary widely around the world. The system of law found in the United States is not the standard by any means. This course explores two different approaches to the subject of law. The first of these is Islamic law. While there are important differences among Islamic countries in their approaches to the law, they all have one thing in common. Law is derived from religion, that is, the Koran. The other system to be considered is that of East Asia. Here the common ingredient is a rich philosophical and cultural heritage that for purposes of this course is being called the Confucian tradition. This tradition serves as the foundation for ordering the social and political worlds, including law.

The meaning of law in Islamic countries is fundamentally different from that of the west. It is this difference that explains, in part, the strain in relations between western countries and the Islamic countries of the middle east. In this category, there are many countries to study, from Morocco to Indonesia.

The legal systems of Asia are hard to define, at least from the American perspective. They appear either amorphous or authoritarian. We are accustomed to the law as an independent structure. In East Asia, law is an integral part of ethics and culture. Modern Asia, however, has been forced, out of necessity, to incorporate western approaches to law in order to cope with the demands of the contemporary world. Additionally, some countries combine elements of all three legal systems (Western, Islamic and Confucian) such as Malaysia and Indonesia.

Course Objectives

By means of written exercises, oral reports and discussion, the course should achieve the following:

A brief overview of the historical context out of which contemporary legal systems have evolved

An understanding and appreciation of the moral and ethical foundations of law

A description of the purposes of law

A description of the mechanics by which law is applied

Assignments

Course requirements include the following:

1. Oral reports on articles and book chapters (20%)
2. Research papers (50%)
3. Presentation of research findings (10%)
4. General discussion of course material (20%)

Research Paper

There is no set length for each of the two papers but little can be done on these topics in less than 15 pages each. The paper should conform to standard manuscript style. Use either footnotes or endnotes. Use the Turabian format.

Note the sections of each paper will not necessarily be of equal length due to availability of information. Given that the amount and quality of information available is uneven, it is impractical to try and focus upon one single country in each of the geographical areas. Instead, the areas as a whole can be considered in order to gather data on the subject matter categories listed below.

Each of the two legal systems will be examined in terms of four subject matter categories. Given that material is not available for all countries on all topics, not all subjects can be considered in detail. Not much is known, for example, on law enforcement and corrections practices in the Islamic world.

The first paper is due in final form on March 14. The second on May 2.

Research Topics

- I. Constitutional foundations
 - A. What is the historical background of the way the polity is "constituted"? That is, how did it come to exist as a state?
 - B. What is the philosophy of "law"? What are its sources?
 - C. What is the authoritative basis of the political system? The authority of government comes from what?

- II. Courts and judicial process?
 - A. What are the methods of adjudication?
 - B. How are the courts organized?
 - C. What is the role of the legal profession?
 - D. How are legal professionals trained?
 - E. What is legal procedure, i.e., due process?

- III. Philosophical and practical aspects of civil rights
 - A. What is the meaning of civil liberties in this system?
 - B. What are gender and disabilities issues and how are they handled in the legal system?
 - C. How is "substance abuse" handled?
 - D. How is "victimless crime" handled?

- IV. Law enforcement and corrections
 - A. How is law enforcement organized?
 - B. How are law enforcement personnel recruited and trained?
 - C. What is the relationship between the police and the community relations?
 - D. What are the philosophy and methods of corrections?
 - E. What is the relationship between law and morality?

Attendance is mandatory. Three absences will be allowed. Additional absences will result in a 5% grade reduction per absence.

Calendar

Part 1

January 29 - February 5 The Study of Comparative law

The first week will be devoted to gathering
bibliography and exploring different data sources

Part 2

February 7 - 28 Islamic Law

Reports on article and book assignments

March 5 - March 26 Islamic Law

Presentations of research findings

Part 3

March 28 - April 18 Asia

Reports on articles and book assignments

April 23 - May 7 Asia

Presentations of research findings

Part 4

May 9-16 Comparative review