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PSC 420.01: Comparative Legal Systems

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Hayes

Political Science 420
Comparative Legal Systems

Spring, 2007

All civil societies govern themselves by some form of law. The philosophical foundations and methods of application of these laws have changed throughout history and continue today to vary widely around the world. The system of law found in the United States is not the standard by any means. In fact, most other legal systems, including those in Europe, are significantly different. This course explores two approaches to the subject of law. The first of these is Islamic law. As in the West, there are important differences among Islamic countries in their approaches to the law. But they all have one thing in common. Law has a spiritual rather than a secular source: it is derived from religion, that is, the Koran. The other system to be considered is that of East Asia. Here the source of law is a philosophical and cultural heritage that has existed for millennia. For purposes of this course, this will be called the Confucian tradition.

The meaning of law in Islamic countries is fundamentally different from that of the West. Islam is holistic; there is no distinction between faith and the physical world. 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 general understanding 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 (70% - 35% each)
3. General discussion of course material (10%)

Research Paper

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

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.

There should be a minimum of three non-internet sources.

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, about law enforcement and corrections practices in the Islamic world.

The first paper is due in final form on March 8. The second on May 3.

Papers should cover but are not limited to the following 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?

- 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.

The Academic Officers of the University of Montana have determined that the following statement must be present on every syllabus:

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University.

All students need to be familiar with the Student Conduct Code. The Code is available for review online at <http://www.umt.edu/SA/VP/SA/index.cfm/page/1321>

Calendar

Part 1

January 23 - February 1 The Study of Comparative law

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

Part 2

February 6 - 22 Islamic Law

Reports on article and book assignments

March 1 - March 22 Islamic Law

Presentations of research findings

Part 3

April 5 - April 19 Asia

Reports on articles and book assignments

April 24 - May Asia

Presentations of research findings

Part 4

May 10 (8:00-10:00) Final review

Books on Reserve

An Na'im, *Toward an Islamic Reformation*

Bassiouni, *Islamic Criminal Justice System*

Ebbe, *Comparative and International Criminal Justice Systems*