LEGAL TRADITIONS
(WESTERN IDEAS OF LAW (LAW 303))
Course Outline - Spring 2017
Professor Dennis Pavlich

Course Description.

This course, delivered in seminar format, commences with a general consideration of religion, political structure and economics (limited) in social formations that establish the foundations and origins of order and justice in those ancient legal jurisdictions that have influenced western law. Selected theories of jurisprudence - notably natural law, positivism and realism (including critical legal studies) - are reviewed briefly (but frequently referenced throughout the course) to provide a conceptual context for and enable critique of the values underlying the narratives of the subject area.

We examine the concept of law in western legal systems by considering the major philosophical hallmarks and axioms (especially the rule of law) of Western law. We focus on the evolution of canon law, the continental Civil Law system of Western Europe (using the Italian legal system as a paradigm) and the Common Law system developed in England. We do this following the major sequence and ordering of Professor John Head in his book Great Legal Traditions. We also consider, compare and trace various historical, common foundations of these two “legal traditions” through the background of the legal order and social formations of peoples of the ancient Near East (emphasizing those of Mesopotamian derivation including the Israelites), Greece (noting the influence of Egypt) and Roman Law (including the significant role of the Catholic Church in transmuting it) and discuss, determine and evaluate their contributions to western ideas of law. We review and critique the hypothesis of law as a system of rules related to each other by logical consistency according to criteria of legal reasoning as applied and adopted by institutions socially recognized as legitimate and historically justifiable. We explore this in the context of a social phenomenon and a formation that appears to endorse legalism as a central mechanism for the cultural organization of a just society.

We shall engage in comparative legal theory focusing on the similarities and differences between the civil and Common law traditions as well the role and development of the role and ideas of law in the Chinese legal traditions.

In addition, the course cross cuts the consideration of these legal traditions by reviewing the scope of myth, religion, language, writing and moral reasoning on power elites responsible for law codes, legislation, dispute resolution and precedent in the evolution from pre-legal to proto-legal, and then on to fledged, autonomous, legal systems.

Course Materials:

1. Required:
   - Supplementary Materials for Course - handout. All readings not referenced as “Hood” are to be found in these Supplementary Materials (“SM”). These materials are from Smith and Weistubb, The Western Idea of Law (Butterworths) with the kind permission of the authors.

2 Suggested general reading/viewing (according to personal interest and emphasis):
Joshua Berman, *Created Equal*
Penguin Classics *The Talmud - A Selection*

Israel Finkelstein – *The Bible Unearthed*, Youtube

Peter Stein, *Roman Law in European History*


Adriaan Lanni, *Law and Justice in the Courts of Classical Athens*, Kindle Book format

Riggsby, *Roman Law and the Legal World of the Romans*, Kindle Book format

Leanne Bablitz, *Actors and Audience in the Roman Courtroom*, in Kindle Book format

Robinson, Fergus & Gordon, *European Legal History*

**Evaluation:**

Your choice:
1. Either a paper (15 - 20 pages) on an assigned topic chosen from the subject matter covered in this course outline or a 24-hour “take-home” examination.
2. 5% final grade based on class presence/participation

**Course Outline**

**January 3 & 5:**
Introduction to the course; discussion of course orientation and objectives; philosophy of law; western law as an autonomous system; roots of western law; the value and challenge of a comparative study of law. Use of the term: “codes of law”; historical context.

Readings
- SM: Smith and Weistubb, The Foundations of Western Law page 1 – 9
- Head pages 4 – 39

**January 10 & 12:**
Discussion of legal tradition and the nature of law; understanding “autonomy of law” and “rule of law”; From Myth to...?

Readings:
- SM: Smith and Weistubb: The Evolution of Western Legal Consciousness, page 10 – 29
- SM: Amaury de Reincourt, Sex and Power in History page 34 - 44
January 17:
Legal codes of the Acadians (Hammurabi); Hittites and Israelites (Mosaic laws in Exodus and Deuteronomy).
Influence of the structure of Mesopotamian law codes on Jewish law
Readings:
- Search internet for extracts from the Code of Hammurabi
- SM Y Kaufmann: The Religion of Israel page 45 – 57
- SM Roland de Vaux: Ancient Israel page 58 – 66

January 19:
Sources and nature of Jewish law, historical context; influence on Christian concepts of justice and the structure of later legal systems.
Readings
- SM Harold Berman: The Interaction of Law and Religion, etc page 137 - 160

January 24:
Political and legal organization of the Athenians (including consideration of the Codes of Dracus and Solon).
Readings:
- SM Kathleen Freedman, Legal Code and Procedure, page 88;
- SM Paul Vinogradoff, The Jurisprudence of the Greek City, page 93;
- SM Robert Bonner, “Lawyers and Litigants” page 95 - 96;
- SM Mogens Hansen: The Sovereignty of the Peoples Court in Athens, page 96 - 100

January 26 & 31:
Introduction to Roman Law.
Readings:
- SM CF Colbert, Justinian: The Digest of Roman law page 116 – 138
- SM E Vernon Arnold, Roman Stoicism
- SM Joan Miquel, Stoic Logic and Roman Jurisprudence page 103 – 108
- SM Fritz Schulz, Principles of Roman Law
- Head 44 – 72

February 2 & 7:
Gratian’s Decretum and the Codification of Canon law; the evolution of continental ius commune and the rise of the nation state in Western Europe. The French Civil Code
Readings: Head pages 77 - 108
February 9:
How the Civil Law Operates: sources of law, organization and role of the legal profession in law formulation.
Readings: Head pages 152 – 181

February 14:
Illustrations from Italy
Readings: Head 182 – 231

February 16:
Distribution of Civil Law and Future
Readings: Head pages 231 – 238; 239 – 254

February 21 & 23: NO CLASSES – READING WEEK

February 28:
“Foxy Knoxy Trial” – Head pages 302 - 327

March 2:
The common-law tradition in History: The Celts, Romans and Anglo Saxons; the Norman conquest
Readings: Head pages 330 - 360

March 7:
Barriers to the reception of Roman law and the rationalization of English law
Readings: Head pages 360 – 431

March 9:
How the Common Law Operates; interplay between statutes and case law; jurists and legal writing; the legal profession
Readings: Head pages 433 - 454

March 14:
The Chinese Legal Tradition from an Historical Perspective; Confucianism and Legalism; law codes in dynastic China
Readings: Head pages 458 - 478
March 16:
Key themes in Dynastic Chinese Law: continuity, ethics as guide, political control (versus rule of law)
Readings: Head pages 478 – 505
The Travelling Court – Youtube.

March 21:
Modern China and the role of law
Readings: Head pages 506 - 536

March 23: How does the Law in China operate? Understanding and comparing the “rule of law” and “rule by law”
Readings: Head pages 537 - 590

March 28: Modern China’s Legal Identity
Readings: Head pages 591 - 645

March 30:
Learning from Comparative Legal Systems

April 4 & 6:
Paper Presentations