STPEC
Instructor: Noah Hershey
Supervising Instructor: (TBA)

Course Description:
The purpose of this course is to critically look into the commonly held notion that a religious democracy is inherently unfair. This will be done by examining the interplay of religion and law in governments through the lens of the society’s treatment of ‘minorities’ (those who do not subscribe to or are not empowered by the religion of the government). Certainly religious democracies face obstacles to impartiality, but are the unfairness of these democracies a result of the religion associate with? It is not by virtue of being a religious democracy that one becomes unfair, but the methods used to make such a democracy religious. After all, every government is seemingly based in cultural ideas, which are very often subject to the intrusion of religious doctrine. To say that a religious democracy is inherently unfair is far too shallow of an investigation to constitute a true answer to the question. This course will look at the practical application of religious doctrine in England, Iran, Turkey, Pakistan, Israel and Australia to determine the effects of such doctrine on the law and fairness of each country. Perhaps the way that a form of government becomes tyrannical is a lack of state empowered opposition to the executive. In the United States lawyers occupy this role, challenging the State’s legislation when they feel the need. In other areas of the world it is religious scholars that fill this role protecting their rights to religion from government interference. However, problems consistently arise in states where the primary legislators are unopposed.

The course will begin with various theories about legal pluralisms and move to a practical analysis.

Course Readings: Will be made available online

Grading:
Attendance (10%)
Weekly reading response papers. 250-300 words. (15%)
Two 6-8 page papers, 30% for first paper 45% for second.

The first paper will be due end of week 6, and the second will be due on the last day of class.

Section I: Theories of Legal Pluralism.

Week 1:
Care, Chapter 5: Pluralism in law and religion by Margaret Davies. Pages 72-99
Shah, Chapter 1: Legal Pluralism as a Tool for Ethnic Minority Studies. Pages 1-26

Week 2:
Yilmaz, Chapter 2: Dynamic Legal Pluralism: Pages 9-30


Practical analysis:
Week 3: The United Kingdom
Yilmaz Chapter 4: Muslim Legal Pluralism in England. Pages 49-81

Shah Chapter 4: Criminal (in)Justice in a Plural Society: South Asians and the English Law on Homicide. Pages 67-88

Week 4: The United Kingdom

Cane 8: A very English affair: establishment and human rights in an organic constitution by Charlotte Smith. Pages 157-185

Week 5: Australia
Cane 9: Days of rest in multicultural societies: private, public, separate? By Ruth Gavison and Nahson Perez

Cane 10: Australian legal procedures and the protection of secret Aboriginal spiritual beliefs: a fundamental conflict. By Ernst Willheim Pages 214-242

Week 6:

Paper 1 due: Contrast ways that Church of England interacts with the Government and the way that the aboriginal religions in Australia interact with government there. How explicit status of the Church of England affect its expression? How does the religious precept of secrecy affect the way that the Aboriginal religion is expressed in relation to the religion? Expected length 6-8 pages.

Week 7: Turkey
Yilmaz 5: Muslim Legal Pluralism in Turkey. Pages 83-124.

1 Available on JSTOR
Care 11: Secular and religious conscientious exemptions: between tolerance and equality. By Yossi Nehushtan Pages 243-267

Week 8:

Week 9: Israel
Halbertal 13: Religion and State in Israel by Menachem Loerbaum. 152-164
Halbertal 15: Human Rights and Membership Rights in the Jewish Tradition. 179-188

Week 10:
1Law and Religion in Israel By: Englard, Izhak From: The American Journal of Comparative Law, 1987, 35, 1, 185-208, American Society of Comparative Law

Week 11: Pakistan
Yilmaz 6: Muslim Legal Pluralism in Pakistan. Pages 125-142
Feldman 3: Islamism as a Modernist Ideology - The Islamist Constitutional Model 105-126

Week 12

Week 13: Iran
Feldman 3. The Iranian Option – The Future of the Islamic State 127-146

Week 14:
1Minority-State Relations in Contemporary Iran By: Higgins, Patricia J. From: Iranian Studies, 1984, 17, 1, 37-71, Taylor & Francis, Ltd. on behalf of International Society for Iranian Studies

Final Paper: Can a religious democracy treat all of its members in a pluralistic way? What is necessary for this to occur?

1Available on JSTOR
Resources:


