

# **Law, Faith and the Postcolonial: Critical Perspectives in Comparative Law**

## **Course Outline**

### **Week 1 – Introduction**

The first seminar will introduce central themes in postcolonial and critical theory. It will compare the objectives of these theoretical positions in relation to the more historical and descriptive approach that comparative law (be it comparative law that has focused on Europe and North America or comparative law that has focused on Africa, the Middle East and Asia) has taken. While this course does not eschew some of the most important historical literature in comparative law, it also draws on material that is informed by phenomenological, deconstructive and psychoanalytical approaches. Here we tease out what it was that drove Britain and Europe beyond its boundaries, firstly the Americas and then South to Africa and East to the Middle East and Asia.

### **Week 2 – Europe, the Colonial Encounter and Its Other**

#### *Core Reading*

Homi Bhabha, *The Location of Culture*, Routledge. 1994, pp. 20-65.

David Armitage, *The Ideological Origins of the British Empire*, 2000, pp. **TBA**

Ian Duncanson, The Sovereign, the Law and the Two British Empires, *Windsor Yearbook of Access to Justice* (2007) 25, No. 2, pp 93-142.

Edward Said, *Orientalism*, Penguin Books. London: 1978, pp. **TBA**

#### *Additional Reading*

Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason*, Harvard University Press. 1999 pp. 198-250.

### **Week 3 – Nation, Law and Identity: the peace process and the “theft of enjoyment” in Ireland/Northern Ireland**

#### *Core Reading*

Patrick Hanafin, *Constituting Identity: Political identity formation and the Constitution in post-independence Ireland*, Ashgate Press, Aldershot: 2001, pp. **TBA**

Barry Collins & Patrick Hanafin, ‘Mothers, Maidens and the Myth of Origins in the Irish Constitution’ in *Law and Critique* (2001), Vol. 12, 1, pp 53-73.

Barry Collins, “The Belfast Agreement and the Nation that Always Arrives at its Destination”, in *Penn State Law International Law Review*, 20 (2002), pp. 385-413.

### **Week 4 – Israel and Palestine: the Holocaust, dispossession of land and the Palestinian claim to self-determination**

#### *Core Reading*

Emmanuel Levinas, *The Levinas Reader* (ed) Sean Hand, Blackwell. Oxford, pp. **TBA**

Rashid Khalidi, ‘The Palestinians and 1948: the underlying causes of failure’ in Avi Shlaim and Eugene L. Rogan (eds), *The War for Palestine: Rewriting the History of 1948*, Cambridge University Press, Cambridge: 2001, pp. 12-36.

Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples*, Cambridge University Press, Cambridge: 2003, pp. **TBA**

Barry Collins, “Locating Sovereignty in International Law: Reflections on the Construction of a Wall in Palestine”, in J. Ismael and W. Haddad(eds.), *Barriers to Reconciliation; Case Studies on Iraq and the Palestine-Israel Conflict*. University Press of America Press (Lanham, MD: 2006), pp. **TBA**

### **Week 5 – State Formation in Pre-Colonial South and South East Asia**

#### *Core Reading*

Herman Kulke, The Early and Imperial Kingdom in SE Asian History, in *South East Asia in the 9<sup>th</sup> to 14<sup>th</sup> Century* (ed) Anthony Milner (1986) pp.1-22.

Stanley Tambiah, *World Conqueror, World Renouncer* - Ch 6, Cambridge University Press. 1976  
Ben Anderson, The Idea of Power in Javanese Culture, in *Culture and Politics in Indonesia* (ed) Claire Holt, pp. 1-39.

Bardwell L Smith, 'Kingship, the Sangha and the Process of Legitimation in Anuradhapura' in Smith, Bardwell L (ed) *Religion and the Legitimation of Power in Sri Lanka*, Anima Books. Chambersburg, Pennsylvania, pp. 73-95.

#### *Additional Reading*

\*Paul Wheatley, 'The Suspended Pelt: reflections on a discarded model of Spatial Structure', in *Geographic Humanism, Analysis and Social Action* (ed) D. Deskins et al., pp. 47-108. Ann Arbor, Michigan: Michigan Geographical Publications No. 17.

David K Wyatt, 'Relics, Oaths and Politics in Thirteenth-Century Siam', in *Journal of Southeast Asian Studies* (2001), 32, 1, pp. 3-66

Sirima Kiribamune, 'Buddhism and the Royal Preorogative in Medieval Sri Lanka' in Smith, Bardwell L (ed) *Religion and the Legitimation of Power in Sri Lanka*, Anima Books. Chambersburg, Pennsylvania, pp. 107-118.

\*Charles Higham, *The Civilisation of Angkor*, ch 3 & 4.

\*Georges Coedes, *The Indianised States of Southeast Asia*, pp. 14-35.

Charles Higham, *The Archaeology of Mainland SE Asia*, Ch 1, p233-9, 306-20, 356-63. 1989.

\*Barbara Andaya, 'Women and Economic Change: the Pepper Trade in pre-modern Southeast Asia' in *Journal of the Economic and Social History of the Orient* (1995), 38, 2, pp. 165-90.

### **Week 6 - The Asokan Persona and the Galactic Polity in South and South East Asia and the Social Contract in Buddhist Political Theory**

#### *Core Reading*

Stanley Tambiah, *World Conqueror, World Renouncer*, pp. 32-72, Cambridge University Press. 1976.

H.L. Seneviratne, 'Religion and the Legitimacy of Power in the Kandyan Kingdom' in Bardwell L Smith (ed) (ed) *Religion and the Legitimation of Power in Sri Lanka*, Anima Books. Chambersburg, Pennsylvania, pp. 177-187.

Andrew Huxley, 'The Buddha and the Social Contract' in *Journal of Indian Philosophy* (1996) Vol. 24 (4), 406-20.

\_\_\_ 'Studying Theravada Legal Literature', *Journal of the International Association of Buddhist Studies*, (1997), Vol 20, No 1, 63

#### *Additional Reading*

H.L. Seneviratne, *Rituals of the Kandyan State*, Cambridge: Cambridge University Press. 1978

Steven Collins, 'The Lions's Roar on the Wheel-Turning King: A response to Andrew Huxley's 'The Buddha and the Social Contract'' in *Journal of Indian Philosophy* (1996) Vol. 24 (4), 421-446.

James Duncan, *The City as Text: The Politics of Landscape Interpretation in the Kandyan Kingdom*. Cambridge, CUP. 1990, pp.154-184.

### **Week 7 - Surveying the Legacy of Buddhist Law in Theravada Buddhist South East Asia: Burma and Thailand**

#### *Core Reading*

John S. Furnivall, 'Manu in Burma' *Journal of the Burma Research Society* (1940), 30, 351.

Maung Maung, *Law and Custom in Burma and the Burmese Family*, Martinus Nijhoff: The Hague, 1963, Ch 1

Michael Aung Thwin, 'Heirarchy and Order in pre-colonial Burma' *Journal of South East Asian Studies* (1984) 15, 224

\_\_\_ *Pagan, Origins of Modern Burma*, University of Hawaii Press: Hawaii, 1985, ch 6 and conclusion.

Stanley Tambiah, *World Conqueror, World Renouncer* -ch 6 and 8, Cambridge University Press: Cambridge, 1976, ch 8.

Aroonrut Wichienkeo, 'Lanna Customary Law' in Andrew Huxley (ed) *Thai Law, Buddhist Law: Essays on the Legal History of Thailand Laos and Burma*, pp.1-29. White Orchid Press. Bangkok. 1996.

#### *Additional Reading*

Robert Taylor, *The State in Burma*, C.Hurst & Company: London, 1987, ch.1.

Barbara Andaya, 'Statecraft in the reign of Lu Tai of Sukhothai' in Bardwell L. Smith (ed) *Religion and Legitimation in South East Asia* 1978.

Robert Lingat, 'Evolution of Conception of Law in Burma and Siam', *Journal of the Siam Society* (1950) 38, 9.

Swearer and Sommai Premchit, 'Relationship Between Religious and Political Orders in Northern Thailand, in Bardwell L. Smith (ed) *Religion and Legitimation in the Pre-Colonial Kingdoms of South East Asia*.

David Wyatt 1984b *A Short History of Thailand*, Yale University Press: New Haven & London, 1984, pp38-74.

Simon La Loubere 1693 (reprinted 1969 – with an introduction by David K. Wyatt), *The Kingdom of Siam*, Oxford University Press: Kuala Lumpur - ch 4-7.

<http://instruct1.cit.cornell.edu/courses/hist244/LaLoubere.html>

### **Week 8 - Colonialism and the Transformation of the State in South Asia.**

#### *Core Reading*

Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* Princeton, N.J, Princeton University Press, 2001, pp 19-42, 107-23 and 173-97.

David Scott, 'Colonial Governmentality', in (1995) 43 *Social Text* 191-220.

Dipesh Chakrabarty, *Provincialising Europe: Postcolonial Thought and Historical Difference*, pp. 97-113, 237-255, University Press, Princeton: 2000.

Pradeep Jeganathan, 'Authorising History, Ordering Land: The Conquest of Anuradhapura', in Jeganathan, P and Q. Ismail (eds) *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka*, Colombo: Social Scientists Association, Colombo: 1995, pp. **TBA**

#### *Additional Reading*

David Scott, 'Dehistoricising History' in Jeganathan, P and Q. Ismail (eds) *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka*, Colombo: Social Scientists Association, 1995.

### **Week 9 - Colonialism and the Reinvention of Islamic Law**

John Strawson, 'Revisiting Islamic Law: Marginal Notes from Colonial History' in (2003) 12 *Griffith Law Review* 362-383.

\_\_\_, 'Orientalism and Legal Education in the Middle East: Reading Frederic Godaby's Introduction to the Study of Law, (2001) 21 *Legal Studies*, pp. 663-678.

Timothy Mitchell, 'Orientalism and the Exhibitionary Order,' in Nicholas B Dirks, *Colonialism and Culture*, University of Michigan Press, Ann Arbor: 1988, pp **TBA**

Noel Coulson, *An Introduction to Islamic Law*, Edinburgh University Press, Edinburgh: 1964, pp.

Arjan Appadurai, *Modernity at Large: Cultural Dimunions of Globalization*, University of Minnesota Press. 1996, pp, **TBA**.

#### *Additional Reading*

D.A. Washbrook, 'Law, State and Agrarian Society in Colonial India' in *Modern Asian Studies* (1981), Vol. 15, pp. 649-

### **Week 10 - Colonialism and Legal Transformation in the Malay/Javanese World**

#### *Core Reading*

John Ball, 1982 'Indonesian Legal History 1602-1848' Oughtershaw Press, Sydney 1982, pp.37-50.

Michael Ricklefs, *A History of Modern Indonesia*, 1981, ch 1.

Tony Milner, 'Islam & The Modern State' in (ed) M.B. Hooker, *Islam in Southeast Asia* (1983) p23

M.B. Hooker, 'Law Texts of Muslim S.E.Asia' in (ed) M.B. Hooker, *Laws of Southeast Asia, Vol 1 -the Pre-Modern Texts*, Singapore, Butterworths:1986, pp, **TBA**  
M.B.Hooker, 'The Trengganu Inscription' 49 *Journal of the Malayan Branch of the Royal Asiatic Society* (1976) Vol. 49, p.127.  
John Bousfield, 'Islamic Philosophy in Southeast Asia' in (ed) M.B. Hooker 1983. *Islam In South-East Asia*. E.J. Brill, Leiden: 1983, pp. **TBA**

#### *Additional Reading*

Abdul Majeed Mohamed Mackeen, 'Contemporary Islamic Legal Organisation in Malaya' in *Yale Southeast Asia Studies Monograph*, 1969 - partially reprinted in (ed) M.B. Hooker *Readings on Islam in Southeast Asian Law* (1985)  
M.B.Hooker, 'Note on Malayan Legal Digests' *Journal of the Malayan Branch of the Royal Asiatic Society* (1968) Vol.41, p157.  
M.B.Hooker, 'The Oriental Law Texts' in (ed) M.B. Hooker, *Malaysian Legal Essays: a collection of essays in honour of Professor Emeritus Datuk Ahmad Ibrahim*, 1986.

### **Week 11 - The Colonial Transformation of Law in Buddhist South East Asia**

#### *Core Reading*

Anthony Reid, *The Land Below The Winds*, 1988, pp.137-146 (gives a general comparison between S.E. Asian legal systems just before the colonial period).  
Lucian W. Pye, *Asian Power and Politics*, Harvard University Press, Boston: 2006 (1985), ch 4 (compares the political aspects of law throughout S.E. Asia)  
Michael Aung Thwin, 'The British Pacification of Burma - order without meaning?' in *Journal of Southeast Asian Studies* (1985), Vol. 16, p.245m  
Criag J. Reynolds, 1995. 'A New Look at Old Southeast Asia' in *Journal of Asian Studies* (1995) Vol. 54, 2, pp. 419-446.  
Charles Keyes, 'Buddhism and National Integration in Thailand' in *Journal of Asian Studies* (1970) Vol. 30, p. 551-67.

#### *Additional Reading*

David Chandler, *A History of Cambodia*, Westview Press: 1983, ch 8  
David Engel, Law and Kingship in Thailand in the Reign of King Chulalongkorn, 1975, p.1-26; 60-7; 119-124.  
Craig J. Reynolds, 1992. 'Authenticating Southeast Asia in the Absence of Colonialism: Burma' in *Asian Studies Review* (1992) Vol. 15, 3, pp.141-51.

### **Week 12 - The Colonial Transformation of the Bureaucratic Imaginary in Sri Lanka (a Buddhist case study).**

#### *Core Reading*

Bruce Kapferer, *Legends of People, Myths of State: Violence, Intolerance and Political Culture in Sri Lanka and Australia*, Smithsonian Institution Press. London and Washington, 1988 pp 29-48, 72-84.  
Ananda Abeysekara, *Colors of the Robe: Religion, Identity and Difference*, University of South Carolina Press, Columbia 2002.  
Bruce Kapferer, 'Ethnic Nationalism and the Discourse of Violence in Sri Lanka' in *Communal/Plural* (2001), Vol. 9, 1, p. 33-67.  
Iselin Frydenlund, The Sangha and Its Relation to the Peace Process in Sri Lanka, *A Report for the Norwegian Ministry of Foreign Affairs*, 2005.

#### *Additional Reading*

International Crisis Group, *Sri Lanka: The Failure of the Peace Process*, Asia Report No. 124, 28<sup>th</sup> November 2006, pp 1-17.  
Roshan de Silva Wijeyeratne, 'An Ontological Approach to Constitutionalism in Sri Lanka' in Eve Darian-Smith and Peter Fitzpatrick (eds), *Laws of The Postcolonial*, University of Michigan Press: Michigan 1999.  
Steven Kemper, *The Presence of the Past: Chronicles, Politics and Culture in Sinhala Life*, Cornell University Press. Ithaca and London, 1991, pp 53-69.

### **Week 13 – The Empire Strikes Back – the politics of the *hijab* (veil) in Europe**

Joan Scott, *The Politics of the Veil*, Princeton University Press, Princeton University Press, New York 2007, pp. TBA

Stuart Motha, 'Veiled Women and the Affect of Religion in Democracy' *Journal of Law and Society*, 34 (1) pp. 139-162.

Werner Menski, 'Muslim law in Britain' *Journal of Asian and African Studies*, Vol. 62, pp. 202-236.