Contemporary Legal Cultures - Introduction

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Course contains:

- exercices:
    - general introduction to the problem of legal culture and legal tradition (1st class)
    - outline of
        - civilian tradition (2nd class)
        - common law tradition (3rd class)
        - hybrid legal system phenomenon (4th class)
- lectures (dr Aleksandra Szymańska, dr Tomasz Dolata)

Grading:

- mutual grading for both part of the course on the basis of paper
- requirements:
  - between 5 and 10 pages
  - standardised text: font Times New Roman, 12
  - submitting via email
  - please consult the particular topic either with me or with lecturers
  - deadline: 10th January 2018 (last lecture)

- Contact
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Definition of legal culture of legal tradition:

- No two national legal systems are the same, but there are sufficient similarities between some of them to allow classification;
- Different criteria have been used for the purposes of such classification, incl. historical background and development, ideology, sources of law, division of law in the legal system, etc.;
- Most authors agree on existence of two major legal traditions:
  - the Romano-Germanic civil law tradition;
  - the Anglo-American common law tradition.

- Then, there are systems that in the same religious legal traditions', such as:

  -Hindu law,

  -Jewish law,

  -canon law (the law of the church);
- Some authors also distinguish African (indigenous) customary law.
- However, many legal systems are mixed, they have elements of more than one legal tradition.

Reasons to study comparative law:

- world as a global village
- comparative insights into own legal system
- tool for further harmonisation of law
- natural convergence of different law systems

- Concepts of convergence:
  - evolution of law
  - law of nature
  - ius commune
  - globalisation

Methods of convergence:

- natural convergence
- legal education
- reception of law
- legal transplants
- codification
- unification of law

Barriers:

- language
- world-view
- ethics system / morality
- history

- Law as a fact from the field of:
  - psychology
  - ethics
  - economy
  - sociology

Public Law and Private Law

- Distinction is very important for civil law countries, and much less important in common law countries;

- However, no unifomity exists among civil law countries in distinguishing public and private law;

- Generally speaking , public law is the law that governs the relationship between the individuals (physical or legal persons) and the state . Thus, in public law state is directly involved as a legal actor;

- Public law includes at least :
  - constitutional law
  - administrative law, and
  - criminal law.

- By contrast, private law governs the relationship between private individuals without intervention of a state or government. In this areas of law state is not directly or primarily a party;

- Private law includes at least:
  - civil law, and commercial law.

- Or, depending upon legal system and accepted classification of branches of law, one can say that private law includes the following branches: contract law, tort law, family law, property law,

Public law vs. Private law

Public law

- defines the state or governs the relationship between the state and its citizens,
- tends to be more general, may involve multiple parties or interests,
- more likely to be prospective (forward looking),
- in some cases goes beyond awards of monetary damages (e.g. imprisonment)

Private law

- governs relationship between citizens,
- often retrospective, concerns with resolving secific disputes about past conduct between identified parties,
- rarely has public policy implications.

Natural law vs Positive Law

- Natural Law: Assumes that law, rights and ethics are based on universal moral principals inherent in nature discoverable through human reason.

- Positive Law: Law is what is formally correctly promulgated