
**TULANE JOURNAL OF INTERNATIONAL
AND COMPARATIVE LAW**

VOLUME 32

SPRING 2024

No. 2

**Harmony, Order, and Expression:
A Comparative Analysis of Student Speech on
College Campuses in China, Saudi Arabia, and
Germany**

Trevor N. Ward*

I.	INTRODUCTION	208
II.	OVERVIEW OF THE RELEVANT LEGAL TRADITIONS.....	211
	A. <i>China: A Mosaic of Confucian Philosophy, Code Law, and the Soviet Legal Order</i>	211
	B. <i>Saudi Arabia: Embracing Divine Law</i>	215
	C. <i>Germany: The Quintessential Civil Law System</i>	219
III.	OVERVIEW OF THE RELEVANT LEGAL REGIMES ON STUDENT SPEECH AND EXPRESSION	221
	A. <i>China: Limited Expression for the Good of the Whole</i>	221
	1. Student Speech on College Campuses	221
	2. The Values Embraced by the China’s Legal Regime	223
	B. <i>Saudi Arabia: Virtue and Morality Guide Expression</i>	224

* © 2024 Trevor N. Ward. Trevor is an Air Force judge advocate stationed at Joint Base Andrews, Maryland, and presently serves as an appellate defense counsel representing convicted Air and Space Force members before the Air Force Court of Criminal Appeals, Court of Appeals for the Armed Forces, and the Supreme Court of the United States. Trevor has argued freedom of speech issues at all levels of litigation, including the military’s highest court. Special thanks to Gillian Feehan, James McGehee, and Michael Pinkard for their guidance and mentorship during the writing of this Article. The opinions expressed in this Article are the author’s own, and do not reflect the opinion of the United States Government, Department of Defense, or the Department of the Air Force.

1.	Student Speech on College Campuses.....	224
2.	The Values Embraced by the Saudi Legal Regime.....	226
C.	<i>Germany: An Emphasis on Individual Rights</i>	227
1.	Student Speech on College Campuses.....	227
2.	The Values Embraced by the German Legal Regime	229
IV.	COMPARATIVE ANALYSIS OF THE LEGAL REGIMES.....	229
A.	<i>Safeguarding the Social Order</i>	229
B.	<i>Maintaining Virtue and Morality</i>	231
C.	<i>The Role of the Individual</i>	232
V.	CONCLUSION.....	232

I. INTRODUCTION

When Yang Shuping, an exchange student from China, delivered a commencement address at the University of Maryland in May of 2017,¹ she prompted criticism from her home state's government.² At the commencement, Yang spoke about the “fresh air” of free speech and expression she experienced in the United States, articulating that “[d]emocracy and free speech should not be taken for granted . . . [they] are worth fighting for.”³ While presumably uncontroversial to the Western listener, American news outlets were quick to note that the response from the People's Republic of China (P.R.C.) was stern.⁴ According to U.S. media, “[s]tate run-newspapers [in China] fanned the flames of controversy” when those papers quoted sources criticizing Yang's speech as “immature and mean.”⁵ Following China's response to Yang, the American media establishment weighed in, characterizing the Chinese reaction as hateful and in contradiction to free speech norms.⁶

1. Simon Denyer & Concong Zhang, *A Chinese Student Praised the “Fresh Air of Free Speech” at a U.S. College. Then Came the Backlash.*, WASH. POST (May 23, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/05/23/a-chinese-student-praised-the-fresh-air-of-free-speech-at-a-u-s-college-then-came-the-backlash/?utm_term=.94b283f64767.

2. *See id.*

3. *Id.*

4. *See, e.g.*, Wang Zhen, *Chinese Student Abused for Praising “Fresh Air of Free Speech” in US*, GUARDIAN (May 23, 2017), <https://www.theguardian.com/world/2017/may/23/china-yang-shuping-free-speech-university-of-maryland-us-student>.

5. *Id.* Another source referenced in state newspapers indicated their astonishment that American “speeches [are] not examined . . . [for] their potential impact” on society before they are proffered. Denyer & Zhang, *supra* note 1.

6. *Id.* (indicating that Yang “faced abuse from nationalists in China” from a government with “intensifying offensive[s] against free speech since [President] Xi took power”).

But it is often too easy for Western society to paint a foreign legal culture with one broad stroke of the brush. For instance, in September of the same year “[t]he heads of ten [Chinese] universities issued a joint statement” that condemned “recent abuses” of freedom of expression on college campuses.⁷ To be sure, university officials and students alike indicated that state regulation of speech “undoubtedly violate the right of students and teachers to freely discuss politics inside campus.”⁸ And, according to the P.R.C.’s Ministry of Education, students have the right to be “aware of the major issues concerning the reform and development of schools, [to] provide[] opinions and suggestions on school affairs, and participate[] in democratic supervision.”⁹

While Western media outlets characterized the Chinese response to Yang as nationalistic and in contravention of free speech norms, this was an overly simplistic view of the issue.¹⁰ In fact, it is clear that many in the Chinese establishment believe that free expression is a fundamental right on college campuses.¹¹ However, like all rights in China, expression and speech are limited by traditional Confucian values.¹² For instance, a central tenant of Confucian philosophy is to avoid disrupting Li¹³ meaning that members of a Confucian society should strive to conform their behavior to protect the order of society and safeguard superior-inferior relationship dynamics.¹⁴ Hence, while the American media interpreted China’s response to Yang as being part of an anti-free speech culture,¹⁵ the reality is much more complex.¹⁶ In fact, the Chinese response was likely not rooted in anti-free speech sentiment at all but rather in the Confucian understanding that Yang had not acted in accordance with Li when she insulted China and disturbed the national order.¹⁷ Hence, what appeared to be an invidious reaction to some in the

7. Karen Cheung, *Chinese University Students Form Freedom of Expression Concern Group Following Pro-Independence Slogan Row*, H.K. FREE PRESS (Sept. 20, 2017), <https://www.hongkongfp.com/2017/09/20/chinese-university-students-form-freedom-expression-concern-group-following-pro-independence-slogan-row/>.

8. *Id.*

9. Ministry of Education of the People’s Republic of China of Higher Education, Approval No. 31, UNIV. OF ELEC. SCI. AND TECH., Art. 25(5) [hereinafter *Approval No. 31*].

10. *See, e.g.*, Denyer & Zhang, *supra* note 1.

11. *See supra* notes 8-10 and accompanying text.

12. H. Patrick Glenn, LEGAL TRADITIONS OF THE WORLD 335-38 (5th Ed. 2014).

13. *Id.* at 321-24, 335-36.

14. *See id.* at 327-28; *see also* Li, ENCYCLOPEDIA BRITANNICA (2008).

15. *See supra* notes 4-8 and accompanying text.

16. Denyer & Zhang, *supra* note 1.

17. *Id.* For example, some Chinese commentators were “critical not of Yang’s comments but of the [manner] in which she chose to make them.” Another commentator stated that “China

West was merely the embodiment of fundamental Confucian values by Chinese commentators.¹⁸

Yang's story and the response it garnered from the West demonstrate the importance of understanding the legal tradition of a society before conducting an analysis of a particular regime.¹⁹ To be sure, understanding a legal regime's underlying tradition can inform a legal analysis, providing clarity to the goals promulgated by laws and the values that those laws safeguard.²⁰ Yang's story also highlights drastically different views when it comes to student speech and expression on campus.²¹ Therefore, to gain a better understanding of speech and expression on foreign college campuses, this Article reviews the student speech regulations of three different legal systems: China, Saudi Arabia, and Germany. Specifically, this Article analyzes the aforementioned legal regimes in light of their respective traditions; by doing so, it sheds light on student expression in different legal systems.

As a background, Part II of this Article discusses the legal traditions of China, Saudi Arabia, and Germany respectively, laying an appropriate framework to analyze student speech regulations.²² Specifically, this Part reviews the basic legal traditions of each nation, the evolution of these traditions, and the values embraced under each system.²³ Part III reviews the relevant laws regulating student speech and expression on college campuses.²⁴ In addition, Part III determines the interests and values that each legal tradition—through its regulations—seeks to safeguard.²⁵ In Part IV, this Article compares the three legal systems and highlights the

does not need a traitor like [Yang]” who painted “an inadequate picture of China.” Yet another Chinese commentator told Yang that the “motherland has done so much . . . but what have you done,” implying that Yang owes much to China, and that she should not so eagerly disparage the motherland. *See, e.g., id.* Even Yang recognized that while she had “no intention[] of belittling [China]” she was sorry for damaging the country's reputation. *See id.*

18. *See supra* notes 12-18 and accompanying text. It does not escape the author that there are some anti-free speech elements inherent in most communist or authoritarian states. Specific to China, these issues will be discussed later in this Article. *See discussion infra* at subparts II.A. and III.A.1.

19. *See supra* notes 1-10 and accompanying text.

20. *See, e.g., Glenn, supra* note 12, at 361-87 (discussing how comparative scholars can properly reconcile legal traditions only through an in-depth understanding of the history and context of those traditions).

21. *See supra* notes 1-10 and accompanying text.

22. *See discussion infra* at Part II.

23. *See discussion infra* at Part II.

24. *See discussion infra* at Part III.

25. *See discussion infra* at Part III.

different values and goals embraced by each tradition.²⁶ Finally, Part V concludes by articulating the necessity for using comparative law when analyzing foreign legal regimes.²⁷

II. OVERVIEW OF THE RELEVANT LEGAL TRADITIONS

As noted in the Introduction, it is necessary to understand the underlying traditions of a legal regime before analyzing its laws. Therefore, this Part provides a general overview of the legal traditions of Chinese, Saudi Arabian, and German laws. Each of these three legal systems are unique in that they are part of a distinct legal tradition with their own history, evolution, and principal goals.

A. *China: A Mosaic of Confucian Philosophy, Code Law, and the Soviet Legal Order*

The Chinese legal tradition is only one part of a vast, complicated history wrought with internal conflict, complex philosophies, and colonialism.²⁸ To understand China's complex identity, it is necessary to review various aspects of the Chinese legal system in light of this complicated history.

The Chinese legal system began as a chthonic oral regime.²⁹ But at some point, Chinese law began to form into a distinct, formal legal system.³⁰ By the early Zhou dynasty, Chinese legal thought was dominated by two competing philosophies.³¹ The first was concerned with a legal system that respected the balance of nature—such as Yin and Yang—and took into account the basic elements of Earth.³² The second

26. See discussion *infra* at Part IV.

27. See discussion *infra* at Part V.

28. See, e.g., Jerome Alan Cohen, *Introduction*, in ARTICLES ON CHINA'S LEGAL TRADITION 3-9 (1980).

29. Professor Patrick Glenn notes that “until about four millennia ago” China had a chthonic legal system. Glenn, *supra* note 12, at 319.

30. Scholars are not certain about the exact time when formal Chinese law began to crystalize. See, e.g., Glenn, *supra* note 12, at 322; Herrlee Glessner Creel, *Legal Institutions and Procedures During the Chou Dynasty*, ARTICLES ON CHINA'S LEGAL TRADITION 40-44 (1980). Suffice to say that most scholars agree that Chinese law moved away from the chthonic system sometime before the Warring States period.

31. Compare Glenn, *supra* note 12, at 322 (discussing the emergence of formal legalism preceding the Warring States period), with Creel, *supra* note 30, at 43-44 (discussing the rise of both naturalist legal philosophy and formal legal philosophy prior to the Warring States period).

32. See Creel, *supra* note 30, at 43-44 (“[R]eferenc[ing] . . . the peculiar qualities of . . . yin and yang, the five elements, and other [categories].”).

legal philosophy was concerned with establishing a formalistic law that could exert control over lay people.³³

While the naturalist and formalist legal philosophers debated the merits of their theories, the Zhou Dynasty collapsed, leading to the Warring States period.³⁴ During this time, seven feudal kingdoms came to power and engaged in over two and a half centuries of internal war.³⁵ Due to the chaos and instability caused by 250 years of internal conflict, the feudal kingdoms adopted legal formalism in order to exercise control over their dominions and establish order.³⁶ As one Chinese legal scholar quipped, the formal legalists of the Warring States period attempted “to mold the populace of their states . . . into bodies [solely] responsible to the wills of their rulers.”³⁷ In this way, the feudal kingdoms became what we would call totalitarian regimes, using formal law as a political “stick” to manipulate their people.³⁸

The formalistic systems adopted by the feudal kingdoms survived the Warring States period.³⁹ Professor Glenn notes that the Ch'in dynasty embraced legal formalism as a way to reestablish order after the chaos caused by the Warring States.⁴⁰ However, this is not to say that the naturalistic legal philosophy that existed before the Warring States period disappeared completely.⁴¹ In fact, during the Warring States period, many prominent Confucian philosophers developed the ideas that would dominate the next two millennia of Chinese thought.⁴² And, as the Warring States period drifted into the annals of history, Confucian thought became the dominant philosophic tradition of China; this

33. Creel, *supra* note 30, at 41-44.

34. See, e.g., Creel, *supra* note 30, at 43-44; see also Yuri Pines, ENVISIONING ETERNAL EMPIRE: CHINESE POLITICAL THOUGHT OF THE WARRING STATES ERA 18-20 (2009) (discussing the political demise of the Zhou kings).

35. Adam Augustyn, *Warring States*, ENCYCLOPEDIA BRITANNICA (Feb. 29, 2014) <https://www.britannica.com/event/Warring-States>.

36. Cohen, *supra* note 28, at 8-9; Creel, *supra* note 30, at 47.

37. Creel, *supra* note 30, at 47.

38. See Glenn, *supra* note 12, at 321-24; cf. Pines, *supra* note 34, at 86, 207 (discussing authoritarian political thought and governance during the Warring States period).

39. It should be no surprise that after two and a half centuries of civil war, China chose to implement a legal system designed to exert control and maintain order, even at the expense of others' liberties. See, e.g., Creel, *supra* note 30, at 43-44; Cohen, *supra* note 28, at 8-9; see also Glenn, *supra* note 12, at 322.

40. Glenn, *supra* note 12, at 322.

41. See Creel, *supra* note 30, at 42-43; see also Augustyn, *supra* note 35.

42. See Augustyn, *supra* note 35.

naturally led to the decline of the formalistic legal tradition (or Fa) and the rise of the Confucian Li.⁴³

While early “accounts of [Li] are not uniform,” Li would eventually develop “a broad meaning that encompasses [] rules in general . . . government protocols, and social norms.”⁴⁴ While the concept of Li is a comprehensive philosophical idea covering a range of interpersonal and personal behavior,⁴⁵ Li can be accurately summarized as an ethical system that—if practiced by virtuous persons—creates a harmonious society.⁴⁶ To be sure, a necessary condition of Li is maintaining the order of society and ensuring that superior-inferior relationships are not disturbed.⁴⁷ Further, Li is not the only guiding concept in Confucian philosophy. In fact, the concept of He—roughly translated as social “harmony”—guides most other Confucian principles, including Li.⁴⁸ Hence, maintaining Li (i.e., the proper balance in both society and interpersonal relationships) is necessary because it advances the He (harmony) of the whole.⁴⁹

To be sure, the Li and He of Confucian philosophy do not contain Western conceptions of individualism. For instance, during the Qing Dynasty, the Chinese legal tradition under Confucian philosophy “value[d] . . . the interests of the state [over] those of the individual.”⁵⁰ But, “[t]he individual is not meant to be left out of this reasoning, but rather swept up in it.”⁵¹ This is because the individual is inseparable from the whole, and the actions of the whole and the individual are interdependent.⁵² So, when the law places value on the nation—or, more

43. Glenn, *supra* note 12, at 322-24.

44. Chenyang Li, THE CONFUCIAN PHILOSOPHY OF HARMONY 58 (2014) [hereinafter Li, CONFUCIAN PHILOSOPHY].

45. *See generally id.*; cf. Glenn, *supra* note 12 at 335-39.

46. Li, CONFUCIAN PHILOSOPHY, *supra* note 44, at 57-61.

47. *See, e.g.*, Glenn, *supra* note 12, at 321-24; Li, CONFUCIAN PHILOSOPHY, *supra* note 44, at 57-61, 108; Chenyang Li, *The Confucian Ideal of Harmony*, 56 PHIL. OF EAST AND WEST 583, 583-84 (2006) [hereinafter Li, *The Confucian Ideal*]. To be sure, relationships are not equal under Confucian principles. For example, an older brother is superior to a younger sibling, and the former has moral authority over the latter. Li, CONFUCIAN PHILOSOPHY, *supra* note 44, at 108. However, the older brother also has moral obligations to his brother. *Id.* If either brother disobeys the balance of the relationship, the Li is disturbed, and—in this case—familial harmony is disrupted. *Id.*

48. *See* Li, *The Confucian Ideal*, *supra* note 47, at 583-84.

49. *See id.*; Cohen, *supra* note 28, at 8-10; cf. Glenn, *supra* note 12, at 335-36; Li, CONFUCIAN PHILOSOPHY, *supra* note 44, at 57-61, 108-09.

50. Cohen, *supra* note 28, at 8.

51. Glenn, *supra* note 12, at 335.

52. *See generally* June Ock Yum, *The Impact of Confucianism on Interpersonal Relationships and Communication Patterns in East Asia*, 55 COMM. MONOGRAPHS 375 (2009) (arguing that East Asian cultures do not embrace individualistic qualities like those seen in the West, mostly as a result of Confucian philosophy).

appropriately, the whole—over the individual, that individual does not lose rights.⁵³ Rather, their rights are considered to be safeguarded through the maintenance of He (i.e., interwoven with the whole).⁵⁴

While China had moved away from the formalistic Fa for nearly two millennia, colonialism would introduce China to civil law and the Fa-like code system that it brought with it.⁵⁵ To this day, the formal Chinese legal system is littered with remnants of the civil law tradition.⁵⁶ And, the advent of socialism would likewise add a complex layer to the Chinese legal system.⁵⁷ At present, the official Chinese legal system is guided by socialist principles such as equality,⁵⁸ formalistic legalism akin to Fa,⁵⁹ and individualistic rights protection.⁶⁰

To be sure, there is a “tension amongst [these two] major Chinese values: (1) the traditional cultural heritage based on Confucianism; [and] (2) the Chinese central government’s socialist ideology.”⁶¹ For example, Article 33 of the Chinese Constitution provides that all people are equal under the soviet legal system.⁶² But, this ideal naturally conflicts with the concept of Li, insofar as it prescribes rights between individuals with inferior-superior relationships.⁶³ Additionally, Article 5 of the Constitution provides that the soviet state will promulgate a formal legal

53. See *supra* notes 50-52 and accompanying text.

54. See *supra* notes 44-49 and accompanying text.

55. See Glenn, *supra* note 12, at 345-47 (discussing colonialism’s effect on the Chinese legal tradition); cf. Rosser H. Brockman, *Commercial Contract Law in Late Nineteenth Century Taiwan*, in ARTICLES ON CHINA’S LEGAL TRADITION 76-80, 127-29 (1980) (discussing civil commercial law in Taiwan during the Western colonial presence).

56. See generally *The General Principles of the Civil Law of the People’s Republic of China*, CIVIL AND COMMERCIAL LAWS (last visited Apr. 18, 2018), http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm (discussing the principles safeguarded by the civil law regime); cf. GLENN, *supra* note 12, at 346-47.

57. XIANFA art. 1 (2004) (China) (“The People’s Republic of China is a socialist state.”).

58. *Id.* at art. 33, cl. 2 (“All citizens of the People’s Republic of China are equal before the law.”); see also *id.* at arts. 34-37 (guaranteeing certain rights to all Chinese citizens).

59. See generally *id.* at arts. 123-35 (establishing a formal court system to adjudicate criminal and civil matters in accordance with the Chinese civil code).

60. See, e.g., *id.* at art. 35 (“Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”).

61. Yan Jiang, *A World of Difference*, 61 OR. ST. B. BULL. 19, 26 (Apr. 2001), <https://www.osbar.org/publications/bulletin/01apr/china.ht>.

62. XIANFA art. 33, cl. 2 (2004) (China).

63. Compare *id.* at art. 33, cl. 2., with *supra* notes 44-49 and accompanying text. To be sure, the Soviet system recognizes inherent equality between all persons. See XIANFA, *supra* note 57 at art. 33, cl. 2 and accompanying text. But, the concept of Li recognizes inherent inequality. See *supra* notes 44-52 and accompanying text.

system similar to Fa.⁶⁴ But, as noted above, the Confucian concept of Li does not embrace a formal legal regime.⁶⁵

As the above demonstrates, China has a complex legal tradition that evolved from an array of historical occurrences and competing philosophies. In its modern legal system, there is clearly a tension between the formal soviet law and the traditional Confucian values of He and Li.⁶⁶ However, there are some clear underlying values embraced by the modern Chinese legal tradition irrespective of this conflict. First, this legal tradition values societal harmony and national order over the interests of the individual.⁶⁷ And second, the Chinese legal tradition is concerned with observing superior-inferior relationships.⁶⁸ Hence, while there is a tension between soviet and Confucian values in various respects, the Chinese legal tradition nevertheless values social harmony and the preservation of interpersonal power dynamics.⁶⁹

B. *Saudi Arabia: Embracing Divine Law*

The Saudi Arabian Constitution provides that “God’s book and the Sunnah of His Prophet, [and] God’s prayers . . . are its constitution.”⁷⁰ To be sure, Saudi Arabia’s legal system embraces the Islamic legal tradition, specifically the Hanbali school of Islamic jurisprudence.⁷¹ Hence, to understand the Saudi Arabian legal system, it is first necessary to understand the broader Islamic legal tradition that has developed in the Arabian world.

64. See XIANFA art. 5 (2004) (China).

65. See *supra* notes 44-49 and accompanying text.

66. See *supra* notes 61-64 and accompanying text.

67. Both the Soviet legal order and traditional Confucian values support this assertion. Compare XIANFA art. 51 (2004) (China) (“Citizens . . . may not infringe upon the interests of the State, of society or of the collective.”), *id.* at art. 53 (“Citizens . . . must . . . [protect] public order and respect social ethics.”), and *id.* at art. 54 (“It is the duty of citizens . . . to safeguard the . . . hon[or] and interests of the motherland.”), with *supra* notes 44-52 and accompanying text.

68. The Soviet legal order, much like traditional Confucianism, embraces the idea that there are special duties owed to certain relationships. Compare XIANFA arts. 1-2 (2004) (China) (noting that while China is democratic, the central government will be led by a dictatorship), with *supra* notes 44-52 and accompanying text.

69. *Id.*

70. SAUDI ARABIA CONST. art. 1 (Mar. 1992).

71. Hossein Esmacili & Jeremy Gans, *Islamic Law Across Cultural Borders: The Involvement of Western Nationals in Saudi Murder Trials*, 28 DENV. J. INT’L L. & POL’Y 145, 148-49 (2000). Further, Saudi Arabia adheres to the Wahhabi “mission.” See generally David Commins, THE WAHHABI MISSION AND SAUDI ARABIA xx, vii-viii (2006). Muhammad ibn Abd al-Wahhab advocated for a fundamental view of the Islamic tradition; that is, that derivation from the Holy Quran or the Hadith rendered one a non-believer.

Akin to the Chinese legal tradition, the history and development of Arabian Islamic thought informs an understanding of Islamic law itself.⁷² Also like China, the Arab world⁷³ began its legal tradition as an oral chthonic culture.⁷⁴ However, by the time the Prophet Muhammad was born, there were “many kinds of law” being observed in the Arab world.⁷⁵ This was a result of a weak “concept of land boundaries” in early Arabian culture; and, as people migrated throughout Arabia, they took with them the law that they were accustomed to.⁷⁶ This created a mosaic of variant legal systems being observed in the Arab world.⁷⁷ Yet, this mosaic of laws did not itself displace all the chthonic traditions of early Arabia.⁷⁸

The Prophet was born in the late-sixth century⁷⁹ and began to receive divine revelation from Allah at the turn of the seventh century.⁸⁰ These divine revelations were recorded by the Prophet, and those recordings became what is now known as the Quran.⁸¹ Islamic law is at its most fundamental level based wholly on the revealed word of God (i.e., the dictates of Allah in the Quran).⁸² However, as some jurists have noted, “making sense of the [Quran] is not easily done.”⁸³ Consequently, Muslim jurists have often turned to the Sunnah—the normative acts of the

72. See, e.g., Glenn, *supra* note 12, at 361-87 (discussing how comparative scholars can properly reconcile legal traditions only through an in-depth understanding of the history and context of those traditions).

73. When speaking of the historical development of Saudi law, this Article refers to the Arab world as one entity.

74. See generally Mathias M. Siems, *Legal Origins: Reconciling Law & Finance and Comparative Law*, 52 MCGILL L.J. 55 (2007) (discussing, in part, areas of law that contain a mix of Chthonic and Islamic law); Cf. Glenn, *supra* note 12, at 181 (“[At the time of the Prophet] [w]ritten law had not entirely displaced chthonic law.”).

75. Glenn, *supra* note 12, at 180-81.

76. Abdul Rahman Al-Ansary, *Arabia Before Islam*, in HISTORY OF HUMANITY: FROM THE SEVENTH CENTURY B.C. TO THE SEVENTH CENTURY A.D. 139-41 (J. Hermann et al. eds., 1996); Glenn, *supra* note 12, at 180. By the time of the Prophet, Roman (or civil law) and Talmudic law would have been familiar concepts to many in the Arab world. Glenn, *supra* note 12, at 180.

77. *Id.*

78. *Id.*; see generally Siems, *supra* note 74.

79. ANNEMARIE SCHIMMEL, AND MUHAMMAD IS HIS MESSENGER: THE VENERATION OF THE PROPHET IN ISLAMIC PIETY 7 (1985).

80. *Id.* at 10.

81. Nicoli Sinai & Helmer Ringgren, *Qur'an*, ENCYCLOPEDIA BRITANNICA (Feb. 7, 2024), <https://www.britannica.com/topic/Quran#ref336758>.

82. Kevin Reinhart, *Introduction to LALEH BAKHTAR*, ENCYCLOPEDIA OF ISLAMIC LAW: A COMPENDIUM OF THE MAJOR SCHOOLS xxxvi (1996) (“The first and foremost source of Islamic law is . . . the Qur’an.”).

83. *Id.*

Prophet—and the Hadith—the written recordings of the Prophet’s normative actions—to interpret the Quran.⁸⁴

But, revelation of the divine truth does not make up the whole of Islamic law. Because divine revelation ceased upon the death of the Prophet, Islamic jurists have to engage in human reasoning to develop a legal theory beyond the scope provided by the divine sources.⁸⁵ In sum, there are two broad categories of Islamic law: (1) divine law—the Quran, Sunnah, and Hadith—which are part of the revelation; and (2) temporal law, derived through human reason and logic.⁸⁶

Despite the vast volume of both divine sources of law—the Quran and Hadith—as well as the Ijtihad, scholars have been able to determine some of the preeminent underlying values and goals of the Islamic legal tradition. At the most basic level, the Quran and Sunnah instruct Muslims how to be virtuous practitioners of their faith.⁸⁷ As such, Sharia law is not merely a legal regime established to regulate secular conduct.⁸⁸ Rather, Sharia is concerned with the moral and religious consequences of Muslims’ actions.⁸⁹ Akin to Confucian philosophy,⁹⁰ Islamic law aims to create virtuous practitioners, not just robotic followers of secular law.⁹¹

Further, the Islamic legal tradition values truth-seeking. Because Islamic law is a divine system revealed to the Prophet,⁹² the Islamic legal system is concerned with finding the truth of that revelation.⁹³ For example, the Holy Quran states that Muslims should “not mix truth with falsehood,”⁹⁴ that “Allah has revealed the [Quran] with the truth,”⁹⁵ and

84. *Id.*; see also Glenn, *supra* note 12, at 197-99.

85. N.J. COULSON, A HISTORY OF ISLAMIC LAW 3-4 (2011). For instance, Ijtihad—or human reason and logic—informs analyses of the divine sources of law. Glenn, *supra* note 12, at 201-02.

86. The latter type of law is known as Ijtihad. See generally Wael B. Hallaq, *On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad*, 63 *STUDIA ISLAMICA* 129, 129-31 (1986) (providing an overview of Ijtihad, and its controversy in Islamic thought).

87. See, e.g., Glenn, *supra* note 12, at 201-03; Reinhart, *supra* note 82, at xxxvi; see also THE HOLY QURAN 1:6-7 (“It is You [Allah] we worship . . . Guide us to the straight path.”).

88. See Glenn, *supra* note 12, at 181.

89. See Reinhart, *supra* note 82, at xxxvi.

90. See discussion *supra* at subpart II.A.

91. See *supra* notes 85-89 and accompanying text.

92. Glenn, *supra* note 12, at 181-86.

93. See, e.g., THE HOLY QURAN 2:147 (“The truth is from your Lord, so do not be a skeptic.”); M. Cherif Bassiouni, *The Social System of Morality of Islam* (Jan. 24, 2012), <http://www.mei.edu/content/social-system-and-morality-islam> (“The element of [virtuous values] has to be predicated on knowledge, awareness, and truth.”).

94. THE HOLY QURAN 2:42.

95. *Id.* at 42:17.

that “[Allah] sent down with the [prophets] the Scripture, with the truth.”⁹⁶ In sum, the words truth, truthfulness, and truth-seeking appear more than 235 times in the Holy Quran.⁹⁷

Additionally, the Islamic legal tradition values creating an orderly, moral society. Professor Cherif Bassiouni argues that “[t]he preservation of a social order depends on each and every member of that society freely adhering to the same moral principles and practices.”⁹⁸ According to Professor Bassiouni, the Islamic legal tradition provides a guiding morality, which creates a unified, orderly society.⁹⁹ But, this is not to say that the individual is left out of this equation. For example, the Quran provides that individuals must at times suffer “in pain and adversity” in order to help create a virtuous world.¹⁰⁰ This means that individual rights and freedoms must be tempered against the interests of society as a whole.¹⁰¹ To be sure, Islamic law is concerned with ensuring that individuals conform their behavior to divine truth. For, “[u]nder Islamic law, the political authority owes a duty not only to the people but to God not to violate the freedom and liberties of the ruled without justification.”¹⁰² Therefore, while individual interests are not absent in the Islamic legal tradition, those interests must be balanced against the virtuous order of society and the truth of the divine law.

Islamic law runs deeply within the fabric of Saudi Arabian society. As noted above, Saudi Arabia’s modern system embraces the Islamic legal tradition and, specifically, the Hanbali jurisprudential school.¹⁰³ As such, it may be concluded that Saudi Arabian legal goals are in line with the overarching values of the Islamic legal tradition referenced above. That is, that Saudi Arabian law values creating virtuous Muslims, finding the truth of the revealed, divine law, and creating an orderly society under that divine law.¹⁰⁴

96. *Id.* at 2:213.

97. *See generally id.*

98. Bassiouni, *supra* note 93.

99. *Id.*; *see also* Glenn, *supra* note 12, at 203-04.

100. THE HOLY QURAN 2:177.

101. Bassiouni, *supra* note 93 (“Individual obligations must be met before one can claim a portion from the community of which he is part.”).

102. MASHOOD A. BADERIN, INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW 44 (2003).

103. *See supra* notes 70-71 and accompanying text.

104. *See supra* notes 70-102 and accompanying text.

C. *Germany: The Quintessential Civil Law System*

Germany was part of the chthonic legal tradition until Roman influence introduced the civil system in the first century.¹⁰⁵ When the Roman Empire collapsed in the mid-fifth century, so too did its legal influence over much of Europe.¹⁰⁶ However, civil law was “[not] utterly forgotten . . . on the borders of Germany.”¹⁰⁷ In fact, revised collections of Roman law were replicated in parts of France and Germany shortly after Rome’s decline; as Professor Bryce noted, the Roman Empire may have fallen in the mid-fifth century, but “the . . . Empire still existed . . . in men’s minds” and in their law.¹⁰⁸ And, by the time the Holy Roman Empire gained power over much of modern-day Germany in the fifteenth century, the Holy Roman Empire instituted various versions of Roman civil law.¹⁰⁹

While civil law never completely disappeared in Europe,¹¹⁰ it was overshadowed by chthonic and ecclesiastical law.¹¹¹ In some sense, the legal tradition of post-Roman Europe was concerned with maintaining status relationships and the obligations owed under those relationships.¹¹² But the enlightenment of the eighteenth century gave a breath of life into the Roman code system. Enlightenment thinking emphasized individualism over the collective.¹¹³ As a result, this novel thinking necessitated a need to define these individualistic rights under the law.¹¹⁴

105. Glenn, *supra* note 12, at 134.

106. JAMES BRYCE, *THE HOLY ROMAN EMPIRE* 36-37 (1918).

107. *Id.* at 37; *but see* Glenn, *supra* note 12, at 139.

108. BRYCE, *supra* note 106, at 37.

109. *See, e.g., Reichskammergericht*, *ENCYCLOPEDIA BRITANNICA* (2017) (indicating that the Imperial Chamber of Justice used Roman civil law in some of its adjudications).

110. *See* BRYCE, *supra* note 106 at 37.

111. Glenn, *supra* note 12, at 139.

112. *See, e.g., J.G.A. POCOCK, THE ANCIENT CONSTITUTION AND THE FEUDAL LAW: A STUDY OF ENGLISH HISTORICAL THOUGHT IN THE SEVENTEENTH CENTURY* 298, 350 (1987) (discussing how feudal law created legal obligations based on relationships). The feudal legal system then was not unlike the Confucian legal philosophy that endorses certain rights and obligations based on relational status. *See* discussion *supra* at subpart II.A.

113. *See, e.g.,* Glenn, *supra* note 12, at 147-49; *see generally* JOHN LOCKE, *THE TWO TREATISES OF CIVIL GOVERNMENT* (Peter Laslett ed., 1988).

114. Glenn, *supra* note 12, at 147-50.

This need would eventually give rise to the civil law tradition throughout Europe.¹¹⁵ To this day, Germany is part of that tradition.¹¹⁶

Civil law is characterized by its expansive code system.¹¹⁷ Because of its depth and detail, civil law systems tend to be egalitarian, providing the populace with an easy-to-understand set of laws that clearly define individual legal rights and obligations.¹¹⁸ By laying out the rights and obligations the state and the people owe one another, the civil code system inherently creates a bi-polar relationship.¹¹⁹ Because of this dualistic arrangement between people and their government, some have argued that civil law contributed to the rise of the nation-state.¹²⁰ More to the point, since civil law creates obligations and rights between the governed and the governor, a relationship necessarily forms between the two; this allows the governed to inherit a national identity.¹²¹

Civil law also prioritizes the individual's role in society, promoting both negative and positive rights. In part, this is because the civil law tradition evolved with the enlightenment, which in many ways advocated for the protection of individual rights over the aristocratic regimes of Europe.¹²² After all, Germany's 138-page constitution¹²³ provides significant protections not only for citizens' political rights (typically classified in negative terms)¹²⁴ but also for economic and social protections (generally characterized in positive terms).¹²⁵ This is not to say, however, that German individual rights are absolute. For instance, the German constitution provides for the restriction of certain rights in

115. *Id.*; see also Malick W. Ghachem, *Montesquieu in the Caribbean: The Colonial Enlightenment Between Code Noir and Code Civil*, in *POSTMODERNISM AND THE ENLIGHTENMENT: NEW PERSPECTIVES IN EIGHTEENTH-CENTURY FRENCH INTELLECTUAL HISTORY* 1-24 (Daniel Gordon ed., 2001) (discussing the civil code system in light of enlightenment ideals).

116. Sofie Cools, *The Real Difference in Corporate Law Between the United States and Continental Europe: Distribution of Powers*, 30 *DEL. J. CORP. L.* 697, 702 (indicating that Germany uses a civil law code system).

117. *Cf.* Peter F. Schlosser, *Lectures on Civil-Law Litigation Systems and American Cooperation with those Systems*, 45 *U. KAN. L. REV.* 9, 13 (discussing the Italian and German code systems with regard to pleadings); compare U.S. CONST. amend. 1, with GRUNDGESETZ [GG] [BASIC LAW], translation at <https://www.btg-bestellservice.de/pdf/80201000.pdf>, art. 1.

118. See, e.g., GRUNDGESETZ [GG] [BASIC LAW] arts. 1-19 (discussing, at length, the civil liberties and rights of the citizenry).

119. Glenn, *supra* note 12, at 165-71 (discussing the rise of European national identity).

120. *Cf. id.*

121. *Id.*

122. See *supra* notes 113-116 and accompanying text.

123. See generally GRUNDGESETZ [GG] [BASIC LAW].

124. See, e.g., *id.* at arts. 1-5, 8-19.

125. *Id.* at arts. 6-7.

“special instances,” such as national defense emergencies.¹²⁶ Additionally, Germans cannot exercise their rights if the exercise of them would violate another’s inherent rights.¹²⁷

Therefore, the civil law system clearly values individual rights, both in the positive and negative sense of the term. Additionally, the German code system provides for expansive protections for these rights in a clear, and in-depth manner (e.g., the 138-page constitution).¹²⁸ While individual rights are important, there are some limits to these rights.¹²⁹ But, it should be noted that these limitations typically come into effect only when the rights of one infringe on the rights of others.¹³⁰

III. OVERVIEW OF THE RELEVANT LEGAL REGIMES ON STUDENT SPEECH AND EXPRESSION

The foregoing overview demonstrates the vast differences in evolution, goals, and values that underlie the three legal regimes at issue in this Article. This overview informs the rest of this Article’s analysis, providing clarity behind the different goals and values sought through the regulation of student speech.

A. *China: Limited Expression for the Good of the Whole*

1. Student Speech on College Campuses

The Chinese Constitution provides for the rights and responsibilities of every Chinese citizen, including students at public universities.¹³¹ Among the rights guaranteed to all Chinese citizens is the right to express oneself.¹³² Specifically, Article 35 provides that all “[c]itizens of the People’s Republic of China [shall] enjoy freedom of speech, [and] of the press.”¹³³ Additionally, the Constitution provides that citizens have a right to “criticize . . . any State organ or functionary.”¹³⁴

However, the Chinese Constitution also provides limits to freedom of expression. For instance, Article 38 informs that the personal dignity

126. *Id.* at art. 17(a).

127. *Id.* at art. 2, cl. 1 (“Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.”).

128. *Supra* notes 124-126 and accompanying text.

129. *Supra* notes 126-127 and accompanying text.

130. GRUNDGESETZ, *supra* note 118 at art. 2, cl. 1.

131. *See generally* XIANFA (2004) (China).

132. *Id.* at art. 35.

133. *Id.*

134. *Id.* at art. 41, cl. 1.

of Chinese citizens “is inviolable,” and that “libel, false accusation, or false incrimination . . . is prohibited.”¹³⁵ Moreover, when a citizen criticizes the State, they may not “fabricat[e] or distort[] facts for purposes of libel or false incrimination.”¹³⁶ A broader limitation of speech rights is found in Article 51, where the Constitution prescribes that “[c]itizens . . . in exercising their [] rights, may not infringe upon the interests of the State, [or] of society.”¹³⁷ The constitution continues, providing that all citizens have a duty in the exercise of their rights to “observe . . . public order and respect social ethics”¹³⁸ and “safeguard the [] honor[] and interests of the motherland.”¹³⁹

Additionally, China regulates its public universities through the Ministry of Education.¹⁴⁰ The Ministry regulates the curriculum, procedure, and conduct of all public colleges and universities.¹⁴¹ In line with this mission, the Ministry also promulgates regulations for specific codes of student conduct, which regulate the rights, privileges, and responsibilities of students at each public university.¹⁴²

Much like the Chinese constitution, the regulations promulgated by the Ministry safeguard students’ free speech interests.¹⁴³ Specifically, the Ministry has provided that students at public university have the basic right to be “aware of the major issues concerning the reform and development of schools, [and] provide[] opinions and suggestions on

135. *Id.* at art. 38.

136. *Id.* at art. 41, cl. 1.

137. *Id.* at art. 51.

138. *Id.* at art. 53.

139. *Id.* at art. 54.

140. *The Responsibilities of the Ministry of Education*, MINISTRY OF EDUCATION OF THE PEOPLE’S REPUBLIC OF CHINA (last visited Apr. 30, 2024), http://en.moe.gov.cn/About_the_Ministry/What_We_Do/201506/t20150626_191288.html [hereinafter *The Responsibilities of China’s MOE*] (“To direct the development and reform of higher education, and further deepen the reform of the administrative system of universities under the direct affiliation of the Ministry of Education.”).

141. *See, e.g., id.* (discussing the role of the Ministry of Education in “formulat[ing] guidelines and policies” for higher education institutions).

142. *See, e.g.,* Ministry of Education, Approval No. 31, *supra* note 9. It should be noted that approval no. 31 regulates only conduct at the University of Electronic Science and Technology. *Id.* at art. 1. However, because the Ministry of Education promulgates such regulations for all Chinese universities, there is little reason to provide a separate analysis for each approval. *The Responsibilities of China’s MOE, supra* note 140. To be sure, an analysis of Ministry of Education regulations demonstrates little diversity in the manner of regulation. *Cf. HIGHER EDUCATION IN THE PEOPLE’S REPUBLIC OF CHINA* 8-10 (Finnish Board of Education ed., 2007) (referencing, in part, the laws and regulations of the Ministry of Education).

143. *Compare supra* notes 132-140 and accompanying text *with* Ministry of Education, Approval No. 31, *supra* note 9, at art. 25(3)-(6).

school affairs.”¹⁴⁴ Moreover, the Ministry has indicated that students have a right to “participate[] in democratic supervision and management” of the university.¹⁴⁵ And, if students are “dissatisf[ied] with the disposition . . . handled by the school,” they can submit a complaint regarding that issue.¹⁴⁶

Despite the rights guaranteed to students under the Ministry of Education’s regulations, there are limits to student expression. For example, the Ministry of Education has stated that students cannot exercise speech if it contradicts their obligation to “[c]herish and safeguard the reputation . . . [and] interests of the school.”¹⁴⁷ Additionally, the Ministry’s regulations provide that students cannot use speech that would “[dis]respect the teachers and [dis]unite the[ir] classmates.”¹⁴⁸ Further, because the Ministry of Education and the universities it manages are state organs, students are prohibited from “distorting” facts about the university or its administration.¹⁴⁹

2. The Values Embraced by the China’s Legal Regime

It is clear that China values expression and speech in its broader society and on college campuses. As the constitution demonstrates, citizens have a right to exercise free speech and expression and to petition the state for a redress of grievances.¹⁵⁰ And, the regulations promulgated by the Ministry of Education likewise show that China is committed to free speech values on college campuses.¹⁵¹ However, a thorough reading of Chinese law leaves little doubt that student speech rights on college campuses are limited.¹⁵²

This is not to say that China’s restrictions on student speech are necessarily arbitrary policy decisions promulgated by a free-speech-hating dictatorship. Rather, the speech restrictions reviewed above demonstrate an underlying respect in Chinese society for He.¹⁵³ As discussed in subpart II.A., Confucian ideals demand that individual interests should be exercised to promote social harmony (He).¹⁵⁴ The

144. Ministry of Education, Approval No. 31, *supra* note 9, at art. 25(5).

145. *Id.*

146. *Id.* at art. 25(6).

147. *Id.* at art. 26(5).

148. *Id.* at art. 26(3).

149. *See id.* at art. 41, cl. 1.

150. *See supra* notes 132-134 and accompanying text.

151. *See supra* notes 143-149 and accompanying text.

152. *See supra* notes 135-139, 147-149 and accompanying text.

153. *See* discussion *supra* at subpart II.A

154. *Id.*

Chinese regulations reviewed above promote this Confucian value. For example, the Chinese Constitution limits free speech by providing that people should not exercise speech that degrades society.¹⁵⁵ And, the constitution goes further by prohibiting speech that disturbs social harmony.¹⁵⁶ Likewise, the Ministry prohibits all speech on campus that causes disunion between classmates.¹⁵⁷ Just like the Confucian concept of He, the above referenced regulations limit individual interests by advancing the social He.

Confucian principles also demand that individuals respect the obligations owed to interpersonal relationships.¹⁵⁸ The Constitution and Ministry's regulations reviewed in this subpart also support this Confucian goal. For instance, the Ministry prohibits any speech that disrespects teachers.¹⁵⁹ Because teachers are in a superior relationship to students, students are prohibited from upsetting social Li through disrespectful speech.¹⁶⁰ Therefore, to safeguard Li, China has regulated student speech to preclude upsetting this inferior-superior balance.

As noted in subpart II.A., the Chinese legal regime demonstrates a tension between the soviet legal order and Confucian philosophy.¹⁶¹ While the constitution and the Ministry of Education provide for seemingly broad speech rights, those rights are mitigated by Confucian considerations such as social harmony and the maintenance of interpersonal relationships.¹⁶²

B. Saudi Arabia: Virtue and Morality Guide Expression

1. Student Speech on College Campuses

As noted in subpart II.B., the Saudi Constitution makes plain that the Quran and the Sunnah are the fundamental sources of national law.¹⁶³ Therefore, it is relevant to begin our analysis with those divine sources. However, neither the Quran nor Hadith make any specific reference to

155. See *supra* notes XIANFA, *supra* note 131 at art. 51.

156. See *supra* notes 135-139 and accompanying text.

157. Ministry of Education, Approval No. 31, *supra* note 9, at art. 26(3).

158. See discussion *supra* at subpart II.A.

159. Ministry of Education, Approval No. 31, *supra* note 9, at art. 26(3).

160. Compare discussion *supra* at subpart II.A., with Ministry of Education, Approval No. 31, *supra* note 9, at art. 26(3).

161. See discussion *supra* at subpart II.A.

162. See discussion *supra* at subpart III.A.1.

163. See discussion *supra* at subpart II.B.

student speech on college campuses.¹⁶⁴ Nor do these divine sources of law specifically refer to the free expression of ideas known in the West.¹⁶⁵

With that said, these divine sources of law can provide guidance with regard to the values placed on speech and expression in the Islamic legal tradition. As noted in subpart II.B., Islamic law is primarily concerned with truth-seeking.¹⁶⁶ For instance, the Quran states that “[s]o what would you love after discarding the truth except error.”¹⁶⁷ Hence, the Quran instructs that Muslims should embrace truth in all aspects of their life. And, the Hadith according to al-Khudari provides that the Prophet once said that “[w]hosoever of you sees an evil action, let him change it . . . with his tongue.”¹⁶⁸ Taken together, the Quran and Hadith instruct Muslims to engage in truth-seeking through words and to express truth in light of evil. Therefore, speaking the truth is both permitted and obligatory.

Additionally, the Quran instructs Muslims to avoid speech that may lead to either immorality or speech that is in contravention of the truth. For example, the Quran states that “Allah likes not the uttering of unseemly speech in public.”¹⁶⁹ Similarly, the Quran provides that one’s discourse with immoral persons should be limited.¹⁷⁰ To be sure, the Quran states that when Muslims engage in an argument, they should avoid discussions with those that are “unjust.”¹⁷¹ This is not to imply, however, that arguments are always prohibited. In fact, the Quran encourages truth-seeking discussions with moral “People of the Book.”¹⁷²

Additionally, the Quran instructs Muslims to “speak to men kindly”¹⁷³ even when confronted with anger, violence, and blasphemy.¹⁷⁴ The Sunnah also supports this view. According to the Hadith of Bukhari, the Prophet was sitting with his wife when he was approached by a group of Jews.¹⁷⁵ The latter group levied an insult against the Prophet, and the

164. *See generally* THE HOLY QURAN.

165. *See generally id.*

166. *See* discussion *supra* at subpart II.B.

167. THE HOLY QURAN 10:33.

168. STUDIES IN ISLAMIC LAW AND SOCIETY: DISPENSING JUSTICE IN ISLAM: QADIS AND THEIR JUDGMENTS 230 (Muhammad Khalid Masud et al. eds., 2006).

169. THE HOLY QURAN 4:49.

170. *See, e.g., id.* at 29:47

171. *Id.* at 29:47.

172. *Id.* at 29:47. “People of the Book” refers to Jews, Christians, and Zoroastrians, as well as Muslims. *Ahl al-Kitab*, ENCYCLOPEDIA BRITANNICA (2016).

173. THE HOLY QURAN 2:84.

174. *Id.* at 3:187.

175. The Hadith According to Al-Bukhari, Vol. 1, 311-12.

Prophet's wife responded in anger.¹⁷⁶ But, the Prophet instructed his wife that "God the Most High loves gentleness."¹⁷⁷ Hence, according to the Quran and Sunnah, Muslims should speak with kindness, even when confronted with anger and violence.

While the Quran and Hadith provide insight into speech generally, they do not provide an understanding of student-specific speech. Some Saudi Arabian universities have promulgated specific codes of conduct regulating student behavior,¹⁷⁸ and some of these codes regulate student speech.¹⁷⁹ For example, Dar Al Uloom University (DAU) in Riyadh has a broad Code of Ethics that "affirm[s] . . . full commitment to the values . . . according to [Islam]."¹⁸⁰ More than this, the Code provides for specific speech regulations. Under the Code, students are prohibited from using disrespectful, obscene, or offensive language while they are enrolled at DAU.¹⁸¹ Additionally, the Code of Ethics does not allow discussion on any matter that may be construed as culturally insensitive.¹⁸² The DAU Code of Ethics concludes by noting that all student behavior is judged in light of one's own conscience and the dictates of the Muslim faith.¹⁸³

2. The Values Embraced by the Saudi Legal Regime

Professor Naquib al-Attas argues that "the purpose of [Education] is to produce a good man . . . [and] a good society."¹⁸⁴ For the Islamic legal tradition, and Saudi Arabian law specifically, divine truth is the fabric that holds society together.¹⁸⁵ When a Muslim—whether a student at a Saudi college or a regular member of society—engages in speech that

176. *Id.*

177. *Id.*

178. While a minority of Saudi colleges codify their speech regulations, most universities do provide broad conduct regulations. For example, Effat University has a "Code and Conduct," which merely provides that "Islam is not only a religion but a way of life. Islam provides a universal code of conduct governed by ethics." See *Code of Ethical Conduct*, EFFAT UNIVERSITY (last visited Apr. 19, 2018), [https://www.effatuniversity.edu.sa/English/About/Why-Effat/Pages/Code-of-Ethical-Conduct-\(Tarbawyyat\).aspx](https://www.effatuniversity.edu.sa/English/About/Why-Effat/Pages/Code-of-Ethical-Conduct-(Tarbawyyat).aspx).

179. See, e.g., *Code of Ethics*, DAR AL ULOOM UNIVERSITY (last visited Apr. 15, 2018), <http://dau.edu.sa/en/القيم-والمبادئ-الأخلاقية-في-جامعة-دار-العلوم> [hereinafter *DAU Code of Ethics*].

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. Syed Muhammad Naquib al-Attas, Address at the First World Conference on Muslim Education, *The Concept of Education in Islam*, 15 (1980), <http://mef-ca.org/files/attas-text-final.pdf>.

185. See discussion *supra* at subpart II.B.

contravenes divine truth, they disrupt the social fabric.¹⁸⁶ Further, the Hadith instructs that Muslims have an obligation to speak truth in the light of falsities and injustice.¹⁸⁷ As a result, speech and discourse are confined to the truth-seeking nature of Islamic law.

More than this, Saudi Arabia's regulation of speech promotes social order and harmony. This is evident when the Quran encourages Muslims to speak kindly to other men.¹⁸⁸ The Prophet likewise endorsed this view of speech when he encouraged a tempered reaction in the face of conflict.¹⁸⁹ Similarly, the Code of Ethics at DAU emulates this same value by discouraging insensitive and disrespectful speech that could upset social order.¹⁹⁰ Hence, not only do Saudi Arabia's speech laws encourage truth-seeking, they also promote moral behavior and the social order.

C. Germany: An Emphasis on Individual Rights

1. Student Speech on College Campuses

The German constitution provides a broad prohibition against censorship.¹⁹¹ Specifically, Article 5 of the Constitution guarantees that "every person" has the right to "freely express and disseminate [her] opinions in speech, writing, and pictures."¹⁹² As one commentator quipped, "[y]ou can say anything in Germany."¹⁹³ Despite what some have noted, however, there are limits to German free speech principles. For instance, in Article 5 the German constitution provides that free speech should be limited in the interest "of young persons, and in the [interests] of the right to personal honor."¹⁹⁴ Further, the Constitution provides that the right of free speech is limited by the rights of others.¹⁹⁵ In other words, when the speech of one violates the inherent rights of another, that speech is not protected.¹⁹⁶

186. See *supra* notes 166-179 and accompanying text; cf. discussion *supra* at subpart II.B.

187. STUDIES IN ISLAMIC LAW AND SOCIETY, *supra* note 168.

188. See *supra* notes 173-177 and accompanying text.

189. See *supra* notes 173-177 and accompanying text.

190. See *supra* notes 181-183 and accompanying text.

191. GRUNDGESETZ [GG] [BASIC LAW] art. 5.

192. *Id.*

193. Celia Gomez, et al., *You Can Say Anything in Germany*, HUM. IN ACTION (last visited Apr. 18, 2018), <https://www.humanityinaction.org/knowledgebase/206-you-can-say-anything-in-germany>.

194. GRUNDGESETZ, *supra* note 191.

195. *Id.* at art. 2. This includes the right to education. *Id.* at art. 7.

196. *Id.*

German national law also provides various limitations on free speech. Most notably is Germany's broad hate speech law, codified in section 130 of the German criminal code.¹⁹⁷ This law makes it unlawful for anyone to "incite hatred against a national, racial, religious group or of a group defined by their ethnic origins . . . or calls for violent or arbitrary measures against them."¹⁹⁸ This same code section also criminalizes any speech that "denies or downplays an act committed under the rule of National Socialism."¹⁹⁹ Additionally, Germany passed another notable speech regulation in October of 2017; this new law aims at regulating hate speech and "fake news" on the Internet.²⁰⁰

It should also be noted that many colleges promulgate policies that regulate students with regard to studying, taking examinations, and various other types of academic conduct.²⁰¹ However, these policies do not contain specific protections for—or prohibitions against—student speech rights.²⁰² In part, this is because German public universities are not large bureaucratic agencies that focus on regulating student conduct;²⁰³ rather, German universities—and German students—focus on studying and examinations.²⁰⁴

197. STRAFPROZESSORDNUNG [STOP] [CODE OF CRIMINAL PROCEDURE], § 130, para 1, translation at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

198. *Id.* at § 130, para 1(1).

199. *Id.* at § 130, para 3. This law is colloquially known as the Auschwitz Lie Law. See Marjorie Miller, *German Ban on Holocaust Denial Upheld*, LA TIMES (Apr. 27, 1994), http://articles.latimes.com/1994-04-27/news/mn-50950_1_holocaust-denial.

200. *Germany Starts Enforcing Hate Speech Law*, BBC NEWS (Jan. 1, 2018), <http://www.bbc.com/news/technology-42510868>. This author attempted to find an English translation of the relevant Code section, but was unsuccessful.

201. See generally *Information from A-X*, FREIE UNIVERSITÄT: BERLIN (last visited Apr. 19, 2018), https://www.fu-berlin.de/en/studium/information_a-z/index.html.

202. See, e.g., *id.*; *Rights and Duties of Students*, UNIVERSITIES OF THE STATE OF BERLIN (last visited Apr. 19, 2018), http://gesetze.berlin.de/jportal/portal/t/1fb/page/bsbeprod.psm1/action/portlets.jw.MainAction;jsessionid=8189ABD303FBCA9B85A850B4406465AA.jp23?p1=i&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-HSchulGBE2011pG2&doc.part=G&toc.poskey=#focuspoint.

203. *Language and Culture in Austria, Germany and Switzerland: Education*, GERM. WAY & MORE (last visited Apr. 19, 2018), <https://www.german-way.com/history-and-culture/education/>.

204. See *Information from A-X*, *supra* note 201. It should be noted that the University of Hamburg "bec[a]me Germany's first [university] to set forth guidelines for religious" expression. *University of Hamburg Publishes "Religious Expression" Code*, DEUTSCHE WELLE (Dec. 22, 2017), <http://www.dw.com/en/university-of-hamburg-publishes-religious-expression-code/a-41067705>. The University of Hamburg passed the religious code in response to several complaints from students who were pressured by others to listen and conform to religious activity. *Id.* In essence, the new religious code provides that students and staff cannot express their religion when it interferes with the rights of others. *Id.*

2. The Values Embraced by the German Legal Regime

Germany clearly values a rights-oriented approach to speech. As noted, the German constitution provides expansive protections on verbal and written speech,²⁰⁵ as well as rights against public censorship.²⁰⁶ Despite this, Germany's speech protections are not absolute. As the Constitution notes, speech is limited by the inherent rights of others.²⁰⁷ Further, Germany has expansive protections against hate speech. As noted, speech cannot degrade nor call for violence against a group of people based on ethnicity.²⁰⁸ Additionally, Germany restricts speech that denies, or brings into doubt, the Holocaust and other egregious acts perpetrated by the Third Reich.²⁰⁹ But, while Germany's speech protections are not absolute, individual speech rights are primarily limited because of Germany's concern for safeguarding others' rights.²¹⁰ Hence, Germany's limitations are distinct from the speech limitations reviewed in both China and Saudi Arabia. In Germany, restrictions on speech are not intended to advance the social order; rather, they exist to protect the inherent rights of others.²¹¹

IV. COMPARATIVE ANALYSIS OF THE LEGAL REGIMES

The legal systems of China, Saudi Arabia, and Germany each embrace a unique regime for regulating student speech on college campuses.²¹² And, each regime highlights the underlying legal tradition that each nation embraces.²¹³ It is clear from the foregoing that China, Saudi Arabia, and Germany value distinct goals, and promulgate their laws with different values in mind. But, despite their differences, some of the underlying values and goals of these three legal regimes overlap. This Part briefly explores some of these differences and similarities.

A. *Safeguarding the Social Order*

As noted at the conclusion of subpart III.C., China and Saudi Arabia both seek to safeguard social harmony and order through their respective

205. *See supra* notes 194-195 and accompanying text.

206. *See supra* note 194 and accompanying text.

207. *See supra* notes 195-196 and accompanying text.

208. *See supra* notes 197-200 and accompanying text.

209. *See supra* note 199 and accompanying text.

210. *See generally supra* notes 194-198 and accompanying text.

211. *See supra* notes 197-200 and accompanying text; *cf.* discussion *supra* at subpart II.C.

212. *See* discussion *supra* at Part III.

213. *See* discussion *supra* at Part III.

legal regimes.²¹⁴ After all, the Chinese legal tradition focuses on maintaining the social He.²¹⁵ In line with this tradition, student speech regulations are aimed at promoting harmony. For example, the Ministry of Education prohibits any speech that disunites the student body.²¹⁶ In a similar vein, the Islamic legal tradition values maintaining the social order of society. As demonstrated in subpart II.B., Sharia law values behavior that does not disrupt social stability.²¹⁷ And, Saudi Arabian speech regulations further this goal. As noted in subpart III.B., the Hadith provides that individuals should speak with kindness, even in the face of anger or blasphemy.²¹⁸ This regulation on speech furthers the social order desired by Islamic law.²¹⁹

Yet, while these two systems embrace the same overarching goal (i.e., social harmony), they have differing values that lead them to this conclusion. For China, the social He is the goal of the Confucian legal order; but, in Islamic terms, it is the divine truth of Allah as it is revealed to His Prophet.²²⁰ To be sure, in the Islamic legal tradition, maintaining the social order is not a goal in itself. Rather, divine truth—which prescribes social stability—is the overarching goal.²²¹ Hence, while these systems appear similar on their face, their underlying values and goals are unique.

Germany's legal regime, in contrast, is distinct from both China and Saudi Arabia. While the latter are concerned with limiting free expression to promote social harmony, the German system emphasizes the value of individual speech rights.²²² In part, this is because Germany is a civil law system, which was heavily influenced by enlightenment thinking.²²³ And, while Germany does regulate some speech, its goal in that regulation is not the maintenance of social order.²²⁴ Rather, Germany's goal is the protection of others' individual rights and ensuring that individual interests are not infringed.²²⁵

214. See discussion *supra* at subparts II.A-B., III.A.-B.

215. See discussion *supra* at subparts II.A., III.A.

216. See *supra* note and accompanying text.

217. See discussion *supra* at subpart II.B.

218. See *supra* notes 173-175 and accompanying text.

219. See discussion *supra* at subpart III.B.2.

220. See discussion *supra* at subpart II.A.

221. See discussion *supra* at subparts II.B., III.B.

222. See discussion *supra* at subpart III.C.2.

223. See discussion *supra* at subpart II.C.

224. Cf. discussion *supra* at subpart II.C.2.

225. See discussion *supra* at subparts II.C., III.C.2.

In sum, both China and Saudi Arabia value the maintenance of social harmony and order in society. As such, they have encapsulated harmonious values in their laws regulating speech. However, these two regimes do not represent a monolith. As discussed, China and Saudi Arabia come to the same normative conclusion, but different values guide them to this end. Germany's speech regulations largely ignore the concerns shared by Saudi Arabia and China, instead promoting individual rights and interests over concerns about social harmony. This, of course, is not dissimilar to other Western nations, especially the United States.²²⁶

B. Maintaining Virtue and Morality

The maintenance of virtue and morality is also of great concern in both the Chinese and Saudi Arabian legal regimes. For Confucian thinkers, the social Li is a moral code, which instructs individuals how to interact with others.²²⁷ And, disrupting this Li is an inherently immoral act.²²⁸ Chinese law regulates student speech to ensure that the Li is not disturbed.²²⁹ Similarly, the Saudi speech regulations reviewed in subpart III.B. promote virtue and morality.²³⁰ For example, the Quran prohibits speech which is "unseemly" in public, and instructs that Muslims should avoid discussions with "unjust" or immoral persons.²³¹ However, Germany does not adhere to the same values as China and Saudi Arabia. As Germany's constitution and code law demonstrate, the role of the individual generally trumps any universal moral code.²³²

226. The West's legal tradition with regard to free speech is generally guided by the enlightenment ideals discussed in subparts II.C. and III.C. The U.S. has perhaps the most expansive free speech protections in the world. *See, e.g.,* Robert A. Sedler, *Freedom of Speech: The United States Versus the Rest of the World*, MICH. ST. L. REV. (2006); PEW RESEARCH CENTER, *Americans More Tolerant of Offensive Speech than Others in the World* (Oct. 12, 2016). While free speech issues are fiercely debated on American college campuses, public universities in the U.S. are significantly limited in their ability to curtail student speech rights. *See* Trevor N. Ward, *Protecting the Silence of Speech: Academic Safe Spaces, the Free Speech Critique, and the Solution of Free Association*, Note, 26 WM. & MARY BILL RTS. J. 557 (2017).

227. *See supra* notes 44-55 and accompanying text.

228. *See supra* notes 44-55 and accompanying text.

229. *See* Ministry of Education, Approval No. 31, *supra* note 9, at art. 25(5); *see also supra* note 160-162 and accompanying text. To be sure, the Ministry of Education prohibits students from using speech that disrespects their teachers. *See supra* note 150 and accompanying text. Because teachers are in a superior relationship to students, this regulation safeguards the Li.

230. *See* discussion *supra* at subpart III.B.2.

231. *See supra* notes 169-172 and accompanying text.

232. *See* discussion *supra* at subpart II.C. and III.C. That said, Germany does not wholesale ignore morality. As noted, the German constitution provides that speech rights are limited when the speaker violates the "honor" rights of the listener. *See supra* notes 194-196 and accompanying

C. *The Role of the Individual*

It may be concluded from subparts IV.A-B. that the German legal regime is primarily concerned with safeguarding the rights of the individual.²³³ But that is not to say that Saudi Arabia and China ignore the role the individual plays in their legal regimes. Under the Chinese legal tradition, Confucian philosophy takes the individual into account.²³⁴ Recall that Confucian philosophy arose in response to the Warring States period and totalitarian regimes.²³⁵ In order to promote a harmonious society that encouraged peace, Confucianism recognized that the individual must sacrifice some individualistic rights in order to gain security in society.²³⁶ Hence, the individual's interests—in safety and security—are taken into account under the Confucian system.

In Saudi Arabia, the individual is also an important consideration. Islamic law seeks divine truth; and, following this divine truth ensures one's own morality and salvation.²³⁷ Therefore, while Islamic law may restrict some individual rights, those restrictions exist to—in the end—provide the individual with a moral, virtuous existence.²³⁸ To be sure, individual interests are not ignored in Islamic law; rather, individualism is merely tempered in light of divine truth.

All in all, the three legal regimes reviewed in this Article take the individual into account when regulating speech. While in Germany the individual's rights are of the utmost concern, China and Saudi Arabia emphasize the role of the individual in light of social harmony and divine truth. Therefore, while China and Saudi Arabia protect far less speech than Germany, the interests of the individual remain an important consideration in all three regimes.

V. CONCLUSION

China, Saudi Arabia, and Germany have each implemented distinct regulations for managing student speech.²³⁹ While their methods for regulating speech differ in a variety of ways, this Article demonstrates

text. But, while Germany is concerned with the honor of others, the speech limitations in the German constitution are still justified by safeguarding other individual rights rather than endorsing an overarching moral framework. *See generally* discussion *supra* at subpart III.C.

233. *See* discussion *supra* at subparts III.C.1.-2.

234. *See supra* notes 51-54.

235. *See supra* notes 42-45 and accompanying text.

236. *See supra* notes 51-54 and accompanying text.

237. *See* discussion *supra* at subparts II.B., III.B.2.

238. *See* discussion *supra* at subparts II.B., III.B.

239. *See generally* discussion *supra* at Parts III and IV.

that these differences are rooted in much more than mere policy choices.²⁴⁰ Rather, these differences stem from underlying legal traditions with inherent variations in history, values, and goals.²⁴¹ To be sure, even when the regulations of the three states at issue prohibited similar types of student speech, the underlying goals behind the similarities differed dramatically.²⁴² It is this author's hope that the Article has demonstrated the complexity that understanding a legal tradition can bring into an analysis of foreign law.²⁴³

After all, this Article begins by implying that—to the Western observer—China's reaction to Yang Shuping's commencement address was the result of a totalitarian, nationalistic regime imposing censorship on Yang's freedom of speech.²⁴⁴ However, as this Article demonstrates, the Chinese reaction noted in the Introduction is much more complicated than Western commentators indicated. The modern Chinese legal tradition clearly values freedom of expression in many forms.²⁴⁵ But, when Yang delivered her commencement address in May of 2017, she did not merely exercise freedoms; to some in China, Yang disturbed the Confucian Li and He.²⁴⁶ More than this, Yang's public invocation against China disturbed her inferior relationship with her superior (i.e., the state), invoking outrage at the disruption of Li. With this understanding, it is of little surprise that Chinese commentators were eager to ridicule Yang; she had disturbed both the Confucian Li and He of her society by publicly criticizing her home state's government.

What Yang's story—and, more broadly, this Article—has demonstrated is that there is a true danger in interpreting another state's laws without having a complete understanding of that state's underlying legal and cultural tradition. This danger is especially prevalent when one's views are informed only by one limited legal outlook. While a relatively new field of study, comparative law can provide the requisite knowledge

240. See discussion *supra* at Parts III and IV.

241. See, e.g., discussion at Part II.

242. See discussion *supra* at Parts III and IV.

243. This Article has laid the foundation for additional scholarship in this area. In the future, scholars and practitioners will hopefully use this case study as a jumping-off point to conduct additional micro-comparative analysis of Western, Far Eastern, and Middle Eastern free speech norms and laws. This will hopefully contribute to a larger macro analysis of the free speech regimes established by those areas of the world, how they advance similar (albeit, complex) goals, and their meaningful differences.

244. See *supra* notes 1-6 and accompanying text.

245. See discussion *supra* at subpart III.A.

246. Compare *supra* notes 1-6, 10-17 and accompanying text, with discussion *supra* at subparts II.A., III.A.

necessary for analyzing foreign states' legal systems. And, in doing so, it can open up a larger conversation about the adequacy of domestic laws, the goals embraced by variant legal regimes, and the values that our own domestic legal cultures should embrace.