

Religion and Liberal Democracy

Spring 2010
Thursdays, 3:00 – 4:50
Room 4172

Instructor: John Inazu
Office Hours: 1-4 on Wednesday afternoons in Room 3009
Email: inazu@law.duke.edu
Credits: 2.0

Important Note: This is a draft version of the syllabus (current as of October 2009). I am posting it now to give interested students an idea of the content, structure, and requirements of the course. Portions of this syllabus are likely to change as I finalize the readings and rethink certain approaches to the material. I will distribute and review the final syllabus on the first day of class.

Description

Religious practice complicates liberal democratic theory in ways more complex than legal frameworks like “establishment” and “free exercise” are able to capture. Illiberal practices, theological justifications, and cultural differences challenge core tenets of liberalism like autonomy, equality, and public reason. These tensions have manifested in a variety of forms across American law and culture, ranging from religious groups that desire to remain insulated from the effects of culture to those that would control it in order to transform it. Each of these groups raises legal, philosophical, and theological challenges that liberal democracy cannot ignore. This course explores the questions that surface at the nexus of liberalism and religious practice.

Texts

Students will be required to purchase the following books, which will be complemented by essays and articles posted on Blackboard:

- RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* (1984)
- JASON C. BIVINS, *THE FRACTURE OF GOOD ORDER: CHRISTIAN ANTILIBERALISM AND THE CHALLENGE TO AMERICAN POLITICS* (2003)
- ISAAC KRAMNICK AND R. LAURENCE MOORE, *THE GODLESS CONSTITUTION: A MORAL DEFENSE OF THE SECULAR STATE* (2005)
- LUCAS SWAINE, *THE LIBERAL CONSCIENCE: POLITICS AND PRINCIPLE IN A WORLD OF RELIGIOUS PLURALISM* (2006)
- STEVEN SHIFFRIN, *THE RELIGIOUS LEFT AND CHURCH-STATE RELATIONS* (2009)
- CHARLES MARSH, *THE BELOVED COMMUNITY: HOW FAITH SHAPES SOCIAL JUSTICE, FROM THE CIVIL RIGHTS MOVEMENT TO TODAY* (2005)

Assignments and Course Grade

Class Participation: 25%

Your class participation grade will be based upon: (1) class discussion; (2) presentation of a 4-5 page summary and critique of the readings for one class session; (3) successfully meeting the deadlines for the writing project; (4) the peer review that you provide on draft papers from two of your classmates.

You will sign up for the summary and critique for the week of your choosing on a first-come, first-served basis. Each week after the second will need to be covered by at least one student, and no more than two students will present in a given week, so those who sign up later may not get their preferences. The summary will be due to the instructor by email 24 hours before the class. The student will then bring hard copies of the summary for each member of the class, and we will read together the summary as part of our class discussion.

Term Paper: 75%

The bulk of your course grade will be determined by a research paper on a topic that you choose in consultation with me. I encourage you to choose something that interests you and that might develop into an article or writing sample. (Note that you might need to read ahead or pursue some outside reading to help identify your topic of interest.)

Your writing project will develop along scheduled deadlines that you may not have encountered in other classes. I impose these deadlines to encourage dialogue, feedback, and revisions that will benefit your final written work.

Shortly into the semester, you will email me a one-paragraph research proposal of the topic you want to explore and the issues that you anticipate addressing. I will work with you to refine the topic or select a different topic if I anticipate problems with your initial choice. After I have approved all of the proposals, I will circulate them to the class so that you can be aware of what others are doing and provide optional feedback or suggestions.

Before or after spring break, you will need to submit a draft of at least ten pages. (I am indifferent between the two deadlines but want to accommodate those who want to head to spring break free and clear and those who plan on using the break to catch up on work.) I will provide extensive feedback on your drafts and suggestions for further research and revisions.

Toward the end of the semester, you will need to provide completed drafts of your twenty-page paper to two of your classmates (whom I will designate for you, paying attention to topical similarities). Each of your peer reviewers will need to email comments to you (and copy me on the comments) by the next class.

Your final paper will be due to me by the day of exam week when our class would have had an exam had one been scheduled. You are also free to submit your final paper at an earlier time (any time after you have incorporated your peer review).

Attendance

Your attendance and contribution to the discussion are crucial to making this class successful and a necessary part of engaging with the complex ideas that we'll encounter. Missing more than one class or repeated late arrivals to classes may adversely affect your class participation grade.

Communication

I will hold office hours from 1-4 on Wednesday afternoons in my office (Room 3009). I am also available to meet with you at a different time or place by appointment.

You can email me with questions or concerns. I will make every effort to respond to your emails within one day of your having sent them, with the exception of emails sent over the weekend or holidays, which I will answer by the following business day.

You should feel free to use office hours not only to discuss our substantive readings but also to obtain help on your writing, to ask questions about graduate school or law school, or to talk about other academic or career interests.

Tentative Syllabus

Jan. 14 What is Religion?

- George C. Freeman III, *The Misguided Search for the Constitutional Definition of "Religion,"* 71 GEO. L.J. 1519 (1983)
- *United States v. Kuch*, 288 F.Supp. 439 (D.D.C. 1968)

Jan. 21 What is Free Exercise?

- *Reynolds v. United States*, 98 U.S. 145 (1878)
- *Employment Division v. Smith*, 494 U.S. 872 (1990)
- Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 CHI. L. REV. (1990)
- Stanley Hauerwas and Michael Baxter, *The Kingship of Christ: Why Freedom of "Belief" Is Not Enough*, DEPAUL L. REV. 42 (1992)

Jan. 28 Neutrality and Public Reason

- JOHN LOCKE, A LETTER CONCERNING TOLERATION (1689)
- John Rawls, *The Idea of Public Reason Revisited*, 64 CHI. L. REV. 765 (1997)
- Ronald Dworkin, *Rawls and the Law*, in JUSTICE IN ROBES 241-61 (2006)

Feb. 4 The Problem of Neutrality

- Michael Sandel, *Freedom of Conscience or Freedom of Choice*, in ARTICLES OF FAITH, ARTICLES OF PEACE: THE RELIGIOUS LIBERTY CLAUSES AND THE AMERICAN PUBLIC PHILOSOPHY, James Davidson Hunter and Os Guinness, eds. (1990)
- Stephen L. Carter, *Liberal Hegemony and Religious Resistance: An Essay on Legal Theory*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, Michael W. McConnell, Robert F. Cochran, Jr., and Angela C. Carmella, eds. (2001)
- Michael Walzer, *Drawing the Line: Religion and Politics*, 1999 UTAH L. REV. 619-38 (1999)
- Michael McConnell, *Five Reasons to Reject the Claim that Religious Arguments Should Be Excluded from Democratic Deliberation*, 1999 UTAH L. REV. 639-57 (1999)

Feb. 11 The Problem of Public Reason (Part I)

- RICHARD JOHN NEUHAUS, THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA (1984) (selections)

RESEARCH PROPOSALS DUE

- Feb. 18 The Problem of Public Reason (Part II)
- Robert Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983)
 - John Howard Yoder, *Response of an Amateur Historian and a Religious Citizen*, 7 J. L. & REL. 428 (1989)
- Feb. 25 The Challenge to Liberal Democracy (Part I)
- JASON C. BIVINS, THE FRACTURE OF GOOD ORDER: CHRISTIAN ANTILIBERALISM AND THE CHALLENGE TO AMERICAN POLITICS (2003)
- Mar. 4 The Challenge to Liberal Democracy (Part II)
- Stanley Hauerwas, *A Christian Critique of Christian America*, in CHRISTIAN EXISTENCE TODAY (1988)
 - H. Jefferson Powell, *The Earthly Peace of the Liberal Republic*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT, Michael W. McConnell, Robert F. Cochran, Jr., and Angela C. Carmella, eds. (2001)
- RESEARCH DRAFT PAPER DUE (ALTERNATE DEADLINE I)
- Mar. 11 Spring Break (no class)
- Mar. 18 The Challenge to Religion (Part I)
- ISAAC KRAMNICK AND R. LAURENCE MOORE, THE GODLESS CONSTITUTION: A MORAL DEFENSE OF THE SECULAR STATE (2005) (selections)
- RESEARCH DRAFT PAPER DUE (ALTERNATE DEADLINE II)
- Mar. 25 The Challenge to Religion (Part II)
- Yael Tamir, *Remember Amalek: Religious Hate Speech*, in OBLIGATIONS OF CITIZENSHIP AND DEMANDS OF FAITH: RELIGIOUS ACCOMMODATION IN PLURALIST DEMOCRACIES, Nancy Rosenblum, ed. (2000)
 - Emily Gill, *Religious Organizations, Charitable Choice, and the Limits of Freedom of Conscience*, 2004 PERSP. IN POLITICS 741-55 (2004)
- Apr. 1 Religion in Liberal Democracy (Part I)
- LUCAS SWAINE, THE LIBERAL CONSCIENCE: POLITICS AND PRINCIPLE IN A WORLD OF RELIGIOUS PLURALISM (2006)

Apr. 8 Religion in Liberal Democracy (Part II)

- STEVEN SHIFFRIN, THE RELIGIOUS LEFT AND CHURCH-STATE RELATIONS (2009)

DRAFT PAPERS DUE FOR PEER REVIEW

Apr. 15 Religion and Liberal Democracy

- CHARLES MARSH, THE BELOVED COMMUNITY: HOW FAITH SHAPES SOCIAL JUSTICE, FROM THE CIVIL RIGHTS MOVEMENT TO TODAY (2005)

PEER REVIEW COMMENTS DUE

TBD FINAL PAPERS DUE (5:00 PM)