

HI 295/RN295—Religious Controversies and the Law

Spring 2015, Tuesdays and Thursdays, 2:00-3:30

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Course Outline

When public debates occur about religious questions – if circumcision is cruel to children, kosher slaughtering is sufficiently hygienic, or a civil servant has a right to wear a religious symbol to work – courts and legislatures often take up a role in regulating religion. This course explores religious controversies in the public sphere and their historical context, focusing on Europe, North America, Israel, and Turkey. In the first half of the semester we will look at the historical context in which ideas about religious toleration, legal rights for minorities, and concepts such as pluralism and multiculturalism evolved. In the second half of the semester we will look at case studies organized along thematic lines. We will examine a series of religious controversies where rights claimed by individuals, religious groups, and the state conflicted and how they were resolved (or remain contentious). In doing so we will consider how governments have weighed individual rights against collective rights, and religious freedom against other social and legal values, rights, and needs. The course has two primary objectives: to explore how and why states intervene in religious conflicts, and to examine how the legal struggles over religion reflect different states' historical experiences and legal traditions.

Course Requirements

Your final grade will be determined as follows:

Analytical essay #1, 20%. A 4-6 page essay about the historical development of religious tolerance. Suggested topics and questions will be provided. Due on February 24.

Book review, 20%. A 4-6 page review of one book selected from the list on the final page of this syllabus. Further instructions on effective book review writing will be distributed. Due on March 26.

Analytical essay #2, 20%. The second 4-6 page essay should ask a probing question (or questions) about a religious controversy discussed in class and be comparative in some way. Due on April 28.

Final examination, 20%. The final examination is open-book and you will be given a preparation guide in advance.

Class discussion, preparation, and student presentation, 20%. Attendance and informed participation in class discussion are required. Students will each be required to present one religious/legal controversy and an associated reading.

All assignments should be completed independently and plagiarism from any source is unacceptable. Cases of suspected academic misconduct will be referred to the Dean's Office. If they have not already, students should familiarize themselves with Boston University's Academic Conduct Code:

<http://www.bu.edu/academics/policies/academic-conduct-code/>

Texts

All required and supplementary texts are available on Blackboard.

We will be using cases and other materials from the following three casebooks:

W. Cole Durham and Brett G. Scharffs eds., *Law and Religion: National, International, and Comparative Perspectives* (Aspen Publishers, 2010). ["Durham and Scharffs" in the syllabus]

John T. Noonan, Jr. and Edward McGlynn Gaffney, Jr. eds., *Religious Freedom: History, Cases, and Other Materials on the Interaction of Religion and Government* 2nd ed. (Foundation Press, 2001). ["Noonan and Gaffney" in the syllabus]

Leslie C. Griffin, *Law and Religion: Cases and Materials* 3rd ed. (Foundation Press, 2013). ["Griffin" in the syllabus]

Course Schedule

Part I – How and Why do States Regulate Religion?

Week 1 – Getting Started

January 20 - First day of class
Introduction

January 22

Secular and Church Authority in Europe: The Reformations

-John Merriman, "The Two Reformations," chapter 3 in *A History of Modern Europe: From the Renaissance to the Present* 3rd ed. (Norton, 2010), 85-125.

-Durham and Scharffs, "Formative Tensions in the History of Religious Freedom," 1-13.

-Trial of Anne Askew

Week 2 – The Origins of "Tolerance"

January 27

Secular and Church Authority in Europe: The Wars of Religion

-John Merriman, "The Wars of Religion," chapter 4 in *A History of Modern Europe*, 126-164.

-The Edict of Nantes

January 29

The Origins of Tolerance: England and the Dutch Republic

-John Merriman, "England and the Dutch Republic in the Seventeenth Century," chapter 6 in *A History of Modern Europe*, 208-241.

-Locke and Spinoza

Week 3 – Enlightenment and Religion

February 3

Enlightenment, Religion and Law

-Clifford Backman, "The Enlightened," in *The Cultures of the West* vol. 2 (Oxford, 2013), 553-589.

-Joseph II "Edict of Tolerance" and the French National Assembly "Debate on the Eligibility of Jews for Citizenship"

February 5

The American Experience

-Noonan and Gaffney, chapter 6, "Freedom of Conscience and Religious Establishments in a Revolutionary Age," 158-200.

-Durham and Scharffs, "The Emergence of Religious Liberty Rights: Competing Approaches," 18-26.

Weeks 4+5- How and Why do States Regulate Religion?

February 10

Theorizing Religion and the Law

-Durham and Scharffs, chapter 2, "Theoretical and Religious Perspectives on Freedom of Religion," 39-76.

-Arthur Remillard, "Steelers Nation and the Seriously Religious Side of Football," *Marginalia* (August 28, 2013).

-T. M. Luhrmann, "Religion Without God," *New York Times* (December 24, 2014).

February 12

Comparative Approaches to Regulating Religion

-Durham and Scharffs, chapter 4, "Comparative Constitutional Perspectives on Religion-State Relationships," 113-162.

February 17 – no class (substitute Monday)

February 19

Religious autonomy and the right to association

-Durham and Scharffs, 371-373; 414-445.

Week 6 – Multiculturalism and Minority Rights

February 24 – Essay #1 due

Toleration and Multiculturalism

-Will Kymlicka, chapters 2 and 3, *Multicultural Citizenship* (Oxford, 1995), 10-48.

-Tim Nieguth and Aurélie Lacassagne, “Contesting the Nation: Reasonable Accommodation in Rural Quebec,” *Canadian Political Science Review* 3, 1 (2009): 1-16.

February 26

Individual and Collective Rights

-Nathan Glazer, “Individual Rights against Group Rights”; Michael Walzer, “Pluralism: A Political Perspective”; Michael Hartney, “Some Confusions Concerning Collective Rights,” in *The Rights of Minority Cultures*, Will Kymlicka ed. (Oxford, 1995), 123-154, 202-227.

-Canadian Charter of Rights and Freedoms

Part II – Case Studies

Week 6 – Religious Authority

March 3

Shari’a

-Ayelet Shachar, “State, Religion, and the Family: The New Dilemmas of Multicultural Accommodation” and John Milbank, “Shari’a and the True Basis of Group Rights: Islam, the West, and Liberalism” in *Shari’a in the West*, edited by Rex Ahdar and Nicholas Aroney (Oxford, 2011), 115-158.

March 5

Kashrut

-Shai Lavi, “Unequal Rites: Jews, Muslims and the History of Ritual Slaughter in Germany,” in *Juden und Muslime in Deutschland: Recht, Religion, Identitaet*, edited by Jose Brunner and Shai Lavi (Wallstein Verlag, 2009), 229-234.

-The Establishment Clause’s Effect on Kosher Food Laws; and “Barghout v. Bureau of Kosher Meat and Food Control” in Griffin, 50-54.

Spring break March 7-15

Week 7 - Education

March 17

State aid to Schools in Europe and the United States

-Durham and Scharffs, 495-510.

-J. H. H. Weiler, "Discrimination and Identity in London: The Jewish Free School Case," in *Jewish Review of Books* (Spring 2010).

March 19

Religion in Public Schools in Europe and the United States

-Durham and Scharffs, 511-535.

-Select cases from Griffin; Noonan and Gaffney.

Week 8 – Taxes

March 24

Europe

-Durham and Scharffs, 451-472.

March 26 - Book review due

The United States

-Durham and Scharffs, 472-494.

-Griffin, 450-468.

Week 9 - Space

March 31

The Eruv

-Charlotte E. Fonrobert, "The Political Symbolism of the Eruv." *Jewish Social Studies* 11, 3 (2005): 9-35.

-Valerie Stoker, "Drawing the Line: Hasidic Jews, Eruvim, and the Public Space of Outremont, Quebec." *History of Religions*, 43, 1 (2003): 18-49.

April 2

A Religious Town (Kiryas Joel)

-Jonathan Boyarin, "Circumscribing Constitutional Identities in *Kiryas Joel*." *The Yale Law Journal*, 106, 5 (1997): 1537-1570.

-Nomi Stolzenberg, "The Culture of Property." *Daedalus* 129, 4 (2000): 169-192.

-Nomi Stolzenberg and David Myers, "Rethinking Secularization Theory: The Case of the Hasidic Public Square." *AJS Perspectives* (Spring, 2011): 37-38.

Week 10 - Gender

April 7

Religion in Conflict with Women's Rights

-Durham and Scharffs, 345-368.

-Readings on the Aguna problem

April 9

Regulating Sexual Morals

-Polygamy; Marriage; Sodomy; in Noonan and Gaffney, 912-927.

-Readings on laws against homosexuality/marriage equality movement.

Week 11 – The Public Sphere

April 14

Israel

-Pnina Lahav, “The Woes of WoW: The Women of the Wall as a Religious Social Movement and as Metaphor,” *Boston University School of Law Working Paper* no. 13-2 (January 23, 2013).

<http://www.bu.edu/law/faculty/scholarship/workingpapers/TheWoesofWoW.html>

-Simon Rabinovitch, “Jewish and Democratic According to the Law,” my introduction to Israel’s proposed nation-state laws followed by the draft laws in translation, *The Marginalia Review of Books*

<http://marginalia.lareviewofbooks.org/jewish-and-democratic-according-to-the-law/>

April 16

Europe and the United States

-Durham and Scharffs, 562-588.

Week 12 - Dress

April 21

France

-Joan W. Scott, “The Banning of Islamic Head Scarves in French Public Schools.” *French Politics, Culture and Society* 23 (2003): 106-127.

-Sophie Body-Gendrot, “France Upside down over a Headscarf?” *Sociology of Religion* 68, 3 (2007): 289-304.

April 23

Turkey

-Alev Cinar, “Clothing the National Body: Islamic Veiling and Secular Unveiling,” chapter 2 in *Modernity, Islam, and Secularism in Turkey: Bodies, Places and Time* (University of Minnesota, 2005), 53-98.

-Leyla Sahin v. Turkey in Griffin, 557-589.

Week 13 - Dress cont’d,

April 28 – Final analytical essay due

The United States

-Jennifer M. Westerfield, “Behind the Veil: An American Legal Perspective on the European Headscarf Debate.” *The American Journal of Comparative Law* 54, 3 (2006): 637-678.

-Goldman v. Weinberger in Noonan and Gaffney, 456-464.

April 30 – last day of class

Revisiting the question: Do religious groups have collective rights?

Suggested Books for Review

- Darian-Smith, Eve. *Religion, Race, Rights: Landmarks in the History of Modern Anglo-American Law*. Oxford; Portland, Or: Hart Pub, 2010.
- DeGirolami, Marc O. *The Tragedy of Religious Freedom*. Cambridge, MA: Harvard University Press, 2013.
- Gordon, Sarah Barringer. *The Spirit of the Law: Religious Voices and the Constitution in Modern America*. Cambridge, MA: Belknap/Harvard University Press, 2010.
- . *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America*. Chapel Hill, NC: University of North Carolina Press, 2002.
- Hamburger, Philip. *Separation of Church and State*. Cambridge, MA: Harvard University Press, 2004.
- Herman, Didi. *An Unfortunate Coincidence: Jews, Jewishness, and English Law*. Oxford, UK: Oxford University Press, 2011.
- Hollinger, David A. *Postethnic America: Beyond Multiculturalism*. New York: Basic Books, 2006.
- Kaplan, Benjamin. *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe*. Cambridge, MA: Belknap/Harvard University Press, 2007.
- Kibria, Nazli. *Muslims in Motion: Islam and National Identity in the Bangladeshi Diaspora*. New Brunswick, NJ: Rutgers University Press, 2011. [BU Sociology professor]
- Lahav, Pnina. *Judgment in Jerusalem: Chief Justice Simon Agranat and the Zionist Century*. Berkeley, CA: University of California Press, 1997. [BU Law professor]
- Leiter, Brian. *Why Tolerate Religion?* Princeton, NJ: Princeton University Press, 2012.
- McGreevy, John T. *Catholicism and American Freedom: A History*. New York: 2004.
- Sehat, David. *The Myth of American Religious Freedom*. New York: Oxford University Press, 2011.
- Sezgin, Yüksel. *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt, and India*. Cambridge Studies in Law and Society. Cambridge, UK: Cambridge University Press, 2013.
- Tambar, Kabir. *The Reckoning of Pluralism: Political Belonging and the Demands of History in Turkey*. Stanford, CA: Stanford University Press, 2014.

Wexler, Jay. *Holy Hullabalos: A Road Trip to the Battlegrounds of the Church/State Wars*. Boston, MA: Beacon Press, 2009. [BU Law professor]

Witte, John Jr. *The Reformation of Rights: Law, Religion and Human Rights in Early Modern Calvinism*. Cambridge: Cambridge University Press, 2008.

_____. *God's Joust, God's Justice: Law and Religion in the Western Tradition*. Grand Rapids, MI: William B. Eerdsman Co. (for Emory University Studies in Law and Religion), 2006.

_____ and Joel A. Nichols. *Religion and the American Constitutional Experiment* 3rd ed. Boulder, CO: Westview Press, 2011.