

Law and Religion

Law 355 / Religion 222

Prof. Timothy Lubin, Washington and Lee University

Fall 2008, TTh 2:30–4:00

Description

The terms ‘law’ and ‘religion’ denote two complex realms of life that have much shared history and continue to intersect in the modern world. In both spheres, personal, institutional, and textual authorities jostle with each other, and with the norms derived from custom and convention. Both spheres contribute to the shaping of group identities, the legitimation of power, and the regulation of society. This seminar will compare examples from a range of places and periods, premodern and modern, to cast into perspective dilemmas and debates that figure in the U.S. today.

During the first half of the term, legal systems and practices rooted in particular religious traditions will be surveyed to identify the legacy of religious principles in modern law and to highlight the persistence of religiously defined legal systems today. In the latter six weeks, the seminar will turn to some major secular models of law and the ways in which they define religion and balance the protection of religious freedom with their standards of equity and religious neutrality.

Course Requirements

The student will write:

- (i) Five bi-weekly six-hundred word essays responding to assigned questions distributed on Thursday in each even-numbered week except Week XII. The essays may be submitted by email and will be due on the following Mondays by 5 pm; selected essays may be circulated to the class as a basis for discussion. (Cumulatively, along with participation in class discussions, 50% of the final grade.)
- (ii) A research paper (ca. 4000 words) on a topic to be chosen by the student in consultation with the professor; students will also make a 10–15 min. oral presentation on their research topics (together, 50% of final grade).

Texts Available for Purchase

Lawrence Rosen, *The Anthropology of Justice*

Rebecca French, *The Golden Yoke*

Gary Jacobsohn, *The Wheel of Law*

Winnifred F. Sullivan, *The Impossibility of Religious Freedom*

* Other readings, marked with an asterisk, will be on reserve via Blackboard.

On-line resource:

Marylin Johnson Raisch, “Religious Legal Systems: A Brief Guide to Research and Its Role in Comparative Law” < http://www.nyulawglobal.com/globalex/Religious_Legal_Systems.htm >

Class Schedule (readings subject to change)

Part I Religious Conceptions of Law

Introductory Meeting (4 Sept.)

Week I. Basic Categories: Religion, Morality, Custom, Rule, Law

- * Winnifred Sullivan and Robert Yelle, "Law and Religion: An Overview," *Encyclopedia of Religion*, vol. 8, 2nd ed. (Detroit: Macmillan Reference USA, 2005), pp. 5325–5332.
- * Lawrence M. Friedman, "Some Comments on Legal Interpretation," *Poetics Today* 9(1) (1988): 95–102.
- * Andrew Huxley, "Introduction," in *Religion, Law and Tradition: Comparative Studies in Religious Law*, ed. A. Huxley (London: RoutledgeCurzon, 2002) RLT (on reserve).
- * Max Gluckman, "Dispute and Settlement," ch. 5 in *Politics, Law and Ritual in Tribal Society*.

Week II. Jewish Law

- * David Novak, "Halakhah: Structure of Halakhah," *Encyclopedia of Religion*, vol. 6, 2nd ed. (Detroit: Macmillan Reference USA, 2005), pp. 3747–3755.
 - * Edward L. Greenstein, "Biblical Law," (ch. 1.B) and Robert Goldenberg, "Torah" (ch. 2) in *Back to the Sources*, ed. by Barry W. Holtz (New York: Summit Books, 1984).
 - * Bernard Jackson, "Judaism as a Religious Legal System," in RLT (on reserve).
 - * David Daube, "Jewish and Roman Philosophies of Law," in RLT (on reserve).
 - * David Novak, "Jewish Marriage and Civil Law: A Two-Way Street?," 68 *Geo. Wash. L. Rev.* 1059 (2000).
- See also: Jewish law sources in [Medieval Sourcebook and Project Genesis](#), Fordham U.

Week III. Canon Law

BIWEEKLY PAPER 1 DUE MONDAY AT 9AM

- * [Code of Canon Law](#), Intratext through 2003, and at the [Vatican site](#) (excerpts).
- Landau, Peter. "'Aequitas' in the Corpus Iuris Canonici," 20 *Syracuse J. Int'l L. & Com.* 95 (1994).
- * Nuzzo, James L.J. "The Rule of Saint Benedict: The Debates Over the Interpretation of an Ancient Legal and Spiritual Document," 20 *Harv. J.L. & Pub. Policy* 867 (1997).
- * Silvio Ferrari, "Canon Law as a Religious Legal System," in RLT (on reserve).
- * "The Trial of Joan of Arc" (selections).

Week IV. Islamic Law

Lawrence Rosen, *The Anthropology of Justice*.

- * Ebrahim Moosa, "Allegory of the Rule (*Hukm*): Law as Simulacrum in Islam," *History of Religions* 38:1.
- * Brinkley Messick, "Written Identities: Legal Subjects in an Islamic State," *History of Religions* 38:1.

Guest lecturer: Patrick Hatcher

Week V. Hindu Law

BIWEEKLY PAPER 2 DUE MONDAY AT 9AM

- * T. Lubin, D. R. Davis, Jr., and J. Krishnan, "Introduction," in *Law and Hinduism: An Introduction*, ed. T. Lubin, J. Krishnan, and D. R. Davis, Jr.
- * D. R. Davis, Jr., "Historical Overview of Hindu Law," ch. 1 in *Law and Hinduism: An Introduction*, ed. T. Lubin, J. Krishnan, and D. R. Davis, Jr.
- * Ludo Rocher, "Law Books in an Oral Culture: The Indian Dharmaśāstras," *Proceedings of the American Philosophical Society* 137(2), 1993, pp. 254–267.
- * T. Lubin, "Punishment and Expiation: Overlapping Domains in Brahmanical Law," *Indologica Taurinensia* 33, 2007.

Week VI. Buddhist Law

- * Andrew Huxley, "Buddhist Law as a Religious System?" in RLT (on reserve).
- Rebecca French, *The Golden Yoke: The Legal Cosmology of Buddhist Tibet*, pp. 55–191.
- * "Religious Law: A Discussion," in RLT (on reserve).

Part II Legal Conceptions of Religion

Week VII. Secularism and Legal Pluralism

BIWEEKLY PAPER 3 DUE MONDAY AT 9AM

- * John Winthrop, "A Model of Christian Charity" (1630).
- * John Adams, "A Dissertation on the Canon and the Feudal Law" (1765).
- * Thomas Jefferson, "Religion," from *Notes on the State of Virginia* (1787).
- * John Griffiths, "What is Legal Pluralism?" *Journal of Legal Pluralism* 24 (1986): 1–55.
- * R. B. Friedman, "On the Concept of Authority in Political Philosophy," in *Concepts in Social and Political Philosophy*, ed. R. E. Flatham (Macmillan, 1973).
- * T. Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16(3) (1987).

Week VIII. Religion and State in American History

- * Mark DeWolfe Howe, *The Garden and the Wilderness* (Chicago, 1965).

Week IX. Constitutional Law vis-à-vis Religion in India and Israel

BIWEEKLY PAPER 4 DUE MONDAY AT 9AM

- Gary Jacobsohn, *The Wheel of Law*.
- * Amartya Sen, "Secularism and Its Discontents," in *The Argumentative Indian* (2005).

Week X. Religious Freedom v. Social Equity

- * Anand Yang, "The Criminalization of Disapproved Hindu Practices," ch. 17 in *Law and Hinduism: An Introduction*, ed. T. Lubin, J. Krishnan, and D. R. Davis, Jr.
- * *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).
- * Ruma Pal, "Religious Minorities and the Law," ch. 2 in *Religion and Personal Law in Secular India*, ed. G. J. Larson.
- * *Larson v. Valente*, 456 U.S. 228 (1982).
- * *Board of Ed. of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994).

Week XI. Dilemmas Religion Poses in the Courts

BIWEEKLY PAPER 5 DUE MONDAY AT 9AM

Winnifred F. Sullivan, *The Impossibility of Religious Freedom*.

* *Wisconsin v. Yoder, et al.*, 406 U.S. 205 (1972).

* *Lee v. Weisman*, 505 U.S. 577 (1992).

* *Edwards v. Aguillard*, 482 U.S. 578 (1987).

* *Civil Liberties for Urban Believers v. City of Chicago* (7th Cir. 2003) 342 F.3d 752, 760).

* *U.S. v. Meyers* (D. Wyo. 1995) 906 F. Supp. 1494, affd. (10th Cir. 1996) 95 F.3d 1475.

* *Re S (Specific Issue Order: Religion: Circumcision)*, [2004] EWHC 1282, [2005] 1 FLR 236.

Week XII. Student Research Presentations

RESEARCH PAPER DUE DEC. 8 AT 9AM IN HARD COPY