

**Religion and Law in Comparative Perspective**  
History 3680/RELSTDS 3680

Prof. Alexander Kaye  
History  
348 Dulles Hall  
[kaye.74@osu.edu](mailto:kaye.74@osu.edu)

Prof. Isaac Weiner  
Comparative Studies  
433 Hagerty Hall  
[weiner.141@osu.edu](mailto:weiner.141@osu.edu)

**I. Course Description:**

These days, it is almost impossible to go online or watch TV without learning about a conflict at the intersection of religion and law: Should yoga or creationism be taught in public schools? Should religious symbols be displayed in public? Should same sex marriage be legal? Should corporations be required to provide their employees with access to contraception? These conflicts raise critical questions about the meaning of secularism and religious freedom; about religion's proper place in American life; and about how we understand what it means to be an American.

Yet as contentious as these questions are in the contemporary United States, they have been addressed in different ways in other times and places. Recent scholarship across a range of academic disciplines has called into question long-held assumptions about the separation of religion and law in the modern world. It has revealed how religion and law intersect, interact, and influence each other in often surprising ways, which vary across different societies and cultures. This situation calls for new ways of describing and interpreting their vexed relationship.

In this course, we will develop tools for thinking critically about these issues by adopting a comparative, interdisciplinary approach. Drawing on concrete cases, historical studies, and theoretical literature, we will explore how the relationship between religion and law has been configured differently in different liberal democracies and what this might mean for contemporary debates. Throughout, our discussions will be guided by a few basic questions: What is "religion" under the rule of law, and how has it been regulated in different times and places? What capacity does law have for accommodating and managing religious and other forms of human difference? What does religious freedom mean today, and what are its conceptual and practical limits?

Readings will include case law and other legal materials, as well as academic writings by religion scholars, political scientists, historians, anthropologists, sociologists, philosophers, and others. Assignments will invite you to cultivate your own public voice by drawing on the tools you learn in this class to intervene in contemporary debates. The class is open to all students; no prior knowledge is assumed.

**II. Expected Learning Outcomes**

Upon successful completion of this course, students should be able to:

- Read, understand, and analyze literature from multiple disciplines.
- Understand the ways in which terms like "religion" and "law" have been used in different historical and national contexts and how this pertains to contemporary controversies.

- Place contemporary debates about the intersection of religion and law in the United States in the context of four centuries of geopolitics and philosophical discussion.
- Write a sustained and coherent piece of engaged public scholarship.

### **III. GE Goals and Expected Learning Outcomes**

History 3680/RELSTDS 3680 counts toward the following GE requirements:

#### ***Historical Study***

Goals: Students recognize how past events are studied and how they influence today's society and the human condition.

#### Expected Learning Outcomes:

1. Students construct an integrated perspective on history and the factors that shape human activity.
2. Students describe and analyze the origins and nature of contemporary issues.
3. Students speak and write critically about primary and secondary historical sources by examining diverse interpretations of past events and ideas in their historical contexts.

History 3680/RELSTDS 3680 addresses these goals by offering students opportunities (1) to analyze particular historical, political, and social factors that shaped the development of religious freedom and secularism in different times and places; (2) to describe and analyze the origins and nature of contemporary issues, such as the place of religion in public school and the state's role in regulating marriage and sexuality; and (3) to analyze competing interpretations of key events in the historical development of religious freedom, such as the writing of the First Amendment to the U.S. Constitution.

#### ***Diversity: Global Studies***

Goals: Students understand the pluralistic nature of institutions, society, and culture in the United States and across the world in order to become educated, productive, and principled citizens.

#### Expected Learning Outcomes:

1. Students understand some of the political, economic, cultural, physical, social, and philosophical aspects of one or more of the world's nations, people and cultures outside the U.S.
2. Students recognize the role of national and international diversity in shaping their own attitudes and values as global citizens.

History 3680/RELSTDS 3680 addresses these goals by (1) offering students opportunities to conduct cross-cultural comparative analysis, through which they will learn about the different ways that religion and law have interacted in countries such as France, Britain, and Israel, and about some of the political, cultural, social, and philosophical aspects of diverse religious communities, including Jewish, Christian, Muslim, and Hindu; and (2) preparing students for the responsibilities of global citizenship in an increasingly diverse and interconnected world by offering them tools for thinking historically and comparatively about contemporary issues related to religion and law and through assignments inviting them to cultivate their own public voices by bringing insights learned in this course to bear on contemporary issues and case studies.

#### **IV. Assessment of GE Learning Outcomes**

Student success in achieving the expected learning outcomes will be measured directly through: (1) analysis of semester-long discussion and blog contributions; and (2) analysis of semester-long paper assignment. Learning outcomes also will be measured indirectly through the use of questions embedded in student discursive course evaluations at the end of the semester. Finally, faculty reflection on the degree to which the course produced GE learning outcomes as well as peer teaching observations will be utilized to arrive at a comprehensive assessment of the GE learning outcomes.

#### **V. Course Requirements/Grading:**

##### **Participation: 20%**

As this is a seminar, prepared participation is essential.

##### **Presentations: 15%**

One or two students will make a brief presentation most weeks. This means that each student may be required to make two presentations per semester. Presentations should be 5-7 minutes long and include: 1) A brief biographical comment about the author and a contextualization of the publication, 2) a synopsis of the substance and/or arguments of the piece, 4) personal critique (did you find the argument convincing?), 5) questions for the group to consider in its discussion.

##### **Collaborative blog: 20%**

This course has a dedicated blog site, which is publicly accessible. Every week, one or two students will have the responsibility of “hosting” the class blog for the week. Their task will be to post an article/news story/video clip etc. that is related to the topic of the course. (E.g. an article about the Muslim Brotherhood in Israel, a video commercial from the French elections, a picture from a Greek museum exhibit on ancient religions, an editorial about gay marriage, a video of a congressional hearing on birth control, etc.) They will then add their comments about that content – not necessarily whether they agree or disagree, but how our historical and philosophical readings create a new lens through which to contextualize and critique arguments that appear in the media every day. The comments may also include questions to which others may respond. The comments should be around 250-350 words. Those posts must be made by Sunday midnight.

All other students must then post a response of 50-100 words that engages with the host’s comments and questions. The responses may also include links or other content. The responses may engage with each other as well as with the host’s original comment. Responses must be posted by Wednesday midnight.

##### **Final Paper: 45%**

A final paper of 10-12 pages, topic to be determined in consultation with the instructor. Students will be expected to offer nuanced, critical analysis of a particular conflict at the intersection of religion and law.

##### **What Do Grades Mean?**

A (excellent) requires innovation, inspiration, and a superior execution of all the requirements of an assignment.

B (good) meets all the requirements of an assignment very well.

C (fair) fulfills the requirements of an assignment satisfactorily.

D (minimum passing) meets the bare minimum requirements of an assignment.

F (failed) indicates that one has not met the bare minimum requirements of an assignment.

The grading scale will be as follows: A (93-100), A- (90-92), B+ (87-89), B (83-86), B- (80-82), C+ (77-79), C (73-76), C- (70-73), D+ (67-69), D (60-66), below 60 is failing.

## **VI. Reading**

All reading must be completed before the session to which it applies.

Hamburger, *Separation of Church and State*, Leiter, *Why Tolerate Religion?*, Kuru, *Secularism and State Policies Toward Religion*, and Sullivan, *Ministry of Presence* are available at the university bookstore.

Other readings are available on-line or will be posted to Carmen.

You are not required to read the titles under “Further Reading” but you may find it helpful for the course and/or for your final papers. Occasionally we may ask a student to make a presentation of one of those pieces.

## **VII. Plagiarism and Academic Misconduct**

Plagiarism is the unauthorized use of the words or ideas of another person. It is a serious academic offense, and is described in detail in your student policies handbook. Please read this information carefully, and remember that at no point (including discussion) should words or ideas that are not your own be represented as such.

It is the responsibility of the Committee on Academic Misconduct to investigate or establish procedures for the investigation of all reported cases of student misconduct. The term “academic misconduct” includes all forms of student academic misconduct wherever committed; illustrated by, but not limited to, cases of plagiarism and dishonest practices in connection with examinations. Instructors shall report all instances of alleged academic misconduct to the committee (Faculty Rule 3335-5-487). For additional information, see the Code of Student Conduct ([http://studentaffairs.osu.edu/info\\_for\\_students/csc.asp](http://studentaffairs.osu.edu/info_for_students/csc.asp)).

Please note: all papers submitted to Carmen will be automatically checked for plagiarism by the Turnitin software. You are encouraged to make use of this software on your own before final submission of your paper to ensure that you have not accidentally engaged in academic misconduct.

## **VIII. Writing Center**

The **OSU Writing Center** is a free service that provides professional tutoring and consultation on writing. Visit <http://cstw.osu.edu> or call 688-4291 to make an appointment. They also offer drop-in consultations in Thompson Library and online consultations via the chat function on Carmen. I encourage you to use the university resources available to you to improve the quality of your writing, both for your papers and in preparation for your final exam. If you do decide to

use these services, please authorize that I be notified via a tutoring report because it helps me gauge your effort and track what advice has been given to you.

## **IX. Disability Services**

Students with disabilities that have been certified by the Office for Disability Services will be appropriately accommodated, and should inform the instructor as soon as possible of their needs. The Office of Disability Services is located in 150 Pomerene Hall, 1760 Neil Ave; telephone 292-0901; <http://www.ods.ohio-state.edu/>.

## **X. Course Schedule**

### **Week 1**

#### **Introduction**

*Burwell v. Hobby Lobby* (2014)

### **Week 2**

#### **Secularization and Modernity**

Tierney, "Religious Rights: A Historical Perspective" in Van Der Vyver ed., *Religious Human Rights in Global Perspective: Religious Perspectives*, Volume 1

Locke, *A Letter Concerning Toleration*

Available at:

[http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=764&layout=html#chapter\\_80887](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=764&layout=html#chapter_80887)

Isaiah Berlin, "Two Concepts of Liberty"

Casanova, Jose. "The Secular, Secularizations, Secularisms." In *Varieties of Secularism in a Secular Age*. Edited by Michael Warner, Jonathan VanAntwerpen and Craig J Calhoun. Cambridge, Mass.: Harvard University Press, 2010. 54-73.

#### **Further Reading:**

Walzer, *On Toleration*

### **Week 3**

#### **What is "Religion"?**

Sullivan, "Judging Religion," *Marquette Law Review* 81 (1997): 441-460

Reynolds V US (1878) (US Supreme Court)

Hugh Urban, *The Church of Scientology*, chapter 5

#### **Further Reading:**

Sullivan *The impossibility of religious freedom*, Part 1

Hugh Urban, *The Church of Scientology* (rest of the book)

### **Week 4**

#### **Religion and Law in the USA**

Madison, Memorial and Remonstrance (1785)  
Virginia Statute for Religious Freedom (1786)  
Constitution of Massachusetts (1780)  
Jefferson's Letter to the Danbury Baptists  
Hamburger, *Separation of Church and State* (Introduction and chapters 4, 7, 8, 9, 10)

Further Reading:

Kuru, *Secularism and State Policies toward Religion*, Chapter 3  
Sarah Barringer Gordon, *The Mormon Question*

**Week 5**

**Religion and Law in France**

“Dechristianizing France” in *Religion, Society and Politics in France Since 1789*, Frank Tallett ed.

Kuru, Chapter 5

Yolande Jansen, “*Laïcité*, or the Politics of Republican Secularism” in de Vries and Sullivan eds., *Political Theologies*

Further Reading:

Taylor, “Modes of Secularism”

Jean Bauberot “The Two Thresholds of Laïcization” in Bhargava ed., *Secularism and its Critics*

**Week 6**

**Religion and Law in Britain**

Andrew Lynch, “The constitutional significance of the Church of England” in Radan, Meyerson, Croucher eds. *Law and Religion*

Charlotte Smith, “A very English affair: establishment and human rights in an organic constitution” in: Cane, Evans, Robinson eds. *Law and Religion in Theoretical and Historical Context*

Laborde, “Political Liberalism and Religion: On Separation and Establishment”

Further Reading:

Augur Pearce, “England’s Law of Religion – The History of a Discipline” in Doe and Sandberg, eds., *Law and Religion: New Horizons*

**Week 7**

**Religion and Law in Israel**

Israel’s Declaration of Independence and Basic Laws

Likhovksi, “The Invention of 'Hebrew Law' in Mandatory Palestine” *American Journal of Comparative Law*, Vol. 46, No. 339, 1998

Englard, “Law and Religion in Israel”, *American Journal of Comparative Law* Vol. 35, No. 1 (Winter, 1987), pp. 185-208

Barak-Erez, *Outlawed Pigs* (Especially caps. 2, 5, 6, 7, 9)

Further Reading:

Yoram Shachar. "Jefferson Goes East: The American Origins of the Israeli Declaration of Independence," *Theoretical Inquiries in Law* 10 (2009): 581-594, 601-614, 616-618.

## **Week 8**

### **Religious Symbols and the Law**

Kuru Chapter 4

Weil, "Why the French Laicite is Liberal" *Cardozo Law Review* (2008-9)

Laborde, "Secular Philosophy and Muslim Headscarves in Schools" *Journal of Political Philosophy* 13:3, 305–329 (September 2005)

Latusi v Italy (European Court of Human Rights)

Lynch v Donnelly (US Supreme Court)

#### Further Reading:

John Bowen, *Why the French Don't Like Headscarves*

Laborde, *Civic Republicanism*

## **Week 9**

### **Religion and Public Schools**

*Mozert v. Hawkins* (1987)

*Kitzmiller v. Dover* (2005)

Sedlock. v. Baird (2013, San Diego Cty California) Complaint Petition; Sedlock v. Baird Minute Order

R(E) v Governing Body of JFS [2009] UKSC 15

## **Week 10**

### **Same Sex Marriage**

Esckridge, "A History of Same Sex Marriage" *Virginia Law Review* 79, 1419 (1993)

Reid, "Marriage: Its relationship to Religion, Law and the State" in Laycock et al eds *Same Sex Marriage and Religious Liberty*

Shifman, Pinhas. "Civil Marriage in Israel: The Case for Reform" in *Jewish Law Association Studies XIII*

Eliav Shochetman, "On the Introduction of Civil Marriage in the State of Israel" in *ibid.*

#### Further Reading:

Aeyal M. Gross, "Challenges to Compulsory Heterosexuality: Recognition and Non-Recognition of Same-Sex Couples in Israeli Law"

## **Week 11**

### **Religion and Legal Pluralism**

Rowan Williams (Archbishop of Canterbury), "Civil and Religious Law in England: a religious perspective"

[<http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective#Lecture>]

Shachar and Hirshl, "The New Wall of Separation: Permitting Diversity, Restricting Competition" *Cardozo Law Review*, Vol. 30, pp. 2535-2560, 2009

Ruth Halperin-Kaddari, "Expressions of Legal Pluralism in Israel: The Interaction Between the High Court of Justice and Rabbinical Courts in Family Matters and Beyond" in *Jewish Law Association Studies XIII*

Further Reading:

Hirschl, *Constitutional Theocracy*

Shachar, "Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law" *Theoretical Inquiries in Law*, Vol. 9, No. 2, pp. 573-607, 2008.

David Harte, "Structure of Religious Pluralism in English Law" in Doe, Sandberg, eds, *Law and Religion: New Horizons*

**Week 12**

**Religious Freedom and Foreign Policy**

Section 2 [Findings; Policy] Skim the rest: U.S. International Religious Freedom Act (1998).

<http://www.state.gov/documents/organization/2297.pdf>

Hackett, R I J, M Silk, and D Hoover. "Religious Persecution As a US Policy Issue." *Center for the Study of Religion in Public Life. Hartford, CT: Trinity College* (2000). Pp. 1-17, 45-59.

Recommended Reading: Pp. 18-31.

Cozad, Laurie. "The United States' Imposition of Religious Freedom: The International Religious Freedom Act and India." *India Review* 4, no. 1 (2005). 59-83

Hurd, Elizabeth Shakman "What's Wrong with Promoting Religious Freedom?" *The Middle East Channel*, 6/12/13.

George, Robert and Katrina L. Swett. "Why Religious Freedom Matters" *CNN global public square* online blog. <http://globalpublicsquare.blogs.cnn.com/2014/01/16/why-religious-freedom-matters/>

Further Reading:

Castelli, E A. "Praying for the Persecuted Church: US Christian Activism in the Global Arena." *Journal of Human Rights* 4, no. 3 (2005): 321-351

Senate Testimony on I.R.F.A.

**Week 13**

**Contemporary Debates over Secularism I**

Leiter, *Why Tolerate Religion*

**Week 14**

**Contemporary Debates over Secularism II**

Sullivan, *A Ministry of Presence*