

Law, Religion and Public Discourse

FALL 2010

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What is lost when secularism defines the norms of public discourse in ways that prohibit reference to religious beliefs as the source of claims or arguments? What would an optimal understanding of the secular be? These questions will be explored in relation to different types of discourse (legal, religious, political), different issues (in particular, the environment and education for equality with respect to same sex relationships), and different faiths or traditions. We encourage students to regularly bring in concrete examples of the use of spiritually based arguments with respect to a wide range of issues, such as economic and social justice, animal rights, as well as the more conventional issues of abortion and same sex marriage. One of the recurring questions will be the extent to which public deliberation requires “publicly accessible” reasons and where faith based argument fits with that requirement. Another is the extent to which the hostility to religiously grounded argument is based on the view that such arguments are, by their nature, not founded on reason.

While the course will address the issue of the separation of church and state, the primary focus will not be on constitutional guarantees of religious freedom. One of the central purposes of the course will be to envision ways in which religious and spiritual beliefs could become respectable dimensions of legal, political, and academic discourse while sustaining a deep respect for pluralism and attending to the dangers that underlie the commitment to the separation of church and state. We will be examining arguments for and against such inclusion.

COURSE REQUIREMENTS:

**REQUIRED READING: COURSE PACK AVAILABLE FROM FACULTY OF
LAW BOOKSTORE**

“COMMENTS” AND “RESPONSES”:

The core of the course will be the discussions of the assigned reading each week. To structure and facilitate an informed discussion, students will be required to write “Comments” on the readings, and “Responses” to other students’ comments.

Students will be organized into 4 groups. Each week, each of the students from one of the groups is responsible for posting a 1-2 page commentary on the reading. (The groups for each week are marked on the syllabus.) Each of the students from another group will be responsible for a 1 page response.

The **COMMENTS** should be your reflections on the reading in light of the ongoing conversation in the course. Thus students are encouraged not only to comment on what they find particularly interesting, important or troubling in the readings, but how this connects to previous readings and to the ongoing dialogue. Students from one other group are required to post **“RESPONSES”** to one of the comments. Responses are your thoughts, reflections, and reactions to the comments. They should be about one page. **Students should post their intention to respond to a particular comment as soon as they have selected it** so that, ideally, each of the “comments” will get a response (as opposed to having a cluster of responses to one comment, and none for the others). **ALL** students should read the comments and responses.

LATE COMMENTS OR RESPONSES WILL NOT BE ACCEPTED, but if you are unable to attend class on a day your comment or response is due, you should do the comment or response for another class. This way I can incorporate your written submissions into the class discussion, which is harder if you are not there to participate in the conversation. If for any reason you cannot do a comment or response for the date assigned to your group, you can do it on another week when you will not otherwise be doing a comment or response. Send an e-mail to let us know.

Comments and responses are to be posted on the joint law and political science version of this course listed on Blackboard. They should be posted under discussion forum by date. Be sure to put your name, group number, and heading of “comment” or “response” in your posting.

Comments are to be posted by 12:00 noon on Sunday and Responses by 5:00 P.M. on Monday.

EVALUATION: GRADUATE STUDENTS AND LAW STUDENTS:

The weekly comments and responses will form a part of the class participation mark of **25%**. Students will receive their “comments” back with very brief remarks and a grade. The responses (which are recorded, but not graded) and regular class discussion will constitute the rest of the participation mark.

A 25-page **PAPER** due last date for written work, April 30, noon. 75%

The paper will focus on 3 or 4 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to using material outside the assigned reading. You are, of course, welcome to note other material that adds to your argument. But if you spending more than a few lines referring to that material, you should ensure that you still have the required page length devoted to the analysis of the texts and issues in the course.

STUDENTS WISHING TO DO A RESEARCH PAPER MUST SUBMIT A PROPOSAL BY FEBRUARY 16. It must relate to the main theoretical issues of the course and engage with some of the assigned reading.

BY THE LAST CLASS, STUDENTS SHOULD SUBMIT A PARAGRAPH SUMMARY OF THEIR PAPER TOPIC AND THE TEXTS THEY WILL FOCUS ON, OR AN OUTLINE OF THE PAPER WHICH IDENTIFIES THE TEXTS. STUDENTS MAY SUBMIT THIS SUMMARY OR OUTLINE EARLIER, BUT I RECOMMEND THAT IF YOU DO SO YOU AT LEAST SKIM ALL THE MATERIALS SO YOU WILL KNOW WHICH WILL WORK BEST FOR YOUR TOPIC.

IF YOU INTEND TO USE MATERIALS OUTSIDE THE SYLLABUS (BEARING IN MIND THE REQUIREMENTS ABOVE), A BIBLIOGRAPHY SHOULD BE INCLUDED.

PAPERS MUST BE SUBMITTED VIA “TURN IT IN.COM” as well as in hard copy (2 copies please). The hard copy must have the turnitin number on it.

EVALUATION: UNDERGRADUATES:

Three 2 page papers that serve as “comments”, worth 10% each. Even though these papers are short, they should be written with care. You have the option of writing one additional paper, with the top 3 grades counting for the final mark. But you cannot do a comment on a day you do a response, and you cannot do it for the last class without prior permission.

Participation and three 1 page responses, worth 20%

PLEASE NOTE THAT YOU ARE AN UNDERGRADUATE ON YOUR PAPERS AND RESPONSES, AS THE GRADING SYSTEM IS DIFFERENT FOR YOU. YOU WILL RECEIVE GRADES ON YOUR RESPONSES AS WELL AS COMMENTS.

15 page paper on three of the readings and a main theme of the course, DUE NOON December 10, worth 50%. Papers to be turned in to Aleatha Cox, Flavelle 343.

The paper will focus on 3 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to using material outside the assigned reading. You are, of course, welcome to note other material that adds to your argument. But if you spending more than a few lines referring to that material, you should ensure that you still have the required page length devoted to the analysis of the texts and issues in the course.

BY November 16, STUDENTS SHOULD SUBMIT A PARAGRAPH SUMMARY OF THEIR PAPER TOPIC and the texts they will focus on, or an outline of the paper which identifies the texts. Students may submit this summary or outline earlier, but i recommend that if you do so you at least skim all the materials so you will know which will work best for your topic.

PAPERS MUST BE SUBMITTED VIA TURN IT IN.COM as well as in hard copy.

WEEK 1 (Sept 13):

Introduction

WEEK 2 (Sept 20):

1. T.N. Madan, *Secularism in Its Place* 3
2. Ashis Nandy, *The Politics of Secularism and the Recovery of Religious Tolerance* 15
3. Papal Address at University of Regensburg
(Recommended, section on Pope) Anver Emon, *On the Pope, Cartoons, and Apostates: Shari'a 2006*..... 226

Group 1 comment, group 2 respond

WEEK 3 (Sept. 27):

1. Gérard Bouchard and Charles Taylor, *Report: Building the Future, A Time for Reconciliation* 59
2. Anver M. Emon, *Islamic Law and the Canadian Mosaic Politics, Jurisprudence, and Multicultural Accommodation* 83

Group 2 comment, group 3 respond

WEEK 4 (Oct 4):

1. John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* 110

Group 3 comment, group 4 respond

THANKSGIVING: Oct. 11

WEEK 5 (Oct 18):

1. Nicholas Wolterstorff, *The Role of Religion in Decision and Discussion of Political Issues* 163
 - a. Supplementary: Robert Audi, *Wolterstorff on Religion, Politics, and the Liberal State* 190

2. Simone Chambers, *How Religion Speaks to the Agnostic: Habermas on the Persistent Value of Religion*..... 492

PUT IN PROPER ORDER (at end of course reader)

Group 4 comment, group 1 respond

WEEK 6 (Oct 25):

1. Jürgen Habermas, *Religion in the Public Sphere*..... 138

Group 1 comment, group 2 respond

Students are encouraged to reflect back on the previous reading and discussions.

READING WEEK

WEEK 7 (Nov 8):

1. Jennifer Nedelsky, *Legislative Judgment and the Enlarged Mentality: Taking Religious Perspectives* 246
2. John Borrows, *Living Law on a Living Earth: Aboriginal Religion, Law, and the Constitution*..... 264

Group 2 comment, group 3 respond

WEEK 8 (Nov 15):

No class for undergraduates. Please read the circulated examples. Undergraduates' examples and comments (following group assignments below) can submit for this day or for December 6.

The environment and faith based argument:

Group 4 and 1 circulate by March 4 examples of faith based public arguments with respect to the environment. Electronic means would be optimal, but if you need to have photocopies made or scanning done, please have them available in Flavelle 343 by Friday February 27.

Please add one paragraph about why you think this is a GOOD example of the use of faith based argument. (It's too easy to find bad examples.) Please comment also on what (if anything) is added by the spiritual arguments that is not (or not as well) captured in purely secular language.

Groups 2 and 3 pick two or three submissions and comment on why you think this is or is not a good use of faith based argument in public deliberation. You might also comment

on the extent to which the argument uses “publicly accessible” arguments and is or is not characterized by “reason.” Please comment also on what (if anything) is added by the spiritual arguments that is not (or not as well) captured in purely secular language.

WEEK 9 (Nov 22):

1. Madhavi Sunder, *Piercing the Veil* 280

Group 3 comment, group 4 respond

WEEK 10 (Nov. 29):

1. Chronology: Chamberlain v. Surrey School District No. 36 354
2. CBC News – School board rejects books with gay parents for bad grammar 355
3. Court Misunderstands the Meaning of “Secular” 357
4. Court Corrects Erroneous Understanding of the Secular and Respects Parental Rights 363
5. Chamberlain v. Surrey School District No. 36, British Columbia Supreme Court 369
6. Chamberlain v. Surrey School District No. 36, Supreme Court of Canada 402

Group 4 comment; Students in group 1 post an example of conflicts or potential conflicts between “education for citizenship” and religious concerns of parents. You can either summarize the conflict and post a description of it from another source. Add a brief commentary on why this is an example of education for citizenship.

