

Religion, Liberalism and the State: the Case of Islam

Fall 2016 (Prof. Fadel)

(10:30 - 12:20, P 363 in the Law Library)

Course Outline and Reading Assignments

Meeting 1 – September 5

Topic 1: Introduction to Political Liberalism and Its Relationship to Religion

Mandatory Readings:

- John Rawls, *The Idea of Public Reason Revisited*, 64,3 *University of Chicago Law Review* (1997) 765-87.
- Jürgen Habermas, *Religion in the Public Sphere*, 14,1 *European J. of Philosophy* (2006), 1-25.
- Robert Audi, *The Separation of Church and State and the Obligations of Citizenship*, 18,3 *Philosophy & Public Affairs* (1989), pp. 274 – 286 and pp. 290 – 296.

Meeting 2 – September 12

Topic 2: Secularization, Political Liberalism and Religion

- Jeffrey Stout, *Democracy and Tradition*, pp. 63 – 77; 85 – 91; 92 – 100.
- Phillip L. Quinn, *Political Liberalisms and Their Exclusions of the Religious*, 69,2 *Proceedings and Addresses of the American Philosophical Association* (1995), 35-56.
- Jose Casanova, “Secularisation, Religion and Multicultural Citizenship,” in *Religions and Dialogue*, Wolfram Weiße, Katajun Amirpur, Anna Körs, Dörthe Vieregge (Hrsg.), editors, pp. 21-32.
- Eduardo Penalver, *Is Public Reason Counterproductive?* 110 *W. Va. L. Rev.* 515 (2007-2008). (available on HeinOnline)
- Andrew March, *Rethinking Religious Reasons in Public Justification*, 107,3 *American Political Science Review* (2013), 523-39.

Meeting 3 – September 19

Topic 3: Religious Critics of Political Liberalism

Mandatory Readings:

- Stanley Hauerwas, *A Community of Character: Toward a Constructive Christian Social Ethic* (University of Notre Dame Press: Notre Dame, 1981), Chapter 4, pp. “The Church and Liberal Democracy,” pp. 72-86.

- William T. Cavanaugh, *A Politics of Vulnerability: Hauerwas and Democracy in Unsettling Arguments: A Festschrift on the Occasion of Stanley Hauerwas's 70th Birthday*, ed. Charles R. Pinches et al. (Cascade Books: Eugene, OR, 2010).
- Ronald Nettler, *Guidelines for the Islamic Community: Sayyid Qutb's Political Interpretation of the Qur'an*, 1,2 *Journal of Political Ideologies* (1996), 183-96.

Meeting 4 – September 26

Topic 4: Constitutional Law of Religious Freedom – the Canadian and United States Experiences: Basic Doctrines

- *R. v. Big M Drug Mart Ltd.*, pp. 822 – 828, from *Canadian Constitutional Law*, Third Edition.
- *Edward Books and Art Ltd. v. The Queen*, pp. 830 – 842, from *Canadian Constitutional Law*, Third Edition.
- *Trinity Western University v. British Columbia College of Teachers*, pp. 851 – 858, from *Canadian Constitutional Law*, Third Edition.
- *R. v. Jones*, pp. 861 – 864, from *Canadian Constitutional Law*, Third Edition.
- *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, pp. 887 – 891, from *Canadian Constitutional Law*, Third Edition.
- *Reynolds v. United States*
- *Wisconsin v. Yoder*, pp. 1213 – 1222, from *Comparative Constitutional Law*, Vicki Jackson and Mark Tushnet.
- *United States v. Seeger*
- *Employment Division v. Smith*

Meeting 5 – October 3

Topic 4, continued: Constitutional Law of Religious Freedom – the Canadian and United States Experience: Religious Exemptions

Mandatory Readings:

- *Multani v. Commission scolaire Marguerite-Bourgeoys and Attorney General of Quebec*
- *Religious Freedom Restoration Act*
- *Hosanna-Tabor Evangelical Lutheran Church v. Equal Employment Opportunity Commission*
- *Burwell v. Hobby Lobby Stores, Inc.*
- *As Exemptions Grow, Religion Outweighs Regulation*, Diana B. Henriques, New York Times, October 8, 2006.
- *Where Faith Abides, Employees Have Few Rights*, Diana B. Henriques, New York Times, October 9, 2006.
- *Religious Programs Expand, Disputes Rise Over Tax Breaks*, New York Times, October 10, 2006.
- *Religion-Based Tax Breaks: Housing to Paychecks to Books*, New York Times, October 11, 2006.

Additional Readings:

The Right Honorable Beverley McLachlin, PC, “Freedom of Religion and the Rule of Law: a Canadian Perspective,” with response by Jean Bethke Elshtain in *Recognizing Religion in a Secular Society*, ed. Douglas Farrow.

- Michael W. McConnell, *Accommodation of Religion* 1985 Sup. Ct. Rev. 1 – 41 (1985). (Available on HeinOnline)
- Ira C. Lupu, *Reconstructing the Establishment Clause: The Case Against Discretionary Accommodation of Religion*, 140 U. Pa. L. Rev. 555. (Available on HeinOnline)

Meeting 6 – October 10

Topic 5: Multiculturalism and Politically Liberal States

Mandatory Readings:

- *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47
- *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607, 2007 SCC 54
- Excerpts from “Building the Future: A Time for Reconciliation,” *Abridged Report*, Gérard Bouchard and Charles Taylor.
- Susan Moller Okin, *Is Multiculturalism Bad for Women?*, pp. 9 – 24; pp. 41 – 46; 85 – 94; 105 – 114; 127 – 131

Additional Readings:

Mark Rosen, *The Limits of Community Self-Governance* 84 Va. L. Rev. 1053 (1998). (Available on HeinOnline)

Meeting 7 – October 17

Topic 6: Islamic Law, Muslim Minorities and Liberal Citizenship

Mandatory Readings:

- Khaled Abou el Fadl, *Islamic Law and Muslim Minorities: the Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries*, 1 Islamic Law and Society no. 2, pp. 141 – 187.
- Andrew March, *Islamic Foundations for a Social Contract in non-Muslim Liberal Democracies*, 101,2 American Political Science Review 235 (May 2007), pp. 235-252.

Additional Readings:

- Mohammad Fadel, *The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law*, 21 Can. J.L. & Juris. 5-69 (2008). (Available on HeinOnline)
- Mohammad Fadel, *Public Reason as a Strategy for Principled Reconciliation: the Case of Islamic Law and International Human Rights Law*, 8 Chi. J. Int'l. L. 1-20 (Summer 2007). (Available on HeinOnline)

No Class – October 24

Meeting 8 – October 31

Topic 7: Pre-Modern Theories of Islamic Government

Mandatory Readings:

- Al-Mawardi, *The Ordinances of Government*, trans. Wafaa Wahba, pp. 1 – 11; 15 – 17; 21 – 22; 32 – 37; 60 – 71; 238 – 259; 260 – 280.
- Al-Ghazali, *The Book of Knowledge*, trans. Nabih Faris, pp. 18 – 22; 29 – 39; 50 – 53.
- Ibn Khaldun, *The Muqaddima*, trans. Franz Rosenthal, pp. 154 – 155.
- Armando Salvatore, “The Collective Pursuit of Public Weal,” *Liberal Modernity, Catholicism, Islam*, pp. 133-72.
- Patricia Crone, *God’s Rule: Government and Islam*, Chapter 16 “The Sunnis”, pp. 219 – 255; Chapter 17 “The Nature of Government”, pp. 259 – 285; Chapter 18 “Functions of Government”, pp. 286 – 314.

Additional Readings:

- Sherman Jackson, *From Prophetic Actions to Constitutional Theory: a Novel Chapter in Medieval Muslim Jurisprudence*, 25 *Int. J. Middle East Stud.* 71 – 93 (1993).
- Sherman Jackson, *Islamic Law and the State*, Chapter 6 “Defining the Legal Jurisdiction of the State: Against the Tyranny of the Government,” pp. 185 – 224.

No Class – November 7 (Reading Week)

Meeting 9 – November 14

Topic 8: Modern Islamic Political Thought

- Charles Kurzman, *Liberal Islam: A Sourcebook*, “Introduction” pp. 3 – 26.
- Charles Kurzman, *Liberal Islam: A Sourcebook*, “Message Not Government, Religion not State” pp. 29 – 36; “Democracy and *Shura*” 96 – 98; “Unveiling and Veiling” pp. 101 – 106; “Minorities in a Democracy” pp. 145 – 154; “Religious Liberty” pp. 161 – 168; “The Medina Document” pp. 169 – 178; *Shar‘a* and Basic Human Rights Concerns pp. 222 – 238; “The Second Message of Islam” pp. 270 – 283; and “Islam and Modernity” pp. 304 – 318.
- Charles Kurzman, *Modernist Islam 1840 – 1940: A Sourcebook*, “Introduction” pp. 3 – 27.
- Charles Kurzman, *Modernist Islam 1840 – 1940: A Sourcebook*, “Introduction” pp. 3 – 27; “The Extraction of Gold, or an Overview of Paris” and “The Honest Guide for Girls and Boys” pp. 31 – 39; “The Surest Path” pp. 40 – 49; “Laws Should Change in Accordance with the Conditions of Nations” and “The Theology of Unity” 50 – 60; “A Lecture in the Club of the Umma Party” pp. 70 – 76; “Democratic Institutions in South Africa” pp. 90 – 92; “Lecture on Teaching and Learning” and “Answer to Renan” pp. 103 – 110; “The Law” 111 – 115; “Government in the Islamic Perspective” 116 – 125; “Reminding the Intelligent, Notifying the Unmindful” pp. 133 – 137; “Democracy: Government by the People, Equality” pp. 138 – 143; “The Muslim Woman: Polygamy Can Be

Prohibited in Islam” 188 – 191; “Turkey Faces West” pp. 215 – 219; “Debate Between a Teacher from Bukhara and a European” pp. 244 – 253; “Islam as a Moral and Political Ideal” pp. 304 – 313; “The Last Word” pp. 325 – 333.

Meeting 10 – November 21

Topic 8: Modern Islamic Political Thought (continued)

Mandatory Readings:

- Khaled Abou el Fadl, *Islam and the Challenge of Democracy*, Joshua Cohen and Deborah Chasman, eds., pp. 3 – 46; pp. 81 – 86; pp. 87 – 92.
- Mohammad Fadel, *Islamic Law Between Reinterpretation and Democracy*, 18 *Yearbook of Islamic and Middle Eastern Law* (2013-15), pp. 44-90.

Meeting 11 – November 28

Topic 9: Muslims, Islamic Law and Europe

Mandatory Readings:

- *Refah Partisi (Welfare Party) and Others v. Turkey*, European Court of Human Rights
- *Layla Şahin v. Republic of Turkey*, European Court of Human Rights
- *The Formation of a European Sharī‘a*, Mathias Rohe in *Muslims in Europe: From the Margin to the Centre*, Jamal Malik (ed.)
- *Unveiling Distribution: Muslim Women with Headscarves in France and Germany*, Pascale Fournier and Gökçe Yurdakul in *Migration, Citizenship, Ethnos* Y. Michal Bodemann and Gökçe Yurdakul (eds.)

Additional Readings:

- Kevin Boyle, *Human Rights, Religion and Democracy: The Refah Party Case*, 1 *Essex Human Rights Review* 1, 1 (2004).
- *Fearful Symbols: The Islamic Headscarf and the European Court of Human Rights in Şahin v. Turkey*, T. Jeremy Gunn.
- Ronan McCrea, *Limitations on Religion in a Liberal Democratic Polity: Christianity and Islam in the Public Order of the European Union*.

Meeting 12 – Date to be determined

Topic 10: The Ontario Shari‘a Arbitration Controversy of 2004 – 2005

Mandatory Readings:

- *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, Prepared by Marion Boyd, Executive Summary, December 2004.
- *Submission of Canadian Council of Muslim Women to Ms. Marion Boyd*, July 30, 2004.
- *Submission of CAIR-CAN to Ms. Marion Boyd*, August 10, 2004.
- *Submission of Muslim Canadian Congress to Ms. Marion Boyd*, August 26, 2004.

- *Submission of Women's Legal Education and Action Fund to Ms. Marion Boyd*, September 17, 2004.
- *The Limits of Private Justice? The Problems of the State Recognition of Arbitral Awards in Family and Personal Status Disputes in Ontario*, Jean-Francois Gaudreault-DesBiens, 16, 1 Perspectives 18 (2005).
- *Were Muslim Barbarians Really Knocking on the Gates of Ontario?: The Religious Arbitration Controversy – Another Perspective*, Natasha Bakht, Summer 2006, *Ottawa Law Review*. (40th Anniv. Ed. Ottawa L. Rev. 67)

Additional Readings:

- *The Politics of Fear and the Decline of Multiculturalism*, Melissa Williams, in *The Ties that Bind: Accommodating Diversity in Canada and the European Union*, edited by John-Erik Fossum, Johanne Poirier & Paul Magnette.
- *Political Liberalism, Islamic Family Law and Family Law Pluralism: Lessons From New York on Family Law Arbitration*, Mohammad Fadel, in *Marriage and Divorce in a Multi-Cultural Context: Reconsidering the Boundaries of Civil Law and Religion*, ed. Joel Nichols.
- Mohammad Fadel, *Muslim Reformists, Female Citizenship and the Public Accommodation of Islam in Liberal Democracy*, 5 *Politics and Religion*, (2012), 2–35.