

Religion and Law

SCAR 3RL3/ARTSSCI 3RL3 C01

Fall 2020

Instructor: Meirav Jones

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Lecture: Tuesdays at 12:30pm (bi-weekly, not compulsory – see class format below)

Office: Online chat room

Office Hours: By appointment

Course Description

Should religious schools receive state funding? Can public servants wear outward symbols of their religions at work? Can a service provider refuse service to gay or transgender people based on their religious feelings? Can public museums refuse to display evidence of evolution? Can I refuse to vaccinate my children based on religious belief? Can I circumcise my son? My daughter? Can I use mind-altering substances in the context of a religious ceremony?

These are all questions to which law has answers – answers that differ from one legal system to another – and supreme courts and lower courts of appeal around the world engage constantly with questions of religion, whether the state is Muslim, Jewish, Catholic, Protestant, or has a strong separation of Church and State. That religion is regulated by the law – ie. that the law will answer these questions for us – is how most of us are used to considering the relationship between religion and the law.

What we are less familiar with than the regulation of religion by the law, is the extent to which the law that regulates religion is itself rooted in and often informed by religion, such sometimes when the law takes a position on religion, it is effectively voicing one religious approach against another from a position of authority. We are also less familiar with the extent to which the “religion” regulated by law is defined *as* religion by the law itself, such that to some degree, the law regulates the religion it creates.

In this course we will learn about the complex relationship between religion and the law, as it evolved in the modern West from the Hebrew Bible, through early and later Christianity including Catholic, Protestant, and secular Europe, to American Colonies, the United States, Canada, and International Law. We will learn to critically-approach issues we hear about in the news, from legislation of head-coverings to arguments that defending religious freedom justifies intervening (or not) in conflicts abroad.

While the course will focus on Western thought, politics and law, and approaches to religion, the religions we will see brought into the law include non-Western religions, and this, too, will be critically approached. Those interested in non-Western religion and/or law will be invited to bring alternative approaches into the conversation, and to explore commonalities and differences based on the different approaches of religions themselves, different challenges different societies have, and will be able to reflect on the effects of colonial history on understandings of the religion, the secular, and the law.

Course Objectives

By the end of the course students will be able to:

- Formulate a complex understanding of the multifaceted relationship between religion and the law, as it has developed throughout Western history.
- Read and understand Canadian and European legislation and US Supreme Court decisions on religious issues, including the different positions represented in the decision-making process and their global and historical dimensions.
- Critically read domestic and international news and opinion pieces that relate to the subject of religion and the law.
- Voice educated positions on contemporary issues, based on understanding complexity.

Required Materials and Texts

There will be no textbook for this course. Materials will be uploaded weekly to Avenue to Learn. Materials will include legislation, court decisions, religious texts, classic works of political theory, YouTube videos, Scholarly articles, and academic book chapters. Materials for week 1 appear below.

Class Format

Religion and Law will take place in a hybrid format.

There will be a bi-weekly class meeting on Zoom (up to half an hour), always on Tuesdays at 12:30pm, where the lecturer will describe the direction the course will be taking including where we have come from and where we are going. At the meeting we will read some of the readings together and open up questions for discussion. Students will also have the opportunity to ask questions for the benefit of the group. Attendance is not compulsory, but will be helpful and hopefully enjoyable. Any narratives or materials presented at the meeting will be uploaded as text to Avenue to Learn, and readings will be from the syllabus. Questions raised at the meetings will be uploaded to the discussion board.

Other than the bi-weekly meeting, course materials will be uploaded weekly to Avenue to Learn. These will include:

- Lectures (15-20 minutes)
- Youtube videos
- Readings, including biblical and classic religious texts, legal and political philosophy, court decisions, legislation, and opinion pieces.

Materials for each week will be uploaded at 12:30pm on Tuesday, with updates from bi-weekly meetings posted at 1:30pm where relevant.

The class will also have an active discussion board that will be monitored by the instructor and/or TA.

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The course should take 3-4 hours per week, including bi-weekly meetings, listening to lectures, reading, participating in the discussion board, but possibly not including graded writing assignments. There will be four reading reports due in weeks 3, 5, 7, and 11, and one final paper due at the end of the course.

Course Evaluation: Overview

Students will be evaluated based on:

Participation - 20%

Reading Reports - 30% (due: 22 Sept., 6 Oct., 27 Oct., 24 Nov.)

Final Paper - 50% (due: 22 Dec.)

Course Evaluation: Details

Participation. The participation grade will be determined by the student's active presence in Zoom meetings and/or discussion groups. There will be no penalty for not participating in all media, however to obtain a high participation grade, students will need to make their presence known, either by video presence (camera on) at zoom sessions, and/or by vocalizing perspectives and opinions on the discussion board.

Reading Reports. Personal responses to the readings, guided by questions from the instructor, will be due in week 3, week 5, week 7 and week 11. The three highest-graded reports will be considered towards the reading report grade. If fewer than four reports are submitted, students will lose 5% of the overall grade. Reports may be video-recorded (4-5 minutes) or written (2-3 double-spaced pages).

Final paper. The final two weeks of the course will be devoted to reading the news, broadly conceived, so bringing a new perspective on current affairs in the media that engage religion and the law. The final paper, to be worked on in these two weeks and submitted within two weeks of the end of the course, should be an analysis, of 8-10 pages, of a recent issue or event. Students will be expected to demonstrate an understanding of key concepts they have learned in the course, identify religious perspectives at play, critically use terms such as "secular" and "liberal", and offer their own voice in their analysis.

Weekly Course Schedule and Readings (tentative)

Week 1, Commences Tuesday September 8, 12:30pm (with bi-weekly Zoom meeting)

Introduction: Approaches to Religion and Law Exemplified in Quebec's Headscarf Ban

In this first week we will survey different models of law and religion in diverse liberal societies. I will introduce the claim that while modern liberal society is generally considered secular, the secular may not

be absent religion. We will use Quebec's "headscarf ban" as legislation that exemplifies the contemporary and local importance of questions of religion and the law, and some of what is at stake.

Readings and Materials:

I. Required Reading:

Benjamin Berger, *Laws' Religion: Religious Difference and the Claims of Constitutionalism* (University of Toronto Press, 2005), Introduction and Chapter 1.

II. Recommended Reading:

Myrian Hunter-Henin, "Why the French Don't Like the Burqa: Laicity, National Identity, and Religious Freedom," *The International and Comparative Law Quarterly* 61:3 (2012), pp. 613-639.

<https://www.jstor.org/stable/pdf/23279928.pdf>

Turgeon L, Bilodeau A, White SE, Henderson A, "A Tale of Two Liberalisms? Attitudes toward Minority Religious Symbols in Quebec and Canada," *Canadian Journal of Political Science* 52 (2019), 247–265.

<https://pdfs.semanticscholar.org/b646/6f8e87353280ded2912b81a8d63581b82507.pdf>

III. Class Materials: Media Accounts and Legal Documents

The Atlantic: <https://www.theatlantic.com/international/archive/2019/07/quebec-bans-religious-symbols/593998/>

Washington Post: https://www.washingtonpost.com/world/the_americas/quebec-ban-on-religious-symbols-would-fall-heavily-on-hijab-wearing-teachers/2019/04/26/44cfd560-5633-11e9-aa83-504f086bf5d6_story.html

NY Times: <https://www.nytimes.com/2020/03/07/world/canada/quebec-religious-symbols-ban.html#:~:text=Fran%C3%A7ois%20Legault%2C%20the%20right%20cleaning,neutrality%20of%20public%20sector%20workers.>

CBC News: https://youtu.be/N7_2ru-u5RA?t=439

Bill 21 (passed, 2019):

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2019C12A.PDF>

Bill 62 (passed but stuck in legal challenge, 2017):

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2017C19A.PDF>

Bill 94 (Tabled in 2010 but not passed before government failed to be reelected):

Download from <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projets-loi-39-2.html>

Week 2, Commences Tuesday September 15, 12:30pm

The Hebrew Bible and its legislating God: Natural, Normative, and Positive Divine Law

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In Week 2 we will begin digging deeply into religion and the law by looking at how Judaism and Christianity revolutionized legal thinking, and the very law that we today see as governing religion.

Select Bibliography (precise readings TBD):

Exodus 19-20, Deuteronomy 4-5 (readings from King James Version)

Philo, On the Account of the World's Creation Given by Moses (known as On Creation), accessible here in Latin and English: <https://ryanfb.github.io/loebolus-data/L226.pdf> (be sure to read only the relevant pages)

Sample Ancient Near Eastern Texts (possibly from Christine Hayes' work, or other translations)

Paul's Romans (or Taubes on this)

Week 3, Tuesday September 22, 12:30pm (with bi-weekly Zoom meeting)

The modern secular state and its legislating... God?

In this week we will look at the foundations of the liberal secular political order, and explore the extent to which traditionally religious approaches to divine positive law and natural law are foundational to modern sovereignty and modern international law. What difference does it make to how we understand the relationship between religion and law, if secular modernity is grounded in religious ideas?

Select Bibliography (precise readings TBD):

Thomas Hobbes, Leviathan (1651), selections

Hugo Grotius, On the Laws of War and Peace (England, 1644 [Latin version, 1625])

Week 4, Commences Tuesday September 29, 12:30pm

International Human Rights Law and the image of God

Human rights are today promoted as universal and liberal, and as trumping particular and traditional political ideas where there is a conflict between these and universal rights. Looking at the history of the International Declaration of Human Rights, however, is revealing with regards to the role of religious thought – and particularly Catholic thought and agreement among Western and non-Western religions – in legislating human rights in the first place.

Select Bibliography (precise readings TBD):

Universal Declaration of Human Rights: <https://www.un.org/en/universal-declaration-human-rights/>

Jacques Maritain, Selections from *The Person and the Common Good*.

Samuel Moyn, Selections from *Christian Human Rights*

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Week 5, Commences Tuesday October 6, 12:30pm (with bi-weekly Zoom meeting)

Getting God out of the Law: Foundations of Toleration, Disestablishment and Religious Freedom in America

Roger Williams and John Locke, writing in the seventeenth century from England and Massachusetts respectively, both pioneered toleration as a political idea, and for both thinkers this involved getting religion out of the law. Both thinkers were guided by religious ideas, and getting to know their important work can help us understand some of the foundations of disestablishment and freedom of religion, and its limits.

Select Bibliography (precise readings TBD):

John Locke, Letter Concerning Toleration

Available here: pp. 34-67, will be uploaded as a file of the letter alone.

http://files.libertyfund.org/files/2375/Locke_1560_EBk_v6.0.pdf

Roger Williams, The Bloudy Tenent of Persecution (1644)

Teresa Bejan, "Evangelical Toleration," *The Journal of Politics* 77:4 (2015)

Mid-Semester Recess October 12-18

Week 6, Commences Tuesday October 20, 12:30pm

Religious Freedom in the US, the Beckett Fund for Religious Liberty, and the Hobby Lobby Case

What religious freedom was, in the minds of its architects and a principle in the international declaration of human rights, is not necessarily what it has become. In fact, religious freedom in American constitutional law is often used to make exceptions to other legal norms. What are some of the agendas behind religious freedom today, what are its effects, and how does this further complicate the relationship between religion and the law in our world?

Select Bibliography (precise readings TBD):

Burwell v. Hobby Lobby

Hobby Lobby story told by the Beckett Fund for Religious Liberty – their case from their perspective:

<https://www.youtube.com/watch?v=-iqn4u471kk>

Amy Howe, Court rules in favor of for-profit corporations, but how broadly? In Plain English", SCOTUS BLOG: <https://www.scotusblog.com/2014/06/court-rules-in-favor-of-for-profit-corporations-but-how-broadly-in-plain-english/>

NY Times Coverage: <https://www.nytimes.com/2014/07/01/us/hobby-lobby-case-supreme-court-contraception.html>

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Excerpt from Wendy Brown, "Religious Freedom's Oxymoronic Edge," in *The Politics of Religious Freedom*

Chapter from Andrew Sullivan, "The Impossibility of Religious Freedom"

Week 7, Tuesday October 27, 12:30pm (biweekly Zoom meeting):

Religious Liberty in the US Continued: LGBT Marriage, Navigating Legal and a Religious Construct

Select Bibliography (precise readings TBD):

Obergefell v. Hodges

Howe, Amy. 2016. "In Historic Decision, Court Strikes down State Bans on Same-Sex Marriage: In Plain English." SCOTUSblog.

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

Reid, Charles J. "Marriage: Its Relationship to Religion, Law, and the State." *Jurist* 68 (2008): 252

Green, Emma. 2016. "Can States Protect LGBT Rights Without Compromising Religious Freedom?" *The Atlantic*, January 6. [Link]

Week 8, Commences Tuesday November 3, 12:30pm

The Case of the Jewish Free School: From Toleration to Religious Freedom, Lost in Translation?

Select Bibliography (precise readings TBD):

UK Supreme Court Decision: <https://cpb-us-e1.wpmucdn.com/sites.northwestern.edu/dist/c/1549/files/2019/01/jews-free-school-decision-14l2nm7.pdf>

Heather Miller Rubens, "'Something has Gone Wrong': The JFS Case and Defining Jewish Identity in the Courtroom," *Maryland Journal of International Law* 29, no. 1 (2014): 368-418.

Christopher McCrudden, "Multiculturalism, Freedom of Religion, Equality, and the British Constitution: The JFS Case Considered," *International Journal of Constitutional Law* 9, no. 1 (2011): 200-229.

J.H.H. Weiler, "Discrimination and Identity in London: The Jewish Free School Case," *Jewish Review of Books* no. 1 (Spring 2010).

Marc Galanter, "A Dissent on Brother Daniel," *Commentary* (July 1963): 10-17.
<https://www.commentarymagazine.com/articles/marc-galanter/a-dissent-on-brother-daniel/>

Week 9, Commences Tuesday November 10, 12:30pm (biweekly Zoom meeting)

Law Defining Religion: New Religions and Civil Religion

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In this unit we will ask about the role religion takes on in the state, as law-defined, and the new religions that enter through and for the sake of law. What does this say about the respective categories of religion and law, and how meaningful they and enduring they are?

Select Bibliography (precise readings TBD):

Urban, Hugh B. 2011. *The Church of Scientology: A History of a New Religion*. Princeton University Press. Chapter 5

Wenger, Tisa. "'We Are Guaranteed Freedom': Pueblo Indians and the Category of Religion in the 1920s." *History of Religions* 45.2 (2005): 89–113. [Link].

U.S. v. Seeger, 1965 (excerpts)

Robert Bellah, "Civil Religion in America"

Kao and Copulsky, "The Pledge of Allegiance and the Meanings and Limits of Civil Religion"

Week 10, Tuesday November 17, 12:30pm

Law Defining Religion: Indonesia's Blasphemy Laws

Unlike the US constitution, the Indonesian system leaves little space for new religions or even for new religious interpretation. While we saw some absurdity and some loss of meaning of the category of religion in the US system, are there ways to define religion traditionally, without becoming legislators of religious matters? An Indonesian blasphemy case brings these questions to mind as it offers an alternative understanding of religious freedom and toleration.

Select Bibliography (precise readings TBD):

Selong District court decision on Bakri case: <https://cpb-us-e1.wpmucdn.com/sites.northwestern.edu/dist/c/1549/files/2017/01/Selong-District-Court-Judgment-16oxzas.pdf>

Fatwa (verdict of Islamic law): <https://cpb-us-e1.wpmucdn.com/sites.northwestern.edu/dist/c/1549/files/2017/01/MUI-Fatwa-vnmhas.pdf>

Kari Telle, "Faith on Trial: Blasphemy and 'Lawfare' in Indonesia," *Ethnos* 83:2 (2018), 371-391.

Kari Telle, "False Prophets? Ontological Conflicts and Religion Making in an Indonesian Court" <https://www.cmi.no/publications/file/5854-critical-anthropological-engagements-in-human.pdf>

Week 11, Commences 12:30pm November 24 (biweekly Zoom meeting)

French Secularism and the Headscarf Revisited

Having studied the complex relationship between religion and the law, laws governing religious head-coverings have greater context. In this unit we will return to the question of headcoverings from a

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contemporary post-secular perspective. What new perspectives are women now bringing into the discourse? Can Laïcité hold, when the secular is in decline?

Select Bibliography (precise readings TBD):

Heeba Ahmed and Muna Eltahawy on the headscarf ban in France:

<https://www.youtube.com/watch?v=kWJRam64dQY>

Kuru, Ahmet T. 2009. *Secularism and State Policies toward Religion: The United States, France, and Turkey*. Cambridge; New York: Cambridge University Press. Chapter 5.

Taylor, Charles. 2010. "The Meaning of Secularism." *Hedgehog Review*. [Link]

Lilla, Mark. 2016. "France on Fire." *The New York Review of Books*.

Jansen, Yolande. 2006. "Laïcité, or the Politics of Republican Secularism." In *Political Theologies: Public Religions in a Post-Secular World*, edited by Hent de Vries and Lawrence Eugene Sullivan, 475–763. Fordham Univ Press.

<https://www.tandfonline.com/doi/abs/10.1080/15288170802285439>

<https://www.jstor.org/stable/3318146?seq=1>

Weeks 12-13, Weeks commencing 12:30pm December 1, 12:30pm December 8

Reading the news, working on final papers.

Course Policies

Submission of Assignments. Assignments will be submitted on Avenue to Learn. All assignments are due at 12pm on Tuesday. They should be submitted in PDF format, or video submissions in MP4, AVI, WMV, or MOV format, or as a link to YouTube. The final paper for the course is due 2 weeks after the end of the course, so Tuesday December 22.

Grades. Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B

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MARK	GRADE
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments. Late assignments will forfeit 5% of the grade for that assignment for each day late. Assignments will not be accepted more than a week late.

SENATE-APPROVED ADVISORY STATEMENTS

ACADEMIC INTEGRITY

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behaviour can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>.

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

AUTHENTICITY / PLAGIARISM DETECTION

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does

not submit work to the plagiarism detection software. **All submitted work is subject to normal verification that standards of academic integrity have been upheld** (e.g., online search, other software, etc.). For more details about McMaster's use of Turnitin.com please go to www.mcmaster.ca/academicintegrity.

COURSES WITH AN ONLINE ELEMENT

Some courses may use online elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in a course that uses online elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

ONLINE PROCTORING

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

CONDUCT EXPECTATIONS

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the "Code"). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online**.

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students' access to these platforms.

ACADEMIC ACCOMMODATION OF STUDENTS WITH DISABILITIES

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University's [Academic Accommodation of Students with Disabilities](#) policy.

REQUESTS FOR RELIEF FOR MISSED ACADEMIC TERM WORK

McMaster Student Absence Form (MSAF): In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar "Requests for Relief for Missed Academic Term Work".

ACADEMIC ACCOMMODATION FOR RELIGIOUS, INDIGENOUS OR SPIRITUAL OBSERVANCES (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances

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should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office **normally within 10 working days** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

COPYRIGHT AND RECORDING

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors.

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

EXTREME CIRCUMSTANCES

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.

NOTES FOR ALL ARTS & SCIENCE COURSES

1. Some of the statements above refer to a "Faculty Office"; please note that the Arts & Science Program Office serves in this capacity.
2. It is the responsibility of students to check their McMaster email regularly. Announcements will be made in class, via A2L, and/or via the course email distribution list.