

LEGAL STUDIES R1B: LAW, RELIGION, AND CULTURE

Fall 2015

Tuesdays and Thursdays, 8-9:30 am

115 Kroeber

Course Syllabus

Instructor: Kathryn Heard

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Office hours: Tuesdays, 10-11:30 am (Café Zeb in Boalt Hall), or by appointment

Course website: <https://bcourses.berkeley.edu>

Course Description and Objectives

In this reading and composition seminar, we will examine historical and contemporary examples of law's regulation of religion to think about the values of freedom, liberty, and equality in democratic societies. We will read a range of classic texts (from John Locke to John Stuart to Karl Marx) as well as watershed legal cases (concerning such issues as polygamy, religious symbols in the workplace, the consumption of hallucinogens, gender equality, and more). We will also analyze the representation of religion in modern culture by reviewing popular reactions to cases before the Supreme Court, street art, and ethnographical accounts of faith-based life. Some of the questions we will explore include: What "counts" as religion in the eyes of the law? How has the relationship between religion and the law been imagined in certain traditions of liberal thought, and how do these traditions account for religious and cultural differences? How can recent legal and social developments help us rethink some of these earlier formations? Can religious liberty or cultural freedom ever be secured within a state?

This course will also serve as an introduction to legal studies. Thus, what will be different about the approach of this course, as opposed to courses in sociology, political science, or religious studies, is the attention paid to how the law has served to shape both religious practices and normative values like freedom and equality. In addition to scholarly texts, students will learn to read and analyze excerpts of both cases and statutes that govern the presence of religion in liberal democracies.

Classroom activities will provide a space for students to tease out the complexities of how the law interacts with and distances itself from religion, both individually and collaboratively. Significant class time and office hours will be devoted to developing and honing the skills of essay writing and critical thinking. Students should emerge from this class able to read a variety of text types analytically and critically; to distinguish valid interpretations or arguments from specious ones; to draft convincing interpretative arguments in clear language; to read their own writing with a critical eye; and to give helpful, responsible feedback to colleagues on their written work.

Course Materials

John Locke, *A Letter Concerning Toleration* (Hackett Edition)
John Stuart Mill, *On Liberty* (Hackett Edition)
Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom*
Diana Hacker, *A Writer's Reference* (7th Edition)
Reader, available at Copy Central on Bancroft Avenue
Additional materials to be shown or distributed in class

Office Hours

My office hours are Tuesdays from 10-11:30 am, or by appointment, in Café Zeb in Boalt Hall. I use <http://wejoinin.com/kheard> for electronic sign-up; this method assures that I will be able to give each student my undivided attention. (Note: I may not be present at my office hours if no one has signed up by Tuesday morning at 8 am.) Please think of me as a resource – I am here to help you with your writing, understanding of the texts, class participation, interpretation and application of current events to the material covered in the course, your adjustment to life at Berkeley, and much more. If you cannot make my office hours, I am happy to schedule an alternative meeting time.

Grading

The university requires that all reading and composition courses be taken for a letter grade; a C- or better is needed to fulfill the requirement. Your grade will be determined by the following rubric:

Assignment 1 (diagnostic essay, 3 pages)	5%
Assignment 2 (argumentative paper, 3-5 pages)	20%
Assignment 3 (hypothetical paper, 4-6 pages)	25%
Assignment 4 (in-depth critical analysis paper, 8-10 pages)	30%
Attendance and participation	20%

Assignments

Written Work

As this course is designed to fulfill the second half of Berkeley's reading and composition requirement, each student will be asked to write at least 19 total typewritten pages, with at least an equal number of pages devoted to preliminary drafting and revising. In this course, the pages will be allocated as follows:

- **Assignment 1: Diagnostic essay (3 pages) – due Sep 8.**
This assignment serves as an introduction to the course. You will be asked to respond to a prompt handed out during the first full week of instruction; your answer will aid in assessing the class's collective writing skills.
- **Assignment 2: Argumentative paper (3-5 pages) – draft due Sep 29, final due Oct 6.**

This paper will prompt you to develop a clearly defined and persuasive argument concerning one (or more) of the texts we have read in the first unit of the course. I will give you the prompts well in advance of the draft paper's due date.

- **Assignment 3: Hypothetical paper (4-6 pages) – draft due Nov 10, final due Nov 17.**
This paper will ask you to marshal the theoretical texts discussed in unit one, and the legal reasoning covered in unit two, to respond to a hypothetical religious challenge to the law. I will ask you to assess the impact of the law on religious individuals, the viability of religious claims for freedom or liberty, and, ultimately, make a recommendation for the challenge's success or denial.
- **Assignment 4: In-depth critical analysis paper (8-10 pages) – proposal due Nov 3, prospectus due Dec 3, oral presentation TBD, final due Dec 16.**
This paper will be cultivated over a series of short assignments that will be explained further as their respective due dates approach. You will have the ability to choose a topic within the realm of law, religion, and culture that is of particular interest to you; from this topic, you will be asked to develop an in-depth analytic argument through guided research.

Formatting

All written work will be due in lecture in hard copy format on the date assigned (unless where noted). Your papers should be formatted as follows: 1-inch margins (top, bottom, left, and right), 12-point Times New Roman font, and double-spaced line formatting.

Peer Review

Each of the three formal papers you will write for this class will be substantially revised based on peer review. Please bring *two* clean copies of a given draft on peer revision day, one for your review partner and one for me. Drafts are intended to be *completed essays* – including introduction, main claim, argument, and conclusion – that meet the length requirement but may be less polished than a revised essay. Revised papers are not just drafts that have been proofread. They should demonstrate your ability to re-think the essay and show a considerable amount of re-writing and re-structuring. The key to good writing is re-writing!

Late Policy

If you believe you will require additional time to complete any of your papers, you should let me know *as soon as you know* (ideally, this will be one week in advance of the due date). I understand that emergencies do arise, but do your best to plan ahead for an extension if you feel you will need one. If your assignments are late, they will be subjected to a one grade step deduction for each day it is late.

Plagiarism

I follow UC-Berkeley's policy on plagiarism. Broadly understood, plagiarism is the presentation of another's words or ideas as one's own without attributing the proper source. Plagiarism includes copying material from books and journals, as well as taking material from the Internet. Plagiarism also includes privately purchasing or obtaining papers from others, which one then presents as one's own. Any material taken word-for-word from another source must be placed in quotation marks and footnoted or cited within the text. You can use ideas and information from

other authors without directly quoting from them, but you must acknowledge them in your footnotes or parenthetical documentation. For any student discovered to have committed plagiarism, I may decide to impose a proportionate sanction for the infraction – for example, for a small plagiarism infraction, you may be required to resubmit an assignment for reduced credit; for a more serious infraction, you may receive reduced credit or a zero on an exam or paper; or for an egregious infraction, you may receive a reduced final grade or failing grade in the course.

Attendance and Participation

Attendance

Due to the collaborative nature and intense pace of this course, your consistent attendance and participation are essential. At the beginning of each class, I will take roll; however, you are allowed up to *three* absences over the course of the semester, no questions asked. (Note: this policy does not extend to peer revision days.) Any absence after the third will reduce your overall attendance and participation grade by one grade step (for example, from a B+ to a B). This applies to any absence for any reason (illness, family emergency, too tired to come to class, etc.); sleeping while present in class will count as an absence. If you have any ongoing concerns (illness, parenting or familial responsibilities, etc.) or something troubling arises, contact me as soon as possible – we will work together to come to an agreeable solution.

Active Participation

To receive full credit for participation, you should regularly contribute to both small and large group discussions. I expect you to come prepared with questions and comments about the course materials for each session. These questions can be efforts to clarify concepts, relate theories to contemporary events, weigh readings against one another, etc. I will ask people to use their questions to stimulate discussions, so please come prepared. By examining these questions and concerns as a group, we will help each other make sense of a subject that can – at times – be confusing, intimidating, and difficult. If you are, for any reason, uncomfortable speaking in class, please feel free to come discuss the texts during my office hours and we can work together to develop a strategy for your participation.

Classroom Climate

I envision the classroom as a cooperative learning community with an atmosphere of active, mutual respect for all. Given that this course covers sensitive material, I have zero tolerance for belittling, harassment, or abusive and inappropriate language and behavior.

Electronic Etiquette Policy

To minimize distractions, please turn off all electronic devices before class begins. This includes laptops, tablets, and phones. I recognize that writing by hand may be difficult for some, but some are also bothered by keyboard tapping. There is also the inevitable temptation to text, check email, and surf the web. As with other temptations subversive to our aims, it is best to remove them. I ask that you take notes the old fashioned way, with pen and paper. If you need to use a laptop or a recording device because of a disability, please send me an email or speak with me after class. For more on the benefits of a no-laptops policy, see: <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>.

Email

I will endeavor to respond to any questions you send me within 24 hours, although I may take up to 48 hours over the weekend. While you should feel free to contact me with any questions regarding the course, I will not engage in substantive discussion about the material over email. If you would like to talk to me about the reading or would like to discuss a particular topic further, please ask in class, come to office hours, or schedule an appointment.

Disability Accommodations

Every student deserves a suitable learning environment. If you have a disability that needs accommodation, please provide me with an accommodation letter from the Disabled Students Program (DSP) within the first two weeks of class. If you have more immediate concerns regarding your DSP accommodation, do not hesitate to send me an email or, if you feel comfortable doing so, speak with me before or after class.

COURSE SCHEDULE

Unit 1: Frameworks for Thinking about Law, Religion, and Culture

Week 1: Why should we study law's intersection with religion and culture?

Aug 27. Introductory meeting

Emily Bazelon, "What are the Limits of 'Religious Liberty'?" pp. 1-5

Emma Green, "American Religion: Complicated, Not Dead," pp. 1-9

Explore: <http://www.pewforum.org/religious-landscape-study/>

Week 2: What do we talk about when we talk about law, religion, and culture?

Sep 1. Defining (and troubling) our terms

Marianne Constable, "On Not Leaving Law to the Lawyers," pp. 69-83

Jonathan Z. Smith, "Religion, Religions, Religious," pp. 269-284

Tomoko Masuzawa, "Culture," pp. 70-93

Sep 3. Applying our terms; the fundamentals of prewriting

Winnifred Fallers Sullivan, "Reforming Culture: Law and Religion Today," pp. 319-337

Diana Hacker, "C1: Planning," pp. 3-12

John R. Trimble, "Thinking Well," pp. 2-11

Week 3: How do we govern a religiously plural state?

Sep 8. The rise of secularism (assignment 1 due)

John Locke, *A Letter Concerning Toleration*, pp. 11-12, 13-22, 26-49, 54-69

Sep 10. Power and the toleration of difference; crafting a thesis statement

Kirstie McClure, "Difference, Diversity, and the Limits of Toleration," pp. 361-391

Michael Walzer, "The Politics of Difference," pp. 165-176

Diana Hacker, "C2: Drafting," pp. 14-18

John R. Trimble, "Getting Launched," pp. 13-24

Week 4: How secular is secular government?

Sep 15. Historical discourses on religious liberty under the law

Isaac Backus, "An Appeal to the Public for Religious Liberty," excerpts

Thomas Jefferson, "An Act for Establishing Religious Freedom," pp. 1-2

John Leland, "The Rights of Conscience Inalienable," excerpts

Thomas Jefferson, "Letters to the Danbury Baptists," pp. 142-146
Political cartoon of Thomas Jefferson

Sep 17. Crafting the supreme law of the land; writing with an audience

United States Constitution (Preamble, Articles, and Amendments)

Robert N. Bellah, "Religion and the Legitimation of the American Republic," pp. 1-23

Wayne C. Booth et al, "Thinking in Print" and "Connecting with Your Reader," pp. 9-25

Week 5: How do we balance religious liberty against the common wellbeing?

Sep 22. Liberty and the freedom of conscience

John Stuart Mill, *On Liberty*, Chapters 1-3

Sep 24. A legal challenge for religious liberty: polygamy

John Stuart Mill, *On Liberty*, Chapter 4

Reynolds v. United States (1878), excerpts

Sarah Song, "Polygamy in America," pp. 142-168

Week 6: Writing workshop: drafting, editing, and revising

Sep 29. Peer review (rough draft of assignment 2 due – bring two copies to class)

Richard Straub, "Responding – Really Responding – to Other Students' Writing," pp. 137-146

Diana Hacker, "C3: Revising," pp. 18-23

Wayne C. Booth et al, "Revising Your Organization and Argument," pp. 203-212

Oct 1. Library research tour

Diana Hacker, "R: Researching," pp. 317-352

For our library research tour, we will be meeting in 350C Moffitt at 8:10 am with librarian Cody Hennesy. Please be sure to bring the following: 1) several broad research topics in which you are interested and 2) your Cal ID.

Week 7: Can religious freedom ever be secured through secularism?

Oct 6. The unfreedoms of secular government (assignment 2 due)

Karl Marx, "On the Jewish Question," pp. 26-46

Oct 8. Modern life, public religions

Peter Berger, "The Desecularization of the World: Resurgent Religion and World Politics," pp 1-18

Winnifred Fallers Sullivan, "We All Religious Now. Again." pp. 1181-1198

Jürgen Habermas, "Religion in the Public Sphere," pp. 1-25

Unit 2: Towards a Post-Secular Jurisprudence of Religious Freedom

Week 8: What does it mean to “freely exercise” religion?

Oct 13. Constitutional challenges to the First Amendment; how to formulate an argument

Sherbert v. Verner (1963), excerpts

Diana Hacker, “A2: Constructing Reasonable Arguments,” pp. 67-84

Wayne C. Booth et al, “Making Good Arguments” and “Making Claims,” pp. 108-129

Oct 15. Contracting – and then expanding – the freedom of religious expression

Employment Division v. Smith (1990), excerpts

Religious Freedom Restoration Act (1993)

Selections from court transcripts and interviews with Al Smith (distributed via bCourses)

Week 9: What counts as religious discrimination?

Oct 20. Religious Discourse and marriage equality

Obergefell v. Hodges (2015), excerpts

Erik Eckholm, “Conservative Lawmakers and Faith Groups Seek Exemptions,” pp. 1-4

Conor Friedersdorf, “Should Mom-and-Pops that Forgo Gay Weddings Be Destroyed?” pp. 1-11

Janet Jakobsen and Ann Pellegrini, “Not Born That Way,” pp. 75-101

Oct 22. NO CLASS

No assigned readings – please use this time to get ahead on next week’s readings and brainstorm ideas for your final research project.

Week 10: Can gender equality be reconciled with religious freedom?

Oct 27. Gender, culture, and religion

Susan Moller Okin, “Is Multiculturalism Bad for Women?” pp. 133-149

Aziza al-Hibri, “Is Western Patriarchal Feminism Good for Minority Women?” pp. 151-156

Leti Volpp, “Feminism v. Multiculturalism,” pp. 1181-1218

Joan Scott, “Sexularism,” pp. 1-13

Banksy, “How Do you Like Your Eggs?” (street art) (to be discussed and distributed in class)

Oct 29. A legal test for religious liberty, part two: religious dress; choosing a research topic

Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores (2015), excerpts

Oral arguments in *EEOC v. Abercrombie* (distributed via bCourses)

Title VII of the Civil Rights Act of 1964, excerpts

Wayne C. Booth et al, “From Topics to Questions” and “From Questions to Problems,” pp. 35-67

Week 11: How do we balance religious liberty against the common wellbeing? (Revisited)

Nov 3. Visions of “bad” culture (single paragraph proposal due)

Jürgen Habermas, “Religious Tolerance: The Pacemaker for Cultural Rights,” pp. 5-18

Leti Volpp, “Blaming Culture for Bad Behavior,” pp. 89-116

Church of the Lukumi Babalu Aye v. City of Hialeah (1993), excerpts

Nov 5. A legal test for religious liberty, part three: healthcare (mock trial)

Burwell v. Hobby Lobby (2014), excerpts (selections and protocol to be distributed in class)

Week 12: Writing workshop: drafting and supporting evidence

Nov 10. Peer review (rough draft of assignment 3 due – bring 2 copies to class)

John R. Trimble, “Middles,” pp. 32-48

Wayne C. Booth et al, “Assembling Reason and Evidence” and “Acknowledgments and Responses,” pp. 130-149

Nov 12. Collaborative workshop on developing a research project

Wayne C. Booth et al, “Engaging Sources,” pp. 84-99

Diana Hacker, APA/CMS Tab (please familiarize yourself with formatting and citations)

Week 13: Can modern law ever guarantee religious freedom?

Nov 17 (Im)possibilities of religious freedom (assignment 3 due)

Winnifred Sullivan, *The Impossibility of Religious Freedom*, Introduction and Chapters 1-2

Nov 19. (Im)possibilities of religious freedom

Winnifred Sullivan, *The Impossibility of Religious Freedom*, Chapters 3-5

Unit 3: Research Presentations

Week 14: Research presentations

Nov 24. Class presentations of research projects

No assigned reading – work on your prospectus; schedule individual meetings for RRR week.

Nov 26. NO CLASS – Thanksgiving

No assigned reading.

Week 15: Research presentations

Dec 1. Class presentations of research projects

No assigned reading – work on your prospectus

Dec 3. Class presentations of research projects (prospectus due)

No assigned reading – work on your prospectus