

# RELIGION, MORALITY AND CONTESTED CLAIMS FOR JUSTICE

Georgetown University Law Center | Fall 2018 (2 credit seminar)  
Cross Listed: Georgetown University GOVT-688 Seminar (3 credits)  
Thursdays, 10:00 a.m. – 12:00 p.m. | Hotung 5013 (Law Campus)

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**Office Hours:** Michael Kessler: by appointment at Law or Main campus  
Amy Uelmen: Thursdays 12:30 – 2:00 at Law Campus, and by appointment

**Course Description:** This interdisciplinary seminar will examine theories of justice and the relationship between law and morality in light of religious and theological visions of the good life and accounts of order. Materials and discussions will probe questions such as: What are the moral values underlying the law? How does the law achieve justice or fall short of this goal? How can moral judgments be brought to bear, if at all, in modern, secular legal institutions and in the formation of public policies?

Throughout the class we will have opportunities to consider how morality and ideas of justice shape, and are shaped by, contemporary legal problems such as: the legal regulation of sexual activity and marriage, controversies regarding federally mandated health insurance, abortion, euthanasia and physician assisted suicide, immigration, regulation of financial institutions, and/or other issues which emerge as topics of particular student interest.

Particular attention will be paid to understanding methods for dialogue across differing thought systems and disciplines and to developing the skills for communication across claims that would otherwise tend to generate religious and political polarization.

This seminar requires a series of short reflection and reaction papers which aim to facilitate thoughtful and active student participation in seminar discussions throughout the course. This course does not satisfy the JD Upper Level Writing Requirement.

**Required Texts:** All of the readings will be posted on TWEN (the Westlaw class management system). If you do not have a Westlaw password, please see one of the professors.

## **Course Requirements:**

- 1) Thoughtful preparation for and participation in class discussion each week.
- 2) Required Weekly Written Submissions:
  - According to the scheme and guidelines at the end of this syllabus, choose five class discussion topics on which you will write five “reflection” papers that thoughtfully engage the material, and raise issues and questions that should enrich our class discussion.
  - With the exception of the first class, for the “off” weeks in which you do not write a reflection paper, you must submit a one-page (300-400 words) “reaction” to the reading assignments in which you may raise issues you hope the class discussion will probe, pose questions, draw connections with material in your other classes, point out tensions and contradictions, etc. For the last block, Class 12 and Class 13 (Section 6), write short reactions for both.
  - **DEADLINE: WEEKLY REFLECTIONS AND REACTIONS MUST BE SUBMITTED TO THE TWEN ASSIGNMENT DROPBOX NO LATER THAN 9AM ON THE WEDNESDAY BEFORE OUR THURSDAY CLASS.**
- 3) **FOR LAW STUDENTS:** Final 6-8 Page (double-spaced) Reflection Paper (not a research project).  
**FOR MAIN CAMPUS STUDENTS ENROLLED IN THE 3 CREDIT GOVT CLASS:** You will be required to write a 15 page final paper more typical of a graduate seminar. Further details should be discussed with the instructors.

### **TOPICS FOR READINGS AND CLASS DISCUSSION**

Notice that the syllabus lists only twelve course meetings. **There will be no class on November 1.** Our thirteenth session will be covered by extending two of our class sessions with an hour for small group discussions. The default will be to arrive an hour earlier (9:00 a.m.), with a possibility for groups to decide on an alternative time prior to class that works well for all members of the group.

Distribution of writing assignments: Within each section (a block of two classes), do one short and one longer reflection, according to the scheme at the end of this syllabus. Please be sure to follow the formatting instructions. Additional readings may be added as our conversations (and political events) evolve over the course of the semester.

### **INTRODUCTION**

**August 30, 2018 (no paper required)**

#### **Class 1: Methodologies for Communication across Profound Cultural and Religious Difference**

- Martin Luther King, Jr., “Letter from a Birmingham Jail” (1963)
- Robert Cover, “Obligation: A Jewish Order of Jurisprudence” (1987)

### **SECTION I: Further Discussion of Foundations and Methodology**

**September 6, 2018**

#### **CLASS 2: Freedom of Expression and Sensitivity to Difference: An Exercise in Empathy**

- Robert Cover, “Nomos and Narrative” (Foreword to “The Supreme Court: 1982 Term”) (1983): read as much as you are able of this classic piece, concentrating on pp. 4-11, 25-35, 40-53, 60-68.
- Barbara Applebaum, “Social Justice, Democratic Education, and the Silencing of Words that Wound” (2003) (Excerpt)
- Victor Bruzzone, “The Value of Immoral and Factually Incorrect Speech” (Areo, July 18, 2018)
- Amy Uelmen, “Facing the prejudices within,” *Living City* (October 2015) (review of HARPER LEE, *GO SET A WATCHMAN*)
- Amy Uelmen, “Beyond Sameness,” (work in progress, forthcoming) (discussing LOIS LOWRY, *THE GIVER*, Instructions to the Receiver of Memory)

**September 13, 2018**

#### **CLASS 3: Conversing about Morality and Religion after the Breakdown (?) of Universal Claims**

We realize the reading for this day is robust, but we encourage you to make the investment, as this work will be foundational for the rest of the semester. The core texts are three different positions on how moral claims grounded in tradition could / should interact with law and public policy:

- H.L.A. Hart, “Positivism and the Separation of Law and Morals,” 71 *Harv. L. Rev.* 593-629 (1958)
- Richard Rorty, *Contingency, Irony, and Solidarity*, Chapter 1, pp. 1-11 and Chapter 3, pp. 44-69
- Robert P. George, “The Central Tradition,” in *Making Men Moral: Civil Liberties and Public Morality*, pp.19-47

To make our discussions on this issue more concrete, we think it will be helpful to consider the role of morality in the analysis of *Bowers* and *Lawrence*. (We assume many of you have already read these cases): *Bowers v. Hardwick*, 478 U.S. 186 (1986) and *Lawrence v. Texas*, 539 U.S. 558 (2003) (as excerpted in Barnett, *Constitutional Law*, 2008).

## **CONTESTED CLAIMS IN CONTEXT:**

### **SECTION II**

**September 20, 2018**

#### **CLASS 4: Economic Inequality: A Ground for Obligations to Respond?**

Overview of some aspects of economic equality:

Peter Edelman, *Not A Crime to Be Poor* (2017):

- Introduction: Ferguson is Everywhere (3-19)
- Chapter 6, Criminalizing Public Benefits (91-115)

Survey of religiously grounded reflection on obligations to foster economic justice – feel free to pick one or two to discuss a mesh (or disconnect):

- Garry Wills, *What the Qur'an Meant and Why It Matters*, Chapter 10 (Commerce, includes discussion of alms)
- Gospel of Matthew 25:31-46
- Thich Nhat Hanh, *Interbeing*, “Mindfulness Training 9-13,” (pp 20-21, 41-51)
- Dieter F. Uchtdorf, “Providing in the Lord’s Way” (Gen. Conf. 10/2011, LDS – Latter Day Saints)
- Dr. Interjit N. Kaur, “Addressing Inequality – An Expanded Interpretation of the 3-Pillars Sikh Theory in Guru Granth Sahib” (Sept. 2013)
  
- In the “Roman Catholic” folder:
  - Vatican Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (2004), Chapter 7, Economic Life
  - Pope Francis, *Evangelii Gaudium* (The Joy of the Gospel) (2013) parag. nos. 176-216
  
- In the “Islamic Perspectives” folder:
  - Sayyid Qutb, *Social Justice in Islam*, Ch.4 (Methods) (orig. 1949, trans version 2000)
  - Afif A. Tabbarah, *The Spirit of Islam*, Ch.2 (Charity) (1993)
  - Paul Heck (GU Theology Prof), *The Moral Economy of Islam*
  - Hartley Dean & Safar Khan, *Muslim Perspectives on Welfare*, 26 J. Soc. Pol. 193-209 (1997)

**September 27, 2018**

#### **CLASS 5: The Migrant Crisis and Sanctuary Cities**

Theoretical Reflection on Clashes Between Religiously Grounded Moral Commitments and Rule of Law:

- Barbara Bezdek, “Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation,” (1995) (excerpt)

Varying Perspectives on Sanctuary Cities

- Jennifer C. Critchly & Lisa J. Trembly, Historical Review, Current Status and Legal Considerations Regarding Sanctuary Cities, *New Jersey Lawyer*, 32-36 (June 2017)
- Kaitlyn Schallhorn, Sanctuary Cities: What are they? Fox News (March 22, 2018)
- Gomex, Ta, Clyworth & Mekelburg, “Gov. Greg Abbott: Mollie Tibbetts murder is ‘why Texas banned sanctuary cities,’ El Paso Times (Aug. 22, 2018)

- Michael Hiltzik, Los Angeles Times, “Another judge slaps down Jeff Sessions for trying to punish ‘sanctuary’ cities like LA” (Sept 17, 2018) & “In sanctuary ruling, a federal judge schools Atty. Gen. Sessions on the law,” (July 6, 2018)
- Trip Gabriel, “An ICE Raid Leaves a Iowa Town Divided Along Faith Lines” (New York Times, July 3, 2015)

Plus: Reflection on Interpretive Methods: Frames for Interpretation of Scriptural Authority

- Romans 13
- Lincoln Mullen, “The Fight to Define Romans 13,” *The Atlantic*, June 15, 2018
- Emily McFarlan Miller, Yonat Shimron, “The ‘Splainer: Why is Jeff Sessions quoting Romans 13 and why is it so often invoked?,” *Religion News Service*, June 15, 2018
- Jeff Sessions and Romans 13, Blog: The Way of Improvement Leads Home, June 14, 2018  
JOHNFEA
- Augustine, *On Christian Doctrine* (426 C.E.) - Book 1, 1, 35-40.
- Rabbi Donniel Hartman, *Putting God Second: How to Save Religion From Itself* (Beacon Press, 2016), pp.126-129

### **SECTION III**

**October 4, 2018 – Extra Hour for Small Group Discussions (Class runs from 9am-12pm)**

#### **CLASS 6: Environmental Justice: Rights for Non-Human Animals?**

**Core readings are two perspectives on how rights rhetoric is applied to discuss treatment of non-human animals:**

- James E. Helmer, “Speaking Theologically of Animal Rights,” 3 *J. Moral Theology* 109-129 (2014)
- Richard L. Cupp, “Human Responsibility, Not Legal Personhood, For Nonhuman Animals,” 16 *Engage* 34-40 (July 2015)

**You may also be interested in weaving in one or more of the following perspectives:**

- David Vogel, “How Green is Judaism: Exploring Jewish Environmental Ethics,” 11 *Bus. Ethics Q.* 349-363 (April 2001).
- Message of Ecumenical Patriarch Bartholomew (September 1, 2011) (2pgs) (Greek Orthodox Christian)
- Charles Camosy & Susan Kopp, “The Use of Non-Human Animals in Biomedical Research: Can Moral Theology Fill the Gap,” *J. Moral Theology* (2014) see esp. pp. 63-71, discussing “beyond pain and suffering”
- 2 short blogs: Camosy on Pope Francis, *Laudato Si’* (2015) – with citations to relevant passages of *Laudato Si’*

**October 11, 2018**

#### **CLASS 7: Euthanasia**

Narratives:

Tracy K. Smith, *Ordinary Light*, Prologue (pp. 3-7)

Matt McClain, “NPR host Diane Rehm emerges as key force in the right to die debate,” *Washington Post* (Feb. 14, 2015)

Reflections on Method:

*Contrasting Values and World Views on the Meaning of Suffering and End of Life Care:*

- Joseph Raz, “Death in Our Life,” 30 *Journal of Applied Philosophy* 1-11 (2013)
- Amelia J. Uelmen, “Mapping a Method for Dialogue: Exploring the Tension Between Razian Autonomy and Catholic Solidarity as Applied to Euthanasia” *J. Moral Theology* (2013)

*An examination of social context / social pressures when euthanasia intersects with disability:*

- *Bouvia v. Superior Court* (Cal. App. 1986)
- Paul K. Longmore, Elizabeth Bouvia, Assisted Suicide, and Social Prejudice 3 *Issues L. & Med.* 141 (1987-1988)

## **SECTION IV**

**October 18, 2018**

**CLASS 8: Abortion – the obligation of pharmacists and police officers**

*Case Studies in Requests for Exemptions: Pharmacists, Police Protection*

*Stormans v. Selecky* (9th Cir. 2015) (pharmacist accommodation for not stocking contraceptives)

*Rodriguez v. Chicago*, 156 F.3d 771 (7<sup>th</sup> Cir. 1998) (police accommodation re protecting abortion clinic)

Kent Greenawalt, brief excerpt from “Receiving and Participating in Medical Procedures,” Chapter 5 in *EXEMPTIONS: NECESSARY, JUSTIFIED OR MISGUIDED?* (2016), pp. 97-111

*Analysis of pharmacist conscience / refusal clauses and intersection with market constraints:*

Robert Vischer, *Conscience and the Common Good*, Chapter 6 – Pharmacists (2010)

*NARAL and USCCB background on conscience / refusal clauses:*

<http://www.prochoiceamerica.org/media/fact-sheets/abortion-refusal-current-laws.pdf>

<http://www.prochoiceamerica.org/media/fact-sheets/abortion-refusal-clauses-dangerous.pdf>

<http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf>

Background on the variety of contexts that inform the decision:

<http://dish.andrewsullivan.com/threads/its-so-personal/> A series of letters to Andrew Sullivan's *The Dish* from a variety of perspectives in response to the murder of late-term abortion provided Dr. George Tiller.

### **OPTIONAL Background**

Casey Excerpts (we assume most of you have explored these in other classes)

Readings from Howard Lesnick, *Religion in Legal Thought and Practice*: the selections are somewhat dated, but provide background on the variety of religious positions on the issue of abortion

**October 25, 2018 – Extra Hour for Small Group Discussions (Class runs from 9-12)**

**CLASS 9: Accommodations and Theological Claims regarding Cooperation / Complicity in Evil**

- James Keenan and Thomas Kopfensteiner, “The Principle of Cooperation,” *Health Progress* (April 1995), pp. 23-27 – *PRIMARY TEXT*
- *Burwell v. Hobby Lobby* (excerpts) (2014)
- HHS Proposed Exemptions to the ACA (August 2011)
- Overview: Kent Greenawalt, Chapter 6, “Contraceptives and the Hobby Lobby Case,” in *EXEMPTIONS: NECESSARY, JUSTIFIED OR MISGUIDED?* (2016), pp. 112-129
- *Abdi Noor Dolal v. Metropolitan Airports Commission* (Hennepin County District Court, MN, 2008)
- *Thomas v. Review Board* (1981) (optional, seminal case background)

**NO CLASS ON November 1, 2018 (covered by the small group discussions)**

**SECTION V**

**November 8, 2018**

**CLASS 10: Discrimination, Exemptions & Artistic Expression**

Analysis of contested claims:

Chai R. Feldblum, “Moral Conflict and Conflicting Liberties,” in *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Laycock, Picarello & Wilson, eds., 2008) (PRIMARY TEXT)

Douglas Laycock, *Afterward*, in in *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Laycock, Picarello & Wilson, eds., 2008)

Cases:

Lee v. Ashers Baking Company (UKSC 2018), pp. 2-10. 14-18  
*Elane Photography* (New Mexico Supreme Court, 2013)

Background: Kent Greenawalt, brief excerpt from “Same-Sex Marriage and Sexual Relations,” Chapter 8 in EXEMPTIONS: NECESSARY, JUSTIFIED OR MISGUIDED? (2016), pp. 177-184

**November 15, 2018**

**CLASS 11: Moral Debates regarding the Legalization of Marijuana**

Analysis of changing attitudes:

- William A. Galston & E.J. Dionne, Jr., “The New Politics of Marijuana Legalization: Why Opinion is Changing,” Brookings Governance Studies (May 2013)
- “Legalize It? American Public Opinion on Marijuana Legalization,” Archstone Recovery Center

Debate in Utah:

- Jason Adkins, *The LDS Church’s Waning Influence? Medical Marijuana in Utah Puts Leaders’ Influence Under Spotlight*, Religion in Public (September 24, 2018)
- Taylor W. Anderson, Salt Lake Tribune, “Utah’s medical marijuana ballot measure would violate Mormon’s beliefs...” (Aug. 16, 2018)

During class we will have a video call with **Jerry Uelmen** (Amy’s dad), who argued the first medical marijuana case, *US v. Oakland Cannabis Buyers’ Cooperative* in 2001, and who dedicated the large bulk of his legal career to moving the dial to treatment of drug abuse rather than incarceration. In 1974 he co-authored with a medical doctor the first casebook on Drug Abuse and the Law.

As background for this please read these very short excerpts on drug policy:

- Gerald F. Uelmen, “If It Doesn’t Fit,” 155-163, and 170-171. (The title of the book is a reference to the line he penned as part of the OJ Simpson defense team in 1994-1995)
- Gerald F. Uelmen, “Treating Drug Offenders: Measuring success, one life at a time,” Living City Magazine (March 2006)

**CONCLUSION**

**CLASS 12: November 29, 2018 – format TBD, SHORT blurbs for this class.**

## **Reflection papers (long) and blurbs (short) Paper Requirements and Guidelines**

### **HEADER:**

Please be sure to include your name, date and the class (e.g., Class 2) on the actual document. Also indicate in the header the intended length (e.g., “long” or “short”). For long submissions, please number your pages.

### **LENGTH:**

- The long reflection essays should be about **1300-1400 words**. Please **SINGLE SPACE**. Using Times New Roman 12 point font and one inch margins; it should be about two full pages.
- The short “blurb” should be about 300-400 words, about one page (double-spaced).

### **CITATIONS:**

Keep in mind that the essays are not research papers. However, if you are drawn to pulling in specific materials as a basis for your discussion, a simplified notation with the most basic information – just enough to orient us – will be fine. For example, for a citation from Cover, (C650) would be sufficient.

### **AVOID FOOTNOTES:**

In such a short essay, if you are tempted to drop into a long and extended discussion in a footnote, at least consider whether the thought might be better integrated into the text.

### **Distribution of assignments for longer reflection papers**

The distribution helps to insure even and active participation of students throughout the semester, and also facilitates the process of professors’ feedback. Please follow this scheme carefully. On the “off” weeks, when you are not writing a long reflection, do the short blurb.

- Reflection #1 - Choose 1 set of materials from Section I
- Reflection #2 – Choose 1 set of materials from Section II
- Reflection #3 – Choose 1 from Section III
- Reflection #4 - Choose 1 from Section IV
- Reflection #5 - Choose 1 from Section V

Concluding class: just a blurb