

Law Informed by Faith (Spring 2013)
 Professor Ronald Garet
 Wednesdays, 2:50-4:40, room 118

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I. Course description

We will consider the role of faith in a lawyer's life and work. Topics and materials will touch on constitutional law, tort law, criminal law, professional responsibility, and more. In each area of a lawyer's work that we address, our question is: how, if at all, does faith inform that work?

Lawyers, judges and lawmakers sometimes choose their goals and strategies, and make their arguments, based in part on bodies of thought such as economics, history, and psychology. The texts, traditions, ideas, and dispositions of religious faith may also serve as resources for analysis and decision in legal roles, though this service is controversial. In our seminar, we begin by reading and critically discussing some authors who engage issues of law and legal policy, or frame their professional commitments as lawyers, in ways informed by their religious faith (or by a commitment to the importance of spirituality in human life). We will consider the conditions or standards of adequacy and excellence in this area of exposition. Each seminar student will write a paper that will go through multiple rounds of editing and revision in light of the instructor's comments and class discussion. Kinds of suitable paper topics include (but are not limited to):

- a student's examination of the bearing of her own faith on a choice that she faces or will face in her profession as a lawyer (e.g., "Does my Christian commitment to loving my enemies bar me from serving in adversarial legal roles such as litigator?");
- a student's effort to determine what follows, from his faith premises, for a particular contested question of law or legal policy (e.g., "Given my belief that we should love our neighbors as ourselves, what stance should I take on immigration law reform?");
- a student's critical reexamination of her faith premises in light of her developing understanding of law and legal reasoning (e.g., "Once we accept shared responsibility for the design of tort law, what if anything is left of the principle that it is wrong to intentionally take innocent human life?")
- a critical reconstruction and assessment of a leading or representative author's work along the above lines (e.g., "Can Catholic just war theory ground a defensible account of the permissibility or impermissibility of waterboarding conducted in the 'war on terror'?");
- a critical inquiry into whether a particular line of reasoning from faith to a legal policy proposal or to a lawyer's (or judge's, or lawmaker's) professional choice counts or should count (within a pluralistic and democratic legal order) as a legitimate reason (e.g., "Which of Martin Luther King's Biblical critiques of segregation, if any, supplies a legitimate ground of decision in public political argument about racial justice?")

Especially in connection with the last topic (legitimate reason), we will ask: Is religious faith a less legitimate source of legal and political argument than other bodies of social thought (such as economics) because religious values are inherently subjective? Or are the claims of, say, law and economics, also "informed by faith"? In what ways does sharing in the work of legal justice draw on our capacities to form and act on (religious, spiritual, or non-religious) faith commitments?

This seminar may be taken for graded credit only. In addition to the required paper, substantial attendance and participation are expected. Photocopied course materials will be distributed.

II. Learning objectives

Our principal aim is to help one another pursue a personally satisfying and critically sustainable integration between our personal commitments (beliefs, feelings) and our professional activities as lawyers. This work of integration will always require us to think dynamically or dialectically on two fronts. Along one front, we ask what it is we truly believe, what promises we have made or are ready to make, where we place our trust and hope, what is worthy of our steady love. Along another front, we ask what are the requirements of legitimate law in a republican form of government, how can

lawyers contribute to the resolution of hard cases and hard questions in such a way as to meet those requirements, and how corresponding norms of professionalism properly delimit the extent to which those in legal roles (lawyer as counselor, lawyer as advocate, legislator, judge, President, juror, citizen...) are free to give voice and effect to their personal beliefs and values. We are always engaged on these two fronts in a dialectical or dynamic way, checking our conclusions about personal fulfillment and about legitimate law against one another. Though the personal questions we pursue along the first front might initially seem “subjective,” and the institutional questions about conditions of legitimate law and professionalism might initially seem “objective,” it will turn out that the two questions interrogate and implicate one another.

In more concrete terms, we can picture at least three fields or areas in which we are in quest of a satisfying integration between our personal commitments and our professional activities as lawyers.

- Personal values and legal reasoning. Where may we - or should we - put our personal beliefs in play, including perhaps our religious or spiritual commitments, when we are making a legal argument (in class, in arguments to a jury, in a complaint or answer, in oral argument before an appellate court, in a judicial opinion, in a President's public address)?
- Personal values and professional choices. As lawyers, where may we - or should we - give effect to our personal commitments, including religious commitments? What about refusing to take on a case, because the client's position is contrary to our commitments? What about declining to engage in aggressive tactics in negotiation or examination of witnesses, if those tactics are contrary to our views about how to relate to others?
- Constructing an overall life. What kind of friend do I aspire to be; what is my vision for my life as a spouse, parent, neighbor, citizen? How do the choices I make, as I navigate across my personal commitments and my professional activities, shape or flavor these spheres of my life?

Together, these fields of inquiry and effort comprise a zone of integration: “Law Informed by Faith.”

On the second of the two fronts described above, we consider the conditions for legitimate law within a republican form of government under a constitution, and how those conditions bear on faith-based reasoning and action in legal offices and roles. What is the proper role (or, what are the proper roles) for religion in the civic and political life of a democratic republic committed, as our democratic republic is committed, to equal protection and basic individual rights? Answers to this question are elusive and deeply contested. A primary goal for our seminar is to provide seminar participants with a supportive setting in which each of us can think through and work out for ourselves our own (tentative) answers. Accordingly, it is highly important that each seminar participant be ready and willing to offer insights, interpretations, and arguments, honestly and in a spirit of common searching and give-and-take. The committed member of a particular faith community is free to speak of her faith commitments if she chooses and if she feels that this will help express and clarify her position on any topic under consideration. She is always equally free to hold her faith commitments more privately and to base the points she makes in class discussion on what she believes to be more widely-shared values. In making one choice or the other she is exemplifying or instantiating the very topic that will constantly concern us - the question of the place of religious beliefs and spiritual aims or experiences in the public discourse and public debate of a democratic, pluralistic society.

Equally, one of us who may be intensely spiritual but who does not identify with any particular religious community is free, if he wishes, to refer to his spiritual experience or understanding of the meaning and worth of spirituality if he feels that this reference will help him convey to his classmates a better understanding of the contribution that he believes religion or spirituality makes (or should make) to our public lives in a constitutional democracy. But he might also think that his spirituality, or spirituality generally, is rather a private or personal concern than a matter properly belonging to public political or legal affairs. In either case, the shared ethic of our seminar should be one in which he is free to take his stand in class, and honestly articulate his position, confident that his classmates and teacher will respect him and value his contribution to our common inquiry.

Equally, one of us who may not describe herself as either spiritual or religious in any way, but who is open to these things should life's experiences and changes bring them her way, is free to share this stance in class discussion if she wishes and feels it appropriate and helpful to do so. Also one of us who may be convinced that there is no reasonable or logical basis for religious belief, and who finds this premise relevant to the argument over religion's place in public political life and in the legitimate roles of the lawyer, is free to assert and draw upon this premise in class discussion, confident that in putting forward her ideas and insights she will have the respect and engage the interest of her teacher and classmates.

In short, our seminar rests on a readiness to think things through and to share with one another according to our lights, without fear of transgressing the norms of our classroom. Whether we are making an argument or responding to an argument made by another, we do so caringly and secure in the worth of our experience and insight.

III. Faith-based reasons for moral choices

The concept of religiously-based or faith-based reasons for moral or ethical choices is important to our seminar. We will devote considerable time to working out, or trying to work out, the explicit or implicit argument that is being made

when religious premises or allusions (such as Bible quotations) find their way into public political arguments (such as campaign speeches, other public addresses, legislative history, briefs, judicial opinions, arguments to juries, etc.) Admittedly, words or phrases from sacred texts or other religious sources sometimes may function more as argument stops than as contributors to reasoning. (As if to say, “I’ll give you all the reasons and arguments you like, except just here, when I refer to Jesus.... At that point, you’re either with me or not with me, and there’s nothing else to say.”) But it is perhaps surprising how often religious references, words or concepts do supply critical links in the chain of a public political argument. In any event, we will work through some texts together to gain a shared ability to reconstruct the argument being made, which will help us understand the work that is being done in the argument by religious reasons. As an example, we will work through Lincoln’s Second Inaugural Address to see what we can make of Lincoln’s argument and of the work being done by the various Scriptural quotations he weaves into his text.

In contemporary political life, examples of political argument drawing on faith premises or sacred texts abound. Examples include Catholic arguments against the death penalty, against abortion, and for redistribution to moderate the effects of capitalism and aid the poor; evangelical arguments against same-sex marriage; faith-based arguments for conservation and preservation of the environment, etc.

The objection to procreative cloning of human beings, that such cloning would be a usurpation of God’s unique role (cloning is “playing God”), advances a religiously-based reason why such cloning is wrong. Lincoln’s objection to slavery, that the slave-holder eats bread earned “by the sweat of another’s brow” rather than by his own sweat, and thus acts contrary to the foundational condition of fallen, sinful humanity set out in the Biblical account of our expulsion from Eden, likewise advances a religiously-based reason for a position on a matter of public concern. (As these two examples illustrate, religious ethics has intersected with public political argument on matters of central concern to our nation on both what is commonly thought to be the “right-leaning” or “conservative” side and on the “left-leaning” or “liberal” side. Our seminar will consider, in roughly equal measure, religious ethics in so-called “conservative” political argument and in so-called “liberal” political argument. We will also consider religiously-based reasons for public political stances that do not lend themselves readily to categorization on the political spectrum.)

IV. Basis of evaluation

a. Term paper.

The required term paper counts three-fourths of the course grade. The paper is due on Thursday, May 16, by 5:00 P.M., and should be submitted in the Dean’s Office. It must be between 6500-7500 words in length (please supply a word count). (The length requirement and other rules governing the term paper will differ if you are writing your Note in association with our seminar.) Illustrative examples of paper topics are given in the Course Description. What all of these examples have in common is a student’s sustained effort to work out the relationship between personal and professional commitments. The paper topic is a good one when it moves the writer into the dialectical relationship between the personal front (what are my commitments; what is worthy of my love and life; where do I place my trust, etc.) and the professional front (what are the conditions of legitimate law in our republican form of government, and how do my lawyerly commitments and choices meet those conditions, etc.)

Later in the semester, once we have become familiar with some of our sources and concepts, we’ll talk further about possible topics or questions that might be of interest to you as issues to pursue in your term paper. I’ll meet with each of you individually to give you feedback on your topic ideas.

Your term paper grade is primarily based on: (1) the clarity and rigor with which you work through the question you pose for yourself, and (2) the care with which you read and apply those reading assignments and class discussions most relevant to your question. Choose your textual foci wisely in light of the problem or puzzle you set out to explore. You should show a capacity to interpret relevant assigned readings fairly and accurately, and to offer your own critical assessment of the arguments implicitly or explicitly made in such readings. It will be helpful for you to identify, where applicable, how your own beliefs (moral, spiritual, religious, political, etc.) are tested or implicated in the problem that concerns you.

Most paper topics will require some research and reading beyond the limits of the materials assigned and discussed in class. I will assist you in this research where I can. But reflection and analysis are more critical than research to this kind of writing project. To foster reflection and analysis, and to make our weekly seminar meetings the best possible resource for each of us, I will ask each student to make an in-class presentation of his or her animating question (cf. the questions animating each of the sample term papers listed in the Course Description), along with his or her tentative best answer to that question. By sharing these questions together, we become a community of persons who come together regularly for the sake of advancing the integration of our personal commitments and professional roles.

b. Attendance and participation. Class participation counts one-quarter of the course grade. The participation score is primarily a measure of contribution to the in-class exposition and critical analysis of assigned readings. Because this is a seminar in which discussion and mutual engagement are expected, substantial attendance is required. Students may miss one class without explanation and without any impact on the participation score. Missing two or more classes will affect the participation score and thus the course grade.

IV. Table of assignments

After the first few class meetings, we will revise the assignments in light of your interests and paper topics.

Table of Assignments (Syllabus)

Class #	Date	Reading assignments	Handouts
1	Wednesday, January 16	(1) Faith-based reasons for legal policy proposals Uelman, <i>Toward a Trinitarian Theory of Products Liability</i> <i>Notes and questions on Uelman</i> (2) Learning goals for our work together <i>Course description, learning objectives, basis of evaluation</i>	Uelman, Trinitarian Theory Notes and questions on Uelman Course description, learning objectives, basis of evaluation
2	Wednesday, January 23	(3) Faith Premises in Political Argument: Lincoln and King <i>The Declaration of Independence</i> (excerpt) Abraham Lincoln, <i>The Gettysburg Address</i> Abraham Lincoln, <i>Second Inaugural Address</i> <i>Lincoln's Second Inaugural Address: Biblical echoes</i> Martin Luther King, <i>I Have a Dream</i> Bible quotations in <i>I Have a Dream</i>	
3	Wednesday, January 30	(4) Rights, powers, and the human status as created: a closer look Continue discussion of <i>I Have a Dream</i> Waldron, <i>The Image of God: Rights, Reason, and Order</i>	
4	Wednesday, February 6	Cohen, "In God's Garden: Creation and Cloning in Jewish Thought" (5) Creation, redemption, and revelation Garet, <i>With Radiant Countenance: Creation, Redemption, and Revelation</i>	
5	Wednesday, February 13	(6) Religious ethics, the meaning of death, and <u>Cruzan</u> <i>Cruzan v. Director, Mo. Dept of Health</i> <i>In which Missouri and Justice Stevens politely disagree</i> <i>Some questions about the Cruzan case</i> Bryant, <i>Thanatopsis</i> Wordsworth, <i>Tintern Abbey</i> Auden, <i>Stop All the Clocks</i>	
6	Wednesday, February 20	First hour: Student presentation and discussion (7) Public reason Second hour: Introduction: <i>John Rawls' idea of public reason</i> <i>Chart: Framework of Rawls' Political Liberalism</i> Rawls, <i>Political Liberalism</i> (excerpt) Rawls, <i>The Idea of Public Reason Revisited</i> <i>Application to arguments invoking the "Good Samaritan"</i>	
7	Wednesday, February 27	First hour: Conclude discussion of Rawls' idea of public reason Second hour: Student presentation and discussion	
8	Wednesday, March 6	(8) Robert Cover: law, meaning, and commitment <i>Introduction</i> Burt, <i>Robert Cover's Passion</i> Cover, <i>Obligation</i> <i>A guide to 'Nomos and Narrative'</i> Cover, <i>Nomos and Narrative</i>	
9	Wednesday, March 13	Continue discussion of Cover. Student presentation and discussion.	

	Wednesday, March 20	Class does not meet (Spring break)	
10	Wednesday, March 27	First hour: (9) Enforcing the insular or paideic nomos Readings on the enforcement of decisions by arbitration tribunals and other panels that apply religious law Second hour: Student presentation and discussion	
11	Wednesday, April 3	First hour: (10) Law's theology Vining, <i>Is There an Implicit Theology in the Practice of Ordinary Law?</i> Reread Wordsworth, <i>Tintern Abbey</i> Second hour: Student presentation and discussion	
12	Wednesday, April 10	First hour: (11) Religion and legal ethics Minow, <i>On being a religious professional: the religious turn in professional ethics</i> Second hour: Student presentation and discussion	
13	Wednesday, April 17	(12) Irony and blessings NPR transcript, <i>Obama's Theologian</i> Garet, <i>To secure the blessings</i> Stolzenberg, <i>Taking blessings seriously</i>	
14	Wednesday, April 24		