

Law Informed by Faith (2 units)

Professor Ronald Garett // Fall, 2014

Tuesdays, 2:00-3:50, room 106

Course website: <http://weblaw.usc.edu/users/rgaret/faith.html>

Course Description

Course Number: LAW-889
Class Number: 03665
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Office hours: By appointment. Each student meets individually with the instructor, during the first weeks of class, to discuss his or her goals for the seminar and the question that will become the focus of his or her seminar paper. Students are also welcome to meet with the instructor as they prepare their in-class presentation of their question of concern, and as they work further on their seminar paper. Students are encouraged to share drafts of their seminar paper with the instructor.

Summary of course requirements

This is a seminar in which we share with one another what we believe in as persons and as lawyers. We share doubts and questions, not only hopes and goals. The readings, class discussions, and term paper all contribute to a joint effort to be clear, with ourselves and others, about our personal and professional life commitments and how they relate to one another. The course is a seminar: a shared effort to make progress together, with one another's support and understanding. It is not a lecture course, and the instructor does not cold-call on anyone. Substantial attendance and participation are expected.

The seminar is not available for CR/D/F grading. Class participation, including an in-class presentation of the question that forms the basis of one's term paper, is required. The term paper is not a research paper, but an opportunity for sustained reflection on one's beliefs and commitments as a person and lawyer. The term paper is also an opportunity to look afresh at the seminar readings that most closely relate to the question one is asking in the paper. The term paper is between 6500-7500 words in length, and is due on the law school paper-submission due date (last day of exam period). Each student will meet with the instructor to

discuss the question he or she is asking in his or her paper. Each student is invited and encouraged to submit a draft for the instructor's comments, but this is not required. A student who wishes to do so may write his or her student Note for the Interdisciplinary Law Journal, Review of Law and Social Justice, or Southern California Law Review in connection with this seminar. For additional requirements that apply to Note-writers, see §III(c), below.

I. Course coverage and learning objectives

We will consider the role of faith in a lawyer's life and work. Faith may include religious faith, spirituality that is not specifically religious, and other convictions about life's worth and meaning. 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?

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;
- a student's questioning whether his faith is an asset to his work as a lawyer, or an obstacle that will create difficulties, or mostly irrelevant to his life as a lawyer;
- a student's effort to determine what follows, from his faith premises, for a particular contested question of law or legal policy;
- a student's critical reexamination of her faith premises in light of her developing understanding of law and legal reasoning;
- 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.

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?

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.

II. 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.)

III. Basis of evaluation

a. Term paper.

The required term paper counts three-fourths of the course grade. The paper is due on the last day of exam period. 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. See §III(c), below.) The term paper project 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; what are my responsibilities to my client; how do my lawyerly commitments and choices meet those conditions and fulfill those responsibilities.)

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 and your central question of concern.

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, 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.

c. Requirements for students writing student Notes in connection with the seminar.

Students who wish to write their Note in connection with the seminar should talk with the instructor about their topic ideas and goals. Students who write their Note in connection with the seminar will receive, in addition to the two units of graded credit for the seminar, an additional unit in the fall semester and an additional unit in the spring semester. Such students must meet the journal deadlines set by the journal for which they are writing. They also must meet the attendance, participation, in-class presentation, and other requirements set out in §III(a) and §III(b), above. Note writers, unlike 2-unit seminar students, are required to carry out substantial research in connection with their paper. The 7500 word maximum does not apply to papers written by Note writers.

Table of Assignments

Class #	Date	Reading assignments	Materials
1	Tuesday, August 26	(1a) The bar oath: promising to practice law faithfully Garet, <i>My Ancient Faith</i> (1b) Learning goals for our work together <i>Course description, learning objectives, basis of evaluation</i>	
2	Tuesday, September 2	(2) Faithfulness in legal practice Luong Chau, <i>Law and Buddhism</i> Deborah Cantrell, <i>Can Compassionate Practice Also Be Good Legal Practice? Answers from the Lives of Buddhist Lawyers</i>	
3	Tuesday, September 9	(3) Faith-based reasons for legal policy proposals Uelman, <i>Toward a Trinitarian Theory of Products Liability</i> <i>Notes and questions on Uelman</i>	
4	Tuesday, September 16	(4) 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>	
5	Tuesday, September 23	Martin Luther King, <i>I Have a Dream</i> Bible quotations in <i>I Have a Dream</i> Garet, <i>With Radiant Countenance</i>	
6	Tuesday, September 30	(5) Rights, powers, and the human status as created: a closer look Cohen, <i>In God's Garden: Creation and Cloning in Jewish Thought</i> Waldron, <i>The Image of God: Rights, Reason, and Order</i>	
	Tuesday, October 7	Class does not meet (Monday classes meet)	
7	Tuesday, October 14	Cohen, <i>In God's Garden: Creation and Cloning in Jewish Thought</i> (6) Religious ethics, the meaning of death, and <u>Cruzan</u> <u>Cruzan</u> case (focus especially on Stevens' dissent) Notes at pp. 33-36	
8	Tuesday, October 21	Continue discussion of <u>Cruzan</u> Poems: <i>Thanatopsis</i> , <i>Tintern Abbey</i> , <i>Stop All the Clocks</i> , <i>When Lilacs Last in the Dooryard Bloom'd</i> Munoz and McMath cases	
9	Tuesday, October 28	1st hour: 2 nd hour:	
10	Tuesday, November 4	1st hour: 2 nd hour:	

11	Tuesday, November 11	1st hour: 2 nd hour:	
12	Tuesday, November 18	1st hour: 2 nd hour:	
13	Tuesday, November 25	1st hour: 2 nd hour:	
14	Tuesday, December 2	1st hour: 2nd hour: <i>The Blessings Clause</i>	

Friday, December 19: Papers are due by 5:00 p.m. Please email your papers to me, preferably as Word documents.