

**RELS 235/335: RELIGION, LAW AND POLITICS**  
Summer School, 2018.

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Lectures: Monday, Tuesday, Wednesday, Thursday (11.00-11.50)  
Tutorial: Thursday (15:00-15.50)  
Office Hours: Fridays (10.00-12.00) and by appointment.

## Introduction

Good dinner etiquette, it is often said, avoids talking about religion and politics. Why? Because, above all other subjects, religion and politics are deemed the most divisive, the most intractable, and will have guests leaving before the starters are finished! Yet when it comes to the law, which aims to establish and implement the most just, most reasonable and most agreeable rules for governing human society, avoidance is not an option.

Consequently, the news is seemingly full of stories about conflicts at the intersection of religion, law and politics: Is the Jewish practice of *kosher* butchery an unacceptable violation of animal rights? Should Muslim women be allowed to testify in court wearing a *niqab*? Should NZ students receive bible education in public school classrooms? Should the Catholic Seal of Confession hold even on matters of child abuse? Should Scientologists get tax exemption? Is there anything wrong with the Pope denouncing Donald Trump?

By the end of this course, you will have a more sophisticated understanding of many contemporary legal and political disputes about religion. You will also feel what it's like to wrestle with these disputes yourself and have a clearer understanding of the industry of consultants, lawyers, lobbyists and activists who pursue careers through contesting these fraught issues. Maybe one day, this could be you!

Aside from teaching you about religion, law and politics, this course aims to develop the important skill of critical thinking, by which I mean the ability to do three things: (1) synthesize and summarize the arguments of others, (2) evaluate and critique those arguments, (3) formulate and articulate your own arguments using original evidence. Through lectures, discussions and some (perhaps unusual) assessments, this class will help hone your skills in all three areas.

## Class and course organization

This course investigates a variety of interesting case studies from around the world. However, it is organized around a single question: *why do liberal-democratic states have so much difficulty regulating religion?* To answer this question, we will examine key assumptions that influence the regulation of religion in most modern democratic contexts. These assumptions can be summarized as follows:

- (1) Religion, law and politics are distinct spheres of human activity and ought to be separated in modern states through policies of secularism.
- (2) Secular policies render states neutral towards religion and therefore maximize the religious freedom, welfare and harmony of citizens.
- (3) Through adopting a uniform system of secular law, states can maintain fair and consistent barriers between the private world of religion and the public worlds of law and politics.

For most of you, these assumptions will seem familiar, even obvious. It seems natural that states should be secular, religion should be private, laws should be neutral and individual freedoms should be maximized. However, during a full-on 6-week schedule of lectures and tutorials, we will systematically re-evaluate these assumptions and ask how they influence, help or harm conflicts over religion.

**Class-time** will involve a mixture of lectures (4 each week) and tutorials (1 each week). Successful learning depends upon student participation, which, in turn, depends upon students coming to class having done the core readings for that week. *Class participation assessments* are designed to encourage this.

**Question-time.** Each class will begin with a '*there's no such thing as* silly questions time' where students are encouraged to ask *any* questions that came up in the course of their study or readings. Who is Rousseau? What do Sikhs believe? What assessment is due next week? Anything goes. One of the great things about this course is that it brings together students from many different backgrounds. So, to make sure that

we're all on the same page, we need to make lots of space for questions. Just to be clear, this class presumes NO previous knowledge of religion, law, or politics. We welcome all!

**Distance students** will follow lectures using Otago Capture, a lecture-recording software that synchronizes audio and slides. These recordings will be available immediately following every lecture and, if technology permits, may even be live-streamed.

An online tutorial is also available for distance students and will take place on Thursday evenings. These are ideal forums for you to discuss the course content and your understanding of these issues with other students. Attendance is highly recommended. It is also where you will pick up your participation marks! Tutorials will use Zoom Videoconferencing

(<https://www.otago.ac.nz/its/services/teaching/otago028772.html>). The URL for the Zoom sessions will be posted on Blackboard. For instructions on using Zoom and technical requirements see <https://www.otago.ac.nz/religion/courses/resources.html>.

**Readings:** All readings will be available online (Blackboard and/or Otago library e-reserve) and/or emailed directly by me. I have worked hard to reduce the readings to the shortest possible length, with the expectation that you will read them closely before class. Please do this. In many weeks there will also be videos to watch or podcasts to listen to. Also please note that, for some topics there is more reading than in others, so plan ahead. I've also tried to keep readings lighter for Thursdays, in light of the tutorials scheduled that day. I've also made an effort to lighten the reading in your final week, as I know you'll be busy working hard on your Research Essay!

For those of you who are keen to read more, I've included a list of optional additional readings for most weeks.

**On contacting me:** I suggest that you try to contact me in person or on the phone if you have a question. Email is cumbersome and often imprecise. And I don't check it hourly. Feel free to ring on my office phone during work hours. Office-hour appointments can be arranged as well.

### **Must read: Your responsibilities as a student:**

Below is a list of non-negotiable, minimal responsibilities for students. I expect you to:

1. make sure that your **read and understand the expectations and assessment policies** in this course outline
2. **access course materials through Blackboard and the Otago Library** e-reserve site. (If you have issues, contact the ITS service desk on 0800479888, [its.servicedesk@otago.ac.nz](mailto:its.servicedesk@otago.ac.nz))
3. **make sure that you are *receiving and reading* all electronic communication** sent through Blackboard. (This may mean updating your communication preferences so that you receive the emails and announcements sent to the entire class through Blackboard.) "I never read that email" is not a viable excuse in this paper
4. complete all **assessments** on time. I almost never grant extensions.

**ASSESSMENTS & POLICIES**

(10%)	Class Participation -or- Class Participation and Written Interventions	<b><i>18 Jan and 8 Feb for Written Interventions</i></b>
(10%)	4-Part Essay Outline	<b><i>Friday 25 Jan at 9am</i></b>
(40%)	1 x Research Essay of 3,000 or 3,500 words	<b><i>Friday 15 Feb at 9am</i></b>
(40%)	1 x Exam	<b><i>Exam Week T.B.A.</i></b>

***10% Class Participation (On-campus students)***

This paper not only prepares students to think critically and write cogently. It prepares students to discuss and debate these issues with others. For this reason, this class mixes together lectures *and discussions*. And discussions work well *only* when students attend class regularly, having done the assigned reading and show willingness to present their ideas, ask questions and respond to the ideas of others. 10% of your marks reflect this. I will evaluate this according to three rubrics:

1. Do you show up regularly to class, with the readings? (We have one tutorial per week, plus four lectures, so absences, without urgent medical necessity, will be counted against class participation marks.)
2. Do you pose questions about the readings/lecture material, respectfully respond to your colleagues questions and/or otherwise further the directions of conversation in class?
3. Do your comments show engagement with the readings and/or draw connections between this week's readings and readings from other weeks?

***10% Tutorial Participation and two Written Interventions (Distance students)***

Although distance students cannot attend lecture discussions, I expect them to participate in our lecture conversations by writing (*at least*) *two Written Intervention* (WIs) submitted by the end of the 2<sup>nd</sup> week for WI 1, and by the end of the 5<sup>th</sup> Week for WI 2. That is, not later than Friday 5pm, 18 Jan and 8 Feb. These WIs are designed to give distance students a broader forum for participation in the course than simply participation in the online tutorial.

You can submit your WIs at any point during the course before the deadlines, and your responses should relate to something we have been discussing *recently* in the course. The earlier you can get these in the better (You can write more if you want to; and your comments will certainly influence how I teach the class!). WIs are one-page long (roughly 200 words) documents. They can be sent as emails or as MS word attachments. Each WI will contain the following:

1. A personal reaction to the readings or class discussions (as followed through online audio). What did you like or dislike? What did you find surprising or frustrating? What do you agree or disagree with?
2. A list of 2-3 questions that you would like to address going forward. These could be requests for clarification, provocations for the class, or general theoretical issues you'd like to explore.

### **40% Exam**

There will be a final exam administered by the exams office. The exam will count for 40% of your marks and will contain short answer and essay questions based on the readings and lectures. The purpose of the exam is to assess your ability to use the ideas, theories and case studies covered in this class to think and write critically about the intersections of religion, law and politics in the modern world.

### **40% Research Essay using Primary and Secondary Sources**

This class encourages you to think critically, intelligently and independently about legal and political disputes about religion in the contemporary world. This class also encourages you to express your thinking in cogent and careful arguments. This essay assessment is designed to help you do this. It involves the following things:

**Choose** a newspaper article, TV report or other media coverage of a dispute at the intersection of religion, law and politics. It can be journalism or op-ed, but has to come from a *mainstream news outlet*: e.g. the Herald, NY Times, BBC, etc. NOT a blogsite or online opinion site.

**Use primary and secondary sources** (academic scholarship and new evidence) **to argue an educated audience** how and why this article over-simplifies, ignores and/or distorts important dynamics that are at play. Your goal is to give a critical reassessment of the report and a fresh perspective on the dispute. In doing this, you should take stock of some of the following questions, along with other questions that you identify:

- What, *specifically*, are the different sides arguing for?
- Why is the dispute hard to resolve?
- *Is* it resolvable, why or why not?
- What are the multiple understandings of secularism, religion, belief, ritual, freedom, law, equality, citizenship, offence, neutrality etc. at play in the conflict?
- Who is speaking on behalf of religion and is it appropriate?
- Why would particular politicians (locally and/or internationally) support one side of the debate or the other?
- What legal concepts seem to be confusing the situation and/or impeding agreement?
- What does a close examination of the political and legal primary sources reveal about the conflict?

### **You must use primary and secondary sources:**

200-level students must use at least 1 primary source and 3 academic secondary sources.

300-level students must use at least 2 primary sources and 6 academic secondary sources.

- a. Primary sources are first-hand, direct, from-the-horse's-mouth sources of information about an event, person, dispute, etc. They are the raw data that journalists, scholars and legal professionals use as evidence. What makes a source a primary source is how you use it: you treat something as a primary source when, *you* approach it as raw, not-yet-interpreted data, and engage directly in dissecting it, analyzing it, critiquing it, thinking about who wrote it and why, and placing that source in its history. If you're not sure about whether a source is a primary source, please ask.

*Examples of religious primary sources* include: myths, religious texts, prayers, personal observation of rituals, interviewing a religious leader.

*Examples of political or legal primary sources* include: copies of parliamentary bills or acts, constitutions, ordinances, court decisions, transcripts of legislative debates (e.g. <http://www.parliament.nz/en-nz/pb/debates/debates/>) or committee meetings, official statements issued from ministries or important political leaders, reports commissioned by governments, manifestos of political groups, findings of official commissions, etc.

- b. By contrast, *secondary sources* are the academic sources you will use to help understand and analyze your primary sources. These will be peer-reviewed scholarly sources.<sup>1</sup> If you do not know the difference, or how to locate them, please let me know and we can discuss this in class.
- c. *Internet sources*: These must be used with EXTREME caution. In some cases, e.g. if you're working on contemporary movements, one might use some internet sources as primary sources. Websites should almost never be used as secondary sources. Wikipedia can be helpful in the initial stages of research but does NOT count as an academic source.

**Feedback to help along the way.** Choose whatever you are passionate about, but choose your topic EARLY in the course and please **OK it with me**. The 4-part essay plan is designed precisely to assist you on your way to the final assignment.

### Technical requirements

*Length*: Essays should be 3000 words for RELS 235 and 3500 words for RELS 335. Do not count footnotes or bibliography in this total. You may go over the limit 10% or under the limit 5% without a grade reduction.

*Format*: This matters. Essays must be double-spaced, Times New Roman, include page numbers. At the top must be your name, student ID number, date and word-count. Footnotes and bibliography must follow one of the following styles: Chicago or MLA. All citations for specific ideas, quotes or facts must have page numbers. (Citing a whole book or article is not OK unless you are clearly and obviously referring to the authors' overall argument.) For guides on this see: <http://www.otago.ac.nz/religion/pdfs/styleguide.pdf>

*Submitting*: Essays must be uploaded to the appropriate link on Blackboard (so we can run it through SafeAssign). It is *your* responsibility to make sure that your essay has been submitted properly. If there is a problem you must send me an email *that same day* with a copy of your essay in PDF or MSWord format. Telling me two days later that "Blackboard lost my submission" is not a legitimate excuse. Late papers are marked down 5% per work day. Extensions are almost never given, except in the cases of medical emergencies. We take plagiarism very seriously, so please do review our plagiarism policy. Or, better, just don't do it.

### How I mark the essays

So that I'm very clear with you about my expectations, let me tell you at the outset that essays will be marked according to the following **rubrics**:

*Basics and polish*: Did the author follow the prompts listed above and is the piece free from careless errors (grammar, spelling, citation style). The best pieces will carefully provide all things asked for in the course outline (e.g. word count, page numbers, plagiarism declaration, etc.).

*Argument/Structure*: Does the piece make a clear argument and have a clear structure? Does the argument flow logically and draw upon ample and well-analyzed evidence? Is it clear what 'work' the paragraphs are doing and are there strong transitions between paragraphs? (The *first sentences of paragraphs* are especially important in this regard. Make sure these sentences do two things: (1) introduce the content/point of that paragraph and (2) make plain how the content/point of that paragraph relates to the overall argument of the essay.) Does the essay have a clear *introduction* that lays out the argument in a direct and clear way and explains why the argument is important,

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<sup>1</sup> Generally speaking, academic sources are articles that appear in peer-reviewed academic journals (e.g. those that are accessed through JSTOR) and books that are published by university presses (e.g. Oxford Univ. Press). If you're confused, please go and ask the librarian. Or, as a last resort, come and see me.

controversial or otherwise should be of interest to the reader? Does it have a *conclusion* that recaps briefly the key points of the essay and explains the significance of the argument for scholars, policymakers or others?

*Content:* Does the piece show evidence of time spent researching and thinking? Does it build upon, critique and advance ideas presented in lectures, required readings and/or recommended readings (rather than simply summarize)? Does it present original ideas? Does it show sophistication in locating, digesting and engaging with a number of appropriate primary and secondary sources? The best pieces will engage deeply with multiple secondary and primary sources beyond those in the required or recommended readings. (Note: Mere citation of works does not count as engaging with them.)

### **10% 4-Part Essay Outline**

The point of this essay outline assignment is to make sure you plan early for your research essay and to give me a chance to give you feedback on your ideas. The outline should be formatted as follows:

**Part I:** Attach a copy of the media report you will critique.

**Part II:** Write a 1-2 page brief that (1) summarizes the ostensible *argument* of the report and/or the *angle of the author*, (2) explains what in the report led you to summarize the author's argument in that way and (3) how you plan to go about reassessing the argument in your research essay (e.g., What type of sources will you look for and why? Which parts of the argument seem particularly 'off' and worthy of critical reassessment and why?)

**Part III:** Identify your primary sources. Make sure you can find copies of these sources online or in the library.

**Part IV:** Identify your academic secondary sources. No credit will be given for non-academic secondary sources.<sup>2</sup> Write the sources down in the correct bibliographic format and explain in 2-3 sentences how you plan to use them to analyze the primary sources (E.g. 'Scott and Schafer provide detailed histories of the case that help illuminate the political context of the speeches...')

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<sup>2</sup> This is key. Credit will NOT be given for non-academic sources. If you're confused, please go and ask the librarian. Or, as a last resort, come and see me.

## Lecture Programme & Weekly Course Readings

- ⇒ Lectures and classes are divided into **four Modules**. We begin with an introduction to the underlying historical formation of the secular nation-state and the idea that religion, law and politics are distinct spheres of human activity (Module I). Then we critique the ideal of a religious neutrality, and how it informs legislation on religious freedom, a concept we also subject to considerable scrutiny (Module II). This is followed by an exploration religious accommodation and legal pluralism (Module III). We finish with a critical introduction to the industry of religion, law and politics (Module IV).
- ⇒ Please read the introduction and reading questions before doing the reading. You should aim to complete the readings *prior* to the lecture.

### **WEEK ONE. 7<sup>TH</sup> – 11<sup>TH</sup> JANUARY.**

Welcome to the course! Arrive rested and ready to think!

#### **Lecture 1 (Jan 7): Introduction to Religion, Law and Politics: Resurgent Religion?**

- Introduction to the course materials, structure, assessments and objectives.
- What is meant by ‘religion’, ‘law’ and ‘politics’?
- Modern society: secularisation or de-secularisation?
- The resurgence of religion in contemporary politics and law.

#### **Required reading**

RELS 235/335 Course Outline.

#### **- Module I -**

“Religion, law and politics are distinct spheres of human activity and ought to be separated in modern states through policies of secularism”?

#### **Lecture 2 (Jan 8): Separate spheres: Origins of the secular state - *liberal* secularism**

- What do we mean by a *liberal* secular state?
- What is a non-establishment and a free-exercise clause?
- What is the *liberal* narrative for the origin of secular states?
- Who are the principal architects of this understanding and what did they say. e.g. Thomas Hobbes (equality and state sovereignty), John Locke (tolerance and separation) and John Stuart Mill (individual liberty)?

#### **Required Reading**

Locke, John “A Letter Concerning Toleration,” ~13pp.

#### **Lecture 3 (Jan 9): Separate spheres: Origins of the secular state – *rational* secularism**

- What is secular ‘*reason*’? How does it relate to the formation of the modern secular nation-states?
- The Enlightenment as the ‘Age of Reason’ and the disenchantment of the European mind.
- What concept of Religion is being juxtaposed against ‘secular reason’?
- The Protestant capitalist nation-state and instrumental-cognitive rationality.

#### **Required Reading**

Ludwig Feuerbach, ‘God as a Projection’, Karl Marx, ‘Religion as Opium: Man Makes Religion’ and Sigmund Freud ‘Religion as Wish fulfilment’ in *Faith and Reason* (1999), edited by Paul Helm, Oxford: Oxford University Press. 226-228, 229-230 and 232-235. (These are all super short!)



<b>Lecture 4 (Jan 10): Separate spheres: Origins of the secular state – colonial secularism</b>
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Modern secular states are not limited to ‘the West’. They are a repeated legal structure for national governance found across the world.

- How did the age of Empire and colonialism export the European model of separate spheres?
- How did this conceptual frame affect pre-existing social systems: who benefited/who suffered?
- What was the impact of ‘religion’ as an organizing concept in cross-cultural description?

**Required Reading**

Tisa Wenger, “‘We are Guaranteed Freedom’: Pueblo Indians and the Category of Religion in the 1920s”, *History of Religions*, 45:2. 2005. 89-113

**Further Required Reading for Week 1.**

Bayly, C.A. *The Birth of the Modern World 178—1914*, Oxford: Oxford University Press. 2004. 325-351 (i.e.: the first two thirds of the chapter ‘Empires of Religion’)

Asad, Talal. ‘Religion, Nation-State, Secularism’ in *Nation and Religion: Perspectives on Europe and Asia*, edited by Peter van der Veer and Hartmut Lehmann, Princeton, NJ: Princeton University Press. 1999. 178-196.

**Optional Further Reading for this Week.**

Cavanaugh, William. ‘Colonialism and the Myth of Religious Violence’ in *Religion and the Secular: Historical and Colonial Formations*, edited by Timothy Fitzgerald, London and Oakville: Equinox Publishing Limited. 2007. 241-262.

Fitzgerald, Timothy. ‘Encompassing Religion, privatized religions and the invention of modern politics’ in *Religion and the Secular: Historical and Colonial Formations*, edited by Timothy Fitzgerald, London and Oakville: Equinox Publishing Limited. 2007. 211-240.

Hirschl, Ran. *Constitutional Theocracy*, Harvard, MA: Harvard University Press. 2010. 26-40. (this reading provides an excellent break-down for the varieties of religion/state governance models across the world).

<b>TUTORIAL 1. (Jan 10): The origins of the secular state</b>
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**WEEK TWO. 14<sup>TH</sup> – 18<sup>TH</sup> JANUARY.**

Continuing with last week’s theme of separate spheres, we look to two major legal controversies emerging from the principle of separate spheres. The second half of the week then moves on to Module II.

(NB. As we turn to specific court cases, the reading load picks up a bit, particularly regarding the Scientology case-study: plan your reading!!)

<b>Lecture 5 (Jan 14): Separate spheres: Case 1 – L’Affair du Foulard / The Veil in France</b>
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- The controversy of Muslim schoolgirls wearing the *hijab* in French schools.
- The meaning and origins of French *laïcité*

**Required Readings**

Video: “La *laïcité* française” (10 minutes) <https://www.youtube.com/watch?v=pl-YYcH-52U>

Jones, Nicky. “Religious Freedom in a Secular Society: The Case of the Islamic Headscarf in France” in *Freedom of Religion Under a Bill of Rights*. Edited by Paul Babie and Neville Rochow. Adelaide: University of Adelaide Press, 2012, 216-236. **Read ONLY 216-229**

Litchfield, John “Do not wear headscarves; do not wear crucifixes do not question the syllabus: France’s school rules policy” *The independent.co.uk* (Sept. 13, 2013)

2003 *The Stassi Report*. “Recommendations” Section. 47-63. [Remember: The Stassi Report was the result of an official commission in France to look at implementing secularism (laïcité) in the context of the headscarf controversy.]

### Lecture 6 (Jan 15): Separate Spheres: Case 2 – Christian Education in NZ Schools

- Controversies concerning Christian Education in New Zealand primary schools.
- Comparison of French and New Zealand secularisms.

#### Required Readings

Watch Video: <https://www.youtube.com/watch?v=GyyRLFj98mE> (7 minutes)

Human Rights Commission report on Religion in NZ Schools ~7 pp.

#### Optional Further Readings for L5 and L6

Cardoso, Luis. “At the heart of the affair” (2000) ~6 pp.

Batuman, E. “The head scarf, modern Turkey, and me.” *The New Yorker Feb 8-15, 2016*.

Bowen, John *Why the French Don’t Like Headscarves*. Princeton: Princeton University Press, 2007. Ch. 4.

CEC Strategic Framework, Info pack and teaching goals (all on blackboard) ~6 pp.

Website: <http://religioninschools.co.nz>

#### – Module II –

“Secular policies render states neutral towards religion and therefore maximize the religious freedom, welfare and harmony of citizens”?

### Lecture 7 (Jan 16): Secular Neutrality: The ‘Church’ of Scientology?

- An introduction to Scientology, its origins, its beliefs and its controversies.
- Why is it important for Scientologists to be recognised as a participating in a religion?
- Who decides this and how?

#### Required Reading

“Hubbard’s Early Life and Beliefs” from “Scientology” in *Encyclopedia Britannica online*. ~1p.

Urban, Hugh. *The Church of Scientology: A History of a New Religion*. Princeton: Princeton UP, 2011, 155-177.

“The Character of Scientology” 5-14, 24-27 (naming ceremony).

2 x Court decisions:

*R v Registrar General, ex parte Segerdal and another* (1970)

*Hodkins v. Registrar* (UK Supreme Court 2013) decision, Pp. 1-19.

### Lecture 8 (Jan 17): Secular Neutrality: Defining Religion

- Other ‘religion’ claims by nascent cultural groups, and the implications of ‘religion’ definitions.
- The necessity and impossibility of a legal definition for ‘religion’.

#### Required Readings

Sullivan, Winnifred. ‘Judging Religion’, *Marquette Law Review*, 81: 2. 1998. 441-459.

Listen to Podcast with Susan Palmer (2015) *Minority Religions and the Law* recorded by The Religious Studies Project. <https://www.religiousstudiesproject.com/podcast/minority-religions-and-the-law/>

**Optional Further Reading for L7 and L8:**

The remainder of Urban's book.

*Places of Worship Registration Act* (UK 1855)

*The Founding Church of Scientology v. U.S.* (1969)

**TUTORIAL 2. (Jan 17) A Working Rubric for Religion?**

**Distance Students – deadline for first Written Intervention. 18<sup>TH</sup> JAN. 5pm.**

**WEEK THREE. 22<sup>ND</sup> – 25<sup>TH</sup> JANUARY.**

This week delves deeper into the idea of a secular neutrality. Does neutrality actually mean fairness? Where does secular 'neutrality' still admit cultural preferences, or indeed, a hidden religiosity of its own?

**Lecture 9 (Jan 21): Secular Neutrality and Indigenous Traditions. Case 1 - Fiji**

- Fiji's Deed of Cession and Fijian indigenous Christianity.
- A short political history of religion in Fiji.
- The founding of Fiji's 2013 Secular State.
- Perceptions of a secular state as an attack on Fiji's indigenous traditions.

**Required Readings**

Newland, L. 'From the Land to the Sea: Christianity, community and the state in Fiji – and the 2014. Elections', in *The People Have Spoken*, edited by Steven Ratuva and Stephanie Lawson, 2016. 109-131.

Excerpts from constitutional submissions sent to the Fiji Constitution Commission (provided to you by me through blackboard)

**Lecture 10 (Jan 22): Secular Neutrality and Indigenous Traditions. Case 2 - NZ**

- The recognition of 'religion' in the Waitangi Treaty
- Historic and contemporary legal activations of 'tradition' and 'religion' towards cultural recognition
- Comparison with Maori recognition claims with that of NZ's small Jewish community.
- Religion and animal rights.

**Required Readings**

Rex Adhar (2004), 'Maori spiritual concerns and the secular state', *New Zealand Law Journal* 208.

Hal Levine (2015) 'Divergent Paths, the Pursuit of Cultural Recognition in Aotearoa New Zealand', *Ethnic and Racial Studies*, 39:4. 574-592.

**Lecture 11 (Jan 23): Neutrality and Civil Religion. United States and ANZAC**

- What is civil religion? Where do we see 'civil religion' ritual? Does this mean nationalism is a religion?
- What does Rousseau understand with the Social Contract? Is it the same as Hobbes?
- What differences are there between civil religion in the United States and New Zealand?

**Required Readings**

Bellah, Robert. "Civil Religion in America" *Daedalus* 96(1) (1967): Pp. 1-21.

Rousseau, Jean-Jacques. *The Social Contract*. Chapter VIII.

Watch a video of an ANZAC dawn service or Memorial Day ceremony (Find one on youtube)

Listen to podcast: Winnifred Sullivan (2013) 'Religion and Law' recorded for The Religious Studies Project,

<https://www.religiousstudiesproject.com/podcast/podcast-winnifred-f-sullivan-on-religion-and-the-law/>

## Lecture 12 (Jan 24): Neutrality in the age of Trump?

Despite strong legal institutions that affirm secularism, we are seeing the rise of a religiously-inflected populist nationalism in the United States and in Europe. Yet this resurgence of political religion is not quite the same as previously understood threats from religious tyranny. What's going on?

- Post-secularism and religion in the public sphere.
- The rise of (religious?) populism in Europe and the United States.
- Religion as deployed as a marker of otherness.
- European secularism as Islamophobia?

### **Required Reading**

Philip Gorski, 2016, 'Why do evangelicals vote for Trump.' **and** Rogers Brubaker 'A new 'Christianist' secularism in Europe', both in *The Immanent Frame*. (<https://tif.ssrc.org>)

### **Optional Further Readings for this Week**

Fiji's Constitutional Preambles and select excerpts from the 1970, 1990, 1997 and 2013 Constitutions, along with the 2012 draft.

Seal, Graham. "ANZAC: The Sacred in the Secular" *Journal of Australian Studies* 31(19) (2007).

Inglis, Ken. "The Rite Stuff" In: Lack, John (Editor); Inglis, KS; Winter, Jay (Introduction by). *ANZAC Remembered: Selected Writings by K. S. Inglis*. Melbourne: University of Melbourne, Department of History, 1998: 127-135.

Hill, Michael and Wiebe Zwaga "Civil and Civic: Engineering a National Religious Consensus". *New Zealand Sociology* 2 (1): (1987), 25-35.

## TUTORIAL 3. (Jan 24) Is Neutrality possible? Is Neutrality desirable?

**SUBMIT ASSIGNMENT 1 (4-PART ESSAY PLAN): 9AM, FRIDAY JANUARY 25<sup>TH</sup>.**

### **WEEK THREE. 14<sup>TH</sup> – 18<sup>TH</sup> JANUARY.**

At face-value, most would agree 'religious freedom' is an inherently good thing. Yet when 'religious freedom' is discussed as a right, grounded in liberty, legislating this right becomes tricky. What gives when the right to religious freedom clashes with other rights, or with other (secular) sacred values, such as free speech, the preservation of life or the protection of children?

## Lecture 13 (Jan 28): Religious Freedom and Free Speech

Does free speech have limits with regards to safeguarding the freedom and dignity of religious believers and their beliefs? And likewise, are there limits to religious free speech, such as when religious texts are used to justify hate speech directed at other minority groups? How is this regulated differently across different liberal democracies?

- Free speech and (religious) limits to free speech: A history of blasphemy in liberal democracy.
- Anti-religious hate speech and hateful religious speech.
- The Charlie Hebdo attacks and 'Je suis Charlie' / The Destiny Church in New Zealand.

### **Required Reading**

Caroline Fourest, 'Our sacred right to blaspheme' Politico, 1 June 2016, <https://www.politico.eu/article/sacred-right-to-blaspheme-charlie-hebdo-terrorism-cartoons-freedom-of-speech/>

Peter Cumper (2017) 'Blasphemy, Freedom of Expression and the Protection of Religious Sensibilities in Twenty-First-Century Europe' in *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre*, Cambridge: Cambridge University Press. Read only pages: 147-166

### Lecture 14 (Jan 29): Religious Freedom and Non-discrimination of Sexual Minorities

In the last decade there has been a worldwide trend towards the recognition of marriage equality and sexual equality in contemporary liberal democracies. Regarding same-sex marriage, this movement has seen the legal arguments deployed by religious conservatives change from declarations that the meaning of marriage is limited to a hetero-normative construction (with the use of religious doctrine, such as 'natural law', to affirm this point), to arguments based on 'religious freedom' which aim to permit individuals to opt-out of any personal involvement with same-sex marriages. This has led to a variety of anti-discrimination claims being made against such religious objectors. Those seeking religious exemptions have included marriage-commissioners, wedding photographers and even bakers!

- What are the relevant rights at stake here, and how have courts and advocates for either side variously approached this issue?
- What are the rights balancing principles that direct their arguments?

#### Required Reading

Moon, Richard, 'Conscientious Objections by Civil Servants: The Case of Marriage Commissioners and Same-Sex Civil Marriages', in *Religion and the Exercise of Public Authority* edited by Benjamin Berger and Richard Moon, Oxford: Hart Publishing. 149-166

Ahdar, R. (2014). Solemnisation of Same-sex Marriage and Religious Freedom. *Ecclesiastical Law Journal*, 16(3), 283-305.

Winnifred Sullivan, 'Is Masterpiece Cakeshop a Church?', *The Immanent Frame*, 8 June 2018, <https://tif.ssrc.org/2018/06/08/is-masterpiece-cakeshop-a-church/>

### Lecture 15 (Jan 30): (Individual) Religious Freedom and Harm

Jehovah Witnesses are often in caught in state litigation because of their strict rules around membership and behaviour. For example, JWs are not allowed to celebrate Christmas, salute flags or receive blood transfusions. In recent years, concerns of the state regarding the welfare of the child have increasingly drawn the religious freedom of JWs into circumspection.

- An introduction to the faith of Jehovah Witnesses
- Non-establishment and free-exercises clashes with the rise of the Welfare state.
- What happens when the imperatives of religious freedom and child welfare collide?
- The NZ Court case *Moore v. Moore*.

#### Required Reading

Film: *Knocking* Available online (<https://www.youtube.com/watch?v=1TYOaFv8qjc>)

Lori G. Beaman (2005): Religion and Rights: The Illusion of Freedom and the Reality of Control, *Culture and Religion: An Interdisciplinary Journal*, 6:1, 17-29

### Lecture 16 (Jan 31): (Institutional) Religious Freedom and Harm

In Australia, following an extensive Royal Commission inquiry into child abuse in the Catholic Church, a bill was passed by the Legislative Assembly of the Australian Capital Territory in 2018. The bill extended mandatory reporting of child abuse across all activities of the Church, included the Catholic confessional. The Seal of Confession is a long-standing ritual of confidential absolution for sinful acts. Some priests have stated that they would rather go to jail, than break the Seal.

- What is the history of the Seal of Confession?
- What are the implications of this intervention by the Australian state.
- What is the difference between institutional and individual religious autonomy?

**Required Reading**

Desmond Cahill and Peter Wilkinson (2017) 'Appendix 2: The Seal of Confession: Its history and Interface in Civil and Criminal Law,' in *Child Sexual Abuse in the Catholic Church: An Interpretive Review of the Literature and Public Inquiry Reports*. Melbourne: RMIT University Centre for Global Research. 344-352.

Melissa Davey (2018) Catholic Church rejects Royal Commission call to report abuse disclosed in Confession', *The Guardian*, <https://www.theguardian.com/world/2018/aug/31/priests-wont-report-abuse-disclosed-in-confession-australian-bishops-say>

**Optional Further Reading for this Week**

Joshua Bauers, "The Price of Citizenship: An Analysis of anti-Discrimination Laws and Religious Freedoms in *Elane Photography, LLC v. Willock*," *Rutgers Journal of Law and Religion* 15, no. 3 (2014): 588-610

**L.15.**

Blankholm, Joseph. "No Part of the World: How Jehovah's Witnesses Perform the Boundaries of their Community" *ARC, The Journal of the Faculty of Religious Studies, McGill University* Volume 37 (2009): 197-211

Weddle, David L. "Jehovah's Witnesses." In *Encyclopedia of Religion*. 2 ed. New York: Macmillian Press, 2005. 4820-4.

Bergman, Jerry. "Dealing with Jehovah's Witness Custody Cases" in *Creighton Law Review* 29 (1996): 1485-1516.

Wah, Carolyn R. "Jehovah's Witnesses and Child Custody Cases in the US 1996-1998" *Review of Religious Research* 2001, 42(4): 372-386

**L.16.**

Browse through the rest of Cahill and Wilkinson.

Fisher, Anthony. Safeguarding the seal of confession [online]. *The Australasian Catholic Record*, The, Vol. 95: 2. 2018. 131-151.

**TUTORIAL 4. (Jan 31) Balancing Right claims and the contradictions of Religious Freedom**

**- Module III -**

Through adopting a uniform system of secular law, states can maintain fair and consistent barriers between the private world of religion and the public worlds of law and politics.

**WEEK 5: 4<sup>TH</sup> - 8<sup>TH</sup> FEBRUARY**

Should the state adopt a 'uniform system of secular law'? That is: a single system of laws, applied to everyone, equally and with no exceptions? What are the alternatives? This week we consider ideals of religious accommodation and legal pluralism.

**Lecture 17 (Feb 4) Religious Accommodation. Pluralism and Diversity in Canada (1)**

**Lecture 18. (Feb 5) Religious Accommodation. Pluralism and Diversity in Canada (2)**

Reasonable accommodation is a policy for managing religion in Canada that poses some challenges to the uniform system idea.

- How does reasonable accommodation work? What problems does it solve and why did the Canadian province of Quebec resort to it?

- What is lost and gained through reasonable accommodation? Why is it controversial?



- Is accommodation the best solution for religious diverse societies? Why does Lori Beaman call pluralism and diversity a 'myth'?

### **Required Readings**

Beaman, Lori. "The Myth of Pluralism, Diversity, and Vigor: The Constitutional Privilege of Protestantism in the United States and Canada." *Journal for the Scientific Study of Religion*, Vol 42, No. 3 (Sep 2003). Pp 311-325.

Zubrzycki, Genevieve. "Negotiating Pluralism in Québec: Identity, Religion, and Secularism in the Debate over 'Reasonable Accommodation' in *Religion on the Edge: De-Centering and Re-Centering the Sociology of Religion*. Edited by Courtney Bender, Wendy Cadge, Peggy Levitt and David Smilde. New York: Oxford University Press, 2012. Pp. 215-232.

Bouchard, Gerard & Charles Taylor. *Building the Future: A Time For Reconciliation: Abridged Report*. (Commission De Consultation Sur Les Pratiques De Accommodement Reliées Aux Différences Cultureles.) Quebec, (2008): Specific selections. Approx. ~20 pp.

### **Optional Further Readings**

Stoker, Valerie "Zero Tolerance? Sikh Swords, School Safety, and Secularism in Québec" *Journal of the American Academy of Religion*, Vol. 75, No. 4 (Dec., 2007), pp. 814-839

## **Lecture 19 (Feb 6) Gender Politics and Legal Pluralism in India**

## **Lecture 20 (Feb 7) Gender Politics and Legal Pluralism in India**

- Legal pluralism refers to a situation in which the state recognizes the presence of multiple legal systems within its borders. The case-study for our discussion of legal pluralism involves Shah Bano, a divorcee who sued her ex-husband in the 1980s for maintenance. The Shah Bano case is one of the most important cases in India's legal history and very compelling example of the complications that may accompany legal pluralism throughout the world.

- What is legal pluralism and what are its pros and cons? How does it differ from practices of accommodation? Whose religious rights are protected by Muslim Personal Law? What role does gender play in the Shah Bano affair? What role has gender and sexuality played in the examples we've seen so far in this course?

### **Required Reading:**

Hussain, Jamila, "More than one law for all: Legal Pluralism in Southeast Asia" *Democracy and Secularity* 7 (2011): 374-389. Pp. 374-379. [NOTE: This is a basic introduction to the idea of legal pluralism]

Awn, Peter "Indian Islam: The Shah Bano Affair" in Jack Hawley (ed.) *Fundamentalism and Gender*. Oxford University Press, 1994. Pp. 63-77.

Read through the entire website on the Shah Bano case compiled by Laura Jenkins:

<http://homepages.uc.edu/thro/shahbano/index.htm>

### **Optional Further Reading:**

(JUDGMENT IN SHAH BANO CASE): *Mohd. Ahmed Khan v. Shah Bano Begum And Others*. 1985 SCR (3) 844. Available at <http://indiankanoon.org/doc/823221/>

Galanter and Krishanan, "Personal Law Systems and Religious Conflict" In Gerald Larson (ed.) *Religion in Personal Law in Secular India: A Call to Judgment*. Bloomington: Indian University Press, 2001.

Williams, Rowan "Civil and Religious Law in England: A Religious Perspective" *Journal of Ecclesiastical Law* 10(3) (2008). 262-282

Anderson, Michael R. "Islamic Law and the Colonial Encounter in British India" *WLUML Occasional Paper No. 7* - June 1996, 3-24.

Moustafi, Tamir and Asifa Quraishi-Landes. "Paradoxes of Religious Freedom in Egypt."

<http://blogs.ssrc.org/tif/2012/04/16/paradoxes-of-religious-freedom-in-egypt/>

**TUTORIAL 5. (Feb 8) Legal Pluralism**

Distance Students – deadline for second Written Intervention. 8<sup>TH</sup> FEB. 5pm.

**Module IV -**

The industry of 'Expert Religion'.

**WEEK 5: 11<sup>TH</sup> - 15<sup>TH</sup> FEBRUARY**

In this final week we look at where claims of expertise on the issue of religion, religious conflict and religious lives, has underpinned a growing industry of both international and local consultants, lobbyists, lawyers, dialogue facilitators, researchers and communication specialists. With claims of 'expert religion' these actors position themselves within discourses of human rights, conflict resolution, governance and development. We are already familiar with many of these voices, as we have encountered them in the course already. This week we look more closely at how they operate and the impact they have.

**Lecture 21. (Feb 11) Global Advocacy on Religious Freedom**

This looks at the growth in the global advocacy on religious freedom, carried out by well-financed and politically well-connected international organisations such as Amnesty International and the Tony Blair Faith Foundation. What are their underpinning philosophies, how do they operate, and what difference do they make? Moreover, how do they respond to and engage with local advocacy already taking place at the grass-roots?

**Required Reading**

Elisabeth Shakman Hurd, 2015, *Beyond Religious Freedom*, Princeton NJ: Princeton University Press. 22-36.  
Schonthal, Ben, 'Economies of expert religion in Sri Lanka', *Journal of Religions and Political Practice* 4.1. 2018. 27-45.

**Lecture 22. (Feb 12) Inter-faith Dialogue and Conflict Resolution**

Inter-religious dialogue is often presented as best practice for resolving inter-ethnic conflict that is marked by religious difference. Inter-faith dialogists have produced massive amounts of literature on cross-faith understanding and the mutual appreciation of religious similarities and differences. Yet are these initiatives effective? On what assumptions do they proceed and whose interests do they serve?

Inter-faith dialogue and conflict resolution.  
Making issues about 'religion'.  
Inter-religious dialogue in India.

**Required Reading**

Muthuraj Swamy (2016) 'Chapter 6: Dialogue and the Myth of Religious Conflicts: A Case Study', *The Problem with Inter-Religious Dialogue*, London: Bloomsbury. 128-145.

**Lecture 23. (Feb 13) Religions as Civil Society Organisations**

In secular states, religious organisations are expected to remain out of politics. Though alternative spaces for public influence continue to open-up, particularly on issues where the state is at a comparative disadvantage or unthreatened by such religious activity. In the South Pacific, the churches have successfully mobilised on the issue of climate change and climate change migration, with church leaders assuming significant positions in UN COP negotiations and brokering land purchase deals. This lecture considers how religions adapt and seek out new spheres of influence in secular society, and continue to push the boundaries of privatised religion. It will also ask: is this a good thing?

- Religion adapting, finding and filling (new) gaps.
- Religions as CSOs.



- Church governmentality in Pacific Climate Change migration.

**Required Reading**

Kemp, Wolfgang, 'Climate change, migration, and Christianity in Oceania', edited by in Kirsten Hastrup and Karen Olwig, *Climate Change and Human Mobility: Challenges to the Social Sciences*, Cambridge: Cambridge University Press. 2012. 235-257

**Lecture 24. (Feb 14) Does Law help or hinder? Round-up!**

This last lecture will reflect on how far we've come since the start of the course. It will look back on the first court case we looked at – the Veil in French Schools – and see if we now look at things differently now the course is finished. What would a religious accommodation approach have been? How does this issue relate to tensions with a French civil religion?

The last lecture will also reflect on the question of whether law actually helps resolve the various problems we have been looking at, or does it make them worse! Do the limits of law begin before the solutions to religious disputes arrive?

No Reading.

**TUTORIAL 6. (Feb 14) The 'Expert Religion' Industry and ROUND-UP**

~SUBMIT ASSIGNMENT 2 – RESEARCH ESSAY: 9AM FRIDAY 15 FEBRUARY ~

~ *Final Examination – Exam Week* ~