

Introduction



Law and Religion Agenda

- Objective: Course introduction.
- Organization of the course.
- Class structure/content.
- Methodology and resources.
- Evaluation.
- Discussion questions.
- Next classes:
 - Jan. 18: Separation of state and church.
 - Jan. 25 & Feb. 1: Section 2(a) of the Charter.
 - Feb. 8: Bill 21.



LAW AND RELIGION

- Course website: www.julianhermida.com
- Email: julian.hermida@algonau.ca
- Live sessions: Zoom (link available in AU Moodle for this course).



Class structure

- Short lectures (Zoom live sessions).

NO RECORDING



- Class activities.
- Possible changes to the course, if Covid-19 measures change.

Content

- Separation of state and Church.
- Religious freedoms and the Charter.
- International and foreign legal instruments.
- Quebec's Bill 21.
- Law and religion during the pandemic.
- Religious legal traditions.

Methodology and resources

- Participatory.
- Covid-19 constraints and challenges.
 - Possible changes to the course if Covid-19 measures change.
- Back to in-person classes?
- Course website: www.julianhermida.com.
- Zoom live sessions.



Evaluation

- Class participation: 40%
- Test: 30%
 - March 1-8 (one week-take home)
- Final take-home: 30%
 - Distribution: March 29.
 - Submission: April 4.



Group discussion

- What is religion?
- What is the connection between state and religion?
- What is the connection between law and religion?
- Is religion freedom a human right? Why or why not?
- Identify and briefly discuss some religious legal traditions.
- Discuss the poem “Some keep the Sabbath going to Church” by Emily Dickinson. What does it mean?

Next classes

- Jan. 18: Separation of state and church.
- Jan. 25 & Feb. 1: Section 2(a) of the Charter.
- Feb. 8: Bill 21.
- Feb. 15: Covid-19 measures and religion.
- March 1: Take-home test.
- March 8: God Sees the Truth but Waits/Jewish legal tradition.
- March 15: Grizzly Bear Spirit case/Islamic legal tradition.
- March 22: Before the Law/Hindu legal tradition.
- March 29: Distribution of final take-home.
- April 4: Submission of final take-home.

Separation of state and church



Law and Religion Agenda

- Objective: Separation of state and church
- Jefferson's "wall of separation" between the church and the state
- US First Amendment.
 - The Establishment Clause.
 - The Free Exercise Clause.
- Next classes:
 - Feb. 1. : Section 2(a) of the Charter
 - Feb. 8: Bill 21.



Separation of state and church

- The act affirmed the right to practice any faith, or to have no faith, as a foundational freedom for all Americans.
- This right is behind Jefferson's "wall of separation" between the church and the state.
- Jefferson argued that religious liberty, free from state tampering, is to be a key part of the American vision.



Separation of state and church

- The text of the 1786 Virginia Statute for Religious Freedom gives great insight into the US First Amendment right.
- It reads: “... no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced ... in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”

Separation of state and church

Jefferson did not suggest that religious people or religious motivations should be exiled from public debate.

The Constitution “restored to man (sic) all his natural rights.”



US First Amendment



US First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The First Amendment has two provisions concerning religion:

- The Establishment Clause; and
- The Free Exercise Clause.



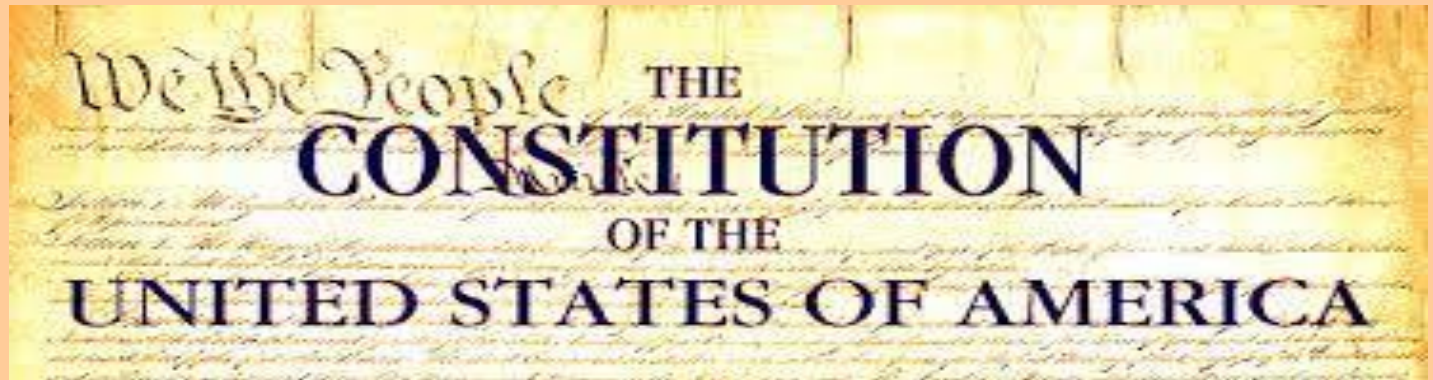
Separation of state and church

- The Establishment Clause and Free Exercise Clause of the First Amendment to the Constitution
- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” This built a “wall of separation of church and state.”



US First Amendment

- The Establishment clause prohibits the government from "establishing" a religion.
- Historically, it meant prohibiting state-sponsored churches, such as the Church of England.
- Today, what constitutes an "establishment of religion" is often governed under the three-part test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971).



US First Amendment: Lemon test

- Government can assist religion only if:
- (1) the primary purpose of the assistance is secular,
- (2) the assistance must neither promote nor inhibit religion, and
- (3) there is no excessive entanglement between church and state.
 - The character and purpose of the institution that benefited,
 - the nature of the aid the state was providing,
 - and the resulting relationship between the government and the religious institution.

If the program failed any single part of the test, it would render the aid an unconstitutional violation of the establishment clause.

US First Amendment

- The Free Exercise Clause protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest.
- In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court held that a state could force the inoculation of children whose parents would not allow such action for religious reasons. The Court held that the state had an overriding interest in protecting public health and safety.

Discussion questions

- Who was Thomas Jefferson?
- Why did Jefferson advocate for the separation of state and church?
- What is the Danbury Letter? How has the Danbury Letter been most frequently used in Supreme Court cases?
- What does separation of state and church mean in practice?
- What are the advantages and disadvantages, if any, of the separation of state and church?
- Is there separation of state and church in Canada? Why or why not?
- Look for and discuss US Supreme Court cases about the separation of state and church.
- Does the US Supreme Court's application of the Danbury Letter seem to have limited free exercise of religion? Why or why not?

Next classes

- Jan. 25 & Feb. 1: Section 2(a) of the Charter.
- Feb. 8: Bill 21.
- Feb. 15: Covid-19 measures and religion.
- March 1: Take-home test.
- March 8: God Sees the Truth but Waits/Jewish legal tradition.
- March 15: Grizzly Bear Spirit case/Islamic legal tradition.
- March 22: Before the Law/Hindu legal tradition.
- March 29: Distribution of final take-home.
- April 4: Submission of final take-home.

Charter of Rights and Freedom



CANADIAN CHARTER OF RIGHTS AND FREEDOMS



Law and Religion: Agenda

- Objective: Section 2(a) of the Charter.
- Freedom of religion.
- Legal definition of religion.
- Limits.
- Infringement of section 2(a).
 - Belief.
 - Interference
- Next classes:
 - Feb. 1: Section 2(a) of the Charter
 - Feb. 8: Bill 21.
 - Feb. 15: Covid-19 measures and religion.
 - March 1: Take-home test.



Charter of Rights and Freedom

2. Everyone has the following fundamental freedoms:

- **freedom of conscience and religion;**
- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly; and
- freedom of association.



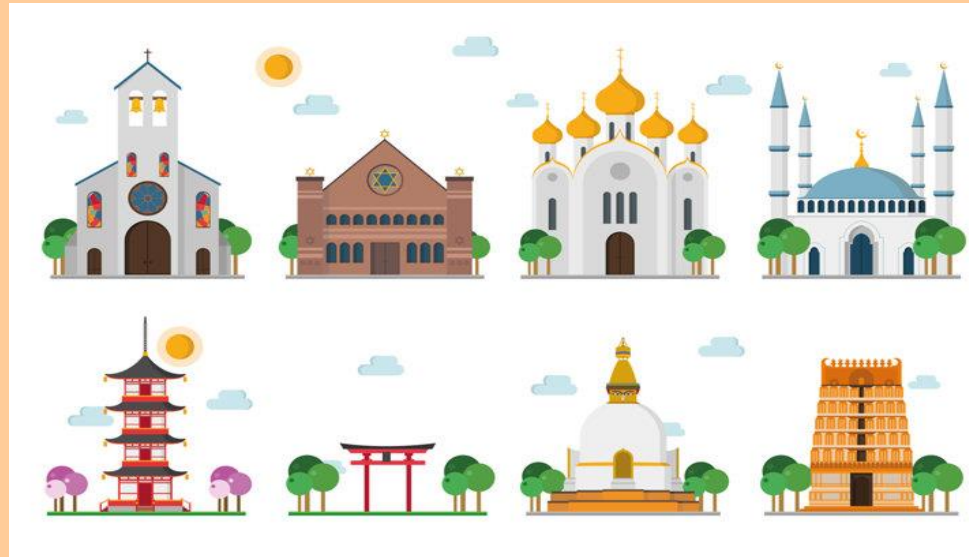
Purpose

- The purpose of section 2(a) is to prevent interference with profoundly held personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being.



Definition

- Freedom of religion has been defined as “the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practise or by teaching and dissemination”



Definition of religion

- The term “religion” has not been specifically defined, although the SC has stated that beliefs or practices rooted in secularism are not protected by the guarantee of freedom of religion and, further, that “religion” typically involves: a particular and comprehensive system of faith and worship; a belief in a divine, superhuman or controlling power; and/or a personal conviction or belief that fosters a connection with the divine or with the subject or object of that spiritual faith.
- However, the SC has also stated that the rights of atheists, agnostics, skeptics and the unconcerned are equally protected by section 2(a).

Limits

- The Supreme Court has stated on many occasions that freedom of religion can be limited where it interferes with the fundamental rights of others.
- When individual rights come into conflict, the conflict ought to be resolved through the proper delineation of the rights and values involved.

Analytical framework for infringement of section 2 (a)

- The claimant sincerely believes in a **belief or practice that has a nexus with religion**; and
- the impugned **measure interferes** with the claimant's ability to act in accordance with his or her religious beliefs in a manner that is **more than trivial or insubstantial**.



Nature of belief

Freedom of religion will only be triggered where the claimant shows that he or she has **a sincere practice or belief that has a nexus with religion**, “which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith”.

Nature of belief

Sincerity of belief is a question of fact. To establish sincerity, an individual must show that he or she sincerely believes that a **certain belief or practice is required by his or her religion**. The religious belief must be asserted in good faith and must not be fictitious, capricious or an artifice. In assessing the sincerity of the belief, a court will take into account, inter alia, **the credibility of the testimony** of the person asserting the particular belief and the **consistency of the belief** with his or her other current religious practices (Multani). It is the sincerity of the belief at the time of the interference, not its strength or absolute consistency over time, that is relevant at this stage of the analysis.

Nature of the belief

The Court does not want to engage in theological debates when examining the practice or belief in question. The practice or belief in question need not be required by official religious dogma nor need it be in conformity with the position of religious officials. Freedom of religion extends beyond obligatory doctrine to voluntary expressions of faith and is not restricted to major and recognizable religions. A protected religious practice need not be part of an established belief system or even a belief shared by others. An individual need only demonstrate a sincere belief that the practice is of religious significance to him or her.

Nature of the interference

- All coercive burdens on the exercise of religious beliefs are potentially within the ambit of section 2(a), whether a coercive burden is direct or indirect, intentional or unintentional, foreseeable or unforeseeable and may also include psychological pressure.
- Directly compelling religious belief or practice clearly infringes section 2(a) as compelling religious practice deprives the individual of the fundamental right to choose his or her mode of religious experience, or lack thereof.

Nature of the interference

- The Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. Claimants must provide **objective proof of interference**, not just cite subjective belief of interference.
- Section 2(a) **does not require the legislature to refrain from imposing any burdens on the practice of religions.**

Nature of the interference

- Legislative or administrative action which has a trivial or insubstantial effect on religion is not a breach of freedom of religion, yet there is no requirement to demonstrate actual harm, only that the freedom is infringed.
- Trivial or insubstantial interference has been described as interference that does **not threaten actual religious beliefs or conduct.**
- **Accommodation** or differential **treatment may be necessary**, nonetheless, to avoid indirect coercion arising from state action.
- In exceptional circumstances, positive government action may be required to make the right to freedom of religion meaningful.

Next classes

- Feb. 1: Section 2(a) of the Charter.
- Feb. 8: Bill 21.
- Feb. 15: Covid-19 measures and religion.
- March 1: Take-home test.
- March 8: God Sees the Truth but Waits/Jewish legal tradition.
- March 15: Grizzly Bear Spirit case/Islamic legal tradition.
- March 22: Before the Law/Hindu legal tradition.
- March 29: Distribution of final take-home.
- April 4: Submission of final take-home.

Law and Religion: Agenda

- Objective: Section 2(a) of the Charter.
- Secularism and state neutrality.
- Best interests of the child.
- Freedom of conscience.
- Denominational school rights and privileges
- Human Rights Act.
- International Law.
- Group discussion.
- Next classes:
 - Feb. 8: Bill 21.
 - Feb. 15: Covid-19 measures and religion.
 - March 1: Take-home test.



Freedom from conformity to religious dogma

- Although section 2(a) of the Charter is not infringed merely because education may be consistent with the religious beliefs held by a majority of Canadians, teaching students Christian doctrine as if it were the exclusive means through which to develop moral thinking and behaviour amounts to religious coercion in the classroom.
- At the same time, requiring a religious school to teach its own religion from a neutral perspective has been found to seriously impair the religious freedom of the school's community members.

Freedom from conformity to religious dogma

- Government may not coerce individuals into affirming a specific religious belief nor to manifest a specific religious practice for a sectarian purpose. Government may not compel individuals to perform or abstain from performing otherwise harmless acts because of the religious significance of those acts to others. But the right not to believe is not infringed by a criminal offence that is rooted in a moral principle developed within a religious tradition.
- A person's belief in the religious aspect of a societal institution does not free that person from an obligation to comply with the civil aspect.

Secularism and state neutrality

- The concept of secularism rules out any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community.
- It implies equal recognition and respect to all members of a community.
- Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group.

Secularism and state neutrality

- Secularism is closely linked to the notion of “state neutrality”.
- “... following a realistic and non-absolutist approach, state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever, while taking into account the competing constitutional rights of the individuals affected.”

Secularism and state neutrality

- A breach of a duty of state neutrality must be established by **proving that the state is professing, adopting or favouring one belief to the exclusion of all others and that the exclusion has resulted in interference** with the complainant's freedom of conscience or religion.
- While the state cannot favour one religious view at the expense of others, the duty of neutrality does not require it entirely to abstain from celebrating and preserving its religious heritage. Such neutrality is consistent with promoting diversity in a multicultural society and with a democratic imperative that requires the state to encourage everyone to participate freely in public life regardless of their beliefs.

Secularism and state neutrality

- The reference to the supremacy of God in the preamble of the Charter cannot be relied on to reduce the scope of freedom religion and authorize the state to consciously profess a theistic faith.



Secularism and state neutrality

- Secularism in the Canadian context has not been held to mean that religion has no place in the public sphere. For example, a secular response that requires individuals to “park their religion at the courtroom door” (*e.g.* always remove the full niqab face veil before testifying in criminal proceedings) is inconsistent with Canadian jurisprudence and “our tradition of requiring state institutions and actors to accommodate sincerely held religious beliefs insofar as possible” and risks limiting freedom of religion where no limit can be justified.
- State officials may exercise their own freedom of conscience and religion when they are not acting in an official capacity.

Best interests of the child

- Parents have the right to rear their children according to their religious beliefs, including choosing religious education and choosing medical and other treatments.
- However, such activities can and must be restricted when they are against the child's best interests.
- The exercise of discretionary powers in a custody application that are based solely on the best interests of the child can prevent the imposition of religious views of the non-custodial parent on the child.
- The “best interests of the child” standard is applied in a way that takes into increasingly serious account the young person’s views in accordance with his or her maturity in a given medical treatment case.

Best interests of the child

- With respect to education, while parents have the right to pass on their religious beliefs to their children, “...the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores the Quebec government’s obligations with regard to public education.

Freedom of conscience

- Freedom of conscience includes the right not to have a religious basis for one's conduct.
- Freedom of conscience and religion should be broadly construed to extend to conscientiously-held beliefs, whether grounded in religion or in a secular morality.
- Freedom of conscience is aimed more broadly at protecting views based on strongly held moral ideas of right and wrong, not necessarily founded on any organized religious principles, and distinguishable from political or other beliefs which are protected by section 2(b) freedom of expression.

Denominational school rights and privileges

- The denominational, dissentient and separate school rights or privileges protected under section 93 of the *Constitution Act*, are the product of an historical compromise crucial to Confederation and form a comprehensive code immune from Charter review.
- A secular public school system does not limit section 2(a), but any government funding of religious schools beyond that required by section 93 would have to be extended equally among religions.

Human Rights Act

- The *Canadian Human Rights Act* prohibits discrimination on the ground of religion as does section 15 of the Charter.



International Law



International norms

- Article 18 of the *International Covenant on Civil and Political Rights*
- Article 14 of the *Convention on the Rights of the Child*
- Article 3 of the *American Declaration of the Rights and Duties of Man*.



International norms

- Article 18 of the *Universal Declaration of Human Rights*,
- Article 12 of the *UN Declaration on the Rights of Indigenous Peoples*,
- Article 12 of the *American Convention on Human Rights*.
- Article 9 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.



International Law

- **UDHR**

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief."

ICCPR

Art. 18 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice "

1981 Declaration of the General Assembly

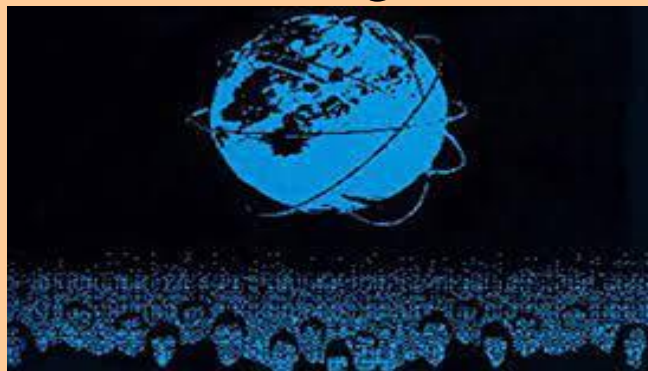
Art. 1 (1): "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice"

Non binding instruments

Human Rights Committee general comment 22

Para . 3: "Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice; ".

Para . 5: "The Committee observes that the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief



Group discussion

- What is the case Masterpiece Cakeshop v. Colorado Civil Rights Commission about?
- What are the baker's main arguments? Do you agree? Why or why not?
- Do you agree with laws that bar businesses from refusing service based on race, sex, marital status or sexual orientation? Why or why not? Do you think that –non-essential- businesses should be free to provide services to everyone without discrimination? Why or why not?
- Is baking a cake an art? Is the baker an artist? What are the legal implications if the cake were a work of art?
- In this case, there is a tension between religious rights and rights against discrimination of gay people. How can a tolerant society best protect everyone's rights?

Next classes

- Feb. 8: Bill 21.
- Feb. 15: Covid-19 measures and religion.
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Quebec Bill 21



Law and Religion: Agenda

- Objective: Bill-21.
- Secularism and state neutrality.
- Quebec's Bill-21
- Group discussion.
- Next classes:
 - Feb. 8: Religion principles (in person)
 - Feb. 15: Covid-19 measures and religion (in person).
 - March 1: Take-home test.
 - March 8: Submission of midterm/God Sees the Truth but Waits (online).
 - March 22: Before the Law (in person).
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CANADA: Secularism and state neutrality

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Secularism and state neutrality

- A breach of a duty of state neutrality must be established by **proving that the state is professing, adopting or favouring one belief to the exclusion of all others and that the exclusion has resulted in interference** with the complainant's freedom of conscience or religion.
- While the state cannot favour one religious view at the expense of others, the duty of neutrality does not require it entirely to abstain from celebrating and preserving its religious heritage. Such neutrality is consistent with promoting diversity in a multicultural society and with a democratic imperative that requires the state to encourage everyone to participate freely in public life regardless of their beliefs.

Secularism and state neutrality

- The reference to the supremacy of God in the preamble of the Charter cannot be relied on to reduce the scope of freedom religion and authorize the state to consciously profess a theistic faith.



Secularism and state neutrality

- Secularism in the Canadian context has **not been held to mean that religion has no place in the public sphere.** For example, a secular response that requires individuals to “park their religion at the courtroom door” (*e.g.* always remove the full niqab face veil before testifying in criminal proceedings) is inconsistent with Canadian jurisprudence and “our tradition of requiring state institutions and actors to accommodate sincerely held religious beliefs insofar as possible” and risks limiting freedom of religion where no limit can be justified.
- State officials may exercise their own freedom of conscience and religion when they are not acting in an official capacity.

Quebec Bill 21: An Act respecting the laicity of the State

- The Quebec nation has its own characteristics, one of which is its civil law tradition, distinct social values and a specific history that has led it to develop a particular attachment to state laicity.
- Secularity should be affirmed in a manner that ensures a balance between the collective rights of the Quebec nation and human rights and freedoms.
- Quebec attaches importance to the equality of women and men.

Quebec Bill 21

Four principles of laicity (secularism)

- The separation of state and religions.
- The religious neutrality of the state.
- The equality of all citizens.
- Freedom of conscience and freedom of religion.



Quebec Bill 21

- A public ban for workers in positions of authority to wear religious symbols.
- All religious symbols, regardless of the size, are prohibited.
- Public employees.
- Crown prosecutors, government lawyers and judges.
- School principals, vice-principals and teachers.

Quebec Bill 21: Receiving services

- Uncover face to receive a public service for identification or security purposes.
- Services, include, municipal services, for instance, public transit. Doctors, dentists and midwives in public institutions.
- Subsidized daycares.
- School boards.



Quebec Bill 21: Notwithstanding clause

- The bill invokes the notwithstanding clause to override any violations of the Charter of Rights and Freedoms. The clause allows provincial or federal authorities to override certain sections of the charter for a period of five years.
- It mentions, in particular, sections two and seven to 15 of the charter, which pertain to legal rights. Section two protects the "fundamental freedoms" of individuals, including freedom of conscience and religion.

Next classes

- Feb. 15: Covid-19 measures and religion.
- March 1: Take-home test.
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Islamic law



Islamic law

- The Qur'an is the principal source of Islamic law, the Sharia.
- It contains the rules by which the Muslim world is governed (or should govern itself) and forms the basis for relations between man and God, between individuals, whether Muslim or non-Muslim, as well as between man and things which are part of creation.
- The Sharia contains the rules by which a Muslim society is organized and governed. It provides the means to resolve conflicts among individuals and between the individual and the state.

Islamic law

- The Hadith and Sunna are complementary sources to the Qur'an and consist of the sayings of the Prophet and accounts of his deeds.
- The Sunna helps to explain the Qur'an, but it may not be interpreted or applied in any way which is inconsistent with the Qur'an.
- Though there are other sources of law—i.e., ijma', (consensus), qiyas, (analogy), ijtihad, (progressive reasoning by analogy)—the Qur'an is the first and foremost source, followed by the Hadith and Sunna.
- Other sources of law and rules of interpretation of the Qur'an and the Hadith and Sunna follow in accordance with a generally accepted jurisprudential scheme.

Islamic law

- The Qur'an contains a variety of law-making provisions and legal proscriptions interspersed throughout its chapters (suwar) and verses (ayat).
- A number of rules exist for interpreting these provisions, such as the position of a given ayah within the context of the surah, which in turn is interpreted in accordance with its place in the sequence of revelations, its reference to other revelations, and its historical context in relation to particular conditions which existed at the time of the given revelation.
- These and other rules are known as the science of interpretation (ilm usul al-fiqh).

Islamic law

- According to ilm usul al-fiqh rules, for example, one initially is to refer to a specific provision and then to a general provision dealing with a particular situation.
- No general provision can be interpreted to contradict a specific provision, and a specific rule will supersede a general proposition.
- A general provision, however, is always interpreted in the broadest manner, while a specific provision is interpreted in the narrowest manner.



Islamic law

- Reasoning by analogy is permitted, as are applications by analogy, except where expressly prohibited. Simplicity and clear language are always preferred.
- Similarly, the clear spirit of certain prescriptions cannot be altered by inconsistent interpretations.
- A policy-oriented interpretation within the confines of the rules of jurisprudence is permissible and even recommended, as is the case with the doctrine of ijtihad (progressive reasoning by analogy).
- Muslim scholars do not consider Islam to be an evolving religion, but rather a religion and legal system which applies to all times. It is, therefore, the application that is susceptible to evolution.

Islamic law

Examples of laws

- "Avoid condemning the Muslim to Hudud whenever you can, and when you can find a way out for the Muslim then release him for it. If the Imam errs it is better that he errs in favor of innocence (pardon) than in favor of guilt (punishment)."

The Prophet's Hadith

- "Were people to be given in accordance with their claim, men would claim the fortunes and lives of (other) people, but the onus of proof is on the claimant and the taking of an oath is incumbent upon him who denies."

The Prophet's Hadith

Jewish law



Jewish law

- The foundation of Judaism is the Torah (the first five books of the Hebrew Bible, sometimes referred to as “the Five Books of Moses”).
- “Torah ” means “instruction” or “teaching,” and like all teaching it requires interpretation and application.
- Jewish tradition teaches that Moses received the Torah from God at Mount Sinai.
- The Torah is replete with instructions, directives, statutes, laws, and rules. Most are directed to the Israelites, some to all humanity.



Jewish law

- The words of the Torah constitute what the rabbinic tradition calls the Written Torah.
- However, beginning around 400 BCE, teachings emerged based in or connected to the Torah, but not literally evident in the text. This body of teaching is known as the Oral Torah, and rabbinic sources claim that it, too, was revealed at Sinai. Halakhah per se begins with this “Oral Torah.”



Jewish law

- Some laws in the Torah required procedures for their observance that were not explicit. Sometimes conditions under which Jews were living were so different from earlier periods that the ancient rabbis simply enacted new rules in keeping with the laws of the Torah. This process of developing, interpreting, modifying and enacting rules of conduct is how halakhah develops.
- Halakhah is the “way” a Jew is directed to behave in every aspect of life, encompassing civil, criminal and religious law.
- The rabbis of classical Talmudic Judaism developed a system of hermeneutic principles by which to interpret the words of the written Torah.

Jewish law

- As rabbinic teachings increased, it was necessary to commit them to writing, lest they be forgotten. Around the year 200 CE, the Mishnah, the earliest compendium of Jewish law, appeared. It became the curriculum of rabbinic instruction. In approximately 425 CE, the interpretive traditions of the rabbis of the Land of Israel were compiled, forming the Talmud Yerushalmi (Palestinian Talmud).



Jewish law

- Another Talmud, the “Bavli” (Babylonian Talmud), was compiled in the Persian Empire a century later. It presents digests of the various teachings of many generations of rabbis on issues of law and other subjects. Although it frequently fails to specify which cited opinion is authoritative, it nevertheless became the universally accepted arbiter of halakhah and the subject of many extensive commentaries.



Jewish law

- In the 18th century, rabbis wanted to reform Judaism. They rejected both some of the teachings and the authority of earlier rabbis in many matters of halakhah.
- Today, rabbis interpret Jewish law according to their respective principles for their communities.
- Many Jews reject the notion of Jewish law as binding, regarding halakhah as spiritual guidance for Jewish living. The approach to halakhah is the central factor differentiating Jewish religious movements today.
- Secular Israeli jurisprudence treats halakhah as a valid and valued source of precedent.

Hindu law



Hindu law

- It is one of the oldest legal systems in the world.
- For about 2,500 years it was based on the same primary sources, Sanskrit texts composed between ca. 500 BCE and 500 CE.
- Hindu law refers to the system of personal laws (marriage, adoption, inheritance, etc.), traditionally derived from Hindu texts and traditions, that shaped the social practice of Hindu communities.
- These texts (*dharmasāstras*) were considered to be revealed, and were part of the eternal, unchangeable Veda.
- From about the seventh until the eighteenth century the basic texts became the object of numerous commentaries, in which each author integrated the entire body of often contradictory *dharmasāstras* into coherent systems.

Hindu law

- In 1772 the British decided to apply the law of the *dharmasāstras* to Hindus in the newly established Anglo-Indian courts of law. Yet, ignorance of the Sanskrit language, lack of familiarity with Hindu culture, and the common law background of British judges led to fundamental developments.
- In 1955–6 the Indian Parliament overruled most of traditional Hindu law with four modern Acts—on marriage, succession, minority and guardianship, and adoptions and maintenance.



Hindu law: Sources

There are usually three principal sources of dharma in the Dharmaśāstra texts:

- (1) Śruti, literally "what is heard," but referring to the Vedas or Vedic literature, the liturgical and praise hymns of the earliest Hindu tradition.
- (2) Smṛti, literally "what is remembered," but referring to the Dharmaśāstra texts as well as other Sanskrit texts such as the Purāṇas and the Epics (Mahābhārata and Rāmāyaṇa).
- (3) ācāra, literally "practice," but referring to the norms and standards established by educated people who know and live by the first two sources of dharma.

Hindu law: Sources

The smṛtis are metrical texts. There are hundreds, perhaps thousands, of texts that fall into this category and it is remarkable how consistent the topics and reasoning used in these texts is.

Though the smṛti texts acknowledge variability in regional religious and legal practices, their principal concern is to explain dharma.

This unity of purpose led to a standardization of topics dealt with by the texts, even though the texts still exhibit differences between them.



Hindu law: Sources

- The most famous and the earliest known smṛti text is the Laws of Manu, which dates to approximately the first century C.E.
- The Laws of Manu, or Mānavadharmasāstra, has recently been critically edited and translated by Patrick Olivelle (2004, 2005).
- His introduction and translation are perhaps the best starting point for understanding the nature of Dharmasāstra and its contents.
- Similar to other scholastic traditions of religious law, the Dharmasāstra commentators' first concern was to explain the sacred legal texts precisely, with careful attention to word meanings, grammatical structures, and principles of legal hermeneutics.

Law and Religion: Agenda

- Objective: application of religion principles in law.
- God Sees the Truth But Waits.
- Group discussion.
- Next classes:
 - March 15: Grizzly Bear Spirit case (in person).
 - March 22: Before the Law (in person).
 - March 29: Distribution of final take-home.
 - April 4: Submission of final take-home.



God Sees the Truth But Waits

- Who is Tolstoy? Where was he from?
- Some universities around the world are banning readings from Russian authors, including classics such as Tolstoy, because of the current situation in Ukraine. What do you think of this? Should we not read a short story or an article because it was written by a Russian author? Why or why not?
- What is the story about? What does the author want to show with this story? What purpose does he seek?
- What is your interpretation of the story?

God Sees the Truth But Waits

- Why is the story called “God Sees the Truth But Waits”?
- How does God see the truth?
- Near the end of the story Makar confesses his crime. Does he deserve Aksyónof’s forgiveness? Why or why not?
- What advice would you give Aksyónof?
- Suppose you are Ivan Aksyónof’s lawyer. Write the appeal to God using legal arguments.
- Write your own ending to the story.

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