**Law and Religion**

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**Course Description**

The course is designed to provide an overview of the major issues and questions within the purview of the protection of freedom of religion from the perspective of race, ethnicity, nationalism. Following a theoretical introduction and general discussions about the concept of law and human rights; the balancing of conflicting rights and constitutional values and political interests; the concept of protecting group rights, and the dynamics of internal restrictions and external protections, as well as different (antidiscrimination focused individual justice-based, redistribution and economic empowerment oriented group justice-based, recognition-focused*,* and social dialogue and representation-focused) concepts of justice, in which religion-based claims are formulated, we turn to the analysis of how religion and religious freedom is conceptualized and operationalized in legal and policy measures. Let us always bear in mind: law is the language politics speaks, how theoretical, often theological, policy and political debates are being resolved (i.e. being cemented into binding decisions) by societies and the political elite.

The accommodation of all claims and aspirations by groups, be them identified, labeled or signified by religion, ethnicity, nationality, etc, is always politicized, and the success will always depend on the nature of the claims and its compatibility with the majority culture. The course will aim at unveiling the underlying patterns in political and legal debates, which will always be shaped by the nature of both the groups and the claims. As we will see neither the standards, nor the practices are fully consistent. In this voyage, we will approach the question of religion from (i) the point of how the state relates to religion on the constitutional level; (ii) how the prohibition of religion-based discrimination and the accommodation of religion-base claims are conceptualized and operationalized; and how (iii) the freedom and autonomy of religious organizations is guaranteed. We will also be looking at several adjacent issues such as (iv) how religion may serve as a marker for ethnicity; and (v) how the free choice of religion can be conceptualized. The issues will be scrutinized by looking at cases and case studies on clothing, dietary practices, religious symbols in public spaces (classrooms, courthouses, at the workplace, on the streets, the army and prisons), public holidays, approaches to marriage, and reproduction (abortion and contraception), male and female circumcision and cosmetic surgery, special cases in refugee procedures, the issue of Sharia courts, and blasphemy. When looking at claims for recognition or accommodation, we will be focusing on their “costs”, be they redistributive, or conflicts with human rights standards.

There will be weekly meetings in a seminar format. Seminar discussions of the required readings will have two parts: a general discussion, in which all students are expected to participate, and individual student presentations that explore, contest, or specify the major arguments of the required readings or cases.

This interdisciplinary course is designed to engage and challenge students in critical debates. Besides reading excerpts from books and academic articles, students will also become familiar with a wide range of case law dealing with the topic. The course is designed to combine academic articles and excerpts from books with legal texts or reports and policy recommendations by international organizations, and with the analysis of case law and jurisprudence. Students will not be given ready answersat the outset; instead, they will be encouraged to take an active part in debating and understanding the analyzed issues.

All the mandatory and recommended readings are provided, and are either directly assigned to students for presentation, or provide background information for complex issues which students need to present as a starting point for class discussions. All presenters are expected to be familiar with the recommended readings and are required to prepare and send notes to the entire group by Tuesday 13,00, the day before class. Late notes and failure to show up or present at class without prior notice will be penalized.

Given the highly intensive cooperation of students the course builds on, missing classes for students who have assignments or presentations is only acceptable for medical reasons, and a doctor’s note will be required. In such cases, if absent student were to present court cases, the relevant notes need to be sent before class or other forms of subsidiary arrangements need to me made, such as for example swapping assignments with colleagues.

Class attendance, presentations and the timely delivery of assignments will be continuously monitored.

Given the fact that the seminar builds on rigorous debates and the critical assessment of the readings, it may happen that the discussion of certain topics transgresses classes and some issues are moved to the next class. This is due to the nature of the course. Should some readings end up not being discussed by the end of the course, students responsible for those presentations will not be penalized for this.

Most readings are available in the syllabus (via weblink), the remaining will be mailed. (In case you face difficulties accessing the readings, please indicate at papa@ceu.edu.)

**Learning Outcomes**

By the end of the course, students will be able to critically discuss a diverse set of topics in the purview of nationalism studies and legal and policy institutions concerning religious diversity.

**Course Requirements**

Students are expected to attend all seminars, read all the required readings and prepare to be active in seminar discussions. It is absolutely essential to read assigned materials prior to each session.

In addition to this, students are required to

1. give presentations on the assigned mandatory and recommended readings,
2. give a presentation on a chosen case studies on the last class, and
3. submit a final essay incorporating and critically analyzing readings discussed during the course. Class 7 and 8 is partially reserved for the discussion of the paper-proposals. Abstracts for the papers need to be submitted by the 9h class.

(i) Students will be asked to sign up for seminar presentations. Choices will be discussed in class. The presenters will be expected to sum up the main arguments of the mandatory and recommended readings and pose some key questions for class discussion. The presentation should be supported by an outline or a response paper of 1-3 pages which discusses some of the selected themes of the reading, to be submitted via e-mail by Tuesday 13,00, the day prior to the class. Unless otherwise indicated, presentations should be reactions to the readings rather than summaries.

Case-presenters (either being individually responsible for the entire case, or cases, or acting as plaintiffs/petitioners/applicants, the states, or the court) need to prepare notes including the following elements

1. For the “court:” *Facts of the case*: either sent along before class or printed and distributed in the classroom*; holding and reasoning of the court:* either sent along after class or printed and distributed in the classroom
2. For the “plaintiff, etc” and the “state”: *A list of arguments:* either sent along after class or printed and distributed in the classroom
3. For everyone, especially the “court:” *Illuminating quotes:* either sent along after class or printed and distributed in the classroom; *background facts and aftermaths*: notes either sent along after class or printed and distributed in the classroom
4. *Adjacent recommended readings:* notes either sent along after class or printed and distributed in the classroom.

(ii) Students are also asked to make a presentation on the double class 10-11. Choices will also be discussed in class. The case presentationshould be 10 minutes (timing will be strictly monitored) and be followed by a short Q&A.  Presentations must be accompanied by a power point presentation (which needs to be 10 slides, excluding cover, references and end slide)  In the presentation students should aim to cover the following things: Introduce the topic/case; summarize the main issue(s) (and how these link to the course); mention and define important concepts and theory; and critically reflect on the relevant empirical/theoretical class material

1. The term paper should be an original research paper that has at least 1000 and no more than 1500 words, double-spaced, with bibliography added. All students are expected to submit a project proposal at the 10th seminar. The proposal shouldoutline the main questions asked and be discussed with the instructor. The topic should relate to the broad themes of the course and class discussions. The paper should follow the genre of a scholarly essay either as a case study or as a literature review. Class 7 and 8 are partly dedicated for the discussion of the paper-projects. Both the outline and final research paper are expected to be products of each student's individual effort. Evaluation will be based on the quality of research, its originality, quality of grammar, accuracy of spelling, and soundness of content. It constitutes plagiarism if a student quotes or adopts ideas from a source without appropriate attribution (for example, by failing to utilize endnotes or footnotes properly). Similarly, direct quotations must be attributed and indicated by quotation marks.
2. Please note that late papers submitted after the deadline will be marked down by half of a letter grade per day.

A group of students have an option to present a mock trial case instead of a final essay. The description of the case, plaintiff/defendant notes and the court’s judgment need to be submitted and presented at the last class. The written documentation needs to be at least 2500 words.

The requirements and grading breakdown of the seminar are as follows:

**Course evaluation:**

Class participation (including in-class presentations): 50%

Class presentation of a national report/case study 25%

Final essay/mock case: 25%

**COURSE DESIGN:**

**Class 1. September 20. Introduction. Religious freedom as a human right under international law.**

**Class 2. September 27. Religion as a human right, religion and refugee protection. International documents and monitoring mechanisms.**

**Class 3. October 4. The concept of religion. Religion and privacy. Freedom from religion. Who is “religious”?**

**Class 4. October 11. Religion as a proxy for ethnicity. The prohibition of discrimination on the basis of religion.**

**Class 5. October 18 Conflicts of individual and collective rights. Harmful traditional practices and the limits of religion**

**Class 6. October 25. The limits of religion I.: denial of state and private services; religion and intimacy: marriage, sexual orientation, reproductive freedom, contraception**

**Class 7. November 8. The limits of religion II.: Religion and criminal law (hate crimes, obscenity and blasphemy) Participation feedback. Discussing final paper and presentation topics.**

**Class 8. November 15. The scope and free choice of religion as an individual and as a collective right. Laicite, secularism: Religious holidays, clothing and practices in public, employment and religion. Discussing final paper and presentation topics Discussing final paper and presentation topics.**

**Class 9. November 22. Religions and constitutions. Theocracies. State religion, state neutrality. Sharia courts and religious arbitration. Recognizing religion by the state: constitutional agents and legal entities. The freedom and autonomy of religious organizations, pledge of allegiance. Abstract for final paper and presentation due.**

**Class 10-11. November 29. Double session, class roundtable: national reports and case studies**

**READINGS AND PRESENTATIONS**

**Class 1. September 20. Introduction. The concept of human rights, balancing, international law.**

**Class 2. September 27. Religion as a human right under international law, religion and refugee protection. International documents and monitoring mechanisms.**

*Reading*

Louis Henkin: Age of Rights, Introduction: The human rights idea, p.1-10

*Recommended reading*

Sen, Amartya: Human Rights and Asian Values, The New Republic, July 14-July 21, 1997 pp. 1-5.

https://www.carnegiecouncil.org/publications/archive/morgenthau/254/\_res/id=Attachments/index=0/254\_sen.pdf

Human rights documents:

Universal Declaration of Human Rights

<https://www.un.org/en/universal-declaration-human-rights/>

International Covenant on Civil and Political Rights

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

International Covenant on Economic, Social and Cultural Rights

https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

European Convention on Human Rights

<https://www.echr.coe.int/Documents/Convention_Eng.pdf>

American Convention on Human Rights

<https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>

African Charter on Human and Peoples' Rights

<https://www.achpr.org/legalinstruments/detail?id=49>

Asian Human Rights Charter

https://www.refworld.org/pdfid/452678304.pdf

Charter of Fundamental Rights of the European Union

<https://www.europarl.europa.eu/charter/pdf/text_en.pdf>

Minority rights:

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>

Framework Convention for the Protection of National Minorities

https://www.coe.int/en/web/minorities/at-a-glance

Convention on the rights of the child

https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[The Yogyakarta Principles](https://en.wikipedia.org/wiki/The_Yogyakarta_Principles)

<https://yogyakartaprinciples.org/> *Recommended reading*

Guide on Article 9 of the European Convention on Human Rights (2020)

<https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf>

Rapporteur's Digest on freedom of religion or belief

<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>

OSCE (2019) Freedom of religion and security

[*https://www.osce.org/odihr/429389*](https://www.osce.org/odihr/429389)

Michael Kagan: Refugee Credibility Assessment and the “Religious Imposter” Problem: A Case Study of Eritrean Pentecostal Claims in Egypt

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1917592>

[Ireland - High Court, 27 April 2012, H.M v Minister for Justice and Law Reform, [2012] IEHC 176](http://www.asylumlawdatabase.eu/en/case-law/ireland-high-court-27-april-2012-hm-v-minister-justice-and-law-reform-2012-iehc-176#content)

<https://www.asylumlawdatabase.eu/en/case-law/ireland-high-court-27-april-2012-hm-v-minister-justice-and-law-reform-2012-iehc-176>

[Sweden - Migration Court of Appeal, 30 November 2011, UM 7850-10](http://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-november-2011-um-7850-10#content)

[*https://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-november-2011-um-7850-10*](https://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-november-2011-um-7850-10)

Atheist Afghan granted religious asylum in UK

https://www.bbc.com/news/uk-25715736Jinan Bastaki: Faith-Based Approaches to Asylum: New Appeals to Accountability? Using Faith-Based Principles as Soft Law

<https://ecommons.udayton.edu/cgi/viewcontent.cgi?article=1267&context=human_rights>

Hathaway, James C- William S. Hick: Is there a Subjective Element in the Refugee Convention's Requirement of 'Well-Founded Fear'?

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2481&context=articles>

Credibility assessment manual 1-2, Hungarian Helsinki Committee

<https://helsinki.hu/wp-content/uploads/Credibility-Assessment-in-Asylum-Procedures-CREDO-manual.pdf>

UN Convention on Refugees

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

UNHCR Handbook on Procedures, Para 1-168

<https://www.unhcr.org/4d93528a9.pdf>

<https://www.un.org/en/sections/issues-depth/refugees/>

https://www.shusterman.com/asylum-based-on-religion

*Video:*

<https://www.youtube.com/watch?v=nDgIVseTkuE&feature=youtu.be>

https://youtu.be/O8kP3pr6XPU

<https://news.un.org/en/tags/un-special-rapporteur-freedom-religion-or-belief/video/1>

**Presentations:**

1. Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights: a) is religion recognized? b) enforcement mechanisms and procedures
2. European Convention on Human Rights , Charter of Fundamental Rights of the European Union a) is religion recognized? b) enforcement mechanisms and procedures
3. American Convention on Human Rights, African Charter on Human and Peoples' Rights, Asian Human Rights Charter, a) is religion recognized? b) enforcement mechanisms and procedures
4. Convention on the rights of the child, Council of Europe Recommendation on the promotion of human rights of older persons, [The Yogyakarta Principles](https://en.wikipedia.org/wiki/The_Yogyakarta_Principles) , Framework Convention for the Protection of National Minorities, a) is religion recognized? b) enforcement mechanisms and procedures
5. Asylum and religion: the law and practice
6. ECHR Article 9, UN SR practice

**Class 3. October 4. The concept of religion. Religion and privacy. Freedom from religion: atheism. Who is “religious”?**

*Reading*

Howerth: What is Religion?

https://www.jstor.org/stable/2376451#metadata\_info\_tab\_contents

*Recommended reading*

Wisconsin v. Yoder, 406 U.S. 205 (1972)

https://supreme.justia.com/cases/federal/us/406/205/

SİNAN IŞIK v. TURKEY

<http://echrblog.blogspot.com/2010/02/no-religion-on-identity-cards.html>

https://www.ceceurope.org/wp-content/uploads/2015/08/CASE\_OF\_SINAN\_ISIK\_v.\_TURKEY.pdf

International Humanist and Ethical Union: Freedom of Thought 2014: A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious; Their Human Rights and Legal Status

<https://humanists.international/what-we-do/freedom-of-thought-report/>

RELIGIOUS FREEDOM AND EQUALITY AS CELEBRATION OF DIFFERENCE: A SIGNIFICANT DEVELOPMENT IN RECENT SOUTH AFRICAN CONSTITUTIONAL CASE-LAW

[*http://www.scielo.org.za/pdf/pelj/v12n4/a03v12n4.pdf*](http://www.scielo.org.za/pdf/pelj/v12n4/a03v12n4.pdf)

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation

<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

Papageorgiou and others v. Greece

https://hudoc.echr.coe.int/eng?i=001-61091

Smith Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872

https://www.law.cornell.edu/supremecourt/text/494/872

Kosteski v. The Former Yugoslav Republic of Macedonia

<https://hudoc.echr.coe.int/eng?i=001-73342>

Holt, Aka Muhammad v. Hobbs, Director, Arkansas Department of Correction, ET AL.

https://caselaw.findlaw.com/us-supreme-court/13-6827.html

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation

<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

*Video:*

<https://www.youtube.com/watch?v=B5SpiV-iOUA>

*https://www.youtube.com/watch?v=fN4HJkMVP1U*

https://www.youtube.com/watch?v=9320tG1bQaY

https://www.prisonerresource.com/religious-rights/you-dont-have-to-be-jewish-to-love-a-kosher-prison-mealarticle-242/

**Presentations:**

1. Atheism: International Humanist and Ethical Union: Freedom of Thought 2014: A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious; Their Human Rights and Legal Status, the Atheist Afghan religious asylum case
2. The European data protection legal regime
3. Wisconsin v. Yoder: Yoder
4. Wisconsin v. Yoder: State
5. Wisconsin v. Yoder: Court
6. Employment Division, Department of Human Resources of Oregon v. Smith: Smith
7. Employment Division, Department of Human Resources of Oregon v. Smith: Oregon
8. Employment Division, Department of Human Resources of Oregon v. Smith: Court
9. Kosteski v. The Former Yugoslav Republic of Macedonia: Kosteski
10. Kosteski v. The Former Yugoslav Republic of Macedonia: FYRM
11. Kosteski v. The Former Yugoslav Republic of Macedonia: Court
12. Holt, Aka Muhammad v. Hobbs, Director, Arkansas Department of Correction,

**Class 4. October 11. Religion as a proxy for ethnicity. The prohibition of *discrimination* on the basis of religion.**

*Reading*

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>

Rogers Brubaker: Religion and Nationalism: Four Approaches

[*https://onlinelibrary.wiley.com/doi/full/10.1111/j.1469-8129.2011.00486.x*](https://onlinelibrary.wiley.com/doi/full/10.1111/j.1469-8129.2011.00486.x)

*Recommended reading*

McCrudden, Cristopher: Thinking about the Discrimination Directives, European Anti-Discrimination Law Review no. 1 (April 2005) pp. 17–21.

<https://www.migpolgroup.com/_old/public/docs/39.EuropeanAnti-discriminationLawReview-Issue1_EN_04.05.pdf>

PAP, András László. Harassment: A Silver Bullet to Tackle Institutional Discrimination, But No Panacea for all Forms of Dignity and Equality Harms. Intersections. East European Journal of Society and Politics, [S.l.], v. 5, n. 2, july 2019.

<https://intersections.tk.mta.hu/index.php/intersections/article/view/497>

303 Creative LLC v. Elenis

<https://www.supremecourt.gov/opinions/22pdf/21-476_c185.pdf>

<https://www.oyez.org/cases/2022/21-476>

*video:*

<https://www.youtube.com/watch?v=_TbvuqRMUO4&feature=youtu.be>

**Presentations:**

1. Brubaker on nationalism and religion
2. 303 Creative LLC v. Elenis
3. Academic freedom issues:

<https://www.nytimes.com/2023/01/08/us/hamline-university-islam-prophet-muhammad.html>

https://www.artnews.com/art-news/news/tallahassee-florida-principal-fired-art-lesson-michelangelo-david-1234662184/

**Class 5. October 18. Conflicts of individual and collective rights. Harmful traditional practices and the limits of religion**

*Reading*

Kymlicka, Will: Multicultural Citizenship, Individual Rights and Collective Rights, pp. 34-48

Okin Moller, Susan: Is Multiculturalism Bad for Women?, In: Joshua Cohen, Matthew Howard and Martha C. Nussbaum (Eds.) Is Multiculturalism Bad for Women?, Princeton, New Yersey: Princeton University Press, 1999., pp. 9-24

Kymlicka, Will: Liberal Complacencies, Id. pp. 31-34

Sassen, Saskia: Culture Beyond Gender, Id. pp. 76-78

*to be sent via email*

Harmful Traditional Practices Affecting the Health of Women and Children

https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet23en.pdf

*Recommended reading*

Vitalis Pemunta, N. (2016). "The Social Context of Breast Ironing in Cameroon", Athens: ATINER'S Conference Paper Series, No: SOC2015-1889.

Paula Casal, Is Multiculturalism Bad for Animals? Journal of Political Philosophy, Vol. Issue 1, pp.1–22, March 2003

<https://onlinelibrary.wiley.com/doi/10.1111/1467-9760.00164>

Legal Restrictions on Religious Slaughter in Europe

https://www.loc.gov/law/help/religious-slaughter/europe.php

Lisa R. Avalos: Female Genital Mutilation and Designer Vaginas in Britain: Crafting an Effective Legal and Policy Framework

<https://heinonline.org/HOL/Page?handle=hein.journals/vantl48&div=21&g_sent=1&casa_token=&collection=journals>

Amanda Kennedy- Lauren M. Sardi: The Male Anti-Circumcision Movement: Ideology, Privilege, and Equity in Social Media

<https://scholarlycommons.law.case.edu/swb/vol11/iss1/12/>

Council of Europe “retreat” on circumcision of young boy

<https://www.secularism.org.uk/news/2015/10/council-of-europe-retreat-on-circumcision-of-young-boys>

Paul Jerome McLaughlin: Legal and Medical Ethical Entanglements of Infant Male Circumcision and International Law

<https://commons.law.famu.edu/library-facpub/4/>

David Abraham: Circumcision: Immigration, Religion, History, and Constitutional Identity in Germany and the U.S.

https://germanlawjournal.com/wp-content/uploads/09\_Vol\_18\_No\_07\_Abraham.pdf

Kennedy, Amanda & LaurenM. Sardi. 2016. "The Male Anti-Circumcision Movement: Ideology, Privilege, and Equity in Social Media." *Societies Without Borders* 11 (1).https://scholarlycommons.law.case.edu/swb/vol11/iss1/12/

Cha'are Shalom Ve Tsedek v. France

https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58738%22]}

Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993).

https://supreme.justia.com/cases/federal/us/508/520/

Legal Restrictions on Religious Slaughter in Europe

https://www.loc.gov/law/help/religious-slaughter/europe.php

*video:*

<https://www.nhs.uk/conditions/female-genital-mutilation-fgm/>

<https://www.unfpa.org/end-child-marriage>

<https://www.youtube.com/watch?v=LprB4qaZ5JU>

<https://www.euronews.com/2019/09/03/belgian-region-bans-halal-and-kosher-slaughter-of-animals>

<https://www.youtube.com/watch?v=SAp5AlWhyWU>

<https://www.skandavale.org/shambo-sanctity-of-life/6/>

<https://www.youtube.com/watch?v=3wAqMdUx_Wg>

<https://www.youtube.com/watch?v=3wAqMdUx_Wg>

**Presentations:**

1. contextualize the Kymlicka-Moller-Sassen-debate through the harmful traditional practice of breast-ironing case (and compare with plastic surgery)
2. FGM, cosmetic surgery, male circumcision: what is the difference?
3. contextualize the Kymlicka-Moller-Sassen-debate through animal slaughter (Cha'are Shalom Ve Tsedek v. France, Church of the Lukumi Babalu Aye, Inc. v. Hialeah)
4. Albinism and withcraft: [www.ohchr.org/sites/default/files/Documents/Issues/Albinism/Albinism\_Worldwide\_Report2021\_EN.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Albinism/Albinism_Worldwide_Report2021_EN.pdf)

https://www.theguardian.com/global-development/commentisfree/2022/jun/08/witch-hunts-ritual-child-abuse-albinism-africa

**Class 6. October 25. The limits of religion I.: denial of state and private services, religion and intimacy: marriage, sexual orientation, reproductive freedom, contraception.**

*Reading*

Christopher McCrudden[:](https://harvardhrj.com/2020/03/indirect-religious-discrimination-a-european-perspective/%22%20%5Cl%20%22_ftn1) Indirect religious discrimination: a European perspective

<https://harvardhrj.com/2020/03/indirect-religious-discrimination-a-european-perspective/>

*Recommended reading*

Hobby lobby

<https://embryo.asu.edu/pages/burwell-v-hobby-lobby-2014>

Pichon and Sajous v. France

<https://www.strasbourgconsortium.org/common/document.view.php?DocumentID=4942>

Bull & Bull v Hall & Preddy

<https://www.equalityhumanrights.com/en/legal-work-scotland/bull-v-hall-why-supreme-court-found-direct-discrimination>

<https://app.croneri.co.uk/law-and-guidance/case-reports/bull-v-hall-2013-uksc-73-sc>

Hands on Originals, Inc v Lexington-Fayette Urban County Human Rights Commission

https://law.justia.com/cases/kentucky/supreme-court/2019/2017-sc-000278-dg.html

State of Washington v Arlene’s Flowers Inc, Ingersoll & Freed v Arlene’s Flowers Inc

<https://www.aclu.org/cases/ingersoll-freed-v-arlenes-flowers-inc?redirect=cases/arlenes-flowers-v-washington>

Lee v Ashers

<https://www.supremecourt.uk/cases/docs/uksc-2017-0020-judgment.pdf>

Elane Photography v Willock

<https://caselaw.findlaw.com/nm-supreme-court/1642684.html>

Oliari and Others v. Italy

<https://strasbourgobservers.com/2015/09/16/oliari-and-others-v-italy-a-stepping-stone-towards-full-legal-recognition-of-same-sex-relationships-in-europe/>

https://www.refworld.org/cases,ECHR,55af917a4.html

[Obergefell v. Hodges](http://www.scotusblog.com/case-files/cases/obergefell-v-hodges/)

<https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf>

<https://www.law.cornell.edu/supremecourt/text/14-556>

 [Dobbs v. Jackson’s Women’s Health Organization](https://www.law.cornell.edu/supremecourt/text/19-1392)

https://www.supremecourt.gov/opinions/21pdf/19-1392\_6j37.pdf

Hate Crime Laws, A Practical Guide, OSCE ODHIR Part I. pp. 16-57

<https://www.osce.org/files/f/documents/3/e/36426.pdf>

*Video:*

<https://www.cnbc.com/2018/06/25/us-supreme-courtducks-a-dispute-over-a-florist-who-refused-a-gay-wedd.html>

<https://www.al.com/news/birmingham/2017/04/suspended_alabama_supreme_cour.html>

<https://www.youtube.com/watch?v=1rWSvCNBZxY>

[https://www.ynetnews.com/articles/0,7340,L-4485174,00.html](https://www.ynetnews.com/articles/0%2C7340%2CL-4485174%2C00.html)

<https://eu.usatoday.com/story/news/nation/2019/08/23/kim-davis-same-sex-marriage-suit-court-rules-kentucky-must-pay-fees/2101785001/>

**Presentations:**

1. denial of services (Hobby-lobby, Pichon and Sajous v. France)
2. denial of services: Hands on Originals, Inc v Lexington-Fayette Urban County Human Rights Commission, State of Washington v Arlene’s Flowers Inc, Ingersoll & Freed v Arlene’s Flowers Inc, Lee v Ashers, Elane Photography v Willock
3. (same sex) marriage: Bull & Bull v Hall & Preddy, Oliari and Others v. Italy, [Obergefell v. Hodges](http://www.scotusblog.com/case-files/cases/obergefell-v-hodges/)
4. abortion ([Dobbs v. Jackson’s Women’s Health Organization](https://www.law.cornell.edu/supremecourt/text/19-1392))

**Class 7. November 8. The limits of religion II.: Religion and criminal law (hate crimes, obscenity and blasphemy.**

*Reading*

Yoo, Kwang Hyuk, When Does Cultural Satire Cross the Line in the Global Human Rights Regime? 'Charlie Hebdo Controversy' Discussion and Its Implication for a New Paradigm of the Bounds of Freedom of Expression (2016)

<https://brooklynworks.brooklaw.edu/bjil/vol42/iss2/4/>

*Recommended reading*

Respecting rights? Measuring the World’s Blasphemy Laws, US Commission on International Religious Freedom

www.uscirf.gov/sites/default/files/Blasphemy%20Laws%20Report.pdf

Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952)

https://supreme.justia.com/cases/federal/us/343/495/

Kalman v. Cortes

https://casetext.com/case/kalman-v-cortes-2

Miller v. California, 413 U.S. 15 (1973)

<https://supreme.justia.com/cases/federal/us/413/15/>

[United States v. American Library Assn., Inc.](https://www.oyez.org/cases/2002/02-361)

https://www.oyez.org/cases/2002/02-361

[City of Erie v. Pap's A.M.](https://www.oyez.org/cases/1999/98-1161)

<https://www.oyez.org/cases/1999/98-1161>

[Ashcroft v. American Civil Liberties Union](https://www.oyez.org/cases/2003/03-218)

https://www.oyez.org/cases/2003/03-218

Akdaş v. Turkey

<https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-1133%22]}>

Hate Crime Laws, A Practical Guide, OSCE ODHIR Part I. pp. 16-57

<https://www.osce.org/files/f/documents/3/e/36426.pdf>

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008F0913>

Bret Boyce: Obscenity and Nationalism: Constitutional Freedom of Sexual Expression in Comparative Perspective

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3185016>

Sekmadienis v Lithuania

<https://laweuro.com/?p=9218>

Blapshemy laws report

<https://www.uscirf.gov/sites/default/files/Blasphemy%20Laws%20Report.pdf>

ECRI Hate Speech

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Giniewski v. France

<https://futurefreespeech.com/giniewski-v-france/>

Robert Post: Religion and Freedom of Speech: Portraits of Muhammad, Constitutional Secularism in an Age of Religious Revival, 2014

[https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199660384.001.0001/acprof-9780199660384-chapter-18](https://oxford.universitypressscholarship.com/view/10.1093/acprof%3Aoso/9780199660384.001.0001/acprof-9780199660384-chapter-18)

Quran-burner trial dropped after Danish parliament revokes centuries-old blasphemy law

<https://www.independent.co.uk/news/world/europe/quran-burner-denmark-facebook-blasphemy-laws-repeal-a7771041.html>

*Video:*

<https://www.youtube.com/watch?v=q9cYuQonbXs>

**Presentations:**

1. Blasphemy-overview + Joseph Burstyn, Inc. v. Wilson, Kalman v. Cortes, Sekmadienis v Lithuania
2. Obscenity, overview + Miller v. California, ([United States v. American Library Assn., Inc.](https://www.oyez.org/cases/2002/02-361), [City of Erie v. Pap's A.M.](https://www.oyez.org/cases/1999/98-1161), [Ashcroft v. American Civil Liberties Union](https://www.oyez.org/cases/2003/03-218)), Akdaş v. Turkey
3. hate crimes-honor killings

Brittany E. Hayes-Colleen E. Mills - Joshua D. Freilich -Steven M. Chermak: Are Honor Killings Unique? A Comparison of Honor Killings, Domestic Violence

<https://journals.sagepub.com/doi/full/10.1177/1088767917736796>

<https://www.amnestyusa.org/updates/the-horror-of-honor-killings-even-in-us/>

Homicides, and Hate Homicides by Far-Right Extremists

<https://www.brandeis.edu/projects/fse/muslim/honor.html>

**Class 8. November 15. The scope and free choice of religion as an individual and as a collective right. Laicite, secularism: Religious holidays, clothing and practices in public, employment and religion. Discussion of final paper/presentation-proposals.**

*Reading*

Lucy Vickers: Religion and the Workplace, The Equal Rights Review, Vol. Fourteen (2015)

<https://www.equalrightstrust.org/ertdocumentbank/Vickers.pdf>

Human rights in a multicultural society: The wearing of religious symbols in public areas

*Recommended reading*

Sahin v Turkey

<https://minorityrights.org/law-and-legal-cases/leyla-sahin-v-turkey-2/>

S.A.S. v. France

<https://globalfreedomofexpression.columbia.edu/cases/s-a-s-v-france/>

[El Morsli v. France](http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=69212&sessionId=16545973&skin=hudoc-en&attachment=true)

<https://ijrcenter.org/2014/07/11/s-a-s-v-france-the-european-courts-decision-in-light-of-human-rights-doctrine-on-restricting-religious-dress/>

Mann v Singh

<https://strasbourgobservers.com/2013/11/19/mann-singh-wins-in-geneva-after-losing-in-strasbourg/>

Osmanoǧlu and Kocabaş v. Switzerland

<https://strasbourgobservers.com/category/cases/osmanoglu-and-kocabas-v-switzerland/>

Lautsi v Italy

https://strasbourgobservers.com/2011/03/22/lautsi-v-italy-the-argument-from-neutrality/

Eva Brems: Equality problems in multicultural human rights claims: the example of the Belgian ‘burqa ban’ In: Marjolein van den Brink, Susanne Burri -Jenny Goldschmidt (eds): Equality and human rights: nothing but trouble? Liber Amicorum Titia Loenen, Utrecht,2015

<https://biblio.ugent.be/publication/5927900>

Mohamed Abdelaal: Extreme secularism vs. Religious Radicalism: The case of the french burkini

<https://nsuworks.nova.edu/ilsajournal/vol23/iss3/5/>

Sidhu, Dawinder S. and Gohil, Neha Singh: The Sikh Turban: Post-9/11 Challenges to this Article of Faith (2008). Rutgers Journal of Law and Religion, Vol. 9, p. 10, 2008.

https://digitalrepository.unm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1296&context=law\_facultyscholarship

Rob Widdershoven: Troubles concerning the ‘burqa ban’: reflections from an outsider, In: Marjolein van den Brink, Susanne Burri -Jenny Goldschmidt (eds):Equality and human rights: nothing but trouble? Liber amicorum Titia Loenen, Utrecht, 2015

https://www.uu.nl/sites/default/files/sim-special-38\_equality\_and\_human\_rights.pdf

Ashley Southall: Muslim Officer Sues New York Police Dept. Over No-Beard Policy, The New York Times, June 22, 2016

<https://www.nytimes.com/2016/06/23/nyregion/muslim-officer-sues-new-york-police-dept-over-no-beard-policy.html>

[Dave Philipps](http://topics.nytimes.com/top/reference/timestopics/people/p/dave_philipps/index.html): Sikh Soldier Allowed to Keep Beard in Rare Army Exception, The New York Times, December, 13, 2015

<https://www.nytimes.com/2015/12/14/us/sikh-soldier-allowed-to-keep-beard-in-rare-army-exception.html>

Katie Rogers: Citadel Denies Student’s Request to Wear a Hijab, The New York Times, May10, 2016

<https://www.nytimes.com/2016/05/11/us/citadel-denies-students-request-to-wear-a-hijab.html>

A Call to Prayer, or Noise Pollution? Israel Targets Mosque Loudspeakers

[*https://www.nytimes.com/2016/11/17/world/middleeast/lod-israel-muslim-prayer.html*](https://www.nytimes.com/2016/11/17/world/middleeast/lod-israel-muslim-prayer.html)

MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007)

http://www.saflii.org/za/cases/ZACC/2007/21.html

US Supreme Court in Equal Employment Opportunity Commission v Abercrombie & Fitch Stores Applicant

<https://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf>

Eweida and Others v. the United Kingdom

<https://hudoc.echr.coe.int/fre-press?i=001-115881>

Bougnaoui and ADDH, G4S Secure Solutions

<https://insanhaklarimerkezi.bilgi.edu.tr/en/news/none-avrupa-adalet-divan-samira-achbita-ve-asma-bo/>

Dahlab v. Switzerland

https://minorityrights.org/law-and-legal-cases/dahlab-v-switzerland-2/

Bunning v Centacare

<https://lawandreligionaustralia.blog/tag/bunning-v-centacare/>

Obst v. Germany

https://www.cambridge.org/core/journals/ecclesiastical-law-journal/article/obst-v-germany-schuth-v-germany/D38DEBFC7C538BD7634FD94BF384E9FE/core-reader*Recommended*

Thlimmenos v. Greece

*https://adsdatabase.ohchr.org/IssueLibrary/ECtHR\_Thlimmenos%20v.%20Greece.pdf*

Goldman v. Weinberger

https://www.oyez.org/cases/1985/84-1097

Francesco Sessa v. Italy: A Dilemma Majority Religion Members Will Probably Not Face

https://strasbourgobservers.com/2012/04/05/francesco-sessa-v-italy-a-dilemma-majority-religion-members-will-probably-not-face/#more-1521

Jewish couple sue over lighting that makes them ‘work’ on sabbath, The Times, The Times, `June 17, 2009

Ahmed Naish: Maldives bans Christmas celebrations at guesthouses, <http://maldivesindependent.com/business/maldives-bans-christmas-celebrations-at-guesthouses-120958>, December 24, 2015

Valsamis v. Greece

<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9053%22]}>

Francesco Sessa v Italy

https://www.legal-tools.org/doc/ae1eea/pdf/

*Video:*

<https://www.youtube.com/watch?v=iw6e4JMyN04>

https://www.publicschoolreview.com/blog/christmas-carols-banned-on-public-school-campuses

https://www.youtube.com/watch?v=82CmqdX114E

<https://www.youtube.com/watch?v=NptVwSxm-t4>

<https://www.youtube.com/watch?v=Wuyq-EvKz0c>

https://www.youtube.com/watch?v=ioyIyxM-gnM

**Presentations:**

1. uniforms: (Thlimmenos v. Greece, Goldman v. Weinberger)
2. pictures ([El Morsli v. France](http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=69212&sessionId=16545973&skin=hudoc-en&attachment=true), Mann v Singh)
3. clothing: Sahin v Turkey, S.A.S. v. France, the burqini-case (press), US Supreme Court in Equal Employment Opportunity Commission v Abercrombie & Fitch Stores
4. schools: Osmanoǧlu and Kocabaş v. Switzerland, Lautsi v Italy, Dahlab v. Switzerland
5. Eweida and Others v. the United Kingdom
6. Religious holidays (Brunei, Maldives, Jewish couple sue over lighting, Valsamis v. Greece, Francesco Sessa v Italy)

**Class 9. November 22.. Religions and constitutions. Theocracies. State religion, state neutrality. Sharia courts and religious arbitration. Recognizing religion by the state: constitutional agents and legal entities. The freedom and autonomy of religious organizations, pledge of allegiance. Discussion of final paper/presentation-proposals. Abstracts for final paper and presentation due.**

*Reading*

Gábor Halmai: Religion and Constitutionalism

<https://jog.tk.mta.hu/uploads/files/mtalwp/2015_05_%20Halmai.pdf>

Gábor Halmai: Varieties of state–church relations and religious freedom through three case studies

<https://me.eui.eu/gabor-halmai/wp-content/uploads/sites/385/2018/05/Varieties-of-State-Church-Relations-and-Religious-Freedom-Through.pdf>

*Recommended reading*

[Michale Corkery](http://topics.nytimes.com/top/reference/timestopics/people/c/michael_corkery/index.html) - Jessica Silver-Greenberg: In Religious Arbitration Scripture Is the Rule of Law, The New York Times, November 2, 2015

https://www.nytimes.com/2015/11/03/business/dealbook/in-religious-arbitration-scripture-is-the-rule-of-law.html

Dominic McGoldrick: Accommodating Muslims in Europe: From Adopting Sharia Law to Religiously Based Opt Outs from Generally Applicable Laws, Human Rights Law Review 9:4

<https://academic.oup.com/hrlr/article-abstract/9/4/603/683680?redirectedFrom=PDF>

Wasmuth v. Germany

https://www.legislationline.org/download/id/4327/file/ECHR\_%20Wasmuth%20v.%20Germany%2017.02.11\_en.pdf

Hoffmann v Austria

<https://hudoc.echr.coe.int/eng?i=001-57825>

Magyar Kereszteny Mennonita Egyhaz and Others v. Hungary

<https://hudoc.echr.coe.int/eng/?i=001-164640>

Metropolitan Church of Bessarabia and Others v. Moldova

<http://licodu.cois.it/?p=10541&lang=en>

# Austria passes controversial reforms to 1912 Islam law

<https://www.bbc.com/news/world-europe-31629543>

Andrew Reynolds: Reserved Seats in National Legislatures: A Research Note, Legislative Studies Quarterly, Vol. 30, No. 2 (May, 2005), pp. 301-310

https://onlinelibrary.wiley.com/doi/abs/10.3162/036298005X201563

Fédération chrétienne des témoins de Jéhovah de France v. France

<https://hudoc.echr.coe.int/eng?i=001-43719>

Kokkinakis v. Greece

<https://hudoc.echr.coe.int/eng?i=001-57827>

Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia

[https://pureadmin.qub.ac.uk/ws/portalfiles/portal/1781649/Case+comment+EHRLR.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/1781649/Case%2Bcomment%2BEHRLR.pdf)

Savez Crkava Rijec Ivota and Others v. Croatia

<https://www.equalrightstrust.org/sites/default/files/ertdocs//Savez%20Crkava_Case%20Report.pdf>

Hasan and Chaush v. Bulgaria

<https://minorityrights.org/law-and-legal-cases/hasan-and-chaush-v-bulgaria-2/>

Vyato-Mykhaylivska Parafiya v. Ukraine

<https://www.legislationline.org/download/id/6660/file/ECHR_Svyato-Mykhaylivska%20Parafiya%20v.%20Ukraine_2007_en.pdf>

Sindicatul Pastorul Cel Bun v. Romania

<https://hudoc.echr.coe.int/fre?i=001-122763>

Karlsson v. Sweden

<https://hudoc.echr.coe.int/fre?i=001-249>

Spetz and Others v. Sweden

<http://echr.ketse.com/doc/20402.92-en-19941012/view/>

Williamson v. The United Kingdom

<https://hudoc.echr.coe.int/fre?i=001-2195>

Ephraim Tabory: State and Religion: Religious Conflict Among Jews in Israel

https://www.jstor.org/stable/23916217#metadata\_info\_tab\_contents

Hanna Lerner: Democracy, Constitutionalism, and Identity: The Anomaly of the Israeli Case We are an ancient people, who have lived thousands of years with no constitution – cannot we continue to live without a constitution?, Constellations Volume 11, No 2, 2004.

https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1351-0487.2004.00374.x

Reuven Y. Hazan (1999) Religion and politics in Israel: The rise and fall of

the consociational model, Israel Affairs, 6:2, 109-137,

https://www.tandfonline.com/doi/abs/10.1080/13537129908719562

Suzie Navot: A new chapter in Israel’s “constitution”: Israel as the Nation State of the Jewish People, [verfassungsblog.de/a-new-chapter-in-israels-constitution-israel-as-the-nation-state-of-the-jewish-people/](https://verfassungsblog.de/a-new-chapter-in-israels-constitution-israel-as-the-nation-state-of-the-jewish-people/)

*Video:*

<https://www.pbs.org/video/religion-and-ethics-newsweekly-arbitration-faith/>

*https://www.youtube.com/watch?v=zhBEm9TLfHY*

**Presentations:**

1. Religious courts and arbitration
2. Recognition (Hoffmann v Austria, Savez Crkava Rijec Ivota and Others v. Croatia, Magyar Kereszteny Mennonita Egyhaz and Others v. Hungary)
3. Internal disputes (Metropolitan Church of Bessarabia and Others v. Moldova, Sindicatul Pastorul Cel Bun v. Romania, Karlsson v. Sweden, Williamson v. The United Kingdom)
4. oath (Mccreary County V. American Civil Liberties Union of Kentucky, Town of Greece v. Galloway, Hamidovic v. Bosnia, Buscarini and Others v c. Saint-Marino, Alexandridis v. Greece + US kneeling (national anthem)

**Class 10-11. November 29. Double session, class roundtable: national reports and case studies**

Students need to concisely prepare a presentation on a chosen topic critically analyzing readings, or a case study or a country report. The presentation needs to be 10 minutes (timing will be strictly monitored) and be accompanied by a power point presentation (which needs to be 10 slides, excluding cover, references and end slide). The content or topic of the presentation will be linked to the final paper