

Civic Versus Religious Identity in the Philosophy of Law

Course Description

What values and goals must citizens share in order to ensure a flourishing society? In a liberal democracy, what must be shared to ensure the preservation of core principles such as liberty and self-government? This course proposes to examine the relationship between civic and religious identity and, more specifically, how religious identity contributes to or detracts from the common life of a polity. John Rawls famously

off share in order for it to flourish. Given his view of the non-public nature of comprehensive doctrines, those goods are perhaps all that can be shared.

Two scholars who depart strongly from Rawls (explicitly or implicitly) yet themselves offer sharply different visions for the relationship between civic and religious identity are David Novak and Jeff Stout. Contrary to towering Jewish thinkers such as Benedict Spinoza and Moses Mendelssohn, Novak considers religion to be a truly public

a puzzling formulation, to be sure they must do so as Jews. For Novak, religion is not to be tolerated only insofar as it presents no danger to civic life; rather, it is to be embraced

conception of the common weal because he thinks citizens are inauthentic and even

values and goals must citizens share in order to ensure a flourishing society? In a liberal democracy, what values and goals must be shared in order to ensure the preservation of core principles such as liberty and self-government? Is there a need for a shared civic identity, and, if so, what is its content? Does religious identity have a place in the public square, or is it an impediment to robust civic unity? Are religious views legitimate in the public square only if they are (or can be) justified in purely secular terms? Does the translation of religious views into universal moral claims undermine the particularity of religion and the distinctiveness of religious identity? How does the relationship between civic and religious identity differ in non-Western and non-liberal societies? What can modern Islam contribute to the understanding of the relationship between civic and religious identity?

Prerequisites

Jewish Ideas and American Democracy

Attendance & Participation

Students are strongly encouraged to attend all meetings during the term and to participate steadily and enthusiastically in class discussion. This is especially important in a topical survey class that moves briskly between themes and topics. Attendance will be taken at the beginning of each class meeting. Promptness, attentiveness, participation, and

discretion. Students are expected to keep up with weekly readings and to come to class prepared to discuss them. Everyone is encouraged to participate regularly and to be

class. After approval for accommodations is granted, please submit your accommodations letter to us as soon as possible to ensure the successful implementation of those accommodations.

Course Evaluation

| | |
|----------------------|-----|
| Written Assignment 1 | 20% |
| Written Assignment 2 | 30% |
| Written Assignment 3 | 40% |
| Participation | 10% |

Course Outline

I. Shared Values: The Thin Version

HLA Hart, *The Concept of Law*, chapter nine

John Rawls, *A Theory of Justice*, chapters two, three, and four; *Political Liberalism*, part four

II. Shared Values: The Thick Version, Part I Religious Identity

David Novak, *The Jewish Social Contract*, chapters one, six, seven, and eight;

Covenantal Rights, introduction, chapters three, five, six, and seven

Timothy Jackson, *The Priority of Love*, introduction, chapters three and five

Lon Fuller, *The Morality of Law*, chapters two and four

III. Shared Values: The Thick Version, Part II Civic Identity

Ronald Dworkin, *Taking Rights Seriously*, chapters seven and eight

Jeffrey Stout, *Democracy and Tradition*, introduction, part two

IV. Universal Values

John Finnis, *Natural Law and Natural Rights*, chapters three, four, six, and eight

David Novak,

Everson v. Board of Education (1947)
Lee v. Weisman (1992)
McCreary County v. ACLU of Kentucky (2005)
Van Orden v. Perry (2005)
Cutter v. Wilkinson (2005)

VIII. The Naked Public Square?

Alasdair MacIntyre, *After Virtue*, preface, chapters one, two, seven, nine, fifteen, sixteen, eighteen, nineteen
Richard Niebuhr, *Christ and Culture*, chapters one, two, four, and seven
Richard John Neuhaus, *The Naked Public Square*, chapters two, four, five, six, and eight

IX. Liberalism and State Neutrality

Amy Gutmann, *Identity in Democracy*, chapter four, conclusion
Stephen Macedo, *Diversity and Distrust*, chapters four, five, ten, and eleven
Steven Smith, *Getting Over Equality*, introduction, chapters seven and eight

X. Multiculturalism

Will Kymlicka, *Liberalism, Community, and Culture*, introduction, chapters two, three, seven, and eight, conclusion
Will Kymlicka and Wayne Norman, *Citizenship in Diverse Societies*, chapters one, two, three, six, and seven
Ayelet Shacha

XI. Civil Religion, Trying Again

Jurgen Habermas, *The Inclusion of the Other*, selections; *Between Facts and Norms*, postscript
Anna Stilz, *Liberal Loyalty*, chapter six

XII. Political Theology

Carl Schmitt, *Political Theology*, chapters three and four
Stanley Hauerwas, *Resident Aliens*, chapters one, two, and four