In this reading and composition seminar, we will examine historical and contemporary examples of the law’s regulation of religion in order to think critically about the values of freedom, liberty, and equality in democratic societies. We will bring a range of classic texts on religion (such as John Locke’s *A Letter Concerning Toleration*, John Stuart Mill’s *On Liberty*, and Karl Marx’s “On the Jewish Question”) to bear on watershed legal cases (on such issues as polygamy, religious dress in the workplace, the consumption of spiritual hallucinogens, and faith-based objections to reproductive healthcare). In doing so, we will also examine how the democratic tensions illuminated by the aforementioned texts are made manifest in modern culture by interpreting street art, ethnographic accounts of spiritually-driven lives, and popular media. Some of the questions we will explore include: What “counts” as religion in the eyes of the law? How has the relationship between religion and the law been historically understood in the democratic liberal state, and how do these historical understandings account for (or refute the possibility of) religious difference? How might contemporary socio-cultural developments – like the recent refusal of some Southern Baptists to serve same-sex couples – help us to uncover what assumptions the law makes about the “proper” practice of religion? Can religious freedom and individual, secularized liberty ever truly coexist within a democratic state? Fundamentally, this course critically attends to how the law has served to shape both religious practices and normative values. As a result, students will emerge from this course with a nuanced understanding of how law, religion, and culture are not separate entities, but rather generative of one another.

This course will also serve as an introduction to legal studies. Thus, what will be different about the approach of this course, as opposed to courses in sociology, political science, or religious studies, is the attention paid to how the law has served to shape both the day-to-day lives of religious individuals and the promulgation of institutional values like freedom and equality. As a result, in addition to scholarly texts, students can expect to read and analyzes excerpts of cases, statutes, and laws that govern the presence of religion in liberal democratic states.

Classroom activities will provide a space for students to tease out the complexities of how the law interacts with and distances itself from religion and culture, both as individuals and as a collaborative group. Significant class time and office hours will be devoted to developing and honing the skills of essay writing and critical thinking. By the end of the semester, students will be able to read a variety

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Course Syllabus

Instructor: Kathryn Heard
Email: kathryn.heard@berkeley.edu
Office hours: Tuesdays, 4-5 pm or by appointment
Course website: https://bcourses.berkeley.edu

Course Description and Objectives
of text types analytically and critically; to distinguish valid interpretations or arguments from specious ones; to draft convincing interpretative arguments in clear language; to read their own writing with a critical eye; and to give helpful, responsible feedback to colleagues on their written work.

Course Materials

Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom*

Articles available on bCourses
Additional materials to be shown or distributed in class

Please note that, in lieu of an expensive reader, I have posted all our course readings (with the exception of the required books) on our bCourses site. I ask that you print these readings and bring a hard copy to class, as electronic devices can be disruptive to discussion. For more on my electronics policy, see below.

Office Hours

My office hours are Tuesdays from 4-5 pm or by appointment. I use [http://wejoinin.com/kheard](http://wejoinin.com/kheard) for electronic sign-up; this method assures that I will be able to give each student my undivided attention. Please think of me as a resource – I am here to help you with your writing, understanding of the texts, class participation, interpretation and application of current events to the material covered in the course, your adjustment to life at Berkeley, and much more. If you cannot make my office hours, I am happy to schedule an alternative meeting time.

Grading

The university requires that all reading and composition courses be taken for a letter grade; a C- or better is needed to fulfill the requirement. Your grade will be determined by the following rubric:

| Assignment 1 (diagnostic essay, 3 pages) | 5% |
| Assignment 2 (argumentative paper, 4-5 pages) | 20% |
| Assignment 3 (hypothetical paper, 5-6 pages) | 25% |
| Assignment 4 (in-depth critical analysis paper, 7-8 pages) | 30% |
| Attendance and participation | 20% |

Assignments

Written Work
As this course is designed to fulfill the second half of Berkeley’s reading and composition requirement, each student will be asked to write at least 19 total typewritten pages, with at least an equal number of pages devoted to preliminary drafting and revising. In this course, the pages will be allocated as follows:
• **Assignment 1:** Diagnostic essay (3 pages) – due Sept 8.
This assignment serves as an introduction to the course. You will be asked to respond to a prompt handed out during the first full week of instruction; your answer will aid in assessing the class’s collective writing skills.

• **Assignment 2:** Argumentative paper (4-5 pages) – draft due Oct 3, final due Oct 6.
This paper will prompt you to develop a clearly defined and persuasive argument concerning one (or more) of the texts we have read in the first unit of the course. I will give you the prompts well in advance of the draft paper’s due date.

• **Assignment 3:** Hypothetical paper (5-6 pages) – draft due Nov 7, final due Nov 10.
This paper will ask you to marshal the theoretical texts discussed in unit one, and the legal reasoning covered in unit two, to respond to a hypothetical religious challenge to the law. I will ask you to assess the impact of the law on religious individuals, the viability of religious claims for freedom or liberty, and, ultimately, make a recommendation for the challenge’s success or denial.

• **Assignment 4:** In-depth critical analysis paper (7-8 pages) – proposal due Nov 3, prospectus due Dec 1, oral presentation TBD, final due Dec 15 by 2:30 pm.
This paper will be cultivated over a series of short assignments that will be explained further as their respective due dates approach. You will have the ability to choose a topic within the realm of law, religion, and culture that is of particular interest to you; from this topic, you will be asked to develop an in-depth analytic argument through guided research.

**Formatting**
All written work must be uploaded to bCourses by the date and time assigned. Your papers should be formatted as follows: 1-inch margins (top, bottom, left, and right), 12-point Times New Roman font, and double-spaced line formatting. Your papers should also be submitted in .doc or .docx format. (All Berkeley students are given free copies of the Microsoft Office Suite; if you need a copy, please visit the IT department’s website.)

**Peer Review**
Each of the three formal papers you will write for this class will be substantially revised based on peer review. Please bring two clean copies of a given draft on peer revision day, one for your review partner and one for me. Drafts are intended to be completed essays – including introduction, main claim, argument, and conclusion – that meet the length requirement but may be less polished than a revised essay. Revised papers are not just drafts that have been proofread. They should demonstrate your ability to re-think the essay and show a considerable amount of re-writing and re-structuring. The key to good writing is re-writing!

**Late Policy**
If you believe you will require additional time to complete any of your papers, you should let me know as soon as you know (ideally, this will be one week in advance of the due date). I understand that emergencies do arise, but do your best to plan ahead for an extension if you feel you will need one. If your assignments are late, they will be subjected to a one grade step deduction for each day it is late.
Plagiarism
I follow UC-Berkeley’s policy on plagiarism. Broadly understood, plagiarism is the presentation of another’s words or ideas as one’s own without attributing the proper source. Plagiarism includes copying material from books and journals, as well as taking material from the Internet. Plagiarism also includes privately purchasing or obtaining papers from others, which one then presents as one's own. Any material taken word-for-word from another source must be placed in quotation marks and footnoted or cited within the text. You can use ideas and information from other authors without directly quoting from them, but you must acknowledge them in your footnotes or parenthetical documentation. For any student discovered to have committed plagiarism, I may decide to impose a proportionate sanction for the infraction – for example, for a small plagiarism infraction, you may be required to resubmit an assignment for reduced credit; for a more serious infraction, you may receive reduced credit or a zero on an exam or paper; or for an egregious infraction, you may receive a reduced final grade or failing grade in the course.

Attendance and Participation

Attendance
Due to the collaborative nature and intense pace of this course, your consistent attendance and participation are essential. At the beginning of each class, I will take roll; however, you are allowed up to three absences over the course of the semester, no questions asked. (Note: this policy does not extend to peer revision days.) Any absence after the third will reduce your overall attendance and participation grade by one grade step (for example, from a B+ to a B). This applies to any absence for any reason (illness, too tired to come to class, etc.); sleeping while present in class will count as an absence. If you have any ongoing concerns (illness, parenting or familial responsibilities, etc.) or something troubling arises, contact me as soon as possible – we will work together to come to an agreeable solution.

Active Participation
To receive full credit for participation, you should regularly contribute to both small and large group discussions. I expect you to come prepared with questions and comments about the course materials for each session. These questions can be efforts to clarify concepts, relate theories to contemporary events, weigh readings against one another, etc. I will ask people to use their questions to stimulate discussions, so please come prepared. By examining these questions and concerns as a group, we will help each other make sense of a subject that can – at times – be confusing, intimidating, and difficult. If you are, for any reason, uncomfortable speaking in class, please feel free to come discuss the texts during my office hours and we can work together to develop a strategy for your participation.

Classroom Climate
I envision the classroom as a cooperative learning community with an atmosphere of active, mutual respect for all. Given that this course covers sensitive material, I have zero tolerance for belittling, harassment, or abusive and inappropriate language and behavior.

Electronic Etiquette Policy
To minimize distractions, please turn off all electronic devices before class begins. This includes laptops, tablets, and phones. I recognize that writing by hand may be difficult for some, but some are also bothered by keyboard tapping. There is also the inevitable temptation to text, check email,
and surf the web. As with other temptations subversive to our aims, it is best to remove them. I ask that you take notes the old-fashioned way, with pen and paper. If you need to use a laptop or a recording device because of a disability, please send me an email or speak with me after class. For more on the benefits of a no-laptops policy, see: [http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom](http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom).

**Email**

I will endeavor to respond to any questions you send me within 24 hours, although I may take up to 48 hours over the weekend. While you should feel free to contact me with any questions regarding the course, I will not engage in substantive discussion about the material over email. If you would like to talk to me about the reading or would like to discuss a particular topic further, please ask in class, come to office hours, or schedule an appointment.

**Disability Accommodations**

Every student deserves a suitable learning environment. If you have a disability that needs accommodation, please provide me with an accommodation letter from the Disabled Students Program (DSP) within the first two weeks of class. If you have more immediate concerns regarding your DSP accommodation, do not hesitate to send me an email or, if you feel comfortable doing so, speak with me before or after class.

**COURSE SCHEDULE**

*Unit 1: Frameworks for Thinking about Law, Religion, and Culture*

**Week 1: Why should we study law’s intersection with religion and culture?**

*Aug 24. Introductory meeting*
Emily Bazelon, “What are the Limits of ‘Religious Liberty’?” pp. 1-5
Emma Green, “American Religion: Complicated, Not Dead,” pp. 1-9

**Week 2: What do we talk about when we talk about law, religion, and culture?**

*Aug 29. Defining (and troubling) our terms*
Leti Volpp, “Blaming Culture for Bad Behavior,” pp. 89-116

*Aug 31. Applying our terms and beginning to pre-write: analyzing the issue of animal sacrifice*
*Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), excerpts
“Learning to Read a Case,” bCourses
Week 3: How do we govern a religiously plural state?

Sept 5. The rise of secularism
John Locke, *A Letter Concerning Toleration*, pp. 11-12, 13-22, 26-49, 54-69

Sept 7. Power and the toleration of difference; crafting a thesis statement

** Sept 8: Assignment #1 due to bCourses by 5 pm **

Week 4: How secular is secular government?

Sept 13. Separations of church and state: crafting the supreme law of the land
*The Declaration of Independence* (1776)
*The Constitution of the United States* (1787)
Thomas Jefferson, “Letter to the Danbury Baptists” (1802)
Optional: bring to class a $2 bill and a nickel

Sept 15. The rise and power of civil religion; writing with an audience
Wayne C. Booth et al, “Thinking in Print” and “Connecting with Your Reader,” pp. 9-25

Week 5: How do we balance religious freedom against the common wellbeing?

Sept 19. Liberty and the freedom of conscience

Sept 21. A legal test for religious liberty, part one: polygamy
John Stuart Mill, *On Liberty*, Chapter 4
*Reynolds v. United States* (1878), excerpts
Optional: Sarah Song, “Polygamy in America,” pp. 142-168

Week 6: Can religious freedom ever be secured through secularism?

Sept 26. The unfreedoms of secular government

Sept 28. Modern life, public religions
Winnifred Fallers Sullivan, “We All Religious Now. Again,” pp. 1181-1198
Jürgen Habermas, “Religion in the Public Sphere,” pp. 1-25

Week 7: Writing workshop: drafting, editing, and revising

Oct 3. Peer review (rough draft of Assignment #2 due – bring two copies to class)

Oct 5. Library research tour
**For our library research tour, we will be meeting in 405 Moffitt at 5:10 pm with librarian Cody Hennesy.**

**Oct 6: Assignment #2 due to bCourses by 5 pm**

Unit 2: Towards a Post-Secular Jurisprudence of Religious Freedom

Week 8: What does it mean to “freely exercise” religion?

Oct 10. Constitutional challenges to the freedom of religious exercise
*Sherbert v. Verner* (1963), excerpts
*Employment Division v. Smith* (1990), excerpts

Oct 12. The power of constitutional law; how to formulate an argument
Selections from court transcripts and interviews with Al Smith, bCourses
Kathryn Heard, “Theorizing Smith: The Affective Politics of the Legal Regulation of Religion”

Week 9: What counts as religious discrimination?

Oct 17. Religious discourse and marriage equality
*Obergefell v. Hodges* (2015), excerpts

Oct 19. A test for religious liberty, part two: butchers, bakers, and candlestick makers
**NOTE: this class will be structured as a Supreme Court debate on the case below**
Erik Eckholm, “Conservative Lawmakers and Faith Groups Seek Exemptions,” pp. 1-4

Week 10: Can gender equality be reconciled with religious freedom?

Oct 24. Gender, culture, and religion
*EEOC v. Abercrombie & Fitch Stores* (2015), excerpts
Susan Moller Okin, “Is Multiculturalism Bad for Women?” pp. 133-149
Azizah Y. Al-Hibri, “Is Western Patriarchal Feminism Good for Minority Women?” pp. 41-46
Oct 26. A legal test for religious liberty, part three: women’s healthcare; choosing a research topic

*Burwell v. Hobby Lobby* (2014)
Wayne C. Booth et al, “From Topics to Questions” and “From Questions to Problems,” pp. 35-67

**Week 11: Does religion influence social institutions?**

Oct 31. Penitentiaries, religious reformation, and “the spiritual”
Jeremy Bentham, *The Panopticon Writings*, excerpts (pp. 1-37)
Jonathan Lardas Modern, “The Ghosts of Sing Sing, or the Metaphysics of Secularism,” pp. 615-643

Nov 2. A legal test for religious liberty, part four: prisons

*Holt v. Hobbs* (2016), excerpts
Video: oral argument at the 9th Circuit Court of Appeals in *Nance v. Miser* (2017)

**Nov 3: One paragraph proposal due to bCourses by 5 pm **

**Week 12: Writing workshop: drafting and supporting evidence**

Nov 7. Peer review (rough draft of assignment 3 due – bring 2 copies to class)
Wayne C. Booth et al, “Assembli Reason and Evidence” and “Acknowledgments and Responses,” pp. 130-149

Nov 9. Collaborative workshop on developing a research project
Wayne C. Booth et al, “Engaging Sources,” pp. 84-99

**Nov 10: Assignment #3 due to bCourses by 5 pm **

**Week 13: Can modern law ever guarantee religious freedom?**

Nov 14. (Im)possibilities of religious freedom

Nov 16. (Im)possibilities of religious freedom

**Unit 3: Research Presentations**

**Week 14: Research presentations**

Nov 21. Class presentations of research projects
No assigned reading – work on your prospectus; schedule individual meetings for RRR week.

Nov 23. NO CLASS – Thanksgiving
No assigned reading.
Week 15: Research presentations

Nov 28. Class presentations of research projects
No assigned reading – work on your prospectus

Nov 30. Class presentations of research projects
No assigned reading – work on your prospectus

** Dec. 1: Prospectus due to bCourses by 5 pm **

** Final paper due Dec 15 by 2:30 pm **