

## **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 offers a fairly thin account of a few “primary” goods that the members of a society must 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 affair. He writes that for Jews to participate “actively and honestly” in politics—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 as an indispensable component of it. This view stems from Novak’s covenantal theology, whereby Jewish identity is rooted in the “corporateness” or peoplehood of the faith community. But is this commitment to the primacy of religious identity and, indeed, to religious particularity an impediment to robust civic unity?

Jeff Stout seems to think so. For Stout, in a healthy society the individual is a citizen first and a believer second. Therefore, whereas Novak rejects Rawls’s thin conception of the common weal because he thinks citizens are inauthentic and even hamstrung if they leave their religious identities behind, Stout holds that disparate faith traditions should yield to the shared tradition of democracy. Religion, he fears, can give way to the pernicious traditionalism he associates with Richard John Neuhaus (and, in a different way, with Alasdair MacIntyre), who argues for keeping religion in the public square.

Ironically, while Stout might advocate the “Protestantization” of religion, he, unlike Rawls, is prepared to accept religious arguments in the public square, like those made by Lincoln and King, without translating them into secular terms. At the same time, Novak, espousing a more “Catholic” view of religion in the public square, prefers to recast all religious-ethical claims in universal, rational terms, in keeping with his natural law understanding of morality. Thus, in practice it is Novak more than Stout who appears to circumscribe the place of religion in the public square since religious claims are admissible only because they can be justified on non-religious grounds. Moreover, there remains a question of whether the privatization of faith (from Stout) and the rationalization of religious values (from Novak) threaten the integrity of faiths that understand themselves to have a role in the public square and particularly of those that understand themselves to have such a role in an irreducibly particularistic way.

### **Key Questions**

What is the relationship between civic (or political) and religious identity? How does religious identity contribute to or detract from the common life of a polity? What

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 courtesy to fellow students will be considered in the course evaluation at the instructors' 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 engaged in class discussions.

### **Honor Code**

Stern College maintains an honor code that these instructors take very seriously. The work you submit must be your own. All outside sources and references consulted must be properly cited. Cheating will not be tolerated and will result in university disciplinary action. If you are unclear in any way about what constitutes plagiarism, please do not hesitate to discuss it with either or both professors.

### **Writing Center**

The College maintains a wonderful resource to help student improve their writing skills: The Stern Writing Center. It is located in room 714 of 215 Lexington, right around the corner from the Art History classroom. Tutors are on hand to help you on writing assignments, and to offer techniques for assessing your own work. Students can schedule regular appointments online or drop-by to check if a tutor is available. We are more than happy to make the introduction for you. You can make appointments or learn more about the Center through: <http://yu.edu/writing-centers/beren>; email [berenwritingcenter@yu.edu](mailto:berenwritingcenter@yu.edu), or call 917-326-4981.

### **Students with Disabilities and Special Needs**

Students with disabilities who are enrolled in this course and who will be requesting documented disability-related accommodations are encouraged to make an appointment with the Office of Disability Services – (646) 592-4132 – during the first two weeks of

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, *Natural Law in Judaism*, chapters one, two, and three

#### V. Civil Religion

Benedict Spinoza, *Theological-Political Treatise*, preface, chapters one, three, seven, fourteen, and twenty

Karl Marx, “On the Jewish Question”

Moses Mendelssohn, *Jerusalem*, section one

John Dewey, *A Common Faith*

#### VI. Religion in Politics

Thomas Jefferson, “Letter to the Danbury Baptists”

Martin Luther King, “Letter from Birmingham Jail”

Abraham Lincoln, “Second Inaugural Address”

Eric Metaxas, *Amazing Grace: William Wilberforce and The Heroic Campaign to End Slavery*, selections; *Bonhoeffer: Pastor, Prophet, Martyr, Spy*, selections

#### VII. The Constitution and the Supreme Court

US Constitution, Amendments I, V, IX, X, XIV

*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  
Michael Sandel, "Freedom of Conscience or Freedom of Choice?"  
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 Shachar, "On Citizenship and Multicultural Vulnerability"

#### 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