

Master of Arts in American History and Government  
Ashland University

**AHG 660 5E: Religious Liberty in America**

Instructors: Sarah A. Morgan Smith and Sarah Beth V. Kitch

**Course focus:** This course examines the contested development of the American concept of religious liberty from its origins in the colonial period through the present day. We will discuss the philosophical and theological arguments for and against religious liberty, and consider the testing of this principle in a variety of historical moments, including the treatment of Quakers and other dissenters in early America; the move to disestablish churches in the early republic; the controversy over Catholic schools and Mormon polygamy in the nineteenth century; and the rights of Jehovah's Witnesses, Native American religious practitioners in the late twentieth. We will close the course with a consideration of the Religious Freedom Restoration Act, and its ongoing legal significance for the state of religious liberty in the 21st century.

**Learning Objectives:** By the end of the course, students will be able to:

1. identify the essential rights and liberties related to religion as liberty of conscience, free exercise, pluralism, equality, separation of church and state, and disestablishment and explain how they are interconnected.
2. articulate the key developments in the American understanding of religious liberty from the colonial period to the present
3. explain the development of the modern doctrines of free exercise and establishment
4. evaluate the merits and potential problems of religious liberty as principled commitment, both historically and as a matter of contemporary politics.

**Requirements:**

- **Attendance and participation at all class sessions (25%)**
- **Take Home Exam (75%)** essay question + short identifications. Further details will be distributed during the week. Note: exams will be due one week after the final on-campus session of the summer.

**Important Notes to Students**

*Preparation and Participation*

Each class meeting is rooted in the discussion of the assigned readings. It is therefore expected that each student will complete all assigned readings before the start of each class meeting.

It is strongly recommended that you complete as much of the reading as possible before the course begins. In particular, you should **read the assigned sections of Witte and Nichols, *Religion and the American Constitutional Experiment* as well as Nussbaum, *Liberty of Conscience* in full before the course begins** as these texts help to provide a broad conceptual and contextual background for the individual issues and documents we are going to discuss.

### *Attendance*

Attendance is expected at all class meetings.

### *Academic Integrity*

Any willful plagiarism on papers or cheating on exams may result in an “F” for the course and additional penalties up to expulsion from the university. For more information on what constitutes plagiarism, students should consult the Academic Integrity Policy in the available at <https://www.ashland.edu/administration/registrar/academic-integrity-policy>.

### **Required Texts:**

- Daniel Dreisbach and Mark David Hall, *The Sacred Rights of Conscience: Selected Readings on Religious Liberty and Church-State Relations in the American Founding* (Indianapolis: Liberty Fund, 2010), ISBN 978-0-86597-715-0. **This text is abbreviated as SRC in the readings below.**
- Martha Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2010), ISBN 978-0465018536. **Please read the chapters assigned in this before the class starts; we will be referring to it throughout the course.**
- John Witte, Jr. and Joel Nichols, *Religion and the American Constitutional Experiment*, 4<sup>th</sup> Edition (New York: Oxford University Press, 2016), ISBN 978-0190459420. **Please read the chapters assigned in this before the class starts; we will be referring to it throughout the course.**
- Course Packet (**CP**) of additional reading materials available on Blackboard. These materials (including the images) are required texts for the course.

## Schedule:

**Sunday, JULY 22**

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**Session 1, 4:30 PM – 6:00 PM**

**Introduction, Background, and Definitions: OR, What are we talking about?**

**Focus:** How did the historical background of Christianity from the ancient world through the Reformation shape the earliest American colonists' understanding of religious liberty? Why did various thinkers adopt more individualistic or more communal approaches to the concept? What are the essential rights and liberties related to religion and how they are interconnected? Why, according to these arguments, do religious belief and practice deserve special protection?

**Required Reading:**

- Witte and Nichols, *Religion and the American Constitutional Experiment*, Chapter 1-3

**Session 2, 7:30 PM – 9:00 PM**

**Ashbrook Center Lecture (attendance required)**

**Session 3, 9:00 AM – 10:30 AM**

**Colonial America: From Persecution to Toleration and Beyond**

**Focus:** Using the “essential liberties” defined in session one, how would you evaluate the laws and other documents presented here? Which liberties seem to have the most traction philosophically for early Americans, and why? Why were colonial leaders so concerned about Catholics, Quakers, and other dissenters? Why did colonists in British North America feel threatened by the suggestion of establishing an Anglican bishop in the colonies during the mid-18<sup>th</sup> century? What relationship had they come to understand existed between their civil and religious liberties?

**Required Reading:**

- Dreisbach and Hall, *SRC*:
  - John Cotton, *A Discourse about Civil Government* (1637-39), 133-146
  - Roger Williams, *Mr. Cotton’s Letter... and The Bloody Tenent* (1644), 146-155
  - Provisional Regulations for the Colonists of New Netherland (1624), Dutch West Indian Company Instructions (1656), Flushing Remonstrance (1657), 107 - 109
  - An Act made at General Court... and A Declaration... Concerning the Execution of Two Quakers (1658-59), 110-114
  - Elisha Williams, *Essential Rights and Liberties of Protestants* (1744), 173-179
- Course Pack (on Blackboard)
  - Herbert L. Osgood, “The Society of Dissenters Founded at New York in 1769,” *American Historical Review* 6.3 (1901): 498–507.
  - An Attempt to Land a Bishop in America. London, 1768. Engraving, artist unknown. Library of Congress Prints and Photographs Division, LC-DIG-ppmsca-13637.

**Recommended Reading:**

- Dreisbach and Hall, *SRC*:
  - Virginia, Articles, Laws, and Orders (1610-11), 84-86
  - Providence Agreement (1637), 88
  - Laws and Liberties of Massachusetts (1647), 89-102
  - Maryland, An Act Concerning Religion (1649), 103-106
  - William Penn, *The Great Case of Liberty of Conscience* (1670), 42-46
  - Toleration Act (1689), 51-55
  - Samuel Adams, *The Rights of the Colonists...* (202-204)

## Session 4, 10:50 AM – 12:20 PM

### The Founding Era: Constitutional Concerns and Considerations

**Focus:** What “essential liberties” of religion surface in these texts? What are the arguments for these liberties? What arguments against religious liberty (or its elements) do our authors address here, and how? How do the thinkers in this session address the plurality of religions in America? What competing interests are at stake? What are the iterations and possible contemporary interpretations of the First Amendment?

#### Required Reading:

- Witte and Nichols, *Religion and the American Constitutional Experiment*, Chapter 4: Forging the First Amendment Religion Clauses
- Dreisbach and Hall, *SRC*:
  - John Adams, Letter to Abigail Adams, September 16, 1774 (p. 216)
  - Texts Concerning the National Seal, August 1776 and June 1782 ((pp. 229-231)
  - Thomas Jefferson, A Bill for Establishing Religious Freedom in Virginia, 1779 and 1786 (pp. 250-251)
  - James Madison, Memorial and Remonstrance Against Religious Assessments, 1785 (pp. 309-313)
  - Benjamin Franklin, Letter to Richard Price, October 9, 1780 (p. 368)
  - A Friend to the Rights of the People, New Hampshire, February 8, 1788 (p. 383)

#### Recommended Reading:

- Dreisbach and Hall, *SRC*:
  - Northwest Ordinance, July 1787 (pp. 236-238)
  - U.S. Constitution, 1788 (pp. 349-350)
  - U.S. Constitution, Article VI, Clause 3 (p. 373)
  - U.S. Constitution, Amendment 1, 1791 (p. 433)
  - John Witherspoon, Sermon Delivered at a Public Thanksgiving after Peace, 1782 (pp. 278-290)
  - John Leland, Objections to the Constitution, February 28, 1788 (pp. 408-409)
  - Thomas Jefferson, Letter to James Madison, December 20, 1787 (pp. 412-413)
  - James Madison, Letter to Thomas Jefferson, October 17, 1788 (pp. 413-415)

**Session 5, 1:45 PM – 3:15 PM**

**Formal vs. Informal Religious Establishments: The Sunday Mail Controversy**

**Focus:** Where and how do we draw the line between laws that respect the religious sensibilities of a majority and laws that create de facto establishments? What arguments are raised in favor of a legally mandated Sunday-Sabbath observance? What arguments are raised against it? Which of the essential liberties from the first session does either side seem to hold most dear and why?

**Required Reading (all in the course pack on blackboard):**

- Chris Beneke, “The Myth of American Religious Coercion: or Failures of the Unofficial Religious Establishment, Briefly Told,” *Common-Place* vol. 15, no. 3 (Spring 2015).
- Senator Theodore Frelinghuysen (NJ), Speech...Concerning Sabbath Mails (1830)
- Senator Richard Johnson, Transportation of the Mail on the Sabbath (1829)
- Report of the General Union for Promoting the Observation of the Christian Sabbath (1829)
- Emerson B. Powery , Rodney S. Sadler, Jr., "Reading Against Jesus: Nineteenth Century African Americans' View of Sabbath Law," *SBL Forum* , n.p. [cited May 2005].

**Tuesday, JULY 24**

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**Session 6, 9:00 AM – 10:30 AM**

**Slavery, The Black Church and the Civil Rights Movement**

**Focus:** What is the relationship between slavery and Christianity in America? What does it mean to be physically enslaved but spiritually free? What effect does a pro-slavery formulation of Christianity have on slaves' religious practice? How, in response, do some slaves draw on religious narratives—and which narratives become significant? How does King's address relate to the backdrop of Christianity and slavery in America? What ambiguities does Raboteau highlight in the relationship between Christianity and slavery in America—and what does he make of these ambiguities?

**Required Readings (all in the course pack on blackboard):**

- Harriet Jacobs, *Incidents in the Life of a Slave Girl* (1861)
  - Chapter 1: Childhood
  - Chapter 13: Church and Slavery
- Frederick Douglass, *Narrative of the Life of Frederick Douglass* (1845)
  - Appendix
- W.E.B. DuBois, *Souls of Black Folk* (1903)
  - Chapter 1: Of Our Spiritual Strivings
  - Chapter 10: Of the Faith of the Fathers
  - Chapter 14: Of the Sorrow Songs
- Martin Luther King, Jr., "The Ethical Demands for Integration" [1962] in *A Testament of Hope* (1991)
- Albert J. Raboteau, *A Fire in the Bones* (1995)
  - Chapter 1: African-Americans, Exodus, and the American Israel

**Session 7, 10:50 AM – 12:20 PM**

**Establishing Religious Liberty in the Courts: The Development of the Free-exercise and Establishment Doctrines**

**Focus:** What standards did the courts (especially the Supreme Court) develop to test religious liberty cases? Why and how did they adopt those standards and how might we assess them in light of the facts of the path-breaking cases that brought them into being? How do those formative arguments concerning Establishment and Free Exercise shape jurisprudence today? How does the logic of each major body of jurisprudence (i.e., Establishment, on the one hand, and Free Exercise, on the other) square with one another? What, if any, criticisms do the justices make of the accepted standards of review?

**Required Reading:**

- Witte and Nichols, *Religion and the American Constitutional Experiment*
  - Chapter 6: The Free Exercise of Religion
  - Chapter 7: The Free Exercise of Religion, Free Religious Speech, and Religious Freedom Statutes
  - Chapter 8: Modern Establishment Law
- Course Pack (on Blackboard)
  - *Reynolds v. United States* (1879), in Muñoz, *Religious Liberty and the American Supreme Course: The Essential Cases and Documents* (2013)
  - *Cantwell v. Connecticut* (1940), in Muñoz
  - *Employment Division v. Smith* (1990), in Muñoz
  - *Everson v. Board of Education of Ewing Township* (1947), in Muñoz
  - *Zorach v. Clauson* (1952), in Muñoz
  - *Lemon v. Kurtzman* (1971), in Muñoz
  - *Edwards v. Aguillard* (1987), in Muñoz



**Session 8, 1:45 PM – 3:15 PM**

**The Catholic School Movement: Origins and Issues**

**Focus:** Why did Catholic Americans object to the use of the KJV in schools? How did the non-Catholic majority respond? How can we understand the arguments on both sides and in the later *Pierce v. Society of Sisters* and school voucher case vis-a-vis the first principles discussed in Session 1, and the judicial standards outlined in Session 7?

**Required Reading (all in the course pack on blackboard):**

- Case Study: Philadelphia Bible Riots 1844
  - Broadside, Bishop Francis Patrick [Kenrick], Philadelphia May 7, 1844.
  - Printed Letter, From: Morton McMichael, June 28, 1844.
  - Statements, [Miss Bedford and Gibbon, March 16, 1844?]
  - Testimony, Mr. Moore, [n.d.].
  - "THE ANTI-CATHOLIC RIOTS IN PHILADELPHIA IN 1844." *The American Catholic Historical Researches* 13, no. 2 (1896): 50-64.
- Case Study: *Pierce v. Society of Sisters*
  - *Oregon School Law* pamphlet with original case arguments
  - SCOTUS decision
- Selections from *School Choice: The Blaine Amendments and Anti-Catholicism* (US Commission on Civil Rights: 2007).

Wednesday, JULY 25

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Session 9, 9:00 AM – 10:30 AM

**Religious Liberty for Non-Western Religions**

**Focus:** Why and in what ways were non-Western religions like those of Chinese or Afro-Caribbean immigrant communities and Native American tribes perceived as threats to American cultural and civic identity? What did the Ghost Dance mean? Are there any significant areas of overlap between these religions and the “standard” Protestantism of nineteenth century America? Could the standards developed in *Employment Division* or *Lukumi Babalu Aye* be applied against culturally and politically prevalent religious forms and their practices? In what ways, if any, does the Court address this possibility? How does he envision Islam within American conceptions of religious liberty? How does Shaykh Hamza Yusuf describe religious liberty within Islamic tradition, and what bearing does this have on his argument concerning religious liberty in the American setting?

**Required Reading:**

- Course Pack (on Blackboard)
  - James Mooney, *The Ghost Dance Religion* (1892)
  - Wong Chin Foo, “Why Am I a Heathen?” (1887)
  - *Quick Bear vs. Leupp*, 210 US 50 (1908)
  - *Employment Division v. Smith* (1990)
  - *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993)
- Video: Hamza Yusuf on **Islam, Citizenship, and Religious Liberty** (<https://www.c-span.org/video/?409483-1/islam-citizenship-religious-liberty>)

**Recommended:**

- James Mooney’s recordings of the Ghost Dance Songs online at <http://publicdomainreview.org/collections/james-mooneys-ghost-dance-recordings-1894/>

**Session 10, 10:50 AM – 12:20 PM**

**Religious Liberty for New Religions: Mormons**

**Focus Questions:** Why do you think the LDS leadership included such a full-throated statement of religious liberty in the constitution for the state of Deseret? What justifications are given for limiting the application of religious freedom in the polygamy cases? Are those justifications compelling? What (if anything) makes polygamy different from other types of religious exercise? What is the danger in the Mormon leadership's response to the pressure from the United States government? How are the arguments for accommodation presented by Mormons and Jehovah's Witnesses (as explained in Nussbaum, *Liberty of Conscience*) similar or different?

**Readings:**

- Nussbaum, *Liberty of Conscience*, Chapter 5 (175-223)
- Course Pack (on Blackboard)
  - Doctrine and Covenant of the Church of Jesus Christ of Latter-Day Saints, Section 132 (1843)
  - Jed Woodworth, "Mercy Thompson and the Revelation of Marriage," January 2015 (part of LDS Church History Library Revelations in Context Online Exhibit)
  - Laws and Ordinances of the State of Deseret (1851)
  - Republican Party Platform (1856)
  - Morrill Anti-Bigamy Act (1862)
  - Reynolds vs. United States 98 U.S. 145 (1878)
  - Late Corporation of the Church of Latter-Day Saints v. United States, 136 U.S. 1 (1890)
  - Edmunds-Tucker Act (1887)
  - Woodruff Manifesto (1890)
  - Enabling Act (1894)
  - Second Manifesto (1904)

**Session 11, 1:45 pm – 3:15 pm**  
**Conscientious Objectors**

**Focus:** What allowance, if any, should American law make for conscientious objectors? What should conscientious objectors do in absence of accommodations within the law, where they find conflict with generally applicable laws? What does it mean to be a conscientious objector? What is religion? What is the value of religion? What, according to Heschel, are the threats to, and supports of, religious free exercise? How do Heschel and King formulate their objections to the war in Vietnam? What difference do religious claims and reverence make to their arguments? How do their arguments resonate, or fail to resonate, with the “essential liberties” we discussed in our opening, colonial, and founding sessions?

**Required Reading (all in the course pack on blackboard):**

- Debate on militia service from First Congress, 1790
- Judah L. Magnes, excerpt from *Wartime Essays*
- Stephen Wise Attacks Pacifists, NYT, 1918
- Stephen S. Wise, “What Are We Fighting For?” 1918 (audio available on LOC: <https://www.loc.gov/item/2004650682/>)
- Letter from Judah L. Magnes to Gandhi (February 26, 1939)
- Abraham Joshua Heschel, “The Moral Outrage of Vietnam” in *Vietnam: Crisis of Conscience* (1967)
- Abraham Joshua Heschel, “Religion in a Free Society” [1958] in *The Insecurity of Freedom* (1966)
- Martin Luther King, Jr., “Beyond Vietnam” via *The King Center* (1967)

Thursday, JULY 26

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Session 12, 9:00 AM – 10:30 AM

**The Presidency, Religious Practice, and Pluralism**

**Focus:** How should we evaluate religious language from the President? Should his (or her) individual faith matter? Should it be reflected in his (or her) public statements? How does President Washington's articulation and defense of the role of religion in American civic life pair with how he speaks on domestic religious liberty? How did Jefferson's presidency challenge either or both understandings? What parallels in practice and innovation exist between Washington and Eisenhower? How does President Eisenhower shape citizens' expectations for the modern presidency with regard to religion? When an overtly religious individual such as President Obama is serving as a political leader in a pluralist society, what does toleration mean? How, if at all, does Obama harmonize the roles of president, pastoral presence, and political theologian?

**Required Reading:**

- In Dreisbach and Hall, *SRC*
  - George Washington, Farewell Address (1796) (468-470)
  - Chapter 11: Religion and Politics in the Election of 1800 (478-519)
    - [William Linn], *Serious Considerations on the Election Of a President: Addressed to the Citizens of the United States*, 1800
    - Grotius [Dewitt Clinton], *A Vindication of Thomas Jefferson; Against the Charges Contained in a Pamphlet Entitled, "Serious Considerations," &c.*, 1800
  - Thomas Jefferson to Danbury Baptist Association, January 1, 1802 (528)
  - Excerpt from Thomas Jefferson, Second Inaugural Address (530)
- Course Pack (on Blackboard):
  - James Madison, 1815 'Proclamation - Recommending a Day of Public Thanksgiving for Peace,' in John T. Woolley and Gerhard Peters, *The American Presidency Project* [online]. Santa Barbara, CA.
  - Dwight Eisenhower, Inauguration Prayer (1953)
  - Dwight Eisenhower, Interchurch Center Cornerstone Address (1958)
  - Barack Obama, National Prayer Breakfast Address (2015)
  - Barack Obama, Charleston Eulogy (2015)

### **Session 13, 10:50 AM – 12:20 PM**

#### **Debating Religious Liberty and Discrimination**

**Focus:** What are the common concerns that bring Anderson and Corvino to write with and debate one another? What do the two thinkers agree on? How does each thinker understand/define: religion, liberty, discrimination, pluralism? What basic aims or goods orient each thinker’s vision for religious liberty and discrimination in America? How does each author address the development of religious liberty in America? What are the contemporary practical and principle-oriented issues that Anderson and Corvino consider? (And how are these concerns like/unlike earlier iterations of debates over religious liberty?) What approaches do Anderson and Corvino suggest—in common, or in tension with one another?

#### **Required Reading:**

- “Debating Religious Liberty and Discrimination” video of debate between Ryan Anderson and John Corvino (Fall 2017) at Notre Dame ([https://www.youtube.com/watch?v=0FQKLJg\\_-bE](https://www.youtube.com/watch?v=0FQKLJg_-bE))

### **Session 14, 1:45 pm – 3:15 pm**

#### **Discussion of Religious Liberty and Discrimination**

#### **Focus:**

(See also focus questions above). How has the Supreme Court’s understanding of religious freedom evolved in the last thirty years? In what ways can we see the shadow or legacy of previous generations’ attempts to grapple with the role of religion at play in contemporary American religion and politics?

#### **Required Reading:**

- Course Pack (on Blackboard)
    - Excerpt from *Employment Div. v. Smith*, 485 U.S. 660 (1988) (CP)
    - Religious Freedom Restoration Act (1993) (CP)
    - Excerpt from *Burwell v. Hobby Lobby Stores, Inc.* 573 U.S. \_\_\_\_ (2014) (CP)
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**Friday, JULY 27**

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**Session 15, 9:00 AM – 10:30 AM**

**Living in the “None” Generation: Public (ir)Religion and Religious Liberty**

**Focus:** How does wide-spread public secularism function to coerce or oppress religious individuals according to Robinson? Is such a public sentiment compatible with the First Amendment? What, if anything, ought the government to do about it? How does the Williamsburg Charter fit into this paradigm?

**Required Reading:**

- Course Pack (on Blackboard)
  - Marilynne Robinson, “The Tyranny of Petty Coercion”
  - Williamsburg Charter

**Recommended Reading:**

- Pew Research Center Religious Landscape Study (<http://www.pewforum.org/religious-landscape-study/>) – play around with the interactives, especially for your home state!

**Session 16, 10:50 AM – 12:20 PM**

**Secular Toleration?**

**Focus:** What, in Nussbaum’s account, is the American tradition of religious liberty? What does she diagnose as threats to religious liberty? What resources for remedy does she find in the American tradition, and how do these inform the response she proposes? What is the remedy Nussbaum proposes? Why do the themes and questions Nussbaum highlights in *Liberty of Conscience* matter? What do you think are the strengths and weaknesses of her account and argument?

**Required Reading:**

- Nussbaum, *Liberty of Conscience* (2008)

**Session 17, 1:45 pm – 3:15 pm      Review/Take Home exam**