Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.

---First Amendment to the Constitution of the United States

This course is an introductory study of the concept of freedom as it finds expression in the First Amendment to the Constitution of the United States. Though the Amendment addresses four (or five) freedoms, our focus will be on the first: the so-called freedom of religion. We will examine some of the key historical and political antecedents to the Constitution’s assertion of religious freedom, and we will read closely and critically key Supreme Court decisions that shaped the application of the First Amendment to American civic and social life.

Work for the course will consist in regular class attendance, a mid-term examination, and a final essay. The precise topic of the final paper will be announced later in the course. The mid-term examination will be written in class on March 3rd and will derive from study questions distributed earlier. The final paper is due in class on April 26th. Admission to that final session requires submission of the final paper.

Although we will not take attendance, we expect students to attend class sessions and to come prepared to discuss the assigned reading.

Assigned books: J. Witte, Jr., Religion and the American Constitutional Experiment (Westview Press 2nd ed. 2005). All other assignments for the course are on electronic reserve.

January 13  Introduction

Discussion of material that will be distributed in class.

January 18  Overview


January 20  Biblical Antecedents: Covenant and Freedom

Genesis 1:1-2:4; Exodus 19-24, 25-31 (skim); Deuteronomy 17:14-20; Judges 8:22-23, 9:1-15; I Samuel 8; II Chronicles 19; Daniel 2-4, Esther
W.S. Green, “How Religion is a Foundation of Western Civilization,” (handout)

January 25  “Render Unto Caesar: “ Christianity and Polity

Matthew 22:15-21;
Harold J. Berman and John Witte, Jr., “Church and State,” The Encyclopedia of Religion 3, pp. 489-495
Harold J. Berman, ‘Law and Religion in the West,” The Encyclopedia of Religion, 8, 472-475

January 27  Faith, Reason, and Freedom

Bernard Lewis, What Went Wrong: Western Impact and Middle Eastern Response (Oxford University Press, 2002), pp. 96-116 (“Secularism and the Civil Society”)

February 1  Preparation Sections

February 3  The American Experience & Constitutional Development

N&G, pp. 158-208

February 8  Preparation Sections
February 10  The Role of the States: The American Experience Before 14th Amendment “Incorporation”

N&G, pp. 210-12 (“The People Against Ruggles” (NY 1811))
N&G, pp. 222-31 (“Barnes v. First Parish in Falmouth” (Mass. 1810))
N&G, pp. 245-53 (Alexis de Tocqville, Democracy in America (1835))
Witte, pp. 107-24

February 15  Preparation Sections

February 17  Federal Constitutional Interpretation Before “Incorporation”

“Reynolds v. United States,” 98 U.S. 145 (1879)
“Cantwell v. Connecticut,” 310 U.S. 296 (1940)
Witte, pp. 125-42

February 22  Preparation Sections

February 24  Defining a “Religious” Objection


March 1  Preparation Sections

March 3  Mid-Term

March 15  Preparation Sections

March 17  Free Exercise at the Supreme Court

Religious Freedom Restoration Act of 1993
Religious Land Use and Institutionalized Persons Act of 2000
Witte, pp. 143-184

March 22  Preparation Sections

March 24  The Establishment Clause and State Aid to Parochial Schools
          Witte, pp. 185-232

March 29  Preparation Sections

March 31  Prayers and Pledges
          “Michael A. Newdow v. United States,” 328 F.3d 466 (9th Cir. en banc, 2003), vacated because of lack of standing, 542 U.S. ___ (2004)
          Oral Argument Transcript (scheduled before the Supreme Court on March 2, 2005) in “Van Orden v. Perry” (No. 03-1500) and “McCreary County v. ACLU of Kentucky” (No. 03-1693))

April  5  Preparation Sections

April  7  Free Speech/Free Exercise Rights vs. Establishment Clause Concerns

April 12 Preparation Sections
April 14  Academic Views on the Supreme Court and the Religion Clauses

Witte, pp. 233-59

April 19-21  Work on papers

April 26  Papers due