

Islam and Civil Liberties in Europe
Spring Semester 2011
Mondays, 10:00-11:55 am, Room 244
Professor Robert A. Kahn
University of St. Thomas School of Law

Office Hours, Rm. 315: Mon. 12-2; Tues, Thurs. 10:00-1:30pm; 3:00pm-5:00pm
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SYLLABUS

Note: This packet includes almost all the course readings. Readings marked with three asterisks (***) are required; other readings are optional. For each week, I have included a list of study questions. [The current study questions are preliminary in nature; when I hand out the finished syllabus on Jan 24th I will have a revised set of questions for each week. The packet also contains the tentative syllabus. It is subject to change].

At the end of the syllabus is a supplemental bibliography. The materials listed there are intended to help you start your research and/or answer the study questions more fully. They are not included in the packet of readings. You can, however, borrow the books to make photocopies and all of the other materials are either available in my office or online.

Course Goals: The main goal of the course is to help prepare you for the practice of law by showing how, in an extended example, lawyers, people of faith, political figures and scholars have responded to a specific set of issues. More specifically the course goals are:

- 1) To gain an overview of debates over a variety of issues including bans on headscarves, the applicability of Islamic law, the construction of mosques and minarets, and issues related to free speech and blasphemy (such as the controversy over the Danish Cartoons).
- 2) To gain a sense of how various European countries approach civil liberties issues and how this differs from the US experience.
- 3) To learn how to speak and write about a controversial subject in a way that, while civil, does not drain all the passion from the subject.
- 4) To learn how to critically evaluate legal and factual arguments about Islam and the law.
- 5) To learn how to write articles and shorter pieces that critically engage the scholarly literature.

Course Requirements: The course requirements are as follows:

- 1) All students will write **three short (1-2 pp.) reaction papers** that describe and critically respond to one or more of the readings (required or optional) for a given week. Each paper is worth 5% of the grade and is due at the start of the class in question.
- 2) Good faith class attendance and participation is worth an additional 5% of the grade. This includes regularly attending classes, informing me of any absences, taking part in class exercises, and treating other members of the class with respect.

The remaining 80% of the course grade depends on which option you decide to take. There are two choices:

- 3a) **The Seminar Paper Option.** Students will write a 7,500 word research paper on some aspect of Islam and civil liberties in Europe, Canada or the United States. (The paper topics are not restricted to the themes discussed in this class, i.e. headscarves and the Danish cartoons). The paper can discuss the situation of Muslims in a particular European country, explore a scholarly argument in depth, or take up one of the study questions.

The paper option will satisfy the Upper Level Writing Requirement. To take this option you need to observe the following schedule:

Before **Feb. 14** you should speak to me about your preferred topic.

Due **Monday Feb. 28:** One or two paragraphs describing your topic, any research you have done and your tentative thesis

Due **Monday Mar 14:** A 2-3 page outline/summary laying out your thesis, main arguments and the materials you plan to use in your paper

Due **Monday Apr. 4:** A rough draft. You should make this version as complete and thoughtful as possible. I will return your draft with comments and we will have a conference during the week of Monday April 6th.

Monday April 26: You will give a 5-10 minute in-class presentation on your topic.

Due **Thur. May 12, 2011--**the final version of your paper.

- 3b) **The Short Paper and Take Home Final Option.** Alternatively, you can write a short paper (4-6 pp.) that compares and contrasts two or more of the readings for a given week or, alternatively, answers one of the study

questions (30%) and complete a take home final (50%). Here are more details about the paper:

--You should sign up to do a short paper one weeks before the class in question.

--At least once before the paper is due, you should meet with me to discuss your progress.

--The paper itself is due at 1:00pm on the day of class.

--You should then prepare to lead the class in a 10-15 minute discussion about the subject of your paper.

--I will hand back the papers by the following Thursday. If you wish, you can rewrite your paper for a higher grade. (In this case, I will average the grades for the first and second drafts).

The take home final will be handed out on the last day of class (Apr. 26). It is due at the end of the Exam Period (May 7th). You will need to complete two eight page essay questions.

Course Policies

Code of Student Responsibility: All regulations in the University of St. Thomas Code of Student Responsibility govern this class. Please note the following:

Part II, §1.01 defines academic misconduct:

- “A. *Cheating.* Cheating includes giving, receiving, possessing, or using any materials, information, or study aids prohibited by the instructor. Cheating also includes other dishonesty or fraud relating to law school work or violating the rules established by the instructor to govern work for that instructor.”
- “B. *Plagiarism.* Plagiarism occurs when students claim or submit as their own original work the research, ideas, or writing of another without acknowledging and clearly identifying the source, all without regard to the quantity of materials used. Examples of plagiarism include copying, summarizing, or paraphrasing another’s work without proper attribution. It is not a defense to plagiarism that there was no intent to deceive, to misrepresent, or to gain any unfair advantage.”

“C. *Misuse of Property or Services at the Law School.* Misuse of property or services includes stealing, hiding, damaging, defacing, destroying, or impeding access to property or services of the library, of the law school, or of any member of the law school or university community.”

Accommodations for Students with Disabilities. Qualified students with documented disabilities who may need classroom accommodations should make an appointment with the Enhancement Program – Disability Services office during the first two weeks of the term. Telephone appointments are available to students as needed. Appointments can be made by calling 651-962-6315 or 800-328-6819, extension 6315. You may also make an appointment in person in O’Shaughnessy Educational Center, room 119. For further information, you can locate the Enhancement Program on the web at <http://www.stthomas.edu/enhancementprog/>.

LIST OF READINGS

Jan 24 **European Muslims**

***John Esposito & Dalia Mogahed Who Speaks for Islam: What a Billion Muslims Really Think? (2008), pp. 1-28.

***Jane Smith, “Introduction,” in Yvonne Yazbeck Haddad ed. Muslims in the West: From Sojourners to Citizens (2000), pp. 3-16.

Tariq Modood, “Muslims and European multiculturalism,” Open Democracy Institute (2003), pp. 1-7.

Ralf Dahrendorf, “Today’s Counter-Enlightenment” Project Syndicate (2006), pp. 1-2.

Study Questions:

- 1) What are the core elements of Islam?
- 2) What legal issues does the arrival of European migrants raise for the liberal democracies of Western Europe?
- 3) How should Europe respond to the arrival of European Muslims?

- 4) Pick two or three countries listed in the Haddad volume (see item [7] in the supplemental bibliography) and compare how they treat Muslims? If there are differences, what factors explain them?

Jan 31

Is Europe Post-Christian?

***Lautsi v. Italy, [ECHR 2009] No. 30814/06, Nov. 3, 2009.

***Alliance Defense Fund, Intervention in Appeal of ECHR Decision (Nov. 13, 2009).

***Written Submission of the International Commission of Jurists, Interights and Human Rights Watch in *Lautsi v. Italy* Appeal (June 2, 2010).

***John Hooper, “Human rights ruling against classroom crucifixes angers Italy,” The Guardian, Nov. 3, 2009.

***Ian Swanson, “Is Italian crucifix ruling Scotland’s cross to bear?”The Scotsman, June, 23, 2010.

George Weigel, The Cube and the Cathedral: Europe, America and Politics Without God. (2005), pp. 56-86.

Study Questions:

- 1) Evaluate the result in Lautsi. How does it compare to church state separation controversies in the United States?
- 2) Lautsi is currently on appeal. The materials from the Alliance Defense Fund and ICJ take different sides of the issue. Who has the more convincing argument?
- 3) What does the debate over Lautsi say about the status of Christianity in Europe? See Weigel (in the packet as an optional reading) and Rémond (item [15] the supplemental bibliography, pp. 205-18)?

Headscarves, Hijabs and Burqas

Feb 7

Women, Islam and the Headscarf

***John Esposito & Dalia Mogahed, Who Speaks for Islam, pp. 99-133.

***Muttaqun Foundation, “Why I Veil, Liberated by Islam” (www.muttaqun.com).

***Carøe Christiansen, “Women’s Islamic Activism: Between Self-Practices and Social Reform Efforts,” in John Esposito and Francois Burgat eds. Modernizing Islam: Religion in the Public Sphere in Europe and the Middle East (1984), pp. 145-66.

Study Questions:

- 1) What according to Esposito and Mogahed is the status of women in the Muslim world?
- 2) What are the reasons Muslim women offer for wearing the headscarf?
- 3) To what extent are feminism and Islamism compatible? See Christiansen.
- 4) Jansen (see item [5] in the supplemental bibliography, pp. 138-57) takes a more negative view of Islamic fundamentalism, can this be reconciled with Christiansen?

Feb 14

Headscarves in Schools: France, Germany and the United Kingdom

***The Ludin case (2 BvR 1436/02)(Sept. 24, 2003)(translated from German)

***R (on the application of Begum) v. Head Teacher and Governors of Denbigh High School, UKHL 15 [2006] All ER 487 (Mar. 22, 2006)

***Dominic McGoldrick, Human Rights and Religion: The Islamic Headscarf Debate in Europe, pp. 34-44; 81-106

***Justin Vaisse, “Veiled Meaning: The French Law Banning Religious Symbols in Public Schools,” Brookings Institution U.S.-France Analysis Series (Mar. 2004).

Robert A. Kahn, “The Headscarf as Threat: A Comparison of German and U.S. Legal Discourses,” Vanderbilt Journal of Transnational Law, Vol. 40 (2007), pp. 417-34.

Study Questions:

- 1) Assess Vaisse’s argument for banning headscarves in public schools. Is it persuasive? According to McGoldrick, has the ban been effective?
- 2) Compare the Begum and Ludin cases. What are the concerns about Muslim clothing raised in each case? How does each court balance these concerns against the right of Muslims to dress as they please?

Feb 21

Headscarves and Society: Banning the Burqa

***Text of French Burqa Ban (translated from French).

***“French Senate bans burka,” Canadian Press, Sept. 14, 2010.

***“To Ban the Burqa—Or Not,” Wall Street Journal, Sept. 18, 2010.

***”Editorial: Under Sarkozy’s Veil,” International Journal of Baudrillard Studies, Vol. 7, No. 2 (July 2010)

***Joan Wallach Scott, “France’s ban on the Islamic veil has little to do with female emancipation,” Guardian, Aug. 26, 2010.

***“In quotes: Jack Straw on the veil,” BBC, Oct. 6, 2006.

***Khan, “The Veil and the British Male Elite,” Baltimore Chronicle and Sentinel Oct. 2006.

***Janice Turner, “Islam and the great Turkish headscarf war,” The Times (London), Jul. 18, 2008.

Study Questions:

- 1) What are the arguments for and against the French burqa ban? Which side has the better argument? Would such a ban be imaginable in the United States? Why or why not?
- 2) Reconsider the bans on Islamic clothing in schools from last week. Do the same rationales in favor of school bans apply to broader bans?
- 3) Is the opposition to the headscarf a function of male elitism? See Khan and the BBC article about Jack Straw.
- 4) Are the dangers posed by Islamic clothing greater in a majority Muslim country like Turkey? See Turner.

Feb 28

Is America any Different? (I): Clerical Garb bans

***Hysong v. School District of Gallatin, 164 Pa. 629, 30 A. 482 (1894).

***Freeman v. Florida, 2003 WL 21338169 (Fla. Cir. Ct., June 6, 2003).

***Ginnah Muhammad v. Enterprise Rent-A-Car (hearing transcript).

Virgil C. Blum, S.J. “Comment: Religious Liberty and the Religious Garb” University of Chicago Law Review, Vol. 22 pp 875-88.

Kahn, “The Headscarf as threat”, op. cit., pp. 434-44.

Study Questions:

- 1) Why did several American states ban public school teachers from wearing clerical garb? How do these reasons compare to the rationales behind the European headscarf laws? See Hysong and Blum.
- 2) How do the Freeman and Ginnah cases compare to European restrictions on the headscarf?
- 3) Would the same restrictions at issue in Freeman also apply to a Christian seeking a photo-free drivers license? Should they? See Kahn, 2007.
- 4) What role should experts on Islam play in determining when Islam allows a woman to remove her headscarf? See Kahn, Freeman appellate ruling and Bartsch (items [21] and [27] in the supplemental bibliography) and Bulliet, (item [3] in the supplemental bibliography, pp. 135-61, discussing the decentralized nature of Islam).
- 5) What about head coverings worn for “cultural” reasons? See McGlothin and Reads (items [28] and [29] in the supplemental bibliography).

Public Manifestations of Islam Sharia Law and Minarets

Mar 7 Sharia Law and Muslim Arbitration Panels

*** Archbishop of Canterbury, “Archbishop’s Lecture—Civil and Religious Law in England: a Religious Perspective.” Feb. 2008.

***”Williams under fire in Sharia row,” BBC NEWS, Feb. 8, 2008.

***“The Archbishop of Canterbury and the Sharia Debate,” The American Muslim, Feb. 12, 2008 (blog post).

***Brigitte Gabriel and Lauren Losawyer, “Sharia law question merits support,” The Oklahoman, Oct. 16, 2010.

***”Our SQ choices,” The Oklahoman, Oct. 17, 2010.

***Trevor Brown, "SQ 755 ban raises questions, concerns," The Norman Transcript, Sept. 25, 2010.

***Awad v. Ziriax, Case No. CIV-10-1186-M, Order Granting Preliminary Injunction (Nov. 29, 2010).

Study Questions:

- 1) Should the UK adopt the Sharia? If so, what would this mean? See the Archbishop of Canterbury's statement.
- 2) Compare the arguments of the Archbishop's critics and supporters of the Oklahoma ban on the Sharia law. Are there any similarities?
- 3) What would the Archbishop think of Judge LaGrange's ruling granting a preliminary injunction against the Oklahoma Sharia ban?

Mar 14 The Swiss Minaret Ban

***"The Swiss referendum on minarets: background and aftermath," European Race Audit: Briefing Paper No. 1, Feb. 2010.

***"Minaret ban approved by 57% of voters," swissinfo.ch, Nov. 29, 2009.

***"World's press dissect Swiss minaret ban," swissinfo.ch, Nov. 30, 2009.

***Ian Traynor, "Sarkozy defends Switzerland minaret ban," Guardian, Dec. 8, 2009.

***Tariq Ramadan, "The Swiss Minaret Initiative: Assuming our Responsibilities," Tariq Ramadan Official Website (www.tariqramadan.com). Dec. 2, 2009.

Study Questions:

- 1) Why did the Swiss ban minarets? Is it possible to reconcile the ban with freedom of religion?
- 2) What was the global reaction to the ban? How does it compare to the reaction to bans on the headscarf and burqa?

- 3) What does Tariq Ramadan say about the ban? Evaluate his call for shared responsibility at the end of his article.

Mar 28 Is America any Different? (II): The Debate over Park51

***Matt Dunning, "CB1 Back's Imam's Community Center, Silent on Mosque near WTC," Tribeca Tribune, May 6, 2010.

***Brown v. New York City Landmarks Commission, Verified Petition, Aug. 4, 2010.

***"ACLJ Amends Law Suit to Stop Ground Zero Mosque; Asserts Mayor Bloomberg Exerted Political Pressure to Get Mosque Approved," Business Wire, Oct. 13, 2010.

***Brown v. New York City Landmarks Commission, Amended Verified Petition, Oct. 13, 2010.

***Paul Vitello, "In Fierce Opposition to a Muslim Center, Echoes of an Old Fight," New York Times, Oct. 7, 2010.

***"There is no 'big difference' with 19th century," Irish Echo, Oct. 27, 2010.

Study Questions:

- 1) Assess the debate over the proposed Islamic cultural center in lower Manhattan. Why has it aroused controversy?
- 2) Review the two complaints filed in Brown v. New York City Landmarks Commission. What did the amended complaint add?
- 3) Return to the Swiss minaret ban. How does opposition to Park51 compare to Swiss opposition to minarets?
- 4) Is it reasonable to compare the opposition to Park51 to earlier opposition to the construction of Catholic churches?

**Blasphemy vs. Free Speech:
The Danish Cartoon Affair**

Apr 4 Precursors: Salmon Rushdie Affair and Otto-Preminger v. Austria (1994)

***Leonard W. Levy, Blasphemy: Verbal Offense Against the Sacred from Moses to Salmon Rushdie, pp. 534-67.

***Otto-Preminger Institut v. Austria, [1994] ECHR (Sept. 20, 1994).

***Richard Webster, A Brief History of Blasphemy: Liberalism, Censorship and 'The Satanic Verses' (1990), pp. 45-67.

Mehdi Mozaffari, Fatwa: Violence and Discourtesy (1998), pp. 130-51.

Liaquat Ali Khan, "Combating Defamation of Religions," The American Muslim (blog post)(Jan. 1, 2007).

Study Questions:

- 1) What happened in the Gay News and case? Is that case distinguishable from the Rushdie Affair? See Levy (pp. 534-50).
- 2) Could the Gay News case take place in the United States today? See the Levy chapter on the U.S. (item [30] in the supplemental bibliography).
- 3) How, according to Webster, did the liberal "myth" of "absolutist free speech," hamper the British response to the Satanic Verses controversy?
- 4) Where does the Otto-Preminger case fit into the mix? Is it proof that Europeans still punish blasphemy? Or is the case an outlier? See Kahn, A Margin of Appreciation for Muslims? (item [44] in the supplemental bibliography).
- 5) What does Rosen (item [33] in the supplemental bibliography) see as the harm posed by Rushdie's novel?

Apr 11 Danish Cartoon Affair (I)—Denmark and Europe

***Director of Public Prosecutions "Decision on possible criminal proceedings in the case of Jyllands-Posten's article 'the Face of Muhammed.'" (Mar. 15, 2006).

***Jytte Klausen, "Rotten Judgment in the State of Denmark" Spiegel Online, Feb. 8, 2006.

***Flemming Rose, "Why I Published The Muhammad Cartoons," Spiegel Online May 31, 2006.

***Hesham A. Hassballa, “Why We Muslims are Angry,” (available at <http://beliefnet.com>) Mar. 2006.

Robert A. Kahn, “Tragedy, Farce, or Legal Mobilization? The Danish Cartoons in France or Canada” U. of St. Thomas Legal Studies Research Paper, No. 10-21, Aug. 30, 2010.

Study Questions:

- 1) How did the Danish background contribute to the start of the cartoon controversy? See Klausen, and Lex et. al. (item [35] in the supplemental bibliography).
- 2) What were Flemming Rose’s reasons for running the cartoons? Did he have an obligation to apologize for them? See Holder (item [37] in the supplemental bibliography).
- 3) Why did the Danish prosecutor’s office refuse to bring charges against the paper?
- 4) Are the cartoons blasphemous under Islamic law? See Saloom (item [34] in the supplemental bibliography)
- 5) What was the response to the cartoons in the rest of Europe? For France, see Kahn.
- 6) Have attitudes towards Islam and free speech changed since the Satanic Verses controversy? Should they? See Mozafarri and Vernon (items [33] and [36] in the supplemental bibliography).

April 18 Danish Cartoon Affair (II)—American Responses

***Flemming Rose, “Why I Published Those Cartoons,” Washington Post, Feb. 19, 2006.

***Paul K. McMasters, “Drawing fire and blood: free speech and religion,” First Amendment Center, Feb. 12, 2006.

***Poynter Podcast: Covering the Caricature Controversy,” Poynter Online Feb. 8, 2006.

***Robert A. Kahn, “News Value, Islamophobia, or the First Amendment, Why and How the Philadelphia Inquirer Published the Danish Cartoons,” U. of St. Thomas Legal Studies Research Paper No. 10-07, Feb. 9, 2010.

Robert A. Kahn, Holocaust Denial and the Law: A Comparative Study (2004), pp. 121-35.

Study Questions:

- 1) Compare Rose’s editorials in *Der Spiegel* (see Apr. 11th) and the Washington Post (see Apr. 18th). What did Rose change when he shifted to an American audience and why did he change it?
- 2) Does the defense of free speech set out by Paul K. McMasters compare to the positions taken by Rose and the Danish Prosecutors Office?
- 3) How did metropolitan newspapers in the United States frame the decision about whether to publish the cartoons? See Poynter; Kahn.
- 4) How does the response of American newspapers to the Danish cartoons compare to their response to ads denying the Holocaust? See Kahn, Lipstadt (item [40] in the supplemental bibliography)
- 5) Is anti-Muslim hate speech allowable in the United States? See Citizen Publishing Co. v. Miller (item [39] in the supplemental bibliography)? Should it be?

Student Presentations and Conclusion

April 26 Looking Toward the Future/Student Presentations

***Weigel, The Cube and the Cathedral, pp. 138-56.

***“Look out, Europe, they say: Why so many Muslims find it easier to be American than to feel European.” The Economist, Jun. 22, 2006, pp. 1-10.

Study Questions:

- 1) Which of Weigel’s scenarios for the future looks most likely?

- 2) Is America a better “fit” for Muslims than Europe? If so, will this trend continue?

Supplemental Bibliography

The following list of books and articles are either available online or sitting in my office ready to be photocopied. The list, therefore, is somewhat idiosyncratic and by no means complete. It does, however, give you ways to further your research. Also some of the readings listed below are mentioned in the study questions. That said, the readings listed below are entirely optional.

A. Islam in General:

[1] There are a number of good introductions to Islam. One book I have found useful is Haroon Siddiqui, Being Muslim (Groundwood Books, 2006). It has good chapters on European Muslims and women. It is also a quick read.

[2] At the other end of the spectrum is Hans Küng’s Islam: Past, Present & Future (One World Press 2007). This 750 page book is encyclopedic in nature and has well defined discussions of a variety of topics including competing paradigms of Islam (pp. 455-71), the future of the Islamic legal order (pp. 551-78) and the hijab dispute (pp. 619-35).

[3] For a quick, well-written historical discussion of the development of Islam, combined with a sophisticated discussion about the decentralized nature of modern Islam, see Richard W. Bulliet, The Case for Islamo-Christian Civilization (Columbia University Press, 2004).

B. Islam and Fundamentalism

[4] John Esposito and François Burgat eds., Modernizing Islam: Religion in the Public Sphere in Europe and the Middle East (Rutgers 2003). The authors take the very interesting perspective that Islamism far from a return to the past is, in fact, a modernizing phenomenon. The contribution of Bjørn Olav Utvik (Chap. 2, pp. 43-68) does an especially good job of this. There is also a nice discussion by Linda Herrera of how the hijab controversy has played out in Egypt (Chap. 7, pp. 167-89).

[5] Johannes J.G. Jansen, The Dual Nature of Islamic Fundamentalism (Cornell 1997), takes the position that fundamentalism is both politics and religion. The book has a good chapter on women (pp. 138-57).

[6] Finally, for an article laying out the differences between “modernism” and “neo-fundamentalism” in the immediate aftermath of the 1979 Iranian revolution, see Fazur Rahman, “Roots of Islamic Neo-Fundamentalism” in Philip H. Stoddard, David C. Cuthell, and Margaret W. Sullivan eds. Change and the Muslim World (Syracuse 1981), pp. 29-39).

C. Muslims in Particular European Countries

[7] The Yvonne Yazbeck Haddad volume Muslims in the West: From Sojourners to Citizens, (Oxford University Press, 2002), cited in the syllabus, has a very nice set of chapters on Muslims in different countries (including Britain, France, Germany, Switzerland, Norway, Sweden, Denmark, Italy and the Netherlands. There are also several chapters on the United States.

[8] For a similar volume published in 1993, see Jørgen Nielsen, Muslims in Western Europe (Edinburgh 1993), which has chapters on France, West Germany, the United Kingdom, Scandinavia and Southern Europe. It also contains a chapter on “Family, Law and Culture.”

[9] The views of European Muslim elites are surveyed in Jytte Klausen’s, The Islamic Challenge, Politics and Religion in Western Europe, (Oxford 2005). The book, which relies on a survey of 1,500-2,000 Muslim leaders from across Europe, has a lengthy (32 pp.) chapter on “Sexual Politics and Multiculturalism.”

[10] Another very good volume is Tariq Modood, Anna Triandafyllidou and Ricard Zapata-Barrero eds. Multiculturalism, Muslims and Citizenship: A European Approach (Routledge, 2006). In addition to country-specific chapters on Belgium, Britain, France, Germany, Denmark, Spain and Italy, there are two more general essays relating the rights of European Muslims to secularism and liberalism.

D. Muslims in the United States

One of the chief reasons to study the treatment of Muslims in Europe is to provide a basis of comparison for how they are treated in the United States (and vice versa).

[11] A good place to start is Karen Isaksen Leonard, Muslims in the United States: The State of Research, (Russell Sage Foundation, 2003). While difficult reading at points, the book covers a large amount of recent research on American Islam.

[12] Another entry point is Iman Feisal Abdul Rauf’s What’s Right with Islam is What’s Right With America (HarperCollins 2004), which is a very well written account of why

Muslims fit in well in the United States (which might then explain why Muslims have encountered difficulties in Europe).

[13] Older, but very useful for its collection of multiple essays is Yvonne Yazbeck Haddad ed. The Muslims of America, (Oxford 1991). A wide range of topics are covered, including Christian perceptions of Muslims, Islamic thought in the United States and the religious rights of Muslims in prison.

[14] Another excellent book on American Muslims is Yvonne Yazbeck Haddad and Adair T. Lummis, Islamic Values in the United States (Oxford 1987). The book uses opinion surveys to take an extended look at three Muslim communities in the United States. The book also has a good chapter on gender roles.

E. European Secularism

The question, of course, is how secular Europe actually is.

[15] The best book I have come across on the subject is René Rémond, Religion and Society in Modern Europe (Blackwell, 1999). The book gives a comprehensive overview of church state relations over the past two centuries. The end of the book, Chapters 13-15, directly takes up the German crucifix decision and Islam.

[16] For an historical overview, see Hugh McLeod, Religion and the People of Western Europe 1789-1970 (Oxford 1981)(pp. 131-43 on the fragmentation of Western religions after 1950 is helpful.).

[17] For an exploration of what secularism actually is, see Talal Asad, Formations of the Secular: Christianity, Islam, Modernity (Stanford 2003). Asad is an anthropologist and his writing can be tough to wade through, but very rewarding. He has a nice chapter on “Muslims as a ‘Religious Minority’ in Europe” (pp. 159-80).

F. The Hijab in France and Germany

[18] John Bowen’s book Why The French Don’t Like Headscarves, cited in the syllabus, is devoted exclusively to the 2004 law banning the wearing of “ostentatious” religious symbols. Chapters 8-9, discussing the headscarf in the context of Islamism and sexism are very interesting.

There are two other law review articles on the Ludin case:

[19] The first article is Axel. Frhr von Campenhausen, “The German Headscarf Debate” 2004 B.Y.U.L. Rev. 665 (2004). The article gives very good coverage of the decision itself but runs a little long.

[20] The second article is Ruben Seth Fogel “Headscarves in German Public Schools: Religious Minorities are Welcome in Germany, Unless—God Forbid—They are Religious,” 51 N.Y.L.R. 620 (2006/07). Fogel’s takes up the German Federal States who, in the wake of the Ludin case, passed provisions banning the headscarf, something Fogel opposes..

[21] Finally, while it is not about the headscarf per se, Matthias Bartsch “Paving the Way for a Muslim Parallel Society,” Spiegel Online (Mar 29, 2007)(available at www.spiegel.de) takes up the question of how and when courts should interpret the Koran).

G. The Hijab in the United Kingdom and Turkey

[22] For an overview of the Begum decision from the perspective of family dynamics, see Susan Edwards, “Imagining Islam...of meaning and metaphor symbolizing the jilbab – R (Begum) v. Headteacher and Governors of Denbigh High School), Child and Family Law Quarterly 19:2 (1 June 2007), available on Lexis.

[23] Boris Johnson (now mayor of London) responded approvingly to the Begum decision, see “Dress in Educational Establishments” Mar. 23, 2006. (available at www.boris-johnson.com).

[24] For a comparison of the Sahin and Begum cases from a narrative perspective featuring Turkish author Orhan Pamuk’s novel Snow, see Ian Ward, “Headscarf Stories,” 29 Hastings Int’l & Comp. L.Rev. 315 (2006).

[Note: Because Ward wrote most of his article before the House of Lords reached its decision in the Begum case, his discussion is based on the Court of Appeals ruling, which favored Begum].

[25] I have also come across a transcript of a very interesting panel discussion on Turkish secularism. See “Secularism: The Turkish Experience” Transcript, By Omer Barisitrn, Dec. 2004—Philadelphia.

H. The Hijab in the United States and Canada

[26] Patrick T. Currier, “Note: Freeman v. State of Florida: Compelling State Interests and the Free Exercise of Religion in Post-September 11th Courts.” 53 Cath. L. Rev. 913 (Spring, 2004).

[27] On appeal, the court affirmed, making use of a state expert on Islam, who said that veiling was not necessary. See Freeman v. Department of Highway Safety and Motor Vehicles, 924 So.2d 48 (Fl. Ct. App. 2006).

[28] For an interesting case involving a headscarf worn by a non-Muslim for “cultural” reasons, see Mississippi Employment Security Commission v. McGlothin, 556 So. 2d 324 (Miss. 1990).

[29] In a similar case, EEOC v. Reads, Inc., 759 F.Supp. 1150 (E.D. Pa. 1991), the court, relying in part on Pennsylvania’s religious garb law, reached the interesting conclusion that the employer discriminated against plaintiff on religious grounds even though plaintiff’s head scarf was not a religious symbol.

I. Blasphemy and the Satanic Verses Controversy

[30] Leonard Levy’s encyclopedic work, Blasphemy, listed in the syllabus, has a useful chapter on the decline of blasphemy prosecutions in modern United States (pp. 522-34).

[31] Mohammad Hashim Kamali, Freedom of Expression in Islam, (Islamic Texts Society 1993), listed in the syllabus, has a lengthy discussion of the Islamic Law of blasphemy (pp. 212-58).

[32] For an additional take on the Satanic Verses controversy, this time from an anthropologist who sees Rushdie’s book as raising the question of religious doubt. See Lawrence Rosen, The Culture of Islam: Changing Aspects of Contemporary Muslim Life, (Chicago: 2002), pp. 158-73.

[33] For a general discussion of freedom of expression and Islam with an emphasis on the challenge presented by “modernity,” see Mehdi Mozaffari Fatwa: Violence & Discourtesy (Aarhus 1998), listed in the syllabus, pp. 166-94.

J. The Danish Cartoon Controversy—Denmark and Europe

There are many newspaper articles and short pieces available on the Internet. The Wikipedia cite for the Danish Cartoon Controversy is a good place to start your hunt for additional materials (although you should never cite to Wikipedia itself).

[34] For a discussion about whether the cartoons violate Islamic law, see Rachel Saloom, “You Dropped a Bomb on Me, Denmark—A Legal Examination of the Cartoon Controversy and Response as it Relates to the Prophet Muhammad and Islamic Law,” 8 Rutgers Journal of Law and Religion (Fall 2006)(available on line and in my office for photocopying).

[35] For more discussion of the Danish background to the cartoon controversy, see Sine Lex, Lasse Lindekilde and Per Mouritsen, “Public and political debates on multicultural crises in Denmark” Center for University Studies in Journalism, University of Aarhus, May 2007 (pp, 3-6 laying out the essentials of Danish identity are especially helpful).

[36] Richard Vernon, “Challenging the Liberal Settlement,” 55 University of New Brunswick Law Journal 186 (2006) takes the position that the arrival of European Muslims should change the terms of the European liberal settlement, one values freedom of expression over avoiding giving religious offense.

[37] Cindy Holder, “Debating the Danish Cartoons: Civil Rights or Civil Power?” 55 New Brunswick Law Journal 179 (2006) discusses whether Flemming Rose should have apologized for the cartoons.

K. The Danish Cartoon Controversy—Canada and the United States

[38] Joseph F. Fletcher & Tara Raissi, “Changing Our Minds About the Cartoon Controversy” 55 University of New Brunswick Law Journal 193 (2006) discusses the debate over publication of the cartoons in Canada and takes the US to task for its free speech absolutism (p. 198).

[39] In Citizen Publishing Co. v. Miller, 115 P.3d 107 (Ariz. 2005), the Arizona Supreme Court held that a newspaper was not responsible for printing a letter to the editor that threatened to kill Muslims, in part because the threat lacked “immediacy.”

L . Holocaust Denial and General U.S. Attitudes Toward Hate Speech

[40] Deborah Lipstadt, Denying the Holocaust: The Growing Assault on Truth and Memory (Basic Books 1993), pp. 183-208 takes a very dim view of college newspapers that—in the early 1990s—ran ads denying the Holocaust.

[41] Robert A. Kahn, “Cross-Burning, Holocaust Denial, and the Development of Hate Speech Law in the United States and Germany,” 83 Univ. of Detroit Mercy L. Rev. 163 (2006) argues that American speech absolutism has never fully applied to Klan related activities.

[43] Timothy Garton Ash, "A blanket ban on Holocaust denial would be a serious mistake," The Guardian, Jan. 18, 2007 (available at www.guardian.co.uk) makes a strong argument against genocide denial laws.

M . Defamation of Religions

[44] Robert A. Kahn, "A Margin of Appreciation for Muslims: Viewing the Defamation of Religions Debate Through Otto-Preminger Institut v. Austria," U. of St. Thomas Legal Studies Research Paper, No. 10-27 (Posted Nov. 30, 2010) uses the 1994 Otto-Preminger case to suggest problems with the divide between a liberal West and intolerant Islam suggested by some opponents of the U.N. defamation of religions proposal.