Preface

The following set of materials has been prepared for the course "History of Church-State Relations in the West." In this course, we shall explore the interactions between religious and political authorities and institutions in Europe and colonial America during certain critical periods from the 4th to the 18th centuries. We shall focus on the variety of legal and political arrangements developed to facilitate the cooperation of religious and political authorities, to protect them from each other, and to define the religious liberties and duties of those subject to their authority. We shall also pay attention to the variety of philosophical and theological theories of church and state that supported and contested these legal and political arrangements. Jurisdictional disputes over marriage and family life, and the treatment of religious outsiders, notably Jews, provide running examples throughout the course.

The course will focus on four periods: (1) the 4th and 5th century Roman Empire and the establishment of Christianity by Roman law, and the state prohibitions on Judaism and heresy; (2) the Papal Revolution of the 11th to 13th centuries and the rise of clerical hegemony and religious establishment by the church’s canon law; (3) the Protestant Reformation of the 16th century, and the fresh rise of religious establishments by state civil law; and (4) the American colonial experience of the 17th and 18th centuries, and the gradual rise of constitutional principles of religious liberty that culminated in the First Amendment.

The reading materials are comprised of both primary sources (constitutions, statutes, and treatises written during the period under consideration) and secondary sources (descriptions and analyses by more recent historians). In preparation for class, the secondary sources, and primary sources marked with an asterisk (*) merit closest scrutiny.
Course Instructions

1. **Reading Materials.** In addition to the photocopied materials that follow, I have assigned two volumes of mine for this course:

Please purchase these volumes at the Druid Hills Bookstore in Emory Village, or directly from the publisher or through one of the electronic bookstores (e.g., amazon.com; barnesandnoble.com).

2. **Classes.** Please attend and be prepared for each class. If you have a scheduling conflict or emergency that prevents your attendance, please send me an email message prior to the class. I shall sanction habitual and unaccountable absence from class or delinquency in class preparation by lowering your final examination grade -- or, in extreme cases, involuntarily withdrawing you from the course. Conversely, I shall reward faithful classroom attendance and participation by raising your final examination grade by one or two grades (e.g., from B to B+ or A-).

3. **Review Classes.** At the end of each major section of the course, and at the end of the semester, I shall hold extra review classes for you to ask questions about the material covered to date. These classes are all optional attendance.

4. **Class Cancellation.** Our schedule has built into it an extra two class periods to give us a bit more flexibility. I need to be out of town on Tuesday, **September 5**, and am cancelling class that day. If we do not use the other extra class period, we shall end the course on Thursday, November 30 (rather than on the scheduled date of Tuesday, December 5); that will give you a bit more time for the final examination.

5. **Final Examination.** I shall distribute a final take home examination on our last day of class. Your answers will be due on the last day of the law school examination period, Friday, December 22. The examination will consist of a broad synthetic question that pulls together various themes discussed in the course. You will be assigned a limit of 3000 words for your answer and will have two or three questions from which to choose one. The exam is entirely open book, with the expectation that the course reading materials and your notes will provide more than enough information to prepare your answer. I shall hand out a few sample questions later in the semester to whet your appetite.

6. **Office Hours.** Office hours will be Tuesdays and Thursdays, 12:00–2:30 p.m. To arrange an appointment at another time, please email me at the above number or my associate Amy Wheeler at awheeler@law.emory.edu.
Course Outline

Key to Page Numbers

CM = Page Numbers in Photocopied Course Materials that follow

FSC = Page Numbers in John Witte, Jr., From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition (1997)


* = Key Documents, to be reviewed in detail in class.

I. INTRODUCTION

A. Overviews.


3. Id., God's Joust, God's Justice: Law and Religion in the Western Tradition (2007), ch. 1

4. FSC, 1-15

B. Why History?


II. CHURCH AND STATE IN THE ROMAN EMPIRE

A. State Indifference, Repression, and Toleration of the Church.

1. Sidney E. Ehler, Twenty Centuries of Church and State (1957), 1-10


3. Charles N. Cochrane, Christianity and Classical Culture (1940), 177-337 (excerpts)

4. Documents.
   a. Didaché, or The Teaching of the Twelve Apostles (c. 120)
   b. Emperor Trajan's Rescript to Governor Pliny on the Treatment of the Christians (113)
   c. Edict of Milan on the Toleration of the Christian Religion (313)*
   d. Edict Establishing Catholicism (380)*
   e. The Code of Justinian (ca. 529), Title V

B. Concepts of Religious Liberty and Church-State.


III. CHURCH AND STATE IN THE HIGH MIDDLE AGES

A. Introduction: The Papal Revolution.

2. Review Tierney, “Religious Rights,” supra, CM pages 6-10  
3. Review Witte, “History of Separation of Church and State,” supra, CM pages 19-21  
4. Documents  
   a. Dictates of the Pope (1075)*  

B. Constitutional Law and Canon Law.

2. LP, 35-41, 259-62  
3. FSC, 22-36

C. The Two Swords Theory of Church and State.

1. Otto von Gierke, *Political Theories of the Middle Age*, repr. ed. (1958), 7-21  
3. Early Variations on the Two Powers Theory  
   a. Humbert, Three Books Against Simony (1054-58)*  
   b. Peter Damian, Letter to King Henry IV (1065)*  
   c. Honorius, Summa Gloria (c. 1100)*
d. Henry IV’s Summons to the Diet of Worms (1076)* 216
e. York Tractates (c. 1100)* 218

4. The Emerging Doctrine of Papal Power
b. Thomas Aquinas, Summa Theologica (c. 1253), Part III. (Supp.), QQ. 17-18* 223
c. Tierney, Papal Infallibility, 82-86, 115-121 228
d. Pope Innocent III, Selected Decretals (1198-1202) 231

5. Mature Versions of the Two Swords Theory
b. Pope Boniface VIII, Unam Sanctum (1302)* 244

d. The Plight of Jews and Heretics.

2. Schreiber, Jewish Law, 281-291 252
4. Solomon Grayzel, The Church and the Jews in the X11th Century (1933), 49-59, 72-82 269

5. Documents.
a. Innocent III, An Edict in Favor of the Jews (1199)* 273
b. Decrees of the Fourth Lateran Council (1215)* 274
c. English Charters and Councils (1201-1275) 276
d. Charter of the Jews of the Duchy of Austria (1244) 278
e. Las siete partidas (c. 1265), Title 24 281

IV. CHURCH AND STATE IN THE PROTESTANT REFORMATION

A. Background and Overview.
1. Sidney Z. Ehler and John B. Morrall, Church and State Through the Centuries (1954), 96-99 284
2. LP, 40-50, 177-182

3. Documents
a. Statute of Praemunire (1393)* 286
b. Pragmatic Sanction of Bourges (1438) 288
c. Concordat of Bologna (1516)* 293


B. Church and State in the Lutheran Reformation.
1. Overview
a. LP, 1-23

2. The Early Radical Attack
a. LP, 53-69

3. Church, State, and Family in the Two Kingdoms
a. LP, 87-138, 262-92
b. FSC, 42-73

4. The Lutheran Establishment
   b. The Religious Peace of Augsburg (1555)* 309

5. Lutheranism and Anti-Judaism
   a. William A. Mueller, *Church and State in Luther and Calvin* (1954), 60-72 (excerpts) 314
   b. Martin Luther, *That Jesus Christ was Born a Jew* (1523)* 317
   c. Id., *Concerning the Jews and Their Lies* (1543)* 318

C. Church and State in the Anabaptist Reformation.

1. Thomas G. Sanders, *Protestant Concepts of Church and State* (1964), 75-96 319
5. Documents
   a. The Schleitheim Confession (1527)* 351
   c. Balthasar Hubmaier, *Concerning Heretics and Those Who Burn Them* (1524) 371
   d. Selections in Klaassen, *Anabaptism in Outline*, 290-301 375

D. Church and State in the Calvinist Reformation.

1. The Geneva Experiment in Church-State Relations
   b. John Calvin, *Institutes of the Christian Religion* (1559), bk. 4, ch. 1, 6, 8, 10, 11, 20* 410

2. Church, State and Family Life in Calvin’s Geneva
   a. FSC, 74-129

E. Church and State in the Anglican Reformation.

1. The Tudor Reformation of Church-State Relations
   a. FSC, 130-140
   c. Reformation Constitutional Acts 1533-1559* 432

2. Anglican Establishment Theory and Practice
   c. The 39 Articles (1571), Arts. 19-21, 37 461

3. Church, State and Family Life in Reformation England
   a. FSC, 140-176

4. Persecution and the Struggle for Religious Liberty
   b. Act Prohibiting Bulls from Rome (1571) 472
   c. Act Against Sectaries (1593)* 473
   d. Act Against Papists (1593)* 473
V. CHURCH AND STATE IN EARLY AMERICA

A. Models and Principles of Church and State/Religious Liberty

1. Overview
   b. FSC, 176-198

2. Classic Texts
   a. John Locke, *A Letter Concerning Toleration* (1689) 491
   b. Roger Williams, *Bloody Tenent of Persecution For Cause of Conscience* (1644) 498
   c. William Penn, *The Great Case of Liberty of Conscience* (1670) 506
   e. Id., *Notes on the State of Virginia* (1784), Query 17 515
   f. James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785) 517
   g. George Washington, Letters on Religious Liberty (1787-1792) 520
   h. Virginia Bill of Rights (1776) 526
   i. Massachusetts Constitution (1780) 527

B. The Formation of the First Amendment Religion Clauses

1. Witte, *Religion and the American Constitutional Experiment*, 57-86, 241-43 533
Church-State Relations. Articles March 1, 2002. Preamble. God is love. The appropriate relation between religion and the state was best exemplified in the life of our Savior and example, Jesus Christ. As one of the Godhead, Jesus held unparalleled authority on earth. The Seventh-day Adventist Church is mindful of the long history of the involvement of the people of God in civil affairs. Joseph wielded civil power in Egypt.[16] Similarly, Daniel rose to the heights of civil power in Babylon and the nation was benefited as a result. [17] In our own church history, Adventists have joined with other religious and secular organizations to exert influence over civil authorities to cease slavery and to advance the cause of religious freedom. Next (Church of Jesus Christ of Latter-day Saints). The relationship between church and state is the institutional form of the relationship between the religious and political spheres. This relationship has taken a variety of forms historically and in the modern world from the state dominating religion to religion dominating the state and recent attempts to separate them. In most ancient civilizations this relationship was not clearly defined but it is one of the most significant themes running Church - State Relations in Europe. By Russell Sandberg and Norman Doe1. Academic lawyers frequently distinguish between three models of Church-State relations in Europe: State Church Systems, Separation Systems and Hybrid Systems. However, the sociologist of religion Grace Davie has suggested that the position of religion in Europe can be understood sociologically, historically and legally in terms of a basic dichotomy between the northern Protestant State Church systems and the southern Catholic separation systems. Whilst the basic unit of human organisation in the West has been that of nations subdivided in various ways such as by religion; in contrast, in the East, the basic unit is that of the Islamic religion subdivided into nations (Lewis Relationships between state and the followers of genuine religion have continuously changed in the course of history. The family represented the initial cell of human society. The holy history of the Old Testament shows that the state was not formed at once. The Old Testament people had no state before Joseph’s brothers went to Egypt. III. 3. In church-state relations, the difference in their natures should be taken into account. The Church has been founded by God Himself, our Lord Jesus Christ, while the God-instituted nature of state power is revealed in historical process only indirectly. The goal of the Church is the eternal salvation of people, while the goal of state is their well-being on earth. «My kingdom is not of this world», says the Saviour (Jn.