

CHRISTIAN ETHICS, LAW AND PUBLIC POLICY
ETH 610

McAfee School of Theology, in conjunction with Walter F. George School of Law
Spring 2011
10-1, Wednesdays
Henry County Campus, Mercer University

I. Faculty Information

McAfee: Dr. David Gushee
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II. Course Description

This course will explore social-ethical issues arising at the intersection of law, Christian ethics, and public policy. The key purpose of the course is to offer an interdisciplinary engagement with major social issues as these are contested in courts of law and public opinion, and not least, in the church itself. Taught as a joint Law/Theology course, the class aims to enhance learning through the intellectual encounter between Law and Theology/Ethics and the personal encounter between law students, ministry students, and faculty from both fields.

Rationale: In the United States of America, most important issues of public policy become legal issues and are contested in the courts, for reasons we will explore in the course. For a sizable majority of Americans, issues of public policy are also deeply influenced by their religious faith and theological/ethical convictions.

To understand this social, religious, ethical, and legal landscape, students will do comparative and careful reading of texts from both law and Christian theology/ethics. Readings will include basic legal materials on these issues, such as court decisions, statutes, treaties, and executive orders. They will also read key biblical texts, along with works on Christian ethics and public policy.

All students will read the same material in law and ethics. Theology students will read primary legal materials such as judicial opinions, statutes, and treaties, perhaps for the first time, and will be asked to comment on what they read. Law students will assist in explicating those legal materials to theology students, and in the process gain a new understanding of those texts. Similarly, law students will be reading unfamiliar texts in Christian ethics, with corresponding help from McAfee students. Reading of unfamiliar texts and discussion of issues from fresh perspectives will assist both sets of students (and faculty!) to gain a deeper understanding of these crucial issues and our overlapping but distinct vocational opportunities and responsibilities.

Faculty and Approach: To aid in the cross-disciplinary understanding of these issues, the course will be taught simultaneously by Dr. David Gushee of McAfee School of Theology and Drs. Timothy Floyd and Jack Sammons of the Walter F. George School of Law. Although we will have separate registration, overlapping but separate syllabi, and separate grading, the classes will meet concurrently and together. For all but registration and grading purposes, we will be one class.

III. Learning Outcomes

Through this course, theology students will achieve the following learning outcomes:

1. Gain competence in understanding the connections between ethics and law in biblical thought. Measured by: Hiers analysis, final essay.
2. Demonstrate an adequate grasp of the key theological concepts undergirding Christian political and legal thought. Measured by: issue papers, class discussion.
3. Become familiar with the key statutes, treaties, and legal cases in American law that are most significant in connection with Christian ethics. Measured by: issue papers, class presentations.
4. Grow in the capacity to communicate Christian theological-ethical concepts to those outside our field. Measured by: quality of class discussion, especially in relation to the law students.
5. Develop basic competence in proposing theologically well-grounded, ethically sensitive normative approaches to contested issues arising in American public life. Measured by: issue papers.
6. Demonstrate ability to articulate an adequate Christian ethic as it pertains to our witness in the public square on contested contemporary issues. Measured by: final essay.

IV. Course Readings and Teaching Content

A. Required Readings

Timely and thorough reading of assigned materials is essential. Class activities are integrated with reading and cannot be fully appreciated apart from the reading. All assigned readings are to be completed prior to the date the readings are listed on the syllabus and discussed in class. Expect to read 6-8 hours per week for this class. Both law and theology students will be doing the exact same reading.

Richard H. Hiers. *Justice and Compassion in Biblical Law*. T & T Clark, 2009. ISBN 978-0-567-26909-6. Covers OT law and draws interesting connections to western categories of legal thought. **Must be read prior to first day of class.**

Glen H. Stassen and David P. Gushee. *Kingdom Ethics: Following Jesus in Contemporary Context*. Intervarsity Press, 2003. ISBN: 0-8308-2668-8. A Christian ethics text based on the teachings of Jesus with a focus on the Sermon on the Mount. McAfee students may be reading this text for the second time; the focus of our reading this time will be different than in the introductory course in ethics. Should be read prior to first day of class if possible.

Richard Fallon. *The Dynamic Constitution: An Introduction to American Constitutional Law*. Cambridge University Press, 2005. ISBN 978-0521-60078-1. Layperson's guide to American law.

Thomas Buergenthal, et al. *International Human Rights in a Nutshell*. 4th ed. West Publishers, 2009. ISBN 978-0314-18480-1. Layperson's guide to international human rights law and practice.

Access to case summaries, legal opinions, treaty texts, and other legal documents will be provided by the law faculty. Access to several theological-ethical texts provided by Dr. Gushee.

Key scriptural texts related to each issue will also be assigned. These should be read prior to class like the other readings. Law students will also be reading these texts.

B. Teaching Content and Approach

The course begins by establishing the intellectual and historical background to the way law, ethics, and public policy intersect in American society. In the second half of the course, major cases, laws, and treaties will be the focus for ethical and legal analysis and discussion, supplemented by readings in Christian ethics on those issues.

We are experimenting with a way of facilitating this course that constantly creates an interaction of law professors/students and theology professor/students, and asks each discipline to work outside of its own training at least part of the time. It's a kind of exercise in intellectual cross-training and helping one another learn.

A typical class session will look like the following:

- *Law student presents for 5-7 minutes on the theological ethics of the issue being considered;
- *Theology student presents for 5-7 minutes on the legal case/s under consideration;
- *Law faculty presents for 7-10 minutes on the legal case/s under consideration;
- *Theology faculty presents for 7-10 minutes on the theological ethics of the issue being considered;
- *Everyone joins in an open discussion of both the law and the theological ethics at stake in the issue being considered.

After a break, we consider a new issue, with the Theology student going first and then moving ahead along the pattern just described.

V. Course Requirements

Summary

Hiers Analysis.....	100 points
Class Presentation.....	100 points
Issue Papers (two papers, worth 100 points each).....	200 points
Final Essay.....	100 points
Attendance/Participation.....	100 points
Extra Credit.....	up to 40 points

Total possible points:	600+ points

GRADING SCALE—OFFICIAL MCAFEE POLICY

The method and manner of evaluation for course grades is left to the discretion of the course instructor as outlined in the course syllabus. A student may take an examination or submit an assigned project at other than the scheduled time only under extenuating circumstances and with permission from the instructor.

Cumulative grade point averages are computed on a quality point system. The interpretation of the letter grades and their quality point values is as follows:

	Quality Points	
	Per Credit Hour	
A Exceptional mastery of course essentials	4.0	93%-100%
B+ More than required mastery of course essentials	3.5	89%-92%
B Required mastery of course essentials	3.0	82%-88%
C+ Slightly more than course essentials	2.5	78%-81%
C Course essentials	2.0	70%-77%
D Minimal comprehension of course essentials	1.0	65%-69%
F Inadequate comprehension of course essentials	0	Below 65%
IC Incomplete	0	
AU Audit	0	
W Withdrawal	0	

Description of Assignments

1. *Hiers Analysis*. Papers on Hiers should be 7-8 pages. This is to be an analysis focusing on the significance of this work as it pertains to the intersections of Christian ethics, law,

and public policy. Details for the shaping of this analysis will be made available during the class. Due: 3/16.

2. *Class Presentations*. Each McAfee student will offer one presentation to the class as outlined above (p. 3). These brief but important presentations will be graded both on their prepared text and on the quality of oral presentation and engagement that day in class.

2. *Issue Papers*. These should be 8-10 pages, and are due one week after the issue you are considering has been discussed in class. Students should pick two of the many public policy issues we are considering, and write about each of them in a paper taking the following form:

a) Descriptive level: Summarize the legal case/s and law considered and what is most important about them, considering primarily the legal readings and secondarily the theological ethics readings.

b) Analytical/critical level: discuss what is at stake from a Christian theological and ethical perspective in the cases/issues, considering primarily the theological ethics readings and secondarily the legal readings.

c) Normative level--church: make a brief proposal concerning what the church should teach and do about the key moral issue at stake here.

d) Normative level—policy: make a brief proposal concerning what the state should do about the key issue at stake here. Explain any differences or similarities between your normative proposals for church and state.

3. *Final Essay*. In lieu of a final exam, a take-home essay question will be given on the final day of class. This essay question will offer the student an opportunity to reflect in a comprehensive way on the materials covered in the course and their implications for church and society. These 12 page essays will be due to me by May 6 by email.

4. *Attendance/participation*. Student participation grade includes attendance, quality of involvement in class, humility and teachableness, and overall demonstration of enthusiastic engagement in the learning process. This will be a small, intensive, interactive class, and class discussion is pivotal to the learning process and therefore the grade.

All papers should follow the guidelines set forth in the McAfee Style Guide, available on the McAfee School of Theology website under “helpful Student Links” at http://www2.mercer.edu/Theology/Current_Students/default.htm

VI. Academic Policy Statements

On Late Work: All papers and assignments are due at or before the start of class on the date assigned. They will be graded and sent back to you in a timely fashion, with three weeks as the outside deadline. Papers lose 5 points credit for every day that they are late, excluding Sundays. Papers turned in after the start of class are treated as if turned in the

next day. The only exceptions to this policy include family emergencies and bereavement. **NO PAPERS OF ANY TYPE WILL BE RECEIVED AFTER May 6, at midnight, by email. Class presentation papers must be ready on time to receive credit.**

INCOMPLETE POLICY

The official policy of Mercer University states that a grade of incomplete (“IC”) in a course will only be granted in cases of extreme or unusual circumstances that occur in the lives of students during the semester of study. If you feel that an incomplete is appropriate in this class, please submit your request in writing to the Associate Dean for Masters Studies by no later than the last day of scheduled classes for the current term. If an incomplete is granted, you will negotiate with the Associate Dean for Masters Studies an appropriate time frame for completing the work for the course. (Note that Mercer University policy requires that incomplete coursework be completed and a grade assigned by the last day of classes of the next full semester, or the “IC” will be replaced with a letter grade of “F”). Please note that the granting of an incomplete does not automatically excuse coursework that was due before the request for incomplete status. If a student begins to develop a pattern of requesting “incompletes,” requesting “incompletes” in consecutive semesters or on a recurring basis, he or she may be placed on probation.
rev 1/27/10

Students with Special Needs:

“Students requiring accommodations for a disability should inform the instructor at the close of the first class meeting or as soon as possible. The instructor will refer you to the Disability Support Services Coordinator to document your disability, determine eligibility for accommodations under the ADA/AA/Section 504 and to request a Faculty Accommodation Form. In order to receive accommodations in a class, students with sensory, learning, psychological, physical or medical disabilities must provide their instructor with a Faculty Accommodation Form to sign. Students must return the signed form to the Disability Services Coordinator. A new form must be requested each semester. Students with a history of a disability, perceived as having a disability, or with current disabilities who do not wish to use academic accommodations are still strongly encouraged to register with the Disability Services Coordinator and request a Faculty Accommodation Form each semester. For further information, please contact Richard Stilley, Disability Support Services Coordinator / Assistant Dean for Campus Life, at (678) 547-6823 or visit the website at <http://campuslife.merceratlanta.org/disabilityservices.html>.

Cheating and Plagiarism

Mercer University’s Graduate Student Honor Code addresses the issues of cheating and plagiarism. It defines cheating as “the taking of credit for work which has been done by

another person.” Plagiarism is “the use of ideas, facts, phrases, or additional material such as maps and charts from any source without giving proper credit for such material.” Examples include but are not limited to the following: using information from any source, including internet sources, without giving proper acknowledgement to the original author of the material; submitting the same, or nearly the same, paper for academic credit in two classes without the consent and approval of both instructors; submitting another student’s work as one’s own or allowing one’s work to be submitted by another student; turning in late assignments without clearly indicating that the work is submitted late; giving or fabricating false citations and references in any material submitted for grading.

The Mercer University catalogue states the following consequences for plagiarism: (1) reduction in the final grade for the course; (2) a zero on the assignment; (3) an “F” grade for the course; (4) suspension from the University; (5) expulsion from the University. Additionally, any scholarship student caught plagiarizing will automatically forfeit his/her scholarship.

For more on this subject, see the McAfee Student Handbook

(http://www2.mercer.edu/NR/rdonlyres/0A22158A-21CF-45BD-A221-858B5CD26585/0/MDIV_Student_Handbook_10_11.pdf) and also the Graduate Honor System at www.mercer.edu/educ_docs/grad_honor.pdf.

Weather Issues:

Inclement Weather:

If severe weather occurs, classes will be canceled in accordance with the Associate Provost’s decision of Mercer-Atlanta. Call the Mercer weather line for information about class cancellations—(678) 547-6111 (Atlanta) or listen to WSB 750 AM.

VII. Course Schedule

Note: Because McAfee and Law are on different calendars, we are adapting normal course schedules to coordinate the two programs as best we can.

Feb. 2a—Course Organization and Syllabus

Feb. 2b—OT Ethics and American Law

Reading: Hiers, *Justice and Compassion in Biblical Law*, entirety

Biblical Case Study: Polygamy.

Scripture: Gen. 2:18-25; Gen. 16; Gen. 29:30-34; Deut 21:15-17; 1 Kings 11:1-8; Mt 19:1-12.

Legal: Reynolds v. U.S., 98 U.S. 145 (1878).

Feb. 9— NT Ethics and American Law; Bible, Ethics, and Law in Christian Thought

Reading: KE, ch. 1-6.

Biblical Case Study 1: Law and Love.

Scripture: Romans 13:1-10

Legal: Ackroyd, “The Weeping Time,” Chapter XXX, *The Life of Thomas More*; Hauerwas & Shaffer, “Hope Faces Power,” *Christian Existence Today*.

Biblical Case Study 2: Being a Good Samaritan.

Scripture: Luke 10:25-37

Legal: Torts – *Soldano v. O’Daniels*, 190 Cal. Rptr. 310;

Criminal Law – *Anderson v. State*, 27 Tex. App. 77 (1889)

Law Presenter:

Theology Presenter:

Feb. 16a—The Relationship Between Ethics and Law in Legal Representation

Scripture: Psalm 15; Prov. 12:17, 12:19, 14:25, 22:21, 23:23

Legal: “Lawyers for Criminal Defendants,” Heymann and Liebman, *The Social Responsibility of Lawyers*; “The Family Trust Dispute” in Shaffer and Cochran, *Lawyers, Clients, and Moral Responsibility*

Law Presenter:

Theology Presenter: Drew Zimmer

Feb. 16b—American Constitutionalism and the Theology of Church/State Relations

Reading: Fallon, Prologue, Introduction and ch. 3-11; Oliver O’Donovan, *Desire of the Nations*, 226-251.

Scripture: Ex 20:1-17

Legal: *Madison’s Remonstrance*.

Theology Presenter: Elices Washington

Law Presenter:

Feb. 23a— Free Speech.

Scripture: Romans 6-7

Legal: *Whitney v. California*, *Brandenburg v. Ohio* ; *Cohen v. California*; *Texas v. Johnson*

Law Presenter:

Theology Presenter:

Feb. 23b—Religious Liberty—Free Exercise and Establishment

Reading: Fallon, Ch. 1, 2;

Scripture: Mt 13:24-30; 1 Cor. 8, 10; Rom. 14

Legal: *Lee v. Weisman*, 505 U.S. 577 (1992); *Employment Division v. Smith*, 494 U.S. 872 (1990); *Mozert v. Hawkins*, Stanley Fish, “Vickie Frost Objects”

Theology Presenter:

Law Presenter:

Mar. 2a—Marriage and Divorce

Reading: KE, ch. 13;

Scripture: Gen. 1:26-31, 2:18-25; Dt 24:1-4; Mal 2:13-16; Mk 10:2-12; 1 Cor 7:1-16; Eph. 5:21-33);

Legal: Louisiana “Covenant Marriage” statute; Noah Feldman, *Divided by God*, 103-5; *Avitzur v. Avitzur*, 56 N.Y. 2d 108 (1983)(enforcing jurisdiction of rabbinical court, or “beth din”).

Law Presenter:

Theology Presenter: Michael Glover

Mar. 2b—Homosexuality and Same-Sex Marriage

Reading: KE, ch. 14;

Scripture: Ex. 20:14; Mt 5:27-30; 1 Cor 6:12-20, 7; Rom. 1:26-31; 1 Thess 4:3-8;

Legal: United States Defense of Marriage Act; *Perry v. Schwartzenegger*, U.S. District Court, N. D. Calif, August 3, 2010

(<http://metroweekly.com/poliglot/2010/08/04/Perry%20Trial%20Decision.pdf>).

Theology Presenter: Emily Holladay

Law Presenter:

[Mar. 9-16—Our spring breaks do not align. Therefore we are not meeting. Please be working on your papers during this time. Hiers paper is due 3/16, by email.]

Mar. 23a—Abortion

Reading: KE ch. 10;

Scripture: Ex. 21:22-25; Ps 139:13-16; Lk.1:39-45, 10:25-37

Legal: *Roe v. Wade*; *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

Law Presenter:

Theology Presenter:

Mar. 23b--Surrogacy and Assisted Reproduction

Reading: Rae, “Reproductive Technologies”

Scripture: Gen. 16:1-6; 1 Sam 1-2:10.

Legal: Baby M case in Gregory Pence, *Classic Cases in Medical Ethics*

Theology Presenter: Jillian Farmer

Law Presenter:

Mar. 30a—Withdrawing Care/Assisted Suicide

Reading: KE, ch. 9, 11;

Scripture: Gen. 9:1-6, Ex. 21:12-25; Rom. 13:1-7; 1 Cor. 15:20-28;

Legal: *Washington v. Glucksberg*, 521 U.S. 702 (1997); Various statutes, judicial decisions, and Guardian ad litem report in the Schiavo case (links at <http://news.findlaw.com/legalnews/lit/schiavo/>); *People v. Kevorkian*, 447 Mich. 436, 527 N.W.2d 714 (1994); *Dax’s Case*; *Vacco v. Quill*

Law Presenter:

Theology Presenter: Scott Claybrook

Mar. 30b—Death Penalty

Reading: KE, ch. 9;

Scripture: Gn. 9:1-6, Ex 21:12-25, Num 35:16-34; Mt 5:21-26; Mt. 14:1-12; Rm. 13:1-7;

Legal: *Furman v Georgia*; *Gregg v. Georgia*, 428 U.S. 153 (1976); *Callins v. Collins*, 510 U.S. 1141 (1994)(Blackmun, J., dissenting)

Theology Presenter: Taylor Johnson

Law Presenter:

Apr 6a— Race and Criminal Justice

Reading: KE, ch. 19

Legal: *McClesky v. Kemp*, 481 U.S. 279 (1987); *United States v. Armstrong*, 517 U.S. 456 (1996).

Law Presenter:

Theology Presenter:

Apr. 6b—Race in American Culture

Reading: KE, ch. 19

Scripture: Ex 19:5-6; Ezra 9-10; Zech 8:20-22; Mt 28:16-20; Acts 2:1-13; Gal 2; Eph. 2:11-22

Legal: *Brown v. Board of Education*, 347 U.S. 483 (1954); *Bob Jones Univ. v. U.S.*, 461 U.S. 574 (1983); *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003); Civil Rights Act of 1964.

Theology Presenter:

Law Presenter:

Apr. 13a— Refugees and Humanitarian Law

Reading: Buergenthal (pp. tbd);

Scripture: Gen. 11:31-12:9; Ex. 1-2; Ruth; Lev 19:9-10; Mt 2:13-23; Mt 25:31-46; 1 Peter 3:13-14;

Legal: Universal Declaration of Human Rights; United Nations Convention Relating to the Status of Refugees;

Law Presenter:

Theology Presenter: Andi Sullivan

Apr. 13b--Immigration Legislation

Reading: Garrett, “Baptist Response to Undocumented Immigration,” ch. 2, 5.

Scripture: in Garrett, “Baptist Response to Undocumented Immigration,” ch. 3

Legal: *Negusie v. Holder* (US Sup Ct 2009); Arizona Immigration Statute and federal court order enjoining portions of the law

(http://graphics8.nytimes.com/packages/pdf/national/20100729_ARIZONA_DOC.pdf)

Theology Presenter: Shanna Wood

Law Presenter:

Apr. 20a--The Laws and Ethics of War

Reading: KE, ch. 7; Buergenthal (pp. tbd);

Scripture: Deut 20; Josh 6; Isa. 60:17-18; Lam 1; Mt. 5:38-48, 26:52-53; Rev. 18;

Legal: Geneva Conventions (selected portions); United Nations Charter (selected portions)

Law Presenter:

Theology Presenter: Missy Ward

Apr. 20b--Torture and Truth Commissions

Reading: “An Evangelical Declaration Against Torture”

Scripture: Mt 26:57-67; Mt 27:11-31

Legal: Authorization for Use of Military Force Against Terrorists (joint res 9/14/2001); *Boumediene v. Bush*, 553 U.S. 723 (2008). United Nations Convention against Torture; Bybee/Yoo 2002 “Techniques” memo

Theology Presenter:

Law Presenter:

Apr. 27a— Fundamental Human Rights—Trafficking

Reading: Buergenthal (pp. tbd);

Scripture: Gen. 1:26-28; Gen. 9:5-6; Dt. 21:1-9; Ps 82:3-4; Jer. 22:3;

Legal: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Georgia Massage Therapy Act; City of Macon Ordinance regulating massage parlors

Law Presenter:

Theology Presenter:

Apr. 27b— Closing Reflections

Reading: Herbert Fingarette, “The Meaning of Law in the Book of Job,” from Hauerwas & MacIntyre, Revisions.

Everyone Presents!

May 6. Final Essay due by email.