Abstract:

Secular Regulation of Religious Marriage and Divorce in America

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This presentation and paper will review the developments in the regulation of religious marriage and divorce in America in the last 40 years. It will focus on three sub-faith groups – tradition Jews, observant Muslims and fundamentalist Mormons – and will examine attempts by secular society and law to regulate their marriages and divorces. In each of these three faith groups, secular law and society focus on different aspects of their religious marriage and divorce. In the case of the traditional Jewish community, the focus has been on developing mechanism to ensure that a Jewish divorce is given, with little regulation of marriage. In the last 40 years, four tools have been brought to focus: legislation, contract, tort and judicial intervention. In the case of the observant Muslim community, the focus has been on marriage and divorce: both on preventing polygyny and insuring that Islamic divorce arbitrations are fair and consistent with the requirements of the Federal Arbitration Act. Interestingly, in the last decade, the United States as abandoned the regulation of religiously permitted, but unlicensed, polygyny, and functionally permits a man to religiously marry more than one wife, conceding to the Islamic community the validity of religious polygyny. In the case of the fundamentalist Mormon community, the focus has been on marriage and the government has repeatedly civilly and criminally intervened to prevent under-age marriages, even as it has abandoned objections to religiously valid polygyny, and in secular society hardly regulates adolescent sexuality.

We will discuss whether these interventions have been ‘successful’ (and what they means), and why. How much ‘accommodation of religious law by the modern state’ was present and why. After we will examine which secular approaches have been effective and why, and we will also consider how each of these faith groups have responded to these interventions, and what the secular responses to these religious replies might be. After all, sometimes the there is an accommodation of secular law by modern religion.