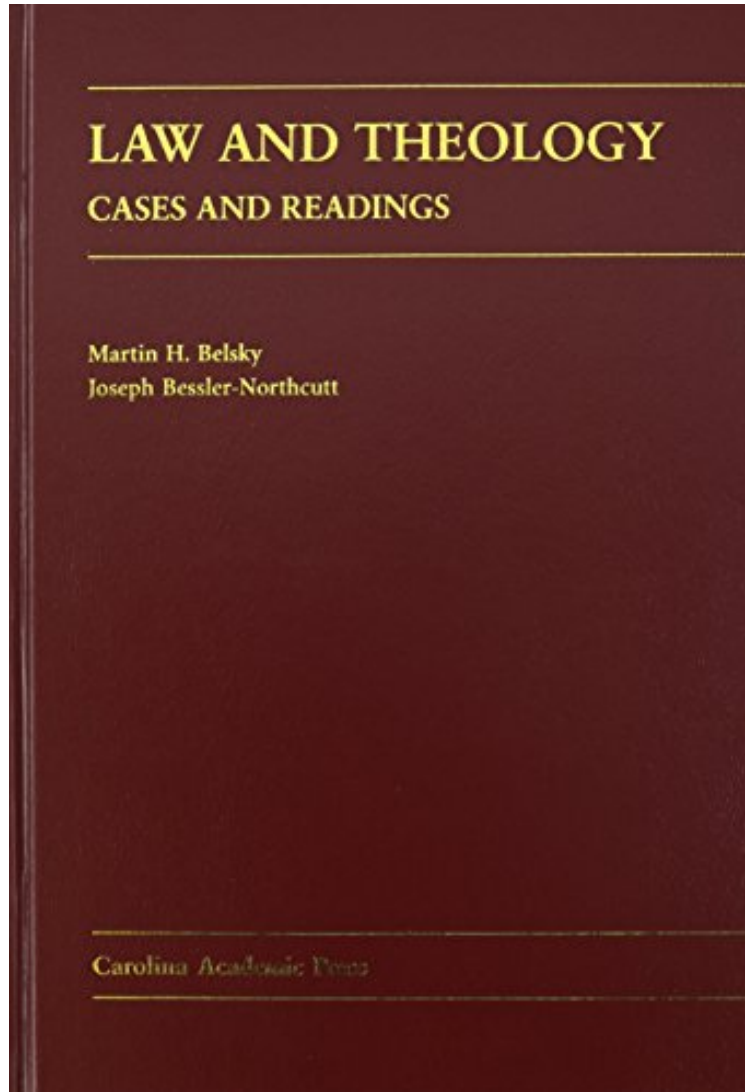


## Law and Theology: Cases and Readings

*Martin H. Belsky, Joseph Bessler-Northcutt*  
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**Martin H. Belsky, Joseph Bessler-Northcutt : Law and Theology: Cases and Readings** before purchasing it in order to gage whether or not it would be worth my time, and all praised Law and Theology: Cases and Readings:

0 of 1 people found the following review helpful. Well Planned Church/State survey anthology By P. Nagy Law and Theology: Cases and Readings by Martin H. Belsky, Joseph Bessler-Northcutt (Carolina Academic Press) A law professor and a theology professor have joined to produce a case and textbook exploring the tensions and intersections between the norms of civil society and the norms of religious traditions. This book will show how the disciplines of law and theology approach problems. The book looks at both the process of interpretation undertaken by theologians and judges, the ethical and moral choices under differing sets of professional standards, and the conflict between our

Constitution and our faith. Topics include: "When can you lie"; "Thinking like a lawyer" and "Thinking like a Minister"; the role of minorities and women; the issues of abortion, evolution, and capital punishment; and religion's role in politics. The book is designed to interest not just law students, lawyers, theology students and ministers, but also any person who seeks to learn about the interplay of law, religion, and society. Using cases, and easily understandable commentary, it is intended to be accessible to a reading audience beyond the academy. Excerpt: In the Spring semester of 1999, the two of us offered a new course called Law and Theological Ethics. Cross-listed at the University of Tulsa College of Law and Phillips Theological Seminary, we described our goal for the course as an attempt to explore the tensions within, and the intersections between, legal and religious traditions as they negotiated the complex processes of social and cultural change. We wanted our students to analyze and interpret the legal and theological questions embedded in a series of issues. In addition, we wanted our law and seminary students to see how a discipline different from their own approached newly emerging questions and problems in civil society. Most textbooks on Law and Religion deal exclusively with the two religion clauses in the First Amendment to the Constitution and the impact of their legal interpretation for churches and American religious life. We both felt that approach was too narrow. We wanted students, teachers, and lay readers to explore the influences flowing both ways between Law and Theology. Widening the breadth of investigation, we hope to help readers grasp some of the clearly competing perspectives within each of these disciplines as well as how these disciplines overlap in their concern for the public good. Our text selections were governed by a variety of criteria, but a central criterion was readability. We did not want the volume to be pitched at a level only for experts. On the legal side, we have used principally, but not exclusively, Supreme Court decisions, which show the American legal institution wrestling with major cultural and moral issues from within a Constitutional framework. On the religious side, we have used a variety of writings, drawn principally from Protestant and Roman Catholic scholars and theologians writing for a lay audience. We have included as well a number of pieces from Jewish scholars, and several from Muslim and other scholars of various religious traditions. While attempting to acknowledge America's growing religious diversity, we have also tried to emphasize major lines of religious influence in America's history to this point. We have not divided the chapters into distinct legal and theological sections. Instead we have interspersed readings with cases in order to prompt questions and concerns that cross between the disciplines.

Part One, Equality : The disciplines of Law and Theology invoke equality as a central value. The former speaks of equality "under the law," while the latter speaks of all persons as "created in the image of God." Nonetheless, significant strands in both disciplines have defended radical inequalities in political, social, and ecclesiastical practice. Chapter One looks to the history of African-American slavery and segregation as a cautionary tale about how flawed the disciplines of Law and Theology can be with respect to the most fundamental judgments. Today, no serious practitioner in either discipline would defend human slavery. Moreover, while American society is almost as racially segregated in practice today as in the 1950s, and especially with respect to African Americans, very few voices would encourage public policies of racial segregation. Nonetheless, serious legal and political debate still exists about the appropriate remedies for African-Americans still emerging from previous generations of slavery and segregation. On the religious side, one sees little movement towards genuine racial integration in what used to be called the "mainline" Protestant churches. If the principle of racial equality, under the law and in the eyes of God, is now a settled conviction, such is not the case either with respect to the status of women or to the status of gays and lesbians. Chapters Two and Three respectively take up the ongoing tensions, both legally and theologically, between traditionalist and progressive interpretations of gender and sexual identity.

Part Two, Protecting America's Faith-Based Society: The United States Constitution provides in the First Amendment that "Congress shall make no law respecting an establishment of religion nor the free exercise thereof." The original purpose of the "disestablishment" provision was to prohibit the newly created United States from establishing a "state religion" (See Daniel A. Farber, *The First Amendment at 267* (1998)). In fact, it was not until the late 1940s that this provision and other parts of the First Amendment were made applicable to all governments at all levels—school districts, cities, counties, and states. (See *Everson v. Board of Education*, 330 U.S. 1 (1947)). Today, we accept the concept of a legal "wall of separation" used by Thomas Jefferson and quoted in the *Everson* case, 330 U.S. at 16, but debate how permeable that wall should be. See Arlen Specter, *Defending the Wall: Maintaining Church/State Separation in America*, 18 *Harv. L.J. Pub. Poly* 575, 579-80 (1994). Not everyone, however, then or now, liked the idea of the legal separation of Church and State. Early and contemporary antidisestablishmentarians have argued that for the nation to endure, it must be moral and that morality can be grounded only in true religion. In contrast, defenders of the separation of church and state have argued that the achievement of a religiously peaceful and diverse society, based on separation, is itself a moral achievement of the first order. The former, particularly fundamentalist and conservative evangelical Christians, have argued that failure to integrate Christianity into the everyday public forum of American educational and political life discriminates against religion and denies our clear cultural heritage as a faith-based society. Strict separationists counter that the more the government, or even public figures, use religion as an everyday vehicle of communication, the less likely it is to be sincere or truly reverential. The chapters of Part Two attempt to illuminate both the Court's and the American religious community's attempt to protect the ecology of America's unique faith-based society. Chapter Four will review the historical development of America's complex, and

sometimes hesitant, commitment to religious diversity. Chapter Five examines the Court's role in protecting religious diversity through studying a variety of establishment cases dealing with school prayer, the Pledge of Allegiance in public schools, and the place of the Ten Commandments in government buildings. Chapter Six attends to the development of a more pragmatic approach to religion on the Court, looking, in particular, at faith-based social programs. Chapter Seven explores both the promise and the limits of the nation's commitment to the Free Exercise of religion. Part Three, Human Life: These chapters take up particularly divisive issues in contemporary American culture: evolution, abortion, assisted suicide, and the death penalty. Each of the first three chapters touches upon the uneasy relation between science and religion insofar as scientific theory and medical/technological advances have raised profoundly difficult epistemological and moral questions about the beginning and end of life. The final chapter on the death penalty picks up the question about the end of life and asks specifically about the propriety of the state using execution as a form of punishment. At stake, theologically, is whether human beings are to be understood naturalistically, as existing simply on a continuum with other species and life forms, or whether human beings belong in a unique sense to God, created in the divine image. Here, as elsewhere in the book, one finds a large range of variously nuanced theological opinions. For those who believe generally that modern society has become "too secular," too divorced from traditions of religious belief, any affirmation of evolution, abortion, and/or assisted suicide is a clear signal of that peculiarly modern hubris, or arrogance that claims no need for God. Theological moderates and liberals tend to reinterpret religious traditions in light of new knowledge, neither discarding the traditions nor dismissing the importance of new scientific, historical, and technological advances—balancing respect for religious traditions with respect for developing intellectual and moral insight. While theological conservatives, especially Christians and Muslims, tend to support the death penalty, as in keeping with traditional religious authority and individual moral accountability, theological moderates and liberals have tended to criticize the death penalty on structural grounds, e.g., as punitively unnecessary, abusive of minorities, and subject to various forms of prosecutorial misconduct. The courts, too, have had to wrestle with the moral implications of technological advances in medicine that are capable of prolonging long at one end of the spectrum and enhancing the viability of intrauterine life at the other. Is RU486 an abortion pill, and if so, is it legal? Do the rights of a developing fetus' override a mother's right to exercise control over her body, and if so, when, and under what circumstances? Can dying persons seek the assistance of a physician in ending their own lives? Is withholding medication from a dying patient a significantly different act from actively providing drugs that cause the patient's death? Such questions require judges and justices to reflect on basic questions of human existence. When legal judgments have disagreed sharply with theological ones in American history, vehement protests invoking the ultimate authority of God have followed. Liberal protests against slavery and for civil rights, for example, as well as protests in support of labor unions, opposition to the death penalty, and support of women's and gay rights, have invoked the theological argument that all persons are created in the "image of God" and possess, therefore, equal dignity to others. Conservative protests against alcohol, desegregation, abortion, civil rights for gays and lesbians, and a permissive secular society, have all invoked the image of a divinely ordained natural law, transgressed by self-centered and arrogant "sinners" who have hastened the moral decay of society. Part Four, Law and Theology in the 21st Century: By the end of the 1990's, many political and religious leaders expressed a new sense of optimism. The Cold War had ended. Religion was flourishing in the former Soviet Union and even in China. The concerns about terrorism, caused by some fanatic religious fundamentalists, spurred by the Iran Hostage Crisis of 1980, the World Trade Center Bombing of 1993, and the Oklahoma City Bombing of 1995 seemed to be fading. The scandals of the 1980's and early 1990's, involving some evangelical leaders were also fading in the public memory. The global economy was strong. The European community was coming together. Despots were captured in Serbia and Somalia. Even peace in the Middle East seemed possible, though difficult. There was increasing cooperation, at least in the United States, among the Abrahamic traditions of Judaism, Christianity, and Islam. Even the very contentious Presidential election of 2000 did not affect this mood. The closeness of the election indicated that politics and public policy had moved and would have to move to the middle to capture the undecided. This ebullient and culturally confident period ended on September 11, 2001. On live T.V., we saw the destruction of the Twin Towers of New York City's World Trade Center, the bombing of the Pentagon, and the heroic actions to destroy a fourth plane headed for another government target. We watched our President declare war on global terrorism and the nation-states supporting it. As part of that war, new security measures were enacted, which triggered a range of questions about the wisdom of national security interests trumping basic American commitments to civil liberties. Are racial profiling, extensive federal wire-tapping, and other marginally legal and, even previously unacceptable search-and-seizure methods, justified to gain information about terrorists and future terrorist acts? Can we afford the absolute right of a public trial by jury? Does security require extraordinary methods, including indefinite detention of suspects, and even torture? How do we deal with the six to seven million Muslims living in the United States, as well as Middle Eastern, Indian, and Sikh communities? Would we be able to continue our trend of cooperation, or return to suspicion of "foreigners" and to our ancient religious antagonisms? In addition, faith in our religious leaders was shaken by new allegations of sexual abuse by Catholic priests, covered-up by Catholic bishops. In these final chapters, we examine the troubled past and uncertain future of law and theology, and the cultural dangers they will have to negotiate in coming

decades. We begin, in Chapter Twelve with a discussion of, what has been called, "civil religion," and the use of religion in America's political life. We continue by taking up a variety of challenges to the Constitution's "no religious test" clause, discussing, as well, those situations where Roman Catholic officials, in particular, have objected to the public stances of Roman Catholic candidates on issues like abortion. Finally, we will ask whether and under what circumstances religious involvement in politics taints the credibility of religious bodies, their officials, and their membership. In Chapter Thirteen we first explore how far protection of religion can be allowed to protect acts of individual abuse by clergy and what obligations theologians and politicians have to protect religious followers. We then examine the challenges to religious tolerance and civil liberties posed by the terrorist attacks of 9/11 and by a new war with Iraq. Finally, we will call attention to the disturbing phenomenon of fundamentalism and authoritarianism that threaten to undo Western civil and religious commitments of toleration and religious pluralism. 0 of 0 people found the following review helpful. Excellent resource. By SeekerLaw and Theology: Cases and Readings Well organized and insightful. The collaboration of a law professor and theologian adds depth and perspective to the subject.

A law professor and a theology professor have joined to produce a case and textbook exploring the tensions and intersections between the norms of civil society and the norms of religious traditions. This book will show how the disciplines of law and theology approach problems. The book looks at both the process of interpretation undertaken by theologians and judges, the ethical and moral choices under differing sets of professional standards, and the conflict between our Constitution and our faith. Topics include: "When can you lie"; "Thinking like a lawyer" and "Thinking like a Minister"; the role of minorities and women; the issues of abortion, evolution, and capital punishment; and religion's role in politics. The book is designed to interest not just law students, lawyers, theology students and ministers, but also any person who seeks to learn about the interplay of law, religion, and society. Using cases, and easily understandable commentary, it is intended to be accessible to a reading audience beyond the academy.