

Seminar: Law and Theology  
Adjunct Professor Patrick S. Cheng

Syllabus

Spring 2007  
Mondays, 2:50 to 4:40 p.m.  
319 Cooper Street, Room 202

**Description**

This seminar will explore the relationship between law and theology. Over the course of the semester, we will cover a wide variety of topics from an interfaith perspective, including faith and the practice of law, punishment and forgiveness, the natural law tradition, social justice, feminism and theology, the relationship between law and morality, and theology and war.

**Objectives**

The seminar has the following objectives:

- To encourage you to reflect upon and deepen your own views on the relationship between law and theology;
- To enable you to engage in respectful dialogue with individuals who may have jurisprudential and theological perspectives that differ greatly from your own;
- To develop your skills in assessing and responding to jurisprudential and theological arguments; and
- To allow you to explore, research, and write about a topic of your choosing relating to a problem or controversy in law and theology.

**Materials**

There are two required books for the seminar:

- Martin H. Belsky and Joseph Bessler-Northcutt, *Law and Theology: Cases and Readings* (2005), published by Carolina Academic Press. This book will be available at the bookstore or can be ordered online.
- *Christian Perspectives on Legal Thought* (Michael W. McConnell et al. eds., 2001), published by Yale University Press. This book also will be available at the bookstore or can be ordered online.

A third book is recommended, but not required:

- Harold J. Berman, *Faith and Order: The Reconciliation of Law and Religion* (1993), published by William B. Eerdmans Publishing Company. Although this book is not required, it may be a helpful resource for researching your seminar paper. This book will be available at the bookstore or can be ordered online.

All other materials for the seminar are available through HeinOnline or the assignment and materials pages of the course website.

## Topics

Below is a tentative sequence of topics for the seminar. Please note that the topics and assignments are subject to change as the semester progresses.

Date	Class	Topic
January 8, 2007	Week 1	Faith and the Practice of Law
January 15, 2007	No Class	-----
January 22, 2007	Week 2	Law and Theology
January 29, 2007	Week 3	Interpretation
February 5, 2007	Week 4 Paper Topic Due	Punishment and Forgiveness, Part I
February 12, 2007	Week 5	Punishment and Forgiveness, Part II
February 19, 2007	Week 6	Natural Law
February 26, 2007	Week 7	Social Justice
March 5, 2007	Week 8	Theology and Feminism
March 12, 2007	No Class	-----
March 19, 2007	Week 9 Paper Outline Due (5-7 pp., bibliography of primary and secondary sources)	Presentation of Paper Outlines
March 26, 2007	Week 10	Theology and Standing
April 2, 2007	Week 11	Theology and Schism
April 9, 2007	Week 12	Theology and Morality
April 16, 2007	Week 13	Theology and War
April 23, 2007	Week 14 Final Paper Due (20 pp., excluding footnotes)	Conclusion

## Grading

Your grade will be based upon three factors:

- **Seminar paper -- 60%.** The seminar paper will consist of a 20-page double-spaced paper (approximately 5,000 words, excluding footnotes) on a topic of your choosing relating to a problem or controversy in law and theology. A list of possible topics can be found at the end of this syllabus. A detailed description of your paper topic and thesis (1-2 pp.) is due in class on February 5, 2007. A detailed outline of your paper with a

bibliography of primary and secondary sources (3-5 pp.) is due in class on March 19, 2007. The final paper is due in class on April 23, 2007.

- **Class Summary -- 15%.** During our first class, you will be asked to choose *one* class on which you will prepare a three to five page summary of the topic for your colleagues. In addition to summarizing the assigned readings on that topic, the summary should highlight potential difficulties in the readings and demonstrate that you have done some independent research and reflection on the topic. The summary should be uploaded to the FileStore section of the course website no later than the Tuesday of the week *preceding* the assigned class. Thus, if you are responsible for the topic of Law and Theology (January 22nd), your summary should be uploaded to the FileStore section of the website no later than Tuesday, January 16th. Please have at least three choices in the event that your first choice is not available.
- **Email reflections -- 25%.** Each week (other than the first week), you will be asked to draft and circulate a short email (no more than three paragraphs) prior to our seminar meeting via the website discussion board on: (1) the one thing in the assigned readings that you found most interesting; (2) the one thing that you disagreed with the most; and (3) the one thing that you found the most challenging to understand. There are no "right" or "wrong" answers, but the reflections should demonstrate your thoughtful engagement with the assigned readings. The email reflection for a given week is due no later than the night *before* the class meeting. Thus, your email reflection on Law and Theology (January 22nd) is due no later than Sunday, January 21st.

### **Participation**

I expect that you will attend all meetings of the seminar, unless you have a compelling excuse (for example, a religious holiday). I expect that you will come fully prepared to class and that you will participate actively in the class discussion. I reserve the right to adjust your final grade upwards or downwards by one-half step (for example, from a B+ to an A- or a B), depending upon your attendance and/or the quality of your class participation.

### **Contact**

The best way to contact me is by email at [pscheng@camden.rutgers.edu](mailto:pscheng@camden.rutgers.edu). I do not have regular office hours, although I would be happy to schedule an appointment to speak with you in person, by phone, or via the chat function on the course website.

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Readings

Please note that the following topics and assignments are subject to change as the semester progresses.

January 8, 2007: Week 1 – Faith and the Practice of Law

- Azizah al-Hibri, *On Being a Muslim Corporate Lawyer*, 27 Tex. Tech. L. Rev. 947 (1996).
- Kinji Kanazawa, *Being a Buddhist and a Lawyer*, 66 Fordham L. Rev. 1171 (1998).
- Nancy C. Miller-Herron, *Maintaining Spiritual Sanity in a Secular Vocation*, 11 J.L. & Religion 749 (1994-95).
- Ved P. Nanda, *Hinduism and My Legal Career*, 27 Tex. Tech. L. Rev. 1229 (1996).
- Russell G. Pearce, *The Jewish Lawyer's Question*, 27 Tex. Tech. L. Rev. 1259 (1996).

January 15, 2007: No Class

January 22, 2007: Week 2 – Law and Theology

- *Learning to Think Like Lawyers and Theologians*, in Belsky, 3-9.
- Handout, *What Is Theology?*
- Mulford Q. Sibley, *Religion and Law: Some Thoughts on Their Intersections*, 2 J.L. & Religion 41, 51-67 (1984).
- Harold J. Berman, *Law and Logos*, 44 DePaul L. Rev. 143, 155-65 (1994).
- Michael W. McConnell, *Old Liberalism, New Liberalism, and People of Faith* in McConnell, 7-17.

January 29, 2007: Week 3 – Interpretation

- *The Conflict of Interpretations*, in Belsky, 9-22.
- Samuel J. Levine, *Jewish Legal Theory and American Constitutional Theory: Some Comparisons and Contrasts*, 24 Hastings Const. L.Q. 441, 478-501 (1997).
- Moses Receives the Ten Commandments, *Exodus* 19:16-20:21 (NRSV).
- Handout, *Background on Exodus 20:14*.
- Sanford Levinson, *On Interpretation: The Adultery Clause of the Ten Commandments*, 58 S. Cal. L. Rev. 719 (1985).

February 5, 2007: Week 4 – Punishment and Forgiveness, Part I

**Detailed paper topic and thesis (1-2 pp.) due in class.**

- *Punishment*, in The Internet Encyclopedia of Philosophy, at <http://www.iep.utm.edu/p/punishme.htm>.
- *Death Penalty*, in Belsky, 263-69.
- *Gregg v. Georgia*, 428 U.S. 153 (1976), in Belsky, 274-78.
- Clifford S. Fishman, “*Old Testament Justice*”, 51 Catholic U. L. Rev. 405 (2002).
- Jerome Hall, *Biblical Atonement and Modern Criminal Law*, 1 J.L. & Religion 279 (1983).

February 12, 2007: Week 5 – Punishment and Forgiveness, Part II

- Damien P. Horigan, *Of Compassion and Capital Punishment: A Buddhist Perspective on the Death Penalty*, 41 Am. J. Juris. 271 (1996).
- K.L. Seshagiri Rao, *Practitioners of Hindu Law: Ancient and Modern*, 66 Fordham L. Rev. 1185 (1998).
- Ludo Rocher, *Hindu Conceptions of Law*, 29 Hastings L.J. 1283 (1978).
- Luke T. Lee & Whalen W. Lai, *The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist*, 29 Hastings L.J. 1307 (1978).
- Paul O. Ingram & David R. Loy, *The Self and Suffering: A Buddhist-Christian Conversation*, 44 Dialog 98 (2005).
- Denis J. Wiechman et al., *Islamic Law: Myths and Realities*.

February 19, 2007: Week 6 – Natural Law

- *Natural Law*, in The Internet Encyclopedia of Philosophy, at <http://www.iep.utm.edu/n/natlaw.htm>.
- Thomas Aquinas, *Summa Theologiae* I-II Q. 96, A. 4, 6, at <http://www.ccel.org/a/aquinas/summa/FS/FS096.html>.
- Gerard V. Bradley, *Natural Law*, in McConnell, 277-90.
- Milton R. Konvitz, *Conscience and Civil Disobedience in Jewish, Christian, and Greek and Roman Thought*, 29 Hastings L.J. 1619, 1619-29 (1978).
- Charles Villa-Vicencio, *Theology, Law and State Illegitimacy: An Agenda for Theologians and Lawyers*, 5 J.L. & Religion 241, 243-50 (1987).
- Martin Luther King, Jr., *Letter From Birmingham Jail* (1963).

February 26, 2007: Week 7 – Social Justice

- Parable of the Sheep and Goats, *Matthew* 25:31-46.
- *Social Justice*, in Catechism of the Catholic Church §§ 1928-38 (1997), at <http://www.vatican.va/archive/catechism/p3s1c2a3.htm>.
- *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 1-2, 17-29, 88-90 (1973).
- Richard H. Hiers, *Biblical Social Welfare Legislation: Protected Classes and Provisions for Persons in Need*, 17 J.L. & Religion 49, 60-62, 67-79 (2002).
- R.H. Helmholz, *Natural Human Rights: The Perspective of the Ius Commune*, 52 Catholic U. L. Rev. 301, 301-08 (2003).
- George E. Garvey, *A Catholic Social Teaching Critique of Law and Economics*, in McConnell, 230-40.

March 5, 2007: Week 8 – Theology and Feminism

- “Women Priests: The Case for Ordaining Women in the Catholic Church,” from [www.womenpriests.org](http://www.womenpriests.org).
- “Episcopal Church’s New Dawn,” *USA Today* (Feb. 5, 2007) (profile on Episcopal Presiding Bishop Katharine Jefferts Schori).
- *Bradwell v. State*, 83 U.S. 130 (1872), in Belsky, 65-67.
- *United States v. Virginia*, 518 U.S. 515 (1996), in Belsky, 67-69.
- Steven F. Friedell, *The “Different Voice” in Jewish Law: Some Parallels to a Feminist Jurisprudence*, 67 Ind. L.J. 915, 915-23, 923-44 (skim), 944-49 (1992).

March 12, 2007: No Class

March 19, 2007: Week 9 – Presentation of Paper Topics

**Detailed outline and bibliography (5-7 pp., with a bibliography of at least five primary and five secondary sources), due in class.**

- Presentation of paper topics.

March 26, 2007: Week 10 – Theology and Standing

- Background: Executive Order 13279 (2002), in Belsky, 166-70.
- “High Court Debates Suit Against White House’s Faith-Based Initiative,” *Legal Times* (Mar. 1, 2007).
- *Flast v. Cohen*, 392 U.S. 83 (1968), focus on pp. 83-88, 101-06, 116-33.
- Brief for the Petitioners, *Hein v. Freedom from Religion Foundation* (U.S., No. 06-157), focus on pp. 2-11.
- Brief for the Respondents, *id.*, focus on pp. 12-15.
- Amicus Brief for Legal and Religious Historians and Law Scholars, *id.*, focus on pp. 2-4.
- Transcript of Oral Argument (Feb. 28, 2007).

April 2, 2007: Week 11 – Theology and Schism

- “Episcopalians in Colorado Plan to Leave Denomination,” *New York Times* (Mar. 28, 2007).
- “Seven Virginia Episcopal Parishes Vote to Sever Ties,” *Washington Post* (Dec. 18, 2006).
- Complaint, *Episcopal Church v. Truro Church* (Va. Cir. Ct., Feb. 9, 2007).
- Episcopal Church Canon I.7.4-5.
- *Jones v. Wolf*, 443 U.S. 595 (1979).
- *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 83 N.J. 572 (1980).
- *Bjorkman v. Protestant Episcopal Church in the United States of America in the Diocese of Lexington*, 759 S.W.2d 583 (Ky. 1988).

April 9, 2007: Week 12 – Theology and Morality

- “Conservative Panel Votes to Permit Gay Rabbis,” *Jewish Daily Forward* (Dec. 6, 2006).
- Elliot N. Dorff et al., *Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards* (Dec. 6, 2006), focus on pp. 1-2, 15-20.
- Joel Roth, “We Can’t Legitimate Homosexuality Halakhically,” *United Synagogue of Conservative Judaism Review* (Spring 2004).
- *Lawrence v. Texas*, 533 U.S. 267 (2001), in Belsky, 75-81.
- Calvin Woodard, *Thoughts on the Interplay Between Morality and Law in Modern Legal Thought*, 64 *Notre Dame L. Rev.* 784 (1989).

April 16, 2007: Week 13 – Theology and War

- Jimmy Carter, “Just War – or a Just War?,” *New York Times* (Mar. 9, 2003).
- BBC Website, “Ethics of War,” at <http://www.bbc.co.uk/religion/ethics/war/index.shtml> (focus on “Religions” section).
- *War*, in *Stanford Encyclopedia of Philosophy*, at <http://plato.stanford.edu/entries/war/>, focus on section 2.1 (*Jus ad bellum*).
- John Yoo, “Using Force,” 71 *U. Chi. L. Rev.* 729 (2004), focus on pp. 729-32, 744-75.
- Kimberly Kessler Ferzan, “Defending Imminence: From Battered Women to Iraq,” 46 *Ariz. L. Rev.* 213 (2004), focus on pp. 213-18.
- *War and Terrorism* in Belsky, 349-62 (skim).

April 23, 2007: Week 14 – Conclusion

**Final paper (20 pp., excluding footnotes), due in class.**

- James Boyd White, “How Theology Might Learn From Law,” 53 *Mercer L. Rev.* 1009 (2002).

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Additional Resources on Religion:

- Linda Edwards, *A Brief Guide to Beliefs: Ideas, Theologies, Mysteries, and Movements* (2001).
- Moojan Momen, *The Phenomenon of Religion: A Thematic Approach* (1999).

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Possible Paper Topics

Bible

- Hebrew Scriptures
  - Biblical Law
  - Covenant and Contract
- Christian Scriptures
  - Law and Grace

Establishment Clause

- Theology in the Classroom
  - Creationism and Intelligent Design
  - Pledge of Allegiance
  - Teaching Theology
  - Theology Scholarships and Vouchers
- Theology in the Courtroom
  - The Religious Judge
  - The Ten Commandments

Ethical Issues and the Law

- Abortion
- Death Penalty
- Euthanasia
- Poverty and Social Justice
- Same-Sex Marriage

Feminism, Theology, and the Law

Free Exercise Clause

- Exemptions
  - Religious Practices
  - Religious Beliefs
- Internal Affairs
  - Clergy
  - Property Disputes

Historical Theology and the Law

- Colonial Theology
- Contemporary Theology
  - Liberation Theology
  - Neoorthodox Theology
- Medieval Theology
  - Canon Law
- Patristic Theology
- Reformation Theology

Interpretation

- Legal and Theological Texts

Jurisprudence and Theology

- Critical Legal Studies
  - Critical Race Theory
  - Feminist Legal Studies
- Historical Jurisprudence
- Natural Law
  - Civil Disobedience
- Positivism
- Realism

Lawyering and Theology

- Legal Ethics
- The Religious Lawyer

Law School and Theology

- Law School Curriculum
- Legal Education
- Legal Scholarship

Morality

Political Theory and Theology

- Rawls and Liberalism
- Utilitarianism

Punishment and Forgiveness

Racism, Theology, and the Law

Reparations, Theology, and the Law

War and Theology

World Religions and the Law

- Baha'i
- Buddhism
  - Karma
- Christianity
  - Law and Grace
- Hinduism
  - Dharma
- Islam
  - Sharia
- Judaism
  - Halakha and Aggadah
  - Torah
- Native American