

RELIGION IN LEGAL THOUGHT AND PRACTICE

This book examines moral issues in public and private life from a religious but not a devotional perspective. Rather than seeking to prove that one belief system or moral stance is *right*, it undertakes to help readers more fully understand the effect of religious beliefs and practices on ways of conceiving and addressing moral questions, without having to accept or reject any specific religious outlook. It shows how the similarities *between* religions and the differences *within* one religion are more important than the reverse. The book asks:

- Where do moral imperatives come from, and how do the answers found in religion and law interact?
- How does the fact that a moral norm is grounded in religion affect our thinking about it?
- What is the significance of the differences (and similarities) between religious and secular sources of moral norms?

Howard Lesnick, Jefferson B. Fordham Professor of Law at the University of Pennsylvania Law School, has been a law teacher for 50 years. In addition to many articles on religion and morality and on ethical responsibility in law and legal education, he has written *Listening for God: Religion and Moral Discernment*, *Being a Lawyer: Individual Choice and Responsibility in the Practice of Law*, and (with Joan F. Goodman) *The Moral Stake in Education: Contested Premises and Practices*.

In 2003, he received the Association of American Law Schools' Deborah Rhode Award for outstanding contributions to public service. Lesnick is also the recipient of Community Legal Services of Philadelphia's Equal Justice Award and the Society of American Law Teachers' Distinguished Teaching and Service Award.

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According to a rabbinical interpretation, the Lord said to Moses: “Wherever you see the trace of man there I stand before you.”

When engaged in a conversation with a person of different religious commitment I discover that we disagree in matters sacred to us, does the image of God I face disappear? Does God cease to stand before me?

Rabbi Abraham Joshua Heschel

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Preface

This book examines moral issues in public and private life from a religious perspective, without tying the inquiry to any specific tradition of revelation. Its subject is the relation between religion and moral obligations (including obligations to support or oppose, or to obey or disobey, certain legal requirements). It does not, however, proceed from a devotional perspective. It seeks rather to *understand* religious perspectives at work in the arenas under consideration and to *articulate* their relevant themes accurately, empathically, and in some depth. My goal is to enable readers with widely varying responses to the call of religion to understand their own responses more fully and to appreciate that they can understand as well the beliefs and practices of others, without having to validate or endorse them.

My premise is that the ways in which many of us think about questions of moral and legal obligation, and about our own unfolding careers, are related to our religious or spiritual consciousness. The book was conceived to provide a context in which to explore the content of that relation by reading and thinking about the interactions between religion and contested moral questions among colleagues with whom one is united only in the belief that the questions are worth pondering and a (perhaps tentative) willingness to bring something of oneself into the discussion. Some 15 years of teaching in this area have convinced me that the inquiry fills a powerful need and greatly benefits students' professional development. My hope is that it will prove similarly useful for individual reading and reflection.

The book is not a contribution to the discourse ordinarily suggested by the phrase *law and religion*, which typically embraces the study of legal issues raised by the diverse manifestations of religion in public life, in particular questions arising under the Religion clauses of the First Amendment to the U.S. Constitution. There is only one case in these readings. My effort is rather to facilitate consideration of questions like these:

- Where do moral imperatives come from, and how do the answers found in religion and in law affect one another?
- What is the significance of the religiously grounded character of a moral norm for our thinking about moral obligation and disputed issues of public policy?
- What are the differences (and similarities) between religious and secular sources of moral norms?
- How can religion's importance to our legal thinking, and its grounding in (differing) claims of revelation, be honored in a manner that honors too our commitments

to pluralism and freedom of conscience and our self-concepts as morally and intellectually responsible agents?

- How can we integrate our religious commitments with our choices in our work lives?

The Summary of Contents provides a general idea of the themes and organization of the book. Each chapter begins with a brief, more specific statement of the burden of each.

The organization and content of the more than 100 (highly edited and carefully focused) selections chosen and the notes accompanying them necessarily manifest particular understandings of the questions and authors considered and the subjectivity of my own judgments. In light of the variety and inherent particularity of religious experiences, the demands of accuracy of portrayal and depth of understanding can only be partially satisfied. Indeed, many would avow the impossibility of succeeding in the effort to which I have set myself. I hope that, in the end, if I have not disproved the truth of that belief, I will not have provided an exhibit in support of it either. I have sought neither to hide nor trumpet my own views, and to avoid the polemics and polarization so prevalent in the field. Where a writing does manifest such qualities, I have used it in the hope of fostering an understanding of the bases of such passion, as well as of the ways in which it energizes (in others) negative responses. I have striven primarily to evoke my readers' considered judgments rather than to persuade them of the wisdom of mine.

A cautionary thought at the outset: There is no significant word in this arena that is not fraught with contested meanings and does not generate wide-ranging deeply felt associations. I will use the word *religion* to describe outlooks, practices, and beliefs that are experienced as grounded in that which *transcends* the natural world.¹ So, baseball is not, in my lexicon, a religion, no matter how important a role it plays in one's life; nor is Marxism, utilitarianism, or the philosophy of Ayn Rand, and "worshiping wealth" is not a religion if the term is used in its usual metaphoric sense, although – to take an especially well-known primal account – to forge a lump of gold into the shape of a calf and treat it as having transcendent power would be to engage in a religious practice.

This is not primarily a reference book. I have not introduced citations to the extensive literature further illuminating (and complicating) the questions addressed or pursuing relevant tangents to them. Footnotes are especially sparse, and most elisions are not marked by dots, the inclusion of which is no assurance against distortion of authorial intention and, in my experience, contributes to a significant loss of focus in reading. The curious or skeptical reader can readily consult the source.

The epigraph to the book is from Rabbi Heschel's *No Religion Is an Island*, in *No Religion Is an Island: Abraham Joshua Heschel and Interreligious Dialogue*, eds. Harold Kasimov and Roger Sherwin, 7–8 (1991).

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Howard Lesnick
 Philadelphia, PA
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¹ This "definition" is of course not intended necessarily to govern legal questions, in particular the meaning of the word as it appears in the First Amendment to the U.S. Constitution.