Leslie Griffin has written a magnificent interdisciplinary case book for courses that focus on the relationship between law and religion. *Law and Religion* served as the text for my Religion and First Amendment seminar during the fall semester 2007 at Seton Hall Law School, and enabled me to elicit class discussion and connect themes more readily than any other case book I’ve used in nineteen years of teaching in this field. Sensibly organized, clearly written, flexible for different course formats and emphases, and just the right length, the book offers an impressive selection of cases, law review articles, non-legal scholarly texts and news accounts that give students numerous ideas and examples to consider and comment upon. These wide-ranging and well-balanced materials present the issues in all their complexity and challenge the reader with pointed and provocative questions (What do you think? Do you agree? How does this compare?). The student response was extraordinary.

Although *Law and Religion* is primarily a text on the Religion Clauses, it does not have an overwhelming focus on the U.S. Supreme Court. Of course, all of the Court’s doctrines in the field are given prominence through the reproduction of important decisions and the use of many case descriptions for those not excerpted. But the book is so much more. In addition to the thoughtful selections from authors on various religious and jurisprudential topics, Professor Griffin has selected many decisions from state and lower federal courts and materials describing the enormous role that legislatures and executives play in negotiating the religion-law relationship. In the section on religion in the public school science curricula, for instance, the book reproduces the two Genesis creation accounts and an excerpt from Darwin’s *The Origin of Species*, together with lengthy excerpts from two federal district court decisions.¹ This presentation is much more effective than a focus on the rather perfunctory Supreme Court decisions on the topic (which are addressed in notes). The trial court opinions engage questions regarding creation science, intelligent design and

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evolution in ways the high court does not, and made for excellent class
discussion. To further illustrate the use of diverse resources, consider
the section on comparative church-state law, where Professor Griffin has
chosen materials that enable students to juxtapose American
jurisprudence and practice against the varied religion-law relationships
of other nations and the understanding of “religious freedom” held by
various international actors.

_Law and Religion_ is characterized by a profound sense of religious
pluralism and deep understanding of the religious dimension of the
human person. Professor Griffin, who holds a doctorate in Religious
Studies from Yale and taught religious ethics in the Notre Dame
Theology Department, is also fluent in the language of political
philosophy, having published extensively on the work of writers like
John Rawls and John Courtney Murray, S.J., who address the
intersection of religion and political liberalism. This breadth of learning
and experience explains the ease with which Professor Griffin connects
the religious, political, juridical and social realms. Materials on
religious topics are seamlessly interwoven with the legal materials,
introducing students not only to legal issues but to the religious diversity
that gives rise to them. And materials in political philosophy help the
reader contextualize the jurisprudence by raising questions about the
role of religion and religious groups in society, and the relation of
pluralism to public values.

The multi-dimensional view of law and religion thus provides a
rich context for the U.S. Supreme Court’s jurisprudence. This makes
_Law and Religion_ appropriate not only for a traditional First Amendment
seminar or course, but also for Law and Religion classes seeking a
greater philosophical, sociological, or comparative international
emphasis. In fact, the teaching manual sets out sample syllabi for
multiple formats and different emphases. (I followed the suggested
format, with some of my own modifications, for a two-hour weekly
seminar with an emphasis on the Religion Clauses.) The manual also
provides cites to numerous resources for further exploration. In addition
to this very helpful teacher’s manual, website updates provide a
continuous flow of fascinating cases and news accounts. Familiarity
with resources in the field helps teachers not only with class preparation
but in their supervision of student seminar papers and projects.

The first two chapters provide an overview of the Free Exercise
and Establishment Clauses. In addition to an excellent presentation of
the Free Exercise jurisprudence, the first chapter contains a sophisticated
discussion of the definition of religion. It provides descriptions of a
variety of groups that might or might not be “religions” and some thoughtful typologies for assessing “religion” in judicial and other contexts (especially Ninian Smart’s seven dimensions of religion, to which my students returned at key moments throughout the semester).

The introductory Establishment Clause materials hone in on the most fundamental church-state concept: the separation of governmental and religious functions. Using Larkin v. Grendel’s Den, Inc.\(^2\) and Board of Education of Kiryas Joel Village School District v. Grumet\(^3\) (on the unconstitutional fusion of these functions), the book raises many of the basic concerns of the field. The text next moves to an overview of the various “tests” one might employ to determine whether particular state action violates the Clause (Lemon,\(^4\) endorsement or coercion). But, characteristic of this text, the book does not stop with Supreme Court decisions. Several exceptionally thoughtful lower court decisions on kosher food, blue laws, and religious holidays on public school calendars help give substance to the Court’s doctrine. The materials on the state’s involvement in kosher food inspection sparked a particularly lively discussion in my class on important themes—minority religious accommodation, religious consumer protection, possible non-governmental alternatives, and threshold questions of whether certain constitutional doctrines should even apply to a given issue in the first instance.

After laying the foundation for the current jurisprudence and underlying social and political issues, Law and Religion turns to conscience claims against the state in three contexts: the military, medicine, and law. Students found these materials riveting. Case book authors often use the military conscientious objection cases to illustrate examples of the definition of religion. But because that issue had been addressed with other, more thought-provoking materials in the first chapter, Professor Griffin is able to use the conscientious objection materials to shift the question from “what is religion?” to “what is conscience?” Given the Iraq War and the possibility of the return of the draft (and current examples of soldiers with conscience claims even in the volunteer army), the Supreme Court’s decision in Gillette v. U.S.,\(^5\) disallowing the exemption for Catholics with “selective” objection to an unjust war, gained new relevance.

As we moved to the arena of medicine, students were introduced to conscience claims made by individual medical professionals, including pharmacists, and by religiously affiliated hospitals on a host of issues (abortion, emergency contraception, and end of life decisions, to name a few). The materials raised fundamental questions concerning conflicting religious and “public” norms—which become even more complicated when one or both sets of norms are in flux. The materials invited further reflection on civil disobedience, with discussions of Gandhi and Rev. Martin Luther King, Jr., and even Alabama Chief Justice Roy Moore, who installed and then refused to remove a Ten Commandments monument in the rotunda of the state judicial building in direct contravention of a federal court order.

Chapter Four offers a straightforward treatment of the Free Exercise Clause, with the focus on exemptions from general, neutral laws under the old *Sherbert* jurisprudence (where court-mandated exemptions were possible) and the new *Smith* approach (where court-mandated exemptions are nearly impossible). But coming on the heels of the superb section on conscience in Chapter Three, the materials on *Smith* and its implications for exemptions assume an urgency I’ve not seen students grasp in the past. The book provides numerous lower federal and state court reactions to *Smith*, as well as excellent contextual materials on Native American peyotism (to better understand the religious practices at issue in *Smith*). While I would have liked to see more attention to *Wisconsin v. Yoder* in this section, a lengthy excerpt does appear in the very last chapter of the book (where it is used effectively to pull together major themes in the field). And of course, it can be assigned out of case book order if the teacher so chooses.

Chapter Four continues on to the topic of statutory exemptions under the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act, and Title VII. By seeing the federal laws together, students understand the interpretive difficulties more clearly, as well as the interaction and possible hierarchy among them. The lower federal court decisions applying these statutes also facilitate the teaching of many substantive areas (like the clergy-penitent privilege, for instance).

Chapter Five is an extraordinarily concise yet comprehensive treatment of church autonomy issues. The first subsection, on “Disputes over Church Property,” uses an excerpt from Kent Greenawalt rather

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than excerpts from the Supreme Court decisions (which tend to make even a law professor’s eyes glaze over) to raise themes. This piece is then coupled with a recent state court decision to illustrate the difficulties in doctrinal application. The second and third subsections of the chapter address disputes about religious employment, and tort suits against religious organizations. These materials explore Title VII’s exemption from religious-based discrimination in hiring and firing and other doctrines requiring deference to church employment decisions, as well as the many ways in which tort law intersects with belief, clergy conduct, and church decision-making. The issues raised were so troubling to my students that I could have easily devoted two classes to the topic.

The Establishment Clause discussion (ch. 6), which I assigned over four seminar sessions, starts with a focus on public funding. Madison’s *Memorial and Remonstrance* (opposing the public financing of ministers in Virginia) is reproduced as an appendix at the end of this chapter, and the founding period history needed for context is presented concisely with the help of notes and excerpts. Lengthy historical materials from the colonial and founding periods are not presented, so that teachers who approach the field from a historical perspective will need to supplement the text. The reader finds figures like John Locke, Roger Williams and William Penn, and additional information on Virginia’s establishment presented in connection with the theme of tolerance found in a later chapter on “Comparative Religious Freedom.”

The main cases in the Establishment Clause subsection on public funding are the oldest (*Everson v. Bd. of Educ. of Ewing Township*) and one of the most recent (*Zelman v. Simmons-Harris*), which provide a dramatic contrast in interpretive approaches. With a variety of well selected scholarly writings and notes to link these two decisions, this section masterfully summarizes the twists and turns of sixty years of jurisprudence. By avoiding an exclusive emphasis on *Lemon* (which was treated as part of the introductory Establishment Clause materials), students enjoy an unencumbered view of the Court’s early attempts to grapple with the difficult issues without resort to a “test.” I especially appreciated the contextual materials provided on nineteenth-century Catholicism and the Blaine amendments. I have always thought the modern cases were more closely related to the calls for public funding of Catholic education in the nineteenth century than to the funding of

ministers in the founding period, despite Everson’s resort to the Virginia experience.

Law and Religion next turns to normative and symbolic issues, taking up prayer in public schools and religious symbols on public property. Here the choice of Supreme Court decisions is particularly thoughtful. Engel v. Vitale\textsuperscript{11} and Lee v. Weisman\textsuperscript{12} are paired on prayer, and Lynch v. Donnelly\textsuperscript{13} illustrates the main themes in the holiday symbols area. To help students further explore the theme of symbolism, Professor Griffin includes a note containing a visual reproduction of twenty-four different religious symbols allowed by the Veterans Affairs Department for soldiers’ grave markers, including the originally rejected Wiccan symbol. Finally, the book provides an intense look at Supreme Court reasoning on religious symbols in the Ten Commandments context—with major excerpts from three decisions on this topic.\textsuperscript{14}

Chapter Seven addresses “Religion and Politics,” with subsections on “Presidents,” “Civil Religion,” “Political Morality and Religion,” and “Taxes and Political Activity.” Given time constraints, I covered only “Presidents.” (The remaining subsections are intellectually rich, with excerpts from Abraham Lincoln, Robert Bellah, and John Rawls.) As the update suggests, I added the Supreme Court’s 2007 decision in Hein v. Freedom from Religion Foundation, Inc.,\textsuperscript{15} which denied taxpayer standing to challenge executive branch funding of faith-based initiatives from general appropriations (as opposed to specific congressional appropriations). Placing Hein here worked well, as it followed on the heels of the Establishment Clause materials from the previous weeks; furthermore, it allowed a focus on President Bush, who has created an enormous federal bureaucracy (without the help of Congress) for the purpose of ensuring equal opportunity in funding for both religious and secular social service providers.

In the treatment of presidents, Professor Griffin juxtaposes President Kennedy’s famous Houston Address with remarks by President Bush on stem cell research, and provides plenty of additional materials on various candidates and leaders, such as former Vice-Presidential candidate Senator Joseph Lieberman and current Presidential candidate Mitt Romney. This set of readings elicited a most

\textsuperscript{11} 370 U.S. 421 (1962).
\textsuperscript{12} 505 U.S. 577 (1992).
\textsuperscript{15} 127 S.Ct. 2553 (2007).
enthralling class discussion. Students argued over the appropriateness of explicit religious language in our political discourse, and the ways in which reliance on religion, expressed or unexpressed, is inappropriate (to some students) or inevitable (to others) or vital (to still others). The recent statements of Romney and fellow candidate Mike Huckabee in the 2008 campaign will undoubtedly make their way into future editions of the book.

The text returns to the public school classroom in Chapter Eight, “Teaching About Religion and Science,” with subsections on “Prayer, Theology and Religious Studies” and on “Creation, Evolution and Intelligent Design.” I chose the latter topic for one seminar session, and we enjoyed a lively debate. The cases on creation science and intelligent design, as mentioned above, were district court decisions that detailed and analyzed the carefully developed record at trial. The students found most enlightening the statements of religious leaders like John Paul II and the Dalai Lama, which demonstrated that not all religions (and particularly not all Christians) accept a creationist theory (a common misconception) and that some religions attempt to synthesize faith and evolution. The book also provided a fair amount of material criticizing evolution, especially where it has been presented as a philosophical, ethical or religious system.

The former subsection, on “Prayer, Theology and Religious Studies” (primarily in the university setting) is a masterful collection of materials that asks what it means to teach about religion (which is constitutional). The distinction between preaching and teaching is explored, as are numerous examples of ways in which religious topics make their way into university and public school curricula.

The book shines in its treatment of “Comparative Religious Freedom” in Chapter Nine, in which international protections for religious freedom are discussed. (Additional subsections—on tolerance and on “the clash of civilizations and the illusion of destiny”—round out this chapter, using excerpts from Samuel Huntington and Amartya Sen.) My class was riveted by the 2005 decision in Leyla Sahin v. Turkey, in which Turkey’s ban of the Muslim headscarf in the public university was upheld by the European Court of Human Rights to protect the equality of women and pluralism. Here the text analyzes the phenomenon of intentionally secular nations (like France and Turkey), and students reacted sharply not only to the decision to deny relief but

also to the assumption that secularism fosters equality and protects pluralism. Immediate and strong contrasts and comparisons were drawn to the U.S. situation. We discussed various religious garb restrictions in the U.S., which were set forth in the notes, and further discussed the federal tax code’s electioneering and lobbying restrictions for religious institutions and other non-profits, which in some ways serve to maintain a secular political sphere. This brought us right back to the reasons for separation of governmental and religious functions presented in the introductory chapter on the Establishment Clause, and got us talking about whether the secularism of places like France and Turkey is fundamentally different from the secularism that results from this separation of function.

The book then delves into Islam and the various types of Islamic political and legal influence (Islamic states, states in which Islam is the official religion, states that recognize Islam as a source of law with special status, etc.). This typology of church-state relations launched the class into a discussion of whether the U.S. is a “Christian” state, or whether Christianity functions like an official religion, or receives special privilege, notwithstanding the Free Exercise and Establishment Clauses, or whether the Religion Clauses really do function to protect religious minorities, religious freedom, religious pluralism, and religious equality. Students offered many diverse views on the impact of the Religion Clauses.

The final chapter (ch. 10) is entitled “The Old and New Law of Religion.” It begins with the famous “Amish case,” Wisconsin v. Yoder, 17 and then presents a nice excerpt from Diana Eck’s work on religious diversity in America regarding the growing Muslim, Buddhist, Hindu and Sikh populations. My class came back around to the question of religious exemptions, autonomy (and survival) of religious groups, and the challenges that lay ahead as we become increasingly pluralistic. We returned to the fundamental question of the course: how do varying interpretations of the Religion Clauses promote or hinder efforts to foster pluralism, to ensure freedom without anarchy, to enable particularistic identities within civil society without undermining what is held in common?

My enthusiasm for Law and Religion is boundless, for all the reasons I’ve expressed. Professor Griffin has written a most engaging case book that gets students (and their professors) thinking, talking, and learning.

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