

THE FIRST AMENDMENT AND RELIGION IN AMERICA
PSC 291/REL 297
Professor Jackson
Spring 2010

Required material: All assigned readings are posted in pdf format on Blackboard.
(The pdf files can be printed on a 2-to-1 basis, if you so desire, economizing paper and ink.
This is practical for most of the pdf files that currently have one printed page per pdf
page, but probably not practical (no, I agree) for the pdf files that currently have two
printed pages per pdf page.)

**Congress shall make no law respecting an establishment of religion, or prohibiting
the free exercise thereof; or abridging the freedom of speech, or of the press; or the
right of the people peaceably to assemble, and to petition the Government for a red-
dress of grievances.**

First Amendment to the Constitution of the United States

This course is an examination of the social articulation and role of religion in the
United States, particularly as expressed in the two religion clauses of the First Amend-
ment. We will examine some of the key historical and political antecedents to the Con-
stitution's establishment of religious freedom, and we will read critically and carefully key
decisions (usually, but not exclusively from the Supreme Court of the United States) that
have shaped and continue to shape the application of the First Amendment's construct
to American civil and social life.

Work for the course will consist of regular class attendance and participation, a
short mid-term paper and a final essay. (Students who are taking this for Political
Science writing [PSC 291W] should meet with me at the end of the first class on January
22nd to discuss writing requirements that will be in lieu of the short mid-term paper and
final essay.)

January 22 Overture

Richard Posner, "Faith-Based Morality and Public Policy" (and related
material), <http://leiterreports.typepad.com/blog/2004/12/>

Biblical Antecedents & Early Christianity: Covenant and Separation

Exodus 19-20; Exodus 24; Exodus 31; Deuteronomy 17:14-20; Judges 8:22-23, 9:1-15; I Samuel 8; Daniel 2-4

William S. Green & Gary Porton, "Religious Resources for Political

Culture. The Case of Judaism," in J. Neusner, ed., *Reflections of Judaism* in J. Neusner, ed., *Religion and the Political Order: Politics in Classical and Contemporary*

Christianity, Islam, and Judaism (Atlanta, Scholars Press, 1990), pp. 109-20

Matthew 22:15-21

Bruce Chilton, "Primitive and Early Christianity," in J. Neusner, ed., *God's Rule: The Politics of World Religions* (Georgetown U. Press, 2003), pp. 37-60

January 29 Europe & Christianity: Persecution to Toleration

Harold J. Berman and John Witte, Jr. "Church and State." The

Encyclopedia of Religion 3, pp. 489-95

Harold J. Berman, *Law and Religion in the West*, *The Encyclopedia of Religion*, 8, 472-75

William S. Green, "Religion and Society in America" in J. Neusner, ed.

World Religions in America: An Introduction [Revised and

Expanded Edition] (Westminster/John Knox Press, 2000), pp. 246-

55

John Noonan, Jr. & Edward Gaffney, Jr. *Religious Freedom: History*

Cases and Other Materials on the Interaction of Religion and

Government (Foundation Press 2001), pp. 117-37 (hereafter,

"Noonan & Gaffney")

John Locke, *A Letter Concerning Toleration* (1689)

William S. Green, "What Do We Mean by 'Religion' and 'Western

Civilization'?" in J. Neusner, ed., *Religious Foundations of*

Western Civilization (Abingdon Press, 2006), pp. 3-23

Bernard Lewis, *What Went Wrong: Western Impact and Middle Eastern Response* (Oxford U. Press, 2002), pp. 96-116

February 5 The Colonial Experience & Constitutional Development

John Witte, Jr. & John A. Nichols, *Religion and the American*

Constitutional Experiment (Westview Press, 3rd ed. 2011), pp. 21-

40 (hereafter "Witte & Nichols")

Noonan & Gaffney, pp. 158-65

Thomas Jefferson, *Notes on Virginia* (Query XVII) (1784)

Noonan & Gaffney, pp. 169-73

Assessments (1785)

Mooney & Ganney, pp. 178-200
George Washington, First Inaugural Address (1789)
Congressional Resolution: Day of Thanksgiving (1789)
George Washington, Farewell Address (1796)
James Madison, Detached Memoranda (circa 1817)

February 12 **The American Experience Through the Application of the First Amendment to States**

Noah Feldman, Divided by God: America's Church-State Problem—and What we Should do About It (Farrar, Straus and Giroux 2005), pp.

53-56 (hereafter "Feldman, Divided by God")

"People v. Ruggles," 8 Johns. R. 290 (NY 1811)
"Demeray, First Parish in Falmouth?" (Mass. 1810) (O'Leary & Gaffney

pp. 222-31)

(1835)

Witte & Nichols, pp. 118-22 & 130
"Reynolds v. United States," 98 U.S. 145 (1879)
* Note on "Cleveland v. United States," 329 U.S. 14 (1946)
"Pierce v. Society of Sisters," 268 U.S. 510 (1925)
"Cantwell v. Connecticut," 310 U.S. 296 (1940)
*Note on "Murdock v. Commonwealth of Pennsylvania," 319 U.S. 105 (1943)

February 19 **No class**

February 26 **Free Exercise at the Supreme Court**

"Wisconsin v. Yoder," 406 U.S. 296 (1972)
* Note on "Sherbert v. Verner," 374 U.S. 398 (1963)
"Employment Division, Dept. of Human Resources of Oregon v. Smith," 494 U.S. 872 (1990)
*Note on "Church of Lukumi Babalu Aye, Inc. v. Hialeah," 508 U.S. 486 (2003)
"Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC," 565 U.S. ___ (2012)

Congress Enters the Fray

Religious Freedom Restoration Act of 1993

"City of Boerne v. Flores," 521 U.S. 507 (1997)

*Note on "Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal," 546 U.S. 418 (2006)

Religious Exemption Law Map of the United States

Religious Land Use and Institutionalized Persons Act of 2000

*Note on "Cutter v. Wilkinson," 544 U.S. 709 (2005)

~~March 5~~ ~~Work on Mid-Term Paper~~

March 12 No class (Spring break)

March 19 Mid-Term Paper Due

"Religion" and its "Exercise"

"United States v. Seeger," 380 U.S. 163 (1965)

Perspectives on the Free Exercise of Religion

Winnifred Sullivan, The Impossibility of Religious Freedom (Princeton U. Press, 2005), pp. 2-3, 7-9, 29-31, 105-09, 138-51

Martha Nussbaum, Liberty of Conscience: In Defense of America's

Tradition of Religious Equality (Basic Books 2008), pp. 116-20, 151-58, 164-74

Kent Greenawalt, Religion and the Constitution Volume I: Free Exercise

and Fairness (Princeton University Press 2007), pp. 124-38

*Note on "Thomas v. Review Board," 450 U.S. 707 (1981)

*Note on "United States v. Ballard," 322 U.S. 78 (1944)

~~March 26~~ ~~The Establishment Clause and State Aid to Religious Schools~~

Feldman, Divided by God, pp. 57-71, 86-92

"Everson v. Bd. of Education," 330 U.S. 1 (1947)

"Lemon v. Kurtzman," 403 U.S. 602 (1971)

"Zelman v. Simmons-Harris," 536 U.S. 639 (2002)

Tax Exemptions to Religious Organizations

"Walz v. Tax Comm. of the City of New York," 397 U.S. 664 (1970)

"Standing" and the Ability to Challenge Monetary Aid

*Note on Taxpayer Standing

April 2 **Prayers, Pledges, and the First Amendment**

“West Virginia State Bd. of Education v. Barnette,” 319 U.S. 624 (1943)

“Lee v. Weisman,” 505 U.S. 577 (1992)

“Marsh v. Chambers,” 463 U.S. 783 (1983)

*Note on “Simpson v. Chesterfield County Bd. of Supervisors,”
404 F.3d 276 (4th Cir. 2005), cert. denied, 546 U.S. 937
(2005)

*Note on “Newdow v. Rio Linda Union School District,” 597 F.3d
1007 (9th Cir. 2010)

Commandments and Symbols

“Stone v. Graham,” 449 U.S. 39 (1980)

April 9 **Commandments and Symbols (cont.)**

“Van Orden v. Perry,” 545 U.S. 677 (2005) (including “Appendix”)

“M.C. Galt v. City of Kenton,” 545 U.S. 844 (2005)

Witte & Nichols, pp. 231-34

Religious Speech and the Establishment Clause

“Widmar v. Vincent,” 454 U.S. 263 (1981)

“Good News Club v. Mitchell,” 551 U.S. 131 (2007)

*Note on “Faith Center Church Evangelistic Ministries v. Glover,”
No. 05-16132 (9th Cir. 2006), cert. denied (2007).

*Note on “Christian Legal Society v. Martinez,” 561 U.S.
(2010)

Exercise vs. Establishment

“Locke v. Davey,” 540 U.S. 712 (2004)

April 16 **Academic Views on the Supreme Court and the Religion Clauses**

Michael W. McConnell, “Religious Freedom at a Crossroad,” 50 U.

Chicago Law Review (1972), pp. 119-24 Chicago Law Review (1992), pp. 115-04

Kathleen M. Sullivan, "Religion and Liberal Democracy," 59 U. Chicago Law Review (1992), pp. 195-223

Noah Feldman, "A Church-State Solution," NY Times Magazine (July 3, 2005)

Marci Hamilton, God vs. The Gavel: Religion and the Rule of Law (Cambridge U. Press 2005), pp. 3-11, 273-302

Martha Nussbaum, Liberty of Conscience, pp. 225-32

April 23 **Work on Final Paper**

April 30 **Papers Due; Concluding Thoughts and Discussion**