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Main content

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The Supreme Court and Religion in American Life Vol. I: The Odyssey of the Religion Clauses (218 pages) Vol. II: From "Higher Law" to "Sectarian Scruples" (261 pages)

James Hitchcock

Princeton, New Jersey: Princeton University Press, 2004

The Supreme Court began a significant shift during the 1940s, argues James Hitchcock, by increasing the number of First Amendment cases it reviewed and by altering its understanding of the relationship between church and state to an Enlightenment view of religion and politics. Hitchcock's two-volume contribution to church-state scholarship will prove to be a cornerstone for accommodationist theory and a thorn in the flesh for separationist scholars. The St. Louis University history professor's work is the latest in a trend toward accommodationist scholarship, most notably evident in Philip Hamburger, *Separation of Church and State* (Harvard University Press, 2002), and Daniel Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York University Press, 2003).

The first volume provides the reader with an analysis of the most extensive set of religion cases reviewed by the Supreme Court to date, including cases that have been overlooked by other works on church-state relations. The religion clauses, Hitchcock demonstrates, played a minimal role in the early court, yet the court was still concerned with protecting religious liberties by using other factors, such as property rights and contract law. For example, *Dartmouth College v. New Hampshire* (1819), a case involving a religious institution's legal autonomy, was decided not on the First Amendment but on the basis of contract law. Religion cases did increase, due to litigation brought by Mormons and Jehovah's Witnesses, yet the most significant period of transition and expansion in the court, according to Hitchcock,...

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"Hitchcock covers a tremendous amount of American legal history and does so with remarkable clarity and brevity. His arguments are nuanced and always thought-provoking. The book compels a rethinking of prevailing legal doctrines and thus has the potential to have a significant impact on the continuing debate on the constitutional relationships between religion and American life."—Daniel Dreisbach, American University. "This book and its companion volume provide a concise, but complete account of all the relevant cases since 1789 with sophisticated scholarly analysis. It is by far the Supreme Court of the United States (SCOTUS) is the highest court in the federal judiciary of the United States of America. It has ultimate (and largely discretionary) appellate jurisdiction over all federal and state court cases that involve a point of federal law, and original jurisdiction over a narrow range of cases, specifically "all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party". The Court holds the power of judicial review, the The Supreme Court of the United States, whose decisions not only define constitutional law but vitally affect national policy, has long held both an honored and a controversial place in American life. In no area do its decisions bring it more honor or more controversy than in the field of religion; for, as a member of the First Congress under the Constitution said, "the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand. ... Thus, the same decision of the Court may be hailed by some as a great landmark in the struggle for Landmark Supreme Court Cases. Reynolds v. United States (1879) The Court examined whether the federal anti-bigamy statute violated the First Amendment's Free Exercise Clause, because plural marriage is part of religious practice. It unanimously upheld the federal law banning polygamy, noting that the Free Exercise Clause forbids government from regulating belief, but does allow government to punish activity judged to be criminal, regardless of an activity's basis in religious belief. (Citation: 98 US 145) BRI e-Lesson Available. The Court ruled 7-2 that the South Carolina statute did impede a person's right to freely exercise religion, in violation of the Free Exercise Clause. (Citation: 374 U.S. 398).