The First Amendment and Religion in America
PSC 291/REL 297
Professor Jackson
Spring 2013

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, conserving paper and ink. This is practical for many of the .pdf files that currently have one printed page per .pdf page, but probably not practical (i.e., legible) 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 redress of grievances.

--First Amendment to the Constitution of the United States

This course is an examination of the special articulation and role of religion in the United States, particularly as expressed in the two religion clauses of the First Amendment. We will examine some of the key historical and political antecedents to the Constitution’s formulation of religious freedom, and we will read closely and critically 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

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
Matthew 22:15-21

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
John Locke, A Letter Concerning Toleration (1689)

February 5

The Colonial Experience & Constitutional Development

Noonan & Gaffney, pp. 158-65
Thomas Jefferson, Notes on Virginia (Query XVII) (1784)
Noonan & Gaffney, pp. 169-73
James Madison, *A Memorial and Remonstrance Against Religious Assessments* (1785)
Noonan & Gaffney, 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**

“People v. Ruggles,” 8 Johns. R. 290 (NY 1811)
“Barnes v. First Parish in Falmouth” (Mass. 1810) (Noonan & Gaffney, pp. 222-31)
Alexis de Tocqueville, *Democracy in America* (Book I, Chapter XVII) (1835)
Witte & Nichols, pp. 118-22 & 130
“Pierce v. Society of Sisters,” 268 U.S. 510 (1925)

*February 19*  
**No class**

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

“Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC,” 565 U.S. ____ (2012)

**Congress Enters the Fray**

Religious Freedom Restoration Act of 1993
Religious Exemption Law Map of the United States
Religious Land Use and Institutionalized Persons Act of 2000

March 5  Work on Mid-Term Paper

March 12  No class (Spring break)

March 19  Mid-Term Paper Due

   “Religion” and its “Exercise”


Perspectives on the Free Exercise of Religion


   *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

Tax Exemptions to Religious Organizations


   “Standing” and the Ability to Challenge Monetary Aid
*Note on Taxpayer Standing

April 2

Prayers, Pledges, and the First Amendment

*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


April 9

Commandments and Symbols (cont.)

“McCreary County v. ACLU of Kentucky,” 545 U.S. 844 (2005)
Witte & Nichols, pp. 231-34

Religious Speech and the Establishment Clause

*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


April 16

Academic Views on the Supreme Court and the Religion Clauses

Michael W. McConnell, “Religious Freedom at a Crossroad,” 59 U.
Martha Nussbaum, Liberty of Conscience, pp. 225-32

April 23
Work on Final Paper

April 30
Papers Due; Concluding Thoughts and Discussion