

Paper Proposal:

Christian Conservatives and Constitutional Law

Rogers M. Smith
University of Pennsylvania

Until the mid-20th century, American constitutional jurisprudence supported a wide range of accommodations and different forms of assistance for a broad though bounded array of American religious groups. Many religious historians argue that more theologically conservative Christians came to feel increasingly unwelcome in American public life during the first third of the 20th century, and that many withdrew into fairly insular religious communities. But insofar as this was the case, it was not due chiefly to judicial hostility; for example, no court invalidated the Tennessee ban on teaching evolution in the famous Scopes trial.

Beginning in the late 1940s, and especially from roughly 1960 to 1980, the U.S. Supreme Court did become increasingly influenced by more liberal political and theological perspectives, closely allied with the civil rights movement, in ways that led it to reject many forms of accommodation and assistance for traditionally powerful religious groups, particularly in the context of public schools. These decisions included bans on leading prayers, conducting Bible readings, and using explicitly religious curriculum in the public schools, and rejection of many forms of financial aid to parochial schools. As resistance to public school desegregation orders led to the creation of largely white private religious academies in the 1970s, courts sustained more stringent restraints on such aid.

These developments, however, accelerated the displacement of more liberal theological and political perspectives from dominance in American Protestantism that had been underway at least since the late New Deal. They also contributed to increasing divisions between the world-views of many of the more religious and the more secular members of the civil rights coalition of the 1950s and 60s. They therefore contributed to the rise of the modern Christian Right, which has in turn generated both new constitutional arguments and new political pressures that are transforming American constitutional law—particularly since the election of Ronald Reagan with conservative Christian support in 1980. Conservative Christians continue to feel, with some foundation, that modern courts have often adopted stances hostile to their beliefs and values; but their increased influence is the single greatest factor contributing to the re-shaping of American constitutional law on a wide array of religion-related topics. Yet while they are now very much part of modern constitutional debates, they remain far from hegemonic—a powerful but minority voice in American culture as a whole. For this reason among others, they are divided on their views about the proper relationship of church and state on a number of issues, while speaking with strong and united voices on others. Those circumstances indicate that constitutional controversies over religious issues will remain intense for the foreseeable future.