



Wrestling with God: The Courts' Tortuous Treatment of Religion

Patrick M. Garry

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The relationship between church and state is both controversial and unsettled. For decades, the courts have vacillated dramatically in their rulings on when a particular governmental accommodation rises to the level of an impermissible state establishment of religion. Without a comprehensive theory of the First Amendment establishment clause, religion cases have devolved into a jurisprudence of minutiae. Seemingly insignificant occurrences, such as a student reading a religious story or a teacher wearing a cross on a necklace, have led to years of litigation. And because of the constant threat of judicial intrusion, a pervasive social anxiety exists about the presence of religion in American public life. This anxiety, in turn, leads to more litigation, as opposing parties constantly try to influence the fluctuating direction of the courts' religion doctrines. Courts have often treated the two religion clauses of the First Amendment as contradictory, with the free exercise clause used to protect religious practices and the establishment clause employed to limit the public expression of religious beliefs. "Wrestling with God" not only reconciles the relationship between the two clauses but also distinguishes them in terms of their respective purposes. Whereas the exercise clause focuses on individual freedom, the establishment clause addresses the institutional autonomy of religious organizations. Under this distinction, many cases currently falling under the establishment clause - e.g., prayer in the schools - should instead be governed by the exercise clause. Unlike many contemporary interpretations of the establishment clause, the model offered in "Wrestling with God" views the clause not as a check on religion but as a protection against a specific kind of religious coercion - the kind that results from governmental interference with the freedom of religious institutions. As Patrick M. Garry skillfully argues in "Wrestling with God", the establishment clause does not exist for the benefit of a secular society; it exists for those religious institutions in which individuals seek to practice their beliefs.



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