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# Facts and Fictions About the History of Separation of Church and State

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# Facts and Fictions About the History of Separation of Church and State

JOHN WITTE, JR.

In the past decade, a veritable cottage industry of important new books, articles, briefs, and judicial opinions has emerged devoted to the history of separation of church and state.<sup>1</sup> We now know a great deal more about the history of separationist rhetoric from Thomas Jefferson's famous 1802 Letter to the Danbury Baptist Association to Justice Hugo Black's opinion in the 1947 Supreme Court case of *Everson v. Board of Education*. We know more about the odious manipulation of separationist rhetoric by the Ku Klux Klan and other nativist groups against Catholics, Jews, and other minority faiths and immigrant groups in the later nineteenth and early twentieth centuries. And we now see more clearly than before that Justice Black drew some

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•JOHN WITTE, JR. (J.D., Harvard) is Jonas Robitscher Professor of Law and Director of the Center for the Study of Law and Religion at Emory University. A specialist in legal history, marriage, and religious liberty, he has published 120 articles and 18 books, including recently, *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (2002); *Religion and the American Constitutional Experiment* (2d ed., 2005); *Sex, Marriage and Family Life in John Calvin's Geneva*, 3 vols. (2005-) (with Robert M. Kingdon); and *The Teachings of Modern Christianity on Law, Politics, and Human Nature*, 2 vols. (2006) (with Frank S. Alexander). The author presented earlier versions of this lecture as the keynote lecture at the American Society of Legal History Annual Meeting on 13 November 2004 and as a lecture at a conference of the United States Court of Appeals, District of Columbia Circuit, co-sponsored by George Mason University, on 12 June 2004. Portions of this text are adapted from his review essay, "That Serpentine Wall of Separation," *Michigan Law Review* 101 (2003): 1869-1905.

1. See, e.g. Mark D. McGarvie, *One Nation Under Law: America's Early National Struggles to Separate Church and State* (DeKalb, Ill.: Northern Illinois University Press, 2004); Forrest Church, ed., *The Separation of Church and State* (Boston: Beacon Press, 2004); James Hitchcock, *The Supreme Court and Religion in American Life*, 2 vols. (Princeton, N.J.: Princeton University Press, 2004); Philip A. Hamburger, *Separation of Church and State* (Cambridge, Mass.: Harvard University Press, 2002); Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: NYU Press, 2002); Stephen M. Feldman, *Please Don't Wish Me a Merry Christmas: A Critical History of the Separation of Church and State* (New York: NYU Press, 1997); Jo Renée Formicola and Hubert Morken, ed., *Everson Revisited: Religion, Education, and Law at the Crossroads* (Lanham, Md.: Rowman Littlefield, 1997); Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York: Norton, 1996).

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