

文献目録

アメリカ憲法「宗教条項」文献

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この文献目録は2005年7月から2010年4月までのアメリカ憲法修正第一条、宗教条項 (Religion Clauses) に関する文献を扱っている。この5年間は世界においても、混乱と変化の時代であった。アメリカ連邦最高裁でも、それに呼応するように判事の去就が続いた。

2005年9月にリンクエスト首席判事 (Chief Justice Rehnquist) が引退。その後任に、首席判事の調査官を務めたこともあるロバーツ (John G. Roberts) 氏が、その職 (Chief Justice) に就いた。2006年1月に国教樹立禁止条項などで約10個もの原理を提供し、よくもあしくも“Swing Voter”といわれたオ'Connor判事 (Justice O'Connor) が引退した。その後、アリトー判事 (Justice Samuel Alito) が就任。2009年6月にソーター判事 (Justice Souter) が引退し、ソトマイヤー判事 (Justice Sonia Sotomayor) が就任した。さらに、最近になってステイヴンズ判事 (Justice Stevens) が引退の表明を行った。

ロバーツ・コート (Roberts Court) といわれる時代が始まっている。宗教が社会に与える影響はむしろ多様化し、適用法は複雑になった。連邦最高裁はその対応に追われ、その試行錯誤のゆえに風当たりも一段と激しくなってきた。しかし、少しずつではあるが、変化への兆候も現れている。

このアメリカ憲法「宗教条項」文献に関する著作・論文の選択は、憲法学者、実務家、研究者を中心に行った。

I. アメリカ合衆国憲法における宗教条項の位置

——宗教条項 (Religion Clauses) の適用範囲をめぐる

(Employment Division v. Smith の混乱と宗教の多様化に追われて)——

- [1] 宗教条項 —— 「信教の自由条項」と「国教樹立禁止条項」との関係、
およびアメリカ憲法における「宗教条項」の位置

Beckwith, Francis J., “Article: The Court of Disbelief: The Constitution’s Article VI Religious Test Prohibition and the Judiciary’s Religious Motive Analysis” 33 *Hastings Constitutional Law Quarterly* 337 (Winter / Spring, 2006)

Belsky, Martin H., “Symposium: Supreme Court Review: Symposium Forward: Supreme Court Review The Religion Clauses and the ‘Really New’ Federalism” 42 *Tulsa Law Review* 537 (Spring, 2007)

Berg, Thomas C., “The Rehnquist Court and the First Amendment: What’s Right and Wrong with ‘No Endorsement’ ” 21 *Washington University Journal of Law & Policy* 307 (2006)

Berg, Thomas C., “Response: Religious Choice and Exclusions of Religion” 157 *PENNumbra-University of Pennsylvania Law Review* 100 (December, 2008)

Berquist, Krysta, “Case Comment: Locke v. Davey: Has There Been a Change in the Standard of Review for Freedom of Religion Cases?” 13 *The Digest National Italian American Bar Association Law Journal* 91 (2005)

Bezanson, Randall P., *How Free Can Religion Be?* (University of Illinois Press, 2006)

Bodensteiner, Ivan E., “Article: The Demise of the First Amendment as a Guarantor of Religious Freedom” 27 *Whittier Law Review* 415 (Winter, 2005)

Carmella, Angela C., “Symposium: The Religion Clauses in the 21st

- Century: Article: Responsible Freedom under the Religion Clauses: Exemptions, Legal Pluralism, and the Common Good” 110 *West Virginia Law Review* 403 (Fall, 2007)
- Charlow, Robin, “Article: The Elusive Meaning of Religious Equality” 83 *Washington University Law Quarterly* 1529 (2005)
- Claeys, Eric R., “The Rehnquist Court and the First Amendment: Justice Scalia and the Religion Clauses: A Comment on Professor Epps” 21 *Washington University Journal of Law & Policy* 349 (2006)
- Cook, Heather, “Article: Service before Self? Evangelicals Flying High at the U.S. Air Force Academy” 36 (Jefferson Law Book Company, Division of Anderson Publishing Co.) *Journal of Law & Education* 1 (January, 2007)
- Deverich, Carolyn A., “Comment: Establishment Clause Jurisprudence and the Free Exercise Dilemma: A Structural Unitary-Accommodationist Argument for the Constitutionality of God in the Public Square” 2006 *Brigham Young University Law Review* 211 (2006)
- Eisgruber, Christopher L., “Symposium: The Jurisprudence of Justice Stevens: Panel V: First Amendment/Voting Rights: Justice Stevens, Religious Freedom, and the Value of Equal Membership” 74 *Fordham Law Review* 2177 (March, 2006)
- Eisgruber, Christopher L. and Sager, Lawrence G., “Symposium: The Supreme Court’s Hands-off Approach to Religious Doctrine: Does It Matter What Religion Is?” 84 *Notre Dame Law Review* 807 (January, 2009)
- Epps, Garrett, “The Rehnquist Court and the First Amendment: Some Animals are more Equal than Others: The Rehnquist Court and ‘Majority Religion’ ” 21 *Washington University Journal of Law & Policy* 323 (2006)

- Esbeck, Carl H., "IDEA: 'Play in the Joints between the Religion Clauses' and Other Supreme Court Catachreses" 34 *Hofstra Law Review* 1331 (Summer, 2006)
- Esbeck, Carl H., "Symposium: The Religion Clauses in the 21st Century: Article: When Accommodations for Religion Violate the Establishment Clause: Regularizing the Supreme Court's Analysis" 110 *West Virginia Law Review* 359 (Fall, 2007)
- Feldman, Stephen M., "Symposium: Religion, Division, and the Constitution: Empiricism, Religion, and Judicial Decision-Making" 15 *William & Mary Bill of Rights Journal* 43 (October, 2006)
- Fitzkee, David E. and Letendre, Linell A., "Article: Religion in the Military: Navigating the Channel between The Religion Clauses" 59 *The Air Force Law Review* 1 (2007)
- Flanders, Chad, "Article: The Possibility of a Secular First Amendment" 26 *Quinnipiac Law Review* 257 (2008)
- Garfield, Alan E., "Article: What Should We Celebrate on Constitution Day?" 41 *Georgia Law Review* 453 (Winter, 2007)
- Garnett, Richard W., "John F. Scarpa Conference on Law, Politics, and Culture: Standing, Spending, and Separation: How the No-Establishment Rule Does (and Does not) Protect Conscience" 54 *Villanova Law Review* 655 (2009)
- Garry, Patrick M., "Article: Coordinating The Exercise and Establishment Clauses: A Narrow Establishment Clause Test for Government Funding of Prisoner Rehabilitation Services by Religious Providers" 6 *Ave Maria Law Review* 387 (Spring, 2008)
- Gaus, Matthew, "Note: Locke v. Davey: Discretion, Discrimination, and the New Free Exercise" 54 *The University of Kansas Law Review* 553 (January, 2006)
- Gedicks, Frederick Mark, "Essay: On the Permissible Scope of Legal

- Limitations on the Freedom of Religion or Belief in: The United States” 19 *Emory International Law Review* 1187 (Summer, 2005)
- Gellman, Susan and Looper-Friedman, Susan, “Article: Thou Shalt Use the Equal Protection Clause for Religion Cases (Not Just the Establishment Clause)” 10 *University of Pennsylvania Journal of Constitutional Law* 665 (May, 2008)
- Gordon, Daniel, “Article: Examining Justice Breyer’s Constitutional Consequential Thinking: Can Justice Scalia be Wrong and Justice Kennedy be Right?” 23 *St. John’s Journal of Legal Commentary* 137 (Spring, 2008)
- Gordon, Sarah Barringer, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Belknap Press of Harvard University Press, 2010)
- Graber, Mark A., “Symposium: The Maryland Constitutional Law Schmooze: Foreword: Our Paradoxical Religion Clauses” 69 *Maryland Law Review* 8 (2009)
- Graves, Kevin, “Chalk Talk: University Accommodation of Non-Majority Religions: Legitimate Protection of Students’ Right to Practice or Unconstitutional Governmental Endorsement?” 37 (Jefferson Law Book Company) *Journal of Law & Education* 291 (April, 2008)
- Green, Steven K., “The 2006 Randolph W. Thrower Symposium Interactive Federalism: Filling the Gaps? Article: Religion Clause Federalism: State Flexibility over Religious Matters and the ‘One-Way Ratchet’ ” 56 *Emory Law Journal* 107 (2006)
- Green, Steven K., “Symposium: A Second-Class Constitutional Right? Free Exercise and the Current State of Religious Freedom in the United States: Religious Liberty as a Positive and Negative Right” 70 *Albany Law Review* 1453 (2007)
- Green, Steven K., “Symposium: The Religion Clauses in the 21st Century:

- Article: Reconciling the Irreconcilable: Military Chaplains and the First Amendment” 110 *West Virginia Law Review* 167 (Fall, 2007)
- Greenawalt, Kent, “Article: Common Sense about Original and Subsequent Understandings of the Religion Clauses” 8 *University of Pennsylvania Journal of Constitutional Law* 479 (May, 2006)
- Greenawalt, Kent, “Law and Morality: Constitutional Law: Moral and Religious Convictions as Categories for Special Treatment: The Exemption Strategy” 48 *William & Mary Law Review* 1605 (April, 2007)
- Greenawalt, Kent, “Symposium: The Religion Clauses in the 21st Century: Article: Establishment Clause Limits on Free Exercise Accommodations” 110 *West Virginia Law Review* 343 (Fall, 2007)
- Greenawalt, Kent, “Symposium: The Supreme Court’s Hands-off Approach to Religious Doctrine: Hands Off: When and about What” 84 *Notre Dame Law Review* 913 (January, 2009)
- Greene, Abner S., “The Rehnquist Court and the First Amendment: The Apparent Consistency of Religion Clause Doctrine” 21 *Washington University Journal of Law & Policy* 225 (2006)
- Hall, Mark David, “Article: Jeffersonian Walls and Madisonian Lines: The Supreme Court’s Use of History in Religion Clause Cases” 85 *Oregon Law Review* 563 (2006)
- Hesse, Richard A., “Symposium: A Second-Class Constitutional Right? Free Exercise and the Current State of Religious Freedom in the United States: The Constitutional Requirement of Sensitivity to Religion” 70 *Albany Law Review* 1447 (2007)
- Horwitz, Paul., “Symposium: Religion, Division, and the Constitution: Religious Tests in the Mirror: The Constitutional Law and Constitutional Etiquette of Religion in Judicial Nominations” 15 *William & Mary Bill of Rights Journal* 75 (October, 2006)

- Irons, Peter, *God on Trial: Dispatches from America's Religious Battlefields* (Viking Adult, 2007)
- Isgur, Sarah M., "Note: 'Play in the Joints' : The Struggle to Define Permissive Accommodation under the First Amendment" 31 *Harvard Journal of Law & Public Policy* 371 (Winter, 2008)
- Jacob, Bradley P., "Article: Will the Real Constitutional Originalist Please Stand Up?" 40 *Creighton Law Review* 595 (April, 2007)
- Jelen, Ted G., "In this Issue: Religious Pluralism and Civil Society: Section One: Broad Perspective: The Constitutional Basis of Religious Pluralism in the United States: Causes and Consequences" 612 *The Annals of The American Academy of Political and Social Science* 26 (July, 2007)
- Kolenc, Antony Barone, "Article: 'Mr. Scalia's Neighborhood' : A Home for Minority Religions?" 81 *St. John's Law Review* 819 (Fall, 2007)
- Koppelman, Andrew, "Article: Is It Fair to Give Religion Special Treatment?" 2006 *University of Illinois Law Review* 571 (2006)
- Kujovich, Gil, "Essay: Constitutional Law: Comment on Accommodating Differences in Constitutional Law" 30 *Vermont Law Review* 489 (Spring, 2006)
- Laycock, Douglas, "Symposium: The (Re)Turn to History in Religion Clause Law and Scholarship: Regulatory Exemptions of Religious Behavior and the Original Understanding of the Establishment Clause" 81 *Notre Dame Law Review* 1793 (June, 2006)
- Levine, Raleigh Hannah and Pannier, Russell, "Article: Comparative and Noncomparative Justice: Some Guidelines for Constitutional Adjudication" 14 *William & Mary Bill of Rights Journal* 141 (October, 2005)
- Lupu, Ira C. and Tuttle, Robert W., "The 2006 Randolph W. Thrower Symposium Interactive Federalism: Filling the Gaps? Article:

Federalism and Faith” 56 *Emory Law Journal* 19 (2006)

Mallard, Meredith, “Case Note: Constitutional Law – Free Exercise and Establishment Clauses – A State’s Right to Deny the Use of Public Funds for Devotional Degrees: *Locke v. Davey*, 540 U.S. 712 (2004)” 72 *Tennessee Law Review* 981 (Spring, 2005)

Mangrum, Richard Collin, “Centennial Symposium: Reconciling the Free Exercise and Establishment Clauses: Shall We Sing? Shall We Sing Religious Music in Public Schools?” 38 *Creighton Law Review* 815 (June, 2005)

Marcus, Kenneth L., “Article: Privileging and Protecting Schoolhouse Religion” 37 (Jefferson Law Book Company) *Journal of Law & Education* 505 (October, 2008)

Massaro, Toni M., “Article: Religious Freedom and ‘Accommodationist Neutrality’ : A Non-Neutral Critique” 84 *Oregon Law Review* 935 (2005)

McConnell, Michael W., “Symposium: The Brennan Center for Justice and Thomas Jorde Living Constitution: A Symposium on the Legacy of Justice William J. Brennan, Jr.: Justice Brennan’s Accommodating Approach toward Religion” 95 *California Law Review* 2187 (December, 2007)

Meier, Luke, “Program on Law and State Government Fellowship Symposium: From the State House to the Schoolhouse: Religious Expression in the Public Sphere: Using Agency Law to Determine the Boundaries of the Free Speech and Establishment Clauses” 40 *Indiana Law Review* 519 (2007)

Merriam, Jesse R., “Article: Finding a Ceiling in a Circular Room: *Locke v. Davey*, Federalism, and Religious Neutrality” 16 *Temple Political & Civil Rights Law Review* 103 (Fall, 2006)

Nickel, James W., “Article: Who Needs Freedom of Religion?” 76 *University*

- of Colorado Law Review* 941 (Fall, 2005)
- Olree, Andy G., “Article: Identifying Government Speech” 42 *Connecticut Law Review* 365 (December, 2009)
- Penalver, Eduardo Moises, “Symposium: The Jurisprudence of Justice Stevens: Panel V: First Amendment/Voting Rights: Treating Religion as Speech: Justice Stevens’s Religion Clause Jurisprudence” 74 *Fordham Law Review* 2241 (March, 2006)
- Penalver, Eduardo Moises, “Symposium: The Religion Clauses in the 21st Century: Article: Is Public Reason Counterproductive?” 110 *West Virginia Law Review* 515 (Fall, 2007)
- Post, Robert, “Symposium: The Brennan Center for Justice and Thomas Jorde Living Constitution: A Symposium on the Legacy of Justice William J. Brennan, Jr.: Brennan and Religion” 95 *California Law Review* 2193 (December, 2007)
- Ravitch, Frank S., *Masters of Illusion: The Supreme Court and the Religion Clauses* (New York University Press; annotated edition, 2007)
- Ravitch, Frank S., “Article: Rights and The Religion Clauses” 3 *Duke Journal of Constitutional Law & Public Policy* 91 (2008)
- Ross, Tara and Smith, Joseph C., Jr., *Under God: George Washington and the Question of Church and State* (Spence Publishing Company, 2008)
- Sedler, Robert A., “Article: Essay: The Protection of Religious Freedom under the American Constitution” 53 *The Wayne Law Review* 817 (Summer, 2007)
- Shiffrin, Steven H., *The Religious Left and Church-State Relations* (Princeton University Press, 2009)
- Sisk, Gregory C., “Article: How Traditional and Minority Religions Fare in the Courts: Empirical Evidence from Religious Liberty Cases” 76 *University of Colorado Law Review* 1021 (Fall, 2005)
- Smith, L. Scott, “Article: ‘Religion – Neutral’ Jurisprudence: An

- Examination of its Meanings and End” 13 *William & Mary Bill of Rights Journal* 841 (February, 2005)
- Smith, L. Scott, “Article: Religion, Politics, and the Establishment Clause: Does God Belong in American Public Life?” 10 *Chapman Law Review* 299 (Winter, 2006)
- Solomon, Stephen D., *Ellery’s Protest: How One Young Man Defied Tradition and Sparked the Battle over School Prayer* (University of Michigan Press, 2007)
- Stone, Geoffrey R., “Melville B. Nimmer Memorial Lecture: The World of the Framers: A Christian Nation?” 56 *UCLA Law Review* 1 (October, 2008)
- Strang, Lee J., “Symposium: The (Re)Turn to History in Religion Clause Law and Scholarship: Introduction” 81 *Notre Dame Law Review* 1697 (June, 2006)
- Tebbe, Nelson., “Article: Excluding Religion” 156 *University of Pennsylvania Law Review* 1263 (May, 2008)
- Thompson, Brett, “Case Note: Locke v. Davey: The Fine Line between Free Exercise and Establishment” 56 *Mercer Law Review* 1093 (Spring, 2005)
- Trammell, Alan, “Note: The Cabining of Rosenberger: Locke v. Davey and the Broad Nondiscrimination Principle that Never was” 92 *Virginia Law Review* 1957 (December, 2006)
- Volokh, Eugene, *The Religion Clauses And Related Statutes: Problems, Cases, And Policy Arguments* (Foundation Press, 2005)
- Wildhack, William A., III, “Article, Essay & Note: Navy Chaplains at the Crossroads: Navigating the Intersection of Free Speech, Free Exercise, Establishment, and Equal Protection” 51 *Naval Law Review* 217 (2005)

[2] 宗教的価値と憲法的価値、宗教と司法に関する著作・論文

Bornstein, Brian and Miller, Monica, *God in the Courtroom: Religion's Role at Trial* (Oxford University Press, USA, 2009)

Duncan, Ann W. and Jones, Steven L., *Church-State Issues on America Today* (Praeger Publishing, 2007)

Feldman, Noah, *Divided by God: America's Church-State Problem – and What We Should Do About It* (Farrar, Straus & Giroux, 2005)

Galston, Miriam, “Article: Theocracy in America: Should Core First Amendment Values be Permanent?” 37 *Hastings Constitutional Law Quarterly* 65 (Fall, 2009)

Garnett, Richard W., “Symposium: The Supreme Court's Hands-off Approach to Religious Doctrine: A Hands-off Approach to Religious Doctrine: What are We Talking about?” 84 *Notre Dame Law Review* 837 (January, 2009)

Gedicks, Frederick Mark, “Symposium: Religion, Division, and the Constitution: Religions, Fragmentations, and Doctrinal Limits” 15 *William & Mary Bill of Rights Journal* 25 (October, 2006)

Gedicks, Frederick Mark, “Symposium: The Maryland Constitutional Law Schmooze: Atmospheric Harms in Constitutional Law” 69 *Maryland Law Review* 149 (2009)

Gildin, Gary S., “Symposium: God's Law in the People's Law: A Discussion of Contemporary Issues Arising from Religion and the Law: The Sanctity of Religious Liberty of Minority Faiths under State Constitutions: Three Hypotheses” 6 *University of Maryland Law Journal of Race, Religion, Gender and Class* 21 (Spring, 2006)

Goldstein, Jared A., “Article: Is there a ‘Religious Question’ Doctrine? Judicial Authority to Examine Religious Practices and Beliefs” 54 *Catholic University Law Review* 497 (Winter, 2005)

Greenawalt, Kent, “Symposium: Constitutionalism and Secularism in an

Age of Religious Revival: The Challenge of Global and Local Fundamentalism: Religion and Public Reason: Secularism, Religion, and Liberal Democracy in the United States” 30 *Cardozo Law Review* 2383 (June, 2009)

Grossman, Michael C., “Note: Is this Arbitration?: Religious Tribunals, Judicial Review, and Due Process” 107 *Columbia Law Review* 169 (January, 2007)

Koppelman, Andrew, “Symposium: The Supreme Court’s Hands-off Approach to Religious Doctrine: The Troublesome Religious Roots of Religious Neutrality” 84 *Notre Dame Law Review* 865 (January, 2009)

Lemmons, R. Mary Hayden, “Selected Papers from the Terrence J. Murphy Institute Conference: Sacrifice and the Common Good in the Catholic Tradition: Article: Tolerance, Society, and the First Amendment: Reconsiderations” 3 *University of St. Thomas Law Journal* 75 (Summer, 2005)

Magarian, Gregory P., “Article: The Jurisprudence of Colliding First Amendment Interests: From the Dead End of Neutrality to the Open Road of Participation- Enhancing Review” 83 *Notre Dame Law Review* 185 (November, 2007)

Modak-Truran, Mark C., “Symposium on Religion, Religious Pluralism, and The Rule of Law: Article: Beyond Theocracy and Secularism (Part I): Toward a New Paradigm for Law and Religion” 27 *Mississippi College Law Review* 159 (2007/2008)

Myers, Richard S., “Symposium: Fifteenth Annual Society of Catholic Social Scientists Meeting: The Privatization of Religion and Catholic Justices” 47 (St. John’s Law Review Ass’n.) *Journal of Catholic Legal Studies* 157 (2008)

Newsom, Michael, “Article: Pan-Protestantism and Proselytizing: Minority

- Religions in a Protestant Empire” 15 *Widener Law Review* 1 (2009)
- Perry, Michael J., *Toward a Theory of Human Rights: Religion, Law, Courts* (Cambridge University Press, 2006)
- Sandrik, Karen, “Symposium: Law and Religion: Article: Towards a Modern Definition of Religion” 85 *University of Detroit Mercy Law Review* 561 (Summer, 2008)
- Smith, L. Scott, “Article: From Typology to Synthesis: Recasting the Jurisprudence of Religion” 34 *Capital University Law Review* 51 (Fall, 2005)
- Strossen, Nadine, “Article: Religion and the Constitution: A Libertarian Perspective” 2005-06 *Cato Supreme Court Review* 7 (2005/2006)
- Tupi, Bradley S., “Article: Religious Freedom and the First Amendment” 45 *Duquesne Law Review* 195 (Winter, 2007)

[3] 宗教と政治、あるいは宗教と民主主義制度に関する著作・論文

- Aka, Philip C., “Article: Assessing the Constitutionality of President George W. Bush’s Faith-Based Initiatives” 9 (Wayne State University) *The Journal of Law in Society* 53 (Winter, 2008)
- Failing, Marie A., “Article: Against Idols: The Court as a Symbol-Making or Rhetorical Institution” 8 *University of Pennsylvania Journal of Constitutional Law* 367 (May, 2006)
- Gilman, Michele Estrin, “Article: If at first You Don’t Succeed, Sign an Executive Order: President Bush and The Expansion of Charitable Choice” 15 *William & Mary Bill of Rights Journal* 1103 (April, 2007)
- Green, Steven K., “Article: ‘A Legacy of Discrimination’? The Rhetoric and Reality of the Faith-Based Initiative: Oregon as a Case Study” 84 *Oregon Law Review* 725 (2005)
- Greenawalt, Kent, “Symposium: Religion and Morality in the Public Square: Religiously Based Judgments and Discourse in Political

- Life” 22 *St. John’s Journal of Legal Commentary* 445 (Fall, 2007)
- Joireman, Sandra F., *Church, State, and Citizen: Christian Approaches to Political Engagement* (Oxford University Press, 2009)
- Karlan, Pamela S., “Harris Lecture: Taking Politics Religiously: Can Free Exercise and Establishment Clause Cases Illuminate the Law of Democracy?” 83 *Indiana Law Journal* 1 (Winter, 2008)
- King, Andrew J., “Symposium: God’s Law in the People’s Law: A Discussion of Contemporary Issues Arising from Religion and the Law: Accommodating Religion and Law in the Twenty-First Century” 6 *University of Maryland Law Journal of Race, Religion, Gender and Class* 7 (Spring, 2006)
- Ledewitz, Bruce, “Article: Up against the Wall of Separation: The Question of American Religious Democracy” 14 *William & Mary Bill of Rights Journal* 555 (December, 2005)
- Lupu, Ira C. and Tuttle, Robert W., “Article: The Faith-Based Initiative and the Constitution” 55 *DePaul Law Review* 1 (Fall, 2005)
- Massey, Calvin, “Article: The Political Marketplace of Religion” 57 *Hastings Law Journal* 1 (November, 2005)
- Meares, Tracey L. and Corkran, Kelsi Brown, “Article: When 2 or 3 Come Together” 48 *William & Mary Law Review* 1315 (March, 2007)
- Murray, Bruce T., *Religious Liberty in America: The First Amendment in Historical and Contemporary Perspective* (University of Massachusetts Press, 2008)
- Newman, Stephen A., “Article: From John F. Kennedy’s 1960 Campaign Speech to Christian Supremacy: Religion in Modern Presidential Politics” 53 *New York Law School Law Review* 691 (2008/2009)
- Reid, Elisabeth Divine, “Spring 2007 Guest Writer: Thou Shalt Honor the Establishment Clause: The Constitutionality of the Faith-Based Initiative” 28 *Hamline Journal of Public Law & Policy* 431 (Spring,

2007)

Ⅱ. 「信教の自由条項」に関する諸問題

[1] 「信教の自由条項」(Free Exercise Clause) の審査基準

— 多大な影響を与えた “Neutral and Generally Applicable Law” への変更 —

Berg, Thomas C., “Essay: On the Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in: The United States” 19 *Emroy International Law Review* 1277 (Summer, 2005)

Boyce, Bret, “Article: Equality and the Free Exercise of Religion” 57 *Cleveland State Law Review* 493 (2009)

Brownstein, Alan, “Article: Taking Free Exercise Rights Seriously” 57 *Case Western Reserve University* 55 (Fall, 2006)

Byrnes, Timothy A., “Free Exercise in Contemporary America” 70 *Albany Law Review* 1441 (2007)

Corkran, Kelsi Brown, “Comment: Free Exercise in Foster Care: Defining the Scope of Religious Rights for Foster Children and their Families” 72 *University of Chicago Law Review* 325 (Winter, 2005)

Day, David S., “Article: Some Problems of Free Exercise Doctrine-Social Good, Social Harm, and Undue Burdens: An Essay” 54 *South Dakota Law Review* 253 (2009)

Deutsch, Norman T., “Article: May Religious Worship be Excluded from a Limited Public Forum? Commentary on the Ninth Circuit Court of Appeals Decision in Faith Center Church Evangelistic Ministries v. Glover” 31 *University of Hawaii Law Review* 29 (Winter, 2008)

Duncan, Richard F., “Symposium: Law and Religion: Part Two of Two: Article: Locked out: Locke v. Davey and the Broken Promise of Equal Access” 8 *University of Pennsylvania Journal of Constitutional Law*

699 (August, 2006)

Dunn, Joshua, “Counterpoint: Almost Persuaded: Statutory Protections for Students' Religious Rights” 38 (Jefferson Law Book Company)

Journal of Law & Education 627 (October, 2009)

Forren, John P., “Article: Revisiting Four Popular Myths about the Peyote Case” 8 *University of Pennsylvania Journal of Constitutional Law* 209 (March, 2006)

Fuller, Gregory H., “Case Note: Constitutional Law – Free Exercise of Religion – Strict Scrutiny and the Religious Freedom Restoration Act” 74 *Tennessee Law Review* 129 (Fall, 2006)

Goldberg, Steven, “Essay: Cutter and the Preferred Position of the Free Exercise Clause” 14 *William & Mary Bill of Rights Journal* 1403 (April, 2006)

Greenawalt, Kent, *Religion and the Constitution: Volume I: Free Exercise and Fairness* (Princeton University Press, 2006)

Jacob, Bradley P., “Article: Free Exercise in the ‘Lobbying Nineties’” 84 *Nebraska Law Review* 795 (2006)

Krotoszynski, Ronald J., Jr., “Article: If Judges were Angels: Religious Equality, Free Exercise, and the (Underappreciated) Merits of Smith” 102 *Northwestern University Law Review* 1189 (Summer, 2008)

Lombardi, Clark B., “Article: Nineteenth-Century Free Exercise Jurisprudence and the Challenge of Polygamy: The Relevance of Nineteenth-Century Cases and Commentaries for Contemporary Debates about Free Exercise Exemptions” 85 *Oregon Law Review* 369 (2006)

Mason, Caleb E., “Article: Faith, Harm, and Neutrality: Some Complexities of Free Exercise Law” 44 *Duquesne Law Review* 225 (Winter, 2006)

McCarthy, Shannon L., “Case Comment: Constitutional Law – States

- Must Protect, but Not Sponsor, Free Exercise of Religion – *Locke v. Davey*, 540 U.S. 712 (2004)” 38 *Suffolk University Law Review* 937 (2005)
- Meyler, Bernadette, “Article: The Equal Protection of Free Exercise: Two Approaches and their History” 47 *Boston College Law Review* 275 (March, 2006)
- Moreland, Michael P., “Symposium: A Second-Class Constitutional Right? Free Exercise and The Current State of Religious Freedom in The United States: Religious Free Exercise and Anti-Discrimination Law” 70 *Albany Law Review* 1417 (2007)
- Munoz, Vincent Phillip, “Article: The Original Meaning of the Free Exercise Clause: The Evidence from the First Congress” 31 *Harvard Journal of Law & Public Policy* 1083 (Summer, 2008)
- Newborn, Brooke E., “Article: Public School Dress Codes and the Free Exercise Clause of the First Amendment---Jacobs's Ladder” 80 *Pennsylvania Bar Association Quarterly* 172 (October, 2009)
- Olree, Andy G., “Article: The Continuing Threshold Test for Free Exercise Claims” 17 *William & Mary Bill of Rights Journal* 103 (October, 2008)
- O'Scannlain, Diarmuid F., “Article: From Pierce to Smith: The Oregon Connection and Supreme Court Religion Jurisprudence” 86 *Oregon Law Review* 635 (2007)
- Simson Gary J., “Symposium: A Second-Class Constitutional Right? Free Exercise and the Current State of Religious Freedom in the United States: Reflections on Free Exercise: Revisiting *Rourke v. Department of Correctional Services*” 70 *Albany Law Review* 1425 (2007)
- Tebbe, Nelson, “Article: Free Exercise and the Problem of Symmetry” 56 *Hastings Law Journal* 699 (March, 2005)
- Tozzi, Piero A., “Article: Whither Free Exercise: *Employment Division v.*

Smith and the Rebirth of State Constitutional Free Exercise Clause Jurisprudence?” 48 (St. John's Law Review Ass'n.) *Journal of Catholic Legal Studies* 269 (2009)

Weinberg, Philip, “Article: O Centro Espirita: The Supreme Court Raises the Spirits of the Free Exercise Clause” 32 *Dayton Law Review* 385 (Spring, 2007)

Yordy, Eric D., “Commentary: Fixing Free Exercise: A Compelling Need to Relieve the Current Burdens” 36 *Hastings Constitutional Law Quarterly* 191 (Winter, 2009)

[2] 「信教の自由条項」—Smithの後遺症を回復できたのか

— RLUIPA “Religious Land Use and Institutionalized Persons Act” に関して—

Antos, Karen L., “The Greening of the Corporation: Note: A Higher Authority: How the Federal Religious Land Use And Institutionalized Persons Act Affects State Control over Religious Land Use Conflicts” 35 *Boston College Environmental Affairs Law Review* 557 (2008)

Armijo, Enrique, “Article: Belief behind Bars: Religious Freedom in Prison, RLUIPA, and the Establishment Clause” 31 *New England Journal on Criminal and Civil Confinement* 297 (Summer, 2005)

Branham, Lynn S., “The Constitutionality of Faith-Based Prison Units: Article: ‘The Devil is in the Details’: A Continued Dissection of The Constitutionality of Faith-Based Prison Units” 6 *Ave Maria Law Review* 409 (Spring, 2008)

Chase, Roland F., “Article: Zoning Regulation of Religious Activities: The Impact of Federal Law” 54 *Rhode Island Bar Journal* 5 (September / October, 2005)

Crisalli, Noelle V., “Note: Civil Liberties for Urban Believers v. City of

- Chicago: A Defining Case for the Substantial Burden Test under the Religious Land Use and Institutionalized Persons Act” 23 *Pace Environmental Law Review* 263 (Winter, 2005 / Winter, 2006)
- Evans-Cowley, Jennifer S. and Pearlman, Kenneth, “Article: Six Flags over Jesus: RLUIPA, Megachurches, and Zoning” 21 *Tulane Environmental Law Journal* 203 (Summer, 2008)
- Farmer, Hamilton Neal, “Case Note: Constitutional Law--Free Exercise Clause--Religious Land Use and Institutionalized Persons Act does not Violate First Amendment Religion Clauses” 36 *Cumberland Law Review* 653 (2005-2006)
- Gaubatz, Derek L., “Article: RLUIPA at Four: Evaluating the Success and Constitutionality of RLUIPA’s Prisoner Provisions” 28 *Harvard Journal of Law & Public Policy* 501 (Spring, 2005)
- Goldfien, Jeffrey H., “Article: Thou Shalt Love Thy Neighbor: RLUIPA and the Mediation of Religious Land Use Disputes” 2006 (Curators of the University of Missouri) *Journal of Dispute Resolution* 435 (2006)
- Johnson, Melissa R., “Notes: Positive Vibration: An Examination of Incarcerated Rastafarian Free Exercise Claims” 34 *New England Journal on Criminal and Civil Confinement* 391 (Summer, 2008)
- Kao, Tara, “Article: They can Take Your Body but not Your Soul – or So You Thought – The Third Circuit's Application of the Turner Standard in Prisoners’ Free Exercise Cases” 10 *Boalt Journal of Criminal Law* 1 (December, 2005)
- Keegan, Michael, “Article: The Supreme Court’s ‘Prisoner Dilemma’ : How Johnson, RLUIPA, and Cutter Re-Defined Inmate Constitutional Claims” 86 *Nebraska Law Review* 279 (2007)
- Kirkpatrick, Daniel, “Note & Comment: Zoned Secular: Seattle's Prohibition of New Religious Facilities in Industrial Zones violates the Religious Land Use and Institutionalized Persons Act's

- 'Equal Terms' Rule" 81 *Washington Law Review* 191 (February, 2006)
- Kluska, Daniel, "Case Note: Madison v. Riter" 13 *Washington and Lee Journal of Civil Rights and Social Justice* 193 (Fall, 2006)
- Kruse Kristin E., "Case Note: Religious Land Use—Eleventh Circuit Broadly Interprets Religious Land Use and Institutionalized Persons Act of 2000 to Leave Local Governments nearly Powerless to Zone Houses of Worship" 58 *Southern Methodist University Law Review* 465 (Spring, 2005)
- McMullin, James B., "Note and Comment: Incarceration of the Free Exercise Clause: The Sixth Circuit's Misstep in Cutter v. Wilkinson" 19 *Brigham Young University Journal of Public Law* 413 (2005)
- Saxer, Shelley Ross, "Article: Faith in Action: Religious Accessory Uses and Land Use Regulation" 2008 *Utah Law Review* 593 (2008)
- Schnizler, Cristina Harrison, "Comment: The Religious Land Use and Institutionalized Persons Act of 2000 and its Effect on Eleventh Circuit Law" 57 *Mercer Law Review* 1261 (Summer, 2006)
- Serkin, Christopher and Tebbe, Nelson, "Article: Condemning Religion: RLUIPA and the Politics of Eminent Domain" 85 *Notre Dame Law Review* 1 (November, 2009)
- Silverbrand, Ian J., "Symposium: Law and Religion: Article: Baranowski v. Hart: Limitations on Jailhouse Religion Despite the Free Exercise Clause and RLUIPA" 85 *University of Detroit Mercy Law Review* 587 (Summer, 2008)
- Turner, Ronald G., "Feature Story: The Impact on People in Prison: The Religious Land Use and Institutionalized Persons Act of 2000" 45 *Tennessee Bar Journal* 25 (January, 2009)
- Vallely, Sarah E., "Comment: Criminals are All the Same: Why Courts

Need to Hold Prison Officials Accountable for Religious Discrimination under the Religious Land Use and Institutionalized Persons Act” 30 *Hamline Law Review* 191 (Winter, 2007)

[3] 「信教の自由条項」の権利と他の憲法的権利が含まれるケース

— ハイブリッド権利の例外 (Hybrid Rights Exception) をめぐって —

(i) 「ハイブリッド権利の例外」あるいは「信教の自由条項」と他の憲法的権利の共存

— 「信教の自由条項」と「表現の自由」、「結社の自由」、「教育の権利」の憲法的権利、あるいは諸権利との共存も含む —

Baker, Cynthia A., “Program on Law and State Government Fellowship Symposium: From the State House to the Schoolhouse: Religious Expression in the Public Sphere: Introduction: Megaphones and Duct Tape: Legal Tools Shaping Religious Expression in the Public Sphere” 40 *Indiana Law Review* 491 (2007)

Bowman, Kristi L., “Symposium: The Religion Clauses in the 21st Century: Article: Public School Students’ Religious Speech and Viewpoint Discrimination” 110 *West Virginia Law Review* 187 (Fall, 2007)

Brown, Josie Foehrenbach, “Article: Representative Tension: Student Religious Speech and the Public School’s Institutional Mission” 38 (Jefferson Law Book Compnay) *Journal of Law & Education* 1 (January, 2009)

Cooper, Ariana S., “Note: Free Exercise Claims in Custody Battles: Is Heightened Scrutiny Required Post-Smith?” 108 *Columbia Law Review* 716 (April, 2008)

Cordes, Mark W., “Article: Religion as Speech: The Growing Role of Free Speech Jurisprudence in Protecting Religious Liberty” 38

Southwestern Law Review 235 (2008)

Cymrot, Avigael N., "Article: Reading, Writing, and Radicalism: The Limits on Government Control over Private Schooling in an Age of Terrorism" 37 *St. Mary's Law Journal* 607 (2006)

Esenberg, Richard, "Article: Of Speeches and Sermons: Worship in Limited Purpose Public Forums" 78 *Mississippi Law Journal* 453 (Spring, 2009)

Feldman, Stephen M., "Article: The Theory and Politics of First Amendment Protections: Why Does the Supreme Court Favor Free Expression over Religious Freedom?" 8 *University of Pennsylvania Journal of Constitutional Law* 431 (May, 2006)

Green, Steven K., "Symposium: All Things Not Being Equal: Reconciling Student Religious Expression in the Public Schools" 42 *U.C. Davis Law Review* 843 (February, 2009)

Greenawalt, Kent, "Article: Child Custody, Religious Practices, and Conscience" 76 *University of Colorado Law Review* 965 (Fall, 2005)

Greenfield, Louis A., "Note: Religious Home-Schools: That's not a Monkey on Your Back, It's a Compelling State Interest" 9 *Rutgers Journal of Law and Religion* 4 (Fall, 2007)

Halligan, Elizabeth B., "Note and Comment: Coercing Adults?: The Fourth Circuit and the Acceptability of Religious Expression in Government Settings" 57 *South Carolina Law Review* 923 (Summer, 2006)

Jenkins, Peter J., "Comment: Morality and Public School Speech: Balancing the Rights of Students, Parents, and Communities" 2008 *Brigham Young University Law Review* 593 (2008)

Lechlitter, Michael E., "Note: The Free Exercise of Religion and Public Schools: The Implications of Hybrid Rights on the Religious Upbringing of Children" 103 *Michigan Law Review* 2209 (August,

2005)

McDowell, Kevin C., “Program on Law and State Government Fellowship Symposium: From the State House to the Schoolhouse: Religious Expression in the Public Sphere: The Paradox of Inclusion by Exclusion: The Accommodation of Religion in the Public Schools” 40 *Indiana Law Review* 499 (2007)

Merriam, Jesse R., “Article: Why Don’t More Public Schools Teach Sex Education?: A Constitutional Explanation and Critique” 13 *William & Mary Journal of Women and the Law* 539 (Winter, 2007)

Morisey, Muriel, “Article: Flag Desecration, Religion and Patriotism” 9 *Rutgers Journal of Law and Religion* 1 (Fall, 2007)

Olsen, Chad, “Comment: In the Twenty-First Century’s Marketplace of Ideas, will Religious Speech Continue to be Welcome?: Religious Speech as Grounds for Defamation” 37 *Texas Tech Law Review* 497 (Winter, 2005)

Selfridge, Alexandra, “Part Two: Rights of Parents: Challenges for Negotiating and Drafting an Antenuptial Agreement for the Religious Upbringing of Future Children” 16 *The Journal of Contemporary Legal Issues* 91 (2007)

Shulman, Jeffrey, “Article: Spiritual Custody: Relational Rights and Constitutional Commitments” 7 *Journal of Law & Family Studies* 317 (2005)

Steilen, Matthew, “Article: Parental Rights and the State Regulation of Religious Schools” 2009 *Brigham Young University Education and Law Journal* 269 (2009)

Still, Kyle, “Comment: Smith’s Hybrid Rights Doctrine and the Pierce Right: An Unintelligent Design” 85 *North Carolina Law Review* 385 (December, 2006)

Taylor, John E., “Symposium: The Religion Clauses in the 21st Century:

Article: Why Student Religious Speech is Speech” 110 *West Virginia Law Review* 223 (Fall, 2007)

Tyler, John, “Comment: Is Worship a Unique Subject or a Way of Approaching Many Different Subjects?: Two Recent Decisions that Attempt to Answer this Question Set the Second and Ninth Circuits on a Course toward State Entanglement with Religion” 59 *Mercer Law Review* 1319 (Summer, 2008)

Volokh, Eugene, “Symposium: Looking Backward, Looking Forward: The Legacy of Chief Justice Rehnquist and Justice O’Connor: Symposium Article: Freedom of Expressive Association and Government Subsidies” 58 *Stanford Law Review* 1919 (April, 2006)

Wasserman, Lewis M., “Article: The Rights of Parentally-Placed Private School Students under the Individuals with Disabilities Education Improvement Act of 2004 and the Need for Legislative Reform” 2009 *Brigham Young University Education and Law Journal* 131 (2009)

(ii) 「信教の自由条項」あるいは「宗教条項」と他の法律との関係

Foti, Anthony D., “Issues in the Third Circuit: Could Jesus Serve on a Jury? Not in the Third Circuit: Religion-Based Peremptory Challenges in *United States v. Dejesus* and *Bronshtein v. Horn*” 51 *Villanova Law Review* 1057 (2006)

Hinkle, Daniel M., “Article: Peremptory Challenges Based on Religious Affiliation: Are They Constitutional?” 9 *Buffalo Criminal Law Review* 139 (2005)

Malanga, Christian A., “Note: Expressive Association – Student Organizations’ Right to Discriminate: A Look at Public Law Schools’ Nondiscrimination Policies and their Application to Christian Legal Society Student Chapters” 29 *Western New England Law Review* 757 (2007)

- Marcus, Kenneth L., “Essay: The Most Important Right We Think We Have but Don’t: Freedom from Religious Discrimination in Education” 7 *Nevada Law Journal* 171 (Fall, 2006)
- Saxer, Shelley Ross, “Article: Government and Religion as Landlord and Tenant” 58 *Rutgers Law Review* 409 (Winter, 2006)
- Seng, Michael P., “Article: The Fair Housing Act and Religious Freedom” 11 *Texas Journal on Civil Liberties & Civil Rights* 1 (Fall, 2005)
- Shulman, Jeffrey, “Article: The Outrageous God: Emotional Distress, Tort Liability, and the Limits of Religious Advocacy” 113 *Penn State Law Review* 381 (Fall, 2008)
- Visser, Ryan C., “Note: Collision Course?: Christian Legal Society v. Kane could Create a Split over the Right of Religious Student Groups to Associate in the face of Law School Antidiscrimination Policies” 30 *Hamline Law Review* 449 (Spring, 2007)
- Volokh, Eugene, “Article: Parent-Child Speech and Child Custody Speech Restrictions” 81 *New York University Law Review* 631 (May, 2006)
- Whitehead Roy Jr., Block, Walter and Tinsley, Patrick C., “Article: Christian Landlords and the Free Exercise Clause: An Economic and Philosophical Analysis of Discrimination” 33 *Oklahoma City University Law Review* 115 (Spring, 2008)

[4] 「信教の自由条項」の拡大解釈が深刻化する

— “Freedom of Conscience” 「良心の自由」の範囲、
医療現場から —

(i) 「拒否条項」(Refusal Clauses) などに関する著作・論文

- Calhoun, Samuel W., “Article: May The President Appropriately Invoke God? Evaluating the Embryonic Stem Cell Vetoes” 10 *Rutgers Journal of Law and Religion* 1 (Fall, 2008)

- Duvall, Melissa, "Comment: Pharmacy Conscience Clause Statutes: Constitutional Religious 'Accommodations' or Unconstitutional 'Substantial Burdens' on Women?" 55 *American University Law Review* 1485 (June, 2006)
- Greenawalt, Kent, "Lecture: Objections in Conscience to Medical Procedures: Does Religion Make a Difference?" 2006 *University of Illinois Law Review* 799 (2006)
- Harrington, Maxine M., "Article: The Ever-Expanding Health Care Conscience Clause: The Quest for Immunity in the Struggle between Professional Duties and Moral Beliefs" 34 *Florida State University Law Review* 779 (Spring, 2007)
- Knestout, Brian P., "Comment: An Essential Prescription: Why Pharmacist-Inclusive Conscience Clauses are Necessary" 22 (The Catholic University of America) *Journal of Contemporary Health Law & Policy* 349 (Spring, 2006)
- Langlois, Natalie, "Note: Life-Sustaining Treatment Law: A Model for Balancing a Woman's Productive Rights with a Pharmacist's Conscientious Objection" 47 *Boston College Law Review* 815 (July, 2006)
- Lowell, Staci D., "Note: Striking a Balance: Finding a Place for Religious Conscience Clauses in Contraceptive Equity Legislation" 52 *Cleveland State Law Review* 441 (2004/2005)
- Pittman, Larry J., "Article: Embryonic Stem Cell Research and Religion: The Ban on Federal Funding as a Violation of the Establishment Clause" 68 *University of Pittsburgh Law Review* 131 (Fall, 2006)
- Selby, Patricia L., "Comment: On Whose Conscience? Patient Rights Disappear under Broad Protective Measures for Conscientious Objectors in Health Care" 83 *University of Detroit Mercy Law Review* 507 (Summer, 2006)

Smearman, Claire A., “Article: Drawing the Line: The Legal, Ethical and Public Policy Implications of Refusal Clauses for Pharmacists” 48 *Arizona Law Review* 469 (Fall, 2006)

Smith, George P., II, “Article: Law, Medicine, and Religion: Towards a Dialogue and a Partnership in Biomedical Technology and Decision Making” 21 (The Catholic University of America) *Journal of Contemporary Health Law & Policy* 169 (Spring, 2005)

(ii) 宗教と医療、および「良心の自由」の歴史と憲法的議論

Beaman Lori G., *Defining Harm: Religious Freedom and the Limits of the Law (Law and Society)* (University of British Columbia Press, 2007)

Belsky, Martin H., “Article: A Practical and Pragmatic Approach to Freedom of Conscience” 76 *University of Colorado Law Review* 1057 (Fall, 2005)

Ciulli, Anthony, “Article: Religious & Philosophical Exemptions to Mandatory School Vaccinations: Who Should Bear the Costs to Society?” 74 *Missouri Law Review* 287 (Spring, 2009)

Nussbaum, Martha, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (Basic Books, 2008)

O'Callaghan, Nora, “Article: Lessons from Pharaoh and the Hebrew Midwives: Conscientious Objection to State Mandates as a Free Exercise Right” 39 *Creighton Law Review* 561 (April, 2006)

Quackenbush, Devin W., “Note: Religion's Hepatitis B Shot: The Arkansas General Assembly Established an overly Broad Religious Exemption to Mandatory Immunization after the District Court Invalidated the Original Religious Exemption-McCarthy v. Ozark School District” 42 *Creighton Law Review* 777 (June, 2009)

Schenk, Richard, O.P., “John F. Scarpa Conference on Law, Politics, and Culture: Voices of Conscience” 54 *Villanova Law Review* 593 (2009)

- Smith, Steven D., "Article: What Does Religion Have to Do with Freedom of Conscience?" 76 *University of Colorado Law Review* 911 (Fall, 2005)
- Sonne, James A., "Article: Firing Thoreau: Conscience and At-Will Employment" 9 *University of Pennsylvania Journal of Labor & Employment Law* 235 (Winter, 2007)
- Toews, Mark G., "Article: Mennonites, The First Amendment, and the Role of Selective Conscientious Objectors in a Democratic Society" 9 *Florida Coastal Law Review* 35 (Fall, 2007)
- Wills, Susan Sikes, "Note: Laying on of Hands: Do Law, Medicine, and Religion Make Strange Hospital-Bedfellows?" 30 *Oklahoma City University Law Review* 225 (Spring, 2005)

[5] 「信教の自由条項」（および宗教条項）と社会的諸価値観の衝突

— 宗教条項と同性愛、同性婚の権利、女性の権利をめぐる —

- Bailey, Maureen K., "Article: Contraceptive Insurance Mandates and Catholic Charities v. Superior Court of Sacramento: Towards a New Understanding of Women's Health" 9 *Texas Review of Law & Politics* 367 (Spring, 2005)
- Brammer, J. Brady, "Comment: Religious Groups and the Gay Rights Movement: Recognizing Common Ground" 2006 *Brigham Young University Law Review* 995 (2006)
- Dent, George W., Jr., "Article: Civil Rights for Whom?: Gay Rights versus Religious Freedom" 95 *Kentucky Law Journal* 553 (2006/2007)
- Hayes, Jeffrey Michael, "Comment: Polygamy Comes out of the Closet: The New Strategy of Polygamy Activists" 3 *Stanford Journal of Civil Rights & Civil Liberties* 99 (February, 2007)
- Koppelman, Andrew, *Same Sex, Different States-When Same-Sex Marriages Cross State Lines* (Yale University Press, 2006)
- NeJaime, Douglas, "Article: Inclusion, Accommodation, and Recognition:

Accounting for Differences Based on Religion and Sexual Orientation” 32 *Harvard Journal of Law & Gender* 303 (Summer, 2009)

Rutledge, Colleen Theresa, “Article: Caught in the Crossfire: How Catholic Charities of Boston was Victim to the Clash between Gay Rights and Religious Freedom” 15 *Duke Journal of Gender Law & Policy* 297 (August, 2008)

Severino, Roger, “Article: Or for Poorer? How Same-Sex Marriage Threatens Religious Liberty” 30 *Harvard Journal of Law & Public Policy* 939 (Summer, 2007)

Stone, Geoffrey R., “John F. Scarpa Conference on Law, Politics, and Culture: Same-Sex Marriage and the Establishment Clause” 54 *Villanova Law Review* 617 (2009)

Strasser, Mark, “Article: Marriage, Free Exercise, and the Constitution” 26 (Law and Inequality: A Journal of Theory and Practice) *Law and Inequality* 59 (Winter, 2008)

Ⅲ. 「国教樹立禁止条項」に関する憲法的地位

[1] 「国教樹立禁止条項」の憲法的地位について

— 原理の多様化と編入理論から「国教樹立禁止条項」適用廃止論まで —

Abbott, Greg, “Article: Acknowledgement without Endorsement: Defending the Ten Commandments” 9 *Texas Review of Law & Politics* 229 (Spring, 2005)

Abrell, Anne, “Note: Just a little Talk with Jesus: Reaching the Limits of the Legislative Prayer Exception” 42 *Valparaiso University Law Review* 145 (Fall, 2007)

Alembik, Marcia S., “Note: The Future of the Lemon Test: A Sweeter Alternative for Establishment Clause Analysis” 40 *Georgia Law*

Review 1171 (Summer, 2006)

- Alstyne, William Van, "Symposium: Ten Commandments, Nine Judges, and Five Versions of One Amendment – The First. ('Now What?') " 14 *William & Mary Bill of Rights Journal* 17 (October, 2005)
- Andersen, Eric G., "Article: Protecting Religious Liberty through the Establishment Clause: The Case of the United Effort Plan Trust Litigation" 2008 *Utah Law Review* 739 (2008)
- Bartrum, Ian, "Article: The Constitutional Structure of Disestablishment" 2 *New York University Journal of Law & Liberty* 311 (2007)
- Bassett, William W., "Symposium: Educational Choice: Emerging Legal and Policy Issues: Article: Changing Perceptions of Private Religious Schools: Public Money and Public Trust in the Education of Children" 2008 *Brigham Young University Law Review* 243 (2008)
- Browning, James Adam, "Article: Newdow v. United States Congress: Is There Any Room for God?" 34 *Northern Kentucky Law Review* 51 (2007)
- Campbell, James A., "Newdow Calls for a New Day in Establishment Clause Jurisprudence: Justice Thomas's 'Actual Legal Coercion' Standard Provides the Necessary Renovation" 39 *Akron Law Review* 541 (2006)
- Chemerinsky, Erwin, "Essay: Why Separate Church and State?" 85 *Oregon Law Review* 351 (2006)
- Chemerinsky, Erwin, "Essay: The Wren Cross Controversy: Religion and The Public University: Why Church and State should be Separate" 49 *William & Mary Law Review* 2193 (May, 2008)
- Church, Forrest, *So Help Me God: The Founding Fathers and the First Great Battle over Church and State* (Houghton Mifflin Harcourt, 2007)
- Colby, Thomas B., "Article: A Constitutional Hierarchy of Religions? Justice Scalia, The Ten Commandments, and the Future of the

- Establishment Clause” 100 *Northwestern University Law Review* 1097 (Spring, 2006)
- Conkle, Daniel O., “Symposium: The Religion Clauses in the 21st Century: Article: The Establishment Clause and Religious Expression in Governmental Settings: Four Variables in search of a Standard” 110 *West Virginia Law Review* 315 (Fall, 2007)
- Davids, James A., “Article: Putting Faith in Prison Programs, and its Constitutionality under Thomas Jefferson’s Faith-Based Initiative” 6 *Ave Maria Law Review* 341(Spring, 2008)
- Davids, James A., “Article: Pounding a Final Stake in the Heart of the Invidiously Discriminatory ‘Pervasively Sectarian’ Test” 7 *Ave Maria Law Review* 59 (Fall, 2008)
- DeForrest, Mark, “The Use and Scope of Extrinsic Evidence in Evaluating Establishment Clause Cases in light of the Lemon Test’s Secular Purpose Requirement” 20 *Regent University Law Review* 201 (2007 / 2008)
- Degirrolami, Marc O., “Article: The Problem of Religious Learning” 49 *Boston College Law Review* 1213 (November, 2008)
- DelFattore, Joan, “Symposium: Law and Religion: Part Two of Two: Article: What is Past is Prelude: Newdow and the Evolution of Thought on Religious Affirmations in Public Schools” 8 *University of Pennsylvania Journal of Constitutional Law* 641 (August, 2006)
- Detroy, Kevin M., “2006 Spring Symposium Issue: Note: A Coherent Standard, If You Please: The Supreme Court’s Failure to Adhere to a Consistent Standard in Establishment Clause Cases and Why a Revision of Justice O’Connor’s Endorsement Test may be just What is Needed” 33 *Northern Kentucky Law Review* 571 (2006)
- Dixon, Rod, “Article: Pledging to God while Getting a Public Education: Why a Wall of Separation Divides Ceremonial Celebration from

- Religious Indoctrination: Elk Grove Unified School District v. Newdow and the Right of Parental Privacy” 48 (St. John's Law Review Ass'n.) *Journal of Catholic Legal Studies* 147 (2009)
- Dobosh, William J., Jr., “Article: Coercion in the Ranks: The Establishment Clause Implications of Chaplain-Led Prayers at Mandatory Army Events” 2006 *Wisconsin Law Review* 1493 (2006)
- Dolan, Mary Jean, “Article: Government-Sponsored Chaplains and Crisis: Walking the Fine Line in Disaster Response and Daily Life” 35 *Hastings Constitutional Law Quarterly* 505 (Spring, 2008)
- Dolan, Mary Jean., “Article: Why Monuments are Government Speech: The Hard Case of Pleasant Grove City v. Sumnum” 58 *Catholic University Law Review* 7 (Fall, 2008)
- Drakeman, Donald L., *Church, State, and Original Intent* (Cambridge University Press, 2009)
- Duncan, Kyle, “Article: Subsidiarity and Religious Establishments in the United States Constitution” 52 *Villanova Law Review* 67 (2007)
- Duncan, Kyle, “Article: Bringing Scalia’s Decalogue Dissent Down from the Mountain” 2007 *Utah Law Review* 287 (2007)
- Duncan, Richard F., “Symposium: Liberty under Law: 400 Years of Freedom: Article: Justice Thomas and Partial Incorporation of the Establishment Clause: Herein of Structural Limitations, Liberty Interests, and Taking Incorporation Seriously” 20 *Regent University Law Review* 37 (2007-2008)
- Esbeck, Carl H., “Church Autonomy Conference: Federalist Society Conference: ‘The Things that are not Caesar’s: Religious Organizations as a Check on the Authoritarian Pretensions of the State’: Protestant Dissent and the Virginia Disestablishment, 1776-1786” 7 *The Georgetown Journal of Law & Public Policy* 51 (Winter, 2009)

- Esenberg, Richard M., “Article: You Cannot Lose If You Choose Not to Play: Toward a More Modest Establishment Clause” 12 *Roger Williams University Law Review* 1 (Fall, 2006)
- Esenberg, Richard M., “Article: Must God be Dead or Irrelevant: Drawing a Circle that Lets Me in” 18 *William & Mary Bill of Rights Journal* 1 (October, 2009)
- Failing, Marie A., “Tribute: In praise of Contextuality – Justice O'Connor and the Establishment Clause” 29 *Hamline Law Review* 7 (Winter, 2006)
- Feldman, Stephen M., “Article: Divided We Fall: Religion, Politics, and the Lemon Entanglements Prong” 7 *First Amendment Law Review* 253 (Spring, 2009)
- Finkelman, Paul, “Essay: The Ten Commandments on the Courthouse Lawn and elsewhere” 73 *Fordham Law Review* 1477 (March, 2005)
- Fitschen, Steven W., “Counterpoint: Laying Low the High Flying Evangelicals at the United States Air Force Academy? Thanks, but No Thanks” 36 (Jefferson Law Book Company, Division of Anderson Publishing Co.) *Journal of Law & Education* 501 (October, 2007)
- Forman, James, Jr., “Article: The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics” 54 *UCLA Law Review* 547 (February, 2007)
- Garry, Patrick M., “Article: A Congressional Attempt to Alleviate the Uncertainty of the Court's Establishment Clause Jurisprudence: The Public Expression of Religion Act” 37 *Cumberland Law Review* 1 (2006-2007)
- Garry, Patrick M., “Article: The Democratic Aspect of the Establishment Clause: A Refutation of the Argument that the Clause Serves to Protect Religious or Nonreligious Minorities” 59 *Mercer Law Review*

595 (Winter, 2008)

Gedicks, Frederick Mark, "Symposium: Establishment and Fairness: Indeterminacy and the Establishment Clause" 25 *Constitutional Commentary* 279 (Summer, 2008)

Geisinger, Alex and Bodensteiner, Ivan E., "Article: An Expressive Jurisprudence of the Establishment Clause" 112 *Penn State Law Review* 77 (Summer, 2007)

Gey, Steven G., "Legal Scholarship Symposium: The Scholarship of Nadine Strossen: Rewriting the Establishment Clause for One Nation under (a) God" 41 *Tulsa Law Review* 737 (Summer, 2006)

Gey, Steven G., "Symposium: Law and Religion: Part Two of Two: Article: Reconciling the Supreme Court's Four Establishment Clauses" 8 *University of Pennsylvania Journal of Constitutional Law* 725 (August, 2006)

Gey, Steven G., "Religion in the Public Schools: Article: Vestiges of the Establishment Clause" 5 *First Amendment Law Review* 1 (Fall, 2006)

Gey, Steven G., "Symposium: The Religion Clauses in the 21st Century: Article: Life after the Establishment Clause" 110 *West Virginia Law Review* 1 (Fall, 2007)

Gordon, Daniel, "Article: A Constitutional Res Gestae: Ending the Dueling Histories of Everson and McCollum and the Nazi State" 16 *Widener Law Journal* 1 (2006)

Green, Steven, *The Second Disestablishment: Church and State in Nineteenth-Century America* (Oxford University Press, USA, 2010)

Greenawalt, Kent, *Religion and the Constitution: Volume 2: Establishment and Fairness* (Princeton University Press, 2008)

Harwood, Christopher B., "Article: Evaluating the Supreme Court's Establishment Clause Jurisprudence in the wake of *Van Orden v. Perry* and *McCreary County v. ACLU*" 71 *Missouri Law Review* 317

(Spring, 2006)

Heckman, Diane, “Article: One Nation under God: Freedom of Religion in Schools and Extracurricular Athletic Events in the Opening Years of the New Millennium” 28 *Whittier Law Review* 537 (Winter, 2006)

Heller, Nathan P., “Note: Context is King: A Perception-Based Test for Evaluating Government Displays of the Ten Commandments” 51 *Villanova Law Review* 379 (2006)

Hill, B. Jessie, “Article: Putting Religious Symbolism in Context: A Linguistic Critique of the Endorsement Test” 104 *Michigan Law Review* 491 (December, 2005)

Hillman, Benjamin Siracusa, “Note: Is There a Place for Religious Charter Schools?” 118 *The Yale Law Journal* 554 (December, 2008)

Horwitz, Paul, “Article: Demographics and Distrust: The Eleventh Circuit on Graduation Prayer in *Adler v. Duval County*” 63 *University of Miami Law Review* 835 (April, 2009)

Knowlton, Megan, “New Development: Religious Music in Public Schools: The Disappointing Analysis in *Stratechuk v. Board of Education, South Orange-Maplewood School District*” 10 *Rutgers Journal of Law and Religion* 10 (Spring, 2009)

Koppelman, Andrew, “Symposium: Original Ideas on Originalism : Phony Originalism and the Establishment Clause” 103 *Northwestern University Law Review* 727 (Spring, 2009)

Koppelman, Andrew, “Article: Corruption of Religion and the Establishment Clause” 50 *William & Mary Law Review* 1831 (May, 2009)

Kosse, Susan Hanley, “Article: A Missed Opportunity to Abandon the Reasonable Observer Framework in Sacred Text Cases: *McCreary County v. ACLU of Kentucky* and *Van Orden v. Perry*” 4 *First Amendment Law Review* 139 (Spring, 2006)

Laycock, Douglas, “SYMPOSIUM LA CONCEPTION AMERICAINE DE LA

LAICITE: University of Paris II (Pantheon-Assas)—Paris, France, January 28, 2005: Church and State in the United States: Competing Conceptions and Historic Changes” 13 *Indiana Journal of Global Legal Studies* 503 (Summer, 2006)

Laycock, Douglas, “Symposium: The Religion Clauses in the 21st Century: Article: Substantive Neutrality Revisited” 110 *West Virginia Law Review* 51 (Fall, 2007)

Ledewitz, Bruce, “Article: Could Government Speech Endorsing a Higher Law Resolve the Establishment Clause Crisis?” 41 *St. Mary's Law Journal* 41 (2009)

Lugosi, Charles I., “Article: The Rejection of Divine Law in American Jurisprudence: The Ten Commandments, Trivia, and the Stars and Stripes” 83 *University of Detroit Mercy Law Review* 641 (Summer, 2006)

Lugosi, Charles I., “Symposium: Fifteenth Annual Society of Catholic Social Scientists Meeting: How Secular Ideology is Marginalizing the Rule of Law and Catholic Contributions to Law and Society II: The Ten Commandments and the Rejection of Divine Law in American Jurisprudence” 47 (St. John's Law Review Ass'n.) *Journal of Catholic Legal Studies* 145 (2008)

Lupu, Ira C. and Tuttle, Robert W., “Symposium: The Religion Clauses in the 21st Century: Article: Instruments of Accommodation: The Military Chaplaincy and the Constitution” 110 *West Virginia Law Review* 89 (Fall, 2007)

Lupu, Ira C. and Tuttle, Robert W., “Symposium: Conflicts 101: Higher Education and the First Amendment: The Cross at College: Accommodation and Acknowledgment of Religion at Public Universities” 16 *William & Mary Bill of Rights Journal* 939 (April, 2008)

- Luther, Robert, III and Caddell, David B., “Article: Breaking Away from the ‘Prayer Police’: Why the First Amendment Permits Sectarian Legislative Prayer and Demands a ‘Practice Focused’ Analysis” 48 *Santa Clara Law Review* 569 (2008)
- Marker, Shaun, “Note: ‘It’s Time for Roy’s Rock to Roll’ …After the Court of the Judiciary Speaks, Roy and His Rock, Roll” 31 *New England Journal on Criminal and Civil Confinement* 431 (Summer, 2005)
- Marks, Jason S., “Article: Spackle for the Wall? Public Funding for School Vouchers after *Locke v. Davey*” 61 *Journal of the Missouri Bar* 150 (May-June, 2005)
- McCauliff, C.M.A., “Article: Distant Mirror or Preview of our Future: Does *Locke v. Davey* Prevent American Use of Creative English Financing for Religious Schools?” 29 *Vermont Law Review* 365 (Winter, 2005)
- McGreal, Paul E., “Article: Social Capital in Constitutional Law: The Case of Religious Norm Enforcement through Prayer at Public Occasions” 40 *Arizona State Law Journal* 585 (Summer, 2008)
- Mead, Julie F., Green, Preston C. and Oluwole, Joseph O., “Article: Re-Examining the Constitutionality of Prayer in School in light of the Resignation of Justice O’Connor” 36 (Jefferson Law Book Company, Division of Anderson Publishing Co.) *Journal of Law & Education* 381 (July, 2007)
- Meier, Luke, “Religion in the Public Schools: Article: Constitutional Structure, Individual Rights, and the Pledge of Allegiance” 5 *First Amendment Law Review* 162 (Fall, 2006)
- Merritt, Deborah J. and Merritt, Daniel C., “Symposium: Conversations about Sandra Day O’Connor: The Future of Religious Pluralism: Justice O’Connor and The Establishment Clause” 39 *Arizona State Law Journal* 895 (Fall, 2007)

- Meyler, Bernadette, "Article: Summum and The Establishment Clause" 104 *Northwestern University Law Review Colloquy* 95 (August, 2009)
- Minow, Martha, "Legal Scholarship Symposium: The Scholarship of Laurence Tribe: The Government Can't, May, or Must Fund Religious Schools: Three Riddles of Constitutional Change for Laurence Tribe" 42 *Tulsa Law Review* 911 (Summer, 2007)
- Moss, Marianna, "Article: How are Reasonable Children Coerced? The Difficulty of Applying the Establishment Clause to Minors" 10 *U.C. Davis Journal of Juvenile Law & Policy* 379 (Summer, 2006)
- Munoz, Vincent Phillip, "Article: Thou Shalt Not Post the Ten Commandments? McCreary, Van Orden, and the Future of Religious Display Cases" 10 *Texas Review of Law & Politics* 357 (Spring, 2006)
- Munoz, Vincent Phillip, "Article: The Original Meaning of the Establishment Clause and the Impossibility of its Incorporation" 8 *University of Pennsylvania Journal of Constitutional Law* 585 (August, 2006)
- Myers, Rachel R., "Exploring Alternatives to The Incarceration Crisis: Comment: Pledge Protection: The Need for Official Supreme Court Recognition of Civil Religion" 3 *University of St. Thomas Law Journal* 661 (Spring, 2006)
- Nahmod, Sheldon H., "Article: The Pledge as Sacred Political Ritual" 13 *William & Mary Bill of Rights Journal* 797 (February, 2005)
- Natelson, Robert G., "Article: The Original Meaning of the Establishment Clause" 14 *William & Mary Bill of Rights Journal* 73 (October, 2005)
- Obert, Steven R., "Article: Essay & Note: Public Prayer in the Navy: Does it Run Afoul of the Establishment Clause?" 53 *Naval Law Review* 321 (2006)
- Olree, Andy G., "Article: James Madison and Legislative Chaplains" 102

- Northwestern University Law Review* 145 (Winter, 2008)
- Patel, Amit, “Article: The Orthodoxy Opening Predicament: The Crumbling Wall of Separation between Church and State” 83 *University of Detroit Mercy Law Review* 195 (Spring, 2006)
- Peet, David C., “Comment: Deed of Mistrust?: The Use of Land Transfers To Evade the Establishment Clause” 59 *American University Law Review* 129 (October, 2009)
- Pendley, William Perry, “2006 Denver University Law Review Symposium: Borrowing the Land: Cultures of Ownership in the Western Landscape: Article: The Establishment Clause and the Closure of ‘Sacred’ Public and Private Lands” 83 *Denver University Law Review* 1023 (2006)
- Pybas, Kevin, “Article: Does the Establishment Clause Require Religion to be Confined to the Private Sphere?” 40 *Valparaiso University Law Review* 71 (Fall, 2005)
- Pybas, Kevin, “Article: Two Concepts of Liberalism in Establishment Clause Jurisprudence” 36 *Cumberland Law Review* 205 (2005-2006)
- Rees, Laura J., “The Ninth Annual Frankel Lecture: Comment: ‘No [Christian] Child Left behind’: The Supreme Court's Jurisprudence in Establishment Clause Cases Involving School Children” 42 *Houston Law Review* 197 (2005)
- Rogers, Melissa, “Symposium: The Texas Religious Viewpoints Antidiscrimination Act and the Establishment Clause” 42 *U.C. Davis Law Review* 939 (February, 2009)
- Rosen, Richard D., “Article: Katcoff v. Marsh at Twenty-Two: The Military Chaplaincy and the Separation of Church and State” 38 *The University of Toledo Law Review* 1137 (Summer, 2007)
- Roy, Lisa Shaw, “Article: History, Transparency, and the Establishment Clause: A Proposal for Reform” 112 *Penn State Law Review* 683

(Winter, 2008)

- Samaha, Adam M., "Article: Endorsement Retires: From Religious Symbols to Anti-Sorting Principles" 2005 (The University of Chicago) *The Supreme Court Review* 135 (2005)
- Schloss, Tracy E., "Feature: Deference vs. Interference: Entangling the Courts in Religious Doctrine could Chip Away at the Separation of Church and State" 31 *Pennsylvania Lawyer* 40 (March / April, 2009)
- Sekulow, Jay Alan and Zimmerman, Erik Michael, "Symposium Issue: World Views Collide: Posting the Ten Commandments is a 'Law Respecting an Establishment of Religion?': How McCreary County v. ACLU Illustrates the Need to Reexamine the Lemon Test and its Purpose Prong" 23 *Thomas M. Cooley Law Review* 25 (Hilary Term, 2006)
- Silberlight, Adam, "Article: Thou Shall not Overlook Context: A Look at the Ten Commandments under the Establishment Clause" 18 *Widener Law Journal* 113 (2008)
- Smith, Steven D., "Symposium: The (Re)Turn to History in Religion Clause Law and Scholarship: The Jurisdictional Establishment Clause: A Reappraisal" 81 *Notre Dame Law Review* 1843 (June, 2006)
- Sproule, Christen, "Article: Federal Funding for the Preservation of Religious Historic Places: Old North Church and the New Establishment Clause" 3 *The Georgetown Journal of Law & Public Policy* 151 (Winter, 2005)
- Staples, Shawn, "Case Note: Nothing Sacred: In Van Orden v. Perry, the United States Supreme Court erroneously Abandoned the Establishment Clause's Foundational Principles Outlined in Lemon v. Kurtzman" 39 *Creighton Law Review* 783 (April, 2006)
- Strasser, Mark, "Article: Establishing the Pledge: On Coercion, Endorsement, and the Marsh Wild Card" 40 *Indiana Law Review* 529

(2007)

- Strasser, Mark, "Article: Death by a Thousand Cuts: The Illusory Safeguards against Funding Pervasively Sectarian Institutions of Higher Learning" 56 *Buffalo Law Review* 353 (May, 2008)
- Strasser, Mark, "Article: The Protection and Alienation of Religious Minorities: On the Evolution of the Endorsement Test" 2008 *Michigan State Law Review* 667 (Fall, 2008)
- Strasser, Mark, "Article: State Funding of Devotional Studies: A Failed Jurisprudence that Has Lost its Moorings" 11 *Journal of Law & Family Studies* 1 (2008)
- Strasser, Mark, "Article: Repudiating Everson: On Buses, Books, and Teaching Articles of Faith" 78 *Mississippi Law Journal* 567 (Spring, 2009)
- Strasser, Mark, "Article: The Coercion Test: On Prayer, Offense, and Doctrinal Inculcation" 53 *Saint Louis University Law Journal* 417 (Winter, 2009)
- Strossen, Nadine, "Symposium Issue: World Views Collide: What Role Religion should Play (or Not Play) in our Public Policy" 23 *Thomas M. Cooley Law Review* 131 (Hilary Term, 2006)
- Sunstein, Cass R., "Mcelroy Lecture: Celebrating God, Constitutionally" 83 *University of Detroit Mercy Law Review* 567 (Summer, 2006)
- Thompson, Scott, "Article: House of Wisdom or a House of Cards? Why Teaching Islam in U.S. Foreign Detention Facilities Violates the Establishment Clause" 88 *Nebraska Law Review* 341 (2009)
- Ward, Cynthia V., "Essay: Coercion and Choice under the Establishment Clause" 39 *U.C. Davis Law Review* 1621 (April, 2006)
- Wedeking, Jim, "Article: Quaker State: Pennsylvania's Guide to Reducing the Friction for Religious Outsiders under the Establishment Clause" 2 *New York University Journal of Law & Liberty* 28 (2006)

- Weinberger, Lael Daniel, “Symposium: Law and Religion: Article: Religion Undefined: Competing Frameworks for Understanding ‘Religion’ in the Establishment Clause” 86 *University of Detroit Mercy Law Review* 735 (Summer, 2009)
- Welner, Kevin G., *NeoVouchers: The Emergence of Tuition Tax Credits for Private Schooling* (Rowman & Littlefield Publishers, Inc., 2008)
- Wexler, Jay D., “The Rehnquist Court and the First Amendment: The Endorsement Court” 21 *Washington University Journal of Law & Policy* 263 (2006)
- Wheeler, Brian, “Note and Comment: The Pledge of Allegiance in the Classroom and the Court: An Epic Struggle over the Meaning of the Establishment Clause of the First Amendment” 2008 *Brigham Young University Education and Law Journal* 281 (2008)
- Woudenberg, Anita Y., “Article: Propagating a Lemon: How the Supreme Court Establishes Religion in the name of Neutrality” 7 *First Amendment Law Review* 307 (Spring, 2009)
- Wright, Jonathan, *Separation of Church and State* (Greenwood Pub Group, 2010)

[2] 「国教樹立禁止条項」—宗教と科学に関して

— 進化論と知的設計論 “Intelligent Design” は、並列して学校で教えるべきか —

- Bowman, Kristi L., “Article: An Empirical Study of Evolution, Creationism, and Intelligent Design Instruction in Pubic Schools” 36 (Jefferson Law Book Company, Division of Anderson Publishing Co.) *Journal of Law & Education* 301 (July, 2007)
- Brauer, Matthew J. and Forrest, Barbara and Gey, Steven G., “Article: Is it Science Yet?: Intelligent Design Creationism and the Constitution” 83 *Washington University Law Quarterly* 1 (2005)

- Brownfield, Ellen Yonts, “Chalk Talk: The First Amendment Implications of Teaching the Theory of Evolution and Creationism in Public Schools” 36 (Jefferson Law Book Company, Division of Anderson Publishing Co.) *Journal of Law & Education* 141 (January, 2007)
- Buckles, Johnny Rex, “A Tribute to Professor Daniel G. Gibbens: Article: The Constitutionality of the Monkey Wrench: Exploring the Case for Intelligent Design” 59 *Oklahoma Law Review* 527 (Fall, 2006)
- Crump, David, “Article: Natural Selection, Irreducible Complexity, and the Bacterial Flagellum: A Contrarian Approach to the Intelligent Design Debate” 36 *Pepperdine Law Review* 1 (2008)
- Dodson, Scott, “Article: A Darwinist View of the Living Constitution” 61 *Vanderbilt Law Review* 1319 (October, 2008)
- Hackney, Mary Katherine, “Comment: Is this Apple for Teacher an Apple from Eve? Reanalyzing the Intelligent Design Debate from a Curricular Perspective” 85 *North Carolina Law Review* 349 (December, 2006)
- Lofaso, Anne Marie, “Article: Does Changing the Definition of Science Solve the Establishment Clause Problem for Teaching Intelligent Design as Science in Public Schools? Doing an End-Run around the Constitution” 4 (Franklin Pierce Law Center) *Pierce Law Review* 219 (Summer, 2006)
- Luskin, Casey, “Article: Does Challenging Darwin Create Constitutional Jeopardy? A Comprehensive Survey of Case Law regarding the Teaching of Biological Origins” 32 *Hamline Law Review* 1 (Winter, 2009)
- McDonald, Barry P., “Article: Getting Beyond Religion as Science: ‘Unstifling’ Worldview Formation in American Public Education” 66 *Washington & Lee Law Review* 587 (Spring, 2009)
- Terry, Kelly S., “Article: Shifting out of Neutral: Intelligent Design and the

Road to Nonpreferentialism” 18 *The Boston University Public Interest Law Journal* 67 (Fall, 2008)

Wexler, Jay D., “Article: Intelligent Design and the First Amendment: A Response” 84 *Washington University Law Review* 63 (2006)

[3] 「国教樹立禁止条項」あるいは「宗教条項」と反差別法 (Title VII) との諸問題 — 聖職者の例外 (Ministerial Exception) など —

- (i) 雇用主が宗教団体および関連機関における反差別法 (Title VII) の適用
- Alstyne, William W. Van, “Country Studies: United States: Religion in the Workplace: A Report on the Layers of Relevant Law in the United States” 30 *Comparative Labor Law & Policy Journal* 627 (Spring, 2009)
- Colletta, Kristen and Kapulina, Darya, “Note: Employment Discrimination and the First Amendment: Case Analysis of Catholic Charities” 23 *Hofstra Labor & Employment Law Journal* 189 (Fall, 2005)
- Corbin, Caroline Mala, “Article: Above the Law? The Constitutionality of the Ministerial Exemption from Antidiscrimination Law” 75 *Fordham Law Review* 1965 (March, 2007)
- Kalscheur, Gregory A., “Article: Civil Procedure and the Establishment Clause: Exploring the Ministerial Exception, Subject-Matter Jurisdiction, and the Freedom of the Church” 17 *William & Mary Bill of Rights Journal* 43 (October, 2008)
- Messner, Thomas M., “Article: Can Parachurch Organizations Hire and Fire on the Basis of Religion without Violating Title VII?” 17 *University of Florida Journal of Law & Public Policy* 63 (April, 2006)
- Minow, Martha, “Article: Should Religious Groups be Exempt from Civil Rights Laws?” 48 *Boston College Law Review* 781 (September, 2007)
- Nichols, Andrew C., “Article: Exemptions for ‘Religious Corporations’ from Employment Discrimination Statutes: Should Non-Profit Status be

- Required” 3 *The Georgetown Journal of Law & Public Policy* 133 (Winter, 2005)
- Pena, Marisela, “The Ninth Annual Frankel Lecture: Comment: The ‘Catholic Union’ Dichotomy: Are the Catholic Church’s First Amendment Rights and the Collective Bargaining Rights of Catholic Church Employees mutually Exclusive?” 42 *Houston Law Review* 165 (2005)
- Prekert, Jamie D. and Magid, Julie M., “Article: A Hobson’s Choice Model for Religious Accommodation” 43 *American Business Law Journal* 467 (Fall, 2006)
- Prose, Sara, “Case Digest: Constitutional Law – The Ministerial Exception Exists in Michigan as a Valid Defense in Employment Discrimination Suits. *Weishuhn v. Catholic Diocese of Lansing*” 87 *University of Detroit Mercy Law Review* 41 (Fall, 2009)
- Rosenthal, Daniel J., “Article: Charitable Choice Programs and Title VII’s Co-Religionist Exemption” 39 *Creighton Law Review* 641 (April, 2006)
- Santos, Sarah L., “Note: The Fair Labor Standards Act – Where the Fourth Circuit went wrong in *Shaliehsabou v. Hebrew Home of Greater Washington*: Judicial Expansion of Fair Labor Standards Act Exemptions to Include Ministerial Employees” 28 *Western New England Law Review* 369 (2006)
- Warnick, Ashlie C., “Article: Accommodating Discrimination” 77 *University of Cincinnati Law Review* 119 (Fall, 2008)
- Zaheer, Bilal, “Note: Accommodating Minority Religions under Title VII: How Muslims Make the Case for a New Interpretation of Section 701 (j)” 2007 *University of Illinois Law Review* 497 (2007)

- (ii) 雇用者あるいは被雇用者の宗教的権利、また反差別法 (Title VII) との関係
 Gaul, Christopher M., “Note: Catholic Bishop Revisited: Resolving the
 Problem of Labor Board Jurisdiction over Religious Schools” 2007
University of Illinois Law Review 1505 (2007)
- Magid, Julie Manning and Prenekert, Jamie Darin, “Article and Essay: The
 Religious and Associational Freedoms of Business Owners” 7
University of Pennsylvania Journal of Labor & Employment Law 191
 (Winter, 2005)
- Roblyer, Giles, “Case Note: Half-Answered Prayers” 77 *University of
 Cincinnati Law Review* 1683 (Summer, 2009)

*「聖職者の例外」に関する多種の議論も、特に「宗教条項」における、その議論の位置は、扱われる角度によって微妙に異なってくる。たとえば宗教団体と司法の対立を中心とするならば、「国教樹立禁止条項」で扱う方がより明確になるが、一方、宗教団体の「自律権」が論点となるならば「信教の自由条項」で扱う方が、問題の本質が明らかになる。今回の多くの論文では、宗教団体と司法に焦点をあて、その議論が「国教樹立禁止条項」で行われているために、分類としては、「国教樹立禁止条項」で扱うことが適切であろうと考えた。それは論文の大半が、宗教団体と反差別法との衝突のさいに、裁判所が、宗教団体の教義に介入する危険性が、非常に高いという角度から論じられているからである。

[4] 「国教樹立禁止条項」あるいは「宗教条項」—— 宗教団体の法的地位と責任
 —— Section 501 (c) (3) of the Internal Revenue Code を巡って ——

(i) 宗教団体の免税措置 (Tax Exemption) に関する著作・論文

- Blair, Keith S., “Article: Praying for a Tax Break: Churches, Political
 Speech, and the Loss of Section 501 (c)(3) Tax Exempt Status” 86
Denver University Law Review 405 (2009)

- Buckles, Johnny Rex, “Article: Is the Ban on Participation in Political Campaigns by Charities Essential to their Vitality and Democracy? A Reply to Professor Tobin” 42 *University of Richmond Law Journal* 1057 (May, 2008)
- Buckles, Johnny Rex, “Article: Does the Constitutional Norm of Separation of Church and State Justify the Denial of Tax Exemption to Churches that Engage in Partisan Political Speech?” 84 *Indiana Law Journal* 447 (Spring, 2009)
- Cummings, Zachary, “Symposium: Liberty under Law: 400 Years of Freedom: Note: Prophetic Speech and the Internal Revenue Code: Analyzing I.R.C.501 (c)(3) in light of the Religious Freedom Restoration Act” 20 *Regent University Law Review* 151 (2007-2008)
- Dorocak, John R., “Article: The Income Tax Exclusion of the Housing Allowance for Ministers of the Gospel per I.R.C. Section 107: First Amendment Establishment of Religion or Free Exercise thereof- Where should the Warren Court Have Gone?” 54 *South Dakota Law Review* 233 (2009)
- Kemmitt, Chris, “Article: RFRA, Churches and the IRS: Reconsidering the Legal Boundaries of Church Activity in the Political Sphere” 43 *Harvard Journal on Legislation* 145 (Winter, 2006)
- Leff, Benjamin M., “Article: ‘Sit Down and Count the Cost’ : A Framework for Constitutionally Enforcing the 501(c)(3) Campaign Intervention Ban” 28 *Virginia Tax Review* 673 (Winter, 2009)
- Lindquist, Sarah A., “Comment: Property Tax Exemptions for the Nontraditional Church: How Do We Grant Tax Exemptions to Places of Worship and Not Amusement Parks?” 33 *Florida State University Law Review* 1149 (Summer, 2006)
- Mayer, Lloyd H., “Article: Politics at the Pulpit: Tax Benefits, Substantial Burdens, and Institutional Free Exercise” 89 *Boston University Law*

Review 1137 (October, 2009)

- Mirkay, Nicholas A., "Article: Is it 'Charitable' to Discriminate?: The Necessary Transformation of Section 501(c)(3) into the Gold Standard for Charities" 2007 *Wisconsin Law Review* 45 (2007)
- Mirkay, Nicholas A., "Article: Losing our Religion: Reevaluating the Section 501(c)(3) Exemption of Religious Organizations that Discriminate" 17 *William & Mary Bill of Rights Journal* 715 (March, 2009)
- Prather, Jerome Park, "Note: Tax Exemption of American Churches and Other Nonprofits: One Election Cycle after Branch Ministries v. Rossotti" 94 *Kentucky Law Journal* 139 (2005/2006)
- Ryan, Meghan J., "Article: Can the IRS Silence Religious Organizations?" 40 *Indiana Law Review* 73 (2007)
- Samansky, Allan J., "Article: Tax Consequences When Churches Participate in Political Campaigns" 5 *The Georgetown Journal of Law & Public Policy* 145 (Winter, 2007)
- Smith, Jennifer M., "Article: Morse Code, Da Vinci Code, Tax Code and ... Churches: An Historical and Constitutional Analysis of Why Section 501(c)(3) Does Not Apply to Churches" 23 *The Journal of Law & Politics* 41 (Winter, 2007)
- Tobin, Donald B., "Symposium: The Law of Politics: The Role of Law in Advancing Democracy: Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy" 95 *Georgetown Law Journal* 1313 (April, 2007)
- Totten, Mark, "Symposium Article: Law of Democracy: The Politics of Faith: Rethinking the Prohibition on Political Campaign Intervention" 18 *Stanford Law & Policy Review* 298 (2007)

(ii) 宗教団体が負う聖職者に対する責任

— 聖職者による性的虐待に対する不法行為の責任範囲など —

Arnold, Julie M., “Note: ‘Divine’ Justice and the Lack of Secular Intervention: Abrogating the Clergy-Communicant Privilege in Mandatory Reporting Statutes to Combat Child Sexual Abuse” 42 *Valparaiso University Law Review* 849 (Spring, 2008)

Bainbridge, Stephen M. and Cole, Aaron H., “Symposium: For all the Saints: How the Lives of Extraordinary Catholics can Shed Light on the Ordinary Practice of Law: Article: The Bishop’s Alter Ego: Enterprise Liability and the Catholic Priest Sex Abuse Scandal” 46 (St. John’s Law Review Ass’n.) *Journal of Catholic Legal Studies* 65 (2007)

Clark, Kelly W. G., Roggendorf, Kristian Spencer and Janci, Peter B., “Article: Of Compelling Interest: The Intersection of Religious Freedom and Civil Liability in the Portland Priest Sex Abuse Cases” 85 *Oregon Law Review* 481 (2006)

Fife, Morgan, “Comment: Predator in the Primary: Applying the Tort of Negligent Hiring to Volunteers in Religious Organizations” 2006 *Brigham Young University Law Review* 569 (2006)

Hamilton, Marci A., “Article: The Waterloo for the so-called Church Autonomy Theory: Widespread Clergy Abuse and Institutional Cover-Up” 29 *Cardozo Law Review* 225 (October, 2007)

Mansfield, John H., “Church Autonomy Conference: Federalist Society Conference: ‘The Things that are not Caesar’s: Religious Organizations as a Check on the Authoritarian Pretensions of the State’: A Tale of Two Organists: Suits against Churches for Employment Discrimination and Sexual Abuse by Ministers” 7 *The Georgetown Journal of Law & Public Policy* 237 (Winter, 2009)

Miller, Caroline E. Law, “Comment: Holding Clergy Accountable: Maryland

should Require Clergy to Report Suspected Child Abuse” 34
University of Baltimore Law Review 337 (Spring, 2005)

(iii) 宗教団体に関する諸問題

Alderman, Ashley, “Note: Where’s the Wall?: Church Property Disputes within the Civil Courts and the Need for Consistent Application of the Law” 39 *Georgia Law Review* 1027 (Spring, 2005)

Berg, Thomas C., “Church Autonomy Conference: Federalist Society Conference: ‘The Things that are not Caesar’s: Religious Organizations as a Check on the Authoritarian Pretensions of the State’: Religious Organizational Freedom and Conditions on Government Benefits” 7 *The Georgetown Journal of Law & Public Policy* 165 (Winter, 2009)

Carmella, Angela C., “Article: Constitutional Arguments in Church Bankruptcies: Why Judicial Discourse about Religion Matters” 29 *Seton Hall Legislative Journal* 435 (2005)

Chopko, Mark E. and Moses, Michael F., “Article: Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy” 3 *The Georgetown Journal of Law & Public Policy* 387 (Summer, 2005)

Davitt, Christina M., “Article: Whose Steeple is it? Defining the Limits of the Debtor’s Estate in the Religious Bankruptcy Context” 29 *Seton Hall Legislative Journal* 531 (2005)

Ellis, Cameron W., “Note: Church Factionalism and Judicial Resolution: A Reconsideration of the Neutral-Principles Approach” 60 *Alabama Law Review* 1001 (2009)

Garnett, Richard W., “Symposium: Religion and Morality in the Public Square: Religion and Group Rights: Are Churches (just) like the Boy Scouts?” 22 *St. John’s Journal of Legal Commentary* 515 (Fall, 2007)

- Garnett, Richard W., "Article: Do Churches Matter? Towards an Institutional Understanding of the Religion Clauses" 53 *Villanova Law Review* 273 (2008)
- Idleman, Scott C., "Symposium: Catholicism and the Court: The Relevance of Faith Traditions to Jurisprudence: Article: Panel: The Role of Faith in Judging: Private Conscience, Public Duties: The Unavoidable Conflicts Facing a Catholic Justice" 4 *University of St. Thomas Law Journal* 312 (Fall, 2006)
- Laycock, Douglas, "Church Autonomy Conference: Federalist Society Conference: 'The Things that are not Caesar's: Religious Organizations as a Check on the Authoritarian Pretensions of the State': Church Autonomy Revisited" 7 *The Georgetown Journal of Law & Public Policy* 253 (Winter, 2009)
- Lipson, Jonathan C., "Article: When Churches Fail: The Diocesan Debtor Dilemmas" 79 *Southern California Law Review* 363 (January, 2006)
- Lupu, Ira C. and Tuttle, Robert W., "Church Autonomy Conference: Federalist Society Conference: 'The Things that are not Caesar's: Religious Organizations as a Check on the Authoritarian Pretensions of the State': Courts, Clergy, and Congregations: Disputes between Religious Institutions and their Leaders" 7 *The Georgetown Journal of Law & Public Policy* 119 (Winter, 2009)
- Pybas, Kevin, "Symposium: Law and Religion: Article: Religious Groups in a Free Society" 86 *University of Detroit Mercy Law Review* 685 (Summer, 2009)
- Radwan, Theresa J. Pulley, "Article: Keeping the Faith: The Rights of Parishioners in Church Reorganizations" 82 *Washington Law Review* 75 (February, 2007)
- Serritella, James A. & Berg, Thomas C. & Durham, W. Cole, Jr., et al., eds., *Religious Organizations in the United States – A Study of Identity, Liberty,*

and the Law (Carolina Academic Press, 2006)

Stabile, Susan J., "Symposium: 2006-2007 Catholic Lawyer's Program Series on Faithful Citizenship: When Conscience Clashes with State Law & Policy: Catholic Institutions" 46 (St. John's Law Review Ass'n.) *Journal of Catholic Legal Studies* 137 (2007)

Stewart, Tracy N., "Recent Development: Creating Ecclesiastical Immunity: How the Supreme Court of North Carolina Stripped Civil Protections from Religious Bodies in *Harris v. Matthews*" 86 *North Carolina Law Review* 1743 (September, 2008)

Suhr, Daniel R., "Article: On the Freedom of a Congregation: Legal Considerations when Lutherans Look to Change Denominational Affiliation" 13 *Texas Review of Law & Politics* 365 (Spring, 2009)

Treeman, Judd M., "Comment: Blessed be the Name of the Code: How to Protect Churches from Tithe Avoidance under the Bankruptcy Code's Fraudulent Transfer Law" 25 *Emory Bankruptcy Developments Journal* 599 (2009)

[5] 「国教樹立禁止条項」——連邦納税者は執行府を訴えられるのか

—— Standing (原告適格) について ——

Duncan, Kyle, "Article: Misunderstanding Freedom from Religion: Two Cents on Madison's Three Pence" 9 *Nevada Law Journal* 32 (Fall, 2008)

Edwards, Meredith L., "Recent Decision: Constitutional Law—Taxpayer Standing to Challenge Executive Spending—Discretionary Spending versus Spending Pursuant to Congressional Authority" 77 *Mississippi Law Journal* 695 (Winter, 2007)

Elliott, Heather, "Article: The Functions of Standing" 61 *Stanford Law Review* 459 (December, 2008)

Ellis, John R., IV, "Case Note: Constitutional Law—Standing in Federal

- Courts-Taxpayer Status is Insufficient to Confer Standing on a Plaintiff Challenging the Constitutionality under the Establishment Clause of Executive Use of Discretionary Funds” 38 *Cumberland Law Review* 645 (2007-2008)
- Esbeck, Carl H., “Essay: What the Hein Decision can Tell Us about the Roberts Court and the Establishment Clause” 78 *Mississippi Law Journal* 199 (Fall, 2008)
- Kmiec, Douglas W., “An Enigmatic Court? Examining the Roberts Court as It Begins Year Three: Standing Still---Did the Roberts Court Narrow, but not Overrule, Flast to Allow Time to Re-Think Establishment Clause Jurisprudence?” 35 *Pepperdine Law Review* 509 (2008)
- Lowman, Debra L., “Article: A Call for Judicial Restraint: Federal Taxpayer Grievances Challenging Executive Action” 30 *Seattle University Law Review* 651 (Spring, 2007)
- Lupu, Ira C. and Tuttle, Robert W., “Article: Ball on a Needle: Hein v. Freedom from Religion Foundation, Inc. and the Future of Establishment Clause Adjudication” 2008 *Brigham Young University Law Review* 115 (2008)
- Oluwole, Joseph O. and Green, Preston C., III, “Article: Hein v. Freedom from Religion Foundation and Taxpayer Standing” 54 *The Wayne Law Review* 1203 (Fall, 2008)
- Segall, Eric J., “Symposium: Supreme Court Review: The Taxing Law of Taxpayer Standing” 43 *Tulsa Law Review* 673 (Spring, 2008)
- Wilders, Bradley Thomas, “Note: Standing on Hallowed Ground: Should the Federal Judiciary Monitor Executive Violations of the Establishment Clause?” 71 *Missouri Law Review* 1199 (Fall, 2006)

IV. 州憲法・法律の歴史等、およびネイティブ・アメリカンの宗教的権利に関する諸問題

- [1] 州に関する憲法・法律の歴史、連邦憲法の歴史、少数派の宗教的権利など
 Adams, Nathan A., IV, “Article: Pedigree of an Unusual Blaine Amendment: Article I, Section 3 Interpreted and Implemented in Florida Education” 30 *Nova Law Review* 1 (Fall, 2005)
- Aggergaard, Steven P., “Developments in Minnesota Law: Religion, Speech, and the Minnesota Constitution: State-Based Protections amid First Amendment Instabilities” 32 *William Mitchell Law Review* 719 (2006)
- Boyer, Jonathan D., “Article: Education Tax Credits: School Choice Initiatives Capable of Surmounting Blaine Amendments” 43 *Columbia Journal of Law and Social Problems* 117 (Fall, 2009)
- Calabresi, Steven G. and Agudo, Sarah E., “Article: Individual Rights under State Constitutions when the Fourteenth Amendment was Ratified in 1868: What Rights are Deeply Rooted in American History and Tradition?” 87 *Texas Law Review* 7 (November, 2008)
- Davis, James Calvin, *On Religious Liberty: Selections from the Works of Roger Williams* (Belknap Press of Harvard University Press, 2008)
- Dougherty, James, “First Amendment: Supreme Court of New York: Kings County” 23 *Touro Law Review* 287 (2007)
- Goldenziel, Jill, “Article: Blaine’s Name in Vain?: State Constitutions: School Choice, and Charitable Choice” 83 *Denver University Law Review* 57 (2005)
- Hamburger, Philip, “Article: Religious Freedom in Philadelphia” 54 *Emory Law Journal* 1603 (Fall, 2005)
- Hutson, James H., *Church and State in America: The First Two Centuries (Cambridge Essential Histories)* (Cambridge University Press, 2007)

- Kang, John M., “Article: Appeal to Heaven: On the Religious Origins of the Constitutional Right of Revolution” 18 *William & Mary Bill of Rights Journal* 281 (December, 2009)
- Mahaney, Stacey L., “Comment: The California Missions Preservation Act: Safeguarding our History or Subsidizing Religion?” 55 *American University Law Review* 1523 (June, 2006)
- Manta, Irina D., “Article: Missed Opportunities: How the Courts Struck Down the Florida School Voucher Program” 51 *Saint Louis University Law Journal* 185 (Fall, 2006)
- Marx, Sarah, “First Amendment: Court of Appeals of New York” 24 (Touro College Jacob D. Fuchsberg Law Center) *Touro Law Review* 225 (2008)
- Milhizer, Eugene R., “Article: So Help me Allah: An Historical and Prudential Analysis of Oaths as Applied to the Current Controversy of the Bible and Quran in Oath Practices in America” 70 *Ohio State Law Journal* 1 (2009)
- Najar, Monica, *Evangelizing the South: A Social History of Church and State in Early America (Religion in America)* (Oxford University Press, 2008)
- Nichols, Joel A., “Article: Religious Liberty in the Thirteenth Colony: Church-State Relations in Colonial and Early National Georgia” 80 *New York University Law Review* 1693 (December, 2005)
- Ouzts, Patrick H., “Note & Comment: School Choice: Constitutionality and Possibility in Georgia” 24 *Georgia State University Law Review* 587 (Winter, 2007)
- Sciver, Kurt Van, “Article: To Strict Scrutiny and Beyond! Interpreting California's Free Exercise Clause” 38 *Southwestern Law Review* 395 (2009)
- Wood, Diane P., “Article: Reflections on the Judicial Oath” 8 *The Green Bag* 2d 177 (Winter, 2005)

[2] ネイティブ・アメリカンの宗教的権利と土地問題

- Blatt, William, "Forum: Lloyd Burton's Worship and Wilderness: Culture, Religion, and Law in Public Lands Management: Holy River and Magic Mountain: Public lands Management and the Rediscovery of the 'Sacred in Nature'" 39 (University of Massachusetts) *Law & Society Review* 681 (September, 2005)
- Bogen, David and Goldstein, Leslie F., "Symposium: The Maryland Constitutional Law Schmooze: Culture, Religion, and Indigenous People" 69 *Maryland Law Review* 48 (2009)
- Brucker, Sara, "Article: Navajo Nation v. United States Forest Service: Defining the Scope of Native American Freedom of Religious Exercise on Public Lands" 31 *Environs: Environmental Law & Policy Journal* 273 (Spring, 2008)
- Carpenter, Kristen A., "Editor's Letter: Considering Individual Religious Freedoms under Tribal Constitutional Law" 14 *The Kansas Journal of Law & Public Policy* 561 (Spring, 2005)
- Carpenter, Kristen A., "Article: A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Nonowners" 52 *UCLA Law Review* 1061 (April, 2005)
- Carpenter, Kristen A., "2006 Denver University Law Review Symposium: Borrowing the Land: Cultures of Ownership in the Western Landscape: Article: Old Ground and New Directions at Sacred Sites on the Western Landscape" 83 *Denver University Law Review* 981 (2006)
- Dalton, James R., "Comment: There is Nothing Light about Feathers: Finding Form in the Jurisprudence of Native American Religious Exemptions" 2005 *Brigham Young University Law Review* 1575 (2005)
- Worthen, Kevin J., "Article: Eagle Feathers and Equality: Lessons on Religious Exceptions from the Native American Experience" 76

- * 上記に掲げた著作・論文の分類では、それらの内容が多岐にわたっており、一つのカテゴリーにあてはめることができないものも多かった。そのために中心的に述べられているテーマによって、便宜上、分類を行っている。
- * 最近の「宗教条項」に関する論文では、「信教の自由条項」あるいは「国教樹立禁止条項」と明確に立て分けて論争されているケースが少ない。例えば、教会という宗教団体に対しても、本来であるならば、「国教樹立禁止条項」の適用が中心と考えられるが、多くの論文の中で「教会の“自律権”あるいは“信教の自由”」というが表現が使われ、「信教の自由条項」のアプローチから、「国教樹立禁止条項」が論争されている。そのような論文では、宗教団体に関する議論であっても単純に「国教樹立禁止条項」に分類するということができない。論文では、「信教の自由条項」と「国教樹立禁止条項」とを含めた「宗教条項」として扱われている場合が多い。しかし、それでは全ての議論が「宗教条項」となりうるために、強いて細かく、分かりやすいように分類した。また、ある意味で、一つのカテゴリーに分類できない状況こそが、現在の宗教的権利の議論の本質を表している、と考えられる。ゆえに、この点にご理解いただき、一つの試みとして以上の分類の形態となったことを、お許し願いたい。

