Long, Emma: *The Church-State Debate. Religion: Education, and the Establishment Clause in Post-War America*. London: Bloomsbury Publisher 2013. ISBN: 9781472522528; 280 S.

Rezensiert von: James Hitchcock

For those outside the United States (and for many within as well) the role of the Constitution in American public life is often mysterious, and this book, by a professor at an English university, serves to illuminate some aspects of the subject.

The Constitution was hammered out just after the American Revolution and, with twenty-seven amendments adopted since the 1780's, has served ever since as the basic document defining the American state. The Supreme Court, which was itself established by the Constitution, has over the years sat in judgment on the work of Congress, the President, and the various state governments, determining if their actions conform to the Constitution. (Whe-ther the Founding Fathers intended the Court to have that authority is open to de-bate.)

The Court has nine members, who are appointed by the president and approved by the Senate, after which they may serve as long as they wish. Perhaps especially over the issue of religious establishment, the nomination process has often been highly politicized, with presidents endea-voring to appoint justices who represent the president's own judicial philosophy. (Once on the Court, however, justices do not always vote the way the president may have expected.) A simple majority rules in every case, and 5–4 decisions are common.

The First Amendment begins, «Congress shall make no law respecting an establishment of religion nor prohibiting the free exercise thereof», a rather schematic proclamation that has been the focus of endless and often passionate controversy, especially given the relatively high level of religious affiliation in the United States and the wide diversity of its churches.

Until the 1830's several of the indivi-dual states had official established churches, and the First Amendment was under-stood to prohibit only the Federal govern-ment from doing so. At the same time there was a common belief that civic virtue was rooted in religion, so that the government should support and encourage religion in general. Thus there have always been paid chaplains in the military, the education of American Indians was at one time put in the hands of the various churches, prayers have often been recited at official gatherings, and public figures routinely invoke divine guidance in their speeches. Historically there were practically no antireligious movements in the United States comparable to those found in some European countries.

The American public school system was established in the middle of the nineteenth century, and from the beginning Catholics and some others (notably some Lutherans) considered it dangerously secular and therefore moved to establish their own schools. In reality, however, many of the public schools reflected a generalized kind of Protestantism, especially manifest in prayers and Bible reading.

Only in the 1920's did the Supreme Court begin to hold that the Bill of Rights applies to the states as well as to the Federal government, and since then the great majority of religion cases have involved state and local governments. Thus the author of this work essentially begins her story after World War II.

The great majority of «establishment» cases considered by the Court involve the question whether the government – Federal, state, or local – can offer support to religious schools and whether there can be a religious presence in the public schools. Both issues have generated considerable controversy, with two judicial philosophies in conflict – «accommodation», which favors governmental support of religion, and «separation», which holds that there should be a substantial «wall» between church and state. Roughly speaking, Republicans support accommodation and Democrats separation.

The author organizes dozens of cases into three major categories – aid to religious schools, prayer in the public schools, and «equal access» (whether students have the right to form religious organizations that are officially recognized by the school). Devoting a book specifically to issues involving schools

is of course defensible, but readers unfamiliar with the subject may miss the larger context into which the school cases fit, for example, the debate over whether churches should be exempt from taxation and if so why, or how the Court justifies prayers at official meetings of government bodies.

In what seemed at the time like the rather trivial Everson case (reimbursing parents for the expense of transporting their children to Catholic schools), a majority of the Court in 1947 enunciated a strict separationist position that is officially still dominant but has been modified over the years in many ways. After allowing reimbursement for travel, the Court proceeded within a few years to forbid any direct public support of religious schools and to permit only a few indirect subsidies. In some ways the key issue now is «vouchers» – money paid directly to parents, who may choose where to send their children to school. (The Court has generally upheld government grants to America's large number of private universities.)

Beginning a year after Everson, the Court became zealously vigilant against anything that implied that the public schools supported religion – students could not receive voluntary religious instruction in a public school building, prayers and Bible readings were prohibited, and in one case even a required minute of silence at the beginning of the school day was prohibited, on the grounds that it might be construed as a prayer. As with aid to private schools, the Court has become somewhat more accommodationist in the past twenty years.

«Equal access» has been a relatively recent issue, and for the most part a majority of the Court has held that student religious groups have the same rights as all other student groups.

The author undertakes to analyze the complex factors that account for Court decisions and particularly why the reigning judicial philosophy seems to change from age to age. While in one sense she is justi-fied in beginning her survey in 1947, it obscures the fact that at that point the Court made a radical break with the past.

Long claims that, where the religion clauses are concerned, «the Court has never followed the route of original in-tent», but that was precisely what it did in 1947, often repeating the same argument in later cases. The key to the new separationism was the alleged discovery of the «original intent» of the framers of the Constitution, and «wall of separation» – a phrase used by Thomas Jefferson in a letter – was often cited to explain that intent. Underlying that, it was claimed, were the lessons the framers had learned from the European religious wars and from religious intolerance in colonial America.

In her relatively brief but densely packed survey of the principal cases, the author attempts to situate them in historical context, her principal thesis being that various factors – social and political as well as judicial – affected their outcome. This is far from a new idea, and Long does not shed any significant new light on it as she refers to Catholic-Protestant tensions, the Civil Rights Movement, the Cold War, and other things that may have influenced the justices in ways but are largely speculative.

Supreme Court eras are commonly designated by the names of their Chief Jus-tices. Long sees the Court of Warren E. Burger (1969–86) as in some ways crucial. A Republican, Burger was appointed by President Richard M. Nixon perhaps largely because conservatives thought the Court of Earl Warren (1953–69) had exceeded its authority and had in effect engaged in legislation. But under Burger the separationist philosophy continued to gain ground, with Burger himself often supporting it.

Long views the Burger Court as prac-ticing a statesmanlike moderation that successfully navigated treacherous waters, and she seems to think that popular criticism of the separationist position has simply been misinformed and even irrational. Others – on both sides of the divide – have seen the jurisprudence of the Burger Court as confused and inconsistent. The cause of that confusion is precisely the fact the strictseparationist understanding of the First Amendment was a novel one in 1947, and the Burger Court later had to engage in sometimes tortured reasoning in order to uphold it.

Long's chapter on the Court of William H. Rehnquist (1986–2005) has a question for a

title: «Accommodation Triumphant?» Rehnquist was promoted to Chief Justice by President Ronald Reagan, and as an associate justice he had written the most thorough critique to date of separationism, especially its reading of the Founding Fathers. During Rehnquist's long tenure a divided Court moved away from strict separationism, as justices often disagreed sharply.

Just as the book is weakened by taking 1947 its starting point, so by ending in 1997 – fifteen years before its publication – it omits further attempts to refine the meaning of the establishment clause, mainly in an accommodationist way. Overall, however, it serves as a useful introduction to the subject.

Zitierweise:
James Hitchcock: Rezension zu: Emma Long, The Church-State Debate: Religion: Education, and the Establishment Clause in Post-War America, New York, Bloomsbury, 2013. Zuerst erschienen in: Schweizerische Zeitschrift für Religions und Kulturgeschichte, Vol. 108, 2014, S. 529-5232

James Hitchcock über Long, Emma: *The Church-State Debate. Religion: Education, and the Establishment Clause in Post-War America*. London 2013, in: H-Soz-Kult .