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November 2, 2011: The Establishment Clause in Shambles

Bruce Ledewitz
Duquesne University, ledewitz@duq.edu

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11/2/2011-- [As a continuation of Saturday's blog entry] Just this past Monday, Justice Clarence Thomas, dissenting from the denial of certiorari review in a case involving the public display of crosses, [Utah Highway Patrol Organization v. American Atheists, Inc., __ S.Ct. __ (2011)] stated that “Establishment Clause jurisprudence [is] in shambles.” No one is going to dispute that statement. Not only is there uncertainty in doctrine in this field, but Supreme Court is buffeted by sociological and political trends, in which a growing American secularism seems eternally in conflict with an ever more assertive American religious commitment. It is not clear how social peace is ever going to be achieved in this highly contested area.It is against this background that six scholars will gather tomorrow at Duquesne University School of Law to discuss the future of the Establishment Clause. I wish I could invite you all to be there, but we are actually full-up. (We should have picked a larger room). I will be blogging after the fact and for a few days afterward about the program and what I learned. Roughly speaking, there are three divergent paths that the Supreme Court might take into the future. The Court might reinvigorate the dominant model of the past fifty years, variously referred to as government neutrality or separation. Or the Court might rethink that commitment and look anew at religion in the public square. A third possibility is one the Court has been utilizing recently—applying standing and justiciability standards in such a way as to preclude some plaintiffs from being heard in court.For the names and backgrounds of the speakers, see the entry immediately below.