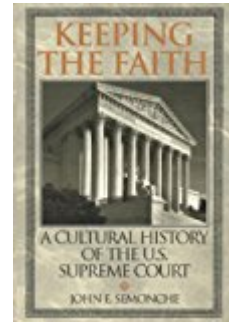




**John E. Semonche.** *Keeping the Faith: A Cultural History of the U.S. Supreme Court.* Lanham, Md.: Rowman & Littlefield Publishers, 1998. viii + 499 pp. \$39.95 (cloth), ISBN 978-0-8476-8985-9.



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## The Supreme Court and America's

What has been the relationship between the U.S. Supreme Court and the public's respect for the rule of law? This is the very interesting question that John Semonche addresses in his new book called *Keeping the Faith: A Cultural History of the U.S. Supreme Court*. In providing his answer, Semonche, a professor of history and law at the University of North Carolina, Chapel Hill, relies heavily on a concept of civil religion first popularized by sociologist Robert Bellah. Bellah argued in an influential article published in 1967 that respect for the rule of law was so deeply embedded in American life and culture as to constitute a kind of civil religion. In support of that idea, Bellah pointed to passages in presidential addresses that advocate respect for law in almost religious terms. Semonche, however, argues in his book that while Bellah was right about the notion of respect for law as a kind of civil religion, he was wrong to give the president the primary role in explicating and advancing it. Rather, Semonche contends, the Supreme Court's members are the ones who have functioned as the high priests of America's civil religion. Semonche devotes most of his almost five-hundred-page study to exploring how he believes the Court has done this over its two-century existence.

Semonche is clearly onto something important in advancing his thesis. The U.S. Constitution, which brought the Supreme Court into being, clearly places it at the apex of the American legal system. If respect for the rule of law is the core commitment of the American civil creed, then the Court would logically play the most important role in advancing it.

The basic problem with Semonche's thesis is that it tends to read into the past a role that the Court has taken on in a major way only during the past sixty years or so. Until the late nineteenth century, the Supreme Court was a largely invisible institution in American life. In the years after the Civil War, as the federal government gradually became more important to the daily life of the citizenry, the Court did gain the opportunity to play the role Semonche ascribes to it. At first, however, many of the Court's most far-reaching decisions tended to diminish respect for the rule of law among the people rather than strengthen it. From the late nineteenth century through the mid-1930's, the Court's most far-reaching rulings tended to be ones that struck down laws regulating minimum wages and maximum hours, and upheld ones that limited freedom of expression. In so doing, the Court was articulating a kind of civil religion, but it was

one with which many Americans disagreed. There were of course dissenters, such as Oliver Wendell Holmes and Louis D. Brandeis, to name the two most famous of them. They played the priestly role that Semonche has in mind—but only in dissent.

With the advent of the New Deal Court first led by Harlan Fiske Stone in the 1940's, the Court began to play the role (and to enjoy the visibility and popular respect) that makes Semonche's thesis work. And, in fact, the most interesting and effective sections of his book deal with the period beginning in the early 1940's through the present. During those almost sixty years, the Court's nine justices have ever more self-consciously and publicly played the part of the high priests of America's civil religion. Even then, however, the Court has had to struggle to do so, thanks to the unpopularity of some of its most important decisions. The Court's rulings since the early 1950's in the areas of desegregation, criminal pro-

cedure, and abortion have had more ambiguous consequences for respect for the rule of law (and the Court) than Semonche suggests.

Despite these problems with his central thesis, Semonche's book is still worthy of commendation for having illuminated the role the Supreme Court has come to play over time, and the consequences for American politics, life and culture. *Keeping the Faith's* central thesis is one that all serious students of the Supreme Court will need to consider seriously.

This review was commissioned for H-Pol by Lex Renda <renlex@uwm.edu>

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