

REVIEW

The Traditions of American Religious Liberty

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RELIGIOUS LIBERTY IN THE UNITED STATES: The Development of
Church-State Thought Since the Revolutionary Era

By Elwyn A. Smith

Philadelphia: Fortress Press 1972 373 pp \$10.95

The author analyzes the thought of individuals who helped fashion the laws and customs that institutionalized religious liberty for the American republic. He classifies these people in three traditions — separatist, Catholic, and constitutional. Each category has a double reference, that of historical usage and that of conceptual construct.

The *separatist* tradition derives its meaning from the views historically held by the “separatist Baptists” and others who were willing “to grant full civil rights to the adherents of any religion or philosophy loyal to liberty and the new nation” (p. xii). In this section Smith synthesizes the church-and-state thought of Roger Williams, Isaac Backus, John Leland, James Madison, Thomas Jefferson, Jonathan Edwards, and more recent figures.

The *Catholic* tradition takes its meaning from the Christianity of Rome — from Catholicism’s theological assumptions concerning the religious and political unity of man and society. All established religions are “Catholic” in the sense that they prefer to institutionalize the unity of the human being. This second section reviews the church-and-state thought of Catholic writers, including John Carroll, John England, Orestes A. Brownson, John J. Hughes, John Ireland, John Courtney Murray, and others.

The *constitutional* tradition draws its substance from the interpretations of the federal Constitution. The author attempts in this section to “discern the changing assumptions and understandings visible in judicial documentation” (p. xii). Smith asserts that the constitutional tradition is not a synthesis of the separatist and the Catholic traditions; rather, it emerges from the decisions made by the Supreme Court in its resolution of conflicts between religion and civil authority.

Even though there are diverse strains of thought within the separatist and the Catholic traditions, these have common elements that enable the historian to systematize and synthesize each tradition in an honest fashion. Smith’s cogent exposition ac-

completes this, thereby helping us understand the differences between these two traditions.

Unhappily, the author's examination of the constitutional tradition does not have the same merit. Succinctly portraying the events that brought about the First Amendment's religion clauses, Smith analyzes the relevant court cases that explicate the theory and law of the First Amendment. But he fails in his attempt to establish a constitutional tradition with a unity similar to that of the previous traditions.

The Supreme Court has formulated some guiding theoretical and conceptual referents from the Establishment and the Free Exercise clauses. Quite early the Court gave them meaning with the famous Jefferson metaphor that they were intended to erect a "wall of separation between church and state." The Court further refined this in the *Everson* case with specific illustrations and with the concept of neutrality between the state and religion, and between religion and religion.¹ The Court also formulated tests to measure this proscription.

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The most basic test devised by the Court appeared in the *Schempp* decision: "There must be a secular legislative purpose [and secular means] and a primary effect that neither advances nor inhibits religion."² This test has its primary association with the Establishment Clause; but with reference to the Free Exercise Clause, the Court noted that "the distinction between the two clauses is apparent — a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended."³

One could expect that this rubric would help define a line of separation between church and state. More accurately, however, one might suggest that it created a permeable membrane, and that what does and does not go through the membrane is ultimately a matter not of logic but of psychology. One can characterize the law of the First Amendment and religion as protean and topically specialized, its strictures assuming different casts, depending on their contexts. In contrast, although recognizing some incongruities, Smith suggests a continuity that is illusory.

In his final chapter, entitled "The Meaning of Separation of Church and State," Smith summarizes the principle of separation (as he interprets the First Amendment) by stating: "If the laws bear so heavily on a religious group as effectively to inhibit freedom of exercise . . . it may be shown that the state is hostile and thus breaching the principle of separation. Similarly, if the state is favoring one program above others, the proper complaint is not that it should aid all but that it should favor none. The *McCullum* decision [religious instruction in public schools] is thus balanced by *Sherbert* [denial of unemployment benefits for refusal to work Saturday]" (p. 364).

As accommodating as this spacious principle of separation is for these two examples, it narrows so as not to admit the free-exercise Sunday-law cases of *Braunfeld v. Brown*, which allowed general Sunday laws that advanced the state's secular goals.⁴ There was no material difference in the effect of the law on either *Sherbert* or *Braunfeld*, and yet the Court chose to accommodate the religious conscience of one and not of the other. The clearest difference between the cases is that one pertains to unemployment insurance and the other to Sunday laws. The *Braunfeld* decision makes untenable the argument for continuity that Smith attempts by pairing of the *McCullum* and *Sherbert* cases.

Although Smith's work concentrates on the history of thought, he does dip into the "exciting story of the struggle for religious liberty only as much as is required to make the ideas intelligible" (p. xiv). One could wish that he had dipped deeper into this well of historical fact — as he did in his study of the refusal to bear arms because of religious scruples (related in the chapter "Religion, Conscience, and Free Exercise"). At issue was the proposition of the district court in *Girouard v. United States* that refusal to bear arms is not necessarily a sign of disloyalty.⁵ Smith observes that "the nation may thank the 10,000 Seventh Day Adventist non-combatant soldiers in the American army in World War II for putting this question to rest" (p. 275).

The real continuity of church-and-state thought lies in society's day-to-day events — not in legal decisions nor in a formal constitutional statement.

RECENT BOOKS BY ADVENTIST AUTHORS

The Ellen G. White Writings. By Arthur L. White. Washington, D. C.: Review and Herald Publishing Association 1973. pp. 192. \$2.95 (paper).

John Foxe and the Elizabethan Church. By V. Norskov Olsen. Berkeley: University of California Press 1973. xii plus pp. 264. \$11.50.

Modern Messianic Movements as a Theological and Missionary Challenge. By Gottfried Oosterwal. Elkhart, Indiana: Institute of Mennonite Studies 1973. pp. 55. \$1.00 (paper).

The Remnant. By Gerhard F. Hasel. Berrien Springs, Michigan: Andrews University Press 1972. vi plus pp. 460. \$4.90 (paper).

What Ellen White Has Meant to Me. Edited by Herbert E. Douglas. Washington, D. C.: Review and Herald Publishing Association 1973. pp. 226. \$2.95 (paper).

NEW ADVENTIST JOURNALS

Adventist Heritage: A Magazine of Adventist History. Published in cooperation with Loma Linda University Division of Religion (A. Graham Maxwell, director). Editors: Gary G. Land (Andrews University), Ronald L. Numbers (Loma Linda University), Jonathan M. Butler (Union College).

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Origins, a Geoscience Research Institute publication to be issued periodically, is edited by Ariel A. Roth (Loma Linda University). The first number (January 1974) of 48 pages contained the following: Why a Publication on Origins? (Ariel A. Roth) ; Towards the Development of a General Theory of Creation (Berney R. Neufeld) ; Rationalism, Empiricism, and Christianity as Philosophical Systems for Arriving at Truth (Conrad D. Clausen) ; Fossil Tree Orientation in the Chinle Formation (Arthur V. Chadwick and Leonard R. Brand) ; Famous Fossils from a Mountaintop (Harold G. Coffin) ; and two book reviews. No subscription price is given, but requests may be sent to *Origins*, Geoscience Research Institute, Loma Linda University, Loma Linda, California 92354.

AGG, Die Adventgemeinde in Geschichte und Gegenwart, is published as a series of pastoral-theological contributions by the Adventistischer Wissenschaftlicher Arbeitskreis e. V. of Germany. This organization of German Adventist academicians has published three volumes under the editorship of L. E. Träder of Darmstadt. Volume 1 (114 pages) was devoted to Biblical exegesis and Environmental Pollution ; volume 2 (129 pages) to Faith and Medicine ; and volume 3 (64 pages) to The Time of Judgment or the Judgment of Time?, a round-table discussion of the book *Zeit des Gerichts oder Gericht der Zeit* by Christian D. Schmidt, a former Seventh-day Adventist. We congratulate our fellow Adventist scientists and scholars in Germany for this fine series. No subscription price is given. The address is Adventistischer Wissenschaftlicher Arbeitskreis e. V., 61 Darmstadt-Eberstadt, Heinrich Delp-Strasse 211, Germany.

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