

'intermediate associations' in a flourishing civil society. The last chapter is effectively a critique of Ernest Gellner's *Conditions of Liberty: Civil Society and its Rivals* (1994).

What was missing was a final chapter pulling Section Two together and charting the way forward, at least in outline. Perhaps one should not be too negative about the overall coherence of a collection of essays. Taken as individual pieces they are illuminating and enjoyable. Moreover, the book is beautifully produced. But for one minor flaw (the noticeably erratic setting of spaces after punctuation) it was aesthetically pleasing to read. One can only hope that the full constitutional implications of Hittinger's political theology will soon be stated more fully, and as powerfully and attractively.

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RELIGIOUS FREEDOM: HISTORY, CASES AND OTHER MATERIALS ON THE INTERACTION OF RELIGION AND GOVERNMENT, by JOHN T NOONAN Jnr and EDWARD McGLYNN GAFFNEY Jnr, New York, Foundation Press, 2001, xlv + 998 pp. (\$80) ISBN 1-56662-962-4

The area of study that United States constitutional lawyers call Church-State is rich and diverse and—in view of the relative paucity by comparison of the religious liberty jurisprudence of the European Convention on Human Rights—has some valuable lessons for United Kingdom lawyers. Noonan and Gaffney's book is the second edition of an established collection of materials for use in teaching religious liberty in American university law schools.

Part One of the book (the first one hundred and fifty pages or so) contains a wealth of historical material on law and religion from primary sources, which will be of general interest. The first five chapters gather materials from the biblical period, the Establishment of the church under Constantine and the Donatist controversy, the contest between church and state in twelfth century England, the mediaeval period, and the Reformation and Counter-reformation struggles over religious liberty (taking in, for example, Locke, Spinoza and Roger Williams). This is a real feast of historical material brought out by judicious selection of original documents and helpful explanatory comments.

Equally useful is Part Three, which occupies two-thirds of the 929 pages of main text. This contains extracts from the contemporary United States case law and scholarly critique across the range of Church-State issues. The range is as diverse as the imagination of US constitutional litigators. Familiar issues such as school prayer, conscientious objection, battles over evolution and creation, and abortion protests feature alongside less well-known legal controversies such as those over taxation or animal sacrifices.

Probably less useful for an overseas reader is Part Two, 'The American Experience', which brings historical writings from figures such as Madison and Jefferson, with extracts from church-state cases from 1790 to 1940. This collection is unlikely to have direct appeal to law teachers in Britain or Europe as a teaching aid, especially since five-sixths of the materials are exclusively American. Rather, its usefulness lies in bringing together in a convenient form a range of historical material on conflicts of conscience with the state and as a handy collection of primary sources for anyone researching the Free Exercise and Establishment clauses.

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REGULATING RELIGION: THE COURTS AND THE FREE EXERCISE CLAUSE by CATHERINE COOKSON, Oxford University Press, 2001, 304 pp. (Hardback £35.00) ISBN 0-19-512944-X

Religious liberty has long since outgrown its roots in seventeenth and eighteenth century battles over tolerating religious (generally, Christian, non-conformist) diversity. However, in its post-Enlightenment form the problem remains of where law should draw the boundary between the competing demands that religious believers encounter between acting in conformity to their beliefs and obeying laws framed by the state in general terms for the population at large. Historically, conflict raged over issues such as polygamy. Today it is more likely to be over the freedom to use prohibited drugs for religious purposes, the administering of parental discipline to children, or whether exemption should be granted to religious organisations from non-discrimination legislation. Nowhere have these issues been discussed with greater sophistication than in the jurisprudence and scholarly commentary of the 'free exercise' clause (the First Amendment to the United States Constitution: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof'). Catherine Cookson's study *Regulating Religion* is a fine and richly argued addition to this literature, which contains many lessons for readers outside the United States.

In view of the fact that several powerfully argued critiques of the free exercise clause have been produced by other writers in the last two decades (notably Michael McConnell, Steven D Smith, Kent Greenawalt and Douglas Laycock), what does this book add?

First, Cookson attempts (reasonably successfully in my view) to demonstrate the value of a different type of analysis—the process of casuistry. She quotes (at page 41) Johnson and Toulmin:

[casuistry is] the analysis of moral issues, using procedures of reasoning based on paradigms and analogies, leading to the formulation of expert opinion about the existence and stringency of particular moral obliga-