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Public Regulation of the Religious Use of Land: A Detailed and Critical Analysis of a Hundred Court Cases. By James E. Curry. Charlottesville, Va.: The Michie Company, 1964. Pp. 429. $12.50.

Probably the most fascinating areas of the law are those in which two public policies clash head-on. Mr. Curry's book deals with such an area. Since the adoption of the first zoning ordinance in New York City in 1917, and more particularly since the United States Supreme Court's decision in *Euclid v. Ambler Realty Co.*,[1] there has been a strong public policy in support of the cities' efforts to plan for and regulate the pattern of their development. On the other hand, there has been an even stronger public policy, as exemplified in the "freedom of religion" provisions of state and federal constitutions and exemption from taxation of religious organizations, in favor of protecting churches from interference by the various levels of government. These two policies clash when a local government's zoning ordinance attempts to regulate churches and their related facilities. Mr. Curry describes the consequences.

The book's title is perhaps a bit too broad to describe its subject-matter accurately. Mr. Curry is concerned with zoning regulations only. He does not discuss, except in passing, other police-power regulations which might affect churches, such as the building code; nor does he go into the few cases which deal with particular churches under the law of nuisance. And finally, as the sub-title indicates, he is concerned solely with case law and makes no effort to gather and analyze the statutory and ordinance materials dealing with the subject.

It would also have been helpful, perhaps, if Mr. Curry had more explicitly pointed out early in the book that the zoning regulations under discussion fall into a series of different measures. For example, a zoning ordinance might (a) exclude churches completely from a community, (b) exclude churches from particular districts, (c) permit churches in particular districts only under special permits, (d) require churches to have lots either larger

[1] 272 U.S. 365 (1926).

than or equal in size to those of other types of permitted buildings, (e) require churches to have front, side, or rear yards either larger than or equal in size to those of other types of permitted buildings, (f) require churches to provide off-street parking space on the lot, (g) require churches to be located adjacent to particular classes of thoroughfares, (h) regulate the maximum heights of churches, (i) regulate the maximum bulk of churches, (j) regulate the maximum permitted occupancy of churches, and so forth. In addition, as Mr. Curry does point out, there are many church-related facilities such as parsonages, parochial schools, convents, etc., which may be subject to the same range of regulation.

The importance of such classification lies in the fact that the layman approaching the subject for the first time is apt to have a confused image of what the ordinance actually has to say, and while Mr. Curry impliedly recognizes this range of regulations, the wealth of detail in his analyses tends on occasion to obscure the precise nature of the regulation involved.

Within these limitations, Mr. Curry has written what must for the time be regarded as the definitive work on his subject. Apart from numbers of law review and magazine articles, there has been no effort to analyze this body of law on a systematic basis. Not only has Mr. Curry made such an analysis with an attention to factual and legal detail lacking from many such articles,[2] but he has been exhaustive in his coverage—including what appears to be 100 per cent of the cases decided prior to 1963.

After warming up with an introduction to the historical and constitutional background against which these cases arise, Mr. Curry begins his argument by demolishing the "absolutist" dogma (set forth in numerous articles and some reported opinions) that churches are more-or-less immune from any regulation under the police power. To the extent that there is any such case-law doctrine on a nationwide basis, he indicates that it is limited to a prohibition against a zoning ordinance's attempt to exclude churches from an entire community.

Having thus laid the ground work for his argument that these cases must be approached on an individual, balancing-of-interests basis, he then isolates the various arguments which may be made

[2] One suspects that the courts themselves did not in most cases analyze the situations before them with the care that he has, which may detract somewhat from the validity of his conclusions.

in favor of or in opposition to particular regulations. Of the arguments in favor of regulation, he finds that the needs of traffic safety (as reflected in off-street parking requirements, location at an appropriate point on the street system, etc.) have been most convincing to the courts. Next, he finds that the courts have generally upheld minimum lot size and yard requirements, maximum height limitations, and similar controls, as applied to churches. Among the other justifications, which have received varying degrees of judicial approval, he includes protection of neighboring properties from annoyance; protection of property values; fiscal considerations such as expenses to the community from providing streets, fire protection, and police services, and the concomitant transfer of property from taxable to tax exempt status; and the general appearance of the resulting community.

Examining the problem in terms of possible defenses against regulation, Mr. Curry finds that most of the decided cases have been concerned with possible violation of the due process clause of the fourteenth amendment of the federal constitution and of similar state constitutional provisions. Strangely enough, there has been relatively little reference to the "freedom of religion" guaranty of the first amendment, which he believes is deserving of more attention. He also suggests more usage of the equal protection clause of the fourteenth amendment in cases where there appears to be improper discrimination either against or in favor of churches and their related facilities.

In addition to dealing with the constitutional issues which may be raised, Mr. Curry examines a number of subsidiary issues, perhaps the most important of which is how broadly to define churches for purposes of zoning regulations—*i.e.*, whether church schools, recreation facilities, housing facilities, athletic fields, etc., are entitled to the same protection as the churches themselves.

The usefulness of the book is enhanced by several unusual features. One is a chronological listing, with brief summarizations, of all church zoning cases since the first in 1922. A second is a state-by-state listing of the cases, with some attempt to describe the general attitude of the courts in particular states where this is possible. A third is a very extensively cross-indexed set of references, including a chronological listing; alphabetical listings of books, periodicals, articles; alphabetical listing of authors; listing

of case references by religious denominations, with sub-listings of the towns involved; listing of case references by the municipalities involved; an alphabetical listing of cases; and finally an extensive subject index. Surely this must be one of the most thoroughly indexed books ever written.

In conclusion, this reviewer must add a personal feeling of regret that what might have been an extraordinarily fine piece of work has somehow been flawed in its presentation. In some measure, this reaction may have been induced by the fact that the author makes much of the fact that he is writing for laymen as well as lawyers. Carrying out this approach, he rarely cites a case in the text in the traditional legal manner; instead, he refers to "The Youngstown, Ohio, Unitarian church case" and allows the reader to track down the citation in the list of references at the back of the book. Even there, the normal legal form of citation is not followed, although all the information is there.

But what is fundamentally of more importance is a hortatory style throughout. No matter which side the author is presenting on a particular issue (and he does balance his arguments fairly evenly), he has a tendency to get carried away with his argument. At the same time there is an unfortunate undercurrent that suggests that only the author, of all those who have written in the field (including judges) truly understands the subtleties of the issues presented.

If these defects in style can be overlooked, the reader will find this the best source book available in this area of the law.

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The Constitution of Malaysia. By Harry E. Groves. Singapore: Malaysia Publications Ltd., 1964. Pp. 239.

Perhaps never before has world interest been so acutely concentrated upon Malaysia as in the opening weeks of 1965. As Sukarno-dominated Indonesia withdraws from the United Nations and accelerates the tempo of its aggressions it appears that the viability of 1963-born Malaysia may be severely tested. While re-

cent events in Malaysia and at its borders are perhaps not so explosive as in the Congo, nor so desperate as in South Viet Nam, they give cause for genuine alarm. Thinking people around the world are seeking information of Malaysian governmental structure and political stability.

Most opportunely, Harry E. Groves, a competent American legal scholar, who until recently was Dean of the Faculty of Law of the University of Singapore, has authored *The Constitution of Malaysia.* Illustrative of the "small-world" adage, it is interesting to observe that Mr. Groves is a member of the North Carolina Bar and has both taught and practiced law in North Carolina. This new volume, in workman-like fashion, sets forth both the raw material and the finished product of Malaysian constitutional law.

Fourteen states compose the Malaysian Federation which is headed by a monarch elected for a five year term. Eleven of these states, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perlis, Perak, Selangor, and Trengganu formed the Federation of Malaya in 1957. These constitute a contiguous land mass except for the island of Penang. To these in 1963 were added the island of Singapore, connected to the mainland by a causeway, and two states across the South China Sea in North Borneo, Sabah and Sarawak. The capital of the former is 900 miles from Singapore, and that of the latter, half that distance.

In aggregate the eleven Malay states cover 51,000 square miles, an area slightly larger than that of North Carolina. Sarawak's 48,000 square miles is a trifle smaller than North Carolina. Sabah's 29,000 square miles and Singapore's 210 give all of Malaysia an area of about 129,000 square miles. Population figures in millions are: the Malay states, 7.6; Singapore, 1.8; Sarawak, .8; and Sabah, .5 for an aggregate of 10.7.

An incredible diversity of races, cultures, languages, and religion prevails, with none holding a majority. Forty-two per cent are Chinese with a heavy concentration in Singapore and to a lesser extent in Sarawak. Some 38 per cent are Malays who comprise half of the population in the Malay states group. About 10 per cent are Indians and Pakistanis. Other important racial groups are the Sea Dayaks, Land Dayaks and Melanus in Sarawak; the Muruts and Bajaus in Sabah; and the Europeans and Eurasians in all the states.

Malay is the national language, but English is the official language of both Houses of Parliament, the State Legislative Assemblies, and all of the Courts until 1967, and thereafter until Parliament otherwise provides. English will be used officially in Sarawak and Sabah until 1973, and thereafter until terminated with the approval of their respective State Legislative Assemblies. Native languages are used in native courts in Sarawak and Sabah and in the religious courts in Malaya. The Legislature of Singapore has exclusive control over the length of time English, Mandarin, and Tamil shall continue to be its three official languages and English the authoritative text of its legislative bills.

Islam is the state religion and it is a criminal offense to seek to convert members of the Islamic faith to other religions. Even so, the Muslim adherents of Islam, though more numerous than any other religious group, comprise less than a majority of the population. Practically all Malays, most Pakistanis, and some of the native peoples of Sarawak and Sabah are Muslims. The Muslim religion forbids marriage with non-Muslims. Among the other faiths intermarriage, while encouraged and increasing, is not yet common. Within these limits there is religious freedom, and Christianity, Buddhism, Taoism, Confuscianism, Hinduism, Judaism, animism, and other religions are practiced throughout Malaysia.

Economically, Malaysia fits into the current concept of an "underdeveloped" country. Rubber and tin account for 80 per cent of the exports from the Malay states. The principal export from Sabah is timber. Sixty per cent of Sabah's population is engaged in small homestead farming. Sarawak, largely undeveloped, exports timber, rubber, and pepper, and lacks industries and entrepot trade. Singapore, reputed to be the second largest port in the British commonwealth, is a trade center dependent upon commerce but now seeking to industrialize. The National Finance Council and the National Land Council concern themselves with regional development plans.

Historically the native Malays lived in largely autonomous Sultanates. The Portuguese subjugated Malacca in 1511. Commencing in 1874, the British negotiated treaties with what are now the Malay states, except for Penang and Malacca. Until 1909 Kedah, Perlis, Kelantan, and Trengganu acknowledged suzerainty of the King of Siam, which Britain then replaced by treaty.

The Malays in general are small farmers, fishermen, policemen, soldiers, and small rubber cultivators. Those with more education tend to enter the civil service rather than commerce. Since the fifteenth century, when the Sultan of Malacca paid tribute to the Emperor of China, the Chinese have been numerous in Malaya. The British brought in many Chinese to labor in the tin mines, and they continue to pursue this occupation. Since the Communist conquest of the Chinese mainland, the Chinese population of Malaya has become much less transient than formerly. As might be expected they have expanded into industry and finance as well as being the metropolitan shopkeepers and tradesmen. They continue to evince a great interest in the preservation of Chinese language and culture, but in the matter of religion they are divided into Buddhists, Confucianists, Taoists, and Christians.

The British continue to have an importance far greater than their number. They are dominant in commerce and industry. Though now declining in number, the British have filled the higher federal civil service and judicial positions and thus significantly contributed to a smooth transition from colonial to independent control. Britain assumed authority over Sarawak in 1839 and Labuan in 1847. The British North Borneo Company was chartered in 1881, and merchants, by means of the company, were permitted to administer the territory. The British established a Protectorate of North Borneo, Sarawak, and Brunei in 1888. In 1946, North Borneo (including Labuan) and Sarawak became British Crown Colonies.

The preceding compression from Mr. Groves's terse and illuminating introductory chapter gives the feel of the diverse stuff of which Malaysia is made. There is considerable truth to Sukarno's jaundiced cry that Malaysia was made in London. What Sukarno refuses to face is the fact that the constitution and government of Malaysia were tailored to the multiplicity of Malaysia's unique needs and that they constitute a going concern, a functioning indigenous political institution, for the whole Malaysian region.

The Malaysian constitution is not only a written one, it is written at great length and with specificity. It derives immediately from the 1957 constitution of the Federation of Malaya, as amended. That document closely followed the constitution of India but was also influenced by the United States and Irish constitutions and by

British constitutional processes. The whole has been modified and leavened in response to indigenous factors. Its basic concept is the "formation of a democracy, of a representative government responsible to an electorate."[1] The distinctive feature of an elected monarch was taken from the practice of the indigenous democratic matriarchy of Negri Sembilan which prevailed as early as the sixteenth century.

The Chief-of-State, the Yang di-Pertuan Agong, is elected monarch for a five-year term from among the State Sovereigns on a rotating basis. The electors are the members of the Conference of Rulers which consists of the royal rulers in nine states and the appointed heads in the other five states. State royal rulers are essentially hereditary. Seniority of royal tenure prevails in forming the list of nine state rulers from which the Yang and his Deputy, the Timbalan Yang, are chosen. Succession is not automatic. Minors are disqualified. A state ruler when elected Yang must cease to be ruler of his own state, but may refuse to become Yang. Finally, if five members of the Conference of Rulers find the senior on the list unsuited for any reason he is disqualified. This has already occurred in one instance. The Yang may not hold any other office of profit nor actively engage in commercial enterprise.

The Yang performs ceremonial functions and gives a strong cohesive force to the highly diverse federal structure. The constitution prescribes that the Yang shall appoint a Prime Minister likely to command the confidence of the majority of the members of the lower house. Normally this is the leader of the majority party, but if the majority party is split or no party has a majority, the appointment by the Yang could be of major political significance. The Yang, upon the recommendation of the Prime Minister, appoints the twenty man cabinet, and upon ministerial advice, the twenty-two members of the Senate from those who have rendered outstanding public service or those distinguished in a profession, commerce, industry, agriculture, or in cultural, social, or racial minority service. The number of ministers is left flexible, and ministers without portfolio may be appointed. Judicial appointments are made by the Yang after consultation with the Conference of Rulers, upon the recommendation of the Prime Minister who first consults with the Judiciary. The Yang also appoints the

[1] GROVES, THE CONSTITUTION OF MALAYSIA 32 (1964).

Attorney General, Auditor General, and the Supreme Commander of the Armed Forces, all upon the advice of the Prime Minister.

The court system, except for Muslim religious courts, is unitary. There are commissioners and trial courts in each state, three High Courts (one for the Malaya States, one for the Borneo States, and one for the State of Singapore), and a Federal Court, with its principal seat at Kula Lumpur, the capital. The Federal Court has exclusive jurisdiction to determine appeals from decisions of a High Court, to determine challenges to the competency of a legislature to enact a particular law, to determine controversies between states or the Federation and any state, to decide constitutional questions which have arisen in proceedings in other courts, and to render advisory opinions on actual or potential constitutional issues referred to it by the Yang. Appeals may be taken from the Federal Court to the Judicial Committee of the Privy Council, and this frequently occurs.

The Malaysian Parliament is similar to that of India. It consists of the Yang, the Senate, and the House of Representatives. The normal term for each Parliament is five years, but it may be dissolved at any time by the Yang upon the request of the Prime Minister. The Federal House and the unicameral state legislative assemblies are popularly elected bodies. State legislatures may be dissolved independently of Parliament, but in practice all are dissolved when Parliament is dissolved so that national and state elections may be held simultaneously. There are numerous political parties. The Alliance parties of Malaya, Sarawak, and Sabah, which unite to form the government, are each in turn a coalition of several parties.

A reviewer of this informative work is tempted to try to compress all of its interesting material into the review. This is impossible and the reader is urged to pursue Mr. Groves's timely book in the original. He will find separate chapters devoted to "The Yang Di-Pertuan Agong"; "The Conference of Rulers"; "Parliament"; "Elections"; "The Cabinet"; "The Judiciary"; "Other Constitutional Agencies"; "Federalism"; "Citizenship," including State, Federal, and Commonwealth citizenship; "Fundamental Liberties"; and "Special Powers Against Subversion and Emergency Powers." These, thoroughly but concisely, set forth the elaborate but practical

accommodations prescribed to give federal cohesion while preserving great local diversity and autonomy.

After one has read Mr. Groves's excellent presentation, he is likely to conclude that Malaysia is much better fortified constitutionally, and better supported by democratic self-government, to resist foreign infiltration and aggression than are many of the recently established nations.

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