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Book Review

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Catholic teleologists. They are more comfortable viewing a principle of justice in conflict with the notion of promoting the good. Cahill, however, makes clear (as others in that tradition have done) that the common good is not a quasi-utilitarian principle striving to maximize net utility. It is something much richer. It accommodates concern for justice and the priority for the poor. Whether it would be better to hold out a separate, nonteleological principle like justice is a matter for further debate.

ROBERT M. VEATCH, *Georgetown University.*

HITCHCOCK, JAMES. *The Odyssey of the Religion Clauses.* Vol. 1 of *The Supreme Court and Religion in American Life.* Princeton, NJ: Princeton University Press, 2004. 232 pp. $29.95 (cloth).

HITCHCOCK, JAMES. *From "Higher Law" to "Sectarian Scruples."* Vol. 2 of *The Supreme Court and Religion in American Life.* Princeton, NJ: Princeton University Press, 2004. 272 pp. $35.00 (cloth).

In volume 1, James Hitchcock provides a comprehensive historical treatment of all the U.S. Supreme Court cases involving the religion clauses. He also discusses Supreme Court cases not technically dealing with the religion clauses that substantially impact religious liberty, including cases involving church property, religiously affiliated colleges, and internal church disputes. Rather than providing a technical legal treatment, he focuses mostly on a historical narrative of the cases. He seems to want the Supreme Court case narratives and the justices' opinions to speak for themselves. The first seven chapters begin and end with very sparse analysis of how the cases affect legal doctrine, conceptions of religious liberty, or the larger society. The conclusion, however, provides some analysis of these issues and identifies how the Court's interpretation of the religion clauses has changed. Consequently, except for Hitchcock's discussion of Supreme Court cases involving church property, religiously affiliated colleges, and internal church disputes, volume 1 will be mostly beneficial for those scholars not familiar with the Supreme Court's religion clause cases.

Volume 2 focuses on the broader "context of the continuing dialogue about the role of religion in public life" and its relationship to the Court's interpretation of the religion clauses (1). The first part of Hitchcock's argument focuses on challenging the predominantly separationist reading of the framers' original intent that began in 1947 with *Everson v. Bd. of Education*, which was the first Supreme Court case applying the establishment clause to a state law. Hitchcock argues that "the 1947 separationist claim concerning original intent was seriously flawed in that it assumed that the opinions of Jefferson and Madison alone determined that intent, prescinded from the views of virtually all other Framers, exaggerated Jefferson and Madison's own degree of separationism, and ignored the realities of the religious establishment as they existed in America from the beginning" (110). Moreover, Hitchcock maintains that the separationist reading of the religion clauses constitutes "the abandonment in law of the moral authority of Christianity" (136).

Alternatively, Hitchcock claims that in "most of the history of the country until after World War II [i.e., after *Everson*] . . . the importance of religion in public life was largely taken for granted" (133). He argues that this is consis-

tent with an "alternative account" of Locke that was adopted by the founders who "were able to construct a Christian model of a republic" (133). This Christian republic entailed "a secular government but a Christian society" where "religion [was] regarded as essential for inculcating in citizens those virtues that alone make self-government possible" (133). Thus, he concludes that through most of its history "the Court merely assumed that religion [i.e., Christianity] was to be encouraged as a positive social benefit," because "the moral basis for American democracy was civil religion combined with natural law" (133, 135).

While Hitchcock astutely identifies an alternative reading of the Court's pre-*Everson* views on the role of religion in society, his critique of separationist readings of the religion clauses is less persuasive. Hitchcock's argument seems to confuse two overlapping but distinct debates—the debate about the proper interpretation of the religion clauses and the debate about the proper role of religion in public life. For example, on page 128, he begins a paragraph by criticizing "the incoherence of the modern jurisprudence of the Religion Clauses" because it treats religion as "irrational." To support this observation, the next sentence observes that "some separationists insist that believers refrain from offering religious reasons for their positions and stipulate that believers can legitimately participate in public discussion only to the degree that they propose 'accessible' secular (or 'public') reasons" (128). In the first sentence, he is referring to a separationist interpretation of the religion clauses. Conversely, in the second sentence, he is referring to Robert Audi's philosophical arguments about the ethical and political grounds for the separation of church and state in a liberal constitutional democracy. Certainly these two debates often influence one another and sometimes overlap, but Hitchcock often treats them as one debate. This confusion is further magnified by his frequent generic references to "separationists" and "liberalism" without specifying the details of the particular understanding of separation or liberalism that he is referring to and by lumping disparate forms of separation and liberalism offered by numerous scholars together as a single entity.

Despite this confusion, Hitchcock clearly argues that the contemporary separationist views of the religion clauses and the secular understanding of the state offered by liberalism are inconsistent with the Framer's original understanding of the religion clauses and their views about the role of religion in public life. Hitchcock's argument suggests that there are only two choices: a Christian republic or a republic based on "comprehensive liberalism." For example, by keeping religion out of public schools, he maintains that "religion is irrelevant to contemporary life" (153). "Liberalism has moved toward becoming a secular orthodoxy that places believers in the situation where a minimal understanding or religious liberty excludes them from full participation in public life" (159). "Thus not only are churches to be made to conform to law and public policy, liberal values are required to be internalized by those who wish to have a legitimate place in society" (148).

Given his rejection of a republic based on comprehensive liberalism, Hitchcock suggests that the original understanding of our country as a Christian republic should be normative. Hitchcock's argument, however, has two problems. First, it fails to show that a Christian republic is the only alternative to comprehensive liberalism. His argument appears to equate the process of secularization with the ideology of secularism. In Jeffrey Stout's new book *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2004), Stout

argues that the fact that most ethical discussion in the public square is secularized ("not 'framed by a theological perspective' is taken for granted by all those who participate in it") "is not a reflection of commitment to secularism," that is, an ideology that competes with religious traditions for ultimate commitment (93). In other words, a separationist interpretation of the religion clauses does not necessarily presuppose an ideology of secularism (e.g., comprehensive liberalism). Stout emphasizes that a secularized modern democratic discourse does not "involve endorsement of the 'secular state' as a realm entirely insulated from the effects of religions convictions, let alone removed from God's ultimate authority. It is simply a matter of what can be presupposed in a discussion with other people who happen to have different theological commitments and interpretive dispositions" (Stout, 97). Consequently, Hitchcock's critique of comprehensive liberalism as a "secular orthodoxy" does not rule out the possibility of a republic with a secularized public square that recognizes and encourages citizens holding a plurality of religious commitments and that is consistent with a separationist interpretation (or some other interpretation) of the religion clauses.

In addition, Hitchcock's argument fails to present persuasive reasons why we should revert back to the framers' interpretation of the religion clauses and their Christian understanding of the republic. Even if we grant his historical argument, Hitchcock fails to provide an argument for why the "original intent" of the framers should be the controlling interpretative approach. The Constitution does not include interpretative rules requiring that it be interpreted according to the text and the framers' intent. Interpreters must choose whether to rely on the framer's intent, the text of the Constitution, Supreme Court precedent, prudential consequences, ethical concerns, natural law principles, or some combination of these factors. In fact, his emphasis on the framers' intent suggests a formalistic legal positivism (the meaning of the religion clauses is a determinate fact) that would substantially exclude the natural law principles he claims are part of the moral basis of American democracy.

Despite these concerns, both volumes make an important contribution to the historical understanding of religious liberty in America. They reveal an alternative reading of the framers' understanding of the religion clauses and of the role of religion in public life. Hitchcock also persuasively establishes that legal issues beyond the religion clauses (e.g., church property, religiously affiliated institutions, and internal church disputes) are central to understanding religious liberty in America.

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HEINZE, ANDREW R. *Jews and the American Soul: Human Nature in the Twentieth Century*. Princeton, NJ: Princeton University Press, 2004. xvi+438 pp. $29.95 (cloth).

In *Jews and the American Soul,* Andrew Heinze considers the influence of Jewish figures, both intellectual and popular, on the formation of American attitudes toward the psyche. Assuming a historical perspective reaching from the late nineteenth century to the turn of the millennium, he traces the Jewish contributions to the concept of the psyche and popular understandings of psychoanalysis.

By positing a coherent set of "Jewish values" held by both secular and reli-