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Book Review. The Supreme Court and Religion in American Life

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Der Staat und die katholische Kirche in Litauen seit dem Ende des Zweiten Weltkrieges. By Martin Jungraithmayr. [Zeitgeschichtliche Forschungen, Band 16.] (Berlin: Duncker und Humblot. 2002. Pp. 423. €76 paperback.)

This law dissertation at the University of Marburg deals with the relations between the Catholic Church and the State since the Soviet occupation of 1940. After a detailed introduction on church and state at the time of Lithuania's independence, the destruction of the church as an institution and the physical liquidation of the clergy through Stalin's religious policy are set forth in detail. The juridical aspects and the hostile Soviet church law take up much space.

From the Soviet point of view, it was a question of the fastest possible and unlimited extension of the atheistic policy of destruction to the states and territories occupied since 1939. For this reason the ideological basis, the principles of the Soviet religious policy in general, the laws and decrees, and their translation into reality are treated in detail. Unfortunately, the work of bringing out adequately the specific situation in Lithuania in comparison with other regions of the Soviet Union is missing. The reader gains the impression that the persecution and annihilation of the Church were exceptionally extensive in Lithuania; actually in few regions of the Soviet Union could the Church preserve as much strength and spirit of resistance as in Lithuania. The reasons for that await a detailed investigation.

From the time of "perestroika" the episcopate and clergy stood without reservation behind the independence movement, which had been prepared by a widespread movement of dissidents within the Church. The last part deals with the legal restoration of church-state relations, property rights, and educational policy since 1991, which tore open painful wounds in society. The Lithuanian religious law of 1995 could not manage to come to treat all religious denominations as equal before the law and was to make the further penetration of foreign religious communities more difficult.

This book is a compilation of the research and journalism in the German language without sufficiently evaluating it critically; Russian, English, and Lithuanian sources and accounts are not taken into consideration. The possibilities for a comparative examination are hardly exploited.

University of Cologne

GERHARD SIMON

American

The Supreme Court and Religion in American Life. Vol. I: *The Odyssey of the Religion Clauses*; Vol. II: *From "Higher Law" to "Sectarian Scruples."* By James Hitchcock. (Princeton: Princeton University Press. 2004. Pp. x, 218; viii, 261. \$32.95; \$35.00.)

In this two-volume work, Professor James Hitchcock first provides a comprehensive survey of the Supreme Court's decisions concerning religion. He

then evaluates and critiques the Court's decisionmaking, especially in the contemporary period.

In Volume I, Professor Hitchcock offers a historical survey of the Supreme Court's religion cases, from the Court's earliest decisions to those of the Rehnquist Court. He attempts to describe every case, whether prominent or obscure, offering what he calls "the most comprehensive survey of the religion cases that has yet been published" (p. 1). Hitchcock discusses cases arising not only under the Religion Clauses of the First Amendment, i.e., the Free Exercise and Establishment Clauses, but also under the Free Speech Clause, other constitutional provisions, common-law doctrines, and statutes. All in all, he describes nearly 300 cases, drawn from a wide variety of contexts. In so doing, he highlights many decisions that are frequently overlooked, including decisions not relying on the Religion Clauses. For example, the Dartmouth College case of 1819 rested on the Contract Clause, but Hitchcock maintains that it served to protect the liberty of organized religious groups and, in particular, to promote the proliferation of religiously affiliated colleges.

This volume is a valuable historical resource, albeit one that is not without shortcomings. To the legally trained eye, the book's case discussions are generally accurate, but not precisely so in every particular. (For example, some cases decided under the Free Speech Clause are described at times as cases grounded on the Free Exercise Clause.) More generally, the principal strength of this volume—its comprehensive coverage—may also be its principal weakness. Hitchcock provides a helpful synthesis and historical analysis in his conclusion, but the volume lacks an introductory summary, and its chapters are rather loosely organized, in part by topic and in part by historical period, creating something of a potpourri at times. More to the point, the volume may pursue comprehensiveness to a fault. Many of the cases discussed are interesting and significant, but many of the others are obscure for good reason. As a result, some of the discussion is tedious.

Volume II, standing alone, is an extremely impressive work. With clear thematic organization and rich documentation, Hitchcock discusses and analyzes the Supreme Court's understanding of the Religion Clauses and of religion itself. He explains that throughout most of American history, the Court, like society generally, accepted a broad public role for religion, but that the Court's approach shifted dramatically in the 1940's, with the Court expanding certain aspects of private religious liberty but substantially contracting the permissible role of public religion. Hitchcock documents the personal religious histories of the justices, from John Marshall to the Rehnquist Court, and he suggests that the separationist justices of the 1940's may have been influenced by their personal estrangement from religion, leading them to support a jurisprudence resting in part on the view that religion is radically subjective, irrational, divisive, and potentially dangerous. He systematically criticizes these assumptions about religion, as well as the Court's asserted reliance on the original intent of the framers, including what he regards as an undue emphasis on the views of

Madison and Jefferson. In his conclusion, Hitchcock extends his focus beyond the Supreme Court, offering a provocative and far-reaching critique of various strands of contemporary liberal theory, including especially those strands that promote a liberalism that is “comprehensive” as opposed to merely “political.” This is an important work that deserves close attention.

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DANIEL O. CONKLE

Sacred Song in America: Religion, Music, and Public Culture. By Stephen A. Marini. [Public Expressions of Religion in America.] (Urbana and Chicago: University of Illinois Press. 2003. Pp. xiv, 400. \$34.95.)

Stephen Marini’s latest book examines sacred song’s function in the religiously pluralistic society of 1990’s America. Two Catholic groups are included: Chicanos of the Hispanic Southwest and the Catholic charismatic movement. The book provides a delightful travelogue through a variety of musico-religious cultures, and with its indices serves as something of a field guide for identifying and understanding varieties of sacred song.

Marini, a professor of Christian Studies at Wellesley College, acknowledges both the immensity of the subject and his newcomer status in many of the interdisciplinary fields covered. His stated purpose is to formulate a definition of sacred song (he provides a literature survey) and test it with field research. The bulk of the book is this field research, and it is in these “thick descriptions” (p. 11) of detail that he shines. He casts his net wide to catch public expressions of sacred song: we follow him as he attends concerts and musicals, goes to church, sits in on rehearsals, and watches broadcasts on television. Histories, interviews, and analyses follow.

The religions included as case studies reflect the “particular attention to diversity” (p. ix) requested by the IUPUI Center for the Study of Religion and American Culture that commissioned the book. They range from “old religions,” such as Native American, Chicano Catholic, Sacred Harp, Black Church, and Jewish, to newer faiths, including Mormon, Southern Baptist, and New Age.

Marini hunts down song “function” in the public sphere by exploring sacred song available not only to the “worshipping public” but to the non-preselected “general public” (p. 9). For this reason, and perhaps diversity, the primary worship music of a tradition is often bypassed for a body of song less linked to ritual. Particularly interesting was his explanation of why Sacred Harp sings and klezmer music concerts, far removed from their original context, appeal to non-religious intellectuals. He posits that this “dislocated sacrality” (p. 90) allows post-moderns to experience “intense personal engagement in a mythic past” (p. 323) without commitment. Sacred song is both the link and the buffer.

His use of different religion theories to analyze each song type is explained as a critique of existing inadequate theories, but this methodology comes across