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## Book Review of Religion and the Public Order, Number Five, An Annual Review of Church and State, and of Religion, Law, and Society

William A. Spurrier

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## BOOK REVIEWS

RELIGION AND THE PUBLIC ORDER, NUMBER FIVE, AN ANNUAL REVIEW OF CHURCH AND STATE, AND OF RELIGION, LAW, AND SOCIETY: EDITED BY DONALD A. GIANNELLA. Ithaca, New York: Cornell University Press, 1969.

This volume is a collection of articles, essays, speeches, etc., and like all such books it suffers and enjoys certain vices and virtues. Some chapters are better than others, the relation between successive articles is not always clear, and other essays are so good one sometimes wishes the writer would continue for the rest of the book!

The reviewer's favorite contributor, Martin Marty, is the author of the opening chapter entitled: *Secularization in the American Public Order*. He offers a keen and provocative analysis of the familiar generalization about the rise of secularism as the chief "note" of our cultural age. With a light touch and a sharp scalpel he dissects both the secularist claim that we are now in a post-religion or post-Christian era, and also dismantles the religionist claim that everything is really basically religious except for the materialism of the crass secularists. Marty's appeal to a more empirical analysis asserts that "the real story" is that our present culture contains a solid mix of religion and secularity, that it is an ambiguous mix, not a dualistic contest, and that any loud claims of victory or defeat by everybody are unwarranted.

For those who would like to pursue this approach, Professor Marty does offer some footnote sources of further reading, but I would hope he himself would expand his thesis, or at the least, be invited to open this volume every year.

Chapter two is a moving, appreciative, and descriptive portrayal of the late Mark DeWolfe Howe by Professor Arthur Sutherland of Harvard Law School. By the skillful use of several examples, quotes, and opinions, Howe is seen as a rare combination of a Church-State-Lawyer-Historian of great care, discernment, and sound historical sense.

Professor Robert Casad offers a chapter on *Compulsory Education and Individual Rights*. He presents a series of cases derived mostly from small religious sects whose several specific practices or beliefs clash with public educational law. The chief example evaluated is, of course, the Amish order. Professor Casad concludes that a Kansas court

decision imposing a requirement on secondary education "was weak" (p. 86). But his evidence suggests stronger words than "weak," especially when he quotes the author of the mandatory bill who testified that he was convinced the measure "is not against their religion, it is against only their customs and perhaps their principles." It would be an interesting discussion to learn what a religion without principles and customs might be like.

The fourth chapter entitled *Values and the The Constitution* deals with the basic and perennial problem of religion and voluntarism. Fr. Bernard Coughlin, Dean of the School of Social Service, St. Louis University, is perhaps best summarized in his own words:

It is enigmatic to say that voluntarism is important to the national culture, and then by neglect or policy to squeeze into insignificance the role of voluntary health, education, and welfare programs. And it is enigmatic to say that religious values are important to the national culture, and then by neglect or legislation to prejudice the potential for church-related programs in these fields. (p. 102)

To use the tremendous tax power of the state for large government programs of health, education, and welfare, while denying similar assistance to voluntary programs, tends to pressure voluntary institutions out of business. And this has wide cultural reverberations; it not only infringes on individual rights to free exercise; it contributes to the corrosion of a culture. (p. 113)

*Civil Disobedience and the Majority of One* is an attempt by Professor William Marnell of Boston State to cut through the popular cliché "civil disobedience," and show that most people who use and claim its mantle do so improperly and indeed betrayingly. Much of the contemporary protests, sit-ins, violence and disruptions are even contrary and inimical to authentic *civil* disobedience and should be exposed for what they are, e.g., basically anti-law and anti-democratic tactics. Marnell pleads for more trust in the law, courts and the democratic process in spite of their sometime injustices, slowness and caution. He seems to present Martin Luther King as one of the few social protesters who really understood and practiced what Marnell wants. He might have received some argument from Martin Luther King in his last months before his assassination.

*The Military Chaplaincy* is evaluated by Fr. Dexter Hanley of Georgetown University, as to whether it contravenes the Constitution.

As suspected, he concludes with most other authorities that it does not. Perhaps the best and most succinct argument in defense of this position is a quote from Justice Brennan:

“[H]ostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion.” (p. 152)

By contrast, the least persuasive argument in defense of required common Sunday School materials for all Chaplains is that this was the most efficient way to provide them and also contributed to uniformity. The latter word, for some people, is a vice not a virtue.

But the really basic and most controversial issue is at the end of the chapter where Fr. Hanley raises the problem of dissent and criticism from within the Service. His answer will please the Pentagon. On basic domestic and foreign policy the Churchman who disagrees must “either resign from the Chaplaincy and speak out, or remain in the Service to minister and remain silent” (p. 175).

The last quarter of the book is devoted to a specific survey of *Recent Developments*. It begins with the honest, blunt, and interest-dulling statement, “in the relevant literature of the period surveyed nothing of striking novelty or force appeared” (p. 179). This is also followed by a signal criticism, theologians and churchmen please note, that “Book length treatment of the relationship between religion and our domestic and international problems is not to be found in the publisher’s lists. This itself is perhaps the most significant feature of the year’s literature.” And it won’t do to say that the publishers turned down some good books because “they won’t sell.” The truth is zero.

Anyway, for the interested scholar, the recent books are listed and commented upon in the various areas of: Religious Freedom, Law and Morality, Constitutional Law, and History.

The Editor, Professor Giannella of Villanova Law School concludes the volume with a succinct summary of the *Year in Review, July, 1966-September, 1967*. He offers a wide variety of specific cases, important decisions, new laws and rendered opinions on such issues as: religious liberty, oaths, Sunday closing laws, tax-exemption, Bible reading, teaching of religion, inter- and intra-church conflicts, religion in public education, abortions and several other problems.

Finally, this section does provide a handy and well-organized ref-

erence summary for the information seeker who wants to know what happened last year.

*Concluding Critique.* I believe this volume is well worth the publishing and the reading. Both the generalist in this general area and the specialist within some field inside will find valuable information, critical evaluation, and some further resources listed. There really is "something for everybody."

For future volumes, I would earnestly suggest somewhere and somehow leaving the tactics up to the Editor. What such an annual book needs is a more daring inclusion or editorial evaluation on: significant trends, more or less significant problems, areas of vital (or not) controversy. Somebody should go out on a limb, as Dean O'Toole (in next to the last chapter) does, and offer value judgments. There is a frequent tendency in most "collections" to present an "objective summary review" or if controversial, to offer the usual bland pro and con. What is needed, in my judgment, is a value decision chapter, every year, which flatly asserts that this looks like a key issue for next year, or that was the most important problem of last year, or more work needs to be done on this problem, or we have got to hurry on this issue or else, or there is an appalling isolation of disciplines on certain problems. Such an addition, would make for better reading and a more lively response.

WILLIAM A. SPURRIER\*

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\* Chairman, Department of Religion, Wesleyan University.