It is this complexity through which Dr Cookson guides us in his well-indexed book. Tables of cases and statutes are followed by a list of statutory instruments; the main body of the volume then clearly sets out the practical impact of this legislation and the functions of the various heritage bodies which operate within it. Nearly 350 pages of appendices follow in which the full text of relevant Acts is usefully assembled. Like all archaeologists involved with churches I have frequently exchanged puzzled correspondence with archdeacons, diocesan registrars and DACs; Dr Cookson's book now gives us exactly the guidance we all needed.

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FOREORDAINED FAILURE: The Quest for a Constitutional Principle of Religious Freedom, by STEVEN D. SMITH, Oxford University Press, 1995, paperback reissue 1999, xii + 167 pp (£12.99) ISBN 0 19 513248 3.

RELIGION IN POLITICS: Constitutional and Moral Perspectives, by MICHAEL J. PERRY, Oxford University Press 1997, paperback reissue 1999, vii + 157 pp (£14.99) ISBN 0 19 513095 2.

Americans have problems with the First Amendment (1791) to their Constitution. Since 1947, the Supreme Court and mainstream constitutional jurisprudence have read it to mean that the relationship between law and religion in the United States is governed by two basic principles: the non-establishment of religion and religious liberty. The Fourteenth Amendment (1868) is taken to apply these principles to state governments as well as to federal government. The problem is that the textual basis for the outworking of these principles is non-existent, the historical understanding of either the First or Fourteenth Amendment elusive, and theoretical constructs of the proper relationship between law and religion controversial.

In a refreshingly clear and vigorous account of the constitutional conundrum, Steven Smith confronts the problem head-on. He argues that the best possible explanation for what the drafters of the First Amendment thought it meant is the literal one: 'Congress shall make no law [...]'. Its purpose was simply to prevent federal government from meddling in matters of religious establishment and religious liberty, leaving state governments to resolve such matters of high political controversy for themselves. This in turn means that there is no substantive principle to be extended to state governments by the Fourteenth Amendment. As regards theoretical constructions of the proper relationship between church and state, and hence the proper meaning of the religion clauses of the constitution, his thesis is again engagingly honest: there is no religiously-neutral conception of religious non-establishment or religious liberty, and hence there is no generally acceptable conception of religious liberty that can qualify for the status of constitutional principle. Although generally loath to draw conclusions from his (for most Americans, unsettling) thesis, he suggests that disputes about the role of religion in public life must be subject to political resolution and incremental development, and any solutions agreed must be immune from judicial review.

I found the argument persuasive, although it moved a little too quickly in places. For example, Smith assumes that religious neutrality requires that any law must have an equal impact on all religious positions. A less ambitious requirement would be—as Perry assumes in the other book reviewed here—that neutrality requires simply the adoption of non-religious, or secular, reasons or motives for laws. Smith needs to show that no plausible conception, rather than his very strict conception, of religious

neutrality can be satisfied. Again, it does not follow from the fact that there is no coherent religiously-neutral conception of religious liberty that there is no coherent conception at all. There might be a coherent, but religiously-biased conception of religious liberty, which could be a candidate for constitutional protection. Such a constitution would combine a form of religious establishment with religious liberty. Indeed, one could argue that the effect of the Supreme Court's decisions over the last half century is to combine a humanist establishment with religious liberty.

Michael Perry argues for a fairly minimalist, consensus-based, understanding of the constitutional provisions. The purpose of the non-establishment clause, he suggests, is to prevent governments favouring one religion (or religion generally) over other worldviews, and the purpose of the free-exercise clause is to prevent governments from discriminating against one religion (or religion generally). Incidentally, this also solves an ongoing problem about the relationship between the two clauses. However, the heart of Perry's concern is not with constitutional interpretation, but with political morality. Against positions recently espoused by John Rawls and Kent Greenawalt, he argues in his second chapter that the appeal to religious arguments in public political debate is legitimate and desirable. However, and this is the thesis of his third and longest chapter, religious arguments should not be used as the basis of political choice (ie in lawmaking etc) unless they are supported by persuasive secular arguments. He gives this thesis point by analysing and dismissing John Finnis's secular argument for the immorality of homosexual activity. There is, he insists, no good secular case against homosexual conduct, and therefore the law may not discriminate against it in any way. There is a moral, if not yet a legal, right to homosexual 'marriage'.

I found the first two chapters of Perry's book unsatisfying. His engagement with the difficulties surrounding the religion clauses of the American constitution is too brief to persuade anyone other than those already predisposed to accept his position. Indeed, his assumption that they may best be read as non-discrimination principles is curious, given that the history of religious liberty is one of gradually expanding toleration of minority beliefs. The second chapter—defending the use of religious arguments in public debate—is fairly uncontroversial to anyone in a European context, even if for pragmatic reasons religious believers are increasingly less inclined to rely on them. However, I was left wondering what was so good about being able to air 'religious' arguments in public, if governments were not ultimately to be allowed to rely on them. Matters get more interesting in the final chapter. Perry suggests that we need to draw a distinction between religious arguments about human *worth* and religious arguments about human *well-being*. It is legitimate to justify political action on the basis of the former, but not the latter. Why? Because even supposing there were no good secular arguments for the value of all human beings, it would be 'silly' (p 69) to prevent governments from acting on that basis. Purely religious arguments about human well-being, on the other hand, are liable to be based on misinterpretations and corruptions of canonical texts, and need correcting by secular arguments, which relate to the world around us. All this enables Perry to prove his Catholic credentials by opposing abortion, basing himself on legitimate (religious) arguments about the human worth of foetuses, and his liberal credentials by supporting homosexual 'marriage', opposition to which can only be based on an illegitimate 'religious' view of human well-being.

The argument is deeply problematic. To start with, there is inconsistency between his arguments against abortion and for homosexual marriage. For Perry, it is simply true that all human beings are sacred—whether this fact is recognised by secular thought or not. Since one cannot draw a non-arbitrary distinction in status at any point

between conception and birth, abortion is always immoral. But could one not also argue that the conventional Christian understanding of marriage is true—whether recognised by secular thought or not—and foundational to the' state's regulation of sexual conduct, precisely because its very male-female complementarity tells us something about the nature of God (cf Genesis 1:27) and his relationship to his people (Ephesians 5: 31–32), and hence about human worth? In short, is abortion simply an issue of human worth, not human well-being, and homosexual conduct about well-being, not worth? The distinction is hard to maintain. Epistemologically, Perry's argument trades heavily on the possibility that secular (rational) knowledge is more reliable than revealed (biblical) knowledge. While acknowledging that 'fundamentalist' Christians are going to have problems here, he does not acknowledge that it also turns Thomist epistemology, at least as traditionally understood, on its head. Granted that our interpretations of canonical texts and religious traditions will be flawed, Perry does not seem to accept that secular knowledge will be at least as (St Paul might suggest, more) flawed. And in matters of fundamental ethical controversy, can one distinguish between 'secular' and 'religious' arguments so easily anyway?

Although deeply implicated in the American debate about law, politics and religion, these books are highly relevant to the United Kingdom. Both of them demonstrate the theoretical difficulties facing anyone who would seek to disentangle religion from public life on a principled basis. With the Human Rights Act 1998 in force, principles of religious liberty and equality will be clearly enshrined in our constitution. In the minds of some, this will represent such a principled disentanglement. The contortions of American political theory over the past few decades in pursuit of this disentanglement—of which Perry's book is the latest offering—make salutary reading. Among other things, the principle of religious neutrality which could be taken to inform the European Convention on Human Rights might cast doubt over the existence of the United Kingdom's remaining established churches. While some conceptions of religious establishment are clearly incompatible with religious liberty and equality, if the search for full religious neutrality is as chimærical as Smith suggests, space remains for the maintenance of other, more liberal, conceptions of establishment, the Scottish and English models included.

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CHURCH AND ORDER—A REFORMED PERSPECTIVE by P. COERTZEN, Peeters, Bondgenotenlaan 153, B-3000 Leuven, Belgium, 1998, vii + 104 pp ISBN 90-429-0569-7.

The book is the text of the lectures that Pieter Coertzen gave in the Onclin Chair for Comparative Church Law at the Cannon Law Faculty of the Catholic University of Leuven in February 1998. Professor Coertzen draws mainly on Church Order in Presbyterian churches in the Netherlands and South Africa. However, his work transcends this Presbyterian text and his prayer in the foreword that it will 'help the Church of Jesus Christ to come to a deeper understanding of its own existence and a fuller obedience to its Lord' is answered in the text. Coertzen rightly notes that it is a *sine qua non* for Church law and Church government that it is government 'by Christ through word and spirit'. Christ is the head of the Church and the Church must be faithful to the Word of God and to being guided by the Holy Spirit in the interpretation and application of the Word. This reviewer is a Baptist and deeply struck by the congregational emphasis of Coertzen's work. On page 33 he says that the Church can only succeed by 'team-work and all the members being filled with the Holy Spirit',