

**Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies.** Edited by Nancy L. Rosenblum. Princeton, NJ: Princeton University Press, 2000. 438p. \$72.50 cloth, \$19.95 paper.

**Surviving Diversity: Religion and Democratic Citizenship.** By Jeff Spinner-Halev. Baltimore, MD: Johns Hopkins University Press, 2000. 246p. \$36.50.

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These two books—one a collection of essays and the other a sustained treatise—dwell on the problems posed for liberal theory and democratic practice by religious commitment. Both supply a rich menu of arguments and insights.

Let us start with a central dispute. Michael McConnell, in his contribution to *Obligations*, insists that the terms of Supreme Court jurisprudence and the norms of liberal political/legal culture treat Americans with strong religious convictions as second-class citizens. Religiously based arguments are unwelcome in the public square, and religious believers must bend their practices to fit the law, not the other way round. These sentiments echo a common complaint that liberal “secularism” has achieved de facto “establishment” in American law, public institutions, and elite culture. In place of the privatizing imperatives of that establishment, McConnell offers an alternative vision, one of “religious pluralism”: All citizens are free to make, accept, or reject public arguments without limitation (p. 104), and the law bends to accommodate believers’ needs, imposing “the least possible violence” on their religious life (p. 103).

McConnell comes under attack in *Obligations* from two directions. On the one side, Graham Walker derides his pluralism as just another form of liberalism, subject to the same complaints McConnell makes against the secularist version. What is needed, in Walker’s view, is something altogether different from liberalism, namely, some form of open constitutional establishment of church. Such an establishment would be more honest for being above-board and, properly limited, should prove more supportive of real religious diversity than the prevailing covert secularist establishment (pp. 117–21).

From a different direction, Amy Gutmann takes issue with McConnell’s one-sided treatment of religious freedom and argues instead for “two-way protection.” Separation of church and state (not separation of religion and politics) is necessary to protect the church from state interference, to be sure, but equally, she claims, to protect citizen and state from inappropriate political aggrandizement by the church. Furthermore, proper separation “denies religious, anti-religious, and nonreligious citizens alike a *general* right—based on conscientious objection—to disobey laws that serve legitimate public purposes” (p. 143, emphasis original). The state can grant exemptions in cases in which doing so does not create “runaway precedents” that subvert legitimate public law (p. 144), but except in special cases, those in which nonreligious parallels do not exist, exemptions based on conscientious scruples should be extended to the religious and nonreligious alike, writes Gutmann.

Nancy Rosenblum further explores this last issue by considering a piece of important legislation, Title VII of the Civil Rights Act of 1964, which gives “preferential treatment” to religious associations by letting them discriminate in their employment practices (p. 172). The Supreme Court, in *Corporation of Presiding Bishop v. Amos* (1987), construed this exemption broadly to allow a religious organization to condition employment on a religious test no matter how remote the employment from any actual religious function.

Although Rosenblum is keen to protect the autonomy of private associations from demands for “convergence”—demands that their internal organization and norms mirror and support the larger public values of democracy, equality, and nondiscrimination—she sees the *Amos* rule as too generous. Religious associations ought to show some nexus between job and religious function before they are allowed to fire a jobholder on religious grounds (p. 181). Among the reasons against handing them such a blank check is the serious threat posed to the religious freedom of individuals adversely affected by discrimination (pp. 183–6).

Jeff Spinner-Halev, in *Surviving Diversity*, takes as his point of departure multiculturalist arguments for valuing and supporting cultural diversity. Both liberal and “nonliberal” forms of these arguments actually narrow the room for diversity, he contends (the principal targets here are the views of Joseph Raz, Will Kymlicka, Nancy Fraser, and Iris Young). These arguments are especially impervious to the “difference” constituted by conservative religious belief. As an antidote, Spinner-Halev offers a more religion-friendly account of liberalism. The liberal state, he contends, should prove a commodious place for those religious communities that organize themselves around ideas of obedience to authority and submission to revealed truth rather than around ideas of autonomy, individualism, and self-discovery. The liberal state can leave such communities to their own ways because a healthy liberal “mainstream” culture provides an “exit” option. Giving this option substance, however, may require some intervention by the state (pp. 49, 63, 73ff).

A liberal society should do more than tolerate the religious. It should take steps to include them in the public square and make efforts, in schools and in law, to exempt them from requirements of which they conscientiously disapprove of (pp. 107, 136–9). Like Gutmann, Spinner-Halev favors extending accommodations and exemptions, where warranted, to all, not just the religious, who are burdened in conscience by public law or policy (p. 207ff).

This brief survey does not begin to do justice to the depth, subtlety, complexity, and power of the works under review. They belong on the bookshelf of anyone intellectually engaged by the recent renewal of interest in church-state issues. (Add to that shelf, as well, Brian Barry’s new book, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, 2001, whose extensive treatment of accommodation and lengthy reflections on the same court cases discussed by Spinner-Halev and the essayists in *Obligations* make it a forceful and provocative companion.)

These two books show that the broad terms of liberalism do not dictate particular settlements of the religious question. History and circumstance must be given their due, and the “inescapability of judgment” (Rosenblum’s phrase, p. 189) means there are no formal or mechanical solutions to the problems at the heart of church-state relations. A great virtue of *Obligations* is three rich essays whose focus lies outside the United States. Gary Jacobsohn, Yael Tamir, and Martha Nussbaum ask us to consider religious freedom in the context of contemporary India and Israel. Even if we begin with broadly liberal values, the circumstances in these two countries may lead us nevertheless to favor legal restrictions on religious speech and to countenance forms of religious establishment. Indeed, in Western European countries with histories far different from that of the United States, we may find religious establishments conducive to liberty, as Graham Walker hopes (see Nussbaum, p. 361).

Walker puts forward a provocative, self-styled nonliberal ideal of a “mixed constitution” that establishes a church but protects religious liberties. But if a constitution genuinely

protects religious liberties, is it not a liberal one? Moreover, must not the “mixed constitution” ideal attune itself to historical realities just as liberal separationism must? The secularist who insists that the Lutheran establishment in Sweden must go shows no less imagination than the Walk-erite who thinks separation of church and state can be cleared off the decks in the United States and replaced by a religious establishment. Still, as an ideal to toy with intellectually, what is it about the “mixed constitution” that ought to attract the reader to it (besides its openness)? According to Walker, “unlike liberalism, it sanctions truth-seeking . . . ; it does not insist that truth-seekers can never find any truth deserving public validation” (p. 121).

This contrast, whether accurate or not, forces some interesting issues onto the table. First, there are questions for critics of the “secular establishment,” like Michael McConnell and Stephen Carter, who would measure U.S. policy by whether it hinders or supports religious pluralism. Why should a particular religious believer, committed to a set of specific theological truths, find religious pluralism in any way attractive? That is, why should he welcome the spread of religious error and theological confusion? What can an orthodox Catholic, say, find attractive about a constitutional order that facilitates the spread of Mormonism, Santería, Bahá’í, the Unification Church, Scientology, the Gospel of Wealth, mushy New Age “spiritualities,” and the theologically anemic but media-savvy nondenominational “Christian” ministries mushrooming everywhere?

Second, there is a question for Walker. If seeking the truth and having it publicly validated is important, can the mixed constitution be indifferent to which church is established? Otherwise, to meet his ideal it would be sufficient for secularism to come out of the closet, divest itself of the garbs of neutrality, announce its own truth, and openly luxuriate in its already existing establishment in the United States.

Third, is liberalism really indifferent to seeking and publicly validating the truth? If so, what accounts for the abundance of public research universities that populate this continent, and the reams of government reports, administrative rules, and legislation that put the public stamp of approval on some views over others? Liberalism is hardly hostile to the truth, although it does dance a fine line about some truths. If we cannot live together as a people under certain descriptions (e.g., “God is one substance, not three”), we had better not stake our constitutional order on them. Still, each of us is committed to the truth or falsity of these descriptions, so must we not find our public order diminished in some way if it cannot acknowledge vital truths? Or is there a higher level truth we might all share that makes such an order morally valuable even as it allows—from our various perspectives—error to rub shoulders on equal terms with truth? If the reader is tired of watching John Rawls’s high-wire act on these matters, she might look, then, at another very different, yet surprisingly congruent, piece of acrobatic artistry, *Dignitatis Humanae* (Holy See, 1965).

#### **Modernity’s Wager: Authority, the Self, and Transcendence.**

By Adam B. Seligman. Princeton, NJ: Princeton University Press, 2000. 141p. \$27.95.

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Who will read Adam Seligman’s important new book, and what will they make of it? The answers to these questions may reflect the very issue that *Modernity’s Wager* examines, modern individualism and its discontents. Seligman writes with great thoughtfulness and erudition, at the borderlands

of social theory, political philosophy, theology, and the history of religion, and he constructs a theoretical lingua franca to draw these disparate discourses into conversation with one another. Yet, he takes the substantial intellectual risk that his argument will not receive due consideration from the very audiences whose attention to it would most advance public discussion: rational choice theorists, Enlightenment liberals, and postmodern relativists, all of whom, in different ways, will question his claim for the importance of external sacred authority. In the end, Seligman proposes skeptical toleration as the most promising basis for restoring a couplet of transcendent authority and authentic (“constitutive”) selfhood that has been lost under conditions of modernity. Yet, for his proposal to gain a hearing will require more than toleration skeptical of its own verities: It will depend upon readers’ willingness to engage ideas far outside—and alien to—their own frames of reference. They will find the effort worthwhile.

Modernity’s wager, as Seligman describes it, is a bet that the autonomous individual of liberal thought can be maintained on the basis of a transcendental philosophy of natural rights, without recourse to transcendental sacred authority, and that the internalized moral selfhood of this autonomous individual, and collectivities of such individuals, will be sufficient for an organization of the social that will not succumb to totalitarianism of either a Jacobean or fundamentalist persuasion. This wager is a risky one, in Seligman’s view, because the moral calculus of liberalism’s autonomous individual cannot be assured in the absence of a well-defined connection of the self to authority that has an external, sacred basis. The wager of modernity stands to lose both the individual self as a fully moral being (rather than merely a utility maximizer) and the possibility of a communal social order that has any moral basis to it beyond what Durkheim called the precontractual principles necessary to maintain a world in which contracts among free individuals undergird social life. The wager, Seligman maintains, morally impoverishes both individuals and the modern social order, and it leads to a paradoxical “politics of recognition,” but in the absence of any moral basis for community that would provide an “authoritative basis of value” on which to base recognition (p. 120). More important, it leaves modernity open to dangerous reversals that potentially threaten the very individual freedoms that liberalism is meant to protect.

In the end, *Modernity’s Wager* must reconcile external sacred authority with the contemporary realities of religious pluralism. To do so, Seligman makes his own wager with the sacred. Recognizing that sacred authority has itself often been used in coercive ways (in effect acknowledging a certain importance of internal freedom of religious conscience that he otherwise declaims as a threat to sacred authority), Seligman shifts from affirming the formal necessity of sacred authority to embracing a particular content of sacred authority that might offer a workable resolution to modernity’s dilemma. This resolution requires modern liberals and humanists to take matters of religion seriously, rather than dismiss all religion as fundamentalist and regressive. (Indeed, as Seligman observes, the resurgence in religious faith of many different types creates facts on the ground that cannot be ignored.) The moral failure of modern individualism, combined with authoritarian and fundamentalist threats, requires proponents of both reason and of faith to act with greater humility and skepticism concerning their own authoritative claims. “What is demanded, then, is a midpoint between nihilism and postmodern relativism, on the one hand, and absolutist claims of both faith and reason, on the other” (p. 129).