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Review of Winifred Fallers Sullivan, *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States* (1994)

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Book Reviews

ALMOND, PHILIP C. *Heaven and Hell in Enlightenment England*. Cambridge: Cambridge University Press, 1994. xiii+218 pp. \$49.95 (cloth).

Observing that images of life after death, even though shrouded in ignorance, “enshrine our deepest hopes and dreams, and express our greatest fears and nightmares” (p. 1), Philip C. Almond explores ideas concerning heaven and hell in English thought during the century from 1650 to 1750. In doing so, he offers the reader a fascinating account of views significantly different from our own and an explanation of the manner in which scientific, moral, legal, and theological currents of thought interacted with one another so that changing fashions in one arena compelled reconsideration in others. The resultant monograph, exploring areas rarely examined by more traditional theological and intellectual historians, simultaneously fascinates, amuses, and clarifies. In the final analysis, this study focuses the reader’s attention on the manner in which modernity in all its ramifications compelled a reshaping of English notions of that which lies beyond the grave.

Almond’s narrative moves from an examination of the nature of the soul and neo-Platonic notions of preexistence through views of the state of humankind between death and the day of judgment to descriptions of heaven and hell, assumptions regarding a last day, and the controversy regarding the duration of divine punishment. It provides a strong sense of the intellectual vitality of this period as scientific advance and change in social and political thought rendered traditional views of heaven and hell questionable to many and unacceptable to some.

Many of the ideas presented are predictable enough: the appeal to the preexistence of souls to explain otherwise inexplicable evil and suffering, the effort of Protestants to reintroduce purgatorial concepts in order to offer the damned a possible melioration of their condition while tempering divine justice with a little mercy, controversy regarding the nature of the resurrected body with a shift from physical to spiritual emphases, and a growing tendency to define the torments of hell as limited in duration rather than eternal. Yet the reader is constantly compelled to examine these themes in new ways as Almond relates them to contemporaneous changes in scientific and social thought.

The subject examined is one that evokes little interest today, but this should not discourage a potential reader. The writing is lively and casts a great deal of light on the manner in which English-speaking Protestantism moved away from traditional theological concepts as well as on the reasons for that evolution. In the process of telling this story, it contributes to our understanding of the transition to modernity in English religious thought. Almond’s volume can be read with profit by all students of religious studies as well as students of early modern England and English intellectual history.

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SULLIVAN, WINIFRED FALLERS. *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States*. Cambridge, Mass.: Harvard University Press, 1994. xxiv+212 pp. \$24.95 (cloth); \$14.95 (paper).

Winifred Sullivan, who describes herself as “a lawyer” and “a student of religion” (p. xxi), examines the relationship of law and religion in the United States. She focuses on the U.S. Supreme Court’s decision in *Lynch v. Donnelly*, 465 U.S. 668

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(1984), in which the Court overturned lower court rulings that the inclusion of a crèche in a Pawtucket, Rhode Island, Christmas display was unconstitutional. Sullivan criticizes the language of *Lynch* from the perspective of the history of religions. *Lynch* illustrates “the impoverished nature of the conversation” (p. xxiii) between law and religion, while history of religions offers “a language about religion which might begin to answer the Supreme Court’s needs” (p. xxiii).

Sullivan devotes chapter 1 to an overview of this history of religions perspective. The next four chapters examine *Lynch* in great detail; Sullivan analyzes the lower court rulings and the opinions of Justices Burger, O’Connor, and Brennan. Sullivan’s final chapter offers an alternative Supreme Court opinion and argues that First Amendment jurisprudence will be enriched by better *language* about religion.

Sullivan’s perspective will be of interest to students of the history of religions, who will agree that Supreme Court discourse about religion is deficient. However, the details of this approach remain murky; it is difficult to see how any court could employ it. In chapter 1, Sullivan provides a general description of her solution. “*The distinguishing characteristic of history of religions is an almost naive insistence on seeing humans as inescapably religious*” (p. 24). Religion is “culturally various” and “inescapably compromised” (p. 23); it is “an identifiable and universal human creation” (p. 25). Sullivan states that “the key value of history of religions in my mind lies in its insistence that humans cannot be understood completely without understanding them as religious as well as social, cultural, and economic beings” (p. 28).

Sullivan identifies the “apparent tension between the universality and the locatedness of religion” (p. 29); this tension pervades the book and is never resolved. For example, she suggests that Supreme Court opinions are too narrow if they focus only on American religion and in chapter 3 analyzes a religion case from the Supreme Court of Japan. However, she does not adequately address the obvious question of how and why the Supreme Court of the United States, which has enough trouble with American religion, should so broaden its jurisdiction.

Sullivan is concerned primarily with *language*; history of religions is “committed . . . to broadening the word ‘religion’ to cover human religiousness in a more inclusive way” (p. 31). The Supreme Court’s language of “religion” in its interpretation of the First Amendment needs to be so expanded. Most of the book is dedicated to an analysis of the language of *Lynch*. The examination of *Lynch* is thorough, as Sullivan situates the opinion within the history of Rhode Island, religion in the United States, and the history of crèches and Christmas.

Students of law as well as religion will be interested in Sullivan’s analysis of the opinions of the three Supreme Court justices in *Lynch*. Sullivan links the three opinions to a broader legal and academic context. Chief Justice Burger’s opinion is “accommodationist—or nonpreferential—Durkheimian” (p. 77) and reflects “a period of world-wide religious revival and the presidency of Ronald Reagan” (p. 77), while Justice O’Connor’s is “procedural—post-religious—law as religion—focus on neutrality and equality” (p. 77) and “recalls the period of the incorporation of the First Amendment into the Fourteenth” (p. 77). “Justice Brennan’s opinion emphasizes a traditional Jeffersonian reading of the period of the founding” (p. 77); he is “Catholic and separationist—expressed in Jefferson’s wall metaphor” (p. 78). Sullivan rejects all three approaches as inadequate: Burger’s approach secularizes (“flattens,” “demystifies,” p. 88) religion; O’Connor “establishes law as religion” (p. 181); Brennan establishes a “particular construction of what religion is” (p. 181).

These descriptions are provocative. One wonders, for example, if Justice O'Connor could really be the "natural heir to Justice Black" (p. 121), and if Hugo Black would ever have allowed the crèche to stand. Given Sullivan's concern with world religions, it is odd that Justice Brennan's Catholicism is situated within some elements of American Catholicism, but is not related to Catholicism outside the United States. For Sullivan, the Catholicism of Brennan's dissent appears to rest more in his sacramental view of the crèche than in any Catholic theory of the proper relationship of church to state. This view contrasts sharply with Burger's secular (or Protestant) interpretation of the crèche.

Sullivan's last chapter offers her proposed opinion, what the Supreme Court should have said in *Lynch v. Donnelly*. Here one realizes that this is explicitly a book about religious *language*. Her conclusion is that the Court should "read law narrowly and religion broadly, to avoid establishing either" (p. 45). The language of *Lynch*, 174–81 (Sullivan, J.), is compelling, but this justice never decides the case before the Court. Sullivan to this point has examined the history of the crèche and the conflicting Christian interpretations of the crèche in great detail. It is striking, therefore, that the reader never learns if the crèche goes or stays under a history of religions analysis.

Thus, the role of the language of the history of religions in court opinions remains unclear. Does history of religions improve the argument by which the justices decide cases? Does it change the outcome? Is the legal argument of *Lynch* affected by a change in religious language? Does this new language have any concrete implications for First Amendment jurisprudence, or is it there to satisfy historians of religion?

These criticisms are more likely to be voiced by lawyers than by historians of religion, who may indeed believe that the Supreme Court of the United States should employ their language. However, in chapter 1, Sullivan states that, in addition to criticizing the law, her book should "give history of religions a look at itself which could be helpful" (p. 35). This look suggests that history of religions offers powerful rhetoric about religion, but that it cannot address the specific questions about religion that courts confront. The book should provoke historians of religion to examine their field's interdisciplinary range.

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CAHILL, LISA SOWLE. *Love Your Enemies: Discipleship, Pacifism, and Just War Theory*. Minneapolis: Fortress Press, 1994. xii+252 pp. \$17.00 (paper).

Readers acquainted with Lisa Cahill's earlier work (*Between the Sexes* [Minneapolis: Fortress, 1985]) will be quick to identify her familiar style. Cahill is a patient, inquiring, and thorough scholar who strives for clarity of expression and who crafts her own proposals with great care. Further, she is consistently engaged with one of the great questions of Christian ethics: how is it that the Bible, in connection with other sources of guidance, informs contemporary Christian judgment?

In the present case, Cahill turns to issues of war. She sets contemporary discussions, dominated as they are by the various positions delineated as "pacifism" and "just war," in the context of questions about the relationship of biblical and contemporary ethics. As she has it, twentieth-century Christians typically recur to language about the kingdom of God as a way of connecting discussions of war with biblical teaching. The ways they do so help to clarify some of the basic differences between developers of just-war thinking and advocates of pacifism.