

Freely entangled

by [Martin E. Marty](#) in the [November 18, 1998](#) issue

*By John T. Noonan Jr., The Lustre of Our Country: The American Experience of Religious Freedom. (California University Press, 436 pp.)*

"Interesting." "Memorable." "Unforgettable." Words like those should turn up in any blurb about John T. Noonan's idiosyncratic book on religious freedom. In a world of good enough but dull books on topics like this, it is a delight to read one that holds one's interest on every page.

What such a blurb could not do is recommend this as a reference work on the topic. Noonan has chosen to mix his modes, jumble his genres, and muddy the traces to his sources by using a maddeningly complex endnote system. Also, several chapters are "centos"--that is, essays pieced together from the works of several authors.

The best cento is by Angelique de Tocqueville, fictional sister of Alexis, America's most perceptive visitor. Through a patchwork invented by Noonan, she complements and supplements her brother, whose *Democracy in America* did not pursue all the implications of religious freedom. In another cento, a made-up American military officer gets to tell how and why he rewrote the Japanese constitution to deal with religious freedom. Both attempts work. But one is not likely to revisit such chapters when summoning data and arguments about religious liberty.

Some will call Noonan a chauvinist or a Euro-American triumphalist for claiming so much for a few European thinkers and a set of American founders. But Noonan, a judge, is sworn to tell the truth, and in truth their achievement deserves the encomia this book extends. Noonan will not let his readers forget how hard won and precious a thing our religious liberty is.

Noonan never suggests that the competing forces and interests that fought over religious liberty in the 1780s or that now deal with it yearly in the courts could ever all be satisfied. The Bill of Rights, which consolidated the best of American colonial thought, needed only 16 words to guarantee the "free exercise" of religion. The corollary no-establishment-of-religion clause serves to reinforce the free-exercise theme. Nonestablishment was a very profound concern of the followers of James

Madison, Noonan's hero, but they knew that other freedoms would fall and human integrity would be violated if religious liberty were limited and the public insecure in its exercise.

Why did the Madisonians care so much? Because, argues Noonan, they cared about individuals; because they had seen enough of religious wars in Europe; because they had to deal with a population that was already quite diverse; because they were developing a new understanding of religious freedom.

What makes Noonan interesting and memorable is his willingness, indeed eagerness, to deal with the hows and the whys of apparent anomalies in the working out of religious freedom, beginning with the actions of Madison, Jefferson and others. The realities suggest, says Noonan, that they and we have let a national religion develop: all three branches of government employ prayer and recognize or celebrate religious holidays. Furthermore, we give tax exemptions to churches, exempt clergy from military service, integrate religion into the armed services, pay for chaplaincies in public institutions and call on God to give victory to armed forces in war. "Judicial rhetoric is deployed to disguise the realities because they are doctrinally embarrassing; the disguise is easily penetrated. Religion is entangled with government. Yet free exercise has survived in the face of the enmeshment."

Noonan asks, "Will ultimately free exercise work itself free, so to speak, and end all entanglements, or will free exercise coexist, and even require coexistence, with them? I explore but do not answer the question." Only ideologues can, and they try. The rest of us have to work out semisatisfying, semifrustrating, temporary and partial solutions.

One of the charms of this book is that very personal character which limits its use as a reference book. Noonan, judge on the U.S. Court of Appeals for the Ninth Circuit and professor emeritus at the University of California at Berkeley, includes autobiographical remarks. He tells how he and his Catholic Church had to be dragged whimpering and even screaming into formal recognition of full religious freedom. There is high drama in his account of the role of John Courtney Murray, S.J., and the American bishops at Vatican II, who helped effect "development" (that is, change) in formal Catholic teaching to assure this recognition.

At midcentury *Christian Century* editors worriedly posed the question, "Can Catholicism Win America?" Noonan has the courage, grace and honesty to say that if

one went by the Roman record, Catholicism clearly did want to dominate, at the expense of the free exercise of religion. Few American Catholics knew about, comprehended, or would have acted in accord with such Vatican aspirations, but the claims were on the books. Two centuries before that, many Protestants had been grudging about or resistant to the idea of assuring religious freedom, and today many pamphleteers and publicists for aggressive religions take the same approach.

By taking us through his own awakenings, Noonan picks up empathic readers and secures his points. In one of his catechisms--yes, catechisms come along with the centos in this olla podrida of genres--Noonan proposes as one of his ten commandments: "You shall know that no person, man or woman, historian or law professor or constitutional commentator or judge, is neutral in this matter." He isn't, nor will his critics be. But his choice to begin with and exegete the writings of Madison is reassuring to us other nonneutral Madisonians.

In describing Madison as "devout" and a "believing" Christian, Noonan may be going further than the evidence warrants. Madison was quite reticent about displaying his religious beliefs. But Noonan demonstrates that Madison's constitutional thought has more of a religious than an "Enlightenment" basis. Madison foresaw that the best way to assure free exercise was to recognize and encourage religious diversity, so the various interests could protect the larger public from the aspirations of each.

Noonan knows that what Madison called "a national religion" gets implied in many acts of Congress and the courts. He shows how legislation designed to prevent "flag desecration" expresses its own kind of idolatry, seldom challenged even by Christian believers who are supposed to be devoted to a religion other than nationalism. Somehow believers are "plural believers" who let the national religion and their particular religions coexist in their minds and practices. Our worlds are and will remain messy on this subject. But we will get nowhere in our judgments, professions, aspirations and assurances if we do not start from and cherish the "free exercise" motif.

I have called this book idiosyncratic. If convincing words on the subject of religious freedom need to be treated from personal angles, be glad the author is one so accomplished, fair-minded and creatively contentious as Noonan.