

standards set for contributions, resulting in a large variety of writing styles from theory-based discussions (Keyman & Özkırmılı) to opinion pieces with a few or no references (Çalışlar, Çandar & Pope). Second, apart from the 15-page introduction, which provides short synopses for each chapter, there is no attempt on the side of the editors for a broader evaluation or synthesis of the arguments presented by the contributors. To correct a couple of errors, the name of the chief of general staff in 1998 was Hüseyin (not Hayri) Kıvrıkoğlu (p. 106), and instead of “international conjecture,” which is frequently stated in pp. 157-62, it must be the “international conjuncture” that has helped the AK Party government in its struggle against the PKK.

It is also a pity for the contributors that the Kurdish question entered into a new phase when a “solution process” was launched in late 2012 through proxy talks among the government, the PKK leadership and Öcalan in

prison. Even though one of the editors points this out in the introduction, the articles were evidently written before this process began. Therefore, no serious commentary or assessment regarding the present state and the future of this process is found in the book, and some remarks, such as the pessimism regarding the slowdown of the 2009 Kurdish opening (p. 235), were already irrelevant when the book entered the market.

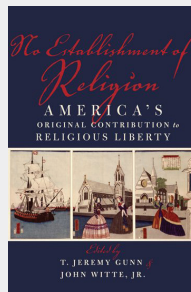
All that said, this volume, which consists of essays by renowned scholars and journalists, provides valuable information and commentary about the past and present of various aspects of the Kurdish question, and any student who would like to have an understanding of not only the earlier phases of the Kurdish issue but also the on-going solution process will benefit from it. In addition, with all its shortcomings, the book can bridge the need for an updated basic reading, if not a textbook, for Turkey’s Kurdish question.

No Establishment of Religion America’s Original Contribution to Religious Liberty

Edited By T. Jeremy Gunn and John Witte, Jr.
Oxford: Oxford University Press, 2012, 432 pages, ISBN 9780199860395.

Reviewed by Brett G. Scharffs

JOHN WITTE, JR., the Director of the Center for the Study of Law and Religion at Emory University, and Jeremy Gunn, a professor at Al Akhawayn University in Morocco and a Senior Fellow at the Emory Center, have edited a valuable new book, *No Establishment of Religion: America’s Original Contribution to Religious Liberty*.



True to its title, the book is a survey of the history of the non-establishment principle in the United States, and an assessment of how the non-establishment clause of the First Amendment contributes to the protection of religious liberty. As Professor Witte explains, “This volume aims to deepen our understanding of the establishment clause in

American History and our appreciation for its signature contribution to the modern understanding of religious liberty” (p. 1). The book is also relevant to current debates taking place in Turkey about what it means to be a secular state, including visions based on a strong ideological secularism that resonates with the non-establishment idea of muscular separation of church and state and those views based on a more pluralistic secularism, which relates more closely to more accommodating interpretations of the establishment clause.

As Thomas Jefferson described it, the U.S.’s constitutional guarantees of disestablishment and free exercise of religion were a “novel experiment” when they were implemented in the late 18th century. It defied the thousand-year European presumption that political stability and social solidarity rested on the establishment of one form of Christianity that was supported by the state against all other forms of faith. The basic assumption was that a shared religious identity was the glue that held a society together. As James Madison memorably explained it, this Western “career of intolerance” was founded on the legal establishment of one religion and “very little toleration of others.” Madison depicted the conventional wisdom as follows: “[I]t was taken for granted that an exclusive and intolerant establishment was essential,” and that “religion could not be preserved without the support of Government, nor Government be supported without an established Religion” (p. 3).

The American experiment turned this conventional wisdom on its head, positing instead that social cohesion could be fostered by guaranteeing religious freedom for everyone and by not having the government support any particular religion. With nearly two

hundred and fifty years of experience, the experiment is no longer an untested hypothesis, but rather a tested proposition.

The journey to non-establishment, however, was more circuitous than we often remember. When the First Amendment was drafted in 1789, seven of the original 13 states had some form of religious establishment, and it wasn’t until 1833 that Massachusetts became the last state to abandon its religious preference. This book provides a valuable survey of the historical development and implementation of the idea of non-establishment in U.S. law, which helps us understand the continuing controversies about how the principle should be interpreted and applied.

The meaning of non-establishment was contested from the beginning, and remains controversial even today. As Professor Witte describes it in his introduction, there were three related goals. The first was to “protect the principle of liberty of conscience by foreclosing government for coercively prescribing mandatory forms of religious belief, doctrine, and practice” (p. 7). The second was to “protect the principle of equality of all faiths before the law by preventing the government from singling out certain religious beliefs and bodies for preferential treatment.” (p. 7). Here views differed, with some arguing for a strong “no aid” principle, and others favoring the allowance of non-preferential support of religion by the state. The third animating idea was to “protect the basic principle of separation of the offices and operations of church and state.” (p. 7). This meant that the government was prohibited from, in Jefferson’s words, “intermeddling with religious institutions, their doctrines, discipline, or exercises,” but was also designed to be protected from interference by religious bodies.

Over time, the interpretation of the principle of non-establishment in U.S. law was divided between two views: one advocating a strong separation of church and state, and the other advocating accommodations of religion that are non-discriminatory and that do not involve direct state funding of religion or involvement of the government in religious affairs. The book traces the development of these views, with an emphasis on the early history.

The book contains 13 chapters, written by an impressive assortment of legal scholars with a range of views. Jeremy Gunn's chapter develops the dialectic between "separationist" and "cooperationist" accounts of the idea of non-establishment. Michael McConnell focuses on what an establishment of religion entailed during the founding era, and identifies six elements: (1) control over doctrine, governance, and personnel of the church; (2) compulsory church attendance; (3) financial support; (4) prohibitions on worship in dissenting churches; (5) use of church institutions for public functions; and (6) restrictions on political participation for members of the established church" (p. 49). McConnell notes that it is a mistake to view the debate about non-establishment as a debate about the influence of religion in society. Non-establishment was not so much about curtailing religion, as it was about government control over public opinion. He stated, "[D]isestablishment was not an attempt to curtail the influence or prominence of religion in public life. It was to make religious practice free and independent, and therefore strong."

Mark McGarvie traces the history of state disestablishment between 1776 and 1833. David Little explains the influence of Roger Williams and the puritan concept of rights, including ideas about non-establishment. Paul Finkelman describes the story of disestablishment in New York. Ralph Ketcham explores Madison's and Jefferson's views about non-establishment and the political struggle for religious freedom in Virginia. Derek Davis examines the ideas concerning the separation of church and state that emerged from the Continental Congress and Carl Esbeck focuses on the formation of the establishment clause during the First Federal Congress. Daniel Dreisbach concentrates on the prohibition of religious tests. Steven Green addresses the evolution of 19th century understandings of church and state, and Thomas Berg explores the proposed adoption of the Blaine Amendment, which would have prohibited federal funding of religious schools. Kent Greenawalt discusses the difficulty of sorting out the original understanding of the establishment clause. Finally, Martin Marty concludes the book by arguing that the establishment clause was not a rejection of religion, but rather a testimony to the ability of religion to stand on its own two feet and thrive when granted freedom and equal treatment.

The book is a valuable resource for scholars, policymakers, lawyers and judges who seek to understand how the principle of non-establishment of religion can be used not as a tool for marginalizing or privatizing religion, but as a means of fulfilling the promise of religious freedom and equality.