

phy" of publications by Marty dealing with the themes of the volume—three hundred titles in all which they estimate form approximately a tenth of his total bibliography—and he has not yet retired. The bibliography confirms what Marty-watchers have known for a long time, namely, his range and productivity are staggering.

It is rare when the essays in a festschrift collectively achieve lasting significance. This volume is no exception in that regard. Despite the best efforts of the editors to organize the disparate contributions, readers will experience a sense of disjunction as they move through the collection. For instance, the five essays presented under the category of "Public Religion" focus on three different national cultures—the United States, Canada, and Japan—and range across art history, mission history, publishing history, ecumenical history, and the history of medical ethics. One might argue that this diversity accurately reflects Marty's own wide ranging interests—and it does. But, unfortunately, the reader's journey is not an easy one. The second group of essays is even more disparate, dealing respectively with Thomsonian medicine in the nineteenth century, American Catholic historiography, recent hymnody and church music, and the religious pilgrimages of three twentieth-century women. The third section of essays has ostensibly the tightest integration as all deal with some aspect of American fundamentalisms.

Several of the articles warrant careful attention by readers. Sally M. Promey's account of John Singer Sargent's murals in the Boston Public Library is a valuable contribution from a sub-discipline infrequently contributing to the study of American religion. Catherine L. Albanese demonstrates the close conjunction between Thomsonian medicine and the politics of Jacksonian America. R. Scott Appleby's use of the concept of the "enclave" as a way of speaking about an American Catholic fundamentalism is most instructive. In other words, these and other essays in the collection have much to offer, but as is often the case with such volumes, here the whole is less than the sum of its parts.

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The Bill of Rights in Modern America: After 200 Years. Edited by David J. Bodenhamer and James W. Ely, Jr. (Bloomington: Indiana University Press, 1993. Pp. x, 246. Bibliography, index. Clothbound, \$29.95; paperbound, \$12.95.)

David J. Bodenhamer and James W. Ely have brought together a distinguished and eclectic group of historical and constitutional

scholars to write on the very large subject of the Bill of Rights (literally the first eight or perhaps nine amendments) of the Constitution of the United States after two hundred years. These writers are a wide-ranging group who are at various points in the current ideological spectrum regarding constitutional interpretation. The editors' agenda is clearly to let the selected writers have the freedom to advocate a wide variety of positions, but the agenda of the editors is also clearly to inform. This collection differs somewhat in its format but compares favorably to the classic *The Birth of the Bill of Rights*, first published in 1955 by Robert A. Rutland.

Some writers choose to argue aggressively for a so-called living constitution made fashionable by such justices as the recently retired William J. Brennan. Others argue for a species of judicial restraint that might be pleasing to Felix Frankfurter or John Marshall Harlan II. It can be said without equivocation that each of the writers did their historical homework well.

It is especially courageous for Randy E. Barnett to attempt to make some sense out of the Ninth Amendment of the Constitution and to frame his argument into almost Borkian original understanding without wading into the current efforts to use that amendment as a basis for personal and sexual privacy. In like vein, co-editor Ely argues for a renewed concern for so-called property rights.

The structure of the book is especially appealing in that it puts the notes plus bibliographic essays and the all-important table of cases at the end and does not clutter up the narration. Of particular moment to this reviewer is the attention that is given to *Barnes v. Glen Theatre*, better known as the Kitty Kat Lounge nude dancing case, a 1991 Supreme Court decision emanating from South Bend, Indiana, by eminent constitutional historian, Paul L. Murphy, in his insightful piece on symbolic speech and the First Amendment. This case was listed along with the flag-burning case and the hate speech cases which came along at the same time.

The bibliographic essays, while not extended, are highly useful. When one looks at the totality of these writings, the ideas and formulations advanced in one time frame by certain groups in society in order to influence a particular decisional result may well in another time, and by other interest groups, be taken up to achieve different results. The Warren court was both praised and criticized for judicial activism and the setting aside of long established precedent. It was also criticized for making value choices that should be made by the elected legislative and executive branches. Those who made those criticisms in the Warren era often paid great homage to the democratically elected legislators and executive. In current terms, one sees those who fear that some of the basic decisions of the Warren court are endangered making the same kinds of argument for *stare decisis* and a new species of legal formalism. There

can be little doubt that some of the basic seeds of so-called substantive due process were sowed as early as Justice Samuel Chase's majority opinion in *Calder v. Bull* in 1798 (which germinated in the dissent of Justice Stephen Field in the *Slaughterhouse* cases in 1873), and were given something of a decent judicial burial, at least in the economic context in 1937. Likewise, ideas of judicial restraint were expressed in Justice Iredell's opinion in *Calder v. Bull*, as well as in the first Justice Harlan's sole dissent in the 1883 Civil Rights cases. Because of its compact brevity, as well as the wide variety of opinion which is proffered, along with superb bibliographic essays, this "small" book will be an excellent supplemental teaching device, more than justifying the time spent by the editors and the authors.

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