



1950

Book Reviews

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Recommended Citation

Thormodsgard, O. H. (1950) "Book Reviews," *North Dakota Law Review*: Vol. 26: No. 1, Article 5.
Available at: <https://commons.und.edu/ndlr/vol26/iss1/5>

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BOOK REVIEW

JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA. By William George Torpey.† Chapel Hill: The University of North Carolina Press. 1948. Pp. ix, 376. \$5.00.

In 1917 Professor Carl Zollman prepared a publication on the legal relation of Church and State in the United States. It was published as one of the *Columbia University Studies in History, Economics and Public Law*. In 1924 the same author wrote a companion volume entitled *American Law of Charities*. In 1933 a revised edition on the *American Church Law* was prepared by Professor Zollman. These three publications have been recognized as being usable textbooks for lawyers on the important subject of church law and related topics. Not too many authoritative books on church law have been written in the United States by lawyers for lawyers. Dr. Torpey is not a lawyer. However, after reading several thousand cases and hundreds of articles on the legal aspect of religious liberty, he has prepared a readable textbook on the *Judicial Doctrines of Religious Rights in America*. This book will be of special interest to lawyers, public officials, and religious leaders.

In the first chapter, Dr. Torpey traces the origin of religious liberty in the United States. It is an American concept that the State is not competent to determine religious truths; therefore, it is important that the State be impartial to all forms of beliefs or non-beliefs. However, in the second chapter, "Limitations upon Religious Freedom," the author indicates that when religious movements offend public order and public morality, then the State may limit the theory of religious freedom of the individual for the sake of the larger freedom of the public and for the general welfare of the State.

Chapter 3 on "Religious Societies" is not only historical and informative, but also deals with the practical legal problems of types of religious organizations, such as the unincorporated religious societies and the religious corporations. The religious corporations are of three kinds, namely, the corporations aggregate, the revised corporations sole, and the trustee cor-

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porations. The kind of religious corporation adopted will depend upon the internal policies and practices of the church to be formed. "Administrative Decisions" is the subject matter discussed in Chapter 4. The author by reference to adjudicated cases attempts to define and interpret the jurisdiction of church tribunals and when and under what conditions the civil courts may review their decisions.

A commendable discussion of tax exemption constitutes Chapter 6. The exemption of the property of religious societies and charitable institutions is not based upon a contractual right. The historic reason for the exemption may be traced to colonial times when the Church was an agency of the State. When religious worship became solely a function of private religious organizations, public opinion continued to favor tax exemption privileges for religious institutions. Tax exemption is now expressly provided by constitutional provisions or by specific legislation.

Extensive litigation has occurred over such matters as the scope of the exemption, when exemption begins, exclusive use, primary religious use, primary secular use and the doctrine of divisibility, and special assessments.

Chapter 9 on "Educational Practices Involving the Right of Religious Freedom" is comprehensive. It deals with issues on which reasonable persons may differ. Topics including free transportation of children to sectarian schools, furnishing free textbooks to all children of the state, Bible reading in public schools, compulsory flag salutes in public schools, wearing by teachers of distinctive religious garbs in public schools, and excusing students for religious instructions are fairly presented in this survey. Some topics in the field of evidence, such as competency of witnesses, credibility of testimony, witnesses in the federal courts, competency of jurors, and dying declarations, are briefly discussed in Chapter 10, "Religious Rights in Court Trials." An average student in evidence would be familiar with the general principles as to the religious rights of individuals in civil and criminal trials. A brief analysis of the law on "Devises and Bequests for Religious Purposes" is presented in Chapter 11. The publication of this book for the good of the reading public is timely, and Dr. Torpey has made a valuable contribution to the legal literature on the relation of Church and State. All readers will

approve of his firm belief in personal liberty. Persons with different racial and religious backgrounds are all grateful for the historic fact that Church and State are politically separated. The usefulness of this small volume is enhanced by the inclusion of an excellent bibliography of books, periodicals, and cases, and by an index.

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