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Book Review - Reviewing S. Prakash Sinha, *What Is Law?* (1989)

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CHRISTIANITY AND THE CONSTITUTION: THE FAITH OF OUR FOUNDING FATHERS

Eidsmoe, John, Grand Rapids, Michigan, MI: Baker Book House (P.O. Box 6487, 49506), 1987 415 pp., \$19.95 (paper).

Judging by its title, John Eidsmoe's *Christianity and the Constitution: The Faith of Our Founding Fathers*, appears to promise an historical look at the religious beliefs and backgrounds of America's founders. It does that—and more—with mixed results. To be sure, there is some good in this book: to the extent that it sticks to its nominal purpose and attempts to document the religious beliefs of some of this nation's founding fathers, Eidsmoe's work is useful.

Unfortunately, both the author's scholarship and his motives in writing this book are questionable. His scholarship suffers from his tendency to rely on secondary sources, rather than primary ones, for his citations to the words of the founders. As a result, the context of those original words is called into doubt.

More troubling, however, is the fact that Eidsmoe's title is not fully candid about the contents within: wandering well beyond the promised history of the founders' religious views, the author uses the book as a pulpit to preach his gospel that the United States Constitution was—and is—"a Christian document." (Eidsmoe, p. 359) Eidsmoe arrives at this conclusion circuitously and somewhat incredibly: he asserts that certain broad principles in the Constitution are not inconsistent with those of Christian morality (a broad assertion with which few could argue).

From this springboard, he takes a leap of faith and logic in claiming that this fact, in effect, renders the Constitution a Christian document. The writer further attempts to bolster his thesis by noting the various references to God in the Declaration of Independence and implying that those references are somehow incorporated, along with the general spirit of the Declaration, into the Constitution. As historical and constitutional scholarship, these arguments are, at best, tenuous.

The author betrays his own impatience with "scholars" who "often

come to non-Christian conclusions because they start with non-Christian presuppositions and use non-Christian sources." (Eidsmoe, p. 407) Eidsmoe overlooks the fact that scholarship depends on objective appraisals of all sources, viewpoints, and arguments on a particular issue: to frame scholarship in terms of "Christian" and "non-Christian" is to encourage un-scholarly polarization.

In his concluding chapter, Eidsmoe argues for a return to constitutional interpretation based on the intent of the framers and rejects the living document view of the Constitution. One of the main problems with the bedrock view of constitutional interpretation is that it is difficult to agree on just whose intent is most important. For example, take, as the author does, the establishment clause in the first amendment: should one look to the intent of the amendment's author (James Madison), the intent of the members of the first Congress, or that of the state legislators who ratified the amendment? Indeed, to the extent that one looks to the intent of all of the above, how do we treat the undoubtedly disparate views of the amendment's purpose and meaning held by these individuals?

Moreover, to the extent that Eidsmoe purports to divine the intent of the framers from the religious views held by the founding fathers profiled in this book, his problems are twofold: first, not all of the founders so profiled were present at the creation of the first amendment; second, even assuming that the majority of the framers were practicing Christians, it does not necessarily follow that they could not have intended "the wall of separation" between church and state referred to by Thomas Jefferson. After all, Eidsmoe admits, albeit in understatement, that Madison believed "that the church flourished better without the state's 'help'." (Eidsmoe, p. 110)

In his final chapter, the author summarizes and emphasizes his main point:

Church and state do have separate functions, but religion and politics cannot be totally separated. For every aspect of politics and law involves moral principles. . . . Morality cannot be separated from reli-

gion. . . . Morality always deals with ultimate values which find expression in some type of religion. The question is, which religion and what values—those of the Judeo-Christian tradition on which the nation was founded, or those of Secular Humanism, the New Age, or others? (Eidsmoe, p. 409)

Anyone who has even so much as skimmed an appreciable number of the previous 408 pages of *Christianity and the Constitution* can hardly doubt Eidsmoe's answer to that rhetorical question.

**Stephen R. Alton
Irving**

WHAT IS LAW?

Sinha, S. Prakash, New York, New York: Paragon House (90 5th Avenue, 10011), 1989, 274 pp., \$29.95.

The title of S.P. Sinha's book, *What Is Law?*, is somewhat deceptive, for the author ambitiously tries to do more than merely define the concept of law in well under 300 pages. After the introductory historical and philosophical overview of his initial chapter, Sinha uses the balance of his book to summarize the major theories of law, including how law arises, how it is applied, and why it is important in society. The work is less of an original attempt by its writer to answer the question posed by the title than it is an effort to seek such an answer by means of surveying—albeit briefly in each instance—the views of the major thinkers in this field.

In point of fact, the book is, by the author's own admission, least successful in arriving at a working definition of law. In his concluding chapter, Sinha offers three reasons for this difficulty. First, "the theories [of law surveyed by the author] attempt to define law, claiming to make a universal statement about it, for a universe whose civilizations do not share law as a central principle of social organ-

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ization." (p. 217). In his first chapter's historical overview, the writer notes "that while law and its institutions have played a central role in the historic development of Western civilization, such has not been the case with Chinese, Japanese, Indian, and African civilizations." (p. 38). Second, the epistemologies behind the various theories of law very greatly, and, states the author "the persuasiveness of a theory is dependent upon the acceptance of its epistemological premise." (p. 217). Third, theories of law are either inherently ideological, in which case they quite naturally evince a preference for their own ideology over all others, or they attempt to be ideologically neutral while purporting to define a concept that is unavoidably value-laden. (p. 217).

As a consequence of these difficulties, the reader is supposed to arrive at two conclusions: law is not necessarily inevitable in the evolution of any given society, and conflicting values (i.e., tensions in the law) exist in any society. (p. 200). Neither conclusion, however, is particularly startling. Indeed, because there are so many theories of law, one is as unlikely to arrive at the single, correct, and comprehensive theory as he or she is to arrive at the single, correct, and comprehensive theory of truth, knowledge, or reality. Some theories of law may be better models than others, but all of the theories discussed in this book have something to contribute to the reader's general understanding of

the concept.

The author does much that is useful in this tome insofar as he provides the reader with a brief introduction to the philosophy of law. Paradoxically, this brevity is also the book's major weakness, for Sinha often discusses a philosophical, sociological, or logical theory without pausing to define his terminology; familiarity on the part of the reader with basic philosophical, sociological, and logical concepts is implicit. Perhaps the reason for such omission is a desire on the part of the author to keep his work as brief as possible. As a result of this apparent choice, *What Is Law?* may be a book without a natural audience. To the extent that it is a brief summary of much of the thinking in the field of legal philosophy, it is appropriate for the novice but may be too basic for the reader who is well-schooled in the subject. On the other hand, to the extent that the work assumes a prior knowledge of philosophy, sociology, and logic, this short book is of limited use to the novice (at whom it is apparently directed) but may be more appropriate for those advanced readers.

Nevertheless, *What Is Law?* is worth reading, if for no other reason than for its admirably concise and lucid overview of the philosophy of both the Critical Legal Studies Movement—currently a popular jurisprudential topic—and the Crits' precursors, the Legal Realists.

**Stephen R. Alton
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