Church History 79:4 (December 2010), 860–862.
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doi:10.1017/S0009640710001058

FORUM: Mark deWolfe Howe, The Garden and the Wilderness *Introduction*

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Mark deWolfe Howe's classic, *The Garden and the Wilderness: Religion and Government in American Constitutional History*, was published in 1965. Notwithstanding the many subsequent judicial and scholarly developments in First Amendment religion clause jurisprudence, this slim volume remains among the best efforts to consider seriously the interrelated histories of law and religion in the United States. Beautifully written and economical in its expression, Howe's book is often cited but less often carefully read. Unlike many who write about the religion clauses, Howe understood the deeply contingent nature of the dependence of religion and law one upon the other.

The metaphor in the title is taken from the writing of seventeenth-century puritan Roger Williams, "founder" of Rhode Island, and a passionate advocate of "soul-liberty" and of the separation of church and state—for the sake of the church. Although he deeply cared about the quality of our common lives as well, Williams's vision is both austere and deeply humane.

The thesis of Howe's book was that a Jeffersonian impulse for the First Amendment, a Jeffersonian understanding of "separation"—as protecting the state from "ecclesiastical depredations"—had been ahistorically given prominence by the Supreme Court over a Williamsian "evangelical" impulse. The favoring of a Jeffersonian separation understanding, in Howe's view, both distorted the original understanding of the religion clauses and hobbled the possibilities for making those clauses live in the twentieth century. After twenty-five years of revision, the history Howe only began to uncover is now much better known and understood. Howe's book has, however, become obscured in the process.

Because of the political and scholarly polarization on the subject, Howe's book is too often read with present debates in mind, assigning him reflexively to the "pro-religion" camp. Howe's argument in *The Garden and*

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https://doi.org/10.1017/S0009640710001058 Published online by Cambridge University Press

the Wilderness is more subtle and more complex than such an assignment would imply. While he held up an evangelical Christian reading of the religion clauses as historically significant, it is far from clear that he would have regarded such a reading as necessarily normatively to be privileged, in its original form, politically, over time. Indeed, it is the sophistication of his appreciation for the changes that have occurred to both religion and law over the course of U.S. history and of the evolving interrelatedness of these two cultural forms that remains challenging to scholars today. While he thought that including the evangelical reading was necessary to an understanding of the clauses—and of the problem—he was too much a historian to regard the recovery of historical knowledge as a necessary blueprint for the future.

Originally given as a set of lectures sponsored by the Frank L. Weil Institute for Studies in Religion and the Humanities, Howe's book analyzed several moments in American history, noting changing patterns in legal, political, and ecclesiastical history. He combined close readings of significant court decisions with an appreciation for the ways in which those decisions both shaped and were shaped by contemporary religious and social realities. He discussed the preference for the congregational polity that shaped the law in the antebellum period, the nationalism of the post–Civil War period, and the growing internationalism of the twentieth century. Giving prominent attention to the effect of the incorporation of the religion clauses into the Fourteenth Amendment in the mid–twentieth century, Howe showed how the Court's move toward its decision in *Brown v. Board of Education* profoundly affected its decisions in its religion cases of the same period, producing the dominant language of equality and neutrality that shaped the Court's twentieth-century First Amendment clause jurisprudence.

More than forty years later, Howe's book now seems remarkably prescient and clear-eyed. It is patent to many that a more balanced approach to the religion clauses is overdue. But Howe does not offer political solutions. He insists on the particularities of time and place. Religion is not for him all the same. And neither is government. What he teaches us today is that there is no single reading of the religion clauses demanded by the text or by the early history. What he teaches is that we ought to give care to the social and religious realities of our time and be modest in our hopes for the rule of law.

This forum brings together scholars of American legal and religious history for a conversation about the importance of Howe's reading of constitutional law respecting religion for their own work and for the collective work of understanding the story of law and religion in the United States. The contributors are Kathleen Flake of Vanderbilt University, Clark Gilpin of the University of Chicago, and Elizabeth Dale of the University of Florida. All three accept Howe's invitation to take history seriously by further qualifying Howe's own history. Gilpin brings the eye of a Puritan historian with a deep

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knowledge of Williams's work to Howe's contrast between Jefferson and Williams, arguing that Howe misses what Jefferson and Williams shared, as well as where they differed. Flake too challenges Howe's reading of Williams, displaying Williams's theology next to Mormon ecclesiology. Dale sets Howe's work within a broader constitutional history insisting that we will never have the accurate history that Howe seems to yearn for. Together these readings honor Howe's book by engaging deeply where they disagree with him.

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