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## COMMENTARY

### COMMENTS ON PAPERS BY MILNER BALL AND FREDERICK GEDICKS

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As one from the dissenting church tradition, I am both comfortable with and supportive of Milner Ball's critique of mainstream religion in the United States. His distinction between "normal religion" and "biblical faith" is particularly helpful. Normal religion's seemingly conflicting strains of comforting the victims while at the same time legitimating the powers that be no doubt will be around as long as government and religion themselves. My only question for Professor Ball involves his identification of Martin Luther King, Jr., and other extraordinary religious leaders with "normal religion." Defining "biblical faith" so narrowly as to exclude such notables from the ranks would seem to lead to widespread frustration and possible hopelessness on the part of the unwashed masses (including myself) who will never scale such lofty moral and ethical heights.

While I am in general agreement with Professor Ball, there is little in Frederick Gedicks' paper with which I agree other than his assertion that religion should play a prominent role in informing and shaping public policy. Beyond that point our paths diverge rather dramatically. The underlying premise of his paper is, of course, this notion of a naked public square (*i.e.* that religion has been removed from the arena of public debate and that all who wish to participate therein must check their beliefs at the door). I must confess that ever since Richard John Neuhaus wrote his book,<sup>1</sup> I have been searching for the "naked public square" and have yet to find it. What I have found is a public square that is not only well clothed in the garb

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1. R.J. NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* (1984).

of religion but perhaps a bit overdressed. Allow me to illustrate.

The 1988 presidential campaign found not one but two of the final four candidates to be Baptist ministers, and the winner of that election, himself an active Episcopal layman, made his first presidential act a prayer. What followed was a very moving inaugural address replete with religious imagery.

Lest one think this is atypical of American politics, recall for a moment the Reagan Administration which was profuse with the language of Zion. It seems that not a week went by when preachers weren't parading in and out of the White House, oftentimes led by the Most Right of the Religious Right, the Rev. Jerry Falwell.

Even those worldly Democrats are often explicit in both their religiously motivated conduct and religious speech. The only president they have elected in more than two decades made Micah 6:6-8 the centerpiece of his inaugural, and he managed not only to attend church but to teach Sunday School throughout his four years in the White House.

And, for those concerned about the balance of power, the nation's chief executives don't have a thing on the Congress. Several months ago, I sat and listened to then Majority Leader Robert Byrd wax eloquent on the floor of the Senate for what seemed like an eternity about the beauty of the King James Bible and how wonderful it is that the Senators and their chaplains (at taxpayers' expense) can read the King James version and expound upon it much like Senator Byrd's grandmother had done decades before.

Instead of increased privatization, I suggest there has been an enormous proliferation of religion in public life in the past 30 years. In his book *Representing God in Washington*,<sup>2</sup> Allen Hertzke writes that in 1950 there were 16 religious lobbies in Washington. Today, there are more than 80, and the list is growing. This combination of intense political activism with a pluralism of religious expression is a characteristic unique to American political science, says Hertzke. Of particular importance are the two Pastorals on nuclear arms, the first in 1983 by the National Conference of Catholic Bishops and the second in 1986 by the United Methodist Council of Bishops. Kenneth Wald in his book *Religion and Politics in the United States* concludes on the basis of several opinion surveys that "dramatic shifts" in Catholic opinion on both military spending and arms

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2. A. HERTZKE, *REPRESENTING GOD IN WASHINGTON: THE ROLE OF RELIGIOUS LOBBIES IN THE AMERICAN POLITY* (1988).

control indeed occurred between 1983 and 1984 and quite possibly are attributable to the Bishops' Pastoral.<sup>3</sup>

Religious leaders of all types—Moslems and Jews, Protestants and Catholics—frequently are called upon to testify before Congress and the various state legislatures on a multitude of international and domestic concerns. Even when uninvited, these religious activists are present, influencing the political process at both the state and national levels. I know because I frequently attend or participate in these hearings. And the good news is that the churches have been quite successful in their moral advocacy—from dial-a-porn to equal access, from aid to the homeless to aid to the Contras. Finally, in the most fundamental of all public arenas—the streets—religious activism is alive and well. Operation Rescue is frontpage news across the nation as religious activists continue a tradition that has included the abolitionist, temperance, civil rights, and peace movements.

In short, the notion of a naked public square devoid of religious influence has no significant basis in fact. Certainly, there are isolated anecdotes and court cases demonstrating that religion at times does receive short shrift in the public arena—the absence of adequate references to religion in social studies textbooks being the most dramatic example.<sup>4</sup> The overwhelming weight of the evidence, however, is to the contrary. At best, Professor Gedicks' premise seems a gross exaggeration of present reality.

A more accurate assessment would seem to be that religion enjoys a prominent, and some would even argue favored, role in American society. For example, our churches and synagogues are tax exempt; gifts to our ministries are tax deductible; we don't have to file financial disclosure forms or informational returns as do other nonprofit organizations, nor do we have to file for recognition as tax-exempt entities; we are protected from routine audits and investigations by the IRS; our housing allowances are exempt from taxation; we are

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3. K. WALD, *RELIGION AND POLITICS IN THE UNITED STATES* (1986).

4. The omission of information about religion from textbooks has been widely recognized and steps are being taken to remedy the problem. California, for example, has directed that its future textbooks will have more references to religion, and a broad coalition of prominent national religious and educational organizations has drafted guidelines on teaching about religion in the public school curriculum. See, e.g., *Coalition Promotes Teaching About Religion in Schools*, *Washington Post*, June 1, 1988, at A1, col. e; *Trend Gaining in Public Schools to Add Teaching About Religion*, *N.Y. Times*, Mar. 19, 1989, at 1, col. 1.

exempt from key provisions of major civil rights legislation; we have special exemptions in both the National Labor Relations Act and Selective Service laws; we are exempted from key provisions of the Social Security tax, and from countless state and local regulations. On top of that, our social service agencies, hospitals, universities, and other institutions can obtain millions of dollars in federal grants to assist us in providing housing for the homeless, day care, food, health care, higher education, and numerous other worthwhile services. In fact, I am told by the former government liaison for Catholic Charities that 40% of that organization's budget comes directly from governmental sources!

I am particularly disturbed by Professor Gedicks' portrayal of the Supreme Court as supporting the notion that religious activism in the political realm is somehow dangerous and undesirable. In each of the opinions cited in his paper, the Court stated that government *funding* for religious activities, not religious activism, leads to the political divisiveness along religious lines that the first amendment was designed to prevent. The Court repeatedly has stated that religious activism on social and political issues is altogether appropriate and consistent with our democratic form of government.<sup>5</sup> Even in the public schools, the Court has recognized and continues to recognize an appropriate place for religion in teaching about religion, and values education, individual free exercise, and released time.<sup>6</sup> Moreover, the Court is almost certain to uphold the recently enacted Equal Access Act which places student religious groups on an equal footing with other non-curriculum-related clubs in federally funded secondary schools. In contrast, the Court has condemned, and rightly so, state-sponsored religion in the public schools.

Professor Gedicks is correct in his assertion that the Court has indicated that Congress may not pay churches and other pervasively sectarian institutions to teach sexual morality and other value-laden curricula.<sup>7</sup> Well the Court should. Teen pregnancy is a serious societal problem, but so are homicide and theft. Would Professor Gedicks argue that Congress could pay churches to teach the Ten Commandments? In fact, the record in *Bowen* showed that the counseling and educational services offered by religious organizations and funded by the

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5. See, e.g., *McDaniel v. Paty*, 435 U.S. 618 (1978).

6. *School Dist. v. Schempp*, 374 U.S. 203 (1963); *Zorach v. Clauson*, 343 U.S. 306 (1952).

7. See *Bowen v. Kendrick*, 108 S. Ct. 2562 (1988).

Department of Health and Human Services were coercive in nature and encouraged counselees to embrace particular religious beliefs. The case demonstrated the obvious: It is impossible for religious organizations to teach sexual morality without consciously or unconsciously promoting religion in violation of the establishment clause.

A more serious threat to both the body politic and to authentic religion comes not from the Supreme Court, a "secular elite," or even from the ACLU but from well-meaning religious zealots who would put the prestige, power, and purse of the state behind religion—those who would convert the public schools into an evangelistic arm of the church and make God the national mascot.<sup>8</sup> These are the forces that in Manatee and Sarasota counties, Florida, imposed a doctrinal test on all candidates for public office,<sup>9</sup> and in Arizona recently declared this to be a Christian nation.<sup>10</sup> It is for this reason that church-state separation is not only desirable but essential to religious liberty.

To Professor Gedicks and others who would suggest using government to assist religion, I say, "No thanks." Western Europe's attempts "to assist" religion have been miserable failures, and I am confident the same would be true here.

"If it ain't broke, don't fix it," goes the old saw. Church-state separation has given us the strongest political and religious institutions on earth. It should not be abandoned.

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8. See Statement by James M. Dunn, Executive Director, Baptist Joint Committee on Public Affairs, *Tulsa World*, Oct. 19, 1980.

9. See *Candidates Sign Pledge to Govern Under Jesus*, *National Jewish Post and Opinion*, Sept. 22, 1988, *Christian Pledge Blasted at Interfaith Forum*, *Sarasota Herald-Tribune*, Oct. 2, 1988.

10. See *Republicans Rue Mecham's Return*, *Washington Post*, Mar. 14, 1989, at A12, and Dershowitz, *Justice O'Connor's Second Indiscretion*, *N.Y. Times*, Apr. 2, 1989, at § 4, 31, col. 2.

