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ARTICLES

NORMAL RELIGION IN AMERICA

MILNER S. BALL*

I. BILLY BUDD’S COMFORTER

The setting for Herman Melville’s novella *Billy Budd* is a British warship, the *Bellipotent*.1 Included in her standard complement is a nameless chaplain.2 I call your attention to him. Although he is but a minor figure and inhabits a man-of-war, an English vessel at that, he nonetheless exemplifies the role of religion in America.

You will remember from the story the climactic episode in Captain Vere’s quarters. The master-at-arms, John Claggart, a mysteriously malevolent figure accuses the angelic Billy Budd of mutiny. Struck dumb by the accusation, the handsome sailor can only let fly an uncontrollable blow that kills Claggart. At the instance of Captain Vere, a drumhead court sentences Billy Budd to death. He is to be hanged at first light the following morning.

Enter the chaplain.3 We are told that he is “a discreet man possessing the good sense of a good heart,”4 and that he holds no fear for the innocent soul of Billy Budd in spite of his failure both “to impress the young barbarian with ideas of death”5 and “to bring home to him the thought of salvation and a Savior.”6 According to all that we know from the story, he is what he is represented to be, i.e. a “good man.”7

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1. In some editions, she is the *Indomitable*.
2. I have employed the image of this chaplain before. See Ball, *Cross and Sword, Victim and Law*, 35 Stan. L. Rev. 1007 (1983). I shall employ it again in future.
4. Id. at 398.
5. Id. at 397.
6. Id. at 398.
7. Id. at 397.
Twice in the night the chaplain visits the condemned and imprisoned Budd, providing him with courteously received but unavailing "clerical discourse." He then attends Budd as he is brought up for execution. The only other act performed by the chaplain is to conduct the regular morning worship service after Billy Budd is hanged and immediately buried at sea.

A. Functional Boundary

The chaplain fulfills a specific and a general role. Specifically, he attends the victim. He does so gently, with respect and deference. Just before the sentence is carried out, we are told: "Brief speech indeed he had with the condemned one, but the genuine Gospel was less on his tongue than in his aspect and manner towards him." The office is performed with grace and sincerity.

Still, the reader is left to wonder. The chaplain's care for Billy Budd is exemplary, but was not something more, something else called for? At least some word of protest if not some act to prevent the hanging? Says the text:

Marvel not that having been made acquainted with the young sailor's essential innocence the worthy man lifted not a finger to avert the doom of such a martyr to martial discipline. So to do would not only have been as idle as invoking the desert, but would also have been an audacious transgression of the bounds of his function, one as exactly prescribed to him by military law as that of the boatswain or any other naval officer.

B. The Double Duty of Religion

The chaplain's specific function was to console the victim—within limits—to extend concern to him but not to take up his cause, for this particular duty was subsumed under the chaplain's general, primary reason for being on the Bellipotent. The text describes his general role as follows:

8. Id. at 398.
9. I am identifying Billy Budd and not John Claggart as victim. Budd is identified as a victim, id. at 380, and as a martyr, id. at 398. The News from the Mediterranean, which Melville identified as an article in a weekly naval chronicle of the time, described Claggart as though he were the victim. Id. at 406-07. But compare the treatment of Budd and Claggart in R. Weisberg, The Failure of the Word (1984) with R. Posner, Law and Literature (1988).
10. H. Melville, supra note 3, at 400.
11. Id. at 398.
Bluntly put, a chaplain is the minister of the Prince of Peace serving in the host of the God of War—Mars. As such, he is as incongruous as a musket would be on the altar at Christmas. Why, then, is he there? Because he indirectly subserves the purpose attested by the cannon; because too he lends the sanction of the religion of the meek to that which practically is the abrogation of everything but brute Force.12

It is a role with origins in the arrangement between church and state effected by Constantine over sixteen centuries ago after his troops gained victory in battle under the sign of the cross. The Church, here in the person of the clergyman, is given room and access on the Bellipotent. In return, the state, here in the person of Captain Vere, receives the moral right to uphold order; the nation and its employment of force are legitimated by religion.

The chaplain's last act in the story takes place immediately following the disposal of Billy Budd's body, an event that provokes an ominous unease among the sailors. The story picks up:

The band on the quarter-deck played a sacred air, after which the chaplain went through the customary morning service. That done, the drum beat the retreat; and toned by music and religious rites subserving the discipline and purposes of war, the men in their wonted orderly manner dispersed to the places allotted them when not at the guns.13

The chaplain both consoles victims (i.e., the condemned, the unfortunate, the dying, etc.) and lends sanction to the powers that be. The latter, the legitimating, is performed indirectly always by his presence and on specified occasions by his timely toning of the restive with religious rites. I take the chaplain's double function—nurturing and sanctioning; consoling victims and legitimating the enterprise—to be emblematic of normal religion in America.

II. GEORGE, THE CONFESSOR

Allow me to elaborate the proposition by turning to another text. Studies of American civil religion have taught us to anticipate sterototypical celebrations of the faith in presiden-

12. Id. at 399. See also id. at 397.
13. Id. at 405.
tial inaugurals. So I turn from the *Bellipotent* to the ship of state
and the texts from the Bush inaugural.\textsuperscript{14}

This year's inaugural was steeped in religion. The Address
included a prayer and much religious talk. Before the event a
letter from the then Vice-President, on stationery that
appeared to be official, was sent to the nation's clergy and
exhorted them to join their services of worship to his and
others across the nation on inaugural weekend and to ring
bells. There was also a letter to clergy from one Roy Pfautch,
identified as Chairman, Day of Prayer and Thanksgiving, The
American Bicentennial Presidential Inaugural, written at the
request of the President-elect, announcing a service at the
National Cathedral to "culminate the celebration" of Bush's
inauguration and further exhorting congregations to join in the
prayers and ring bells. Accompanying the letter was a special
bulletin cover that might be used for the occasion together with
suggested litanies for the congregation to say.

(In all of this—letters, litany, speech—no mention was
made of the establishment clause. Nor, so far as I know, has
anyone raised the issue of the constitutional propriety of the
activity. Why not? Was there not here a violation of the Con-
stitution? Do such things have to be litigated? Is it not to be
expected that Presidents and Vice-Presidents will, without the
continual intervention of the judiciary, preserve, protect and
defend the constitution they have sworn to preserve, protect
and defend? Was the medium of the inaugural—its religious
pomp and circumstance—not an exact contradiction of its core
substance, the oath of office? Does American normal religion
depend essentially upon the passive toleration or non-recogni-
tion of this contradiction?)

The chaplain of the *Bellipotent* would have been very much
at home at the inauguration. The Anglicanism would have
more than compensated for the embarrassment of his national-
ity, and he would have been adequately confirmed in his duty
to console victims and to legitimate the enterprise.

\textsuperscript{14} The letters and suggested worship materials were mailed to "nearly
300,000 American clergy—all those of any kind whose addresses could be
obtained." Cornell, *Bush Asks U.S. Churches to Join Him in Inaugural Devotions*,
documents are on file with the author. The Inaugural Address may be found
A. Victims

In his speech, Bush declared his first act as President to be a prayer. The central statement of his prayer was: "There is but one use of power and it is to serve people." He went on to speak approvingly of generosity, of "strength [as] a force for good," of "quieter, deeper successes that are made not of gold and silk but of better hearts and finer souls," and of "a thousand points of light—of all the community organizations that are spread like stars throughout the nation doing good." In one extended passage, he called upon "the goodness and the courage of the American people" in engaging the "high moral principle" to "make kinder the face of the nation and gentler the face of the world," a work that he elaborated by referring to "the homeless, lost and roaming," "the children who have nothing," "those [enslaved] to whatever addiction," and "young women to be helped who are about to become mothers of children they can't care for and might not love."

All of this I construe as affirmation of the duty to console victims, a theme that carried over into the first section of the suggested liturgy for the proposed National Day of Prayer and Thanksgiving to end the inaugural weekend. The title of this section is "Caring for the People of America" and includes the petition:

For constant remembrance of the poor and neglected, the old and the sick, and those oppressed by terror, disease or injustice; that we may endeavor to heal the broken, and ease the sorely burdened; WE PRAY TO YOU, O LORD.

The same notion may also be read in the third section of the liturgy, which is styled "Reconciliation of the Peoples of the Earth" and includes the petition:

For a heart that mourns with those who suffer, and for a conscience that takes upon itself the burden of human sin, WE BESEECH YOU, O LORD.

I think it cannot be gainsaid that the religion of the Bush inaugural importantly enjoins its adherents to practice care for the victims of the society, consolation for Billy Budd.

But, it appears, not more than consolation is to be practiced. The chaplain does not challenge the process and system

15. All references to the Inaugural Address are taken from the N.Y. Times, supra note 14. All references to the mailed material are taken from the author's copies.
that hanged the essentially innocent sailor. The Inaugural Address, just after citing the work to be done for the homeless, for children, for addicts, and for pregnant young women, adds this paragraph:

The old solution, the old way, was to think that public money alone could end these problems. But we have learned that that is not so. And in any case, our funds are low. We have a deficit to bring down. We have more will than wallet; but will is what we need.

Non-governmental care for victims may be a substitute for correction of systemic victimization. Even so, the fact remains that the inaugural homily and liturgy do admonish the national congregation to take thought for those in need.

B. Established Power

The other and chief role of religion in America—supplying legitimacy to the enterprise—was also evident, perhaps dominant, in the inaugural texts. The President's prayer, for example, was devoted to statements about power:

[W]rite on our hearts these words: "Use power to help people." For we are given power not to advance our own purposes nor to make a great show in the world, nor a name. There is but one just use of power and it is to serve people.

Service of people is a constraint upon or guide for the use of power, but the assumption of the prayer and its message is that its utterer has the power and the people to be served have it not. It restates the fact that, although governmental power may be of and for the people, it is exercised by an elite. And this circumstance is acceptable, is legitimated, is perceived as just if the power held by the elite is stated as used for the people.

Certainly one of the chief effects of the worship service that concluded the inaugural weekend was to invest the President with religious sanction and to tone the citizenry with religious rites. Indeed, the ceremony completed the transformation—the fast work of success, power and forgetfulness—according to which George Bush, the divisive, degraded campaigner who would do anything to win, became the object of reverential pilgrimage.

The liturgy was styled "the National Service." The signal event was held in the "National Cathedral."
National Cathedral? Why is it owned by Episcopalians?) The letter accompanying the litanies sent to the clergy of the nation said the purpose of the service was “[t]o encourage a spirit of oneness throughout America,” and proposed bell-ringing “as a symbol of unity in celebrating this significant moment . . . .” One of the petitions on the back of the bulletin commended for use reads: “Guide us as we all work with our President.” And in his speech, after lamenting partisan divisiveness, the President said:

It’s been this way since Vietnam. That war cleaves us still. [But, friends, that war began in earnest a quarter of a century ago; and surely the statute of limitations has been reached.] This is a fact: The final lesson of Vietnam is that no great nation can long afford to be sundered by a memory.

A new breeze is blowing—and the old bipartisanship must be made new again.

I do not wish to misrepresent the texts. They also contain prayers of praise and thanksgiving directed to God, prayers free of entanglement with the nation, the President or others of the powers that be in this world as presently constituted. But I do think it fair to say that the tenor of the religion on display in the inaugural texts includes as one of its central tenets or injunctions (in addition to the consolation of victims), the legitimation of the national enterprise. Why else is the only (religious?) symbol on the suggested bulletin cover, prominently displayed (center, upper third), the trademarked logo of the American Bicentennial Presidential Inaugural?

16. L’Enfant’s plan for the capital called for a “great church for national purposes,” and this one, begun in 1890, is scheduled for completion in 1990. Cathedral Nears Completion, N.Y. Times, June 2, 1989, at 19, col. 6. The cathedral was conceived by a Frenchman. It is Episcopal (i.e., Church of England). It is in the Gothic style. And it is being constructed “in the same manner that they were built in the Middle Ages.” Id. This French-English-Gothic-Middle Ages building is the American national cathedral. Perhaps to contrast with the prevailing Greek-Roman style of governmental buildings? What would a really American building look like? A tepee?

17. About the language that appears in brackets, the New York Times explained: “Because of slips in Mr. Bush’s delivery, two sentences . . . . are taken from his prepared text.” N.Y. Times, supra note 14. This is one of the sentences.

18. In the center of the logo appears the capitol dome, beneath it the head and wings of an eagle, and, trailing from the eagle’s head, a ribbon bearing the names Bush and Quayle. The “TM” appears at the lower right.
III. THE LIMITS OF RELIGION

The Religion symbolized by the chaplain on the Bellipotent and displayed at the inauguration of George Bush has for its role the consolation of victims and the legitimation of the enterprise (the nation, the establishment, the powers that be). If I may cannibalize Thomas Kuhn's notion of "normal science," I can identify the religion I have been talking about as normal religion.\(^{19}\)

Normal religion remains normal religion, I think, even though particular instances of its exercise may press or exceed the limits observed by the chaplain and the inauguration. The test of limits can occur with respect to either consolation of victims or the sanctioning of the system and its force.

A. Beyond Consolation

Unlike the Bellipotent's chaplain, Martin Luther King, Jr., did lift a finger on behalf of blacks, \(i.e\). he did more than tend the victims. In doing so, he was prophetically critical of organized religion as well as the system as it was then constituted. Dr. King may be the exception that proves the rule. Or he may be included within the rule. Certainly he is numbered among the nation's saints. If he is to be included within normal religion, then we might say that he either caused a re-configuration of the boundaries of normal religion or was subsequently understood to have fallen within them all along.

In the latter regard, it is to be remembered that his appeal was insistently American. In his Letter from the Birmingham Jail, for example, he spoke of "the sacred heritage of our nation,"\(^{20}\) and said that blacks would "reach the goal of freedom . . . because the goal of America is freedom."\(^{21}\) "[W]hen these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judaeo-Christian heritage, thereby bringing our nation back to those great wells

19. See T. Kuhn, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (2d ed. 1970). Normal religion like normal science does not remain constant. What is considered normal from time to time depends upon the reigning paradigm. Kuhn identifies paradigmatic shifts as revolutions. Maybe reconfigurations of normal religion are revolutions, but I think a less loaded word would be more accurate. In any event, what counts as religion, a religious question, a religious answer, and a religious practice has certainly changed from the times of John Cotton and Jonathan Edwards to those of Jim Bakker and Jimmy Swaggart.
21. Id. at 97.
of democracy which were dug [in] the Constitution and the Declaration of Independence.\textsuperscript{22}

If Dr. King exceeded the received limits of consolation for victims, he did so by appealing to the other, more general role of normal religion, \textit{i.e.} the sanctioning of the enterprise. He presented his cause as fundamentally American, as belonging to the American story. For this reason, my own sense of it is that, exceptional though he was, he, like Frederick Douglass, Abraham Lincoln and Barbara Jordan, is to be included within normal religion.\textsuperscript{23}

\textbf{B. Beyond Legitimation}

There has also been a testing of the limits of the other role of religion, \textit{i.e.} sanctioning the enterprise, when religion has moved out front, from indirect legitimation to active prosecution of the enterprise—as though the chaplain had led a boarding party or manned cannon in battle. So has it been in the relation of the United States to Indian tribes. Certainly religion has at times acted to restrain the violence practiced by Americans upon Native Americans, but missionaries and their religion have also served in the vanguard effecting national policy to Christianize and Americanize the Indians.

Missionaries have served as the paid agents of the United States to Indians.\textsuperscript{24} And in some cases, the most destructive moves by the United States against the tribes have been inspired by religious groups. It was the Lake Mohonk Conference of Christians, for example, that pressed upon the government the General Allotment Act of 1887 in consequence of which the bulk of Indian lands was liquidated—138 million acres in 1887 reduced to 48 million in 1934.\textsuperscript{25} The measure gained from the support of Christians the legitimation that it was otherwise altogether lacking from the Constitution.\textsuperscript{26}

\textsuperscript{22} \textit{Id.} at 99.
\textsuperscript{25} F. PRUCHA, \textit{supra} note 24, at 202-28, 295-305.
\textsuperscript{26} On the absence of any legal basis in this and related moves against the tribes, see Ball, \textit{Constitution, Court, Indian Tribes}, 1987 Am. B. Found. Res. J. 1.
Such zeal is far greater than any evidenced by the chaplain, but I would still include it within normal religion. For one thing, religion has so often been at the forefront of crusading violence—the cross leading Constantine into battle—and has so long been entwined in European and American relations with indigenous peoples, that it may be regarded as a familiar exception. Indeed, the chaplain’s discretion and restraint may be the exception. For another thing, religious initiative in the Indian instance was thought to be a fulfillment of its other role, was undertaken as a form of care for victims, was an excess of Good Samaritanism or benevolent paternalism. Just as Dr. King appealed to the American enterprise when he took up the cause of blacks, so did religious societies profess concern for the Indians when they became active, frontline agents of the United States or incited the government to extraordinary acts.

C. More Normalcy

Dr. King, on the one hand, and missionaries to the Indians, on the other, may constitute exceptions or expansions or herniations of normal religion. I still think that normal religion, and religion normally, fulfills the dual role in American life of consoling victims and legitimating the enterprise.

America is bullish on religion just now.\(^\text{27}\) So much so that the New York Times Book Review assures us “the idea of God [is] a serious subject again”\(^\text{28}\) and “is reflected now in our literature.”\(^\text{29}\) If religion is on the increase, then I think it reasonable to anticipate quantitative but not qualitative change. That is to say, there are not likely to be unusual, dramatic developments on the fringes,\(^\text{30}\) no spikes carrying above or below the received limits on the graph. There is likely to be a continued numerical swelling of normal religion: more chaplains but not more prophetic Martin Luther Kings or martial frontier missionaries.\(^\text{31}\) So religion will be normal, but more so.

29. Id. at 29.
31. Predictions about religion in America are notoriously foolhardy. Those inclined to make or trust them should re-read Book One, Part II, ch. 7 of Tocqueville’s Democracy in America (J.P. Mayer ed. 1969). Although gifted with accurate vision in other respects, Tocqueville foresaw a future two-part division in which some would give up Christianity and all others would return to the Church of Rome.
IV. AMBIGUITY

Within normal religion as I have been talking about it, there are two obvious tensions or contradictions or ambiguities.

A. Self-fulfillment and Concern for Others

One has to do with caring for victims. It is not obvious that normal religion will continue to include such care. Much public discourse is given over to privatism, acquisitiveness, solipsism, self-fulfillment. ("Are you better off today than you were four years ago?") As Robert Bellah and others have proposed, white, middle-class Americans lack the language of service to others—the language of republicanism, community, and biblical faith—and speak and think predominantly in the discourse of self-satisfaction. Much within normal religion revolves around this turn to the self: self-improvement, self-fascination, feeling good about ourselves, about my faith, my exertions of belief, about what I can do to be saved, etc. The focus is upon the believing self.

For example, in a recent interview about the religious character of his new book, A Prayer for Owen Meany, John Irving spoke about his believing. Note in his statement the concentration on the self, the "I", and the self's work of belief:

What degree of religious belief I can manage owes as much to personal experience as it does to all those years of conscious and subconscious training within the church. . . . When I am moved to see beyond my usual doubt, when I am moved to something that approaches real faith, it seems to me, I am basing those instincts for belief on personal experience as much I am on any formal religious training.

Focus upon the self and its sources and efforts at belief is typical of normal religion. But self-fascination and individualism provide at best a fragile basis for community responsibility. Only to the degree that self-fulfillment includes a component of good deeds for others is care for victims a factor.

However, notwithstanding normal religion's present devotion to the self, there continues within it a contrary tradition of

self-sacrifice and genuine care for others. The notion of "a thousand points of light" may constitute an escape from the demands of systemic governmental justice, but it at least recognizes the claim upon us of the people abused by our system. There continue to be sufficient recruits for the office of chaplain on board the *Bellipotent*.

To take a better example than that of "a thousand points of light," the present conflict between those opposed to abortion and those who favor choice can be characterized as a religious conflict of concerns for victims: Those opposed to abortion seek protection for fetuses; those favoring choice seek protection for women generally and poor black women in particular. Common to them is a commitment to others difficult to reconcile with an individualistic worldview.

Or, for another example, there is the ACLU which does not qualify as one of George Bush's "thousand points of light" but does display Americans' capacity for service to others. Milton Mayer observed that the ACLU "has usually found itself on the side of those who have nobody else on their side, the publicans and sinners, the rejected, the desolate, and the dispossessed." He then went on to draw this conclusion:

This habitual association with the unloved or forgotten of the world suggests to me, and to my amazement, a profoundly religious, and a profoundly Christian, well-spring in a rigorously secular institution.

After all these decades of unrelenting struggle to maintain the separation of church and state, what a shock it would be to the ACLU to discover it itself is a church, moved to care for the uncared-for by a power which exceeds its nature and ours.

So there is this contradictory aspect of normal religion. It is a religion of self-fulfillment in which is to be found a continuing commitment to service of others.

**B. Judaeo-Christian, Civil, or What?**

Description of the second contradiction or ambiguity or tension requires some definitional comment on normal religion. The subject given me—The Role of Religion in American Life—has mercifully freed me from embroilment with definitions of religion for constitutional or judicial purposes.

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35. *Id.*
That challenge I happily leave to others. I have not defined normal religion because I have not thought it necessary to do so for my limited purposes and have simply assigned to the examples I have employed the work of giving content to the notion. In doing so, I have assumed—claiming either Ludwig Wittgenstein or Justice Potter Stewart for my guide—that we know normal religion when we see it.

Besides making that assumption explicit, I now add that normal religion exhibits some of the indicia both of "the Judaeo-Christian heritage" and of the "American civil religion." In fact it belongs to the nature of normal religion to be imprecise in contour and content. But therein lies the problem that I now address. Normal religion has gotten by as vaguely Judaeo-Christian, vaguely American civil—with emphasis upon the Christian and American. And by its very vagueness it has seemed or laid claim to be generously embracing.

When George Bush spoke the word "God" at his inaugural, he invoked a wondrous and mammoth—if often assumed—process of translation. The "G" word was given a huge variety of meanings by its audience. Some hearers gave it Christian-trinitarian, others Judaic, others rationalistic content. Some heard it as a mandatory political, public relations signal. Others heard it as empty and meaningless. Yet others responded with none of the above. Not the least condition of normal religion is this seeming capaciousness or indefiniteness or emptiness or comprehensiveness or universality of its "God."

The inaugural "God" this year was Episcopalian in orientation but not so pointedly so as to overtax the assumptions that the customary translations would take place and that the deference of non-Episcopalians could be counted upon again this year.

But I wonder whether the seeming vacuity or neutrality of normal religion does not rest upon false premises that, increasing, we shall be forced to reckon with. I do not think there is so much underlying neutrality and harmony as has been assumed. Normal religion, I think, exercises a more intolerant hegemony than we openly admit. And this is true of both the strong belief and dilute belief branches.

In the strong belief branch, normal religion is predominantly influenced by middle-class, Protestant Christian traditions. One writer recently reported:

I am told everywhere that we are undergoing a religious revival. Maybe so. What I, at least, seem to see is a
lot of hopeful language and a frightening, intolerant fundamentalism when it is not, as it is in official Washington, the most chilling public relations. I shudder when Mike Wallace, interviewing President Reagan just before he left the White House, addressed him as "a spiritual person." 36

If this author's observation is correct then the face put on normal religion may be amiable—lots of smiling kids going Up With People—but is in fact fundamentalist and intolerant. I tend to credit the possibility. I remember too well the paranoia about Roman Catholicism that was precipitated by John Kennedy's campaign for the Presidency. I wonder what normal religion would make of Greek Orthodoxy in the White House. What of Southern Black Baptist Gospel? We pay lip service to our Judaeo-Christian heritage, but what of the Judaic part? Just how successful, even now, would be a campaign for the Presidency by a Jew?

When school children were gunned down in Stockton, California, by a young man with an assault rifle, follow-up stories portrayed the families and friends of the victims mourning according to their Buddhist custom. We were reminded of our sizeable and growing population of Buddhists. The economic and political power of that group is increasing. As they negotiate room within the public sphere, or wrest space for themselves, what will be the consequence for their religion and for normal religion? Will normal religion expand to embrace Buddhism? Or will normal religion assume or require that Buddhists grant deference to normal religion's Protestant Christian tilt?

Has not normal religion falsely assumed or enforced already the deference of others? I think, for example, of *Lynch v. Donnelly*, 37 which upheld the constitutionality of a city-supported crèche. Writing about Justice O'Connor's opinion in that case, Mark Tushnet observes that "her approach begins with the perception that government endorsement of religion 'sends a message to nonadherents that they are outsiders, not full members of the political community.'" 38 Tushnet adds: "Fair enough, and for me, dispositive against the crèche. To Justice O'Connor, though, the crèche 'cannot fairly be understood to convey a message of government endorsement of reli-

Tushnet concludes: "I need not spell out what this means about the way in which Justice O'Connor understands me and, I might add, many other Jews." 40

The matter is no better in the diluted belief branch of normal religion. In fact it may be capable of less tolerance than the strong belief branch. For example Tushnet reports on a conversation with Michael Seidman about Justice O'Connor's opinion in *Lynch v. Donnelly*. Seidman suggested that Justice O'Connor's reaction was attributable not to insensitivity about the views of Jews but to "the weakness of her Christian commitments, which make it impossible for her to see how anyone, Jew or Christian, could 'fairly' understand a crèche to be a religious symbol." 41 That is a plausible analysis.

However, what it fails to explain is *Lyng v. Northwest Indian Cemetery Protective Association*. 42 There, Justice O'Connor was fully cognizant that a proposed Forest Service road through sacred precincts of Indians would not only be offensive to them but would have disastrous consequences for their religion. She and the Court nonetheless upheld the Forest Service action. The weakness-of-Christian-commitment explanation would only fit if it could be said that her commitment was so diluted that the total loss of her religion would be so insignificant to her that she could not understand why Indians' loss of their religion would fairly upset them. Whether that be true or not, I do think it correct that weak commitment produces as much intolerance as strong commitment.

There are now over 1200 distinct religious bodies in the United States. 43 Is the assumed toleration of diversity in fact a deference enforced upon minorities within the hegemony of normal religion? Jews cannot fairly take a crèche as a religious symbol? Indians cannot fairly have religions that stop logging roads? How should Jews regard the National Cathedral? Would the Court allow the Park Service to build through it a tramway taking tourists to an Indian museum?

The problem is not one of physical space. There is plenty of room on the *Bellipotent* for chaplains of all religions. And if there is not, then a satisfactory accommodation can be arranged. For example, when denominational bidding for

39. *Id.*
40. *Id.*
41. *Id.* at 223 n.6.
43. J. MELTON, A DIRECTORY OF RELIGIOUS BODIES IN THE UNITED STATES (1977) (directory of 1,275 primary religious bodies functioning in the United States).
rights to evangelize the Indians grew too brisk, the government simply divided the territory among the competitors. If the Episcopalian takes the available bunk on the Bellipotent, the Roman Catholic can be placed on the Victory.

Nor is the problem one of exotic religions, some murderous satanic worship invented by a group dropping acid. In the first and important instance, the issue is accommodation of real believers in the traditional religions: Christianity, Judaism, Islam, Buddhism. What happens to their offense at normal religion? What happens to their offense at one another? Is further entrenchment of an exclusionary normal religion the likely outcome?

V. PERSONAL DISCLOSURE AND THE ARCANUM

I was not asked to address the role of religion in my own life, but I shall conclude with a brief comment on the subject both to serve full disclosure and to aid your evaluation of my assessment of the role of religion in American life: that there is normal religion which both encourages consolation for victims and legitimates the enterprise and that this religion is marked by contradictory commitments to the self and to others as well as by an asserted, necessary inclusiveness that is in reality a limited tolerance.

Religion—normal religion in any event—has caused me disquiet amounting to alarm and has impelled me to conclude that I am a practitioner of either deviant religion or, as I prefer to think, the biblical faith which I distinguish from religion. If drawing a distinction between religion and being shaped by the biblical sagas is idiosyncratic, it is a shared idiosyncrasy. The distinction lies at the core of Karl Barth's theology, for example, and was central to Dietrich Bonhoeffer's thought, life and death.

The subject of the biblical stories is revelation, not religion. And revelation proceeds from God to us. Religion is human striving after God or a projection or human-generated idea of God, and proceeds in the opposite direction, from here to there. This directional metaphor—human movement

44. See F. Prucha, supra note 24, at 512-19.
toward the divine—is common to the religion of Tocqueville, Unger, Ricoeur, and American normal religion.

As I understand it, religion may warrant special attention from the state because of religious disagreement's potential for disruption and civil unrest and because of the state's need for moral sanction of its force. Otherwise, it seems to me, religion warrants no privilege in preference to other noble human attempts at self-transcendence: art, music, philosophy, politics, speech. Certainly in the biblical stories religion warrants no privilege and is no more affirmed or disaffirmed than any other great human enterprise.

Perhaps a few, brief examples will be my best option for conveying in a short time the difference I discern between normal religion and the biblical faith.

A. Canonical Selectivity

The liturgy for the suggested inaugural worship service began with the section styled "Caring for the People of America." The biblical text to be read was James 2: 5, 8-9, 12-17. These verses describe God's preference for the poor and our duty to love and care for them.

Note the omission of several intervening verses, including verses 6-7 which read: "But you have dishonored the poor man. Is it not the rich who oppress you, is it not they who drag you into court? Is it not they who blaspheme that honorable name by which you are called?" These verses call to mind the fifth chapter of James which the liturgy stopped short of citing and which begins: "Come now, you rich, weep and howl for the miseries that are coming upon you." I think the careful editing is not the consequence of the Episcopalian and Republican orientation of the service but of a selective reading of biblical texts that is natural to normal religion and that biblical faith struggles against.

If some biblical material is excluded, some non-biblical material is included in normal religion's sacred canon. The

46. See Tocqueville's Democracy in America, supra note 31, at ch. 8 (titled "How Equality Suggests to the Americans the Idea of the Indefinite Perfectibility of Man").

47. See Kronman, Book Review, 61 Minn. L. Rev. 167, 200-05 (1976) (exchange of letters in which Unger says his work is Christian "because it affirms that mankind can progress toward the ideal (beatitude) in history but that they cannot achieve it in history").

48. See P. Ricoeur, Lectures on Ideology and Utopia 312 (1986) ("we must let ourselves be drawn into the circle [of ideology and utopia] and then must try to make the circle a spiral").
Declaration of Independence and the Constitution, for example, are mandatory. In this regard, a student has called my attention to the masthead of the Northwest Florida Daily News: "[Freedom] must be consistent with the truths expressed in such great moral guides as the Coveting Commandment [sic], the Golden Rule and the Declaration of Independence."49

B. The Inversion of Majesty

The first section of the inaugural litany contains a second, related example of the difference between normal religion and biblical faith. Following each of the initial prayers, the congregation is to repeat the conceptually and liturgically singular response: "Behold America, We Beseech You, O Lord." In the biblical texts, the expletive or command "behold" is typically uttered by God to people and directs them to a mighty act of his. I know of no instance in the biblical stories where a human summons God to behold a worldly spectacle. God was able to detect the Tower of Babel, for example, without being enjoined to do so.

C. Cheap Grace

A third example follows from the proud "Behold America." Notably absent from that same section of the liturgy, and, for that matter, from the remaining litanies (with two possible exceptions), is any confession of sins.50 There is no sense of remorse, no sense of causative responsibility for the condition of the poor. Repentance is no part of the liturgy. Missing from it is any notion of forgiveness or of the need for forgiveness.

D. In the Beginning Was the Word Crafter

A fourth example is this: The Inaugural Address, as reproduced in the New York Times, occupies the top two-thirds of a page. The bottom third of the page is devoted to a human interest story about the person who actually wrote the address

50. The two possible exceptions—emphasize the possible—are as follows:

One petition reads: "O God of Wisdom, we pray that you might teach us to know and to respect the delicate balance of your creation, so that our ignorance can be overcome through education and conservation, thereby restraining our exploitation and abuse of natural resources."

Another reads: "For a heart that mourns with those who suffer, and for a conscience that takes upon itself the burden of human sin, We beseech You. O Lord."
that George Bush spoke. Under the subtitle "Where Bush found the words to free his sentiments" appears a photograph of the smiling Peggy Noonan. I pass over the White House operatives' fascination with technique that calls for disclosing the magician's process of fakery at the same time he is performing it. I do so to call attention instead to something else.

In the prayer within the speech written by Ms. Noonan and said by Mr. Bush, the President tells God: "[W]rite on our hearts these words: 'Use power to help people.'" I had thought this an example of normal religion's arrogance, an example of the assumption that we must tell God what to write on our hearts because otherwise he would be unable to think up anything to inscribe.

In that regard I was going to classify the maneuver with that of the last petition on the back of the proposed bulletin cover. That petition reads—and you will recognize again Ms. Noonan speaking through President Bush to God to suggest what He might want to do—: "lead us toward a kinder, gentler spirit, we pray."

I have had to change my mind. I now think this was not arrogance on the part of President Bush and normal religion but was instead an act of obeisance. What do Presidents do? They speak words given them to say by people under their authority. A President would naturally be led to assume that a higher power than himself is one who says things thought up for him by lesser lights. What more humble approach to make to God than to come bearing the gift of a well-crafted, successful line—the sharing of a script?

E. Satanic Verses

A fifth, more serious example of the difference between normal religion and the biblical faith is the Salman Rushdie affair. I do not wish to be misunderstood in what I am about to say. I do not think it acceptable for the religious anymore than for the Mafioso to put out contracts on peoples' lives. That is wrong. But the reaction to Muslim condemnation of *Satanic Verses* has gone beyond condemnation of the inducement to assassins and constitutes a failure to understand and respect the offense to Muslims of Rushdie's blasphemy. I repeat: the call for Rushdie's death is wrong. But wrong, too, has been

some of the response, those elements in it which magnify American normal religion's intolerance and failure of understanding and respect.

American consumers have bought the book in vast numbers. American authors have leapt to the barricades rightly to condemn the urging to assassination but wrongly to recite the offending passages. The whole has precipitated an uninspiring dialogue on the order of "No you can't," "Yes I can."

Rushdie's life and right to speak and write surely warrant effective protection. But why does either his life or his freedom to write require self-righteous exacerbation of the offense that produced the threat to Rushdie? If I, an adherent of the biblical faith, am told that *Satanic Verses* is offensive blasphemy to Islam, then why would I want to read the book? Protect Rushdie, to be sure, but why rush to buy his work?

As an adherent of the biblical faith—the strong belief branch—am I not led to reflect upon my own faithful zeal, or lack thereof? Am I not led to remember that hideous, repulsive punishment for blasphemy was written into law and practiced in the United States? Am I not led to remember that, in my own Presbyterian tradition, Calvin's Geneva, that shining city on a hill, practiced the burning of heretics? Am I not led to ponder how the root document of western law, the Book of Deuteronomy, mandates in no uncertain terms what is to be done to blasphemers, be they family and friends or not? What, after all, separates me and my tradition from those Muslims zealous to redress the offense of blasphemy?

F. Crèches and Cash Flow

*Lynch v. Donnelly* is an offense to me as well as to those who are other than Christian believers. Normal religion's display of Jesus dolls to jolly up shoppers to spend more on Christmas presents is deeply offensive. It is blasphemous. For the Supreme Court to sanction the state's practice in giving this offense excludes me, too, as an adherent of the biblical faith.

G. Conclusion

The swelling of normal religion is to me no occasion for joy. Dietrich Bonhoeffer concluded that, in his time and place, adherents of the biblical faith could only celebrate the sacraments and engage in direct intimate discourse about faith—

could only do liturgy and do theology—as an arcane disciple. Secrecy was required. Does an age bullish on religion necessitate a return to the arcanum, because to speak too openly about the faith or to engage too freely in its sacraments risks religious dilution and confusion?

No more than Bonhoeffer do I mean by that question to imply disengagement from the world. Quite the contrary. Unlike normal religion, practice of the biblical faith does not claim space for itself, status, the rewards of official acceptance, tax exemption. If its discipline is arcane, its living and its dying take place very much in the world.

I can well imagine serving on board the Bellipotent, not with the privilege of chaplaincy but doing the work of a sailor as a sailor. I can imagine being on board the legal academy, not from a license to practice theology but from a license to practice law, doing what lawyers do, including the sins reserved specially to lawyers to commit.

53. On the arcane discipline, see E. Bethge, supra note 45, at 783-88.