

# Mere Creatures of the State

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*Education, Religion and the Courts*

by William Bentley Ball

Preface by Richard John Neuhaus

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*Reviewed by Karen Lynn Krugh*

Are we, or are our children, mere creatures of the state? Has the right to instruct our children in the richness of our faith, and the right to publicly profess and practice that faith, been usurped by the state? Perhaps not entirely, and perhaps not explicitly. But to the extent that the prayer of a young school child is considered unconstitutional, yes, they have. William Bentley Ball knows this, having argued ten cases before the Supreme Court and twenty-two cases before state courts. It is from this background that *Mere Creatures of the State?* emanates.

When the nation was founded, the founding fathers recognized the importance of protecting the citizens of the state from a religion imposed by the state. With this in mind, they set down the following words in the First Amendment to the Constitution: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...* " And for the first century-and-a-half after those words were penned, less than a dozen cases involving religion were brought before the Supreme Court. Yet in the 1993 term alone, 36 cases involving religion were brought before the court.

In the past fifty-or-so years, we have witnessed a gradual reversal of the use of that "first freedom." This same right has come to be used as the basis for the removal of practices previously taken for granted: the offering of a blessing at

commencement, a moment of silence for prayer or meditation before the beginning of a school day, public assistance money for the education, transportation or supplies of school children enrolled in private or parochial schools, the display of a creche or menorah during the holidays. Fr. Richard John Neuhaus explains in the preface that “no establishment is now taken to mean that any cooperative relationship between government and religion is suspect as a forbidden establishment of religion.”

William Bentley Ball knows this better than most, and is therefore one of the few people who could write this book, having been personally involved in several of the key cases which are now used as a basis for deciding cases dealing with religion and the establishment clause. For cases he himself argued (*Lemon*, *Yoder*, and *Zobrest*, to name a few), he builds them from the ground up, introducing the reader to the real people involved. From the Amish farm of Jonas Yoder in Wisconsin to the state capital building in Harrisburg, Pennsylvania, to the counsel table of the nation’s highest court, Ball’s account provides a rare glimpse inside some of the most well-known Supreme Court cases of the twentieth century.

How did he feel the arguments went in *Yoder*? What was the origin of the now-famous *Lemon* test? Upon completing his arguments, which way did he see the judgment going? Providing a perspective unique to only those most closely involved in such cases, Ball’s is a work rich, not just in scholarly information, but in American history. And Ball is deeply entrenched in that history.

If the aim is to find a book heavy with lawyerese and legalistic entanglements, explaining statutes, precedents and the like, this is *not* the book. If the aim is to find an immensely readable, thoroughly enjoyable mix of personal anecdotes and legal history, this *is* the book. Do not misunderstand – this book is not light reading. Combining the

personal with the historical, *Mere Creatures of the State?* provides a tangible look over the past fifty years at the key decisions dealing with religion and education that affect the way all Americans profess and practice their faith today. And coming from Ball's own pen, this is the most informed book on the subject to have appeared in quite some time.