In Memoriam: William Bentley Ball
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On January 10, 1999, God called from this life at the age of 83 the renowned Catholic constitutional lawyer and religious liberty advocate William Bentley Ball. A member of the Society of Catholic Social Scientists since 1995, Ball was that rare mix of legal scholar, man of humane learning, top-notch trial and appellate lawyer, and defender of Catholic truth and sound principle. He almost seemed like an anachronism in a profession which in recent times has given itself over to positivism, utilitarian calculation, and the furtherance of selfish interests.

A native of Cleveland, Ball worked his way up from modest beginnings, and always remembered the lessons learned during the Depression as so many in his generation did. He served in the Ohio National Guard and then as an officer in the Navy during World War II, earned his undergraduate degree from what is now Case Western Reserve University, and then graduated from Notre Dame Law School. He practiced corporate law for a time, was on the founding faculty of Villanova University Law School in the 1950's, then became executive director and legal counsel for the newly-formed Pennsylvania Catholic Conference in Harrisburg in 1960. In 1968, he founded the law firm of Ball, Skelly, Murren, and Connell in Harrisburg, which continued to serve as legal counsel for the Conference. Having thus been on the ground floor of many firsts, Ball can rightfully be said to have been a pathfinder, organizer, and builder. As his career went on, he was one of the small number of American lawyers who became distinguished as U.S. Supreme Court litigators as he argued nine cases before that tribunal and assisted in twenty-five others. He became known especially as a religious liberty specialist, and secondarily as a family rights defender.

Probably Ball's most famous case before the Supreme Court was Wisconsin v. Yoder (1972) in which he successfully defended a Wisconsin Amish family that refused to upset the entire Amish way of life by sending their children to secondary school in compliance with the state's compulsory attendance statute. The Court accepted Ball's argument that such a requirement violated the family's religious freedom. Basically, what the Court in that case did was to say that a public policy that was not directly geared to violate religious liberty would have to give way if it had that actual effect. In recent years, the Court has
backed away from that position and has allowed public policies having such an
effect to stand. Ball strongly criticized this new religious liberty jurisprudence
of the Court. He saw it, at least in part, as reflecting the constitutional thinking
of such conservative legal heroes as Justice Antonin Scalia and former Judge
Robert Bork, among others, who he rightfully believed went overboard in
deferring to legislative bodies and in emphasizing a black-letter reading of the
Constitution which was reluctant to acknowledge unenumerated rights or take
a sufficiently expansive view of rights.

Ball thus posed in contradiction to both the reigning conservative
jurisprudence and the reigning liberal one, the latter of which has all too often
simply viewed the Constitution's meaning as infinitely malleable to meet
current liberal ideological preferences. He provided a jurisprudential perspec­tive that was both shaped squarely by a traditional Natural Law understanding and, in my judgment, was more faithful to the full American
constitutional tradition (and the English common law tradition it was erected on).

Ball's most important recent Supreme Court case was Zobrest v. Catalina
Foothills School District (1993) in which he successfully vindicated the right,
under the federal Education of the Handicapped Act, of a deaf Catholic school
pupil to the assistance of a sign-language interpreter provided by the local
public school district. The district had refused to provide the interpreter because
of an exaggerated fear of breaching the mythical wall of church-state
separation. Ball convinced the Court that his client should not be denied the
benefit to which he was entitled under the statute because of his religious faith.

A Supreme Court case that Ball was involved with that he unfortunately did
not win was Bob Jones University v. U.S. (1983). In that case, the Court upheld
the refusal of the IRS to grant the University a tax exemption, based on the
agency's arbitrary decision that the University's religiously-based rule against
student interracial dating violated "national public policy." While Ball was a
strong defender of minority rights, he clearly saw that the dangerous
implication of this kind of governmental stance is that tax-exempt organizations
and institutions would essentially become agents of the government to insure
the promotion of its policies.

Ball was as vigorous a writer about church-state and religious liberty
questions as he was a legal advocate. He published numerous articles and book
chapters and in the 1990s came out with two noted books, In Search of a
National Morality, an anthology which he edited, and Mere Creatures of the
State?, his long-awaited reflection on and inquiry into the state of American
church-state law and parental educational rights. The former was a joint
Catholic-evangelical Protestant effort addressing important public issues,
especially in the religious liberty, pro-life, pro-family, and public morality
areas. Ball was an exemplar of the very best approach to ecumenism: looking
for common ground where it could be found; he was also vice president of the
National Committee for Amish Religious Freedom and a member on the Religious Liberty Committee of the National Council of Churches—but always strongly and unapologetically adhering to his orthodox Catholicism. Ball's *Mere Creatures* insightfully identified the Supreme Court's 1971 *Lemon v. Kurtzman* decision (which he knew about and participated in from the ground level since it involved Pennsylvania's first-in-the-nation non-public school assistance law) as both the chief culprit in leading to our current convoluted church-state jurisprudence and the major legal tool in the secularizing of American life.

Although I was not a close personal friend of Ball's, I had great admiration for him and deeply appreciated his support for my initiatives and the contacts I had with him. Before I had ever actually met him, except by telephone, I twice attempted to line up national pro-life and pro-family groups and legal figures to promote him to President Reagan for appointment to open Supreme Court seats. He readily and graciously accepted my invitation to come to Franciscan University of Steubenville in 1989 to deliver the annual Orestes A. Brownson Lecture in Politics, Law, and Religion. It has been my privilege to have served with him on the Advisory Board of the Catholic League for Religious and Civil Rights (among whose members I stand as a pygmy among giants). And, of course, he has supported and been a member of the Society. He also contributed an article to our symposium on "Natural Law in American Politics and Constitutional Law" in the first issue of this Review. Interestingly, Ball was also a friend, associate, and confidant of another prominent late member of the Society whose work I also greatly admired, Russell Kirk. Indeed, both were latter-day examples of the American gentlemen who played such a crucial part in shaping the public philosophy and public affairs of early America.

My only hope is that other American Catholic lawyers will look to Ball as a model to follow and as an inspiration to continue the legal struggle for religious liberty. This is all the more important at this time when the marginalization of religion in America has opened an ever-widening door to legal attack upon it.

Bill Ball, *requiescat in pace*. 

Krason 331