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“Sectarianizing” Civil Religion? A Comment on Gedicks and Hendrix

By Steven D. Smith

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"SECTARIANIZING" CIVIL RELIGION? A COMMENT ON GEDICKS AND HENDRIX

*Steven D. Smith**

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I. INTRODUCTION

During some periods in the past, public religious expressions and symbols—Ten Commandments monuments, for instance—served a broadly unifying function in this country. But such expressions and symbols have become “sectarianized,” and hence today are no longer capable of providing a shared basis for community. So runs the central thesis in a provocative article by Frederick Mark Gedicks and Roger Hendrix.¹ There is much in the article that is worthy of comment (and much, incidentally, with which I agree), but for purposes of this short response I will limit myself to trying to explain why I am not ready to sign onto the “sectarianization” thesis.

I cannot just categorically reject the thesis, however, because Gedicks and Hendrix *might* be right. Or even if they are not right now, over the next five or ten or twenty years, their thesis might *become* right. That is because the thesis is basically a claim about the perceived social meaning of particular expressions and symbols, and if enough people assert, with enough conviction or insistence, that an expression or a symbol means something in particular, the assertion can become self-fulfilling. So, if Gedicks and Hendrix, and Paul Finkelman,² and the fashionable “Jeremiahs-in-reverse” who decry the imminent advent of “theocracy”³ say that Ten Commandments monuments equate to go-

* Warren Distinguished Professor of Law, University of San Diego. This Comment benefited from exchanges with Professor Gedicks and other participants in the conference.

¹ Frederick Mark Gedicks and Roger Hendrix, *Uncivil Religion: Judeo-Christianity and the Ten Commandments*, 110 W. VA. L. REV. 275 (2007).

² See Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 FORDHAM L. REV. 1477 (2005).

³ See, e.g., KEVIN PHILLIPS, *AMERICAN THEOCRACY* (2006). For a critical review of several recent works in this, “Theocrats are coming!” vein, see Ross Douthat, *Theocracy, Theocracy, Theocracy*, *First Things*, Aug./Sept. 2006, at 23 (book review).

vernmental endorsement of conservative Christianity, and if they say this energetically enough, they may become right—in the same way that if enough people say that “c-o-w” refers to a swift four-legged mammal that says “neigh” and is ridden by jockeys and cowboys, that is what the word *will* come to mean.

In a sense, we might say that if “we”—our society, our legal-political culture—want Gedicks=s and Hendrix=s thesis to be true, we have the power to make it true. So, my modest response will limit itself to suggesting (a) that the “sectarianization” thesis is not correct for the reason Gedicks and Hendrix say it is, and (b) that we—Gedicks and Hendrix included—ought to reflect a bit more carefully before deciding whether we want to make their thesis true.

II. AGREEMENT BEYOND DISAGREEMENT

Political and religious leaders, when they speak in public contexts, often affirm religious ideas in generic, nonsectarian terms that, at least on the face of things, most (though of course not all) Americans can accept. Examples include “In God we trust,” “One nation under God,” and “God bless America.” On less civic occasions (such as in church), however, these same political and religious leaders often make it clear that they believe in more specific and less inclusive doctrines, and that they think contrary, specific religious beliefs held by other Americans are wrong. So, it turns out that the public figure who in civic settings offers bland and irenic statements about “deity” or “Providence” actually believes in, say, a Christian, trinitarian, or maybe even Calvinist version of deity, and this public figure believes that contrary notions about deity held by other Americans are mistaken. Once we perceive the existence of these more specific beliefs, Gedicks and Hendrix suggest, we will realize that the more generic, nonsectarian public statements made by the official are deceptive, and that their apparent inclusiveness is illusory.

So, suppose a public official says something like “In God we trust,” or “God bless America.” On first hearing, I might think I can join in these affirmations; I am, after all, a theist. But then I realize that this same official holds Calvinist beliefs, and that in less public or political settings he explicitly affirms these beliefs. Now I will understand the official, even in his public utterances, to be saying something like “In the stern God of Calvin we trust,” or “May the Trinity bless America”; and not being a Calvinist, I will find myself opposed to, and excluded by, *these* sectarian (in disguise) affirmations. If I have understood the article correctly, this is the central argument animating Gedicks and Hendrix=s “sectarianization” thesis.⁴

On a conceptual level, the argument seems to me fundamentally mistaken. Gedicks and Hendrix have merely described (in disapproving terms and

⁴ Some citizens, of course, argue quite overtly and unapologetically for exclusive or “sectarian” religious agendas, but I take it that this is not the sort of religious expression that Gedicks and Hendrix are primarily addressing. Their target, as I read the article, is the sort of civil religion that purports to be inclusive and nonsectarian but, according to their argument, really is not.

tone) an instance of the very common situation in which people agree on some abstract propositions or ideals or goals, but disagree at a more concrete level about how those propositions, ideals, or goals should be interpreted, implemented, or applied. People agree at a general level, in other words, but disagree at a more specific level. Gedicks and Hendrix seem to believe that in these situations, the disagreement over specifics somehow vitiates the agreement at the more general level or renders that apparent agreement illusory or deceptive. But this seems to me a plain *non sequitur*—and a potentially destructive one. It is destructive because, both in practical and academic contexts, as we diverse human beings discuss and negotiate and interact with each other, a great deal can hinge on our recognizing in such situations that both the agreement (at one level) and the disagreement (at another level) are real, and that neither negates the other. Without that recognition, a great many valuable cooperative human enterprises would become difficult or impossible.

Gedicks and Hendrix appreciate this point well enough when it suits their purposes. For instance, they more than once describe themselves as “Christians.”⁵ Yet they also realize—as Professor Gedicks’s poignant recounting of his experience living in the Bible Belt reflects⁶—that in many respects, their specifically Mormon theological beliefs differ from those beliefs of many other people who call themselves “Christians,” and that these theological differences are sufficiently large that some of these other believers would exclude Gedicks and Hendrix from the category of “Christians.” For their part, Gedicks and Hendrix evidently reject this effort to exclude. They understand that it is possible for people to agree on enough or at a general enough level to be united in being “Christians,” while also sincerely disagreeing about many of the specific tenets of Christianity.⁷

Yet if the logic of Gedicks and Hendrix’s “sectarianization” argument were cogent, their critics would be fully justified in excluding them from the community of “Christians.” “You say and we say,” the excluders might explain to Gedicks and Hendrix, “that Jesus is the son of God, the redeemer of the world, and the author of salvation. Let it be granted that you and we are sincere in affirming these propositions. Even so, on closer inspection it becomes apparent that yours and our understandings of God, redemption, and salvation differ substantially. Hence, our apparent agreement is illusory, and any suggestion that we agree *in being Christian* is spurious—mere deception.” Gedicks and Hendrix evidently—and correctly, I believe—regard this exclusionary argument as unsound; but it exhibits the same dubious logic that they themselves employ in trying to show that generic or nonsectarian public religious references are

⁵ Gedicks and Hendrix, *supra* note 1, at 296.

⁶ *Id.* at 300.

⁷ It is, of course, a complex and contestable question, which I do not address here, whether Latter-day Saint beliefs, or any other set of beliefs, ought to be classified as “Christian.” As a child of and participant in the same religious tradition, however, I fully join in Gedicks’s and Hendrix’s view on this point.

reducible to the more specific and “sectarian” beliefs that those who use or support the references may hold.

Hence, Gedicks=s and Hendrix=s central argument—that because on a concrete level different believers embrace inconsistent or “sectarian” religious ideas, it somehow follows that the appearance of agreement and inclusiveness, at a more general level is illusory—seems simply wrong.⁸ But even if their *logic* is unsound, it is possible that their conclusion is correct *as an empirical matter*. As noted, the meaning of particular expressions is a contingent and conventional matter, and it is possible that to Americans today (*all* Americans?, “average” or “typical” Americans?, non-Christian Americans?), publicly-sponsored religious expressions are in fact understood to be endorsements of something like conservative Christianity. The question is ultimately an empirical one.

Notably, however, Gedicks and Hendrix offer no empirical evidence in support of their interpretation. So for all that appears, it is entirely possible that when governments or public figures use generic religious language, they intend only a generic and inclusive meaning (which of course is perfectly consistent with their believing, whole-heartedly, the more specific doctrines or interpretations that they recite in other, less public contexts). And it is entirely possible that citizens in general accurately understand these intentions, and hence take these expressions in this generic and inclusive sense (which of course is perfectly consistent with citizens also understanding that the public figures also have more specific religious beliefs).

In sum, Gedicks and Hendrix seem to offer what they take to be a logical or conceptual argument for their “sectarianization” thesis; but the logic is flawed. Alternatively, their thesis might be taken in a more empirical sense, but Gedicks and Hendrix offer no empirical evidence in support of that thesis.

There is, however, a third alternative. Under this third alternative, Gedicks and Hendrix might not be either reasoning about what public religious expressions logically *must* mean or reporting on what these expressions empiri-

⁸ Might the argument be salvageable on radically nominalistic assumptions? Suppose someone denies the validity or reality of any general concepts or categories, any universal properties, and any essential natures. There is no such thing as an abstract category of “persons,” this radical and perhaps wacky nominalist insists: the word can only be understood as a shorthand for the particulars that the speaker of the word has in mind. Consequently, when I say something like “All persons are eligible to participate,” my statement can only be taken to refer to, maybe, the particular Toms, Dicks, and Harrys with whom I am acquainted; and if you are not acquainted with those particular Toms, Dicks, and Harrys, then when you nod and say, “Yes, all persons are eligible to participate,” we are not in fact agreeing, but rather are using the term “persons” to refer to entirely different sets of things. In the same way, when we say “God,” we must be understood to be referring only to the very specific deity in whom we happen to believe. Gedicks(s and Hendrix(s argument might make sense on something like these linguistic and metaphysical assumptions. I doubt, however, whether the assumptions themselves make sense. On these assumptions, for example, it seems we would never actually change or progress in our understanding of God; as our religious views change, we would instead be continually transferring our faith from one deity to another. In any case, as their classification of themselves as “Christians” shows, it seems clear that Gedicks and Hendrix themselves do not embrace this sort of radical nominalism.

cally *do* mean. Gedicks and Hendrix might instead be trying to *shape* meanings and perceptions.

Suppose you dislike the term “phooey.” You might declare, or even write learned articles purporting to show, that “phooey” is a term of unspeakable abuse, and you might persuade or cajole or intimidate other people to share your view. If you are successful in this effort, “phooey” *will* at that point become a term of abuse: by saying that “phooey” is abusive, you will have made it so. In the same way, Gedicks and Hendrix and other like-minded critics and scholars might be campaigning to delegitimize public religious symbols, such as Ten Commandments monuments, by ascribing a sectarian meaning to them.

There would be irony in this scenario, perhaps, because it would turn out that the real perpetrators of “sectarianization,” division, and exclusion would be, not the conservative Christians or political leaders who speak to or for them, but rather the secular critics, who strategically charge “sectarianization” in an effort to delegitimize traditional and valued expressions and symbols. But in any case, the possibility pushes us to ask the question: would it be a good idea to delegitimize religious expressions and symbols for public use? Suppose we have the power, through our beliefs and assertions and usages, to give such expressions either a nonsectarian or a sectarian meaning. Should we *want* to choose the latter option, and thus choose to eliminate these expressions and symbols as a basis of political community?

III. CIVIC RELIGION OR SECULAR COMMUNITY?

These are difficult questions, and there is no possibility of discussing them satisfactorily in this brief comment. I will limit myself to giving the barest sketch of a response that would question the efforts of Gedicks and Hendrix and like-minded scholars and critics.

We can begin with a shamelessly summary statement of background assumptions. First, political community is an important (though perhaps only *prima facie*) human good. Second, a political community is not just a collection of individuals who happen to occupy the same geographical space; rather, a community is composed of people who understand themselves—or imagine themselves⁹—to be in some sense united by common ties or commitments. Third, those common ties and commitments, though multifaceted, often include public, communal affirmations of what are widely taken to be important, unifying truths.

How to select and express these (ostensible) truths presents a challenge to the skill and virtue of citizens and their political leaders. In a large and di-

⁹ Benedict Anderson has emphasized that “[a]ll communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined.” Such a community “is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.” BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 6 (rev. ed. 1991).

verse community, there are probably *no* propositions of any significance that *every* citizen agrees upon; hence, a requirement of unanimity as a condition of public affirmation would be no more feasible than a requirement of unanimity in the election of Senators, or the enactment of legislation. “We hold these truths to be self-evident . . .,” we solemnly intone; but in fact many, many citizens do *not* believe the “truths” selected (whatever they are) to be “self-evident,” and many do not believe in them at all. In reality, public affirmations are a necessary, but troubling and tremendously complicated affair, in which mutually acceptable expressions are sought and variously expressed, at different levels of government and in different ways—in language and stone and symbol.¹⁰

Civic religion in its various forms is one possible response to this challenge of community—and one with a venerable American pedigree.¹¹ At the same time, civil religion is a problematic enterprise that generates criticism from both the secular and the religious.¹² A proposal to base community on civil religion (among other things, of course) thus raises difficult issues.

But two points ought to be relatively clear. First, given the nature of the problem, it ought not to be sufficient for critics simply to point out that many Americans do not agree with the content of particular religious affirmations (any more than it would be decisive, or at all surprising, to point out that many citizens oppose any other measure or public policy that government may be considering). *Of course* there will be opposition to and disagreement with any proposition (religious *or* secular) that government may endorse, but it does not follow that government must or could remain mute, affirming and standing for nothing at all.

Second, critics of a particular proposal for community affirmations ought to address the obvious and unavoidable question: *What is the alternative?* The prevailing assumption in much modern law and scholarship is that, contrary to the views of earlier thinkers like Jean-Jacques Rousseau,¹³ we now know that civil religion can be dispensed with because community can be founded and

¹⁰ For a thoughtful reflection on the use of monuments, flags, stamps, and other such symbols in the maintenance of community in this country, see SANFORD LEVINSON, *WRITTEN IN STONE* (1998). For my own consideration of how the Constitution attempts to bring out E Pluribus Unum by facilitating affirmations at some juridical or jurisdictional levels, while maintaining an agnostic stance relative to those same affirmations at other levels and in other ways, see Steven Smith, *Our Agnostic Constitution*, 83 N.Y.U. L. REV. (forthcoming 2008).

¹¹ For perhaps the seminal modern treatment of the subject, see ROBERT N. BELLAH, *Civil Religion in America*, in *BEYOND BELIEF: ESSAYS ON RELIGION IN A POST-TRADITIONAL WORLD* 169 (1970).

¹² For a powerful recent articulation of such criticism from a religious perspective, see DARRYL HART, *A SECULAR FAITH: WHY CHRISTIANITY FAVORS THE SEPARATION OF CHURCH AND STATE* (2006).

¹³ Rousseau argued that “no state has ever been founded without religion serving as its base.” JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* 99 (Donald A. Cress, ed., Hackett Publishing Co. 1987) (1762).

government can operate on the basis of purely secular beliefs. Gedicks and Hendrix seem to share in this modern assumption.

The assumption *might* be right. But there is reason to be skeptical. Once again, the question raises large and complicated issues that have been the subject of a vast literature¹⁴; this is hardly the place to go into detail about them. For now it may be enough to tersely note three points. First, the claim that secular discourse is "neutral" toward religion and inclusive of all citizens has been powerfully criticized.¹⁵ Second, a substantial argument has been made that religious beliefs and assumptions are more supportive of social justice and human rights than secular discourse is.¹⁶ Third, religious beliefs, though of course not universally shared, very likely command the assent of more citizens in this country than, say, the secular "public reason" of John Rawls.¹⁷ These points are all contestable and contested, to be sure, but they ought to be at least substantial enough to give critics like Gedicks and Hendrix pause in their effort to delegitimize (admittedly problematic) religious affirmations as a basis for community—to be replaced by . . . what?

IV. CONCLUSION

If there was any seminal event in this country's tradition of giving legal protection to religious freedom, it was probably the adoption of Thomas Jefferson's famous Virginia Bill for Religious Freedom.¹⁸ The Bill began with an eloquent assertion of its animating premise—"Almighty God hath created the mind free . . ."—and it proceeded to justify freedom of religion in overtly reli-

¹⁴ See, e.g., SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988); Michael M. Maddigan, *The Establishment Clause, Civil Religion, and the Public Church*, 81 *Cal. L. Rev.* 293 (1993).

¹⁵ Such criticism has been made by, among others, Professor Gedicks. See, e.g., Frederick Mark Gedicks, *Public Life and Hostility to Religion*, 78 *VA. L. REV.* 671 (1992).

¹⁶ See, e.g., Michael J. Perry, *Comment on The Limits of Rationality and the Place of Religious Conviction: Protecting Animals and the Environment*, 27 *WM. & MARY L. REV.* 1067 (1985). Perry quotes John Coleman's statement:

[T]he strongest American voices for a compassionate just community always appealed in public to religious imagery and sentiments. . . . The American religious ethic and rhetoric contain rich, polyvalent symbolic power to command commitments of emotional depth, when compared to "secular" language Secular Enlightenment language remains exceedingly "thin" as a symbol system.

Id. at 1071. See also MICHAEL J. PERRY, *THE IDEA OF HUMAN RIGHTS* 11-41 (1998) (arguing that a religious rationale is necessary to justify human rights).

¹⁷ For a recent detailed argument to this effect, see BRUCE LEDEWITZ, *AMERICAN RELIGIOUS DEMOCRACY* (2007).

¹⁸ For a discussion that elaborates somewhat on the points made here, see Steven D. Smith, *Nonestablishment "Under God"? The Nonsectarian Principle*, 50 *VILL. L. REV.* 1, 20 (2005).

gious terms¹⁹. Atheists, if there were any in Virginia at the time, presumably would have preferred that this religious rationale be omitted, but without it, there would have been little or nothing in the bill to speak to and elicit the support of religious believers. Conversely, more evangelical citizens might have preferred something more manifestly Christian over the generic “Almighty God.” And in fact an attempt was made to amend the language in a more sectarian direction. But in the end, the more generic and inclusive language prevailed.

Had the legislators been influenced by the logic of Gedicks=s and Hendrix=s argument, the bill might never have been approved at all; and it surely would not have been enacted in anything like the form it in fact took. “Sure, it says ‘Almighty God,’” evangelical Christians might have reasoned, “and of course we believe in Almighty God. But the bill was written by that deist—that infidel—Tom Jefferson, and we know well enough what *he means* by ‘Almighty God.’ Certainly not the God of the Bible that we believe in. It=s Jefferson=s detached ‘watchmaker’ deity that the bill invokes, and we cannot assent to that heresy.”

Deists could have reasoned in the same way: the bill was supported by citizens and legislators many or most of whom were trinitarian Christians who presumably understood “Almighty God” in an objectionable (to deists) Christian sense. In this way, delegates of all stripes might have concluded that the appearance of agreement on a generic, widely embraced religious proposition was a sham. They *might* have drawn this conclusion—but they would have been wrong to do so, both conceptually and practically. More generally, such logic would subvert the process of searching for and crafting agreement—a process on which pluralistic democracy depends. After all, if such “sectarianization” reasoning can be used to subvert seemingly inclusive religious expressions, it can equally be directed against any other set of expressions or beliefs that might be offered as a basis of community.

Whether civil religion (and what form of civil religion) can contribute to community will no doubt be contested questions as long as Americans remain religious and as long as democracy shall last. It is possible that civil religion will be, or should be, abandoned as a basis of community. But it should not be abandoned on the basis of the “sectarianization” critique offered by Gedicks and Hendrix.

¹⁹ Reprinted in JOHN T. NOONAN, JR. & EDWARD MCGLYNN GAFFNEY, JR., RELIGIOUS FREEDOM: HISTORY, CASES, AND OTHER MATERIALS 169 (2001).