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10-19-2007

### October 19, 2007: World Magazine interview with Bruce Ledewitz

Bruce Ledewitz

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Title: World Magazine interview with Bruce Ledewitz

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10/19/2007--World Magazine is a Christian news magazine I highly recommend. Marvin Olasky, the Editor-in Chief, has always been hard to categorize politically. Here is part of the magazine's typical self-description: "We believe that our purpose is to glorify God and enjoy Him forever—and forever begins right now. We like sex, within marriage. We're not amoral hedonists, but we're not stoic moralists either. We like the vines and fig trees God gives us. We read novels, go to movies, and listen to classical music but also jazz. We prefer ice cream to cotton candy. We cover movies, yoga, artists and travel; we aren't Christians with rules against anything that's fun because God made fun, too. "

What follows is an interview from some months ago that has just appeared.

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Bruce Ledewitz received his J.D. from Yale Law School in 1977 and is a Professor of Law at Duquesne University, where he has taught constitutional law since 1980. His book *American Religious Democracy* (Praeger, 2007) argues that the era of ardent separation of church and state is over—and that the change is not something to fret about.

Many Christian conservatives have also written about secularism run amuck, but Ledewitz is neither conservative nor Christian: He served as western Pennsylvania coordinator for the presidential campaigns of Gary Hart and Al Gore, was secretary of the National Coalition to Abolish the Death Penalty, and is Jewish.

WORLD: Why do you think the United States is becoming a "religious democracy"?

LEDEWITZ: My definition of religious democracy, which is "simply that a substantial number of voters in America now vote the way they do for what they consider to be religious reasons" and that government policy increasingly reflects that reality, suggests that America has always been a religious democracy, which is true to an extent. The difference today is that voting for religious reasons is more self-conscious than before, especially among conservatives.

The changes in policy include President Bush's faith-based initiatives, the veto of federal funding of stem-cell research, state constitutional amendments banning gay marriage, among much else—and in the U.S. Supreme Court, appointments of justices who do not appear to favor strict separation of church and state.

WORLD: What makes you think that the Supreme Court will probably end up in support of the positions of Justices Scalia and Thomas—"that government may permit and encourage a kind of generic religious expression and belief, even monotheism dependent on a Creator"?

LEDEWITZ: Predicting the future movement of the Supreme Court is notoriously difficult, but reversing the lower court that removed the phrase "under God" from the Pledge of Allegiance, even though on technical grounds, was consistent with past decisions allowing government religious language in the public square, such as legislative prayers, opening the court sessions with "God save this Court," and so forth.

The current makeup of the court probably contains four justices already who endorse this position. Justice Anthony Kennedy, the pivotal fifth vote, is also not committed to strict separation. So, in the absence of reinvigoration of government neutrality and the wall of separation, which does not appear likely, permitting government encouragement of generic religious expression seems the only place the court can go.

WORLD: You suggest that secularists who seek change through the courts are the real anti-democrats. Why?

LEDEWITZ: In recent years, liberals have had a tendency to seek social change in the courthouse rather than at the ballot box. This is most evident today in the context of abortion and gay marriage. Conservative legal theory has criticized this tendency, though conservatives engage in the same judicial tactics. I point to the secularists in this regard because it is they who often describe religious voters as anti-democratic, whereas on a variety of issues, it is secularists and others on the left who seek to stymie the majority will of the voters by bringing suit. Of course, I am not criticizing resorting to the courts per se, only pointing out that those who do so cannot criticize their political opponents as anti-democratic.

WORLD: What do you make of the accusation that Christians want to establish "theocracy"?

LEDEWITZ: It is necessary to distinguish among three terms: democracy, theocracy, and constitutional democracy. In democracy, the majority will of the voters determines public policy. Thus, even if the voters enacted the book of Leviticus, that would be democratic in any fair understanding of the term. In theocracy, public policy is determined not by majority will of the voters but in some other way, often by giving clerical offices some form of veto over public policy, as in Iran.

Constitutional democracy places limits on what the majority will of the voters is allowed to enact as public policy. Thus, secular opponents might be correct, from their point of view, in accusing religious voters of undermining constitutional democracy, but not of promoting theocracy.

WORLD: You write that the Supreme Court could get around the impasse about prayer at graduation ceremonies or football games by developing a different understanding of what "government" is, and then conceiving of civil society apart from government. Please explain.

LEDEWITZ: Constitutional law conceives of only two political actors: government and individuals. The government may not foster religion but individuals have the right of free speech. This leads to the result that at high-school graduations, no prayers may be offered, but individual students are free to praise Jesus Christ. This student speech can be more disturbing to religious minorities than the nonsectarian prayer that school boards used to offer. Other groups exist between these two categories, such as parents of graduating seniors. Such groups should be viewed as civil society that is not bound strictly by the constitutional limits on what the government is permitted to do. Thus, parents should be free to work out acceptable expressions of faith for a graduation program.

WORLD: Why can those who believe in God's judgment not be "indifferent to the conduct of the nonbelieving others" in their society?

LEDEWITZ: I do not claim to be a theologian, but as I read the Bible, divine judgment operates at the level of a whole people. Thus, all Egyptians suffer in the book of Exodus, whether or not they had anything to do with enslaving the Hebrews. We see the same phenomenon today in regard to the war in Iraq and American foreign and military policy generally, which affect all members of this society. So, although I do not regard the loving relationships of gay couples, for example, as sinful in any way, religious believers who see this behavior as sinful are not necessarily free to take a "live and let live" attitude. Of course, Jesus' teaching on judgment also operates here for the Christian.

WORLD: You state that in 2006 Democratic candidates did not run on a "secular agenda—the separation of Church and State, and government religious neutrality—really anywhere in the country. There was little or no talk about getting God out of public life. . . . For one election at least, the Democratic Party accepted American Religious Democracy." What do you think will happen in the 2008 election?

LEDEWITZ: As the recent testimonies of faith on CNN by Sen. Hillary Clinton, Sen. Barack Obama, and former Sen. John Edwards demonstrated, the 2008 presidential campaign is going to be open to religious expression. Even the remaining constraint expressed last year by Obama that people of faith should express their commitments in secular language in public debate is unlikely to be heard again. Democrats nationally will not run on a secular agenda. I doubt the Democratic Party platform will call for removing the words "under God" from the Pledge of Allegiance. On the other hand, the platform won't expressly repudiate the separation of Church and State either. That would be too precipitous a change and too hard for some of the party's base to accept.

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