

BOOK REVIEW

RELIGION AND PUBLIC EDUCATION IN A CONSTITUTIONAL DEMOCRACY

Does God Belong in Public Schools? By Kent Greenawalt. Princeton Univ. Press, 2005.

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INTRODUCTION

THE Constitution of the United States contains two of the major standards appropriate to a liberal democracy. Both are expressed in the First Amendment: one clause prohibits Congress's establishing religion; the other prohibits its restricting the free exercise of religion.¹ The present age is witnessing an apparently increasing tension over the meaning of these clauses, and the problem of interpreting them is intensified by the possibility of their apparently supporting conflicting directives in certain situations. In the United States (which is the primary setting of concern in this essay), the problem has been especially difficult and divisive. A major current issue is how science should be taught in public schools. Evolutionary biology has been the focus of most of the controversy here, but the place of religion in history, civics, and other areas of the curriculum also raises difficult questions about how, both constitutionally and ethically, teachers should deal with either religion itself or the religious implications of their subject

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¹ U.S. Const. amend. I. This is worded in terms of prohibition of religion, not *a religion*. The wording is "respecting an establishment of religion," and establishing religion does not entail establishing *a religion* where that has reference to an already existing one. *Id.* This distinction is legally as well as conceptually significant and will be observed in what follows.

matter. For many years Professor Kent Greenawalt has published well-argued, influential scholarly works on the relations among law, religion, and politics. His most recent book, *Does God Belong in Public Schools?*, is his first full-scale comprehensive treatment of the subject of religion and education in a liberal democracy (with the United States as the central example). My aim here is to bring out some of its distinctive points and to discuss a number of them in the hope of promoting further inquiry into the issues and, if only indirectly, better ways of teaching in the public schools.

I. KENT GREENAWALT'S CASE FOR BALANCE BETWEEN
GOVERNMENTAL NEUTRALITY AND RELIGIOUS FREEDOM IN
PUBLIC EDUCATION

Many kinds of circumstances call for decisions on how religion should be treated in public school education. Greenawalt's introduction provides ten instructive examples. They range from the problem of whether to teach about condoms in providing sex education, to the proper role of Christmas carols, to the acceptable restrictions on choice of commencement speakers. As he interprets the Supreme Court, "American states may not prefer one religion over others and may not prefer religion over nonreligion."² He notes, however, that "[s]ome Supreme Court justices and critics believe government should be able to prefer religion in general."³

In this part of the book and throughout, he distinguishes between teaching and preaching and, by implication, between teaching ideas or asserted contents of texts *as true* and teaching about them, say about their meaning, history, and influence. The question he is addressing in many parts of the book is not whether public schools may teach *about* religion—something that, even in the history curriculum alone, is difficult to avoid. Rather, the question is when teaching about religion or some other subject violates "the central principle that public schools should not teach religious views as true."⁴

In clarifying what it is to teach about religion rather than to teach religion itself, Greenawalt is careful to distinguish teaching

² Kent Greenawalt, *Does God Belong in Public Schools?* 3 (2005).

³ *Id.*

⁴ *Id.* at 9.

religion from teaching morality, though he is aware of the historically close association between these two kinds of instruction. He is also aware that “some theorists now argue that liberal democracies should be neutral among competing versions of the good life.”⁵ He does not take up the question of how far a liberal democracy should go toward accepting some such view, but he implicitly makes an important distinction that bears on that question. On the one hand, there is teaching a full-scale vision of the good life; on the other hand, there is simply teaching morality. He notes that “[m]ost moral virtues concern how people can live amicably together. Schools certainly should encourage students to be honest and respectful”⁶

As one would expect, Greenawalt devotes much discussion to questions about (religiously intended) Bible readings in public schools and, what is more overtly religious, offering prayers. There is now wide agreement that these are inappropriate to classrooms and official school functions (apart from nonconfessional readings of the Bible that constitute teaching about religion or are essential in, for example, a literature class). But a major question that persists here is their permissibility in graduation ceremonies. On the one hand, Justice Scalia has maintained that “public ceremonies had long involved prayers and that the meaning of the Establishment Clause should be marked by reference to historical practices and understandings.”⁷ On the other hand, Greenawalt cites Justice Kennedy, writing for the majority in *Lee v. Weisman*,⁸ Justice Kennedy considered graduation ceremonies among the most significant occasions in life and noted that “attendance is effectively mandatory.”⁹ In that case, including prayers in them encroaches on “freedom of conscience.”¹⁰

One principle Greenawalt suggests in partial justification of Justice Kennedy’s position, or at least in contrast to Justice Scalia’s view (cited above), is that “when a Constitution is, like ours, very difficult to amend, rigid adherence to what a provision was nar-

⁵ Id. at 25.

⁶ Id.

⁷ Id. at 45 (citing *Lee v. Weisman*, 505 U.S. 577, 631 (1992) (Scalia, J., dissenting)).

⁸ 505 U.S. 577 (1992).

⁹ Greenawalt, *supra* note 2, at 45 (citing *Weisman*, 505 U.S. at 586, 595).

¹⁰ Id. (citing *Weisman*, 505 U.S. at 593).

rowly intended to accomplish at the time of adoption would be a disaster. A more contextual development of principle over time is a requisite for a decently functioning constitutional order.”¹¹ Greenawalt is aware that this principle is controversial, and in my view much of the book may be regarded as an attempt to show, in connection with the question of religion in public schools, that the principle yields the best overall results in the myriad difficult cases. He does not elaborate on the distinction between narrow and wide interpretations of the founders’ intentions, but the context makes it reasonable to suppose that he would be prepared to do so.

Since a commencement speaker need not be on the staff of a school or representing its views, the nonestablishment standard permits some latitude in choosing speakers for this and similar occasions. Here Greenawalt’s view is that “*some* religious content is permissible, and constitutionally protected, *if* the speaker is chosen on the basis of neutral criteria and the content of the speech is the speaker’s own.”¹² But he dissents from the 2003 view of the Department of Education, which would permit a speech that is “a fervent plea to members of the audience to be born again.”¹³

To be sure, he also notes that “[n]ot all devotion is verbal,” citing decorations in classrooms and elsewhere on school property.¹⁴ Here, too, the distinction he draws between what a *school* presents as true and what a visiting speaker presents as true might be invoked to good purpose. Compare a teacher’s placing religious decorations from a single faith prominently in a classroom with a visiting parent’s doing so as part of an informational presentation. The latter is still further from constituting a case of the school’s violating the establishment norm if parents from several quite different religious groups do likewise in a short span of time.

The Pledge of Allegiance receives particular attention. Here Greenawalt cites the view (drawn from Justice O’Connor) that: “The Pledge is a patriotic exercise, not a religious devotion; ‘under God’ now lacks real religious significance; the phrase is a kind of ‘ceremonial deism’ that recognizes the country’s religious traditions but does not endorse any particular religion or religion in

¹¹ Id. at 44.

¹² Id. at 50.

¹³ Id.

¹⁴ Id. at 51.

general.”¹⁵ He does not make it clear how much of this position he accepts. The claim that the Pledge is not a religious devotion receives some confirmation from the mechanical way in which it is usually recited, and its generic reference to God at least seems neutral among monotheistic religions. But the question whether it endorses religion—something that certainly can be done in a mechanical fashion—in general remains (and will be discussed below).

In support of the distinction between teaching about religion and teaching religious propositions, Greenawalt naturally considers what constitutes those propositions. He does not offer a definition (quite reasonably, in my view, given the elusiveness of the concept of religion and the purposes of the book), but he does offer some marks by which we may identify the kinds of propositions that should not be taught as true:

Here we may settle for some brief generalizations. Claims about the existence, nature, and actions of God or gods are religious. Claims about life after death are religious. Claims about the ultimate significance of physical reality and of human life are religious. . . .

. . . .

. . . [R]eligions typically also include ideas about how human beings should lead their lives—for example, they should be honest and generous toward others. For convenience, we may call these secondary religious propositions.¹⁶

In this context, it seems likely that it is overall ideas about the “meaning” of human life, perhaps including some ideas about how life should be lived, that Greenawalt is calling secondarily religious. No specific moral standards, however, are referred to in this passage. This is appropriate: if Greenawalt included the idea that we should be honest, he would be undermining the distinction he himself observes between the religious and the ethical.

As broad as his characterization of religious propositions is, Greenawalt rejects the view that we should “consider anything that people care about deeply enough as *religious for them*.”¹⁷ One rea-

¹⁵ Id. at 57 (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 37 (2004) (O’Connor, J., concurring)).

¹⁶ Id. at 66 (footnote omitted).

¹⁷ Id. at 66–67.

son is that adopting this idea would “cripple the schools’ efforts to provide ordinary moral and political education.”¹⁸ There is trouble enough, however, with the cases in which propositions not religious at all, or only secondarily so, are incompatible with views some students hold on the basis of their religion. Consider the conflict between the view that “American participation in World War II [was] morally justified” with the idea that “the saying of Jesus that we should ‘turn the other cheek’ shows that God wants us to be pacifists.”¹⁹ Here, he holds that “teachers should not challenge the competing religious views head-on, but many students will grasp the negative implications for those views.”²⁰

How is this delicate distinction between head-on and indirect challenge of a religiously held view to be made in practice? Apparently a key point is to “offer *nonreligious* reasons for a position” that imply the falsity of a religiously held view and thereby (as I would put it) emphasize the *evidential grounds* rather than the *religious implications* of the position the teacher is supporting.²¹ This could well invite a comparison of different sets of grounds for the nonreligious position in comparison with the religious view, and it can help to take the focus off the disputed claim (though, as Greenawalt realizes, this effort may not succeed). As Greenawalt concludes, “schools inevitably, unavoidably teach ideas that imply that particular religious doctrines about the natural world and social justice are incorrect. They need not, and should not, teach that *particular religious bases* for scientific, ethical, and political views are correct.”²²

One reason that (in my view) supports this approach to teaching is that in a great many cases of secular ideas conflicting with views held on a religious basis, there is logical space for argument about whether the latter views are strictly required by the relevant religious basis. If the question whether they are thus required is even admissible, then there is room for students and others who reject

¹⁸ Id. at 67.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 68.

²² Id. Saying this is compatible with holding that they should also not teach that the religious bases in question are *incorrect*. To maintain both would be to support a kind of neutrality position that, though not affirmed here, is consonant with what I take to be Greenawalt’s overall position.

the secular ideas to consider whether their deepest religious commitments require the view(s) apparently disconfirmed by secular considerations. An important example here is of course evolutionary biology: its claims conflict with the Genesis account of our creation but not with either theism as such or various non-literalistic kinds of interpretation of the Bible.

The question of how to teach evolutionary biology is particularly controversial at present, and Greenawalt quite rightly gives it careful attention. An important passage provides a nonestablishment basis for not teaching the Genesis account:

Teaching Genesis creationism is teaching religion, because the only substantial basis for believing in that account is religious. Teaching intelligent design is religious if that theory is presented as true or as *the* alternative to dominant evolutionary theory. A decision not to teach evolution is also religious, because religious views are the only likely basis for exclusion.²³

One might try to deal with the problem by treating religious and scientific discourse as separate, in a sense implying that there cannot be sufficient conceptual commonality to permit incompatible claims of the kind in question. But “[t]he ‘separate discourses’ approach founders on the reality that scientists and religious believers both care about what is really true, overall.”²⁴

Greenawalt prefers to treat science as in a sense simply *non-metaphysical*, for instance in simply not presupposing anything, whether positive or negative, about the supernatural realm. He takes as “a central characteristic of modern science, that it is methodologically naturalist—approaching scientific problems on the assumption that physical events have natural causes and can be explained according to uniform laws that need not refer to anything supernatural.”²⁵ From this point of view, one could take “creationism and intelligent-design theories as being about the limits of science.”²⁶

One limit Greenawalt attributes to science is perhaps uncontroversial: “Science cannot explain why anything at all exists, why our

²³ Id. at 90.

²⁴ Id. at 96.

²⁵ Id. at 97.

²⁶ Id. at 111.

lives have meaning, if they do, and why we should be ethical. These intrinsic limits, set by the nature of the scientific enterprise, should definitely be mentioned in science courses”²⁷

The overall position Greenawalt arrives at on teaching evolution is this:

In science courses, evolution should be presented as the dominant theory, with a clear indication about any gaps and uncertainties, and with a suggestion that some people believe evolution is perfectly compatible with a religious view of the origins of life and that other people believe religious sources provide a truer source of insight when the teachings of religion and the findings of science conflict.²⁸

This conclusion is not accompanied by a definite proposal as to what in detail should be said, but I suggest that it is clearly consistent with Greenawalt’s view that science teachers, particularly in biology, should be given some instruction in elementary philosophy of science. The topic of what constitutes science and how science differs from religion, ethics, mathematics, and other disciplines is a philosophical topic, not a scientific one; instituting this proposal, then, is desirable even in curricula where a good scientific education is provided. As to how much philosophy of science is appropriate, that is a task for another place; my point here is that the book invites educators and others to reflect on the question of how philosophy of science can best supplement education for teaching science in public schools.

Similar points hold for teaching history, economics, and literature, and Greenawalt also has a chapter on teaching these subjects in public schools. A similar principle is surely applicable to these subjects, and not surprisingly given his “doubt that a critical discussion in school of the strengths and weaknesses of various religious perspectives is generally a good idea. Rather, the role of text and teacher should be largely to explain various perspectives, leaving it to students outside class to undertake whatever critical discussions they wish.”²⁹

²⁷ Id. at 113 (footnote omitted).

²⁸ Id. at 121.

²⁹ Id. at 133.

A related matter is how to deal with value questions, questions Greenawalt does not deny are appropriate in some contexts in public school teaching. Noting that “[a]lthough ‘values clarification’ has faded in popularity . . . [some] [t]eachers have encouraged individual students to choose values as they might careers,” he asks whether this approach is permissible in relation to avoiding positions on religious propositions.³⁰ His view is that this depends “on whether a religious question is squarely faced and resolved, on whether a comment is dropped in passing or reflects a major theme, and on whether our society shares a consensus about the particular issue a text or teacher addresses.”³¹ Claiming that values are a purely human invention would be an example of what he considers impermissible.³² This claim, moreover, is both antithetical to most religious views and commonly rejected by secular moral philosophers and many others who reflect on ethical questions. There are, however, many cases that are harder to assess, and Greenawalt is careful to leave room for the exercise of judgment and the possibility of cases about which there will be persisting disagreement even among reasonable people.

II. THREE THEORETICAL PROBLEMS RAISED BY THE POSITION

Among the many theoretical problems raised by the book, three in particular deserve amplification here. One concerns constitutional interpretation. The second concerns the distinction between teaching religion and teaching morality. The third is the twofold problem of (1) how to distinguish what government endorses and what it simply sponsors and (2) how this bears on establishment. I take these in turn.

In responding to Justice Scalia, Greenawalt speaks of what the Founders “narrowly” intended, as opposed (I assume) to what they intended in a broad sense.³³ He does not elaborate on the distinction, but there is a philosophically sound distinction to be drawn here that might serve his aims or similar purposes. In setting down a rule of conduct it is normal to have certain cases in mind and to

³⁰ Id. at 140.

³¹ Id.

³² See id. at 140–41.

³³ Id. at 44.

intend one's provisions to apply to them. In a constitutional context, however, as in any long-range policy context, there will be a set of governing ends that ground the intention. If, moreover, the rule is meant to apply across time and in changing circumstances, sound deliberation will embody, and will often be substantively guided by, at least one future-directed intention whose content is applicable to other cases. Suppose the Founders intended to prohibit Congress's establishing the Church of England and certain other Christian denominations. Suppose, too, that whereas they did think of those possibilities, they did not even have a passing thought of the establishment of any Islamic denomination. If they did not, one might say that nonestablishment of that religion was not part of their narrow intention. But, given their overall intention to preserve religious liberty, is there any question that they would—with no new basic premises—have formed the narrow intention in question had the matter of possible Islamic establishment come up? One way to put the point is to say that where fulfilling a guiding intention (such as protecting religious liberty), or—what may be normatively even more basic—preserving a certain guiding value (say religious liberty itself), is a major or even central ground of a narrow intention (for instance, preventing establishment of any Christian denomination), clear cases of the preservation of that value may be taken to be within the scope of the counterpart wider intention. In this way, preventing the establishment of Islam (or any particular religion not considered in the discussion leading to framing the document in question) might be taken to be within the scope of its wider intention. When fulfilling a narrow intention, clear cases of the preservation of the values guiding that narrow intention may be taken to be within the scope of a broader intention.

Whether or not this way of making the distinction between narrow and broad intention captures part of what Greenawalt had in mind, it supports one important point he makes: that narrow intention, understood in relation to contemporaneous examples, is not a sufficient basis of plausible constitutional interpretation. No constitution, guiding document, or mission statement can list *every* possibility to which it applies. Hence, if intention is a criterion of interpretation—as is plausible—it is above all broad intention that is needed. The distinction as drawn here raises a further problem,

however. Suppose that confronting a concrete problem *would* yield a change in basic premises. Imagine that, confronted with the question of extending religious freedom for atheists, some of the Founders would have changed their position from a basic commitment to religious liberty to a narrower commitment to such liberty for theists.³⁴ Would this hypothetical fact have more interpretational authority than the broad intention with which it apparently conflicts? If one thinks so, one might proceed in any of several ways. On one view, what the writers in question would likely have narrowly intended (or would have stated) is the standard of interpretation. This is a kind of historical fidelity standard. On a quite different view, one would give higher authority to value commitments that one considers sound and that seem deeper, provided they are not *inconsistent* with the clear narrow intentions of the document. This is a partly historical but mainly value-oriented approach. One such deeper value would be respecting the dignity of individual citizens as free agents. A commitment to this second view might yield a further hypothetical that overrides the first, say the hypothetical that if the writers in question grounded their narrow intentions in their deepest value commitments, then even if they would prefer not to allow religious freedom for atheists, they would permit it. The nest of problems here is many faceted, and I cannot pursue them further. My point is that some distinction between narrow and broad intention is important and that, in dealing with the issues in question, we should take account of underlying values that influence writers of a document as well as their intentions, whether narrow or even broad.

Regarding the distinction between teaching values and teaching religion, I want to begin by stressing that observing this distinction

³⁴ Given the influence of John Locke on some of the Founders, it is appropriate to point out that he did not believe atheists should be tolerated: "Those are not at all to be tolerated who deny the Being of a God. Promises, Covenants, and Oaths, which are the Bonds of Humane Society, can have no hold upon an Atheist." See John Locke, *A Letter on Toleration* 51 (James H. Tully ed., Hackett Publishing Co. 1983) (1689). He apparently did not take this to imply the penalty of forced conversion, however, or even to undermine a kind of separation of church and state. He said, for example, "If [the Civil Power] be once permitted to introduce any thing into Religion, by the means of Laws and Penalties, there can be no bounds put to it No man whatsoever ought therefore to be deprived of his Terrestrial Enjoyments, upon account of his Religion." *Id.* at 43.

is of immense importance for any educational system that separates church and state. If teaching the basic moral values, which include justice, veracity, non-injury, and a measure of beneficence,³⁵ is precluded by policy, moral education cannot be given in public schools. This includes education by example, such as criticizing a bully as unfair and describing cheating as wrong and not just against the rules. To be sure, if enough values are taught and interconnected, then in effect a “comprehensive view of the good” may be conveyed. In my judgment Greenawalt is quite correct in suggesting that no such blanket restriction on teaching in the public schools is warranted for a free democracy. But let me provide a supporting consideration.³⁶

The term ‘comprehensive conception of the good’ can suggest completeness, but it is vague in a way that renders it applicable to a view that contains broad moral standards with the range and apparent universality of the set articulated by W.D. Ross.³⁷ In particular, these standards are realizable in very different kinds of lives viewed in terms of style of life, sociopolitical outlook, occupation, and, with some restrictions, even religious position. Even if one modifies the kind of broad ethical standards in question, one might find a core that is comprehensive in applying to many specific forms of human life, each very different from the other. Surely a free democracy should not teach in public schools any highly specific standards of conduct that restrict liberty. These may but need not belong to a comprehensive view of the good. Granted, a given religion might endorse a standard inconsistent with the kind of ethics a free democracy may teach, say one that gives women lesser basic rights. But here I see no reason to abstain from teaching fundamentally egalitarian values; rather, as Greenawalt suggests,

³⁵ That these are among the basic moral values and that there are certain sound moral principles corresponding to them is argued in detail in Robert Audi, *The Good in the Right: A Theory of Intuition and Intrinsic Value* 40–157 (2004).

³⁶ In this context I draw on ideas defended in Robert Audi, *Moral Foundations of Liberal Democracy, Secular Reasons, and Liberal Neutrality Toward the Good*, 19 *Notre Dame J.L. Ethics & Pub. Pol’y* 197, 197–218 (2005). That paper argues that within certain limits free democracies need *not* be neutral to even quite wide-ranging views of the good.

³⁷ See W.D. Ross, *The Right and the Good* 16–48 (1930). For a detailed case for the existence of ethical universals among different cultures and religions, see Brian D. Lepard, *Rethinking Humanitarian Intervention* 39–98 (2002).

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where clear conflict with religious views likely to be represented among students is evident, the teaching should be done in a delicate way that is not adversarial.

The problem of distinguishing governmental endorsement of a view from mere sponsorship of the occasion on which it is expressed by an individual is perhaps even more difficult to solve. Here I think it is useful to bring a third category into the picture: permission. Greenawalt in effect does this when he makes a number of instructive points about how public schools may properly choose graduation speakers. Sponsoring a speaker does not entail endorsement of what the speaker says—though it may imply endorsement of at least much of what the speaker says if the speaker is (in advance) well known to have certain ideas to press on the relevant kind of occasion. The school would in this case certainly be accountable for inviting the speaker. Permission to speak does not entail even weak sponsorship, as is indicated by permitting open-ended comments and questions from the floor at a lecture or indeed in a classroom. Here freedom of expression may even require allowing pious comments from the audience, though a school would be warranted in calling to a halt what is developing into a religious speech or an oral prayer.

There is a related distinction between, on the one hand, what a school sponsors in the way of content or in the form of a speaker's presenting it and, on the other hand, its sponsorship of student groups. Greenawalt speaks to such differences as well and notes the important difference between a student group's use of a school building outside school hours and its activities during those hours and, especially, as part of the curriculum. Here his chapter on equal facilities is highly informative.³⁸ Among the difficult questions it pursues is the distinction between viewpoint and content discrimination.³⁹

In my view, a notably difficult case for the distinction between establishment and mere sponsorship is that of the Pledge of Allegiance. I can agree with Justice O'Connor's view that it is not a religious devotion.⁴⁰ But I doubt that we should go so far as to say, as

³⁸ See Greenawalt, *supra* note 2, at 69–76.

³⁹ See *id.* at 72–74.

⁴⁰ *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 37 (2004) (O'Connor, J., concurring).

Justice O'Connor does, that the phrase “‘under God’ now lacks real religious significance” or is “a kind of ‘ceremonial deism’ that recognizes the country’s religious traditions but does not endorse any particular religion or religion in general.”⁴¹ If Greenawalt accepts this view, it could be because of a strict construction of ‘endorse’ and ‘religion.’⁴² To see the issue, let me begin with those terms. First, there is no doubt that ‘under God’ is meant *referentially* and not merely figuratively, and is commonly so understood. If there is a nation under God, then there is a God. But second, there is no religion in the *institutional* sense that receives any endorsement through this referential presupposition. What, then, of the idea that the phrase ‘under God’ is ceremonial?

We can agree that ‘under God’ is used ceremonially without denying that it is also used referentially. The use is not *merely* ceremonial in the way ‘How goes it?’ can be a merely ceremonial “question” answerable by ‘Hi’ and not calling for a descriptive reply (nor such as to make answering with ‘ok’ a lie when one in fact feels ill). I am reminded here of Greenawalt’s insightful remark that “[t]he ‘separate discourses’ approach founders on the reality that scientists and religious believers both care about what is really true, overall.”⁴³ A similar point holds regarding the referentiality of ‘under God’ for both thoughtful religious citizens and thoughtful secular citizens; they generally care about whether it is in fact true that the nation is “under God.”

Perhaps Greenawalt could agree that owing to the referential use of ‘under God,’ the Pledge is, after all, not “neutral” toward religion—at least in not being neutral toward the nonreligious (some of whom disapprove of the recitation on a neutrality basis). This brings us back to the larger constitutional issue. How far do non-establishment and free exercise go? On a narrow view of establishment, endorsing generic monotheism may not be establishment; on a wider view of it, however, generic monotheism is *the*, or *a*, core element in many religions, and endorsing it, even presupposi-

⁴¹ Greenawalt, *supra* note 2, at 57 (quoting *Elk Grove Unified Sch. Dist.*, 542 U.S. at 37 (O’Connor, J., concurring)).

⁴² In private communication after this writing, Greenawalt has told me that his own view is closer to the one I propose in the text and that in a forthcoming work he will be addressing the issues raised by the Pledge.

⁴³ See Greenawalt, *supra* note 2, at 96.

tionally, is sufficient to violate nonestablishment standards if the context is one in which government compels or even calls on citizens to affirm the position.⁴⁴

Whatever one concludes about this, it does appear that even presuppositional affirmation of generic monotheism is not neutral with respect to nonreligion and, by implication, toward nonreligious citizens. An important question that now arises is whether the minimal cases of nonneutrality constituted by the Pledge are a sufficient imposition on the religious liberty of the nonreligious to be unconstitutional. I am inclined to doubt this, in part on the ground that the Pledge can be viewed as a solemn *oath* and as having religious *significance* even without mention of God. By contrast, its nonneutrality seems clearer. One reason to think so is that, however ceremonial the Pledge is, it is commonly taken as broadly *promissory*. One is making a commitment to one's country. This is serious, and it adds weight to any presupposition of divine sovereignty over that country.

Compare the also controversial placement of 'In God we trust' on currency. Users of the currency need not even read this; one who does notice it certainly need not affirm it; nor is accepting currency on which it appears any kind of implicit acceptance of the reference. I mention this difference particularly because I do not mean to imply that just *any* apparently referential use of 'God' by government is a violation of neutrality (where this includes oral uses in non-campaign speeches by government officials speaking in their official capacities). That is a strong view I here leave open. One reason to question it is the possibility that such a use is an allusion to what has been previously said or believed. This case may be less close to a violation than, say, a case in which an apparently approving quotation in which God's existence or sovereignty is presupposed. That second case may be the kind in which some people would place 'In God we trust' as it appears on currency, and I am not here taking a position on whether its use there constitutes a violation. A number of cases must be considered for a full-scale theory of neutrality; my aim here is only to suggest something about their range.

⁴⁴ See supra note 34 and surrounding text.

III. THE SPECIAL CASE OF SCIENTIFIC EDUCATION

The teaching of evolutionary biology has been fraught with controversy in the United States and is still intensely debated. Part of the problem is the conflict between a Darwinian account of the development of the human species and the account in Genesis. But it should be stressed that because biological science makes no reference to the soul and indeed views human beings as organisms, even citizens who do not accept the Genesis account literally may believe, or have a perhaps vague impression, that teaching evolutionary biology implies that the human person is an entirely physical entity. This is not the place to amplify the point. I stress it because it bears on neutrality toward religion. If, as I suggest, teaching biology does not entail endorsing or presupposing this physicalistic picture of the human person—a picture explicitly or implicitly denied by most monotheists—then that can be pointed out to help in clarifying and perhaps in defusing the controversy.

Is rejecting this entailment (as I judge we should) consistent with the methodological naturalism Greenawalt and many others take to be a commitment of scientific inquiry? I think it is; methodological naturalism is not metaphysical. In Greenawalt's formulation, the view calls for "approaching scientific problems on the assumption that physical events have natural causes and can be explained according to uniform laws that need not refer to anything supernatural."⁴⁵ On this view, natural causes are not necessarily physical. To be sure, the possibility of explaining nonphysical events is not mentioned. But suppose mental events are not physical. This does not entail that they are not natural or that they must have physical causes—or *only* physical causes.

Granted, many methodological naturalists are also philosophical naturalists. The latter hold that only natural (as opposed to supernatural) phenomena exist. Many of the latter, moreover, are physicalists and hold that everything that exists (or at least every concrete entity) is physical. But the point here is that adherence to scientific method or to evolutionary biology in particular does not commit one to philosophical naturalism.⁴⁶

⁴⁵ Greenawalt, *supra* note 2, at 97.

⁴⁶ That philosophical naturalism does not in every plausible form entail physicalism and that the scientific habit of mind does not entail philosophical naturalism are ar-

These points could be accepted by proponents of creationism or of intelligent design. A number of them have claimed that it is as rival scientific accounts that their positions should have a place in the high school curriculum.⁴⁷ Greenawalt, in line with the vast majority of biological scientists, does not accept this claim. I will not evaluate it here. Quite apart from whether these positions may qualify as broadly scientific, there is a sufficient constitutional basis on which to frame a case against including these approaches in public school education.

It is instructive to recall one of Greenawalt's main points: that "[t]eaching Genesis creationism is teaching religion, because the only substantial basis for believing in that account is religious. . . . A decision not to teach evolution is also religious, because religious views are the only likely basis for exclusion."⁴⁸ Since the Genesis account is biblical as well as clearly theistic, there is no good reason to doubt that teaching it is teaching religion and indeed doing so with at least the suggestion of a broadly Hebraic-Christian perspective. But the reasoning in this passage is puzzling and in fact in some tension with other parts of Greenawalt's text. Suppose it is true that the only substantial basis for believing in that account is religious. This alone does not make the account itself religious. There are those who argue that the only substantial basis for moral principles is religious, and even if we agree on this we need not (and, with Greenawalt, I think we should not) conclude that moral principles are also religious. The character of their content is one thing, and the basis for accepting them is another. The two are connected in a complex way, but even if the only substantial basis for accepting them as true is religious, it does not follow that their content is religious.

gued in Robert Audi, *Religion, Science, and Philosophical Naturalism*, in *Knowledge and Belief: Proceedings of the 26th International Wittgenstein-Symposium 377* (Winfried Löffler & Paul Weingartner eds., 2004). For a detailed treatment of how persons may be conceived physicalistically, see generally Jaegwon Kim, *Mind in a Physical World* (1998); for contrasting views meant to present a philosophy of mind consonant with Biblical theists, see generally Richard Swinburne, *The Evolution of the Soul* (1986), and J.P. Moreland & Scott B. Rae, *Body and Soul* (2000).

⁴⁷ For papers on both sides of the issue concerning the status of intelligent design theories, see *Debating Design: From Darwin to DNA* (William A. Dembski & Michael Ruse eds., 2004).

⁴⁸ Greenawalt, *supra* note 2, at 90.

My sense of the context leads me to think that one idea Greenawalt has in mind here is that it would be clear to any comprehending listener or reader that the *basis* of the Genesis position (or of various other creationist positions) is religious. That, I believe, is true; but since the overt *content* of the Genesis account is theistic, I find it odd to advance such an indirect reason for taking it to be religious. To be sure, the *teaching* of the view is plausibly considered religious. But Greenawalt's general point here is that if the only plausible motivational basis for teaching a view as true is a certain set of premises that the view obviously presupposes, then teaching it as true is in effect an implicit endorsement of those premises.

Since a decision to teach something is quite different from actually teaching it, grounds for taking such a decision to be religious are still another matter. A *decision* to teach or indeed not to teach a view could be deemed religious in a sense related to the sense in which a kind of teaching of a view has just been described as religious in character. Such a decision may be a religiously motivated action and supporting the decision, even in the context of an institution that espouses nonestablishment and neutrality, could be seen to be at least in tension with both of those standards. But a decision to teach can be purely mental and is in any case a step away from actually teaching: one could decide, for religious reasons, to teach a certain view, realize that these are inappropriate reasons for a public official, consider what secular reasons might support the same decision, find them cogent, and mainly or wholly *for those reasons*, proceed to teach. Criteria for arriving at good decisions in educational and other matters, then, are important for free democracies; but if our concern is mainly to determine what may and may not be taught under certain standards (such as constitutional ones), it may be even more important to attend to the difference between what is conveyed *by* teaching something in a given context and what kind of content it itself has.

Another trouble with a *motivational strategy for content determination*, as we might call it—allowing that the motivation may be evidential or psychological or both—is more apparent when the motivational criterion we have been exploring (or perhaps also an evidential grounding criterion) is used to support the view that a decision *not* to teach evolution is religious. Here the clear-basis

reading offered above in explaining Greenawalt's apparent inference does not apply. Even apart from the point that the religious or anti-religious basis is only "likely" rather than entailed, abstaining from teaching evolution (in a high school biology class) might be motivated not by religious considerations but by a desire to avoid discord in the community or even by some perhaps narrow academic criterion of the biological importance of the theory relative to other elements suitable for high school biology.

To be sure, it is important to be clear about what motivates a decision on such an important matter, not only from the point of view of understanding and negotiating with school authorities and others, but also from an ethical point of view and from the point of view of ascertaining whether the motivating considerations include any evidence or justification that would support the decision. Without knowing what motivates a decision, negotiation for a different one is hampered by our not knowing what basic concerns must, in the decider's mind, be met. Without such knowledge, we cannot evaluate to what extent the decider is living up to a certain standard; hence we may be unable to appraise the person from an ethical point of view. We are also unable to determine whether genuine evidence or sound justificatory elements are a ground of the decision. Motivational considerations may be important for still other reasons in relation to church-state issues and the ethics of citizenship,⁴⁹ but I do not see how motivational considerations of the kind in question can serve as a good criterion for what counts either as teaching religion or as a religious endorsement.⁵⁰

It would be misleading not to balance these points by recalling Greenawalt's direct (partial) *content* characterization of what counts as a religious claim: "Claims about the existence, nature, and actions of God or gods are religious[.]. . . [as are claims] about

⁴⁹ The ethical and sociopolitical importance of motivational considerations in such matters is treated in some detail in Robert Audi, *Religious Commitment and Secular Reason* 81–108 (2000).

⁵⁰ A rather different point holds for the claim (in the same passage) that "[t]eaching intelligent design is religious if that theory is presented as true or as *the* alternative to dominant evolutionary theory." Greenawalt, *supra* note 2, at 90. In the context in which intelligent design is likely to be presented as the only alternative, the motivation is likely to be religious; but in principle there could be a competing nonreligious theory. Again, there is apparently no escape from the need to determine when content itself is religious.

life after death . . . [and] the ultimate significance of physical reality and of human life”⁵¹ These criteria alone are sufficient for treating creationism and some versions of intelligent design as religious. The latter position, to be sure, has taken many forms. It may be true that proponents even of nontheistic forms are motivated to propose them by theistic considerations. But if this does not lead to these views’ satisfying at least something like the presuppositional basis standard sketched above, then whether they should be taught may be chiefly a matter of their scientific or intellectual importance relative to evolutionary biology.

One might wonder about the applicability of Greenawalt’s framework to higher education. Much of what he says can be applied to instruction in higher education in state schools, but this is not a topic he discusses. There are at least three major reasons for leaving the subject aside. First, the administrative and certainly the governmental control of the curriculum are less extensive in higher education owing to its greater academic freedom. Second, attendance is not required of citizens, whereas they must attend a public school or be educated at some cost (depending on whether vouchers are available from local governments to defray the cost of private education). Third, the college student audience is, other things being equal, significantly less impressionable than a high school audience.

The first point bears heavily on whether nonestablishment standards would be violated by, say, a biologist’s including intelligent design, in a theistic version, in a college biology course. The second and third bear to some extent on whether there is an encroachment on free exercise. No one is legally required to attend a college or university or achieve a comparable level of education on their own, and those who do attend and encounter teaching of religion are less likely to feel that it is an imposition. They also have greater freedom than high school students to issue challenges from their own religious point of view if they wish.

Despite these differences, there is good reason for state colleges and universities to be sensitive to nonestablishment concerns, and it is not inconceivable that unconstitutional violations might occur. Suppose an administration managed to employ biologists who

⁵¹ *Id.* at 66.

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taught intelligent design in place of evolutionary biology and suppose the institution made the relevant course a requirement for graduation. This would be a move toward a kind of establishment. If courses in which a particular religion is taught are also required, there would be a further move. I do not know what the legal issues would be in such a case, but from the point of view of the kind of neutrality appropriate for a free democracy, this would be criticizable at least from the point of view of nonestablishment.

CONCLUSION

A free society that separates church and state will very likely always face problems in determining how to guide public education, particularly at the pre-college level. Establishment need not occur overtly, and covert approaches to it may be difficult to identify. Free religious expression on the part of those in authority may easily tilt their public conduct toward religious endorsements, and high authority can yield an element of coercion toward accepting religious views, as requiring the Pledge of Allegiance may in some contexts illustrate. The need to respect free religious expression by teachers and students is especially difficult to accomplish without moving toward establishment or, short of this, away from neutrality toward the nonreligious. Institutional hostility toward religion is of course a violation of neutrality in the other direction. Greenawalt's treatment of these problems in *Does God Belong in Public Schools?* is an outstanding example of the fruitful integration of legal scholarship, political philosophy, and observations of contemporary American culture. The book is theoretically plausible, culturally sensitive, and directly applicable to determining public policy. The problems that remain are well worth further investigation, and their pursuit will be greatly facilitated by the framework of analysis he provides.