The Supreme Court and the Pedagogy of Religious Studies: Constitutional Parameters for the Teaching of Religion in Public Schools

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The Supreme Court uses the idea of objective pedagogy to define the proper role of religion in public school classrooms. The justices tend to leave this idea undefined, except to oppose objectivity to advocacy. Current pedagogical theory challenges this opposition. Moreover, educators often translate the Court’s idea of objectivity into an exclusion of some methodologies in religious studies, like theology. A reformulation of religious studies pedagogy could not only meet the Court’s standards on neutrality but also lead to a more engaging and open pedagogical response to the religious pluralism represented in public classrooms.

I

Few decisions by the U.S. Supreme Court have been so contested and criticized as those dealing with the First Amendment’s Establishment Clause. For many religious conservatives, the 1963 Abington Township v. Schempp case (374 U.S. 203), which banned organized school prayer and Bible reading in public schools, marked the beginning of a social

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transformation of education. Since Schempp, the issue of religion in the schools has become increasingly contentious, with some charging that the Court has made education not just neutral but hostile to religious faith. Although the Schempp decision did make many educators nervous about introducing any religious material into the classroom, the Court did not completely ban religion from public education. Instead, it enshrined the distinction between teaching "about" religion (which is acceptable) and the teaching "of" religion (which is not). Religion is a permissible topic in public education as long as it is kept within strictly designated boundaries.

Justice Tom C. Clark, in the majority opinion, anticipated the possibility that the Court's decision might be misconstrued:

In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. (quoted in Alley: 188)

While insisting on the nondevotional use of the Bible in the classroom, Clark also argued that the state cannot establish a religion of secularism in place of the Protestant civil religion that school prayers were meant to support. Schools should not give preference to those who have no faith over those who do.

Schools can achieve this balancing act, the Court maintains, by staying on the straight and narrow path of objective pedagogy. Restricting advocacy in the classroom is the best way the Court can limit governmental intrusion into religious affairs and protect minority rights of conscience. These are laudable goals, but the problem is that the distinction between teaching "about" religion and the teaching "of" religion is not, as the Court assumes, a matter of common sense. It is not drawn from pedagogical theory or from the actual practices and reflections of those who teach religious studies. 1 In fact, the Supreme Court has never focused its atten-

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1 Robert S. Michaelsen has suggested that the Court's language of objectivity concerns how religion is taught, not the content of religion courses: "We should note, however, that the Court used the adverbial form, not the noun. What is suggested is a manner, a style, an approach and not some kind of ontological reality" (296). Even so, given the Court's suspicion that the ways in which theology is ordinarily taught involve advocacy and proselytization, the Court's emphasis on objectivity would preclude most forms of theological reflection from public education.
tion on the specific nature and content of religious studies as an academic discipline.²

Of course, the Court is primarily concerned not with outlining the most effective way of teaching religion but with interpreting the Constitution. Yet doing the latter necessarily involves it in providing broad parameters for guiding teachers in specific classroom situations. The Court has sketched those guidelines in such broad strokes, however, that they are abstract and simplistic at best, leaving one justice to despair at the Court’s ability to carry out “a subtle inquiry” into the nature of pedagogy.³

The justices have elaborated on the meaning of objective pedagogy only in dicta (statements that are not necessary to the decision and therefore are not binding and have no precedential value) that are found, for the most part, in cases that do not directly concern religious studies in public schools. Nevertheless, the Court’s language has had a significant impact on the ways in which educators think religion must be approached in public classrooms. When the Court first made the distinction between “about” and “of,” many, if not most, religious studies programs still reflected their ecclesial origins by emphasizing Christian topics, frequently to the exclusion of nonwestern religious traditions. Throughout the 1960s and 1970s, however, religious studies programs began the process of dismantling their ties to the “seminary model” of teaching, which required courses in church history, ethics, and theology. From this transformation Sydney E. Ahlstrom draws the conclusion that the Schempp decision was nothing less than a blow to the Protestant establishment, which had long assumed that what was good for the Protestant church was good for the nation (20).

The pamphlet The Bible and Public Schools is a good example of how the Court shapes discussions of the role of religion in the classroom. Published by the National Bible Association and the First Amendment Cen-

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² The only instance where a course on religion at a public university has been directly challenged is Calvary Bible Presbyterian Church v. Regents of the University of Washington (436 P. 2d 189, 1967; 393 U.S. 960, 1968). In this case two Bible Presbyterian clergymen from the Seattle area sued the University of Washington to discontinue its “Bible as Literature” course (which was taught in the English department, not religious studies). The lower federal court ruled that the course was fine as long as it was taught objectively and not by a theologian. Only those courses that are devotional and designed to induce faith and belief in the student should be proscribed. The Supreme Court refused to hear the case (it denied certiorari). Also note Justice Brennan’s comment in Edwards v. Aguillard that “the Court has not questioned the authority of state colleges and universities to offer courses on religion or theology” (482 U.S. 578, 1987: 584n5).

³ Justice Jackson, in a concurring opinion in McCollum v. Board of Education (1948), admitted that “when instruction turns to proselyting and imparting knowledge becomes evangelism is, except in the cruelest cases, a subtle inquiry” (333 U.S. 203: 235–236, emphasis added).
ter and endorsed by organizations on both sides of church–state debates, this pamphlet reiterates the Court's language that schools may not provide religious instruction but may teach about religion. In explaining what this means, the pamphlet uses a series of dichotomous terms that polarize religious studies into acceptable and unacceptable strategies: educational versus devotional, objective versus sectarian, academic versus religious, and so on. Religion courses cannot promote religion, and they cannot impose, encourage, or discourage any particular view. Supernatural occurrences may not be taught as historical fact. The pamphlet does admit that there are some problems with this approach: "Sometimes, in an attempt to make study about the Bible 'more acceptable' in public schools, educators are willing to jettison accounts of miraculous events. But this too is problematic, for it radically distorts the meaning of the Bible. For those who accept the Bible as scripture, God is at work in history, and there is a religious meaning in the patterns of history" (8). However, the pamphlet offers no advice to teachers about how the religious meaning of the Bible can be preserved without acknowledging any role for the supernatural—except to repeat that they must "teach about the religious content of the Bible from a variety of perspectives" (8).

In an attempt to clarify such mixed signals, President Clinton issued a directive through the Department of Education in 1995 to help schools balance freedom and responsibility in the classroom. Because many schools had gone further than the Court had required in limiting religious expression, President Clinton felt it was necessary to remind teachers that students may discuss and advocate religious belief in the classroom and in written work. The directive rightly suggests that teachers should encourage this freedom in responsible ways. When advice is given to teachers, however, the issue once again comes around to the question of objectivity. Most explicitly, the directive forbids teachers from advocating any religious doctrine or idea.

Understandably, many public educators use the language of the Court to limit the teaching of religion to purely historical issues, so that any theological, philosophical, or comparative examination of the truth claims of religion is ruled impermissible. Indeed, in conversations with colleagues who teach at public universities, I have been told over and over again that theological perspectives in the public classroom are just not constitutionally acceptable. The discipline of theology—which is implicated in religious belief systems in more dense and direct ways than are other methodologies in religious studies—is welcome in private institutions, but public schools cannot blur the boundary between church and state by allowing teachers to bring constructive religious views and apologetical arguments into the classroom. Thus, the great body of theological litera-
ture, which indisputably plays such a prominent role in western history, is ruled out of bounds—except as purely historical documents—in most public classrooms.

Public schools have long functioned in America as a kind of national church, teaching the civic religion of tolerance, respect, and pluralism, the very virtues that hold our democracy together (McConnell: 35). Public education is compulsory, and teachers act as agents of the state in their official duties, so teachers should be neutral about substantive issues concerning morality, politics, and religion. Objective pedagogy thus assumes that a secular space exists in the classroom within which religion can be approached in a dispassionate and impartial manner. Much of the Protestant establishment could support this pedagogy during the 1960s, when books such as Harvey Cox's *The Secular City* praised secularism not only as the end product of Christian history but also as the best medium for the flourishing of authentic religious faith. By the 1990s, however, such optimism about a detached and disinterested educational point of view had all but disappeared.

Of course, the concerns of the Court are still crucial, especially in grievous cases in which a teacher advocates for a religious position in ways that are insensitive to students and incongruent with the topic being discussed. Objectivity, however, is not necessarily the answer because it can be used to silence students, as when the teacher claims a privileged perspective that rules out of bounds a student's own beliefs. Radical pluralism has forced teachers and students alike to be more honest and open about their own perspectives and agendas. As Stanley Fish, among many others, has argued, the academy has become a place for competing interest groups and politicized disputes. Education today, for better or worse, is at least in part a matter of retrieving the history of marginal groups and enabling students to discover their own particular identities. If the idea of neutrality seems like a way of stifling, rather than encouraging, religious discussions, then teachers need to rethink what it means to be fair and to respect cultural differences.

The religious studies classroom, which is increasingly diverse, should be attentive to and supportive of the full range of beliefs represented by the students. Motivating students to learn involves engaging them in a way that respects their freedom and dignity. Objectivity should be seen as one tool among many in the teacher's repertoire, rather than the script that sets the stage for all teaching of religion. Teachers of every subject recom-

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4 Fish focuses on the ways in which liberal principles of neutrality involve substantial moral claims rather than just being matters of procedural fairness. Moreover, these very principles are often used to exclude religious viewpoints from the public domain.
mend positions based on informed and thoughtful beliefs about matters that arise from the curriculum. Many teachers will, when asked by students, share their own personal beliefs in ways that help students come to terms with their own ideas about complex personal decisions. Teachers of religion also need to show the value and importance of their subject matter—how it has impacted history and how it can change individual lives. They need to allow for personal discussion about matters that make a difference in the lives of their students. And they need to do this in ways that are sensitive to the values and beliefs that students bring with them to the classroom. Teachers thus model for students how to approach this topic and how to integrate it into their personal lives.5

I would characterize the Court’s comments on religious studies pedagogy as an “Of course . . . of course . . . of course . . . but” argument. Of course students can talk about religion in the classroom, of course teachers can bring up the subject when it is appropriate, and of course textbooks can examine the historical significance of religious traditions, but religion should only and always be taught in an objective manner. The justices take the idea of objective religious pedagogy as an unproblematic solution to the problem of the role of religion in public education. Whatever else they say about this complicated issue, the justices can always fall back on this basic assumption—that religion can and should be taught objectively as a way of avoiding the problem of the government favoring or promoting a particular religious sect or idea. Objective pedagogy thus functions as the very foundation of the Court’s treatment of religion in the public classroom.

Undeniably, teaching religion in public schools is a sensitive topic, but this merely means that teachers need to have more practice and preparation for such courses. The only alternative, which is prevalent in public schools today, is to withdraw religion from the public realm altogether.6 Many educators still believe that the Supreme Court defends an absolute or strict separation between church and state, but this language never appears in the Constitution, and recent decisions have relied on criteria

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5 Interestingly, the Supreme Court also has argued that it is very difficult, if not impossible, to distinguish between speech that is about religion and religious speech that constitutes worship. As Justice Powell argued in <i>Widmar v. Vincent</i>, “Merely to draw the distinction would require the university—and ultimately the courts—to inquire into the significance of words and practices to different faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases” (454 U.S. 263, 1981: 270n6).

6 For an example of the absence of religion in public school curriculum, see the study by the social scientist Paul Vitz. He examined sixty-five social studies textbooks used by more than 85 percent of America's elementary school students. He found no primary references to religion and very few secondary references.
that move well beyond the metaphor of a wall of separation. In fact, Supreme Court decisions about education and religion have been complex and even confusing. For example, the Court has allowed states to give tax breaks to people who donate money for scholarships at religious schools, and charter schools and voucher programs—the constitutionality of which are still unsettled—are giving parents more freedom in choosing the kind of education they want for their children.

The justices are increasingly recognizing that a truly neutral position on religion would allow schools to find ways to accommodate religious students and their viewpoints. At the very least, the Court has made it clear that schools should not go overboard in working against religion. As Justice Hugo Black stated in the 1947 Everson v. Board of Education (330 U.S. 1) decision, “State power is no more to be used so as to handicap religions than it is to favor them” (quoted in Alley: 53). Yet many justices continue to treat education as a secular affair and religion as an essentially private matter, so that the two should not be mixed any more than is necessary. As a result, parents with strong religious convictions continue to leave school systems that are perceived to be insensitive to issues of faith and unable to help students integrate their faith into their academic studies.

In recent years plaintiffs have begun taking school systems to court in order to prevent them from inculcating quasi-religious philosophies like secularism, materialism, humanism, and atheism, and some courts have become more sensitive to the charge that schools, whether intentionally or not, frequently promote a secular learning environment that does not give religious faith its due. While the debate about whether secularism

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7 Roger Williams first used the phrase “separation of church and state” in a metaphorical form in a letter to John Cotton; and Thomas Jefferson used the metaphor of the wall of separation in a letter to the Baptist Association of Danbury, Connecticut, but the wall metaphor did not enter into common judicial usage until Justice Hugo Black used it in Everson v. Board of Education (1947). That decision, ironically, actually sustained a New Jersey statute that provided public funding to transport children attending religious schools. Political liberals are almost unanimous in their use and defense of the wall metaphor, while political conservatives argue that wall rhetoric protects secularism rather than religion, keeping religion out of politics and education rather than keeping the government out of religious affairs.

8 See, for example, Smith v. Board of School Commissioners of Mobile County (655 F. Supp. 939 [S.D. Ala.], 1987 [on remand], rev’d, 827 F. 2d 684 [11th Cir.], 1987). A coalition of religious groups complained that the Mobile, Alabama, Board of Education was violating the Establishment Clause by excluding Christianity while promoting a religion of secular humanism. District Court Chief Justice William Brevard Hand agreed with these complaints, but the Eleventh Circuit Court reversed his ruling, and the Supreme Court refused to review the case. Also note Chief Justice Rehnquist’s comment, in his dissent in Thomas v. Review Board: “There can be little doubt that to the extent secular education provides answers to important moral questions without reference to religion or teaches that there are no answers, a person in one sense sacrifices his religious belief by attending secular schools” (450 U.S. 707, 1981: 724n2).
constitutes a religion continues, the Supreme Court has consistently maintained that teachers, as government employees, cannot promote religion in any way. Translating the judicial language of neutrality into the context of the classroom, however, would seem to solve the problem of church-state relations only by seriously handicapping teacher effectiveness. Teaching religion in ways that neither defend nor denigrate it would rule out not only careful theological apologetics but also the criticisms (and reconstructions) of religion that constitute much of western philosophy.

Are there ways of framing the constitutional limits to the pedagogy of religious studies that use a better language than that of objectivity and neutrality? More specifically, does the Court really intend to rule out theology as a constitutionally acceptable method and perspective in the teaching of religion in public schools? Clearly, there are dangers to blurring the separation of church and state, especially when one religion, Christianity, is so culturally and numerically dominant in American life. To solve this problem, public education—when it deals with religion at all—often promotes a civil religion of an inclusive theism that promotes tolerance and mutual understanding. Religious studies programs frequently provide the theoretical foundation for this civil religion by treating all religions as diverse manifestations of one common experience. The problem with this civil religion, however, is that it leaves little room for those who take a more confessional approach to religious truth. In responding to this concern, evangelicals have been especially aggressive in pushing the Supreme Court's rulings on religion and education to the forefront of public debate.

What I am suggesting is that we do not need more public or civil religion in the classroom but more space for the articulation of distinctive religious voices, for all religions—even the most inclusive and civil religion—are particular, emerging from specific traditions and communities rather than reflecting general and pervasive values. In the remainder of this essay, I first summarize and analyze the Court's myriad comments about religious studies. Then I propose two ways in which the Court could go about rethinking its position on the role of religion in the public classroom. Finally, I conclude with some observations about the healthy impact on public schools of permitting a robust role for religious faith in the classroom.

II

The Court has acknowledged that Americans are an extremely religious people. As Justice William O. Douglas wrote in the 1952 Zorach v.
Clauson decision that let stand a New York State law allowing release time for students engaging in religious activities, “We are a religious people whose institutions presuppose a Supreme Being” (343 U.S. 306: 313). In recent years, however, the Court’s language about religion has shifted from an acknowledgment of the religious substance of U.S. culture to an emphasis on the role of religion as a private conveyor of values and beliefs. As Frederick Mark Gedicks has argued, the Court has replaced “a religiously informed communitarian discourse on public morality and politics by a secular, neutral, individualist discourse on such matters” (4). The public piety of the nineteenth century, which tolerated secularism but insisted that American traditions were essentially religious, has been replaced by a public secularism that relegates religion to the private realm, barely permitting its expression in public institutions.9 To the extent that the Court looks at religion as a matter of private taste, not public debate, it will tend to place religion in the home, not in the public schools. Thus, the very assumptions of the Court concerning the nature of religion significantly shape and limit what it allows in terms of the interaction of religion and education.

There is plenty of evidence that the Court assigns religion to the private realm. As Chief Justice Burger commented in Lemon v. Kurtzman (403 U.S. 602, 1971), “The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn” (quoted in Alley: 92). The Constitution, of course, does not entail any such decrees, and most of its Framers were quite comfortable in permitting a wide variety of public religious expressions, including a national day of Thanksgiving, military and legislative chaplains, and the use of schools to promote broad religious values. The idea that religion is a private matter emerged only in the twentieth century as a result of an increasingly secular society. This trend has led some scholars to hypothesize that modern democracies inevitably marginalize religion as they learn to deal with public problems in scientific and value-neutral ways.

As a result of their interpretation of religion as a private matter, the justices have been opposed to any situation whereby schools might be perceived as supporting or encouraging religious belief. Justice Thurgood

9 Indeed, in recent years the Court has increasingly recognized civil religion as a particular religion, so that generic prayers cannot be tolerated merely because they are nondenominational. This is clear from Justice Kennedy’s comment, writing for the majority, in Lee v. Weisman, a 1992 case that ruled against a school that had invited a local clergyman to give an invocation and benediction during the graduation ceremony: “The suggestion that the government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted” (quoted in Alley: 255).
Marshall has put it most bluntly in *West Side Community School v. Mergens* (496 U.S. 226, 1990): “But although a school may permissibly encourage its students to become well rounded as student-athletes, student-musicians, and student-tutors, the Constitution forbids schools to encourage students to become well rounded as student-worshippers” (quoted in Alley: 245–246). Marshall made this argument in the case that granted Christian clubs equal access to school facilities, but while he sided with the majority, he also had some deep reservations. He was worried that a school’s endorsement of a Christian club might “convey to students the school-sanctioned message that involvement in religion develops ‘citizenship, wholesome attitudes, good human relations, knowledge and skills.’ We need not question the value of that message to affirm that it is not the place of schools to issue it” (Alley: 248). Here neutrality seems to slide into hostility. Schools, according to Marshall, cannot even suggest that religious belief is connected to anything positive like knowledge or moral behavior. Of course, there is a distinction to be made between what a school does and what happens within a particular classroom. Even so, what can be inferred from the Court’s reduction of religion to a matter of private taste is, at best, that students may be encouraged to think about religion in objective ways. If that thinking results in a firmer faith, then that might be acceptable but only as long as the classroom encourages the thinking—and not the faith.

The Court is really most worried about situations in which the government is perceived to be advancing or promoting religion. In *Edwards v. Aguillard* (482 U.S. 578, 1987) the Court found the Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public Instruction Act to be unconstitutional for precisely this reason. When elaborating on the government’s neutrality on religious issues, the Court has insisted that the government should be neutral not only among the various religious sects but also between religion and nonreligion. Frequently, however, the Court signals that it is most concerned not with the advancement of religion per se but with the advancement of a particular religious belief. This language, which pervades the *Edwards* decision, is a more careful and workable alternative to the problem of advancing religion in general. This distinction, though apparently a minor one, is crucial when it comes to religious studies. Though schools as a whole are forbidden to encourage religious faith, it is difficult to imagine the Court prohibiting a religious studies classroom from taking a sympathetic and affirming approach to the religious beliefs of the students. What takes place in many religious studies courses is the exploration of all dimensions of religious faith. While such exploration involves objective elements, the core phenomenon of faith itself is hardly a matter of objectivity in any simple or straightforward
ward way. Thus, it is impossible to conceive of a religion course that is strictly neutral toward religion at all times, without raising both critical and appreciative interpretations of religious traditions.

Part of the problem with understanding the Court's approach to religion is that there is no single position that can summarize its interpretation of the Establishment Clause. The narrow interpretation of the Establishment Clause would suggest that Congress can make no law establishing a religion. Thus, the U.S. government can be secular without thereby implying that American society should be secular. A broader interpretation of the clause would argue that religion should play no role, or only a minimal role, in public deliberations sponsored by the government. Thus, wherever the government is, religion should not be—and, given the broad expansion of the government throughout the twentieth century into nearly every aspect of modern existence, this would mean that religious expression would have little room to make its case outside of family life and religious institutions themselves. The broader the Court interprets the establishment law, the more it tends to clear religion out of public institutions like education, thus secularizing not only the government but society as a whole.

Sometimes, the Court's intention is clearly to create a religion-free zone in the schools in order to foster secular values. As Justice Frankfurter argued in *McCollum v. Board of Education*, a 1948 decision that struck down a release time program in Illinois,

> The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from the pressures in a realm in which pressures are most resisted and conflicts are more easily, and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogenous democratic people, the public school must be kept scrupulously free from entanglement in the strife of sects. (333 U.S. 203: 216–217)

This argument assumes that public schools should inculcate a common set of secular values for all students. Thus, religion is portrayed as a divisive force, as no religion commands the assent of all students. Perhaps in 1948 the justices could assume that all Americans shared a common set of secular values that could be learned in school. Such consensus, if it ever existed, was doubtless supported by religious beliefs, but today it has obviously fallen apart. In its place, schools need guidance in deciding how to adjudicate among the many competing value systems that students bring with them to the classroom. If religious views are not to be excluded from education, what kind of scrutiny should they receive, given the many value claims competing for educational attention?
III

The most careful attempt to answer that question came in a decision that has served as a precedent, as well as an object of scorn and ridicule, for all subsequent Court decisions about religion. Since Everson (1947) and McCollum (1948), the Court has moved away from the language of strict separation, recognizing many ways in which religion and education overlap. Once the wall separating church and state has been lowered, however, it is difficult to know exactly how high it is supposed to be. Thus, in Lemon (1971) the Court tried to establish a precise set of criteria for determining how the government can avoid establishing religion. The Lemon decision embraces the language of neutrality, not separation, and develops a three-prong test to elaborate the specific meaning of neutrality. As presented by Chief Justice Burger, a constitutional law regarding religion must satisfy three conditions: first, it must have a secular purpose; second, its primary effect must neither advance nor inhibit religion; and third, it must not foster an excessive entanglement of government with religion.

Some legal scholars suggest that Lemon brought an end to the strict separation interpretation of the Establishment Clause, but Lemon itself has been subjected to various interpretations and criticisms. Indeed, it would be an exaggeration to say that the Court completely rejected the language of separation; instead, the Court softened that doctrine (see Guliuzza: 66). Because the Court continues to use the language of separation, as well as neutrality and other key terms, no single terminology has risen to the level of a generally accepted rule. Consequently, most religion cases are decided by a slim majority, with justices disagreeing with each other about the philosophical and judicial bases for their rulings.

Significant alternatives to Lemon have been put forward as better ways to resolve this complex issue. One alternative, the language of "benevolent neutrality" used by Justice Burger in Walz v. Tax Commission (397 U.S. 664, 1970), comes from a case prior to Lemon. It is meant to acknowledge the inevitable involvement of government with religion, while drawing the line at establishment or interference. Justice O'Connor has repeatedly offered the alternative of an endorsement test, but it is hard to understand how the government can be involved in religion without endorsing or advancing it. Justice Kennedy thus advocates for the stronger language of preferentialism, which allows the government to prefer religion over nonreligion as long as it does not coerce religious participation. Justice Rehnquist has demonstrated the most outrage over Lemon. In Wallace v. Jaffree (4762 U.S. 38, 1985), he harshly criticized the Lemon test as unworkable and inadequate, as well as being based on historically faulty
doctrine (Alley: 216). He agreed that the Constitution forbids the government from establishing a national religion or showing preference to one religious sect over another. Nevertheless, he argued, the government's accommodation of religion is not only healthy but even essential for the working of democracy.

Lemon itself, which involved parochial school aid programs in Pennsylvania and Rhode Island, was based on the entanglement part of the three-prong test. State funds could not be used to support parochial teachers, even when they taught purely secular subjects. In the words of Chief Justice Burger,

We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. Doctrines and faith are not inculcated or advanced by neutrals. With the best of intentions such a teacher would find it hard to make a total separation between secular teaching and religious doctrine. (quoted in Alley: 88)

Thus, Burger lapsed into the doctrine of strict separation even while basing his decision on the entanglement test. Even more disturbing, Lemon demonstrated the Court's tendency to speculate about the pedagogical practices of teachers in parochial schools. Although the district court was satisfied with testimony from teachers that they did not interject religion into their secular classes, the Supreme Court was worried that the teachers might take the government's money and then turn around and proselytize in class. By letting this worry determine its decision, the Court relied not on the evidence but on its own psychological evaluation, from the bench, of the teacher's motives.10

More troublesome than this use of psychological speculation is the Court's insistence that publicly funded teaching can in no way favor reli-

10 In Wolman v. Walter (433 U.S. 229, 1977) the Court upheld the use of state money for diagnostic services in private schools but decided that treatment programs must take place somewhere away from school facilities. Justice Blackmun argued that counselors and teachers were more likely to advocate for religious beliefs in the classroom than diagnosticians were. However, in Agostini v. Felton (114 U.S. 2481, 1997) the Court rejected the notion that public employees, solely because of their presence on private school property, are presumed to inculcate religion in students. Any remaining reservations about the indirect diversion of public aid to religious instruction were jettisoned when Wolman was overturned by Mitchell v. Helms (120 U.S. 2530, 2000). The justices finally decided that the issue is not whether the aid is diverted to purposes that promote religion but whether the aid is distributed on the basis of neutral principles. Because any instructional tool can be used to convey a religious message, the majority were skeptical about judging a law permitting secular aid to sectarian schools on the basis of the law's indirect effect in aiding religion. Because divertibility is potentially boundless, the Court decided to retreat to the question of eligibility for aid. Mitchell thus allows the first Lemon prong to trump the second.
gious belief. Perhaps the Court’s psychological insight was correct: teaching in a religious environment inevitably encourages students to take a religious perspective on issues, even if those issues are presumably secular in content. The Court is clear that public funds cannot be used to support those elements of a private institution that, as a primary objective, advance particular religious beliefs. This still leaves open, however, the question of religious studies courses that advance a sympathetic understanding of various religious traditions while enabling students to come to terms with their own religious beliefs.

Even if Lemon were strictly applied to religious studies courses that include components of theological content and methodology, those courses, I would argue, would pass the Court’s test. There are actually two questions concerning the role of theology in the public classroom. One concerns the content of the curriculum. Does the Court mean to suggest that all texts of a theological nature are impermissible? This hardly seems likely. Nobody has seriously suggested that Aquinas or Augustine cannot be taught in public schools. The second concerns the question of how religion should be taught, not what religious texts and examples should be used. If religion is to be taught at all in public schools, can teachers demonstrate how religious beliefs are constructed, defended, and revised by theological methods? Surely teachers can allow students themselves to take theological positions on the various questions pertaining to religion. But what about the teachers themselves. Can they teach theologically?

In brief, an argument in defense of a robust and diverse approach to religious belief in the religious studies classroom could include the following points:

1. Any restrictions on theological methodology—which would include constructive, apologetical, and philosophical defenses of religious faith—in the study of religion would violate the Court’s own understanding of neutrality. Why tie the hands of religious studies teachers in ways that limit their ability to bring the full range of methodologies to bear on their topic? The Court’s notion of neutrality involves not just neutrality between religious sects but also neutrality between religion and nonreligion. Certainly, secular and critical arguments, perspectives, and positions are put forward in public education with little fear or hesitation about violating the Constitution. Why should teachers who raise religious issues from a more sympathetic perspective be penalized?

2. It is unlikely that a strong argument could be made in defense of theology in terms of the Free Exercise Clause and Free Speech Amendment. As Justice Powell argued, in a dissenting opinion in Edwards v.
Aguillard, "Academic freedom does not encompass the right of a legislature to structure the public school curriculum in order to advance a particular belief" (quoted in Alley: 223). Academic freedom, though broad, is always taken by the Court to be circumscribed by the Establishment Clause. Nevertheless, Powell also argued that a religious purpose alone is not enough to invalidate an act of a state legislature. That purpose must predominate.

3. Thus, the debate about theology in religious studies should focus on its secular or religious purpose. A good case could be made that the secular purpose in allowing for religious advocacy is to make sure that all students have an opportunity to develop intellectually in healthy and holistic ways. The purpose of introducing theological perspectives, then, is not to promote one particular religious viewpoint over another but to enhance the education of religious students so that they can take ownership of their own intellectual development.

4. The only alternative to allowing theology into the classroom is insisting on strict objectivity, but, as I have already argued, there is no wholly neutral perspective from which religion can be examined without passion, opinion, and prejudice. Even in the most historically oriented courses, religious studies teachers introduce their perspectives into the classroom in order to enhance and encourage dialogue and debate. When a teacher plays "devil's advocate," for example, defending an unpopular religious position, or when a teacher models how rational argument can be used to construct and defend religious belief, the teacher is functioning as a theologian. Even deciding how to frame, say, the Protestant Reformation and the Roman Catholic response is fraught with theological implications.

5. Furthermore, and more importantly, objectivity often means, in the context of religious studies, a religious relativism or pluralism that treats all religions as the same thing. But that is not objective. As recent scholarship has shown, those seminal figures who founded religious studies as an academic discipline had various theological motives and agendas (see Wasserstrom). Any position on the importance or value of religion is itself a theological position. Religion always enters the public classroom in ways that are theologically shaped and driven.

6. For the government to stipulate what can and cannot be said in the religious studies classroom would amount to an unnecessary entanglement of state and church. It would be practically impossible for the Court to monitor the activities of a religious studies classroom anyway, but there is an important principle at stake. The government should not be involved in the business of regulating an academic field.
like religious studies. Justice Souter, in a concurring opinion in *Lee v. Weisman* (505 U.S. 577, 1992), scoffed at the idea that the courts can "engage in comparative theology. I can hardly imagine a subject less amenable to the competence of the federal judiciary, or more deliberately to be avoided where possible" (quoted in Alley: 263). The field of religious studies itself is diverse, covering the whole range of positions from theology to atheism, constructive spirituality to skeptical reductionism. Any religion classroom should be open to the full spectrum of possibilities in the scholarly study of religion, which would include theological perspectives.

7. Finally, and perhaps most importantly, consideration must be given to the age and academic level of the students. Students at the collegiate level are more able than younger students to handle the various methodological problems involved in the academic study of religion. But this does not mean that younger students need to be "protected" from the very study of religion altogether. Instead, teachers need to be especially sensitive to the faith commitments of younger students, so that those faith perspectives function as the operative boundaries of the classroom. A narrative approach to the fullness of religious traditions would be suitable for younger students. Critical, comparative, and apologetical methodologies should be introduced only as students mature in their intellectual development. The more serious the study of religion becomes for students, the more it should be open to theological discussions about religious beliefs on a wide variety of topics.

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11 Justice Brennan, in *Edwards v. Aguillard*, noted: "The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary" (quoted in Alley: 22). I agree with this statement, even though it ignores the fact that schools, by their very silence on the topic of religion, can have a secularizing effect on the education of young people. Elementary schools should approach religion in a predominantly historical manner that nonetheless still permits students to share their own religious experiences and commitments in tolerant ways. In an important development on this topic, the Court ruled in a six–three decision on 11 June 2001 that a New York School district must let the Good News club hold after-school meetings in school buildings. This club is an evangelical organization that introduces members ranging in age from five to twelve to Bible stories, worship, and prayer. The Court decided that allowing the club to meet immediately after school would not mislead children into believing that the government endorses the club's religious message. If younger students can understand the difference between granting equal access to religious groups and promoting specific religious beliefs, then high schools should go even further in encouraging vigorous religious discussion. In *West Side Community School v. Mergens*, which allowed students to form religious clubs on school premises, Justice O'Connor noted. "We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis. The proposition that schools do not endorse everything that they fail to censor is not complicated" (quoted in Alley: 242).
In sum, the theological study of religion in public schools would survive a constitutional challenge because its main purpose would be for secular pedagogical reasons. Moreover, the prohibition of theology from the public classroom would not only violate the Court’s understanding of neutrality, it also would involve the government in an unnecessary entanglement with religion. The problem with these arguments, however, is that the idea of secular purpose can be easily manipulated by those on both sides of an issue. It is especially difficult to distinguish between the primary and secondary effects of a statute, as well as to ascertain the legislative motivations behind the passing of a law. Moreover, the matter of entanglement is equally ambiguous. The Court might decide that it is simpler just to ban theology than to allow it in certain forms and to certain degrees. Thus, Lemon does not offer, as the Court itself has admitted, a reliable set of criteria for thinking through complex issues like the role of theology in the religious studies classroom.

IV

Most legal scholars would agree that the courts should not create an unfair burden on public religious expression. Nonetheless, the courts do have a responsibility to set standards for religious speech by government agents in publicly funded institutions. This is a difficult issue because, as Ronald Thiemann has argued, “communities of faith contribute to public life in part by offering their adherents alternative modes of meaning and interpretation to the dominant secular culture” (167). One way of resolving the problem of religious expression in the classroom would be to forego Lemon and instead appeal to some philosophical notion of open and democratic dialogue. In the interest of fairness, religious viewpoints should be allowed into the classroom as long as they meet generally applicable conditions for the tolerant exchange of ideas.

Is it possible to develop such guidelines philosophically, rather than judicially, with more success than the Lemon test? A promising way of thinking about the criteria for public and democratic debate is to ask what the virtues are that make such debates work in the first place. That is, what are the habits of mind and the rules of conduct that enable people to enter into robust disagreement with each other without resorting to rhetorical or real violence? These values, if they could be described in such a way as to carry broad consent, would actually provide the moral foundations for the American republic. Ronald Thiemann, in his book Religion in Public Life, nominates three commitments that can serve to distinguish between those who rightfully participate in democratic processes from those who take advantage of democracy merely to try to impose their
beliefs on others: freedom, equality, and mutual respect. These virtues are the very conditions without which democracies could not flourish. The art of public discussion, which is one of the most important lessons practiced and taught in the classroom, is at its core an exercise in the development of these three virtues.

The problem with Thiemann’s proposal is that it is not clear that everybody agrees with anything more than a thin and vague description of these virtues. Freedom, equality, and respect frequently are the very objects that public debates are attempting to analyze and implement, rather than being presupposed by those debates. Moreover, the more broadly these virtues are defined, the less substance they have, and thus the more they function as mere rules of protocol rather than philosophical premises worthy of serious analysis and agreement. When people on opposite sides of an issue say they are not being heard or respected, they mean that the very substance of their argument is too far removed from the assumptions of the other side. Frequently, people of different ideologies talk past one another; so it is not clear what it means to respect one’s opponent, other than not resorting to rhetorical or real violence. Finally, it is not clear where these virtues are learned. One of the great debates in our society concerns the role of religion in cultivating and shaping the public virtues on which the American democracy is founded. A question that should guide every public discussion of religion—including the discussions of religious studies classes—is the relationship between traditional forms of faith and the virtues of democratic pluralism.

Thiemann further clarifies his proposal for public discussions of religion by drawing on a notion from philosopher John Rawls. Rawls talks about the conditions of publicity that can be generally applied to any and every democratic discussion of vital issues (212–254). In Thiemann’s interpretation these conditions are not threshold principles designed to preclude certain arguments—especially religious ones—from the public realm. Instead, they are what he calls norms of plausibility that provide “criteria that democratic citizens should employ to evaluate arguments in public domain” (135). There are, in Thiemann’s view, three such norms. The first, and most important, is the norm of public accessibility. Public arguments should be open to public examination, which contributes to the democratic goal of solving disputes peacefully.12 Thiemann goes so

12 W. Royce Clark, in his extensive examination of the judicial issue of religious studies, likewise comes to the conclusion that the criteria for acceptable pedagogy is not objectivity but a critical approach to the topic. It is not the content of the course but how it functions in the overall educational environment that matters: “Were religious studies to face legal challenge, it may well be that the key word would not be ‘objective,’ but something more along the lines of ‘critical,’ which nei-
far as to argue that appeals to “emotion, base instinct, and private sources of revelation” (136) are incompatible with this norm. The other two norms involve mutual respect and moral integrity.

The problem with these conditions of publicity are similar to the problems I have outlined with regard to the moral virtues of a democracy. The very idea of moral integrity, for example, is hotly contested in today’s society, so suggesting that it should function as a necessary precondition for democratic debate appears to put the cart before the horse. Indeed, one of the most important tasks of the religious studies classroom is to analyze concepts like integrity and tolerance, and while this can be done in respectful and open ways, the question of their value should not be decided before the discussion has begun.

The deeper philosophical problem with Thiemann’s (and Rawls’s) proposal is that it is too dependent on the transcendental ideals of Kantian Enlightenment philosophy, which tries to uncover the operative principles that can be applied to all human conduct. This methodology assumes that all rational actors obey the same implicit rules. These rules demarcate, in principle, an ideal space—tending toward the secular and neutral—within which religion can be discussed. It follows that religion must adapt itself—by minimizing its claims—to this consensual space in order to be given the right of free expression. This is hardly fair to many religious traditions, which frequently call into question the rules of rationality by insisting on the uniqueness of their demands and claims. The philosophical quest for the essence of communication can thus end up determining the outcome of what should be an ongoing public debate.

I agree that school systems need to have some sense of the limitations of religious expression in the classroom, but I doubt that such rules can come from an abstract portrait of rational discussion. Rather than assuming the superiority of a neutral and objective viewpoint, it would be better to acknowledge how religion classrooms provide a space for passionate disagreement, personal engagement, and spiritual transformation. Any guidelines for the recovery of religion in the public classroom should pay attention to its special pedagogical challenges and joys. Given the personal nature of teaching religion, these guidelines can be only roughly sketched; that is, they are pragmatic and flexible, rather than transcendent and ideal.

...ther attempts to reduce notions of ultimacy within an ‘objective’ interpretation, nor side-lines such notions altogether” (Clark: 138).

While I think the shift from the rhetoric of objectivity to a critical approach is an improvement, I am suspicious that much is gained in the long run. There is still the problem of defining what critical means, especially whether theological approaches are sufficiently critical and whether reductive or social scientific approaches are too critical.
In my book, *Taking Religion to School*, I explore these guidelines in depth, but in this essay I can only suggest a basic framework for their development. Religious advocacy and theological argument in the classroom, by teachers as well as students, should be limited in three basic ways, which pertain to the origins, purpose, and means of such arguments. First, such advocacy and argument should emerge from the material under consideration. Especially concerning the teacher, such advocacy and argument should be in response to the questions and needs of the students. Theological concerns are handled best if they are not introduced by the teacher out of nowhere. Such concerns should emerge from the very dynamic of the classroom itself. Second, the primary purpose of such advocacy and argument should be to help students rethink and reformulate their own opinions and beliefs. Students need to grow in their understanding of religion by both deepening and complicating their beliefs. Otherwise, some of their most crucial personal transformations throughout adolescence will be unrelated to their schooling. Third, and finally, theological advocacy and argument must provide room for students to try on new ideas as well as to defend old ones. Thus, it must be done in such a way as to avoid embarrassing, confronting, or distressing students. The teacher (and other students) should never be condescending, absolutist, or arrogant in introducing theological arguments.

V

In sum, a robust and open discussion of religion will inevitably include questions concerning the truth and value of religious faith. Teachers must be prepared to allow students to talk about religion in direct and personal ways. They also must be ready to provide students with the theological and philosophical tools to make thoughtful judgments about religious issues. This means that the classroom should welcome not only those religious voices that reflect the civic values of tolerance and openness but also those voices that defend the unchanging nature of tradition, scripture, and revelation. It is worth noting that giving more space to religiously conservative students in the classroom is not itself an indication of conservative religious beliefs. A more religiously open classroom has been defended by such liberal educators as Nel Noddings and James W. Fraser as the only hope for restoring our public schools to their democratic role of representing all students.\(^\text{13}\) If schools do not let students raise the most

\(^{13}\) As Fraser notes, "To the degree religious people have been marginalized and driven into the arms of political conservatives, who are not otherwise their allies, to that degree, educated liberals, secular and not quite so secular have failed" (239). Moreover, "the way to avoid religious tyranny
fundamental questions about the ultimate meaning of human existence, then they deprive many students of their very motivation to learn. Putting theological questions aside teaches students to compartmentalize their lives, so that their spiritual longings and existential quests are sequestered to the private realm. The result reduces education to the mere pursuit of the information and credentials needed for material success.

To effectively teach religion, schools must be open and sensitive to the beliefs of the students. Unfortunately, this is often not the case. As James Davison Hunter has argued, public education, as with all large, modern bureaucracies, is saturated with a disenchanted and secular worldview grounded in a functional view of rationality. Moreover, public education is shaped by the liberal perspectives of what Peter Berger calls the knowledge classes, just as it once was captured by the interests of cultural traditionalists. Because it is not directly dependent on the fees of its students, public education can afford to ignore local constituencies. The result has been a pervading sense of alienation from education by many Americans and, thus, an erosion of confidence in the one institution that has the best chance to unite Americans. If schools were to begin listening to the local religious concerns of their communities, paying particular attention to student voices in religion classes, then there could be an opportunity for restoring public schools to their prior status in American culture.

Teaching religion in faithful ways—faithful to the texts and ideas in the curriculum, the religious traditions under consideration, and, most importantly, the beliefs of the students—is not an easy task, but, then again, teaching any topic in the charged atmosphere of public education can be a challenge. Religion, though, does have its peculiar difficulties. As Fraser states, “As with many fields, it is hard to teach about the topic of religion without providing students with experience with the topic. Science classes without labs are second-rate science classes” (232). Public schools cannot allow actual worship services or rituals in their classrooms. But they can draw on student experiences even as they provide students with the critical tools to help them make sense of religious pluralism and the intelligibility of faith. Thus, students themselves can provide much of the material for many religious studies classrooms by sharing their stories and perspectives. The point of such discussions would be to help students integrate their religious beliefs into the rest of their education. Young people are naturally theological, wondering about the meaning of life, the

is not to impose a different, perhaps milder, tyranny of the bureaucrat, the professional, and the curriculum expert. The way to a better future is through an inclusive and engaging education in which schools encourage all their citizens—students, teachers, and administrators—to listen respectfully, where power is shared, where all voices are heard and given their due rights” (Fraser: 240).
origins of the universe, the fate of the world, and realities that transcend everyday existence. Honoring those interests should be an integral aspect of every course on religion in the public schools.

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