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## Preparing for the Clothed Public Square: Teaching About Religion, Civic Education, and the Constitution

Jay D. Wexler

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# PREPARING FOR THE CLOTHED PUBLIC SQUARE: TEACHING ABOUT RELIGION, CIVIC EDUCATION, AND THE CONSTITUTION

JAY D. WEXLER\*

## TABLE OF CONTENTS

I. TEACHING ABOUT RELIGION: A BRIEF HISTORY .....	1172
A. <i>The Post-Schempp Years</i> .....	1172
B. <i>Efforts in the Eighties</i> .....	1181
C. <i>Current Developments</i> .....	1186
II. TEACHING ABOUT RELIGION AS CIVIC EDUCATION .....	1191
A. <i>The Theory of Civic Education</i> .....	1191
B. <i>Teaching About Religion as Civic Education</i> .....	1200
1. <i>Intellectual Reasoning Skills</i> .....	1200
2. <i>Knowledge of Religious History</i> .....	1202
3. <i>Informed Evaluation of Government Laws and             Other Action Affecting Religion</i> .....	1203
4. <i>Understanding the Role of Religion in             Public Debate and Decision Making</i> .....	1214
5. <i>Tolerance</i> .....	1219
6. <i>Two Counterarguments</i> .....	1220
a. <i>The Argument From Political Liberalism</i> .....	1220
b. <i>The Argument From Civic Republicanism</i> .....	1229
III. TEACHING ABOUT RELIGION AND CIVIC EDUCATION: WHAT TO TEACH AND HOW .....	1231
A. <i>Introductory Thoughts</i> .....	1231
B. <i>Which Religions?</i> .....	1237

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\* Associate Professor, Boston University School of Law. The author thanks Tricia Bellia, Neal Devins, John Duffy, Tom Grey, Sean Hecker, Gia Lee, Trevor Morrison, Steven Shiffrin, and participants in workshops at Boston University, Cornell, and William and Mary Law Schools for their extremely helpful comments on an earlier draft of this Article. The author also thanks Erin O'Callaghan and the editors of the *William and Mary Law Review* for their excellent work editing and preparing this Article for publication.

IV. TEACHING ABOUT RELIGION AND THE CONSTITUTION . . . .	1243
<i>A. Intentional Inculcation</i> . . . . .	1244
<i>B. Unintentional Inculcation</i> . . . . .	1248
<i>C. Coercion</i> . . . . .	1250
<i>D. Endorsement Through Selection of</i> <i>What Traditions to Teach</i> . . . . .	1252
<i>E. Endorsement Through Selective Presentation of a</i> <i>Shared Text or Tradition with Multiple Schools</i> . . . . .	1255
<i>F. Disapproval</i> . . . . .	1256
<i>G. Incidental Burden on Religious Believers</i> . . . . .	1258
CONCLUSION . . . . .	1262

Although law and religion scholars have long argued about whether American culture marginalizes religious belief,<sup>1</sup> many important indicators suggest that religion indeed plays a prominent role in contemporary American life.<sup>2</sup> America is an extremely religious nation. Polls consistently show that about ninety percent of Americans continue to believe in God,<sup>3</sup> and both church attendance and membership remain at high levels.<sup>4</sup> This religiosity, moreover, spills out into the public square. A great many Americans rely on religious reasons when thinking and talking about public issues.<sup>5</sup> Ninety percent of the members of Congress, by one report,

1. Compare, e.g., STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* 6 (1993) (arguing that the "common rhetoric" of our society "refuses to accept the notion that rational, public-spirited people can take religion seriously"), and Randy Lee, *When a King Speaks of God; When God Speaks to a King: Faith, Politics, Tax Exempt Status, and the Constitution in the Clinton Administration*, 63 LAW AND CONTEMP. PROBS. 392, 392-93 (2000) (arguing that religion is marginalized), and Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 127 (1992) (noting that religion in America has been "shoved to the margins of public life"), with William P. Marshall, *The Culture of Belief and the Politics of Religion*, 63 LAW AND CONTEMP. PROBS. 453, 454 (2000) (arguing that the "purported marginalization is more a matter of perception than reality"), and Kathleen M. Sullivan, *Religion and Liberal Democracy*, 59 U. CHI. L. REV. 195, 195-96 (1992) (noting that there are "numerous indicators of religion's lively role in contemporary American social and political life"). See also Frederick Mark Gedicks, *Public Life and Hostility To Religion*, 78 VA. L. REV. 671, 671-73 & nn.1-9 (1992) (describing the debate and citing sources).

2. Because it is not directly relevant to the arguments I advance here, I do not undertake any analysis of the meaning of "religion." I do find Kent Greenawalt's working definition to be useful and relevant for my purposes: "[R]eligious bases for decision are connected to theistic belief or other belief about a realm of ultimate value beyond, or deeper than, ordinary human experience, or to forms of life or institutions understood to be religious . . ." KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASONS* 39 (1995).

3. BARRY A. KOSMIN & SEYMOUR P. LACHMAN, *ONE NATION UNDER GOD: RELIGION IN CONTEMPORARY AMERICAN SOCIETY* 9 (1993) (noting that fifty-eight percent of Americans believe that religion is "very important" and that ninety-four percent believe in God or a universal spirit); WARREN A. NORD, *RELIGION & AMERICAN EDUCATION: RETHINKING A NATIONAL DILEMMA* 2 (1995) ("Polls consistently show that nine out of ten Americans believe in the existence of God."); WARREN A. NORD & CHARLES C. HAYNES, *TAKING RELIGION SERIOUSLY ACROSS THE CURRICULUM* 1 (1998) ("The United States is a religious nation. About 90 percent of Americans claim to believe in God, and almost 80 percent say that religion is an important part of their lives. Seventy percent of Americans pray and 40 percent attend religious services and read the Bible each week.").

4. See Marshall, *supra* note 1, at 459 (noting that in 1995, church membership stood at sixty-nine percent, and that church attendance stood at forty-three percent).

5. See, e.g., KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 30 (1988) (noting that it is "self-evident to most seriously religious persons" that "[r]eligious convictions of the sort familiar in this society bear pervasively on people's ethical choices, including choices about laws and government policies"); see also STEPHEN L. CARTER, *GOD'S NAME IN*

consult their religious beliefs when voting on legislation.<sup>6</sup> A majority of Americans believe that religious organizations should publicly express their views on political issues,<sup>7</sup> and an even stronger majority believe it is important for a President to have strong religious beliefs.<sup>8</sup> It came as little surprise, then, when all of the major presidential candidates invoked their religious faith in public speeches during the 2000 campaign.<sup>9</sup>

Americans also strongly believe that religion should play an important role in solving society's problems. Over seventy percent of Americans believe that religious organizations—"clearly the major forces mobilizing volunteers in America,"<sup>10</sup> according to one prominent scholar—help solve these problems.<sup>11</sup> Believing this himself, President George W. Bush, within days of taking office, issued an executive order establishing the White House Office of Faith-Based and Community Initiatives to expand opportunities for faith-based organizations.<sup>12</sup> Much public debate in the months

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VAIN: THE WRONGS AND RIGHTS OF RELIGION IN POLITICS 4-7 (2000).

6. CARTER, *supra* note 1, at 111; *see also* GREENAWALT, *supra* note 2, at 153-55 (citing statistics).

7. *See* The PEW Research Center for the People and the Press, *Religion and Politics: The Ambivalent Majority*, at <http://www.people-press.org/dataarchive> (last visited Feb. 12, 2002) [hereinafter PEW Research Center] (noting that fifty-one percent of Americans believe that churches should express their views on social and political matters). Moreover, as Diana Eck has recently pointed out, the American public square is now populated with a greater variety of religious traditions than ever before, each with its own unique way of participating in that public square. DIANA L. ECK, *A NEW RELIGIOUS AMERICA: HOW A "CHRISTIAN COUNTRY" HAS NOW BECOME THE WORLD'S MOST RELIGIOUSLY DIVERSE NATION* 67-75 (2001).

8. *See* PEW Research Center, *supra* note 7 (reporting that seventy percent of Americans believe that it is important for a President to be a person of faith).

9. *E.g.*, E.J. Dionne, Jr., *Religion and Politics*, WASH. POST, Dec. 28, 1999, at A23 (noting that Gary Bauer and Orrin Hatch named Jesus as the political philosopher with whom they most identified); Hanna Rosin, *Balancing Jewish Law, Public Life*, WASH. POST, Aug. 8, 2000, at A12 (noting that Joseph Lieberman "drop[s] Talmudic references in speeches" and speaks "freely about his religion on prime-time television"); *Faith-Based Campaigning*, WASH. POST, Aug. 10, 2000, at A28 (editorial) (describing George W. Bush's statement that "Jesus was his favorite philosopher," and Al Gore's practice of "asking himself what Jesus would do" before making every decision).

10. E.J. Dionne, Jr. & John J. DiIulio, Jr., *What's God Got To Do With the American Experiment?*, BROOKINGS REV. 4, 6 (1999) (reporting comments of Father Andrew Greeley).

11. PEW Research Center, *supra* note 7 (observing that seventy-two percent of Americans believe churches, synagogues, and other religious organizations "help solve important social problems").

12. Exec. Order No. 13199, 66 Fed. Reg. 8499 (Jan. 29, 2001) ("Establishment of White House Office of Faith-Based and Community Initiatives"); *see also* Exec. Order No. 13198, 66

following this order focused on the desirability of extending charitable-choice legislation to allow more religious service providers to share in public funds.<sup>13</sup> Religion may or may not have played an equally important role in American public life seventeen years ago when Richard Neuhaus first decried the "Naked Public Square,"<sup>14</sup> but today at least the public square is substantially clothed with religion.<sup>15</sup>

At the same time, in a series of recent decisions, the United States Supreme Court has significantly limited the judicial role in reviewing government action affecting religion. In *Employment Division, Department of Human Resources v. Smith*,<sup>16</sup> for example, the Court reversed decades of precedent by holding that laws and regulations incidentally burdening religious belief and practice generally would be reviewed under an extremely lenient standard when challenged on Free Exercise Clause grounds.<sup>17</sup> Moreover, in a

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Fed. Reg. 8497 (Jan. 29, 2001) (setting out agency responsibilities with respect to faith-based initiatives).

13. See, e.g., Nathan J. Diament, *A Faith-Based Rorschach Test*, WASH. POST, Mar. 20, 2001, at A29 (noting variety of fears about the plan); E.J. Dionne, Jr., *DiIulio's Faith-Based Challenge*, WASH. POST, Mar. 30, 2001, at A29 (noting that Bush's plan to offer government aid to social programs run by religious groups "has unleashed intense argument and soul-searching"); Laurie Goodstein, *A Clerical, and Racial, Gap Over Federal Help*, N.Y. TIMES, Mar. 24, 2001, at A1 (discussing disagreement over Bush's plan); Steven Waldman, *Doubts Among the Faithful*, N.Y. TIMES, Mar. 7, 2001, at A19 (discussing conservative opposition to the plan). Another recent example demonstrating the important role played by religion in public life is President Bush's consultation of religious authorities when determining whether federal funds may be spent on stem cell research. See Bill Broadway, *Faith is a Force on Both Sides of Stem Cell Debate*, WASH. POST, Aug. 4, 2001 at B09.

14. RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* vii (1984) ("The naked public square is the result of politically grounded values from the conduct of public business. The doctrine is that America is a secular society. It finds dogmatic expression in the ideology of secularism. I will argue that the doctrine is demonstrably false and the dogma exceedingly dangerous.")

15. See Marci A. Hamilton, *Power, the Establishment Clause, and Vouchers*, 31 CONN. L. REV. 807, 814 (1999) ("The problem with the marginalization thesis is that it conflicts with sociological data and political facts."). I first came across the phrase "clothed public square" in CARTER, *supra* note 1, at 211.

16. 494 U.S. 872 (1990).

17. *Id.* at 883-91. It should be noted, however, that at least as a practical matter, if not a theoretical one, the Supreme Court did not, even prior to *Smith*, generally interpret the Free Exercise Clause as imposing a substantial limitation on the State. See, e.g., *O'Lone v. Shabazz*, 482 U.S. 342 (1987) (rejecting challenge to prison regulations allegedly infringing upon inmates' religious rights); *Goldman v. Weinberger*, 475 U.S. 503 (1986) (rejecting challenge to Air Force regulation that prohibited a serviceman, who was an orthodox Jew, from wearing a yarmulke).

series of recent Establishment Clause cases, the Court has overruled prior decisions by holding that public institutions can lend computers and other instructional equipment to religious schools<sup>18</sup> and that public school teachers may provide remedial instruction to students on the premises of religious schools.<sup>19</sup> The Court also has upheld a variety of other laws providing aid to religious organizations,<sup>20</sup> as well as laws specifically accommodating religious belief and practice.<sup>21</sup> By limiting the judicial role in these ways, the Court has provided the State with broad latitude to enact legislation affecting religion and therefore has left the primary responsibility for evaluating the desirability of such laws to elected officials and the citizens who elect them.

Both of these states of affairs—the prominence of religion in American public life and the responsibility placed on citizens to evaluate government action affecting religion—strongly suggest that to participate most effectively in public life, citizens must know something about religion. Despite this need, the public institutions that are primarily responsible for preparing citizens for public life in America—the public schools—have not taught students very much about religion. The typical high school curriculum, as interest groups from both sides of the political spectrum agree, has “all but ignore[d] religion.”<sup>22</sup> Most public schools do not offer classes about religion.<sup>23</sup> Teachers have not been trained to teach about

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18. *Mitchell v. Helms*, 530 U.S. 793 (2000) (overruling *Meek v. Pittenger*, 421 U.S. 349 (1975), and *Wolman v. Walter*, 433 U.S. 229 (1977)).

19. *Agostini v. Felton*, 521 U.S. 203, 209 (1997) (overruling *Aguilar v. Felton*, 473 U.S. 402 (1985)).

20. *E.g.*, *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995) (upholding the payment of public funds to outside contractor for printing costs of publication of religious student group); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993) (upholding payment of public money to deaf student to pay for interpreter to help him in Catholic high school).

21. See *infra* text accompanying notes 213-16.

22. *NORD & HAYNES, supra* note 3, at 2; See also George W. Dent, Jr., *Religious Children, Secular Schools*, 61 S. CAL. L. REV. 863, 868-71 (1988) (noting that fundamentalist Christians as well as the People for the American Way believe that “public education has slighted religion”).

23. See *NORD, supra* note 3, at 212 (citing Department of Education study from 1980s indicating that only 640 of 15,000 public high schools offered courses in religion, and that only two-tenths of one percent of all students were enrolled); see also Marjorie Coeyman, *Talking Religion in the Classroom: Supporters Argue It's Key to Understanding Everything*, CHRISTIAN SCI. MONITOR, Dec. 14, 1999, at 15 (“[M]ost educators in public schools tread gingerly around

religion.<sup>24</sup> And although there is some indication things are beginning to change slightly,<sup>25</sup> textbooks in all core subjects, including history, for the most part have treated religious topics in a perfunctory or superficial manner or have ignored them altogether.<sup>26</sup> As a result, students have often graduated from high

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the topic of religion—or avoid it altogether.”); Gilbert T. Sewall, *Religion Comes to School*, PHI DELTA KAPPAN, Sept. 1, 1999, at 10 (“In social studies and civics, the overwhelming thematic foundation in the curriculum is caution about a ‘wall of separation’ between church and state. . . . [T]he secular establishment that administers the nation’s 16,000 school districts finds it difficult to conduct any school-based discussion of religion’s place . . . in human life . . .”); Christine Wicker, *Teaching, Not Proselytizing: Oxford Series Aims to Give Students a Scholarly Look at Religion*, DALLAS MORNING NEWS, Oct. 16, 1999, at 1G (“[I]n the past 20 years, teachers and textbook writers have become timid about discussing faith in public schools.”).

24. NORD & HAYNES, *supra* note 3, at 91 (“For the teacher, the challenge of achieving even minimal fairness in the treatment of religion when teaching world and U.S. history is daunting to say the least. Few teachers have much background in religious studies.”); George R. La Noue, *The Conditions of Public School Neutrality*, in RELIGION AND PUBLIC EDUCATION 22, 30 (Theodore R.Sizer ed., 1967) (“Assuming it were possible to design a satisfactory comparative religion course, the enormous shortage of qualified teachers in this field remains a serious problem.”); Jim Castelli, *Schools Take up Religion as an Academic Study*, USA TODAY, Nov. 6, 1990, at 4D (“[T]he lack of training for teachers to teach about religion is a major problem . . .”).

25. NORD, *supra* note 3, at 159 (“There have been incremental improvements in the latest editions of at least a few social studies and history textbooks . . .”); NORD & HAYNES, *supra* note 3, at 78 (“The news is not all bad. According to the American Textbook Council, there has been some improvement in the treatment of religion in the new generation of history texts.”) (citation omitted); Gilbert T. Sewall, *Religion and the Textbooks*, in CURRICULUM, RELIGION, AND PUBLIC EDUCATION: CONVERSATIONS FOR AN ENLARGING PUBLIC SQUARE 73, 80 (James T. Sears & James C. Carper eds., 1995) (“[T]he most widely used U.S. and world history textbooks cover major religious events and movements—including non-Western religions—more thoroughly than they did as little as 10 years ago.”).

26. ASSOCIATION FOR SUPERVISION AND CURRICULUM DEVELOPMENT, RELIGION IN THE CURRICULUM 7 (1987) (“Nor is it only texts in American history that are affected. The critical influence of religion on world history and culture is similarly slighted in texts on political science, sociology, literature, and world history.”); NORD & HAYNES, *supra* note 3, at 78-79 (“Despite this progress, textbooks are still woefully inadequate in their treatment of religion. World history texts do provide brief accounts of the basic teachings and practices of the major religions as they appear in history, but, in our view, the texts do not give enough space to the topics to enable students to make sense of these traditions.”); PAUL VITZ, CENSORSHIP: EVIDENCE OF BIAS IN OUR CHILDREN’S TEXTBOOKS 56-57 (1986) (pointing out that textbooks make little mention of religion in American history in the last seventy-five to one hundred years); Dent, *supra* note 22, at 870 (“Textbooks ignore the role of religion in history . . .”); Warren A. Nord, *Religion, The First Amendment, and Public Education*, 8 BYU J. PUB. L. 439, 440-41 (1994) (concluding that textbooks “essentially ignore religion”); Sewall, *supra* note 25, at 81 (“Textbooks seldom explain religion’s role in shaping human thought and action or as a motivating agent of culture, politics, and ethics.”).

school without learning anything more about the breadth of the American religious experience than what they have learned about their own religion in their own home or place of worship.<sup>27</sup>

In recent years, however, this situation has begun to change. Committed and sophisticated reformers,<sup>28</sup> seizing on strong dicta from the Supreme Court supporting the need to teach students about religion, have spearheaded a movement to convince schools to teach about religion. These advocates have made remarkable progress in persuading school administrators, school boards, and communities that public schools can teach objectively<sup>29</sup> about religion without running afoul of the First Amendment and without causing paralyzing controversy among concerned parents and lawmakers.<sup>30</sup> They have developed educational materials, trained

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27. Cf. ECK, *supra* note 7, at 70 ("Americans, on the whole, have a high degree of religious identification . . . and yet a very low level of religious literacy.").

28. These reformers include Warren A. Nord of the University of North Carolina, Charles C. Haynes of the Freedom Forum's First Amendment Center, and Oliver Thomas, previously general counsel to the Baptist Joint Committee for Public Affairs.

29. Of course, the meaning of objectivity, and particularly the idea that actual objectivity is achievable, is highly controversial. For discussions of the concept of objectivity in the legal literature, see KENT GREENAWALT, *LAW AND OBJECTIVITY* (1992); Jules L. Coleman & Brian Leiter, *Determinacy, Objectivity, and Authority*, 142 U. PA. L. REV. 549 (1993); Heidi Li Feldman, *Objectivity in Legal Judgment*, 92 MICH. L. REV. 1187 (1994); Jeanne L. Schroeder, *Subject: Object*, 47 U. MIAMI L. REV. 1 (1992). Despite the problematic nature of the concept, I do not doubt that, as the Court has suggested, there is a useful and workable distinction between the objective presentation of religious phenomena and a presentation of the same phenomena in a nonobjective manner (such as one attempting to convince the listener of the correctness of a certain religious viewpoint). This is the distinction that has animated the academic study of religion, and the impossibility of achieving complete objectivity has never made the enterprise impossible or pointless. As historian of religion Wendy Doniger O'Flaherty explains:

[S]cholars of religion have made the most self-conscious effort to be more objective than the chemists . . . . This is all well and good; if one is going to teach a highly charged subject like religion, one must be more aware, not less aware, of the impossible goal of pure objectivity. It behooves us, even more, perhaps, than it behooves anthropologists or classicists, to play by the rules of the game of scholarship . . . . Clifford Geertz has stated the problem well: "I have never been impressed by the argument that, as complete objectivity is impossible in these matters (as, of course, it is), one might as well let one's sentiments run loose. As Robert Solow has remarked, that is like saying that as a perfectly aseptic environment is impossible, one might as well conduct surgery in a sewer."

WENDY DONIGER O'FLAHERTY, *OTHER PEOPLES' MYTHS: THE CAVE OF ECHOES* 21-22 (1988) (quoting CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 30 (1973)).

30. See *infra* text accompanying notes 114-25; see also Castelli, *supra* note 24, at 4D ("But

teachers, and articulated guidelines to help teachers and administrators implement such programs.<sup>31</sup> They have written books and articles to persuade policymakers that teaching about religion is a necessary part of a strong education.<sup>32</sup> Finally, they have convinced diverse interest groups and associations that schools should teach about religion. For example, a 1995 statement of principles stating that “[s]chools demonstrate fairness when they ensure that the curriculum includes study *about* religion, where appropriate, as an important part of a complete education,” was endorsed by such diverse groups as the Christian Coalition, the National Association of Elementary School Principals, the National Association of Evangelicals, the Anti-Defamation League, and the People for the American Way.<sup>33</sup>

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all of that is changing. Educators say there’s still a long way to go, but schools all across the country are putting information about religion—not religious devotion—back into the public schools.”).

31. See *infra* text accompanying notes 109-36.

32. See, e.g., FINDING COMMON GROUND: A FIRST AMENDMENT GUIDE TO RELIGION AND PUBLIC EDUCATION (Charles C. Haynes & Oliver Thomas eds., 1998); NORD & HAYNES, *supra* note 3, at 43 (noting that without learning about religion, “[s]tudents will not be liberally educated, they will not be able to make reflective and critical judgments about anything that is religiously contested”); *id.* at 57 (“If students are to be liberally educated, they must learn a good deal about religion . . .”); NORD, *supra* note 3, at 8 (“I will argue that all students should receive a liberal education that takes seriously a variety of ways of making sense of the world, religious ways included, if they are to be informed, reasonable, and responsible individuals.”); Charles C. Haynes, *Averting Culture Wars Over Religion*, EDUC. LEADERSHIP (Dec. 1998/Jan. 1999) (“The key, of course, is to neither inculcate nor inhibit religion, but rather to teach about religion objectively.”), available at <http://www.ascd.org/readingroom/edlead/9812/hayes.html>; see also Philip C. Kissam, *Let’s Bring Religion into the Public Schools and Respect the Religion Clauses*, 49 U. KAN. L. REV. 593 (2001) (urging Kansas public schools to introduce the study of religious subjects).

33. RELIGIOUS LIBERTY, PUBLIC EDUCATION, AND THE FUTURE OF AMERICAN DEMOCRACY: A STATEMENT OF PRINCIPLES, reprinted in FINDING COMMON GROUND, *supra* note 32, at 2\*2; see also PRESIDENT’S GUIDELINES ON RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS, reprinted in FINDING COMMON GROUND, *supra* note 32, at 13\*7 (noting that public schools “may teach *about* religion, including the Bible or other scripture; the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries”). For more on the federal government’s approach to religion in the public schools, see its website at <http://www.ed.gov/initiatives/religionandschools> (last modified Jan. 30, 2001). The movement’s leaders have announced that there is now a “New Consensus” in favor of teaching about religion in public schools. E.g., NORD & HAYNES, *supra* note 3, at 9. The authors explain:

Given the heated nature of our culture wars, it may come as something of a surprise to many that over the last decade a fairly broad consensus about the role of religion in public schools has developed at the national level among the

Despite this recent success, several important questions remain regarding teaching about religion in public schools. For one thing, the movement could benefit from greater theoretical focus. As the reformers themselves recognize, the "basic principles" of the movement (that teaching about religion objectively is constitutional and "tremendously important if students are to be educated about our history and culture"<sup>34</sup>) are "open to varying interpretations."<sup>35</sup> One critical task for the future is prioritization. Reformers have called for a plethora of curricular changes to inject more religion into the classroom. These include teaching students, among other things, religion's role in U.S. history;<sup>36</sup> religious interpretations of history;<sup>37</sup> theological history;<sup>38</sup> competing views of the First Amendment;<sup>39</sup> religion's role as a buffer to state authority;<sup>40</sup> religious views on contested policy issues;<sup>41</sup> how religion affects political choices;<sup>42</sup> religious views on economic

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leadership of many religious and educational organizations. This New Consensus has been articulated in a number of documents ....

*Id.*

34. NORD & HAYNES, *supra* note 3, at 9.

35. *Id.*

36. See FINDING COMMON GROUND, *supra* note 32, at 8\*1-8\*11 (listing twenty-nine religious influences on U.S. history and sources that discuss each); see also CHARLES C. HAYNES, RELIGION IN AMERICAN HISTORY: WHAT TO TEACH AND HOW (1990) (providing instructional strategies to incorporate religion and U.S. history).

37. See NORD & HAYNES, *supra* note 3, at 80 ("Without exposure to religious conceptions of history, students will understand little about how history has been interpreted for much of the development of Western civilization; they will learn that all of history should be interpreted only in secular ways.").

38. See *id.* The authors assert:

Students can make better sense of the last two centuries of world history if they have some understanding of such theological developments as the rise of literary and historical biblical criticism, debates within Roman Catholicism since the Second Vatican Council, the fundamentalist response in various traditions to religious liberalism and modernity, and the impact of science and psychology on religious thinking.

*Id.* at 90.

39. *Id.* at 101 ("Students need to be familiar with this ongoing controversy [between separationist and accommodationist interpretations] over the 'separation of church and state' and the meaning of the Establishment Clause.").

40. *Id.* at 103 ("[I]t is also tremendously important that students appreciate the widespread religious concern about nurturing an uncritical allegiance to the state.").

41. *Id.* at 104 ("Students must learn to look at the actions of government through the eyes of people in various religious communities if they are to understand our politics and make educated judgments about justice and government.").

42. *Id.* at 102 ("To make sense of our politics, students need to understand the religious

questions;<sup>43</sup> religious meanings in art and literature;<sup>44</sup> the secularization of literature and art in modern times;<sup>45</sup> religious views on the debate over origins, the Big Bang, nature and ecology, technology, genetic engineering, health and healing, and other scientific issues;<sup>46</sup> the Bible as literature, in literature, as history, in history, and as scripture;<sup>47</sup> and world religions, including a comparative study of sacred scriptures.<sup>48</sup> But with limited resources and a host of other subjects vying for space in the classroom,<sup>49</sup> developers of educational materials, school boards, school administrators, teachers, and parents must find some way to decide which elements of religion stake the strongest claim to inclusion in the public school curriculum.

To know what and how to teach about religion, educational policymakers need a coherent general theory of public education to guide their decision making. As Amy Gutmann explains:

All significant policy prescriptions presuppose a theory, a political theory, of the proper role of government in education. When the theory remains implicit, we cannot adequately judge its principles or the policy prescriptions that flow from them.

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worldviews that shape our culture wars and the ongoing debate over the proper role of religion in politics.”).

43. NORD, *supra* note 3, at 302:

What should students learn of religious ways of thinking about the economic world? They should be taught something of the scriptural and historical roots of contemporary religious understandings of justice and morality, rationality and human nature, tradition and community, in the major religious traditions. They should know something of mainline Catholic theory since Leo XIII, the Social Gospel movement and its legacy in contemporary liberal Protestantism, liberation theology, and conservative Christian defenses of free enterprise.

44. NORD & HAYNES, *supra* note 3, at 121 (“[I]f students are to be liberally educated they must have some sense of the religious as well as the more narrowly secular . . . meaning and significance of art and literature.”).

45. *Id.* at 131 (“Students should understand that the historical secularization of literature and art is one of the major themes of Western cultural history.”).

46. *Id.* at 134-61.

47. *Id.* at 164-71.

48. *Id.* at 172-77; see also FINDING COMMON GROUND, *supra* note 32, at 9\*1-9\*12 (listing resources for teaching about world religions).

49. See, e.g., Edd Doerr, *Teaching About Religion*, HUMANIST, Nov. 1, 1998, at 33 (“Meanwhile, there are school challenges that demand more immediate attention [than teaching about religion]: more adequate and more equitably distributed funding; smaller classes; more availability of preschool and early childhood education; and beefing up curricula in history, English, foreign languages, science, world literature, and other areas.”).

The attractions of avoiding theory are . . . superficial. We do not collectively know good educational policy when we see it.<sup>50</sup>

Although there are many educational theories from which to choose,<sup>51</sup> this Article argues that, in light of the need to prepare students for legal and political life in a nation suffused with religion, public schools should teach students about religion as part of "civic education," which has as its purpose "the formation of individuals who can effectively conduct their lives within, and support, their political community."<sup>52</sup> The Article contends that schools should teach about religion so that students can make fully informed decisions about laws and other government actions affecting religious belief and practice and so they can understand the myriad ways that religious beliefs affect the way that many Americans think and talk about issues of public importance, including law, in the clothed public square. It explains why recent decisions of the Supreme Court regarding the Free Exercise and Establishment Clauses have made this need for knowledge about religion more acute. It further considers the argument, based on notions of Rawlsian public reason, that knowledge of religion is unnecessary for participation in political life because public

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50. AMY GUTMANN, *DEMOCRATIC EDUCATION* 6 (rev. ed. 1999); see also *id.* at 5: [Without a theory], we neglect educational alternatives that may be better than those to which we have become accustomed or that may aid us in understanding how to improve our schools before we reach the point of crisis, when our reactions are likely to be less reflective because we have so little time to deliberate.

51. For example, so-called "liberal" theories of education, according to Gutmann, "aim at developing individual autonomy." *Id.* at 8. "Philosophic" education, according to William Galston, aims to "seek truth" and develop students' "capacity to conduct rational inquiry." William Galston, *Civic Education in the Liberal State*, in *LIBERALISM AND THE MORAL LIFE* 89 (Nancy L. Rosenblum ed., 1989). Utilitarian theories of education seek, as Mill says, to "render the individual, as much as possible, an instrument of happiness, first to himself, and next to other beings." JAMES MILL ON EDUCATION 41 (W.H. Burston ed., 1969). For further discussion of utilitarian theories of education, see Amy Gutmann, *What's the Use of Going to School? The Problem of Education in Utilitarianism and Rights Theories*, in *UTILITARIANISM AND BEYOND* 261, 264 (Amartya Sen & Bernard Williams eds., 1982) (summarizing Bentham's theory of education). For a relatively modern example of a utilitarian theory of education, see R. M. Hare, *Opportunity for What? Some Remarks on Current Disputes About Equality in Education*, 3 OXFORD REV. OF EDUC. 207, 211 (1977) ("[L]et us ask what I say is the main question: What principles of justice as regards the provision of education will have the highest acceptance-utility?").

52. Galston, *supra* note 51, at 90.

discourse and decision making should rest on arguments accessible to all citizens, and it explains why recent scholarship in law and religion undermines this contention.

A second important issue raised by this teaching about religion movement concerns the limitations placed on schools and teachers by the Constitution. Several Supreme Court Justices have said in dicta that schools generally may constitutionally teach about religion,<sup>53</sup> but the issue is more complicated than these general pronouncements suggest. The Constitution is by no means irrelevant to the actual implementation of a religious studies program.<sup>54</sup> Indeed, the concept of teaching about religion raises a series of important issues at the boundary between inculcation or promotion of religious viewpoints on the one hand and objective presentation of religious phenomena on the other hand. Because this boundary is so thin, the case for teaching about religion in the public schools is subject to the criticism that its benefits are not worth the costs of constitutional litigation and violations. This Article, therefore, considers the various constitutional limits to which schools must adhere when implementing a program to teach about religion, and it argues that, although these limits are important, they by no means preclude schools from implementing a successful teaching about religion program, as evidenced by the many schools that have succeeded in implementing such programs.

The Article proceeds in four parts. Part I describes the Supreme Court's dicta concerning teaching about religion and outlines the history of the teaching about religion movement incited by that dicta. Part II introduces the theory of civic education and argues that public schools should teach students about religion to prepare them for citizenship because, among other things, such teaching will equip students to evaluate laws affecting religion and to understand discourse in a public square clothed with religion. Part III provides some thoughts about how and what schools should teach about

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53. See *infra* text accompanying notes 55-66.

54. In this Article I use the phrase "religious studies" to denote a class or set of classes that teach about religion objectively. See Leslie Griffin, *"We Do Not Preach, We Teach": Religion Professors and the First Amendment*, 19 QUINNIPAC L. REV. 1, 9 (2000) ("What is religious studies? It is the name often used in the United States for the academic study of religion, a term used to distinguish such study from the more traditional theology."). For an argument questioning the validity of the religious studies field, see TIMOTHY FITZGERALD, *THE IDEOLOGY OF RELIGIOUS STUDIES* 3 (2000).

religion in order to achieve the civic goals outlined in the previous Part, and it argues specifically that schools should teach students about a broad range of religions to prepare them for legal and political life in a pluralistic national (and global) community. Finally, Part IV considers the constitutional issues involved in implementing a religious studies program and argues both that the Constitution does not preclude teaching about religion, and that the benefits of teaching about religion outweigh any possible constitutional costs.

## I. TEACHING ABOUT RELIGION: A BRIEF HISTORY<sup>55</sup>

### A. *The Post-Schempp Years*

Though a few voices may have been calling for schools to teach religion objectively prior to 1963,<sup>56</sup> observers of the period seem to agree that it was the *Abington School District v. Schempp*<sup>57</sup> decision in that year that sparked the beginnings of the movement to teach about religion.<sup>58</sup> In that case, which invalidated a practice of

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55. This brief background, divided into three parts primarily for convenience rather than to indicate any fundamental difference between historical periods, is intended only to highlight the most important developments of the last forty years. It is certainly not intended as a formal "history" of the period.

56. *E.g.*, CLAIRE COX, *THE FOURTH R: WHAT CAN BE TAUGHT ABOUT RELIGION IN THE PUBLIC SCHOOLS* 11-12 (1969) (reprinting 1951 statement of National Education Association in favor of teaching about religion); STEPHEN MACEDO, *DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY* 70 (2000) (noting that in the mid-nineteenth century some proposed to "present the various versions of religious truth present in the polity to children in an evenhanded way"); PHILIP H. PHENIX, *RELIGIOUS CONCERNS IN CONTEMPORARY EDUCATION: A STUDY OF RECIPROCAL RELATIONS* 52-54 (1959) ("Instead of teaching religion the teacher may teach *about* religion. By this is meant a factual, intellectual, objective treatment of the subject of religion."); Nicholas Piediscalzi, *Public Education Religion Studies Since the Schempp Decision* (1963), in *FOUNDATIONS FOR CHRISTIAN EDUCATION IN AN ERA OF CHANGE* 186, 188 (Marvin J. Taylor ed., 1976) (noting that there were several efforts underway before 1963, such as The Educational Research Council of America's Social Science Curriculum Project and the Nebraska Curriculum Center's English Curriculum Project, which were "seriously considering including religion studies in their materials").

57. 374 U.S. 203 (1963) (striking down a Pennsylvania law requiring reading of Bible passages at beginning of the school day).

58. *See, e.g.*, Arthur Gilbert, *Reactions and Resources*, in *RELIGION AND PUBLIC EDUCATION*, *supra* note 24, at 37, 40; Nicholas Piediscalzi, *A Survey of Professional Efforts to Establish Public Education Religion Studies*, in *PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW* 3, 3 (Paul J. Will ed., 1981); Piediscalzi, *supra* note 56, at 188; Elliott Wright,

teacher-led Bible reading in public school classrooms, three different Justices nonetheless spoke strongly in favor of teaching about religion in the public schools.<sup>59</sup> Justice Clark, writing for the Court, said

it might well be said 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. . . . 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.<sup>60</sup>

Likewise, in his concurring opinion in the same case, Justice Brennan explained:

The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion.<sup>61</sup>

Finally, Justice Goldberg's concurrence stated:

Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so. And it seems clear to me

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*Religion in the Public Schools: The Issue in Cultural and Historical Perspective* (Jan. 14, 1994), available at <http://www.ihc4u.org/wright.htm>; see also NIELS C. NIELSEN, JR., GOD IN EDUCATION: A NEW OPPORTUNITY FOR AMERICAN SCHOOLS 153-54 (1966) (quoting *Schempp* and noting "[i]t is our thesis that specific information about religion has a legitimate place in the public school curriculum"). For general historical accounts of the role of religion in education in American history, see generally NORD, *supra* note 3, at 63-97; Stephen L. Carter, *Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later*, 27 SETON HALL L. REV. 1194 (1997).

59. For an argument that the Court, in its doctrinal analysis, has relied not on the distinction between teaching religion and teaching about religion but instead on the type of school at issue, see Griffin, *supra* note 54, at 28 ("Instead of focusing on the curriculum, in the First Amendment religion cases set in schools, the justices have been attentive to institutional status, examining the nature of the schools instead of the content of the courses.").

60. *Schempp*, 374 U.S. at 225.

61. *Id.* at 300 (Brennan, J., concurring).

... that the Court would recognize the propriety of ... teaching *about* religion, as distinguished from the teaching *of* religion in the public schools.<sup>62</sup>

These pronouncements both echoed and foreshadowed other statements made by members of the Court. For example, fifteen years earlier, Justice Jackson, writing in concurrence in *McCullum v. Board of Education*,<sup>63</sup> observed that,

I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played [in our culture]. . . . One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought.<sup>64</sup>

Twenty-four years later, Justice Powell would write in *Edwards v. Aguillard*:<sup>65</sup>

As a matter of history, schoolchildren can and should properly be informed of all aspects of this Nation's religious heritage. I would see no constitutional problem if schoolchildren were taught the nature of the Founding Fathers' religious beliefs and how these beliefs affected the attitudes of the times and the structure of our government. Courses in comparative religion of course are customary and constitutionally appropriate.<sup>66</sup>

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62. *Id.* at 306 (Goldberg, J., concurring).

63. 333 U.S. 203 (1948).

64. *Id.* at 236.

65. 482 U.S. 578 (1987) (Powell, J., concurring).

66. *Id.* at 606-07 (footnotes omitted) (Powell, J., concurring). The full quotation is: As a matter of history, schoolchildren can and should properly be informed of all aspects of this Nation's religious heritage. I would see no constitutional problem if schoolchildren were taught the nature of the Founding Fathers' religious beliefs and how these beliefs affected the attitudes of the times and the structure of our government. Courses in comparative religion of course are customary and constitutionally appropriate. In fact, since religion permeates our history, a familiarity with the nature of religious beliefs is necessary to understand many historical as well as contemporary events. In addition, it is worth noting that the Establishment Clause does not prohibit *per se* the educational use of religious documents in public school education. Although the Court has recognized that the Bible is "an instrument of religion," . . . it also has made clear that the Bible "may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like." *Stone v. Graham*, 449 U.S., at 42 (citing [*Schempp*]). The book is, in fact, "the world's all-time best seller" with undoubted

Thus, although the Supreme Court has never directly considered a case involving whether a public school may teach about religion, several members of the Court, writing in different eras of the court's history, have indicated that teaching about religion would be constitutional. No Justice, moreover, has cast any serious doubt on this question.

In several states, formal legal action to promote teaching about religion followed closely on the heels of the Court's decision. In the same year that the Court handed down *Schempp*, for example, the legislatures of California and Florida passed laws essentially authorizing schools to teach, as the Florida legislature put it, "secular courses in religion."<sup>67</sup> In addition, the Attorneys General of four other states sent letters to their Commissioners of Education indicating that schools within those states could teach religion in an objective manner.<sup>68</sup> The Boards of Education of at least three other states authorized schools to do the same.<sup>69</sup>

Although many religious believers disagreed fervently with the Court's separationist decisions on school prayer, several religious groups—in the wake of *Schempp*—nonetheless voiced their support

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literary and historic value apart from its religious content. The Establishment Clause is properly understood to prohibit the use of the Bible and other religious documents in public school education only when the purpose of the use is to advance a particular religious belief.

*Id.* (footnotes omitted).

67. Gilbert, *supra* note 58, at 40. California's law, added to the state's Education Code, provided:

Nothing in this Code shall be construed to prevent or exclude from the public schools' reference to religion or references to or the use of religious literature, art or music . . . when such references or uses do not constitute instruction in religious principles or add to any religious sect, church or sectarian purpose and when such references or uses are incidental or illustrative of matters properly included in the course of study.

*Id.* at 40.

68. The four states were Delaware, Georgia, Maine, and West Virginia. Georgia's Attorney General, for example, wrote a letter saying that reading or discussing the Bible as part of a broad course in comparative religion or the history of religion would be permissible. *Id.* at 41.

69. Those states were: Illinois, whose superintendent advised that the Constitution "does not prohibit the teaching of factual information on the history and tenets of religious bodies in the regular curriculum;" Indiana, whose Board of Education authorized a course in 1965 in "The Bible as Literature," for high school seniors; and Texas, where the legal counselor to the Education Agency in 1965 ruled that a Bible course "offered as an elective and presented as a study of the Bible for its literary or historic qualities," would be constitutional. *Id.* at 41.

for the idea that schools should teach students about religion.<sup>70</sup> The National Council of Churches, for example, hosted a conference in 1964 at which members gave their "full support" to the "objective teaching about the influence of religion in history and in contemporary society" and proposed that schools offer "elective courses on the history of religion."<sup>71</sup> Baptist and Lutheran groups also voiced their support for such efforts.<sup>72</sup> Cardinal Ritter, the Archbishop of St. Louis, representing the Catholic Church, made a similar point when he said in 1965 that recent Supreme Court decisions "uphold the right and obligation of the schools to teach about religion but not to teach religion itself."<sup>73</sup> Jewish groups too, while generally remaining more skeptical than Christians of the idea that schools should teach about religion,<sup>74</sup> nonetheless issued a joint statement endorsing the teaching of religion when "such teaching is intrinsic to the regular subject matter being studied."<sup>75</sup>

In addition, several new organizations were founded specifically to address the problem of how to encourage and improve teaching about religion.<sup>76</sup> The Religious Instruction Association, founded in

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70. In addition to the ones discussed in the text, other organizations, including the Religious Heritage of America, the Laymen's National Bible Committee, the American Bible Society, the National Conference of Christians and Jews, and the Religious Education Association, all voiced their support for teaching about religion. COX, *supra* note 56, at 84-98.

71. Gilbert, *supra* note 58, at 43; see also COX, *supra* note 56, at 49-57 (describing views of the National Council of Churches).

72. COX, *supra* note 56, at 57-64.

73. Gilbert, *supra* note 58, at 45. For more on the Catholic response, see COX, *supra* note 56, at 68-73.

74. According to Rabbi Arthur Gilbert, Director (in 1967) of the National Department of Religious Curriculum Research, Anti-Defamation League of B'nai B'rith in New York:

Jewish reactions to the proposals to teach about religion in the public school have been more restrained than those of Protestants or Catholics. From bitter memory, Jews fear that the religion to be taught in government-sponsored schools, in a Christian-influenced environment, will short-change Judaism as a relevant and vital contemporary faith.

Gilbert, *supra* note 58, at 47. For more on the Jewish reaction to teaching-about-religion proposals, see COX, *supra* note 56, at 73-82.

75. Gilbert, *supra* note 58, at 48. The Anti-Defamation League also supported teaching about religion when such teaching would be intrinsic to the curriculum, though it did not support the development of separate classes devoted entirely to religion. *Id.*

76. Also, existing educational organizations began paying attention to the issue of whether schools should teach about religion. The American Academy of Religion, for example, convened a meeting on the topic in 1974 to consider how the organization could serve the needs of the emerging movement. Piediscalzi, *supra* note 58, at 16-17. The Academy established a committee known as the Religion Studies in Public Education Group, which over

the early 1960s to gather and disseminate information and materials relating to teaching about religion,<sup>77</sup> was headed by an educator named James V. Panoch, an apartment building manager and former Illinois school teacher.<sup>78</sup> Panoch stressed the importance of exposing students to religious ideas, rather than imposing religious beliefs on students,<sup>79</sup> and received criticism from religious fundamentalists for his approach.<sup>80</sup> The National Council on Religion and Public Education, established in 1971, was founded to provide "a means for cooperation among organizations and institutions concerned with those ways of studying religion which are educationally appropriate and constitutionally acceptable to a secular program of public education."<sup>81</sup> Finally, the Public Education Religion Studies Center, founded in 1972 at Wright State University

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the next five years, studied topics such as "Public Education Religion Studies as a Discipline" and "Paradigms for Public Education Religion Studies," *id.* at 17, and which published a full volume, see PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, and over twenty-five papers on the subject, see Nicholas Piediscalzi, *A Critical Review of AAR Papers (1970-1978) on Public Education Religion Studies*, in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 97. All of these papers, according to Nicholas Piediscalzi, one of the early leaders of the teaching-about-religion movement, supported the "general goal that religion studies should develop a critical understanding of the universal phenomenon of human religiousness through a critical examination of its many and varied manifestations." *Id.* at 101; see also *id.* at 98-100 (arguing that these papers also all mentioned or presupposed that the legality of teaching about religion was settled by *Schempp* and agreed that the only justifiable rationale for teaching religion is an educational one).

Likewise, following a 1964 report, in which it endorsed the academic study of religion, the American Association of School Administrators in 1965 convened a meeting of Jewish, Catholic, and Protestant officials who, while disagreeing on many particulars, nonetheless reached consensus on the general idea that schools should find appropriate ways to teach students about the relationship between religion and other elements of human culture. Gilbert, *supra* note 58, at 51-52; Piediscalzi, *supra* note 58, at 4 (noting that although the various officials "did not reach agreement on philosophical issues, they achieved consensus on the [need for quality materials for teaching religion in history]").

77. See Piediscalzi, *supra* note 58, at 14-15.

78. Gilbert, *supra* note 58, at 57.

79. COX, *supra* note 56, at 92-93.

80. Gilbert, *supra* note 58, at 57.

81. Piediscalzi, *supra* note 58, at 15 (quoting THE NATIONAL COUNCIL ON PUBLIC EDUCATION, BY-LAWS (1973)). The materials formerly housed at the National Council on Religion and Public Education distribution center are now housed at The Religion and Public Education Resource Center, which currently serves "both as a depository of existing materials and as a catalyst for the development and distribution of new materials relating to pedagogical and legal issues that arise in connection with teaching about religion in public schools." FINDING COMMON GROUND, *supra* note 32, at 9\*5. The Center's website is <http://www.csuchico.edu/rs/rperc> (last visited Feb. 12, 2002).

to "encourage and facilitate increased and improved teaching about religion within constitutional bounds,"<sup>82</sup> conducted workshops and conferences, provided curriculum materials and other resources, consulted with governmental and educational groups, and published a newsletter.<sup>83</sup> The organization even held a symposium recognizing the tenth anniversary of *Schempp* at which Justice Clark, the author of the opinion, delivered the keynote address.<sup>84</sup>

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82. Piediscalzi, *supra* note 58, at 15 (quoting brochure from the organization).

83. *Id.*

84. For a record of the symposium, see RELIGION STUDIES IN THE CURRICULUM: RETROSPECT AND PROSPECT, 1963-1983, *passim* (Peter Bracher et al. eds., 1974). It is important to note that academic and religious writing on teaching about religion was not all positive. In addition to the lukewarm reaction of Jewish groups, see *supra* text accompanying notes 74-75, several participants at a Harvard conference in 1967 voiced serious doubts about the endeavor. See, e.g., La Noue, *supra* note 24, at 22, 30-31 (noting several problems with teaching about religion); Theodore R.Sizer, *Introduction*, in RELIGION AND PUBLIC EDUCATION, *supra* note 24, at xv, xvii ("How such teaching is to be done in a public school baffles the imagination; indeed, perhaps the public school . . . is a poor place to attempt it."); *id.* at xvi ("The problems with [comparative religion courses] are that their organizers often fail to recognize that many children do 'believe,' and thus have more than intellectual feelings about the material, and that their teachers rarely face up to the issue of how one acquires criteria for selecting among them . . ."); Nicholas Wolterstorff, *Neutrality and Impartiality*, in RELIGION AND PUBLIC EDUCATION, *supra* note 24, at 3, 18 ("But caution seems in order. For a great many of us in our society consider the Bible the presentation of God's Word to man. [Many of them] argue, if I understand them, that unless it is presented as such, it is bound to be misunderstood."); *id.* at 20 ("We find ourselves, then, in the curious situation in which courses in religion qua religion are likely to produce sharp dissatisfactions in society and an overall gain in mutual understanding. Accordingly, I find it not at all clear, one way or the other, whether such courses are desirable.").

Moreover, of course, many schools continued to teach religion in violation of *Schempp* and other cases. See, e.g., COX, *supra* note 56, at 8 ("Many [state] officials are prepared to order a cessation of the singing of hymns, recitation of prayers, and reading of Bible passages only when the first complaint is registered."); Ellis Katz, *Patterns of Compliance with the Schempp Decision*, 14 EMORY J. PUB. L. 396, 405 (1965) ("60 per cent of the states that required or allowed Bible reading before the *Schempp* decision reported that Bible reading still takes place in some school districts under their jurisdiction."). Several federal court cases from this period deal with the distinction between permissible and impermissible teaching of the Bible in elementary schools. E.g., *Crockett v. Sorenson*, 568 F. Supp. 1422, 1430 (W.D. Va. 1983) ("Although a stated purpose of the program is the objective teaching of the Bible, the evidence is to the contrary. The fact is that the program was originally designed to inculcate religious beliefs in the students."); *id.* at 1431 (listing eight guidelines for teaching the Bible constitutionally, including "[t]he course should be taught in an objective manner with no attempt made to indoctrinate the children as to either the truth or falsity of the biblical materials"); *Wiley v. Franklin*, 497 F. Supp. 390, 395-96 (E.D. Tenn. 1980) (finding some Bible lessons constitutional and others unconstitutional); *Wiley v. Franklin*, 474 F. Supp. 525, 531 (E.D. Tenn. 1979) ("The ultimate test of the constitutionality of any course of instruction founded upon the Bible must depend upon classroom performance."); *Wiley v. Franklin*, 468

As a result of these efforts, some progress was achieved in introducing the objective teaching of religion into the public schools. States and various organizations drafted guidelines and standards to explain the difference between teaching about religion objectively and conducting religious indoctrination.<sup>85</sup> Materials for use in the classroom were developed,<sup>86</sup> although most fell far short of the ideals articulated by the standards and guidelines.<sup>87</sup> Though competent

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F. Supp. 133, 150 (E.D. Tenn. 1979) ("Thus the Constitutional issue presented in teaching the Bible study courses in the public schools is not the Bible itself, but rather the selectivity, emphasis, objectivity, and interpretive manner, or lack thereof, with which the Bible is taught."); *Vaughn v. Reed*, 313 F. Supp. 431, 434 (W.D. Va. 1970) (noting that for Bible study programs to be constitutional, "the teachers must conscientiously refrain from any action which amounts to the indoctrination or practice of religion . . ."). For a discussion of these and other cases involving the teaching of the Bible in public schools, see Michael Clay Smith & Richard A. Hartnet, *Teaching Bible in the Public Schools*, 32 EDUC. L. REP. 7 (1986).

85. The Public Education Religion Studies Center, for example, issued guidelines for evaluating teacher education programs and teacher competency. See Public Education Religion Studies Center, *Guidelines for Teacher Education Programs*, reprinted in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 242-43 (providing, among other things, that teacher education programs should "stress why and show how teachers must be nonconfessional and pluralistic in their approach" and "help teachers discover the complexities and problems involved in teaching about religion in a pluralistic society"); *id.* at 244-46 (providing that "[c]ompetent religion studies teachers should . . . be well-versed in the legal issues surrounding religion studies in public education, academically qualified in religion as an academic subject, and non-confessional in approach"). The Boards of Education of both California and Michigan established similar guidelines. CALIFORNIA STATE BOARD OF EDUCATION, TEACHING ABOUT RELIGION IN THE PUBLIC SCHOOLS: EDUCATIONAL RESPONSIBILITIES OF SCHOOL PERSONNEL (1973), reprinted in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 235, 235-38 (stressing the need for factual accuracy and empathy and the problem of oversimplification); STATE OF MICHIGAN DEPARTMENT OF EDUCATION, PROGRAM DEVELOPMENT SUGGESTIONS FOR TEACHING MINOR IN THE ACADEMIC STUDY OF RELIGIONS (1976), reprinted in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 247, 249-50.

86. *E.g.*, Gilbert, *supra* note 58, at 65-80 (describing and evaluating various efforts to develop materials); Piediscalzi, *supra* note 58, at 10-12 (describing various integrated curricula, textbooks, courses, and units developed by various organizations and projects); Piediscalzi, *supra* note 56, at 187-88 (describing curricula developed in Pennsylvania and Florida).

87. See Gilbert, *supra* note 58, at 59 (noting that the new materials "remain, in many ways, faulty or inadequate"). Gilbert analyzed a number of Bible curricula and other materials. His primary criticism of several Bible courses dealt with the inadequacy of the materials from the perspective of Jewish students. For example, with respect to a Bible studies curriculum developed at the University of Nebraska Curriculum Development Center, Gilbert wrote:

Throughout most of the units, the religious material is objective; there is no effort to impose a sectarian viewpoint or to proselytize. The Jewish student, nevertheless, will be confronted with a serious problem for which the materials

teachers remained in short supply, several courses, programs, and institutes were established to train teachers to teach about religion.<sup>88</sup> And although we lack reliable data on exactly how much teaching about religion was actually taking place, it appears that the number of classes offered in religious subjects, including the objective study of the Bible, increased somewhat in the years after *Schempp*.<sup>89</sup> Despite these improvements, however, most teachers and administrators were not involved in the efforts to improve teaching about religion,<sup>90</sup> and, by 1981, those who *were* involved in

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offer no help. . . . The Christological interpretations of Old Testament material . . . are given so forcefully that a Jewish student who does not believe that the doctrine of original sin, for example, is the proper interpretation of the Adam and Eve story will be confused and troubled. . . .

*Id.* at 71; see also *id.* at 66-68 (criticizing Bible study curriculum developed at Indiana University for having Christian bias). Adequate world religion materials were also lacking. Piediscalzi, *supra* note 58, at 11 ("To date, no adequate single text on the living religions of the world has been published for use in public education.").

88. Piediscalzi, *supra* note 58, at 14 ("During the summer of 1978, according to an informal survey conducted by PERSC, about fifteen summer institutes and workshops were offered in different parts of the United States on various aspects of integrating religion studies into the public school curricula."); Frank L. Steeves & Joseph Forcinelli, *Certification Programs for Public Education Religion Studies*, in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 187, 187 ("Eight states provide for some form of certification in religion studies."); *id.* at 188 (noting that in 1973, Michigan, Wisconsin, and California had approved college teaching majors or minors leading to certification for teaching religion studies in the public schools).

89. See, e.g., COX, *supra* note 56, at 99-126 (surveying efforts to teach about religion in over twenty states); William E. Collie, *The Extent and Effect of Public Education Religion Studies in the Schools: Research Findings and Their Implications*, in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 173, 173 ("Formal and informal reports from numerous parts of the United States point to a growth pattern in public education religion studies since 1963."); Henry J. Hoeks & Michael H. McIntosh, *Religion Studies in Michigan Secondary Schools: Prevalence, Practices, and Propensities*, in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 153, 158 ("Speaking positively, there are signs of increased activity in some schools regarding recent or proposed introduction of curricular offerings in religion studies. Negatively, however, a significant number of senior high school department chairpersons and principals reported that curricular offerings in religion studies were being dropped."); John T. Leaby, *Illinois Religion and Public Education Survey: Background and Analysis*, in PUBLIC EDUCATION RELIGION STUDIES: AN OVERVIEW, *supra* note 58, at 163, 170 (noting that "[i]n 1977, the Illinois Religion and Public Education survey of junior and senior high schools was undertaken to provide the first accurate information on religion studies in public education," and concluding that the total number of schools teaching about religion as separate courses, units, or informal approaches was 35.55%); Piediscalzi, *supra* note 58, at 8 ("Reports from many different sections of the United States reveal that religion studies have been increasing in public schools."); *id.* at 8-9 (describing the situation in various states, including Ohio, Iowa, Massachusetts, and Kansas).

90. See Gilbert, *supra* note 58, at 59 ("[E]ducators, too, have warned the nation that any

such efforts made up what one contemporary commentator described as merely a "small, quiet, and almost unrecognized movement."<sup>91</sup>

### B. Efforts in the Eighties

Although the late seventies and early eighties saw a dip in interest in teaching about religion,<sup>92</sup> several studies conducted in the mid-eighties gave a boost to the movement by demonstrating that history and other social studies textbooks systematically ignored religious topics and themes.<sup>93</sup> Perhaps the most influential of these studies was Paul Vitz's *Censorship: Evidence of Bias in our Children's Textbooks*.<sup>94</sup> Vitz, a professor of psychology at New York

program to teach about religion needs to be undertaken carefully."); Piediscalzi, *supra* note 76, at 107 ("[M]ost of those in the American Academy of Religion who are involved in public education religions studies have not had any working experience in or ongoing contact with the public school classroom and teacher education programs."); *id.* ("[R]eligionists who seek to establish working relationships with educators and classroom teachers must sacrifice the luxury of their liberal arts snobbery which holds educators and teachers to be lower than the lowest of illiterate technicians."); Piediscalzi, *supra* note 58, at 18 ("On the whole, the majority of public school teachers and administrators, members of colleges and departments of education, and state board of education officials are notably absent from these efforts.").

91. Piediscalzi, *supra* note 58, at 19. Likewise, Gilbert argued in 1967 that "[t]he degree to which any information about religion is now communicated within the public schools' social studies or literature curriculum is minimal." Gilbert, *supra* note 58, at 58.

92. *E.g.*, THE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, RELIGION IN THE PUBLIC SCHOOLS 27 (1986) [hereinafter RELIGION IN THE PUBLIC SCHOOLS] (noting a decline in interest in the early eighties); Wright, *supra* note 58 (questioning whether "the momentum for religious studies in the public schools curriculum" will "grow or again fade out as it did in the 1970s"). Of course, this is not to say that the early eighties were completely devoid of interest. For papers dealing with teaching about religion from this period, see WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, RELIGIOUS STUDIES GUIDELINES (1982); Wesley J. Bodin & Robert J. Dilzer, *Ideas and Resources for Teaching About Religions in Secondary Schools*, SOCIAL EDUC., Jan. 1981, at 17; Walter Nelson, *Religion in the Social Studies Curriculum*, SOCIAL EDUC., Jan. 1981, at 28; Robert J. Dilzer, Including the Study About Religions in the Social Studies Curriculum: A Position Statement and Guidelines (Nov. 1984) (unpublished manuscript on file with author).

93. *E.g.*, PAUL GAGNON, DEMOCRACY'S UNTOLD STORY: WHAT THE WORLD HISTORY TEXTBOOKS NEGLECT (1987); CHARLES C. HAYNES, TEACHING ABOUT RELIGIOUS FREEDOM IN AMERICAN SECONDARY SCHOOLS (1985); PEOPLE FOR THE AMERICAN WAY, LOOKING AT HISTORY: A REVIEW OF MAJOR U.S. HISTORY TEXTBOOKS (1986); VITZ, *supra* note 26; see also John W. McDermott, Jr., *The Treatment of Religion in Public School Textbooks: A Political Analysis and a Modest Proposal*, 13 RELIGION & PUB. EDUC. 62 (1986) (detailing the ongoing controversy about public school textbooks).

94. VITZ, *supra* note 26.

University, examined eight American History secondary school textbooks, each of which had been listed on the textbook adoption lists of five or more states.<sup>95</sup> Though Vitz found no evidence to suggest the existence of “any kind of conscious conspiracy operating to censor textbooks,”<sup>96</sup> he nonetheless found that “a very widespread secular and liberal mindset appear[ed] to be responsible” for the fact that “[r]eligion, traditional family values, and conservative political and economic positions [had] been reliably excluded from children’s textbooks.”<sup>97</sup> Specifically, with respect to religion, Vitz found that:

[N]ot one of these texts acknowledges, much less emphasizes, the great religious energy and creativity of the United States. ... For all practical purposes, religion is hardly mentioned as existing in America in the last seventy-five to one hundred years; in particular, none of these books includes any serious coverage of conservative Protestantism in this century, although a few books mentioned the Scopes Trial. ... None of them offers any serious appreciation of positive Catholic contributions to American life. Prejudice against Catholics is commonly noted, but positive contributions in terms of the assimilation of countless immigrants, the many hospitals and orphanages built by Catholics, and the significance of the Catholic school system are (with one exception) not mentioned. Likewise, the very many positive contributions of American Jews receive almost no notice.<sup>98</sup>

Other studies came to similar conclusions. One of these studies—an examination of world history textbooks published by the American Federation of Teachers—found, for example, that “one of the most serious failures” of world history textbooks was their failure to treat seriously “the basic ideas of Judaism and Christianity.”<sup>99</sup>

The publication of these studies spurred several influential educational groups and associations to reexamine the question of whether public schools should teach students about religion and to

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95. Vitz also examined social studies texts used at the elementary school levels and concluded that, like the high school history books, they ignored religious themes, facts, and ideas. *Id.* at 5-44.

96. *Id.* at 1.

97. *Id.*

98. *Id.* at 56-57.

99. GAGNON, *supra* note 93, at 59.

articulate in strong terms the need to include the objective study of religion in the curriculum.<sup>100</sup> The Association of Supervision and Curriculum Development (ASCD), for example, responded to the studies published in 1985 and 1986 by convening a policy panel to address the issue.<sup>101</sup> In the 1987 report that grew out of this panel discussion, the ASCD decried the failure of textbooks to discuss religion<sup>102</sup> and called for a "major research and development effort ... to develop new curricular materials and instructional designs for teaching about religion within ... various subject areas."<sup>103</sup> The Association insisted that it "and other education groups must educate the community about the need to include religion in the curriculum" in order to bring America's public school system "a step closer to reflecting [religious] diversity in the curriculum and honoring the basic principles of our democracy."<sup>104</sup> Other groups and interested individuals reached similar conclusions.<sup>105</sup>

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100. See HAYNES, *supra* note 93, at ix (noting that the textbook studies of the mid-1980s, among other things, gave steam to the movement to teach about religion); Wright, *supra* note 58:

As important as the publications was the incentive the process gave to the several groups to revisit policies and practices on religion in public education, and to do so aware of the great diversity reflected at the roundtable. Major educational groups, including the American Association of School Boards, the National Education Association, and the Association of Supervision and Curriculum Development (ASCD) issued new publications on the subject.

101. RELIGION IN THE CURRICULUM, *supra* note 26, at 7-8 (citing Vitz's studies, among others).

102. *Id.*

103. *Id.* at 35.

104. *Id.* at 34.

105. For example, Charles R. Kniker, an Iowa State professor of education and editor of the journal *Religion and Public Education*, wrote a report for the Phi Delta Kappa Educational Foundation (cited by Justice Powell in his concurring opinion in *Edwards v. Aguillard*, 482 U.S. 578, 607 n.7 (1987)), in which he stated that:

Social studies teachers have an obligation to help students understand the role of religion in various cultures throughout history. This would include the impact of religion on historic events and the influence of religion on law, art, music, and literature, as well as traditional religious topics taught in history courses such as the Crusades and the Reformation.

CHARLES R. KNIKER, TEACHING ABOUT RELIGION IN THE PUBLIC SCHOOLS 26-27 (1985). Also, the American Association of School Administrators issued a report in 1986 in which it argued that:

Teaching about religions, as the *McCullum* case illustrates, is constitutionally permissible. In addition, it is sound educational policy. One of the principal roles of the public schools is studying our culture and passing on the rich heritage of the American people. Religions have played a significant part in that cultural

Two important events in the late eighties provided new momentum for the teaching about religion movement. First, in 1988, a group of religious, political, business, and educational leaders—including Presidents Carter and Ford, Chief Justices Rehnquist and Burger, and several university Presidents—came together in Williamsburg, Virginia to sign the Williamsburg Charter, a document prepared by religious leaders over the course of two years that, in the words of author James Davison Hunter, “celebrates religious liberty, sets out the place of such liberty in American public life, and reaffirms the place of such liberty for people of all faiths or none.”<sup>106</sup> At the same time, the drafters of the Charter also produced a new curriculum for all school age levels focusing on religious pluralism and the role of religion in American life. The curriculum, *Living With Our Deepest Differences: Religious Liberty in a Pluralistic Society*,<sup>107</sup> was one of the first comprehensive curricula dealing with these topics, and has been used in a number of school districts around the country.<sup>108</sup>

The second important development occurred the same year, when seventeen religious and educational organizations, including the American Academy of Religion, the American Jewish Congress, and the National Educational Association, jointly sponsored a set of guidelines for teaching about religion in public schools.<sup>109</sup> The joint

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heritage.

RELIGION IN THE PUBLIC SCHOOLS, *supra* note 92, at 26-27; see also *id.* at 28 (noting the developments in the field since its last discussion of the problem in 1964 and concluding that “a number of curriculum development projects ha[d] created materials” to meet the goals of providing “objective, balanced, and educationally sound materials for teachers”).

106. JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* 392 n.6 (1991). For a list of signers of the Charter, see *FINDING COMMON GROUND*, *supra* note 32, at 2\*6-2\*9. To read the Charter itself, see *id.* at A\*1-A\*14. See also CARTER, *supra* note 1, at 208-09 (noting that the Williamsburg Charter and its associated curriculum signaled that “matters are beginning to change”).

107. MICHAEL D. CASSITY ET AL., *LIVING WITH OUR DEEPEST DIFFERENCES: RELIGIOUS LIBERTY IN A PLURALISTIC SOCIETY* (1990).

108. HUNTER, *supra* note 106, at 392 n.6 (“The most practical outcome of the Williamsburg Charter is a new curriculum on religious liberty in a pluralistic society. It has been introduced in many public schools and is making an important contribution to the education reform movement and to the maintenance of a responsible, civil society.”)

109. RELIGION IN THE PUBLIC SCHOOL CURRICULUM: QUESTIONS AND ANSWERS, *reprinted in FINDING COMMON GROUND*, *supra* note 32, at 6\*1-6\*4. The other signers included the American Association of School Administrators, the American Federation of Teachers, the Americans United Research Foundation, the Association for Supervision and Curriculum Development, the Baptist Joint Committee on Public Affairs, the Christian Legal Society, the

statement, which encourages including religion “[w]herever it naturally arises”<sup>110</sup> in the curriculum because “study about religion is essential to understanding both the nation and the world,”<sup>111</sup> articulated the following six guidelines for “distinguish[ing] between teaching about religion in public schools and indoctrination”:

1. The school’s approach to religion is *academic*, not *devotional*.
2. The school may strive for student *awareness* of religions, but should not press for student *acceptance* of any one religion.
3. The school may sponsor *study* about religion, but may not sponsor the *practice* of religion.
4. The school may *expose* students to a diversity of religious views, but may not *impose* any particular view.
5. The school may *educate* about all religions, but may not *promote* or *denigrate* any religion.
6. The school may *inform* the student about various beliefs, but should not seek to *conform* him or her to any particular belief.<sup>112</sup>

These guidelines proved to be quite important in helping schools develop religious studies programs, most notably in California, where they were reprinted in a newsletter outlining that state’s approach to teaching about religion as a larger part of a program of civic education.<sup>113</sup>

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Church of Jesus Christ of Latter-day Saints, the Islamic Society of North America, the National Association of Evangelicals, the National Conference of Christians and Jews, the National Council of Churches of Christ in the USA, the National Council on Religion and Public Education, the National Council for the Social Studies, and the National School Boards Association.

110. *Id.* at 6\*3.

111. *Id.* at 6\*2.

112. *Id.*

113. BARBARA B. GADDY ET AL., SCHOOL WARS: RESOLVING OUR CONFLICTS OVER RELIGION AND VALUES 296 n.11 (1996).

### C. Current Developments

Reformers like Charles Haynes, Warren Nord, and Oliver Thomas<sup>114</sup> have built upon these consensus efforts of the late eighties to garner even stronger support over the last decade for teaching about religion.<sup>115</sup> The centerpiece of this new movement is a volume called *Taking Religion Seriously Across the Curriculum*, authored by Nord and Haynes in 1998.<sup>116</sup> In the book, Nord and Haynes articulate why they think schools should teach students about religion, how schools should implement a program to teach about religion, and what schools should actually teach about religion. With respect to justifications, Nord and Haynes stress both "civic" and "educational" reasons for teaching about religion:

We will argue there are two fundamental reasons—or families of reasons—for including religion in the curriculum, for taking it seriously. First, there are *civic* reasons. The American experiment in liberty is built on the conviction that it is possible to find common ground in spite of our deep religious differences. It is rooted in the civic agreement we share as citizens, in our principled commitment to respect one another. Properly understood, this means that we not exclude religious voices from the public square or from public education, but that we take one another seriously. . . . Second, there are *educational* reasons for taking religion seriously. A good *liberal* education should expose students to the major ways humanity has developed for making sense of the world—and some of those ways of understanding the world are religious. An exclusively secular education is an illiberal education.<sup>117</sup>

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114. See *supra* note 28.

115. See Lynne S. Dumas, *The Top Ten Educational Trends in America Today*, FAMILY PC FROM ZDWIRE, May 1, 2000, at 98, 103 (noting that teaching about religion might become one of the top ten trends in American education in the near future).

116. NORD & HAYNES, *supra* note 3; see also Larry Witham, *New Tack Taken on Religion in Schools: Group Seeks End to Secular Bias*, WASH. TIMES, Sept. 16, 1998, at A5 (noting that the plan behind the "new consensus" to teach about religion is found in the book and that a San Diego high school teacher said that the book should be "mandatory reading" for all public school instructors").

117. NORD & HAYNES, *supra* note 3, at 8.

Recognizing that, in many communities, trying to introduce religion into the curriculum will likely create controversy, Nord and Haynes suggest a specific set of steps for school districts to follow to minimize discord. These steps include appointing a community task force, identifying shared civic principles "that can serve as ground rules for negotiating differences and working for consensus," involving people of diverse views in the decision-making process, and implementing the program with careful follow-through.<sup>118</sup> Following these steps, the authors argue, will provide school districts with a "framework for constructive dialogue and a basis for agreement across deep differences."<sup>119</sup>

Finally, with respect to what schools should actually teach about religion, Nord and Haynes suggest specific religious facts, themes, ideas, and perspectives that students should be exposed to both in their existing classes in subjects such as history, science, economics, civics, and literature,<sup>120</sup> as well as in special classes devoted entirely to religion.<sup>121</sup> More importantly, the authors set out general principles to guide the introduction of these religious ideas into the classroom. Specifically, they argue that teachers should present religion fairly and without making judgments about the material; that the major religions should be emphasized but that "minor" religions should be discussed as well; that teachers should not convey the message that the major religions are somehow normative; and that in choosing among the less influential religions, teachers should choose those that are practiced locally.<sup>122</sup> The authors argue that schools should introduce students to the many dimensions of religion, including religious doctrine, ethics, experience, art, and social institutions,<sup>123</sup> and that they should emphasize primary sources in doing so.<sup>124</sup> Finally, they argue that

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118. *Id.* at 28-30.

119. *Id.* at 29.

120. *Id.* at 77-163.

121. *Id.* at 164-80.

122. *Id.* at 47-48.

123. *Id.* at 49-50. For this point, the authors rely on the work of Ninian Smart. *E.g.*, NINIAN SMART, *THE RELIGIOUS EXPERIENCE OF MANKIND* 6-18 (2d ed. 1976).

124. NORD & HAYNES, *supra* note 3, at 50-53. The authors argue that if texts and teachers are to take religion seriously, they "must let the advocates of that religion speak for themselves, using the cultural and conceptual resources of their own traditions." They call this "understanding religion from the inside." *Id.* at 50. The authors do, however, recognize that students should also "understand religion from the outside" and that secondary sources

students must learn about the deep differences among religions, as well as how different religious and secular traditions criticize each other.<sup>125</sup>

Although written materials such as *Taking Religion Seriously Across the Curriculum*<sup>126</sup> have played a central role in the teaching about religion movement, the movement is by no means limited to these materials. Haynes, Thomas, and others have also taken their "common ground" message around the country, holding training workshops and mediation sessions to help troubled school districts implement new programs.<sup>127</sup> Though the reformers certainly have a long way to go,<sup>128</sup> they apparently have achieved quite a bit of success.<sup>129</sup> As a result of these workshops and mediation sessions,

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such as textbooks "have their place as well." *Id.* at 51-53.

125. *Id.* at 53-55. For example, the authors suggest that students should consider such issues as: "Why do Muslims believe Islam to be superior to Christianity—and how do Christians argue otherwise? How do neo-Darwinians and various kinds of theologians criticize one another's positions?" *Id.* at 55.

126. *Taking Religion Seriously Across the Curriculum* is supported by two other key publications—Warren Nord's *Religion and American Education*, see NORD, *supra* note 3, which provides an historical and more deeply theoretical defense of teaching about religion in the public schools, and *Finding Common Ground*, see FINDING COMMON GROUND, *supra* note 32, which offers practical assistance to teachers and school districts seeking to include teaching about religion in their curricula, including sample policies and guidelines from school districts around the country.

127. David Ruenzel, *Old-Time Religion*, EDUCATION WEEK ON THE WEB (Mar. 27, 1996), at <http://www.edweek.org/edsearch.cfm> (describing workshops given by Haynes and Thomas in several states).

128. See, e.g., *id.* (noting that, despite various programs, most teachers still "shun any discussion of religion").

129. For example, Haynes was once called upon to mediate a dispute in Orangetown, New Jersey over whether a nativity scene, instead of a Christmas tree, should have been displayed next to a menorah. Through his efforts, Haynes helped the school district realize, as the superintendent put it, "that the question wasn't if we should teach about religion in the schools but how do we best teach about it," Edward Felsenthal, *Cease-Fire: End of a Culture War?*, WALL ST. J., Mar. 23, 1998, at A1 (quoting Morton Sherman), and, by the time Haynes left, teachers were telling students the story of Christmas in front of a display case containing not only a crèche, but symbols of other religions as well. See *id.* Likewise, when the school district in Modesto, California sought help dealing with a dispute over whether sexual orientation should be included in a newly drafted tolerance statement, it brought in Haynes to present a common ground training workshop for the committee that had been appointed to deal with the controversy. See Wayne Jacobsen, *Why Common Ground Thinking Works*, EDUC. LEADERSHIP, Dec. 1, 1999, at 76, 76-77. After Haynes left, committee members agreed that his workshop had "saved the process and provided the framework not just for consensus, but also for unanimity" by convincing the participants that one need not accept the religion or lifestyle of others to agree that no student should be harassed or discriminated against on the basis of his or her race, religion, or sexual orientation. *Id.* at 77.

Haynes, as one commentator puts it, has “reshaped the way religion is treated in thousands of schools” around the country.<sup>130</sup>

Teaching about religion programs have been particularly successful in California and North Carolina. As early as 1991, the state of California implemented a program known as the “3 Rs Project”—referring to “rights, responsibilities, and respect”—that provides support for teaching about religion in the public schools. The project trains teachers on how to teach about religion constitutionally and has established links between religious studies scholars at local colleges and school districts, in order to support those districts in their efforts to introduce religious topics into the classroom.<sup>131</sup> Moreover, California’s statewide guidelines for social science education emphasize the importance of teaching students about various world religions,<sup>132</sup> as well as religion’s influence on the development of America’s political culture and institutions.<sup>133</sup> In North Carolina, it appears that the development of courses about religion has taken place primarily at the county level, rather than the state level. One of the most successful programs has been developed by the Wake County School District, which, with the help of Nord and others, has developed two elective courses called “The Bible in History” and “Religions in World Cultures.”<sup>134</sup> The courses

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130. Felsenthal, *supra* note 129, at A1 (“Mr. Haynes runs a mediation and training program that has already reshaped the way religion is treated in thousands of schools.”); *see also* Ruenzel, *supra* note 127 (noting that Haynes “travels across the country working with teachers”).

131. *See* GADDY ET AL., *supra* note 113, at 205-06. Other states, such as Georgia, Oklahoma, Pennsylvania, Texas, and Utah have implemented similar programs. NORD & HAYNES, *supra* note 3, at 92.

132. CALIFORNIA STATE BOARD OF EDUCATION, HISTORY-SOCIAL SCIENCE FRAMEWORK FOR CALIFORNIA PUBLIC SCHOOLS KINDERGARTEN THROUGH GRADE TWELVE, 1997 UPDATED EDITION 80-81 (1997) (describing an elective course for ninth graders in which “students consider the principal religions of the world that are active today, influencing the lives of millions and impressing their image on the contemporary world”); *id.* at 7 (“When studying world history, students must become familiar with the basic ideas of the major religions and the ethical traditions of each time and place.”).

133. *Id.* at 7:

Students are expected to learn about the role of religion in the founding of this country because many of our political institutions have their antecedents in religious beliefs. Students should understand the intense religious passions that have produced fanaticism and war as well as the political arrangements developed (such as separation of church and state) that allow different religious groups to live amicably in a pluralistic society.

134. Ruenzel, *supra* note 127. Ruenzel also quotes Nord as saying:

appear to be popular among students and successful both in imparting knowledge of various religious traditions and in encouraging mutual respect among students of different faiths.<sup>135</sup> As one conservative Christian student responded when asked whether Christians might disapprove of learning about other religions: "That argument makes no sense to me. I come from a strong Baptist background, and one of the reasons I took this class was just so I could learn about other religions. Otherwise it's like eating one cereal your entire life and saying this is the best cereal."<sup>136</sup>

The last decade has also seen significant gains in the development of materials and in teacher training. New materials for teaching about religion include a seventeen-volume set of reference books developed by Oxford University Press called *Religion in American Life*;<sup>137</sup> a CD-ROM called *On Common Ground: World Religions in America*, prepared by Harvard Professor Diana Eck;<sup>138</sup> materials on Islam developed by the Council on Islamic Education;<sup>139</sup> and materials on Indian faiths developed by a group called Education about South Asia—Vidya.<sup>140</sup> As for teacher training, in addition to the common ground workshops led by Haynes and others,<sup>141</sup> at least two universities—Harvard and the University of Pennsylvania—have recently introduced certificate-

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Wake County went about this the right way . . . . They got advice from scholars in putting a curriculum together, which helped ensure that it passed constitutional muster. And they offered the world-religion course alongside the Bible course so that students would have an opportunity to be exposed to more than just the Judeo-Christian tradition.

*Id.*

135. *Id.* (noting that all but one student interviewed said that the course had made them more respectful of religion).

136. *Id.*

137. The books, which deal with such topics as African-American religions, American Indian religions, women and American religion, Mormons in America, and Alternative American Religions (such as Quakers, Shakers, Christian Scientists, and Scientology), were edited by prominent university scholars such as Jon Butler of Yale University. Wicker, *supra* note 23, at 1G.

138. See NORD & HAYNES, *supra* note 3, at 93 ("Using the CD-ROM, students can find out about the practices and beliefs of America's many faith traditions and explore the religious diversity of 18 cities and regions. Fifteen different religions are represented, from the long-established Native American, Christian, and Jewish traditions to more recent arrivals such as Hinduism and Buddhism.").

139. *Id.* at 95.

140. *Id.*

141. See *supra* text accompanying notes 127-30.

granting programs for future teachers seeking to learn how to teach students about religion.<sup>142</sup>

Thus, the movement to encourage public schools to teach about religion is at its strongest point in the last forty years.<sup>143</sup> As described in the next Part, this development should be welcomed because, if students are going to learn the skills, knowledge, and dispositions they need to participate most effectively and fairly in our pluralistic, liberal democracy, American schools must begin doing a better job of teaching them about religious ways of life.

## II. TEACHING ABOUT RELIGION AS CIVIC EDUCATION

### A. *The Theory of Civic Education*

To reiterate William Galston's definition, civic education takes as its purpose the "formation of individuals who can effectively conduct their lives within, and support, their political community."<sup>144</sup> Unlike other theories of education that have as their purposes the pursuit of certain kinds of truth (e.g., scientific, historical, etc.), and are therefore at least theoretically independent of the reigning political regime, the content of civic education is by definition inherently linked to the political system that it seeks to support.<sup>145</sup> Thus, civic education in a monarchy would seek to instill in students the skills, knowledge, and dispositions necessary for political life under the

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142. FINDING COMMON GROUND, *supra* note 32, at 9\*4-9\*5 (describing the Harvard Divinity School's Program in Religion and Secondary Education and the University of Pennsylvania's Religion in Public Life Certificate Program).

143. Of course, the movement to teach about religion is not without its critics or its problems. As described and discussed in more depth below, *see infra* text accompanying notes 323-27, 375-81, criticism comes from both devoutly religious people who object to the relativism encouraged by religious studies classes, e.g., MACEDO, *supra* note 56, at 70 (noting that Catholics in the 1840s objected to proposals to teach various religions in an objective and evenhanded way because they believed "this would imply that religion is a mere choice, like styles of dress"), and by those who believe such classes will inevitably result in indoctrination, *see, e.g.*, Edd Doerr, *Religion and Public Education*, PHI DELTA KAPPAN, Nov. 1, 1998, at 225 ("The probability that attempts to teach about religion will go horribly wrong should caution public schools to make haste very slowly in this area."). The latter situation is currently occurring, according to a report on Bible teaching in the public schools in Florida written by the People for the American Way. *See infra* text accompanying notes 325-26.

144. Galston, *supra* note 51, at 89.

145. WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 242-43 (1991).

rule of a king or queen. Civic education in a Communist country might, as Chinese scholar Liu Guohua explains, "attempt to enlighten students by intensifying their consciousness of communist ideals, such as unselfishness and public-regarding behavior, as well as faith in the coming existence of a communist society."<sup>146</sup> Civic education in America, then, generally would seek to teach students the skills, knowledge, and dispositions<sup>147</sup> necessary for life in (to borrow again from Galston), "a community possessing to a high degree the following features: popular-constitutional government; a diverse society with a wide range of individual opportunities and choices; a predominantly market economy; and a substantial, strongly protected sphere of privacy and individual rights."<sup>148</sup>

In theory, there are as many models for civic education in a liberal democracy as there are models of liberal democracy.<sup>149</sup> One

146. Liu Guohua, *Civic Education in China: Past, Present, and Future Challenges* 5 (1998) (unpublished manuscript on file with author).

147. The emphasis on teaching skills, knowledge, and dispositions is typical of those who support civic education. *E.g.*, Margaret Stimmman Branson, *Project Citizen: An Introduction* (Feb. 1999), at [http://www.civiced.org/articles\\_branson99.html](http://www.civiced.org/articles_branson99.html) ("As Alexis de Toqueville pointed out, each new generation is a new people that must acquire the knowledge, learn the skills, and develop the dispositions or traits of private and public character that undergird a constitutional democracy."); Michael Engel, *The Meanings of Civic Education: Theoretical Perspectives on Classroom Practice* 1 (1998) (unpublished paper presented at the Annual Meeting of the American Political Science Association) (on file with author) ("The need to develop the values, knowledge, and skills required for democratic citizenship . . . has taken on greater urgency and received considerable public attention."); John J. Patrick, *Community and Individuality in Civic Education for Democracy* 9 (1996) (unpublished paper presented at the International Conference on Individualism and Community in a Democratic Society, on file with author) (recommending that schools "[t]each civic knowledge, skills, and virtues that constitute a common core of learning by which to maintain the culture of the community").

148. GALSTON, *supra* note 145, at 220. Indeed, civic education has had a long history in the United States. *See generally* R. FREEMAN BUTTS, *THE CIVIC MISSION IN EDUCATIONAL REFORM: PERSPECTIVES FOR THE PUBLIC AND THE PROFESSION* (1989) (discussing the history of citizenship education); R. FREEMAN BUTTS, *THE REVIVAL OF CIVIC LEARNING: A RATIONALE FOR CITIZENSHIP EDUCATION IN AMERICAN SCHOOLS* 51-88 (1980) (providing historical perspective on civic education); MACEDO, *supra* note 56, at 45-157 (chronicling civic education in America);

149. The Supreme Court has repeatedly endorsed the idea that public schools should prepare students for citizenship in a liberal democracy. *E.g.*, *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986) ("The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order."); *Board of Educ. v. Pico*, 457 U.S. 853, 864-65 (1982) (holding that schools should allow students to exercise independent judgment

important distinction that emerges from the literature on civic education,<sup>150</sup> however, is the distinction between what can be roughly characterized as the liberal—or perhaps more precisely, the “political liberal,” except that the term “civic” in “civic education” likely already captures this distinction—and the republican, or participatory, approaches to civic education.<sup>151</sup> Scholars have noted that the political theories that form the basis for these two models of civic education—liberalism and civic republicanism—often can be difficult to differentiate.<sup>152</sup> Like the underlying theories on which they rest, the specific expressions of the liberal and republican models of civic education are themselves not always easy to distinguish from each other and seem generally to exist along a gradual continuum, rather than as two distinct and irreconcilable poles. Nonetheless, in theory, the two models do emphasize

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and express individual political viewpoints); *Ambach v. Norwich*, 441 U.S. 68, 76 (1979) (“The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions . . .”); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (noting that schools should expose students to a “robust exchange of ideas” as part of education for citizenship).

150. There are, of course, positions other than the two described here. *E.g.*, Engel, *supra* note 147, at 12 (advocating a “transformative” rather than a “conservative” model of civic education).

151. *E.g.*, Bruce Jennings, *Foundations of Citizenship Education*, CIVIC ARTS REV., Winter/Spring 1991, at 3 (noting that “achieving consensus on the normative foundations of civic education is . . . difficult” because of two different views of citizenship: “a *civil* conception of citizenship, drawn largely from the liberal tradition of political theory, and a *civic* conception of citizenship, drawn from either the republican or the participatory democratic traditions”); Richard M. Battistoni, *Civic Education in America* 6 (1983) (unpublished paper presented at the Annual Meeting of the Southwestern Social Science Association, on file with author) (looking at the question of American civic education by looking at political philosophy and noting that “[t]wo ‘models’ of democratic politics and citizenship immediately suggest themselves as alternative conceptions running through American political life: what I call the ‘liberal’ and the ‘participatory-republican’ models.”).

152. *E.g.*, JOHN RAWLS, *POLITICAL LIBERALISM* 205 (1996) (arguing that nothing in classical republicanism is incompatible with political liberalism); Suzanna Sherry, *Responsible Republicanism: Educating for Citizenship*, 62 U. CHI. L. REV. 131, 137 (1995) (observing that “[r]econciling liberalism and republicanism—or rights and virtue—is thus the newest cottage industry among constitutional law professors”); Nomi Maya Stolzenberg, *“He Drew a Circle That Shut Me Out”: Assimilation, Indoctrination, and the Paradox of a Liberal Education*, 106 HARV. L. REV. 581, 657 (1993) (arguing that civic republicanism “permits the imposition of those values, habits, and manners characteristic of a liberal society: open-mindedness, tolerance of diverse opinions, and the critical-objective mindset that underlies individual freedom of choice”).

different approaches to civic education and are therefore worth considering individually.

Political liberalism, according to Stephen Gardbaum, is a political theory that responds to the lack of consensus on moral ideals in pluralistic societies by ensuring that "the actions of the state do not privilege or presuppose the superiority of any of the competing moral ideals affirmed by its citizens."<sup>153</sup> Although the proponents of liberal theories of civic education such as John Rawls, Stephen Macedo, and William Galston,<sup>154</sup> differ somewhat in the details they espouse, they generally share the view that, although the liberal state should not support or endorse any one comprehensive vision of the good life, it must nonetheless instill in its citizens certain so-called "political virtues" necessary for its own survival and flourishing.<sup>155</sup> Further, these thinkers recognize that a state which promotes such virtues will tend to disadvantage some visions of the good life that are inconsistent with those virtues.<sup>156</sup> Thus, for

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153. Stephen Gardbaum, *Liberalism, Autonomy, and Moral Conflict*, 48 STAN. L. REV. 385, 385-86 (1996). Political liberalism is distinguished from so-called "comprehensive liberalism," which, according to Gutmann, "offers not only political principles but also a conception of the good life, typically as a life of individuality or autonomy, that complements its political principles." Amy Gutmann, *Civic Education and Social Diversity*, 105 ETHICS 557, 558 (1995). For the classic account of political liberalism, see generally RAWLS, *supra* note 152. For analysis of political liberalism as a response to communitarian critiques of Rawls' earlier work, see STEPHEN MULHALL & ADAM SWIFT, *LIBERALS & COMMUNITARIANS* 167-205 (1992). For a critique of Rawls' political liberalism, see Michael J. Sandel, *Political Liberalism*, 107 HARV. L. REV. 1765 (1994). For an example of comprehensive liberalism, see JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986).

154. Characterizing William Galston's position is problematic. Compare Gutmann, *supra* note 153, at 560 (characterizing Galston as a supporter of political liberalism), with Gardbaum, *supra* note 153, at 386 n.4 (characterizing Galston as a supporter of comprehensive liberalism). Regardless of how he may be characterized as a matter of political theory, I characterize him as a proponent of political liberal civic education, as opposed to liberal education, as defined by Gutmann, *supra* note 50, because he views civic education as a method primarily to promote political virtues as a way of supporting liberal democratic political institutions, rather than as a method to promote the individual autonomy of students.

155. Compare this view to the neutrality theory of liberal education espoused by Bruce Ackerman, who argues that "[t]he ideal liberal education is one that permits the child to move from his initial resistances to an ability to define his own objectives in the light of the universal culture defined by all humankind." BRUCE A. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 160 (1980).

156. For example, it will disadvantage those who hold religious beliefs that are inconsistent with liberal values. See, e.g., GALSTON, *supra* note 145, at 14-15 (noting that an appropriate understanding of liberal virtues can reduce the tension between "traditionalists" and "liberationists" but acknowledging that it cannot "be altogether dissolved"); *id.* at 177 (noting

example, Macedo argues in favor of what he calls a "tough-minded version of liberalism ... a liberalism with spine."<sup>157</sup> He rejects the view that liberal political institutions and public policies should be neutral with respect to all visions of the good life,<sup>158</sup> and instead contends that they should embody and promote "the capacities and dispositions conducive to thoughtful participation in the activities of modern politics and civil society."<sup>159</sup> Likewise, although Galston acknowledges that the "liberal conception of the *good* ... allows for a wide ... pluralism among ways of life,"<sup>160</sup> he nonetheless insists that it is "far from fully neutral with respect to conceptions of the good,"<sup>161</sup> and that "the liberal state must become far more aware of, and far more actively involved in reproducing, the conditions necessary to its own health and perpetuation."<sup>162</sup> Such active reproduction, Galston claims, "is fully consistent with the historic liberal commitment to freedom and diversity."<sup>163</sup>

Although the specifics differ in each case, supporters of liberal civic education generally emphasize that schools should educate students about liberal political institutions; procedures, and rights; impart in students the ability to think rationally and critically about public issues; and, most importantly, instill in them the liberal virtues of tolerance, mutual respect, and empathy for different ways of life. Thus, Rawls, in distinguishing his political liberalism from comprehensive liberal theories such as those advanced by Kant and Mill, argues that education should not aim at fostering autonomy and individuality as a way of life, but instead should teach students about their constitutional rights and promote political virtues<sup>164</sup>

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that his liberal account of the good is deliberately thin, but thick enough to rule out certain visions of the good life, such as secular nihilism, theological withdrawalism, moral monism, Nietzschean irrationalism, and barbarism); MACEDO, *supra* note 56, at 228 ("[M]any believers, fundamentalists included, pay a substantial price for life in a liberal society. It cannot be the case that all religions prosper equally in a liberal regime, and Galston certainly admits this."); RAWLS, *supra* note 152, at 193 ("[I]t is surely impossible for the basic structure of a just constitutional regime not to have important effects and influences as to which comprehensive doctrines endure and gain adherents over time ...").

157. MACEDO, *supra* note 56, at 5.

158. *Id.* at 8.

159. *Id.* at 10.

160. GALSTON, *supra* note 145, at 10.

161. *Id.* at 8.

162. *Id.* at 6.

163. *Id.*

164. RAWLS, *supra* note 152, at 199. As Rawls explains:

such as tolerance and a sense of fairness.<sup>165</sup> Other thinkers, such as Galston and Macedo, offer thicker, more substantive accounts of liberalism and thus encourage schools to impart a somewhat broader set of political virtues to their students, including not only tolerance and mutual respect, but also such virtues as familial fidelity, a strong work ethic, adaptability, self-criticism, moderation, and respect for the norms of public reasonableness.<sup>166</sup>

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[P]olitical liberalism has a different aim and requires far less. It will ask that children's education include such things as knowledge of their constitutional and civic rights so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a legal crime, all this to insure that their continued membership when they come of age is not based simply on ignorance of their basic rights or fear of punishment for offenses that do not exist. Moreover, their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society.

*Id.*

165. *Id.* at 157 (pointing to "the virtues of tolerance and being ready to meet others halfway, and the virtue of reasonableness and the sense of fairness."); *see also id.* at 224 (noting that political virtues include reasonableness and a readiness to honor the duty of civility, "which as virtues of citizens help to make possible reasoned public discussion of political questions"). Moreover, though he does not explicitly say so, Rawls, like all other proponents of civic education, also surely thinks that schools should teach students to use reason to organize their lives and the life of the political community, for he observes that "any workable political conception of justice . . . must . . . endorse rationality as a basic principle of political and social organization." *Id.* at 177. The necessity of developing basic skills such as the ability to think rationally is often not explicitly discussed by theorists, in large part because everyone agrees on their value. Sherry, *supra* note 152, at 157 n.111. Sherry indicates:

I consciously pass over the need to learn and teach basic skills—which now must include computer literacy as well as the traditional "three Rs"—since it is uncontroversial . . . . One reason that basic skills education is uncontroversial may be that it is necessary to prepare children to become self-sufficient and economically productive individuals, regardless of how citizenship is defined or whether particular children are or will become citizens.

*Id.* Some scholars do, of course, focus on such skills. *E.g.*, Battistoni, *supra* note 151, at 23 (noting that "many of the analytical and reasoning skills essential to good citizenship are better taught outside the social studies, in areas such as science and mathematics").

166. *See* GALSTON, *supra* note 145, at 246 (noting liberal virtues such as "independence, tolerance, and respect for individual excellences and accomplishments"); *id.* at 222 ("I turn now from individualism to diversity, the second defining feature of liberal society. The maintenance of social diversity requires the virtue of tolerance."); *id.* at 221-25 (discussing adaptability, courage, loyalty, and other virtues); *id.* at 246:

Still other[] [virtues necessary to sustain the liberal state] are entailed by the key features of liberal democratic politics. For citizens, the disposition to respect the rights of others, the capacity to evaluate the talents, character, and

Proponents of so-called republican or participatory civic education agree with liberals about the importance of teaching critical thinking, tolerance, mutual respect, and empathy,<sup>167</sup> but they add to these skills and virtues a number of skills and virtues drawn specifically from the civic republican tradition.<sup>168</sup> First and foremost, republicans argue that schools should teach students to participate

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performance of public officials, and the ability to moderate public desires in the face of public limits are essential. . . . And the developed capacity to engage in public discourse and to test public policies against our deeper convictions is highly desirable for all members of the liberal community, whatever political station they may occupy.

See also MACEDO, *supra* note 56, at 125 (advocating the teaching of a "range of liberal virtues: not only tolerance and mutual respect, but also openness to change, self-criticism, moderation, and respect for the norms of public reasonableness"). Macedo also explains:

Liberals cannot . . . leave aside altogether the project of moral education. A system of free self-government needs to encourage widespread convergence on certain shared attitudes and character traits, as well as the patterns of social life that support them. No liberal democracy can survive without citizens prepared to tolerate others, to act more or less responsibly, to take some part in public affairs, to stay informed, and to act for the good of the whole at least sometimes. For a liberal democracy to thrive and not only survive, many of its citizens should develop a shared commitment to a range of political values and virtues: tolerance, mutual respect, and active cooperation among fellow citizens of various races, creeds, and styles of life; a willingness to think critically about public affairs and participate actively in the democratic process and in civil society . . . .

*Id.* at 10-11.

167. See, e.g., CENTER FOR CIVIC EDUCATION, *THE ROLE OF CIVIC EDUCATION: A REPORT OF THE TASK FORCE ON CIVIC EDUCATION* 5-6 (1995) (noting that civic education is necessary to teach empathy); Sherry, *supra* note 152, at 168-71, 177 (noting the importance of tolerance to a republican education for citizenship). Amy Gutmann, whom Suzanna Sherry characterizes as espousing a republican version of civic education, see Suzanna Sherry, *Republican Citizenship in a Democratic Society*, 66 TEX. L. REV. 1229, 1229 (1988) (book review) ("Amy Gutmann's *Democratic Education* might equally well be entitled *Republican Education*, for its central theme is how to produce true republican citizens—citizens who possess both the ability and the motivation to participate in their deliberative political communities."), also emphasizes the importance of teaching mutual respect and toleration. E.g., Amy Gutmann, *Undemocratic Education*, in LIBERALISM AND THE MORAL LIFE 71, 79 (Nancy L. Rosenblum ed., 1989) (noting the need for teaching virtues such as religious toleration and "mutual respect for reasonable differences of opinion"); Gutmann, *supra* note 153, at 567 (endorsing Rawls' emphasis on teaching political virtues such as toleration and mutual respect); *id.* at 577-78 (arguing that democratic governments have a duty to teach students mutual respect).

168. For classic discussions of civic republicanism in the legal literature, see, for example, Frank Michelman, *Law's Republic*, 97 YALE L.J. 1493 (1988) and Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539 (1988). For a critique of civic republicanism, see Steven G. Gey, *The Unfortunate Revival of Civic Republicanism*, 141 U. PA. L. REV. 801 (1993).

actively in public life through deliberation with fellow citizens about matters of public importance. As one supporter of such a version of civic education puts it: "Civic education for the common good aims to equip citizens with the capacity for civic deliberation. That is, to carry on discussion of the question first formulated by Aristotle: 'Given our circumstances, how ought we to live together?'"<sup>169</sup> Accordingly, republicans urge schools to equip students with the skills and the dispositions to forge a common culture, despite the diversity that often makes such a common project so difficult to achieve. Thus, for example, R. Freeman Butts, a leader in the movement to promote civic education over the last fifty years, describes the republican tradition that informs his theory of civic education as

requir[ing] a *formative politics* in which citizens are expected to deliberate about the common good on the basis of a knowledge of public affairs and also a sense of belonging, a concern for the whole, a moral bond with the community whose fate is at stake, and thus they are enabled to shape the destiny of the political community ....<sup>170</sup>

In order to enable students to participate effectively as public citizens and to forge common bonds across such a diverse population, supporters of republican or participatory civic education often encourage schools to require students to participate in group projects and community service in a way not generally emphasized by proponents of liberal civic education.<sup>171</sup> They also tend to emphasize the importance of teaching persuasion, negotiation, and other rhetorical skills necessary for public deliberation.<sup>172</sup>

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169. William M. Sullivan, *Education for the Common Good*, CIVIC ARTS REV., Winter/Spring 1991, at 19, 20.

170. R. Freeman Butts, *Education for Civitas: The Lessons Americans Must Learn* (May 1997), available at [http://www.civiced.org/papers\\_butts01.html](http://www.civiced.org/papers_butts01.html).

171. See, e.g., Benjamin R. Barber, *Civic Education and Community Service*, CIVIC ARTS REV., Winter/Spring 1991, at 10, 10-12 (noting importance of community service to civic education); David Johnston, *Individualism and Civic Virtue*, CIVIC ARTS REV., Winter/Spring 1991, at 4, 8 (suggesting that institutions of higher learning "develop and encourage group projects and allocate responsibility for these projects to the group as a whole").

172. See, e.g., Johnston, *supra* note 171, at 7 (encouraging institutions of higher learning to "take steps to revive interest in the art of persuasion"); Battistoni, *supra* note 151, at 22 (indicating that "the social studies curriculum ought to integrate materials leading to the

Prominent proponents of the republican approach to civic education include Professor Suzanna Sherry of the Vanderbilt Law School<sup>173</sup> and the Center for Civic Education, the nation's largest and most active civic education organization and the publisher of both the *National Standards for Civics and Government*<sup>174</sup> and *Civitas*,<sup>175</sup> a 600-plus page "framework" for civic education.<sup>176</sup>

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development of communications and rhetorical skills. The importance of discussion and debate to the participatory-republican model of democratic politics makes these verbal reasoning skills mandatory to future citizens" and that the "rhetorical skills of persuasion and bargaining ... are necessary citizen attributes in a diverse society where conflict is seen as legitimate but yet surmountable."); Sandra Stotsky, *Literature and the Development of Civic Consciousness: Questions from the 1987 Institute on Writing, Thinking, and Citizenship Education 4* (1987) (unpublished paper, on file with author) (arguing that literature programs can teach students the written skills needed for direct participation in public life).

173. See Sherry, *supra* note 152, at 157. In that article, Professor Sherry argues in favor of an educational program that will "prepare children to become *responsible* and *deliberative* citizens in a *diverse* republic of *rights*" by teaching them moral character, critical thinking, and cultural literacy. *Id.* More specifically, she contends that students should be trained to participate in their republic by engaging in rational deliberation, *id.* at 176, to act in accordance with cultural norms, such as individual responsibility, honesty, hard work, and tolerance, *id.* at 177, to think critically about authority and social norms, *id.* at 172-73, and, most controversially, to gain a knowledge of and an attachment to their own common culture, *id.* at 157. With respect to this last point, Sherry acknowledges that schools should (indeed, must) acknowledge diversity, embrace a pluralistic and inclusive multiculturalism, and encourage tolerance of diverse belief systems, *id.* at 166, 170, but she argues that schools should focus foremost on fostering in students a commitment to forging a common culture, *id.* at 162-63.

174. CENTER FOR CIVIC EDUCATION, NATIONAL STANDARDS FOR CIVICS AND GOVERNMENT (1994) [hereinafter NATIONAL STANDARDS].

175. CENTER FOR CIVIC EDUCATION, CIVITAS: A FRAMEWORK FOR CIVIC EDUCATION (1991) [hereinafter CIVITAS].

176. The *National Standards*, for instance, in its content standards for secondary school students urges schools not only to instruct students about the fundamentals of the American political system, the relationship between political institutions and democratic values, and the relationship of the United States to the rest of the world, NATIONAL STANDARDS, *supra* note 174, at 89-124, but also to encourage them to take part in civic life, explaining that "[t]he well-being of American constitutional democracy depends upon the informed and effective participation of citizens concerned with the preservation of individual rights and the promotion of the common good." *Id.* at 80. The *Civitas* framework goes even further than the *National Standards*, noting:

The ultimate goal of civic education is the widespread participation in the governance of the groups to which they belong by citizens ... [who must learn] the knowledge, skills, dispositions, and moral commitments required for competent and responsible participation in monitoring and influencing the formulation, implementation, adjudication, and enforcement of public policy.

CIVITAS, *supra* note 175, at 39.

As I argue in the next section, regardless of the theoretical differences between these two models of civic education, teaching students about religion is consistent with—and supportive of—either model.

### *B. Teaching About Religion as Civic Education*

Teaching about religion in the public school classroom can prepare students for citizenship in at least five distinct and important ways. This subpart examines these ways in turn.

#### *1. Intellectual Reasoning Skills*

First, by studying about religion, students will have the opportunity to learn a set of civically important intellectual reasoning skills that they might not develop in their other classes and pursuits. Participation in democratic life—whether it be through holding public office, deliberating in the public square, arguing with friends (or foes) in private about public issues, or just deciding which candidate or policy initiative to support or vote for—will often require a citizen to consider how other citizens, who may very well approach basic moral or ethical questions from significantly different starting points, might view the public issue at stake. For example, a political representative might want to consider, when deciding how to vote on a proposed piece of legislation, whether and why some of her constituents (perhaps a minority of them) would find that legislation to be morally offensive. A community leader might want to convince other members of the community to support a particular policy initiative by appealing to arguments that those members might find attractive, even if the leader herself finds them irrelevant. In addition, a person heading for the polls might want to consider whether voting “yes” on the referendum of the day would negatively affect people whose views on fundamental questions differ from his own. In each of these cases, the citizen must be able to think about the relevant public issue from a perspective different from his or her own and to reason about the desirability of the proposed government action from within a different world view. Classes such as math and science may teach students to reason analytically, but they hardly teach

students to think about questions from a variety of intellectual angles.

Teaching about religion can help fill this void by training students to analyze, evaluate, and articulate positions on public issues from within very different fundamental paradigms. In a class about religion, students will learn how different religious traditions approach basic ontological, epistemological, sociological, and moral issues. They will explore how these traditions' approaches to these basic questions might differ and, if Nord and Haynes' prescription is followed, how they differ from certain important nonreligious viewpoints.<sup>177</sup> In doing so, students will be forced to consider how people from all over the world, throughout many historical periods, have thought about issues; to compare these different viewpoints; and to articulate them in discussions, assignments, and examinations. Such a program not only will provide students with important bodies of knowledge—as discussed below—but also presumably with an improved ability to understand and communicate with contemporaries who do not share their basic assumptions. This understanding and communication will be facilitated regardless of whether their differences are religious or nonreligious in nature,<sup>178</sup> and regardless of whether the relevant discourse concerns a major policy issue of national importance or a local issue of relevance only to a county, city, or school district.<sup>179</sup>

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177. *See supra* note 124 and accompanying text.

178. In other words, this general skill will allow students to think about problems from different comprehensive viewpoints, even nonreligious ones. For example, it might help a student more or less dedicated to a form of Kantian liberalism (even if she does not identify her position as such) to understand a libertarian perspective on a disputed issue. It also might help a utilitarian understand how a Marxist might approach such an issue.

179. Such a skill might come in useful, in other words, regardless of whether the dispute is about a major national issue such as abortion or about a local issue such as whether a school should perform a Christmas play or display religious symbols as part of a holiday celebration.

## 2. *Knowledge of Religious History*

Second, as many have observed,<sup>180</sup> by teaching students about the role that religious believers, religious communities, and religious ideas have played over the course of history, schools can improve those students' currently inadequate understanding of historical events, better preparing them for civic life. An accurate knowledge of history is critical to understanding present issues of public concern. Citizens of a particular culture or nation inevitably consult their knowledge of history, not only in thinking about how public issues ought to be approached and resolved, but also in articulating their positions on those issues to other citizens. As one scholar of civic education explains, "[a] thorough historical understanding allows us to better judge current problems, institutions, and values by showing us similar political situations over time, where we can disinterestedly examine them in all of their complexity and with all of their ramifications."<sup>181</sup>

Given the extremely significant role that religion has played in American life over the past four centuries, students must gain some understanding of American religious history to understand their own history. For example, anyone considering the issue of whether religious communities ought to take a public stand on civil rights issues would, at some point, naturally try to remember what he or she knows about how religious communities have participated in civil rights issues in the past. If that person were also involved in a public (or semipublic) debate over the same issue, he or she might also cite historical examples to convince his colleagues or opponents of the correctness of his position. Thus, a student who never learned about the role of Christianity in the civil rights movement of the 1960s<sup>182</sup> or in the abolitionist movement of the mid-nineteenth century<sup>183</sup> would have no choice but to rest his opinion on this very important public issue on a radically incomplete knowledge of

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180. This appears to be the position of those Supreme Court Justices who have weighed in on the issue. See *supra* text accompanying notes 59-66. Nord and Haynes certainly believe this to be the case. NORD & HAYNES, *supra* note 3, at 35-39; *id.* at 38-39 ("[F]or most of history the sacred and the secular were pervasively entwined, and religion pervaded all of life . . . . If students are to understand *history* they must understand *religion*. This is not controversial.").

181. Battistoni, *supra* note 151, at 21.

182. See CARTER, *supra* note 1, at 227-29.

183. See HAYNES, *supra* note 36, at 7.

the facts that are necessary to the problem's resolution. The same analysis applies to teaching students about religious contributions to foreign cultures. A failure to understand the role that Confucianism has played in Chinese civilization, or that Islam has played in many Middle Eastern civilizations, will undermine public decision making and discourse about issues relating to those cultures and nations. Teaching students about religion will certainly not ensure that every public decision will rest on full knowledge of the relevant facts, but surely it will help.<sup>184</sup>

### *3. Informed Evaluation of Government Laws and Other Action Affecting Religion*

Third, schools should teach about religion to prepare students to evaluate thoughtfully and intelligently laws and other government actions that affect religious believers and communities. In a sense, this argument for teaching about religion for civic purposes resembles the argument in favor of teaching science for civic purposes. According to some educational theorists, schools should teach students science, not simply to ensure that some students will eventually become scientists (a small number of students in any event), or to improve our long-term national economic productivity and competitiveness, or to give students the pleasure of learning about the natural world, but rather to create a scientifically literate citizenry that can, as the National Research Center's *National Science Education Standards* puts it, "engage intelligently in public

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184. Schools should also consider teaching what Carter calls "the negative side" of religion. CARTER, *supra* note 1, at 207. Carter argues:

Of course, children should study the negative side as well: from the religion-based prohibition movement that culminated in the Eighteenth Amendment and the Volstead Act to the destruction of many Native American religious traditions to what the historian Jon Butler has called the "African spiritual holocaust"—that is, the willed destruction during the nineteenth century of the African religious traditions that the slaves brought with them and tried to preserve.

*Id.*; see also NORD & HAYNES, *supra* note 3, at 39 (citing as another tremendously important reason to study religion's role in history the fact that, "If history is replete with examples of ways in which religion has ennobled humanity and enabled people to flourish, it is also all too filled with examples of religious warfare and persecution. This makes the story of religious liberty . . . important for students to understand."); William P. Marshall, *The Other Side of Religion*, 44 HASTINGS L.J. 843, 845 (1993) (examining the "psychological and sociological forces inherent in religious experience that can lead to intolerance and persecution").

discourse and debate about matters of scientific and technological concern.<sup>185</sup> In our increasingly complex and technological society, the argument goes, citizens must possess at least a basic knowledge of fundamental scientific concepts and an understanding of the scientific method to debate and evaluate thoughtfully such public policy issues as improving public health, protecting the natural environment, and developing ethical rules to govern the use of new technologies such as cloning and genetic engineering.<sup>186</sup> Just as schools should teach science to promote a scientifically literate society that can evaluate important public questions involving science and technology, so too they should teach about religion to promote a religiously literate society that can evaluate important public questions involving religious belief and practice.

Government action—legislation, regulation, and policymaking at all levels of formality—affects religion in countless ways. Government programs in the United States provide financial and other sorts of aid to religious organizations, in varying levels of

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185. NATIONAL RESEARCH CENTER, NATIONAL SCIENCE EDUCATION STANDARDS 13 (1996) [hereinafter NATIONAL SCIENCE EDUCATION STANDARDS]; see also *Why and How You Should Learn Math and Science: Hearing Before the House Committee on Science*, 106th CONG. 70 (1999) (statement of Rodger Bybee) (“[E]ducation has a goal of preparing students to exercise their rights, duties, and responsibilities as citizens. . . . Justification for teaching mathematics and science rests on the utility of mathematics and scientific knowledge to individuals in their work and responsibilities as citizens . . .”); W. Wayt Gibbs & Douglas Fox, *The False Crisis in Science Education*, SCI. AM., Oct. 1999, at 87, 88 (“A consensus has begun to emerge among science education researchers, teachers and practicing scientists that schools should turn out scientifically literate citizens, not more candidates for the academic elite.”).

186. See, e.g., NATIONAL SCIENCE EDUCATION STANDARDS, *supra* note 185, at 11 (“Why is science literacy important? . . . Americans are confronted increasingly with questions in their lives that require scientific information and scientific ways of thinking for informed decision making. And the collective judgment of our people will determine how we manage shared resources—such as air, water, and national forests.”); Rhonda Miller, *Science Books are Out, Hands-On is In*, PITT. POST-GAZETTE, Aug. 26, 1999, at A1 (“The top students who are predisposed to science are doing very well. We’re worried about the bottom three-quarters of the class, the ones who will need basic science literacy to be productive and successful citizens, to make good technological and political decisions.”) (quoting George Nelson, director of Project 2061, a Washington, D.C.-based organization that encourages science, math, and technology literacy); *id.* (stating that people need a better understanding of science in order to make decisions about issues in their daily lives, including the environment, cloning, and DNA fingerprinting. “People have to make decisions about products that they buy and their health. The change in science education is based on the idea that everyone can and needs to understand these complex issues to a certain extent.”) (quoting Karen Stamp, director of laboratories for Carnegie Mellon University’s chemistry department).

directness.<sup>187</sup> Statutes that are facially neutral with respect to religion nonetheless often place substantial burdens on the exercise of religious practice.<sup>188</sup> Other regulatory and criminal statutes—over two thousand by one count—specifically provide exemptions or accommodations for religion.<sup>189</sup> Congress and state legislatures have passed general legislation to protect the free exercise of religion.<sup>190</sup> Government sells public land to religious institutions<sup>191</sup> and places

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187. *E.g.*, Personal Responsibility and Work Opportunity Reconciliation Act, 42 U.S.C. 604a (Supp. V 1999); *Mitchell v. Helms*, 530 U.S. 793, 798 (2000) (describing Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. No. 97-35, 95 Stat. 469).

188. General laws and policies regulating drug use, prison activities, and animal sacrifice, for example, can burden religious belief and practice. *E.g.*, *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872 (1990) (involving claim that drug laws infringed on religious ritual of smoking peyote); *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) (challenging prison regulation prohibiting Muslim prisoners from attending weekly congregational services); *Hamilton v. Schriro*, 74 F.3d 1545 (8th Cir. 1996) (challenge to prison regulations denying Native American prisoners access to sweat lodges). General regulations can also deny religious believers access to religious symbols in some cases. *E.g.*, *Cheema v. Thompson*, 67 F.3d 883 (9th Cir. 1995) (upholding preliminary injunction under Religious Freedom Restoration Act [RFRA] when school district weapon ban prohibited students from carrying ceremonial knives at all times as required by their religious beliefs); *Werner v. McCotter*, 49 F.3d 1476 (10th Cir. 1995) (finding no RFRA violation when prison officials refused to provide prisoner with Cherokee Native American religious literature or symbols); *cf. Sasnett v. Sullivan*, 908 F. Supp. 1429 (W.D. Wis. 1995) (finding violation of RFRA when prison prohibited prisoners from wearing crucifixes). Such general laws and regulations can also interfere with religious rules regarding sacred time. *E.g.*, *Sherbert v. Verner*, 374 U.S. 398 (1963) (invalidating state law denying unemployment compensation to worker who refused to work on the Jewish Sabbath); *see also Mack v. O'Leary*, 80 F.3d 1175 (7th Cir. 1996) (finding that Muslim prisoner had stated RFRA claim by alleging that prison officials refused to accommodate needs of Muslim inmates during holy period); *Rust v. Clarke*, 883 F. Supp. 1293 (D. Neb. 1995) (upholding denial of requests by adherents of Asatru religion for weekly worship time in prison), *aff'd*, 89 F.3d 841 (1996); *Woods v. Evatt*, 876 F. Supp. 756 (D.S.C. 1995) (upholding against RFRA attack prison policy permitting Muslim inmates to receive gifts during Christmas but not during their primary holidays), *aff'd*, 68 F.3d 463 (4th Cir.) (table).

189. Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DEPAUL L. REV. 1, 5 (2000) (citing study showing that over 2000 federal and state statutes included a specific accommodation for religion).

190. For federal statutes, see for example, Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb to bb-4 (1994); Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.S. § 2000cc to cc-5 (2001). The Supreme Court has held that Congress exceeded its section 5 enforcement powers when promulgating RFRA with respect to its application to state laws. *City of Boerne v. Flores*, 521 U.S. 507 (1997). On state RFRA's, see Alan E. Brownstein, *State RFRA Statutes and Freedom of Speech*, 32 U.C. DAVIS L. REV. 605 (1999).

191. *E.g.*, Marci A. Hamilton, *Religion and the Law in the Clinton Era: An Anti-Madisonian Legacy*, 63 LAW & CONTEMP. PROBS. 359, 380 (2000) (describing sale of federal land to Catholic University).

religious symbols on public property.<sup>192</sup> Disputes over the proper role of religion in public schools arise daily.<sup>193</sup> Public land regulation interferes with sacred spaces such as sacred forests, churches, and gravesites.<sup>194</sup> Congress has passed domestic legislation to promote religious liberty abroad,<sup>195</sup> and the United States, through its participation in the United Nations, has adopted an international

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192. *E.g.*, *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989) (holding unconstitutional a freestanding display of a nativity scene in front of a county courthouse but holding constitutional the display of a menorah placed next to a Christmas tree); *Lynch v. Donnelly*, 465 U.S. 668 (1984) (upholding a display of a crèche in Providence, Rhode Island against Establishment Clause challenge).

193. For an attempt to summarize the current state of the law regarding the various controversies that arise in connection with religion in the public schools, see *Religion in the Public Schools: A Joint Statement of Current Law* (Apr. 1995), available at <http://www.ed.gov/Speeches/04-1995/prayer.html>.

194. Historically, many government regulations and laws have infringed upon sacred Native American land. The case of *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), in which the Supreme Court held that the Free Exercise Clause did not prohibit the United States Forest Service from building a road through sacred Native American land, is perhaps the most memorable example. See also *Wilson v. Block*, 708 F.2d 735 (D.C. Cir. 1983) (Northern Arizona); *Crow v. Gullet*, 706 F.2d 856 (8th Cir. 1983) (holding that South Dakota could develop Bear Butte into a public park); *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980) (flooding of the Rainbow Bridge area on Lake Powell); *Sequoyah v. Tennessee Valley Auth.*, 620 F.2d 1159, 1164 (6th Cir. 1980) (flooding of the Little Tennessee River behind the Tellico Dam); John T. McQuiston, *Way Cleared for Development Fought by Tribe*, N.Y. TIMES, Apr. 18, 2000, at B4 (reporting that judge in Long Island cleared the way for the construction of thirty-eight homes on sixty-two acres of land considered by the Shinnecock Indian Nation to be sacred). Zoning and other land regulation has also often interfered with other types of sacred land and space. *E.g.*, *Thiry v. Carlson*, 78 F.3d 1491 (10th Cir. 1996) (holding that parents' religious beliefs would not be substantially burdened by relocation of the daughter's gravesite and use of existing gravesite for public highway); *International Church of the Foursquare Gospel v. City of Chicago Heights*, 955 F. Supp. 878 (N.D. Ill. 1996) (denying preliminary injunction under RFRA sought by church seeking special use permit to build in area zoned for business and manufacturing); *Abierta v. City of Chicago*, 949 F. Supp. 637 (N.D. Ill. 1996) (holding that church had sufficiently alleged violation of RFRA when city sought to rezone property that church sought to purchase, *rev'd*, 129 F.3d 899 (7th Cir. 1997); *First Covenant Church of Seattle v. City of Seattle*, 840 P.2d 174 (Wash. 1992) (en banc) (holding that Free Exercise Clause prohibits application of landmark ordinance to restrict church's ability to alter its exterior); Editorial, *Religion and Its Landmarks*, N.Y. TIMES, July 27, 2000, at A24 (describing controversy over law that would limit the power of zoning boards to interfere with the practice of religion by, for example, denying a permit to an Islamic center in an area where there were Christian churches); Charles C. Haynes, *Government Encroaches on Freedom*, DAYTON DAILY NEWS, Mar. 21, 2000, at 6A (describing land use disputes in many towns that have arisen when government officials have tried to limit what can be done in churches and other religious spaces—for example, by applying height restrictions to prohibit a Mormon temple from building a spire).

195. See International Religious Freedom Act, 22 U.S.C. 6401(b) (Supp. V 1999).

declaration to do the same.<sup>196</sup> In sum, in nearly every area of public law, actions taken by governments at the international, federal, state, and local level significantly affect religious belief and practice.

Evaluating this government activity requires knowledge of religion because of the special nature of religious belief and practice. As law and religion scholars have explained, religious beliefs are special<sup>197</sup> in that, to those who hold them, they are often experienced as (1) *involuntary*, in the sense that they are experienced as stemming from an external source or command;<sup>198</sup> (2) *fundamental*, in the sense that they play an overriding role in the believer's approach to life;<sup>199</sup> and (3) *comprehensive*, in that they imbue the

196. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Res. 36/55, UN GAOR, 36th Sess., Supp. No. 51, at 881, UN Doc. A/36/51 (1981).

197. The idea that religion is special is not uncontroversial. See Steven G. Gey, *Why is Religion Special?: Reconsidering the Accommodation of Religion Under the Religion Clauses of the First Amendment*, 52 U. PITT. L. REV. 75 (1990); William P. Marshall, *In Defense of Smith and Free Exercise Revisionism*, 58 U. CHI. L. REV. 308, 319-23 (1991) (suggesting that religious beliefs are not more deeply held and important to individuals than other deeply rooted social, political, and cultural beliefs); McConnell, *supra* note 189, at 42 (rejecting arguments that religion is not special); Jane Rutherford, *Religion, Rationality, and Special Treatment*, 9 WM. & MARY BILL RTS. J. 303, 304 (2001) (arguing that religion is special because "of the role it plays in balancing power, providing voices for outsiders, advancing non-market values, and fostering individual identity and spirituality"); Jay D. Wexler, *Cleaning the Mess?*, 49 STAN. L. REV. 667, 669-70 (1997) (book review) (observing that scholars have had to grapple with religion's specialness).

198. *E.g.*, STEPHEN L. CARTER, *GOD'S NAME IN VAIN: THE WRONGS AND RIGHTS OF RELIGION IN POLITICS* 44 (2000) (noting that for "millions of Americans, moral rules are God given"); JOHN H. GARVEY, *WHAT ARE FREEDOMS FOR* 46 (1996) ("The individual does not have complete control over choosing the religious option. It is God who makes the choice. I might have to accept choice and cooperate in carrying it out, but I am cast as the supporting actor."); MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 63-65 (1996) (noting that many religious believers regard themselves as "claimed by religious commitments they have not chosen"); see also Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 125 (1992). In response to a decision by the Supreme Court striking down a statute requiring employers to accommodate their employees' observance of the Sabbath, McConnell noted that:

It would come as some surprise to a devout Jew to find that he has "selected the day of the week in which to refrain from labor," since the Jewish people have been under the impression for some 3000 years that this choice was made by God. Jewish observers do not seek the right to "select the day" in which to refrain from labor, but only the right to obey laws over which they have no control.

*Id.*; see also *id.* at 172.

199. See, *e.g.*, CARTER, *supra* note 198, at 25 (noting that religions "provide meanings to their adherents, meanings of a deep and transcendent sort"); *id.* at 73 (noting that religious

believer's approach to all of life, rather than only to some part of life.<sup>200</sup> Moreover, these beliefs are manifested in practice in a variety of public dimensions, both individual and communal, such as through religious symbol,<sup>201</sup> religious ritual,<sup>202</sup> and notions of sacred space<sup>203</sup> and sacred time.<sup>204</sup> These religious practices, stemming as

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believers owe their "first allegiance" to those religious beliefs); HUNTER, *supra* note 106, at 126 (noting that religiously orthodox communities "order themselves, live by, and build upon the substance of a shared commitment to transcendent truths"); McConnell, *supra* note 198, at 126 (observing that for "most ordinary citizens . . . religion commonly remains a central aspect of life").

200. *E.g.*, CARTER, *supra* note 198, at 73 (observing that the principal Western religious traditions do not "conceive of the world as divided into that which God created and therefore rules and that which God did not and does not"); *id.* at 25 ("To the faithful, there is no part of the day that is outside of God's view.").

201. For a consideration of religious symbol by someone who is both a lawyer and a religious studies scholar, see WINNIFRED FALLERS SULLIVAN, *PAYING THE WORDS EXTRA: RELIGIOUS DISCOURSE IN THE SUPREME COURT OF THE UNITED STATES* 53-58 (1994).

202. Rituals—prayers, ceremonies, recreations of events, offerings, and dances, among many others—are a ubiquitous part of religious life. Ritual is, according to Jonathan Z. Smith (one of The University of Chicago's many important post-Eliadean historians of religion), among other things, a way of creating perfection out of ordinary existence, "a means of performing the way things ought to be in conscious tension to the way things are." JONATHAN Z. SMITH, *IMAGINING RELIGION: FROM BABYLON TO JONESTOWN* 63 (1982).

203. "Sacred space" roughly refers to the idea that many, if not most, religious traditions believe that certain areas or places have sacred significance—that there are some limited number of places where human beings can become close with whatever they consider to be the divine. As Mircea Eliade explains: "Every sacred space implies a hierophany, an interruption of the sacred that results in detaching a territory from the surrounding cosmic milieu and making it qualitatively different. . . . [These spaces are] sanctuaries that are 'doors of the gods' and hence places of passage between heaven and earth." MIRCEA ELIADE, *THE SACRED & THE PROFANE: THE NATURE OF RELIGION* 26-27 (1957); see also Robert S. Michaelsen, *Is the Miner's Canary Silent? Implications of the Supreme Court's Denial of American Indian Free Exercise of Religion Claims*, 6 J.L. & REL. 97, 100 (1988). The author explains:

The power of sacred space stems from the fact that as a unique reality it is a channel or "means of communication with the gods and about the gods," that, as such, it is a special "place of divine power," and that, consequently, it affords a model or "icon of the world" and thereby gives form to the world and structure and meaning to the inhabitants of the world.

*Id.*

204. "Sacred time" refers to the idea that many, if not most, religious traditions believe that certain times of the day, week, month, or year are imbued with sacred significance. As Eliade explains, sacred time allows the religious believer to recreate and reactualize a sacred event that took place in the mythical beginning of the religion's history:

Hence religious man lives in two kinds of time, of which the more important, sacred time, appears under the paradoxical aspect of a circular time, reversible and recoverable, a sort of eternal mythical present that is periodically reintegrated by means of rites. This attitude in regard to time suffices to distinguish religious from nonreligious man; the former refuses to live solely in

they do from religious belief, share the significance of that belief and are often experienced as involuntary and fundamental, in the senses described above.

Because religious belief and practice are special, laws and other government action that affect religion have unique effects. For example, when the government enacts a regulatory program that has the effect of destroying sacred Native American forest land,<sup>205</sup> it does something different from when it condemns or destroys ordinary forest land, and the effects of its action are qualitatively different from these ordinary activities. Likewise, as the Supreme Court has recognized,<sup>206</sup> when government places religious symbols such as a cross or a crèche on public lands; it does something different from when it places secular symbols, such as a depiction of the scales of justice or a statue of a famous historic figure, on its property. When government provides public funds to religious organizations, the effects are somewhat different from when it provides such funds to nonreligious organizations, such as public schools and secular social welfare agencies.

To evaluate laws and other government action that affect religion students must know something about the special nature of religious belief and practice. For example, to know whether to support a policy to place religious symbols on public property,<sup>207</sup> students must know how that policy will affect those who hold religious beliefs not represented by those symbols, as well as how a decision not to place those symbols on public property will affect those who do believe in the religion represented by the symbols.<sup>208</sup> If a student is to decide

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what, in modern terms, is called the historical present; he attempts to regain a sacred time that, from one point of view, can be homologized to eternity.

ELIADE, *supra* note 203, at 70.

205. *E.g.*, *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) ("The Government does not dispute, and we have no reason to doubt, that the logging and road-building projects at issue in this case could have devastating effects on traditional Indian religious practices.").

206. *E.g.*, *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 579-84 (1989).

207. Within constitutional limits, of course. *Id.* at 598-601.

208. Criticism of the Court's decision in *Lynch v. Donnelly*, 465 U.S. 668 (1984), has often centered on the Court's failure to understand the true significance of the religious symbolism at issue. *See, e.g.*, SULLIVAN, *supra* note 201, at 88 (stating that "Burger's opinion purports to encompass and define for American culture the meaning of a publicly displayed crèche, while it denies the religious experience of millions of Americans. . . . Display of the crèche, it is now

intelligently whether to support a law mandating destruction of sacred lands, he or she not only must understand the economic and environmental impact of such a decision, he or she also must understand how the destruction of those lands will affect those who believe the land is sacred. This is certainly not to say that schools should teach about religion to convince students that when government takes action that has the effect of disadvantaging religion, religion should always win out. Rather, the idea is simply that schools should give students enough information to know what is at stake in issues involving legislation (or regulation) and religion. This is also not to say that teaching students something about religion will ensure that decisions about public issues involving religion will always be made on full information. Such a goal is not possible within the limits of a public school curriculum and is undoubtedly not achieved even in more established subjects such as science or economics. But every bit helps, and given the importance of religion in American life—and in the life of all the world's cultures—and the virtual absence of any coverage of religion in the current public school curriculum,<sup>209</sup> schools should at least start informing their students about religion.

By leaving the evaluation of laws and government actions affecting religion in the hands of politically accountable officials, Supreme Court decisions over the past fifteen years have exacerbated the need to teach students about religion for civic purposes. For example, in the Free Exercise context, prior to 1990, the Court reviewed generally applicable laws that burdened religion under a strict scrutiny standard, requiring the State to demonstrate that the law served a compelling interest and was narrowly tailored to serve that interest.<sup>210</sup> If the State could not make such a showing, the complainant would be entitled to an exemption from the law. In

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ordained, is to communicate nothing more than a spirit of holiday goodwill," and that, further, Burger "flattens and demystifies religious experience. He domesticates it, refusing to allow that it is a 'live option,' in William James's words . . . [T]he effect of Burger's opinion is that of a steam roller.") (footnotes omitted); Mark Tushnet, *The Constitution of Religion*, 18 CONN. L. REV. 701, 712 n.52 (1986) ("Indeed it is difficult to believe that the *Lynch* majority would have reached the same result had there been a Jew on the Court to speak from the heart about what public displays of crèches really mean to Jews.").

209. See *supra* text accompanying notes 22-27.

210. E.g., *United States v. Lee*, 455 U.S. 252, 257-58 (1982); *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718 (1981).

its 1990 decision in *Smith*, however, the Court reversed course and held that generally applicable laws that incidentally burdened religion would be reviewed under an extremely lenient standard.<sup>211</sup> By making it almost impossible for a plaintiff to obtain a religion-based exemption to a generally applicable law, *Smith* makes it more important that students learn about religion, because it means that politically accountable actors must consider the costs of burdening religious believers when deciding whether to enact a generally applicable law. Without some knowledge of religion, citizens will have no way to decide whether their political representatives have struck the right balance when they either vote to enact a generally applicable law that burdens religious belief or practice,<sup>212</sup> or when they decide not to support such a law on the grounds that the law's benefits are insufficient to justify imposing a burden on religion.

In the context of legislative accommodations of religion, the Court's decision in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*,<sup>213</sup> which held that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions,"<sup>214</sup> similarly increases the importance of teaching students about religion. *Amos* gives politically accountable officials significant discretion to provide exemptions from generally applicable laws to religious believers.<sup>215</sup> Legislatures certainly have taken advantage of this discretion, carving out exemptions from statutes governing such diverse areas as taxation, food safety, antidiscrimination, military service,

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211. See *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 882 (1990). The Court did note that the strict scrutiny standard would continue to apply to hybrid claims involving both the Free Exercise Clause and other constitutional protections, such as the freedom of speech or the right of parents to direct the education of their children. *Id.* at 881.

212. Or to support a generally applicable regulation or other policy, short of formal legislation.

213. 483 U.S. 327 (1987).

214. *Id.* at 335.

215. The Court has limited this discretion in some respects. See, e.g., *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710-11 (1985) (holding unconstitutional a state statute providing that no person could be forced to work on the day that he or she declared to be his or her Sabbath day). As Michael McConnell notes, however, the Court's decisions as a whole have "returned to national and state legislatures" the question of religious accommodation. McConnell, *supra* note 189, at 2.

immigration, and drug use.<sup>216</sup> The rationale for providing such exemptions is that religion is special in some way that justifies treating it differently from other forms of belief. In order to evaluate whether religious belief is in fact special, and whether this specialness is significant enough to justify unique treatment under the law, however, public officials must have some understanding of what exactly might be special about religion. To evaluate the decisions of those public officials either to include or not to include a religious exemption or accommodation in a generally applicable statute, citizens in turn also must know something about religion. Classes in religious studies can help improve decision making in this regard.

Finally, the Court's recent Establishment Clause jurisprudence also supports the need to teach students about religion. Although the Court has held firm on its position of limiting government-sponsored religious practice in schools,<sup>217</sup> it has, in a series of opinions stretching back over ten years, given the State significant leeway to provide financial and other types of aid to religious organizations. Prior to 2000, Supreme Court case law prohibited the State from providing instructional materials and computers to religious schools,<sup>218</sup> the Court's decision in *Mitchell v. Helms* overruled this line of cases and upheld the provision of such aid in many circumstances.<sup>219</sup> Likewise, prior to 1997, it was unconstitutional for public school teachers to provide remedial education on the premises of religious schools;<sup>220</sup> the Court's decision in *Agostini v. Felton* overruled the cases establishing this prohibition and held that such remedial education was consistent with the Establishment Clause.<sup>221</sup> In a series of other cases, the Court has allowed the State to provide various types of aid to

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216. James E. Ryan, Note, *Smith and the Religious Freedom Restoration Act: An Iconoclastic Assessment*, 78 VA. L. REV. 1407, 1446 (1992).

217. *E.g.*, *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (invalidating school policy authorizing student-led prayer at school football games).

218. *E.g.*, *Wolman v. Walter*, 433 U.S. 229, 251 (1977) (finding unconstitutional the use of public monies for purchase of instructional materials and equipment for students); *Meek v. Pittenger*, 421 U.S. 349, 366 (1975) (invalidating instructional-equipment loan program).

219. 530 U.S. 793 (2000).

220. *Aguilar v. Felton*, 473 U.S. 402, 412-14 (1985); *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 397 (1985).

221. 521 U.S. 203, 209 (1997).

religious institutions, upholding the use of public funds to pay an outside contractor for printing the publication of a religious student group;<sup>222</sup> the payment of public money to a deaf student to pay for an interpreter to assist him in his classes in a Catholic high school;<sup>223</sup> and the payment of public money to provide vocational services to a blind student who chose to study at a Christian college to become a pastor.<sup>224</sup> The Court has upheld other sorts of financial aid to religious institutions as well.<sup>225</sup>

As in the Free Exercise and accommodation contexts, these Establishment Clause cases have left publicly accountable officials with substantial discretion to enact laws affecting or involving religion—in this case, aid programs that funnel public money to religious organizations. Determining whether these elected officials should in fact exercise this discretion to provide public aid to religious organizations requires that citizens have some knowledge of how the aid programs will affect religious believers and communities, and therefore requires knowledge about religion itself. Relevant questions might include how religious believers will feel about being excluded from public aid programs, whether religious organizations can survive without public aid, how members of minority religious communities will feel about the fact that in practice most public money given to religion will flow to organizations affiliated with majority religious traditions, and whether there is something unique about religion that will cause religious believers to compromise their beliefs by accepting public funds. Teaching students about religion will help equip them to think about these questions and to answer them thoughtfully and intelligently. This, in turn, will allow them to fulfill their role as citizens to evaluate the decisions of their elected public officials regarding the allocation of public funds.

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222. *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 845-46 (1995).

223. *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 3 (1993).

224. *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 488 (1986).

225. *E.g.*, *Bowen v. Kendrick*, 487 U.S. 589, 617 (1988) (rejecting facial challenge to Adolescent Family Life Act, which provided grants to religious and other organizations providing counseling on teenage sexuality); *Mueller v. Allen*, 463 U.S. 388, 394-404 (1983) (upholding Minnesota statute allowing state taxpayers to deduct expenses incurred in sending their children to private schools, including religious schools).

#### 4. *Understanding the Role of Religion in Public Debate and Decision Making*

Fourth, teaching about religion can improve students' comprehension of the way in which many religious people form opinions and make choices about law and other public issues, and can therefore help promote mutual understanding and civic peace. Although there is a significant dispute in the law reviews and elsewhere as to whether, as a normative matter, citizens ought to rely on religious beliefs or experience when forming or articulating views on matters of public concern,<sup>226</sup> there can be little dispute

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226. For a sampling of this literature, see GREENAWALT, *supra* note 2; GREENAWALT, *supra* note 5; MICHAEL J. PERRY, *RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES* (1997); Larry Alexander, *Liberalism, Religion, and the Unity of Epistemology*, 30 SAN DIEGO L. REV. 763 (1993); Robert Audi, *The Place of Religious Argument in a Free and Democratic Society*, 30 SAN DIEGO L. REV. 677 (1993); Robert Audi, *The Separation of Church and State and the Obligations of Citizenship*, 18 PHIL. & PUB. AFFAIRS 259 (1989); J. David Bleich, *Godtalk: Should Religion Inform Public Debate?*, 29 LOY. L.A. L. REV. 1513 (1996); Khaled Abou El Fadl, *Muslim Minorities and Self-Restraint in Liberal Democracies*, 29 LOY. L.A. L. REV. 1525, 1539 (1996); Franklin I. Gamwell, *Religion and Reason in American Politics*, 2 J.L. & REL. 325, 332 (1984); John H. Garvey, *The Pope's Submarine*, 30 SAN DIEGO L. REV. 849 (1993); Kent Greenawalt, *Religious Expression in the Public Square—The Building Blocks for an Intermediate Position*, 29 LOY. L.A. L. REV. 1411 (1996); Abner S. Greene, *Is Religion Special? A Rejoinder to Scott Idleman*, 1994 U. ILL. L. REV. 535; Abner S. Greene, *The Political Balance of the Religion Clauses*, 102 YALE L.J. 1611 (1993); David Hollenbach, S.J., *Contexts of the Political Role of Religion: Civil Society and Culture*, 30 SAN DIEGO L. REV. 877 (1993); Scott C. Idleman, *Ideology as Interpretation: A Reply to Professor Greene's Theory of the Religion Clauses*, 1994 U. ILL. L. REV. 337; Charles Larmore, *Beyond Religion and Enlightenment*, 30 SAN DIEGO L. REV. 799 (1993); Sanford Levinson, *The Confrontation of Religious Faith and Civil Religion: Catholics Becoming Justices*, 39 DEPAUL L. REV. 1047 (1990); Robin W. Lovin, *Perry, Naturalism, and Religion in Public*, 63 TUL. L. REV. 1517 (1989); Marshall, *supra* note 184; Michael J. Perry, *Religious Arguments in Public Political Debate*, 29 LOY. L.A. L. REV. 1421 (1996); Maimon Schwarzschild, *Religion and Public Debate in a Liberal Society: Always Oil and Water or Sometimes More Like Rum and Coca-Cola?*, 30 SAN DIEGO L. REV. 903 (1993); Suzanna Sherry, *Religion and the Public Square: Making Democracy Safe for Religious Minorities*, 47 DEPAUL L. REV. 499 (1998); Steven Shiffrin, *Religion and Democracy*, 74 NOTRE DAME L. REV. 1631 (1999); David M. Smolin, *Cracks in the Mirrored Prison: An Evangelical Critique of Secularist Academic and Judicial Myths Regarding the Relationship of Religion and American Politics*, 29 LOY. L.A. L. REV. 1487 (1996); Lawrence B. Solum, *Novel Public Reasons*, 29 LOY. L.A. L. REV. 1459, 1460-67 (1996); Symposium, *Religiously Based Morality: Its Proper Place in American Law and Public Policy?*, 36 WAKE FOREST L. REV. 217 (2001); Ruti Teitel, *A Critique of Religion as Politics in the Public Sphere*, 78 CORNELL L. REV. 747 (1993); Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 SAN DIEGO L. REV. 817 (1993); Christopher L. Eisgruber & Lawrence G. Sager, *Unthinking Religious Freedom*, 74 TEX. L. REV. 577 (1996) (book review); Kathleen M. Sullivan, *God as a Lobby*, 61 U. CHI. L. REV. 1655 (1994) (book review). For discussions of

that many citizens do in fact rely on religious beliefs and experiences when formulating their views on such issues.<sup>227</sup> As Columbia Law Professor Kent Greenawalt explains, religious

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the special problem of religion and judging, see the articles in Symposium, *Religion and the Judicial Process: Legal, Ethical, and Empirical Decisions*, 81 MARQ. L. REV. 177, *passim* (1998).

At least four types of arguments have been made in favor of imposing some limits on the use of religious reasons and arguments in public discourse and decision making. First, it has been suggested, primarily by Robert Audi, that reliance on religious reasons can, in some circumstances, violate principles of separation of church and state that must be adhered to in any free and democratic society. See Audi, *Separation of Church and State*, *supra*, at 278-86 (arguing that citizens should not advocate or promote any legal or public policy restrictions on human conduct unless one also has and is willing to offer, and is motivated by, an adequate secular reason); Audi, *Place of Religious Argument*, *supra*, at 687-99. Second, some (most notably Abner Greene) have argued that citizens and legislators should not rely on religious reasons because such reasons are epistemologically fundamentally different from other sorts of reasons. Reliance on those reasons is therefore unfair, since, as Greene argues, it "excludes those who do not share the faith from meaningful participation in political discourse and from meaningful access to the source of normative authority predicating law." Greene, *The Political Balance of the Religion Clauses*, *supra*, at 1614; see also GREENAWALT, *supra* note 2, at 76 (describing and rejecting an accessibility argument raised by Thomas Nagel); Audi, *Place of Religious Argument*, *supra*, at 690 (noting that some reasons "cannot motivate . . . rational[ly] informed person[s]" to do certain things). Third, some contend that religious arguments are inherently more divisive than other types of arguments, and that reliance on those reasons in public discourse could therefore cause harmful consequences to such discourse, making it more polarized, intolerant, and persecutory. *E.g.*, GREENAWALT, *supra* note 5, at 219 ("Why isn't it all right to advocate political positions in terms of narrower religious convictions? . . . [I]n actuality, such discourse promotes a sense of separation between the speaker and those who do not share his religious convictions and is likely to produce both religious and political divisiveness."); El Fadl, *supra*, at 1539 ("My own inclination is that if social and political discourses are to avoid polarization, a degree of self-restraint is necessary."); Marshall, *supra* note 184, at 859 (arguing that "religion has its dark side. This dark side, moreover, has the potential to be a powerfully destructive political force. It may, for example, harm the process of political decisionmaking. . . . Religion, if unleashed as a political force, may also lead to a particularly acrimonious divisiveness among different religions," and that "most problematically, religion's participation in the political process can produce dangerous results: Fervent beliefs fueled by suppressed fear are easily transformed into movements of intolerance, repression, hate, and persecution."). Finally, it has been argued that allowing reliance on religious reasons would unfairly favor Christian beliefs in public discourse to the detriment of religious minorities. Sherry, *supra*, at 502 ("[I]n America, in actuality, allowing religious reasons to justify public policy will have a negative effect on minorities, especially Jews. The idea of favoring religion in general over non-religion is a chimera, because in America, such a policy will always have the effect of favoring Christianity over other religions.").

For a discussion of the arguments put forward against limiting public debate and decision making in this way, see *infra* text accompanying notes 264-69.

227. GREENAWALT, *supra* note 2, at 30 ("Religious convictions of the sort familiar in this society bear pervasively on people's ethical choices, including choices about laws and government policies.").

believers draw on a variety of "sources of ethical guidance," including "sacred texts, authoritative statements by church organizations and religious leaders, consultation with the community of believers, and direct inspiration, usually through prayer and meditation."<sup>228</sup> These religious sources of authority provide ethical prescriptions of varying specificity that the believer may rely on with varying degrees of confidence.<sup>229</sup> Those who derive ethical standards of behavior from authoritative sources will most likely be guided by those sources in their consideration of issues of public policy.<sup>230</sup> As Greenawalt says, "religious premises that pervade one's view of social reality and justifiable human actions will almost certainly affect what one thinks the government should do."<sup>231</sup> Religious convictions, Greenawalt notes, may be relevant to a wide variety of divisive public issues including "matters like military and foreign policy, capital punishment, welfare distribution, animal rights, and abortion."<sup>232</sup> Other important issues, such as environmentalism,<sup>233</sup> euthanasia,<sup>234</sup> and legal ethics,<sup>235</sup> can easily be added to that list.

This reliance by many deeply religious citizens on religious sources of authority raises important civic problems. Those who do not rely on such sources—or rely on them only to a limited extent—often have difficulty understanding how deeply religious citizens reach conclusions on issues of public policy, and vice versa.

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228. *Id.* at 31. Of course, as Greenawalt observes, reliance upon these sources of authority does not mean that religious believers eschew reason as a ground for ethical or political choice. *See id.* at 31 ("[V]ariations among believers over how far religious sources of guidance should be mediated by reason are highly important."); *see also* Gamwell, *supra* note 226, at 332 ("The point of moment is that authentic religious beliefs, whatever their substance in fact is, are inherently accessible to humans qua humans, or inherently rational in character.").

229. *See* GREENAWALT, *supra* note 5, at 31-34.

230. For a discussion of the various ways that a religious believer might be guided by religious authority, *see* Garvey, *supra* note 226, at 859-76.

231. GREENAWALT, *supra* note 5, at 34.

232. *Id.*

233. *E.g.*, Harold Coward, *Religious Responses to the Population Sustainability Problematic: Implications for Law*, 27 ENVTL. L. 1169, 1171-80 (1997) (reviewing religious responses to the global challenges of population pressure and environmental degradation).

234. *E.g.*, Haripriya M. Mannan, *Death as Defined by Hinduism*, 15 ST. LOUIS U. PUB. L. REV. 423 (1996) (analyzing Hinduism's views on euthanasia).

235. *E.g.*, Leslie Griffin, *The Relevance of Religion to a Lawyer's Work: Legal Ethics*, 66 FORDHAM L. REV. 1253 (1998); Ved P. Nanda, *Hinduism and My Legal Career*, 27 TEX. TECH. L. REV. 1229 (1996).

As Yale Law Professor Stephen Carter has explained, those who believe in the supremacy of religiously authoritative sources often begin from epistemological starting points that are radically different from those who do not share such beliefs.<sup>236</sup> For example, a creationist who believes in the inerrancy of the Bible cannot, by definition, believe in scientific theories that contradict biblical teachings.<sup>237</sup> A Jehovah's Witness who follows his religion's prohibition against accepting blood transfusions cannot faithfully accept a transfusion, regardless of how necessary his doctor thinks the transfusion is for his health.<sup>238</sup> The Jehovah's Witness and the doctor, like the evolutionist and the creationist, have fundamentally different approaches to these problems. They are at epistemological loggerheads. Because of this disjunction, the believer's reliance on religion may appear unreasonable, misguided, or even ridiculous to those who rely on other sorts of authority or reasoning to reach decisions on public issues. Conversely, those who eschew religion as a source for guidance on public issues may seem morally bankrupt to those who do rely on religious sources for their values. This lack of mutual understanding, in turn, can cause offense and alienation, make it impossible for believers and nonbelievers (or "orthodox" believers and "progressive" believers)<sup>239</sup> to understand each other's needs and interests when discussing public issues, and exacerbate what James Davison Hunter termed the "culture war" between

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236. CARTER, *supra* note 1, at 218 ("[T]he idea that we share either common starting points or common forms of reasoning from our starting points may be no more than a pleasant fantasy."); *id.* at 226 ("A large part of the trouble, of course, is that not everyone agrees that the Enlightenment project of replacing divine moral authority with the moral authority of human reason was a good idea.").

237. Stephen L. Carter, *Evolutionism, Creationism, and Treating Religion as a Hobby*, 1987 DUKE L.J. 977, 980-82. The creationism-evolution debate obviously has public ramifications, particularly as it relates to what should be taught in the science classrooms of public schools.

238. See CARTER, *supra* note 1, at 219-21 (explaining how the liberal cannot understand the Jehovah's Witness's belief that accepting a blood transfusion violates God's law against ingesting blood).

239. In his classic book, James Davison Hunter describes the two "polarizing impulses" that he believes constitute the "heart of the contemporary culture war": the "impulse toward orthodoxy" and "the impulse toward progressivism." HUNTER, *supra* note 106, at 43. The impulse toward "orthodoxy," according to Hunter, refers to "the commitment on the part of adherents to an external, definable, and transcendent authority." *Id.* at 44. Progressivists, on the other hand, tend "to resymbolize historic faiths according to the prevailing assumptions of contemporary life." *Id.* at 44-45. The two groups have "fundamentally different conceptions of moral authority." *Id.* at 49.

those who rely on religion as a source of values and those who do not.

It is unlikely that teaching students about religion will resolve Hunter's culture war, but it might help nonreligious, or "progressively" religious, students understand the way many "orthodox" religious citizens reach conclusions and make decisions about issues of public concern, and vice versa. Students in religious studies classes will learn about religious scripture, religious experience (and the transformative effect such experience can have on individuals),<sup>240</sup> the ethical teachings of religious traditions, and other concepts that will help them understand why devoutly religious people approach important questions by referring to sources of religious authority. This surely is not to say that the young evolutionist will come to agree with his creationist friend (or vice versa) or that the budding young doctor will agree with her Jehovah's Witness classmate or that the pro-choice student will learn to agree with the "orthodox" Catholic pro-life advocate; such transformation is extremely unlikely, and most assuredly should not be the goal of the religious studies class in any event. But by learning, for example, about the Bible, the idea of biblical inerrancy, and the teachings of the Catholic Church, the evolutionist, the future doctor, and the pro-choice liberal might learn to understand and appreciate why their "orthodox" classmates and fellow citizens disagree with them. And through dialogue over these issues, those students who tend more toward the "orthodox" might also come to understand better their more "progressivist" (or atheistic) classmates. Such understanding may, if we are lucky, lead to a richer and more-civil civic discourse in the clothed public square regarding some of our most divisive public controversies.<sup>241</sup>

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240. On religious experience, see WILLIAM JAMES, *THE VARIETIES OF RELIGIOUS EXPERIENCE* 177-238 (1990) (describing conversion experiences); *id.* at 343 ("[M]ystical states seem to those who experience them to be also states of knowledge. They are states of insight into depths of truth unplumbed by the discursive intellect."); RUDOLF OTTO, *THE IDEA OF THE HOLY* 4 (1950) ("For if there be any single domain of human experience that presents us with something unmistakably specific and unique, peculiar to itself, assuredly it is that of the religious life.").

241. Cf. PERRY, *supra* note 226, at 46 ("Because of the religious illiteracy—and alas, even prejudice—rampant among many nonreligious intellectuals, we probably need reminding that at its best, religious discourse in public culture is not less dialogic—not less open-minded, not less deliberative—than is, at its best, secular discourse in public culture.") (footnote omitted).

### 5. *Tolerance*

Finally (and most certainly related to the foregoing four points), teaching about religion can help foster those virtues that all civic education in a democracy seeks to promote: tolerance, empathy, and mutual respect.<sup>242</sup> The major rallying call of the movement to teach students about religion is the need to find "common ground."<sup>243</sup> The introduction of religious studies into the curriculum can help achieve this goal in two ways. First, the very introduction of a course about religion can help soothe the fear that religious believers have about the pervasive secularity of the public school curriculum. If a community can succeed in agreeing that such a course would be educationally desirable and that it should be implemented according to a set of fair principles, then it has already achieved a fair amount of cooperation and respect. The process itself, in other words, is a way of finding some short-term common ground.

The true challenge, however, a long-term one. Though it is far from certain that teaching students about different religious faiths will inspire them to be more tolerant and respectful towards those who hold different religious beliefs, there is reason to be optimistic.<sup>244</sup> Introducing students to the different dimensions—ritual, ethical, scriptural, etc.—of a variety of religious traditions can help dispel the intolerance and disrespect that arise from

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242. Scholars dispute whether respect or tolerance should be the goal; as well as whether it is the choice or the content of the choice that ought to be tolerated or respected. *E.g.*, MACEDO, *supra* note 56, at 223 (critiquing Stephen Carter's concept of respect and arguing that "[l]iberal citizens must *respect* each other's rights, but they need not approve of the choices that other people make within the limits of their rights"); Linda C. McClain, *Toleration, Autonomy, and Governmental Promotion of Good Lives: Beyond "Empty" Toleration to Toleration as Respect*, 59 OHIO ST. L.J. 19 (1998). Making any attempt to resolve this dispute is beyond the scope of this Article.

243. *See, e.g.*, NORD & HAYNES, *supra* note 3, at 16 ("The greater risk, however, is to ignore the distrust and discontent that have led many parents to conclude, fairly or unfairly, that public schools are hostile to their faith and values. Ironically . . . religious issues in schools have actually become a good place to start building common ground.").

244. It is important to distinguish teaching about tolerance from teaching about religion. The question posed here is whether teaching about religion itself might promote tolerance or respect, regardless of whether it is also accompanied by a message that students should be tolerant and respectful of other faiths. There is good reason to believe that teaching a message of tolerance and respect will have some success in fostering those virtues. The argument here is that simply teaching about religion itself will independently have that effect.

naiveté and ignorance about religion. Showing students how religious believers themselves express their beliefs, what Nord and Haynes call "understanding religion from the inside,"<sup>245</sup> might allow them to sympathize with people of different faiths. Teaching students about how government action can frustrate religious practices and the way many religious people rely on different sources of authority to reach decisions on important public questions could cause those students to empathize with (instead of ignoring, marginalizing, or ridiculing) people who hold unfamiliar religious beliefs.<sup>246</sup> Moreover, religious studies classes, by encouraging dialogue between religious and nonreligious students, might also help religious students better understand the perspectives of nonreligious students, thus improving tolerance in the other direction as well. Although there is always a chance that the ongoing effort to promote teaching about religion might ultimately backfire—perhaps familiarity will, in the end, simply breed more discord and suspicion—the positive possibilities seem like reason enough to continue the effort.<sup>247</sup>

## 6. *Two Counterarguments*

### a. *The Argument From Political Liberalism*

This subpart considers and rejects two important possible critiques of the case just set out in favor of schools teaching students about religion.<sup>248</sup> The two critiques are derived from the

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245. NORD & HAYNES, *supra* note 3, at 50.

246. *See id.* at 30-32 (describing a middle-school social studies class in which the teacher teaches about religion and in which "[s]tudents can address serious and controversial topics more readily because they are prepared to exchange views without personal attack or ridicule").

247. As Charles Haynes put it:

[W]e must learn more about another. Ignorance breeds suspicion and distrust. Only through mutual understanding can we engage each other with respect and civility.

Not that understanding others requires us to accept their religion. We are all free to call others to the truth as we know it. But we do need to know something about who our neighbors are if we're going to debate them without going for the jugular.

Charles C. Haynes, *Religious Diversity Can Be Source of U.S. Strength*, DAYTON DAILY NEWS, Dec. 7, 1999, at 12A, available at LEXIS, News, Individual Publication File.

248. Beyond the scope of the Article is any in-depth consideration of general critiques of

the theory of civic education itself (as distinguished from teaching about religion as one part of civic education). One such critique might be that education should strive to be neutral with respect to instilling values or orientations in students. A somewhat more sophisticated critique might contend that education should at least strive to be as neutral as possible, so as to prevent those who control the curriculum from indoctrinating students into believing one or another conception of how they ought to live. The short—though not entirely complete—answer to these critiques, in my view, is that education cannot possibly be neutral, or even close to neutral. As one legal scholar puts it:

A value-free curriculum is clearly impossible. Selectivity is inherent in making decisions of inclusion and exclusion necessary to develop a curriculum. Curricular choices, therefore, inevitably lend the color of official support to one perspective over another. Additionally, pedagogical style and classroom procedure instill through students' experience value positions . . . . Similarly, schools simply cannot attain value-neutral or balanced education . . . . Value neutrality itself has a value bias favoring the liberal philosophy embodied by the scientific method of inquiry.

Stanley Ingber, *Religious Children and the Inevitable Compulsion of Public Schools*, 43 CASE W. RES. L. REV. 773, 778-79 (1993) (footnotes omitted); see also Sherry, *supra* note 152, at 158 ("But educational neutrality is neither possible nor desirable."). Another critique of civic education in a liberal state would claim that there is no need to educate students for life in such a state; liberal democratic institutions are themselves sufficient to ensure the preferred results. See, e.g., Galston, *supra* note 51, at 91 (identifying "a tradition of Mandevillean argument that liberal polities do not need—indeed, are distinctive in not needing—civic education directed to the formation of liberal citizens because social processes and political institutions can be arranged so as to render desired collective outcomes independent of individual character and belief."). The need for liberal civic education is, in my estimation, adequately defended by others, such as Macedo and Galston, see GALSTON, *supra* note 145, at 17-21, 231-37, 244-45; MACEDO, *supra* note 56, at 3-12. A fourth critique might contend that even if civic education is to some degree desirable, other goals of education (utilitarian, liberal, etc.) should predominate (and perhaps eclipse) the goal of training citizens. Balancing the benefits of civic education against those of other theories of education is beyond the scope of this Article.

This Article also does not consider in any depth the various practical problems of implementing a teaching about religion program in the public schools. These obstacles—training teachers, developing materials, getting communities to agree on basic principles, among others—are indeed substantial. But as outlined in Part I, recent years have seen great improvement in the development of curricular materials and teacher training, and efforts such as those undertaken by Haynes and others have achieved significant success in bringing diverse members of various communities together behind the idea of teaching about religion. These developments indicate that the practical obstacles to widespread implementation of teaching about religion programs are not insurmountable, particularly if unique methods of community-based reform and perhaps alternative dispute resolution mechanisms are used to instigate change and resolve problems that might arise. See Tomiko Brown-Nagin, "Broad Ownership" of the Public Schools: An Analysis of the "T-Formation" Process Model for Achieving Educational Adequacy and its Implications for Contemporary School Reform Efforts, 27 J.L. & EDUC. 343 (1998) (describing a nonadjudicative model of school reform); Michael A. Rebell & Robert L. Hughes, *Schools, Communities, and the Courts: A Dialogic Approach to Education Reform*, 14 YALE L. & POL'Y REV. 99, 99 (1996) (proposing a model for education reform which "seeks to unite all the relevant stakeholders in a principled process

two theories of civic education—liberal and republican—described earlier. The first of these critiques can be stated this way: Because discourse on important public issues in a pluralistic liberal democracy should be conducted in language that is accessible to all citizens, and because public decision making should turn on reasons not drawn from comprehensive visions of the good life not shared by all, religious beliefs (being such comprehensive visions<sup>249</sup>) are not relevant to public decisionmaking or discourse, and therefore students need not learn about religion to participate meaningfully in civic life.<sup>250</sup>

Such a critique quite clearly would be informed by at least some elements of political liberalism. Political liberals such as Rawls and Macedo argue that public decision making and discourse should generally be carried out in terms that are equally accessible to all reasonable citizens—as Macedo says, “in terms of reasons and arguments that can be shared with reasonable people whose religious and other ultimate commitments differ.”<sup>251</sup> The ideal of

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of discussion, deliberation, and reevaluation of fundamental policies and values”).

Finally, the suggestion that teaching about religion programs are problematic because the way they are implemented may affect how students will understand the relationship between religion and the state is considered, at least briefly, *infra* Part III.

249. GREENAWALT, *supra* note 2, at 5 (“A broader category, into which almost all religious beliefs fall, is ‘comprehensive views’: overall perspectives that provide a (relatively) full account of moral responsibilities and fulfilling human lives.”).

250. John Rawls describes the meaning of a “comprehensive” moral view or conception of the good life as follows:

A moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system .... Many religious and philosophical doctrines aspire to be both general and comprehensive.

RAWLS, *supra* note 152, at 13; see also *id.* at 59 (defining “reasonable comprehensive doctrines”).

251. Stephen Macedo, *Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?*, 105 ETHICS 468, 475 (1995). For Rawls’ articulation and defense of public reason, see RAWLS, *supra* note 152, at l-lvii, 212-54. Rawls’ position seems to apply to reaching public decisions as well as to articulating reasons for those decisions. GREENAWALT, *supra* note 5, at 53 (“Although Rawls does not explicitly discuss the point, I understand his theory to embrace the ways in which a citizen justifies to himself the political positions that he takes, as well as the reasons he communicates to others.”).

public reason,<sup>252</sup> according to political liberals, demands that citizens articulate their positions on public issues without reference to their fundamental views on the nature of the good life, regardless of whether those views are religious or secular in nature.<sup>253</sup> Such a limit on the proper grounds for public decision making and discourse is defended as being necessary to promote civic trust in a deeply pluralistic society.<sup>254</sup> As Macedo puts it, "should we not try and offer our fellow citizens reasons that they ought to be able to accept without making the absurdly unreasonable demand that they first accept our convictions about the ultimate ends of human life?"<sup>255</sup> Though political liberals have not gone so far as to critique in print the idea of teaching students about religion for civic purposes (so far as I know),<sup>256</sup> one might build upon their conception of public reason to argue that if religious grounds are off-limits in public decision making and debate, then there is little need to teach students about religion to prepare them for civic life.

This criticism has some force, but ultimately it is inadequate to defeat the case for teaching about religion as civic education. To begin with, as the previous subparts of this Part have explained, the case for teaching about religion for civic purposes does not rest solely on the need to teach students to understand how religious people make public decisions and their public articulation of religious reasons for reaching those decisions. Thus, even if the point about public reason were granted in full, and it were conceded that public decision making and discourse should remain entirely free from religious reasoning, there would still be sufficient reason to teach students about religion for public purposes. Even if religion,

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252. For a good summary of Rawls' conception of public reason, see Solum, *supra* note 226, at 1460-67.

253. See Macedo, *supra* note 251, at 475 (noting that "[n]either Protestant fundamentalism nor Dewey's secular humanism are proper grounds for determining basic rights and constitutional principles").

254. For a discussion of other grounds for limiting religious input on public decision making and discourse, see *supra* note 226.

255. Macedo, *supra* note 251, at 495.

256. At times, Macedo seems to come close to stating this critique in his recent book. MACEDO, *supra* note 56, at 121-22 ("Indeed, maintaining an educational establishment that teaches children that important public issues can be deliberated upon without considering religious questions is itself part of the education for liberal democratic citizenship properly understood."); *id.* at 183 ("Liberal public reason avoids saying anything about how religion is to be studied: that is left to churches and other private groups.").

as political liberals might suggest, should be a private affair in the sense that it should not inform political choices, the impact of government action on religion remains a public concern, just as any government action affecting other essentially private matters (such as sex, artistic creation, etc.) does. Therefore it would remain important, for example, for students to learn about the role that religion has played in history and about how government action can affect religious belief and practice, so they can intelligently evaluate legislation and other public action that might affect religion. Moreover, the point about tolerance and mutual respect remains valid as well, since that argument turns not on whether religious people may properly rely on religious grounds in reaching and articulating public decisions, but rather on whether people should be treated with respect regardless of their private world views. In sum, the argument from public reason, at best, only diminishes slightly the case for teaching about religion as civic education.

The critique is even weaker than this, however, because the argument in favor of public reason is unpersuasive even as an attack against the justification for teaching about religion for civic purposes that it most clearly stands up against—namely, the argument that students should learn about the ways many religious people make public decisions. For one thing, for the argument to be successful, it would have to claim that all public decisions, not simply a significant subset of those decisions, must be made without recourse to religious reasons. Otherwise, teaching students about religion would still be important for teaching students how religious citizens make decisions on those public issues to which the rule of public reason does not extend. Indeed, political liberals like Rawls and Macedo do limit the reach of this rule, with Rawls arguing that it applies only to “constitutional essentials” and questions of basic justice,<sup>257</sup> and Macedo suggesting that it only applies to questions

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257. RAWLS, *supra* note 152, at 214-15. Rawls goes on to say:

Many if not most political questions do not concern those fundamental matters, for example, much tax legislation and many laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts.

*Id.* at 241. Indeed, Rawls has limited the reach of his rule of public reason even further, noting in what he calls his “proviso” that “reasonable [comprehensive] doctrines may be introduced in public reason at any time, provided that in due course public reasons, given by a reasonable

involving the “most basic political rights and institutions.”<sup>258</sup> More to the point—even once again conceding for the sake of argument the normative appeal of limiting public discourse to public reasons—such a rule would not translate directly to an argument against teaching about religion as a way of preparing students to understand how, in fact, many public decisions are made and how, in reality, much public discourse is conducted. Even if it were improper as a matter of political theory<sup>259</sup> or constitutional law<sup>260</sup> for citizens or legislators to rely in some cases on religious reasons when reaching public decisions or to articulate those reasons in public, the fact would still remain that a great many religious people do reach such decisions, at least in part, on religious reasons and do articulate their support for legislation and other policy choices in religious terms. Civic education must train students to function effectively within the political system that actually exists. It surely can aim to transform that system, but it cannot adequately prepare students by ignoring established and probably indelible features of the political system in which those students live. As Galston says:

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political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support.” *Id.* at li-iii. Thus, teaching about religion would still be justified under Rawls’ version of political liberalism as a way of teaching students about how religious people reach decisions on public issues, since religious reasons are sufficient, at least in the interim, for justifying such decisions under the proviso.

258. Macedo, *supra* note 251, at 475.

259. See GREENAWALT, *supra* note 2, at 126 (outlining the types of restraint on the use of religion in politics that might be recommended as a matter of political theory).

260. See, e.g., *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (holding that statute must have a “secular legislative purpose” to pass Establishment Clause scrutiny); PERRY, *supra* note 226, at 34 (“[W]e should probably conclude that *as a practical matter*, the nonestablishment norm requires only that government not make . . . political choices about the morality of human conduct—unless a plausible secular rationale supports the choice without help from a parallel religious argument.”). The fact that a law must have a plausible secular purpose to pass constitutional muster does not mean that religious arguments are off-limits in public debate. *E.g.*, Michael J. Perry, *supra* note 226, at 1438 n.46. Perry argues:

Sullivan is wrong to suggest that the fact that government may not make political choices in the absence of a plausible secular rationale constitutes “the banishment of religion from the public square.” . . . First, the “public square”—the public culture of a society—includes much more than politics . . . . Second, religion has not been banished even from politics . . . . [I]t is neither constitutionally nor morally inappropriate for legislators or other public officials, much less citizens, to present religiously based arguments about the morality of human conduct in public political debate.

*Id.* (citation omitted).

The adequacy of a conception of civic education cannot be determined in the abstract, but only through its congruence with the basic features of the society it is intended to sustain. To depart significantly from those features is to recommend a conception of civic education suitable for some society other than the one at hand.<sup>261</sup>

Given the fact that in American public life, many individual decisions on public issues are made at least partially for religious reasons,<sup>262</sup> schools would be shortchanging students if they failed to provide some insight into how those decisions are actually made on the grounds that in an ideal world those decisions would be made for other types of reasons.<sup>263</sup>

One might respond here that a system of public education seeking to promote citizenship may choose to ignore—or to present only in a negative manner—even established and indelible features of a political system, if those features are normatively undesirable or harmful. After all, racism might play a significant role in the way many people make public decisions, but nobody would suggest that schools should teach about racism in a way that would not condemn it. Therefore, the argument would go, because Rawls and others have demonstrated that, as a normative matter, reliance on religion in public decision making and discourse is clearly improper, schools should not teach students about religion to help them understand religious discourse on public issues, even though as a descriptive matter many people do, in fact, conduct such discourse.

Although the major premise of this argument is sound—surely there are certain indelible features of the American civic landscape that need not be presented in anything but a negative light, if at all—the minor premise—that reliance on religion in public decision

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261. GALSTON, *supra* note 145, at 246.

262. See PERRY, *supra* note 226, at 47 (noting that in the United States “we do present and discuss . . . religiously based moral arguments in our public culture” and that “religiously based moral discourse . . . inevitably . . . takes place in public culture”).

263. This is not to say that normative arguments against the use of religiously based reasons in public decision making and discourse should be ignored in the development of a religious studies curriculum. Indeed, the curriculum should be designed to incorporate those concerns. For example, a class might introduce the issue of whether religious arguments are properly relied upon in talking about and reaching conclusions on public issues, and it might explicitly discuss the various arguments put forth on both sides of that debate.

making and discourse is clearly inappropriate—is not. Although Rawls and other political liberals have certainly made a forceful case for keeping comprehensive visions of the good life out of such decisionmaking and discourse, other writers and scholars, many of them law professors working in the field of law and religion, have advanced equally, if not more, forceful arguments to the contrary. These arguments are sufficient to defeat the minor premise presented above, and therefore the conclusion as well.

Scholars have advanced at least four principal arguments against placing limits on the use of religious reasons and arguments in the public square. First, some have argued that such limits cannot work because, as a practical matter, it is impossible for religious believers to separate religious beliefs from secular ones. Those with deeply held religious beliefs, therefore, will always rely on religious reasons when reaching conclusions about issues of law and public policy.<sup>264</sup> Second, and closely related to the first reason, some have argued that requiring religious believers to reach and articulate positions on public issues without reference to their deeply held religious beliefs is fundamentally unfair.<sup>265</sup> Third, many have argued that religious beliefs are on the same epistemological level as other types of beliefs—political, moral, etc.—and thus, like arguments based on those other types of beliefs, should be allowed in public discourse.<sup>266</sup>

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264. See GREENAWALT, *supra* note 5, at 155 (stating that to demand that religious people “pluck out their religious convictions is to ask them how they would think about a critical moral problem if they started from scratch, disregarding what they presently take as basic premises of moral thought. Asking that people perform this exercise is . . . unrealistic in the sense of impossible . . .”); PERRY, *supra* note 226, at 47 (noting that it is “impossible” to maintain a wall of separation between religiously based discourse and the discourse of public political debate); Lovin, *supra* note 226, at 1523 (“This reliance on religious conviction in advance of political justification is not an irrational act or a willful defiance of liberal principles. It stems, rather, from an understanding that religious convictions, by their nature, override other reasons for action . . . . Religious imperatives are ‘trump.’ They overrule prudential considerations . . . .”); William W. Park, *Spiritual Energy and Secular Power*, in *THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW* 171, 204 (Mark Janis ed., 1991) (“[R]eligious values will inevitably inform a religious citizen’s legal choices, no less than secular values influence the policy choices made by the non-religious citizen.”).

265. *E.g.*, GREENAWALT, *supra* note 5, at 155 (arguing that it is “positively objectionable” to make religious believers separate their religious beliefs from what they think on public issues); Sandel, *supra* note 153, at 1776 (“[I]t is not always reasonable to bracket, or set aside for political purposes, claims arising from within comprehensive moral and religious doctrines.”).

266. See Alexander, *supra* note 226, at 774 (stating that the “liberal’s rejection of religious-based policies suggests some sort of epistemological divide or discontinuity between what we

Finally, several writers have suggested that allowing believers to make religiously based arguments in public about public issues will in fact deepen public discourse. These writers have suggested that religious discourse can be as open-minded and deliberate as so-called secular discourse,<sup>267</sup> that religious arguments can provide novel perspectives that otherwise would not make their way into public discourse,<sup>268</sup> and that religious contributions can generally enrich the overall quality of public debate.<sup>269</sup>

One need not resolve whether these arguments ultimately are sufficient to defeat the argument from political liberalism to conclude that they are significant enough to defeat the argument that the position of political liberalism is so clearly correct that schools should ignore, or treat only in a negative light, the fact that a great many people rely on religious reasons when deciding and talking about public issues. The arguments put forward in defense of this reliance are serious and substantial and, like those on the other side, cite weighty concerns about fairness, discrimination, and the ability of citizens of all orientations to participate fully in the democratic process. A school that decided not to teach about religion

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can claim justifiably to know secularly, ... and what we can claim justifiably to know religiously, the latter being an inferior form of knowledge for purposes of public policy," and arguing that "[n]o such epistemological divide exists"); Hollenbach, *supra* note 226, at 896-97 (denying any discontinuity between religious reasons for policy choices and other types of reasons); Idleman, *supra* note 226, at 343-52 (arguing against Greene's position that religious arguments are inherently inaccessible to nonbelievers); Schwarzschild, *supra* note 226, at 913 (noting that any systematic body of principles can be analogized to religion).

267. PERRY, *supra* note 226, at 46 ("[W]e probably need reminding that, at its best, religious discourse in public culture is not less dialogic—not less open minded, not less deliberative—than is, at its best, secular discourse in public culture."). For commentary to the effect that religious arguments can resonate even with those who do not share the religious premises upon which they are based, see *id.* at 80:

[T]he moral insight, the insight into the requirements of human well-being, achieved over time by a religious tradition, as *the yield of the lived experience of an historically extended human community*, might well have a resonance and indeed an authority that extends far beyond just those who accept the tradition's religious claims.

268. See Waldron, *supra* note 226, at 841-42:

Even if people are exposed in argument to ideas over which they are bound to disagree ... it does not follow that such exposure is pointless or oppressive. For one thing, it is important for people to be acquainted with the views that others hold. Even more important, however, is the possibility that my own view may be improved, in its subtlety and depth, by exposure to a religion or a metaphysics that I am initially inclined to reject.

269. See, e.g., Hollenbach, *supra* note 226, at 888-96.

on the grounds that to do so would endorse what it believes is an inappropriate fact of American civic life would itself be taking a side on a deeply and reasonably contested question of great importance. While such side-taking might be appropriate in certain circumstances, here it would not be, given that the reliance on religious reasons is such an important part of American life and that understanding this reliance is so important to the development of civic peace.

*b. The Argument From Civic Republicanism*

A second critique of teaching about religion for civic purposes would also call into question the idea that religion should play a prominent role in public life, but from a very different angle. This critique, informed by notions of civic republicanism,<sup>270</sup> might suggest that public institutions should be devoted to forging a common culture and a common vision of the good life, and that there is therefore no room for celebration of individual religious differences in the public square. Religious diversity might be tolerated in the private sphere, but public discourse and education must focus not on these differences, but on our commonalities—our common history, concerns, needs, and goals. Under such an approach to public institutions and discourse, schools should leave teaching about religion to private institutions such as churches and temples and devote their limited resources to fostering a common culture and instilling in students the disposition to work together to sustain that culture.

There are several problems with such a critique. First, it suffers from the same problem that the critique from political liberalism suffers—it ignores the fact that in twenty-first century America, many public decisions are made on religious grounds that are not shared by everyone and that have not been derived through any common project. Again, even if it were conceded that public institutions—and perhaps even legal doctrine—should be tailored to achieve certain republican aims, it does not follow that education should press republican aspirations exclusively, particularly when it is clear (as it currently is) that the achievement of many of those

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270. See *supra* text accompanying notes 167-72.

aspirations is not likely to be realized in society at large anytime in the near future.<sup>271</sup>

Second, and more fundamentally, knowledge of individual differences, including religious ones, would seem to be a prerequisite for the success of any republican venture.<sup>272</sup> Surely it will be an impossible task to forge anything resembling a common culture in a pluralistic society if citizens do not have some understanding of how fundamental commitments on matters of ultimate concern, to use Tillich's phrase,<sup>273</sup> differ across various religious subcommunities and among individual believers. As Suzanna Sherry observes, "[t]o the extent that multiculturalism is inclusive ... it is not only compatible with a responsible republican education, it is also necessary if republicanism is to survive in [a] ... diverse and democratic society."<sup>274</sup> Sherry's point makes sense in the context of teaching about religion because without an understanding of religious differences—including the difference between religion and nonreligion, and the difference between "orthodox" and "progressive" religion—it is hard to see how citizens would be able to move forward to find common ground. It would seem, then, that training students to tolerate and respect different religious traditions, as well as teaching students how to think within different paradigms,

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271. See GREENAWALT, *supra* note 5, at 75 ("I want to concede the theoretical possibility that in an otherwise liberal society, religious convictions might be so uniformly held they could provide a shared basis for political reasoning, though I am doubtful that could occur in any modern prosperous society with substantial nondiscriminatory immigration."); RAWLS, *supra* note 152, at xviii:

Now the serious problem is this. A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens.

272. For discussions of multiculturalism in education and beyond, see generally THOMAS J. LA BELLE & CHRISTOPHER R. WARD, *MULTICULTURALISM AND EDUCATION: DIVERSITY AND ITS IMPACT ON SCHOOLS AND SOCIETY* (1994); *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* (Amy Gutmann, ed. 1994).

273. See PAUL TILICH, *DYNAMICS OF FAITH* 1-29 (1957).

274. Sherry, *supra* note 152, at 166. Sherry uses the term "ethnically" in this sentence to modify "diverse and democratic society," but the same point would appear to apply equally to religion. In other parts of her article, Professor Sherry equates the two types of diversity. *Id.* at 168 ("Even if it were possible for every child to be given a curriculum tailored to her own ethnic (or religious) ancestry, such a course would endanger the welfare of both the community and the child.").

how religion has influenced history both here and abroad, how government action affects religious practice and belief, and how religious people make public decisions would not only be consistent with a republican approach to civic education, but it might even be a necessary precondition to achieving republican aims.

### III. TEACHING ABOUT RELIGION AND CIVIC EDUCATION: WHAT TO TEACH AND HOW

The preceding part articulated a theoretical argument for why public schools should teach about religion to prepare students for civic life. This part considers briefly the next logical question: What and how should schools teach about religion to achieve those civic purposes? Clearly, these are very complex questions, the answers to which could take up an entire volume. Moreover, beyond a very general level, the actual details of how a religious studies program should be implemented in actual classrooms will have to be worked out by education specialists with experience and expertise in designing curricula. In light of these limitations, this part simply offers some general introductory thoughts about the kinds of issues that schools will have to consider, and suggests some general principles that schools should follow. Following these general thoughts and suggestions, the Article addresses one important specific problem that will arise whenever schools decide to start teaching about religion—namely, how broad a sweep of religious traditions should schools include in their religious studies classes?

#### *A. Introductory Thoughts*

As documented in the Introduction, the last five or ten years have seen a significant increase in support for the idea that public schools should teach about religion.<sup>275</sup> Some even claim that, as a result of this support, there is now a “New Consensus” in favor of teaching about religion.<sup>276</sup> Although these developments surely are worth

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275. See *supra* text accompanying notes 114-43.

276. E.g., NORD & HAYNES, *supra* note 3, at 9 (stating that: “[g]iven the heated nature of our culture wars,” many people would be surprised to find “that over the last decade a fairly broad consensus about the role of religion in public schools has developed at the national level among the leadership of many religious and educational organizations. This New Consensus

celebrating, the idea of a "New Consensus" is, in an important sense, somewhat misleading. Educational authorities may be gradually realizing that it is important generally to teach students about religion, but this does not mean that they have reached any sort of agreement on the details of what and how students should learn about religion. These unanswered questions are indeed important, particularly given the already-overloaded curriculum and the intense controversy surrounding religion in the public schools.<sup>277</sup> For example, should schools teach students only about Christianity and Judaism, or should they teach about a broader range of major religions? Should they limit themselves to the major religions or also teach a smattering of minor ones? Should they give equal time to minor religions and major ones, or emphasize the major ones? How should a school determine if something is a major or minor religion? Or that something is a religion at all? Should schools teach only about religious scripture and history, or should they give students some idea of how believers practice their religion today? What other elements and dimensions of religion should schools teach students? Religious ethics? Theological history? Religious art and music? Should schools offer separate courses in religion or only teach religion where it naturally arises in the already existing curriculum?<sup>278</sup> Should religious studies classes be offered on a required, opt-in, or opt-out basis? Should students be taught about religious views on issues of public policy, or should religion be presented as a primarily private affair? What role should

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has been articulated in a number of documents."); *id.* at 36 ("Our educational framework is grounded in the New Consensus that has developed over the course of the last decade."); Felsenthal, *supra* note 129, at A1 (noting that the culture war in the schools is "winding down" and that "[i]n its place is emerging a new consensus that allows for extensive teaching about religions and their value systems, but no preaching"); Jacobsen, *supra* note 129, at 76 ("Working with legal advisors from education and advocacy groups on the left and the right, Haynes and Thomas helped forge a consensus that clarifies what religious liberty means and how it can be implemented successfully in public education."); Witham, *supra* note 116, at A5 ("A group of educators and policy advocates yesterday united around a 'new consensus' on teaching about religion in public schools, calling it a long-shot agenda but the most likely to satisfy all Americans.").

277. See *supra* note 49.

278. This issue is referred to in the reform literature as the issue of "natural inclusion." *E.g.*, NORD, *supra* note 3, at 209 ("Arguably, religion should be included in the conversation whenever it has something to say about the subject at hand, whenever it 'naturally' comes up. But there is a very important ambiguity hidden in the term 'natural inclusion.' Natural to whom?").

the so-called "dark side" of religion play in religious studies classes?<sup>279</sup> Should religion be presented alongside other strands of intellectual history or by itself? Any school seeking to integrate religion into the current public school curriculum in a thoughtful manner will have to move beyond the "New Consensus" by struggling with these difficult questions, among others.<sup>280</sup>

To answer these questions, and to set workable priorities, schools need to start with a clear idea of why they wish to teach students about religion. Different theories of education will suggest very different answers to the questions. For example, a school seeking to teach students about religion to expose them to different conceptions of the good life that they might choose to adopt as their own would have little reason to favor major religious traditions over minor ones, because each tradition presumably would represent an equally viable possibility for the students. Such a school might focus more intensely on the experiential dimension of religion than on historical materials, and would likely offer electives rather than required courses. On the other hand, a school whose purpose in teaching about religion is to prepare its students for participation in the world economy<sup>281</sup> might seek a less comprehensive religious studies program, perhaps simply augmenting its world history classes with religious materials from prominent world religions so students will have a better ability to interact with people from other nations and cultures. Finally, a school following Galston's definition of "philosophic" education, a school that thus wants to teach its students to seek truth,<sup>282</sup> might focus on the epistemological dimension of religion, particularly as it relates to the relationship between religion and science.<sup>283</sup> In each case, the general theory justifying the inclusion of religious materials in the curriculum will

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279. See *supra* note 184.

280. It is true that Nord and Haynes have pretty much answered most of these questions for themselves, see *supra* text accompanying notes 119-25, but it is unclear whether school districts generally agree with them. Furthermore, Nord and Haynes do not confront the all-important prioritization issue in any sustained fashion. It would seem to be impossible to integrate all of their suggestions into an actual curriculum, and, in my view, they do not offer sustained principles which schools can use to prioritize their resources.

281. This might be one version of a utilitarian theory in support of teaching students about religion.

282. See *supra* note 51.

283. For an excellent discussion of this relationship, see generally IAN G. BARBOUR, *RELIGION IN AN AGE OF SCIENCE* (1990).

have important effects on how the curriculum is designed and structured.

As they consider how to design religious studies programs to achieve their educational goals, schools must also keep in mind at least three other concerns. First, of course, they must give serious thought to what they think about religion itself because how they present religion to students undeniably will affect how students learn to think about it. For example: Is religion primarily a private, personal phenomenon, or does it have a significant public dimension as well? Are the ethical teachings of religious traditions more important than their ritual practices or scriptural texts? Is there something inherently divisive or "dark" about religious belief?<sup>284</sup> Are religious beliefs significantly different from other sorts of beliefs, such as political or philosophical beliefs?<sup>285</sup> The answers to questions such as these clearly will have an impact on the curriculum, independent of the educational theory that justifies teaching about religion in the first place. Second, schools must think seriously about how their presentation of religion might affect the students' understanding of the proper relationship between religion and the State. Inevitably, what schools teach about religion and how they teach it will affect the way that students think about this relationship. For example, a curriculum that ignores religious themes and ideas may signal to students that religion has no proper role in public life, as might a curriculum that treats religion as a primarily private phenomenon. A curriculum that stresses the role that religions have played in instigating warfare over the centuries might have a different effect on students' understanding of Free Exercise and Establishment Clause norms<sup>286</sup> than would a curriculum that focuses on religion's positive role in civil and human rights movements. A class that treats those belief systems

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284. See *supra* note 184.

285. Compare SANDEL, *supra* note 198, at 63-64 (arguing that religious beliefs are deeply held and important to individuals), with Marshall, *supra* note 197, at 319-23 (doubting that religious beliefs are more deeply held and important to individuals than other deeply rooted political, social, and cultural beliefs).

286. I mean this both as students will come to understand how courts should think about questions arising under these clauses, as well as, more importantly, how they will come to understand how public institutions other than courts should deal with religious belief—e.g., should lawmakers and policymakers accommodate religious belief, should owners of public property allow religious symbols to be placed on their property, etc.

traditionally thought of as religious as highly similar to those traditionally thought of as philosophical might cause students to think one way about whether public programs and laws should be set up to accommodate religious believers, whereas a class that treats so-called religious belief systems as significantly different from so-called philosophical ones may cause students to think quite differently about such issues.<sup>287</sup>

Finally, as a matter of educational theory, schools must consider how their curricula should handle these types of highly contested issues. Specifically, they must consider whether to present only one side of contested questions, or instead to present multiple perspectives on those questions. If they decide that multiple perspectives are appropriate, they further must decide whether to present multiple sides of all significantly contested issues, or only some of those issues. For example, if the relevant decision makers take the view that religious belief systems are very different than philosophical ones, should they present only that view, or should they explain the opposing view (that both systems are essentially the same) as well? Should they present the "dark" side of religion even though they believe that the "bright" side predominates? If they believe that religion is essentially a private phenomenon, should they also present the view that religion can play a prominent role in public life?<sup>288</sup>

This Article has explored the theory of civic education and has argued that schools should teach students about religion to train them to participate effectively in a pluralistic liberal democracy. Several implications for implementing an actual religious studies curriculum follow rather straightforwardly from the earlier discussion of why teaching about religion is important for civic education. For instance, even though schools should add religious themes and ideas to existing social studies classes so that students can learn about the role that religion has played in human history, the goals outlined above probably can not be attained through

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287. Of course, factors other than curriculum development, such as the teacher's presentation of the material, will also have important effects on how students understand these issues. See Ingber, *supra* note 248, at 778-79.

288. Deciding whether to present multiple or minority perspectives would also seem to be an important issue when schools present to students the current Supreme Court doctrine on questions of religious liberty.

simply adding religious content to classes that already exist. Instead, separate classes in religious topics will have to be added to the curriculum so that students can gain an in-depth understanding of religion. Second, the content of religious studies classes should be tailored to achieve civic purposes. For example, students might be required to take part in exercises designed to teach them how to think about problems from different religious perspectives (What do Buddhists think about death? How does the Confucian understanding of the family differ from how familial issues are treated in the Old Testament?). Teachers might present concepts such as religious ritual and symbolism in the context of how government action can infringe upon religious practice and belief. Religious topics that might be more heavily implicated by government action, such as ritual or sacred space, should be stressed more than ideas that are not as important for understanding that relationship, such as theological history or religious perspectives on history. Religious concepts should be presented in the context of teaching important civic virtues such as tolerance and mutual respect. As Nord and Haynes contend, schools should make substantial use of primary sources, so that students can learn about the nature of religious beliefs from the voices of those who hold such beliefs.<sup>289</sup>

In many ways, however, identifying civic education as the general justification for introducing religious studies materials into the classroom is just a beginning. As already discussed, civic education is by no means a unitary theory.<sup>290</sup> Different theories of civic education will dictate different types of religious studies curricula—different content, different emphases, different prioritization, and perhaps in some cases, different messages about the proper relationship between religion and government. For example, a theory of civic education holding that all students should be required to learn the skills and dispositions necessary for effective participation in a liberal democracy might dictate a required class in religious studies—and its attendant stress on tolerance and mutual respect—with no possibility of opting out,<sup>291</sup> while a theory of civic education seeking to inculcate liberal values only to the extent that those values are not inconsistent with the values

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289. See *supra* text accompanying note 124.

290. See *supra* text accompanying notes 149-76.

291. See, e.g., Gutmann, *supra* note 153, at 565-70.

already held by religious believers might dictate an optional religious studies class, or at least one with a clear opt-out provision.<sup>292</sup> A theory of civic education that takes as its purpose the teaching of mutual respect might dictate a somewhat different type of religious studies class than a class justified by a civic educational theory based on tolerance.<sup>293</sup> A republican or participatory theory of civic education might dictate a class in which students discuss and debate religious concepts and ideas more actively than a class justified by a liberal theory of civic education. In sum, the initial identification of civic education as a general theory to support teaching students about religion, although important, is only a preliminary step in fleshing out the details of any specific religious studies curriculum. Schools must give thought to what they mean by civic education to flesh out the details of their curriculum. As they do so, one of the most important details they will need to consider is what range of religions to teach about, as the next subpart explains.<sup>294</sup>

### *B. Which Religions?*

Given the “vast and fascinatingly rich panorama of mankind’s religious experience,”<sup>295</sup> any school that tries to decide which religions to teach its students will have to choose from a nearly endless set of possibilities and permutations. Despite this theoretical cornucopia of choices, several prominent models of which religions to teach stand out for schools to follow. First, many schools apparently choose to teach students about only those religious traditions that have the greatest following in the United States—Christian religious traditions, including perhaps Catholicism and Judaism<sup>296</sup>—often in the context of teaching about

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292. See, e.g., Stephen G. Gilles, *On Educating Children: A Parentalist Manifesto*, 63 U. CHI. L. REV. 937, 938 (1996).

293. For discussions of the difference between tolerance and respect, see sources cited *supra* note 242.

294. Perhaps the most difficult question of all as a matter of educational and political theory is the question of whether to allow an opt-out from classes that seek to inculcate liberal virtues. This Article does not address that issue in depth, but interested readers should consult sources cited *infra* note 383.

295. SMART, *supra* note 123, at 23.

296. See KOSMIN & LACHMAN, *supra* note 3, at 15-16 (reporting that 26.2% of all Americans

the Bible.<sup>297</sup> Alternatively, schools could present, as part of their history classes, only those religious traditions that have significantly influenced American history.<sup>298</sup> Third, schools could choose to teach about the world's major religions, often meaning Christianity, Judaism, Islam, Buddhism, Hinduism, Confucianism, and perhaps Taoism.<sup>299</sup> Or they could choose to teach primarily about the major religions with some reference to other important religious traditions, chosen either for their global and historical influence and number of adherents<sup>300</sup> or because those traditions are practiced by members of the class or local community.<sup>301</sup>

The simple conclusion—the one that constitutes the so-called “New Consensus”—that schools should teach students about religion cannot by itself identify the proper model from among these possibilities. Nor do we get much further by deciding that the reason schools should teach about religion is to prepare students for citizenship. Instead, we need to specify more precisely the specific parameters of the civic educational theory that justifies the religious studies program in the first place. Indeed, the question of which religions to teach is a critical one for civic education. If civic education aims at training students to conduct their lives within, and to support, their political community,<sup>302</sup> then it very much matters how schools and educational leaders conceive of the relevant political community. The conception they arrive at will in large part dictate how broad a sweep of religious traditions they think their students should study. Schools must therefore think hard about the scope of the political community they seek to emphasize. Do they want to train students to participate in a local community or a national one? A homogeneous one or a pluralistic

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are Catholic; 60% are non-Catholic Christians; and 2.2% are Jewish).

297. See *infra* text accompanying notes 324-26 (describing efforts to teach about the Bible).

298. For an example of a curriculum adopting something similar to this approach, see HAYNES, *supra* note 36, at 109-21, 147-61 (including lessons on the role of the African-American Church and the needs and requirements of Muslim students in public schools).

299. SMART, *supra* note 123, at 5 (listing all but Taoism as the “great living faiths”); HUSTON SMITH, *THE RELIGIONS OF MAN* (1958) (including chapters on all seven religions).

300. See SMART, *supra* note 123, at 5 (noting that in addition to the six “great living faiths,” Taoism, Shintoism, the Jain and Sikh religions, and certain modern Christian offshoots, such as the Latter-day Saints, are “also important”).

301. This is the recommendation of Nord and Haynes. NORD & HAYNES, *supra* note 3, at 47-48.

302. See Galston, *supra* note 51, at 90.

and diverse one? Should schools limit themselves to training students for participation in the American political community, or is preparation for living in the international community also appropriate?

As a general matter, although students certainly must be taught knowledge, skills, and dispositions relevant to political life in their local and regional communities, it would seem that the true challenge for public schools in modern America is to train students for participation in the broadest and most diverse possible political community. It is certainly true that students must learn how to support the American national community, because a great many of the political decisions that affect the everyday lives of citizens take place on a national scale. It would also appear that, in teaching students to live in their national community, schools should teach students about a variety of minority faiths, because it is in the clash between those faiths and the government, as well as between minority faiths and more broadly held beliefs, that many of the most difficult civic challenges involving religion arise.<sup>303</sup> The need to teach students to tolerate others, to understand how people think from within fundamentally different intellectual paradigms, and to appreciate the often deleterious effects of government action on religious beliefs and practices is more acute with respect to minority faiths than other, more dominant religious traditions.<sup>304</sup> In order to meet these civic challenges, schools must teach their students to participate in a diverse and pluralistic national political community.

The relevant political community, however, is even broader than the national community, even if that national community is understood quite broadly. In a world in which nations and peoples are linked by high-speed transportation, a highly developed international economy, global political alliances and associations, and the Internet, students must learn how to exist within and support the global political community, with its incredibly broad array of religious diversity.<sup>305</sup> This is true for several reasons. First,

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303. See, e.g., ECK, *supra* note 7, at 22-25.

304. See MACEDO, *supra* note 56, at 189 ("Understanding the special burden that public rules sometimes impose on religious or cultural minorities requires adopting the minority perspective . . .").

305. See ECK, *supra* note 7, at 24:

We cannot live in a world in which our economies and markets are global, our political awareness is global, our business relationships take us to every

the need to understand how other people think about problems from within very different intellectual and epistemological paradigms is one that applies not only to local, regional, and national problems, but also to international problems. Thinking about how domestic legislative and policy decisions, such as those bearing on free trade and military issues, will be understood by citizens of other countries and political orientations has become critical to evaluating those decisions.<sup>306</sup> Teaching students about a broad range of religious traditions will better prepare them to think about the international ramifications of domestic legislation from the perspective of other people than would teaching about a narrow range of religions. Second, as already discussed above, only by understanding the role that religion has played in the history of foreign cultures can we really understand those cultures.<sup>307</sup> Thus, to the extent that schools are teaching the history of other parts of the world, they should also teach about the religions that historically have affected those areas. Third, it is important for students to understand both how our policy and legislative choices might affect religious believers in other countries—an example might be to understand what role American free trade legislation might have on the ability of Falun Gong followers to practice their religion in China<sup>308</sup>—and how religious people around the world make their own policy and legal decisions based on their religious beliefs—an example might include understanding Islamic law,<sup>309</sup> which often seems so unfamiliar to

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continent, and the Internet connects us with colleagues half a world away and yet live on Friday, or Saturday, or Sunday with ideas of God that are essentially provincial . . . .”

306. For example, how they might be understood by groups such as Chinese Communists and Islamic leaders in Middle East nations.

307. See *supra* text accompanying notes 180-84.

308. See, e.g., Gayle M.B. Hanson, *China Shaken By Mass Meditation*, INSIGHT, Aug. 23, 1999, at 24 (describing Falun Gong movement); Bill Nichols, *Critics: China Trade Blinds U.S. to Abuses*, USA TODAY, Jan. 11, 2000, at 8A (describing how rights activists accused the Clinton administration of being more concerned with China's admission to the World Trade Organization than with its oppression of the Falun Gong movement).

309. For discussions of Islamic law in religious studies literature, see John R. Bowen, *Quran, Justice, Gender: Internal Debates in Indonesian Islamic Jurisprudence*, 38 HIST. RELIGIONS 52, 55 (1998) (analyzing processes of deliberation and debate within the Indonesian jurisprudential community); Ebrahim Moosa, *Allegory of the Rule (Hukm): Law as Simulacrum in Islam?*, 38 HIST. RELIGIONS 1, 2 (1998) (analyzing how Islamic jurists can conclude, at the end of an empirical evaluation of the facts in a given case, whether conclusions “constitute a transcendental and divine authority”). For a discussion in the legal

many Americans.<sup>310</sup> Finally, because the need to promote tolerance and mutual respect in an often intolerant and belligerent world certainly extends beyond our national borders, it also would seem to make sense to teach these virtues in the context of a broad range of religious traditions.

Applying these principles to the possible models outlined above demonstrates that, although narrow religious studies programs focusing only on the Bible, or on Christianity, or on the role that dominant religious traditions have played in American history do promote some goals consistent with civic education<sup>311</sup> (and might surely be consistent with other theories of public education), they nonetheless are far from ideal ways to prepare students to exist within and support their political community.<sup>312</sup> They are of limited use in teaching students how to look at issues from a variety of intellectual perspectives and are underinclusive with respect to teaching students the religious dimension of world history. Although they certainly can provide students with some sense of religious ritual, symbol, authority, and other concepts, students are likely to be left with a very limited knowledge of these concepts, and that knowledge will most likely be of the sort with which they are already most familiar. Such classes cannot provide the best context for teaching mutual respect and toleration, as they focus on the most prominent religions instead of those that might more broadly be met with ignorance and suspicion. Instead, schools should aim to teach a broad range of religious traditions. If they teach a class on the Bible, they should follow the Wake County school district and offer a class in world religions as well.<sup>313</sup> And they should probably follow Nord and Haynes and teach not only major religions, but also those with fewer adherents, though these need not necessarily be

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literature, see El Fadl, *supra* note 226.

310. For an excellent contemporary account, see William T. Vollmann, *Across the Divide*, THE NEW YORKER, May 15, 2000, at 58.

311. For instance, they certainly help satisfy the need to teach students about religious influences on American (or Western) history and culture so they can better understand current political and legal issues.

312. Nord and Haynes agree that schools should not require Bible classes, because they "com[e] a little too close to privileging the Jewish and Christian traditions." NORD & HAYNES, *supra* note 3, at 171 ("The ideal, once again, is to incorporate the Bible into a religion course in which it would be studied with other sacred scriptures.").

313. See *supra* text accompanying notes 134-36.

limited to those that are practiced locally, particularly if some other religious traditions might better be used to illustrate key religious concepts.

This last point leads to one final possibility. Schools and developers of educational materials might consider focusing on teaching key religious concepts (e.g., religious experience, ritual, symbolism, authority, scripture, sacred space and time) instead of focusing primarily on the content of specific religious traditions (e.g., the names of Biblical characters, or the specific teachings of the Buddha). In doing so, they could illustrate those concepts with multiple examples drawn from a wide variety of traditions, both major and minor, and even from those traditions that are obscure or no longer exist. After all, if the key idea in teaching religion for civic purposes is to teach students concepts and dispositions that will help them participate in and support their political community, it is more important that they learn those concepts and dispositions than for them to master in any breadth or depth the content of any particular traditions. Students might be able to learn just as much about religious ritual by studying Aztec sacrifice,<sup>314</sup> Swedish shamanic performances,<sup>315</sup> and cross-tradition ritual weeping<sup>316</sup> as they can from studying Christian or Jewish ritual practices. They may be able to learn as much about sacred space from studying the religious practices of ancient North American and North Asian peoples<sup>317</sup> as from studying contemporary churches and temples. Indeed, this approach actually might be less controversial than a course focusing on major traditions, because it could avoid the problem of having a nonadherent teach in depth about religious traditions to which many students in the class belong—a concern of some parents of religious children.

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314. See Michel Graulich, *Aztec Human Sacrifice as Expiation*, 39 HIST. RELIGIONS 352 (2000).

315. See GALINA LINDQUIST, SHAMANIC PERFORMANCES ON THE URBAN SCENE: NEO-SHAMANISM IN CONTEMPORARY SWEDEN (1997).

316. See Gary L. Ebersole, *The Function of Ritual Weeping Revisited: Affective Expression and Moral Discourse*, 39 HIST. RELIGIONS 211 (2000).

317. See ELIADE, *supra* note 203, at 52-54.

## IV. TEACHING ABOUT RELIGION AND THE CONSTITUTION

Thus far, this Article has focused on the benefits, from a civic perspective, of teaching students about religion in public schools. A full consideration of whether schools should begin teaching students about religion, however, also must consider the possible costs of implementing such a program. Perhaps the most worrisome cost is the threat that teaching about religion will lead to constitutional violations and litigation.<sup>318</sup> Indeed, because the line between objective presentation of religion on the one hand and promotion and inculcation of religion on the other hand is so fine, and because the impulse to inculcate students may be very strong in some people and communities, the argument certainly could be made that teaching students about religion is not worth the constitutional costs.

In this part, the Article contends that, on the contrary, the constitutional costs do not outweigh the benefits of teaching about religion. The seven subparts that follow discuss seven important constitutional problems that could arise in connection with a teaching about religion program. The Article introduces each problem, suggests some of the problem's complexities, and then explains why the problem does not defeat the case in favor of teaching about religion, either because the problem is not as great

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318. For a brief discussion of the practical implementation costs of teaching about religion, see *supra* note 248. Another important cost of teaching about religion is the displacement of other subjects from the curriculum. Because the typical public school curriculum is already either full or overloaded, requiring students to take a course or two in religion will necessarily mean that they will have to forego taking other courses. The question arises, then, whether teaching about religion is more important than teaching about other subjects, and, if so, what subjects should be displaced. A full and comprehensive answer to this question would require consideration of the importance of a range of other subjects, a project that I simply cannot complete here. Moreover, the question must be answered by specific reference to the circumstances facing each particular school or school district. In light of these difficulties, I choose to rest my case by simply pointing out as strongly as I can the advantages of teaching about religion, rather than by comparing those advantages to the advantages of teaching other subjects. I may not go so far as Warren Nord, who suggests that schools should consider teaching one year of religion and 11 years of math instead of 12 of math and no years of religion, NORD, *supra* note 3, at 212, and I will concede that in some particularly disadvantaged school districts, teaching about religion might not be advantageous enough to make the final cut. I do think, however, that in many, if not most, school districts, teaching about religion is important enough, for the reasons discussed above, to make it at least an elective and to perhaps require students to take at least one semester-long course.

as it would first appear or, more often, because schools, as well as concerned parents and students, can take steps to prevent the constitutional problems from occurring.<sup>319</sup> Although the natural inclination of lawyers, particularly those who are members of minority religious traditions or do not believe in any religion at all,<sup>320</sup> is to doubt whether litigation and legal problems can be avoided in such a delicate area, it is worth considering that the recent growth in the movement to teach about religion has met with much success and does not appear to have been accompanied by any overwhelming increase in related constitutional litigation.<sup>321</sup>

### A. *Intentional Inculcation*

The Supreme Court has long held that public schools may not indoctrinate students or otherwise intentionally attempt to inculcate religious belief in their students. As the Court observed in *Lemon v. Kurtzman*, "[t]he State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion."<sup>322</sup> In light of this prohibition, it can be argued that promoting teaching about religion is a bad idea because it might encourage certain schools and teachers to use the "teaching about religion" label as a subterfuge to inculcate students in a particular religious belief.<sup>323</sup>

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319. Even though a detailed legal analysis of these problems, focusing on the specific types of actions that would or would not violate the Establishment Clause, would be interesting and important, and is certainly something for future work, this Article does not undertake such an analysis.

320. The author, in full disclosure, is a member of both of these two groups.

321. This is not to say that issues have not arisen. For example, a recent high school field trip to see the exiled Tibetan religious leader, the Dalai Lama, gave rise to controversy from legislators who questioned the use of public tax dollars for what they thought was an essentially religious event. Bess Keller, *Dalai Lama's 'Summit' Stirs Debate for Schools*, EDUC. WEEK ON THE WEB (May 23, 2001), available at <http://www.edweek.org/ew/ewstory.cfm?slug=37summit.h20>; see also Ellen Sorokin, *Islam Course at Middle Schools in California Angers Parents*, WASH. TIMES, Jan. 16, 2002, at A1 (describing objections to course requiring students to wear Muslim robes, adopt Islamic names, and stage make-believe pilgrimages to Mecca to learn about the faith). Such controversies, however, seem minor compared to the great benefits that the reform movement has brought.

322. 403 U.S. 602, 619 (1971); see also *Mitchell v. Helms*, 530 U.S. 793, 809 (2000) (noting that "religious indoctrination . . . reasonably . . . attributed to governmental action" is unconstitutional); *Agostini v. Felton*, 521 U.S. 203, 223 (1997) ("As we have repeatedly recognized, government inculcation of religious beliefs has the impermissible effect of advancing religion.").

323. Or in the view that having a religious belief is better than having no religious belief,

Indeed, this scenario appears to have already occurred in Florida. Though many schools around the country apparently have been teaching the Bible in a constitutionally appropriate manner,<sup>324</sup> evidence uncovered in the last few years by the People for the American Way indicates that many school districts in Florida, often using a curriculum developed by an organization called the National Council on Bible Curriculum in Public Schools,<sup>325</sup> may have, in fact, unconstitutionally "taught the Bible to their students not from an objective perspective as part of a truly academic and secular course, but from a religious perspective, generally from a particular sectarian perspective of Christianity."<sup>326</sup> Moreover, it is quite possible that this type of teaching is also occurring elsewhere.

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which would also be unconstitutional.

324. For an account of how the Bible is being taught in classrooms around the country, see generally Marie Goughnour Wachlin, *The Bible: Why We Need to Teach It; How Some Do*, 87 ENG. J. 31 (1998).

325. Information about this group can be found on the People for the American Way website at [http://www.pfaw.org/issues/religious\\_freedom/fl-bible-ncbcpsfacts.html](http://www.pfaw.org/issues/religious_freedom/fl-bible-ncbcpsfacts.html) (last visited Feb. 14, 2002)); see also Yonat Shimron, *The Bible Returns: Religion's Revival in North Carolina Schools*, THE NEWS & OBSERVER, Jan. 25, 1998, at A1 (describing the group and the use of its curricula in North Carolina schools).

326. People for the American Way Foundation, *The Good Book Taught Wrong: 'Bible History' Classes in Florida's Public Schools 3* (1999) [hereinafter GOOD BOOK], available at [http://www.pfaw.org/issues/religious\\_freedom/florida-bible.pdf](http://www.pfaw.org/issues/religious_freedom/florida-bible.pdf). People for the American Way (PFAW) became involved with the Bible teaching issue in Florida in 1997, when the school board in Lee County adopted curricula for Bible history courses after a contentious year-long controversy in the community. According to PFAW, during the debate over adoption of the curricula, one committee member criticized those he thought were not enthusiastic supporters of the curricula by calling them "Jews ... and others who you wondered if they had any religion at all." *Id.* at 2. After the school board adopted the curricula, PFAW, along with a Florida law firm, sued the school district on behalf of parents who thought the curricula presented the Bible from a Christian perspective. A district court found for the plaintiffs, enjoining the district from teaching the "New Testament" curriculum. *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d 1426, 1434 (M.D. Fla. 1998) (finding "it difficult to conceive how the account of the resurrection or of miracles could be taught as secular history" and noting that "counsel for Defendants recommended the deletion of references to the resurrection, as well as many other modifications .... The Court can only hope that the School Board will implement the advice of its attorneys."). The Court also held that the school district could teach the "Old Testament" curriculum, but that plaintiffs should videotape the classes and return to the Court if they believed the classes were being taught in violation of the First Amendment. *Id.* The Court further held:

In the event that Plaintiffs continue to believe that First Amendment violations are occurring in Lee County schools, the Court urges Plaintiffs to return to this Court with tapes and transcripts which clearly and specifically identify when, where, how and why the violations occur. The Court expects Plaintiffs to remain vigilant.

The concern over promoting inculcation is certainly a significant one. Obviously, it would be a substantial argument against the teaching about religion movement if that movement were in fact remarkably increasing the amount of inculcation of religion taking place in the public schools. There are several reasons, however, why the problem is ultimately not sufficiently troublesome to defeat the case for teaching about religion. First, it is quite likely that the schools that would use the "teaching about religion" label as a subterfuge are already inculcating students in various ways.<sup>327</sup> Promoting teaching about religion, and developing guidelines and standards for appropriate instruction, can only increase awareness of the distinction between inculcation and objective presentation, and make it clearer that inculcation is unconstitutional and inappropriate.

Second, schools—as well as individual teachers, parents, children, and watchdog groups—can prevent constitutional violations through vigilance.<sup>328</sup> Steps that concerned citizens can (and should) take include holding community meetings both before and during the

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*Id.* Following this decision, the school board settled the case with the plaintiffs, agreeing to substitute a more neutral, academic curriculum for the challenged curricula. *GOOD BOOK*, *supra*, at 3. Despite the decision, PFAW's report indicates that fourteen school districts in Florida have been offering Bible classes that "appear to be violating the Constitution." *Id.* at 4. According to the report, the school districts are presenting the Bible from a Christian perspective, for example, by teaching that the "Old" Testament is predictive of the "New" Testament, an interpretation not shared by Judaism; by failing to teach books of the Bible considered to be canonical by Catholics; and by asking questions of students assuming they are Christians. *Id.* at 4-8. As an example of the latter problem, the report quotes one examination question which asks: "If you had a Jewish friend who wanted to know if Jesus might be the expectant [sic] Messiah, which book [of the Gospels] would you give him?" Another asks: "Why is it hard for a non-Christian to understand things about God?" *Id.* at 8; see also Craig Timberg, *Schools Try Out Bible History Classes*, *PORTLAND OREGONIAN*, June 11, 2000, at A8 (describing Bible classes in Virginia that are similar to the ones being taught in Florida).

327. See *supra* note 84 for sources suggesting that many school districts have never followed the holding in *Schempp* and other cases.

328. It could be argued here that since vigilance is necessary, promoting teaching about religion hurts members of minority religious traditions by placing the burden on them to police the process. Surely it is true that if schools start teaching more about religion, members of minority religions and those who believe in no religion will need to exert a certain amount of energy to protect their constitutional rights. But this is always true for minorities in nations that protect minority rights. Rights are rarely self-enforcing. Moreover, members of minority religious traditions stand to gain significant long-range advantages, in terms of tolerance and mutual respect, from encouraging schools to teach about their religious traditions. This advantage justifies whatever efforts minorities might have to take in the short term.

implementation of a teaching about religion program, developing guidelines and standards,<sup>329</sup> monitoring, and employing alternative dispute resolution procedures<sup>330</sup> to head off litigation and ensure that schools do not violate the Constitution. The experience in Florida tends to bear out these suggestions. Although the People for the American Way did file a lawsuit, which it won, against an offending district, other less adversarial methods have also been used to promote appropriate teaching. The People for the American Way report outlining problems existing in Florida districts is one example,<sup>331</sup> as are the guidelines issued in response to this report by the Florida School Commissioner regarding the proper teaching of the Bible.<sup>332</sup> On a larger scale, the National Bible Association and the First Amendment Center at Vanderbilt University recently published a booklet, partially in response to the Florida situation, called *The Bible & Public Schools: A First Amendment Guide*, to educate school districts and teachers about how to teach the Bible without violating the First Amendment.<sup>333</sup>

Finally, and perhaps most importantly, the argument from fear simply goes too far. The only prophylactic rule that could prevent the possibility of subterfuge would be a rule that counsels against

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329. See *supra* notes 118-19 and accompanying text (discussing Nord and Haynes' proposals).

330. At least one county has adopted such an alternative dispute resolution procedure. DAVIS COUNTY, UTAH, SCHOOL DISTRICT POLICY AND PROCEDURES § 19, reprinted in FINDING COMMON GROUND, *supra* note 32, at 16\*13. Although it is not clear whether such a process would be binding, in that it would prevent parents from suing before exhausting the process, it surely would be helpful, since it would offer parents a more informal, expeditious, and inexpensive method for raising concerns with the religious studies program.

331. See *supra* note 326.

332. E.g., Charles C. Haynes, *Finding Common Ground: Florida's Bible-Course Guidelines Could Be Model For All*, GANNETT NEWS SERV., Apr. 10, 2000 (noting that Florida's Commissioner of Education released new guidelines for teaching the Bible in public schools in response to the criticism there).

333. NATIONAL BIBLE ASSOCIATION & FIRST AMENDMENT CENTER, *THE BIBLE & PUBLIC SCHOOLS: A FIRST AMENDMENT GUIDE* (1999). The guide suggests that teachers use a biblical sourcebook, rather than any particular Bible, to avoid "suggest[ing] to students that [the adopted Bible] is normative, the best Bible," *id.* at 6, that they expose students to a variety of biblical interpretations, *id.*, and that they offer Bible-in-literature classes, rather than classes in the history of the Bible, since the latter "is a difficult undertaking for public schools because of the complex scholarly and religious debates about the historicity of the Bible," *id.* at 8; see also Beth J. Harpaz, *Guide Offered On Teaching About Bible in Public Schools*, THE BATON ROUGE ADVOCATE, Nov. 12, 1999, at 8A (describing the guide), available at 1999 WL 6121031.

teaching about religion under any circumstances. Such a rule would virtually guarantee that students graduate from public high schools without learning anything about religion at all, except for perhaps what they learn about their own or their parents' faiths in private religious schools in the afternoons and on the weekends. For all the reasons discussed earlier,<sup>334</sup> this is highly undesirable from a civic perspective. Vigilance, rather than ignorance, should be the response to the fear of inculcation.

### *B. Unintentional Inculcation*

Even absent an intention to promote religion, state action that has the effect of inculcating religious belief or otherwise promoting or endorsing religion is prohibited by the Establishment Clause. The oft-maligned *Lemon* test,<sup>335</sup> as modified by the Supreme Court's recent decision in *Agostini v. Felton*,<sup>336</sup> asks whether government action has a primary "effect of advancing or inhibiting religion," which in turn asks whether the action "resul[ts] in governmental indoctrination."<sup>337</sup> Likewise, the Court's prohibition on government endorsement of religion, as Justice O'Connor explained in *Wallace v. Jaffree*,<sup>338</sup> "preclude[s] government from conveying . . . a message that religion or a particular religious belief is favored or preferred,"<sup>339</sup> or as the Court put it in *County of Allegheny v. ACLU*, "prohibits government from appearing to take a position on questions of religious belief."<sup>340</sup>

Critics of encouraging schools to teach about religion might argue that schools and teachers—even if they do not intend to inculcate, promote, or endorse religion—will nonetheless tend to do so, at least occasionally, and will therefore, despite their best intentions, violate the Establishment Clause. Because violations of the Establishment Clause are inevitable, the argument might run, it would be better for schools simply to eschew teaching about religion altogether.

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334. See *supra* text accompanying notes 177-247.

335. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

336. 521 U.S. 203 (1997).

337. *Id.* at 233-34.

338. 472 U.S. 38 (1985).

339. *Id.* at 70 (O'Connor, J., concurring).

340. 492 U.S. 573, 594 (1989).

The critics here would be right that occasional violations of the Establishment Clause may occur when teachers actually present material about religion to students. Teachers are only human of course, and they come to their classes armed with their own religious beliefs, assumptions, and biases. It is certainly possible that teachers will communicate these beliefs and biases subconsciously in their presentation of material, and that this presentation will, therefore, at times have the effect of promoting or endorsing certain religious viewpoints. This is all the more likely since teachers communicate ideas and values not only through the actual material they present, but also in the manner in which they present it, including their use of "pedagogical style and classroom procedure."<sup>341</sup> Thus, for example, a Christian teacher might imply, by the language he chooses to use or even by his tone of voice or body language, that Christian beliefs are superior to other religious beliefs. Such an unintentional message would appear to violate the Supreme Court's Establishment Clause jurisprudence and could give rise to controversy or litigation.

Again, this critique is cause for concern, but not cause for abandoning the religious studies project altogether. For one thing, the costs do not outweigh the benefits. Occasional, and most likely relatively minimal subconscious violations of the Establishment Clause are troubling, but not nearly as troubling as the current system (or at least the system as it existed five years ago), which leaves children largely ignorant of the great diversity and importance of religious belief. Second, as with the case of intentional inculcation, schools and concerned citizens can take several steps to ensure that subconscious promotion of religion is kept to a minimum. Paying serious attention to teacher training is one obvious step that schools can take. Conducting community meetings both before and during the program, and keeping communication channels open among students, parents, and teachers can help bring to light violations or concerns and therefore prevent future problems. Finally, teachers can use primary sources and the technique of attribution ("Buddhists believe X," "Christians believe Y") to let religious believers speak for themselves and therefore

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341. Ingber, *supra* note 248, at 778.

minimize the possibility that the teachers will subconsciously present their own views on religion.<sup>342</sup>

### C. Coercion

The Supreme Court has unanimously held that schools may not coerce students into participating in a religious ritual or practice, such as prayer.<sup>343</sup> Moreover, in *Lee v. Weisman*, four Justices agreed with Justice Kennedy's position that the Establishment Clause prohibits subtle forms of psychological coercion,<sup>344</sup> such as the type of coercion that can arise from peer pressure in school classrooms, as well as more traditional force-based forms of coercion.<sup>345</sup> Thus, the Court in *Weisman*, citing *Schempp*, *Edwards v. Aguillard*, and other cases, observed that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,"<sup>346</sup> and therefore held that a public school could not allow clergy members to offer prayers at its official school graduation ceremony.<sup>347</sup> The Court recently reaffirmed this prohibition on subtle forms of coercion in *Santa Fe Independent School District v. Doe*, which invalidated a school policy allowing a student to deliver a prayer at the beginning of a football game.<sup>348</sup> Quoting from *Weisman*, the Court reiterated that "the government may no more use social pressure to enforce orthodoxy than it may use more direct means."<sup>349</sup>

Although the Court has never addressed any issue involving whether certain forms of teaching about religion might shade into prohibited coercion, schools wishing to avoid constitutional litigation

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342. See FINDING COMMON GROUND, *supra* note 32, at 7\*5.

343. See *Lee v. Weisman*, 505 U.S. 577, 642 (1992) (Scalia, J., dissenting) (agreeing with the majority's statement that "the Establishment Clause 'guarantees that government may not coerce anyone to support or participate in religion or its exercise'").

344. *Id.* at 592-98.

345. Justice Scalia's dissent, joined by three other justices, took the position that the Establishment Clause prohibits only this latter type of coercion. *Id.* at 642 ("I see no warrant for expanding the concept of coercion beyond acts backed by threat of penalty—a brand of coercion that, happily, is readily discernible to those of us who have made a career of reading the disciples of Blackstone rather than of Freud.").

346. *Id.* at 592.

347. *Id.* at 599.

348. 530 U.S. 290, 312 (2000).

349. *Id.*

should be careful not to place students in a position that might make them feel subtle psychological pressure to participate in a religious ritual or to put themselves too closely into the mindset of an adherent of a particular religion. For example, one possible tool for teaching students about the diversity of sacred spaces might be to take them on a field trip to see, for example, a Buddhist temple.<sup>350</sup> It would be inappropriate, and perhaps unconstitutional under *Weisman* and *Santa Fe*, however, for a teacher to suggest in any way that students should participate in a ritual, such as prayer or incense burning, while they visited the temple. Instead, to dispel any coercive pressure, the teacher should probably make it explicit that students do not have to take part in any such ritual.<sup>351</sup>

Likewise, it also probably would be inappropriate, and possibly unconstitutional under some circumstances, for a teacher to ask a student to assume the role of an adherent of a particular religious tradition and to explain his or her views—on prayer, on the divine, on a controversial public issue, etc.—in the first person as a member of that tradition.<sup>352</sup> In other words, for example, a teacher should not ask a non-Christian student to pretend to be a Christian and then to explain his or her views, as a Christian, on the relationship between good and evil. Although such an exercise would not in fact coerce a student into becoming a Christian, the exercise might come dangerously close to making the student feel pressure to be at least something approaching a Christian for the duration of the exercise.<sup>353</sup> Instead, it would be preferable for the teacher to ask the student what a Christian might think about the relationship between good and evil.

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350. For a rich discussion of the massive number of Buddhist temples in America, see ECK, *supra* note 7, at 148-51, 168-70.

351. Even this might not be enough, if the situation was similar to the situations at issue in the school prayer cases, in which the majority of students would voluntarily participate in the prayer. If the majority of the students visiting the temple, for example, were Buddhist, and their participation in a ritual at the temple would make the minority students feel pressure to also participate in the ritual, then the teacher might have to take stronger steps to dispel any coercion, or forego the trip to that particular temple altogether.

352. This would be particularly true if the exercise was an extended one or the role the student was asked to assume was one of an adherent of a tradition of which the majority of the class were members.

353. It is for this reason that the course described in Sorokin, *supra* note 321, is constitutionally problematic.

Although the line between objective presentation and coercion might be a fine one at certain points, the possibility that something might happen in the classroom that would constitute an inappropriate or even unconstitutional coercion of religious belief or practice is not substantial enough to cause schools to abandon the teaching about religion project. It should be relatively easy for schools, thinking ahead and using quality materials, to avoid situations that could violate constitutional rights or instigate litigation. And those schools that choose not to take such steps are probably the type of schools that would engage in religious coercion even without the protection of the "teaching about religion" label.

*D. Endorsement Through Selection of What Traditions to Teach*

The Supreme Court dicta described in Part I makes it fairly clear that schools may choose to teach about any subset of religion, even if that subset is quite small.<sup>354</sup> For example, schools may teach about only Christianity or only the Bible and may ignore the rest of the rich panorama of religious life and history if they wish. Although such a limited course would not bring the civic benefits that a fuller religious studies program offers,<sup>355</sup> the Court is right to sanction such a program, because teaching about even a limited slice of religion has important secular civic benefits and can be done for secular reasons. As one lower court concluded with respect to the Bible, after surveying the Bible's importance for understanding Western art, language, popular culture, history, and law, "it becomes obvious that a basic background in the Bible is essential to fully appreciate and understand both Western culture and current events."<sup>356</sup>

But just as a school may not take actions that have both the purpose and effect of promoting religion (inculcation),<sup>357</sup> and may not take actions that have the effect but not the intent of promoting religion (unintentional inculcation),<sup>358</sup> so too may they not, under

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354. See *supra* text accompanying notes 59-67 (describing Supreme Court endorsement of, among other things, teaching about the Bible in public schools).

355. See *supra* text accompanying notes 303-13.

356. *Crockett v. Sorenson*, 568 F. Supp. 1422, 1429 (W.D. Va. 1983).

357. See *supra* text accompanying notes 322-23.

358. See *supra* text accompanying notes 335-40.

current Supreme Court doctrine, take actions that do not have an actual secular purpose, or have the purpose of endorsing religion, even if those actions do not actually promote religion.<sup>359</sup> The rationale for such a rule is that the "government [may not] appea[r] to take a position on questions of religious belief or '[make] adherence to a religion relevant in any way to a person's standing in the political community.'"<sup>360</sup> Thus, for example, it would appear that a school that required students to take calculus solely because it thought such a course would bring students closer to God might run into trouble even if none of the students felt any influence on their religious beliefs as a result of taking the course. This would be particularly true if the school reached its decision in a way that sent a message that religious reasons are uniquely and predominantly important to how the school makes curricular decisions, thus signaling to those who are not religious that they are not equal members of the school community.<sup>361</sup>

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359. See *Mitchell v. Helms*, 530 U.S. 793, 807 (2000) (government action must have "a secular purpose"); *County of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989) ("In recent years, we have paid particularly close attention to whether the challenged governmental practice has the purpose ... of 'endorsing' religion, a concern that has long had a place in our Establishment Clause jurisprudence."); *Edwards v. Aguillard*, 482 U.S. 578, 588-94 (1987) (finding that statute's purpose was to endorse a religious doctrine and to advance a particular religious belief). Obviously, there are quite difficult issues involved in how a court would determine whether a school possessed the forbidden intent. For one thing, it is not clear how to reconcile the Court's *Lemon* test standard requiring only some secular purpose and the Court's endorsement standard forbidding the government from intending to endorse religion. Does a school that intends to endorse a religious belief but also has a strong secular reason for taking an action violate the Establishment Clause? It is not entirely clear. Nor is it clear exactly what kinds of evidence would establish that the government intended to endorse religion. Moreover, the question of how a court should go about determining the intent of the government raises many familiar problems. See *Edwards v. Aguillard*, 482 U.S. 578, 635-40 (1987) (Scalia, J., dissenting).

360. *Allegheny*, 492 U.S. at 594 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring)).

361. CARTER, *supra* note 1, at 162 in which he states:

If my children attended a public school that decided, for purely religious reasons, to begin offering a modern calculus course not previously part of the curriculum, I would be the first to cry "Hallelujah!" It would not matter one whit that the calculus course was consistent with some religion's holy book—and I doubt that anybody would sue.

Carter's point is well taken, but two additional points are also relevant. First, it would present a different situation if the adoption of the calculus course was accompanied by speeches and written documents proclaiming that the school was adding the course because of its belief in a particular religion. This would send a message of disapproval to adherents of other religions or no religion, a message that might violate the Court's no-endorsement principle. Second, as

In light of this principle, schools should not decide to teach about a particular tradition in order to promote that tradition or to make their students better adherents of the tradition or to promote the values of the tradition. It is certainly conceivable that a community overwhelmingly of one religious faith might be tempted to teach about religion for one of these purposes. But even if the decision makers have these purposes in mind, they should at least take the simple step of articulating secular reasons for teaching about religion and should refrain from making oral or written statements indicating that their intent is to promote religion. In fact, they should probably even make oral and written statements to the contrary. Then, even if the decision makers were in fact motivated by religious purposes, they would not have sent a message of exclusion to nonbelievers and therefore would not likely encourage a constitutional attack.<sup>362</sup> In light of how easy it would be for a school to take such steps, it is unlikely that the forbidden purpose problem will be much of an obstacle to implementing a religious studies course. Nor would it be much of a problem by itself—absent any actual statements or other evidence that might make nonadherents feel estranged—if school decision makers silently choose to teach about religion for religious purposes—the secular and civic benefits would be the same, and it is not clear what the harms would be. Nonetheless, to gain the active support of the entire community, it would be preferable if decision makers realized the many secular, civic benefits of teaching about religion and structured their curriculum to achieve those benefits. As in the case of inculcation, concerned parents and students can insist on inclusive procedures and open communication to help ensure that schools teach about religion for purposes that are attractive to all citizens of the community.

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a practical matter, resting a decision to add a course on religious grounds is likely to foster less-enthusiastic support than resting the decision on more broadly applicable grounds, for the obvious reason that it will be hard for nonadherents to get excited about the religious reason. As spelled out in the text, these two reasons counsel in favor of resting a decision to teach about religion on secular, civic grounds.

362. These steps would, of course, not guarantee that the program would not be challenged or invalidated, *see Edwards*, 482 U.S. at 587-89 (looking behind articulated purpose to find illegal one), but they would surely help, particularly if there are not indications in the legislative history that the purpose was, in fact, an illicit one, *cf. id.* at 592-93 (analyzing statements of law's sponsor).

*E. Endorsement Through Selective Presentation of a Shared Text or Tradition with Multiple Schools*

Courts have invalidated some Bible studies classes for presenting the Christian view of the Bible as normative. For example, two courts have held that it is unconstitutional for schools to teach the Christian interpretation of the resurrection of Jesus in the New Testament as normative.<sup>363</sup> Likewise, the People for the American Way report on Bible teaching in Florida<sup>364</sup> reports that many school districts are violating the Constitution by framing and teaching their Bible history classes from Christian perspectives. For example, the report complains of classes using only Christian terms to describe the Bible ("Old Testament" rather than "Hebrew Bible" or "Hebrew Scriptures"), putting forward Christian interpretations of the story of Adam and Eve, and presenting the Old Testament as predictive of the New Testament.<sup>365</sup> In all of these cases, even if it is not articulated precisely in these terms, the concern appears to be that the underlying majority Protestant community<sup>366</sup> is selectively presenting a text shared by multiple religious traditions (Protestants, Catholics, Jews, Muslims) to promote its own view of the meaning of the text.

At first glance, this analysis might seem to raise the specter that a school could easily violate the Constitution when teaching about any shared text or tradition with multiple sects. After all, many religious traditions have numerous sects or divisions, and many of the distinctions among them will be difficult to identify and explain, particularly for traditions not familiar to western teachers and students. Would a mistaken characterization of any shared text or tradition, implicitly presenting one side of a highly contested issue,

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363. *Gibson v. Lee County Sch. Bd.*, 1 F. Supp. 2d 1426, 1434 (M.D. Fla. 1998); *Wiley v. Franklin*, 474 F. Supp. 525, 531 (E.D. Tenn. 1979). It is not entirely clear from these decisions what the courts found problematic. It would not seem to be a problem for a school to teach that Christians believe that Jesus's resurrection was evidence that Jesus was the son of God. It appears from the cases that the schools must have been teaching more than this, perhaps that there is only one interpretation—the Christian one—of these events.

364. See *supra* text accompanying notes 324-26.

365. GOOD BOOK, *supra* note 326, at 4-6.

366. The People for the American Way also note that the Bible is presented from a specifically Protestant perspective, excluding, for example, books considered canonical by Catholics but not by Protestants. *Id.* at 6.

necessarily present constitutional problems? For example, would it be unconstitutional for a teacher to teach that Confucians generally believe human nature is good, when one of Confucius's great followers Mencius believed this but his other most significant follower, Hsün-tzu, did not?<sup>367</sup> Would it be unconstitutional to teach that Buddhists believe that nirvana and samsara are different, when in fact at least some Mahayana Buddhists (as opposed to Hinayana Buddhists) believe they are the same?<sup>368</sup>

Fortunately, it is very unlikely that a court would find such a reductive presentation unconstitutional, at least in communities that are not overwhelmingly constituted by Mencian Confucians or Hinayana Buddhists.<sup>369</sup> The two critical facts that seem to be driving the Bible cases will generally be missing from such situations: (1) there will likely be no intent to promote a particular side of the shared text or tradition, and (2) the underlying community will not likely be made up of the favored school, and will therefore not stand to benefit religiously from the overly simplistic presentation. Thus the underlying concern in the Bible cases—that one sect should not be allowed to advance its contested view of a shared text or tradition in a public school—is absent from the Confucian and Buddhist examples. There is certainly a problem with a school overly simplifying complex religious traditions, but the problem is educational rather than constitutional, and the solution is likely to be seen as better materials and training, not litigation.

### *F. Disapproval*

It is clear that schools may teach facts and values that are at odds with some religious beliefs. For example, schools can teach that racism is immoral, even though some religions might hold racist

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367. A.C. GRAHAM, *DISPUTERS OF THE TAO: PHILOSOPHICAL ARGUMENT IN ANCIENT CHINA* 244-51 (1989) (describing differences between Hsün-tzu and Mencius).

368. Frank E. Reynolds & Jason A. Carbine, *General Introduction*, in *THE LIFE OF BUDDHISM* 9 (Frank E. Reynolds & Jason A. Carbine eds., 2000) (noting the "Mahayana doctrinal emphasis that samsara and nirvana were not ontologically separate realities").

369. A problem might also arise if the teacher was a proponent of one of those schools and there was evidence that he or she intended to promote his or her version of the religion by presenting it selectively. It is by no means impossible that one of these situations could arise. As Diana Eck notes in her recent book, the American religious landscape has become enormously pluralistic. See ECK, *supra* note 7, at 1-25.

views. Schools can teach about the theory of evolution, even though it contradicts the beliefs of many religious Americans.<sup>370</sup> And, as Stephen Carter has suggested, no objective presentation of religion would be complete without some mention of the "negative side" of religion,<sup>371</sup> such as wars, torture, slavery, and other evils committed in religion's name. Even though teaching these facts and values might offend some religious believers, such teaching does not violate the Establishment Clause because it does not promote or endorse a religious belief.<sup>372</sup>

Nonetheless, there may be some limits on what types of negative messages schools can communicate about a particular religion or religion generally. The Supreme Court's endorsement test prohibits the government not only from expressing endorsement of religion, but also from expressing disapproval of religion. As Justice O'Connor put it in a relatively recent case: "[E]very government practice must be judged ... to determine whether it constitutes an endorsement or disapproval of religion."<sup>373</sup> There has been little examination of this part of the endorsement test by either courts or commentators,<sup>374</sup> and it is therefore unclear how far the disapproval prohibition reaches. The Court certainly has never applied it to prohibit schools from teaching subjects that offend religious believers, and it appears unlikely that it ever would apply it in such

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370. For a discussion of the history of the creationism-evolution debate in America, see Jay D. Wexler, Note, *Of Pandas, People, and the First Amendment: The Constitutionality of Teaching Intelligent Design in the Public Schools*, 49 STAN. L. REV. 439, 444-51 (1997).

371. See CARTER, *supra* note 1, at 207.

372. See *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521-22 (9th Cir. 1994) (rejecting claim that school violated Establishment Clause by requiring teacher to teach evolution or secular humanism). Objections to teaching such topics are treated, if at all, under the Free Exercise Clause, which entitles religious objectors, in some situations, to opt out of generally applicable laws and practices. For a discussion of the Free Exercise Clause in this context, see *infra* text accompanying notes 375-88.

373. *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 778 (1995) (O'Connor, J., concurring) (quoting *Lynch v. Donnelly*, 465 U.S. at 694 (O'Connor, J., concurring)); see also *Board of Educ. v. Mergens*, 496 U.S. 226, 249 (1990) ("Because the Act on its face grants equal access to both secular and religious speech, we think it clear that the Act's purpose was not to 'endorse or disapprove of religion.'").

374. For one brief discussion, see Eugene Volokh, *Equal Treatment is Not Establishment*, 13 NOTRE DAME J.L. ETHICS & PUB. POL'Y 341, 368-70 (1999). Volokh argues that the disapproval formulation, as well as other Court expressions of evenhandedness, prevents the government from discriminating against religion in operating an open educational subsidy program. See also Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 151-53 (1992).

a fashion. It is quite possible, however, that a court would find that a direct criticism of some aspect of religious belief or practice does violate the prohibition on government disapproval of religion. For example, if in a class on evolution a teacher said that the scientific evidence proved that God did not exist or that the Bible was wrong, a court might hold the teacher's actions unconstitutional. Likewise, it might very well violate the Establishment Clause for a teacher to disparage a particular religious belief or text or practice during a religious studies class by, for example, saying that Buddhist views on reincarnation are ridiculous or intimating through body language that the Hindu God Ganesha is absurd because he has the head of an elephant.<sup>375</sup>

Once schools recognize that such disapproving statements and actions might violate the Constitution, it is unlikely that they will occur with any frequency. (One would hope that it does not take the Constitution to reach this result.) Although there may be close cases—which are unlikely, in any event, to give rise to much litigation, because it is unlikely they will be found by courts to be unconstitutional—schools can ensure that teachers do not even come close to the disapproval line through the use of good materials, training, and guidelines. If they so desire, teachers can still introduce criticisms of religion into class discussions by putting them in the mouths of those intellectual figures, for example Freud or Marx, who have espoused them. This use of attribution—for example: “Marx thinks religion is the opiate of the masses. How might a Zoroastrian respond to Marx’s criticisms?”—takes the disapproval out of the mouth of the government, and thus the reach of the First Amendment, while still allowing the teacher to use the criticisms to develop students’ analytical thinking skills.

### *G. Incidental Burden on Religious Believers*

One important critique of teaching about religion that this Article has not yet discussed and that dovetails with an important constitutional issue is the religious critique of the religious studies project. Some deeply religious people object to the idea of teaching religion objectively in the public schools because such an approach

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375. On the worship of Ganesha in the United States, see ECK, *supra* note 7, at 120-23.

to religion encourages a dangerous attitude of relativism<sup>376</sup> and devalues religion by making it seem like choosing a religion is like choosing a product, a "styl[e] of dress,"<sup>377</sup> or any other good or service up for sale in a market economy. This critique is certainly a valid one from the perspective of those who do not believe that religious beliefs are, in Michael Sandel's terms, the "product of free and voluntary choice by the faithful."<sup>378</sup> As Nomi Stolzenberg puts it, "to its opponents, the objective study of religion, and objective approaches to knowledge in general, *are* quintessentially secular humanist activities."<sup>379</sup> It is bad enough, these critics might claim, that the public schools systematically imply—through their science curriculum, lack of prayer, and other means—that religion is unimportant, but to actually teach students that religion is something one chooses, and that there are many viable religious choices, is simply intolerable.

Although this is an important critique, it fails to defeat the case for teaching about religion for civic purposes for several reasons. First, it is unclear whether the harm suffered by those who would object to such teaching would outweigh the significant societal benefits, described earlier, that would be gained if students were to learn about religion. This is particularly true given that, according to those actually working with real communities to implement such teaching about religion programs, the number of religious objectors is in fact quite small,<sup>380</sup> and school leaders can often accommodate the concerns of those objectors by making sure that the process through which teaching about religion programs are implemented is inclusive, deliberative, and civil in nature.<sup>381</sup> Second, the religious

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376. *E.g.*, Stolzenberg, *supra* note 151, at 665 ("Indeed, it seems plausible that continued exposure to a curriculum denying certainty about the truth and adopting an objective, neutral perspective might lead children away from the fundamentalist faith or at least might make them self-conscious about it.").

377. MACEDO, *supra* note 56, at 70.

378. SANDEL, *supra* note 198, at 63-64 (1996) (emphasis omitted).

379. Stolzenberg, *supra* note 152, at 614.

380. FINDING COMMON GROUND, *supra* note 32, at 1\*6 (indicating that although "there are extreme voices in the debate, we know from experience that most teachers, parents, and administrators, and school board members are committed to a principled dialogue, and to fair, open public schools. This includes the vast majority of parents often labeled as members of the 'religious right.'").

381. *See id.*

If the resulting agreements and policies are to inspire broad support in the

objection to teaching about religion is adequately countered by the fact that the current curriculum, through its silence on religious matters, is widely viewed by many—including conservative Christians—as hostile to religion. Teaching about religion, in other words, despite its inherently secular qualities, is viewed by many as a remedy for the current marginalization of religion in public life and is, on balance, highly supportive of religious ways of life.<sup>382</sup> Third, teachers and schools can take steps, through disclaimers and other means, to make religious parents feel more comfortable with religious studies classes.

But teaching about religion in the face of opposition from religious believers raises the constitutional cost issue by inviting religious believers to bring Free Exercise lawsuits seeking judicially mandated exemptions from religious studies classes. As a matter of Free Exercise doctrine, it is unlikely that such lawsuits would succeed. The one circuit court to consider a similar claim held that there was no Free Exercise right to an exemption from a class teaching tolerance, on grounds that such a class did not impose a burden on the free exercise of religion.<sup>383</sup> Although the Supreme Court's *Smith*

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community, all stakeholders must be fully represented in the discussion. When reaching out to critics of the schools, particularly conservative religious groups, school leaders must look beyond stereotypes to find those representatives most interested in dialogue and consensus. Given the lack of civility in the public square of America today, it is not easy to build bridges of understanding and trust, but it can be done.

*Id.*; see also Felsenthal, *supra* note 129, at A1 ("In district after district, Mr. Haynes has won praise for defusing hostile rhetoric and designing religion policies endorsed by people on both ends of the political spectrum . . . . Even as extremists continue to use the issue as a social wedge, the fight is winding down in most of the country.").

382. NORD & HAYNES, *supra* note 3, at 2 ("[M]any religious conservatives are outraged by [the fact that the curriculum all but ignores religion]; they take the absence of religion to imply a hostility to religion."); *id.* at 16 ("The greater risk, however, is to ignore the distrust and discontent that have led many parents to conclude, fairly or unfairly, that public schools are hostile to their faith and values."); *id.* at 25 ("We are convinced that the current curriculum does inhibit religion by marginalizing religion in our intellectual and cultural life, (implicitly) conveying the sense that religion is irrelevant in the search for truth in the various domains of the curriculum . . . ."); NORD, *supra* note 3, at 8 ("What liberals seldom acknowledge is that by ignoring religion, and by promoting secular views hostile to religion, public education in effect takes sides against religion.").

383. *E.g.*, *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987) (denying Free Exercise exemption claims in connection with reading course designed to teach tolerance). The scholarly commentary on whether schools should be required to grant exemptions to objecting students, whether as a matter of constitutional law or political (or educational) theory, is substantial. For a sampling of this literature, see Shelley Burt,

decision limiting Free Exercise protections contains an exception for claims involving both a Free Exercise right and the right of parents to direct the education of their children,<sup>384</sup> it is far from clear that the Court would find that a religious studies class either imposed a burden on religious belief or that, if it did impose a burden, the burden was not justified by a compelling state interest.<sup>385</sup>

Even so, schools should be very wary of requiring students to take a class that they (or their parents) strenuously object to taking on religious grounds. Not only will such a requirement encourage litigation, however unsuccessful it may prove to be, but more importantly it will cause dissension in the community and undercut support for the program as a whole. Instead, schools should consider designing the classes as electives which students must opt into,<sup>386</sup> or as mandatory classes with an opt-out provision.<sup>387</sup> Although

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*Religious Parents, Secular Schools: A Liberal Defense of an Illiberal Education*, 56 REV. POLITICS 51, 53 (1993) ("I argue in this article for a strong principle of parental deference under which most parental objections to particular aspects of the public school curriculum are both respected and accommodated."); Stephen L. Carter, *Parents, Religion, and Schools: Reflections on Pierce, 70 Years Later*, 27 SETON HALL L. REV. 1194, 1224 (1997) (indicating that the "effort to make sure that all children are educated in the same way is just as totalitarian now as it was in the nineteenth century when Protestant nativists were doing it. It is simply a means of limiting the range of diversity and, thus, the range of possible dissent."); Dent, *supra* note 22, at 880-905; William A. Galston, *Two Concepts of Liberalism*, 105 ETHICS 516, 516 (1995) ("This essay may be understood as an effort to say why I believe the Yoder holding was philosophically correct and to explore the wider implications of this judgment for the theory and practice of contemporary liberal democratic citizenship."); Gilles, *supra* note 292, at 938 ("There are compelling reasons to give parents not only the right to transmit their values to their children, but also the right to reject schooling that promotes values contrary to their own."); Gutmann, *supra* note 153, at 565-70 (defending decision in *Mozert*); Mary-Michelle Upson Hirschhoff, *Parents and the Public School Curriculum: Is There a Right to Have One's Child Excused From Objectionable Instruction?*, 50 S. CAL. L. REV. 871 (1977); Macedo, *supra* note 251, at 485 ("As a matter of basic principle at least, we have good reason to refuse the *Mozert* families' request to opt out."); Stolzenberg, *supra* note 152 (analyzing *Mozert* from perspective of fundamentalist families).

384. *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 881 (1990).

385. On this last point, see *Mozert*, 827 F.2d at 1071 (Kennedy, J., concurring) (finding that even if there was a burden on free exercise rights, it was justified by the compelling interest in teaching civility and other citizenship skills).

386. NORD & HAYNES, *supra* note 3, at 23 ("A number of schools have added another dimension to their excusal policies—one that is popular with many parents: opt in.").

387. *Id.* at 22 (arguing that school officials should take religious requests for accommodation seriously). It appears that many school districts do include either opt-in or opt-out provisions in their guidelines for teaching about religion. See, e.g., DAVIS COUNTY, UTAH, SCHOOL DISTRICT POLICY AND PROCEDURES § 16.7, reprinted in FINDING COMMON GROUND, *supra* note 32, at 16\*11 ("A request for waiver shall not be denied unless school

designing the classes in such a way will undercut to some—probably limited<sup>388</sup>—extent the advantages of teaching about religion, by allowing some subgroup of students to opt-out of the class, it will better ensure that the program is actually implemented, will still yield substantial civic benefits for those who do take the class, and will substantially decrease the risk of constitutional litigation.<sup>389</sup> It will also demonstrate that schools recognize the importance of religious belief and religious tolerance, which, after all, is the very point of teaching about religion in the first place.

### CONCLUSION

In her significant recent work, *Paying the Words Extra: Religious Discourse in the Supreme Court of the United States*, lawyer and now Dean of Students at the University of Chicago Divinity School Winnifred Fallers Sullivan argues that

the encounter of American law and American religion will be more successful if American lawyers, judges, and legal scholars enrich their discourse about American religion by participating in and contributing to a larger conversation about the nature of human religion and of the relationship of religion and culture and society.<sup>390</sup>

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officials determine that requiring the participation of the student is the least restrictive means necessary to achieve a compelling school interest.”); RAMONA, CALIFORNIA UNIFIED SCHOOL DISTRICT POLICY, *reprinted in* FINDING COMMON GROUND, *supra* note 32, at 16\*27 (“Students will be excused, when feasible from lessons/activities which their parents find objectionable for religious reasons.”); ST. LOUIS PARK PUBLIC SCHOOLS, MINNEAPOLIS, MINNESOTA GUIDELINES § 4(A)(1), *reprinted in* FINDING COMMON GROUND, *supra* note 32, at 16\*36 (providing that courses in the history, sociology, and literature of religions must be elective); WICOMICO COUNTY BOARD OF EDUCATION, SALISBURY, MARYLAND GUIDELINES § 4(A), *reprinted in* FINDING COMMON GROUND, *supra* note 32, at 16\*24 (“[S]chool administrators and teachers will allow students to be excused, where it is feasible, from activities that are contrary to religious beliefs.”).

388. Most objectors, it appears, can be convinced that the course is a good idea. *See supra* text accompanying notes 378-80.

389. It is quite likely that the opt out would survive constitutional scrutiny, particularly if it is broadly worded. *See, e.g.,* Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 334-37 (1987) (discussing constitutional standard for accommodating religious beliefs). It is also hard to see who would bring a lawsuit challenging an opt-out procedure. Offering the course as an elective, as opposed to an opt-out, will eliminate any chance of litigation.

390. SULLIVAN, *supra* note 201, at 45.

What Sullivan counsels for lawyers, judges, and legal scholars rings equally true for all citizens. In our religiously clothed public square, a great many Americans rely on their deeply held religious beliefs when they talk about and decide how they feel about nearly every major issue of public importance, including issues involving law. When government (at all levels, from the local to the federal) enacts laws and takes other actions to deal with these public issues, it inevitably affects religion in a variety of ways. The Supreme Court has said that it is largely the citizen's responsibility, not the Court's responsibility, to evaluate whether government has made the right choices when its actions affect religion. If Americans are going to understand what is happening in their public life—to understand why our fellow citizens make the decisions they do, and to understand the true impact of our government's decisions—then all citizens, not just those trained in law, must enrich their understanding of religion and its relationship with society and the state. This Article has argued that Supreme Court opinions are right when they say that public schools should teach students about religion, and it has offered a sustained theoretical defense of that position. Schools should teach about religion to prepare students for citizenship in a nation and in a world suffused with religion. The Constitution places some limits on how public schools should go about this important project, but, as various members of the Supreme Court have repeatedly and rightly recognized, it by no means stands in the way.