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Religion, the First Amendment, and Public Education

*Warren A. Nord**

I. INTRODUCTION

It is often assumed that any proponent of religion in public schools must have a religious, and most likely a conservative religious, agenda. There are, however, good secular, liberal reasons for requiring the study of religion in public schools.

A liberal education must avoid indoctrination. We indoctrinate when we systematically avoid giving students the intellectual and imaginative resources to make sense of competing interpretations of contested matters. As this article will show, a good deal of what we teach students—about history, nature, morality, and human nature—is religiously contested, yet students are taught virtually nothing about religious interpretations of these contested matters. In this respect, public education is strikingly illiberal; public education indoctrinates students against religion. A truly liberal education requires the study of religion.

I will have more to say about the illiberality of public education as we proceed, but my chief focus is to argue that a liberal or “separationist” reading of the Establishment Clause leads to a similar conclusion. The Establishment Clause requires the state and its agents, such as public schools and teachers, to be neutral regarding religion. They

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must neither promote nor inhibit it. But just as public education is not liberal, so too it is not neutral.

Public education inhibits religion. Thus, it would seem that there are Constitutional reasons for requiring that public education right the balance and, through teaching students about religious as well as secular ways of understanding the world, restore neutrality to the schools. I will focus my remarks on public school textbooks as a way of evaluating the claim that public schooling is hostile to religion.¹

II. HOSTILITY TOWARDS RELIGION IN TEXTBOOKS

A. *Absence of Religion*

Several years ago I reviewed thirty high school textbooks approved for use in North Carolina schools in order to assess their treatment of religion.² I read the nine most commonly used American and world history textbooks, as well as all of the approved economics, home economics, and biology texts.³

1 Obviously there is much to public education besides textbooks. But while good teachers will not be limited by them, all too many teachers do little more than "teach the text." So the influence of textbooks is nonetheless pervasive.

2 See Warren A. Nord, *The Place of Religion in the World of Public School Textbooks*, 54 EDUC. F. 247 (1990).

3 The world histories were: A HISTORY OF THE WORLD (Houghton-Mifflin 1988); PEOPLE AND NATIONS (Harcourt Brace Jovanovich 1987); THE PAGEANT OF WORLD HISTORY (Prentice-Hall 1986); WORLD HISTORY: PATTERNS OF CIVILIZATION (Prentice-Hall 1988). The American histories were: LAND OF PROMISE: A HISTORY OF THE U.S. (Scott, Foresman 1987); TRIUMPH OF THE AMERICAN NATION (Harcourt Brace Jovanovich, 1986); THE UNITED STATES: A HISTORY OF THE REPUBLIC (Prentice-Hall 1986); UNITED STATES HISTORY (Holt, Rinehart & Winston 1988); OUR LAND, OUR TIME (Holt, Rinehart & Wilson 1987). The economics texts were: ECONOMICS FOR DECISION MAKING (D.C. Heath 1988); UNDERSTANDING ECONOMICS (Random House 1986); ECONOMICS: PRINCIPLES AND PRACTICES (Charles E. Merrill 1988); HENRY BILLINGS, ECONOMICS: ITS YOUR BUSINESS (1986); MCDUGAL, LITTELL ECONOMICS (McDougal, Littell 1988); SCRIBNER ECONOMICS (Scribner Educational Publishers 1988). The home economics texts were: CONTEMPORARY LIVING (Goodheart 1987); CREATIVE LIVING (Glencoe Publishing 1985); FAMILY LIVING (Prentice-Hall 1985); MARRIED AND SINGLE LIFE (Glencoe Publishing 1984); RESOURCES FOR LIVING (EMC Publishing 1987); SUCCEEDING ON YOUR OWN: GOALS—RESOURCES—DECISIONS (Harcourt Brace Jovanovich 1986); TEEN GUIDE (McGraw-Hill 1985); THE BUSINESS OF LIVING (South-Western Publishing 1986). The biology books were: BIOLOGY: AN EVERYDAY EXPERIENCE (Charles E. Merrill 1985); HEALTH BIOLOGY (D.C. Heath 1985); MACMILLAN BIOLOGY (Macmillan 1985); MODERN BIOLOGY (Holt, Reinhart & Winston 1985); SCOTT, FORESMAN BIOLOGY (Scott, Foresman 1985).

My study confirmed what a half-dozen other studies of history texts had shown—the texts essentially ignore religion.⁴ It is true the texts have something to say about religion in ancient history—though even here any respectable scholar of religious history would find their accounts wanting. However, the texts had very little to say about the role of religion in modern history except in a very few cases where religion has had an overwhelming influence on political events.⁵ On the whole, however, the texts are conspicuously silent on the subject of religion.

For example, the world histories ignore Vatican II, arguably the most significant religious event of the past several centuries.⁶ While the American histories often discuss the split between the Republican and Bull-Moose parties in the 1912 election, none mentions the split between Protestant liberals and fundamentalists going on at the same time, a development that is much more significant. In fact, the American histories devote, on average, about one percent of their space to matters having anything at all to do with religion after 1800.

Economics, home economics, and biology texts largely ignore religion. The six economics books I reviewed, totalling over 2,600 pages of text, had a total of one and one-half pages which dealt with religion, and all of the references were historical—the most recent being to the relationship of Calvinism to the rise of the Middle Class in the Sixteenth Century.⁷ While some of the home economics texts include a throw-away line about consulting a clergyman in times of trouble, they routinely manage to discuss human nature, values, decision-making, abortion, sexuality and the family

4 See generally ASS'N FOR SUPERVISION AND CURRICULUM DEV., *RELIGION IN THE CURRICULUM* (1987); 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 AM. WAY, *LOOKING AT HISTORY: A REVIEW OF MAJOR U.S. HISTORY TEXTBOOKS* (1986); PAUL C. VITZ, *CENSORSHIP: EVIDENCE OF BIAS IN OUR CHILDREN'S TEXTBOOKS* (1986); Timothy L. Smith, *High School History Texts Adopted for Use in the State of Alabama: The Distortion and Exclusion of Religious Data*, RELIGION & PUB. EDUC., Spring 1988, at 170-90. For a good review of several of these studies, see John W. McDermott, Jr., *The Treatment of Religion in School Textbooks: A Political Analysis and a Modest Proposal*, RELIGION & PUB. EDUC., Fall 1986, at 62.

5 For example, there is usually (but not always) a sentence, perhaps even a paragraph, about religion in connection with the civil rights movement.

6 Indeed, virtually all world histories ignore Vatican II.

7 ECONOMICS FOR DECISION MAKING 38-40 (D.C. Heath 1988).

with no mention of religion. The six biology textbooks are science textbooks pure and simple. With a single exception, they make no references to religion.⁸

Does ignoring religion constitute hostility to religion? It does not in a drivers' education class, and it probably does not in a math class. But what about home economics? Most religions, liberal and conservative, teach that there are right and wrong ways of living. Yet in discussing values and decision making, not only do these textbooks not teach religious perspectives, they fail to even mention that such perspectives exist and provide alternatives to purely secular approaches.

The distortion caused by ignoring religious views of history can be seen in the following example. Traditional Judaism, Christianity, and Islam asserted that history is the arena in which God's purposes are worked out; that history has a plan. If these religions are right, surely this insight is the most important thing to understand about history. Once again, not only do the history texts not teach this interpretation of history, they even fail to mention it as a possibility.

Any textbook editor must be selective because pages are limited. It is difficult to determine what facts and theories are important enough to be included. It is striking that the economics, home economics, and biology texts ignore what religion views as the most important things to know about the subjects at issue, and the history texts essentially relegate religion to the safe and distant past. By ignoring religion, or at least relegating it to the past, the texts imply that religion is unimportant. Indeed, in constraining the realm of possibilities by failing to provide students with the information and intellectual resources necessary to make sense of religious ways of understanding each subject, the textbooks, in effect, undermine the credibility of religious ways of thinking about those subjects. To that extent, at least, they are hostile towards religion. Consider this analogy: Would ignoring African-Americans or women in history texts show hostility, or be merely neutral?

⁸ The single exception is a short two-paragraph statement in one book to the effect that there are religious as well as scientific ways of understanding nature.

B. *Anti-Religious Bias in Textbooks*

The texts do not simply ignore religion, they teach students to understand the world in ways that conflict with most religions. For example, there are in modern-day America at least four different ways of thinking about the origins of life. First, there is the belief that the world and all plant and animal species were created at once, perhaps 6,000 years ago, by God.⁹ The second view, held by most biologists and paleontologists, is that the various plant and animal species were not created at once, but evolved out of other species over a period of several billion years. These two accounts conflict. The modern scientific account also conflicts with a third view, which could be called the liberal religious view—that evolution is the purposeful working out of God's plan.

A large part of what was revolutionary about the Scientific Revolution was its rejection of the idea that nature, like history, could only be understood in terms of God's purposes. In the Seventeenth Century, physics dispensed with this notion and biology followed suit in the Nineteenth Century. Darwinism provided a mechanism which explained evolution apart from appeal to design. The key Darwinian mechanism of evolution is natural selection now understood to work on the random mutation and recombination of genes. This mechanism is taken to be sufficient to explain the evolution of species. Evolution, according to its proponents, is purposeless. Hence, evolutionary theory is incompatible not only with creationism, but also with the idea of purposeful evolution and hence most liberal religion.¹⁰

A fourth view is that scientific evidence does not support evolution, but supports creationism, or if the term "creationism" is too religiously loaded, the "abrupt appearance" of species.

Of the six biology textbooks used in North Carolina, five line up firmly in the scientific evolution column, the other more or less sidesteps the issue.¹¹ None of the six gives

9 The ground for this belief is the first chapter of Genesis read as an exact historical account of creation.

10 See generally IAN G. BARBOUR, ISSUES IN SCIENCE AND RELIGION (1966); PHILLIP E. JOHNSON, DARWIN ON TRIAL (1991).

11 For a list of biological textbooks, see *supra* note 3. The sidestepping book is BIOLOGY: AN EVERYDAY EXPERIENCE (Charles E. Merrill 1985).

even a single sentence to the three other alternative explanations.

It is true that much secular knowledge is compatible with religion—the categories “secular” and “religious” need not be exclusive. Nonetheless, neo-Darwinian evolutionary theory conflicts with most religion, fundamentalist and liberal, regarding conclusions—the truth or falsity of evolution, and the particular mechanism of evolution which makes it purposeless. But there is also conflict at the level of *method*. Modern science works from a different set of philosophical commitments than does religion. It allows no epistemological room for revelation, scripture, or religious experience.¹² It systematically excludes miracles and purpose from nature on principle.¹³ Scientific method filters religion out of the world.¹⁴ Thus science is not, by its very nature, religiously neutral, but philosophically biased against religion.

Of course it is often argued that science contains only partial truth, and that there are also religious ways of understanding nature that complement science. It has often been suggested, for example, that God stands behind the Big Bang.¹⁵ Modern educators would do well to ask whether He set the seemingly purposeless billiard balls of cosmic evolution on their way fifteen billion years ago knowing that human beings would eventually bounce to life. There are two problems with such rescue missions.

First, this distant and dispassionate being is not the God of most religions. The God of most religions is one who intervenes in history and nature, who shapes it and interacts with it. There is no room for such an interventionist God in the world of science.

Second, if God did set the whole process in motion; if human life is the end of nature; if God provides the direction for evolution; then modern science leaves out the most important part of the explanation. For in the final analysis, it is God's purpose which explains the course of evolution, not natural selection and genetic mutations. It is like explaining how a taxi travels from airport to hotel by reference to

12 See generally Phillip E. Johnson, *Evolution as Dogma: The Establishment of Naturalism*, FIRST THINGS, Oct. 1990.

13 See *id.*

14 See *id.*

15 See generally ROBERT JASTROW, *GOD AND THE ASTRONOMER* (1978).

internal combustion engines, but leaving out mention of the driver, passenger, or point of taking the trip. Yet, the biology books I reviewed in my study give no hint that the explanations they give might be insufficient.

I take as my final example economics textbooks. None of the economics text books I reviewed cite any of the economic teachings of the great religious leaders of the past. They ignore the often significant impact of religion on the modern economic world—on unions or reform movements or ideals of justice.¹⁶ None mention any of the extensive, recent literature on religion and economics by Max Weber, R.H. Tawny, Walter Rauschenbusch, Michael Novak, the Catholic Bishops, liberation theologians, papal encyclicals, or the many statements of ecumenical religious agencies such as the World Council of Churches. In fact, one of the texts lists ninety-seven primary sources, including material from economists and social critics from Marx to Milton Friedman, but none of the authors is a religious writer, and not one of them mentions a religious principle.

As important as what these textbooks ignore, is what they include. They all more or less agree in their account of human nature, values and society. Each of the texts defines the economic world in terms of the competition for scarce resources among self-interested individuals with unlimited wants. In these texts individuals are seen as preference-maximizing social atoms, and values are personal preferences. As one of the text reads:

Make no mistake about it, competition is a contest. There are winners and there are losers. It may sound heartless, but that is the way it is. Each seller is out to make money. The task is to produce and then to sell. There is no thought given for other sellers. Human values, such as love or friendship have nothing to do with competition. No one really cares how nice a person is, or how many chil-

16 For example, the Protestant Social Gospel and the National Catholic Welfare Conference both played major roles in the early Twentieth Century in preparing the way for the welfare state; the Catholic Bishops' recent pastoral letter on the economy and mainline Protestant statements on economic justice continue this critique of the economy from the left. At the same time, there is also a definite counter movement of conservative Catholics and Protestants who defend free enterprise economics.

dren he or she has to support. The rules of the game are simple. Success is rewarded, failure is punished.¹⁷

Now listen to the Catholic Bishops' recent Pastoral Letter on the economy: "This letter," the Bishops begin,

is based on a long tradition of Catholic social thought, rooted in the Bible and developed over the past century by the Popes and the Second Vatican Council in response to modern economic conditions. This tradition insists that human dignity, realized in community with others and with the whole of God's creation, is the norm against which every social institution must be measured.¹⁸

A just economy, the Bishops argue, must protect human dignity.¹⁹ It must enhance our life as a community.²⁰ Society must provide a fundamental "option for the poor" and vulnerable.²¹ It must guarantee a rather extensive set of economic rights.²² In fact, the Bishops argue that:

Followers of Christ must avoid a tragic separation between faith and everyday life. They can neither shirk their earthly duties nor, as the Second Vatican Council declared 'immerse [them]selves in earthly activities as if these latter were utterly foreign to religion, and religion were nothing more than the fulfillment of acts of worship and the observance of a few moral obligations.'²³

In this religious view love, not self-interest, makes the world go round. Nothing similar to these notions, indeed not even the smallest reference to anything like them, is found in the economics textbooks reviewed.

The issue here is not capitalism versus some more leftist form of economics. Rather, it is the philosophical assumptions about knowledge and values and society that shape how the textbook authors on the one hand, and the Bishops on the other, approach their subject. The meaning

17 HENRY BILLINGS, *ECONOMICS: IT'S YOUR BUSINESS* 46 (1986).

18 NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* (1986).

19 *Id.* at ix.

20 *Id.* at ix-x.

21 *Id.* at x-xi.

22 *Id.* at xi-xii.

23 *Id.* at vi-vii.

of the economic world is radically different for these two groups. The economics texts do not just ignore religious interpretations of economics, they offer a competing version of human nature and society.²⁴

III. THE EFFECT OF HOSTILITY

The cumulative effect of all of these textbooks, of all of these secular, scientific accounts of history and psychology and society and nature and values, of religion being ignored over and over, is not inconsiderable. Through our educational system a secular mentality is nurtured which is indifferent at best, but often hostile in fact, to religious ways of making sense of the world.

If there is any doubt that public school textbooks are hostile to religion, bear in mind the last two or three hundred years of Western intellectual history. Educated people have become more and more attuned to modern science and social science, to the ideas and ideologies found in textbooks. In short, these people have become increasingly secular. Religion is no longer sustained by the dominant ideas of our public, intellectual lives. Rather, it has, for the most part, become a matter of personal and private faith.

It is a striking fact that students can attend most public schools and universities, go on to acquire an M.B.A., a J.D., an M.D., or a Ph.D., and never once in their studies confront a live religious idea. We have come to believe that one can know everything important about a particular subject, and know nothing about religion.

24 Consider for instance the following teachings of Jesus:

1. "If a man wants to sue you for your shirt, let him have your coat as well." *Matthew* 6:24 (New English).
2. "I bid you put away anxious thought about food to keep you alive and clothes to cover your body." *Luke* 12:22 (New English).
3. "Sell your possessions and give in charity." *Luke* 12:33 (New English).
4. "So also none of you can be a disciple of mine without parting with all his possessions." *Luke* 14:33 (New English).
5. "Sell everything you have and distribute to the poor." *Mark* 10:21 (New English).

The conflict between Jesus and modern capitalism as it is taught in the textbooks is at least as great as that between the first chapter of Genesis and modern biology. Of course, as is the case with religious theories of evolution, so there are religious ways of accommodating Jesus and modern economics. Yet they are taught no more than are religious accounts of evolution.

It is often claimed that religion is left out of the textbooks because it is controversial; there is some truth to the old maxim: Thou shalt not offend that ye may profit. Still, as I trust my comments have made clear, the reasons go much deeper. The primary reason for omitting religious perspectives from textbooks is not so much that they are controversial, but that most textbook authors and publishers simply reject them out of hand—at least as they apply to their subject.

IV. SECULAR BIAS IN TEXTBOOKS: THE RELIGION OF SECULARISM

Many religious conservatives claim that textbooks teach the religion of secular humanism, and a few years ago Federal District Court Judge Brevard Hand agreed when he ruled that forty-four history, social studies, and home economics textbooks used in Alabama schools were unconstitutional for that reason.²⁵ Though I do not find Judge Hand's arguments completely convincing, I do not find them completely implausible either.

I would not hang too much on the "humanism" of the texts; it is simply too slippery a notion. What is clear, however, is the commitment of the authors of the texts to provide an understanding of their subjects in fully secular terms in spite of the fact that modern, secular, scientific and social-scientific talk is often hostile towards religious ways of making sense of the world. Moreover, the authors teach, and perhaps even accept, those secular ways of thinking uncritically. They consider no alternatives. This is an illiberal and intellectually stifling approach. Judge Hand would have been on firmer ground had he forgotten humanism and looked simply for secularism in the texts, for they are grounded in a deep philosophical commitment to profoundly secular ways of thinking. Indeed, there is something like a "religion of secularism" to be found there.²⁶ In 1961,

25 *Smith v. Board of Sch. Comm'rs of Mobile County*, 655 F. Supp. 939 (S.D. Ala.), *rev'd*, 827 F.2d 684 (11th Cir. 1987).

26 A distinction is often drawn between "secularism" as an ideology, and secularization, which might proceed from many, including religious, causes. There have been, for example, profound religious reasons, growing out of the Protestant Reformation, for the secularization of the state. To teach secular ways of thinking about the world is not necessarily to teach secularism. Few teachers, I suspect, are committed to secularism (or secular humanism) as an ideology, and fewer teach it

well before the rise of the religious right, the sociologist Will Herberg wrote an essay on the history of American education. In that essay Herberg argued that when Americanism and Protestantism ceased to inform public education towards the end of the Nineteenth Century, religious ideas were replaced "however unintentionally, by the substitute-religion of secularism, which may," he wrote, ". . . be accurately defined as the theory and practice of human life conceived as self-sufficient and unrelated to God."²⁷ The idea of a religion of secularism was not invented by religious conservatives for their purposes. Numerous liberal theologians, philosophers, social scientists, and judges have also spoken of "secular religion."²⁸

In *School District of Abington Township v. Schempp*,²⁹ Justice Clark declared that the state could not establish a "religion of secularism," which opposes or shows hostility to religion, thus "preferring those who believe in no religion over those who do believe."³⁰ If secularism is a religion, then the Establishment Clause prohibits the government from establishing or promoting it, particularly in schools. Instead, it would seem that it must be treated neutrally in the classroom, on an even footing with other, more traditional religions.

as such. Still, my argument is that the philosophical commitments which underlie modern science and social science are hostile to religion. In teaching them we nurture a secular mentality and secularize our culture.

27 Will Herberg, *Religion and Education in America*, in RELIGIOUS PERSPECTIVES IN AMERICAN CULTURE 28 (James W. Smith & A. Leland Jamison eds., 1961).

28 Sociologist J. Milton Yinger defined religion as a "system of beliefs and practices by means of which a group of people struggles with [the] ultimate problems of human life" and he argues that communism and nationalism often function as religions. J. MILTON YINGER, THE SCIENTIFIC STUDY OF RELIGION 7, 11-12 (1970). The same is true of science when it becomes a "way of life" rather than just a methodology.

The liberal theologian Paul Tillich argued that the object of religion is whatever ultimately concerns us. See PAUL TILlich, SYSTEMATIC THEOLOGY 12-14 (1951). For Tillich, living in Germany in the 1920s and 1930s, nationalism was the religion of many people; it defined their being, giving meaning to their lives. For the philosopher John Dewey, religious faith was the "allegiance to inclusive ideal ends, which imagination presents to us and to which the human will responds as worth of controlling out desires and choices." JOHN DEWEY, A COMMON FAITH 33 (1934). In large part because Dewey was the major intellectual force behind first Humanist Manifesto, the ideal of humanism was described in religious language in the manifesto.

29 374 U.S. 203 (1963).

30 *Id.* at 225.

Even if secularism is not a religion there is still another Establishment Clause problem inherent in the secular bias of public school textbooks. In his concurring opinion in *Schempp*, Justice Goldberg warned that an "untutored devotion to the concept of neutrality" can lead to a "pervasive devotion to the secular and a passive, or even active, hostility to the religious."³¹ Arguably, something very much like this has happened. Courts have applied an untutored and naive notion of neutrality. They have been blind to the hostility of secular teaching to religion. So long as religion is not explicitly attacked, the texts are neutral, or so the conventional wisdom would seem to have it. As I have argued, however, the conventional wisdom is wrong.

V. THE SUPREME COURT AND "NEUTRALITY"

It was in *Everson v. Board of Education*³² that Justice Black read Jefferson's metaphor of a "wall of separation" into the modern interpretation of the First Amendment.³³ Black went on to parse separationism in terms of governmental neutrality between religion and non-religion. The state, he wrote, must be "neutral in its relations with groups of religious believers and non-believers."³⁴ Neutrality, of course, is a two-way street. The state may not promote religion, but also, as Justice Black indicated, "[the] State power is no more to be used so as to handicap religions than it is to favor them."³⁵

This has been, more or less, the view of the Court ever since. It also continues to be a controversial view. The main line of opposition, sometimes led by current Chief Justice Rehnquist, might be termed accommodationist. According to accommodationists the founders intended only to disestablish a national church, but were fully willing to accommodate religion generally and non-preferentially.³⁶

Though I am inclined to think that the separationists have the stronger case, historical evidence in this area is ambiguous. While we have no idea what most of those who

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

32 *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

33 *Id.* at 16.

34 *Id.* at 18.

35 *Id.* at 18.

36 *Wallace v. Jafree*, 472 U.S. 38, 106 (1985) (Rehnquist, J., dissenting).

voted for the First Amendment thought the Establishment Clause would mean, we do know that Madison, Jefferson, and many Baptist leaders were fairly staunch separationists.³⁷ However, we also know that the First Congress sometimes took an accommodationist posture.³⁸ In any case, we cannot extrapolate neatly from the end of the Eighteenth Century to our times. As Justice Brennan argued in his concurring opinion in *Schempp*:

[O]ur religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.³⁹

No doubt for some of the founders, neutrality meant not taking sides between Protestant sects, but other Founders had more liberal vision. For the past forty years a majority on the Court has correctly recognized that in our ever more pluralistic society the logic of neutrality dictates that government not take sides between religion and non-religion.

For the last twenty years the Court has often used the *Lemon* test for adjudicating Establishment Clause cases. The second prong of the *Lemon* test stipulates that governmental acts "cannot have the primary effect of either promoting or inhibiting religion."⁴⁰ To do so would be to violate neutrality. Under this standard, much of what is taught in public

37 See generally LEONARD LEVY, *THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT* (1986) (discussing the separationist stance of Madison and Jefferson); WILLIAM R. ESTEP, *REVOLUTION WITHIN THE REVOLUTION* (1990) (discussing the separationist stance taken by the Baptists).

38 For example, the first Congress requested President Washington to issue a Thanksgiving Proclamation recommending to the people a day of public thanksgiving and prayer, approved paid chaplains for Congress, and reenacted the Northwest Ordinance of 1787 which provided that "[r]eligion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

39 *Schempp*, 374 U.S. at 240-41 (Brennan, J., concurring).

40 *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

schools should be suspect since it is not neutral, but is hostile to, and inhibits, religion.

Of course we might wonder whether the primary effect of teaching evolution or humanistic psychology is to inhibit religion—rather than, say, to understand modern science or psychology. Of course how people respond to this will depend to a considerable extent on their religious views. For many individuals, the primary effect of such teaching is to undermine their religion. I would suggest that so long as religion remains a viable alternative for people in our culture—and is not merely a dead relic of the past—we must take the competition between religious and secular accounts of reality seriously. After all, what could be more important than whether or not God shapes nature or history? Whether love or self-interest is what should move society? Arguably, the most important effect of textbooks and curriculum is how they teach students to think about these ultimate questions.

VI. OTHER NOTIONS OF NEUTRALITY

The courts have over and over again failed to acknowledge the depth of hostility of modern scientific and social scientific thought to religion. However, Western intellectual history is replete with battles in the culture wars between religion and science.⁴¹ So how would public education and textbooks look if they were to treat religious and secular accounts of their subject in a truly neutral fashion?

Teachers and textbooks are free to teach about religion if that teaching is objective, educational teaching rather than the promotion or indoctrination of religious beliefs. The courts have reaffirmed this position many times.⁴² Neutrali-

41 See generally E.M. ADAMS, RELIGION AND CULTURAL FREEDOM (1993); IAN BARBOUR, ISSUES IN SCIENCE AND RELIGION (1971); FRANKLIN BAUMER, RELIGION AND THE RISE OF SKEPTICISM (1960); W.D. STACE, RELIGION AND THE MODERN MIND (1960).

42 All discussions of the study of religion in public schools take as their point of departure Justice Clark's majority opinion in *Schempp*, where he wrote: [I]t might well be said that one's education is not complete without a study of comparative religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.

ty is not satisfied by occasionally teaching about religion. However, as things now stand, teachers are free to promote, indeed to indoctrinate, students into secular, scientific ways of understanding the world. The courts do not limit them to teaching "about" science.

Consider a hypothetical fundamentalist Christian academy which actively promotes Christian beliefs among students, and has a policy which allows teachers to teach about science only so long as they do not promote it. Of course, science rarely, if ever, appears in their textbooks, and when it does the accounts are written by fundamentalist theologians. Moreover, the administrators make no efforts to ensure that their teachers understand anything whatsoever about science. They note that parents are free, after all, to teach their children science at home should they so choose. Is such a school being neutral respecting science? Would it even be dealing with the subject rationally?

What sort of "neutrality" is preferable? Whenever there are major conflicts between religious and secular ways of understanding a subject, students must learn something about each of them. There is no single neutral view, certainly not that of science. The best we can do is neutrality-as-fairness, taking seriously the various contenders for the truth. Whenever possible, students should study primary sources, and accounts written by proponents of the different views at issue. Under this approach, students should study alternatives written by proponents of the different views.

For example, if there are at least three or four major views of human origin, students should understand the major arguments for and against each of them.⁴³ It is not obvious to me that religious accounts should be studied in any depth in biology classes, though biology classes should

School Dist. of Abington Township v. Schempp, 374 U.S. 203, 225 (1963).

In a concurring opinion, Justice Brennan, the strictest separationist on the Court wrote: "The holding of the Court today plainly does not foreclose teaching classes in literature or history." *Id.* at 300 (Brennan, J., concurring).

In yet another concurring opinion, Justice Goldberg added that "it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of . . . teaching *about* religion, as distinguished from the teaching *of* religion in the public schools." *Id.* at 306 (Goldberg, J., concurring).

Religious indoctrination, the teaching *of* religion, and the *practice* of religion, are unconstitutional. However, neutral or objective teaching *about* religion is clearly constitutional. The Supreme Court has never wavered on this distinction.

43 For a discussion of these views see *supra* part II.B.

at least alert students to the fact there are contending accounts to be found in religious traditions.⁴⁴ Particular texts and courses need not always be neutral if contending points of view are taught in other texts and courses. What is essential is that the curriculum be neutral. The Establishment Clause mandates that public schools not uncritically indoctrinate students into ways of understanding the world that are fundamentally hostile to religion. The solution is not to drop those texts or courses that are hostile, thus eviscerating the curriculum (and giving religious groups veto power over it), but to include contending religious accounts. We achieve neutrality by taking the contending accounts seriously, and then stopping short of providing official conclusions.

I am inclined to think this means that religion must be a required subject in public schools—with appropriate excusal policies of course. This also means that teachers must be religiously literate, with some sense of when there are contending religious accounts of a subject. Such procedures are required if public education is to be considered religiously neutral.

VII. CONCLUSION

Finally, a clarification, a reminder, a reservation, and a brief concluding comment. First, the clarification. The arguments herein do not commit me to the proposition that science is false or that some form of religion is true. Rather they merely indicate that present methods of teaching science and social science are not religiously neutral. Textbooks which include only scientific accounts are not neutral.

Second, the reminder. Truly neutral teaching and textbooks are already permissible under current court rulings. If teachers or textbooks provide alternative religious and secular accounts of contested matters in a fair and objective manner, and withhold judgment about the truth, they are

44 It seems to me both compatible with neutrality and important that students are provided not just with abstract arguments for the alternatives, but some sense of how they play out in our history and culture. For example, I think it tremendously important that biology students understand that most all scientists are evolutionists. Evolutionism and creationism are not alternatives to be weighed in a cultural and historical vacuum. On the other hand, it should be clear from my argument that students must also understand that most people in our culture disagree with neo-Darwinian biology for religious reasons—and they should have some idea of why this is so and how the arguments are made.

doing nothing unconstitutional. My argument is that what is *permitted* is in fact *required* by the Establishment Clause. If public schooling is to be *neutral* between religion and non-religion, then students must study religion as well as science—at least when they conflict.

Third, the reservation. The proposals contained herein raise a variety of practical and political problems. Court review of textbooks and curricula, for example, is particularly troubling. This practice would almost surely run afoul of the third prong of the *Lemon* test, hopelessly entangling religion and government.⁴⁵ I would simply suggest that courts adopt Justice Brennan's advice in *Schempp*: "To what extent, and at what points in the curriculum religious materials should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools."⁴⁶ Unhappily, it is not clear that educators are in fact "experts in such matters"—though they should be.

Lastly, the concluding comment. If my argument appears radical on constitutional grounds, it is, nonetheless, a fairly conventional, indeed conservative, conclusion when viewed in terms of the purpose of a liberal education. That purpose is to immerse students into an informed discussion of major points of view regarding important issues. Unhappily, public education is incredibly illiberal.

45 *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

46 *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 300 (1963) (Brennan, J., concurring). Brennan notes that officials should be entrusted "very largely" with this responsibility. If there are flagrant abuses the courts must, however, provide recourse.