

University of Maryland Law Journal of Race, Religion, Gender and Class

Volume 6 | Issue 1

Article 8

Too Much, Too Little: Religion in the Public Schools

Jay D. Wexler

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/rrgc>



Part of the [Education Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Jay D. Wexler, *Too Much, Too Little: Religion in the Public Schools*, 6 U. Md. L.J. Race Relig. Gender & Class 107 (2006).
Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol6/iss1/8>

This Conference is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in University of Maryland Law Journal of Race, Religion, Gender and Class by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

TOO MUCH, TOO LITTLE: RELIGION IN THE PUBLIC SCHOOLS

JAY D. WEXLER*

I. THE PROBLEM: LESS IS MORE

The current state of religion in the nation's public schools is odd indeed. On the one hand, the courts have consistently held that public school teachers may not lead their students in an organized prayer.¹ Yet on the other hand, most people seem to agree that there is no problem with those same teachers leading their students in the Pledge of Allegiance, an exercise that asks students on a daily basis, not only to explicitly recognize the existence of a single god, but also to link the nation's very identity to that highly contested theological proposition.² Likewise, despite the fact that the courts have unanimously rejected attempts by state and local educational authorities to alter their science curricula to achieve religious purposes,³ school boards around the country continue to take constitutionally questionable steps to undermine the presentation of evolution, perhaps the most central and robust theory in all of biology. Even where school boards fail to take explicit steps to curtail the teaching of evolution, reports suggest that science teachers self-censor and teach less evolution (if any) than they should.⁴ Finally, although it is often said that schools should teach their students the knowledge and information they need to participate intelligently in the nation's public affairs,⁵ these schools often fail to teach students anything at all

* Associate Professor, Boston University School of Law. B.A., Harvard University; M.A., University of Chicago Divinity School; J.D., Stanford Law School.

1. See, e.g., *Engel v. Vitale*, 370 U.S. 421 (1962); *Lee v. Weisman*, 505 U.S. 577 (1992).

2. See 4 U.S.C. 4 (2002) (statutorily establishing the Pledge and directing method of reciting it).

3. See, e.g., *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337 (5th Cir. 1999); *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

4. See Cornelia Dean, *Evolution Takes a Back Seat in U.S. Classes*, N.Y. TIMES, Feb. 1, 2005, at F1 (explaining that many teachers do not teach evolution in order to avoid controversy).

5. See Jay D. Wexler, *Preparing for the Clothed Public Square: Teaching About Religion, Civic Education, and the Constitution*, 43 WM. & MARY L. REV. 1159, 1191-1200 (2002).

about religion, despite its obvious importance and prevalence not only within our borders, but around the world as well.⁶

Thus, the oft-heard criticism that our public schools contain too much religion turns out to be true, but so does the equally oft-heard critique that schools do not contain enough religion. The schools fail our students by tailoring their curricula to satisfy particular religious constituencies and by leading them in a daily exercise that is arguably even more objectionable than the obviously unconstitutional school prayer exercises that (at least theoretically) were excised from the nation's public schools over thirty years ago. But the schools fail students at least as much, if not more, by not teaching them nearly enough about religion in history and other social science classes. Schools cannot possibly expect to graduate citizens prepared to understand the most important and challenging of human conflicts if they teach them little or nothing about what is perhaps the most universal, significant, and unique human phenomenon.⁷

Although at first glance these "too much, too little" failures may appear to be symptoms of inconsistent diseases, they in fact may not be as unrelated as they initially seem. I would like to suggest that perhaps our failure to understand religion and give it the serious attention it deserves has contributed to the deeply troubling practice of promoting particular religious views in the public schools to the detriment of the common good. There are at least two possible explanations for this failure, each relying on a different causal mechanism. The first, what I will call the "reaction mechanism" explanation, posits that at least some of the pressure to promote particular sectarian religious viewpoints in the public schools can be explained as a reaction by majoritarian forces against a public school curriculum that is viewed as hostile to religion. In this view, religious believers fight back against the perceived over-secularization of the public schools (evidenced by, among other things, the near-complete absence of religious topics in the curriculum) and try to get those schools to adopt their specific religious viewpoints as truth. The second explanation, what I will term the "ignorance reinforcement mechanism" explanation, posits that at least some percentage of the population will support problematic religious programs in the public schools because the public schools that trained them as citizens did not

6. See, e.g., WARREN A. NORD & CHARLES C. HAYNES, *TAKING RELIGION SERIOUSLY ACROSS THE CURRICULUM 2* (1998) (arguing that the public school curriculum has "all but ignore[d] religion").

7. See generally Wexler, *supra* note 5.

convey the information regarding religion that is essential to making informed policy choices.

Of course, it is pure speculation as to how well these explanations capture the real causal relationship between our twin failures with respect to religion and public education, and it is likewise primarily guesswork to link either explanation to some specific policy proposal or practice in the public schools. Nonetheless, I think that the reaction mechanism explanation may help explain the intelligent design movement, while the ignorance reinforcement mechanism provides a better explanation for the continued fervent support of the Pledge of Allegiance in its current form.

As the most recent manifestation of the ongoing controversy regarding how schools ought to present the theory of evolution to their students, the intelligent design movement has benefited a great deal from the “equal time narrative”—the notion that schools act unfairly toward religion when they teach evolutionary theory, but not the alternatives to evolution that fit more comfortably with some forms of religious belief. Surely, this story gains steam from the failure of public schools to teach about religion elsewhere in the curriculum. For some, of course, no amount of recognition of religion’s importance in the school curriculum could possibly lift the burden on their religious sensibilities they feel when schools teach evolution in science classes. But for others, perhaps, such recognition—in the form of comparative religion courses, the inclusion of religious perspectives in history or current events classes, or courses in religious texts as literature—might go some distance toward defusing the anger and alienation that they feel toward the public schools for excluding religious viewpoints from the serious work of the school curriculum.

The “under God” phrase in the Pledge, too, was a reaction, at least at first. However, it was not a reaction to the secularism of the public schools, which were not nearly as secular as they are now, but rather to the atheists and Communists who many perceived to be America’s main adversaries during the Cold War period. “The inclusion of God in our pledge . . . would . . . acknowledge the dependence of our people and our Government upon the moral directions of the Creator,” reads the 1954 House Report accompanying the act adding the two words “under God” to the Pledge.⁸ “At the same time, it would serve to deny the atheistic and materialistic concepts of communism with its attendant subservience of the

8. H.R. REP. NO. 83-1693 at 2340 (1954).

individual.”⁹ But these words do not explain the current preoccupation with keeping those two controversial words in our national vow. That insistence is surely rooted in the narrow self-interest of those who benefit from having their particular religious views endorsed by the state, and in some sense imposed upon children who are often too young to understand what they are saying. It also, however, likely draws some of its ongoing force from the failure of the population to understand religion, a phenomenon that several religion scholars have recently referred to as our nation’s “collective religious illiteracy.”¹⁰

When the Ninth Circuit Court of Appeals first invalidated the phrase “under God” in the Pledge of Allegiance in 2003, it did so on three independent theories: (1) that the phrase was inserted for a purely religious purpose, (2) that the phrase endorsed monotheistic religion, and (3) that leading the class in the Pledge amounted to religious coercion of non-believers, even though those non-believers have a constitutionally protected right under the free speech clause of the First Amendment not to say the Pledge (or any part of it) at all.¹¹ Although the same court later amended its opinion, relying finally only on the coercion rationale, it probably had the issue right the first time around.¹² Of all three theories, the coercion argument is the weakest one, although even it is likely correct under the relevant Supreme Court cases, which have held that schools coerce nonbelievers by leading prayers at graduation exercises or football games, even though objecting students need not participate in saying the prayers.¹³

Indeed, if “under God” in the Pledge of Allegiance is constitutional, it is probably because official government references to a monotheistic creator have been ubiquitous for all of our nation’s history, including the founding era which gave rise to the First Amendment’s prohibition on state establishment of religion.¹⁴ But even granting that this historical narrative is as clear as the Pledge’s

9. *Id.*

10. See Stephen Prothero, *Passing All Understanding: We are a Nation of Faith and Religious Illiterates*, PITTSBURGH-POST GAZETTE, Jan. 24, 2005, at D4; DIANE L. MOORE, OVERCOMING RELIGIOUS ILLITERACY: A MULTICULTURAL APPROACH TO THE STUDY OF RELIGION IN SECONDARY EDUCATION (forthcoming 2007).

11. *Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002).

12. *Newdow v. U.S. Congress*, 328 F.3d 466 (9th Cir. 2003).

13. See *Lee v. Weisman*, 505 U.S. 577 (1992); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

14. See generally Brief Amicus Curiae of the Knights of Columbus in Support of Petitioners, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004) (No. 02-1624), available at <http://www.becketfund.org/litigate/PledgeAmicus2.pdf>.

defenders say that it is (and there are reasons to think otherwise¹⁵), and even granting the validity of a constitutional methodology that justifies current practices solely by their long-standing history (a highly dubious proposition, it would seem), the fact remains that saying the Pledge of Allegiance as it currently reads in the schools is bad policy—unfair, intolerant, and perhaps even counter-productive—in a society that is quite possibly the most religiously diverse in the world.¹⁶

Only by ignoring, either purposefully or non-purposefully, that a great many American citizens do not believe that there is any god, or that there is only one god, or that the one god which exists is fundamentally connected to our national identity, can one maintain the fiction that the Pledge of Allegiance is inclusive, harmless, inoffensive, or non-discriminatory. Some, like Justice Scalia, understand this point perfectly well but believe that government may (should?) ignore the feelings and beliefs of millions of Americans anyway.¹⁷ But for others, the problem may be that the basic point eludes them; they may not understand in the first place how controversial a proposition the Pledge espouses, or how many people disagree with that proposition, or how deep this disagreement runs. For this constituency, a little information could make a great difference.

Consider for a moment a barely noticed brief filed at the Supreme Court in the Pledge case by a major New York law firm on behalf of “Buddhist temples, centers, and organizations representing over 300,000 Buddhist Americans” in support of Michael Newdow and the other plaintiffs challenging the Pledge.¹⁸ The Brief¹⁹ explains in very clear language how the “under God” language in the Pledge of Allegiance is “inconsistent and incompatible with the religious beliefs and ethical principles [Buddhist students] are taught by their parents,

15. See, e.g., Brief Amicus Curiae of Historians and Law Scholars in Support of Respondent at 3-11, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, No. 02-1624 (2004).

16. See DIANA ECK, *A NEW RELIGIOUS AMERICA: HOW A “CHRISTIAN COUNTRY” HAS BECOME THE WORLD’S MOST RELIGIOUSLY DIVERSE NATION* (2001).

17. *McCreary County v. ACLU of Ky.*, 125 S. Ct. 2722, 2753 (2005) (Scalia, J., dissenting) (arguing that the Establishment Clause “permits disregard of polytheists and believers in unconcerned deities, just as it permits the disregard of devout atheists”).

18. Brief Amicus Curiae of Buddhist Temples, Centers and Organizations Representing Over 300,000 Buddhist Americans in Support of Respondents, *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004) (No. 02-1624).

19. The Brief points out that the Buddhist population in America currently stands at between three and four million people and growing. *Id.* at 3.

by other adults in their communities, and by their teachers at after school religious programs and at Sunday Dharma school.”²⁰ Elsewhere, the Brief contends that the “word ‘God’ as it is used in the Pledge *cannot* be stretched, construed or contorted to encompass the Buddha or Buddhism, and the importance of *non-theism* in Buddhism cannot be understated.”²¹ An affecting footnote suggests that “[t]he fact that the Pledge affirms loyalty to a country ‘under’ a deity they do not worship is especially poignant for those Buddhist-American families who have lost loved ones fighting for the United States.”²² It is difficult to understand how anyone could emerge from reading even this very short document and think that saying the Pledge of Allegiance is a neutral or inclusive exercise.

It is certainly not a cure-all, but if students were to learn more about religion in the public schools, they might graduate into citizens who can understand what is really at stake when they consider supporting policies that will exclude or offend millions of Americans. For this reason, among others, schools should teach their students about religion in history, literature, civics, and philosophy classes. They should teach about majority religious traditions, and also minority ones—those traditions that are growing each day in America but do not share the presumptions and premises of the great monotheistic traditions. They should also teach about atheism and other humanist traditions, for it is clear (if not commonly recognized) that explicitly teaching about non-religion is very different from teaching ideas (evolution, for example, or racial equality) that happen to be inconsistent with some religious beliefs. If schools did these things, at least some of the pressure to inject sectarian religious views into the curriculum would be lessened, and some of the arguments in favor of such policies would be revealed as the falsehoods that they surely are.

II. TOWARD A SOLUTION: MORE IS LESS

Fortunately, efforts to improve how schools teach about religion have been on the rise in recent years. Building on studies performed in the mid-eighties showing that schools were ignoring

20. *Id.*

21. *Id.* at 15 (emphasis added).

22. *Id.* at 11 n.24.

religion in their curricula,²³ a group of reformers, led by Charles Haynes, began tireless work in the nineties to improve the situation.²⁴ These reformers began preparing guidance materials to help teachers understand what and how they could teach about religion, developing curricular materials to give teachers the resources they need to teach about religion, and running workshops to train teachers to introduce this controversial subject into their classrooms.²⁵

These efforts have continued in the past few years and bring great hope that our schools may soon give religion the emphasis in the curriculum that it deserves. For one thing, researchers have begun compiling new data on how many schools are teaching about religion, and what effect this teaching is having on students. The Harvard Divinity School's Center for the Study of World Religions, for example, has begun to collect data on which schools are teaching about religion and what materials they use to do so. The study, which focuses on Massachusetts, California, and Texas, is intended to "help provide information for the creation of relevant educational resources and teacher training opportunities."²⁶ An important recent study of Modesto, California's required course in comparative religion has shown that the course has improved students' knowledge of world religions, increased students' respect for religious liberty, and made students more supportive of First Amendment rights.²⁷

Second, the longstanding Harvard Divinity School Program in Religion and Secondary Education has recently made efforts to upgrade its marketing and enroll a greater number of divinity students seeking preparation for a career in secondary school teaching. According to Diane Moore, who took over leadership of the program in 2001, the recent tragic events of September 11, 2001 spurred an increased awareness of the need to understand religion. "If there's one thing that's come out of the September 11 tragedy," she says, "it's the recognition that we clearly need to have a better understanding of religion in the contemporary age."²⁸ Moore has also taken steps to

23. See Wexler, *supra* note 5, at 1181-83 (describing studies).

24. See *id.* at 1186-91.

25. See *id.*

26. See Harvard Divinity School, Harvard Divinity School Study on Teaching About Religion in the Schools, <http://www.hds.harvard.edu/prse/hstars> (describing study and including links to questionnaires).

27. See EMILE LESTER & PATRICK S. ROBERTS, *LEARNING ABOUT WORLD RELIGIONS IN PUBLIC SCHOOLS: THE IMPACT OF STUDENT ATTITUDES AND COMMUNITY ACCEPTANCE IN MODESTO, CALIF.* 5-8 (2006).

28. Wendy S. McDowell, *Learning to Present Religion in the Schoolroom*, HARV. DIVINITY BULL., Spring 2003.

replicate Harvard's success elsewhere by chairing a task force within the American Academy of Religion to bring together religious studies departments with schools of education.

Third, university scholars have begun to recognize the importance of teaching students about religion, a development that may very well have important effects on secondary school education as well. The recent draft of the so-called "Wingspread Declaration on Religion and Public Life," drafted by twenty-five university scholars from a variety of disciplines under the auspices of the Society for Values in Higher Education, stresses the importance of improving students' "religious literacy," not only through religious studies offerings, but elsewhere in the curriculum as well. As the draft forcefully puts it:

This statement advocates for the study about religion in all its dimensions, disciplines, and complexities and every level of education. We challenge colleges and universities to teach about religion across the curriculum and as part of their efforts to educate citizens for a diverse, complex, and religion-infused local and global society.²⁹

Finally, influential members of the academy have begun speaking out about the need to create a more religiously informed citizenry. For instance, Columbia University's Kent Greenawalt, one of the nation's most prominent legal scholars, argues in his new book, *Does God Belong in the Public Schools?*,³⁰ that schools must (cautiously, of course) help their students "understand major religious ideas" if the students "are to receive a full liberal education."³¹ The book, which devotes seven of its fifteen chapters to the subject of teaching about religion, has already begun bringing the issue into the journalistic mainstream.³² Similarly, Boston University's Stephen Prothero, author of the highly successful *American Jesus*,³³ recently

29. THE JOHNSON FOUNDATION, WINGSPREAD DECLARATION ON RELIGION AND PUBLIC LIFE: ENGAGING HIGHER EDUCATION (2005), available at <http://svhe.org/files/Declaration%20on%20Religion%20and%20Public%20Life.pdf> (emphasis omitted).

30. KENT GREENAWALT, *DOES GOD BELONG IN THE PUBLIC SCHOOLS?* (2005).

31. *Id.* at 149.

32. See, e.g., *Religion and Public Life: The Schools* (National Public Radio, Talk of the Nation, Nov. 23, 2004); Charmaine Yoest, *The Four Rs: Readin', Writin', 'Rithmetic, and Religion?*, THE WKLY. STANDARD, Nov. 24, 2005.

33. STEPHEN PROTHERO, *AMERICAN JESUS: HOW THE SON OF GOD BECAME A NATIONAL ICON* (2004).

argued in an article in the *Los Angeles Times* that America's intolerable religious ignorance "imperils our public life."³⁴ The piece, not surprisingly, was reprinted in newspapers around the country³⁵ and received considerable attention and circulation on the internet.

Thus, there are reasons to be optimistic about the state of teaching about religion in our public schools. Of course, these fortunate trends have not come without their share of conflict. For instance, a battle over how to teach about the Bible in the public schools has recently heated up. The National Council on Bible in the Public Schools (NCBPS), an organization that has developed a Bible study curriculum often criticized for teaching the Bible from a sectarian perspective,³⁶ has launched an attack against a rival textbook put out by the Bible Literacy Project (BLP), an organization that has attempted publish a book teaching about the Bible from a more objective perspective. D. James Kennedy, a Florida minister and member of the advisory board of the NCBPS, has argued that the BLP's book advocates an "extremely radical" approach to its subject, claiming that the book is "relativistic" and a "typical liberal approach to the Bible."³⁷ Writing to a legislator in Alabama about the BLP's text, Kennedy suggested that it "would be a tremendous mistake to impose such very anti-biblical material upon our children in public schools."³⁸ Charles Haynes, who supports the BLP's book, has responded that the NCBPS book's sectarian approach runs afoul of the Constitution. "If the Bible is a blueprint for the Constitution, I guess they haven't read it," Haynes says.³⁹

The controversy is not limited to arguments over the proper way to teach the Bible, or even how to present the traditional Western

34. Prothero, *supra* note 10.

35. See, e.g., *id.*; Stephen Prothero, *A Deeply Religious America, Deeply Ignorant*, ALBANY TIMES UNION, Jan. 23, 2005, at E2; Stephen Prothero, *A Nation of Religious Illiterates*, CINCINNATI POST, Jan. 18, 2005, at A7.

36. See, e.g., THE GOOD BOOK TAUGHT WRONG: BIBLE HISTORY CLASSES IN FLORIDA PUBLIC SCHOOLS (2002) (criticizing NCBPS curricula).

37. Jim Brown, *Coral Ridge Leader Labels Bible Text for Schools 'Relativistic,'* AGAPE PRESS, Mar. 2, 2006, available at <http://www.bibleinschools.net/pdf/BLP%20textbook%20anti-biblical>.

38. Letter from D. James Kennedy, Ph.D., to The Honorable Nick Williams, (Feb. 17, 2006), available at <http://www.bibleinschools.net/pdf/Kennedy-literacy.pdf>.

39. Ralph Blumenthal & Barbara Novovitch, *Bible Course Becomes Test for Public Schools in Texas*, N.Y. TIMES, Aug. 1, 2005, at A1. A recent piece of legislation in Georgia, passed by both the state Senate and House of Representatives, has been considered a victory for the BLP because it calls for use of the Bible itself as the primary textbook for Bible courses in the state. See Press Release, National Council on Bible Curriculum in Public Schools, NCBPS Applauds Georgia Legislation Calling For Bible To Be Taught In Public Schools (Mar. 27, 2006), available at http://www.bibleinschools.net/pdf/GA_legislation.pdf.

monotheisms. *The Wall Street Journal's* front page recently reported on a dispute in California over the way textbooks adopted for the state by California's Curriculum Commission should present controversial elements of Hinduism. A group known as the Hindu Education Foundation, allegedly associated with an Indian Hindu nationalist organization, pushed the Commission to adopt changes to the relevant textbooks that "delete or soften references to polytheism, the caste system and the inferior status of women in ancient India."⁴⁰ Scholars, including Harvard professor Michael Witzel, and a rival organization, Friends of South Asia, objected to these proposed changes as historically inaccurate.⁴¹ To deal with the impending crisis, the state commission held a debate between scholars of Hinduism regarding what the books should report. In March of 2006, the Hindu Education Foundation sued the California State Board of Education for approving textbooks that the Foundation has argued "demean, stereotype, and reflect adversely upon Hindus."⁴²

One response to these controversies⁴³ is to conclude that the public schools were right all along when they decided, consciously or not, to ignore religion in the curriculum. Perhaps religion is simply too divisive to include any of it in the public schools, no matter how ostensibly objective the presentation. This would be an unfortunate conclusion to draw. It is true that someone will always be there to object to any particular depiction of a religious tradition, tenet, or belief. It is, as detractors claim, surely impossible to develop a curriculum to satisfy everyone. But no important policy ever gets implemented without some friction, much less one that deals with such a sensitive subject as this. It will certainly not be an easy road, and the state actors that lead the way will have to tread carefully and in good faith. The media and the judges will be watching, and surely missteps will be made along the way. It is better for schools to cause an occasional conflict here and there, however, than to continue creating citizens who know nearly nothing about humankind's most pressing subject.

40. See, Daniel Golden, *New Battleground in Textbook Wars: Religion in History*, WALL ST. J., Jan. 25, 2006, at A1.

41. *Id.*

42. Press Release, Hindu American Foundation Sues California State Board of Education (Mar. 17, 2006), available at http://www.hinduamericanfoundation.org/media_press_release_california_lawsuit.htm.

43. Similar disputes exist involving the presentation of Islam and Judaism. See Golden, *supra* note 40.