

\* *Introduction* \*

CONTROVERSIAL CIRCUMSTANCES

1. On March 11, 2002, the Ohio school board heard conflicting testimony over what the state should teach about the history of life on earth. Parents had objected to their children being taught that Darwinian evolutionary theory is true. Believing that the theory is not only false but undermines sound religion and morality, the parents wanted teachers to present an account of life that recognizes God's creative hand. Two scientists testified that standard evolutionary theory cannot explain the complexity of organs like the eye and of many individual cells, which reveal an intelligent design. Unlike many so-called creationists, who claim that the earth is less than ten thousand years old and that all basic kinds of plants and animals were created at the same time, these scientists did not dispute that the earth is billions of years old, that single-cell life-forms were the ancestors of all life on earth, or that natural selection of organisms best suited for survival accounts for much of the development of life. Unlike Darwinians, however, they argued that natural selection cannot explain nearly as much as most modern biologists assume, and suggested instead that the history of life on earth demonstrates the activity of an intelligent designer. Opponents of teaching intelligent design claimed that teaching it, no less than teaching creationism according to the Genesis account, is teaching religion, not science. Should the board have directed its schools to teach intelligent design?

2. A junior high school course on sex education includes information about the use of condoms. Faced with extensive parental complaints that artificial contraception violates God's law and that schools should not teach it, should the school board direct that teaching about condoms stop?

3. The Edgemont public school long celebrated the Christmas season by having students gather in the central hall before classes and sing Christmas carols. All students attended a Christmas pageant put on by ninth and tenth graders, under the

## INTRODUCTION

music teacher's direction, involving Christmas music and dialogue about the birth of Jesus. Should the school have continued its caroling and pageant?

4. A ninth-grade English teacher assigned her students a research paper, for which they were to use at least four separate sources. Students picked their own topics. The teacher rejected as unsuitable one student's proposal to write on the life of Jesus. Was she mistaken?

5. Parents of fifth and sixth graders who have created a Christian club for their children apply to use an empty classroom during the lunch hour, when the students, with parents supervising, will engage in religious worship. Should the school provide the classroom?

6. An eleventh-grade civics teacher wishes to supplement the standard text with essays exploring religious perspectives on American society. She wants her students to consider claims that Americans are a "chosen people" and that the only firm basis for a belief in human equality rests on God's equal loving concern for all people. In her proposal to the principal, the teacher indicates that, beyond presenting these views, she will argue that both are valid, though leaving students free to believe otherwise. Should the principal approve her plan?

7. Educators in the New York City school system proposed a "Rainbow Curriculum" for elementary schools that emphasized broad tolerance for individuals and groups. Parents in some districts objected to teaching respect for gays and lesbians and appreciation for family structures involving homosexual parents. The basis for their objections was largely religious. Should the schools have refrained from teaching this aspect of the "Rainbow Curriculum"?

8. High school seniors choose a classmate to speak at their graduation. During a rehearsal two days before graduation, the principal learns that the speaker will urge her audience to turn their lives over to Jesus. Should the principal intervene?

9. Ten of the twenty-two books on the shelf of a fifth-grade classroom are religious, and the teacher keeps a Bible on his desk. During the daily period of "free reading," he always reads

## INTRODUCTION

silently from his Bible. After a few parents complain, should the principal tell the teacher to change the selections in his little “library” or his reading habits?

10. Having reviewed the district’s literature texts for elementary school, fundamentalist Christian parents discover that both in specific aspects and overall impression, the readings deeply offend their religious convictions. When they ask to withdraw their children from class use of the texts, should the district accede?

## RELIGION, EDUCATIONAL PURPOSES, AND CONSTITUTIONAL LAW

These ten problems all involve judgments about how public schools should respect religious freedom, and all of them reach beyond sound educational decisions to constitutional interpretation. Officials must determine the meaning and application of language forbidding the government from establishing religion and protecting the free exercise of religion and freedom of speech. Within our political system, constitutional questions involve judges: how often should they constrain the educational choices of legislators, school boards, administrators, and teachers?

Our ten problems implicate fundamental controversies over the purposes of public education. How should schools aim to educate our children? What should they take on; what should they leave to parents and private groups?

Most of the critical questions arise out of an assumption that the government, and its schools, should be neutral about religion. According to the Supreme Court, American states may not prefer one religion over others and may not prefer religion over nonreligion. Some Supreme Court justices and critics believe government should be able to prefer religion in general; a smaller number of people (not including any Supreme Court justices) think states should be able to prefer Christianity. Almost no one believes the Constitution allows officials to prefer one version of Christianity over all others. Thus, virtually everyone agrees that certain preferences or endorsements in respect to religion are forbidden. It follows that public schools may not teach that particu-

## INTRODUCTION

lar religious doctrines, such as the virgin birth and transubstantiation, are true; nor may they endorse particular religious practices, such as Communion with wine or infant baptism.

Aiming to inculcate various moral and political virtues, public schools teach students that they should respect their fellows, tolerate diverse views, and deliberate about alternatives. This instruction may affect the attractiveness of various religions. Most obviously, students may be discouraged from accepting religious views directly opposed to what they are taught in school. For example, a white supremacist religion that advocates depriving minorities of all political rights will find few recruits among students taught to believe in racial equality.

Although tracing the connections between the teaching of civic virtues and the appeal of various religions may be hazardous, we can imagine that the influences reach beyond instances of direct opposition. A teacher recommending tolerance and reasoned consideration for political life may emphasize that he is not addressing how people should develop religious beliefs and practices; a church that demands strict adherence to higher religious authority and takes a harsh view of other religious perspectives may say little about politics. Hierarchical, intolerant religion is not opposed in strict logic to participatory, deliberative, tolerant politics. But there is a tension. Unable to compartmentalize, or to perceive why attitudes appropriate for religious understanding are inapt for politics, a student might be drawn to a religion that fits her ideas of desirable political life, and vice versa. Thus, what schools teach apart from religion can have spillover effects for the ways students approach religion.

About these possible spillover effects, educators might adopt a range of attitudes. They could regard the effects as beyond their mandate; unintended influences on religious beliefs and practices would not be their concern.

Alternatively, educators could welcome certain of these effects. Although schools cannot teach against hierarchical, intolerant religion, educators might recognize that the civil life of liberal democracies will fare better if fewer people adhere to such religious faiths. So long as they assume that schools should not *aim*, even indirectly, to promote or discourage religious views, educators who welcome various spillover effects will *act* like those who disregard them.

## INTRODUCTION

Finally, educators might regard spillover effects as a cause for regret, drawing schools away from a neutrality about religion they might otherwise achieve. On this view, perhaps schools should try to counter spillover effects in various ways—much as we might hope that officials planning a new highway would not stick with an otherwise appealing route that would require the destruction of six Roman Catholic churches and no other houses of worship. One way to minimize spillovers would be to show believers in a hierarchical, intolerant religion how they can harmonize their views with democratic politics.

A related concern about spillover involves religion more broadly. Education that disregards religion may implicitly communicate its unimportance. Do public schools need to try counter this possible effect by presenting religious perspectives as options for students to consider? This troubling question about public school curriculums easily outranks in practical significance more confrontational issues about practices such as prayer and Bible reading.

In the pages that follow, we will examine these ten problems and others like them, analyzing ways in which religion touches the public school system, and exploring what courts have said about constitutional limits. The book is not restricted to discerning what public schools *may* do, given prevailing constitutional law; it also considers the exercise of educational judgment and the range of choice that judges should allow. Judicial decisions and opinions serve as subjects for critical examination, as well as setting the parameters for what now counts as constitutionally permissible. Avoiding the oversimplifications and automatic dismissals of opposing arguments that one finds at all points along the religious and political spectrums, the book aims to provide readers with bases on which to make judgments of their own that go deeper than visceral like or dislike of competing positions or groups. These bases are not easy formulas but a range of normative principles and practical considerations that should inform educational and constitutional choices.

Public school systems surely rank among the most important of American social institutions. According to tradition, they are our primary vehicle for forging a unified civic identity and for creating opportunities for children to transcend their parents' economic and social status. Yet we all know that, nationwide,

## INTRODUCTION

public schools suffer grave problems. Inner-city schools, beset by budgetary constraints and acute disciplinary difficulties, are failing miserably in the endeavor to afford fair opportunities for many of their students. Some critics level the further charge that even schools in favored geographical locations do not provide students a coherent moral structure, and they attribute this failure to the absence of religion.

One proposed “remedy” for religionless public schools is public financing of private education, dominantly education under religious auspices. Although arguments about such aid connect to debates about what public schools should undertake, we can quickly see that neither “vouchers,” approved by the Supreme Court in the summer of 2002, nor other assistance to private education will “solve” issues about public school religion.

At present, few legislators are willing to vote in favor of vouchers for all students that approximate the costs of public education. Even if they did so, many parents would not find within easy reach private schools that offer a religious education they approve. For the foreseeable future, most American children will be educated in public schools. The proper place of religion and religious judgment in those schools will remain a central political and constitutional issue for a long, long time.

To explore these issues, we begin by sketching briefly the historical development of public schools as it relates to religion, and constitutional doctrines that apply to religion in the schools. Next we turn to modern controversies over the proper purposes of public schools that bear significantly on the place of religion.

These initial chapters set the stage for the more detailed treatments that follow. Each of the remaining chapters discusses a set of specific problems, such as school prayer or teaching science, providing an analysis that takes into account constitutional law and educational policy in our liberal democratic political order. All our subjects can be loosely categorized under four major questions: (1) Do devotional practices belong in public schools? (2) When should the religious convictions and interests of students be treated like their nonreligious interests and convictions? (3) What should schools teach about religion and about topics, such as evolution or use of condoms, whose content conflicts with widespread religious views? (4) When should stu-

## INTRODUCTION

dents, and teachers, be exempted from ordinary educational requirements because of their religious convictions?

By way of brief summary, the United States Supreme Court, in its exercises of constitutional interpretation, has said that officially sponsored devotional practices do not belong in public schools; that, in general, voluntary student groups devoted to religion should be treated like other student groups; that schools should not teach particular religious propositions as true but may teach about religion; that government should not, in short, sponsor particular religious views or engage in religious practices. I shall suggest that these positions represent an approach to the place of religion in public schools that is coherent and reflective of the fundamental values of a diverse liberal democracy. These are values that I embrace. The positions also represent sound constitutional doctrine. But these positions alone, at this level of generality, leave many sensitive issues unresolved. Much of the book is taken up with addressing these issues from the standpoint of educational choice and constitutional doctrine.

In part II, we inquire mainly about religious practices, reviewing general devotional exercises such as prayer and Bible reading and use of school facilities by religious clubs. We also address the bar on teaching religious propositions as true.

We concentrate in part III primarily on the subtle problems of teaching *about* religion, something allowed, and even encouraged, by the language of Supreme Court opinions. Individual chapters address different branches of learning and forms of teacher expression that do not directly involve the curriculum.

In part IV, we consider students' expressions of religious perspectives within the context of public education and claims by parents to have their children opt out of education that offends their religious sensibilities.

Running through these chapters is a story of a changing relationship between religion and public education, in which the courts have played a role, but only a modest one.

The schooling of children became mainly public in the first half of the nineteenth century. Although church membership was then lower than it is now, writers widely supposed that religious conviction was the key to personal morality and good citizenship; a nondenominational Protestantism was taught and

## INTRODUCTION

practiced within the schools. By the end of the nineteenth century, texts and educators were treating their subject matters as essentially secular; religion was no longer a significant aspect of what students were taught. But in a great many schools, morning prayers and brief devotional Bible reading continued, the husks of a once serious effort to instruct students in the Christian religion.

During the late nineteenth and early twentieth centuries, some state courts reviewed whether prayer and Bible reading in public schools violated clauses forbidding establishments of religion in their own state constitutions. Most, but not all, concluded that these devotions were all right. When the United States Supreme Court finally addressed the practices in 1962 and 1963, it decisively ruled that they violated the Establishment Clause in the First Amendment of the federal Constitution. The Court indicated that schools could teach *about* religion but not attempt to indoctrinate.

The legal history of the last four decades has involved a working out of many of the implications of this basic principle. The Supreme Court itself has considered moments of silence, prayer at graduations and football games, posting of the Ten Commandments, the status of student groups that engage in religious worship, and the teaching of evolution and creationism. Lower courts have inquired about rights of teachers to express religious views, and rights of students to fulfill assignments with religious topics and to withdraw from parts of courses that offend their religious convictions.

During the past two decades, the Supreme Court has revamped the law of free exercise and establishment to an extraordinary degree. One component of this restructuring has been a reliance on a concept of equality, drawn from the Free Speech Clause, to require that, among voluntary student groups, religious groups be treated no less favorably than other groups. But the main engines of reform have been a sharp cutting back of both free exercise and establishment restrictions. The consequence is that other branches of government now have much broader discretion to decide how to treat religious claims and religious groups than they once did. But in this era of striking change, most of the standards relating to public school education have proved remarkably stable.

## INTRODUCTION

They have done so despite the fact that public schools have been a major battleground in what some have described as the country's "culture wars." A large segment of the American populace persists in condemning the Supreme Court for taking religion out of schools and thus contributing to a secular, immoral, materialist cultural ethos. Others insist that religion has no place within public schools. Within recent years, a third approach has attracted the support of a surprisingly diverse range of groups: public schools should make a much more serious effort to teach about religion but without engaging in devotional practices or teaching the truth of particular religious views. Everything the courts have said so far leaves wide room for debate about the constitutional limits of teaching about religion and about how a program conceived in those terms can best be carried forward.

Although the chapters that follow provide an account of "where we are now" and "how we got there," their main focus is analytical and normative. They undertake to examine the decisions and doctrines of the courts from a critical perspective, explaining their bases and evaluating their strengths and weaknesses. They focus on the central principle that public schools should not teach religious views as true, exploring what that principle entails and whether it is a solid basis for the aspirations of public schools. Most of the chapters involve a mixture of constitutional law and educational judgment. What is the range of approaches that schools may undertake? Within that range, which approaches make the most sense in terms of educational objectives and the values of the religion clauses? In no small part, the normative analysis of the book can be seen as a reflection on the constitutional "specialness" of religion. A pervasive question in modern law about the religion clauses is how far religion should be treated differently from other subjects of human understanding. A foundational assumption about religion and public schools is that religion is not the same as other subjects; this study helps show why that assumption has arisen and why it should continue.