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Kent Greenawalt: Religion and the Constitution: Volume I

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Introduction

Americans should freely practice their religions, and government should not establish any religion: these are crucial principles of our liberal democracy. Although the principles themselves receive wide assent, people disagree intensely over what they signify and how they apply. Does treating religious individuals and organizations fairly mean regarding them like everyone else or giving them a mix of special benefits and disadvantages?

This book, volume 1 of *Religion and the Constitution*, concentrates on the free exercise of religion; a companion will focus on nonestablishment. These are of course the two main pillars in the Constitution's treatment of religion. Because issues about free exercise and nonestablishment intertwine, however, we need to examine various establishment concerns here, most notably problems raised by classifications along religious lines. Both volumes discuss the declaration in the Constitution's First Amendment that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."¹ But in each volume we shall also consider legislative choices and claims of moral and political philosophy that reach beyond constitutional constraints.

My approach to the broad subject is grounded on three fundamental assumptions. First, ideas about free exercise and nonestablishment are not reducible to any single value; a number of values count. Second, sound approaches to the state's treatment of religion cannot be collapsed into any single formula or set of formulas. For example, one pervasive issue is whether religious claims may (or must) be treated differently from analogous nonreligious claims. Against those who assert that similar treatment should always or never be required, I resist any uniform answer, arguing that a great deal depends on what kind of claim is involved. Although no ready formula is available to resolve problems about government and religion, we can identify major considerations that legislators and judges need to take into account. I sketch the most important of these considerations in a later section of this introduction, as well as outline some of the most general values or principles that underlie or motivate this book on free exercise.

Third, we can best work toward sensible approaches by addressing many discrete issues. These reveal rich variations in the state's relations with reli-

¹ U.S. Const., amend. 1.

