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K. Greenawalt: Religion and the Constitution, Volume 2

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Introduction

Two fundamental principles of American liberal democracy are that citizens should be able to freely practice their religion and that government should not establish any religion. This volume, the second of two devoted to an examination of these principles, concentrates on nonestablishment. The wording of the First Amendment of the federal Constitution that embodies that principle is “Congress shall make no law respecting an establishment of religion.” States have their own establishment clauses, and the federal provision now applies to states and localities.

An ideal of nonestablishment relates closely to a belief in free exercise, and the fairness of treating religious practices and organizations differently from nonreligious ones figures prominently in the coverage of the two principles. As we found it necessary to consider nonestablishment concerns in volume 1, *Free Exercise and Fairness*, many chapters in this volume will bring us back to the values of free exercise and the way those values should be realized in legal standards. Nonetheless, various problems about establishment are sufficiently distinctive to warrant this separate volume. As in the previous volume, we will look at legislative choices and claims of political philosophy as well as constitutional constraints.

As I have explained in more detail in the first volume, my approach to the subject is grounded on the following three premises: (1) Neither free exercise nor nonestablishment is reducible to any single value; many values count. (2) Sound constitutional approaches to the religion clauses cannot be reduced to a single formula or set of formulas, although we can identify major considerations that should guide legislators and judges. (3) The most profitable way to develop sensible approaches is from the “bottom up”—addressing discrete issues in their rich complexity and investigating conflicting values over a range of issues.

After noting some major issues, this introductory chapter comments on the scope of the federal Establishment Clause, summarizes the undisputed core of impermissible establishments of religion, analyzes the basic values that underlie nonestablishment, and briefly summarizes what follows in succeeding chapters of the book.

