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Title: Is There a Common Core to Religion?

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I have been suggesting that the Establishment Clause should be interpreted to allow the government to establish “religion”, but not a religion. Surely readers have been asking themselves for awhile, just what is this “religion”?

There is some evidence that the American people accept the idea of a common core among religions. A recent study suggested a surprisingly high level of acceptance among Americans with regard to religious traditions other than their own. The Pew Forum on Religion and Public Life last year surveyed 35,000 Americans, and found that 70% of persons affiliated with a religion agreed with the statement “Many religions can lead to eternal life.”[1] I am extrapolating that someone who feels that all religions may lead to salvation must also believe that all religions express some common core of salvation values.

I’m not sure that Americans have thought very much about what these common values might be, let alone whether the use of Judeo-Christian language, including the word God itself, is helpful in expressing these values. But Justices Brennan and O’Connor gave some voice to this possible religious core in *Lynch*, the case that upheld a crèche in a City’s Christmas display in 1984.

Justice O’Connor was concurring in *Lynch*, concluding that the inclusion of the crèche in the City’s Christmas display did not amount to an endorsement of religion, and therefore was not a violation of the Establishment Clause. The crèche was no more an endorsement of religion than other public expressions of religion the Court had already allowed—such as prayer to open legislative sessions—or other practices using religious language that had not even been challenged—such as the announcement “God save the United States and this honorable court” to open Supreme Court sessions.

The problem for Justice O’Connor was to explain why these other expressions did not endorse religion. They seemed to, after all. But these expressions are permissible, she argued, because they serve, and are understood to serve, nonreligious purposes.

"Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society." [2]

There is a sense in Justice O’Connor’s observation that religious expressions convey something that cannot be conveyed in any other way in this culture. What that something is, may be the common core of religion that I am suggesting government may establish. One of her suggestions is that religion helps us recognize what is most worthy in life.

Justice Brennan wrote the principal dissent in *Lynch*, for three other Justices. He also discussed these same sorts of public religious expressions. Justice Brennan first dismissed any religious content in them, referring to them as ceremonial deism, a phrase he borrowed from Dean Rostow.^[3] He then seemed to agree with Justice O'Connor that

"these references are uniquely suited to serve such wholly secular purposes as solemnizing public occasions, or inspiring commitment to meet some national challenge in a manner that simply could not be fully served in our culture if government were limited to purely non-religious phrases."

As Justice Kennedy observed in another case, the sorts of goals to which Justices O'Connor and Brennan are adverting, are not purely secular.^[4] These are goals infused with religious meaning. Religion may well inspire us to meet national challenges in a way that nonreligious language, images and values cannot. But that need not be because religion is effective cheerleading. It may be because the core of religion is teaching us what is important, or even that some things are important.

[1] Report 2, at <http://religions.pewforum.org/reports>.

[2] 465 U.S. at 693 (O'Connor, J., concurring).

[3] 465 U.S. at 717 (Brennan, J., dissenting).

[4] *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. at 673 (Kennedy, J., concurring in the judgment in part and dissenting in part).
