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IS GOD UNCONSTITUTIONAL?

PHILLIP E. JOHNSON*

New York state law allows public school districts to make their buildings generally available after school hours for rental to community groups for "social, civic and recreational" uses.¹ A state court held that this broad authorization was not broad enough to include "religious" purposes, and so student Bible clubs and churches were not allowed to rent rooms.² A major constitutional controversy over the exclusion of religious groups erupted when the evangelical minister of "Lamb's Chapel," in a town called Center Moriches, applied to use a school auditorium to show a six-part film series. The series featured lectures by Dr. James Dobson, a Christian psychologist whose "Focus on the Family" radio broadcasts attract an enormous audience.³

The Dobson lectures dealt with parent-child relationships from a conservative Christian viewpoint. Dr. Dobson urged parents to "turn their hearts toward home" and give priority to their families during child-rearing years. He warned that the family is "under fire" in a "civil war of values," opposed abortion and pornography, and concluded with a defense of "traditional values which, if properly employed and defended, can assure happy, healthy, strengthened homes and family relationships in the years to come."⁴ One of the lectures was by Mrs. Shirley Dobson: she spoke of a difficult childhood with an alcoholic father, and "recall[ed] the influences which brought her to a

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1. N.Y. EDUC. LAW § 414 (McKinney 1988).

2. *Deeper Life Christian Fellowship v. Sobol*, 948 F.2d 79, 83-94 (2d Cir. 1991); *Trietley v. Board of Educ.*, 409 N.Y.S.2d 912 (N.Y. App. Div. 1978).

3. Facts regarding the "Lamb's Chapel" controversy are taken from the Supreme Court's majority opinion in *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141 (1993). The Dobson film series is described in footnote three of that opinion. *Lamb's Chapel*, 113 S. Ct. at 2144-45 n.3.

4. *Id.*

loving God who saw her personal circumstances and heard her cries for help."⁵

The school district, backed by the state attorney general, refused to permit its facilities to be used for showing the films. The minister then brought a lawsuit challenging the refusal as unconstitutional. Whether the minister had a case depended upon how one categorized the film series. The district had no obligation to make its facilities available to outsiders, and if it chose to do so it could place reasonable limitations on the kinds of uses that would be permitted. For example, the district had refused the same minister's request to hold church services on Sunday in a school building, and the legality of this refusal was not challenged.⁶

On the other hand, Supreme Court decisions interpreting the First Amendment have imposed a ban on what lawyers call "viewpoint discrimination."⁷ This means that, if the district allowed speakers to address a particular subject on school property at all, it could not discriminate in favor of some opinions and against others. If political meetings were permitted, the socialists as well as the Republicans must be allowed to meet, and if religious services were allowed, the Buddhists as well as the Catholics would have to be welcome. But "religion" was categorically not allowed, said the state. Therefore the Dobson film series was excluded not because its viewpoint was disfavored, but because it did not fit within the categories for which use of school facilities was authorized. The federal trial court which heard the minister's lawsuit accepted this reasoning and upheld the state's position, and the court of appeals affirmed its decision.⁸

When the case got to the United States Supreme Court, however, things went very differently. The state's legal rationale collapsed if the appropriate category for the film series was not *religion*, but rather family values and relationships. This latter subject was not only legitimate for groups renting rooms after school hours; it was part of the regular school curriculum as well. Looked at that way, by excluding the films

5. *Id.*

6. *Id.* at 2144-45 n.2.

7. *See, e.g.,* *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985).

8. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 959 F.2d 381 (2d Cir. 1992), *affg* 770 F. Supp. 91 (E.D.N.Y. 1991).

the state was discriminating against a religious viewpoint on a secular subject, and thus allowing only one side of a controversial question to be presented. And that is just the way the Supreme Court did look at it. In the words of the unanimous opinion by Justice White, "there [was] . . . no suggestion . . . that a lecture or film about child-rearing and family values would not be a use for social or civic purposes" as permitted by the state's rules.⁹ The denial of permission to show the Dobson films on that subject for no "reason other than the fact that the presentation would have been from a religious perspective" therefore violated the constitutional principle that the government may not deny a speaker access to a public forum "solely to suppress the point of view he espouses on an otherwise includible subject."¹⁰

The *Lamb's Chapel* case illustrates how classifying a viewpoint or theory as "religious" may have the effect of *marginalizing* it. A viewpoint or theory is marginalized when, without being refuted, it is categorized in such a way that it can be excluded from serious consideration. The technique of marginalizing a viewpoint by labelling it as religion is particularly effective in late twentieth century America, because there is a general impression, reinforced by Supreme Court decisions, that religion does not belong in public institutions. Supposedly this exclusion of religion reflects a national policy of religious neutrality, but it is anything but neutral when it is employed to protect important ideas and public policies from effective criticism. The subject of family values and sexual behavior provides a powerful illustration of this point.

James Dobson's views about family values have deep roots in our religious tradition, and great current public support, but they are also extremely controversial. The values he upholds are centered around a man and a woman who marry for life, and who play distinct paternal and maternal roles. In this value system abortion is equivalent to homicide, and homosexu-

9. *Lamb's Chapel*, 113 S. Ct. at 2147.

10. *Lamb's Chapel*, 113 S. Ct. at 2147 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985)). Footnote five of the Supreme Court's opinion in *Lamb's Chapel* lists a sampling of groups that were considered acceptably non-religious by the school authorities. *Id.* at 2146-47 n.5. The list includes "[a] New Age religious group known as the 'Mind Center,' which claimed that its lecture on parapsychology was 'scientific' even though it made 'incidental reference' to religion. *Id.*

al behavior is a manifestation of sin rather than a natural expression of an innate sexual orientation. Adolescents in the Dobson view are not taught to use condoms while having sexual intercourse, because a higher priority is placed on teaching them to wait for adulthood and marriage before having sex at all.

Public education in states like New York tends to take a more relativistic approach to sexual morality. In what I will call the "progressive" (as opposed to the traditional) viewpoint about family life and sexual behavior, the family itself may be redefined to include (for example) homosexual and lesbian couples who adopt children. From the progressive standpoint, to advocate heterosexuality as morally superior to homosexuality, or premarital chastity as morally superior to sexual experimentation, is itself a form of viewpoint discrimination. Moreover, progressives think it irrational to spend much effort trying to get adolescents to refrain from sexual intercourse altogether, the sexual urge being deemed to be irresistible. Progressive sex education may make favorable reference to abstinence in passing, but the main emphasis is upon teaching young people to practice "safe sex," by means of explicit instruction and even hands-on practice in the use of condoms.¹¹ To traditionalists, this instruction seems to be a positive encouragement to promiscuous sex, and about as rational as pouring gasoline on a raging fire. Bitter political battles have erupted, in New York and elsewhere, between the progressives and the traditionalists.¹²

11. See, e.g., Robin Fields, *Fau Festival Trumpets Safer Sex: Students Play Games, Win Prizes and Learn Real-Life How-To's*, SACRAMENTO BEE, Mar. 4, 1994, at 4B; Jacqueline R. Kasun, *Condom Nation: Government Sex Education Promotes Teen Pregnancy*, HERITAGE FOUND. POL'Y REV., Spring 1994, at 79; *Sex Education in Schools: Peers to the Rescue?*, 344 LANCET 899 (1994).

12. For example, an article in the conservative magazine the *American Spectator* described the events leading up to the New York City School Board's decision not to renew the contract of School Superintendent Joseph Fernandez as follows:

All of the following are from educational materials now being distributed to children in the New York City public school system:

The Teenager's Bill of Rights:

I Have the Right to Decide Whether To Have Sex and Who to Have It With.

I Have the Right to Use Protection When I Have Sex.

I Have the Right to Buy and Use Condoms.

Condoms can be sexy! They come in different colors, sizes, flavors, and styles to be more fun for you and your partner. You can put them on together. Shop around till you find the type

To progressives, the Dobson approach to family values is likely to seem outdated, intolerant, and aimed at undoing everything progressive sex education aims to accomplish. Progressive educators do not deny that religiously motivated dissenters, however irrational, have a right to freedom of speech. It does not follow, however, that the state should appear to give approval to such opinions by giving them a place in the public schools. The main point is to keep extremist influences out of the school curriculum itself, of course, but even renting a school auditorium after hours might seem like a symbolic acknowledgement of the legitimacy of a viewpoint which the schools are trying to delegitimize. The school district tried to hint at this consideration to the Supreme Court, at the cost of undermining its own denial that it was engaging in viewpoint discrimination. If religious use of school property were permitted at all, said the district's brief, the school might have to grant access to a "radical" church that meant to "proselytize," and this could lead in turn to "a volatile and destructive situation."¹³ A friend of the court brief by educational organizations supporting the district's position spelled the point out more clearly: if the principle of viewpoint neutrality were applied to this situation, "the use of school facilities would

you like best. Be creative and be safe. . . . Guys can get used to the feel of condoms while masturbating.

SUCKING: A lot of guys still enjoy sucking and getting sucked. The biggest risk from sucking is getting cum in the mouth. The only way to be totally safe is to lick only the shaft or to use a condom.

TOYS (dildos, butt plugs, etc.) are fun. Don't share toys. Clean them with lots of soap and water after each use.

WATER SPORTS and scat are fine. Don't let anyone's p—s or s—t get inside your body.

When the New York Post recently ran a cartoon portraying School Chancellor Joseph Fernandez as a dirty old man hawking pornographic books to little children in the park, it came close to describing the sense of desperation felt by most city parents.

William Tucker, *Revolt in Queens*, AM. SPECTATOR, Feb. 1993, at 26, 26. I include what some may think to be tasteless details for a specific reason: one of the things that infuriated conservative opponents of the progressive sex education agenda in New York City and elsewhere was that establishment newspapers, such as the *New York Times*, labelled them as being opposed to "tolerance" without reporting the specific content of the educational materials to which they were objecting. See, e.g., *id.* at 30 (describing typical media coverage).

13. 113 S. Ct. at 2148 (citing Brief for Respondents at 4-5, 11-12, 24, *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141 (1993) (No. 91-2024)).

have to be made available even to groups which, for example, preach racial intolerance in contravention of the educational mission of our public school system to teach pluralism and mutual respect for all people."¹⁴

Was the district then denying that it was engaging in viewpoint discrimination, or was it justifying the practice of discriminating against religious viewpoints by classifying them as extremist or irrational, like the viewpoint of the Ku Klux Klan on racial issues? The state attorney general of New York, supporting the school board, embraced the latter option. The purpose of making school facilities available to the public, he argued to the Supreme Court, was to serve the interests of the public in general rather than private or sectarian interests. Ordinarily, freedom of expression is thought to serve the public interest by allowing the citizenry to hear a variety of viewpoints and thus become better informed. That is not the case when a religious position is advocated, said the attorney general, because "[r]eligious advocacy . . . serves the community only in the eyes of its adherents and yields a benefit only to those who already believe."¹⁵

This sweeping dismissal of the value of religious speech was all the more remarkable in that it was aimed specifically at a movie series directed at ordinary parents, urging them to devote their primary attention to their family relationships during the critical years when their children are growing up. Why would such a message yield no benefit to non-Christians? For that matter, suppose that the film series made a straightforward effort to convert unbelievers to the Christian faith, or to some other faith. Why would that message yield a benefit only to those who already believe, if it was specifically addressed to unbelievers who chose to attend? The implicit message of the New York attorney general's argument seemed to be that religious advocacy is valueless because it is irrational, and therefore persons outside the community of faith will not, or at least should not, take it seriously.

The attempt to marginalize religious advocacy—or traditional family morality—failed spectacularly in this instance in the

14. Brief for the New York State School Boards Association et al. at 7, *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141 (1993) (No. 91-2024).

15. Brief for Respondent Attorney General at 24, *Lamb's Chapel* (No. 91-2024).

Supreme Court, although it was successful in the courts below the highest level. The New York attorney general might well have expected a more favorable reception for his argument, however, because essentially the same line of reasoning had succeeded brilliantly in the Supreme Court a few years previously. In its 1987 decision in *Edwards v. Aguillard*, the Supreme Court decided the constitutionality of a Louisiana statute that required that when "evolution-science" was taught in the public schools, balanced treatment had to be given to the rival theory of "creation-science."¹⁶ With two Justices dissenting, the majority opinion by Justice Brennan held that the state law was an unconstitutional "establishment of religion," because the legislature's purpose "was clearly to advance the religious viewpoint that a supernatural being created mankind."¹⁷

The issue decided in *Edwards* is clouded by the fact that the term "creationism" in newspaper and textbook usage refers to Genesis literalism, and hence to the belief that the earth is no more than a few thousand years old. The Supreme Court opinion addressed a much broader question than the age of the earth or the validity of the Genesis account, however. What Justice Brennan described as a "religious viewpoint" is the very broad proposition that a purposeful supernatural being—God—is responsible for our existence. The leading alternative to that belief is that purposeless material processes created us, and that purpose and consciousness did not exist in the cosmos until they evolved naturalistically. This second viewpoint is incorporated in the scientific definition of "evolution," because in contemporary usage "science" is thought to be based upon a completely naturalistic understanding of reality.

To clarify the essential point, suppose that the basic claim of "creationism" is that God created us, whether he did so suddenly a few thousand years ago or gradually over a much longer period of time. Suppose further that creationists claim that certain features of living organisms, such as the extreme complexity of even the simplest living organisms, give support to their claim that a pre-existing intelligence was necessary for biological creation. If the Supreme Court in the *Edwards* case in 1987 had employed the same reasoning as in the 1993 *Lamb's Chapel* decision, its opinion might have said that the

16. 482 U.S. 578 (1987).

17. *Id.* at 591.

subject in question was not religion, but human or biological *origins*, and that it would be unconstitutional viewpoint discrimination to exclude creationist opinion from discussion of a secular subject already included in the public educational forum. Instead the majority opinion in *Edwards* said that the state was not only permitted to exclude the creationist viewpoint, but was *required* to do so—and not because belief in a supernatural creator was necessarily false or irrational, but precisely because it was *religious*.¹⁸ The logic implies that creationist arguments must be excluded regardless of their merits, and that students may hear only the naturalistic viewpoint on the subject of origins. The creationist viewpoint was thoroughly marginalized by being confined within the category of religion.

The strategy of marginalizing “religion” succeeded in *Edwards*, but failed in *Lamb’s Chapel*, probably because neither the Supreme Court nor the legal community in general understood that the two cases were profoundly similar, although superficially very dissimilar. The first superficial dissimilarity is that *Lamb’s Chapel* involved the use of a school building by a community group after hours, whereas *Edwards* concerned the teaching of a theistic viewpoint in the school curriculum itself. The distinction is superficial because the same issue of classification is critical to both situations. Put most simply, the underlying ideological question in both *Lamb’s Chapel* and *Edwards* was whether the authorities were dealing with separate subjects, or with conflicting opinions about the same subject. If a high school curriculum incorporates the subject of biological origins, and if supernatural creation is a rational alternative to naturalistic evolution within that subject, then it is bad educational policy as well as viewpoint discrimination to try to keep students ignorant of an alternative that may be true.

Of course, this reasoning does not apply if the excluded alternative is irrational, or demonstrably false. We do not give the views of the flat-earth society a respectful hearing in geography classes, and we do not give favorable recognition in arithmetic class to the dissenting opinion that two plus two equals five. The real argument in the Louisiana creationism case, which was pressed upon the Supreme Court with great

18. *Id.* at 589-90.

urgency by the National Academy of Sciences, was that the creationist position is irrational, the equivalent in biology of the flat-earth position in geography.¹⁹ This argument was endorsed not only by all the major scientific and educational organizations, and by the leading civil liberties organizations, but also by many mainstream religious groups.²⁰ The extreme isolation of the creationist groups supporting the balanced treatment legislation both reflected and furthered the public's impression that what was at stake was not the general concept of creation by God, but an effort by fundamentalist extremists to import all the details of the literal Genesis account into the science curriculum.

The legal problem for the opponents of creationism was how to translate the National Academy of Science's argument into an acceptable proposition of constitutional law. The Supreme Court has no obvious authority to decide that belief in the existence of a supernatural creator is irrational, or even that belief in the literal Genesis account is irrational. What it does have is authority to interpret the religion clauses of the First Amendment—and thus to decide that this belief is religious. In context, "religious" was a surrogate for "irrational"—which is to say that the Brennan opinion in *Edwards* essentially adopted the reasoning that was later unsuccessfully advanced by the New York attorney general in *Lamb's Chapel*. Discussions about how the evidence of biology might support a creationist viewpoint were characterized as equivalent to the minutes of the flat-earth society, or perhaps the Ku Klux Klan. Such nonsense might appeal to those who already believe, but it has no conceivable educational value.

19. See Brief for the National Academy of Science, *Edwards v. Aguillard*, 482 U.S. 578 (1987) (No. 85-1513).

20. Brief for the Anti-Defamation League of B'nai Brith and Americans for Religious Liberty, *Edwards* (No. 85-1513); Brief for Americans United for the Separation of Church and State et al., *Edwards* (No. 85-1513); Brief for the State of New York, Joined by the State of Illinois, *Edwards* (No. 85-1513); Brief for the American Federation of Teachers, AFL-CIO, *Edwards* (No. 85-1513); Brief for the American Jewish Congress and the Synagogue Council of America, *Edwards* (No. 85-1513); Brief for the New York Committee for Public Education and Religious Liberty, *Edwards* (No. 85-1513); Brief for The National Academy of Sciences Urging Affirmance, *Edwards* (No. 85-1513); Brief of 72 Nobel Laureates et al., *Edwards* (No. 85-1513); Brief of People for the American Way & American Society of Biological Chemists et al., *Edwards* (No. 85-1513).

I am not denying that the courts may draw a distinction between what may be said in the classroom during school hours and what may be said in public meetings after school hours. The courts might apply the "two subjects" approach to religious speech in the regular school curriculum, and the "two opinions about the same subject" approach when school rooms are rented to community groups in the evening or on weekends. In fact, I expect that the courts probably will do something of that kind, at least for a while, in the wake of the *Lamb's Chapel* decision. For one thing, the Supreme Court's opinion in *Lamb's Chapel* itself may have implied the legitimacy of such a distinction by observing that the showing of the Dobson films *by an outside group after school hours* would not imply endorsement by the school district of its message.²¹ Perhaps such endorsement would be implied if a teacher showed the film in a family life class, even in combination with other materials supporting the progressive viewpoint, and in that case the longstanding prohibition against using the classroom to "further religion" would come into play.

No doubt the courts can draw a line around the classroom, and order the religious speakers to stay outside the line. The problem with doing this, however, is that such a line becomes difficult to defend once its rationale has been undermined. Religious groups have largely accepted the exclusion of religious speech from the public schools because they have accepted the official explanation that the constitutional policy reflects a genuine neutrality on religious matters rather than a hostility towards theistic religion. That explanation is wearing thin, however. Excluding religious opinion from the schools was one thing when the schools taught mainly the "three R's," and when there was no conflict between the moral principles taught at home and in the church and those taught or practiced in the classroom. A superficially similar policy has quite a different effect when the schools are actively promoting the progressive viewpoint on sexual behavior to students from traditionalist homes, and actively promoting a naturalistic understanding of creation in science classes.

Under current conditions, excluding theistic opinions means giving a monopoly to naturalistic opinions on subjects like whether humans were created by God and whether sexual

21. *Lamb's Chapel*, 113 S. Ct. at 2148.

intercourse should be reserved for marriage. As the *Lamb's Chapel* litigation itself indicates, the religious traditionalists are learning to see the exclusion of religion not as religious neutrality, but as a partisan maneuver by educators who want to promote an ideological agenda without opposition. If they pursue their protest vigorously, the courts will not long be comfortable with a formula that claims to be neutral but that patently serves the interests of one side to a major cultural controversy.

The way in which the exclusion of theistic opinions from the regular classroom may be undermined by the reasoning employed in the *Lamb's Chapel* opinion was illustrated by a case which did not go to court, but was settled in the academic government of San Francisco State University.²² Professor Dean Kenyon is a distinguished senior biology professor at that institution, and a co-author of a standard work on the origin of life on earth titled *Biochemical Predestination*.²³ Although his book reflected the orthodox naturalism of the contemporary scientific community, Kenyon eventually became disenchanted with the effort to explain the origin of life as a product of purposeless and unguided chemical evolution. He became a proponent of "intelligent design" as an explanation for life's inherent complexity, which is to say he argued that a pre-existing supernatural intelligence probably had to be involved in some way, without necessarily endorsing the literal Genesis account.

When Kenyon taught the prevailing naturalistic theories of biological and chemical evolution in his large introductory biology course for non-majors, he also explained his own skepticism about whether these theories were consistent with the evidence and argued that intelligent design was a legitimate alternative to naturalistic evolution. A handful of students complained, and the department chairman immediately endorsed their complaints. He announced that he would not allow Kenyon to teach this course in the future, on the

22. The facts in the Dean Kenyon case are known to me from personal knowledge, as a participant in the controversy. See also Stephen C. Meyer, *Symposium from John Weister: Open the Debate on Life's Origins*, INSIGHT MAG., Feb. 21, 1994, at 26; Stephen C. Meyer, *A Scopes Trial for the 90's*, WALL ST. J., Dec. 6, 1993, at A14.

23. DEAN H. KENYON & GARY STEINMAN, *BIOCHEMICAL PREDESTINATION* (1969).

ground that the professor was improperly introducing his "religious opinions" into the science curriculum. Kenyon complained to the university faculty senate's Academic Freedom Committee, arguing that he was merely exercising the right of a professor to question orthodox opinion in the subject of his expertise, which is exactly what academic freedom exists to protect. The committee agreed with Professor Kenyon, despite vigorous arguments from the department chairman and the dean of the School of Science that intelligent design is inherently in the category of religion and not science. When the university's faculty senate overwhelmingly voted to support the committee, the administrators backed down and reluctantly reinstated Professor Kenyon in his course, at least for the time being. The outcome turned on how one categorized what Professor Kenyon was doing. Academic freedom does not permit a professor to neglect a subject he is assigned to teach and present a different subject instead. It, does, however, permit him to express a dissenting opinion about the assigned subject, even if it is an opinion that his colleagues and the academic administrators regard as irrational. Like the James Dobson film series, Professor Kenyon's advocacy of intelligent design was a separate opinion about a subject already being discussed in the secular public forum, not the introduction of a new and different subject.

There is a second superficial dissimilarity between the *Lamb's Chapel* and *Edwards* cases, which pertains to the subject matter. At one level the Dobson film series was about family morality, and the Louisiana creationism statute was about science education. The slogan of science educators these days is that "evolution is a fact," and on that basis creationists are often defined as persons who deny facts established by "scientific knowledge." In our culture, however, morality is typically considered to be a matter not of fact, but of value. In disputes about facts one side is in principle right and the other wrong, but in disputes over value both sides may be equally right. That Mount Everest is taller than Pike's Peak is an objective fact; whether it is more beautiful is a subjective question of value.

Some contemporary thinkers would place both religion and morality together in the category of subjective value, as distinguished from objective scientific knowledge. This was the position taken by the famous evolutionary biologist Stephen Jay

Gould, for example, when he reviewed my book *Darwin on Trial*. Science and religion are separate realms of equal dignity and importance, wrote Gould, "because science treats factual reality, while religion struggles with human morality."²⁴ If we were to accept that division of things, then religious leaders (like James Dobson?) should have roughly the same authority in the moral realm that Gould and his scientific colleagues have over the realm of factual reality. In that case the argument for allowing religion to participate in the morals curriculum, or even to dominate it, would be very strong—and so would the argument for excluding religion from the science curriculum.

This distinction is also superficial, because the validity of religious morality is inextricably linked to the validity of the factual propositions that support it. If God really did create us "male and female," and intended male and female to play different roles in the family, and intended sexual intercourse to be confined to the marital relationship, then the system of traditional family morality makes sense. In that case radical versions of feminism and gay liberation are at war with the natural and divine order of things, and are likely to end in frustration and destruction. If God is merely a projection of human desires—or worse, a concept invented by patriarchal authorities to rationalize their oppressive rule, then the death of God is like being released from a prison. All the rules promulgated in the name of the illusion that deprived us of our freedom lose their authority when the illusion is exposed. Some elements of the prison moral code might be retained in the new situation: a ban on polygamy, for example, might be rationalized as a protection for women's rights. But the outlook on family morality as a whole rightly becomes entirely different once the death of God becomes fully assimilated as knowledge.

The rationality of any moral code, in other words, is linked to a picture of reality that contains both fact and value elements. That picture of reality can probably best be expressed in the form of a *story*. The Christian story is one of humans who are created by God, but who are separated from God by their own sin, and who have to overcome that sin to become what they were meant to be. The Enlightenment rationalist story is one of humans who escape from superstition by

24. Stephen J. Gould, *Impeaching a Self-Appointed Judge*, SCI. AM., July 1992, at 118, 120.

mastering scientific knowledge, and eventually realize that their ancestors created God rather than the other way around. Currently many women have been telling a naturalistic story of gender oppression by patriarchs throughout history, rationalized through religious and scientific mythology, and of consciousness raising that permits women to see through the myths and assert their natural equality. We saw that Shirley Dobson spoke in one of the Dobson films of her difficult childhood with an alcoholic father, and recalled "the influences which brought her to a loving God who saw her personal circumstances and heard her cries for help."²⁵ Her personal story makes perfect sense if the Christian story about reality in general is true, but if the Enlightenment story is true that loving God was no more than a product of her imagination, and if the radical feminist story is true it was probably a product of patriarchal tradition that was forced upon her. In a sense the New York attorney general was right: Christian family morality looks like oppressive nonsense if you take for granted that Christian metaphysics has been shown to be false. Since the Supreme Court had implicitly agreed in the *Edwards* opinion that supernatural creation is an inherently irrational concept, why should it require a public school system dedicated to the promotion of rationality and democratic freedom to make room in its buildings for the promotion of irrationality and oppression?

It is apparent from the legal cases that the dominant judicial philosophy of late twentieth century America views theism, particularly traditional Christian theism, with considerable ambivalence. On the one hand, naturalistic thinking rules the intellectual world, including the National Academy of Sciences, the public schools, the universities, and the elite of the legal profession. On the other hand, it would be unthinkable for the Supreme Court or any other official body to declare explicitly that "a supernatural being did *not* create mankind." An official posture of religious neutrality is essential not only because atheists and agnostics are outnumbered by theists, but because our constitutional order is genuinely committed to freedom of religion and of religious expression. But what cannot be done explicitly can often be done implicitly, by the

25. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 113 S. Ct. 2141, 2144-45 n.3 (1993).

imposition of categories and definitions that are anything but neutral in their impact.

The courts may express not only tolerance but even respect for "religion," but this does not necessarily mean that they take the existence of God as anything but a comforting fantasy. If the courts contrast "religious belief" in God with "scientific knowledge" of naturalistic evolution, they imply that the former is a subjective feeling and the latter is an objective fact. Even people who believe in God tend to accept these categories, because the surrounding culture teaches them to do so, and when they accept the categories of naturalistic metaphysics they admit naturalistic thinking into their own minds.

The decisive question for First Amendment religious law, therefore, is one of metaphysics rather than legal doctrine. Is the Constitution genuinely neutral between scientific naturalism and theism? In that case both positions should be admitted to public discussion, in the schools and elsewhere, and protected from "viewpoint discrimination." Or is naturalism the established constitutional philosophy? In that case naturalism will have a monopoly in the public arena, and theistic dissent will be restricted to private life. If the latter alternative is taken, then the Supreme Court will have established a national religion in the name of First Amendment freedoms.

