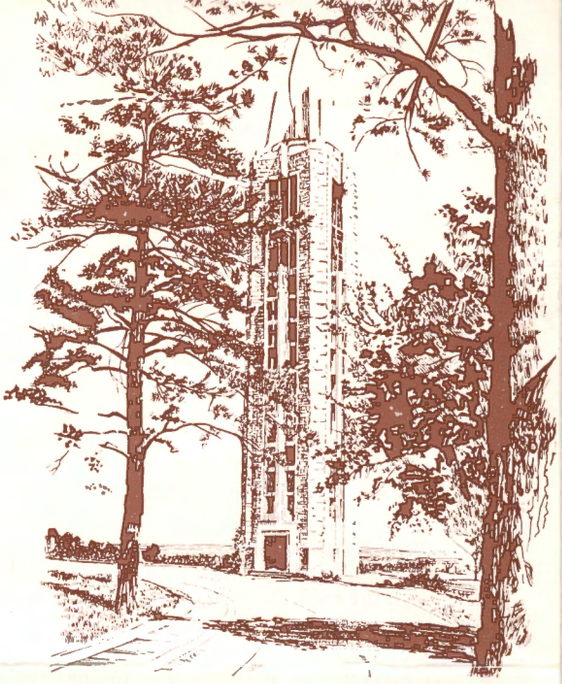
RELIGION

Bulletin of Kansas School of Religion at The University of Kansas

Vol. 1, No. 3, April, 1964



There is a story—apocryphal, of course—about the first pair. As they left the garden of Eden, the lady solemnly said to Adam: "My dear, we are going through a period of transition." The human adventure being what it is, every period is one of transition, of changing ideas and social structures, but not every age has experienced the radical "shaking of the foundations" that has occurred in almost every part of the world over the last generation.

Any thoughtful citizen must be concerned about the kaleidoscopic religious scene in the land, the transition from a Protestant to a religiously pluralistic society, the growing American cult of religion-in-general, the shifting of familiar ethical landmarks, the adjustments and realignments demanded by the ecumenical movement, and the crises calling for a Dulles-like "agonizing reappraisal" in many areas where the principle of separation of church and state applies. In regard to the latter, confusion has been compounded for many good people by a series of Supreme Court decisions on religion and the schools over the last sixteen years.

A university president under whom the editor of this periodical served is fond of referring to the university as a community of junior (students) and senior (teachers) scholars. That would be presumptuous if the term scholar were treated as a synonym for savant, one who is in possession of the holy grail of truth rather than in quest of it. Better that the university be called a community of junior and senior students, for even the teachers prefer to regard themselves as among those who are seeking answers. Certainly more than anywhere else, it is to the university with its studious atmosphere and its vast resources for learning that the confused citizens have a right to look for guidance in clarifying their thought on important issues. But sometimes they have been given the proverbial stone when they have asked for a loaf. Speaking at Ohio State University last November, Franklin Littell declared: "We come, thus, to a time when both state and church desperately need the university as a center of dialogue, and the university reflects the confusion and ambiguity of our culture rather than pointing toward the way out."

Law Professor Robert C. Casad

The presence of Kansas School of Religion at The University of Kansas is a symbol of concern, on the part of church and state, for the dialogue for which Littell and others plead. For it to be a meaningful concern depends upon the seriousness with which church and state (in this case represented by the university) assume the role of participants in the dialogue. Kansas School of Religion wants to be more than a mere symbol of mild concern. One of our board members, Law Professor Robert C. Casad, is involved in two projects that are illustrative of the vigorous, creative role we think the School of Religion should play. One of these is the work of the Committee on Religion and Public Higher Education. The other is the coming Conference on Religion and Law sponsored by the School of Religion in association with the K. U. Law School.

Out of a total of forty members on the School of Religion board fifteen are teachers or administrators in The University of Kansas. Of these, three were appointed by the board chairman, lawyer Ralph King, more than a year ago to serve on a Committee on Religion and Public Higher Education. It would be hard to find in Kansas any group better equipped to serve in this capacity. The chairman of the committee, Dr. Robert C. Casad, is a Baptist. After a brilliant scholastic career, he joined the faculty of the K. U. Law School in 1959, where he soon won the respect of his colleagues and his students. He has achieved distinction for his research and writing in the area of church-state relations. Serving with Professor Casad is Dr. James K. Logan, a Congregationalist. The fact that he is now in the second year of what promises to be a brilliant career as dean of the Law School is sufficient reason for his appointment to a post on the committee. The third member is Dr. George Anderson, a Lutheran, the head of the Department of History of K. U. As a student of the history of American institutions and as a concerned churchman, he has had a special interest in the relations between church and state. The article, "On Teaching Religion at the State University" which we are here printing in a special, enlarged issue of RELIGION is the first major result of the committee's labors. It appears also in the March issue of the *Kansas Law Review*. This product of the solid thinking of men of letters is a significant contribution to the dialogue that "both church and state desperately need" and that citizens seeking light have a right to expect at this great state university.

EDITOR

On Teaching Religion at the State University*

Robert C. Casad†

The annual report of the Rector of the University of Virginia for the year 1822 contained some interesting observations concerning the propriety of instruction in religion at the state university. The Rector was firmly committed to developing a true public university at which a genuinely liberal education might be obtained. He was, however, also dedicated to the principles of religious freedom embodied in the first amendment and was the author of the view that the first amendment built a "Wall of separation between church and state." With characteristic foresightedness, Thomas Jefferson saw at that early time the delicate nature of the problem posed to the state-supported university that aims to provide instruction in all recognized branches of learning without violating the principle of separation of church and state. He had been principally responsible for seeing to it that no professorship of divinity should be instituted at the University of Virginia, and in that report of 1822 he sought to explain and clarify his thinking on that matter. The absence of a specific chair in divinity, he said "was not . . . to be understood [as meaning] that instruction in religious opinions and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations between man and his Maker, and the duties resulting from these relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation. The want of instruction in the various creeds of religious faith existing among our citizens presents, therefore, a chasm in a general institution of the useful sciences."[1] The report went on to propose a method of "filling the chasm" which would not violate constitutional principles.[2]

Other early university officials were not so concerned as was Jefferson about the constitutional implications of religious instruction. Religion had been a major part of the life of the private universities which had provided the pattern for the new state universities. It continued, for a time, to be so in the state universities as well. Courses in religion were frequent; compulsory chapel almost universal. But around the mid-nineteenth century American state universities and later the land-grant colleges began to develop curricular patterns different from those of the classical university, and by the end of the century, theology had largely given place to more scientific, utilitarian and specialized professional courses.[3] Religion courses were rarely found, although the reason was not the fear of violating the Constitution. The first amendment was not applicable to the states at all until after the adoption of the fourteenth amendment, after the Civil War. Moreover, even after the fourteenth amendment hardly anyone thought there would be any basic illegality in teaching religion, or even praying, in public educational institutions, at least where participation was voluntary, until nearly the end of the first half of the twentieth century.[4] The reason for the decline in religious exercises and courses was that the dominant philosophy at that time tended to be secular and anti-religious. Theology had lost much of its intellectual attractiveness in comparison to the challenge of new scientific and technical disciplines. Moreover, jealousy between the sects themselves tended to force secularization upon state universities.[5]

In the twentieth century the tide has apparently turned: religion is finding its way back into the academic community of state universities. In 1933, 76% of the seventy-nine tax-supported institutions covered by one study offered at least one course that could be classified as a course in "religion." By the 1940's, 80% were offering such courses.[6] Now according to one writer the figure may be over 98%.[7] In the early 1930's, state-supported colleges and universities offered an average of five religious-content courses per institution. By 1958 the average was about nine courses per institution.[8] Surely many factors have contributed to this change, but one important factor must be growing realization of the necessity of filling the "chasm" noted by Jefferson. A university cannot ignore a subject so important to human life and society as religion. At one time it was argued that students who wanted to study religious subjects could go to private religious colleges. This argument no longer seems persuasive. A recent study indicates that the proportion of students enrolled in public as compared to private institutions of higher education has changed from less than 50% before World War II to 61.5% in 1963.[9] Higher education is coming more and more to be a state function. State-supported colleges and universities now surely have an obligation to present their students with the means for learning about all significant aspects of man and the universe. The question of reconciling the role of religion and theology in the academic community of a state university with the constitutional principle of separation of church and state can no longer be solved by simply excluding theology from the community. The problem is a difficult one, but any university worthy of the name must try to solve it.

Federal Constitutional Limitations

The problem of working out the proper role for religion and theology in a state university is complicated by the widespread confusion concerning the significance of certain decisions of the Supreme Court rendered during the period since World War II. In 1948, in the famous case of *McCollum v. Board of Education*,[10] the court held constitutionally invalid a program of religious instruction in public

* This paper was prepared by the author with the collaboration of Dean James K. Logan and Professor George Anderson for the Kansas School of Religion's Committee on Religion and Public Higher Education. It appears here in almost the same form in which it was published in *Kansas Law Review*, vol. 12, March, 1964, pp. 405–416 and is reprinted by permission (copyright 1964, Kansas Law Review, Inc.).

† Associate Professor, The University of Kansas School of Law. A.B. 1950, M.A. 1962, The University of Kansas; J.D. 1957, The University of Michigan.

[1] PADOVER, THE COMPLETE JEFFERSON at 957 et seq. (1943). Bean, *Historical Developments Affecting the Place of Religion in the State University Curriculum*, 50 RELIGIOUS EDUCATION 275, 278 (1955). The passage quoted also appears in Justice Reed's dissenting opinion in McCollum v. Board of Education, 333 U.S. 203, 245 (1948).

[2] See text accompanying note 34 *infra*.

[3] Bean, *What is a State University*, in RELIGION AND THE STATE UNIVERSITY 60–61 (1958).

[4] The first of the "religion in public schools" cases, McCollum v. Board of Education, 333 U.S. 203, was decided in 1948.

[5] See Kauper, *Law and Public Opinion*, in RELIGION AND THE STATE UNIVERSITY, 69, 78 (1958). See also Bean, *Historical Developments Affecting the Place of Religion in the University Curriculum*, 50 RELIGIOUS EDUCATION 275, 281 (1955).

[6] Smith, *Religious Instruction in State Universities*, 53 RELIGIOUS EDUCATION 293 (1958).

[7] See Platt, *Religious Influences on the State College Campus*, The Christian (International Weekly of The Disciples of Christ) Dec. 29, 1963, p. 4.

[8] Smith, *supra* note 6.

[9] Platt, *supra* note 7.

[10] 333 U.S. 203 (1948).

grade schools under which students who did not wish to participate were released and allowed to study other subjects in another room. In 1952 the Court again considered the question of religious instruction for public grade school pupils in the case of *Zorach v. Clauson*.[11] The program in that case, as in the *McCollum* case, involved instruction during regular school hours, but the pupils wishing to participate repaired to a place outside the school for the religious instruction, while the pupils who did not want to participate remained in their classes for secular instruction. In the *Zorach* case the Court held that the program did *not* violate any constitutional provisions. The only differences between the programs involved in these two cases were:

(1) In the *McCollum* case the pupils who did not want to participate had to move to a different room: in the *Zorach* case the pupils who *did* want to participate had to move.
(2) In the *McCollum* case the religious instruction took place in the regular classroom, the outside instructor occupying the position in the class, and no doubt borrowing some of the prestige, of the regular teacher. In the *Zorach* case, the instruction took place off the school grounds in a situation in which the religious instructor could not even implicitly draw upon the authority of the public school.[12]

The next significant decision was the celebrated "Regent's Prayer Case," *Engel v. Vitale*[13] in 1962. That case concerned a nondenominational prayer (that did little more than acknowledge human subservience to a superior power) which had been officially promulgated by the New York Board of Regents for use in those schools that *desired* to use a prayer. Certain school boards prescribed the recitation of the prayer at the beginning of every school day. Students who did not want to participate were told they need not repeat the prayer, and could even leave the room if they wished. This practice was held an unconstitutional "establishment of religion" by the Supreme Court. The practice involved in the *Engel* case was not instruction—it could not even claim such educational purposes as did the religious instruction in the *McCollum* case—it was a devotional exercise, pure and simple. Moreover, like the instruction in *McCollum*, it took place during regular school hours, in the regular school room, and nonparticipating pupils had the burden of taking the initiative to absent themselves if they desired to do so. The *Engel* case presented one other feature indicating "establishment of religion" by state action more strongly than did the *McCollum* case. In *Engel* the prayer was led by the regular teacher as a part of her official duty: in *McCollum* the religious teacher merely stood in the position of the teacher.

The *Engel* case caused a great deal of comment, much of it ill-informed. It is probably true that some of the statements of the court in the *Engel* opinion went beyond the necessities of the actual decision,[14] but this is a problem that is inevitable when the Court is trying to formulate legal doctrines to implement broad constitutional principles. The fact of the matter is that in the *Engel* case the court struck down a practice that had all of the bad features of that previously ruled invalid in *McCollum* while lacking even the justification that it was educational, at least in some degree. Nevertheless, the strong language of the majority opinion caused some to feel that the singing of "America" and the "Star Spangled Banner" in school were now illegal, and that the national motto, "In God We Trust," was now unconstitutional. Perhaps it was the fuss stirred up by the *Engel* opinion that led the court in the most recent case, *School District v. Schempp*[15] to go out of its way to declare that the principle of separation of church and state did not mean absolute separation. There are some areas in which the state must have contact with religion, as the court sought to make clear in the *Schempp* case.

In *School District v. Schempp*, the practice in question was the regular reading of ten verses from the Bible, without comment, at the opening of each school day, in accordance with a Pennsylvania statute. Pupils not wishing to listen or participate in the reading could be excused at the request of their parents. The particular school district in question prescribed recitation of the Lord's Prayer in addition to the Bible reading. This case, unlike the others mentioned, concerned the employment of the practice in senior high school rather than grade school. The practice was found to constitute an unconstitutional "establishment of religion."

It may be noted that Bible reading is not necessarily a devotional exercise, as was the prayer in *Engel v. Vitale*.[16] It can have a legitimate educational function, as the Court acknowledged. But in this instance it did not have any such purpose or effect, the Court concluded. Accordingly, the Bible reading in *Schempp* fell under the same ban as the prayer in *Engel*. Some of the statements made by the justices in explaining their opinions are worth repeating.

Writing for the majority, Justice Clark said:

> [I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.[17]

Justice Brennan in his concurring opinion, said:

> The holding of the Court today plainly does not foreclose teaching *about* the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. To what extent, and at what points in the curriculum religious materials should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools.[18]

To this statement Justice Brennan appended a footnote which contains the only reference by the court in any of its decisions to the problem of teaching religion courses in state-supported colleges and universities. The reference cites a recent excellent article dealing with the teaching of religion in California state institutions of higher education.[19]

Justice Goldberg's concurring opinion, in which Justice Harlan joined, said:

> Neither the state nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of

[11] 343 U.S. 306 (1952).
[12] The distinction between these two cases was analyzed by Justice Brennan in his concurring opinion in School District v. Schempp, 83 Sup. Ct. 1560, 1575 (1963).
[13] 370 U.S. 421 (1962).
[14] For a learned criticism of Justice Black's absolutist approach to the *Engel* case, see Griswold, *Absolute is in the Dark—A Discussion of the Supreme Court to Constitutional Questions*, 8 UTAH L. REV. 167 (1963).
[15] 374 U.S. 203 (1963).
[16] 370 U.S. 421 (1962).
[17] 83 Sup. Ct. 1560, 1573 (1963).
[18] *Id.* at 1612-13.
[19] Louisell and Jackson, *Religion, Theology, and Public Higher Education*, 50 CALIF. L. REV. 751 (1962).

religion and, indeed, under certain circumstances the First Amendment may require that it do so. And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains and of teaching *about* religion, as distinguished from the teaching *of* religion, in the public schools.[20]

These quotations fairly indicate that a majority of the present Court recognizes that religion has a legitimate function in public education, and that the principles of the first amendment permit—may even require—the teaching of religious subjects in some manner and under some circumstances.[21] The principle of "separation of church and state" is not as absolute as Jefferson's famous metaphor would suggest, as Jefferson himself surely realized, if we may judge from his report quoted at the outset of this paper.

It will be noted that both Justice Brennan and Justice Goldberg spoke of "teaching *about* religion" as distinguished from the teaching *of* religion, the former being lawful and the latter perhaps not. The semantic substance of these contrasting terms is not clear. The contrast of prepositions suggests that at least two different concepts are involved, but the words themselves only hint at their nature. Probably the justices were aware of this ambiguity but were not yet ready to spell out the distinguishing features of the different concepts. The word "teaching" in this context is ambiguous. "Teaching religion" may mean communicating the facts concerning the values, history, mental disciplines, etc., connected with the religion so that the "student" may know what those facts, values and mental processes are. Or it may mean communicating those facts, values, mental processes, etc., to the "student" so that the student will accept them as true and valid for his own life. The one type of teaching seeks to promote understanding: whether the student accepts the values as true or adopts the disciplines in his own life is irrelevant. The other type of "teaching" seeks commitment on the part of the student. It aims to convince the student to accept the truth of the facts; to adopt the values; to incorporate the processes and disciplines into his own life: whether he understands the doctrines, values or disciplines is irrelevant. It seems most likely that when the justices spoke of "teaching about religion" they had in mind teaching for understanding. When they spoke of "the teaching of religion" they surely meant teaching for commitment, or we might call it indoctrination.[22]

The word "religion" too is ambiguous here. It may refer to the creedal discipline of a particular sect; it may refer to one of several aspects of religion in its most abstract sense; or it may refer to the *academic* discipline, probably better called "theology," which is the traditional basis of the professional education of the clergy. The terms "religion" and "theology" are frequently used to mean the same thing. Our language may perhaps have enough different words for the several different concepts that the term "religion" has been applied to, but like the legal terms "right," "privilege," "power" and "immunity" these precise meanings are not well enough known to the general public to give them effective currency.

[20] 83 Sup. Ct. 1560, 1615 (1963).

[21] The Court's recent decisions dealing with the "establishment" clause of the first amendment have raised some perplexing problems in reconciling that clause with its companion, the "free exercise" clause. The "establishment" clause cannot be construed so as to permit the state to *inhibit* religion, for that would bring it into conflict with the freedom of exercise of religion likewise contained in the first amendment. Justice Brennan devoted considerable attention to this matter in his concurring opinion in the *Schempp* case.

[22] See Kauper, *Law and Public Opinion*, in RELIGION AND THE STATE UNIVERSITY 69, 78 (1958).

What, then, in summary, are the limitations imposed by the U.S. Constitution upon the teaching of religion in public educational institutions? Three basic limitations present themselves in the cases discussed.

(1) Such instruction as there is must be voluntary. A student probably cannot be compelled to study religion or even "about" religion. And this means he cannot even be subjected to the sort of indirect compulsion that exists where he must remove himself from the classroom in order to avoid the instruction. This indirect compulsion can be very strong, especially in the case of younger children, in view of the apparently natural desire of children to conform to the seemingly dominant behavior pattern. This sort of compulsion existed in the *McCollum*, *Engel* and *Schempp* cases. However, the indirect compulsion existing where a student is required to remain behind in school while other pupils leave to go to their religious instruction away from the school grounds did not invalidate the released-time program in the *Zorach* case.

(2) The program must not be devotional in character. It must present not a worship but an educational experience. Prayer can hardly be regarded as educational—no matter how valuable one may regard it as being for other purposes. It is true that educational institutions operated and supported by the federal government—such as the service academies—do have official devotional exercises, but these are not conducted in regular school hours, and there may also be the same justification for them as for the services of military chaplains.[23]

(3) The instruction must seek to promote understanding, not commitment. It must aim at education, as contrasted with indroctrination. Reading the Bible to students in the lower grades, who are not mature enough to comprehend the literary or historic values of it, seldom can be other than a devotional exercise or an attempt at indoctrination. Likewise, reading the Bible without comment or discussion to high school students, as in the *Schempp* case, does not seek to promote understanding.

If these be the operative limitations, there should be no obstacle in the U.S. Constitution to even a tax-supported program of instruction in a university where understanding about religion and theology is taught on an elective basis, where no particular point of view is favored over another, and where no attempt to elicit a commitment from the students would be made, either directly or indirectly, expressly or implicitly. The situation of colleges and universities is so different from that of the primary and secondary schools that the recent decisions that have caused such excitement probably will have little or no effect on the issue of teaching religion in college or university. The first amendment, as the Court has tried to make it clear, does not regard contact between religion and the state as evil in itself. It so regards only such contact as is likely to produce the substantive evils the first amendment was designed to prevent—namely, (1) infringements of personal religious freedom, and (2) the utilization of the power, prestige and money of the state to promote one religion over another (including the promotion of religion in general over irreligion). Contact between religion and the public schools, where attendance by all who cannot afford accredited private education is compulsory, is especially likely to produce these substantive evils. Pupils in the lower grades are peculiarly susceptible to indoctrination. They tend to accept uncritically what is taught them in their classes. The use of the power and prestige of the school and the teacher in support of a particular religious practice or doctrine clearly tends to favor that practice or doctrine over all alternatives. Pupils in the lower primary grades usually are not capable of examining

[23] See Justice Brennan's discussion of the chaplains in the armed services in School District v. Schempp, 83 Sup. Ct. 1560, 1610-12 (1963).

the Bible or religious doctrines objectively for their literary, historic or philosophic significance, and so no matter how hard the teacher may try to make Bible reading or study an educational exercise, it cannot be more than an indoctrination for such pupils. This kind of activity tends both to utilize the power of the state to promote religion and to infringe the freedom of the student who does not want to participate. This infringement of his freedom is not avoided by giving him the choice of leaving the class and going to another room. In view of the strong drive to conformity that most children feel, his choice is not a free one: he is still under an indirect compulsion.

Contact between religion and the state in a college or university is not subject to these evils. College students are not readily susceptible to indoctrination. The whole atmosphere of free inquiry that pervades a university conduces to questioning ancient truths and challenging dogmas. These students *are* capable of examining religious literature and doctrines objectively. And if the religion courses are elective, there is no compulsion, direct or indirect, such as exists in the public school setting.

Limitations in the State Constitution

Two provisions of the Kansas Constitution are pertinent to the issue of the role of religion in tax-supported colleges and universities.

> Kansas Bill of Rights § 7. Religious Liberty. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control or interference with the rights of conscience be permitted; nor any preference be given by law to any religious establishment of mode of worship . . . ."

> Kansas Constitution, Article 6, § 8. Nonsectarianism. No religious sect or sects shall ever control any part of the common-school or university funds of the state.

Kansas decisions shed very little light on the significance of these provisions to the teaching of religious subjects in state-supported colleges and universities. It has been held that regular reading of the Twenty-third Psalm and recitation of the Lord's Prayer in a public grade school where students were not required to participate, but were required to refrain from other activitiy at that time, did not violate the religious liberty provision.[24] That decision, however, was rendered before the United States Supreme Court had construed the United States Bill of Rights as prohibiting such practices.

In spite of the different wording, the effect of the religious liberty provision of the Kansas Bill of Rights on religion in state-supported institutions of higher education is probably about the same as the effect of the first amendment to the U.S. Constitution already described.

The nonsectarianism provision was held violated when a school district which could lawfully maintain two schools allocated tax moneys to a Catholic parochial school instead of building a second public school in the district.[25] Probably that provision prevents the allocation of university funds, at least those derived from legislative appropriations, to a private religious institution such as the Kansas School of Religion.[26] It does not prevent other forms of cooperation or assistance, however, although if such cooperation or assistance should be so substantial as to constitute an "establishment" it might be invalid under the religious liberty provision and the first amendment as well. The nonsectarianism provision probably would not prevent the setting up of a school or department of religion within the university itself, supported by state funds but controlled by the university administration in the same manner as other departments. Such a school or department might be vulnerable to attack as constituting an "establishment," however, unless its course offerings were carefully screened so as to include only such matters as fall within the permissible limits outlined above.[27]

Should a State University Concern Itself with Religion and Theology?

The fact that a state university can lawfully teach religious subjects does not mean it should or must. All would acknowledge, however, that some attention must be paid to religion. The Justices of the Supreme Court in the quotations set out above[28] recognize that necessity. But should religiously oriented courses be taught by professional theologians in courses emphasizing the theological method and approach? Or should they be taught by professors of literature, history, sociology, etc., in courses emphasizing the method and approach of their own academic disciplines? The catalog of the College of Liberal Arts and Sciences of The University of Kansas indicates that several courses which might be described as containing "religious" content are regularly offered in several departments. Examples include:

English 233: Literary Aspects of the King James Bible
Greek 57: New Testament
History 120: Age of Reformation
History 121: Age of Religious Wars
History 320: Historical Interpretation of the Reformation
Linguistics 1: Hebrew Language I
Linguistics 2: Hebrew Language II
Philosophy 110: Mediaeval Philosophy
Philosophy 176: Philosophy of Religion
Philosophy 178: Recent Philosophy of Religion
Psychology 100: Psychology of Religion
Slavic and Soviet Area 118: Church History of Russia I
Slavic and Soviet Area 138: Church History of Russia II
Sociology 110: Religion and Society
Sociology 111: Sociology of Asian Religions
Sociology 112: Primitive Religions

Courses of this type are valuable and important. But should there not be something for the student who wants a deeper understanding of religion as a subject in itself taught by a professor whose principal interest and field of competence is religion? Does the university discharge its obligation to its students by providing courses wherein students of literary criticism, or history, or psychology or philosophy or sociology may learn something of the significance of religion to their fields? We can answer that last question affirmatively only if we assume that there is nothing of academic value in the study of religion or theology itself. To make such an assumption one would have to ignore the historic role of the faculty of theology in the life of the university.

But there may be a yet more fundamental issue. If the state university cannot "establish" a particular set of religious doctrines or even religion in general by a policy of favoritism, neither can it "establish" secularism. The "establishment" clause of the first amendment must be a two-way street. While at the university, students are forming the

[24] Billard v. Board of Education, 69 Kan. 53, 76 Pac. 422 (1904).
[25] Wright v. School District, 151 Kan. 485, 99 P. 2d 737 (1940).
[26] The Kansas School of Religion is an institution directed and financed cooperatively by several religious groups, Christian and Jewish. Its classes are conducted in a building adjacent to but not on the campus of The University of Kansas.
[27] *Cf. supra.*
[28] *Cf. supra.*

principles and values on which their life will be based. To deny students access to courses in religion at an intellectual level comparable to that encountered in other university work, unless the student can afford to go to a private college or university, serves to inhibit religion as against secularism and serves indirectly to compel the student to accept a value system he might not have accepted had he been better informed. Perhaps this is one of those areas to which Justice Goldberg was referring in the passage quoted above[29] when he said that in certain circumstances the first amendment may *require* the government to take cognizance of religion. To the extent that a university seeks to provide its students with the means to a "liberal" education, it must make accessible to them the means of understanding at least the historically most important value systems so that they can properly assess their relevance to their own lives. Forced to choose between, for instance, a materialistic set of values which he learned about in college by studying critically the works of great materialistic writers and an idealistic religious set of values which he learned about in Sunday school or synagogue at a very young age, his choice cannot be an intelligent one nor a fair one.

The aim of "liberal education," according to the article reprinted in the Catalog of the College of Liberal Arts and Sciences of The University of Kansas, is to ". . . invite and qualify men to choose deeply and fundamentally . . ." in making the decisions upon which life will be based.[30] Education can hardly be "liberal" in this sense unless it provides the student an opportunity to consider, at a level commensurate with his intellectual maturity the answers that the world's great religions provide to the basic issues of human existence.

Cardinal Newman is reported to have said that a man is hardly educated unless he is liberally educated, and he cannot be liberally educated if he is religiously illiterate.[31] Of course we must acknowledge that Cardinal Newman may have been subject to some bias which would lead him to attribute more importance to "religious literacy" than some others equally as well educated as Newman might do. But if the liberally educated man is the one qualified to choose deeply and fundamentally, as the college catalog indicates, he must at least have an understanding of the nature of the choices which religion offers. If the university is to provide the means to a liberal education, it must give its students access to the serious study of religion. As Louisell and Jackson, in the article referred to by Justice Brennan, have put it:

> Unless the university is to be regulated to the position of a training school for technicians, it must bear the responsibility of provoking the individual to think fundamentally about his role in life and about ultimate questions. Like Socrates, the university should be the inquiring conscience of society, presenting for the thinking student a variety of values so that he may intelligently choose from among the clamor of alternative principles that may shape his life. Although it is not the duty of the university to force a particular choice on a student, or even to force him at this stage to choose, it would seem to be the duty of the university to see that the student has the opportunity to learn about all reasonably possible choices. Indeed, unless knowledge of all such choices is available to the student, the university has to some extent *forced* a choice upon him.[32]

These same authors, in concluding their study of the California situation made a statement we could well borrow:

> The problem of the place of theology in the university has to be faced. The dialogue of an intellectual community is not complete without the participation of theology. We cannot afford to leave its voice indefinitely muted or to hear it at most only tangentially and indirectly. Ideally, this discipline overtly and forthrightly should resume its historic university role. Is the ideal precluded for the public university by constitutional or other legal criteria?
>
> To offer theological or other courses in religion which are voluntary, conducted on a high level, intellectually objective, given to students at college age in absence of circumstances which would render such courses coercive on the religious beliefs of students or indicate an "official" approval or disapproval of a particular viewpoint, is constitutionally and legally unobjectionable.[33]

It is probably safe to say that most of the state universities in the country have given considerable attention to the problem of the proper role of religion in publicly supported higher education. The problem is not easy to solve. The answer cannot be found by cutting religion completely off from higher education. By such an approach the university would abdicate one of its responsibilities as an agency of free inquiry and education. Moreover, the systematic exclusion of religion from the public university may well involve in itself an infringement of fundamental civil liberties.

In the report referred to at the outset of this paper, Thomas Jefferson suggested as a solution to this dilemma that the university encourage independent religious schools to establish themselves "on the confines of the University." This arrangement would offer the advantage of "enabling the students of the University to attend religious exercises with the professor of their particular sect. . . ." "Such an arrangement would complete the circle of the useful sciences embraced by this institution and would fill the chasm now existing on principles which would leave inviolate the constitutional freedom of religion. . . ."[34]

The Kansas School of Religion serves the function of "filling the chasm" for The University of Kansas. It is quite different from the arrangement suggested by Jefferson in that it does not conduct "religious exercises" and does not schedule its courses for the purpose of enabling students to study with professors of their "particular sect." These differences, however, would seem to make the Kansas School of Religion academically stronger and even more clearly invulnerable to constitutional objections. If religious groups are willing to provide such institutions and to support them sufficiently that high academic standards can be maintained, this may present the best possible solution to the [illegible] of religion in public higher education.

[29] *Cf. supra.*

[30] Perry, *When is Education Liberal*, in THE UNIVERSITY OF KANSAS COLLEGE OF LIBERAL ARTS BULLETIN 8 (1962–63).

[31] Ward, *Theology and Liberal Education*, 49 RELIGIOUS EDUCATION 336, 338 (1954).

[32] Louisell and Jackson, *Religion, Theology, and Public Higher Education*, 50 CALIF. L. REV. 751, 752 (1962).

[33] *Id.* at 792.

[34] See note 1 *supra* [illegible]

RELIGION

Published quarterly in October, January, April, and July by Kansas School of Religion at The University of Kansas, Lawrence, Kansas, 660[illegible]

Editor: William J. Moore, Dean of Kansas School of Religion

RETURN REQUESTED

Subscription 50 cents per year.

Second class postage paid at Lawrence, Kansas

Dr. James E. Seaver
1629 Alabama
Lawrence, Kansas

POSTAGE DUE 10 CENTS

☐ Moved, left no address
☐ No such number
☒ Moved, not forwardable
☐ Addressee unknown

RETURNED TO WRITER

REASON CHECKED
Unclaimed
Refused
Unknown
Insufficient address
Moved—Left no address
No such post office in state
Do not remail in this envelope

1003

Gone over 2 years