

God on Stage? Religious Themes in Public Educational Theatre

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In January 2004, Covington High in New Orleans endured a censorship controversy. The drama teacher proposed that one of the school dramas for the coming year be the 1971 off-Broadway musical, *Godspell*, a story inspired by the teachings of Jesus Christ. The school's drama team performed the play at the school five years prior with little complaint. This time, however, school principal Danny Guillory decided that the play should not be performed, because he received some complaints from Covington citizens who objected to the show's Christian content. He told the *New Orleans Times-Picayune*, "When it (a production) has a religious nature, some people will see that as offensive."¹ Guillory made the decision despite the fact that previous committees approved the play and another local high school had recently performed the play.

Ironically, although *Godspell* draws direct inspiration from the New Testament book of Matthew, it focuses upon the teachings of Jesus instead of his miracles. For example, the play contains no healings or resurrection scene, a fact that sometimes offends Christians. In fact, librettist John-Michael Tebelek claimed he wrote *Godspell* as a political allegory, and he took great exception to having the two lead

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1. Trey Iles, "Teacher irked by ban on musical," *New Orleans Times-Picayune*, 15 January 2004, metro, 1.

characters identified as “Jesus” and “John the Baptist/Judas.”² According to composer Stephen Schwartz, the play is just a “timeless story” about “how a community is formed around a man with a simple but profound message.”³ Yet, because the principal identified the subject matter of the play as having “a religious nature,” he singled *Godspell* out for censorship.

The censorship of *Godspell* is not an isolated incident.⁴ Such incidents raise difficult questions about theatre productions in public schools. After all, *Godspell* is merely one of many plays containing religious figures and themes. The range of possible dramas with “a religious nature” possessing the potential for controversy is enormous. First, several dramas and plays clearly focus upon or draw inspiration from figures depicted in sacred texts, such as *Godspell*, *Jesus Christ Superstar*, *Joseph and the Amazing Technicolor Dreamcoat*, etc. One could also add the plays of India, based upon their ancient works of faith, the *Mahabharata* and the *Ramanyana*, that are still performed today. Second, numerous productions address actual historical events related to religion, such as *Inherit the Wind*, *Luther*, *Pippen*, or *The Crucible*.⁵ Third, many fictional dramas and musicals clearly have religious themes and messages, such as *Les Miserables*, *Fiddler on the Roof*, and *You Can't Take it With You*. The musical *Kismet* suggests an Arabian concept of salvation or, at the least, a happy resolution. Fourth, a whole host of plays that touch upon religious themes in significant ways exist. Some old texts of England's many mystery, cycle and *Corpus Christi* plays still survive. Many other modern plays often address religious themes. One could ask, should children's plays, such as *The Masque of Beauty and the Beast* by Michael Elliot Brill, be dismissed from the public school drama repertoire because Beauty dares to beg her Heavenly Father's understanding as she takes her earthly father's place at the palace of the Beast? Finally, a variety of plays contain anti-religious themes. For instance, Howard Richardson and William Berney's *Dark of the Moon* seemingly extols the superiority of magic and witchcraft over the supposed superstitions of the Christian faith. The Christians in the play are depicted as

2. Stephen Schwartz, available online at: www.stephenschwartz.com (accessed 18 November 2004). Tebelek actually used the names of the original leads, Stephen and David, in his version of the script.

3. Stephen Schwartz, *Godspell*, compact disc, DRG Records, (P) and © 2000, A Note from the Composer.

4. See D. Lenzian, “‘Godspell’ Is a Theatrical, Not Religious Experience,” *The Times Herald-Record* (7 April 2001). Available online at: [<http://www.therecord.com/archive/2001-04/07/07mi-view.htm>, retrieved July 19, 2004]; P.R. Winnick, “Jewish Life Flourishing in North Hills,” *Pittsburgh Post-Gazette* (11 October 2000): N-1; Karen Kramer Faaborg, “High School Play Censorship: Are Students' First Amendment Rights Violated when Officials Cancel Theatrical Productions?,” *Journal of Law and Education* 14 (1985): 576.

5. Karen Faaborg reported that a school in Pylesville, Maryland canceled *Inherit the Wind* out of “fear of upsetting certain fundamentalist groups in the community,” 576.

hypocrites who promote a range of evils ranging from infanticide to rape.⁶

How should public school teachers react to such plays? Do teachers and public school administrators have a legal mandate to avoid dramas that contain religious or anti-religious themes? Perhaps teachers and administrators, out of fear of violating the First Amendment, may avoid some of the best literature the stage has to offer. Are such educators being overly cautious, or are they merely following the religion clauses of the First Amendment? Former President Bill Clinton suggested that “The First Amendment permits—and protects—a greater degree of religious expression in public schools than many Americans may now understand.”⁷ If his assertion is true, how might educators discern what theatre productions are within the bounds of the Establishment Clause?

This issue, specifically the constitutionality of theatre productions in public schools with religious or anti-religious themes, has not come before the Supreme Court and little scholarly attention has been given to the topic.⁸ Since little case law or scholarship on this particular

6. Many of the plays we will list in this article are approved for various public school productions. For example, the Texas University Interscholastic League pre-approves several plays for its annual one-act play contest, including *Dark of the Moon*, *Les Miserables*, *The Masque of Beauty and the Beast*, and *Everyman*. University Interscholastic League; available online at <http://www.uil.utexas.edu/aca/drama/plays.html> (accessed 23 November 2004). Interestingly, the standards set forth in the contest rules also contain some guidelines regarding religion. They state, “Directors shall eliminate profane references to a deity and obscene language or scenes from the approved production.” Ibid.

7. William Clinton, “President Clinton’s Memorandum on Religious Expression in the Public Schools,” *First Amendment Cyber Tribune*, 1995; available online at <http://fact.trib.com/1st.pres.rel.html> (accessed 23 August 2004).

8. The literature addressing religion and public education pays virtually no attention to dramas with religious themes. See Kent Greenawalt, *Does God Belong in Public Schools?* (Princeton, NJ: Princeton University Press, 2005); Joan DelFattore, *The Fourth R: Conflicts Over Religion in America’s Public Schools* (New Haven, Conn.: Yale University Press, 2004); Charles Haynes and Oliver Thomas, *Finding Common Ground: A Guide to Religious Liberty in Public Schools* (Nashville, Tenn.: First Amendment Center, 2001); Martin Marty with Jonathan Moore, *Education, Religion and the Common Good: Advancing a Distinctly American Conversation about Religion’s Role in Our Shared Life* (San Francisco, Calif.: Jossey-Bass, 2000); Robert Nash, *Faith, Hype and Clarity: Teaching about Religion in American Schools and Colleges* (New York: Teachers College Press, 1999); Warren Nord and Charles Haynes, *Taking Religion Seriously Across the Curriculum* (Alexandria, Va.: Association for Supervision Curriculum and Development, 1998); James T. Sears with James C. Carper, *Curriculum, Religion and Public Education* (New York: Teachers College Press, 1998); Warren Nord, *Religion and American Education: Rethinking a National Dilemma* (Chapel Hill, N.C.: University of North Carolina Press, 1995). The subject that is perhaps the closest to theatre production that receives more significant scholarly attention is the performance of sacred choral music in public schools. See Faith D. Kasparian, “Note, The Constitutionality of Teaching and Performing Sacred Choral Music in Public Schools,” *Duke Law Journal* 46 (1997): 1111-68.

subject exists,⁹ we offer a proposal for how schools and the courts should handle such cases in light of current tests, past precedent, and educational realities.

If the Supreme Court or other lower courts were to examine the constitutionality of public school drama classes presenting dramas such as *Godspell* or *Jesus Christ Superstar*, the major question, we argue, should be whether a theatre production with religious themes constitutes government sponsorship of religious speech. We contend that dramatic productions with religious themes need to be treated in a similar manner as literature with religious themes. The courts do not consider literature to be government sponsorship of religious speech merely because it contains religious themes, was written with religious motivations, or is even used as a sacred text. Dramatic productions deserve the same artistic respect. Even dramatic productions about individuals in sacred texts such as the Bible need to be understood as performing the Bible as drama in a manner similar to studying the Bible as literature. Ultimately, using these productions does not necessarily involve government sponsorship of religious speech. Nonetheless, educators' use of drama with religious themes may trigger Establishment Clause concerns, and thus we examine and suggest certain tests that would identify inappropriate uses of such dramas by educators.

The tests we examine draw from the three tests already in play in Supreme Court interpretation: (1) The Lemon Test,¹⁰ (2) the Endorsement Test,¹¹ and (3) the Coercion Test.¹² First, we note that if students are coerced to perform or attend a drama with religious themes, such coercion would prove problematic. Second, we argue that the constitutional tests concerning secular purpose and entanglement are of limited help in determining when dramatic presentations with religious themes might be used to support government sponsorship of religious speech. The most applicable criterion will prove to be whether a teacher continually uses dramatic productions to advance or promote a particular religion, religion in general or an anti-religious perspective. In other words, we claim that just as how a literature teacher used the Bible in a class is the most important variable in determining an Establishment Clause violation,

9. There are a number of cases that deal with the constitutional limits of school authorities to regulate school plays; however, these cases do not address Establishment Clause issues. The most well-known case from the Third Circuit is *Seyfried v. Walton*, 668 F. 2d 214 (3rd Cir. 1981).

10. This test was fully formulated in the 1971 Supreme Court case, *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Since that time, the *Lemon* test has served as the predominant, although not the exclusive, test in Supreme Court Establishment Clause jurisprudence.

11. Justice O'Connor first described the endorsement test in her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668 (1984).

12. Justice Kennedy first outlined the Coercion test in *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989) at 660-63.

the same would hold true for dramatic productions.

ARE SCHOOL PLAYS WITH RELIGIOUS THEMES GOVERNMENT SPEECH?

In light of past court precedent, we will treat a school play as a part of the school curriculum as was done in *Seyfried v. Walton*.¹³ Classifying theatre productions as government speech has important implications for how such productions would be treated in Establishment Clause cases. Douglas Laycock notes that of the three classes of religious clause cases: (1) funding of religious organizations; (2) regulation of religious practices and sponsorship; and (3) regulation of religious speech; the Supreme Court approach to religious speech cases has remained relatively consistent.¹⁴ He writes, "The Court has prohibited government sponsorship of religious speech for more than forty years, without exception in the public schools and with few exceptions elsewhere."¹⁵ To support this point, he cites the Court's language in *Board of Education v. Mergens* in which the Court identified a "crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."¹⁶ If plays are considered government speech, the key question will be whether plays with religious themes should be considered government religious speech in the same way that teacher-led prayer and devotional Bible reading are considered religious speech, or if such plays are closer to an academic speech about religion similar to the practice of studying the Bible as literature.

In the teacher-led Bible reading case,¹⁷ two of the Court's reasons for striking down state laws supporting these practices pertained to what eventually became the first two prongs of the *Lemon* test.¹⁸ In fact, in most cases, the Court relies on the purpose and effect prongs of the *Lemon* test to judge the legality of laws and policies influencing

13. *Seyfried v. Walton*, 668 F.2d. 214 (3rd Cir. 1981). For an argument claiming that *Seyfried* was wrongly decided, see Faaborg. Additional issues regarding the religious liberty and free speech rights of students would need to be addressed if a school play were understood as part of student expression. For example, what happens in a case where a student theatre group might have voted to perform *Godspell*? In such a case, the whole matter of student rights would need greater attention.

14. Douglas Laycock, "Comment: Theology Scholarships, the Pledge of Allegiance, and Religious Liberty: Avoiding the Extremes but Missing the Liberty," *Harvard Law Review* 118 (2004): 156-246.

15. *Ibid.*, 157.

16. *Board of Education v. Mergens*, 496 U.S. 226 (1990) at 250.

17. *Abington v. Schempp*, 374 U.S. 203 (1963).

18. The third prong states that a government law or action must avoid fostering excessive governmental entanglement with religion.

public schools. The Court stated that in order for a government law or action to survive an Establishment Clause challenge it must have a secular or civic purpose, and it must not have the primary effect of either advancing or inhibiting religion. Although these tests have been routinely criticized,¹⁹ they have not been discarded and have in fact been most consistently applied to Establishment Clause cases in public schools. Justice O'Connor's Endorsement Test also derives from these first two prongs of the *Lemon* test.²⁰ Her articulation of the test in *Lynch v. Donnelly*²¹ basically restates these two tests.

The purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice . . . in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.²²

Thus, to determine whether dramatic productions with religious themes performed in public schools are government-sponsored religious speech, we will focus our analysis on these two prongs of the *Lemon* Test. Moreover, as Charles Haynes, a prominent scholar, and Oliver Thomas, a well-known lawyer, who both address religion and education issues, note, "Rarely at issue in cases involving public education, the entanglement prong is most often associated with cases involving aid to parochial school."²³ Thus, we will assume that entanglement concerns would be a non-issue for theatre unless the public school performs the religious-themed play for a church audience.

THE PURPOSE OF DRAMA IN PUBLIC SCHOOLS

Could a public school theatre group's performance of *Godspell*, *Les Miserables*, or *Dark of the Moon* possess a secular purpose? In this section, we further explain why the secular purpose test possesses little usefulness in these controversies. The purposes for public school theatre one finds in state requirements, not surprisingly, focus upon how theatre educates the students who participate in theatre and not on the content of theatre productions or what the purpose of theatre is in relation to the audience. For instance, standards for high school-level theatre in Louisiana, the state where the *Godspell* incident mentioned in the introduction occurred, focus upon the importance of

19. See for example Stephen Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Anchor Books, 1993),

20. Kasparian, "Note."

21. *Lynch v. Donnelly*, 465 U.S. 668 (1984).

22. *Ibid.* at 690 (O'Connor, J., concurring).

23. Charles Haynes and Oliver Thomas, *Finding Common Ground: A First Amendment Guide to Religion and Public Education* (Nashville, Tenn.: First Amendment Center, 2001), 44.

theatre arts for developing creative expression, aesthetic perception, historical and cultural perspectives, and the skills of critical analysis.²⁴ The standard regarding critical thinking reveals the purely educational focus, “Students make informed verbal and written observations about the arts by developing the skills for critical analysis through the study of and exposure to the arts.”²⁵ Louisiana is not alone. For instance, the Texas standards emphasize similar goals:

Through perceptual studies, students increase their understanding of self and others and develop clear ideas about the world. Through a variety of theatrical experiences, students communicate in a dramatic form, make artistic choices, solve problems, build positive self-concepts, and relate interpersonally.²⁶

Another part of the Texas standards also emphasizes the educational aspect of theatre, particularly with regard to critical thinking:

Students increase their understanding of heritage and traditions through historical and cultural studies in theatre. Student response and evaluation promote thinking and further discriminating judgment, developing students who are appreciative and evaluative consumers of live theatre, film, television, and other technologies.²⁷

Education scholars echo these points. Rachael Kessler extols the value of imagination and creativity as “a synthesis or integration of many modes of knowing—left brain/right brain; reason and intuition; imagination and observation; and physical, emotional, and conceptual ways of knowing.”²⁸ Eric Jensen agrees, reporting a variety of benefits derived from the various aspects of theatre. Technical theatre, design and implementation of lighting, set construction and costuming contribute significantly to education, enhancing “cognition, emotional expression, perception, cultural awareness, and aesthetics.”²⁹ Jensen speaks highly of the performance aspect of dramatic arts, as well. In addition to the benefits mentioned above, he asserts that performance contributes to neurobiological growth and overall health.³⁰ Clearly, these benefits are not religious considerations. As a primary educational intent to theatre arts, the overall health and cognitive

24. *Louisiana Arts Content Standards: State Standards for Curriculum Development* (Baton Rouge, La.: Louisiana Department of Education, 2003), 35-49.

25. *Ibid.*, 44.

26. *Texas Administrative Code* (TAC), Title 19, Part II. Chapter 117. Texas Essential Knowledge and Skills for Fine Arts, sub-chapter C High School, subsection 64, Theatre, Level I, Introduction, available online at: <http://www.tea.state.tx.us/rules/tac/chapter117/ch117c.html> (accessed 23 November 2004).

27. *Ibid.*

28. Rachel Kessler, *The Soul of Education: Helping Students Find Connection, Compassion, and Character at School* (Alexandria, Va.: Association for Supervision and Curriculum Development, 2000), 104.

29. Eric Jensen, *Arts with the Brain in Mind* (Alexandria, Va.: Association for Supervision and Curriculum Development, 2001), 49.

30. *Ibid.*, 71.

growth of students proves neither religious nor anti-religious.

Thus, although a court would likely look to these educational standards to determine whether the production of a particular play with religious themes fulfills these purposes, these standards prove to be of little help when addressing the controversial content of a play. Any well-performed play is likely to fulfill most of these standards. Certainly, the presentation of a play with religious themes is not equivalent to the *practicing* of religion. It is the practicing of an art.

At times in the past, the purpose prong of the Lemon test has been used to evaluate the motives of state legislators. For example, the Court indicated in *Edwards v. Aguillard*³¹ that the motivation of state employees or representatives may be relevant when considering the secular purpose prong of the Lemon test. This precedent raises the question of whether one should consider the playwright's or theatre director's purpose when evaluating the appropriateness of a play. We contend that the motives of the play's author are irrelevant to the evaluation of a play's appropriateness for public school. After all, when choosing literature for students we do not dismiss literary authors whose motives may have been religious or anti-religious. If Fyodor Dostoyevsky's motive for writing *The Brothers Karamazov* was to promote the moral beauty of Christianity or if Rudolfo Anaya wrote *Bless Me, Ultima* to attack Catholicism it would not mean we should *prima facie* exclude these works from a public school literature course. Thus, we would argue that even though an author of a play may claim the purpose of his or her play as, "The Lord wants the message to get out for his children, to know the truth about sex,"³² this should not be a reason to discontinue a play. The purpose clause of the Lemon test should not be used to judge the motives of a drama's author. It should only be used to evaluate the overall educational activity of drama and the overall activity of public educational theatre clearly has a secular purpose. The real source of controversy remains the content of the drama and whether a play with religious or anti-religious themes might constitute government religious or anti-religious speech.

THE PRIMARY EFFECT OF PROMOTING OR INHIBITING RELIGION

On its web site, the Anti-Defamation League's (ADL) guide for religion and public education sets forth the answer to the question: "May school assemblies or special events include religious music or drama?" It is not quite clear what might qualify as a religious drama, but the answer reflects a clear application of the first two prongs of the *Lemon* test as well as the language of the endorsement test to the

31. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

32. Debbi Wilgoren, "For Student Actors, a Play on Reality; Playwright's 'Ruby' Targets Teen Pregnancy," *The Washington Post*, 20 May 1999, B1. Also cited in "D.C. Public Schools Discontinue Promotion of Religious Play," *Church & State* (July/August 1999), 21.

content of dramatic productions:

Yes. Religious music or drama may be included in school events that are part of a secular program of education. The content of school special events, assemblies, concerts and programs must be primarily secular, objective and educational, and may not focus on any one religion or religious observance and may not appear to endorse religion over non-religion or one religion over another. [footnote in document: *School District of Abington Township, PA v. Schempp*, 374 U.S. 203 (1963); *Sease v. School Dist. of Philadelphia*, 811 F.Supp. 183 (E.D. Pa. 1993)]. Such events must not promote or denigrate any particular religion, serve as a religious celebration, or become a forum for religious devotion. Student participation should be voluntary. Thus, a school's choral group can sing songs that are religious in nature but may only do so if the song is part of a larger program of music that is secular.³³

As should be clear from our argument above, we would agree that dramas with religious themes must be part of a secular program of education. Yet, we have questions about the ADL's recommendation that the content of a drama production "must be primarily secular, objective and educational, and may not focus on any one religion or religious observance and may not appear to endorse religion over non-religion or one religion over another." Would these criteria pose problems for a public school production of *Fiddler on the Roof* or *Joseph and the Amazing Technicolor Dreamcoat*? After all, one play clearly focuses on part of the Jewish religious experience (with little reference to other religions) and the other play focuses exclusively on a Jewish religious figure. To address this matter, a more detailed analysis of primary effect test's language in relationship to drama production is needed.

The effect of a theatre production in relationship to the audience has always been a hotly debated topic throughout history. Aristotle, using the term "tragedy," asked, "What is the source of the effect at which tragedy aims?"³⁴ His own response asserted that drama, or tragedy, should be "an imitation of events that evoke fear and pity."³⁵ Aeschylus saw the playwright, or poet, as a moral teacher and believed that a playwright's work must seek to have a moral effect on audiences. But, Euripides took the position that art should have no concern for morality in its function as the revelation of reality.³⁶ Shakespeare might agree, in part, having his Danish prince, Hamlet, proclaim, "The purpose of playing, whose end, both at the first and now, was and is to hold, as 'twere, the mirror up to nature, to show virtue her (own)[sic] feature, scorn her own image, and the very age and body of the time

33. Anti-Defamation League, "Religion in the Public Schools," 2004; available online at: http://www.adl.org/religion_ps/teaching.asp#5 (accessed 23 August 2004).

34. Aristotle, *The Poetics*, trans. M. Heath (New York: Penguin, 1996), 7.2.

35. Ibid.

36. Marvin Carlson, *The Theories of the Theatre: A Historical and Critical Survey from the Greeks to the Present* (Ithaca, N.Y.: Cornell University Press, 1994).

his form and pressure.”³⁷ Shakespeare suggests the stage teaches by reflection of reality and not preaching. Johann Wolfgang von Goethe, a neo-classicist greatly drawn to the works of Shakespeare, considered it erroneous to claim theatre can produce a positive moral or emotional effect on the audience.³⁸

As these examples indicate, playwrights argue three different points: (1) Theatre should primarily be used to inspire moral or ideological change in the audience; (2) Theatre should primarily educate an audience by reflecting or revealing the realities of life; (3) Theatre should primarily entertain us. Of course, most would argue that theatre should do all three and that the best playwrights attempt to do all three. The matter of which purpose should be the primary purpose would be debated among most theatre teachers.

Public school administrators are likely to be most comfortable when theatre focuses upon the latter two purposes. The Texas standards, for example, describe the educational effects of theatre as promoting “understanding of heritage and traditions.” Understood this way, theatre becomes the means for introducing an interesting subject for education. Warren Nord suggests “a liberal education is *an initiation into a conversation*.”³⁹ In this respect, theatre serves to promote conversation about different subjects. Robert Cohen claims, “Thematically, the theatre has at one time or another served as an arena for the discussion of every social issue imaginable.”⁴⁰ Certainly, public school theatre can be understood as providing one avenue by which to introduce various subjects into conversation. According to this view, one might argue that a religious theme within a play is but a simple reflection of an *aspect* of life. It is left to the audience to interpret the merits of the religious ideas as they would any other reflection within the play. The audience is to think or even debate. If that is the purpose of a play, with or without religious themes, then plays with religious content prove not to be government promotion of religious speech.

The standards we examined are curiously silent about the moral or ideological effects of theatre. Yet, most theatre goers recognize that theatre productions contain moral and ideological messages that influence our affections. Nord suggests that we should expect the arts, such as theatre, to perform that role in a liberal education:

[Liberal education] must draw on literature and the arts to inform students’ feelings, articulate their hopes and fears, nurture their sense of guilt and compassion, enrich their ability to empathize with other people and cultures, and enliven their sense of

37. Shakespeare, *Hamlet*, Act 3, Scene 2, lines 21-26.

38. Carlson, *The Theories of the Theatre*, 182.

39. Nord, *Religion and American Education*, 201.

40. Robert Cohen, *Theatre: Brief Version*, 4th ed. (Mountain View, Calif.: Mayfield Publishing, 1997), 293.

history, of being part of developing stories.⁴¹

If a play's writer aims to move one morally or intellectually or implicitly "preach" an ideological or moral message to an audience, does that change its acceptability?

As mentioned above, Goethe considered it wrong to claim theatre can produce a positive moral or emotional effect on the audience. He insisted that such emotional impact occurred on the stage alone, and not upon the audience. If Goethe is right, then a play would not have the ability to promote a religious agenda, as the impact of the religious theme would occur between the characters of the story and not within the audience. We have doubts about Goethe's claim. Moreover, we believe most playwrights hope to have moral or ideological influence upon their audience. Almost every play contains some sort of moral or ideological message. Nonetheless, we think it would be difficult, if not impossible, to determine the primary effect of a drama with religious or anti-religious themes.

In fact, trying to separate plays with a *primary* effect of advancing or inhibiting religion would raise all kinds of odd, perhaps even inane, questions. Should a theatre teacher avoid presenting Shakespeare's *Hamlet*, wherein the titular character's vengeance, in part, is based upon whether his uncle, Claudius, will go to heaven or hell? Should Kaufman and Hart's Pulitzer Prize winning play, *You Can't Take It With You*, be left on the shelf because the title is a reference to an afterlife or because Grandpa demonstrates a prayerful relationship with God? Trying to separate secular and religious plays quickly becomes a hopeless and contrived exercise. Even plays taken from religious sources may have a combination of secular and religious themes. *Joseph and the Amazing Technicolor Dreamcoat* at times appears to extol Joseph's visionary qualities as a dreamer over the original story's text which states the reason for Joseph's success, "The Lord was with Joseph."⁴² On the other hand, one can argue that certain song lyrics indicate Joseph's great patience and faith in God.⁴³ Librettist Tim Rice certainly seems to identify Joseph's abilities as a gift from God. Regardless, we would suggest that such a debate, while interesting, is immaterial to whether a performance of the musical should be allowed. In fact, if anything, a public school theatre group performing the play should at least read and study the original text of the story to see how the author departed from the original story line. This type of comparative study would prove to be valuable exercise with any adoption of a play from a sacred literary text (e.g., *Godspell*, *Jesus Christ Superstar*, etc.).

41. Nord, *Religion and American Education*, 202-03.

42. Genesis 39:2a, 3a, 21a, 23.

43. E.g., "Close Every Door to Me," in Tim Rice and Andrew Lloyd Webber, *Joseph and the Amazing Technicolor Dreamcoat*.

There are also other reasons that we believe trying to subject the content of the well-known dramas to the second prong of the Lemon test is problematic. First, censoring religious or irreligious content from plays would be the same as censoring religious or irreligious content from literature. One cannot make a list of great literature without books that address religious or irreligious themes.

Second, in cases regarding religious content and school curricula, such as *Abington v. Schempp*, the Court has made it clear that government neutrality toward religion cannot result in hostility toward religion or government establishing a "religion of secularism."⁴⁴ In a concurring opinion, Justice Arthur Goldberg even suggested that in order to avoid inhibiting religion the government may even be required to provide teaching *about* religion.

It is said, and I agree, that the attitude of government toward religion must be one of neutrality. But untutored devotion to the concept of neutrality can lead to invocation or approval or results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not compelled by the Constitution, but, it seems to be are prohibited by it. . . . Government must inevitably take cognizance of the existence of religion, and indeed, under certain circumstances the First Amendment may require it to do so.⁴⁵

We would argue that the exclusion of plays with religious elements in favor of works with only secular themes is *not* a neutral act. It would also result in favoritism toward secular plays that exclude religious experiences and events or religiously-based moral views. It is exactly the type of passive hostility toward religion that Goldberg describes. Michael McConnell summarizes the constitutional principle that could be applied to the selection of dramatic content:

The beginning of wisdom in this contentious area of law is to recognize that neutrality and secularism are not the same thing. In the marketplace of ideas, secular viewpoints and ideologies are in competition with religious viewpoints and ideologies. It is no more neutral to favor the secular over the religious than it is to favor the religious over the secular.⁴⁶

Thus, what Warren Nord and Charles Haynes contend about literature could also be said about dramatic productions:

Students . . . should appreciate how modern art and literature are part of an ongoing conversation about God and the human condition. Of course, they should also understand that there continue to be writers and artists who can only be appreciated in the context of the religious traditions they work within or react to, and students should read contemporary religious literature—which textbooks are likely to slight. They

44. *Abington v. Schempp*, 374 U.S. 203 (1963) at 225.

45. *Ibid.*, 306.

46. Michael McConnell, "Testimony on Religious Liberty and the Bill of Rights," Committee of the Judiciary of the United States Senate, 29 September 1995 (Federal Document Clearing House, 1995), 5.

shouldn't learn that the only contemporary literature worth studying, and the only ways in which writers now approach the existential questions of life, are secular.⁴⁷

Overall, we believe that not allowing plays with religious themes would actually inhibit religion.

Third, it should be clear that merely exposing students to religious themes through theatre does not mean the state is advancing a particular religion. Dramas, after all, like literature, are often about someone's interpreted experience, and we cannot exclude a person's religious experience in the same way that we would not exclude other parts of life with which children deal on a regular basis. The Aristotelian view is that acting is to be an accurate imitation for the sake of an audience in order that the audience might view and come to an understanding or "work out what each thing is."⁴⁸ Again, the audience is left to interpret, thus leaving the stage itself neutral. The theatre often does not present judgment; it presents an image or experience for the audience to interpret or judge for itself.

A modern example of this type of play is Alain Boubil's and Claude-Michel Schönberg's musical theatre adaptation of Victor Hugo's *Les Misérables*. *Les Misérables* centers upon several years in the life of a former prisoner, Jean Valjean. Valjean's conversion from a hardened and bitter criminal to a moral saint is a Christian journey. Moreover, the moral of the play uttered by Valjean upon his death is "to love another person is to see the face of God."⁴⁹ Yet, Aristotle would likely see Valjean as a tragic hero, a greater person than ourselves, whom we might choose to imitate for our own betterment. It is the human qualities of faith and conviction that are admirable, but the choice to explore Valjean's reasons for strength and endurance is left to the audience, not forced upon them.

Fourth, a school should not exclude plays involving sacred figures. After all, the Supreme Court indicated that schools need not exclude the study of sacred texts from the study of great literature. Thus, performing a play that involves these individuals depicted in sacred scriptures should not be assumed, *a priori*, to be an endorsement of the particular religion. For instance, some schools may fear presenting *Jesus Christ Superstar* or *Godspell*, perhaps because the character central to the play is the central figure of a faith. Yet, the reality is that both plays present interpretations of the Gospels often considered controversial by conservative or orthodox Christian groups and thus cannot be considered promotions or endorsements of orthodox Christianity. *Superstar* focuses on the events that occurred in the last week of Jesus' life, ending with his death. The original work has no

47. Nord and Haynes, *Taking Religion Seriously*, 131.

48. Aristotle, 3.1.

49. *Les Misérables, The Musical*; available online at <http://www.lesmis.com/musical/story/> (accessed 24 November 2004).

resurrection. The work is more often considered offensive to Christians rather than promoting any religion. As mentioned above, *Godspell* focuses upon the teachings of Jesus, not miracles or faith. The play is a series of stories and lessons. This play also lacks an account of the resurrection. In the truest form of theatre, interpretations of religious ideas, characters, and subject matter—whose source material in these cases is the Bible—are placed before the public with the implied invitation for further examination. With regard to a play's content, the productions place a theme into the public forum for discussion. As suggested previously, if the purpose is to promote discussion, even debate, then the primary function of a play is neither to promote nor inhibit religion. If students can discuss the Bible as literature, they should be able to perform stories from the Bible as drama.

A more difficult example might be a production that sought to recreate Mel Gibson's *The Passion of the Christ* for the stage or a modern production of the *Ten Commandments* or a play about the life of Joseph Smith. Still, we would argue that such plays could serve an educational purpose without necessarily endorsing Christianity, Judaism, or Mormonism. After all, students could read the texts from which the dramas are derived, various views from modern scholars, etc. The audience could even be encouraged to think about the interpretation offered. Is Gibson's *The Passion* anti-semitic when compared to the *Gospel of John*? Since this discussion was a public discussion, it is not a discussion the public school would need to avoid. The key is that a teacher could not endorse a particular religion when having this discussion.

Finally, we would argue that a play that depicts a particular moral view supported by various religions does not constitute an advancement of religion or government sponsorship of religious speech. An example comes from a play performed at Ballou Senior High School in Washington, D.C. Ballou is in the city's poorest ward and does not have a drama department. According to *The Washington Post*, no one could remember the last time there was a school play,⁵⁰ although in 1999, playwright Deborah Jean Nicholson helped the school put on one of her plays entitled, *Ruby*, a story about premarital sex. The problem with the story, according to Americans United for Separation of Church and State, is that the play's message clearly communicated that sex outside of marriage is against the Bible. Thus, they asked the school to discontinue the play.⁵¹

There is little question that this was the play's message. Still, the Americans United view raises some difficult questions. Why can a

50. Wilgoren, *The Washington Post*, "For Student Actors, a Play on Reality; Playwright's 'Ruby' Targets Teen Pregnancy."

51. "D.C. Public Schools Discontinue Promotion of Religious Play," *Church & State* (July/August 1999): 21.

school play not present a religious perspective on sex? Would the play also need to include the safe sex view of sex or different religious perspectives in order to show balance? Would a play that only presented the safe sex message contain that balance? Could the Christian Legal Society ask a school to discontinue such a play if it does not contain that balance and only communicated what might be considered an anti-Christian view of sex (which would vary according to different traditions)? Why does a play even need to have such balance? Many of the messages behind the plays we noted, such as *Les Miserables*, could be accused of not containing such balance.

Overall, we would argue that the content of a drama should not be the primary factor that determines the constitutionality of its use. We do not apply the Lemon test or endorsement test to the content of classical or influential literature used in school and we should not apply it to influential and well-known dramatic productions. Instead, we believe that how the dramas with religious themes are presented and used by educators is the more important factor when determining whether a drama is being used as a vehicle for government promotion of religious speech. In other words, the primary criterion for performing a play in a public school is whether it is good theatre according to the historical canons of theatrical production. Of course, like all canons, this one is subject to debate, but a play's place in the canon should not be determined by whether it is religious or irreligious.

Furthermore, we do not believe the primary criterion of "being in the canon" should exclude locally-written plays or other original works such as *Ruby*. English classes may also include the study and reading of local authors or works. The only major content-based criterion that we believe should trigger an Establishment Clause concern is if the play asks for the audience to affirm or participate in a particular religious or anti-religious message and we know of no such play.

THE ROLE OF THE DRAMA TEACHER

Our proposal gives public school drama teachers wide legal latitude in choosing dramas. Yet, we do not believe they should be left without legal guidance for how they use their choices. How dramas with religious themes are used by teachers in public schools should depend on only particular parts of current Establishment Clause tests.

The religious or irreligious motives of a public school drama teacher for choosing a particular play, however, should not be a legitimate basis for excluding that play. As mentioned above, we recognize that the Court has indicated in *Edwards v. Aguillard*⁵² that the motivation of state employees or representatives may be relevant when considering

52. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

the secular purpose prong of the Lemon test. The Court argued, "While the Court is normally deferential to the State's articulation of secular purpose, it is required that the statement of such purpose be sincere and not a sham."⁵³ Nonetheless, we agree with Stephen Carter that such considerations are fraught with problems. After all, Carter notes, "by some estimates, an absolute majority of the laws now on the books were motivated, at least in part, by religiously based moral judgments."⁵⁴ The same could be true with choices of literature or drama. Thus, the problem with examining motivations extends to a teacher's motivations for choosing to present a particular play. Should the Court discount a teacher using *Joseph and the Amazing Technicolor Dreamcoat* or *Inherit the Wind* because the educator was known to harbor a religious or anti-religious bias? Should teachers who want to perform *Les Miserables* because they enjoy both the quality of the drama and its message of redemption be discounted? Theatre teachers may have a variety of motives for choosing productions, and the separation of religious and secular motivations within individuals would simply be impossible for courts and sometimes even for those individuals themselves.

Instead, any criteria used to determine whether a drama teacher attempts to use dramas with religious themes to promote religion should focus on the teacher's actions. Laycock's summary of past Supreme Court decisions regarding government sponsored religious speech demonstrate this important and consistent emphasis upon the teacher's or school administrator's actions:

Religious speech is attributable to the government if government gives it any assistance not equally available to other private speech—that is, if government employees select the religious message, deliver or lead the recitation of the religious message, encourage students to deliver or reflect on their own religious thoughts or message, arrange for a third party to deliver the religious message or give an otherwise private speaker preferential access to a school forum, program, audience or facility.⁵⁵

Clearly, public school theatre involves many of these elements. Teachers select a play, encourage students to deliver it, and help students give a public performance of the play. Of course, as noted above, we do not believe the mere selection of a play with religious themes constitutes public religious speech.

Nonetheless, if the teacher continually chooses plays with religious or irreligious subject matter, an Establishment Clause violation would then occur, just as an English teacher who stacked the literary deck with literature focusing upon Christian or anti-Christian themes would run afoul of the Establishment Clause. As Kent Greenawalt notes when discussing the performance of sacred music in public schools, the

53. Ibid. at 586-87.

54. Carter, *The Culture of Disbelief*, 111.

55. Laycock, "Comment," 219.

crucial questions concern “emphasis and coverage.”⁵⁶ Educators teaching the Bible as literature may have religious or anti-religious motives, but only if they act in such a way that those motives become apparent would their actions run afoul of religion clauses. In the same way, if a drama teacher constantly chose plays covering religious subject matter such as *Godspell* and *Joseph and the Amazing Technicolor Dreamcoat* or what some groups might identify as anti-religious themes such *Actor’s Nightmare*, *Dark of the Moon* and *Inherit the Wind*, the teacher’s actions demonstrate a primary attempt to promote or endorse religious or anti-religious views.

We should note that this legal argument does not preclude our holding that other moral considerations should influence theatre teachers. Since public school theatre is in some small way tax-supported theatre⁵⁷ and involves student performers, a theatre teacher should think about justice or fairness. In other words, plays should show sensitivity to the different perspectives in the community. Like government grants to artists that seek to produce art that a broad range of the community will enjoy, drama teachers in public schools have a responsibility (not an Establishment Clause or Free Exercise mandate) to do the same with public school theatre. Moreover, since school productions tend to occur but a few times a year, we would recommend the drama teacher develop a plan that encompasses a number of years. For example, a four-year plan for high school that supposes a student active all four years will experience the broadest possible range of productions would be preferable to a season by season plan.

Yet, the problem with the suggestion that public school theatre appeal to the whole community is that good theatre usually provokes a response from its audience. As mentioned above, it places a topic, often a controversial topic, before the audience to be addressed. Perhaps, the best situation would be that in the case of a play addressing a controversial moral or religious issue, such as *Ruby*, the play could be produced in such a way that the audience feels the power and understands various arguments regarding sex before marriage. However, we would argue that to demonstrate this type of justice toward different sides or perspectives in one single play produced in public schools should not be considered a mandate of the religion clauses.

In addition to matters concerning the choice of a play, we believe that some of the criteria used by courts and summarized by Faith Kasparian for judging the constitutionality of musical performances including sacred music could also be used to judge whether a drama teacher is seeking to promote or inhibit religion. The additions to the

56. Greenawalt, *Does God Belong in Public Schools?*, 52.

57. Generally, a school budget covers theatre class expenses. Extracurricular activities, such as dramatic productions, are often supported by fundraisers and ticket sales.

standards below demonstrate how such criteria might apply to drama as well as sacred music. Kasparian states that such factors include:

the teaching style of the choir [or theatre] director, including statements made during rehearsal; the site and time of year of a concern; . . . the presence of program notes explaining the musical [or theatrical] significance of works performed; and the nature of performative artifice—the extent to which the performance underscores the nature of the music [or drama] as independent aesthetic entity.⁵⁸

All three of these elements would be helpful guides for both drama teachers and courts when approaching the subject of dramas with religious content.

Finally, an element of the coercion test would prove helpful at this point. We would argue that participation in any play with controversial themes (whether religious or nonreligious) should be voluntary in order to protect the consciences of students. Nonetheless, we would argue that asking public school students to perform in a play with religious themes is not coercing students to engage in a religious activity or in religious speech. After all, it is the very nature of drama that actors and actresses choose to become another person that they may or may not admire. Even encouraging a nonreligious student to perform a play with religious themes should not be considered problematic. Haynes and Nord make a similar point with regard to music and drama stating “it would be naive to assume that a professional musician who performed Handel’s *Messiah* must be a Christian—or that actors (even if students) must believe the lines they say in plays.”⁵⁹ Thus, no one would be surprised if an atheist actor prayed in a theatre production when playing a religious character.

Moreover, a public school theatre performance of *Godspell* or *Les Miserables* does not coerce the audience to engage in religious activity. One could argue that the coercion test used by Justice Kennedy in *Lee v. Weisman*,⁶⁰ a graduation prayer case, should be used in theatre cases since a theatre production has certain similarities to a graduation ceremony. School plays are, much like graduation ceremonies, often once a semester or once a year events. Yet, a theatre production is also much different than a graduation prayer. First, the activity itself, performing a play, is not a religious activity. Second, the audience chooses to attend a play or theatre production. A public school theatre group that performed *Godspell* or *Les Miserables* would not be compelling students or the audience to participate in a religious activity, even if one important summary line of the play, as is the case with *Les Miserables*, clearly states, “To love another person is to see the face of God.”⁶¹

58. Kasparian, “Note,” 1117.

59. Haynes and Nord, *Taking Religion Seriously*, 130.

60. *Lee v. Weisman*, 505 U.S. 577 (1992).

61. *Les Miserables, The Musical*; available online at: <http://www.lesmis.com/musical/story/> (accessed 24 November 2004).

CONCLUSION

We should acknowledge a particular point of view in our argument: We believe public schools should support good educational theatre. In this essay, we have sought to formulate a reasonable understanding of the theatre teacher's rights and responsibilities with regard to the First Amendment that would also encourage good theatre. The modern drama teacher may feel limited in time, space, and funds. Good literature for the stage should not be one of those limitations. In the same way, the U.S. Supreme Court claims the Constitution allows profound religious literature to be studied in public schools; it should allow drama with religious themes, even if the stories emerge from sacred scriptures. Thus, based upon our evaluation of the various Establishment Clause tests, we believe the vast library of great drama texts should be open to those whose purpose is clear—great theatre.

Theatre teachers should have little fear in presenting the great works of the stage, both modern and classical. A southern woman keeping faith in the face of hardship, a king seeking wisdom from his gods, a man returning from heaven to see his child, or a town under the miraculous protection of God are themes that should not outweigh the educational benefits of performing *Oklahoma!*, *The King and I*, *Carousel*, or *Brigadoon*. If an educator avoids unduly favoring dramas with religious themes, we believe the First Amendment protects such productions.

Theatre's triumph and transcendence in this argument is no surprise to thespians and dramaturgists like Robert Cohen who states:

The greatest plays transcend the social and political to confront the hopes, concerns, and conflicts faced by all humankind: personal identity, courage, compassion, fantasy versus practicality, kindness versus self-serving, love versus exploitation, and the inescapable problems of growing up and growing old, of wasting and dying.⁶²

Echoing Shakespeare, Cohen adds:

The theatre is a medium in which we of the audience invariably see reflections of ourselves, and in the theatre's best achievements those reflections lead to certain discoveries and evaluations concerning our own individual personalities and perplexities.⁶³

One purpose of theatre is to reflect life, *all* life, the religious and the secular. It is a purpose protected by the First Amendment. It is a purpose with a powerful effect, because as Konstantin Stanislavski insists, "If this were not so the public would not make the effort of coming to the theatre."⁶⁴

62. Cohen, *Theater, Brief Version*, 294.

63. *Ibid.*

64. Konstantin Stanislavski, *An Actor Prepares*, trans. E.R. Hapgood (New York: Routledge, 1964), 115.

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