

The Reagan-Era Right and the Fight for ‘Religious’ Equality in the Classroom

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Abstract: The 1980s witnessed the resurgence of religious conservatism in politics and law. For decades, the Supreme Court had required a “wall of separation” to insulate students from organized prayer, Bible reading, and the promotion of religious values in the public-school classroom. Reagan administration officials and their supporters sought to crumble that wall by advocating the insertion of religion into textbooks and classroom exercises. In the 1982 case *Jaffree v. Board of School Commissioners*, evangelical Christian lawyers attacked the “wall of separation” theory by arguing that the very secularism that purportedly ensured religious neutrality did itself constitute a religion—the “religion” of secular humanism. The judge hearing the case agreed, asserting that the First Amendment’s prohibition against an establishment of religion required the schools to treat theistic and secular “religions” equally. Key conservative officials applauded the ruling, which helped advance the New Right’s movement to Christianize America’s public schools.

In November 1982 a pair of evangelical lawyers, Tom Kotouc and Bob Sherling, questioned witnesses at an extraordinary trial. *Jaffree v. Board of School Commissioners of Mobile County* (554 F.Supp. 1104 [1983]) pitted a religious agnostic and father of three public school children against the school board of Mobile County, Alabama, which stood accused of violating the First Amendment’s ban on government endorsement of religion. At trial the Mobile school system defended its teachers’ practice of leading students in prayer during school hours. Kotouc and Sherling’s clients, a group of six hundred evangelicals from Alabama, entered the case as intervenors—concerned citizens who supported the schoolteachers’ and students’ rights to pray aloud, in organized fashion, at any time throughout the school day. Yet, although the intervenors were designated as codefendants alongside the school board, their lawyers did not simply follow the school board’s lead. The intervenors at once complemented and complicated the school board’s position by charging that, if Mobile public schools had discriminated against anyone, it was the Christian majority of students who wished simply to practice their faith openly and sincerely. According to the intervenors, the curricula and textbooks used in the schools privileged the secularist minority. And that, they argued, violated the First Amendment by establishing a religion—the religion of secular humanism.

The intervenors in *Jaffree v. Board* were implementing a twenty-year-old argument that the textbooks and pedagogical methods employed by America’s public educators were propagating a

liberal, secular-humanist “religion” alien to the majority of American citizens. Now, during the Reagan era, activists, politicians, and critics were refining this narrative and demanding that government and law reflect its premises. The New Right of the late 1970s and 1980s emphasized the virtues possessed by “ordinary” citizens—as opposed to the selfish, decadent cosmopolitanism of the “cultural elite”—and championed the right of elected representatives within individual states to regulate family and community life (Macedo 1987). The campaign to restrict the influence of secular humanism in the public schools encapsulated both the New Right’s political majoritarianism and its moral traditionalism. Critics of the textbooks, teaching methods, and anti-prayer policies of the nation’s public schools imagined large swaths of the United States populated by a conservative, “moral” majority. Throughout the South and West especially, where Biblical norms enjoyed their greatest influence, lay those states on which New Right curricular reformers pinned their hopes (Provenzo 1990; Detweiler 1999).

Alabama was one such state. Ishmael Jaffree, an African American lawyer and religious agnostic, had arrived in Alabama from Cleveland, Ohio, in 1976. Having long concluded that the devout Christianity of his childhood was false and destructive, Jaffree determined to raise his children as free thinkers who grounded their beliefs in reason and evidence rather than religious doctrine. He expressed surprise on learning that many Mobile public school teachers were leading their students—including three of his own children—in the daily recitation of grace. Jaffree’s surprise turned to outrage when his children’s teachers, their principals, and the superintendent of schools turned a deaf ear to his complaints. In June 1982 Jaffree filed suit in federal court against the Mobile school system (Newman 1985b; Irons 1990, 357–78).

Neither the teachers’ religious exercises nor their insensitivity to his complaints should have surprised Jaffree. Since World War II, Mobile had become the most religiously-conservative city in this religiously-conservative state. Few Mobilians saw anything wrong with classroom prayer or wished to see it purged (Flynt 1998, 566–67; 2004, 3, 7–8). After the lawsuit became publicized that summer, local residents let Jaffree know how staunchly they resented his efforts. His attempts to portray those efforts as a campaign in defense of minority civil rights failed to win him any support among black Mobilians, who responded as members, not of a racial minority, but of a God-fearing, Christian majority jealous of its right to exercise its faith freely (Williams 2002, 15, 20; Rieff 2001, 192–95). Nor was opposition to Jaffree limited to Mobile. Alabama

governor Fob James, a conservative Democrat who strongly supported President Reagan and his traditional-values agenda, had always considered classroom prayer a legislative priority. The governor capitalized on Jaffree's lawsuit by declaring his support for "those brave schoolteachers" and by winning overwhelming passage of a school-prayer bill, which featured a short prayer—written by the governor's adult son—for teachers to chant with their students. By the time the trial began in November, Ishmael Jaffree was known throughout Alabama as the ungrateful God-hater who would use the courts to silence children's prayers (Leviton 1985; *Montgomery Advertiser* 1982a,b, d; Newman 1985a).

Foreground at the trial of *Jaffree v. Board of School Commissioners of Mobile County* was a political-constitutional argument common among 1980s conservatives. The Mobile school board denounced Supreme Court "judicial activism" and defended the right of local communities and state legislatures to establish religious classroom procedures. For its expert witness the board called constitutional scholar James McClellan, a writer and editor with close ties to the Reagan Justice Department and Senate conservatives. McClellan insisted that the school board could not possibly have violated the First Amendment's ban on religious establishment because the First Amendment did not properly apply to the individual states. The Framers, including the authors of the first and fourteenth amendments, never intended to prohibit state governments from establishing religions, he informed the court. McClellan defended states' rights against encroachment by the federal government, and he defended the lawmaking prerogatives of legislatures—the people's elected representatives—against trespass by unelected federal judges. Like other key New Right constitutionalists, McClellan believed that judicial supremacy over legislatures tended to obstruct popular rule. The Court's prohibition against religious expression in public schools "is undemocratic," he told the court, because it allows "a small, select minority" to "impose their view on the people." Democracy demands the right of the people to "encourage morality," and the federal courts have no business standing in the way (*Jaffree v. Board* 1982, 525–30, 598–600).

McClellan's appeal to the right of ordinary citizens to enact moral public policies advocated more than just a conservative constitutional theory, more than simply a diminished jurisdiction for federal judges over state religion laws. McClellan echoed a standard Reagan-era refrain: that the cultural elite, the "intellectual class," lacked the moral compass necessary for rendering good public policies (Bork 1990, 7–17, 241–50). Ordinary citizens, in McClellan's narrative, comprised a kind of moral majority and thereby warranted greater political influence than they generally enjoyed. As sources of

good and decent values, local communities deserved control over the public institutions at the center of their lives.

By tying conservative constitutionalism to conservative morality, the board enabled its codefendants, the intervenors, to expand the trial's focus beyond the Constitution, and even beyond classroom prayer. The intervenors forged past where prayer supporters had tread in previous cases. They focused little of their argument on what the Constitution did or did not allow. The intervenors aimed to persuade the court that, inevitably, one or another fundamental worldview would shape all teaching materials and methods. Any given textbook or pedagogical theory, they said, would reflect one or another comprehensive morality—one way of parsing right from wrong, knowing what was true and what was false, deciding how to act and how not to act. The intervenors asserted that textbooks and curricula necessarily would be religious because particular religions directed all that was said and done in the classroom. And any worldview that ignored God and considered human beings the arbiters between right and wrong was, they claimed, as much a "religion" as one that acknowledged God as the source and purpose for all existence. The Christian conservatives who intervened in *Jaffree v. Board* defended the schoolteachers' religious rights, not by denying the applicability to the states of the First Amendment, but by reinterpreting "religion." To prohibit Christianity was to establish an alternative religion, they maintained. To silence children's prayers was to advance the religion of secular humanism.

To be sure, the defendant parties emphasized different aspects of the New Right critique of liberalism. The school board registered frustration at the intervenors' depiction of the educational establishment as anti-Christian (*Jaffree v. Board* 1982, 656–57, 680–86, 692–93, 712–16). Still, the two parties ultimately forged complementary arguments that conjointly refuted Jaffree's secularist stance. Lawyers for the school board and for the intervenors applauded testimony offered by one another's witnesses, with the intervenors citing McClellan's published writings to help make their case (*Jaffree v. Board* 1982, 560–66, 571, 578, 640). Christian antiliberalism was easily enough knotted together with constitutional majoritarianism to strangle the plaintiff's hope of eradicating religion from Mobile classrooms.

The portrayal of the secular classroom as a "religious" environment inhospitable to Christian values was not new. The *Jaffree* intervenors built on a profound and sweeping challenge to liberal curricular norms, one brewing since the early 1960s, the ostensible high point for the liberal, pluralist worldview in American culture and politics. During those years the Calvinist cultural critic Rousas John Rushdoony posited that the nation's educational

establishment had been captured by Enlightenment-based enemies of Christianity. Education, according to Rushdoony, necessarily advanced a single system of values—one or another “religion.” Either biblical Christianity or its secular antithesis would always be promoted in American schools. Rushdoony contended that, for much of the twentieth century, public schools had served as organs for the religion of secular humanism, a religion incompatible with biblical Christianity. He considered this situation intolerable, and he called on “true” Christians to begin changing society, to reassert the dominance of Christianity over the human-centered faith established by America’s educators (Rushdoony 1961, 1963).

Rushdoony’s influence was extraordinary. His writings gave rise to a Christian-Right critique of liberalism that depicted secular humanism as the ever-spreading stain needing to be removed from the fabric of American education, culture, and law (McGraw 1976; Duncan 1979; Schaeffer 1981; Hitchcock 1982; LaHaye 1983). His scholarship also influenced televangelists such as Pat Robertson and James Kennedy, who frequently hosted Rushdoony on their programs. Perhaps his most significant impact was on First Amendment scholar John Whitehead. With Rushdoony’s assistance, Whitehead created the Rutherford Institute, one of the nation’s foremost supporters of evangelical legal actions against the public schools (Clapp 1987; Provenzo 1990, 4–11; Clarkson 1998). Whitehead and other pioneers in Christian-conservative “cause lawyering” found in Rushdoony’s esoteric speculations the ideological basis for a new movement: the Christianization of the public schools (den Dulk, 2005).

In his introduction to John Whitehead’s 1977 book *The Separation Illusion*, and in a subsequent essay, Rushdoony asserted that the authors of the First Amendment’s religion clauses had not intended to purge public institutions of Christianity, but only to protect Christianity from interference by the secular state, in order that Christianity—and not the state—could dominate all of society (Whitehead 1977, 9–10; Rushdoony 1978). Informed and inspired by his mentor’s essay, Whitehead drew upon its ideas in a highly influential law review article he published months later (Whitehead and Conlan, 1978) and in a legal brief he submitted for the 1981 *Widmar v. Vincent* case, in which the Supreme Court began to revise its longstanding doctrine requiring the secularization of public education (454 U.S. 263). Through these and other avenues Rushdoony immeasurably influenced Christian-conservative education reform.

The New Right attack on public education had another important forbear: Texans Mel and Norma Gabler, the preeminent critics of textbooks used in American schools. Beginning in 1962, the Gablers began organizing opposition and speaking out against textbooks that they believed promoted a big

federal government, downplayed states’ rights, ignored America’s Christian foundations, and advanced secular humanistic values alien to the majority of citizens (Hefley 1976). The Gablers disseminated information widely through Christian organizations and helped spark a grassroots movement to make public-school textbooks “safe” for Christians. Through their long and tireless advocacy, the Gablers catalyzed the Christian Right’s push for influence over the nation’s public schools (Martin 1982; Provenzo 1990, 20–24, 32–40).

Alabama governor Fob James, along with his wife and son, subscribed wholeheartedly to that effort. From the beginning of his administration in 1980, the governor had sought to purge Alabama public schools of books that denigrated God, country, or traditional Christian values (*Mobile Press* 1981; *Birmingham News* 1981, 1982; *Mobile Register* 1982). Bobbie James, the governor’s wife, made it her personal priority to protect the place of prayer and “creation science” in the classroom (*Mobile Press* 1981; *Montgomery Advertiser* 1982c). Speaking to state legislators debating her husband’s school prayer bill in the summer of 1982, she reminded her audience of the “need to acknowledge God as sovereign over our public schools,” lest heathen forces continue to determine curricular policy (*Montgomery Advertiser* 1982b, 2). Zealotry was a James family affair. First son Fob III, who wrote the governor’s bill and its appended prayer, told the House and Senate committees that the school-prayer battle was an episode in a war between civil and religious authority. “Our Supreme Court has allowed a few atheists to deprive our people of the God who created them,” the governor’s son insisted. “Unless people have God above government, then government is God.” Preparing to pass his father’s bill, the Alabama legislature stood poised to “confront the Supreme Court of the United States” (*Montgomery Advertiser* 1982b, 2; *Mobile Press* 1982).

After being named in Jaffree’s complaint, Gov. James assigned a lawyer from his administration to recruit, organize, and represent a group of evangelicals to intervene in the *Jaffree* case. That lawyer, Thomas Kotouc, was affiliated with the Rutherford Institute and had long sought to defend the “religious freedom” of Christian students. Kotouc partnered up with Bob Sherling, a Mobile lawyer driven by similar inclinations (Kotouc 2002, 2–3, 7; Smith 2002, 6–7; *Mobile Press Register* 1982; Sherling 2000, 6; Wilkinson 1987, 112). The two devised a legal strategy and advanced an ideological vision that built on the arguments of Rushdoony, Whitehead, Tim LaHaye, the Gablers, and others. The *Jaffree* intervenors argued that the real victims of religious discrimination were not Ishmael Jaffree’s three children but the countless boys and girls forced by Mobile public schools to endure and assimilate teachings from a religion that violated the core

precepts of the “traditional” Biblical Christianity that their own families lived by. The Mobile schools—like all American public schools—had systematically promoted the secular-humanist worldview, an ideology so coherent and extensive so as to function as a religion. Indeed, the intervenors argued, for purposes of the First Amendment, secular humanism *was* a religion. That it embraced neither God nor theology was irrelevant. According to the intervenors, the effect of promoting secular humanism while silencing alternative worldviews was so pernicious that it rose to the level of religious establishment—a clear violation of the letter and spirit of the United States Constitution.

While the plaintiffs and the primary defendants called only a few witnesses, the intervenors summoned a parade of scholars, preachers, and teachers to testify to the secular-humanist indoctrination that took place in Mobile schools. Employing a strategy popularized by the Gablers (Gabler and Gabler 1978), the intervenors called witness after witness to examine textbooks used by the schools and accused their authors of advancing anti-Christian beliefs, such as that human beings are morally autonomous, responsible for generating their own moral values. First to take the stand was R. J. Rushdoony, who reiterated his stock assertion that government-run schools indoctrinated children with secular-humanist propaganda. Mobile County, he warned, was proselytizing secular humanism with great effectiveness. Like the intervenors’ other expert witnesses, Rushdoony charged that the textbooks employed by Mobile schools advanced the humanistic worldview while they ignored or disparaged the Christian worldview. Two psychology books presented the humanistic notion that sex roles were culturally learned but not the Christian idea that sex roles were assigned by God, he complained; a science book explaining evolution made no reference to the corresponding Christian account of human origins; a short story’s author endorsed moral relativism by failing to reproach a character who had lied. Especially relevant to the intervenors’ case was Rushdoony’s objection to a social-studies book proclaiming that “morals are rules made by people.” That assertion, in his estimation, blatantly promoted the humanistic view that morality has no transcendental basis—a religious view in direct conflict with the Christian perspective (*Jaffree v. Board* 1982, 344–60).

Rushdoony charged that the moral relativism saturating these schoolbooks derived from a pedagogical theory and method known as values clarification, which had gained widespread currency in the 1960s and 1970s through *Values and Teaching*, a well-known educator’s manual first published in 1966, and through the work of developmental psychologist Lawrence Kohlberg. Central was the theory’s contention that schools must provide children

with moral education by awakening children to their own personal values. Genuine moral education, according to Kohlberg, requires “aiding children to take the next step in a direction toward which they are already tending, rather than imposing an alien pattern on them” (Kohlberg 1967, 300). To flourish in a pluralistic society, citizens must autonomously choose the values they will live by. Raths and his colleagues conclude that “if children—or adults, for that matter—are to develop values, they must develop them out of personal choices” that “involve alternatives . . . prized by the chooser” and remain “freely available for selection” (Raths et al. 1966, 33).

Critics of secularism in the public schools have pointed to values clarification as an egregious example of the secular state usurping the inalienable right of parents to determine their children’s moral development. According to ethicist Richard A. Baer Jr., proponents spuriously present values clarification as morally neutral, when, in reality, it casually assumes and advances specific moral positions, such as “that the individual is free to make value decisions in an open and rational manner” and “that each person is the final arbiter of moral truth, of what is right and wrong, and of what is proper for his own life.” Baer contended that these positions reflected an ethical relativism that, although not embraced by most Americans, was being widely instilled in children (Baer 1977, 1982).

On the basis of his dire concern, Richard Baer made for a compelling witness in *Jaffree*. Baer informed the court that humanism “functions as a kind of religion” that is “contradictory to the basic views of Jews and Christians.” Propagated in textbooks, often without competing religious viewpoints, humanism serves as a tax-supported national religion. He insisted that humanism’s ethical theory, based on radical subjectivity and moral relativity, cannot be reconciled with theistic morality—the two religions necessarily conflict with one another. A genuine neutrality would require the public schools to present both theistic and humanistic worldviews, Baer maintained, while, in practice, American schools presented only the latter. In “a pluralistic society” such as ours, this was unacceptable. “If we make the kind of judgment that it is improper for children to pray in school . . . or to have Bible readings . . . but at the same time permit a range of other [practices] that are religious in nature,” Baer told the court, “then we have a very serious question of evenhandedness.” He charged that liberals had “been so blind to the fact that secularism is not religiously neutral that” they had “pushed for a very one-sided victory” over theistic religion and thereby trampled over the rights of believers (*Jaffree v. Board* 1982, 783–808).

Richard Baer’s testimony in *Jaffree v. Board* reiterated the New Right critique of public education policy. The problem, as Baer saw it, wasn’t simply that traditionally-religious citizens lacked influence

over textbook selection and policy enactment. Equally problematic was the ideology behind those textbooks and policies, which, Baer argued, espoused a radical subjectivity and moral relativity not only alien to most Americans' values but dangerous to society's foundations. By asserting "that all things are a matter of personal preferences and tastes," values clarification could only portray "freedom, justice, democracy, and so on as, finally, matters of personal whim and judgment." In Baer's estimation, curricular materials informed by values clarification corroded the underpinnings of the republic. They promulgated a "religion"—secular humanism—that taught individuals to deconstruct their moral compass with no sure way to rebuild it. He charged that "books like *Values and Teaching*" prescribed a "constant inculcating of doubt and skepticism [toward] traditional approaches to values" and "create[d] a mood of doubt in the child . . . towards the kind of things that many of us are trying to teach our children at home." Children's values, Baer insisted, needed carefully to be shaped by traditional morality. For their own and for society's sake, children needed to be given, not constant options, but firm guidance. Baer maintained that the problem with secular humanism wasn't simply that it enjoyed a monopoly in the classroom, but that it promoted a flawed and dangerous worldview that shouldn't even be allowed in the classroom. Because values clarification "is indoctrination and not education," he told the court, "the method overall should be abandoned in the public schools" (*Jaffree v. Board* 1982, 788–90, 810).

The intervenors' position—that secular humanism was a cohesive worldview that corroded society's foundations, offended the majority of citizens, and depended on a culturally-elite educational establishment for support—found a receptive audience in the trial judge. Mobile native Brevard Hand, an appointee of Pres. Nixon in 1971, had long favored states' rights and legislative dominance over judiciaries (*Reese v. Dallas County* 1973; *Clark v. Marengo* 1979). Judge Hand believed that federal judges should, whenever possible, avoid stifling "democratic" expressions of morality contained in state laws. He believed also that democracies needed to inculcate traditional morality into their youngest members (Hand 1976; *Mobile Register* 1986). Honoring what he took to be the Founding Fathers' original intentions, Hand ruled, in *Jaffree v. Board* (554 F.Supp. 1104 [1983], 1118 n 24, 1127–28), that the First Amendment did not prohibit religious exercises in the classroom. Religious minorities had no choice but to endure the indignities and inconveniences that went along with marginality. He held that the Supreme Court, in its controversial decisions prescribing secularism in the classroom, had "amended the Constitution to the consternation of the republic and . . . den[ie]d to the people their right to express themselves." At James McClellan's urging

(*Jaffree v. Board* 1982, 556, 603), Hand disregarded Supreme Court precedent on school prayer, which he dismissed as "wrongly decided." His brazen ruling would please and inspire conservatives from Senator Jesse Helms (*Congressional Record* 1983) to Attorney General Edwin Meese (Meese 1985, 5–6). Although it was overturned on appeal, the ruling echoed a call—sounded often on the New Right—to limit the power of federal courts over public-school policy.

Into his decision Hand wove an important subtext. If, in fact, the First Amendment did apply to the individual states and did require purging the classroom of religious exercises, Hand wrote, then all religious exercises must be eliminated. He promised that, in the event his ruling was overturned, he would revisit the case and address those issues "raised by the evidence produced by the intervenors dealing with other religious teachings now conducted in the public schools to which no attention has apparently been directed and to which objection has been lodged by the intervenors." Although the school board's constitutional arguments had primarily shaped Hand's opinion, the intervenors had persuaded him that the religion of humanism exerted a dangerous impact on the schools. He complained about how case law had turned a blind eye to humanism's inordinate influence. The intervenors, Hand determined, had established that the "curriculum in the public schools of Mobile County is rife with efforts at teaching or encouraging secular humanism—all without opposition from any other ethic—to such an extent that it becomes a brainwashing effort" (1129–30).

The Eleventh Circuit did reverse Hand's ruling (*Jaffree v. Wallace*, 705 F.2d 1526n [1983]), and the Supreme Court upheld the reversal (*Wallace v. Jaffree*, 472 U.S. 38 [1985]). When the case was remanded back to Hand, he realigned the parties, changing the intervenors into plaintiffs against the school board and state. *Smith v. Board*, the sequel to *Jaffree*, featured an even longer parade of conservatives charging the educational establishment with systematically inculcating the religion of secular humanism into the nation's most vulnerable citizens. Once again, Judge Hand ruled for the antihumanists. "For purposes of the first amendment," Hand declared, "secular humanism is a religious belief system, entitled to the protections of, and subject to the prohibitions of, the religion clauses." Recalling the arguments of Richard Baer, he complained not only that secular humanism enjoyed a religious monopoly in the classroom, but that its content was so dangerous so as to threaten children's—and ultimately society's—wellbeing. "Teaching that moral choices are purely personal and can only be based on some autonomous, as yet undiscovered and unfulfilled, inner self is," he warned, "a sweeping fundamental belief that must not be promoted by the public schools" (*Smith v. Board*, 655 F. Supp. 939 [1987], 982, 987). Not surprisingly, Hand was again

overturned (*Smith v. Board*, 827 F.2d 684 [1987]). But, once again, the judge sounded a ringing condemnation of liberal, secular education and the judicial principles that enforced it.

In *Jaffree* and its sequel, religious conservatives staged a drama long in the making. Informed by activism and ideas sketched out over several years, a group of Alabamians—including the governor, two lawyers, three schoolteachers, and a federal judge—performed one of the central actions in American politics of the 1980s—the attempt to Christianize the public schools. Events such as the *Jaffree* and *Smith* trials reveal the contours of the New Right’s campaign against secular education, a campaign that registered a significant historical shift. The impact of that shift only continues to grow with time’s passage.

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