

# **Students in Texas Need Something, but It's Not the Ten Commandments**

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Naila Ruechel for The New York Times



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Should the Ten Commandments hang beside every chalkboard? Should public schools set aside time each day for students to recite the Lord's Prayer?

In Texas these are no longer hypothetical questions. In June, in the wake of Supreme Court rulings seen as hospitable to public displays of faith, the governor of Texas signed a law requiring public classrooms to display the Ten Commandments. Another law signed that month invites school boards to adopt a policy setting aside time for voluntary daily prayer and readings of the Bible or other religious texts. The state attorney general, Ken Paxton, has recommended that students wondering how to use that time start with "the Lord's Prayer, as taught by Jesus Christ."

It's all part of a battle over how to draw the border between church and state. After a federal judge blocked the Ten Commandments mandate in August in the 11 Texas districts where it was challenged, ruling that it most likely violated the First Amendment, Mr. Paxton appealed. "In Texas classrooms," he said in a statement, "we want the Word of God opened, the Ten Commandments displayed and prayers lifted up."

Beneath the surface of this quarrel, though, lies a deeper, murkier problem: Nobody — not legislators, not judges, not scholars — can quite agree on what religion is. How can you address church-and-state controversies if you're not sure what the "church" part refers to?

In modern times, the Supreme Court has lurched from one way of talking about religion to another. In *United States v. Seeger* (1965), the court extended a religious exemption even to agnostics, as long as their beliefs about ultimate values were "sincere and meaningful" in a religious-like way. In *Lemon v. Kurtzman* (1971), the court assumed that religious purposes and effects could be carved apart from secular ones, with the religious realm to be kept from "excessive government entanglement."

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In *Wisconsin v. Yoder* (1972), religion was seen as encompassing a way of life: the Amish way of farming, schooling, speech and dress. And in *Kennedy v. Bremerton* (2022) — ruling in favor of a public high school football coach who prayed on the 50-yard line — the court scrapped the nebulous old Lemon test in favor of one even more nebulous: It declared that establishment clause disputes should be resolved by looking to the nation's "historical practices and understandings."

What has emerged over the decades is not a coherent doctrine but a kaleidoscope of differing intuitions: religion as inner conviction, as separate sphere, as communal culture, as a practice sanctioned by a nation's inherited customs.

The kaleidoscope is still turning. In religious freedom cases that the Supreme Court is expected to hear this term, which is to begin on Monday, we see a case that arose when prison guards violated embodied religious identity (a Rastafarian is seeking to sue corrections officials after prison guards shaved off his dreadlocks), a case that counterposes professional regulation and religious conviction (a Christian licensed counselor is contesting a state ban on conversion therapy) and a case involving a clash between consumer protection and faith-based mission (a Christian group that runs pregnancy centers is fighting a subpoena for information about its staff members and donors).

Hovering over all these cases are uncertainties about religion that reach back well before the court's postwar jurisprudence. When the term "religion" settled into its now-familiar usage, around the 17th century, it reflected Protestant assumptions, emphasizing belief, individual conscience and voluntary association. In the 1870s, Edward Tylor, an English anthropologist who was raised a Quaker, distilled that outlook into his "minimum definition": Religion was simply "belief in spiritual beings."

Not long after, though, the 19th-century Scottish scholar and minister William Robertson Smith, steeped in the study of ancient Semitic cultures, pushed in the opposite direction. For him, the core of religion wasn't individual belief but ritual and communal ceremony: the binding power of sacrifice and shared practice.

Émile Durkheim, writing early in the 20th century, drew on both those thinkers. In his book "The Elementary Forms of Religious Life," he defined religion as a system of beliefs and practices that concerned sacred things and that created and sustained a moral community.

None of these definitions, or any other, won the day. If you follow many disciples of Durkheim, religion can look like almost any system that supports social cohesion and provides psychological comfort — at which point patriotism or even psychoanalysis can slip into the category. If it

involves spiritual beings, it leaves out Buddhism in its more austere forms. If, as the anthropologist Clifford Geertz proposed, religion is a "system of symbols" establishing powerful moods and conceptions of a "general order of existence," it's hard to say why nationalism or Marxism doesn't qualify.

The definitional perplexities are as persistent as ever. And they help explain the political theater you see in Texas today. If scholars can't say what counts as religion, lawmakers, taking advantage of the conceptual murk, can say they're not legislating faith but merely affirming tradition, heritage or moral order. Phil King, a Republican member of the Texas State Senate, has argued that the "Ten Commandments are part of our Texas and American story" and "are ingrained into who we are as a people and as a nation."

That cultural framing, though, quickly breaks down, along with any claim to neutrality. The Ten Commandments aren't a single, settled text: Catholics, Protestants and Jews number and divide them differently. And Mr. Paxton's model of "the Lord's Prayer, as taught by Jesus Christ" is no less contested. His office circulated the King James rendering, complete with a closing doxology ("For thine is the kingdom, and the power, and the glory, for ever") that is broadly absent from the earliest Greek manuscripts of the Gospels; a great many Christian clergy members don't believe it was

part of what Jesus taught.

The framers of the Constitution, notably, didn't agonize much over what counted as "religion." They took a more pragmatic line. Thomas Jefferson, who considered religion to be "a matter which lies solely between man and his God," thought that being promoted by civil authorities wasn't good for religion. In James Madison's model, a plurality of sects might even serve as bulwarks against the tyranny of the majority. In Texas the state's enlistment of religion turns that arrangement on its head.

But the correct approach isn't to decree, once and for all, what does or doesn't count as religion; it's to ask how a plural democracy can accommodate competing visions of the good. Ours is a nation of technocratic managerialists and natural-law traditionalists, Baptists and Buddhists, nationalists and cosmopolitans. The task is to live together across these divides.

Religion, whatever else it may be, is one dimension of that challenge. What students need — in Texas and everywhere else — is not a government-issued decalogue but a civic education sturdy enough to meet that challenge.

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