

SHOULD 'UNDER GOD' BE REMOVED FROM THE *PLEDGE OF ALLEGIANCE*?

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Recently in the popular press in the United States there has been a great deal of discussion about the *Pledge of Allegiance*. The *Pledge*, though not a regular part of American adult life, is still frequently recited by school children before the beginning of their classes. "Every class day over 60 million public and parochial school teachers and students in the U. S. recite the *Pledge of Allegiance* along with thousands of Americans at official meetings of the Boy Scouts, Girl Scouts, Elks, Masons, American Legion, and others."¹ The *Pledge* as it now stands²:

I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible with liberty and justice for all.

Of course it is important to note that *not* standing or reciting the *Pledge* either for personal, aesthetic or political reasons—as a form of civil disobedience—is not only permitted by law but a right that is protected by law. Our Constitution even goes so far as to protect one's right to perform (albeit peaceful) demonstrations against any and all policies of the government³ including the burning of the Flag itself.⁴

1 "The Strange Origin of the Pledge of Allegiance," www.ACLU.org, 2003.

2 The *Pledge* was written in August 1892 by Edward Bellamy, and Christian Socialist and did not include the words 'under God'. The pledge was officially recognized by Congress in 1942. The phrase was added in 1954 by the Knights of Columbus and that same year an amendment was made by President Dwight D. Eisenhower to add 'under God' to the *Pledge*. "In this way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war." Later attempts to revise the *Pledge*, e. g., prolife advocates adding justice for all 'born and unborn'; and liberals adding one nation, indivisible, with 'equality'... have neither been culturally accepted nor legally sanctioned.

3 Note the numerous and widespread protests against the war in Iraq. In addition, see the very famous case of *Cohen vs. California*, 1971, where a man arrested on a disturbing the peace charge because of his "Fuck the Draft" on a jacket was, in the final analysis vindicated and supported by the courts. "The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in other words, dependent upon showing that substantial privacy interests are being invaded in an essentially intolerable

In other words, America values its peaceful dissidents. Americans' respect for one's right to be a citizen of the United States (with all its privileges) is not abridged by one's desire to either refrain from performing such acts, or to even object to the performing of such acts. The interesting contradiction of American culture and law then, is that the most patriotic position one can maintain is to respect any individual's choice to be (or not to be) patriotic.

Nonetheless, a recent case was brought to court by a California man who "objected to his daughter being compelled to listen to her second-grade classmates recite the pledge."⁵ "Dr. Michael Newdow, a Sacramento California physician, with a law degree who represented himself and whose daughter attends public school in Elk Grove, said he brought the lawsuit that led to the ruling 'because I am an atheist and this offends me.'"⁶

That is, despite the fact that his daughter was not forced to stand, or recite, the *Pledge*, but to simply *listen to*⁷ her classmates recite it, this nonetheless "offended"⁸ Newdow and, he believed, justified him in filing suit⁹ on behalf of all Americans. Citing the First Amendment of the Constitution the following occurred:

In a 2-1 decision the 9th Circuit Court of Appeals, based in San Francisco¹⁰, said the reference to God violated the First Amendment's Establishment Clause which requires the separation of church and state.¹¹

However, the United States Senate was so outraged by the ruling on Wednesday June 26th, 2002, that by the next day they "had passed a resolution

manner. Any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of personal predilections."

- 4 See *Texas V. Johnson*, 1989, where an arrest was made for burning the American Flag. "The Supreme Court reaffirmed the time-honored principle that the appropriate response to speech conveying ideas that we reject or find offensive is not to censor such speech, but rather to exercise our own speech rights." Nadine Strossen, "Regulating Racist Speech on Campus: A Modest Proposal?," in *Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties*, (ed.) Henry Louis Gates, Jr., Anthony P. Griffin, Donald E. Lively, Robert C. Post, William B. Rubenstein, and Nadine Strossen, New York: New York University Press, 1994, pp. 181-256, p. 229.
- 5 "Flap After Court Rules Pledge of Allegiance Unconstitutional," *www.FoxNews.com*, June 27, 2002.
- 6 "Gov't to ask rehearing of Pledge ruling," *www.CNN.com*, June 27, 2002.
- 7 How one can be "forced" to listen to anything is itself problematic.
- 8 The problem of connecting his daughter's "listening" to his "offense" is also problematic.
- 9 *Newdow vs. U. S. Congress*, 2002.
- 10 It is the federal circuit court that covers California, Oregon, Washington, Hawaii, Alaska, Arizona, Nevada, Montana and Idaho.
- 11 "Pledge of Allegiance 'Unconstitutional'," *www.ABCNews.com*, June 27, 2002. The actual decision was made on June 26, 2002.

99-0 expressing full support for the *Pledge of Allegiance* and on Thursday voted 99-0 to recodify the 'under God' language in the *Pledge*.¹²

So one might ask: Why all this fuss over a *Pledge*? In a country that has citizens who have come from nearly every country in the world, members of nearly every religious group, cult, anti-religious group, and anti-cult ever conceived, a country that leads the world in democratic values, cultural diversity and religious tolerance, what's all the fuss about the word 'God' in one *Pledge*?

Well, O. K., it's not just *Pledge*. Several other patriotic songs such as *God Bless America* and *America the Beautiful* and the *Star-Spangled Banner* all contain the word 'God'. In addition, "In God We Trust" appears on our Nation's currency, when a new president is sworn in he/she must say "So help me God," Ohio has "With God, all things are possible" in its state's motto, and the term appears in the constitutions of many states. It seems that using the term 'God', at least in the context of public ritual, is something that is deeply entrenched in American culture.

The legal question is, of course, a difficult and sophisticated one. It is also outside the scope of my expertise. However I will make two brief comments. The first is to recognize that many legal scholars will acknowledge the seeming "conundrum" of the issue.

'It presents a conundrum', said David Cole, professor at the Georgetown University Law Center. 'On the one hand, the *Pledge of Allegiance* under traditional Supreme Court tests is probably unconstitutional. On the other hand, it has been with us for so long, and is so much a part of our culture that it is very unlikely that the Supreme Court is going to declare it unconstitutional.'¹³

The second is to at least open the question of the possible equivocation of what may need to be made distinct—that is a broad and narrow reading of the First Amendment.

Newdow claims that the essence of his dispute is not his own "offense," something that should be seen as a mere personal reaction, but the deeper issue as to "whether or not government should be placing religion in the public schools or anywhere else."¹⁴ He claims to be protecting everyone's First Amendment rights—The First Amendment claims: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."¹⁵ Again, though, it seems that there is a fundamental difference

12 "Gov't to ask rehearing of Pledge ruling," *www.CNN.com*, June 27, 2002.

13 "Pledge of Allegiance 'Unconstitutional'," *www.ABCNews.com*, June 27, 2002. The actual decision was made on June 26, 2002.

14 "Gov't to ask rehearing of Pledge ruling," *www.CNN.com*, June 27, 2002.

15 First Amendment, *Constitution of the United States*, 1791.

between the government's "placing religion" into the school systems via the *Pledge* and allowing a religious element, i. e., the word 'God' to be mentioned in the classroom. The first would be a violation, the second is much more difficult to determine. Even within the wording of the First Amendment itself it seems the government has a duty to protect the "free exercise" of religious activity, regardless of the arena. Newdow's language, then, simply begs the question.

In addition to the problems of the language or "letter" of the law, there may be some misinterpretation of its spirit. There is something problematic about the argument moving seamlessly from the government's traditional *duty of keeping any religion from becoming a "state" religion* (thereby ensuring that all religions are respected and treated equally), to a *duty to protect its citizens from religious influence at all*. The freedom of religion must, at the very least, be examined as something philosophically distinct from a freedom from religion. The historical acceptance of the first does not entail a simple acceptance of the latter.

Finally, even if one were to broaden the scope of the U. S. Government's duties to include the right to live without any religious influence this is clearly not the intent of the language of the 9th Circuit's decision:

'A profession that we are a nation "under God" is identical, for Establishment Clause purposes, to a profession that we are a nation "Under Jesus," a nation "under Vishnu," a nation "under Zeus," or a nation "under no god," because none of these professions can be neutral with respect to religion,' Judge Alfred T. Goodwin wrote for the three-judge panel.¹⁶

If "under no god"--agnosticism or atheism¹⁷--is being interpreted as yet just one of many religions, then none of the above "professions" (under this broader interpretation of *freedom of religion qua freedom from religion*) should be supported any more or less than any other. In other words, even atheism, according to the above order, cannot be supported by law.

What it could possibly mean for the government to have the proactive duty of protecting every citizen's *freedom from religion* via the *Pledge* opens a metaphysical Pandora's Box. One can not, for example, say "one nation, under no god..." without possibly presupposing the existence of God¹⁸ albeit a being which one is simply denying the nation is "under" on the one hand

16 "Pledge of Allegiance 'Unconstitutional'," *www.ABCNews.com*, June 27, 2002. The actual decision was made on June 26, 2002.

17 The way these two epistemological positions interact is also problematic. Although I see them as distinct positions many scholars believe that one or the other is not rationally tenable, or that one collapse into the other.

18 Of course one's prior philosophical commitments--nominalism, Platonism, Kripkeism--will make a difference with respect to one's feeling of security.

or, falling into the logical trap of supporting some kind of No-god-ism—just another religion someone can claim they want to be free of—on the other. Of course one could simply *not add* the words...“one nation, under no God...” but this still may not be enough security for the anti-religious fanatic. One can always claim that the *act of not adding* the term 'God' is a *de facto* adding of the term 'no God'. Or, ironically, that without an explicit denial, there is still a fear that there is an implicit acceptance. The ontological implications of all of the above possible actions and non-actions of language, as well as the actual uses and non-uses of the term 'God' aside, suffice it to say that the intricacies of such issues may make great philosophical scholarship in the most esoteric journals but it would fill the courts with enough lawsuits to keep even an infinite being eternally busy.

And this brings me to the point. If the United States wants to set the standard for religious tolerance¹⁹ it should do so by example. Specifically it should remain tolerant to all religions, setting the stage for this by being tolerant to the religious language deep inside its own history and culture. First, politically speaking this can only be in our best interest. In a time of global anti-Americanism, such behavior would demonstrate the truth about American culture, that it is deeply spiritual, not a country made up of people whose “soul is moved only by money.”²⁰ It is simply an empirical fact that regardless of which God, religion, or feeling of spirituality, most Americans (like most persons across the globe) do believe in some amorphous “something” that ma-

19 The fact that the U. S. A. must set this standard is something I take very seriously. Where else could such tolerance be tolerated? While writing this piece in Bosnia I am often faced with the claim that “before the war” Sarajevo was the most liberal, open and religiously tolerant city, even the standard for East/West relations. It needs to be pointed out, however, that few of the world's religions ever flourished in Bosnia and fewer still exist today. Most of the Jews have left the city (and nonetheless people continue to display anti-semitic and anti-Israeli graffiti), the Orthodox Christian Church in town seems to be more of a shrine than an active congregation. The Catholic Church has a modest congregation, but mostly what you see in Sarajevo are mosques, many of which accept money from Arab nations such as Saudi Arabia displaying more of a commitment to pan-Islamism than to multiculturalism. And of course, the harsh reality of the region is that despite claims to a myriad of reasons for the war, it was, in fact, fought primarily between the Muslim Bosniaks, Catholic Croats and Orthodox Serbs. Compared to the United States—where Hinduism, Buddhism, Shintoism, Taoism, Confucianism (as well as their innumerable varieties), let alone the immense varieties of Christianity and Judaism as well as the numerous Caribbean, Hawaiian, and Native American sects, not to mention the various non-traditional “spiritualisms” such as Eckankar—such multiculturalism is less than impressive. The point is that it is the United States that, despite acts of violence and an often uneasy peace, nonetheless leads the world in multicultural tolerance given the variety of religions, nationalities and cultures that are its citizens. For a good bibliography of scholarship on the history of religious pluralism in the United States see Catherine L. Albanese, *American Religious History* (Washington D. C.: U. S. Department of State, 2002.)

20 A quote from one of my Bosnian students.

kes life more than just mundane living; something with a purpose and teleology, maybe even some idea of the universal and absolute values of justice, goodness, love and peace. I think it is wrong to claim that America is a specifically religious country, that is, that it has any specific religion, but I think it is accurate to claim it is a non-specifically spiritual one. If this is true, there is no reason Americans should fight their desires for spiritual development, and as many reasons as there are spiritual people, to flaunt it.

Second, the language is, at worst, innocuous. Aside from the legal point mentioned above—that one is not forced to actually pledge the *Pledge*, let alone forced to listen to the *Pledge*, even if one can't help "hearing it"—the question of what is really being "heard" also stands in need of analysis. Many scholars in the debate over the *Pledge* argue that the "effect" of the term 'God' in the public sphere of American culture is not essentially religious. For example, Sheldon H. Nahmond, Law Professor at Chicago-Kent College, claims that "ceremonial deism is shorn of all religious context."²¹ In other words, at best there is little of any religious import in such language, and therefore nothing to feel oppressed by. To even claim "offense," let alone actual harm, makes a mockery of actual religious oppression²²—the ending of such oppression being one of the main reasons the United States was founded, as well as one of the main reasons Americans kill and die in countries all over the world.

That is, if one travels and sees what actual religious oppression looks like and returns to the States still feeling oppressed by the *Pledge*, I suggest that they may want to question their own motivation. If one has such harsh attitudes toward others practicing religion in their presence it may be that their own intolerance has, itself, become a form of "religious" fanaticism that is more insidious than any ceremonial use of the term 'God.' If so, then it is this individual's attitude, not the use of the term 'God' in the *Pledge*, that is in need of removal.

Third, there seems to be an important philosophical reason for retaining the term 'God' in all of the venues mentioned above, and, specifically in one venue I have yet to mention, the *Declaration of Independence*. The *Declaration* is the most fundamental document of the United States of America and too alludes to "God language". That is, it is committed to some kind of deity when it states that the "inalienable rights" of "life, liberty, and the pursuit of happiness" are grounded by being "endowed by their creator."

I often wonder what would happen if there was not this foundational construct—their creator—to "endow" or ground the inalienableness of one's rights to be a full person. Would law, then, become the ultimate arbiter of goodness,

21 "Pledging Religious Allegiance?" *www.ABCNews.com*, June 27, 2002.

22 Nazi Germany, Bosnia during the War, and contemporary China just to name a few places where there is true religious oppression.

fairness and justice? Then what happens when there are bad, unfair or unjust laws? How does one fight law, even within the context of a basically just society such as the United States, if one cannot appeal to some other, metalevel, foundation for adjudication? Our founding fathers, knowing there would be no King good enough²³ to serve this grounding purpose, and realizing that the letter of any law can be interpreted in a way that leads to injustice and tyranny, had the foresight not to allow law to ground itself. It is just not elastic enough.

On the other hand a more esoteric and deeply philosophical foundation such as some Platonic idea of "the Good" or Aristotelian idea of our proper Teleos is a bit too elastic. Although both are intellectually attractive, both are politically impractical. Law is at its heart a practical enterprise and therefore decisions must be made in a timely manner. As such presuppositions concerning the decision to apply a Platonic, Aristotelian, or whatever model to any interpretation of the law, will have to be at least temporarily accepted else discussions of the ethical, political and philosophical foundations will become part of the never-ending story that is philosophical scholarship. This is not a form of dogmatic absolutism, but a realization that there is work that needs to be done, now, despite the fact that there is always another (albeit metalevel) philosophical question that can be asked.²⁴

Law, then, seems to need an epistemic foundation, and it needs one precisely in the place it is in the *Declaration of Independence*, as the *deus ex machina* to ground law in something other than itself. Something that on the one hand transcends law to something more foundational albeit more elastic, amorphous, and in need of further interpretation; but which is, on the other hand, not so elastic as to require the kind of sophisticated training and analysis needed to justify philosophical ideals. What better epistemic placeholder can there be than the term 'God'? It is personal enough to "feel" like it makes sense but universal enough to allow for (possibly eternal) discussion.

What doesn't follow from this is that the term 'God' should be interpreted by the Government in any way that operationalizes actions in favor of any specific religion or religious ideology. The term 'God' can only work as a placeholder for religious tolerance as long as the state in question does nothing to try to do any further analysis. The term 'God' must inhabit a "purely speculative space"²⁵ that, in the final analysis, can only be filled by personal con-

23 Even Plato's "philosopher king" is recognized as being not a perfect solution to the forming and maintaining of a just state. *The Republic*, Book VIII.

24 I disagree with Ugo Vlaisavljević, that "philosophy can no longer claim its supremacy over religion," but only that within the pragmatic venue of law, the ongoing nature of philosophical knowledge is impractical. "Ethno-politics and the Divine Good," *Trans Européennes: An International Journal of Critical Thought*, No. 23, Spring/Summer, 2003, pp. 91-106, p. 104.

25 Keith Ward, "Where Has God Gone?," *The Philosopher's Magazine*, 2nd Quarter, 2003, pp. 17-18.

temptation in a truly free atmosphere that allows open critique and challenge—a “Religion beyond all religions.”²⁶

Religious states—those that call themselves, e. g., Muslim or Jewish states—make the mistake of trying to interpret what it means to understand God and therefore tend toward some form of injustice and intolerance. They conflate spirituality with religiosity, and worse, religion with patriotism. Therefore, such states see anti-religious or even alternative-religious ideology as being a danger to the state. This is a mistake that a country of true religious tolerance cannot make.

On the other hand, another mistake a country cannot make is to ignore the feeling of spirituality that exist universally in most people. In a truly free and open society religious tolerance is not simply one dominant religion allowing another religion to flourish, nor the quick and easy institutionalizing of an avoidance of religious thought or language altogether. Instead it is the finessing of a life that allows all thought—spiritual thought and anti-spiritual thought—to flourish. One need only think about those countries that try to oppress all spiritual and religious belief, e. g., the former Soviet Union, to realize that a government sanctioned policy of “no religion” can be just as oppressive as any specific state religion.

To conclude, with respect to the *Pledge* then, in so far as the term ‘God’ remains amorphous—allowing for true freedom of interpretation—there seems to be no reason for removing it from the mainly secular venues in which it is traditionally used. And if there is no real harm, why become oppressive in removing it? Why become an anti-religion fanatic? When people and governments from all over the world look to the United States as the exemplar of religious freedom and tolerance we should make sure we live up to that ideal not by simply allowing all of the world’s religions to practice freely within our national boundaries, but by supporting all healthy and loving expressions of human spirituality.

26 Paraphrasing R. Mahmutcehajić, *Bosnia the Good: Tolerance and Tradition* (CEU Press, 2000), p. 61 by Ugo Vlaisavljević, “Ethno-politics and the Divine Good,” *Trans Européenes: An International Journal of Critical Thought*, No. 23, Spring/Summer, 2003, pp. 91–106, p. 106.