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Suppose that twenty years from now transhumanists make up the bulk of the population in a small Massachusetts town. They persuade the elected school board to offer a required course in the public high school on transhumanism. The course teaches how nanotechnology can improve brain functioning, how human consciousness might someday be downloadable into computers, and similar topics. The course also surveys earlier steps in the fusing of man and his technology, and it takes a positive, optimistic perspective on the past, present, and future of transhumanism. Its essential theme would be, in the words appearing on the website of the transhumanist Anders Sandberg, that “humans can and should continue to develop … [our] bodies and minds … using science and technology…. In the long run, we will no longer be human anymore, but posthuman beings.”

Suppose further that a resident of the town who is not a transhumanist argues that this is an unconstitutional establishment of religion. How would such a case be resolved? How ought it to be resolved? And, most importantly, what does this question tell us about the proper relationship between transhumanist teachings and the state?

I will examine these questions from the perspective of someone who is not part of the transhumanist movement, but is instead an observer. But it may be that, for questions like these, the observer’s perspective is useful.

From a legal point of view, the central question posed by the hypothetical high school course is whether the courts would view transhumanism as a religion. Its defenders might say it is not; they might argue that the course is closer to a science or philosophy course. The state
can “establish” science in the sense that it can be taught in public schools, and the same is true of a survey course in philosophy. But, of course, the transhumanists could not win the case simply by insisting on their own definition. The Dover, Pennsylvania school board defended its offering on intelligent design by saying they were teaching science, not religion, but a federal court disagreed in its 2005 *Kitzmiller* decision.

So how do the Courts decide if something is “religion” for the purposes of the First Amendment? Remarkably, the United States Supreme Court has never set forth a constitutional definition. It’s never been necessary for resolving the cases before it. The Supreme Court did have a series of Vietnam-era cases in which it had to interpret the statutory requirement that conscientious objection to military service be religiously based. The Court, in cases like *Seeger* and *Welsh* read the requirement broadly, allowing conscientious objector status for young men who traced their deepest ethical beliefs not to traditional religious teachings, but rather to their study of thinkers like Plato and Spinoza. The Court said that “religion” in the statute was broad enough to extend to a belief which “occupies in the life of its possessor a place parallel to that filled by the God” of traditional religions. The Court relied in part on the Protestant theologian Paul Tillich in identifying religion with “your ultimate concern, of what you take seriously without any reservation.”

With the Supreme Court never having addressed the definition of religion in the Constitution, the matter has been left to the lower courts. And there is, in fact, a leading case that has dominated the field. In 1979, the United States Court of Appeals for the Third Circuit decided *Malnak v. Yogi*, which concerned a public school course called the Science of Creative Intelligence /Transcendental Meditation. The textbook used in this course was developed by the Maharishi Mahesh Yogi. It taught that “pure creative intelligence” was central to human life and that through Transcendental Meditation students could reach their full potential. Students were taught to concentrate on personal mantras that they were given by instructors in “puja” ceremonies. Proponents of the course argued that they were simply teaching a valuable form of meditation that could relax students and benefit their mental and physical health, and thus the course should be allowed just as we allow physical education courses. The Court, however, found Transcendental Meditation to be a religious exercise, and they held that teaching the course in the public schools violated the non-Establishment Clause.
In the course of this decision, Judge Arlin Adams wrote a thoughtful concurring opinion that surveyed the history and the case law surrounding the meaning of religion in the Constitution. He arrived at three factors that he believed should be taken into account in deciding if something is a religion. No one factor was required or dispositive, but, taken together, they could give guidance on the legal question. In the ensuing decades, Adams’ approach has been adopted by a number of federal and state courts in a variety of settings. It was used, for example, in the 2002 California decision in the *Friedman* case which held that Ethical Veganism is not a religion. I think it is likely that Adams’ perspective would be given considerable weight if the U. S. Supreme Court were ever to take up the question of the constitutional definition of religion.

So what are the Adams’ factors? First, a religion addresses fundamental and ultimate questions. As examples, Adams mentioned “the meaning of life and death, man’s role in the Universe, [and] the proper moral code of right and wrong.” Second, a religion is comprehensive in nature. It is not confined to one question or topic. Thus, Adams argued, the Big Bang theory of the creation of the universe, is not, standing alone, religious. Finally, Adams noted that religions tend to have formal, external signs, such as established leaders or public rituals.

Let’s consider for a moment how transhumanism might fare under this approach. I have to note first that finding that something is a religion is usually not the only issue in an Establishment Clause case. Churches receive tax breaks, ministers deliver public invocations, religious displays on public land are sometimes allowed and sometimes not. There is a lot going on in these cases. In particular, the Supreme Court has not been able to agree on a general approach to what constitutes an improper establishment of religion. Some Justices ask if the government action has the purpose or effect of advancing religion, some whether the government has endorsed religion, and some are only concerned if the government is coercing a religious practice.

But we need not get into these disputes. All of the Justices would agree that a required public school course in a religion would violate the Constitution. You can teach about religion in a history or philosophy course, but you cannot teach and endorse the views of a specific faith in the public schools. So let us consider whether transhumanism looks more like a history
or philosophy course on the one hand, or more like teaching Transcendental Meditation on the other.

Does transhumanism, under the Arlin Adams approach, address fundamental and ultimate questions? Any movement that seeks to extend life indefinitely, to directly shape the functioning of the brain and the mind, and that is fundamentally optimistic about the relationship of technology to humanity presumably has some deep rationale for its policy prescriptions. Perhaps transhumanism leaves the really ultimate or fundamental questions to other underlying philosophical positions, like utilitarianism, without questioning those positions. But that is far from obvious and it is a question the court would want to explore.

Is transhumanism comprehensive? Again, it hardly seems like a modest movement or stance, but perhaps there are vast questions of morality that stand utterly outside the transhumanist frame. Perhaps – but again this is far from obvious, and, again, a court would want to learn just how ambitious the transhumanist agenda is.

Finally, do transhumanists have a formal structure or a set of rituals or practices? Probably not, although Adams is clear that this factor alone does not answer the question of whether something is or is not a religion.

So the outcome of this hypothetical case is unclear. It would turn on precisely what brand of transhumanism was being taught. But as I indicated at the outset, the most important benefit of this thought experiment about a public school course on transhumanism is not to predict the result in court. It is instead to explore what it tells us about the transhumanist point of view.

Let’s go back for a moment to the beginning of the establishment clause question. Why does the Constitution forbid establishing religion while allowing the teaching and funding of science? Part of the reason is historical; religion incited passions and led to conflicts incompatible with a diverse democratic society. A modern version of this concern is the worry some have that religious arguments are “conservation stoppers” that do not work well in public policy disputes.

Now perhaps transhumanism is not a “conversation stopper” but rather simply a perspective that opens up a set of policy debates: this sort of intervention in the brain is helpful and appropriate, this other sort is not. But
imagine a full-blown – some would say an honest – version of transhumanism. Under this view transhumanism represents a very deep set of views on what it is to be human and how humanity should be shaped and transcended; it represents a very strong moral commitment to a very specific version of progress; it represents a very profound type of optimism. All of this offers a stark alternative to the perspectives of traditional religion which reflect a humanity that is humble before God, that is consigned to vast limits on its knowledge, and that is deeply optimistic only in the faith it places in a higher power.

Or to put it another way, perhaps transhumanist beliefs about the proper relationship between technology and mankind really do occupy a “place parallel” to that occupied by God in traditional religion. Perhaps transhumanism is a “conservation stopper” in the sense that adherents cannot really engage in debate with non-adherents because the underlying assumptions of the two groups are too different about what it is to be human. Thus it is not like a science course taught in public schools which offers a set of observations about the natural world that can be used or ignored by society in a variety of ways. Transhumanism embodies much more.

So perhaps a full-blown transhumanist movement should not resist being analogized to religion. It should embrace the analogy and struggle openly to be accepted as ultimate truth. Otherwise why is transhumanism worth taking seriously?

Under this approach transhumanists would forgo being in the public school curriculum in order to be in everyone’s hearts and minds. They would openly compete in the private sphere with Christianity and other faiths. Or to take a more radical perspective, adherents might argue that transhumanism forces us to change the Constitutional rules: we finally have a truth that ought to be established, that ought, in other words, to be publicly funded and taught in public schools. There should be no wall between transhumanism and the state.

To an outside observer like myself it seems that either of these approaches would be true to the actual claims of transhumanism. These approaches are more honest than claiming that the teachings of transhumanism are merely like the curriculum of a chemistry course or a survey course on Western philosophy. If transhumanism is really worthy of
the attention of a non-transhumanist like me, it ought to be willing to take its place as a contender for America’s soul.