SUPREME COURT OF UNITED STATES

People of State of Illinois ex rel. Mccollum

Vs.

Board of Education of School Dist. No. 71, CHAMPAIGN COUNTY, ILL, et al.

No. 90.

Argued Dec. 8, 1947.

Decided March 8, 1948.

Appeal from the Supreme Court of the State of Illinois.

Mr. Walter F. Dodd, of Chicago, Ill., for appellant.

Messrs. Owen Rall, of Chicago, Ill., and John L. Franklin, of Champaign, Ill., for appellees.

Mr. Justice BLACK delivered the opinion of the Court.

This case relates to the power of a state to utilize its tax-supported public school system in aid of religious instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County, Illinois. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boad § of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill.Rev.Stat. ch. 122, §§ 123, 301 (1943).

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart

for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public-school religious-group program violated the First and Fourteenth Amendments to the United States Constitution. The prayer of her petition was that the Board of Education be ordered to 'adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District Number 71, * * * and in all public school houses and buildings in said district when occupied by public schools.' The board first moved to dismiss the petition on the ground that under Illinois law appellant had no standing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instructions violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal the State Supreme Court affirmed. 396 Ill. 14, 71 N.E.2d 161. Appellant appealed to this Court under 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a), and we noted probable jurisdiction. 67 S.Ct. 1524.

The appellee presses a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the 'validity of a statute of any State' as required by 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a). Hamilton v. Regents of University of California, [1934] USSC 165; 293 U.S. 245, 258[1934] USSC 165; , 55 S.Ct. 197, 202[1934] USSC 165; , 79 L.Ed. 343. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action, a ground which is also without merit. Coleman v. Miller, [1939] USSC 115; 307 U.S. 433, 443, 445, 464[1939] USSC 115; , 59 S.Ct. 972, 978, 986[1939] USSC 115; , 83 L.Ed. 1385, 122 A.L.R. 695. A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute.1 In 1940 interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public schoolp upils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend;2 they were held weekly, thirty minutes for the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools.3 The classes were taught in three separate religious groups by Protestant teachers,4 Catholic priests, and a Jewish rabbi, although for the past several years there have apparently been no classes instructed in the

Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers.

The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, [1947] USSC 44; 330 U.S. 1, 67 S.Ct. 504. There we said: 'Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.6 Neither can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.7 Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State." Id., at pages 15, 16 of 330 U.S., at page 511 of 67 S.Ct. The majority in the Everson case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the Everson case, counsel for the respondents challenge those views as dicta and urge that we reconsider and repudiate them. They argue that historically the First Amendment was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions. In addition they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented we are unable to accept either of these contentions.

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the

premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the First Amendment had erected a wall between Church and State which must be kept high and impregnable.

Here not only are the state's taxsupported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State.

The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. Justice FRANKFURTER delivered the following opinion, in which Mr. Justice JACKSON, Mr. Justice RUTLEDGE and Mr. Justice BURTON join.*

We dissented in Everson v. Board of Education, [1947] USSC 44; 330 U.S. 1, 67 S.Ct. 504, 512, because in our view the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of sectarian with secular instruction in the public schools. The Constitution of the United States forbids this.

The case, in the light of the Everson decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning o the solution of a problem, not its answer. This is so because the meaning of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an 'established church.' But agreement, in the abstract, that the First Amendment was designed to erect a 'wall of separation between Church and State,' does not preclude a clash of views as to what the wall separates. Involved is not only the Constitutional principle but the implications of judicial review in its enforcement. Accommodation of legislative freedom and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the 'wall-of-separation' metaphor until we have considered the relevant history of religious education in America, the place of the 'released time' movement in that history, and its precise manifestation in the case before us.

To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting. Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

The emigrants who came to these shores brought this view of education with them. Colonial schools certainly started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of 'one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures.' The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47.1

The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstrance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involved support to religious education. See Mr. Justice Rutledge's opinion in the Everson case supra, 330 U.S. at pages 36, 37, 67 S.Ct. at pages 521, 522. As the momentum for popular education increased and in turn evoked strong claims for State support of religious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various form in other States. New York and Massachusetts provide famous chapters in the history that established diassociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sectarian opposition, to the barring of tax founds to church schools, and later to any school in which sectarian doctrine was taught.2 In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict.3 The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters 'connected with religious policy' and particularly 'in a country composed of such a variety of religious sects as our country.' Vidal et al. v. Girard's Executors, 2 How. 127, 198[1844] USSC 11; , 11 L.Ed. 205. That was more than one hundred years ago.

Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people.4 A totally different situation elsewhere, as illustrated for instance by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mold. See the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

It is pertinent to remind that the establishment of this principle of separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in

the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously freef rom entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.

This development of the public school as a symbol of our secular unity was not a sudden achievement nor attained without violent conflict.5 While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time, and place to place, thus representing in their totality the common interest of the nation.

Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But by 1875 the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In that year President Grant made his famous remarks to the Convention of the Army of the Tennessee:

'Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated for the support of any sectarian schools. Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and state forever separated.' 'The President's Speech at Des Moines,' 22 Catholic World 433, 434-35 (1876).

So strong was this conviction, that rather than rest on the comprehensive prohibitions of the First and Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations including a specific prohibition against the use of public funds for sectarian education,6 such as had been written into many State constitutions.7 By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history: 'It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State.' Root, Addresses on Government and Citizenship, 137, 140.8 The extent to which this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system 'free from

sectarian control.'

Prohibition of the commingling of sectarian and secular instruction in the public school is of course only half the story. A religious people was naturally concerned about the part of the child's education entrusted 'to the family altar, the church, and the private school.' The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive attempts were therefore frequently made to obtain public funds for religious schools.10 But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These, however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday as well as Sunday schools.11 They all fell short of their purpose. It was urged that by appearing to make religion a one-day-a-week matter, the Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

Out of these inadequate efforts evolved the week-day church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were free to do so. Church leaders decided that if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his 'business hours.'

The initiation of the movement12 may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York Ciy in 1905, was that the public school unduly monopolized the child's time and that the churches were entitled to their share of it.13 This, the schools should 'release.' Accordingly, the Federation, citing the example of the Third Republic of France,14 urged that upon the request of their parents children be excused from public school on Wednesday afternoon, so that the churches could provide 'Sunday school on Wednesday.' This was to be carried out on church premises under church authority. Those not desiring to attend church schools would continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

The proposal aroused considerable opposition and it took another decade for a 'released time' scheme to become part of a public school system. Gary, Indiana, inaugurated the movement. At a time when industrial expansion strained the communal facilities of the city, Superintendent of Schools Writ suggested a fuller use of the school buildings. Building on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Writ's plan sought to rotate the schedules of the children during the school-day so that some were in class, othr § were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was 'released time' begun. The religious teaching was held on church premises and the public schools had no hand in the conduct of these church schools.

They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school; and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools.

From such a beginning 'released time' has attained substantial proportions. In 1914—15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures almost 2,000,000 in some 2,200 communities participated in 'released time' programs during 1947.16 A movement of such scope indicates the importance of the problem to which the 'released time' programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

Of course, 'released time' as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some 'released time' classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular 'released time' program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.

The substantial differences among arrangements lumped together as 'released time' emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does 'released time' operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, 'subject to the approval and supervision of the Superintendent.' The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent 'who in turn will determine whether or not it is practical for said group to teach in said school system.' If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

Religious education so conducted on school time and property is patently woven into the working

scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and nonconformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.18 Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.

Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from educational theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey.20 Movements like 'released time' are seldom single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less than an hour a week; in fact, that affords evidence of a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as 'dismissed time,' whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school.21 The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious instruction such momentum and planning. To speak of 'released time' as being only half or three quarters of an hour is to draw a thread from a fabric.

We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial. Different forms which 'released time' has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

Separation means separation, not something less. Jefferson's metaphor in describing the relation

between Church and State speaks of a 'wall of separation,' not of a fine line easily overstepped. The public schooli § at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. 'The great American principle of eternal separation'—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that 'we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.' Everson v. Board of Education, 330 U.S. at page 59, 67 S.Ct. at page 532. If nowhere else, in the relation between Church and State, 'good fences make good neighbors.'

Mr. Justice JACKSON, concurring.

I join the opinion of Mr. Justice FRANKFURTER, and concur in the result reached by the Court, but with these reservations: I think it is doubtful whether the facts of this case establish jurisdiction in this Court, but in any event that we should place some bounds on the demands for interference with local schools that we are empowered or willing to entertain. I make these reservations a matter of record in view of the number of litigations likely to be started as a result of this decision.

A Federal Court may interfere with local school authorities only when they invade either a personal liberty or a property right protected by the Federal Constitution. Ordinarily this will come about in either of two ways:

First. When a person is required to submit to some religious rite or instruction or is deprived or threatened with deprivation of his freedom for resisting such unconstitutional requirement. We may then set him free or enjoin his prosecution. Typical of such cases was West Virginia State Board of Education v. Barnette, [1943] USSC 130; 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628, 147 A.L.R. 674. There penalties were threatened against both parent and child for refusal of the latter to perform a compulsory ritual which offended his convictions. We intervened to shield them against the penalty. But here, complainant's son may join religious classes if he chooses and if his parents so request, or he may stay out of them. The complaint is that when others join and he does not, it sets him apart as a dissenter, which is humiliating. Even admitting this to be true, it may be doubted whether the Constitution which, of course, protects the right to dissent, can be construed also to protect one from the embarrassment that always attends nonconformity, whether in religion, politics, behavior or dress. Since no legal compulsion is applied to complainant's son himself and no penalty is imposed or threatened from which we may relieve him, we can hardly base jurisdiction on this ground.

Second. Where a complaint is deprived of property by being taxed for unconstitutional purposes, such as directly or indirectly to support a religious establishment. We can protect a taxpayer against such a levy. This was the Everson Case[1947] USSC 44; , 330 U.S. 1, 67 S.Ct. 504, as I saw it then and see it now. It was complained in that case that the school treasurer drew a check on public funds to reimburse parents for a child's bus fare if he went to a Catholic parochial school or a public school, but not if he went to any other private or denominational school. Reference to the record in that case will show that the School District was not operating busses, so it was not a question of allowing Catholic children to ride publicly owned busses along with others, in the interests of their

safety, health or morals. The child had to travel to and from parochial school on commercial busses like other paying passengers, and all other school children, and he was exposed to the same dangers. If it could, in fairness, have been said that the expeni ture was a measure for the protection of the safety, health or morals of youngsters, it would not merely have been constitutional to grant it; it would have been unconstitutional to refuse it to any child merely because he was a Catholic. But in the Everson Case there was a direct, substantial and measurable burden on the complainant as a taxpayer to raise funds that were used to subsidize transportation to parochial schools. Hence, we had jurisdiction to examine the constitutionality of the levy and to protect against it if a majority had agreed that the subsidy for transportation was unconstitutional.

In this case, however, any cost of this plan to the taxpayers is incalculable and negligible. It can be argued, perhaps, that religious classes add some wear and tear on public buildings and that they should be charged with some expense for heat and light, even though the sessions devoted to religious instruction do not add to the length of the school day. But the cost is neither substantial nor measurable, and no one seriously can say that the complainant's tax bill has been proved to be increased because of this plan. I think it is doubtful whether the taxpayer in this case has shown any substantial property injury.

If, however, jurisdiction is found to exist, it is important that we circumscribe our decision with some care. What is asked is not a defensive use of judicial power to set aside a tax levy or reverse a conviction, or to enjoin threats of prosecution or taxation. The relief demanded in this case is the extraordinary writ of mandamus to tell the local Board of Education what it must do. The prayer for relief is that a writ issue against the Board of Education 'ordering it to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools * * * and in all public school houses and buildings in said district when occupied by public schools.' The plaintiff, as she has every right to be, is an avowed atheist. What she has asked of the courts is that they not only end the 'released time' plan but also ban every form of teaching which suggests or recognizes that there is a God. She would ban all teaching of the Scriptures. She especially mentions as an example of invasion of her rights 'having pupils learn and recite such statements as, 'The Lord is my Shepherd, I shall not want." And she objects to teaching that the King James version of the Bible 'is called the Christian's Guide Book, the Holy Writ and the Word of God,' and many other similar matters. This Court is directing the Illinois courts generally to sustain plaintiff's complaint without exception of any of these grounds of complaint, without discriminating between them and without laying down any standards to define the limits of the effect of our decision.

To me, the sweep and detail of these complaints is a danger signal which warns of the kind of local controversy we will be required to arbitrate if we do not place appropriate limitation on our decision and exact strict compliance with jurisdictional requirements. Authorities list 256 separate and substantial religious bodies to exist in continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.

While we may and should end such formal and explicit instruction as the Champaign plan and can at

all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remain to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a 'science' as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found 'a Church without a Bishop and a State without a King,' is more than I know. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they may summon to teaching about remote subjects such as Confucius or Mohamet. When instruction turns to proselyting and imparting knowledge becomes evangelism is, except in the crudest cases, a subtle inquiry.

The opinions in this case show that public educational authorities have evolved a considerable variety of practices in dealing with the religious problem. Neighborhoods differ in racial, religious and cultural compositions. It must be expected that they will adopt different customs which will give emphasis to different values and will induce different experiments. And it must be expected that, no matter what practice prevails, there will be many discontented and possibly belligerent minorities. We must leave some flexibility to meet local conditions, some chance to progress by trial and error. While I agree that the religious classes involved here go beyond permissible limits, I also think the complaint demands more than plaintiff is entitled to have granted. So far as I can see this Court does not tell the State court where it may stop, nor does it set up any standards by which the State court may determine that question for itself.

The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation, 'to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching to religious education in all public schools,' is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes. It seems to me that to do so is to allowz eal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. it is a matter on which we can find no law but our own prepossessions. If with no surer legal guidance we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with the way schools are dealing with the problem, we are likely to have much business of the sort. And, more importantly, we are likely to make the legal 'wall of separation between church and state' as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.

Mr. Justice REED, dissenting.

The decisions reversing the judgment of the Supreme Court of Illinois interpret the prohibition of the First Amendment against the establishment of religion, made effective as to the states by the Fourteenth Amendment, to forbid pupils of the public schools electing, with the approval of their parents, courses in religious education. The courses are given, under the school laws of Illinois as approved by the Supreme Court of that State, by lay or clerical teachers supplied and directed by an interdenominational, local council of religious education.1 The classes are held in the respective school buildings of the pupils at study or released time periods so as to avoid conflict with recitations. The teachers and supplies are paid for by the interdenominational group.2 As I am convinced that this interpretation of the First Amendment is erroneous, I feel impelled to express the reasons for my disagreement. By directing attention to the many instances of close association of church and state in American society and by recalling that many of these relations are so much a part of our tradition and culture that they are accepted without more, this dissent may help in an appraisal of the meaning of the clause of the First Amendment concerning the establishment of religion and of the reasons which lead to the approval or disapproval of the judgment below.

The reasons for the reversal of the Illinois judgment, as they appear in the respective opinions may be summarized by the following excerpts. The opinion of the Court after stating the facts, says: 'The foregoing facts, without reference to others that appear in the record show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. * * * And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, [1947] USSC 44; 330 U.S. 1, 67 S.Ct. 504.' Another opinion phrases it thus: 'We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. We find that the basic Constitutional principle of b solute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.' These expressions in the decisions seem to leave open for further litigation variations from the Champaign plan. Actually, however, future cases must run the gantlet not only of the judgment entered but of the accompanying words of the opinions. I find it difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional. Is it the use of school buildings for religious instruction; the release of pupils by the schools for religious instruction during school hours; the so-called assistance by teachers in handing out the request cards to pupils, in keeping lists of them for release and records of their attendance; or the action of the principals in arranging an opportunity for the classes and the appearance of the Council's instructors? None of the reversing opinions say whether the purpose of the Champaign plan for religious instruction during school

hours is unconstitutional or whether it is some ingredient used in or omitted from the formula that makes the plan unconstitutional.

From the tenor of the opinions I conclude that their teachings are that any use of a pupil's school time whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban. I reach this conclusion notwithstanding one sentence of indefinite meaning in the second opinion: 'We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial.' The use of the words 'cooperation,' 'fusion,' 'complete hands-off,' 'integrate' and 'integrated' to describe the relations between the school and the Council in the plan evidences this. So does the interpretation of the word 'aid.' The criticized 'momentum of the whole school atmosphere,' 'feeling of separatism' engendered in the non-participating sects, 'obvious pressure * * * to attend,' and 'divisiveness' lead to the stated conclusion. From the holding and the language of the opinions, I can only deduce that religious instruction of public school children during school hours is prohibited. The history of American education is against such an interpretation of the First Amendment.

The opinions do not say in words that the condemned practice of religious education is a law respecting an establishment of religion contrary to the First Amendment. The practice is accepted as a state law by all. I take it that when the opinion of the Court says that 'The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects' and concludes 'This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith,' the intention of its author is to rule that this practice is a law 'respecting an establishment of religion.' That was the basis of Everson v. Board of Education, [1947] USSC 44; 330 U.S. 1, 67 S.Ct. 504, 508. It seems obvious that the action of the School Board in permitting religious education in certain grades of the schools by all faiths did not prohibit the free exercise of religion. Even assuming that certain children who did not elect to take instruction are embarrassed to remain outside of the classes, one can hardly speak of that embarrassment as a prohibition against the free exercise of religion. As no issue of prohibition upon the free exercise of religion is before us, we need only examine the School Board's action to see if it constitutes an establishment of religion.

The facts, as stated in the reversing opinions, are adequately set out if we interpret the abstract wod § used in the light of the concrete incidents of the record. It is correct to say that the parents 'consented' to the religious instruction of the children, if we understand 'consent' to mean the signing of a card like the one in the margin.3 It is correct to say that 'instructors were subject to the approval and supervision of the superintendent of schools,' if it is understood that there were no definitive written rules and that the practice was as is shown in the excerpts from the findings below.4 The substance of the religious education course is determined by the members of the various churches on the council, not by the superintendent.5 The evidence and findings set out in the two preceding notes convince me that the 'approval and supervision' referred to above are not of the teachers and the course of studies but of the orderly presentation of the courses to those students who may elect the instruction. The teaching largely covered Biblical incidents.6 The religious teachers and their teachings in every real sense, were financed, and regulated by the Council of Religious Education, not the School Board.

The phrase 'an establishment of religion' may have been intended by Congress to be aimed only at a state church. When the First Amendment was pending in Congress in substantially its present form, 'Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience.'7 Passing years, however, have brought about acceptance of a broader meaning, although never until today, I believe, has this Court widened its interpretation to any such degree as holding that recognition of the interest of our nation in religion, through the granting, to qualified representatives of the principal faiths, of opportunity to present religion as an optional, extracurricular subject during released school time in public school buildings, was equivalent to an establishment of religion. A reading of the general statements of eminent statesmen of former days, referred to in the opinions in this and Everson v. Board of Education, supra, will show that circumstances such as those in this case were far from the minds of the authors. The words and spirit of those statements may be wholeheartedly accepted without in the least impugning the judgment of the State of Illinois.

Mr. Jefferson, as one of the founders of the University of Virginia, a school which from its establishment in 1819 has been wholly governed, managed and controlled by the State of Virginia,9 was faced with the same problem that is before this Court today: The question of the constitutional limitation upon religious education in public schools. In his annual report as Rector, to the President and Directors of the Literary Fund, dated October 7, 1822, approved by the Visitors of the University of whom Mr. Madison was one,10 Mr. Jefferson set forth his views at some length.11 These suggestions of Mr. Jefferson were adopted12 and ch. II, § 1, of the Regulations of the University of October 4, 1824, provided that:

'Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within, or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and expected to attend religious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour.'

Thus, the 'wall of separation between church and State' that Mr. Jefferson built at the University which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

Mr. Madison's Memorial and Remonstrance against Religious Assessments14 relied upon by the dissenting Justices in Everson is not applicable here.15 Mr. Madison was one of the principal opponents in the Virginia General Assembly of A Bill Establishing a Provision for Teachers of the Christian Religion. The monies raised by the taxing section16 of that bill were to be appropriated 'by the Vestries, Elders, or Directors of each religious society, * * * to a provision for a Minister or

Teacher of the Gospel of their deo mination, or the providing places of divine worship, and to none other use whatsoever * * *.' The conclusive legislative struggle over this act took place in the fall of 1785 before the adoption of the Bill of Rights. The Remonstrance had been issued before the General Assembly convened and was instrumental in the final defeat of the act which died in committee. Throughout the Remonstrance, Mr. Madison speaks of the 'establishment' sought to be effected by the act. It is clear from its historical setting and its language that the Remonstrance was a protest against an effort by Virginia to support Christian sects by taxation. Issues similar to those raised by the instant case were not discussed. Thus, Mr. Madison's approval of Mr. Jefferson's report as Rector gives, in my opinion, a clearer indication of his views on the constitutionality of religious education in public schools than his general statements on a different subject.

This Court summarized the amendment's accepted reach into the religious field, as I understand its scope, in Everson v. Board of Education, supra. The Court's opinion quotes the gist of the Court's reasoning in Everson. I agree as there stated that none of our governmental entities can 'set up a church.' I agree that they cannot 'aid' all or any religions or prefer one 'over another.' But 'aid' must be understood as a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions. 'Prefer' must give an advantage to one 'over another.' I agree that pupils cannot 'be released in part from their legal duty' of school attendance upon condition that they attend religious classes. But as Illinois has held that it is within the discretion of the School Board to permit absence from school for religious instruction no legal duty of school attendance is violated. 396 Ill. 14, 71 N.E.2d 161. If the sentence in the first opinion, concerning the pupils' release from legal duty, is intended to mean that the Constitution forbids a school to excuse a pupil from secular control during school hours to attend voluntarily a class in religious education, whether in or out of school buildings, I disagree. Of course, no tax can be levied to support organizations intended 'to teach or practice religion.' I agree too that the state cannot influence one toward religion against his will or punish him for his beliefs. Champaign's religious education course does none of these things.

It seems clear to me that the 'aid' referred to by the Court in the Everson case could not have been those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society. h is explains the well-known fact that all churches receive 'aid' from government in the form of freedom from taxation. The Everson decision itself justified the transportation of children to church schools by New Jersey for safety reasons. It accords with Cochran v. Louisiana State Board of Education, 281 U.S. 370, 50 S.Ct. 335, 74 L.Ed. 913, where this Court upheld a free textbook statute of Louisiana against a charge that it aided private schools on the ground that the books were for the education of the children, not to aid religious schools. Likewise the National School Lunch Act aids all school children attending tax exempt schools.17 In Bradfield v. Roberts, [1899] USSC 172; 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168, this Court held proper the payment of money by the Federal Government to build an addition to a hospital, chartered by individuals who were members of a Roman Catholic sisterhood, and operated under the auspices of the Roman Catholic Church. This was done over the objection that it aided the establishment of religion.18 While obviously in these instances the respective churches, in a certain sense, were aided, this Court his never held that such 'aid' was in violation of the First or Fourteenth Amendments.

Well-recognized and long-established practice support the validity of the Illinois statute here in question. That statute, as construed in this case, is comparable to those in many states.19 All differ to some extent. New York may be taken as a fair example.20 In many states the program is under the supervision of a religious council composed of delegates who are themselves communicants of various faiths.21 As is shown by Bradfield v. Roberts, supra, the fact that the members of the council have religious affiliations is not significant. In some, instruction is given outside of the school buildings; in others, within these buildings. Metropolitan centers like New York usually would have available quarters convenient to schools. Unless smaller cities and rural communities use the school building at times that do not interfere with recitations, they may be compelled to give up religious education. I understand that pupils not taking religious education usually are given other work of a secular nature within the schools.22 Since all these states use the facilities of the schools to aid the religious education to some extent, their desire to permit religious education to school children is thwarted by this Court's judgment.23 Under it, as I understand its language, children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education. Teachers cannot keep the records as to which pupils are to be dismissed and which retained. To do so is said to be an 'aid' in establishing religion; the use of public money for religion.

Cases running into the scores have been in the state courts of last resort that involved religion and the schools. Except where the exercises with religious significance partook of the ceremonial practice of sects or groups, their constitutionality has been generally upheld.24 Illinois itself promptly struck down as violative of its own constitution required exercises partaking of a religious ceremony. People ex rel. Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251, 29 L.R.A., N.S., 442, 19 Ann.Cas. 220. In that case compulsory religious exercises a reading from the King James Bible, the Lord's Prayer and the singing of hymns—were forbidden as 'worship services.' In this case, the Supreme Court of Illinois pointed out that in the Ring case, the activities in the school were ceremonial and compulsory; in this, voluntary and educational. 396 Ill. 14, 20, 21, 71 N.E.2d 161.

The practices of the federal government offer many examples of this kind of 'aid' by the state to religion. The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for the proceedings.25 The armed forces have commissioned chaplains from early days.26 They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging to the United States and dedicated to the services of religion.27 Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools.28 The schools of the District of Columbia have opening exercises which

'include a reading from the Bible without note or comment, and the Lord's prayer.'

In the United States Naval Academy and the United States Military Academy, schools wholly supported and completely controlled by the federal government, there are a number of religious activities. Chaplains are attached to both schools. Attendance at church services on Sunday is compulsory at both Military and Naval Academies.30 At West Point the Protestant services are held in the Cadet Chapel, the Catholic in the Catholic Chapel, and the Jewish in the Old Cadet Chapel; at Annapolis only Protestant services are held on the reservation, midshipmen of other religious persuasions attend the churches of the city of Annapolis. These facts indicate that both schools since their earliest beginnings have maintained and enforced a pattern of participation in formal worship.

With the general statements in the opinions concerning the constitutional requirement that the nation and the states, by virtue of the First and Fourteenth Amendments,31 may 'make no law respecting an establishment of religion,' I am in agreement. But, in the light of the meaning given to those words by the precedents, customs, and practices which I have detailed above, I cannot agree with the Court's conclusion that when pupils compelled by law to go to school for secular education are released from school so as to attend the religious classes, churches are unconstitutionally aided. Whatever may be the wisdom of the arrangement as to the use of the school buildings made with The Champaign Council of Religious Education, it is clear to me that past practice shows such cooperation between the schools and a non-ecclesiastical body is not forbidden by the First Amendment. When actual church services have always been permitted on government property, the mere use of the school buildings by a non-sectarian group for religious education ought not to be condemned as an establishment of religion. For a non-sectarian organization to give the type of instruction here offered cannot be said to violate our rule as to the establishment of religion by the state. The prohibition of enactments respecting the establishment of religion do not bar every friendly gesture between church and state. It is not an absolute prohibition against every conceivable situation where the two may work together any more than the other provisions of the First Amendment—free speech, free press—are absolutes.32 If abuses occur such as the use of the instruction hour for sectarian purposes, I have no doubt, in view of the Ring case, that Illinois will promptly correct them. If they are of a kind that tend to the establishment of a church or interfere with the free exercise of religion, this Court is open for a review of any erroneous decision. This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A state is entitled to have great leeway in its legislation when dealing with the important social problems of its population.33 A definite violation of legislative limits must be established. The Constitution should not be stretched to forbid national customs in the way courts act to reach arrangements to avoid federal taxation.34 Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause not a decorous introduction to the study of its text. The judgment should be affirmed.