

Religion And Education In American Constitutional Law: Past, Present And Developing Trends

Dr. Andrew J. “Jack” L. Waskey, Jr.
Associate Professor of Government and Philosophy
Dalton State College

ABSTRACT

The purpose of this article is to discuss past, present, and developing trends of Religion and Education in American Constitutional Law. The author discusses the following topics: The Right to Have Parochial Schools, Child Benefit Laws, Schools and Freedom, Government Mandates, Religious Content in the Curriculum, Silent Mediation Periods, Prayers at Commencement and Football Games, Child Benefit Cases, and other important issues and trends. Focus will be on the Supreme Court and its decisions affecting the public schools.

The United States is probably the most religiously as well as ethnically diverse country in the world.¹ The religious diversity began early in the 169 year long Colonial Era in which Episcopalians, Presbyterians, Puritans, Roman Catholics, Quakers, Huguenots, Lutherans, Moravians², Sephardic Jews, and others came and established their faiths in the New World where the religions of the American Indians would linger in some quarters until today.³

Moreover in the New World new versions of old faiths would emerge as Baptists, Methodists, Unitarians, even before the American Revolution. The frontier movement⁴ saw great revivals and new denominations as Disciples of Christ⁵, African-American groups, Pentecostals, and more in the decades to follow. In both the Great Awakening⁶ of the 18th Century and in the Second Great Awakening in the 19th Century spiritual dynamics would mark Americans with a religiosity unknown in Europe.⁷

In addition to the more or less orthodox Christian faiths, cults, sects, and foreign faiths would emerge along with varieties of atheism and occultist groups. Witchcraft denounced at Salem, Massachusetts, was revived in the late Twentieth Century⁸ although in the earlier in the century secularists reviled the Puritans for punishing it as the product of superstition.

The Constitution of the United States was adopted within the context of the socio-religious culture of the United States. It was also influenced by the American version of

the Enlightenment and its religious character⁹. It has several religious elements that were designed to provide for peace among people of different faiths¹⁰. One of these is the proscription against religious tests for office.¹¹

Two other references to religion are in the first ten Amendments to the Constitution, (the Bill of Rights). Specifically the First Amendment says¹²:

Congress shall make no law

- a. *respecting an establishment of religion, or*
- b. *prohibiting the free exercise thereof;*

These religious provisions are, respectively, the Establishment Clause and the Free Exercise Clause of the Constitution. These clauses were adopted as part of the Bill of Rights shortly after the establishment of the current government in 1789.

The original intent of the Bill of Rights was to protect the individual citizen from the national government. The Bill of Rights did not originally apply to the states as the Supreme Court stated in *Barron v. Baltimore* (1833). This is important in considering both the Establishment and Free Exercise clauses because at the time of the adoption of the Constitution most states had some form of an established religion. This did not end until well into the 1820s¹³ in the **novus ordo seclorum**.¹⁴

The idea of religious tolerance rather than religious conformity provided for in the establishment of a single “orthodox” religion was the product of several sets of advocates such as the **Politiques**, and John Locke. In addition the Enlightenment (and the politics it has spawned) was opposed to settle religion as a part of its war against Christianity in a maneuver to gain operating room. In recent decades the historic idea toleration has been elevated into a civic ideology in the United States. However, it is quite often merely a mask for anti-Christian assaults.

The authors of the Fourteenth Amendment intended that the Bill of Rights apply to the States; however, this interpretation was not accepted by the Supreme Court in the *Slaughter House Cases* (1873).¹⁵ The Fourteenth Amendment was born in controversy and has continued ever since to be controversial. It is the core of the Supreme Court numerous civil rights decisions. It was not until the Twentieth Century when the Supreme Court began to selectively apply the Bill of Rights to the States that the issue of religions in the schools became a source of Supreme Court decisions.

The Court has decided many cases interpreting the Establishment Clause and the Free Exercise Clause. Most of these deal with religion and civic life in other areas than the public schools. These include cases involving Protestant groups and church property, Mormons and polygamy (*U. S. v. Reynolds*, 1890),¹⁶ Jehovah's Witnesses on street preaching and numbers of other issues, Christian Scientist on faith healing¹⁷, Blue Laws, and more recently everything from public nativity scenes or menorahs on public property, *Allegheny County v. ACLU Greater Pittsburgh Chapter* (1989)¹⁸ to the practice of animal sacrifice or chaplains in the military. While the aspects of the issues of religion and state are of great interest time and space have mandated that the focus of this article will be on the Supreme Court and its decisions affecting the public schools.

The Right to Have Parochial Schools

The first case involving public schools and the First Amendment was *Pierce v. Society of Sisters* (1925). This case became the charter for parochial schools. The facts were that Oregon enacted a mandatory school attendance law (Compulsory Education Act, November 7, 1922), which required attendance in public schools in accordance with the Oregon State Constitution. The Society of Sisters had been operating an orphanage in Oregon since 1880. The Society had built and operated a school on its property long before the adoption of the Oregon Compulsory Education Act. The curriculum included most of the subjects taught in the Oregon public schools and instruction in the Roman Catholic faith as well. The Court in its decision said that "the general theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public school teachers only." The court further noted that implementation of Oregon's policy would not only destroy respondent's schools but all other private schools in the state.

Child Benefit Laws

In *Cochran v. Board of Education* (1930) the Court upheld a Louisiana law that allowed state monies to be spent for textbooks to be used by children attending schools operated by the Roman Catholic Church. The law was challenged on the grounds that the Fourteenth Amendment prohibits taking private property for private purposes, since in this case the books were for use by children in private schools. The issue, were the textbooks an unconstitutional establishment of a state religion or were they for the benefit of school children? The Court held that the text-books in all schools, public or private (sectarian or non-sectarian) were for the benefit of the children who used them. Therefore the Louisiana law was constitutional because the law benefited the child and not his or her religion.

Schools and Freedom of Conscience

In the case of *Hamilton v. Regents of University of California* (1934), the Supreme Court rejected the claim to exemption from participation in the Reserved Officer Training Corps (R. O. T. C.),¹⁹ including instruction in military science. The case is interesting because it foreshadows current controversies over citing treaties and international law for Supreme Court decisions. Appellate Hamilton argued that as a member of the Methodist Episcopal Church that he was conscience bound and further more that the law was now pacifist. He cited a social pronouncement of the Methodist

Episcopal Church renouncing war as an instrument of national policy. This was a reaction to the war hysteria and propaganda of World War I.²⁰ Furthermore since treaties are part of the supreme law of the land (Article 6, Section 2) the United States by signing the Paris Peace Pact had agreed to renounce war. The clause, "The high contracting parties agree that the settlement of all disputes or conflict shall never be sought except by pacific means," meant, the plaintiff alleged, that even the study of war was proscribed. Hamilton lost the case.

The acceptance of the appellant's (Hamilton) argument would have been a blow against the whole history of militias in both English and American history.²¹ Moreover, it would have flown in the face of the oath of allegiance sworn to by naturalized citizens to bear arms in defense of the country. This is usually recognized as a duty of all citizens, and the adoption of exemptions from arms but for alternative service has been extended and refined since.

Flag Saluting Cases²²

In the 1930s, 40s and 50s there were a number of Jehovah's Witnesses cases.²³ Two of these cases were important to the subject of religion and public education. The first was lost by the Jehovah's Witnesses, but the second one has been hailed as a great victory for liberty of conscience. The victory came in the case of *West Virginia State Board of Education v. Barnette* (1943). It was a landmark case involving the civil liberty not to salute the American flag or say the pledge of allegiance.

The Jehovah's Witnesses had been organized by Charles Taze Russell in 1884. Witness beliefs and active proselytizing had involved them in numerous civil liberties cases. Now Jehovah's Witnesses' beliefs that civil governments were part of the kingdom of Satan and that saluting the flag and saying the Pledge of Allegiance to the Flag had evoked another case over freedom of religion.

The *Barnette* case had been preceded in 1940 by a similar case from Pennsylvania, *Minersville School District v. Gobitis* (1940). The parents, Jehovah's Witnesses, were encouraging their children to refuse saluting the flag and saying the Pledge of Allegiance as acts of idolatrous civil worship. In the *Gobitis* case the Supreme Court said that freedom of conscience could not keep the state from instituting a mandatory program of civic education.

Reaction to the *Gobitis* decision was mixed. Many people welcomed it, especially as America went to war. Moreover, others treated it as a signal for acting violently against Jehovah's Witnesses. In contrast many groups, including the American Legion, opposed the ruling as a violation of freedom of belief.

Following the *Gobitis* case the West Virginia legislature carefully revised its civic education laws requiring all schools to conduct courses in history, civics, and the Constitution. Moreover, the Board of Education added requirements to salute and to pledge allegiance to the flag. A refusal to conform was treated as insubordination and resulted in expulsion. Readmission to school could only be made by complying with the

requirement. Meanwhile the expelled child was truant, which made the parents subject to criminal penalties.

Barnette, with other Jehovah's Witnesses, sought to restrain the enforcement of this statute. The case was argued March 11, 1943, and decided June 14, 1943 by a vote of 6 to 3. Justice Robert Jackson gave the opinion for the court. Justices Hugo Black, William O. Douglas, and Frank Murphy concurred with the majority. Justices Felix Frankfurter, Owen Roberts and Stanley Reed dissented.

Jackson noted that the Board of Education had already modified the manner of saluting with a stiff arm (Bellamy salute) extended because of the objections of many groups. This was not done to accommodate the Jehovah's Witnesses.

Justice Jackson's opinion shifted the grounds for deciding in favor of the *appellees*. Instead of the Religion Clause the decision was rested on the Free Speech Clause. Saluting or not saluting the flag, and, repeating or not the pledge of allegiance, were acts of speech that cannot be coerced. Compelling an individual to say or enact civic rites violates his civil liberty.

Bus Fare Case

In *Everson v. Board of Education* (1947) the court was faced with a case from New Jersey which provided tax payer paid transportation to and from parochial schools. This bus-fare case was an examination of the Establishment Clause. The court held that the subsidy was constitutional as a child benefit law, rather than a religion benefit law. The opinion of the court was written by Justice Hugo Black, who engaged in some rather high flown and often quoted *obiter dictum* about a so called "Wall of Separation" between Church and State. His rhetoric has been often quoted by opponents of religious liberty, but without regard for its legal authority since a precedent favorable to "separationism" was not established in the case. The problem is that the case settled in favor of the plaintiffs on the "child benefit" theory and not on the alleged "wall of separation."

Inside the School Release Time

Correctives to Justice Black's *obiter dictum* came in subsequent cases such as *Illinois ex rel. McCollum v. Board of Education* (1948). This case examined the constitutionality of "release-time" programs for religious education. Again Justice Black wrote the opinion. The Champaign Board of Education had allowed religious teachers to come to the school during school hours and to provide religious instruction to those whose parents want them to have it. Children whose parents want them exempted were taken to a separate place for instruction in other matters. Justice Black found this case to

be a great breach in the Wall of Separation doctrine. He claimed that the children put in study hall were put into an inferior and coerced condition. This is odd reasoning in the light of the fact that children exempted from saying the pledge of allegiance were not “coerced” but merely excused.

Outside the School Release Time

However, four years later the Supreme Court upheld New York's release time law in *Zorach v. Clauson* (1952). New York allowed pupils to be taken from school property during school hours to private or religious centers for religious instruction. This time Justice Black was the loser in a case in which bitter feelings were expressed. He refused to see any difference between the *McCollum* and *Zorach* cases.

The case was not a repudiation of the *Everson* and *McCollum* doctrines. It did however, begin to set some limits. The Court's decision kept to the principle that the state does not have a general right to control children. Also Justice William O. Douglas laid down the principle "We are a religious people whose institutions presuppose a Supreme Being." Furthermore he said, "we cannot read into the Bill of Rights...a philosophy of hostility to religion."

Government Mandated Prayers

In another New York case the Supreme Court outlawed government required prayers in public schools. It was the common practice until the decision in *Engle v. Vitale* (1962) for there to be in class rooms or over the loud speaker in each room a brief religious exercise which may have included a Bible reading as well as a prayer. However, in this case the Regents of the Board of Education of the State of New York had written and required to be said the following prayer: “Almighty God, we acknowledge our dependence upon Thee and beg Thy blessing upon our teachers, our parents and ourselves. Amen.”

The prayer was clearly innocuous and non-partisan. So much so that it was probably an offense to divinity. However, the violation of the Establishment clause that the Court found here was that the prayer had been written and mandated by the State of New York.

Government Mandated Bible Reading

Maryland case of *Abington School District v. Schempp* (1963) prohibited government required reading of the Bible in school rooms or over the school intercom. However, it did allow for reading it as literature or part of a comparative religion course. The companion case was *Murray v. Curlett* (1963). Madeline Murray (O'Hair, after a subsequent marriage) became notorious for her atheism. She moved to Austin, Texas, and established a center there. At least one of her sons eventually became a Christian.

The Lemon Test

In 1971 the court established the *Lemon* test (*Lemon v. Kurtzman* (1971)). The case involved programs in Rhode Island and Pennsylvania. The programs supplemented the salaries of teachers in private parochial schools. The teachers in question were not teaching religious subjects, but secular subjects. Chief Justice Warren Burger developed the *Lemon* test to determine if a law had the effect of establishing a religion. This test has been the foundation of the Court's decisions since 1971. The criteria for decision are (1) that a state statute must have a secular purpose; (2) the statute's primary or principal effect must be not to advance or inhibit religion; and (3) finally the state's actions must not foster "an excessive government entanglement with religion." The Court held that neither the Rhode Island nor the Pennsylvania laws met the criteria of the *Lemon* test so it struck down both programs as violating the establishment clause.

Ten Commandments and other Religious Symbols

Years later it extended the ruling against mandatory Bible reading in the *Schempp* case in *Stone v. Graham* (1980) to posting the Ten Commandments on the walls of a public school.²⁴

In the 1980s the focus of Court decisions shifted from Establishment cases to Free Exercise cases. It had looked with disfavor upon displays, or practices where the "pre-eminent" purpose was religious rather than secular.²⁵

Free Exercise in the Schools

However, it was faced with developing a new line of decisions to clarify that certain kinds of religious activity could not be barred from schools. These were religious activities initiated by private individuals or groups for whom room must be preserved for private religious activity. This is activity the Court sees as protected by the Free Speech, Free Assembly and Free Exercise Clauses. In the case of *Widmar v. Vincent* (1981) the Court stated that a state university **must** permit a student religious group to meet on the same terms as secular groups. The University of Missouri had barred an evangelical Christian group because it was religious, and because it engaged in a form of free speech that the University in its version of political correctness held to be discriminatory, and thus not agreeable with the Free Speech Clause and furthermore not protected by the Free Exercise Clause.

The Court used its doctrines of free speech and assembly to analyze the facts in the case. It concluded that the university had created a "public forum" on its property analogous to a street or a park. Exclusion of the evangelical group was discrimination based on the content of the group's free speech expressions. The Court also applied the *Lemon* test and concluded that the university was not creating a state sponsored religion but was merely permitting the expression of religion and not sponsoring it. This decision also rejected a stricter interpretation of the separation of church and state mandated by the Missouri State Constitution because exclusion on that basis would entail a notion of separation so broad as to deem any religious activities improper in public institutions. In addition the court noted that to exclude the group the university would have to define what was religious and what was not which would thereby involve the state in defining what was religious and what was not.

Following the *Widmar* decision challenges to the exclusion of religious groups in public high schools arose. Was a high school forum the same as a college campus? Some courts answered no, but Congress in response passed the Equal Access Act (EAA) of 1984. The EAA says that any high school receiving federal funds has an "open forum" for student clubs and must allow them to meet regardless of "religious, political, philosophical or other content of the speech at such meeting" (20 U. S. C. A. § 4071). The central question in these types of cases becomes, is the religious activity the product of state action or not. The principle was stated in the case of *Board of Education v. Mergens* (1990) where it upheld the EAA against constitutional challenges.

The issue of religious clubs has also be litigated on the question could they be banned because they engage in "discrimination" by requiring their officers or members to be adherents of the faith. One of the courts of appeals agreed that anti-discrimination policies could be applied to the offices of secretary and activities coordinator in a religious club, but not to the offices of president, vice-president, and music director, *Hsu v. Roslyn Free School District* (2nd Cir. 1996).

The issue of equal freedom for religious speech was the focus of the Court in the case of *Lamb's Chapel et al. v. Center Moriches Union Free School District* (1993). The court held in favor of Lamb's Chapel, but based its decision on the Free Speech Clause and not on the Establishment Clause. The facts in the case were that Lamb's Chapel

group wanted to use the school facilities in non-school hours to show a video series by Dr. James Dobson (Focus on the Family, <http://www.family.org/>) on family values. The school district's policy permitted meetings for civic or social purposes, which a series on family values even if religious clearly fit. To exclude merely on because the series had a religious point of view was discriminatory.

In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995) the court held that denying funds to a Christian student publication ("Wide Awake") while granting it to all other was discriminatory. The Universities argument was that the publication promoted a specific religious view point and that the aid would therefore be aiding a religion. However, in examining the facts of the case the Court saw that University policy exclude both atheistic and theistic viewpoints. Furthermore the paper's articles (from a religious **view-point**) were about cultural, moral and political issues, which were the same issue other students publications funded by university (or student fees) money.²⁶

In *Good News Club v. Milford Central School*, (2001) the Court said that Milford Central School cannot keep Good News Club from using its facilities because the school had created a limited public forum and prohibiting the religious club was "viewpoint discrimination."

More Benefit and Separation Cases

At times the Court has seemed to vacillate on the issue of separation. In *Roemer v. Board of Public Works* (1976) the Court ruled that states can provide grants to private and religious colleges. Going further the Court in 1980 found in *Committee for Public Education v. Regan* (1980) that states can reimburse religious schools for the cost of giving standardized tests. Moreover in *Mueller v. Allen* (1983) the Court ruled that taxpayers can deduct tuition, textbooks, and transportation expenses from state income taxes that were incurred by attending private and religious schools.

The court seemed to be backing away from its somewhat tolerant position on the child benefit doctrine in *Aguilar v. Felton* (1985) the Court ruled that sending public school teachers to religious schools to provide remedial education and counseling is unconstitutional. Moreover in a New York a case involving a special school district created to benefit the children of Hasidic Jews, *Kiryas Joel Village School District v. Grumet*, (1994) was declared unconstitutional. The state had created a special school district for religious reasons and it was too much for the Court. It ruled that a Hasidic school district, financed by public funds, violates the Establishment Clause.

In *Zobrest et al. v. Catalina Foothills School District* (1993) the Court clearly ruled in terms of the child benefit doctrine when it ruled that a school district does not violate the Establishment Clause by furnishing a sign-interpreter to a deaf child in a sectarian school. Moreover in *Agostini v. Felton* (1997) the Court overturned *Aguilar* and holding that public school teachers providing supplemental at religious schools are providing remedial instruction to disadvantaged students in religious schools which does not violate the Establishment Clause.

Religious Content in the Curriculum

Cases involving introducing religion into the curriculum include *Epperson v. Arkansas* (1968) striking down the Arkansas law banning the teaching of evolution in its schools.²⁷ Louisiana attempt to include creation science was overturned in *Edwards v. Aguillard* (1987).

In a more threatening case the 11th Circuit Court of Appeals said that a state college professor teaching biology did not have the academic freedom to make non-coercive expression of religious belief in class.

The effects of the Court's decisions have been to water down or expunge the influence of religion in American and world history textbooks. The Pilgrims have become merely travelers and Thanksgiving was a mere culture event. Opponents of secular-oriented curricula have not been rewarded with much in the way of success. Even the effort to have "secular humanism" defined as a religion has not been successful even when the evidence has been overwhelming that great numbers of textbooks are teaching a moral relativism are suppressing the role of religion in American life. In a case arising in Mobile, Alabama, this issue was addressed at the federal district court level, the 11th Circuit Court of Appeals in *Smith v. Board of School Commissioners of Mobile County*, (11th Cir. 1987). The Circuit Court said they found the books only inadequate educationally. Moreover, "if we are to eliminate everything that is objectionable to America's warring sects or inconsistent with their doctrines, we will leave public education in shreds."

A similar case arose in *Mozert v. Hawkins County Board of Education* (1987). The 6th Circuit Court rejected the claims of Christian parents that their children had been forced to read material to which they objected (thereby mandating a decision on the relationship of faith and reason). This is most interesting because Christian Scientist children have as a matter of liberty been allowed to avoid health education classes, or Jehovah's Witness children can not be compelled to attend plays, or celebrations or ceremonies that they consider pagan. The court thought that children of regular Christians should be compelled to "learn to think critically," and not be excused because this might further divisiveness and open the door for further opt-outs.

Compulsory school attendance was limited in the case involving the Old Order Amish religion and the Conservative Amish Mennonite Church, *Wisconsin v. Yoder* (1971). The Court allowed these groups to end their formal education with the completion of the eight grade. This case is interesting in terms of H. Richard Niebuhr's book, *Christ and Culture* since the Amish and Mennonites have chosen the position of Christ against culture. A similar position is being chosen by a growing number of conservative Christians in both the growing parochial and home schooling movements.

Silent Mediation Periods

With prayer banned the issue of periods of silent meditation arose in the case of *Wallace v. Jaffree* (1985). However, the court was pushing the line because people were asking about the principle of church-state separation. If government could and should remain neutral to religion where was the line? Because if government was to be forbidden to even make general non-coercive religious statements what would that mean for a host of other religious elements in government. Local Christmas celebrations, religious art in state museums, prayers at inaugurations or other public events were they to be banned. Were all references to God in the Declaration of Independence, the speeches of George Washington, Abraham Lincoln, and other presidents as well as the numerous elements of American history and tradition. Were even the biblical names of Presidents from John to Theodore to be blotted out? This was raising the question if such practices are unconstitutional is the real role of religion in American culture being artificially suppressed--so that government becomes hostile to religion rather than neutral? Or was a kind of "civil religion" to be permitted?

In a subsequent case, *Bronx Household of Faith v. Community School District No. 10* (2nd Cir 1997) the Second Circuit court said that a public school could deny rooms opened for general civic purposes to a religious group for a worship service.

Prayers at Commencements and Football Games

In *Lee v. Weisman* (1992) the Court reaffirmed its ban on government conducted religious exercises in schools by outlawing having a clergyman say prayers at any school function. At a minimum the Establishment Clause bans coerced religious practices. Since "public pressure" or "peer pressure" was coercive even if attendance at the event was voluntary. In this case Justice Anthony Scalia dissented and sought to limit the application of the Establishment Clause to practices in which there was "force of law or threat of penalty." Otherwise great swaths of traditional community life would be banned.

Ingebretsen v. Jackson School District (5th Cir. 1996) was a case involving saying prayers at school graduation events in Jackson, Mississippi. The State of Mississippi had adopted a law to permit voluntary prayers at such events. Ingebretsen appealed the District Courts denial of the right to pray to the 5th Circuit Court of Appeals in New Orleans. The American Family Association Law Center ("AFALC") joined in the appeal.

The opinion noted that the case began "On a wave of public sentiment and indignation over the treatment of a Principal, Dr. Bishop Knox, who allowed students to begin each school day with a prayer over the intercom, the Mississippi legislature passed the School Prayer Statute at issue here (1994 Miss.Laws ch. 609 Appendix A). The law stated that:

[o]n public school property, other public property or other property, invocations, benedictions or nonsectarian, non-proselytizing student-initiated voluntary prayer shall be permitted during compulsory or noncompulsory school-related student assemblies, student sporting events, graduation or commencement ceremonies and other school-related student events.

The case had been originally brought by the Ingebretsen family and others with the aid of the American Civil Liberties Union²⁸ to enjoin enforcement of the School Prayer Statute. The District Court had enjoined enforcement of the Act except for the part which permits prayers to take place at graduation ceremonies in accordance with *Jones v. Clear Creek Indep. School District* (5th Cir.1992).

The appellate court found that the entire law failed to meet all three parts of the Lemon test, as well as other tests (coercive test and endorsement test). And importantly it rejected Mississippi's claim that the intent of the law was to enhance the Free Exercise of religion in the public schools. It noted that "[T]he statute's effect is to advance religion over irreligion because it gives a preferential, exceptional benefit to religion that it does not extend to anything else." It also rejected the claim of the Attorney General of Mississippi that overturning the statute would have a "chilling effect" on the free exercise of prayer. The opinion alleged that enjoining the law "would not affect students' existing rights to the free exercise of religion and free speech." Citing *Wallace v. Jeffree* and *Board of Education of Westside Community Schools v. Mergens*, the court alleged that "students continue to have exactly the same constitutional right to pray as they had before the statute was enjoined. They can pray silently or in a non-disruptive manner whenever and wherever they want. Silence is the effect for the majority. Despite the courts claims the effect of the law is to deny any free exercise of religion to the vast majority in the name of protecting an insubstantial minority from alleged coercion. However, the case was not a complete victory Ingebretsen because a nonpreselytizing student initiated voluntary prayer at the graduations exercise, "a once-in-a-life-time-event" was permitted under *Jones*.

In *Santa Fe Independent School District v. Doe*, (2000) the Court ruled that student-led prayers at public school football games violate the Establishment Clause of the First Amendment.

Modified Child Benefits Cases

In *Board of Ed. of Central School District. No. 1 v. Allen* (1968) the Court continued to uphold the ruling that statutes authorizing the lending of textbooks to religious school students **did not** violate the Establishment Clause.

Support for religious schools continued in *Tilton v. Richardson* (1971). The Court found that federal funding to private, religious, and public colleges in order to build classrooms was constitutional.

The Court sets some limits in *Committee v. Nyquist* (1973) and in *Sloan v. Lemon* (1973). It ruled that states cannot reimburse parents for sending their children to religious schools. This was a set back for the parochial school movement. However in less than two years in *Meek v. Pittenger* (1975) the Court ruled that states can lend textbooks to religious schools but no other materials. The next year it reached a decision similar to *Tildon*. In *Roemer v. Board of Public Works* (1976) the Court ruled that states can provide grants to private and religious colleges.

In *Committee for Public Education v. Regan* (1980) the Court held that states can reimburse religious schools for the cost of giving standardized tests. And in *Mueller v. Allen* (1983) it held that taxpayers can deduct tuition, textbooks, and transportation expenses from state income taxes that were incurred by attending private and religious schools. However, in *Aguilar v. Felton* (1985) it found that sending public school teachers to religious schools to provide remedial education and counseling is unconstitutional. In *Grand Rapids v. Ball* (1985) the Court struck down a Michigan program that provided religious schools with public school teachers for the purpose of teaching certain secular classes. The Court ruled against the program because it believed that religion was being advanced in violation of the second aspect of the *Lemon* test. This was true, the Court ruled, since the pervasively sectarian nature of the schools meant "students would be unlikely to discern the crucial difference between the religious school classes and the public school" classes, even if the latter were successfully kept free of religious indoctrination. In these circumstances a "symbolic union of government and religion" would be created that would have the effect of advancing religion in violation of the establishment provision of the First Amendment. In short, public money flowing to "pervasively sectarian" schools runs the danger both of excessive entanglement of government and religion and of impermissibly advancing or endorsing religion.

However, in the case of *Zobrest et al. v. Catalina Foothills School District*, 509 U.S. 1 (1993) continued the child benefit doctrine when the Court ruled that the school district did not violate the Establishment Clause by furnishing a sign-interpreter to a deaf child in a sectarian school. And, in *Agostini v. Felton*, 521 U.S. 203 (1997) the Court overturned *Aguilar* and said that public school teachers providing supplemental, remedial instruction to disadvantaged students in religious schools does not violate the Establishment Clause.

In 2000 the Supreme Court decided *Mitchell et al v. Helms et al*, 530 U.S. 793 (2000). The case arose in Jefferson Parish, Louisiana, over federal funds being distributed through the public school system to 47 private schools most of which were Roman Catholic. The question was whether Chapter 2 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 95 Stat. 469, as amended, 20 U.S.C. § 7301-7373, [n1] which is rooted in Title I of the Elementary and Secondary Education Act of 1965, "as applied in Jefferson Parish, Louisiana, is a law respecting an establishment of religion, because many of the private schools receiving Chapter 2 aid in that parish are religiously affiliated." The plaintiffs had alleged that the funds, 30% of which went to the private schools, violated the Establishment clause. Justice Clarence Thomas delivered the opinion of the court. The Court upheld the practice but note several things in its opinion. Central to the decision was the case of *Agostini v. Felton* (1997) which had modified the *Lemon* test. Furthermore it noted that the case of *Meek* and *Wolman* created an inexplicable rift within the Court's Establishment Clause jurisprudence. That to establish

a First Amendment violation, plaintiffs must prove that the aid actually is, or has been, used for religious purposes. “The case's tortuous history over the next 15 years indicates well the degree to which our Establishment Clause jurisprudence has shifted in recent times, while nevertheless retaining anomalies with which the lower courts have had to struggle.”

Justice Thomas went on to say, “[I]n the over 50 years since *Everson*, we have consistently struggled to apply these simple words in the context of governmental aid to religious schools. [n4] As we admitted in *Tilton v. Richardson* (1971), “candor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area.” And, “...in *Agostini* we modified *Lemon* for purposes of evaluating aid to schools and examined only the first and second factors, see 521 U.S., at 222-223. We acknowledged that our cases discussing excessive entanglement had applied many of the same considerations as had our cases discussing primary effect, and we therefore recast *Lemon's* entanglement inquiry as simply one criterion relevant to determining a statute's effect.” The case also evoked a concurring opinion from Justice O’Conner, and a vigorous and lengthy dissent from Justices Souter, and others.

In 5-to-4 decision the Court decided *Zelman v. Simmons-Harris* (2002) upholding Ohio’s voucher program. The court’s opinion was written by Chief Justice William Rehnquist. The Court upheld Ohio's voucher program that gives tax dollars to parents in Cleveland to send their children to religious or non-religious schools. It is the first time the court has upheld a voucher system.

Conclusions

The Court has decided a large number of cases involving religion. More are making their way through the judicial system. The relatively small number affecting public education and religion run to well over a thousand pages of written opinion in just the Supreme Court alone. All the religion cases the court has decided must be well into the multiple thousands of pages. So what has the public gotten for its money? Is the country more free, more at peace, more lawful because of the school-religion cases? The answer is an obvious no. If anything the Supreme Court’s work since the *Everson* case in 1947 has been to create a storm of controversy in which both it and the constitution are losing legitimacy. An examination of the school establishment cases shows a pattern of aiding education while seeking to avoid aiding religion directly. The Court has been uncertain at times in its decisions.

The Free Exercise Clause has been the real basis of very few cases, if any. In the main the Court can be viewed as using the Establishment Clause to prevent religious activities more than it has to permit them freedom to operate.

The Establishment and Free Exercise Clauses are products of the Enlightenment. They are being used to promote a civic ideology that vast numbers of religious people,

Christians in particular would not tolerate if they understood it. The Court has expressed great concern for the "warfare of the sects" but not for the warfare against the saints.

In 1995 a federal district judge in Texas issued an order to the participants in the commencement exercise at the local high school that the name of Jesus must not be used. Violators of his court order would get six months in jail for contempt of court. And the judge then posted a United States marshal at the high school graduation with orders to arrest anyone using the name of Jesus in the commencement exercise. Obviously this has made an entire high school free and could in no way be seen as religious persecution or tyranny for the sake of a privileged few.

One can add to this the robbing of the vast majority of their right to religious practice cases such as the ending of prayer at meals at the Virginia Military Institute. The practice had begun in 1839 but in 2004 the Supreme Court refused to hear the case. Obviously the State of Virginia and the United States are much safer now that that tyranny has been ended.

In 2006 the ACLU was successful in getting a court order against the saying of voluntary prayer at the graduation exercises in at the Russell County High School, in Russell Springs, Kentucky. The plaintiff in a case brought to the federal district court for the area was an anonymous accuser. U. S. District Judge Joseph McKinley issued a restraining order prior to the graduation ceremony prohibiting a student led prayer during the ceremony. At the graduation exercises the principal of the high school was interrupted when 200 of the students stood and said the Lord's Prayer in an act of civil disobedience. Their prayer was given a standing ovation by the audience.

Prayer is a religious act. However, it is also an inherent human right. More over the practice in public of prayer is also an act that is essential for human health in maintaining a relationship with the divine. The current denial of this right is damaging not simple to a scheme of human rights but to the essential nature of people.

With a growing attack on the public expression of religion there is the possibility people of faith may lose their tolerance and patience for a judicial that seems intent on suppressing the human rights of the majority.

Ultimately the question needs to be raised is this policy of the Enlightenment a success at achieving peace, or was its aim something else. The numerous cases coming to the court today whether about schools and religion or more often about religious expression in public life are a part of the culture wars being fought in America today. The culture wars are the Enlightenment's final solution to the "problem of Christianity." As Voltaire said, "crush the infamous thing."

The rulings of the Court and even the lower courts would be more tolerable if they were not part of a multi-front war against Christianity in particular and religion in general. In the case of schools it has happened repeatedly that Christian schools have been taken over and suborned to unholy purposes by men (and women now) who have slipped in unawares. The list of colleges, universities, academies and other educational institutions diverted from their original religious mission is long.

Today the current dwindling sense of legitimacy for the courts and the growing demand for a full roll for faith in general and Christian faith in particular are producing greater militancy. As the current generation of Christians, who were brain washed in the public schools during the 1930s, 40s, and 50s die they are being replaced with people

without the same strain of idolatrous Americanism. The way is opening for major clashes that will eventually see a move toward a more theocratic American culture and society.

Ultimately the “culture wars” are the latest conflicts between the City of God and the City of Man. It is the conclusion of this paper that the religious settlement of the First Amendment is a failed policy. The Supreme Court’s decisions are not going to produce civic peace if they continue in the same vein as they have since *Everson*. Therefore, the ensuing conflict may well produce a theomomically friendly form of civil government has a good chance of replacing the current order since people of faith have nothing to gain in the present order and everything by a major change.

Table of Cases (Alphabetical)

- Abington School District v. Schempp*, 374 U. S. 203 (1963)
Aguilar v. Felton, 473 U.S. 402 (1985)
Agostini v. Felton, 521 US 203 (1997)
Allegheny County v. ACLU Greater Pittsburgh Chapter, 492 U. S. 573 (1989)
Board of Education of the Westside Community Schools v. Mergens 496 US 226 (1990)
Barron v. Mayor, City of Baltimore, 32 U. S. 243 (1833)
Bronx Household of Faith v. Community School District No. 10, 127 F.3d 207 (2nd Cir. 1997)
Cochran v. Board of Education, 281 U. S. 370 (1930)
Committee for Public Education v. Regan, 444 U.S. 646 (1980)
Committee v. Nyquist, 413 U.S. 756 (1973)
Edwards v. Aguillard, 482 U.S. 578 (1987)
Epperson v. Arkansas, 393 U.S. 97 (1968)
Engle v. Vitale, 370 U.S. 421 (1962)
Everson v. Board of Education, 330 U. S. 1 (1947)
Good News Club v. Milford Central School, 533 US 98 (2001)
Grand Rapids School District v. Ball, 473 US 373 (1985)
Hamilton v. Regents of University of California, 293 U. S. 245 (1934)
Hsu v. Roslyn Free School District (2nd Cir. 1996)
Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948)
Jones v. Clear Creek Indep. School Dist., 977 F.2d 963, 972 (5th Cir.1992)
Kiryas Joel Village School District v. Grumet, 512 U.S. 687 (1994)
Lamb's Chapel et al. v. Center Moriches Union Free School District, 508 U.S. 384 (1993)
Lee v. Weisman, 505 U.S. 577 (1992)
Lemon v. Kurtzman, 403 U.S. 602 (1971)
Locke v. Davey 540 U. S. ____ (2004)
McCollum v. Board of Education, Dist. 71. 333 US 203 (1948)
Meek v. Pittenger, 421 U.S. 349 (1975)
Minersville School District v. Gobits, 310 U. S. 586 (1940)

Mitchell et al v. Helms et al, 530 U.S. 793 (2000)
Mozert v. Hawkins County Board of Education, 827 F.2d 1058 (6th Circuit) (1987)
Mueller v. Allen, 463 U.S. 388 (1983)
Murray v. Curlett, 374 U. S. 203 (1963)
Pierce v. Society of Sisters, 268 U. S. 510 (1925)
Reynolds, v. United States, **98 U.S. 145 (1878)**
Roemer v. Board of Public Works, 426 U.S. 736 (1976)
Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 817 (1995)
Sloan v. Lemon, 413 U.S. 825 (1973)
Smith v. Board of School Commissioners of Mobile County, 827 F.2d 684 (11th Cir. 1987)
Stone v. Graham, 449 US 39 (1980)
Tilton v. Richardson, 403 U.S. 671 (1971)
Wallace v. Jaffree, 472 U.S. 38 (1985)
West Side Community Board of Education v. Mergens, 496 U.S. 226 (1990)
West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943)
Watson v. Jones, 80 U.S. 679 (1871)
Widmar v. Vincent, **454 U.S. 263 (1981)**
Wisconsin v. Yoder, 406 U.S. 205 (1971)
 536 US 639 (2002).
Zobrest et al. v. Catalina Foothills School District, 509 U.S. 1 (1993)
Zorach v. Clauson, 343 U. S. 306 (1952)

Table of Cases (Chronological)

1833--*Barron v. Mayor, City of Baltimore*, 32 U. S. 243 (1833)
 1871--*Watson v. Jones*, 80 U.S. 679 (1871)
 1873—*Slaughterhouse Cases*, 83 U.S. 36 (1873)
 1878--*Reynolds, v. United States*, **98 U.S. 145 (1878)**
 1925--*Pierce v. Society of Sisters*, 268 U. S. 510 (1925)
 1930--*Cochran v. Board of Education*, 281 U. S. 370 (1930)
 1934--*Hamilton v. Regents of University of California*, 293 U. S. 245 (1934)
 1940--*Minersville School District v. Gobits*, 310 U. S. 586 (1940)
 1943--*West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943)
 1947--*Everson v. Board of Education*, 330 U. S. 1 (1947)
 1948--*Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203 (1948)
 1948--*McCollum v. Board of Education District 71*, 333 U.S. 203 (1948)
 1952--*Zorach v. Clauson*, 343 U. S. 306 (1952)
 1962--*Engle v. Vitale*, 370 U.S. 421 (1962)
 1963--*Abington School District v. Schempp*, 374 U. S. 203 (1963)
 1963--*Murray v. Curlett*, 374 U. S. 203 (1963)
 1968--*Epperson v. Arkansas*, 393 U.S. 97 (1968)

- 1971--*Lemon v. Kurtzman*, 403 U.S. 602 (1971)
1971--*Tilton v. Richardson*, 403 U.S. 671 (1971)
1971--*Lemon v. Kurtzman*, 403 U.S. 602 (1971)
1972--*Wisconsin v. Yoder*, 406 U.S. 205 (1972)
1973--*Committee v. Nyquist*, 413 U.S. 756 (1973)
1973-- *Sloan v. Lemon*, 413 U.S. 825 (1973)
1975--*Meek v. Pittenger*, 421 U.S. 349 (1975)
1976--*Roemer v. Board of Public Works*, 426 U.S. 736 (1976)
1980--*Stone v. Graham*, 449 US 39 (1980)
1980--*Committee for Public Education v. Regan*, 444 U.S. 646 (1980)
1981--*Widmar v. Vincent*, **454 U.S. 263 (1981)**
1983--*Mueller v. Allen*, 463 U.S. 388 (1983)
1985--*Aguilar v. Felton*, 473 U.S. 402 (1985)
1985--*Wallace v. Jaffree*, 472 U.S. 38 (1985)
1985--*Grand Rapids School District v. Ball*, 473 US 373 (1985)
1987--*Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (6th Circuit) (1987)
1987--*Smith v. Board of School Commissioners of Mobile County*, 827 F.2d 684 (11th Cir. 1987).
1987--*Edwards v. Aguillard*, 482 U.S. 578 (1987)
1989--*Allegheny County v. ACLU Greater Pittsburgh Chapter* 492 U. S. 573 (1989)
1990--*Board of Education of the Westside Community Schools v. Mergens* 496 US 226 (1990)
1992--*Lee v. Weisman*, 505 U.S. 577 (1992)
1992--*Jones v. Clear Creek Indep. School Dist.*, 977 F.2d 963, 972 (5th Cir.1992)
1993--*Lamb's Chapel et al. v. Center Moriches Union Free School District*, 508 U.S. 384 (1993)
1993--*Zobrest et al. v. Catalina Foothills School District*, 509 U.S. 1 (1993)
1994--*Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994)
1995--*Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 817 (1995)
1996--*Hsu v. Roslyn Free School District* (2nd Cir. 1996)
1997--*Agostini v. Felton*, 521 US 203 (1997)
1997--*Bronx Household of Faith v. Community School District No. 10*, 127 F.3d 207 (2nd Cir. 1997)
2000--*Mitchell et al v. Helms et al*, 530 U.S. 793 (2000)
2001--*Good News Club v. Milford Central School*, 533 US 98 (2001)
2002--*Zelman v. Simons-Harris*, 234 F. 3d. 945, 959 (6th Cir. 2000)
2004--*Locke v. Davey* 540 U. S. ____ (2004)

Appendix

Organizations (Liberal) Likely to Enter a Case

American Civil Liberties Union (ACLU): <http://www.aclu.org/>

Americans United for the Separation of Church and State:

<http://www.au.org/site/PageServer>

People for the American Way: <http://www.pfaw.org/pfaw/general/>

Organizations(Conservative) Likely to Enter a Case

American Center for Law and Justice: <http://www.aclj.org/>

American Family Association: <http://www.afa.net/>

Foundation for Individual Rights in Education (FIRE): <http://www.thefire.org/>

Focus on the Family: <http://www.family.org/>

The American Family Association Law Center (“AFALC”): www.afa.net

References

- Ahlstrom, Sydney E. *A Religious History of the American People*. 2 vols. Garden City, NY: Doubleday & Co., 1975.
- Beckwith, Francis J. and Michael E. Bauman, eds. *Are You Politically Correct?: Debating America's Cultural Standards*. NY: Prometheus Books, 1993.
- Berg, Thomas C. *The State and Religion in a Nutshell*. St. Paul, MN: West Group, 1998.
- Cross, Whitney R. *The Burned-Over District: The Social and Intellectual History of Enthusiastic Religion in Western New York, 1800-1850*. NY: Harper & Row, 1950.
- Domino, John C. *Civil Rights & Liberties in the 21st Century*. 2nd ed. NY: Longman, 2003.
- Eidelberg, Paul. *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers*. NY: The Free Press, 1964.
- Flowers, Ronald B. *That Godless Court? Supreme Court Decisions on Church-State Relationships*. Louisville, KY: Westminster John Knox Press, 1994.
- Hubbard, Benjamin J., John T. Hatfield, and James A. Santucci. *America's Religions: An Educator's Guide to Beliefs and Practices*. Englewood, CO: Teachers Ideas Press, 1997.
- Hudson, Winthrop S. *Religion in America: An Historical Account of the Development of American Religious Life*. 3rd ed. NY: Charles Scribner's Sons, 1981.
- Hunter, James Davison. *Culture Wars: The Struggle to Define America*. NY: HarperCollins, 1991.
- Limbaugh, David. *Persecution: How Liberals Are Waging War Against Christianity*. Washington, D. C.: Regency Publishing, 2003.

- McDonald, Forrest. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Lawrence, KS: University of Kansas Press, 1985.
- Mead, Frank S. *Handbook of Denominations in the United States*. 10th ed. Nashville, TN: Abingdon Press, 1995.
- Monsma, Stephen. *When Sacred and Secular Mix: Religious Nonprofit Organizations and Public Money*. Lanham, MD: Rowman & Littlefield, 1996.
- Rauch, Johanathan. *Kindly Inquisitors: The New Attacks on Free Thought*. Chicago: The University of Chicago Press, 1993.
- Rosten, Leo. ed. *Religions of America: Ferment and Faith in an Age of Crisis: A New Guide and Almanac*. NY: Simon & Schuster, 1975.
- Tussman, Joseph. *The Supreme Court on Church and State*. NY: Oxford University Press, 1962.
- Walker, Samuel. *In Defense of Liberty: A History of the ACLU*. 2nd ed. Carbondale, IL: Southern Illinois University Press 1999.

¹ Cf. Mead, Frank S. *Handbook of Denominations in the United States*. 10th ed. Nashville, TN: Abingdon Press, 1995; and Rosten, Leo. ed. *Religions of America: Ferment and Faith in an Age of Crisis: A New Guide and Almanac*. NY: Simon & Schuster, 1975.

² Fries, Adelaide L. *The Moravians in Georgia 1735-1740*. 1905. Baltimore, MD: 1993.

³ Cf., Ahlstrom, Sydney E. *A Religious History of the American People*. 2 vols. Garden City, NY: Doubleday & Co., 1975; and Hudson, Winthrop S. *Religion in America: An Historical Account of the Development of American Religious Life*. 3rd ed. NY: Charles Scribner's Sons, 1981.

⁴ Posey, Walter Brownlow. *Frontier Mission: A History of Religion West of the Southern Appalachians to 1861*. Lexington, KY: University of Kentucky Press, 1966.

⁵ Restoration Movement is a movement among Protestants begun about 1800 to unify Christians after the pattern of the primitive New Testament Church. Restorationism is a primitivist indigenous American religious movement. The movement avoids creeds, declaring "no creed but Christ" so that all Christians can be in one accord after the New Testament pattern described in the Book of Acts.

⁶ Heimert, Alan and Perry Miller. eds. *The Great Awakening: Documents Illustrating the Crisis and Its Consequences*. Indianapolis, IN: Bobbs-Merrill, 1967.

⁷ Cf. Niebuhr, H. Richard. *The social sources of denominationalism*. New York, Meridian Books, 1957.

⁸ Cf. Witchcraft. Summers, Montague. *Witchcraft and Black Magic*. 1946. NY: Dover Publications, 2000.

⁹ G. Adolf Koch. *Religion of the American Enlightenment*. 1933. NY: Thomas Y. Crowell, 1968.

¹⁰ Earl Raab, ed. *Religious Conflict in America: Studies in the Problems Beyond Bigotry*. Garden City, NY: Doubleday, 1964.

¹¹ Article VI. para. 3. "...; but no religious test shall ever be required as a qualification to any office or public trust under the United States." *Torcaso v. Watkins*, 367 U.S. 488 (1961) the Court held that the state of Maryland can not require applicants for public office to swear that they believed in the existence of God. The court unanimously ruled that a religious test violates the Establishment Clause. *McDaniel v. Paty*, 435 U.S. 618 (1978) a majority of the Court ruled that ministers may serve in legislatures and hold public office. The state of Tennessee and seven other states had provisions prohibiting clergymen from serving in the legislatures.

¹² Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

¹³ Eidelberg, Paul. *The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers*. NY: The Free Press, 1964, p. 264f.

¹⁴ Look under the pyramid on the back of the one dollar bill. Cf. McDonald, Forrest. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Lawrence, KS: University of Kansas Press, 1985.

¹⁵ Slaughterhouse Cases were three companion cases decided by the United States Supreme Court in which it issued its first interpretation of the Fourteenth Amendment to the Constitution. The cases, *The Butcher's Benevolent Association of New Orleans v. The Crescent City Live-Stock Landing-House Company, (et al)*, 83

U. S. (16 Wallace) 36 (1873), arose from a Louisiana law (1869) giving The Crescent City Live-Stock Landing and Slaughter-House Company a monopoly to own and operated live stock handling and slaughtering facilities in New Orleans. Butchers who were not members of the company could rent at reasonable fees space in the slaughtering facilities, quit the business, or face fines for defying the law. Extensive litigation sent the cases to the United States Supreme Court on appeal from the Louisiana Supreme Court.

¹⁶ *Reynolds v. United States*, 98 U.S. 145 (1878) - Court finds that the federal law prohibiting polygamy, which was challenged by a Mormon defendant, to be constitutional. Polygamy was outlawed. Cf., *Cleveland v. United States*, 329 U.S. 14 (1946) - Court rules that transporting a woman across state lines to enter into a plural marriage, even if motivated by a religious belief is illegal.

¹⁷ Christian Science is an indigenous religious organization founded by Mary Baker Eddy that has figured in numerous cases involving spiritual healing. Mrs. Eddy claimed she discovered "Christ Science" in 1866, and called it Christian Science in her book, *Science and Health, with Key to the Scriptures* (1875). However, the intellectual background of her religion includes New England Transcendentalism, Swedenborgism, spiritualism, mesmerism, faith healing and the thought of magnetic mental healer Phineas Parkhurst Quimby.

Cases involving charges of child neglect have occurred when Christian Scientists have withheld medical treatment for religious reasons. These have usually not been successfully prosecuted. In 1997 the Supreme Court refused to hear *Children's Healthcare Is a Legal Duty, Inc. and Brown v. Deters*, 92 F.3d 1412 (Sixth Circuit 1996). This case raised the question of religious exemption despite the decisions of courts beginning as early as 1903 that religious liberty does not include the right to withhold medical care from a child. Civil libertarians and other have seen the numerous cases involving Christian Scientists as examples of the fight for religious liberty.

¹⁸ **Allegheny County v. ACLU (1989)** was a very fragmented decision dealing with the interpretation of the Establishment Clause of the First Amendment by applying the endorsement test instead the coercion test to allow religious symbols on public property if they are "secularized" or "pluralized."

The case of *Allegheny County v. ACLU Greater Pittsburgh Chapter* 492 U. S. 573 (1989) and its companion case, *Chabad v. ACLU Greater Pittsburgh Chapter*, was argued February 22, 1989, and decided on July 3, 1989. The case began when several private individuals and the Greater Pittsburgh Chapter of the American Civil Liberties Union (ACLU) sued the City of Pittsburgh and the County of Allegheny over two separate Christmas holiday displays claiming that the displays were violating the First Amendment ban against establishing a religion.

The basic issue was did these displays have the effect of endorsing religion? The opinions of the justices were divided and hostile, demonstrating that the Court was struggling with the issue of displays of religious symbols on public property. The majority of the Court decided that the crèche inside the courthouse was an open endorsement of Christianity in violation of the Establishment Clause.

¹⁹ **Reserve Officer Training Corps** or ROTC is a program for training future military officers in civilian schools, colleges, and universities. It has its origins in the colonial militias. The tradition underwent several transformations in the 1800s. By 1908 the first reserve officer commissions were granted as the army expanded. In 1916 Congress passed the National Defense Act of 1916. Partridge's program became the model for the ROTC program created by the new law. In addition the act also provided for a permanent reserve officer corps composed of men trained in the ROTC and its training camps. The program was too new to create enough officers to fully supply the Army in WWI.

The National Defense Act of 1920 expanded the program so that it soon operated in hundreds of high schools and colleges. The expansion was not without serious opposition arising in part from pacifists and the mood of anti-militarism in the post-WWI era. A Committee on Militarism in Education was formed to oppose the program, but eventually the Supreme Court ruled that states have a right to make military training compulsory. The training would be part-time and until recently open to male students only.

²⁰ **Churches and government propaganda.** Governments have historically tried to use religious groups to promote its policies. Whether preaching support for the Crusades, the Wars of Religion, or modern wars the clergy have often shown a zeal for purifying the world even with violence. While the traditional attitude of churches is that war is a terrible evil that should be abolished, the clergy are very capable of "preaching up a war."

During the American Revolution pastors actively sought to shape public opinion for the Patriot or Tory cause. Church support fell into four main categories. The Patriotic group--Congregationalists, and Presbyterians especially--were very supportive of the Revolution. The Reverend Jonathan Witherspoon, a Presbyterian minister, signed the Declaration of Independence, a document designed to influence world public opinion. The "Moderates" were churches arguing for restraint, and the historic peace churches opposed the use of violence even for the Revolution. The Anglican and Methodist Churches supported the Loyalist cause. The main means of propaganda were the sermon, the pamphlet, and some other published writings.

In the War Between the States most Protestant churches divided schismatically along regional lines. The support for the government was usually very strong and reflected the prior decades of debate. Clergy of both sides supported the troops and the cause in sermon and prayer, hymn (e.g., Battle Hymn of the Republic) and deed. After the War the churches in the South continued to preach the righteousness of the Confederate cause.

Until the outbreak of World War I many churches were heavily involved in peace movements. There was agitation for disarmament conferences and treaties which would legislate away war. After the start of WWI the clergy divided almost exclusively along nationalist lines in support of the war. Church sentiment in support of the war moved from the limited use of violence sanctioned by just war doctrine to preaching "holy war". An "holy war" is an Old Testament idea which says that a war is justified because God has commanded it. With violence purified by the command of God it becomes a righteous instrument which cannot be limited. After WWI many preachers were to conclude that their "holy war" had really been a crusade, a war conducted in the name of God without warrant.

After the United States joined the fighting in 1917, a wave of war hysteria gripped the people. Any deviation from the gravest extremism was labeled treason. Those who question the holiness of the war were branded traitors. Those who suggested that America could be with sin too were vilified and imprisoned.

²¹**Minutemen** is the name for militiamen ready to respond to an alarm on a minute's notice. The British North American colonies had inherited from the mother country the practice of universal service in local militias. The many local skirmishes, pirates, Indian raids and wars between the British and French in America had strengthened this tradition.

²² Peters, Shawn Francis. *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution*. Lawrence, Kansas: University Press of Kansas, 2000.

Manwaring, David R. *Render unto Caesar: The Flag-Salute Controversy*. Chicago: University of Chicago Press, 1962.

²³ Jehovah's Witnesses are an anti-Trinitarian, separatist, apocalyptic, indigenous religious sect that has been a party to many civil liberties cases. Jehovah's Witnesses were organized by Charles Taze Russell. He was deeply influenced by the Adventist movement begun by William Miller. In 1884 Russell incorporated The Watch Tower Bible and Tract Society. The organization has been variously known as Russellites, Millennial Dawnists, Rutherfordites (after "Judge" Joseph Franklin Rutherford, the successor to Russell) and as International Bible Students. Since 1931 the official name has been Jehovah's Witnesses. Jehovah's Witness have separated themselves into what they believe is the only group that has the truth necessary for salvation. They reject the term church. They teach that big business, the churches, and civil government are part of the Kingdom of Satan. Believing that the civil government is under the control of Satan, Jehovah's Witnesses refuse to engage in patriotic acts of civil worship. They claim that reciting the Pledge of Allegiance to the Flag, or saluting the flag are acts of idolatry forbidden by conscience. In *Minersville School District v. Gobitis* 310 U.S. 586 (1940) the Supreme Court upheld a Pennsylvania law requiring the salute. However, in the middle of World War II the Supreme Court reversed the *Minersville* decision. In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), the free exercise of religion clause was held to allow Jehovah's Witnesses the freedom of conscience to not to be compelled to salute the flag.

In other cases the courts have held that Jehovah's Witness public school children may not be compelled to stand for the pledge to the flag, or to participating in other patriotic observances, such as marching in patriotic parades, or singing patriotic, or school songs, or school politics. Jehovah's Witnesses school children can refuse to observe holidays (whether national, religious, or local), celebrate birthdays, or participate in extracurricular activities—including sports, cheerleading and homecoming activities. Nor may they be forced to

participate in martial arts (e. g., boxing and wrestling), lotteries, games of chance, or gambling, school clubs, or school plays.

Jehovah's Witness renunciation of patriotism has been extended to automobile license plates. In a New Hampshire case the Court held no one must display a statement on an automobile license plate that violates religious beliefs, *Wooley v. Maynard*, 430 U. S. 705 (1977).

The many "Jehovah's Witness cases" have allowed the courts to consider the scope and limitations of the free exercise of religion. In general unless the activity seriously counters reasonable protection of the public welfare, the Court has allowed it.

²⁴ Why not post just the last five or six? Where is the people in the world besides the "sages" on the Supreme Court who believe that a society can exist let alone prosper where killing (6th), adultery (7th), stealing (8th), lying (9th) or covenanting (10th) which is just plotting and scheming how to do the preceding four prohibitions? Even the Mafia forbids these. Of course without the Second Table of the Law there would be little for most Nashville's country singers to wail about. No crimes of passion for killing cheating hearts; no stealing of love; or other such constant themes sung though the nose to make country music.

²⁵ Cf., *Allegheny County v. ACLU Greater Pittsburgh Chapter* 492 U. S. 573 (1989) and other cases involving three plastic reindeer and a menorah.

²⁶ Jefferson may have been turning in his grave over this one. Was his wall breached?

²⁷ Scopes "Monkey Trial" in 1925 Dayton, Tennessee, at the Rhea County Court House.

²⁸ Cf. Walker, Samuel. *In Defense of Liberty: A History of the ACLU*. 2nd ed. Carbondale, IL: Southern Illinois University Press 1999.