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I

It is true that ~~Christian~~ religion has been closely identified with our history and government. As we said in Engel v Vitale, supra, "The history of man is inseparable from the history of religion ~~at p~~ and ... since the beginning of history many people have devoutly believed that 'more things are wrought by prayer than this world dreams of.'" At p ___. And in Zorach v Clauson, supra, we gave specific recognition to the proposition that "we are a religious people whose institutions pre-suppose a Supreme Being." At p. — The fact that the Founding Fathers believed devoutly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings from the Mayflower Compact to the Constitution itself. These evidences continue to reflect themselves today in our public life through the continuance in our oaths of office from the Presidency down of the final supplication "So help me God." Likewise each House of the Congress provides through its chaplain an opening prayer and our own sessions are ~~opened by the Crier~~ declared open by the Crier in a short ceremony the final phrase of which invokes the grace of God. This interaction of government and religion ~~has~~ is also manifested in our military forces where those of our citizens who are under the restrictions of military service are afforded avenues of voluntary worship. Indeed, only last year an official survey of the ~~government~~ country indicates that 64% of our people have church membership, Bureau of Census, U.S. Department of Commerce, Statistical Abstract of the United States, 48 (83rd Ed. 1962), ~~but~~ while less than 3% profess no religion whatever. Id at p. 46. It can be truly said, therefore, that today as in the beginning, our national life reflects ~~the tradition~~ a religious people who, as Madison said, are "earnestly praying, as... in duty bound, that the Supreme Lawgiver of the Universe ... guide them into every measure which may be worthy of his blessing..." Memorial and Remonstrance Against Religious Assessments. ~~In this spirit our system~~

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See Everson v Board of Education, supra, at pp 508-510.

¶ This is not to say, however, that religion has been so identified with our history and government that ~~religious~~ (its handmaiden) freedom of religion is not dynamic as strongly imbedded in our public and private life. Nothing but the most telling [of personal] experiences in religious persecution [supposed by our forebears] could have planted our belief in liberty of religious opinion ~~so~~ deeply [any more] in our ~~times~~ heritage. It is true that this liberty was not realized by ~~our Colonial government~~ [the colonists] but this is readily accountable to their close ties to the mother country.* However the views of Roger Williams came to be ~~expressed~~ incorporated in not only our own constitution but likewise in forty nine of those of our states :-

> "There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be imbarked in one ship; upon which supposal, I affirm that all the liberty of conscience I have pleaded for, turns upon these two things, that none of the Papists, Protestants, ~~or~~ Jews, or Turks be forced to come to the ships prayers or worship, nor compelled from their own particular prayers or worship, if they practice any."

This was indispensable in a country whose people came from the four quarters of the earth and ~~have~~ brought with them a diversity of religious opinion. Today authorities list 256 separate and substantial religious bodies existing among our people. ~~Today~~.

~~The idea,~~

Almost a hundred years ago in John D Minor et als v The Board of Education of [the City of] Cincinnati, Judge Alphonzo Taft, [father of the Chief Justice,] in an unpublished opinion stated ~~it was~~ the ideal of our people as to

*Massachusetts and Connecticut had established churches until —.

religious freedom in this language:-

"The ideal is absolute equality under the law of all religious opinions and sects... The government is neutral, and, while protecting all, it prefers none, and it disparages none. The State while it does not profess to be Christian, exercises a truly Christian charity toward all. Its impartial charity extends to all kinds of Protestants, Roman Catholics, Jews and Rationalists alike, and covers them with its mantle of protection and encouragement; and no one of them, however numerous, can boast of peculiar favor with the state."

II

Before examining this ~~"neutral" position~~ ~~ideal of "absolute equality"~~ ~~and neutral~~ "neutral" position in which the Establishment and Free Exercise Clauses of the First Amendment places ~~the state~~ government it is well that we clarify the field in so far as presently settled and accepted legal propositions are concerned.

~~Next, at the outset~~ ~~First, we must speak of the settled legal propositions.~~ FIRST, that this Court has decisively settled that the first Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" has been made wholly applicable to the states by the Fourteenth Amendment. Twenty three years ago ~~in Justice Roberts decided~~ in Cantwell v Connecticut, 310 US 296 (1940) this Court through Mr Justice Roberts said:-

> "The fundamental concept of liberty embodied in that [14th Amendment] embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws"..

Forty years ago in the opinion of the ~~Mr Justice Sanford~~ Court in Gitlow v New York 268 US 652 Mr Justice Sanford said: "For present purpose we may and do assume that freedom of speech and of the press - which are protected by the 1st Amendment from abridgement by Congress - are among the fundamental personal rights and "liberties" protected by the due process clause of the 14th Amendment from impairment by the states."

In a series of cases since Cantwell the Court has repeatedly reaffirmed that doctrine and we do so now. Murdock v Pennsylvania, 319 US 105, 108 (1943); Everson v Board of Education, 330 US 1, 5 (1947); Illinois ex rel McCollum v Board of Education 333 US 203, 210-11 (1948); Zorach v Clauson, 343 US 306, 309 (1952); Torcaso v Watkins, 367 US 488 (1961); Engel v Vitale, 370 US 421, 423, 430 (1962).

~~Although some have questioned the history and the logic of this determination, as well as the policy of it, the Court's long and consistent adherence to it renders it beyond question and discussion of it purely academic. In addition we note that none of the parties question~~

While none of the parties here raise the point, taking it as foreclosed, we note that others continue to question the history and logic of this position ~~to question to indicate that public~~

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¶ Second, that this Court ~~has [illegible] rejected repeatedly~~ indeed unanimously, rejected unequivocally, the contention that the establishment clause [only] forbids governmental preference of one religion over another. Almost twenty years ago in Everson v Board of Education, 330 US 1 (1947) the Court said:-

> "Neither a state nor the Federal government can set up a church. Neither can pass laws ~~that~~ which aid one religion, aid all religions, or prefer one religion over another..." at 15

And Mr Justice Jackson, dissenting agreed:-

> "There is no answer to the proposition ... that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which directly or indirectly be made public business and thereby be supported in whole or in part ~~by the~~ at the taxpayers expense... This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms and its strength is its rigidity." at p. 516-17.

And Mr Justice Rutledge, joined by Justices Frankfurter, Jackson and ~~speaking for all four of the dissenters (Frankfurter, Jackson and Burton, JJ.) said~~ Burton, declared:-

> "The [FIRST] Amendment's ~~[illegible]~~ purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships... It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion." at p 519.

(and we re-affirm it now.)

The same conclusion has been firmly maintained ever since that time. See Illinois ex rel McCollum, supra, at p. 210-11; McGowan v Maryland, 366 US 420, 442-43 (1961); Torcaso v Watkins, supra, at p 492-93, 495.

While none of the parties to either this action or its companion case, Wm J. Murray III et al v. John N. Curlett et al, No 119, have even questioned these basic conclusions of the Court, both which have been established, recognized and consistently re-affirmed, others continue to question their history, and logic and efficacy. Such contentions in the light of the cases of this Court are not only untenable but are purely frivolous and have value only to academicians.

~~It also seems appropriate to denote what is not involved here. First, sponsoring federal funds for the employment of Chaplains the inclusion of funds in appropriations for the defense forces for Chaplains the organization in our armed forces of a Chaplain's Corps which administers moral and spiritual service to those who voluntarily wish to receive the same while engaged in the defense forces~~

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III

~~In Cantwell~~

The question before us was first touched upon in Cantwell v Connecticut, supra, a free exercise case, where Mr Justice Roberts for the Court first held that "the fundamental concept of liberty" embodied in the 14th Amendment "embraces the liberties guaranteed by the First Amendment." He then went on to point out that the constitutional "inhibition of legislation" has a "double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be... The freedom to act must have appropriate definition to preserve the enforcement of that protection... a state may by general and non-discriminatory legislation regulate the times, the places and the manner of ~~soliciting support, streets, and~~ holding meetings ~~thereon~~; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment."

A half dozen years later in Everson v Board of Education, supra, this Court, through Mr Justice Black, held that the First Amendment's Establishment and Free Exercise clauses "had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute" [Bill for Religious Liberty]. This ~~statute~~ objective was to relieve the people of "all attempts to influence it [the mind] by temporal punishment, or burthens or by civil incapacitations..." The statute itself ~~gave protection~~ provided that

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"no man shall be compelled to frequent OR support any religious worship OR ministry whatsoever... or otherwise suffer on account of his religious opinions OR belief..." The Court found that the "meaning and scope of the First Amendment ... was designed forever to suppress" the establishment of religion or prohibiting the free exercise thereof. ~~It borrowed and approved~~ It borrowed and approved the holding of the Court of Appeals of South Carolina in (cite - see 13 Wall 679, 730) miss alice
declaring: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasions of the civil authority." In short, the Court held that the First Amendment's Establishment and Free Exercise clause

> "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them."

And Mr Justice Jackson, in dissent, declared that our public schools are organized

> "on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a ~~lofty~~ strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion". At p. 515

And all of the four dissenters speaking through Mr Justice Rutledge said:

> "Our constitutional policy... does not deny the value

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~~a necessity for religious training~~

or necessity for religious training, teaching or observance. Rather it secures this free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two fold protection, and, as the state cannot forbid, neither can it perform or aid in performing the religious function... [at p. 529] it is only by observing the prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissensions inevitable when sect opposes sect over demands... to further religious education, teaching or training in any form or degree, directly or indirectly" At pp 532-533.

Only two years later the Court was asked to reconsider and repudiate the doctrine of these cases in McCollum v Board of Education, supra. It was argued that "historically the First Amendment was intended to forbid only government preference of one religion over another... [and] 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..." The Court was unable to "accept either of these contentions" At p. 211. Mr Justice Frankfurter joined by Justices Jackson, Rutledge and Burton wrote a very comprehensive and scholarly concurrence in which he said:

with Mr Justice Reed alone dissenting,

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"Separation is a requirement to abstain from fusing functions of government and religious sects, not merely to treat them all equally [at 227]... the Constitution... 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." at 228.

In 1952 in Zorach v Clauson, supra, Mr Justice Douglas for the Court reiterated:

"There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously ~~avoids~~ defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter." at p. —.

And Mr Justice Black in dissenting ~~on~~ [placed his reliance on] the fact that the machinery ~~of~~ New York's released-time program channelled children into

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sectarian classes." In his view this was an entering by the state into the forbidden field where "the question is not whether it has entered too far but whether it has entered at all," at p –, and was therefore an abandonment of ~~the~~ "neutrality." ~~the Court had pledged~~ on the part of the state. Mr Justice Frankfurter dissented only on the ground that "it is a strange procedure indeed not to permit the facts to be established" with regard to coercion when the basis of the opinion of the Court was that the presence of coercion would present a wholly different case. But what is significant is that Mr Justice Frankfurter noted that "Happily" the "principles that received unanimous ~~approval~~ acceptance by this Court barring only a single vote" in McCollum "are not disavowed by the Court." at pp ~~3-4~~. Mr Justice Jackson's dissent likewise ~~dispr~~ was based on the McCollum criteria.

And then in 1961 in Torcaso v Watkins, supra, each of those cases was discussed and approved, Mr Justice Black for ~~the~~ the Court, without dissent but with ~~(with~~ Justices Frankfurter and Harlan concurring in the result), used this language:–

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

And finally in Engel v Vitale, supra, only last year these principles were re-affirmed but without the single ~~reference~~ citation of any case and over the single dissent of Mr Justice Stewart, ~~The twenty two word state composed prayer was found to be "a religious~~ The Court found the twenty two

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prayer used in "New York's ~~classroom~~ program of daily classroom invocation of God's blessings as prescribed ~~[illegible]~~ in the Regents' prayer... [to be] a religious activity." It held that "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." at pp — & —
In discussing the reach of the Establishment and Free Exercise clauses of the First Amendment the Court said :—

> "although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct government compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non observing individuals or not. This is not to say (Copy on p. 9 — attached)

And in ~~discussing~~ further elaborating upon the Establishment Clause the Court found that the "first and most immediate purpose rested on a belief that a union of government and religion tends to destroy government and to degrade religion". When government, the Court said "allies "itself with one particular form of religion, the inevitable result ~~[illegible]~~..." is that it incurs "the hatred, disrespect and even contempt of those who hold contrary beliefs."

IV

The wholesome "neutrality" of which this Court's cases speak thus recognizes the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the state [or federal government] would be placed behind the tenets of one or all religious sects. This the Establishment Clause prohibits. And in order to maintain and make more secure this perfect neutrality the Founders [incorporated the Free Exercise clause], recognizing the value or necessity for religious training, teaching and observance" and more particularly the right of every person to freely choose ~~or not to choose~~ his own course with reference [thereto] ~~religion~~ free of any compulsion from the state. This the Free Exercise clause guarantees. While these two clauses may overlap they never collide for their mandate, as South Carolina's Const, supra, so well said a century and a quarter ago, "rescued the temporal institutions from religious interference" and "secured religious liberty from the incroachments of the civil authority." In short, the Establishment Clause prohibits both federal and state governments from performing or aiding in the performance of a solely religious activity whether coercion be present or absent. To violate the Free Exercise clause, on the other hand, governmental compulsion must be shown. This is not to say that the performance of an activity by the state or federal government that is not solely religious does not violate the First Amendment's prohibition for in considering the clauses together, as of course we must do, ~~it~~ the perfect neutrality required ~~cannot~~ would not be maintained if coercion resulted. Examples of this might be found in our oaths of office, the Const Cries's invocation, the engraving

of "In God we Trust" on coins and currency (and on the facade of public buildings) and the attachment of Chaplains to the armed forces and in legislative halls.* These ~~are~~ not being solely religious activities would not fall under the Establishment Clause's direct prohibition and assuming their non coercive effect on those involved would neither violate the Free Exercise Clause. Let us now examine the perfect neutrality of the activity involved here.

~~First, the statute requires ten verses of the Holy Bible to be read and the a activity complained of also includes the recitation of the Lord's Prayer. This is beyond question a solely religious activity. It therefore would come within the prohibition of the Establishment Clause as interpreted by our cases.~~

First, the states statutes require the selection and reading of ten verses of the Holy Bible. In addition the activity complained of also includes the reading of the Lord's Prayer. Second, a child may be excused from the activity upon request of the parent or guardian. The activity is beyond question a solely religious one. It is performed pursuant to the state's mandate in the public school by students who are required by law to attend school of which this activity has been made a part and parcel. There is, therefore, a fusion of the functions of the state and of christian religious sects; a dependency is placed upon the state to aid ~~christian~~ religion and interference results by religion in purely temporal affairs; and a fortiori there is an invasion by the civil authority into the religious functions. This violates that perfect neutrality required by the Amendment.

It is said that "true neutrality" requires such exercises. Otherwise the state is establishing "a religion of secularism". We think the opposite is not only explicit in our cases but is true in reason. Org those who believe in purely private religious exercises.

* We take it that the Chaplain service is in a different category. There only adults are involved and the service is purely voluntary. The soldier often has no service available and being under command would be deprived of his religious activity had the government not made a chaplain available. In the Congress the chaplain's prayer is not by law but by action of each body independently.