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POLSC 294:14 - 01
Special Topics: Religion and the Constitution
Reading Materials

RELIGION AND THE CONSTITUTION

CHAPTER VI - THE FREE EXERCISE CLAUSE:1879-1989

Introduction

The Free Exercise Clause, unlike the Establishment Clause, is distinctly an individual rights provision that protects religious liberty. However, the scope of that protection raises complex issues that include how to define religion, how to balance the government's desire to enact laws that protect important interests and are intended to apply to everyone with the special treatment the U.S. Constitution provides for religious liberty, and how to balance the restrictions on government action that are required by the Establishment Clause with the protection provided by the Free Exercise Clause. This chapter will explore those issues.

A. What is Religion?

MALNAK v. YOGI
592 F.2d 197 (3d Cir. 1979)

OPINION OF THE COURT PER CURIAM

This appeal requires us to decide whether the district court erred in determining that the teaching of a course called the Science of Creative Intelligence Transcendental Meditation (SCI/TM) in the New Jersey public high schools, under the circumstances presented in the record, constituted an establishment of religion in violation of the first amendment of the United States Constitution. We affirm.

The course under examination was offered as an elective at five high schools during the 1975-76 academic year and was taught four or five days a week by teachers specially trained by the World Plan Executive Council United States, an organization whose objective is to disseminate the teachings of SCI/TM throughout the United States. The textbook used was developed by Maharishi Mahesh Yogi, the founder of the Science of Creative Intelligence. It teaches that "pure creative intelligence" is the basis of life, and that through the process of Transcendental Meditation students can perceive the full potential of their lives.

Essential to the practice of Transcendental Meditation is the "mantra"; a mantra is the sound aid used while meditating. Each meditator has his own personal mantra which is never to be revealed to any other person. It is by concentrating on the mantra that one receives the beneficial effects said to result from Transcendental Meditation.

To acquire his mantra, a meditator must attend a ceremony called a "puja." Every student

who participated in the SCI/TM course was required to attend a puja as part of the course. A puja was performed by the teacher for each student individually; it was conducted off school premises on a Sunday; and the student was required to bring some fruit, flowers and a white handkerchief. During the puja the student stood or sat in front of a table while the teacher sang a chant and made offerings to a deified "Guru Dev." Each puja lasted between one and two hours.[1]

The district court found that the SCI/TM course constituted a religious activity under the first amendment. We agree with the district court's finding that the SCI/TM course was religious in nature. Careful examination of the textbook, the expert testimony elicited, and the uncontested facts concerning the puja convince us that religious activity was involved.

A recognition of the religious nature of the teachings and activities questioned here is largely determinative of this appeal. The district court determined that the SCI/TM course has a primary effect of advancing religion and religious concepts, and that the government aid given to teach the course and the use of public school facilities constituted excessive governmental entanglement with religion. The judgment of the district court will be affirmed.

ADAMS, Circuit Judge, concurring in the result.

I concur in the judgment of the Court that the teaching of a course in the Science of Creative

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[1] The district court described the activities of a chanter at the puja ceremony:

The chanter . . . makes fifteen offerings to Guru Dev and fourteen obeisances to Guru Dev. The chant then describes Guru Dev as a personification of "kindness" and of "the creative impulse of cosmic life," and the personification of "the essence of creation," . . . .

The chanter then makes three more offerings to Guru Dev and three additional obeisances to Guru Dev. The chant then moves to a passage in which a string of divine epithets are applied to Guru Dev. Guru Dev is called "The Unbounded," "the omnipresent in all creation," "bliss of the Absolute," "transcendental joy," "the Self-Sufficient," "the embodiment of pure knowledge which is beyond and above the universe like the sky," "the One," "the Eternal," "the Pure," "the Immovable," "the Witness of all intellects, whose status transcends thought," "the Transcendent along with the three gunas," and "the true preceptor." Manifestly, no one would apply all these epithets to a human being.

The district court concluded:

(T)he puja is sung at the direction of Maharishi Mahesh Yogi, a Hindu monk. The words and offerings of the chant invoke the deified teacher, who also was a Hindu monk, of Maharishi Mahesh Yogi. In the chant, this teacher is linked to names known as Hindu deities. Maharishi Mahesh Yogi places such great emphasis on the singing of this chant prior to the imparting of a mantra to each individual student that no mantras are given except at pujas and no one is allowed to teach the Science of Creative Intelligence/Transcendental Meditation unless he or she performed the puja to the personal satisfaction of Maharishi Mahesh Yogi or one of his aides. Needless to say, neither Hinduism nor belief in "the Lord" constitute a dead religion. Both of these beliefs are held by hundreds of millions of people.

Intelligence constitutes an establishment of religion proscribed by the first amendment. In contrast to the majority, however, I am convinced that this appeal presents a novel and important question that may not be disposed of simply on the basis of past precedent. Rather, as I see it, the result reached today is largely based upon a newer, more expansive reading of "religion" that has been developed in the last two decades in the context of free exercise cases but not, until today, applied by an appellate court to invalidate a government program under the establishment clause. Moreover, this is the first appellate court decision, to my knowledge, that has concluded that a set of ideas constitutes a religion over the objection and protestations of secularity by those espousing those ideas. Under these circumstances, I am impelled to state my views separately.

The original definition of religion prevalent in this country was closely tied to a belief in God. This attitude remained unchallenged for many years. Thus, the traditional definition was grounded upon a Theistic perception of religion. It is not clear, however, given the absence of any concentration in SCI/TM on a "Supreme Being," that it may be considered a religion under this traditional formulation.

The district court notes cases more directly on point. The most important of these, and the only Supreme Court cases among them, is *Torcaso v. Watkins*, 367 U.S. 488 (1961). *Torcaso* involved a direct constitutional challenge to a Maryland provision that required an official to declare a belief in God in order to hold office in that state. A unanimous Court rejected this requirement, both as a matter of establishment clause values (the state may not favor Theism over pantheism or atheism) and free exercise clause values (an individual may not be barred from holding public office on the basis of his beliefs). In striking down the Maryland law, the Court specifically observed that neither the state nor the federal government "can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." The Court then added an instructive footnote: "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others."

This note, although dictum, represents a rejection of the view that religion may, consonant with first amendment values, be defined solely in terms of a Supreme Being. Buddhism and Taoism are, of course, recognized Eastern religions. The other two examples given by the Court refer to non-Theist organized groups that were found to be religious for tax exemption purposes primarily because of their organizational similarity to traditional American church groups.

It seems unavoidable that the Theistic formulation presumed to be applicable in the late nineteenth century cases is no longer sustainable. Under the modern view, "religion" is not confined to the relationship of man with his Creator. Even theologians of traditionally recognized faiths have moved away from a strictly Theistic approach in explaining their own religions. Such movement, when coupled with the growth in the United States, of many Eastern and non-traditional belief systems, suggests that the older, limited definition would deny "religious" identification to faiths now adhered to by millions of Americans.

If the old definition has been repudiated, however, the new definition remains not yet fully formed. It would appear to be properly described as a definition by analogy. The modern approach thus looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same

purposes, as unquestioned and accepted "religions."

But it is one thing to conclude "by analogy" that a particular group or cluster of ideas is religious; it is quite another to explain exactly what indicia are to be looked to in making such an analogy and justifying it. There appear to be three useful indicia that are basic to our traditional religions and that are themselves related to the values that undergird the first amendment.

The first and most important of these indicia is the nature of the ideas in question. This means that a court must examine the content of the supposed religion, not to determine its truth or falsity, but to determine whether the subject matter it comprehends is consistent with the assertion that it is, or is not, a religion. Expectation that religious ideas should address fundamental questions is in some ways comparable to the reasoning of the Protestant theologian Dr. Paul Tillich, who expressed his view on the essence of religion in the phrase "ultimate concern." Tillich perceived religion as connected to concepts that are of the utmost importance. One's views, be they orthodox or novel, on the deeper and more imponderable questions – the meaning of life and death, man's role in the Universe, the proper moral code of right and wrong – are those likely to be the most "intensely personal" and important to the believer. They are his ultimate concerns. The first amendment demonstrates a specific solicitude for religion because religious ideas are in many ways more important than other ideas. New and different ways of meeting those concerns are entitled to the same sort of treatment as the traditional forms.

Thus, the "ultimate" nature of the ideas presented is the most important and convincing evidence that they should be treated as religious. Certain isolated answers to "ultimate" questions, however, are not necessarily "religious" answers, because they lack the element of comprehensiveness, the second of the three indicia. A religion is not generally confined to one question or one moral teaching; it has a broader scope. It lays claim to an ultimate and comprehensive "truth." Thus the so-called "Big Bang" theory, an astronomical interpretation of the creation of the universe, may be said to answer an "ultimate" question, but it is not, by itself, a "religious" idea. Likewise, moral or patriotic views are not by themselves "religious," but if they are a part of a comprehensive belief-system that presents them as "truth," they might well rise to the religious level. The component of comprehensiveness is particularly relevant in the context of state education. A science course may touch on many ultimate concerns, but it is unlikely to proffer a systematic series of answers to them that might begin to resemble a religion.

A third element to consider in ascertaining whether a set of ideas should be classified as a religion is any formal, external, or surface signs that may be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions. Of course, a religion may exist without any of these signs, so they are not determinative. But they can be helpful in supporting a conclusion of religious status given the important role such ceremonies play in religious life.

Although these indicia will be helpful, they should not be thought of as a final "test" for religion. Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed. Still, it is important to have some objective guidelines in order to avoid ad hoc justice.

Before applying these guidelines to SCI/TM, however, a separate question must first be examined. There has been considerable speculation whether the broader definition of religion developed in the free exercise cases should be applied under the establishment clause. Professor Tribe has advanced the argument that the free exercise clause should be read broadly to include anything "arguably religious," but that the establishment clause should not be construed to encompass anything "arguably non-religious."

Despite the distinguished scholars who advocate this approach, a stronger argument can be made for a unitary definition to prevail for both clauses. This would seem to be the preferable choice for several reasons. First, it is virtually required by the language of the first amendment. As Justice Rutledge put it over thirty years ago:

> "Religion" appears only once in the Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid "an establishment" and another, much broader, for securing "the free exercise thereof."

Although the Constitution has often been subject to a broad construction, it remains a written document. It is difficult to justify a reading of the first amendment so as to support a dual definition of religion. The advocates of a dual definition appear to be motivated primarily by an anxiety that too extensive a definition under the establishment clause will lead to "wholesale invalidation" of government programs. Were a school, or government agency, to advance the cause of peace, or opposition to war, such an official position would not qualify as a "religion." All programs or positions that entangle the government with issues and problems that might be classified as "ultimate concerns" do not, because of that, become "religious" programs or positions. Only if the government favors a comprehensive belief system and advances its teachings does it establish a religion. It does not do so by endorsing isolated moral precepts or by enacting humanitarian economic programs.

Moreover, the establishment clause does not forbid government activity encouraged by the supporters of even the most orthodox of religions if that activity is itself not unconstitutional. The Biblical and clerical endorsement of laws against stealing and murder do not make such laws establishments of religion. Similarly, agitation for social welfare programs by progressive churchmen, even if motivated by theological reasons, does not make those programs religious. The Constitution has not been interpreted to forbid those inspired by religious principle or conscience from participation in this nation's political, social and economic life.

Finally, the practical result of a dual definition is itself troubling. Such an approach would create a three-tiered system of ideas: those that are unquestionably religious and thus both free from government interference and barred from receiving government support; those that are unquestionably non-religious and thus subject to government regulation and eligible to receive government support; and those that are only religious under the newer approach and thus free from governmental regulation but open to receipt of government support. Belief systems classified in the third grouping are the most advantageously positioned. No reason has been advanced, however, for favoring newer belief systems over older ones. If a Roman Catholic is barred from receiving aid from the government, so too should be a Transcendental Meditator or a

Scientologist if those two are to enjoy the preferred position guaranteed by the free exercise clause. They are clearly not entitled to the advantages given by the first amendment while avoiding the disadvantages. The rose cannot be had without the thorn.

For these reasons, then, I think it is correct to read religion broadly in both clauses and agree that the precedents developed in the free exercise context are properly relied upon here. Having reached this conclusion, two final questions remain: Does SCI/TM qualify as a religion under the criteria discussed above and, if it does, does the teaching and funding of this course constitute an establishment of that religion.

Although Transcendental Meditation by itself might be defended as primarily a relaxation or concentration technique with no "ultimate" significance, the New Jersey course at issue here was not a course in TM alone, but a course in the Science of Creative Intelligence. Creative Intelligence, according to the textbook in the record, is "at the basis of all growth and progress" and is, indeed, "the basis of everything." Transcendental Meditation is presented as a means for contacting this "impelling life force" so as to achieve "inner contentment." That the existence of such a pervasive and fundamental life force is a matter of "ultimate concern" can hardly be questioned. It is put forth as the foundation of life and the world itself.

The Science of Creative Intelligence provides answers to questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness. Although it is not as comprehensive as some religions – for example, it does not include a complete moral code – it is sufficiently comprehensive to avoid the suggestion of an isolated theory unconnected with any particular world view or basic belief system. SCI/TM provides a way to full self realization and oneness with the underlying reality of the universe. Consequently, it can reasonably be understood as presenting a claim of ultimate "truth."

This conclusion is supported by the formal observances and structure of SCI/TM. Although there is no evidence in the record of organized clergy or traditional rites, there are trained teachers and an organization devoted to the propagation of the faith. And there is a ceremony, the Puja, that is intimately associated with the transmission of the mantra.

SCI/TM is not a Theistic religion, but it is nonetheless a constitutionally protected religion. It concerns itself with the same search for ultimate truth as other religions and seeks to offer a comprehensive answer to questions that haunt modern man. That those who espouse these views and engage in the Puja, or meditate in the hope of reaching the transcendental reality of creative intelligence, would be entitled to the protection of the free exercise clause is clear. They are thus similarly subject to the constraints of the establishment clause.

In applying the three-prong test for determining whether a particular program abridges the establishment clause, the district court credited the government with pursuing a secular purpose, but held that the means employed were forbidden. I am in agreement with this conclusion, but entertain some doubt as to the secularity of purpose. A careful review reveals nothing other than an effort to propagate TM, SCI, and the views of Maharishi Mahesh Yogi.[2] A conviction that

[2] It is of particular note that New Jersey did not entrust the teaching of SCI/TM to regular public school teachers, but relied upon instructors trained by WPEC. Although the Constitution

religious education is "good" for students does not make out a secular purpose.

Religious observation and instruction in public schools may be sustainable if ideas are taught in an objective fashion, or if the overall impact of the religious observance is *de minimis*. Neither was true here. Once SCI/TM is found to be a religion, the establishment resulting from direct government support of that religion through the propagation of its religious ideas in the public school system is clear.

Professor's Note: In addition to determining whether a set of beliefs is "religious," as compared to a moral principal or lifestyle choice or some other nonreligious basis for belief, courts can inquire into the sincerity of religious beliefs. While Courts are not permitted to inquire into the "truth" of religious beliefs since the nature of such beliefs roots them in faith and not scientific proof, they are permitted to require that the beliefs be sincerely held. In *Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981), the court described this two part inquiry as follows:

"The relevant case law in the free exercise area suggests that two threshold requirements must be met before particular beliefs, alleged to be religious in nature, are accorded first amendment protection. A court's task is to decide whether the beliefs avowed are (1) sincerely held, and (2) religious in nature.

It is inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith. Judges are not oracles of theological verity, and the Founders did not intend for them to be declarants of religious orthodoxy. See *United States v. Ballard*, 322 U.S. 78, 85-88 (1944). The Supreme Court has emphasized, however, that "while the "truth' of a belief is not open to question, there remains the significant question whether it is "truly held.' " Without some sort of required showing of sincerity on the part of the individual or organization seeking judicial protection of its beliefs, the first amendment would become "a limitless excuse for avoiding all unwanted legal obligations."

B. The Belief/Action Dichotomy

1. REYNOLDS v. UNITED STATES
98 U.S. 145 (1879)

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

[This case arose before Utah became a state. George Reynolds was charged with the crime of bigamy and tried and convicted in a territorial court.]

On the trial, the accused proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints,

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allows "objective" courses in religion, courts are unlikely to find objectivity in courses taught by Jesuits, rabbis, or fundamentalist ministers brought in to the public schools for the express purpose of teaching that course. A comparable situation is presented here.

commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church "that it was the duty of male members of said church, circumstances permitting, to practice polygamy. He also proved "that he had received permission from the recognized authorities in said church to enter into polygamous marriage.

The question is raised, whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is as to the guilt of one who knowingly violates a law, if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment forbids such legislation. The question is whether the law under consideration comes within this prohibition. The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.

There never has been a time in any State of the Union when polygamy has not been an offence against society. In the face of this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is required to deal. Unless restricted by some form of constitution, it is within the legitimate scope of the power of every government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute under consideration is within the power of Congress. The only question which remains is whether those who make polygamy a part of their religion are excepted from the statute. If they are, then those who do not make polygamy a part of their religious belief may be punished, while those who do, must go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the government to prevent her carrying her belief into practice?

So here, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

2. PRINCE v. MASSACHUSETTS
321 U.S. 158 (1944)

MR. JUSTICE RUTLEDGE delivered the opinion of the Court.

The case brings for review another episode in the conflict between Jehovah's Witnesses and

state authority. Sarah Prince appeals from convictions for violating Massachusetts' child labor laws, by acts said to be a rightful exercise of her religious convictions.

The only questions for our decision are whether §§ 80 and 81, as applied, contravene the Fourteenth Amendment by denying or abridging appellant's freedom of religion. Sections 80 and 81 form parts of Massachusetts' comprehensive child labor law. They provide methods for enforcing the prohibitions of § 69, which is as follows:

"No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place."

The story told by the evidence has become familiar. Mrs. Prince is the mother of two young sons. She also has legal custody of Betty Simmons, who lives with them. The children too are Jehovah's Witnesses and both Mrs. Prince and Betty testified they were ordained ministers. The former was accustomed to go each week on the streets of Brockton to distribute "Watchtower" and "Consolation." She had permitted the children to engage in this activity previously, and had been warned against doing so by the school attendance officer. But, until December 18, 1941, she generally did not take them with her at night.

That evening, as Mrs. Prince was preparing to leave her home, the children asked to go. She at first refused. Childlike, they resorted to tears; and, motherlike, she yielded. Arriving downtown, Mrs. Prince permitted the children "to engage in the preaching work with her upon the sidewalks." That is, with specific reference to Betty, she and Mrs. Prince took positions about twenty feet apart near a street intersection. Betty held up in her hand, for passers-by to see, copies of "Watch Tower" and "Consolation." From her shoulder hung the usual canvas magazine bag, on which was printed: "Watchtower and Consolation 5 cents per copy." No one accepted a copy from Betty that evening and she received no money. Nor did her aunt. But on other occasions, Betty had received funds and given out copies.

As the case reaches us, the only question is whether, as construed and applied, the statute is valid. Appellant rests squarely on freedom of religion under the First Amendment. She buttresses this foundation, however, with a claim of parental right as secured by the due process clause. Cf. *Meyer* v. *Nebraska*, 262 U.S. 390. These guaranties, she thinks, guard alike herself and the child in what they have done. Thus, two claimed liberties are at stake. One is the parent's, to bring up the child in the way he should go, which for appellant means to teach him the tenets and the practices of their faith. The other freedom is the child's, "to preach the gospel . . . by public distribution" of "Watchtower" and "Consolation," in conformity with the scripture.

To make accommodation between these freedoms and an exercise of state authority always is delicate. It hardly could be more so than in such a clash as this case presents. On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests stand the interests of society to protect the welfare of children, and the state's authority to that end. It is the interest of the whole community that children be both safeguarded from abuses and given opportunities for growth into free and

independent well-developed men and citizens. Between contrary pulls of such weight, the safest recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on.

The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against assertion of state power, have had recognition here, in *West Virginia State Board of Education* v. *Barnette* and *Meyer* v. *Nebraska*. It is cardinal with us that the custody, care and nurture of the child reside first in the parents. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. *Reynolds* v. *United States*, 98 U.S. 145. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. The catalogue need not be lengthened. It is sufficient to show that the state has a wide range of power for limiting parental authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

Concededly a statute or ordinance identical in terms with § 69, except that it is applicable to adults or all persons generally, would be invalid. But the mere fact a state could not wholly prohibit this form of adult activity does not mean it cannot do so for children. The state's authority over children's activities is broader than over like actions of adults. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens. It may secure this against impeding dangers. Among evils most appropriate for such action are the crippling effects of child employment, and the possible harms arising from other activities subject to all the diverse influences of the street. Legislation appropriately designed to reach such evils is within the state's police power, whether against the parent's claim to control of the child or one that religious scruples dictate contrary action.

The case reduces itself therefore to the question whether the presence of the child's guardian puts a limit to the state's power. That fact may lessen the likelihood that some evils the legislation seeks to avert will occur. But it cannot forestall all of them. The zealous though lawful exercise of the right to engage in propagandizing the community, whether in religious, political or other matters, may and at times does create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves. Massachusetts has determined that an absolute prohibition is necessary to accomplish its legitimate objectives. Its power to attain them is broad enough to reach these peripheral instances in which the parent's supervision may reduce but cannot eliminate entirely the ill effects of the prohibited conduct. We think that

with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, and the boundary of its power has not been crossed in this case.

Our ruling does not extend beyond the facts. The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others except the public proclaiming of religion on the streets remain unaffected by the decision.

MR. JUSTICE MURPHY, dissenting:

This attempt by Massachusetts to prohibit a child from exercising her constitutional right to practice her religion on the public streets cannot, in my opinion, be sustained.

Religious training and activity, whether performed by adult or child, are protected by the Fourteenth Amendment against interference by state action, except insofar as they violate reasonable regulations adopted for the protection of the public health, morals and welfare. Our problem here is whether a state, under the guise of enforcing its child labor laws, can lawfully prohibit girls under the age of eighteen and boys under the age of twelve from practicing their religious faith insofar as it involves the distribution or sale of religious tracts on the public streets. A square conflict between the constitutional guarantee of religious freedom and the state's legitimate interest in protecting the welfare of children is presented.

As the opinion of the Court demonstrates, the power of the state to control the religious and other activities of children is greater than its power over similar activities of adults. But that fact is no more decisive of the issue posed by this case than is the obvious fact that the family itself is subject to reasonable regulation in the public interest. We are concerned solely with the reasonableness of this particular prohibition of religious activity by children.

In dealing with the validity of statutes which directly or indirectly infringe religious freedom and the right of parents to encourage their children in the practice of a religious belief, we are not aided by any strong presumption of the constitutionality of such legislation. On the contrary, the freedoms enumerated in the First Amendment are presumed to be invulnerable and any attempt to sweep away those freedoms is prima facie invalid. The burden was therefore on the state of Massachusetts to prove the reasonableness and necessity of prohibiting children from engaging in religious activity of the type involved in this case.

The burden is not met by vague references to the reasonableness underlying child labor legislation in general. The reasonableness that justifies the prohibition of the ordinary distribution of literature in the public streets by children is not necessarily the reasonableness that justifies such a restriction when the distribution is part of their religious faith. There must be convincing proof that such a practice constitutes a grave and immediate danger to the state or to the health, morals or welfare of the child. Freedom of religion cannot be erased by slender references to the state's power to restrict the more secular activities of children.

The state, in my opinion, has completely failed to sustain its burden of proving the existence of any grave or immediate danger to any interest which it may lawfully protect. There is no proof that Betty Simmons' mode of worship constituted a serious menace to the public. It was carried

on in an orderly, lawful manner at a public street corner. The sidewalk, no less than the cathedral or the evangelist's tent, is a proper place, under the Constitution, for the orderly worship of God. Such use of the streets is as necessary to the Jehovah's Witnesses, the Salvation Army and others who practice religion without benefit of conventional shelters as is the use of the streets for purposes of passage.

It is claimed, however, that such activity was likely to affect adversely the health, morals and welfare of the child. The bare possibility that such harms might emanate from distribution of religious literature is not, standing alone, sufficient justification for restricting freedom of conscience and religion. The evils must be grave, immediate, substantial. Yet there is not the slightest indication in this record that children engaged in distributing literature pursuant to their religious beliefs have been or are likely to be subject to any of the harmful "diverse influences of the street." Indeed, the likelihood is that children engaged in serious religious endeavor are immune from such influences. Moreover, Jehovah's Witness children invariably make their distributions in groups subject at all times to adult or parental control, as was done in this case. The dangers are thus exceedingly remote, to say the least.

No chapter in human history has been so largely written in terms of persecution and intolerance as the one dealing with religious freedom. And the Jehovah's Witnesses are living proof of the fact that even in this nation the right to practice religion in unconventional ways is still far from secure. They have suffered brutal beatings; their property has been destroyed; they have been harassed at every turn by the enforcement of little used ordinances and statutes. To them, along with other present-day religious minorities, befalls the burden of testing our devotion to the ideals and constitutional guarantees of religious freedom. We should therefore hesitate before approving the application of a statute that might be used as another instrument of oppression. Religious freedom is too sacred a right to be restricted in any degree without convincing proof that a legitimate interest of the state is in grave danger.

[Justice Jackson also wrote a dissenting opinion joined by Justices Roberts and Frankfurter.]

C. Free Exercise Challenges to Denial of Government Benefits

SHERBERT v. VERNER
374 U.S. 398 (1963)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellant, a member of the Seventh-day Adventist Church, was discharged by her South Carolina employer because she would not work on Saturday, the Sabbath Day of her faith.[1]

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[1] Appellant became a member of the Seventh-day Adventist Church in 1957, at a time when her employer, a textile-mill operator, permitted her to work a five-day week. It was not until 1959 that the work week was changed to six days, including Saturday. No question has been raised concerning the sincerity of appellant's religious beliefs. Nor is there any doubt that the prohibition against Saturday labor is a basic tenet of the Seventh-day Adventist creed.

When she was unable to obtain other employment because she would not take Saturday work, she filed a claim for unemployment compensation benefits under the South Carolina Unemployment Compensation Act. That law provides that, to be eligible for benefits, a claimant must be "able to work and available for work"; and, further, that a claimant is ineligible for benefits "if he has failed, without good cause to accept available suitable work when offered him by the employment office or the employer." The appellee Employment Security Commission found that appellant's restriction upon her availability for Saturday work brought her within the provision disqualifying for benefits insured workers who fail, without good cause, to accept "suitable work when offered by the employment office or the employer." The Commission's finding was sustained by the Court of Common Pleas. That court's judgment was affirmed by the South Carolina Supreme Court which rejected appellant's contention that the disqualifying provisions of the abridged her right to the free exercise of her religion. We reverse the judgment of the South Carolina Supreme Court and remand for further proceedings.

If the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement of her rights of free exercise, or because any incidental burden on the free exercise of religion may be justified by a "compelling state interest."

We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. It is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning of our inquiry. For "if the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be only indirect." Here not only is it apparent that appellant's ineligibility for benefits derives solely from the practice of her religion, but the ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Significantly South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty. When in times of "national emergency" the textile plants are authorized by the State Commissioner of Labor to operate on Sunday, "no employee shall be required to work on Sunday who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious objections he or she shall not be discriminated against in any manner." The unconstitutionality of the disqualification of the Sabbatarian is thus compounded by the religious discrimination which South Carolina's general statutory scheme necessarily effects.

We must next consider whether some compelling state interest justifies the substantial infringement of appellant's First Amendment right. The appellees suggest no more than a possibility that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might not only dilute the unemployment compensation fund but also hinder the scheduling by employers of necessary Saturday work. But no such objection appears to have been made before the South Carolina Supreme Court. Nor, if the contention had been made, would the record appear to sustain it; there is no proof whatever to warrant such fears of

malingering or deceit. Even if consideration of such evidence is not foreclosed by the prohibition against judicial inquiry into the truth or falsity of religious beliefs, it is doubtful whether such evidence would be sufficient to warrant a substantial infringement of religious liberties. For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights.

In holding as we do, plainly we are not fostering the "establishment" of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences. Nor does the recognition of the appellant's right to unemployment benefits serve to abridge any other person's religious liberties. Nor do we, by our decision, declare the existence of a constitutional right to unemployment benefits on the part of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society. Finally, nothing we say today constrains the States to adopt any particular scheme of unemployment compensation. Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest. This holding but reaffirms a principle that we announced a decade and a half ago, namely that no State may "exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it*, from receiving the benefits of public welfare legislation." *Everson* v. *Board of Education*, 330 U.S. 1, 16.

MR. JUSTICE STEWART, concurring in the result.

This case presents a double-barreled dilemma, which in all candor I think the Court's opinion has not succeeded in papering over. The dilemma ought to be resolved.

I am convinced that no liberty is more essential to the continued vitality of the free society than is the religious liberty protected by the Free Exercise Clause. And I regret that on occasion the Court has shown what has seemed to me a distressing insensitivity to the appropriate demands of this guarantee. By contrast I think that the Court's approach to the Establishment Clause has on occasion been not only insensitive, but positively wooden. There are many situations where legitimate claims under the Free Exercise Clause will run into head-on collision with the Court's insensitive construction of the Establishment Clause. The controversy now before us is clearly such a case.

The appellant refuses to accept available jobs which would require her to work on Saturdays based on the tenets of her religious faith. The Court says that South Carolina cannot declare her to be not "available for work" within the meaning of its statute because to do so would violate her right to the free exercise of her religion. Yet what this Court has said about the Establishment Clause must inevitably lead to a diametrically opposite result. If the appellant's refusal to work on Saturdays were based on indolence, or on a desire to watch the Saturday television programs, no one would say that South Carolina could not hold that she was not "available for work." That being so, the Establishment Clause as construed by this Court not only *permits* but affirmatively *requires* South Carolina equally to deny the appellant's claim for unemployment compensation

when her refusal to work on Saturdays is based upon her religious creed.

To require South Carolina to so administer its laws as to pay public money to the appellant under the circumstances of this case is thus clearly to require the State to violate the Establishment Clause as construed by this Court. This poses no problem for me, because I think the Court's mechanistic concept of the Establishment Clause is historically unsound and constitutionally wrong. I think that the guarantee of religious liberty embodied in the Free Exercise Clause affirmatively requires government to create an atmosphere of hospitality and accommodation to individual belief or disbelief.

South Carolina would deny unemployment benefits to a mother unavailable for work on Saturdays because she was unable to get a babysitter. Thus, we do not have before us a situation where a State provides unemployment compensation generally, and singles out for disqualification only persons who are unavailable for work on religious grounds. This is not a scheme which operates to discriminate against religion as such. But the Court nevertheless holds that the State must prefer a religious over a secular ground for being unavailable for work.

Yet in cases decided under the Establishment Clause the Court has decreed otherwise. It has decreed that government must blind itself to the differing religious beliefs and traditions of the people. With all respect, I think it is the Court's duty to face up to the dilemma posed by the conflict between the Free Exercise Clause and the Establishment Clause as interpreted by the Court. For so long as the fallacious fundamentalist rhetoric of some of our Establishment Clause opinions remains on our books, so long will the possibility of consistent decision in this most difficult and delicate area of constitutional law be impeded and impaired. And so long, I fear, will the guarantee of true religious freedom in our pluralistic society be uncertain and insecure.

MR. JUSTICE HARLAN, whom MR. JUSTICE WHITE joins, dissenting.

South Carolina's Unemployment Compensation Law was enacted in 1936 in response to the grave social and economic problems that arose during the depression of that period. Thus the purpose of the legislature was to tide people when *work was unavailable*. But at the same time there was clearly no intent to provide relief for those who for purely personal reasons were or became *unavailable for work*. In accordance with this design, the legislature provided that "an unemployed insured worker shall be eligible to receive benefits with respect to any week *only* if the Commission finds that he is able to work and is available for work."

The South Carolina Supreme Court has uniformly applied this law in conformity with its clearly expressed purpose. In the present case all that the state court has done is to apply these accepted principles. The appellant was "unavailable for work," and thus ineligible for benefits, when personal considerations prevented her from accepting employment on a full-time basis in the industry and locality in which she had worked. The fact that these personal considerations sprang from her religious convictions was wholly without relevance to the state court's application of the law. Thus in no proper sense can it be said that the State discriminated against the appellant on the basis of her religious beliefs. She was denied benefits just as any other claimant would be denied benefits who was not "available for work" for personal reasons.

With this background, this Court's decision comes into clearer focus. What the Court is holding is that if the State chooses to condition unemployment compensation on the applicant's

availability for work, it is constitutionally compelled to *carve out an exception* -- and to provide benefits -- for those whose unavailability is due to their religious convictions.

The implications of the present decision are far more troublesome than its apparently narrow dimensions would indicate at first glance. The State must *single out* for financial assistance those whose behavior is religiously motivated, even though it denies such assistance to others whose identical behavior is not religiously motivated.

My view is that at least under the circumstances of this case it would be a permissible accommodation of religion for the State, if it *chose* to do so, to create an exception to its eligibility requirements for persons like the appellant. However, I cannot subscribe to the conclusion that the State is constitutionally *compelled* to carve out an exception to its general rule of eligibility. Those situations in which the Constitution may require special treatment on account of religion are, in my view, few and far between.

Professor's Note: In several subsequent cases, the Supreme Court invalidated similar restrictions on unemployment compensation. In doing so, the Court made clear it would broadly define religion for this purpose. In *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981), the Court reviewed a decision by the Indiana Supreme Court to deny benefits to a member of the Jehovah's Witnesses who left his job when he was required to work on the production of military weapons because to do so violated his religious beliefs. The U.S. Supreme Court found he left his employment for religious reasons even though not all members of his religion shared his belief and he appeared to be "struggling" with his beliefs. In doing so, the Court stated:

> Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection. . . ..
>
> . . . Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.
>
> The Indiana court also appears to have given significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets; for that other Witness such work was "scripturally" acceptable. Intrafaith differences are not uncommon among followers of a particular creed, and the judicial process is ill equipped to resolve such differences in relation to the Religion Clauses. One can imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.

> The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. On this record, it is clear that Thomas terminated his employment for religious reasons.

In *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987), the Court further expanded on its inclusive definition of religion by refusing to distinguish an employee who changed her religious beliefs after starting her employment from one whose views did not change:

> The Appeals Commission asks us to single out the religious convert for less favorable treatment than that given an individual whose adherence to his or her faith precedes employment. We decline to do so. The First Amendment protects the free exercise rights of employees who adopt religious beliefs or convert from one faith to another after they are hired. The timing of Hobbie's conversion is immaterial to our determination that her free exercise rights have been burdened; the salient inquiry is the burden involved. In *Sherbert, Thomas*, and the present case, the employee was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former brings coercion to bear on the employee's choice.

Finally, in *Frazee v. Illinois Department of Employment Security*, 489 U.S. 829 (1989), the Court refused to require that an employee objecting to working on Sunday be a member of a particular Christian sect:

> Frazee asserted that he was a Christian, but did not claim to be a member of a particular sect. It is also true that there are Christian denominations that do not profess to be compelled to refuse Sunday work, but this does not diminish Frazee's protection. *Thomas* settled that much. Undoubtedly, membership in an organized religious denomination, especially one with a tenet forbidding work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under our cases, he was entitled to invoke First Amendment protection.

E. Free Exercise Claims to Special Treatment

1. WISCONSIN v. YODER

406 U.S. 205 (1972)

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We review a decision of the Wisconsin Supreme Court holding that respondents' convictions of violating the State's compulsory school-attendance law were invalid under the Free Exercise Clause. We affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Wallace Miller are members of the Old Order Amish religion, and respondent Adin Yutzy is a member of the Conservative Amish Mennonite Church.

Wisconsin's compulsory school-attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after they completed the eighth grade.

Respondents were convicted of violating the compulsory-attendance law and were fined the sum of $ 5 each. The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere.

Old Order Amish communities are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept is central to their faith. A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated by the *Ordnung*, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which young people undertake heavy obligations, not unlike the Bar Mitzvah of the Jews, to abide by the rules of the church community.

Amish objection to formal education beyond the eighth grade is grounded in these central religious concepts. They object to high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, competitiveness, worldly success, and social life. Amish society emphasizes informal learning-through-doing; a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs, but also because it takes them away from their community during the crucial and formative adolescent period. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. Once a child has learned basic reading, writing, and mathematics, these traits, skills, and attitudes admittedly fall within the category of those best learned through example and "doing" rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendance interposes a serious barrier to the integration of the Amish child into the Amish religious community.

The Amish do not object to elementary education through the first eight grades because they agree that their children must have basic skills in the "three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not

significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period.

On the basis of such considerations, [an expert] testified that compulsory high school attendance could not only result in great psychological harm to Amish children, because of the conflicts it would produce, but would also, in his opinion, ultimately result in the destruction of the Old Order Amish church community as it exists in the United States. Testimony also showed that the Amish succeed in preparing their high school age children to be productive members of the Amish community. The evidence also showed that the Amish have an excellent record as law-abiding and generally self-sufficient members of society.

I

A State's interest in universal education is not totally free from a balancing process when it impinges on fundamental rights, such as those protected by the Free Exercise Clause, and the traditional interest of parents with respect to the religious upbringing of their children.

It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Only those interests of the highest order can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.

II

We come then to the claims of the respondents concerning the alleged encroachment on their rights and the rights of their children to the free exercise of religious beliefs. In evaluating those claims we must determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their rejection of contemporary secular values, their claims would not rest on a religious basis.

Giving no weight to such secular considerations, however, we see that the record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, "be not conformed to this world." This command is fundamental to the Amish faith. Moreover, for the Old Order Amish, religion is not simply a matter of theocratic belief. As the expert witnesses explained, the Old Order Amish

religion pervades and determines virtually their entire way of life, regulating it with the detail of the Talmudic diet through the strictly enforced rules of the church community. Their rejection of telephones, automobiles, radios, and television, their mode of dress, of speech, their habits of manual work do indeed set them apart from much of contemporary society.

As the society around the Amish has become more populous, urban, industrialized, and complex, government regulation of human affairs has correspondingly become more detailed and pervasive. The Amish mode of life has thus come into conflict increasingly with requirements of contemporary society. So long as compulsory education laws were confined to eight grades of elementary education imparted in a nearby rural schoolhouse, with a large proportion of students of the Amish faith, the Old Order Amish had little basis to fear that school attendance would expose their children to worldly influence. But modern compulsory secondary education in rural areas is now largely carried on in a consolidated school, often remote from the student's home and alien to his daily home life. As the record shows, the values and programs of the modern secondary school are in sharp conflict with the mode of life mandated by the Amish religion. The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith.

The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. As the record shows, compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region.

In sum, the unchallenged testimony of experts, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger the free exercise of respondents' religious beliefs.

III

We turn, then, to the State's contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption.

The State advances two primary arguments in support of its system of compulsory education. It notes that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

However, the evidence adduced by the Amish in this case is persuasively to the effect that an

additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. Respondents' experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.

The State attacks respondents' position as one fostering "ignorance" from which the child must be protected by the State. This argument does not square with the facts disclosed in the record. This record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society.

It is neither fair nor correct to suggest that the Amish are opposed to education beyond the eighth grade level. They are opposed to conventional formal education of the type provided by a high school because it comes at the child's crucial adolescent period of religious development. Dr. Erickson, for example, testified that their system of learning-by-doing was an "ideal system" of education in terms of preparing Amish children for life as adults in the Amish community.

The State, however, supports its interest in providing an additional one or two years of compulsory high school education to Amish children because of the possibility that some children will choose to leave the Amish community. The State argues that if Amish children leave their church they should not be in the position of making their way in the world without the education available in the one or two additional years the State requires. However, that argument is highly speculative. There is no evidence of the loss of Amish adherents by attrition, nor is there any showing that upon leaving the Amish community Amish children, with their practical agricultural training and habits of industry and self-reliance, would become burdens on society. Indeed, this argument appears to rest on the State's mistaken assumption that the Amish do not provide any education beyond the eighth grade. To the contrary, the Amish provide what has been characterized by expert educators as an "ideal" vocational education for their children.

There is nothing in this record to suggest that the Amish qualities of reliability, self-reliance, and dedication would fail to find ready markets. We are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they leave the Amish faith, nor is there any basis to warrant a finding that an additional one or two years of education would serve to eliminate any such problem that might exist.

Insofar as the State's claim rests on the view that a brief additional period of formal education is imperative to enable the Amish to participate effectively and intelligently in our democratic process, it must fall. The Amish alternative to formal secondary school education has enabled them to survive and prosper in contemporary society as a separate, sharply identifiable and highly self-sufficient community for more than 200 years in this country. In itself this is strong evidence that they are capable of fulfilling the social and political responsibilities of citizenship without compelled attendance beyond the eighth grade.

The requirement for compulsory education beyond the eighth grade is a relatively recent

development. Less than 60 years ago, the educational requirements of almost all States were satisfied by completion of the elementary grades. The independence and successful social functioning of the Amish community for more than 200 years in this country are strong evidence that there is at best a speculative gain from an additional one or two years of compulsory formal education. Against this background it would require a more particularized showing from the State to justify the severe interference with religious freedom such additional compulsory attendance would entail.

IV

This case involves the fundamental interest of parents to guide the religious future and education of their children. This primary role of the parents in the upbringing of their children is now established. Perhaps the most significant statements of the Court in this area are found in *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), in which the Court observed:

"We think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

The Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. And when the interests of parenthood are combined with a free exercise claim more than a "reasonable relation to some purpose within the competency of the State" is required. To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. But in this case, the record strongly indicates that accommodating the religious objections of the Amish will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the responsibilities of citizenship.[2]

The Amish have demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the more difficult burden of demonstrating the adequacy of their mode of continuing informal vocational education in terms of those interests that the State advances in support of compulsory high school education. In light of this convincing showing, one that probably few other religious groups could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. There is no basis for assuming that reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental

[2] An exemption for the Amish [does not] constitute an establishment of religion. Such an accommodation "reflects nothing more than the governmental obligation of neutrality in the face of religious differences."

guidance, provided that state regulations are not inconsistent with this opinion.[3]

JUSTICE POWELL and JUSTICE REHNQUIST took no part in the decision of this case.

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, concurring.

This would be a very different case if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society and since the deviation from the compulsory-education law is relatively slight, I conclude that respondents' claim must prevail.

MR. JUSTICE DOUGLAS, dissenting in part.

The Court's analysis assumes that the only interests at stake are those of the Amish parents and the State. The difficulty with this approach is that the parents are seeking to vindicate not only their own free exercise claims, but also those of their children. On this important and vital matter of education, I think the children should be entitled to be heard. It is the student's judgment that is essential if we are to give full meaning to the Bill of Rights and the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

The Court rightly rejects the notion that actions, even though religiously grounded, are always outside the protection of the Free Exercise Clause. In so ruling, the Court departs from *Reynolds*. What we do today opens the way to give organized religion a broader base than it has ever enjoyed; and it even promises that in time *Reynolds* will be overruled.

2. UNITED STATES v. LEE
455 U.S. 252 (1982)

CHIEF JUSTICE BURGER delivered the opinion of the Court.

Appellee, a member of the Old Order Amish, is a farmer and carpenter. From 1970 to 1977, appellee employed several other Amish on his farm and in his carpentry shop. He failed to file the social security tax returns required of employers, withhold social security tax from his employees, or pay the employer's share of social security taxes. The IRS assessed appellee $ 27,000 for unpaid employment taxes; he paid $ 91 and then sued for a refund, claiming that imposition of the taxes violated his free exercise rights and those of his Amish employees.

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[3] Several States have adopted plans to accommodate Amish religious beliefs through the establishment of an "Amish vocational school." These are not schools in the traditional sense. Respondents attempted to reach a compromise patterned after the Pennsylvania plan, but those efforts were not productive. There is no basis to assume that Wisconsin will be unable to reach a satisfactory accommodation in light of what we now hold.

The preliminary inquiry in determining the existence of a constitutionally required exemption is whether the payment of social security taxes and the receipt of benefits interferes with the free exercise rights of the Amish. We accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their free exercise rights.

The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning and not the end of the inquiry. Not all burdens on religion are unconstitutional. The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.

The social security system is by far the largest domestic governmental program in the United States today. The design of the system requires support by mandatory contributions from covered employers and employees. This mandatory participation is indispensable to the fiscal vitality of the system. Thus, the Government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high.

The remaining inquiry is whether accommodating the Amish will unduly interfere with the governmental interest. Unlike the situation in *Wisconsin* v. *Yoder*, it would be difficult to accommodate the social security system with myriad exceptions flowing from a variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes. If a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the system because tax payments were spent in a manner that violates their religious belief. Because the broad public interest in a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.

Congress has accommodated, to the extent compatible with a comprehensive national program, those who believe it a violation of their faith to participate in the social security system. In § 1402(g) Congress granted an exemption, on religious grounds, to self-employed Amish and others. Confining the exemption to the self-employed provided for a narrow category which was readily identifiable. Self-employed persons in a religious community having its own "welfare" system are distinguishable from wage earners employed by others.

Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all burdens incident to exercising religious beliefs. When followers of a sect enter into commercial activity, the limits they accept on their own conduct as a matter of faith are not to be superimposed on statutory schemes binding on others in that activity. The tax imposed on employers to support the social security system must be applicable to all, except as Congress provides otherwise.