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STUDENT NOTES

THE COURTS AND BIBLE READING IN THE PUBLIC SCHOOLS

A firmly established principle in the state and federal governments is that there should be a separation between the church and the state. One controversial question which has arisen under this principle is the permissibility of Bible reading in the public schools.

The Federal Constitution provides that "Congress shall pass no law respecting the establishment of religion or prohibiting the free exercise thereof."¹ Many state constitutions have comparable provisions.

The purpose of this note is to consider the various means in which state courts have dealt with the problem and to enumerate the factors which the United States Supreme Court may have to consider when it is called upon to resolve this question.

The usual situation in which the issue of Bible reading in public schools has arisen involves these facts: A person with a religious belief, other than Protestant, contests the reading or other use of

¹ U.S. CONST. AMEND. I.

the Bible (usually the King James Version) in a public school. Complainants of the Catholic faith object on the basis that the New Testament is an incomplete translation of the Bible. Members of the Jewish faith base their objection on the contention that the New Testament part of the Bible is a complete repudiation of the Jewish religion. The attendance of the pupils may or may not be compulsory. The reading is ordinarily accompanied by prayer or hymn singing.

Although the United States Supreme Court has never squarely decided the issue of the permissibility of Bible reading in public schools, it has laid down certain propositions concerning the principle of separation of church and state in relation to public education. In *Everson v. Board of Education*,² the Supreme Court interpreted the First Amendment of the United States Constitution to mean:

“Neither a state nor the federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. . . . No tax in any amount . . . can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. . . . [T]he clause against establishment of religion was intended to erect ‘a wall of separation between Church and State.’”

This principle was followed in *McCullum v. Board of Education*,³ where the Court held that the practice of having a religious instructor for all public schools, who came into the schools and instructed pupils who desired to participate constituted religious instruction which was unconstitutional. The Court reasoned that the state was using a public building for a place of worship contrary to the principle that there must be a separation of the state from the teaching of religion.

In its final decision on the matter, the Supreme Court in a case where the instruction was conducted off the school premises, held that the government could accommodate all religions by cooperation but that it could not aid religions financially or by religious instruction.⁴

² 330 U.S. 1,15,16 (1947).

³ 333 U.S. 203 (1948).

⁴ *Zorach v. Clauson*, 343 U.S. 306 (1952).

The only case to reach the Supreme Court in which a state court had upheld Bible reading in public schools was dismissed for lack of jurisdiction, without considering the merits of the controversy.⁵

In the most recent case dealing with reading of verses from the Bible without comment at the opening of the school day, the United States District Court in Pennsylvania held that such reading constituted a religious ceremony and violated the First Amendment of the Federal Constitution.⁶ However, a majority of state courts have upheld Bible reading in the public schools where the reading was presented without comment.

The majority of the state courts have relied on three major arguments to sustain Bible reading and prayers: (1) The state constitutions did not intend to bar nonsectarian religion from the schools; (2) Bible reading is a nonsectarian religious exercise; and (3) Bible reading does not discriminate against anyone or otherwise abridge religious freedom.⁷ The following paragraphs will indicate the various factors that are considered by the courts and the various positions courts have taken under these arguments.

1. *The State Constitutions Did Not Intend to Bar Nonsectarian Religion from the Schools.*

Under this argument the method of constitutional interpretation is a material factor. If a court uses an historical interpretation it will consider the intent of the framers of the constitutions and of the people at the time they were adopted.⁸ The American society at the time the constitution was adopted was one in which religion was a dominant factor. If a literal interpretation is used the court looks at the plain meaning of the words only and does not consider evidence of the history behind the constitutional provision.⁹ The courts holding Bible reading constitutional rely on the historical interpretation and take into consideration the fact that educational tradition in the United States has included religious instruction in the public schools, whereas the courts declaring Bible reading

⁵ *Doremus v. Board of Education*, 5 N.J. 435, 75 A.2d 880, (1950), *appeal dismissed*, 342 U.S. 429, (1952).

⁶ *Schemp v. School District of Abington Township*, 177 F. Supp. 398 (E.D. Pa. 1959).

⁷ Cushman, *The Holy Bible and the Public Schools*, 40 CORNELL L.Q. 475, 476 (1955).

⁸ *Pfeiffer v. Board of Education*, 118 Mich. 560, 77 N.W. 250 (1898).

⁹ *State ex rel. Weiss v. District Board of School District No. 8*, 76 Wis. 177, 44 N.W. 967 (1890).

unconstitutional confine themselves to the plain meaning of the words in the particular provision.

2. *Bible Reading is a Nonsectarian Religious Exercise.*

In *Hackett v. Brookville Graded School District*,¹⁰ a case adhering to the majority view, the Kentucky court ruled that for a book to be sectarian it must teach specifically the particular tenets of a certain sect and the fact that the book covers the beliefs of various sects because of its all inclusive nature does not necessarily make the book a sectarian one. The court further pointed out that neither the fact that one sect accepts a particular version which another sect considers incomplete, nor the fact that a book is edited and interpreted by a particular sect makes a book sectarian, as the controlling factor is the contents of the book.¹¹ This court considered the Bible as a book so comprehensive that all denominations could derive benefit from it. In the majority of the cases a narrow definition of sectarianism has been used resulting in the conclusion that the Bible is not sectarian as to Catholics or Jews simply because it conflicts in some respects with their beliefs.¹²

A narrow definition of sectarianism was applied by the New Jersey court in *Doremus v. Board of Education*, which sustained the reading of the Old Testament as nonsectarian.¹³ The court there used the term sectarianism to include only Christians and Jews.

A subsequent New Jersey case, although involving the distribution of the King James version of the Bible in public schools, reduced the effect of the *Doremus* decision in holding that such distribution violated the First Amendment of the Federal Constitution.¹⁴

In the *Tudor* case the court accepted as sectarian those parts and versions of the Bible which the religious sects considered unacceptable and held they were unacceptable to both those of the Jewish religion and the Catholic faith.¹⁵

The cases which hold Bible reading to be invalid as sectarian instruction argue that any religious instruction is sectarian because it will be inconsistent with the doctrines of some denominations.¹⁶

¹⁰ 120 Ky. 608, 87 S.W. 792 (1905).

¹¹ *Id.* at 615, 87 S.W. at 793.

¹² *Wilkerson v. Rome*, 152 Ga. 762, 110 S.E. 895 (1921); *People ex rel. Vollmar v. Stanley*, 81 Cal. 276, 255 Pac. 610 (1927); *Kaplan v. Independent School District of Virginia*, 171 Minn. 142, 214 N.W. 18 (1927).

¹³ *Doremus v. Board of Education*, *supra* note 5.

¹⁴ *Tudor v. Board of Education*, 14 N.J. 31, 100 A.2d 857 (1953).

¹⁵ *Id.* at 46, 47, 100 A.2d at 865.

¹⁶ *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 346, 92 N.E. 251, 255 (1910).

The earliest expression of this view concedes that it is not sectarian to teach the existence of a Supreme Being but if the instruction espouses doctrine concerning which religious sects are in conflict it is sectarian and, since the Bible contains passages upon which different religious denominations are based, such passages when read even without comment will tend to teach the ideas of the particular sect based thereon.¹⁷

In *People ex rel. Ring v. Board of Education*¹⁸ the Illinois court observed that neither Protestants nor Catholics will accept the other denominations' translation of the Bible because to the other sect it is a sectarian book, incomplete or inconsistent in many particulars with their respective beliefs. The *Ring* case, *supra*, pointed out that any version of the Bible was necessarily sectarian to all those whose religious beliefs were other than Christian and since reading was a usual method of teaching it constituted instruction.¹⁹

3. *Bible Reading Does Not Discriminate Against Anyone or Otherwise Abridge Religious Freedom.*

The factor to be considered here is one's freedom of conscience to worship as one pleases in relation to the element of compulsion. The cases under the majority view where the element of compulsory attendance was not present make the observation that no rights of conscience are abridged where attendance at the religious ceremony is voluntary.²⁰ In *Moore v. Monroe*²¹ the Iowa court ruled that the prohibition was directed at compulsory attendance at, or compulsory support of a church and not the "casual use" of a public building as a place for religious worship. The increase in tax burden because of Bible reading by a teacher has been upheld to be so slight as not to constitute support of religion.²²

A recent New York decision²³ which dealt with the recital of a prayer in the New York public schools put great weight on the fact that the recital was not compulsory and thus held the practice constitutional. The court pointed out that the Constitution does

¹⁷ State *ex rel. Weiss v. District Board of School District No. 8*, *supra* note 9, at 193, 44 N.W. at 973.

¹⁸ 245 Ill. 334, 92 N.E. 251 (1910).

¹⁹ *Ibid.*

²⁰ *Hackett v. Brooksville Graded School District*, 120 Ky 603, 615, 87 S.W. 792, 793 (1905); *Doremus v. Board of Education*, *supra* note 5.

²¹ 64 Iowa 367, 20 N.W. 475 (1894).

²² *Doremus v. Board of Education*, *supra* note 5.

²³ *Engel v. Vitale*, 191 N.Y.S.2d 453 (1959).

not proscribe legislative permission for the saying of a noncompulsory prayer in public schools and the "free exercise" clause of the First Amendment only requires that the school board take affirmative steps to protect the rights of those who desire not to participate.²⁴

The cases holding Bible reading unconstitutional give no added weight to the fact that the attendance is made voluntary. Excusing children from attendance at these exercises does not abolish the discriminatory effect against those who are excused.²⁵ "The exclusion of a pupil from this part of the school exercises in which the rest of the school joins separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school. . . ."²⁶ The manner in which the equality of the pupils is destroyed is explained on the basis that when a small minority is excluded because of apparent nonconformity with the Bible the excluded child is likely to be subjected to ridicule and insults.²⁷

The clearest situation of compulsion, of course, is where a pupil is required to attend the exercises. However, when one is presented with a situation which involves limited alternatives his freedom to act becomes limited. In the case of nonconformity, particularly with the Bible, "the result is an obvious pressure on the child to attend."²⁸ Coercion may depend on the circumstances or the child involved, for some children are more easily persuaded than others.

Conclusion

Since religious freedom is a right guaranteed by the Federal Constitution the Supreme Court may eventually be called upon to answer squarely the question here posed.²⁹ The factors which have been considered in this note will necessarily be called to the Court's attention for consideration in determining whether Bible reading in public schools is permissible under the First Amendment of the

²⁴ *Ibid.*

²⁵ *Herold v. Parish Board of School Directors*, 136 La. 1034, 1047, 68 So. 116, 121 (1915).

²⁶ *People ex rel. Ring v. Board of Education*, *supra* note 18, at 351, 92 N.E. at 256.

²⁷ *State ex rel. Weiss v. District Board of School District No. 8*, *supra* note 9, at 199, 44 N.W. at 975.

²⁸ *Everson v. Board of Education*, 330 U.S. 1, 227 (1947) (concurring opinion).

²⁹ *Everson v. Board of Education*, 330 U.S. 1 (1947).

Constitution. There are many valid arguments for the proponents of either position. Those cases which sustain Bible reading in the public schools emphasize the importance of religion in the American society.³⁰ However, the Supreme Court has condemned aid to religion, financially, or by religious instruction in public schools. Thus, those advocating Bible reading will necessarily be required to show that they are not seeking to set up a state established religion in violation of the First Amendment. The result may also depend on the meaning the Supreme Court attaches to the term "sectarian," because sectarian instruction constitutes a preference of one religion over another which violates the Constitution.

In view of the federal and state constitutional limitations, it would seem that minority groups whose religious beliefs differ from the teachings of the Bible should be protected to worship as they wish.³¹ The Bible is undoubtedly a great source of moral and spiritual guidance which would benefit any person who is exposed to it. The teaching of morals and religion are an important factor in our society, ". . . yet this must be accomplished by methods which keep the Church and State separate, which protect the natural and inalienable right of an individual to worship or not to worship God according to the dictates of his conscience, and under which no aid is given to any sect. . . ."³²

A. G. H.

³⁰ *Doremus v. Board of Education*, *supra* note 5.

³¹ *People ex rel. Ring v. Board of Education*, *supra* note 18, at 346, 92 N.E. at 254.

³² *Wilkerson v. Rome*, 152 Ga. 762, 784, 110 S.E. 895, 906 (1921).