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THE UNCONSTITUTIONALITY OF EXCLUSIVE GOVERNMENTAL SUPPORT OF ENTIRELY SECULARISTIC EDUCATION

DANIEL D. MCGARRY*

INTRODUCTION

Secularism, disregarding the existence of God and the supernatural, renders temporal welfare and progress the ultimate human concerns.¹

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F. BAUMER, RELIGION AND THE RISE OF SCEPTICISM 67 (1960); T. MOLNAR, CHRISTIAN HUMANISM 65 (1978). Humanism is a man-centered ideology whereby the measure of the relative worth of values, ideals, and concepts is entirely based upon secular considerations as seen from the individual's point of view. T. MOLNAR, supra, at 65. Humanism espouses "the glorification of man as a potentially absolute being, implicitly in no need of God." Id. at 125-26. The humanists, therefore, proclaim that religions which place God above man do a disservice to the human species. See B. MORRIS, WHY ARE YOU LOSING YOUR CHILDREN? 9 (1976). Since ethics, values and mores are considered autonomous and situational, they require no theological or ideological sanction. Id. The "good life, here and now," becomes the ultimate goal. Id. This is in direct contrast with traditional faiths that value and emphasize the afterlife, as prophesied in the beatitudes. See generally Matthew 5:3-12. "Secularism" or "humanism" involves a rejection of traditional religion, a worldwide desacralisation, and a transposition of thought and belief from the religious to the irreligious realm. C. CAMPBELL, TOWARD A SOCIOLOGY OF IRRELIGION 6 (1971) (citing Shiner, The Concept of Secularization in Empirical Research, in JOURNAL FOR THE SCIENTIFIC STUDY OF RELIGION 2 (1967)).
Under the name "humanism," or, more precisely, "secular humanism," this system of beliefs has become dominant in American public education since it functions to fill the vacuum produced by the court-mandated exclusion of traditional religious philosophies from American public schools. Consequently, by exclusively supporting public education the content of which is entirely secular, government in the United States inculcates secularism.

This Article proposes to investigate how secularism is inculcated through the American public education system and to demonstrate how exclusive governmental support of such a system is unconstitutional. The inescapable conclusion of this study is that in order to observe the Constitution and to respect natural human rights, the government not only must subsidize education that inculcates secularism, but also must aid education, the subject matter of which is secular as well as traditionally religious.

AMERICAN PUBLIC EDUCATION: THE PREEMINENCE AND INCULCATION OF SECULARISM

Education inculcates values in the young and impressionable. Teachers are mature, self-confident individuals, holding magisterial positions, whereas students are relatively immature, insecure and in the humble position of learners. As such, the individual student, usually pliable and receptive, is subjected to the infusion of ideas, constantly absorbing them from several sources: teachers, fellow students, curriculum and

Today, the ultimate political and educational aim of the humanist movement is to secularize society completely. Id. at 7.

* Court cases concerning the teaching of religious principles or the introduction of dogma in the public school system have "mandate[d] governmental neutrality between religion and religion, and between religion and nonreligion." Epperson v. Arkansas, 393 U.S. 97, 104 (1968); see Everson v. Board of Educ., 330 U.S. 1, 15-16 (1947). Naturally, the public's right to receive information from the government via schools must be balanced with the first amendment freedom to propagate religious beliefs. See Crowley v. Smithsonian Inst., 636 F.2d 738, 744 (D.C. Cir. 1980). In Crowley, the District of Columbia Circuit held that the defendant institution's evolution exhibit did not constitute an establishment of secular humanism as a religion. Id. at 741. Judge Oberdorfer took judicial notice of the fact that secular humanism advocates evolution, the right to divorce, birth control, and universal education, among other causes. Id. at 740 n.3. Secular humanism, and its attendant philosophies, are promoted in the United States by various organizations such as the American Humanist Association, the Ethical Society, the Fellowship of Religious Humanists, Planned Parenthood, the Sex Information and Education Council of the United States, and many members of the Unitarian Church.

* The definitions of education and inculcation are necessarily intertwined since the meaning of inculcate is "to impress by repeated statement or admonition; teach persistently and earnestly" and "to cause or influence (someone) to accept an idea or feeling." THE RANDOM HOUSE DICTIONARY 722 (1981) (emphasis added).
school-related activities. Some of these influences are positive and explicit, while others are negative and subtle.

Positive Inculcation

Many values are communicated positively in public schools. Among these are several moral virtues considered essential for the maintenance of an orderly, tranquil academic atmosphere. For example, students are taught self control, a sense of justice, temperance, sympathy, charity, industry and perseverance, and respect for and obedience to duly constituted authority. Certain virtues concerning citizenship also are imparted to students, including respect for democracy, patriotism, racial equality, and community spirit. To fulfill its essential purpose, a public school must impart these values as well as convey effectively specific course material. Dedicated teachers do not limit their instruction to these minimum essentials, but, also attempt to convey the ultimate principles that underlie values. Thus, a teacher may explain that freedom and equality, which are essential elements of a democratic state, ultimately depend upon spiritual worth, moral dignity, and the final destiny of every human being.¹

In addition to such instruction, many teachers endeavor to convey their own value systems⁵ and seek to “rectify” the existing values and life attitudes of their students. Frequently, they believe that the students’ perceptions, which were learned elsewhere, are old-fashioned and outmoded, and that they cause unnecessary inhibitions and complexes.⁶

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¹ See J. MARITAIN, MAN AND THE STATE 119-27 (1951). The noted philosopher, Jacques Maritain, states:

[I]t would be sheer illusion to think that the democratic charter could be efficiently taught if it were separated from the roots that give it consistence and vigor in the mind of each one. . . . [T]herefore [teachers must] explain and justify [the democratic charter] in the light of the philosophical or religious faith to which they cling and which quickens their belief.

Id. at 121. Similarly, Father Raymond Nogar, professor of philosophy, asserts that while humanism began as a response to the inadequacies of traditional religion, there still exist valid, basic doctrines in nonsecular beliefs, which retain their relevance to man’s life in the developmental world. Nogar, “Evolutionary Humanism and the Faith,” in IS GOD DEAD? 54-55 (1966).

⁵ Ed Doerr, an indefatigable opponent of public aid to church-related education, admits that the public schools, and teachers and courses therein, often inculcate moral and spiritual values hostile to those of students and parents. Doerr, Editorial, 30 CHURCH & STATE 5 (May 1977). He is forced to acknowledge grudgingly that “there is evidence that some teachers, courses, and schools stray from the religious neutrality required by the pluralistic nature of our society and the Constitution in the direction of the major faiths of the local communities.” Id.; see supra note 2.

⁶ One way in which the attitudes and concepts of secular humanism are inculcated in students is through the literature selected by the teacher. See B. MORRIS, supra note 1, at 40-44; B. MORRIS, THE RELIGION OF HUMANISM IN PUBLIC SCHOOLS 7 (1976) [hereinafter cited as
Convinced that reason rather than faith should be the supreme arbiter, many teachers attempt to liberate their students from the antiquated taboos with which they have been indoctrinated by their parents and religious institutions. More and more, public schoolteachers are encouraged to act as mental hygienists, psychiatric clinicians and social engineers, "rehabilitating" individuals and "rebuilding" society for the future. A report of the National Education Society of the United States has predicted that "[s]chools will become clinics whose purpose is to provide individualized psycho-social treatment for the students, and teachers must become psycho-therapists.")

Contemporary educational theory and literature often conceive of the teacher as an agent for revolutionary change in the attitudes, standards and moral views of students, and thus, eventually, those of the community at large. This change is toward more liberal and less inhibited concepts and norms. Some scholars describe instructors as "unafraid to

B. Morris, The Religion of Humanism]; cf. L. Berman, New Priorities in the Curriculum 76 (1968) (personal relationships may be fostered by careful selection of literature, particularly in the sex education area). Much of this literature concerns deviations from traditional social norms regarding morality and sexuality, and directly or indirectly inculcates a "more liberal" and "less conventional" attitude toward possible life choices. See Schwartz, Adolescent Literature: Humanism is Alive and Thriving in the Secondary School, 36 The Humanist 37-38 (Jan.-Feb. 1976). The indoctrination of students in public schools also includes the implantation of specific political views. See Lightfoot, Politics and Reasoning: Through the Eyes of Teachers and Children, 43 Harv. Ed. Rev. 197, 197-98 (1973) ("[t]he teacher's belief systems and value orientations penetrate the classroom environment and are communicated to children"); see also Jennings, Langton & Niemi, Effects of the High School Civics Curriculum, in The Political Character of Adolescence 187-90 (1974) (high school civics courses emphasize the study of various political institutions); Ehman, Jennings & Niemi, Social Studies Teachers and Their Pupils, in The Political Character of Adolescence 211-14 (1974) (teachers are disseminators of political values and skills and they impart cultural norms with political overtones).

Abrigg, In the Name of Education, in 10 Phyllis Schlafly Report 3 (Dec. 1976); see B. Morris, The Religion of Humanism, supra note 6, at 4-10. Barbara Morris, a nationally recognized authority on the philosophy of modern education, postulates that teachers consciously and purposely encourage students to discard the values that they have brought to school with them in order that the school may more easily fulfill its role to "change, create and clarify" their pupils' values. B. Morris, The Religion of Humanism, supra note 6, at 4 (footnote omitted). The goal of secular education is to eradicate old-fashioned mores fostered by puritanical orthodox religions. See id. at 5. She concludes that due to the liberal, autonomous and irreligious education, unmanageable and disrespectful school-age people result. Id. at 6-7. Furthermore, in light of their multi-faceted roles, ranging from educators to therapists, it appears inconsistent that teachers ignore the basic and fundamental influence that religion has played in defining morality, especially since such instruction can occur in an objective, nonsectarian, informational, and historical context. See generally C. Cox, The Fourth R—What Can Be Taught About Religion in the Public Schools 127-55 (1969); V. Thayer, Religion in Public Education 109-22 (1947).

George D. Spindler states that the core values in American culture are changing, and that teachers should be receptive to the new "emergent values," which are supplanting the
challenge old, time-honored ideas.” Similarly, William C. Bower perceives the school as “a laboratory into which the experiences in the school itself, in the family and in the community are brought for analysis, appraisal, and redirection in light of the moral and spiritual insights of mankind.”

Accordingly, Professor Jules Henry believes that “[t]he elementary school classroom does . . . not merely sustain attitudes which have been created in the home, but reinforces some, deemphasizes others, and makes its own contribution.”

Such positive inculcation has been enhanced recently by an emphasis upon “values clarification” and “values development.” In the context of these types of courses and a wide variety of others, such as social studies,

“traditional values” in our country. Spindler, Education in a Transforming American Culture, 25 Harv. Ed. Rev. 145, 148-49 (1955). Spindler categorizes as traditional values puritan morality, work-success ethic, individualism, achievement orientation and future-time orientation. Id. Emergent values, on the other hand, include sociability, relativistic moral attitudes, consideration for others, hedonistic, present-time orientation and conformity to the group. Id.

Sex educators are among those who seek sweeping changes in American values. See B. Morris, The Religion of Humanism, supra note 6, at 5. Morris states that sex educators are moving away from teaching sex from a moral point of view and are instead teaching sex from a hedonistic, pleasure-oriented perspective. Id. She asserts that such an emphasis has contributed to “a scorn [of] Christian standards of morality, [and the proliferation of] open homosexuality, rampant VD and untold numbers of abortions.” Id.; see C. Brauner & H. Burns, Problems in Education and Philosophy 73-77 (1965). For an in-depth exploration of the power struggle between parents and teachers regarding the proper subject matter in public schools, see M. Fantini, What’s Best for the Children? 159-201 (1974) (advocating co-operation between parents and educators in the implementation of educational priorities).

* C. Beck, N. Bernier, J. MacDonald, T. Walton & J. Willers, Education for Relevancy 240 (1968). Barbara Morris believes that the zeal to confront traditional values leads to conflict between schools and parents. B. Morris, The Religion of Humanism, supra note 6, at 3. She states that “[m]any young teachers, thoroughly indoctrinated into Humanism have a missionary zeal that would put so-called Christians to shame.” Id.; see supra note 8.

10 W. Bower, Moral and Spiritual Values in Education 82 (1952). Dewey states, “The business of the educator—whether parent or teacher—is to see to it that the greatest possible number of ideas . . . are acquired in such a vital way that they become moving ideas. . . .” J. Dewey, Moral Principles in Education 2 (1959) (emphasis in original). School activities must be judged by their moral significance in forming and correcting habits tending to contribute to society’s well-being. Id. at 13-15.

11 Henry, Attitude Organization in Elementary School Classrooms, 27 Am. J. Orthopsychiatry 117, 117 (1957); see E. Leacock, Teaching and Learning in City Schools, at xi (1969). Eleanor Burke Leacock, a professor of anthropology, comments that the school is an instrument used to accomplish the dual goals of shaping the student and fostering aspects of his development. E. Leacock, supra, at xi. Thus, a new role for teachers evolves. Id. Furthermore, practically everything that the teacher does, whether explicit or implicit, either will reinforce or reject the perceived value of a particular behavior. Id. at 59-61. Consequently, the depth and variety in the planned classroom curriculum will naturally expose the student to widely divergent sources of input. See id. at 33-34.
history, current events, literature, health, hygiene, home economics and family living, typically a question is posed, diverse alternatives are suggested and considered, and the problem is freely discussed.\(^8\) Arguments and factors of various types—with the exception of religious considerations—are raised and analyzed, and both individual and group solutions are arrived at on a wholly secular basis. Values discussions also may occur in other contexts. In addition to general, open-ended discussion of social and individual problems, there are debates and panels, future-planning games,\(^9\) and “survival” problems.\(^10\) Courses in current events and comparative cultures are also forums for values discussions. Among the issues discussed by students are the pro-abortion and anti-pornography decisions of the courts, the dilemmas of doctors and relatives concerning the survival of those unconscious or suffering with no hope of recovery, the rights of homosexuals, and the proper legal status of drugs such as marijuana. These discussions also may focus upon such issues as “Constructing a Life Philosophy,” “The Sexual Revolution,” “Problems of Death,” and “American Values.” By surrounding the student with purely secular subject matter, the public school system takes affirmative steps to create a wholly secular atmosphere and ultimately to indoctrinate students with secular principles. Indeed, since various moral philosophies are submitted for free and open discussion, and alternatives are given equal status when presented, the impression conveyed is that there is no definite, permanent, fundamental moral law. All alternatives are put on an equal plane, as though one might choose any of them without error or blame, and as if they simply were a matter of free individual choice.\(^11\) The whole process involves an assumption that individual human reason can establish and disestablish morality, and invites an independent establishment of lifeguiding principles and values. It also tends to substitute the value

\(^8\) B. Morris, The Religion of Humanism, supra note 6, at 3.

\(^9\) Id. at 8-9. Future-planning games are conducted on a wide spectrum of topics such as “Tommorrow's Society,” “Changing Family Sexual Roles and Concepts,” and “The Changing Role of Religion.” An emphasis on liberalism is inherent in these scenarios.

\(^10\) Id. at 9-10. Survival problems involve questions whether certain persons should be “exterminated” when the survival of all in a particular crisis is improbable. Id. at 9. An example of such a situation is the dilemma faced during a potential nuclear bombing when there exists only limited space and rations in a shelter. Id. Morris maintains that exercises in survival problems coupled with the humanist belief in the right to abortion, suicide, and euthanasia, contribute to a utilitarian view of life which leads to a lessening of respect for the worth of others' rights to exist. Id.

\(^11\) John S. Stewart claims that values education is deceptively and dangerously superficial. Stewart, Clarifying Values Clarification: A Critique, 56 PHI DELTA KAPPAN 684, 684-87 (1975); see Lockwood, A Critical View of Values Clarification, 77 TEACHERS COLLEGE RECORD 35 (Sept. 1975). Lockwood makes the same observation when he states that values clarification holds all values to be equally valid. As a result, no one opinion is better than any other, and therefore any activity can be justified. Lockwood, supra, at 46-47.
judgments of the majority of students or those of the teacher for those of parents and traditional religion.

**Negative Inculcation**

Perhaps more pervasive and influential than affirmative impartation of secularist values is negative inculcation of such values. Although the aforementioned general discussions may have no predetermined or teacher-dictated solutions, they portray certain moral systems as relevant, thus implicitly suggesting that others are not. The views and principles of traditional religion are excluded rigorously from discussions in our public schools, while those of the secular "isms" that challenge and negate traditional religion and religion-based morality are given full play and respectful consideration. It is by this exclusion of traditional religious principles and morals from consideration that the public-education process in effect denies the existence of God and the validity of traditional religion. If a parent were to avoid all reference to religion and religion-based morality in rearing his children, and were to omit any reference to religious considerations in discussing fundamental questions of human life with them, a reasonable conclusion would be that, implicitly, the existence or at least the validity of God and religion was being denied. The exclusively secular public school system accomplishes the very same result—it endorses the assumption that traditional religious values are irrelevant, unrealistic and illusory, implanting in students habits of secularistic thought and decisionmaking.

Secularism or secular humanism is essentially negative, rather than positive. It is an absence rather than a presence, a negation rather than an affirmation. See H. Cox, *The Secular City* 18 (1966). Secularism is satisfied with the omission of any reference to anything beyond the natural world, and achieves its purpose when supernatural concerns simply are excluded from consideration, as is the case of American public education. See *American Council on Education, Committee on Religion and Education, The Relation of Religion to Public Education* 4 (N. Brown ed. 1958) [hereinafter cited as *Relation of Religion to Public Education*] (it is the essence of secularism to render traditional religion innocuous by isolating it from practical affairs); *American Council on Education, Committee on Religion and Education, The Study of Religion in the Public Schools* 7-8, 13-14 (N. Brown ed. 1958) [hereinafter cited as *Study of Religion in the Public Schools*].

Professor Robert J. Henle, S.J., maintains, however, that what is negative secularism in government becomes positive secularism when it is applied to publicly supported education. Henle, *Dilemmas of the Prayer Decision*, 13 Social Order 32, 46 (Mar. 1963). Father Henle observes that "education, reduced by negation and exclusion to secularism, must become, in fact, positively secular." He explains that "as soon as government enters those areas of concrete activity wherein religion is an important immanent factor, the effort to maintain the negative secularism of government becomes an effort to secularize society positively. . . ." *Id.* at 46-47.
Secularism as the Truly Preeminent Force in American Public Education

Many supporters of public education lament the absence of religious instruction in the public schools. Virgil Henry, after describing the several aspects of life to which children are introduced and adapted in public schools, notes: "For religion, however, the school has a blind spot. . . . The school does not know that there is such a thing as religion in American society." The ultimate result of the exclusion of religion from education was predicted in the latter part of the nineteenth century by the renowned Protestant theologian, Archibald Alexander Hodge. He stated that "[t]he atheistic doctrine is gaining currency, even among professed Christians and even among some bewildered Christian ministers, that an education provided by the common government for the children of diverse religious parties should be entirely emptied of all religious character." Hodge observed accurately that an exclusion of religion from education would result finally in the extirpation of religion from American society and the triumph of atheism.

Sixty years after the publication of Hodge's prophesy, the American Council on Education (the Council) attested to its accuracy. Criticizing the exclusion of religion from public education, the Council declared:

As time passes, the inconsistency of excluding the study of religion becomes more, rather than less, marked. The school itself is emphasizing a division, a split, in the educative process which its own philosophy increasingly repudiates. To avoid this contradiction, one must either accept the patent inference that religious education is relatively unimportant, and a marginal interest, or assume that religion is a matter so remote from life that it admits of no integration with the general educational program.

Eleven years later, the Council issued another report, reiterating and fur-

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17 V. HENRY, THE PLACE OF RELIGION IN PUBLIC SCHOOLS 10 (1950); see C. COX, supra note 7, at 1-12.
18 A. HODGE, POPULAR LECTURES ON THEOLOGICAL THEMES 280 (1887).
19 Professor Hodge noted that the universe must be conceived of either in theistic or atheistic terms, and that atheism taught in schools cannot be counteracted by theism taught in religious institutions. Id. at 281-83. Professor Hodge perceived the natural result of public education that exclusively inculcates secularism as being anti-Christian and anti-social nihilism. Id. at 283-84. He postulated that theories similar to humanism, such as atheism, dualism, polytheism, deism, idealism, materialism, and pantheism, all stem from an attempt to deny the existence of God as the one omnipotent, omnipresent Being. See A. HODGE, OUTLINES OF THEOLOGY 46-52 (1972).
20 RELATION OF RELIGION TO PUBLIC EDUCATION, supra note 16, at 10. The American Council on Education (the Council) notes that contact with religious life is less frequent due to secularism. The Council attributes religious ignorance to this fact. Id. at 29. It further indicates that religious leaders realize that their message is being stifled by the organized secular forces in society. Id. at 45.
ther developing the points made in its initial study. The Council declared: “Our primary concern is to oppose the artificial separation of the sacred and the secular—the setting apart of religion from the common life.” As an antidote, the study quoted the suggestion of the National Council of Churches in the United States, which stated that “[i]n some constitutional way, provision should be made for the inculcation of the principles of religion, whether within or outside the precincts of the school, but always within the regular schedule of a pupil’s working day.”  

In further testimony to the secularizing result of excluding traditional religion from education, Episcopal Bishop James A. Pike asserts that the “exclusively secular” nature of American public education actually is antireligious rather than neutral in its impact. In agreement is distinguished Law Professor Wilber G. Katz, who observes that “rigorous exclusion of the subject of religion from a program of general education would not be neutral; such exclusion would teach by implication the unimportance of religion.” Katz further declares:

To teach moral values without teaching that many believe these values to have religious roots is to predispose students toward secular humanism. This is a serious problem, for recent studies of public education have reported a more or less deliberate avoidance of religious subject matter, even when it is clearly intrinsic to the discipline concerned.

There can be no doubt that our public schools, in their present form, inculcate secularism, by excluding God and traditional religion and morality from evaluative estimates and decisions. Unfortunately, this influence ordinarily cannot be counteracted effectively by family or religion.

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31 Study of Religion in the Public Schools, supra note 16, at 8.
32 Id. at 16.
33 See Jones, Church-State Relations, in Religion and Contemporary Society 156, 188 (H. Stahmer ed. 1963). By recognizing secular humanism as a form of religion, albeit irreligious, an argument may be presented that the secular content of American public education should be counterbalanced by objective instruction in basic Judeo-Christian rationales. For a thought-provoking discussion on the implementation of such a curriculum, see C. Cox, supra note 7, at 127-55; J. Dewey, supra note 10, at 19-28; V. Thayer, supra note 7, at 76-100. A particularly practical proposal would introduce religious mores from a historical, cultural, and textbook approach. C. Cox, supra note 7, at 142-55.
34 W. Katz, Religion and the American Constitutions 40 (1964). Katz contends that objective instruction concerning the religious underpinnings of our history should occur at various age levels so that students will learn the moral habits inherent to our democratic society. Id.
35 Id. at 50. Christopher Dawson believes that wholly secular education has led to an unconscionableness of spiritual values in the Western world. C. Dawson, The Crisis of Western Education 203 (1961). He views this secular civilization as culturally inferior, since all other civilizations have incorporated spiritual values into their educational systems. Id.
As Charles Francis Potter observes:

Education is thus a most powerful ally of humanism, and every public school is a school of humanism. What can the theistic Sunday school, meeting for an hour once a week, and teaching only a fraction of the children, do to stem the tide of a five-day program of humanistic teaching?\footnote{C. POTTER, HUMANISM: A NEW RELIGION 128 (1930). Several prominent educators have observed the dominance of secularism in the public school system. See, e.g., E. TOWNS, HAVE THE PUBLIC SCHOOLS HAD IT? 101-04 (1974) ("[t]he public schools have a singular adherence to secular humanism . . . without reference to or need of God. . . . The public school is no longer neutral, it is anti-Christian"); Drinan, CAN PUBLIC FUNDS BE CONSTITUTIONALLY GRANTED TO PRIVATE SCHOOLS? 13 SOCIAL ORDER 18, 22 (March 1963); Illich, COMMENCEMENT OF THE UNIVERSITY OF PUERTO RICO, 13 N.Y. REV. OF BOOKS 12 (Oct. 9, 1969) ("[t]he school has become the established Church of secular times"); Klewin, MAKE WAY FOR THE CHRISTIAN SCHOOL, 70 LIBERTY 18 (1975) (public education is "trying to supplant rather than supplement home education [and is] affirmatively opposing religion"); National Catholic Welfare Conference, THE CONSTITUTIONALITY OF THE INCLUSION OF CHURCH-RELATED SCHOOLS IN FEDERAL AID TO EDUCATION, 50 GEO. L.J. 397, 438-41 (1961) (exclusive attention to secular values competes and detracts from the inculcation of religious values in students). The Catholic Welfare Conference concludes that the United States Government cannot constitutionally impose a single educational system upon the people, id. at 437, but that it must balance the competing goals of expanding freedom, preserving both parents' and children's rights, and promoting the nation's welfare, when implementing policies affecting education, id. at 442. \footnote{The Supreme Court has condemned government support of nonpublic education on the premise that such promotion is violative of the first amendment's establishment and free exercise clauses. See infra note 46 and accompanying text. In order to determine the constitutionality of a statute under the establishment clause, the Court has set out a three-part test. In order to be held constitutional the statute must have a secular purpose, its primary effect "must be one that neither advances nor inhibits religion," and the statute must not foster "excessive government entanglement with religion." Stone v. Graham, 449 U.S. 39, 40 (1980) (quoting Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)). In Stone, a Kentucky statute required that a copy of the Ten Commandments be purchased with private contributions and posted in public classrooms. 449 U.S. at 39. Applying the three-part test, the Court held that the statute failed to meet the first part because the posting served no educational purpose, but merely induced religion. Id. at 42-43.}}

EXCLUSIVE GOVERNMENTAL SUPPORT OF SECULARISTIC EDUCATION AND THE ESTABLISHMENT CLAUSE

The United States Supreme Court has declared repeatedly that any government support or sponsorship of religion is contrary to the establishment clause of the first amendment. On this basis, the Court has banned all governmental subsidization of private education, since it primarily would benefit church-related schools that regularly include religious instruction along with the teaching of secular subjects.\footnote{Some argue, however, that, if this be the case, then exclusive governmental support of public schools, which exclusively inculcate secular concepts, secular values, and secular habits of thought and choice, also is necessary to accommodate religious students. Id. at 442.} The United States Supreme Court has condemned government support of nonpublic education on the premise that such promotion is violative of the first amendment's establishment and free exercise clauses. See infra note 46 and accompanying text. In order to determine the constitutionality of a statute under the establishment clause, the Court has set out a three-part test. In order to be held constitutional the statute must have a secular purpose, its primary effect "must be one that neither advances nor inhibits religion," and the statute must not foster "excessive government entanglement with religion." Stone v. Graham, 449 U.S. 39, 40 (1980) (quoting Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)). In Stone, a Kentucky statute required that a copy of the Ten Commandments be purchased with private contributions and posted in public classrooms. 449 U.S. at 39. Applying the three-part test, the Court held that the statute failed to meet the first part because the posting served no educational purpose, but merely induced religion. Id. at 42-43.
unconstitutional. 29

Secularism as “Religion” or “Irreligion”

Both humanists and critics of present-day government educational policies observe that secularism or secular humanism is a “religion.” The first Humanist Manifesto explicitly defined secular humanism as a religion, 30 and early founders and leaders of the movement, including several humanist authors, such as Sir Julian Huxley and Professor John Dewey, agreed emphatically with this view. 31 Notwithstanding that many modern humanists prefer to call humanism a “philosophy of life” or simply a “philosophy,” 32 Corliss Lamont, humanism’s leading contemporary expositor, admits that humanism may be termed a religion as well as a philosophy. 33 Leo Pfeffer, an inveterate opponent of any share of educational tax funds for church-related education, nonetheless concedes that nontheistic beliefs, such as secular humanism, may be religious: “I shall regard humanism as a religion along with the three major faiths: Protestantism, Catholicism, and Judaism. This, I submit, is not an unreasonable inclusion. Ethical Culture is exclusively humanist but it is generally considered a religion.” 34 Moreover, Theodore R. Sizer, affording religion a very broad

29 See infra notes 46-55 and accompanying text; cf. Epperson v. Arkansas, 393 U.S. 97, 103-04 (1968) (“[t]he First Amendment mandates neutrality ... between religion and nonreligion”); Torcaso v. Watkins, 367 U.S. 488, 495 (1961) (state cannot “pass laws or impose requirements which aid all religions as against non-believers, and neither can it aid those religions based on a belief in the existence of God as against those religions founded on different beliefs”).

30 HUMANIST MANIFESTO I & II (1976).

31 See J. DEWEY, A COMMON FAITH 8-28 (1934); J. HUXLEY, RELIGION WITHOUT REVELATION 17-24 (1957). Julian Huxley, a twentieth-century philosopher and scientist, advocates humanism as a religion. J. HUXLEY, supra, at 20. He describes religion as “a way of life.” Id. Huxley contends that the highest form of religion exists when there is an absence of a belief in a supernatural god and a divine revelation. Id. at 1. Huxley views the primary purpose of religion as the development and fulfillment of man as the controller of his own destiny. Id. at 208.

Dewey, a philosophical predecessor of Huxley, notes that religions are divided into two groups: those which are premised upon faith in a supernatural being and those which completely discredit traditional religion and the supernatural. J. DEWEY, supra, at 1-2. Dewey contends that belief in a god impedes one’s ability to be religious and that being truly religious is characterized by experience and a general attitude. Id. at 23.


33 C. LAMONT, THE PHILOSOPHY OF HUMANISM 23-25, 53-56 (6th ed. 1982). Lamont indicates that features of humanism, including a oneness with nature and an integrated and inclusive way of life, are common to both humanism and religion. Id. at 177-90.

34 L. PFEFFER, CREEDS IN COMPETITION 5 (1958). Pfeffer examines humanism along with the theistic faiths and discusses their effects on life, values, and community issues. See generally id. He offers proof that humanism is a religion, claiming that it is allied in the “cultural
definition, observes: "One can construe 'religion' as a person's Weltanschauung, the way he sees reality and his place in it." The American Council on Education also accepts a broad definition of religion, stating that "[i]n simple terms religion implies an ultimate reality to which supreme allegiance must be given." Undoubtedly, whatever secular humanists prefer to call their belief and way of life, it constitutes a religion as the term is regarded by contemporary, competent authorities.

Furthermore, secular humanism falls under the rubric of religion as the term has been construed judicially. The Supreme Court has established that beliefs, principles, or values that hold a place in a person's mind and life, similar to faith in God and Divine revelation for traditional believers, are religious, and constitute a religion for purposes of the first market" with the three major religions: Protestantism, Catholicism, and Judaism. Id. Today's humanism is derived from 18th-century deism which often is termed a religion. Id. Additionally, Unitarianism and Universalism, both primarily humanist, are considered religions, while Ethical Culture is listed as a religion in the Yearbook of American Churches. Id.
amendment. To constitute a religion, according to this definition, one’s belief need not include faith in a Supreme Being or even in the supernatural.

Observers have noted that for many Americans, public education has become the equivalent of a national religion, and public schools have become a substitute for churches. Ward G. Reeder observes:

America’s faith in education has been called by a European visitor the “national religion of America.” This faith appeared almost simultaneously with the first settlements, . . . and it has grown more and more firm as the years have rolled by. . . . It has been buttressed by two beliefs: (1) that the welfare, the progress, and the perpetuity of society are determined largely by

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39 See Thomas v. Review Bd. of the Ind. Employment Sec. Div., 450 U.S. 707, 715 (1981); United States v. Seeger, 380 U.S. 163, 176 (1965); Tosciano, supra note 37, at 182. In Thomas, an employee in a roll foundry was transferred to a department that produced turrets for military tanks. 450 U.S. at 710. He quit because the production of armaments was contrary to his beliefs as a Jehovah’s Witness. Id. In determining the definition of “religious beliefs,” the Court noted that it should not be a question of the Court’s perception of the religion. Id. at 714. The Court noted further that “[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” Id. In Seeger, the Court construed the term “religious training and belief,” which was part of a statute exempting conscientious objectors from service in the armed forces. 380 U.S. at 173. The Court stated that this definition would be satisfied by “[a] sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the god of those admittedly qualifying.” Id. at 176.

40 Abington School Dist. v. Schempp, 374 U.S. 203, 225 (1963); Torcaso v. Watkins, 367 U.S. 488, 495 n.11 (1961); Everson v. Board of Educ., 330 U.S. 1, 16 (1946). Since its decision in Everson, the Supreme Court has been presented with several opportunities to define religion. While it may be inferred from many of the Court’s decisions that secular humanism has been accepted as a religion in a legal sense, the Court also has specifically designated secular humanism as among “religions” which do not teach the existence of God. Torcaso v. Watkins, 367 U.S. at 495 n.11. In Abington, Bible reading and recitation of the Lord’s Prayer were banned in public schools. 374 U.S. at 223-26. The Court spoke of “a religion of secularism,” noting that “the State may not establish a ‘religion of secularism’ in the sense of affirmatively opposing or showing hostility to religion, thus ‘preferring those who believe in no religion over those who do believe.’” Id. at 225 (quoting Zorach v. Clauson, 343 U.S. 306, 314 (1952)); see also International Soc’y for Krishna Consciousness v. Barber, 650 F.2d 430, 440 (2d Cir. 1981) (religion exists when “ultimate concern” of devotees is “adherence to sect’s theological doctrines” and “comprehensive set of religious beliefs”); Malnak v. Yogi, 440 F. Supp. 1284, 1313-14 (D.N.J. 1977) (belief in a “god” is not a prerequisite to finding that a belief is religious), aff’d, 592 F.2d 197 (3d Cir. 1979).

41 See Dewey, Education as a Religion, in THE NEW REPUBLIC, Sept. 13, 1922, at 63-65. One commentator, comparing present-day public education to the established church of the Middle Ages in Europe, argued that “the public school is the established church of today and a substitute institution for the medieval church and dedicated to the same monolithic conception of society.” R. Rushdoony, THE MESSIANIC CHARACTER OF AMERICAN EDUCATION 314 (1972); see AMERICAN COUNCIL ON EDUCATION STUDIES, COMMITTEE ON RELIGION & EDUCATION, THE RELATION OF RELIGION TO PUBLIC EDUCATION 46 (1947); J. Brubacher, MODERN PHILOSOPHIES OF EDUCATION 321 (1939).
the education of the people, and (2) that the individual can best realize his
potentialities in happiness and accomplishment through education.\textsuperscript{28}

Moreover, it has been recognized that the principles cultivated in our
public schools are the same as those of Unitarianism.\textsuperscript{45} Originally, the
Unitarians insisted on the oneness of God, rejecting the doctrine of the
Trinity and with it the Divinity of Christ. Many American Unitarians
soon became more rationalistic and agnostic, denying the existence of a
personal God in favor of the concept of a general power or principle.
Their views thus became very close to those of secular humanism.\textsuperscript{44}

Religion, in the broad sense of ultimate concern and purpose, is an
essential ingredient of any culture or civilization, and, therefore, should
be a fundamental element of that culture's educational program. In trans-
mitting a culture or civilization, schools are transmitting either a theistic
culture—a religious culture, one "with God"—or a secularistic cul-
ture—an irreligious or atheistic culture, one "without God." In this sense,
our public schools, as well as our private schools, are inculcating
religion.\textsuperscript{46}

\textsuperscript{42} W. Reeder, \textit{A First Course in Education} 9 (1950). Professor Reeder noted early evi-
dence of public education's synonymity with national religion. \textit{Id.} The early settlers imme-
diately established schools. \textit{Id.} at 10. There also was a plethora of early legislation com-
manding compulsory school attendance, mandating the establishment of a sufficient number
of schools, and requiring the improvement of certain school standards. \textit{Id.} at 11-19.

\textsuperscript{44} According to Rousas J. Rushdoony:

The Messianic Utopianism of early [public school] educators often took extravagant
form. . . . [I]n the early years the educators were far surpassed in their extravagance
by the Unitarian clergy. Although other churches contributed to the movements, Uni-
tarianism particularly aided the cause of messianic education.

R. Rushdoony, \textit{supra} note 41, at 333.

\textsuperscript{44} See generally G. Cooke, \textit{Unitarianism in America} 198-99 (1902); D. Howe, \textit{The Unitari-
an Conscience} 305 (1970); E. Wilbur, \textit{A History of Unitarianism} 462 (1945); C. Wright,
\textit{The Beginnings of Unitarianism in America} 253 (1955).

torial, advocating the denial of federal aid to education, states:

[W]e misunderstand the scheme if we think of the state as neutral. It is neutral in
that it must prefer none of our many religious and cultural strains. But it itself is
committed to exerting a secular, unifying, equalitarian force. While required impar-
tially to accept the presence in society of sectarian influences, that state is neverthe-
less itself a party in the contest. To accept the principle of general support of public
and private schools equally out of public funds is to abandon the mission of the state,
since it removes the single most effective inducement available to the state to draw
people to its system of schools and away from centrifugal systems. To this extent, it is
the mission of the state to discourage parochial schools, just as it is the mission of the
Catholic Church, for example, to discourage Catholic attendance in public schools.

\textit{Id.}
The Unconstitutional Establishment of a Religion or Irreligion of Secularism

Special governmental subsidization of any form of religion or irreligion in education has been banned repeatedly under the Supreme Court's restrictive interpretation of the establishment clause of the first amendment. If it is suggested, therefore, that if secularism or secular humanism is a form of religion or even if it is simply irreligion or opposition to traditional religion, and if the secularism is inculcated exclusively in our publicly subsidized schools, then such subsidization amounts to an unconstitutional establishment of religion. Such an exclusive subsidy constitutes the preferential and monopolistic sponsorship and promotion of the concepts, considerations, and values of one religion—secularism or secular humanism—to the neglect, disfavour and disadvantage of other religions.

The constitutional prohibition against laws aiding the establishment of a religion applies, according to the Supreme Court, to secularist religions or life-outlooks which do not accept the existence of God, as well as to religions that do. Additionally, it applies to "irreligion" or denial of religion ("religion's militant opposite") as well as to "religion" or affirmation of religion. The key Supreme Court decisions and opinions establish--

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*See, e.g., Stone v. Graham, 449 U.S. 39, 42-43 (1980) (statute requiring that the Ten Commandments be posted in public school classrooms is violative of the establishment clause); Wolman v. Walter, 433 U.S. 229, 255 (1977) (funding for textbook loan program and diagnostic and therapeutic services upheld, but funding for instructional materials, equipment and field trip transportation declared unconstitutional); Meek v. Pittenger, 421 U.S. 349, 364-65, 372-73 (1975) (constitutionality of Pennsylvania's textbook loan program upheld, but instructional materials and equipment loan program held unconstitutional); Levitt v. Committee for Pub. Educ. & Religious Liberty, 413 U.S. 472, 481-82 (1973) (statute authorizing reimbursement of expenses incurred in connection with administration and correcting of examinations declared unconstitutional as impermissible aid to religion); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 779-80, 794 (1973) (funds for maintenance and repair of nonpublic schools, tuition grants and tax credits to parents with children in nonpublic schools declared unconstitutional); Lemon v. Kurtzman, 403 U.S. 602, 625 (1971) (state statute providing aid to nonpublic schools, including salary supplements for teachers, and money for textbooks and instructional materials held unconstitutional); School Dist. of Abington v. Schempp, 374 U.S. 203, 223 (1963) (state law providing for Bible readings and school board ruling providing for recitation of prayer held unconstitutional as violative of the first amendment); Engel v. Vitale, 370 U.S. 421, 430 (1962) (classroom prayer prescribed by state statute held unconstitutional as violative of first amendment even though pupils were able to remain silent or be excused from the room); Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203, 209-10 (1948) (use of public school system to enable sectarian groups to give religious instruction to public school students violates first amendment); Treen v. Karen B., 553 F.2d 897, 902-03 (5th Cir. 1981) (statute authorizing voluntary student or teacher initiated prayer during school hours held unconstitutional), aff'd, 102 S. Ct. 1267 (1982); Public Funds for Pub. Schools v. Byrne, 590 F.2d 514, 520 (3d Cir.) (statute authorizing exemption for taxpayers whose dependent children attend private schools violates first amendment), aff'd, 442 U.S. 907 (1979).
ing this principle may be summarized briefly.

As explained by the Supreme Court in *Everson v. Board of Education*:

The "establishment of religion" clause of the First Amendment means at least this: 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. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.4

This prohibition was reiterated in *Torcaso v. Watkins*.49 In *Torcaso*, the Court declared: "Neither [a state nor the federal government] can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."50 Subsequently, the same restriction was restated summarily in *School District of Abington v. Schempp*.61 The *Schempp* Court stated that "[i]n the relationship between man and religion, the State is firmly committed to a position of neutrality."62 Finally, an elaboration on governmental neutrality with respect to religion, including irreligion, is con-

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47 330 U.S. 1 (1946). At issue in *Everson*, was a New Jersey statute authorizing district boards of education to promulgate regulations for transporting children and to reimburse transportation costs to parents of children attending public and private schools. Id. at 3. The statute was challenged by a taxpayer who claimed that such reimbursement to parents of Catholic schoolchildren violated the State and Federal Constitutions in two respects: the payments violated the due process clause, and they violated the first amendment. Id. at 3-5. The Court held that the payments did not violate due process since the funds were spent for a public purpose. Id. at 7. The statute did not violate the first amendment because the amendment does not prohibit the expenditure of tax-raised funds for transportation of private schoolchildren. Id. at 17.

48 Id. at 15-16.

49 367 U.S. 488 (1961). In *Torcaso*, an individual was appointed a notary public. Id. at 489. As a prerequisite to taking office, the individual, Torcaso, was required by the Maryland Constitution to take an oath declaring his belief in God. Id. He refused to do so and was denied a commission. Id. Torcaso brought suit contending that the requirement violated the first and fourteenth amendments. Id.

50 Id. at 495.

61 374 U.S. 203 (1963). In *Schempp*, two cases were consolidated for review. In the first case, parents of public schoolchildren challenged a Pennsylvania statute which provided:

> At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each schoolday. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.

Id. at 205. In the second case, a Maryland school board regulation providing for Bible reading and recitation of the Lord's Prayer was challenged as unconstitutional under the first amendment. Id. at 205, 211-12.

62 Id. at 226.
Secularistic Education

tained in Epperson v. Arkansas.\textsuperscript{83}

[The Government] may not be hostile to any religion or to the advocacy of non-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.\textsuperscript{84}

Notably, in Schempp, the Supreme Court explicitly included the “religion of secularism” or the belief of “those who believe in no religion” in the prohibition embraced by the establishment clause, stating that “[w]e agree of course that the state may not establish a ‘religion of secularism’ in the sense of affirmatively opposing or showing hostility to religion, thus ‘preferring those who believe in no religion over those who do believe.’ ”\textsuperscript{85}

Further Violations of the Constitution

In addition to violating the establishment clause of the first amendment, exclusive governmental support of public education that inculcates secularism violates other provisions of the Constitution, and runs counter to its fundamental purpose and spirit. It infringes upon the free exercise clause of the first amendment,\textsuperscript{86} it violates the equal protection clause of the fourteenth amendment,\textsuperscript{87} it deprives parents of their constitutional “right to control the education of their children,”\textsuperscript{88} and it negates the fundamental purpose and spirit of the Constitution—the securing of the utmost “liberty” for American citizens.\textsuperscript{89}

Denial of Free Exercise of Religion

Exclusive governmental financing of schools which inculcate secularism or secular humanism transgresses the free exercise right of those parents and children who are compelled by lack of alternative tax-supported schools to utilize secularist public schools.\textsuperscript{90} Students in purely secular

\textsuperscript{83} 393 U.S. 97 (1968). In Epperson, a public school biology teacher challenged the constitutionality of an Arkansas statute prohibiting the teaching of theories of evolution in public schools and universities. Id. at 98-100. The school administration adopted a book containing a chapter which set forth the theory that men evolved from other species of life. Id. at 99. The teacher sought a declaration that the statute was void, and injunctive relief to prevent the school system from dismissing her for violating the statute. Id. at 100.

\textsuperscript{84} Id. at 104. The Court held that the statute violated the first and fourteenth amendments because it interfered with the free exercise of religion. Id. at 109.

\textsuperscript{85} 374 U.S. at 225 (quoting Zorach v. Clauson, 343 U.S. 306, 314 (1952)).

\textsuperscript{86} See infra notes 60-64 and accompanying text.

\textsuperscript{87} See infra notes 65-67 and accompanying text.

\textsuperscript{88} See infra notes 68-73 and accompanying text.

\textsuperscript{89} See infra notes 74-78 and accompanying text.

\textsuperscript{90} See Arons, The Separation of School and State: Pierce Reconsidered, 46 Harv. Educ.
schools cannot avoid being imbued with the religion or irreligion of secularism or secular humanism. Thus, they may become accustomed to answering questions and solving problems independently of traditional religious considerations, which often transcend and differ from those of unaided human reason. As has been noted, examples of sensitive and important moral questions discussed in public school classes are those concerning ultimate personal ambitions and goals, pursuit of supreme happiness, marriage, family living, divorce, overpopulation and means of population control, physical and mental health, sexual attitudes and relations, birth control, abortion, taking of human life (as in capital punishment and euthanasia), and death. The result is that many parents and students are compelled by compulsory school attendance laws, together with economic limitations, to use schools which inculcate outlooks, concepts, views, and habits which may be contrary to their religious faith.

In addition to the violation of free exercise rights of parents who send their children to public schools, first amendment guarantees are also

Rsv. 76, 100-01 (1976). According to Arons, the present state school-financing system, whereby the state provides a "free" public education to all qualifying children, acts to inhibit the exercise of first amendment freedoms. Id. at 100. The Supreme Court has consistently held that government benefits may not be conditioned upon the sacrifice of first amendment rights. See Sherbert v. Verner, 374 U.S. 398, 405 (1963). The Sherbert Court held that "conditions upon public benefits cannot be sustained if they so operate . . . as to inhibit or deter the exercise of First Amendment freedoms." Id. According to Arons the current school-financing system conditions the provisions of "free" education upon the sacrifice by parents of their first amendment rights. Arons, supra, at 100. Arons states that "this is precisely the effect of a school system that requires a child to attend a school controlled by a majority of the public in order to receive a 'free' education. The public school will represent and attempt to inculcate values that a particular family may find abhorrent to its own basic beliefs and way of life." Id. Faced with such a system, the family must either reject its own beliefs to receive a state-subsidized education for their child, or forfeit the available public education to preserve their family values and beliefs. Id.

61 See Ohio v. Whisner, 47 Ohio St. 2d 181, 351 N.E.2d 750 (1976). In Whisner, a group of Amish parents were convicted of violating a state statute which required the parent or guardian of a child of compulsory school age to send that child to school. Id. at 183, 351 N.E.2d at 752. The defendants had kept their children out of a religious elementary school because of their objections to certain "minimum standards" promulgated by the State of Ohio relating to the operation of all schools within the state. Id. at 201, 351 N.E.2d at 756-57. It was contended that these "minimum standards" infringed upon, inter alia, the right of defendants and their children to free exercise of religion guaranteed by the first amendment of the United States Constitution. Id. at 198, 351 N.E.2d at 757. In reversing the defendants' convictions, the Supreme Court of Ohio specifically admitted that the conflicting philosophy, curriculum, and teaching required by the State Department of Education of Ohio would violate the free exercise right of the Amish if they were required in religious private schools. Id. at 209-10, 351 N.E.2d at 764; see City of Summer v. First Baptist Church, 97 Wash. 2d 1, 6, 639 P.2d 1358, 1362 (1982) (en banc) (court must balance government's interest in enforcing statute with appellant's right to free exercise of religion).
denied parents who send their children to private schools. Due to compulsory education laws on the one hand and general taxes on the other, parents who send their children to church-related schools because of religious convictions are forced to bear double educational expenses. First, they must pay for the education provided in public schools, which they cannot utilize because of their religious convictions, and second, for the unsubsidized education of their children in schools which includes religion along with secular subjects. They thus are compelled to pay extra for the free exercise of their religion, which includes its effective transmission to the next generation.

The United States Supreme Court in Sherbert v. Verner declared that it is unconstitutional for government to impose a direct or indirect penalty or burden upon a person for the exercise of a constitutional right, such as that of free exercise of religion, unless such a course is necessary in order to protect a substantial and compelling government interest. It is submitted that no such compelling governmental interest exists to justify the financial burdens imposed on parents who send their children to church-related schools.

Violation of the Equal Protection Clause of the Fourteenth Amendment

The exclusive financing of secularist education by government also violates the equal protection clause of the fourteenth amendment. The

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82 See Arons, supra note 60, at 103-04; see also Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925). In Pierce, the Supreme Court held that the state may not compel all children to attend public schools, 268 U.S. at 534-35, concluding that “[t]he child is not the mere creature of the State,” id. at 535. The Pierce Court further stated, however, that the state has the power “reasonably” to regulate all schools. Id. at 534. It has been argued that this power to regulate may result in a substantial burden on first amendment rights. Arons, supra note 60, at 103. Such a possibility could be eliminated by requiring a state that seeks to regulate private schooling to show “either that the regulation affects only the incidents of schooling . . . or that there is an overriding justification for the regulation.” Id.


84 Id. at 406. The appellant in Sherbert, a member of the Sabbatarian Church, was denied welfare benefits because she refused to accept employment which involved work on Saturday. Id. at 399. The Supreme Court held that to require her to work on Saturday would violate her freedom of religion, since Saturday is a holy day of rest and religious worship according to Sabbatarians. Id. at 410. The principle enunciated by the Court was that it is unconstitutional for government to impose a burden upon the exercise of a constitutional right unless it is necessary to protect a compelling state interest. Id. at 406; see Thomas v. Review Bd. of the Indiana Employment Sec. Div., 450 U.S. 707, 716-18 (1981); supra note 39 and accompanying text.

86 See Arons, supra note 60, at 101-03. According to Arons, the present school-financing system discriminates against the poor in violation of the equal protection clause of the fourteenth amendment. Id. at 101. Under the current system, the affluent may opt to send their children to the private school of their choice, while the economically disadvantaged are “effectively denied their right of choice because they can neither afford to exercise choice nor
present system creates a classification between parents and students who utilize completely secularist public schools, and those who utilize independent schools which include traditional religious instruction within their otherwise secular curriculum. Federal, state, and local governments provide public educational benefits to the former but deny them to the latter, and thereby "deny . . . the equal protection of the laws" to parents who choose to send their children to government-approved, church-related schools.

The classification of parents and children into those utilizing secularist public schools and those using church-related schools, and the withholding of benefits from the latter while according them to the former is unnecessary and unreasonable. Its sole defense is the dubious proposition that to provide similar benefits for those who use church-related schools would be tantamount to promoting religion and would thus offend the establishment clause of the first amendment. Nevertheless, it has been seen that public schools promote the religion or irreligion of secularism, and that the present educational policy amounts to an exclusive promotion of one system of religious or irreligious beliefs. That the government and the Supreme Court distinguish between public and church-related schools with insufficient justification is supported by the notion that most western democracies provide public subsidization for students in secularist as well as church-related schools, without the fear or the actual effect of establishing a particular form of religion or irreligion, and with no loss of democratic liberties.\(^6\)

refuse to attend school." \(^{Id.}\) Thus, Arons contends, governmental financing of public schools and denial of aid to sectarian schools prevents the poor from having a free choice, guaranteed by the first amendment, as to where their children should be educated. \(^{Id.}\) at 101-02. The result of this system of education is to deny citizens fundamental rights due to their economic status, an outcome repeatedly held unconstitutional by the Supreme Court. \(^{Id.}\) at 102; see, e.g., Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966) (failure to pay registration fee may not result in loss of voting privilege); Douglas v. California, 372 U.S. 353, 355 (1963) (denial of counsel on appeal to an indigent held unconstitutional); Griffin v. Illinois, 351 U.S. 12, 17 (1956) (state may not discriminate on basis of poverty in criminal trials by denying indigents free transcripts).

\(^{\text{x}}\) U.S. Const. amend. XIV, § 1.

\(^{67}\) There is a trend among Western Governments to support private as well as public schools. In England, free education is available at voluntary schools maintained by the local educational authority. Parents are allowed a portion of tuition fees if they desire to send their children to private institutions outside their school districts. Watt v. Kesteven County Council, [1955] 1 All E.R. 473, 478-79. Section 81 of England's Education Act of 1944 provides for funds to reimburse parents for fees, thereby enabling students to utilize any institutions available to them. Education Act, 1944, 7 & 8 Geo. 6, ch. 39, § 81, reprinted in 11 HALSBURY'S STATUTES OF ENGLAND 237-38 (A. Young 3d ed. 1969).

Norwegian common schools have given religious as well as secular training since their inception. L. ORFIELD, THE GROWTH OF SCANDINAVIAN LAW 193 (1953). Their folk schools, which were incorporated by theologians, have become a regular facet in the national educa-
The Abrogation of a Natural and Constitutional Parental Right

The present policy of exclusive governmental financing of secularist public education in the United States also effectively deprives many parents of their natural constitutional right to direct and control the education of their children, and severely penalizes other parents for their exercise of this constitutional right. Banned from obtaining general educational subsidization for the education of their children if they send them to church-related schools, many parents who are unable to meet the price of private education after paying taxes, are financially compelled to send their children to secularist public schools. Meanwhile, those parents who are able to pay the price of private church-related education after paying their taxes are penalized by the government for the exercise of their constitutional right to control and direct the education of their children. In short, the first class of parents are prevented from exercising a constitutional system. Id. In Denmark, the subsidy paid by the state for each pupil is the same whether he attends a private or public school. W. Fraser, Reforms and Restraints in Modern French Education 3-5 (1971); see T. Heubener, The Schools of West Germany 62-63, 128-32 (1962).

See Arons, supra note 60, at 99-104; cf. Meyer v. Nebraska, 262 U.S. 390, 400-01, 403 (1923) (statute prohibiting modern foreign language instruction for students who had not yet reached the eighth grade was unconstitutional on the ground that it infringed upon liberties guaranteed by the fourteenth amendment). The Meyer Court concluded that it was not only the parent's natural right and duty to control the education of their children but was, in fact, a right ensured by the Constitution. Id. at 400-01.

Similarly, an Oregon law requiring that all pupils between the ages of 8 and 16 years attend only public schools was deemed unconstitutional in Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925). Justice McReynolds, writing for the majority, stated that it was not the state, but the parents who should be the final arbiters in deciding where their children will be educated. Id. The Court continued its support of this position in Farrington v. Tokushige, 273 U.S. 284 (1927), when it refused to uphold state regulations limiting the number and age of students attending Japanese language schools. Id. at 298-99. In Farrington, the Court noted its wariness of state restrictions which "would deprive parents of fair opportunity to procure for their children instruction which they think important . . . ." Id. at 298.

Sixteen years after Farrington, in West Virginia v. Barnette, 319 U.S. 624 (1943), the Court declared unconstitutional an ordinance by a state board of education which made saluting the American flag mandatory in their schools. Id. at 642. This was objected to by Jehovah's Witnesses who were unable to comply because of their religious beliefs. Id. at 629. While praising an attempt to foster patriotism, the Court ruled that the cornerstone of American government was the free consent of the people, and that any enforced participation in ceremonial functions was contrary to both the Bill of Rights and the Constitution. Id. at 638-40.

Subsequently, in Wisconsin v. Yoder, 406 U.S. 205 (1972), a compulsory high school attendance law was held unconstitutional when it conflicted with Amish religious beliefs. Id. at 234. The Court again affirmed its position that a state has an obligation reasonably to regulate the education of children, but concluded that the state's interest "is not totally free from a balancing process when it impinges on fundamental rights and interests, such as
constitutional right, while the second class are punished for exercising this right.

The United States Supreme Court firmly has established the principle that the Constitution guarantees to parents the right to control and direct the education of their children. The Supreme Court recognizes and confirms this right as among the essential human liberties and democratic freedoms the Constitution was meant to protect and promote. In Pierce v. Society of Sisters, the Supreme Court stated:

"The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. 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."

This principle of the right of parents to control the education of their children has been endorsed by the nations of the world and enshrined among basic human rights in the “Universal Declaration of Human Rights” of the United Nations. Section 3 of Article 26 of this declaration, to which the United States is a signatory, states: “Parents have a prior right to choose the kind of education that shall be given to their children.”

The magnitude of the penalty imposed by government refusal to provide otherwise universal educational tax benefits to those parents and children who utilize church-related schools, instead of secularist public schools, becomes apparent upon recognition that the average cost of elementary and secondary education in the United States in 1981 was $2,002 per child. If a parent had four children in school this would amount to over $8,000 per year. For 12 years of elementary and secondary education the penalty would amount to over $24,000 for a parent with one child and over $96,000 for a parent with four children. The imposition of this heavy burden upon parental choice of an education that includes religion along with secular subjects is unconstitutional because it is not necessary in order to protect a compelling and substantial government interest.

those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children

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* 268 U.S. 510 (1925).
* 70 Id. at 535.
* 73 See Sherbert v. Verner, 374 U.S. 398, 403 (1963) (to justify any burden on an individual’s free exercise of religion, a state must show a compelling interest); NAACP v. Button, 371
Abrogation of the Concept of Liberty

At the foundation of the Constitution lies the principle that citizens are guaranteed the greatest measure of liberty consistent with the general public welfare. "Liberty" has always been America's national watchword. The Declaration of Independence, which formally announced the Founding Fathers' intentions of autonomy, begins:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights Governments are instituted among Men . . . .

"Life, Liberty and the pursuit of Happiness" are the nation's three cherished values and primary objectives. No qualifying restriction, other than that which may be demanded by reason, is placed upon liberty. It is a term reasonably construed to include freedom of choice in education and freedom to include religion in the curriculum without being deprived of a fair share of tax benefits. For many, life's fundamental pursuits include the quest for spiritual salvation and eternal beatitude.

Provision for the greatest possible individual freedom was a primary purpose of the Constitution as well as the Declaration of Independence. The preamble to the Constitution states:

We the People of the United States, in Order to form a more perfect Union, . . . and secure the Blessings of Liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

In accordance with this libertarian intention, the Constitution grants the federal government only those powers specifically enumerated, and reserves to the states all other powers.

Since the maximum individual liberty consistent with the general welfare is a prime purpose and basic value of the Constitution, the Supreme Court has gone to extreme lengths on many occasions to defend and uphold the rights and freedoms of individuals, even though such in-
individuals may have been guilty of crimes or flagrant violations of the moral standards of the community. In its decisions annulling any share of educational tax benefits for parents and children using church-related schools, however, the Court has taken a diametrically opposite stance. Certainly the freedom to utilize any form of state-approved schools to fulfill compulsory education laws, and to include religion along with secular subjects in education of the young without incurring penalties that amount to several thousands of dollars, should not summarily be excluded from the basic human liberties protected by the United States Constitution.

Whether secularism or secular humanism is a religion or irreligion, its exclusive fostering and sponsorship by government, through preferential financing of secularist education, is unconstitutional. The Supreme Court has declared that government cannot constitutionally foster or promote irreligion as opposed to religion, any more than it can foster religion as opposed to irreligion, or any specific form or forms of religion as opposed to others.

The Present Financing Scheme and Democracy

The present system of financing education in the United States, in addition to being unconstitutional, is contrary to fundamental principles of democracy. Indeed, this system corresponds more to the educational policies of totalitarian Communist countries than to our own democratic ideals. By depriving many Americans of freedom of choice in education, the present policy not only restricts freedom of education but also curtails freedom of thought, freedom of communication, and freedom of religion, as well as fundamental individual, familial, and parental rights and liberties. In Communist countries, such as the Soviet Union, the govern-

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77 See, e.g., Sibron v. New York, 392 U.S. 40, 62-63 (1967) (heroin found on defendant's person inadmissible because fruit of unlawful search and seizure); Rochin v. California, 342 U.S. 165, 172-73 (1952) (forcible extraction of the contents of an accused's stomach to recover morphine capsules violated defendant's right to due process); McDonald v. United States, 335 U.S. 451, 455-56 (1948) (evidence of a "numbers" operation inadmissible if seized in violation of the fourth amendment right to be free of unreasonable searches and seizures).
79 Epperson v. Arkansas, 393 U.S. 97, 103-04 (1968) (government must maintain neutrality between different religions, or between religion and nonreligion); Abington School Dist. v. Schempp, 374 U.S. 203, 226 (1963) (state is securely committed to a neutral stance toward differing religions); Torcaso v. Watkins, 367 U.S. 488, 495 (1961) (no laws may be passed that would aid one religion at the expense of another); Everson v. Board of Educ. 330 U.S. 1, 15-16 (1947) (neither federal nor state government can establish a church, or favor one religion over another).
ment supports only governmental public education, which is exclusively secular. The United States similarly supports only public education of a secular nature. Perhaps the sole distinction is that in Communist countries, private education is prohibited; only public education is permitted by law.

These Communist countries use government monopoly of education as a means of thought control and enforced indoctrination, openly imposed by constitutional and legal provisions. While in this country no such policy could be proclaimed publicly, it is nevertheless being effectuated with the aid of Supreme Court decisions which limit the use of educational funds exclusively to secular educational institutions. If this condition continues, it will be only a short time until American elementary and secondary education is almost entirely secular. As more affluent public schools tend to improve, parents of children in privately controlled schools will be tempted for financial reasons to send their children to free, “well-fixed” public schools. As enrollments in independent schools decline, the survival of parent-controlled private schools becomes doubtful, and thus parents’ ability to direct the education of their children becomes more tenuous.

SUPREME COURT STANDARDS

Factors considered in recent Supreme Court cases concerning inculcation of religion in church-related schools may also be applied to inculcation of secularism in public schools. These factors, which include general nature and atmosphere, pervasiveness, teachers, potential, neutrality or bias, and surveillance, can be applied to demonstrate that public schools are not religion-neutral10 and thus their exclusive governmental subsidization is unconstitutional.81 It can also be shown that certainty

80 See Toscano, supra note 37, at 199-204. According to Toscano, “Education does more than explain what, how, and when. It attempts to explain why. And whenever educators begin to give their students the reasons behind a fact or an event, they immediately enter the realm of ideology.” Id. at 200. Toscano suggests that a “deliberate attempt to use the law to ban theism, while advancing nontheism is a law ‘respecting an establishment of religion.’” Id. at 201 n.91; see Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, 81 Harv. L. Rev. 513, 561 (1968) (education “directly touches” upon human values).

81 See Giannella, supra note 80, at 561. Giannella notes that education implicates religious matters including the “sources and nature” of moral values. Id.; Toscano, supra note 37, at 200 (moral overtones “pervade” true education). No public education is entirely neutral, and therefore, an exclusive governmental subsidization of public education is arguably unconstitutional. Moreover, it is exceedingly difficult to distinguish secular educational functions from religious functions. See, e.g., Meek v. Pittenger, 421 U.S. 349, 365 (1975); Hunt v. McNair, 413 U.S. 734, 743 (1973).

In Lemon v. Kurtzman, 403 U.S. 602 (1971), the Supreme Court addressed the constitu-
concerning the enforcement of religious neutrality is just as impossible to achieve and as impractical to enforce in the case of public education as it is in that of church-related education. Consequently, to be truly neutral, government must either cease its financing of education entirely or subsidize religion-inclusive education as well as secularist public education. Only then can government maintain strict neutrality between various forms of religion, as well as between religion and irreligion.

General Nature and Atmosphere

The Supreme Court has characterized church-related schools as "institutions," having a "religion-oriented atmosphere," possessing a "substantial religious character," and constituting "a powerful vehicle for transmission of salary supplements paid to teachers in nonpublic schools who teach secular subjects. Id. at 607. The Court noted that aid to church-related schools previously was permitted when the activities were "neutral" or "secular." Id. at 616. However, in the case of actual teaching the Court could not "ignore the danger that a teacher under religious control . . . poses to the separation of the religious from the purely secular aspects of precollege education." Id. at 617. As a result, extensive surveillance would be required to assure that the separation was properly maintained. Id. at 619.

See Toscano, supra note 37, at 199-204. The Court has established certain criteria for determining the constitutionality of statutes providing aid to nonpublic schools. See Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). First, its legislative purpose must be secular. Id. at 612. Second, the primary effect of the statute must neither advance nor inhibit religion. Id. Third, "the statute must not foster 'an excessive government entanglement with religion.'" Id. at 613. (quoting Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970)). In declaring invalid Rhode Island and Pennsylvania statutes which would subsidize teachers of secular subjects in nonpublic schools, the Lemon Court concluded that the amount of supervision necessary to insure compliance with first amendment restrictions would not only be prohibitory, but would, in fact, involve the state in religious matters to an unwarranted degree. 403 U.S. at 619.

Lemon v. Kurtzman, 403 U.S. 602, 615-16 (1971). In Lemon, the two specific "institutions" with a "religion-oriented atmosphere" referred to were the Rhode Island Roman Catholic elementary schools and the Pennsylvania church-related elementary and secondary schools. Id. at 615, 620. Both school systems were "controlled by religious organizations, hav[ing] the purpose of propagating and promoting a particular religious faith, and conduct[ing] their operations to fulfill that purpose." Id. at 620. In Committee for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973), the "religious institutions" at issue were 280 schools in New York State, the majority of which were "related to the Roman Catholic Church and [taught] Catholic religious doctrine to some degree." Id. at 768. Interestingly, over 12% of students nationwide attend church-related schools, with the largest concentration in Roman Catholic institutions. Gianella, supra note 80, at 572 & n.175.

Committee for Pub. Educ. v. Nyquist, 413 U.S. 756, 768 (1973); see Hunt v. McNair, 413 U.S. 734, 743 (1973). In Hunt, the Court addressed the character of the institution with respect to uses of financial assistance, noting that aid has the effect of advancing religion "when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission . . . ." Id.
SECULARISTIC EDUCATION

ting . . . faith to the next generation." Their "profile," according to the Court, includes several features which reflect a religious character, such as a requirement of attendance at religious instruction, a purpose of transmitting religious values, and an imposition of religious regulations as to what and how the faculty may teach. Public schools, on the other hand, due to restrictive Court decisions and other factors, are completely secularist religious or irreligious educational institutions, in character and atmosphere. Their profile is as secularist as church-related schools are traditionally religious. The public schools also require attendance, exclusively inculcate secularist values, and impose restrictions that exclude any counterbalancing inculcation of religious doctrines and religious values.

Pervasiveness

The Supreme Court charges that church-related schools have "the pervasive atmosphere of a religious institution," in which the secular and religious are inextricably intertwined. Similarly, public schools are thoroughly secular institutions with a pervasive secularist atmosphere. In public schools, traditional religious views are completely excluded.

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8 Committee for Pub. Educ. v. Nyquist, 413 U.S. 756, 767-68 (1973) (quoting Nyquist, 350 F. Supp. at 663). The Court in Nyquist noted that in New York State "[s]ome 700,000 to 800,000 students, constituting 20% of the State's entire elementary and secondary school population, attend over 2,000 nonpublic schools, approximately 85% of which are church affiliated." 413 U.S. at 768; see Lemon v. Kurtzman, 403 U.S. 602, 615 (1971) (when considering whether governmental entanglement is violative of the first amendment, inquiry is made into character and purposes of the institution benefited, as well as the type of governmental aid provided and the relationship between the state and the institution).


88 Meek v. Pittenger, 421 U.S. 349, 366 (1975). Because the secular education provided by church-related schools "'goes hand in hand'" with the religious purposes, "'the two are inextricably intertwined.'" Id. (quoting Lemon v. Kurtzman, 403 U.S. 602, 657 (1971)). As a result, aid consisting of even "neutral" educational materials violates the establishment clause of the Constitution. 421 U.S. at 366.

89 See Toscano, supra note 37, at 184-85. A secularist is defined as "'[a] person who rejects all religious systems and forms of worship, concerning himself only with the questions and needs of present life . . . one who believes that religion should not be introduced into public education or the management of public affairs.'" Funk & Wagnalls New Standard Dictionary of the English Language 2214 (1952). The practical effect of the Court's exclusion of religious views has prohibited schoolchildren from reciting prayers, and prevented religious instruction to students and parents of students who desire it, both during and after school hours. Toscano, supra note 37, at 185. This viewpoint has also had the effect of preventing use of government funds for the purchase of religious textbooks or the construction of a building in which religious services will be conducted. Id. at 186. For a discussion of state neutrality in keeping public schools secular, see Katz, Freedom of Religion and State Neu-
The Supreme Court has stated that teachers in church-related schools cannot be monitored as to their inculcation of religion even in the course of teaching secular subjects. The Court has proclaimed that “a textbook’s content is ascertainable, but a teacher’s handling of a subject is not.” The Court has also observed that teachers in church-related schools cannot help communicating and inculcating their religious outlooks and ideas even if they intend otherwise. The danger of surreptitious or inadvertent inculcation of religion by teachers of secular subjects in church-related schools, according to the Court, is both great and constant. So pervasive is this influence that it is even present and active in the composition of ordinary examinations. In fact, the danger of teach-
ers inculcating faith and morals is even present when they are conducting secular field trips, or providing secular auxiliary services such as remedial reading.

If this constant and unavoidable tendency to impart personal ideologies is present in the case of teachers in church-related schools, and moreover exists in the case of a secular teacher who comes into a church-related school to teach a secular subject, how can it not be present in the case of secularist teachers in secularist public schools? Just as the religious atmosphere of a church-related school is supposed to affect the otherwise secular teacher of the secular subject in such a school, so the secularist atmosphere of the secular public schools must affect teachers, whether they are secularists themselves or otherwise religious persons. Further, it is no easier to monitor the naturalistic and secularistic indoctrination and influence of the secular teacher in a secular public school than it is to monitor teachers in private schools.

Potential

The United States Supreme Court has insisted that the mere "potential for impermissible fostering of religion" in the teaching of secular subjects in church-related schools is sufficient to invalidate legislation providing these schools with governmental assistance. The Court has gone so far as to project the potential danger of an establishment of religion as a possible result of such aid, stating that "involvement or entanglement" between government and religion ultimately could result in a "progression leading to the establishment of state churches and state religion."

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See Wolman v. Walter, 433 U.S. 229, 253-54 (1977). The Court in Wolman noted several particularities that differentiated a traditional bus fare program which survived "constitutional muster" from a field trip which did not. See id. at 253. In the case of field trips, schools, as opposed to students, are benefited by the aid. Id. The Court noted that this point alone might make any funding impermissible direct aid to sectarian institutions. Id. Additionally, it is the subjective attitude of the teacher that makes any field trip worthwhile and stimulating. Id. As a result, when a teacher working within a sectarian institution conducts such an activity, "an unacceptable risk of fostering of religion is an inevitable by-product," and therefore, it contravenes the first amendment establishment clause. Id. at 254.

See Meek v. Pittenger, 421 U.S. 349, 370-71 (1975). The danger present in remedial reading is the same danger echoed by the Court whenever teachers and counselors are involved—a subsidized teacher may "fail on occasion to separate religious instruction and the advancement of religious beliefs from his secular educational responsibilities." Id. at 371. The Court recognized that although the danger may be less in the case of remedial reading, the entanglement was still a violation of the constitutional prohibition "respecting establishing of religion." Id. at 372.

See id. at 370-72.


Id. at 621-25.
In the cases in which the Supreme Court has invoked this danger as a reason for invalidating legislation, the aid has been limited and often minimal. Notably, the very same potential for the fostering of religion or irreligion exists in public schools.

**Neutrality or Bias**

Governmental neutrality between religions, and between religion and irreligion is violated by "sponsorship, financial support, and active involvement of the sovereign (government) in religious activity." Nevertheless contemporary educational policy in the United States amounts to government sponsorship and financial subsidization of secularism as opposed to traditional religion. The Supreme Court has stated that "[s]pecial tax benefits . . . cannot be squared with the principle of neutrality established by . . . this Court." Contrary to this admonition, government gives not only "special tax benefits" but a complete monopoly of tax benefits to secularistic education. Considering that a simple loan of secular instructional materials and equipment to church-related schools is said to be unconstitutional, how can full, exclusive governmental financing of public schools that inculcate secularist religion or irreligion be constitutional?

**Surveillance**

The Supreme Court repeatedly has maintained that government cannot be assured that teachers in church-related schools will not inculcate religion, even when they are teaching secular subjects, using secular

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100 Walz v. Tax Comm'n, 397 U.S. 664, 668 (1970). In Walz, an owner of real estate in Richmond County, New York, sought an injunction to prevent religious organizations from receiving certain property exemptions under the New York State Constitution. Id. at 666; see N.Y. Const. art. 16, § 1. The Court interpreted the State Constitution as not attempting to establish a particular religion but as "simply sparing the exercise of religion from the burden of property taxation levied on private profit institutions." 397 U.S. at 673. The Court noted that even if the tax exemption did not establish, sponsor, or support religion, an inquiry was still necessary to determine that its effect is not an excessive government entanglement with religion. Id. at 674. The Court concluded that no such entanglement existed. Id. at 680.


materials, and conscientiously trying to avoid such indoctrination. For this reason, the Court has insisted that strict and intensive governmental surveillance would be required to avoid such a possibility if any government aid were given to church-related schools or to teachers therein. The Court has indicated that "comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed." In many cases effective surveillance to guard against such inoculation will be impossible, since teachers can often indirectly inculcate faith and morals.

The same surveillance that is supposedly necessary in church-related schools is also required in public schools where teachers can and often do inculcate attitudes, values, and standards that are essentially religious or irreligious. Obviously such strict "comprehensive, discriminating, and continuing surveillance" is not currently practiced in public schools and would be impossible to implement.

Miscellaneous Observations of the Court

The Supreme Court has noted and invoked as a partial reason for its decisions "the divisive political potential" in legislating governmental assistance to church-related schools. Notably, however, there is also a "divisive social potential" threatening the family as a fundamental social unit if government does not aid church-related schools. In public schools there is a real danger that children will be directly or indirectly indoctrinated with attitudes, values, and standards that are contrary to those cherished and conveyed by their parents, thus gravely impacting on the family unit. In addition, the Supreme Court has recognized that pupils in church-related schools, such as parochial schools, are of "an impressiona-

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103 Lemon v. Kurtzman, 403 U.S. 602, 618-19 (1971). The Court declared that "[w]e need not and do not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by . . . the First Amendment." Id. at 618. Nonetheless, the Court maintained that states "must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion . . . ." Id. at 619; see Wolman v. Walter, 433 U.S. 229, 247 (1977) (therapists may transmit ideological views to students); Meek v. Pittenger, 421 U.S. 349, 370-71 (1975) (impermissible conduct by a teacher may be less in a remedial math class than in a history class, but it still exists); Levitt v. Committee for Pub. Educ., 413 U.S. 472, 480 (1973) (teachers preparing examinations may inculcate students in religious precepts).


105 Id. at 622-23. As noted by the Court in Lemon, whenever a church-related school serves a large number of students, "it can be assumed that state assistance will entail considerable political activity." Id. at 622. Supporters of parochial education will utilize political activity to gain financial support for church-related schools. Id. Likewise, opponents of state aid to church-related schools will utilize political activity to prevent such aid. Id. Chief Justice Burger reasoned that "political division along religious lines was one of the principle evils against which the first amendment was intended to protect." Id.
ble age," and hence extremely sensitive to influences regarding beliefs and values such as faith and morals.\(^{106}\) Children of the same age in public schools are equally impressionable and susceptible to mind-forming influences divergent from those of their family and church.

THE CASE OF *Wisconsin v. Yoder*

The Supreme Court, in *Wisconsin v. Yoder*,\(^{107}\) has accepted and affirmed the value-laden nature of public education, and has agreed that it conflicts with at least one traditional religion—the Amish faith.\(^{108}\) The Amish, who in pursuit of early Christian ideals prefer to live in simple, agrarian communities, accepted the compulsory education law of the State of Wisconsin as far as it applied to “eight grades of elementary basic education imparted in a nearby rural schoolhouse, with a large proportion of students of the Amish faith.”\(^{109}\) They refused, however, to send their children to public high schools “often remote from the student’s home and alien to his daily home life.”\(^{110}\) When the state attempted to compel certain Amish parents to send their children to high school, the parents were convicted and penalized by a lower Wisconsin court.\(^{111}\) The defense of the Amish parents was that they did not consider high school attendance necessary to their way of life, and that attendance at a public high school would tend to alienate their children from their religion and threaten the religion’s survival.\(^{112}\) Both the Wisconsin and United States

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\(^{106}\) *Id.* at 616.

\(^{107}\) 406 U.S. 205 (1972).

\(^{108}\) See *id.* at 217-18. The Supreme Court noted in *Yoder* that the state has a significant responsibility in educating its citizens. *Id.* at 213. “Providing public schools,” the Court stated, “ranks at the very apex of the functions of a State.” *Id.* The Court observed that the difficulty, however, is that the state’s interest in “universal education” must be balanced against first amendment rights. *Id.*

\(^{109}\) *Id.* at 217. The Amish agree that the first eight grades are necessary in order to teach their children the basic skills to read the Bible, to farm, and to deal with non-Amish people. *Id.* at 212. Often to secure these skills, the Amish established their own elementary schools. *Id.* It is the Amish belief that a basic education “does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period.” *Id.*

\(^{110}\) *Id.* at 217. The Amish objected to education beyond the eighth grade because of the emphasis on competition in school work along with other related peer pressures. *Id.* at 211. During the critical adolescent period students are removed from their community both “physically and emotionally.” *Id.* As noted by the Court, “high school attendance with teachers who are not of the Amish faith—and may even be hostile to it—interposes a serious barrier to the integration of the Amish child into the Amish religious community.” *Id.* at 211-12.

\(^{111}\) *Id.* at 207-08.

\(^{112}\) See *supra* note 110.
Supreme Courts upheld the Amish contention, stating that to force the parents to send their children to public high school would be a violation of the free exercise clause of the first amendment.

Like the Amish, Catholics, Lutherans, Christian Reformists, Orthodox Jews, and others, who operate their own schools at great sacrifice, maintain firmly imbedded religious convictions. Their concern about the dangers to the religious faith and morals of their children and their fears for the survival of their religion are as heartfelt as those of the Amish.

CONCLUSION

Secularism or secular humanism is a world outlook and attitude toward life—a "religion" in both a general and legal sense. It repudiates traditional religion and religion-based morality and implicitly denies the existence of God. Public education inculcates general outlooks and values, as does all education, but the modern reality is that these values are entirely secular and devoid of the concepts and values of traditional religion. When government denies a share of public subsidization to accredited church-related schools, but supplies the same in full measure to public schools, it discriminates against traditional religion. Thus, the government violates both the establishment and free exercise clauses of the first amendment, and the equal protection clause of the fourteenth amendment, and infringes upon other basic human freedoms meant to be safeguarded by the Constitution. A result of this practice may be the decline of traditional religion and, ultimately, a national religion of secularism.

The United States Supreme Court has ruled that government may not prefer one religion over others, nor prefer religion or irreligion over its opposite. This does not mean that government may not simultaneously aid all of these equally and without discrimination.

A constitutionally acceptable solution would be nondiscriminatory governmental subsidization to students in all accredited schools, thus treating secularism and traditional religion equally. True government neutrality and genuine observance of the Constitution demand that government subsidize various types of schools, religious as well as secularist.

113 406 U.S. at 234.
114 Id. The Court concluded that forcing the Amish people to send their children to secular high schools not only would endanger their free exercise of religion, but could eventually destroy it. Id. at 219.
115 For applications of the Yoder decision, see Church of God v. Amarillo Indep. School Dist., 511 F. Supp. 613, 618 (N.D. Tex. 1981) (limiting the number of excused absences for religious holy days deemed unconstitutional), aff'd per curiam, 670 F.2d 46 (5th Cir. 1982), and Moody v. Cronin, 484 F. Supp. 270, 275-76 (C.D. Ill. 1979) (compulsory attendance in coeducational gym classes, which violated religious belief, held invalid).
While this Article maintains that American public education is supportive of secularism, it is neither hostile to nor critical of public education. For those students and parents who prefer secularism and its corollaries, or are not opposed to secularist education and its fruits, or do not care to have traditional religious attitudes and habits inculcated on a daily basis, public education is acceptable. Public education has provided and will continue to provide most valuable public services in this country. This Article is opposed solely to the exclusive governmental subsidization of education that inculcates secularism. A system which subsidizes schools that inculcate traditional religion on a basis similar to that accorded secularist education would not only ensure the survival of church-related educational institutions, but also would be the most equitable and democratic, as well as the most constitutional system of public funding for education.