# Black: Opinion of the Court

MR. JUSTICE BLACK delivered the opinion of the Court.

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of children to and from schools.[[1]](#footnote-1) The appellee, a township board of education, acting pursuant to this statute, authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

The appellant, in his capacity as a district taxpayer, filed suit in a state court challenging the right of the Board to reimburse parents of parochial school students. He **[p. 4]** contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions. That court held that the legislature was without power to authorize such payment under the state constitution. 132 N.J.L. 98, 39 A.2d 75. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. 133 N.J.L. 350, 44 A.2d 333. The case is here on appeal under 28 U.S.C. § 344(a).

Since there has been no attack on the statute on the ground that a part of its language excludes children attending private schools operated for profit from enjoying State payment for their transportation, we need not consider this exclusionary language; it has no relevancy to any constitutional question here presented.[[2]](#footnote-2) Furthermore, if the exclusion clause had been properly challenged, we do not know whether New Jersey's highest court would construe its statutes as precluding payment of the school **[p. 5]** transportation of any group of pupils, even those of a private school run for profit.[[3]](#footnote-3) Consequently, we put to one side the question as to the validity of the statute against the claim that it does not authorize payment for the transportation generally of school children in New Jersey.

The only contention here is that the state statute and the resolution, insofar as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent overlap. *First.* They authorize the State to take by taxation the private property of some and bestow it upon others to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment. *Second.* The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use of state power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the states.

*First.* The due process argument that the state law taxes some people to help others carry out their private **[p. 6]** purposes is framed in two phases. The first phase is that a state cannot tax A to reimburse B for the cost of transporting his children to church schools. This is said to violate the due process clause because the children are sent to these church schools to satisfy the personal desires of their parents, rather than the public's interest in the general education of all children. This argument, if valid, would apply equally to prohibit state payment for the transportation of children to any nonpublic school, whether operated by a church or any other nongovernment individual or group. But the New Jersey legislature has decided that a public purpose will be served by using tax raised funds to pay the bus fares of all school children, including those who attend parochial schools. The New Jersey Court of Errors and Appeals has reached the same conclusion. The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax raised funds were to be expended was not a public one. *Loan Association v. Topeka,* 20 Wall. 655; *Parkersburg v. Brown,* 106 U. S. 487; *Thompson v. Consolidated Gas Utilities Corp.,* 300 U. S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution.*Green v. Frazier,* 253 U. S. 233, 253 U. S. 240. Otherwise, a state's power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general wellbeing **[p. 7]** of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. *Davidson v. New Orleans,* 96 U. S. 97, 96 U. S. 103-104; *Barbier v. Connolly,* 113 U. S. 27, 113 U. S. 31-32; *Fallbrook Irrigation District v. Bradley,* 164 U. S. 112, 164 U. S. 157-158.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran v. Louisiana State Board of Education,* 281 U. S. 370; Holmes, J., in *Interstate Ry. v. Massachusetts,* 207 U. S. 79, 207 U. S. 87. *See* opinion of Cooley, J., in *Stuart v. School District No. 1 of Kalamazoo,* 30 Mich. 69 (1874). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools, rather than run the risk of traffic and other hazards incident to walking or "hitchhiking."*See Barbier v. Connolly, supra,* at 113 U. S. 31. *See also cases* collected 63 A.L.R. 413; 118 A.L.R. 806. Nor does it follow that a law has a private, rather than a public, purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program.*See Carmichael v. Southern Coal & Coke Co.,* 301 U. S. 495, 301 U. S. 518. Subsidies and loans to individuals such as farmers and home owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.

Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the State. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion **[p. 8]** by law. This is the exact question raised by appellant's second contention, to consideration of which we now turn.

*Second.* The New Jersey statute is challenged as a "law respecting an establishment of religion." The First Amendment, as made applicable to the states by the Fourteenth, *Murdock v. Pennsylvania,* 319 U. S. 105, commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity. Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting an establishment of religion" probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights. Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again,[[4]](#footnote-4) therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife and persecutions, generated in large part by established sects determined to **[p. 9]** maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of nonbelief in their doctrines, and failure to pay taxes and tithes to support them.[[5]](#footnote-5)

These practices of the old world were transplanted to, and began to thrive in, the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or nonbelievers, would be required to support and attend.[[6]](#footnote-6) An exercise of **[p. 10**] this authority was accompanied by a repetition of many of the old-world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated.[[7]](#footnote-7) And all of these dissenters were compelled to pay tithes and taxes[[8]](#footnote-8) to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters. **[p. 11**] These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence.[[9]](#footnote-9) The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation.[[10]](#footnote-10) It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty. But Virginia, where the established church had achieved a dominant influence in political affairs and where many excesses attracted wide public attention, provided a great stimulus and able leadership for the movement. The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

The movement toward this end reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jefferson **[p. 12**] and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law.[[11]](#footnote-11) In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or nonbeliever, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free, and that cruel persecutions were the inevitable result of government-established religions. Madison's Remonstrance received strong support throughout Virginia,[[12]](#footnote-12) and the Assembly postponed consideration of the proposed tax measure until its next session. When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson.[[13]](#footnote-13) The preamble to that Bill stated, among other things, that

"Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are **[p. 13**] a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . . ; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern. . . ."

And the statute itself enacted

"That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . .[[14]](#footnote-14) "

This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective, and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute. *Reynolds v. United States, supra,* at 98 U. S. 164; *Watson v. Jones,* 13 Wall. 679; *Davis v. Beason,* 133 U. S. 333, 133 U. S. 342. Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states.[[15]](#footnote-15) Most of them did soon provide similar constitutional protections **[p. 14**] for religious liberty.[[16]](#footnote-16) But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups.[[17]](#footnote-17) In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect.[[18]](#footnote-18) Some churches have either sought or accepted state financial support for their schools. Here again, the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith.[[19]](#footnote-19) The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion.[[20]](#footnote-20)

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it **[p. 15**] was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth.[[21]](#footnote-21) The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom.[[22]](#footnote-22) There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina,[[23]](#footnote-23) quoted with approval by this Court in *Watson v. Jones,* 13 Wall. 679, 80 U. S. 730:

"The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."

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. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining **[p. 16**] or professing religious beliefs or disbeliefs, for church attendance or non-attendance. 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. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." *Reynolds v. United States, supra,* at 98 U. S. 164.

We must consider the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that state statute down if it is within the State's constitutional power, even though it approaches the verge of that power. *See Interstate Ry. v. Massachusetts,* Holmes, J., *supra,* at207 U. S. 85, 207 U. S. 88. New Jersey cannot, consistently with the "establishment of religion" clause of the First Amendment, contribute tax raised funds to the support of an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Nonbelievers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it,* from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief. **[p. 17**] Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State. The same possibility exists where the state requires a local transit company to provide reduced fares to school children, including those attending parochial schools,[[24]](#footnote-24) or where a municipally owned transportation system undertakes to carry all school children free of charge. Moreover, state-paid policemen, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare. And parents might refuse to risk their children to the serious danger of traffic accidents going to and from parochial schools the approaches to which were not protected by policemen. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public **[p. 18**] highways and sidewalks. Of course, cutting off church schools from these services so separate and so indisputably marked off from the religious function would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious, rather than a public, school if the school meets the secular educational requirements which the state has power to impose. *See Pierce v. Society of Sisters,* 26 U. S. 510. It appears that these parochial schools meet New Jersey's requirements. The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.

*Affirmed.*

1. "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part."

"When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part."

New Jersey Laws, 1941, c.191, p. 581; N.J.R.S.Cum.Supp., tit. 18, c. 14,§ 8. [↑](#footnote-ref-1)
2. Appellant does not challenge the New Jersey statute or the resolution on the ground that either violates the equal protection clause of the Fourteenth Amendment by excluding payment for the transportation of any pupil who attends a "private school run for profit." Although the township resolution authorized reimbursement only for parents of Public and Catholic school pupils, appellant does not allege, nor is there anything in the record which would offer the slightest support to an allegation, that there were any children in the township who attended or would have attended, but for want of transportation, any but public and Catholic schools. It will be appropriate to consider the exclusion of students of private schools operated for profit when and if it is proved to have occurred, is made the basis of a suit by one in a position to challenge it, and New Jersey's highest court has ruled adversely to the challenger. Striking down a state law is not a matter of such light moment that it should be done by a federal court ex mero motu on a postulate neither charged nor proved, but which rests on nothing but a possibility. Cf. Liverpool, N.Y. & P. S.S. Co. v. Comm'rs of Emigration, 113 U. S. 33, 113 U. S. 39. [↑](#footnote-ref-2)
3. It might hold the excepting clause to be invalid, and sustain the statute with that clause excised. N.J.R.S., tit. 1, c. 1, § 10, provides with regard to any statute that, if

"any provision thereof, shall be declared to be unconstitutional . . . in whole or in part, by a court of competent jurisdiction, such . . . article . . . shall, to the extent that it is not unconstitutional, . . . be enforced. . . ."

The opinion of the Court of Errors and Appeals in this very case suggests that state law now authorizes transportation of all pupils. Its opinion stated:

"Since we hold that the legislature may appropriate general state funds or authorize the use of local funds for the transportation of pupils to any school, we conclude that such authorization of the use of local funds is likewise authorized by Pamph.L. 1941, ch.191, and R.S. 18:7-78."

133 N.J.L. 350, 354, 44 A.2d 333, 337. (Italics supplied.) [↑](#footnote-ref-3)
4. See Reynolds v. United States, 98 U. S. 145, 98 U. S. 162; cf. Knowlton v. Moore, 178 U. S. 41, 178 U. S. 89, 106. [↑](#footnote-ref-4)
5. See, e.g., Macaulay, History of England (1849) I, cc. 2, 4; The Cambridge Modern History (1908) V, cc. V, IX, XI; Beard, Rise of American Civilization (1933) I, 60; Cobb, Rise of Religious Liberty in America (1902) c. II; Sweet, The Story of Religion in America (1939) c. II; Sweet, Religion in Colonial America (1942) 320-322. [↑](#footnote-ref-5)
6. See e.g., the charter of the colony of Carolina, which gave the grantees the right of

"patronage and advowsons of all the churches and chapels . . . together with licence and power to build and found churches, chapels and oratories . . . and to cause them to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England."

Poore, Constitutions (1878) II, 1390, 1391. That of Maryland gave to the grantee Lord Baltimore

"the Patronages, and Advowsons of all Churches which . . . shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship . . . and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England, with all, and singular such, and as ample lights, Jurisdictions, Privileges, . . . as any Bishop . . . in our Kingdom of England, ever . . . hath had. . . ."

MacDonald, Documentary Source Book of American History (1934) 31, 33. The Commission of New Hampshire of 1680, Poore, supra, II, 1277, stated:

"And above all things We do by these presents will, require and comand our said Councill to take all possible care for ye discountenancing of vice and encouraging of virtue and good living, and that, by such examples ye infidle may be invited and desire to partake of ye Christian Religion, and for ye greater ease and satisfaction of ye sd loving subjects in matters of religion, We do hereby require and comand yt liberty of conscience shall be allowed unto all protestants; yt such especially as shall be conformable to ye rites of ye Church of Engd shall be particularly countenanced and encouraged."

See also Pawlet v. Clark, 9 Cranch 292. [↑](#footnote-ref-6)
7. See, e.g., Semple, Baptists in Virginia (1894); Sweet, Religion in Colonial America, supra, at 131-152, 322-339. [↑](#footnote-ref-7)
8. Almost every colony exacted some kind of tax for church support. See e.g. Cobb, op. cit. supra, note 5 110 (Virginia); 131 (North Carolina); 169 (Massachusetts); 270 (Connecticut); 304, 310, 339 (New York); 386 (Maryland); 295 (New Hampshire). [↑](#footnote-ref-8)
9. Madison wrote to a friend in 1774:

"That diabolical, hell-conceived principle of persecution rages among some. . . . This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five or six well meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all."

I Writings of James Madison (1900) 18, 21. [↑](#footnote-ref-9)
10. Virginia's resistance to taxation for church support was crystallized in the famous "Parsons' Cause" argued by Patrick Henry in 1763. For an account, see Cobb, op. cit. supra, note 5 108-111. [↑](#footnote-ref-10)
11. II Writings of James Madison, 183. [↑](#footnote-ref-11)
12. In a recently discovered collection of Madison's papers, Madison recollected that his Remonstrance

"met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part, and even of not a few of the Sect formerly established by law."

Madison, Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, in Fleet, Madison's "Detached Memorandum," 3 William and Mary Q. (1946) 534, 551, 555. [↑](#footnote-ref-12)
13. For accounts of background and evolution of the Virginia Bill for Religious Liberty see, e.g., James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptists (1900); Cobb, op. cit. supra, note 5 74-115; Madison, Monopolies, Perpetuities Corporations, Ecclesiastical Endowments, op. cit. supra, note 12 554, 556. [↑](#footnote-ref-13)
14. 12 Hening, Statutes of Virginia (1823) 84; Commager, Documents of American History (1944) 125. [↑](#footnote-ref-14)
15. Permoli v. New Orleans, 3 How. 589. Cf. 32 U. S. Baltimore, 7 Pet. 243. [↑](#footnote-ref-15)
16. For a collection of state constitutional provisions on freedom of religion see Gabel, Public Funds for Church and Private Schools (1937) 148-149. See also 2 Cooley, Constitutional Limitations (1927) 960-985. [↑](#footnote-ref-16)
17. Test provisions forbade officeholders to "deny . . . the truth of the Protestant religion," e.g., Constitution of North Carolina (1776) § XXXII, II Poore, supra, 1413. Maryland permitted taxation for support of the Christian religion and limited civil office to Christians until 1818, id. I, 819, 820, 832. [↑](#footnote-ref-17)
18. See Note 50 Yale L.J. (1941) 917; see also cases collected 14 L.R.A. 418; 5 A.L.R. 8, 9; 141 A.L.R. 1148. [↑](#footnote-ref-18)
19. See cases collected 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148. [↑](#footnote-ref-19)
20. Ibid. See also Cooley, op. cit. supra, note 16 [↑](#footnote-ref-20)
21. Terrett v. Taylor, 9 Cranch 43; Watson v. Jones, 13 Wall. 679; Davis v. Beason, 133 U. S. 333; cf. Reynolds v. United States, supra, 98 U. S. 162; Reuben Quick Bear v. Leupp, 210 U. S. 50. [↑](#footnote-ref-21)
22. Cantwell v. Connecticut, 310 U. S. 296; Jamison v. Texas, 318 U. S. 413; Largent v. Texas, 318 U. S. 418; Murdock v. Pennsylvania, supra; West Virginia State Board of Education v. Barnette, 319 U. S. 624; Follett v. McCormick, 321 U. S. 573; Marsh v. Alabama, 326 U. S. 501. Cf. Bradfield v. Roberts, 175 U. S. 291. [↑](#footnote-ref-22)
23. Harmon v. Dreher, Speer's Equity Reports (S.C. 1843), 87, 120. [↑](#footnote-ref-23)
24. New Jersey long ago permitted public utilities to charge school children reduced rates. See Public S. R. Co. v. Public Utility Comm'rs, 81 N. J L. 363, 80 A. 27 (1911); see also Interstate Ry. v. Massachusetts, supra. The District of Columbia Code requires that the new charter of the District public transportation company provide a three-cent fare "for school children . . . going to and from public, parochial, or like schools. . . ." 47 Stat. 752, 759. [↑](#footnote-ref-24)