# Frankfurter: Concurrence

MR. JUSTICE FRANKFURTER delivered the following opinion, in which MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON join. \*

We dissented in *Everson v. Board of Education,* 330 U. S. 1, because, in our view, the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of sectarian with secular instruction in the public schools. The Constitution of the United States forbids this.

This case, in the light of the *Everson* decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer. This is so because the meaning **[p. 213]** of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church." But agreement, in the abstract, that the First Amendment was designed to erect a "wall of separation between church and State" does not preclude a clash of views as to what the wall separates. Involved is not only the Constitutional principle, but the implications of judicial review in its enforcement. Accommodation of legislative freedom and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the "wall of separation" metaphor until we have considered the relevant history of religious education in America, the place of the "released time" movement in that history, and its precise manifestation in the case before us.

To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting. Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

The emigrants who came to these shores brought this view of education with them. Colonial schools certainly **[p. 214]** started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of "one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures." The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47.[[1]](#footnote-1)

The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstrance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involved support to religious education. *See* MR. JUSTICE RUTLEDGE's opinion in the *Everson* case, *supra,* 330 U.S. at 330 U. S. 337. As the momentum for popular education increased and, in turn, evoked strong claims for State support of religious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various forms in other States. New York and Massachusetts provide famous chapters in the history that established dissociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sectarian Opposition, to the barring of tax funds to church schools, and later to any school in which sectarian doctrine was **[p. 215]** taught.[[2]](#footnote-2) In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict.[[3]](#footnote-3) The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters "connected with religious polity," and particularly "in a country composed of such a variety of religious sects as our country." *Vidal v. Girard's Executors,* 2 How. 127, 43 U. S. 198. That was more than one hundred years ago.

Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect, the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its **[p. 216]** people.[[4]](#footnote-4) A totally different situation elsewhere, as illustrated, for instance, by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mould. *See* the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The nonsectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously **[p. 217]** free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion, however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home indoctrination in the faith of his choice.

This development of the public school as a symbol of our secular unity was not a sudden achievement, nor attained without violent conflict.[[5]](#footnote-5) While, in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time and place to place, thus representing in their totality the common interest of the nation.

Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But, by 1875, the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In **[p. 218]** that year, President Grant made his famous remarks to the Convention of the Army of the Tennessee:

"Encourage free schools, and resolve that not one dollar appropriated for their support shall be appropriated to the support of any sectarian schools. Resolve that neither the State nor nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church and the private school, supported entirely by private contributions. Keep the church and the state forever separate."

"The President's Speech at Des Moines," 22 Catholic World 433, 434-35 (1876).

So strong was this conviction, that, rather than rest on the comprehensive prohibitions of the First and Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations, including a specific prohibition against the use of public funds for sectarian education,[[6]](#footnote-6) such as had **[p. 219]** been written into many State constitutions.[[7]](#footnote-7) By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history:

"It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State."

Root, Addresses on Government and Citizenship, 137, 140.[[8]](#footnote-8) The extent to which **[p. 220]** this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system "free from sectarian control."[[9]](#footnote-9)

Prohibition of the commingling of sectarian and secular instruction in the public school is, of course, only half the story. A religious people was naturally concerned about the part of the child's education entrusted "to the family altar, the church, and the private school." The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive **[p. 221]** attempts were therefore frequently made to obtain public funds for religious schools.[[10]](#footnote-10) But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These, however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday, as well as Sunday, schools.[[11]](#footnote-11) They all fell short of their purpose. It was urged that, by appearing to make religion a "one day a week" matter, the **[p. 222]** Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

Out of these inadequate efforts evolved the week-day church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were free to do so. Church leaders decided that, if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his "business hours."

The initiation of the movement[[12]](#footnote-12) may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York City in 1905, was that the public school unduly monopolized the child's time, and that the churches were entitled to their share of it.[[13]](#footnote-13) This, the schools should "release." Accordingly, the Federation, citing the example of the Third Republic of France,[[14]](#footnote-14) urged that, upon the request of their parents, **[p. 223]** children be excused from public school on Wednesday afternoon, so that the churches could provide "Sunday school on Wednesday." This was to be carried out on church premises under church authority. Those not desiring to attend church schools would continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

The proposal aroused considerable opposition, and it took another decade for a "released time" scheme to become part of a public school system. Gary, Indiana, inaugurated the movement. At a time when industrial **[p. 224]** expansion strained the communal facilities of the city, Superintendent of Schools Wirt suggested a fuller use of the school buildings. Building on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Wirt's plan sought to rotate the schedules of the children during the school day so that some were in class, others were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was "released time" begun. The religious teaching was held on church premises, and the public schools had no hand in the conduct of these church schools. They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school, and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools.[[15]](#footnote-15)

From such a beginning, "released time" has attained substantial proportions. In 1914-15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures, almost 2,000,000 in some 2,200 communities **[p. 225]** participated in "released time" programs during 1947.[[16]](#footnote-16) A movement of such scope indicates the importance of the problem to which the "released time" programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

Of course, "released time" as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some "released time" classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular "released time" program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.[[17]](#footnote-17) **[p. 226]** The substantial differences among arrangements lumped together as "released time" emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does "released time" operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, "subject to the approval and supervision of the superintendent." The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent, "who, in turn, will determine whether or not it is practical for said group to teach in said school **[p. 227]** system." If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and nonconformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.[[18]](#footnote-18) Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these nonparticipating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of **[p. 228]** their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and, in the process, sharpens the consciousness of religious differences, at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.[[19]](#footnote-19)

Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from educational theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey.[[20]](#footnote-20) Movements like "released time" are seldom **[p. 229]** single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less than an hour a week; in fact, that affords evidence of **[p. 230]** a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind, the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as "dismissed time," whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school.[[21]](#footnote-21) The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious **[p. 231]** instruction such momentum and planning. To speak of "released time" as being only half or three quarters of an hour is to draw a thread from a fabric.

We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial. Different forms which "released time" has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute Separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation" -- Elihu Root's phrase bears repetition -- is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity. **[p. 232]** We renew our conviction that

"we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."

*Everson v. Board of Education,* 330 U.S. at 330 U. S. 59. If nowhere else, in the relation between Church and State, "good fences make good neighbors."

\* MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON concurred also in the Court's opinion.

1. For an exposition of the religious origins of American education, see S.W. Brown, The Secularization of American Education (1912) cc. I, II; Knight, Education in the United States (2d rev. ed. 1941) cc. III, V; Cubberley, Public Education in the United States (1934) cc. II, III. [↑](#footnote-ref-1)
2. See Boese, Public Education in the City of New York (1869) c. XIV; Hall, Religious Education in the Public Schools of the State and City of New York (1914) cc. VI, VII; Palmer, The New York Public School (1905) cc. VI, VII, X, XII. And see New York Laws 1842, c. 150, § 14, amended, New York Laws 1844, c. 320, § 12. [↑](#footnote-ref-2)
3. S. M. Smith, The Relation of the State to Religious Education in Massachusetts (1926) c. VII; Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929). [↑](#footnote-ref-3)
4. It has been suggested that secular education in this country is the inevitable "product of the utter impossibility of harmonizing multiform creeds.'" T.W.M. Marshall, Secular Education in England and the United States, 1 American Catholic Quarterly Review 28, 308. It is precisely because of this "utter impossibility" that the fathers put into the Constitution the principle of complete "hands off" for a people as religiously heterogeneous as ours. [↑](#footnote-ref-4)
5. See Cubberley, Public Education in the United States (1934) pp. 230 et seq.; Zollmann, The Relation of Church and State, in Lotz and Crawford, Studies in Religious Education (1931) 403, 418 et seq.; Payson Smith, The Public Schools and Religious Education, in Religion and Education (Sperr, Editor, 1945) pp. 32 et seq.; also Mahoney, The Relation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 180-1945 (1946) c. I, and see note 10, infra. [↑](#footnote-ref-5)
6. President Grant's Annual Message to Congress, December 7, 1875, 4 Cong.Rec. 1, 5 et seq.; Ames, The Proposed Amendments to the Constitution of the United States during the First Century of its History, H.R.Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp 277-278. In addition to the first proposal, "The Blaine Amendment," five others to similar effect are cited by Ames. The reason for the failure of these attempts seems to have been in part that the "provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured." Id.

In the form in which it passed the House of Representatives, the Blaine Amendment read as follows:

"No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof, and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan of credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or anti-religious sect, organization, or denomination shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit, and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution, and it shall not have the effect to impair rights of property already vested. . . ."

H.Res. 1, 44th Cong., 1st Sess. (1876). [↑](#footnote-ref-6)
7. See Constitutions of the States and United States, III Report of the New York State Constitutional Convention Committee (1938) Index, pp. 1766-67. [↑](#footnote-ref-7)
8. It is worthy of interest that another famous American lawyer, and indeed one of the most distinguished of American judges, Jeremiah S. Black, expressed similar views nearly forty years before Mr. Root:

"The manifest object of the men who framed the institutions of this country was to have a State without religion, and a Church without politics -- that is to say, they meant that one should never be used as an engine for any purpose of the other. . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason, they built up a wall of complete and perfect partition between the two."

From Religious Liberty (1856) in Black, Essays and Speeches (1886) 51, 53; cf.Brigance, Jeremiah Sullivan Black (1934). While Jeremiah S. Black and Elihu Root had many things in common, there were also important differences between them, perhaps best illustrated by the fact that one became Secretary of State to President Buchanan, the other to Theodore Roosevelt. That two men, with such different political alignment, should have shared identic views on a matter so basic to the wellbeing of our American democracy affords striking proof of the respect to be accorded to that principle. [↑](#footnote-ref-8)
9. 25 Stat. 676, 677, applicable to North Dakota, South Dakota, Montana and Washington, required that the constitutional conventions of those States

"provide, by ordinances irrevocable without the consent of the United States and the people of said States . . . for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control. . . ."

The same provision was contained in the Enabling Act for Utah, 28 Stat. 107, 108; Oklahoma, 34 Stat. 267, 270; New Mexico and Arizona, 36 Stat. 557, 559, 570. Idaho and Wyoming were admitted after adoption of their constitutions; that of Wyoming contained an irrevocable ordinance in the same terms. Wyoming Constitution, 1889, Ordinances, § 5. The Constitution of Idaho, while it contained no irrevocable ordinance, had a provision even more explicit in its establishment of separation. Idaho Constitution, 1889, art. IX, § 5. [↑](#footnote-ref-9)
10. See, e.g., the New York experience, including, inter alia, the famous Hughes controversy of 1840-42, the conflict culminating in the Constitutional Convention of 1894, and the attempts to restore aid to parochial schools by revision of the New York City Charter, in 1901, and at the State Constitutional Convention of 1938. SeeMcLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945 (1946) pp. 119-25; Mahoney; The Relation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; Hall, Religious Education in the Public Schools of the State and the City of New York (1914) pp. 46-47; Boese, Public Education in the City of New York (1&69) c. XIV; compare New York Laws 1901, vol. 3, § 1152, p. 492, with amendment, id. p. 668; seeNicholas Murray Butler, Religion and Education (Editorial) in 22 Educational Review 101, June, 1901; New York Times, April 8, 1901, p. 1, col. 1; April 9, 1901, p. 2, col. 5; April 19, 1901, p. 2, col. 2; April 21, 1901, p. 1, col. 3; Editorial, April 22, 1901, p. 6, col. 1.

Compare S. 2499, 79th Cong., 2d Sess., providing for Federal aid to education, and the controversy engendered over the inclusion in the aid program of sectarian schools, fully discussed in, e.g., "The Nation's Schools," January through June, 1947. [↑](#footnote-ref-10)
11. For surveys of the development of private religious education, see, e.g., A. A. Brown, A History of Religious Education in Recent Times (1923); Athearn, Religious Education and American Democracy (1917); Burns and Kohlbrenner, A History of Catholic Education in the United States (1937); Lotz and Crawford, Studies in Religious Education (1931) Parts I and IV. [↑](#footnote-ref-11)
12. Reference should be made to Jacob Gould Schurman, who, in 1903, proposed a plan bearing close resemblance to that of Champaign. See Symposium, 75 The Outlook 635, 636, November 14, 1903; Crooker, Religious Freedom in American Education (1903) pp. 39 et seq. [↑](#footnote-ref-12)
13. For the text of the resolution, a brief in its support, as well as an exposition of some of the opposition it inspired, see Wenner's book, Religious Education and the Public School (rev. ed.1913). [↑](#footnote-ref-13)
14. The French example is cited not only by Wenner, but also by Nicholas Murray Butler, who thought released time was "restoring the American system in the state of New York." The Place of Religious Instruction in Our Educational System, 7 Vital Speeches 167, 168 (Nov. 28, 1940); see also Report of the President of Columbia University, 1934, pp.22-24. It is important to note, however, that the French practice must be viewed as the result of the struggle to emancipate the French schools from control by the Church. The leaders of this revolution, men like Paul Bert, Ferdinand Buisson, and Jules Ferry, agreed to this measure as one part of a great step towards, rather than a retreat from, the principle of Separation. The history of these events is described in Muzzey, State, Church, and School in France, The School Review, March through June, 1911.

In effect, moreover, the French practice differs in crucial respects from both the Wenner proposal and the Champaign system. The law of 1882 provided that

"Public elementary schools will be closed one day a week in addition to Sunday in order to permit parents, if they so desire, to have their children given religious instruction outside of school buildings."

Law No. 11,696, March 28, 1882, Bulletin des Lois, No. 690. This then approximates that aspect of released time generally known as "dismissed time." No children went to school on that day, and the public school was therefore not an alternative used to impel the children towards the religious school. The religious education was given "outside of school buildings."

The Vichy Government attempted to introduce a program of religious instruction within the public school system remarkably similar to that in effect in Champaign. The proposal was defeated by intense opposition, which included the protest of the French clergy, who apparently feared State control of the Church. See Schwartz, Religious Instruction under Petain, 58 Christian Century 1170, Sept. 24, 1941. [↑](#footnote-ref-14)
15. Of the many expositions of the Gary plan, see, e.g., A. A. Brown, The Week-Day Church Schools of Gary, Indiana, 11 Religious Education 5 (1916); Wirt, The Gary Public Schools and the Churches, id. at 221 (1916). [↑](#footnote-ref-15)
16. See the 1947 Yearbook, International Council of Religious Education, p. 76; also New York Times, September 21, 1947, p. 22, col. 1. [↑](#footnote-ref-16)
17. Respects in which programs differ include, for example, the amount of supervision by the public school of attendance and performance in the religious class, of the course of study, of the selection of teachers; methods of enrolment and dismissal from the secular classes; the amount of school time devoted to operation of the program; the extent to which school property and administrative machinery are involved; the effect on the public school program of the introduction of "released time"; the proportion of students who seek to be excused; the effect of the program on nonparticipants; the amount and nature of the publicity for the program in the public schools.

The studies of detail in "released time" programs are voluminous. Most of these may be found in the issues of such periodicals as The International Journal of Religious Education, Religious Education, and Christian Century. For some of the more comprehensive studies found elsewhere, see Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3; Gorham, A Study of the Status of Weekday Church Schools in the United States (1934); Lotz, The Weekday Church School, in Lotz and Crawford, Studies in Religious Education (1931) c. XII; Forsyth, Week-Day Church Schools (1930); Settle, The Weekday Church School, Educational Bulletin No. 601 of The International Council of Religious Education (1930); Shaver, Present-Day Trends in Religious Education (1928) cc. VII, VIII; Gove, Religious Education on Public School Time (1926). [↑](#footnote-ref-17)
18. It deserves notice that, in discussing with the relator her son's inability to get along with his classmates, one of his teachers suggested that "allowing him to take the religious education course might help him to become a member of the group." [↑](#footnote-ref-18)
19. The divergent views expressed in the briefs submitted here on behalf of various religious organizations, as amici curiae, in themselves suggest that the movement has been a divisive and not an irenic influence in the community: The American Unitarian Association; The General Conference of Seventh Day Adventists; The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, The Northern Baptist Convention, The National Baptist Convention Inc., and the National Baptist Convention; The Protestant Council of the City of New York, and The Synagogue Council of America and National Community Relations Advisory Council. [↑](#footnote-ref-19)
20. There is a prolific literature on the educational, social and religious merits of the "released time" movement. In support of "released time," the following may be mentioned: The International Council of Religious Education, and particularly the writings of Dr. Erwin L. Shaver, for some years Director of its Department of Weekday Religious Education, in publications of the Council and in numerous issues of The International Journal of Religious Education (e.g., They Reach One-Third, Dec., 1943, p. 11; Weekday Religious Education Today, Jan., 1944, p. 6), and Religious Education (e.g., Survey of Week-Day Religious Education, Feb., 1922, p. 51; The Movement for Weekday Religious Education, Jan.-Feb., 1946, p. 6); see also Information Service, Federal Council of Churches of Christ, May 29, 1943. See also Cutton, Answering the Arguments, The International Journal of Religious Education, June, 1930, p. 9, and Released Time, id.Sept., 1942, p. 12; Hauser, "Hands off the Public School?", Religious Education, Mar.-Apr., 1942, p. 99; Collins, Release Time for Religious Instruction, National Catholic Education Association Bulletin, May, 1945, pp. 21, 27-28; Weigle, Public Education and Religion, Religious Education, Apr.-June, 1940, p. 67; Nicholas Murray Butler, The Place of Religious Instruction in Our Educational System, 7 Vital Speeches 167 (Nov. 28, 1940); Howlett, Released Time for Religious Education in New York City, 64 Education 523, May, 1944; Blair, A Case for the Weekday Church School, 7 Frontiers of Democracy 75, Dec. 15, 1940; cf. Allred, Legal Aspects of Release Time (National Catholic Welfare Conference, 1947). Favorable views are also cited in the studies in note 17, supra.Many not opposed to "released time" have declared it "hardly enough" or "pitifully inadequate." E.g., Fleming, God in Our Public Schools (2d ed.1944) pp. 80-86; Howlett, Released Time for Religious Education in New York City, Religious Education, Mar.-Apr., 1942, p. 104; Cavert, Points of Tension Between Church and State in America Today, in Church and State in the Modern World (1937) 161, 168; F. E. Johnson, The Church and Society (1935) 125; Hubner, Professional Attitudes toward Religion in the Public Schools of the United States Since 1900 (1944) 108-109, 113; cf. Ryan, A Protestant Experiment in Religious Education, The Catholic World, June, 1922; Elliott, Are Weekday Church Schools the Solution?, The International Journal of Religious Education, Nov., 1940, p. 8; Elliott, Report of the Discussion, Religious Education, July Sept., 1940, p. 158.

For opposing views, see V. T. Thayer, Religion in Public Education (1947) cc. VII, VIII; Moehlman, The Church as Educator (1947) c. X; Chave, A Functional Approach to Religious Education (1947) 104-107; A. W. Johnson, The Legal Status of Church-State Relationships in the United States (1934) 129-130; Newman, The Sectarian Invasion of Our Public Schools (1925). See also Payson Smith, The Public Schools and Religious Education, in Religion and Education (Sperry, Editor, 1945) 32, 42-47; Herrick, Religion in the Public Schools of America, 46 Elementary School Journal 119, Nov., 1945; Kallen, Churchmen's Claims on the Public School, The Nation's Schools, May, 1942, p. 49; June, 1942, p. 52. And cf. John Dewey, Religion in Our Schools (1908), reprinted in 2 Characters and Events (1929) 504, 508, 514. "Released time" was introduced in the public schools of the City of New York over the opposition of organizations like the Public Education Association and the United Parents Associations.

The arguments and sources pro and con are collected in Hubner, Professional Attitudes toward Religion in the Public Schools in the United States since 1900 (1944) 94 et seq. And see the symposia, Teaching Religion in a Democracy, The International Journal of Religious Education, Nov., 1940, pp.6-16; The Aims of Week-Day Religious Education, Religious Education, Feb., 1922, p. 11; Released Time in New York City, id.Jan.-Feb., 1943, p. 15; Progress in Weekday Religious Education, id. Jan.-Feb., 1946, p. 6; Can Our Public Schools Do More about Religion?, 125 Journal of Education 245, Nov., 1942, id. at 273, Dec., 1942; Religious Instruction on School Time, 7 Frontiers of Democracy 72-77, Dec. 15, 1940, and the articles in 64 Education 519 et seq., May, 1944. [↑](#footnote-ref-20)
21. See note 14, supra. Indications are that "dismissed time" is used in an inconsiderable number of the communities employing released time. Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3, p. 22; Shaver, The Movement for Weekday Religious Education, Religious Education, Jan.-Feb., 1946, pp.6, 9. [↑](#footnote-ref-21)