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Shared-Time - Permissible Aid to Sectarian Education

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CONCLUSION

It is probable that in the near future, an attorney will be called upon to defend a client who has committed a crime while under the influence of an hallucinogen, such as LSD. This probability will increase with the expanding use of the drug. As LSD affects the natural functioning of the mind, the raising of a defense of a lack of criminal responsibility appears to be the most likely approach to be taken by the attorney. Through the introduction of expert medical testimony it can be shown that the LSD reaction is so analogous to that caused by alcohol and narcotics or to insanity that the legal consequences of these areas must be held applicable to hallucinogens.

Philip Wolin

SHARED-TIME—PERMISSIBLE AID TO SECTARIAN EDUCATION

Several years ago, as a result of financial pressures on sectarian high schools, or perhaps as a means to broaden public education, the City of Chicago proposed a shared-time program to be initiated in the Chicago school system on an experimental basis.[1] The proposed experiment would take place at the Kennedy High School in conjunction with St. Paul's Roman Catholic High School. The program was adopted by a resolution of the Chicago Board of Education in April, 1964 and implemented by a report of the General Superintendent of Public Schools one year later. The Chicago experiment on shared-time is significant, not only in its unusual operational features,[2] but in that it may be the solution to the recurring source of controversy throughout the past century involving types of permissible aid to church-related institutions as it pertains to secondary education.[3] In the past, if a private or sectarian school could not fund its operations on a full-time basis independent of public aid, it would have to close its doors. With a shared-time program in effect, some of the burden would be taken off the private school by having its students attend some of their classes at a public

[1] Report on Shared Time by Benjamin C. Willis, former Superintendent of Chicago Public Schools, to the Chicago Board of Education, Feb. 28, 1964.

[2] *See* Flynn, *Hope or Chaos for the Schools?*, 53 ILL. EDUC. ASS'N 125, 127 (1964), where the author notes that two hundred and eighty school district superintendents "said they were operating shared time programs. In addition, one hundred and eleven said they were considering such programs."

[3] DRINAN, RELIGION, THE COURTS AND PUBLIC POLICY 165 (1st ed. 1963). For historical development *see* Comment, *Governmental Aid to Church-Related College—Side-Stepping the "Wall of Separation,"* 16 DEPAUL L. REV. 409 (1967).

school, thereby reducing the private school's cost of operation. But since the establishment clause of the first amendment[4] has become a viable doctrine,[5] the problem of any public aid to sectarian schools on a secondary level involves constitutional ramifications. This paper will attempt to examine the constitutional problems raised by a shared-time program and its permissibility.

DESCRIPTION OF SHARED-TIME

At this point, it will be useful to have a definition and description of shared-time (dual-enrollment) as an analytical matter. For this purpose, Mr. Francais Keppel's interpretation in an address given to the House Committee on Education and Labor is adequate:

> Under the concept of dual-enrollment, a mutual agreement is reached between public school and private school officials wherein a child takes part of his school work in the public school and part in the private school. When in the public school, the child is a public school pupil, his instruction is by public school teachers, and he is under the supervision of public officials just as any other child enrolled in public school. When in private school, the child is, of course, under the supervision of those in charge of the private school. This concept of dual-enrollment differs from released time or dismissed time in that under these programs a child received all of his secular education in the public school but is excused during the school day to attend classes in religious education held off public property and financed entirely by private funds.[6]

In the Chicago experimental program, the subject courses taken in the public school by students who also attend St. Paul's High School are the non-value or neutral subjects.[7] Specifically, this includes the sciences, mathematics, laboratory courses, industrial arts and physical education. At St. Paul's High School the shared-time students take, under religious auspices, English, social studies, music and art. Grading and promotion of parochial students in the public school is determined by the public school, and credit towards a Chicago Public High School diploma is given for the courses which are taken at both schools. The costs of communication between the public and parochial school are financed by the latter. In this particular program

[4] U.S. CONST. amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

[5] Bradfield v. Roberts, 175 U.S. 291 (1899).

[6] Statement by Francais Kepple, Commissioner of Education, before House Committee on Education and Labor, Feb. 28, 1964.

[7] The designation of "neutral" or "non-value" in education courses is generally understood to mean that a course is not subject to social, religious or ethical interpretation; which generally include the physical sciences. In contradistinction, the "value" or "non-neutral" courses are subject to interpretation and generally partake of the humanities, social science and religion.

bus service is not provided due to the proximity of the two schools. Participation in the program may be effected only upon application in writing by the student's parents or legal guardians and the participating students must comply with the compulsory school attendance laws of Illinois.[8] The students from the parochial school are fully integrated into the public school classes, and the scheduling of classes is made by the public school, with the parochial school accommodating its schedule accordingly to satisfy its requirements. The students who are exclusively enrolled in the public school receive a complete education there, including all the courses which the shared-time students receive in the participating private or sectarian school. At no time is there a stoppage or suspension of the daily schedule of classes at the public school to accommodate the shared-time students.

SHARED-TIME AND THE FIRST AMENDMENT

There may be a question whether the Chicago shared-time program, or any notion of dual-enrollment, suffers from constitutional infirmities in its analytical and operational nature. The dispositive question would be couched in the principle of separation of church and state: Does shared-time constitute an "establishment of religion" in violation of the first amendment which has been made applicable upon the states by reason of the due process clause of the fourteenth amendment?[9] The controlling issue to be considered is: Does shared-time constitute direct aid to religious institutions by means of public monies producing vast savings to the church at the expense of general taxpayers and existing solely for the purpose of maintaining parochial school systems? If the affirmative of the issue is concluded, the initiation of a shared-time program would constitute an "establishment of religion" and thus be unconstitutional. It is opined, however, that such is not the case and that shared-time will not fall prey to the invigilating eye of the United States Supreme Court.

The establishment clause has been interpreted by the Supreme Court to mean at least: "Neither a state nor the Federal Government 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."[10] The first amendment certainly reflects the notion that the church and state should be separated, and the separation must be complete and unequivocal where an interference with

[8] ILL. REV. STAT. ch. 122, §§ 26-1, 26-2 (1963).

[9] U.S. CONST. amend. XIV, § 1. "No State shall . . . deprive any person of life, liberty, or property without due process of law . . . ."

[10] Everson v. Board of Educ. of Ewing Twp., 330 U.S. 1, 15 (1947).

the free exercise of religion or an establishment of religion is concerned. "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. . . . Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly."[11] It is not necessary to point out the long history of church-state de facto cooperation and association; this point has been well developed in the much publicized *Zorach* case.[12]

Cases have indicated that not all aid or cooperation with religion is proscribed by the Constitution. In *Cochran v. Louisiana State Board of Education*[13] and *Borden v. Louisiana State Board of Education*,[14] it was held that states may provide textbooks for both public and parochial schools where the text books are of a secular nature. In *Shuey v. Lebanon County*,[15] it was held that the inclusion of a chapel in a county home where the indigent and non-ambulatory guests may worship, if they desire, is constitutional. No violation of the Constitution was found in *St. Patrick's Church Society of Corning v. Heermans*[16] where water was furnished free of cost to school houses, including parochial school houses. In *Everson v. Board of Education of Ewing Twp.*[17] the Supreme Court found that providing bus transportation to all school pupils, sectarian and public, did not constitute an aid to religion. The similarity in these cases is that the function which was aided was something other than religion. The benefit which was conferred was directed either to education generally or to the welfare of the pupil. With shared-time, no aid is given directly to the Catholic Church or to any other institution, secular or sectarian. The public monies which are expended go directly to the public school and the legislative purpose is wholly secular—to provide a good common education. The benefit is conferred directly upon the pupil and is secular in nature; therefore, any savings or benefit to the sectarian institution is incidental and would seem to be permissible aid. The determination of the constitutionality of shared-time, therefore, pivots not merely upon showing that religion is indeed aided, but rather that the form of aid is either permitted or disallowed.

The courts recognize that public monies may not be used to pay tuitions at sectarian schools[18] and that government may not use its authority in the

[11] Zorach v. Clauson, 343 U.S. 306, 312 (1952).

[12] *Id.* at 312-13.

[13] 281 U.S. 370 (1930).

[14] 168 La. 1005, 123 So. 655 (1929).

[15] 10 Lebanon 84 (Pa. Com. Pl. 1964).

[16] 124 N.Y.S. 705, 68 Misc. 487 (1910).

[17] *Supra* note 10.

[18] Almond v. Day, 197 Va. 419, 430, 89 S.E.2d 851 (1955). "It compels taxpayers to

field of education in order to instruct children in religion generally or in any specific religion.[19] If it is assumed that the principal reason for the existence of a sectarian school is to provide for religious teaching and the practice of religion, and that religious considerations are intertwined in the entire fabric of sectarian education, then monies raised by taxation cannot be used to support such education. It follows that direct grants or aids to sectarian schools are prohibited support. But, as seen in shared-time, no tax monies per se will go to the parochial or private schools.

Increased enrollment in certain subject courses at the participating public school will probably necessitate expanded facilities which will in turn require an increased amount of spending for the local board of education. However, the fact that the added enrollment in the public school results in an increased cost of operation is irrelevant. Parents are free to send their children to a private school as they may assume the costs of private dancing, elocution, or music lessons. Public funds cannot be used for these private purposes. But if students of private schools choose to have their education supplemented by the public schools, they certainly are entitled to such privilege because the public schools must stand open to all pupils in the community. In view of the fact that it is the public school which is the exclusive recipient of the permissible public expenditure, it cannot be said that the aid to any sectarian institution is direct.

The test to be applied should be: Is the benefit related to the aiding of the religious aspects of the institution? The best example of prohibited benefits would be "across the board" aid to a sectarian school because of the close relation to the religious function. Such aid is plainly prohibited as no separation is even attempted. Aids such as milk, lunch, medical inspection and services do not raise a substantial problem as they are not closely related to the religious function served.[20] Transportation[21] and textbooks (where the textbooks are common to the secular and sectarian educational systems) also fall into the same category.[22] Aid might also be extended to some equipment or facilities designed for special purposes totally unconnected with the religious functions of the schools.[23]

In the area of shared-time, it would take obtuse reasoning to find that

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contribute money for the propagation of religious opinions which they may or may not believe."

[19] *See* School Dist. of Abington Twp. v. Schempp, 374 U.S. 203 (1963); Engle v. Vitale, 370 U.S. 421 (1962).

[20] *See* PFEFFER, CHURCH, STATE AND FREEDOM 474-75 (1953).

[21] *Supra* note 10.

[22] *Supra* note 13.

[23] Comment, *supra* note 3.

the aid given to the parochial school students in the form of secular education on a part-time basis is directly related to the religious function. Certainly there could be no denial by any participating sectarian institution that shared-time would result in vast savings to it by reducing operational costs, for that is the most attractive feature of shared-time. But shared-time aid goes directly to the public school and manifests itself in the form of a necessary public service—secular education. The benefit accrues primarily and solely to the pupil and any advantages bestowed upon the sectarian institution is but incidental and in no way is its religious function aided. The Supreme Court has stated:

> Of course, cutting off church schools from . . . 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. The Amendment requires the state to be neutral in its elections with groups of religious believers and non-believers; 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.[24]

It may be claimed that the sole purpose for the creation of shared-time programs is to perpetuate the parochial school system; if so, then in order to withstand the strictures of the establishment clause, there must be a secular legislative purpose and a primary effect which neither advances nor inhibits religion.[25] One may conjecture that in the Chicago shared-time experiment, consideration of the financial status of the Catholic Church was highly instrumental in initiating the program because a vast majority of the private high schools in Chicago are maintained by the Roman Catholic Church.[26] The problem which confronts the Church is their financial inability to provide for a complete education, equivalent to the public school in quality. "Massive spending solely for public schools would in time result in a critical weakening of church related schools, presaging the ultimate closing of many of them."[27] Certainly, few would deny that education falls within the proper sphere of public welfare legislation. "It is much too late to argue that legislation intended to facilitate the opportunity of children to get a

[24] *Supra* note 10, at 18.

[25] *See* School Dist. of Abington Twp. v. Schempp, *supra* note 19; McGowan v. Maryland, 366 U.S. 420 (1961); Everson v. Board of Educ. of Ewing Twp., *supra* note 10.

[26] Editorial, *Religion and American Public Schools*, 9 JOURNAL OF CHURCH AND STATE 5, 14 (1967), wherein it was observed that "92% of all private school pupils are enrolled in Catholic parochial schools . . . which in 1966 had 42% of the Catholic children enrolled."

[27] Legal Department, National Catholic Welfare Conference, *The Constitutionality of the Inclusion of Church-Related Schools in Federal Aid to Education*, reprinted in 50 GEO. L.J. 397, 438 (1961).

secular education serves no public purpose."[28] The service being provided to the shared-time students is education of a secular nature, totally unrelated to the religious function. It is not, therefore, the teaching of religion nor its inculcation that is being publicly supported, but rather the general education of the high school pupil. At best the sectarian school is the recipient of an incidental side benefit manifesting itself in the form of financial alleviation of a burden voluntarily assumed. The Supreme Court has always held that incidental side benefits to private parties or religion do not invalidate a law so long as a public purpose is sought and served,[29] and the education of children in science, mathematics and the like involves a public purpose.

It may also be posited that the primary purpose and effect of shared-time is to aid the parochial school student in securing religious training. The predication of this claim would be based upon the premise that the financial relief given by alleviating the load of the parochial school enables it to continue in its function where, without such aid, it might have to close or compromise its educational program. The inarticulated premise is that the function of a church-related school is religious training. Indeed, the major premise to this syllogism is probably true, but the conclusion is erroneous. The primary purpose and effect of shared-time is to enable the pupil to get a good secular education, and while the program may enhance the financial posture of the church-oriented school by allowing it to concentrate its funds on courses steeped in religious dimensions, this is only an incidental benefit.[30]

Another possible objection to shared-time may arise in its operational nature. While it is incumbent upon the sectarian school to adjust its scheduling to be compatible with the public school, some revisions in the scheduling of classes and functions in the public school is inevitable. Would such concessions to the sectarian school constitute a form of prohibited "aid"? If the public schools were never to make concessions to religion, or display some

[28] *Supra* note 10, at 7.

[29] 330 U.S. 1 (1947). "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." *Id.* at 6. "Consequently it [the state] cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-Believers, Presbyterians, or the members of any other faith, *because of their faith or lack of it*, from receiving the benefits of public welfare legislation . . . ." *Id.* at 16. *See also* McGowan v. Maryland, *supra* note 25.

[30] Opinion of the Justices, 99 N.H. 519, 113 A.2d 114 (1955). The case involved a proposed New Hampshire law which would have provided annual grants-in-aid to hospitals in the state offering nurses' training. The aid would have gone only to charitable hospitals, including sectarian ones which did not discriminate on the basis of the religion of either students or patients. The court held that the grant program did not violate the first amendment. "If some denomination incidentally derives a benefit through the release of other funds for other uses, this result is immaterial." *Id.* at 522, 113 A.2d at 116.

recognition of the role religion plays in our pluralistic culture, it would indeed give the student a distorted view of American society. Generally, if the public schools did not acknowledge the relationship of our religious nature to individual and community life, the public schools would indeed be hostile to the religion. This point was recognized in the *Zorach* case when the court stated:

> We are a religious people whose institutions presuppose a Supreme Being. . . . We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe.[31]

The constitutional status of dual-enrollment is not altogether without precedent. In 1911, a case of a similar nature was decided in the Pennsylvania courts.[32] Catholic students attending a parochial school requested admission in a manual training program offered in the public school and were refused. The trial court in upholding the student's right to attend the public school stated that there was no benefit bestowed on the sectarian school by admitting the parochial school students into the public school on a part-time basis. On appeal to the state's highest court, the ruling was upheld and in a four to one opinion the court declared:

> [T]he benefits and advantage of these additional schools as means of education and improvement are not restricted to the pupils in regular attendance at the elementary public schools . . . but are intended to be free to all persons residing in such District, subject, of course, to reasonable rules and regulations consistent with the spirit of the school laws and the necessity for their effective and orderly administration.[33]

In a 1943 Washington case, Justice Mallery, in a dissenting opinion, observed:

> But certainly no inhibitions can be found in . . . [the] federal constitution that would prevent a pupil, in accordance with a legislative enactment, from being a part-time pupil attending the day school . . . and taking fewer courses than the entire high school curriculum; or enjoying equally, with every other pupil, any one or more of the facilities of the public school, which continue to remain a part of the public school entity, without any qualification of exclusive enrollment or the forbearance of private or parachial school attendance.[34]

[31] *Supra* note 11, at 313-14.

[32] Commonwealth *ex rel.* Wehrle v. Plummer, 21 Pa. Dist. 182 (1911).

[33] Commonwealth *ex rel.* Wehrle v. School Dist. of Altoona, 241 Pa. 224, 229 (1913).

[34] Mitchell v. Consolidated School Dist. No. 201, 135 P.2d 79, 88 (Wash. 1943).

It may be inquired whether shared-time does serve a public purpose as it could have the tendency of weakening the control of the public schools because it possibly will enhance private school enrollment. Indeed, even if the result of permitting shared-time would lead to every pupil in the public schools attending private schools on a part-time basis, it is difficult to see where it would necessarily lead to a substantive evil. Shared-time recognizes religious diversity while playing down unnecessary divisiveness. It allows the neutral (public) school to concentrate on academic excellence in most subjects while allowing the religious school to provide the added dimensions of religious insight. Shared-time might, in fact, strengthen the public schools as it would result in the return of many children to it.[35]

Shared-time can be viewed as a permissible aid to sectarian education in that it does not fall under the constitutional infirmities of the program indicated in *McCullom v. Board of Education*.[36] Upon examination, it will be found that the objectional features in the *McCullom* case do not appear in shared-time. Under shared-time, the public school takes no part in selecting or approving religious instruction and no pupil is displaced who is not involved in the sectarian aspects of the program. The operations of the public school are not suspended to accommodate religious instruction and the burden of the expense of communication between schools is not upon the public school. Indeed, if any similarity is to be found, it is to the released time program as ruled upon in *Zorach v. Clauson*.[37] However, it is distinguishable from *Zorach* in that the public school is not required to virtually suspend its operations while the students participating in the shared-time arrangement supplement their education elsewhere. If anything, there is even less cooperation between church and state in shared-time. It would appear difficult then, to see a constitutional distinction between shared-time and the constitutionally upheld released time program in *Zorach* since this "problem like many problems in constitutional law, is one of degree."[38]

[35] *See supra* note 27, at 443-44, for statistics on elementary and secondary school enrollment in the United States. Compare total enrollment with Catholic school enrollment.

[36] McCullom v Board of Educ., 333 U.S. 203 (1948). The McCullom case involved a program whereby, during the daily school schedule, classes were conducted in religion by various religious leaders in the community who were approved by the Board of Education. The classes were conducted in the public school classrooms and those students not desiring to participate in the classes would remain in the halls.

[37] The *Zorach* case, *supra* note 11, involved a released time program whereby some students were released once a week before the end of the regular school day to attend classes in religion at a sectarian institution. Those students who did not participate remained in the public school until the end of the regular school day. Prior to the *Zorach* case, released time was held not violative of the United States Constitution and the Illinois Constitution. *See* People *ex rel.* Latimer v. Chicago Board of Educ., 394 Ill. 228, 68 N.E.2d 305 (1946).

[38] *Supra* note 11, at 314.

Where a state constitutional provision requires a system of free schools whereby all children of that state may receive a good common school education,[39] it is questionable whether such a provision creates an enforceable right to dual-enrollment privileges. There may be rare situations where a statutory denial of such privileges might raise a constitutional problem. Thus, if a state college admitted part-time students but refused admission to those who were also taking courses in a sectarian college, such action might be so arbitrary as to constitute a denial of equal protection of the laws.[40] "[T]o exclude religious institutions from the class benefited would probably be violative of the first amendment as tending to prohibit freedom of worship and of the due process clause as an unreasonable classification."[41]

Would the situation be any different then, if a science academy, instead of a sectarian school, offered courses in math, physics, chemistry and biology in conjunction with a public school? Certainly not; and it could be the case under a conceivable shared-time provision if such a hypothetical academy desired to participate. Could there be an allegation of establishment? It is difficult to admit that secular organizations may participate in shared-time programs but not religious institutions. This clearly would be a case of the state preferring non-religion over religion. Would the state not be in fact hostile to religion under these circumstances? Would it not be the state, then, which is transgressing the strictures of the first amendment by establishing a religion of secularism? One will find it difficult to demonstrate that such is the spirit and the purpose of the Federal Constitution.

Most states have compulsory school attendance laws, but no state may compel its school age children to attend a public school exclusively.[42] In 1960, there were 2,426 Catholic secondary schools in the United States[43] and many were facing a financial crisis due to their inability to independently fund a full curriculum and maintain an adequate staff. Shared-time may be the only solution for these schools, and without it they might have to close

[39] ILL. CONST. art. 8, § 1.

[40] U.S. CONST. amend. XIV, § 1. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

[41] Department of Health, Education and Welfare, *Memorandum on the Impact of the First Amendment to the Constitution Upon Federal Aid to Education*, 50 GEO. L.J. 351, 371 (1961).

[42] Pierce v. Society of Sisters, 268 U.S. 510 (1925). The issue in Pierce concerned the constitutionality of an Oregon Statute which required all school age children to attend the public school, thus giving the State a monopoly over education itself. In stressing the right of children to be educated in a non-state institution, the court stated that "[t]he 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." *Id.* at 535.

[43] *Supra* note 27, at 408.

their doors as educational institutions, and most of their school age adherents would be forced to attend the public schools. This would mean that some children "who, in conscience, desired education in a church-related school would be forced to participate in an education in unacceptable orthodoxies."[44] So, if the Catholic Church were financially coerced to close its doors to its students, they would be virtually forced to be inculcated with views hostile to their religious convictions. There is "coercion upon the child to participate in schooling, the orientation of which [is] counter to his beliefs—a *de facto* denial of free exercise of religion."[45]

If the shared-time program is to be denied, not only must one suspect interference with the free exercise of religion, but also an establishment of religion, other than secularism in the public schools. The predication for this assertion is that the public schools are generally Protestant oriented and teach Protestant values. Mr. Justice Jackson was aware of this when, in dissenting in *Everson*, he observed: "Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values."[46] This is not to say that because public education harmonizes with one religion more than another that it is an establishment, but rather, when it compels the attendance of those alien to its dogma, then it might be so contended.

If any meritorious claim is to be successfully advanced against the permissibility of shared-time, it will not be couched in terms of the first amendment, but rather the objection will be found, if at all, in the construction of the constitutions and statutes of the various states which would indicate that the students must attend the public school on an "all or nothing basis."[47] After the Chicago shared-time experiment was initiated, the precise point was tested in *Morton v. Board of Education of the City of Chicago*.[48] Specifically, it was claimed that the experimental shared-time program at the Kennedy High School in conjunction with St. Paul's Roman Catholic High School was a violation of the Illinois compulsory school attendance

[44] *Supra* note 27, at 439.

[45] *Supra* note 27, at 439.

[46] *Supra* note 10, at 23.

[47] LA. REV. STAT. § 17:153 (1951), which provides that "[t]he school boards . . . are prohibited from entering into any contract, agreement, understanding or combination . . . with any church . . . or association of any religious sect or denomination whatsoever . . . for the purpose of running any public school . . . together, in connection, or in combination with any private or parochial school." In Special Dist. for Educ. & Training of Handicapped Children of St. Louis Cty., Mo. v. Wheeler, 408 S.W.2d 60 (Mo. 1966), it was held that Missouri's compulsory attendance laws require students to attend no more than one school during the school day.

[48] 69 Ill. App. 2d 38, 216 N.E.2d 305 (1966).

laws.[49] The court concluded that "[s]ince the object of the compulsory attendance law is that all children be educated and not that they be educated in any particular manner or place, part-time enrollment in a non-public school is permitted by section 26-1, so long as the child receives a complete education."[50]

It may be suggested that a more favorable alternative to shared-time would be to grant a tax-rebate or voucher for every school aged pupil and let the parent decide where the child should attend school without incurring the burden of both taxation and tuition.[51] By this alternative, it may be possible for the private institutions to become economically nurtured without direct aid by being able to receive both the voucher and some additional tuition. The desired result would be that the private institution would be able to maintain a full curriculum, and at the same time, the intermingling of the public and parochial school functions would be avoided. "But our concern is not with the wisdom of legislation but with its constitutional limitations."[52]

CONCLUSION

It is difficult to see where the system of shared-time is violative of the first amendment. The benefit accrues directly to the function of secular education. Nowhere is any sectarian institution given anything; the expenditure goes directly and exclusively to the function of secular education and is confined to the public school. It would thus appear that shared-time does not violate the establishment of religion clause. Shared-time is similar to released-time; but, it does not incorporate its objectionable feature, that is, at no time must the public school virtually suspend its operations to the detriment of the non-participating students in order to accommodate religious inculcation.

Shared-time is not only permissible, but advisable as the best alternative to direct public aid to parochial education which is clearly proscribed. Without shared-time or an equivalent program, it may be opined that sectarian education, which is deeply rooted in the American tradition, will become

[49] ILL. REV. STAT. ch. 122, § 26-1 (1963). "Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term; Provided that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language . . . ."

[50] *Supra* note 48, at 45.

[51] M. FRIEDMAN, CAPITALISM AND FREEDOM 89-98 (1962).

[52] Braunfeld v. Brown, 366 U.S. 599, 608 (1961).