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Griffiths: Religion, the Courts, and the Public Schools

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BOOK REVIEWS

RELIGION, THE COURTS AND THE PUBLIC SCHOOLS. By William E. Griffiths.[1] Cincinnati: W. H. Anderson Co. 1966. Pp. 244. $5.75.

What strange variety of forces coalesced early in this century to bring about the enactment of state laws requiring the reading of the Bible without comment in the public schools? At least in retrospect one can see that such a practice is at best dubiously valid — educationally or religiously. Why did public school administrators agree or acquiesce in the enactment of laws that, however well-intentioned, can only be described as the legalized institutionalization of a sectarian symbol almost devoid of substance?

Now that the controversy over *Engel*[2] and *Schempp*[3] — prohibiting the reading of the Bible in public schools — has become but a memory the extensive litigation at the state level over Bible reading in the public school, prior to the 1963 decision of the United States Supreme Court, seems pointless and arid. Indeed, it seems almost unbelievable that litigants, educators, and jurists could and did expend so much energy over so inconsequential a symbol as the legally authorized reading of ten verses of the Bible.

A realization of the incredible amount of time and energy expended in futile controversies and litigation at the state level over the constitutionality of Bible reading in the public schools leads one to a more important question: What were public school educators in the fifty years before *Schempp* doing in regard to the key concept of teaching *about* religion?

Not too much light on the crucial question will be gained in this useful manual authored by Professor Griffiths of the School of Education of the University of Massachusetts. But valuable information about past legal struggles is contained here in full detail — as suggested by Dr. Griffiths' subtitle *A Century of Litigation.*

The first four chapters (pp. 1-91) of this book are devoted to what the author calls "morning religious exercises." No one can quarrel with the way in which Dr. Griffiths has assembled the case law and with his summary of the state of the question at this time. This treatment of devotional exercises in the public schools does not, however, delve into the underlying reasons why educators did not themselves consider surrendering sectarian practices because of their very questionable value either educationally or religiously. To put it another way — the question would be: Why did public school educators ac-

1. Assistant Executive Secretary of the Cooperative School Service Center, University of Massachusetts.

2. Engel v. Vitale, 370 U.S. 421 (1962).

3. School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963).

cept without protest a statutory duty that teachers, although they are free to comment on all subjects they teach, must, however, daily read the Bible to their pupils "without comment." Apparently public school educators have *not* looked upon this legal mandate as a "gag" rule or as a restriction on their academic freedom or as an invasion of the legislature into matters properly within the realm of officials of the public schools. Obviously, any attempt by a state legislature to require a state university to have its professors read daily to all freshmen ten verses of the Bible "without comment" would arouse the most vehement protests. But why was such a requirement for high school seniors accepted by educators without protest for at least a half-century?

Professor Griffiths' next three chapters present a good synthesis (but concededly little critical analysis) of what the law is with respect to released time religious education and to the various issues that arise when public school officials cooperate with religious groups.

The last chapter of this study contains interesting material with regard to the religious affiliation of teachers, the wearing by teachers of religious garb, and similar questions. Here again Dr. Griffiths' purpose is only to set forth the law as the various courts have enunciated it.

Lawyers tend, of course, to be generally suspicious and over-critical with Dr. Griffiths' treatment of church-state law because his presentation is by design uncritical. He merely summarizes the majority and minority views in the countless decisions he touches upon, but without pointing out the many contradictions, fallacies, and sheer fantasy that not infrequently have found their way into court opinions on church-state issues.

Infrequently, however, Professor Griffiths makes generalizations, which at best are debatable. For example, while outlining the arguments in favor of shared time, Dr. Griffiths asserts that "direct aid to nonpublic schools is unconstitutional." It may be that the author is not necessarily endorsing this view but simply stating it as the viewpoint of the advocates of shared time. In any event no constitutional lawyer would endorse the statement as written. The fact is that direct aid to nonpublic *colleges* is, of course, at least presumably constitutional in view of the Higher Education Facilities Act of 1963.[4] And no United States Supreme Court decision rules out direct aid to church-related nonpublic elementary and secondary schools so long as the aid is for a secular purpose and is not given with the intent or effect of a primary benefit being derived by religion. The test in *Everson*,[5] coupled with the directives set forth by the Supreme

4. 77 Stat. 363 (1963).
5. Everson v. Board of Educ., 330 U.S. 1 (1947).

Court in the Sunday closing law cases,[6] comes to this: the state, in the exercise of its police power, may confer the secular benefits of public welfare legislation in such a way that an incidental but unintended benefit to religion may result.

Those who have heard and read Professor Griffiths' papers given at conferences on school law will hope that this acknowledged expert on religion and the public schools will in the very near future write about the burning legal-moral-educational problems, which the courts have not yet been called upon to resolve. These issues include the content and presuppositions underlying "moral and spiritual values," the advisability of "shared services" and the almost totally unexplored implications of courses in the public school "about" religion. It is to be hoped that educators and authorities in school law will turn their minds to these complex problems so that the judiciary will not be forced, as it was in the prayer and Bible-reading cases, to resolve issues that educators should have and could have resolved in a manner much more satisfactory to everyone involved.

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6. Gallagher v. Crown Kosher Super Market, 366 U.S. 617 (1961); Braunfeld v. Brown, 366 U.S. 599 (1961); Two Guys From Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961); McGowan v. Maryland, 366 U.S. 420 (1961).

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