

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.⁴⁷

It is true that Justice Black, in the course of his opinion, then stated:

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 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."⁴⁸

For making this oft-quoted statement, Justice Black has been criticized as having gone well beyond the necessities of decision in essaying upon the supposed application of the No Establishment Clause to a number of cases not then before the Court. The statement, however, must be regarded as more than dictum.⁴⁹ It is, in fact, part of the rationale of the decision, and must be read in the light of the actual result of the case: school bus benefits at government expense to citizens, to enable them to acquire education in church-related schools. That is to say: conformably with even so stringent an interpretation of the No Establishment Clause, secular education in church-related schools (and that was precisely and solely what was there involved) is supportable by government.

Unfortunately, the next succeeding paragraph of the Black opinion is often omitted from the discussion of disestablishment problems, but it forms the inseparable complement to his foregoing statement, necessarily resolving the tension between the two concepts of No Establishment and free exercise, which concepts would otherwise become unworkable absolutes. Justice Black stated:

We must consider the New Jersey statute in accordance with the foregoing

⁴⁷ Id. at 17.

⁴⁸ Id. at 15-16.

⁴⁹ Justice Black, speaking for the Court this year in *Torcaso v. Watkins*, denies that the statement was dictum. 367 U.S. 488, 493-94 (1961).