

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. 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, 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. 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.⁵⁰

Everson thus teaches that aid rendered to a citizen in order to obtain state-prescribed education in a church-related school is not, in the constitutional sense, "aid to religion," or a "financing of religious groups," or "support of the religious function" (to borrow terms used by various objectants to aid to education in church-related schools). It is recognition of the principle that government may assist all public service aspects of an educational enterprise.⁵¹ The decision, therefore, conclusively establishes a logical and enlightened "social benefits" doctrine, weighing (in the best traditions of the Supreme Court) the social benefit⁵² conferred by government action, relatively to prohibited government action.

To what subjects may these benefits extend? Justice Black, writing for the majority, said that they included also police and fire protection, connections for sewage disposal, public highways and sidewalks. He

⁵⁰ Id. at 16.

⁵¹ Justice Frankfurter, a dissenting justice in *Everson*, commented upon its holding in his separate opinion in the Sunday Law Cases as follows:

[T]his Court held in the *Everson* case that expenditure of public funds to assure that children attending every kind of school enjoy the relative security of buses, rather than being left to walk or hitchhike, is not an unconstitutional "establishment," even though such an expenditure may cause some children to go to parochial schools who would not otherwise have gone. The close division of the Court in *Everson* serves to show what nice questions are involved in applying to particular governmental action the proposition, undeniable in the abstract, that not every regulation some of whose practical effects may facilitate the observance of a religion by its adherents affronts the requirement of church-state separation. 336 U.S. at 467 (separate opinion).

⁵² See discussion at p. 433-34 *infra* of the many "social benefits" relating to education in church-related schools which already have the sanction of legislative constitutional precedent.