

have the right, coupled with the high duty, to recognize and prepare him for additional obligations.⁹⁴

The teachings of *Pierce* are of importance with respect to the issues here presented. First, *Pierce* holds that there is no power in the state to monopolize education. Secondly, *Pierce* states that the child is not a mere creature of the state. Thirdly, *Pierce* holds that parents may, in the discharge of their duty under state compulsory education laws, send their children to church-related schools rather than to public schools if the church-related schools meet the secular educational requirements which the state has constitutional power to impose.⁹⁵ This is described by the Court as a *right*—not a privilege but a part of that “liberty” protected under the due process clause of the fourteenth amendment (and also undeniably of the fifth amendment).⁹⁶ This becomes a consideration to be weighed where a program of governmental spending upon education in public schools may reach such proportions as to require the cessation of all other kinds of education in the land and *de facto* to remove all possibility of the exercise of the parental right of choice.

The *Pierce* decision has received subsequent recognition by members of the Supreme Court as having established protection to parents and to children under the free exercise clause of the first amendment. Justice Rutledge so recognized it in his dissenting opinion in the *Everson* case,⁹⁷ and Justice Frankfurter in his concurring opinion in the *Sunday Law Cases*, in which Justice Harlan joined.⁹⁸

Certain essential theses of the *Pierce* decision find subsequent expression in the racial desegregation cases.⁹⁹ Here, an “official” plan of free education for Negro children was prescribed by the state. These children felt themselves, however, constitutionally entitled to receive their schooling in institutions which were “unofficial” as to them. The Supreme Court, by the fact of its decision in *Brown*, inferentially denied any supposedly supreme power in the states to require attendance at “official” schools. Moreover, there appears in the *Brown* opinion (by a

⁹⁴ *Id.* at 534. (Emphasis added.)

⁹⁵ Specific recognition of this was given in the opinion of the Court in *Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947). And see similar recognition by the Court in *Prince v. Massachusetts*, 321 U.S. 158, 166 (1943).

⁹⁶ See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

⁹⁷ 330 U.S. at 32-33.

⁹⁸ *McGowan v. Maryland*, 366 U.S. 420, 467 (1961) (separate opinion).

⁹⁹ *Brown v. Board of Educ.*, 347 U.S. 483 (1954).