between "direct" and "indirect" benefits or "direct" and "fringe" benefits. To Justice Rutledge, what was sanctioned by the majority was direct aid to the religious institution. In this connection Professor Paul G. Kauper has stated:

> But to distinguish on principle from this type of benefit ["fringe" or "auxiliary"] and the more substantial benefits that would accrue from subsidies to pay teachers' salaries or to provide educational facilities presents difficulties, particularly when it is noted that in the *Everson* case the Court emphasized that the state imposed a duty on all parents to send their children to some school and that the parochial school in question met the secular education standards fixed by the state. By hypothesis the school building and the instruction in secular courses also meet the state's requirements. When we add to this that education is appropriately a function of both government and religion, the question may well be raised whether the same considerations that govern the problems of bus transportation costs and text books, as well as the question of public grants to hospitals under religious auspices, do not point to the conclusion, whatever different conclusions may be reached under state constitutions, that the First Amendment, in conjunction with the Fourteenth, does not stand in the way of governmental assistance for parochial schools.[140]

Thirdly, the reasoning of the Department Memorandum founders upon difficulties presented by the existence of such benefits to religious institutions as tax exemptions. It is at once apparent that constitutional sanction of tax exemptions (which exemptions are, practically speaking, equivalent to bounties) further weakens arguments that "direct" grants to parochial schools would be impermissible because such aid would support the "religious function" thereof.

Fourthly, an important qualification upon the "no aid" language of the *Everson* majority is expressly given in their opinion. It being clear that the government may not set up an official church, the No Establishment Clause appears to have its principal mandate *as auxiliary to the free exercise clause.* The majority opinion in *Everson* makes this clear. There could be no other explanation for the Court's holding that the No Establishment Clause is made applicable to the states by the fourteenth amendment. Moreover, the opinion of the Court at numerous points expressly stresses that "religious liberty" (free exercise) is the determinant with respect to all government legislation respecting religion which goes beyond "establishing" (in the British sense) a church. The opinion states: "The people . . . reached the conviction that *individual religious liberty* could be achieved best under a govern-

140 Kauper, Frontiers of Constitutional Liberty 136 (1956).