

the state may in numerous ways accommodate its programs to the religious interests of its citizens and institutions.

This distinction between "aid to religion" and "accommodation of religion" is the basic proposition of *Zorach*. The distinction obviously makes "aid to religion" a highly technical concept, since religion was unquestionably "aided" as well as "accommodated" by the released-time program. The Department Memorandum, however, constantly applies the "no aid" principle in dogmatically literal manner without advertg to the fact that *Zorach* has interpreted and limited the principle in terms of a constitutional philosophy that is open to the accommodation of public services to religious interests.

Rule by semantics should never take the place of the rule of law. It can only result in complete confusion. A good example of this confusion is the Department Memorandum's assertion that loans are unconstitutional even if there is "no economic loss from the standpoint of the taxpayers."¹⁵² HEW explains that such a loan "might, nonetheless, be of measurable economic assistance to private institutions unable to secure reasonable credit from non-Government sources."¹⁵³ Another example of the same confusion lies in HEW's frequent recurrence to the "liberation of funds" argument.¹⁵⁴ Any form of joint financing by the government and religious institutions of secular activities, HEW argues, is constitutionally vulnerable, because it results at least in freeing funds for religious purposes which the religious institutions would otherwise have spent on secular welfare activities. This liberation of funds is "aid to religion" and therefore unconstitutional. Such an argument condemns itself.

It treats the "no aid" principle as if it were merely a phrase in the English dictionary. It cannot be reconciled with *Zorach* or the unbroken American tradition of the joint financing by religious and governmental organizations of social welfare activities.

Cochran v. Board of Education

The Memorandum dismisses the *Cochran* case as one of "dubious authority for the proposition that textbooks may be provided by a State to parochial school students."¹⁵⁵ While it is true that first amendment

¹⁵² Id. at 369.

¹⁵³ Ibid.

¹⁵⁴ Id. at 370.

¹⁵⁵ Id. at 359 n.4.