A Wall of Separation - Abington v. Schempp (1963)

Cases don’t just magically appear in the Supreme Court. Except in rare circumstances, they begin as local disputes, then work their way up through District Courts. By the time a case comes before the Nine Supremes, it’s usually been percolating for several years.

The Court chose to hear School District of Abington Township v. Schempp (1963) only one short year after its decision in Engel v. Vitale (1962). This suggests they saw something in the case distinct from the issues a year before; otherwise, they’d have “remanded it” (i.e., “sent it back”) to the lower courts for reconsideration in light of their ruling in Engel.

The case is remembered for the Court’s 8-1 determination that government-sponsored Bible reading or prayer in public schools is unconstitutional. It violates the First Amendment as applied to the states through the Fourteenth (“incorporation”). Other than focusing on ‘Bible reading’ instead of prayer, it is in many ways a repeat of Engel. Still, Abington has several elements which make it worth separate consideration.

The case began in the late 1950’s when Edward Schempp, his wife, and two of his kids who went Pennsylvania public schools, argued that their religious rights (they were Unitarians) were being violated by a state law that required public schools to begin each school day with a reading of at least 10 verses from the Bible.

Pennsylvania tried to deflect the issue by modifying the law to allow students to be excused with a written request from a parent, but that changed little in practical terms. The case moved forward and – as you’ve probably surmised since you’re reading about it now – ended up in the Supreme Court.

The Court occasionally combines similar cases to be heard together. That’s what happened in Brown v. Board of Education (1954), for example – while the story of Linda Brown still remains the ‘face’ of the case, there were four additional cases, all pushed by the NAACP, packaged together with Brown. They were considered and decided simultaneously.

Schempp’s case was combined with one from Baltimore, Murray v. Curlett. While Abington is the one most remembered and discussed, it was Murray – as in “Madelyn Murray O’Hair” – which made the biggest ripple at the time.

Ms. O’Hair was America’s most prominent and outspoken atheist of the 20th Century. For several generations after the Abington/Murray decision, she was loathed and demonized as the woman who removed God (or at least prayer) from public schools.

Whatever the spiritual ramifications of her actions, this simply wasn’t true. She fought prayer and Bible-reading in public schools, certainly, but the prayer issue had already been decided by the time her case made it to the Highest Court. And the Bible-reading issue would have turned out the way it did with or without her.

That doesn’t mean she’s not burning in eternal damnation even as we speak, but history is history – so let’s try to be accurate, shall we?

A second memorable feature of this case, besides the decision itself, is that for the first time the Court developed a sort of ‘test’ to be used in subsequent situations to determine whether or not the Establishment Clause was being violated.

From the majority opinion, written by Justice Tom C. Clark:
The wholesome "neutrality" of which this Court's cases speak... stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions... to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits...

[A] further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees.

Thus, as we have seen, the two clauses may overlap...

The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that, to withstand the strictures of the Establishment Clause, there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion...

The Court would “update” this test less than a decade later in Lemon v. Kurtzman (1971). The updated version – commonly referred to as the “Lemon Test” – is far better known and still utilized today.

Justice Clark’s opinion quotes from the record of the initial “trial court” which heard the case to begin with. Better than anything else, it summarizes the reasoning behind the final decision:

The reading of the verses, even without comment, possesses a devotional and religious character and constitutes, in effect, a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord’s Prayer.

The fact that some pupils, or, theoretically, all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony, for... [the law in question] unequivocally requires the exercises to be held every school day in every school in the Commonwealth.

The exercises are held in the school buildings, and perforce are conducted by and under the authority of the local school authorities, and during school sessions. Since the statute requires the reading of the "Holy Bible," a Christian document, the practice... prefers the Christian religion. The record demonstrates that it was the intention of... the Commonwealth... to introduce a religious ceremony into the public schools...

Note the reference to the documented goals of the legislation. The Court will not typically ignore clearly stated intentions of a law even if the language itself slides under the bar of constitutionality.

Like Justice Black before him, Justice Clark soon launches into a history lesson about the role of faith in our collective past. He cites related cases, some involving schools and others not, before this poignant little line:

The government is neutral, and, while protecting all, it prefers none, and it disparages none.

There’s more history and lots of quoting from other cases, then this:

We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally
force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

There's more reasoning and quoting – it's actually a bit tedious as majority opinions go – until we get to this:

*Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties."

**Pages of legal reasoning and precedence**, then suddenly “a trickling stream may all too soon…” If only Justice Clark had discovered his penchant for drama a few dozen pages earlier.

It is insisted that, unless these religious exercises are permitted, a "religion of secularism" is established in the schools.

Oooh! This sounds interesting. It's essentially the same accusation made against public schools by our very own 21st century representatives several times a year.

*We agree, of course, that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." … We do not agree, however, that this decision in any sense has that effect.*

*In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.*

You can't read much great literature or analyze many influential American speeches without a foundation of Biblical literacy. Reform movements or wars, individuals or cultures – the impact of religion is ubiquitous in our collective past, and to deny it would be to rewrite that history substantially.

*But the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.*

**Despite popular perception** in the 21st Century, the Court expressed no interest in stifling or limiting religion – it merely refused to make it, or any specific form of it, in any way mandatory.

It would be eight years before another case of note involving public education and the role of faith would reach the Supreme Court. It would produce the best-known ‘test’ for weighing whether or not a particular policy or practice was, in fact, in violation of one of those tricky ‘religion’ clauses.

And it would have a catchy name – so… bonus!