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# **Principled Pluralism in Practice: Sphere Sovereignty for Education and the State in the 21st Century**

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# Principled Pluralism in Practice: Sphere Sovereignty for Education and the State in the 21st Century

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**Abstract:** This thesis seeks to apply former Dutch Prime Minister Abraham Kuyper's theory of Sphere Sovereignty as a model for the limits of state sovereignty and education governance in regard to religious freedom within the United States. Through various legal cases dealing with education, I argue that current church-state jurisprudence has placed religious people at a disadvantage when it comes to school choice and funding. In order to understand how the model of sphere sovereignty could manifest itself in the American education system, I compare it with the systems of the Netherlands and England to offer a genuine discussion, as well as critique, about the role of the state and the funding of religious schools. Can Kuyper's theory uphold a commitment to religious freedom and principled pluralism in the 21st century?

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## Introduction: Sphere Sovereignty for the 21st Century?

East Ramapo, a New York school district, is a raw example of the fight between a growing religious majority who send their children to private schools and the community who send their children to public schools. A diverse district with 35,000 students, 76% of these students attend private schools and the “black” and Latino students represent over 90% of the district’s public school population.<sup>1</sup> Since 2005, the nine-member school board in East Ramapo has been held by a majority of Orthodox Jews. Most Jews living in the area were poor and as their population grew, local school officials worried that this would have an effect on their public school budget bill when it was time to vote. They tried to make a truce with their Jewish neighbors: “we’ll leave you alone to teach your children in private yeshivas as you see fit as long as you allow our public school budget to pass.”<sup>2</sup> But the Jewish community was fed up with what they saw as an unfair system - especially when it came to aiding special needs children. The government would only assist special needs children if they were placed in public schools because “for years [prior] special needs kids were isolated,” and the wall of church-state separation didn’t permit funding to go to private schools. And so, a years-long battle has been going on - between the board, which has been accused of diverting funds from local public schools to their own Orthodox private schools and the community of public school parents. Public school advocates and city officials argue that a “wider representation on the board is sorely needed” and the Jewish school board and community argues that a one-size-fits-all approach to education and the federal education regulations are unfair to their rights of religious freedom.

Although this case is a unique one, and rather intense at times as one can hear from the meetings between the groups, the implications that it holds are not as unique. It is part of a larger issue regarding religious freedom, government funding, and the education system in the United States. In the East Ramapo case, the Jewish community saw holding a majority in the school board as a way to protect their First Amendment rights but implemented these in such a way that caused trouble for the community that wasn’t Jewish. On the other hand, the frustration the Jewish community felt with having to “pay twice” for education and leaving them no option to provide adequate assistance for special needs children unless they were sent to public schools caused problems as well. The issue lies with a bigger problem: in that the U.S. Supreme Court claims to hold to neutrality when it comes to religious and secular matters. But as Stephen Monsma suggests, when religion is out of the matter, what is left is secularism. First Amendment cases have always been a matter of contention in America; this is what Winnifred Sullivan also argues in her book *The Impossibility of Religious Freedom* when she

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<sup>1</sup> Jan Ransom, “East Ramapo School Elections Violate Rights, Suit Claims,” *The New York Times* 16 Nov. 2017.

<sup>2</sup> Ben Calhoun, “A Not-So-Simple Majority,” *This American Life* 15 Nov. 2018. See also: Isabel Fattal, “A Heavy Blow to One of America’s Most Controversial School Boards,” *The Atlantic* 20 Nov. 2017.

asserts that the legal system cannot sufficiently protect religious freedom. Michael Feldman also takes a bold position, arguing that if the religion clauses were to be removed, religious freedom could be protected under other constitutional commitments such as freedom of speech, press, and assembly, among others. I admit that this is an intriguing theory to entertain and, in my conclusion, I discuss it at greater length. The issue I take up however is that we are not free from the state and government does play a unique role in the U.S. and in Europe as well when it comes to education and pluralism in particular. Through various legal cases dealing with church and state jurisprudence, I seek to illuminate the ambiguity the U.S. Supreme Court has taken with regard to the First Amendment and suggest that religious people have been placed at a disadvantage when it comes to funding and education. In the Netherlands, the former Dutch Prime Minister, politician, theologian, and journalist Abraham Kuyper vouched for a genuine commitment to pluralism by recognizing the different roles of state, society, and citizen in his principle of Sphere Sovereignty. This led to a wider recognition of religious schools and equal state funding. In this thesis, I argue that Kuyper's theory of sphere sovereignty can uphold a commitment to religious freedom in the education sector in the United States in a pluralistic 21st century.

I will be using a qualitative method to underlie the discussion I bring forward in this thesis. The data and empirical research I have collected are analyzed through the lens of political science. The sources I use include political documents and policies, academic journals and articles, as well as some statistics, and are intended to help the reader gain a better understanding of an issue very much relevant still today. An analytical and critical approach intends to illustrate the usefulness of Kuyper's principle of sphere sovereignty, as well as various critiques and dilemmas with his theory in practice. To gain a better understanding of the issues highlighted in this thesis, I look into the historical factors that played a role in policy-making as well as reoccurring themes and dilemmas in education and religious freedom in the Netherlands, England, and the U.S. I will compare the education systems in these three countries, placing special attention on religious freedom and funding in each. As mentioned earlier, I will analyze various key court cases in the U.S. that deal with religious schools and the funding thereof and use these to show the ambiguity of the Supreme Court with regards to the First Amendment. I am aware of the arguments for and against religious schools in general. I am also aware of the economic arguments for and against private school funding as underlined by thinkers such as Milton Friedman, Christopher Jencks, and John Coons (among others) and will briefly touch on this in my last chapter. This thesis is not concerned with the *nature* of religious schools, but focuses on a commitment to religious freedom as underlined in the First Amendment in the U.S. and other important political documents in the Netherlands and England.

In my first chapter, I will address Kuyper's theory of sphere sovereignty in depth and highlight how this applied to the education sphere within the Netherlands during a time of secularizing trends in state and society and a growing plurality of religious

groups. His principle distinguishes from liberal individualism, collectivist socialism, and conservative nationalism, and asserts that ‘sovereignty’ does not prescribe “state or popular sovereignty” as absolute but used it as a way to circumscribe plural social authorities to each other.<sup>3</sup> With this principle, he successfully was able to limit the role government played in education, arguing that the government’s role is not to dictate over education but to allow a choice for parents both religious and secular to send their children to the schools they see fit. This chapter gives an overview of this idea and shows some of the dilemmas and critiques that come along with his approach. Where is the government’s role in funding secular and religious education and where does its role end? Has “living together apart” in the form of pillarization been beneficial for religious minorities? What is left of pillarization today? These questions I seek to address through the lens of Kuyper’s theory.

In chapter two, I argue that current church-state jurisprudence has placed religious people at a disadvantage at times with regard to education and funding. Jefferson and Madison were all too aware of the problems centralized “state” religion caused and the bitter conflicts that resulted between denominations wanting to gain the upper hand in matters such as education and the building of churches during the founding of the colonies. The Enlightenment era was concerned with placing faith in reason and logic, believing that religion ought not to be part of the public realm since it was seen as a divisive force. Thus, a strict separation of church and state was called for. “Such a separation would spare the state from the dangerous division particularistic religion posed, yet would not harm particularistic religion, since it would continue to flourish in the purely private realm.”<sup>4</sup> The American public philosophy was to rest on three assumptions:

1. “Particularistic religion could be safely assigned to the private sphere without infringing on the religious beliefs and practices of its adherents;
2. A public realm stripped of religious elements would be a neutral zone among the various religious faiths and between faith and non-belief;
3. Religious freedom would flourish in the absence of governmental restraints and with no need for positive governmental actions to equalize the advantages enjoyed by religious and nonreligious groups.”<sup>5</sup>

In regard to education and religious freedom however, this would soon prove to provide some of the toughest cases to resolve in court. These legal issues are what the U.S. has run into time and again when it comes to private schools, parental choice, and religious

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<sup>3</sup> Jonathan Chaplin, “Civil Society and the State: A Neo-Calvinist Perspective,” *Christianity and Civil Society*, ed. Jeanne H. Schindler (Lexington Books, 2008) 72.

<sup>4</sup> Steven Monsma and Christopher J. Soper, *The Challenge of Pluralism: Church and State in Five Democracies* (Rowman and Littlefield, 1997) 8.

<sup>5</sup> *Ibid*, 9.

freedom. Where do religious schools fit in the current education system with regard to funding? Should a student be denied a public scholarship because he wants to study pastoral ministries? Can the state subsidize transportation costs to and from private schools the same way they do for public schools? The U.S. Supreme Court claims to hold to the principle of neutrality. What does neutrality mean with regard to religious freedom? I suggest that the way the U.S. has defined neutrality poses a significant question for the courts when it is faced with First Amendment cases: can it choose neutrality and religious freedom at the same time?

Chapter 3 will discuss another way of education and religious freedom in the case of England. This serves as a comparison to the systems of the Netherlands and the U.S. Whereas in the English system, funding for religious and non-religious schools comes through indirect means by government, there are increasing concerns about the role government actually plays in education. England's education system serves to show valid concerns and issues that come with government funding because after all, when one is entrusted with some money, there also comes accountability and responsibility of how those funds will be used. From the start, funding was unquestioned, but the means and extent of how the government is involved has grown. There are various religious schools in England that point out the concerns in accepting government funds for education. Can these concerns be reconciled in such a way that allows for the unique identity of religious schools to flourish without placing them outside state financial benefits?

Finally, the last chapter will address how Kuyper's principle of sphere sovereignty can manifest itself in the American education system with regard to upholding religious freedom. Drawing from examples in the Netherlands and England, I will suggest that a modernized version of sphere sovereignty could uphold religious freedom in the U.S. In the Netherlands, the system of pillarization allowed for the funding of different religious schools while at the same time allowing space to organize themselves each to their unique identity. Rather than being forced to accept secularization as the only means for living life, allowing each pillar to exist freely according to their worldview grants a greater commitment to tolerance, according to Kuyper. Mark Halstead, British philosopher of education, calls it "voluntary apartheid" (not to be mistaken with the term associated with South African apartheid).<sup>6</sup> In a society where there is bound to exist clashes between ideologies, as was asserted by Samuel Huntington in his book *Clash of Civilizations*, could "living apart together" serve as a commitment to principled pluralism, rather than being forced to leave one's worldview or belief at the doorstep for the sake of so-called neutrality? It would be strange to argue that the U.S. ought to pillarize as the Dutch did in Kuyper's time and as we will come to see, organizing the education system like England might not uphold the separation of church and state

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<sup>6</sup> Johan Sturm, et al., "Educational Pluralism - A Historical Study of So-Called 'Pillarization' in the Netherlands, Including a Comparison with Some Developments in South African Education," *Comparative Education* (1998): 282.

which is appropriate to a certain extent. Sphere sovereignty's lesson lies in the recognition of roles and the limits of power in each sphere of society. Furthermore, I will take a critical look at the issue of race and segregation which, as history and recent empirical research has shown, is often linked to school choice. How can sphere sovereignty reconcile the issue of segregation while maintaining religious freedom through school choice and funding?

There is the "fact of pluralism" and the government does serve a unique role in the functioning of society according to Kuyper. Key to Kuyper's principle of sphere sovereignty is that it was precisely because he was confident in his belief that he could discern what principled pluralism could look like in society filled with many beliefs. Legal scholar John Inazu writes of a "confident pluralism," asserting that, "[it] seeks to maximize the spaces where dialogue and persuasion can coexist alongside deep and intractable differences about beliefs, commitments, and ways of life... a *confident* pluralism [is] rooted in the conviction that protecting the integrity of one's own beliefs and normative commitments does not depend of coercively silencing opposing views."<sup>7</sup> Of course there are limitations, and this is because of the fact that we are not our own islands, but consist of societies, diversifying with the years. A confident pluralism, according to Inazu, is based on two normative premises. The first "is a suspicion of state power, and it is directed primarily as a constraint upon government... the second is a commitment to letting differences coexist, unless and until persuasion eliminates those differences."<sup>8</sup> A commitment to confident pluralism is not easy. It is because most of us don't want to deal with difference. But even more so, we do not want the power and practice of a government that creates rules that displaces, suppresses, or eliminates our values that might not be in line with those of government.<sup>9</sup> A commitment to principled or confident pluralism consists of three aspirations according to Inazu: tolerance, humility, and patience. Out of the three, tolerance is perhaps most familiar, yet also perhaps most misunderstood in the 21st century. There will be viewpoints that we find morally reprehensible. "Tolerance does not mean embracing all beliefs or viewpoints."<sup>10</sup> Tolerance also does not call for us to remain silent when we do disagree. The "tolerance of a confident pluralism does not impose the fiction of assuming that all ideas are equally valid or morally benign. It does mean respecting people, aiming for fair discussion, and allowing for the right to differ about serious matters."<sup>11</sup> As Justice Brennan wrote, "we are not an assimilative, homogenous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellant practice because the same tolerant impulse protects our own idiosyncrasies."<sup>12</sup>

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<sup>7</sup> John Inazu, "A Confident Pluralism," *HeinOnline* (2015): 592.

<sup>8</sup> *Ibid*, 592.

<sup>9</sup> *Ibid*, 592.

<sup>10</sup> *Ibid*, 598.

<sup>11</sup> *Ibid*, 598.

<sup>12</sup> *Ibid*, 598.



Whereas democracy holds to freedom, principled pluralism holds to freedom of belief and confidence therein and allows for the space of each sphere, to exist and thrive, each according to their unique and distinctive roles within the whole of society.

## Chapter I: Sphere Sovereignty, Pillarization, and Education in the Netherlands - A Historical Perspective

Since the Enlightenment, many European nations have seen the declining voice of religion in public affairs. History suggests that the decline of religion's influence on political and social matters has been somewhat double-sided as we will soon see in this chapter. However, modernization has also led to the many varieties of schools within the Netherlands alone. Whereas before there was a strict adherence to the establishment of Protestant and some Catholic schools, there are currently 7,010 primary schools in the Netherlands which include Islamic, Hindu, and Jewish religions, among others.<sup>13</sup> Parents of different worldviews and religions are able to send their children to the schools of their choice without facing heavy financial loads. This kind of religious freedom is a unique case and the Netherlands is one of the few countries to uphold this system. It has certainly not been an easy road however, and education continues to be a point of discussion within Dutch politics.

In this chapter, I will discuss the historical implications that led to the establishment of many different schools and the funding thereof. I will introduce one of the most influential actors in the struggle for religious freedom in the education system and parental choice, the late Dutch Prime Minister Abraham Kuyper and assess his ideas for the role the state plays in the education system. I will address how the system of pillarization (*verzuiling*) in its historical context has carried on to some extent still today in the Netherlands. Later in chapter 4, we will see how this system might be of relevance for the upholding of religious freedom in the United States and how it could be applied in practice.

### The School Wars

The Netherlands was predominantly a Protestant nation until the state and the Dutch Reformed church were officially separated after the French invasion of 1795. Since then, the Netherlands started to change into a modern, liberal society. Influence of the Calvinists withered and the traditional believers seemed to become “relics of ancient times,” viewed by the liberal opinion leaders as “backward and even dangerous reactionaries.”<sup>14</sup> However, the progressively minded Kingdom of the Netherlands still saw itself as a Protestant nation. The national government on the other hand, insisted that schools and education were supposed to be open and public. A more liberal, “down-to-earth” Christian view should be held in the classroom and rather than feeling offended by certain ideas, they should be explored.<sup>15</sup> It was believed that a non-dogmatic outlook of the school would help the nation overcome its deepest religious divides, as

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<sup>13</sup> Jaap Dronkers, “Islamic Primary Schools in the Netherlands,” *Journal of School Choice* (2016): 7.

<sup>14</sup> Sturm, 284.

<sup>15</sup> *Ibid*, 284.

even among Protestants there were denominational splits. Liberals wanted to shape the nation in a liberal fashion and conservatives held that the spiritual development of the child and the protection of communal identities were central to a nation's wellbeing.<sup>16</sup> In the early 19th century, state controlled education replaced the "*officium scholae*" of the church, which was the privilege of churches to organize education.<sup>17</sup> In 1806, confessional instruction was forbidden and there was a full-scale de-Christianization of the public schools.

Growing awareness of the rights of people among orthodox Calvinists marked the starting point of the so-called *school strijd* (school war), which divided the Netherlands for almost 80 years. The government of the Kingdom of the Netherlands retaliated against the anti-modern and anti-liberal segregated churches arguing that these people prevented the modernizing Christian efforts in society. A united, centrally governed state and flourishing economy were the main political goals at that time and the government stressed that there was "no room for disagreement on educational goals and theological hair-splitting."<sup>18</sup> The end of the first school war came about when a democratic faction gained the upper hand in government. These democrats then provided the Netherlands with a liberal constitution which still determines the political and cultural organization of the Netherlands today.<sup>19</sup> The constitution held at its core, "the civil rights and liberties, in particular with regards to freedom of association, religion, and education."<sup>20</sup> This meant that even segregated churches and schools could apply to the authorities for recognition. This also meant that public schools were becoming less religious in nature (even though extracurricular religious education was still available if parents desired this for their children). Private schools had the freedom to start up on their own.

Funding for private schools was not yet common in the first decades after 1848. The constitution affirmed the non-denominational character of the public school and the freedom to establish public confessional schools was at the expense of their religious communities.<sup>21</sup> The government was of the opinion that people who preferred education outside the regular public schools should finance this themselves. The people themselves were also apprehensive of government subsidy because they feared government involvement in the content of education.<sup>22</sup>

The second phase of the school war began in the 1870s when the legislators imposed increasingly costly demands on schools. The costs were aimed at the quality of education, including the quality of the school buildings, teaching staff and expertise, and

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<sup>16</sup> Marietta D.C. van der Tol, *Abraham Kuyper's Sphere Sovereignty: Between Political Pragma and Theological Dogma*, diss., 13.

<sup>17</sup> *Ibid*, 11.

<sup>18</sup> Sturm, 285.

<sup>19</sup> *Ibid*, 285.

<sup>20</sup> *Ibid*, 285.

<sup>21</sup> Tol, 12.

<sup>22</sup> Sturm, 285.

other educational tools.<sup>23</sup> These measures brought private schools into financial trouble and they began to oppose the new legal requirements through a large-scale popular petition in 1878. As the standards went up, the need for support for private schools went up. Private schools started to aim for financial support by the state as well.<sup>24</sup> The main goal of the second phase of the school war was “financial equalization” of both public and private primary education.<sup>25</sup> The peaceful settlement and treaty made between 1917-1920 made this goal a reality. All schools, private and public, would receive government funds according to the proportion of students enrolled.<sup>26</sup> Another reason why private schools sought government subsidies was due to the fact that education was considered a “vital social good” from the 19th century onward. The school had many roles to play. It provided social, moral, civil, hygienic, national, physical, cultural, and aesthetic education, among others, and thus had to fulfill professional training and general social qualifications to meet these new roles adequately.<sup>27</sup> The role of the state came into question as there was discussion over where the state’s authority lay in introducing compulsory education. “This was considered as unjustified interference in the responsibilities and rights of parents in circles of denominational education.”<sup>28</sup> The introduction of compulsory education gave private schools a strong ground to request subsidy from the state, thus ending the school war in 1920.

### **Abraham Kuyper and Sphere Sovereignty**

Abraham Kuyper (1837-1920) was the Dutch Prime Minister at the turn of the 20th century. Not only was he an influential prime minister, but also a theologian, journalist, politician, and founder of the Free University in Amsterdam. Neo-Calvinist in tradition, Kuyper was a seeker for universal truth. Although Kuyper personally held that God was ultimately sovereign and that earthly authority has always had a derived sovereignty, he recognized that modernizing and secularizing trends could not be reversed and the belief that God is sovereign above all would not be recognized by everybody in society. Thus, he sought for a way in which the individual, the state, and the church - among other “spheres” - would have a balanced relationship, each playing the distinct roles intended for them. Each of these “spheres” in society was its own “sovereignty bearer,” as Kuyper put it.<sup>29</sup>

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<sup>23</sup> Ibid, 287.

<sup>24</sup> Ibid, 287.

<sup>25</sup> Ibid, 287.

<sup>26</sup> Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Univ. of California Press, 1968) 127.

<sup>27</sup> Sturm, 287.

<sup>28</sup> Ibid, 287.

<sup>29</sup> Tol, 3.

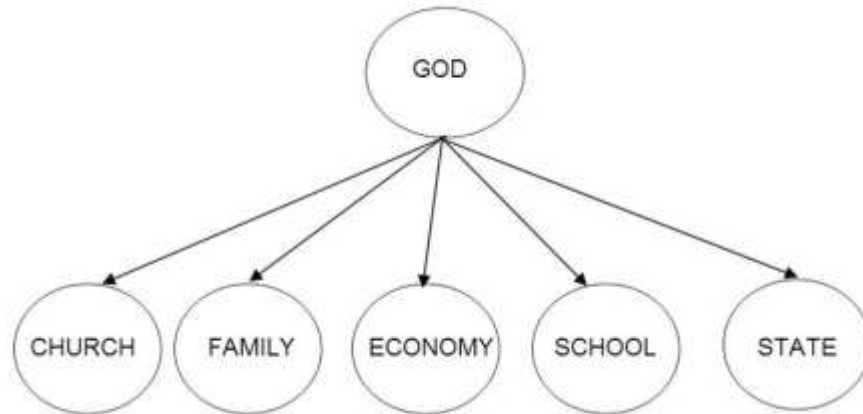


Figure 1.1: Sphere Sovereignty according to A. Kuyper<sup>30</sup>

Kuyper’s idea of sphere sovereignty diverged from Reformed theology and was different from the Catholic perspective, which placed the church over the state. Instead, he recognized that each sphere has its own unique realm of power and that according to the nature of sphere sovereignty, it would be unnatural for the spheres to strive for more power than what their unique roles hold.<sup>31</sup> Kuyper believed that these roles were set in place by God, but recognized that not everyone would agree that God was the designer of these roles. He sought to illuminate the roles for the different spheres in such a way that even those who did not adhere to his God could nevertheless find themselves within these roles.

### *Kuyper’s Social Theory of Sphere Sovereignty*

There were two models in secular Europe in the late 19th century with which Kuyper was dissatisfied. The French model, dating back to the French Revolution, held that sovereignty rested in the individual. The German model on the other hand, held that sovereignty rested within the state, as exemplified in Bismarck’s Prussia.<sup>32</sup> Kuyper asserted that the models did not give due rights to “intermediate bodies” in society such as schools, universities, businesses, and the press, among others, and argued that these bodies ran the risk of being “bullied” by the individual or the state.<sup>33</sup> These two models are similar to each other, Kuyper argued, because through democratic vote, power is put into the state which in turn acts in the name of the individual/people as a whole.<sup>34</sup> Kuyper objected as much to the Christendom model as to the secular model, because in both these models, sovereignty is still mediated to society through either the individual

<sup>30</sup> Doug Van de Griend, *Sphere Sovereignty Graph*. Images.

<sup>31</sup> Tol, 4.

<sup>32</sup> Timothy Keene, “Kuyper and Dooyeweerd: Sphere Sovereignty and Modal Aspects,” *Transformation: An International Journal of Holistic Mission Studies* (2016): 66.

<sup>33</sup> Ibid, 66.

<sup>34</sup> Ibid, 66.

or the state. He argued that not even the church (as was in the Catholic model) had authority over other bodies.

One might be prompted here to stop and think that there is no further use for sphere sovereignty if ultimate responsibility to God has to be accepted in order for it to work. But it is vital to note that “sphere sovereignty is not about traditions and intellectual disciplines.”<sup>35</sup> Rather, it asserts delegated responsibilities and one sovereign. Whether or not one agrees on the “one sovereign” is not what I am arguing in this thesis. The part I wish to stress in particular is that these different spheres in society - the school, the state, the family, the church, the business, etc. - in which most individuals of many different beliefs will function, are meant to exist together in harmony. “Each sphere exists *in relationship* with other spheres.”<sup>36</sup> Because spheres exist in relation to each other, they are at the same time dependent on each other and thus responsible for each other.

Sphere sovereignty was a practical way to create a relationship between the different spheres in society in which both religious and non-religious actively took part in. Sphere sovereignty limits the power of state, church, and the individual (among other spheres). It could be interpreted as “delegated responsibility” as it is the relationship between all of the social structures yet each being their own sovereign sphere.<sup>37</sup> Each social structure has its own limited sovereignty or responsibility of individual and state. Maintaining the balance and mutual respect for the sovereignty of the other spheres was the key point to Kuyper’s theory.<sup>38</sup> The 19th and 20th centuries’ constitutional and political developments made Kuyper realize that the ideal Christian nation was not sustainable anymore and the reformed community was becoming a minority, especially with regard to education. The state was more of a threat to religion than a protector of it, thus creating the reason for why separate spheres were necessary. Policy became law and the deconfessionalization of public schools, the sustainability of private confessional schools, and the establishment of the 1848 Constitution placed the Netherlands in a politically liberal setting and “affirmed tendencies of state absolutism” according to Kuyper.<sup>39</sup> Furthermore, the constitution delegated legislation on primary education to Parliament, where liberals and conservatives competed for dominance of the education system, thus causing primary education to become a tool and interest for the state as they strived for “economic progress, cultural convergence, and nationhood.”<sup>40</sup> Conservatives did not make as much headway towards their ideal, the public confessional school, due in large part to the fact that they had a distrust among one another based on religious differences and splits within their own denomination.

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<sup>35</sup> Ibid, 67.

<sup>36</sup> Ibid, 68. (my own emphasis)

<sup>37</sup> Ibid, 68.

<sup>38</sup> Tol, 8.

<sup>39</sup> Ibid, 11.

<sup>40</sup> Ibid, 12.

This impacted their political standing. As the new School Acts threatened the existence of private confessional schools and raised the standards for public and private schools, liberal leader Jan Kappeyne van de Copello argued that confessional education needed to be suppressed. Public schools received funding; private schools did not even meet the new standards. It was against this backdrop, despite these differences from within and the struggles from outside, that Kuyper saw the need to protect the religious minorities, most notably the Reformed community at that time.

Sphere sovereignty addressed dominance of the state in primary education by placing emphasis on individual sovereignty over state sovereignty. Kuyper believed that education was the primary responsibility of the family. Joachim le Sage, Roman Catholic apologist, had critiqued the government's education policy was infringing upon parents' rights. Guillaume Groen van Prinsterer, historian and politician argued that the family, church, and school were responsible for the education of the community's children.<sup>41</sup> Kuyper understood that the antithesis in the Netherlands was that it was not a Christian nation anymore and asserted that church and state separation was necessary in order to protect the religious minorities within the country. Sphere sovereignty allowed the Reformed community to organize themselves in such a way that they could maintain their own traditions within the liberal constitutional state.<sup>42</sup> "Sphere sovereignty contrasts with the liberal ideal of cultural convergence."<sup>43</sup> In other words, Kuyper's theory of sphere sovereignty was to maintain the distinctness of each tradition. Kuyper also argued that the state is "not bound to the absolute truth in God, because the different functions of the church and state imply state neutrality, since there is no legitimate way to favor one religion or worldview over another."<sup>44</sup>

### *The Role of the Individual*

The individual sphere, Kuyper argued, has a personal and a social function. The personal function is a sphere of its own, to which no one is above (except God, Kuyper would say) and personal conscience governs this sphere. The social function forms the basis of society.<sup>45</sup> Society's structure is seen as a bottom-up development, in which the upward line develops from individual to family, family to village, village to region, and region to national government.<sup>46</sup> The individual partakes in creating, developing, and participating in social life and society's different spheres: home, school, church, associations, organizations, universities, and politics. Kuyper's idea of societal development comes from his belief that it is part of the "creational potential" individuals possess. Kuyper's understanding of society "differs from philosophers who claim that

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<sup>41</sup> Ibid, 14.

<sup>42</sup> Ibid, 15.

<sup>43</sup> Ibid, 15.

<sup>44</sup> Ibid, 20.

<sup>45</sup> Ibid, 4.

<sup>46</sup> Ibid, 5.

societal spheres stem from the state.”<sup>47</sup> This distinction is important in the context of primary education as we will see when we examine the role of the state.

Herman Dooyeweerd (1894-1977), lawyer and doctor of the university Kuyper had founded, used the “family” to show the relationship between the spheres on a higher scale. A husband and wife relate to each other in the spheres of marriage and family for example. This is not to say that each family is a sphere in and of itself, but “every family constitutes an historical example of a family and thus belongs within the sphere of ‘family.’”<sup>48</sup> Families live alongside each other, as do states. The functions within the family differ from the functions within a marriage, and yet they relate to each other because the husband and wife have roles to each other, as well as the role of parents to their children.

### *The Role of the State*

Keene defines the nation as “a coherent political territory” and the state as “that part of the nation that has specific duties within the nation.”<sup>49</sup> Kuyper believed that the state is the ultimate societal sphere, but that this does not elevate its status.<sup>50</sup> The state has a regulative function but can be limited by the competences of other spheres.<sup>51</sup> Some spheres have a certain degree of independence and some even have an exclusive right to regulate. Nevertheless, the spheres are mutually dependent and are to be supported by the state and regulation must ensure the freedom of the individual to respond to his/her roles and functions in the various spheres he/she takes part of in life. This is characterized with the terms of *solidarity* and *subsidiarity*. The state, in solidarity with society, accommodates to the citizen’s different ideologies by “pluralizing the services it controls and finances, as well as by incorporating the differing worldviews into the public order.”<sup>52</sup> The state subsidizes all ideological networks - according to need and the principle of proportionality.

The state is defined by two primary functions, which lead into the roles the state plays in relation to the other spheres. Its functions are those that pertain to “might and right” and “power and justice.”<sup>53</sup> Although each sphere has power of some sort, the state has a monopoly of armed power. (This is different in the U.S., as the state has no legal monopoly on armed forces there.) This is rightly so, Kuyper argues, because of the fact that no perfect society and state exists and crimes and dangers from inside and outside must be addressed properly and in protection of the state and its people. The armed power of the state is restricted in two ways: territory markers and the design of other

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<sup>47</sup> Ibid, 5.

<sup>48</sup> Keene, 68.

<sup>49</sup> Ibid, 74.

<sup>50</sup> Tol, 5.

<sup>51</sup> Ibid, 5.

<sup>52</sup> Sturm, 288.

<sup>53</sup> Keene, 74.



structures' power. For example: a parent's power is upheld in all nations.<sup>54</sup> The might of the state is there to uphold public justice. Public justice then, is defined as "the enforcement of the fulfilment of public offices and the protection of persons and groups from interference from others."<sup>55</sup>

Kuyper argues that the state is a moral organism. He writes his book, *Ons Program* (Our Program), a political manifesto for politics in a secularizing society:

"Living together in one state becomes a network of interpersonal relationships, a partnership of peers, a mass of independent individuals who *formed* the state by coming together and uniting on certain conditions."<sup>56</sup>

Kuyper argues that people's obedience to these conditions comes naturally out of self-control and self-preservation - and simply because these two aspects cannot be helped. Kuyper asserts that because every living thing is an organism and all parts of the organism are potentially present before they can be seen, so too "the forces that will operate in these members and the laws that govern those forces will be established."<sup>57</sup> This is done "with or without the will or contribution of the living thing and with such spontaneity that they will always turn out to be identical, no matter how altered the circumstances."<sup>58</sup> To explain this more clearly, Kuyper makes a comparison to the human heart. It consists of elements it did not choose itself but received and it works with the forces and obeys laws in spite of itself. Thus, if things are to work out well, all parts must work towards a particular goal.<sup>59</sup> The state compares to this in that the people and identity of these people, their relationships and all other social activities that reside in them, including their physical environment - all these things must be taken into account and have depended on each other from the beginning of humanity and "belong together by virtue of their nature."<sup>60</sup> Moreover, he writes, "the laws that the state obeys as it lives and develops cannot be arbitrarily determined but (barring some necessary correctives) are given with the nature of the state."<sup>61</sup> To acknowledge the state as a moral organism is to acknowledge that the government has the right to govern over us. This should not be a surprise to us if we realize that the people that make up an organization recognize the difference in assigned powers, according to Kuyper.<sup>62</sup> Thus, the government has the right to exercise power, but not the right to become tyrannical.

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<sup>54</sup> Ibid, 74.

<sup>55</sup> Keene, 74.

<sup>56</sup> Abraham Kuyper, Chapter 4: Government, *Our Program: A Christian Political Manifesto* (Lexham Press, 2015) Section 38.

<sup>57</sup> Kuyper, Sections 38-39.

<sup>58</sup> Ibid, Sections 38-39.

<sup>59</sup> Ibid, Section 40.

<sup>60</sup> Ibid, Section 39.

<sup>61</sup> Ibid, Section 39.

<sup>62</sup> Ibid, Section 39.

Kuyper asserts that “letting go of the high authority of government strikes at the root of a nation’s sense of duty and breaks the nation’s moral energy.”<sup>63</sup>

Knowing the limits of governance is crucial. Kuyper started his own political party called the Anti-Revolutionary party in light of the rising questions about the state’s role in education. In a religious sense, the party was strictly conservative, and in a social sense quite liberal and modern.<sup>64</sup> The main aspect that divided the liberal party and the anti-revolutionary party was religion. Kuyper however addressed *religion* as a political concept. He argued that there is no escaping that a nation, and really, individuals, are grounded upon a certain foundation. Whether this was a religion or philosophy or some other worldview, one cannot build upon nothing. He/she must consider what he/she is building on. Kuyper makes the comparison to a gardener or builder and soil. A gardener, before planting her seeds, must check what soil she will be planting in. Before building a house, a builder must see what soil he will be building on. In a Christian or Muslim nation for example, “the bedrock of its system of justice, is religion.”<sup>65</sup> In other words, where a person builds his/her notion of justice, there will be a ground, religious or not, upon which he/she will build. Kuyper writes, “where politicians tell us about a ‘just state,’ there arises the demand to tell also about where the ‘pivot of justice’ is found.”<sup>66</sup>

### *The Role of the Church*

The state was instituted because of human error, according to Kuyper. The church plays a missionary role. The church was instituted for similar reasons as the state: the church exists for sacred part of life whereas the state exists for the secular part of life - both exist because of human error.<sup>67</sup> Because of this unique missionary role, the church needed a degree of independence. He noted that because of the historically complicated relationships between the church and state, in order to protect the church and its independence, separation was necessary under law.<sup>68</sup> It is crucial to note however, that Kuyper did not mean separation of *religion* and state. Religion is relevant to all spheres and cannot be left at the doorsteps of people’s homes before they go out into society. Kuyper also stressed that even if church and state would be separated, this would not mean that they can each go their own way. Doing so would cause harm to themselves and both the church and state do well when they, like other spheres, are in “regular correspondence with one another.”<sup>69</sup>

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<sup>63</sup> Ibid, Section 41 (*The Call to Govern*).

<sup>64</sup> Sturm, 288.

<sup>65</sup> Kuyper, Chapter 4: Government, Section 45: “Religion as a National, not Ecclesiastical Sense.”

<sup>66</sup> Ibid, Section 45.

<sup>67</sup> Tol, 6.

<sup>68</sup> Tol, 7.

<sup>69</sup> Kuyper, *Chapter 13: Education*, Section 302.

Kuyper's political program does not go without critique however, and an issue that hangs around his agenda is in regard to anti-Semitism. Kuyper sometimes used prevailing anti-Semitic prejudices to utilize his followers.<sup>70</sup> In a pamphlet called "Liberalists and Jews," Kuyper accused the Jews of creating an alliance with the Liberals, using their agendas to gain headway into society, and in particular, the liberalizing of the school system.<sup>71</sup> Professor George Harinck and Rabbi Lody van de Kamp hesitate calling Kuyper anti-Semitic through and through, pointing out that there are many nuances that come into play regarding Kuyper and Jews.\* Nevertheless, it is unfortunate and disappointing the way in which Kuyper and some of his Dutch Calvinist followers negatively portrayed the Jews at times. It must be noted that when Kuyper's particular principle of sphere sovereignty seemed to be successful enough on its own, he discarded anti-Jewish propaganda and never turned to it again.<sup>72</sup> As such, although this thesis relies on Kuyper's theory of sphere sovereignty, it does not seek to excuse the troubling elements of his use of anti-Semitic language in other political settings. I hope to show the benefits of applying his theory of sphere sovereignty in a critical and modernized way.

The church in its historical form in the Netherlands applied mostly to Protestant and Catholic denominations at that time. Kuyper was aware however of the rise in other minorities and his idea of sphere sovereignty still draws interest from communities both inside and outside the Protestant tradition today.<sup>73</sup> As we will see in the next subsection, sphere sovereignty laid the groundwork for equal funding of all schools including Protestant, Catholic and Jewish schools no less.

### **Pillarization and Education**

An unintentional side-effect of the school wars was that the different denominational streams in the Netherlands became more aware of their interests and quantitative might.<sup>74</sup> The Neo-Calvinist Anti-Revolutionary party was most notable

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<sup>70</sup> Jan Willem Stutje, "Antisemitism among Dutch Socialists in the 1880s and 1890s," *Patterns of Prejudice* (2017): 336.

\*For further reading on the topic of Kuyper and "The Jewish Question" see: John R. Bowlin, *The Kuyper Center Review: Calvinism and Democracy*, Vol. 4, 2014.; James D. Bratt, *Abraham Kuyper: Modern Calvinist, Christian Democrat* (Eerdmans, 2013) 330-332.; Rudolf Dekker, *Meer Verleden dan Toekomst: Geschiedenis van Verdwijnd Nederland* (2008) 275.; George Harinck and Lody van de Kamp, "Les over Het Joodse Probleem - Kuyper Over de Omgang Met Religieuze Minderheden," *Om de Oude Wereldzee*, NPO (May, 2015) Documentary.; Abraham Kuyper, "Liberalisten en Joden" (1878).; Abraham Kuyper, *Om de Oude Wereldzee*. Vol. 1 (1907): 239-324.; Bart Wallet, "Waarom Het Antisemitisme Uiteindelijk Niet Aansloeg in De Nederlandse Christelijk-Sociale Traditie" (2016): 28-33.

<sup>71</sup> Ibid, 336. See also: John R. Bowlin, *The Kuyper Center Review: Calvinism and Democracy*, Vol. 4, (2014) 59.

<sup>72</sup> Stutje, 337. See also: James D. Bratt, *Abraham Kuyper: Modern Calvinist, Christian Democrat* (Eerdmans, 2013) 330-332.

<sup>73</sup> Tol, 20.

<sup>74</sup> Sturm, 288.

among the well-organized political parties. The different parties could be seen as “crystallization points for the ideologically integrated networks of different functional organizations.”<sup>75</sup> Later, these became known as *zuilen* (pillars) in Dutch history. As portrayed earlier in this chapter, public life was primarily divided along ideological lines from 1880-1970. The different pillars were “living apart together” in a consociational democracy.<sup>76</sup> Each pillar, whether Catholic, Protestant, Jewish or secular, had its own independence in outlook on life. They had their own media outlets, newspapers, organizations and clubs, housing associations, insurance companies, businesses, etc. The Netherlands developed in a society of “carefully kept checks and balances” between these different ideological pillars - separate from each other, but working together on a national level.<sup>77</sup> It was a “multicultural system and “the politics of accommodation” or “equitable public pluralism” as Lijphart and Skillen describe, or put otherwise, a system of solidarity and subsidiarity.<sup>78</sup>

Pillarization was a pluralistic way of organizing society, allowing the Dutch to mark their own identities outside of only social-economic purposes. Pillars are not monolithic but are set against a backdrop of different function systems and have to realize themselves in these different functions.<sup>79</sup> This freedom in identity sustenance created a strong form of solidarity and in some cases, this social cohesion proved to be stronger than family ties. This phenomenon of pillarization of the public sphere, which was in development since the mid-19th century, was the main reason why the Dutch parliament decided in 1920 that the government could finance fully all primary schools, private and public, on equal grounds.<sup>80</sup> As people were left to mark their own identities peacefully, there withstood a solidarity among society and the state. The state understood its role, as did the church and the individual. This was a phenomenon within the Netherlands, and although largely depillarized socially, there still exists a certain level of beneficial features from the past system within society still today, most notably: all schools still receive subsidy from the state.

### *Education: Roles and Requirements*

As Kuyper had stated earlier, the education of children is primarily the business of the parents. Upholding nevertheless that the private confessional schools ought to have the freedom to teach in the ways they so desired, members of all cultural groups and religious groups should be educated in such a way that they can participate equally

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<sup>75</sup> Ibid, 288.

<sup>76</sup> Ibid, 288. (See also: Lijphart)

<sup>77</sup> Ibid, 288.

<sup>78</sup> James W. Skillen, “From Covenant of Grace to Equitable Public Pluralism,” *Calvin Theological Journal* (1996): 31.

<sup>79</sup> Raf Vanderstraeten, “Cultural Values and Social Differentiation: The Catholic Pillar and its Education System in Belgium and the Netherlands,” *Compare: A Journal of Comparative and International Education* (2002): 139.

<sup>80</sup> Sturm, 288.

and fully as citizens within their spheres in society.<sup>81</sup> A common curriculum, which at the same time allows for the freedom of distinct identities was the hard task that lay ahead for Kuyper and those who came after him. In such a curriculum, there has to be some sort of cross-cultural understanding because there is the fact of pluralism, yet at the same time must allow for a specific cultural attachment, which allows for the fact of difference. Kuyper, along with others, set the minimum requirements for state subsidy to be received. A legal minimum of 200 students within 5 years was to be acquired, teaching staff was to possess normal qualifications, regular primary education, such as mathematics, was to be taught as required by law, and focus on the ability to function within Dutch society as well as prepare the way for secondary education were among the requirements set in place for the functioning of the education system as a whole in the Netherlands.

Against the backdrop of a pluralistic, subsidized education system like that of the Netherlands, we will make some comparisons in the next chapters with the education systems in both the U.S. and England.

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<sup>81</sup> Sturm, 288.

## Chapter II: The United States Education System and the First Amendment

*“State power is no more to be used so as to handicap religions, than it is to favor them.”*  
- Justice Black, *Everson v. Board of Education*

Broadly speaking, is no secret that the education system in the U.S. is not at its best. No policy area is governance more complex than in elementary and secondary education.<sup>82</sup> With there being nearly 100,000 public schools and 34,576 private schools,<sup>83</sup> the K-12 education system within the U.S. is no small feat. Its \$584 billion system takes in more money than even the largest U.S. corporations.<sup>84</sup> Multiple actors and institutions on the state and federal level have some formal say over what happens in the nation’s classrooms - each with their own agendas, interests, and power to influence or restrain what is deemed to be the “right” way to manage the education system. But what then *is* the “right” way to govern education within the U.S.? As Paul Manna has asked: *Who governs American schools?* Who leads when everyone is in charge?<sup>85</sup> More importantly, what about the First Amendment and education governance? In this chapter, I will address the governance and funding system of American public schools and highlight some of the failures within this system of functioning. Secondly, I will briefly describe the way private schools function and then move into various court cases that deal specifically with the First Amendment’s Establishment and Free Exercise Clauses, funding, and religious freedom in the U.S. Through these cases, I seek to show that the Supreme Court’s ruling on the funding (or lack thereof) for religious people to freely practice their religion at an institution of their choice has been ambiguous and, in some cases, placed people at a disadvantage. With that in mind, I want to set the stage in which I will discuss the relevance of Kuyper’s theory of sphere sovereignty and how a modernized version could be of use for the education system and applied to upholding the First Amendment.

### The Complex Governance of Public Education and Funding within the U.S.

The question of governance in the U.S. is less about liberal or conservative ideas about education than it is about controversies of accountability, testing, compensation, and teaching material, to name a few.<sup>86</sup> It is linked to policy and the difficult task of deciphering the role of government. It becomes even more tricky in regards to the

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<sup>82</sup> Paul Manna and Patrick McGuinn, “Who Leads When Everyone is in Charge?” *Education Governance for the Twenty-First Century: Overcoming the Structural Barriers to School Reform* (Brookings Institution, 2013) 1.

<sup>83</sup> CAPE, Private School Facts. [www.capenet.org/facts](http://www.capenet.org/facts). 2013.

<sup>84</sup> Marguerite Roza, “How Current Education Governance Distorts Financial Decisionmaking,” *Education Governance for the Twenty-First Century*, ed. Manna et. al., 36.

<sup>85</sup> Manna, 1.

<sup>86</sup> *Ibid*, 3.

Constitution and religious freedom, but first we must gain some knowledge as to how education is currently set up, who is in charge, and if the policies set in place hinder or assist efforts to bring about improvements. It is true that “governance reforms alone cannot help all the nation’s young people reach higher levels and erase achievement gaps between advantaged students and their disadvantaged peers,” but without some real improvement in the current governance structure, improvement in the education system as a whole will be hard to imagine.<sup>87</sup> Governance “refers to the process by which formal institutions and actors wield power and make decisions that influence the conditions under which people live in a society.”<sup>88</sup> These formal institutions and actors can be representative bodies, legislators, school boards, governors, and courts, and they make rules, policies, and judgements, among other tasks. Governance in education is often compared to a marble-cake: involving multiple overlapping layers of federal, state, and local policymaking responsibilities. These responsibilities are often “ill-defined” and have conflicting interests. “As a result, over the past 50 years, obsolescence, clumsiness, and misalignment have come to define the governance of public education.<sup>89</sup> Needs change, but structures do not. In this marble-cake depiction, there are layers of Washington, the state capital, the local district, and the individual school building, as well as regional education service centers, courts, parents and guardians - each overlapping and making it hard to create stability in the system. At this point, some people argue that this kind of gridlock keeps the system stable. Others might point out that this is the way of democracy and cite poll data that indicate that most parents are satisfied with their own children's schools.<sup>90</sup> But, as Finn points out, if the system places more attention on the interests of its employees, vendors, and other beneficiaries, rather than the children, families, and communities it is supposed to serve, “then it is a bad form of democracy and in need for reform!”<sup>91</sup>

In the Progressive Era, the main goal was to keep politics out of education and entrust supervision to professionals and independent, nonpartisan boards. “At the state level, governance structures devised for education were meant to serve as a buffer from conventional politics.”<sup>92</sup> The Elementary and Secondary Education Act of 1965 redefined the federal government’s role in funding education. This was in an attempt to leverage the school system to address the negative effects of childhood poverty. The *Abbott v. Burke* case rulings held that K-12 schools should receive foundational funding and that there should be universal preschool for all 3-4 year old children, as well as supplemental or at-risk programs and funding along with school-by-school reform of

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<sup>87</sup> Ibid, 3.

<sup>88</sup> Ibid, 9.

<sup>89</sup> Chester E. Finn Jr. and Michael J. Petrilli, “The Failures of Education Governance Today,” *Education Governance for the Twenty-First Century*, ed. Manna et. al., 21.

<sup>90</sup> Ibid, 22.

<sup>91</sup> Ibid, 22.

<sup>92</sup> Ibid, 22.

curriculum and instruction.<sup>93</sup> In the 1970's, the responsibility for funding began to shift to states as primary dispensers. States steadily increased their financial support to districts, so much so that it jumped from 39% in 1970 to 50% in 2000.<sup>94</sup> The legal challenge came when courts had to spell out how much states should be spending and how these funds should be distributed.<sup>95</sup>

There are two ongoing factors that play into the ongoing dispute, mainly: the ongoing disagreements over the best way to govern the nation's schools to serve both public and private ends and the difficult question of whether or not education is a public good that benefits everyone or a private good that serves individual needs.<sup>96</sup> Manna notes that perhaps we need to look for a system that can strike some sort of balance between centralization and decentralization in order to advance both public and private interests. Furthermore, "funding formulas that dictate one-size-fits-all staffing ratios or standardized service delivery ignore the many differences in students and contexts across dissimilar schools and communities, driving up spending without a corresponding return."<sup>97</sup>

### *The Two Sides of Local Control*

On the one hand, district level power constrains individual schools. The mix between politics and bureaucratic policies make it difficult for principals and other leaders to make much headway in implementing some crucial reforms that might be needed for the classroom and the students in regards to budget, staffing and curriculum. On the other hand, local control is not strong enough to simply dismiss the obstacles that the state and federal governments place before reform-minded board members. Because the decisions and policies are made in many different places, an overview is difficult to come by and the capacity to change seems to be but a tiny light at the end of a long tunnel filled with bureaucratic roadblocks from all sides. In this scenario, nobody is really in charge. "American education does not need czars or dictators - the separation of powers and systems of checks and balances are important elements of democracy" and children and communities do differ across the states, "but today the public education system lacks flexibility and nimbleness of all sorts."<sup>98</sup>

One can argue that in seeing the complexities of the public school system, we should continue to keep private and charter schools far away from this sort of bureaucracy. This is a fair point. Although in this paper I argue essentially for the freedom for religious people to send their children where they would prefer and for some sort of financial assistance, in order to do so, we need to have a more general

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<sup>93</sup> "Abbott v. Burke" (100 N.J. 269 (1985)), (Education Law Center, Overview).

<sup>94</sup> Roza, 37.

<sup>95</sup> Ibid, 37.

<sup>96</sup> Manna, 4.

<sup>97</sup> Roza, 47.

<sup>98</sup> Ibid, 33.



overview of the complications facing the school system as a whole. Public schools are not left out of the equation. Even though the changes and needs for public schools differ from the needs of private schools, the public school system is a good point of departure in order to see the need for reform across the entire span of education governance and funding within the U.S.

### *Private Schools*

Private education is not “off the hook” when it comes to state regulation and control. The state, often labelling these regulations under “compelling state interest for education,” require private schools to conform “to a greater or lesser degree, to the sort of educational experience deemed proper by those social and political forces governing public education at any particular point in time.”<sup>99</sup> But over the past decades, the state has pursued a greater circle of government control over private education. This has caused litigation from private schools to increase as well. Randall states that “the courts have assumed a very prominent and important role in refining and redefining the specific contours that American education might take and the nature of the relationship between private education and the government.”<sup>100</sup> The significance of this lies in the judicial action the courts have been confronted with by private schools. Because private schools do not have the same access to political resources and often face an unsympathetic government, they have turned to the courts for redress of perceived wrongs. “Although the results, as found in published court opinions, have been uneven, litigation in the 20th century has become an important avenue for balancing the interests of the majority against the rights of individuals or groups holding different opinions of proper public policy.”<sup>101</sup> As seen in figure 2.1, the highest total of state and federal appellate cases between 1817-1986 includes public funding:

Figure 2.1: State and Federal Appellate Cases (Private Schools) Case totals:

Establishment and status (general)	34
Public funding aid	119
Regulation and supervision	86
Property, funds, controls, liabilities	101
Teachers and instructors	46
Pupils, tuition, and discipline	223

Data from E. Vance Randall’s *Private Schools and Public Power: A Case for Pluralism*, (1994) 53.

<sup>99</sup> E. Vance Randall, *Private Schools and Public Power: A Case for Pluralism* (Teachers College Press, 1994) 50.

<sup>100</sup> *Ibid*, 51.

<sup>101</sup> *Ibid*, 52.

These numbers have certainly risen over the past decades. Since private school litigation became more prominent in the 1800's, debates about private school financial aid, interpretations and violations of the Establishment and Free Exercise Clauses in the First Amendment, and as of late, the controversial debates about a voucher system still remain hot topics for the 21st century.

Building upon the current debate, I have examined a few of the prominent court cases that deal specifically with religious freedom, the First Amendment, private education, and funding within the U.S. The significance of these cases, as I will argue, is that more often than not, religious people have been disadvantaged when it comes to private education, free exercise, and public funding, despite their rights guaranteed by the First Amendment. Moreover, I seek to illuminate the ambiguity of the court and state in its game of deciphering the meaning of church-state separation and so-called "neutrality." If the state can validate its reasons for regulating private school education with the "compelling state interest in education" label, why does it use a different route in denying state funding to parents who wish to send their children to non-public schools? The latter is often considered as "excessive government entanglement" with religion. Why is the same consideration not used for the former?

### **Education and the First Amendment**

Cases brought forward in the U.S. will always be looked upon in light of the Constitution. "Federal, state, and local governments may grant new rights or expand existing ones, but they cannot reduce or eliminate the basic rights enunciated by the Constitution and interpreted by the Supreme Court."<sup>102</sup> The grounds upon which these rights are enunciated however make all the difference as we will see highlighted in the following cases.

The First Amendment reads:

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*<sup>103</sup>

"Congress shall make no law... respecting an establishment of religion... or prohibiting the free exercise thereof..." - at first glance, this seems absolute. If the state can expand on these rights, but not eliminate or reduce them, why have past decisions seemed to place burdens on those wanting to freely practice their religion? Would granting public funds for student of devotional theology be unconstitutional, even if these funds are accessible for any other study program? I argue that the outcomes of these types of court

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<sup>102</sup> Ibid, 56.

<sup>103</sup> The First Amendment, *The Constitution of the United States of America*.

cases have not always done justice to the so-called “neutrality” towards the church-state separation the U.S. adamantly claims to adhere to. “Once religion is removed from the schools what is left is not a zone of neutrality between religion and secularism: what is left is secularism.”<sup>104</sup>

*Everson v. Board of Education of Ewing Township: Historical implications*

What seemed like simply a case about bus fares, turned out to be the first time the Court rooted “the First Amendment’s religion clauses firmly in James Madison and Thomas Jefferson’s exploits to separate church and state in eighteenth-century Virginia.”<sup>105</sup> The *Everson* case grew out of a “century long struggle in American politics and education over the often contentious - and sometimes bloody - issue of the relationship of religion and education.”<sup>106</sup> The public schools at that time, seen as a “new Protestant establishment” because they fulfilled many roles that the established church was originally assigned to fulfill, caused Roman Catholic churches to create their own parochial school system. Because this was an expensive feat, the Roman Catholic hierarchy sought public support, arguing that they felt it was unjust and oppressive that they were denied their portion of the funds simply because they also taught principles of virtue and religion.<sup>107</sup> These requests were turned down on the grounds that funding could only support “non-sectarian” schools, which at that time meant the loosely-Protestant schools.<sup>108</sup> This led to heated and even violent conflicts between Roman Catholic immigrants and those who saw the immigrants as a threat to the American way of life.

Jefferson and Madison held that the First Amendment upheld the wall of separation between church and state because the federal government could not justify choosing between denominations. Furthermore, it protected churches from the meddling fingers of politics. The founding fathers were very much aware of the conflicts official churches and a centralized government caused; thus the clause that “Congress shall make no law respecting an establishment of religion” ensured that each denomination could establish their own churches without the meddling of government and practice freely without facing the rivalry of another because government wasn’t supposed to get involved anyway. In a responding letter to Danbury Baptist Association, Jefferson wrote that the question of whether freedom of religion is compatible with order in government and obedience to the laws, was best answered by leaving everyone to profess their own personal religious convictions freely and openly without

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<sup>104</sup> Stephen Monsma and J. Christopher Soper, *The Challenge of Pluralism* (Rowman and Littlefield, 1997) 33.

<sup>105</sup> Donald L. Drakeman, “*Everson v. Board of Education and the Quest for the Historical Establishment Clause*,” *The American Journal of Legal History* (2007): 119.

<sup>106</sup> *Ibid*, 123.

<sup>107</sup> *Ibid*, 124.

<sup>108</sup> *Ibid*, 124.

government involvement.<sup>109</sup> Although for a great deal, the conflicts among denominations settled down, new issues about “neutrality” and “free exercise of religion” arose. Ever since the 1947 *Everson* case, “the debate between separationist and accommodationist voices [have] dominated establishment clause jurisprudence.”<sup>110</sup>

A New Jersey law authorized reimbursement by local school boards of the costs of transportation to and from schools, including private schools. 96% of private (Catholic) schools benefited from this law. *Everson*, a taxpayer, filed suit on the grounds that this was an indirect aid to religion and that it violated the New Jersey state constitution and the First Amendment. The constitutional question that was raised: “did the New Jersey statute violate the establishment clause of the First Amendment?”<sup>111</sup> In a 5-4 decision, the Court answered ‘no’ and the opinion was given by Justice Black. He wrote that the laws to which people were compelled to support and attend government-favored churches caused early settlers left Europe. Yet these practices seemed to infiltrate the new world and to best avoid this, individual religious liberty could best be achieved under a government which was barred from all power to tax, aid, or assist any or all religions.<sup>112</sup> Justice Black stated that the establishment clause, at least, means that neither a state or federal government can set up a church. But neither can it aid any religion, nor prefer one religion over another. It can neither compel or force someone to profess a belief or disbelief in any religion.<sup>113</sup> The court could have claimed that the New Jersey law was unconstitutional because the funds were benefiting 96% of private schools, thus entangling state with religion as Mr. *Everson* claimed. But an important point that Justice Black recognized was 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.”<sup>114</sup>

Justice Black saw the aid in funds for transportation not as entanglement with religion, but rather a public good, from which *all* children could benefit. This suggests that if this benefit were denied on the grounds of entanglement with an establishment of religion, this would place all children attending private schools at a disadvantage, as their

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<sup>109</sup> *Danbury Baptist Association’s Letter to Thomas Jefferson and his response.*

<sup>110</sup> John J. Patrick and Gerard P. Long, “Part VI: The Constitutional Prohibition of an Establishment of Religion,” *Constitutional Debates on Freedom of Religion: A Documentary History: 1791-1991* (Greenwood Press, 1999) 139.

<sup>111</sup> “*Everson v. Board of Education of the Township of Ewing*” (330 U.S. 1 (1947)). *Oyez.*

<sup>112</sup> Justice Black, Opinion, *Religious Liberty and the American Supreme Court: The Essential Cases and Documents* comp. Vincent Philip Muñoz, (Rowman and Littlefield, 2013) 68.

<sup>113</sup> *Ibid*, 70.

<sup>114</sup> *Ibid*, 70.

families would need to find new ways to fund transportation - which some may not even be able to afford. Justice Black also recognized that although the First Amendment holds to separation of church and state, at times, decisions may come very close to that line. He writes, “state power is no more to be used so as to handicap religions, than it is to favor them.”<sup>115</sup> In other words, that would be “neutrality.”

*Lemon v. Kurtzman: The test for constitutionality*

It is important that we look beyond the surface of apparent contradictions. That a state can reimburse the parents of parochial school students for transportation costs, but it cannot reimburse parochial schools for field trip transportation costs, seems an obvious contradiction. It has also been argued that “in its application of tenets such as government neutrality, the Court has been relatively consistent in its adjudication of establishment clause issues.”<sup>116</sup> I suggest that this is not the case. There has been an ever-consistent debate between the separationist position, where the wall between church and state should be “high and impregnable”, and the accommodationist position, where the concept of a “wall of separation was a ‘useful metaphor,’ [but not] an accurate description of the practical relationship between church and state.”<sup>117</sup>

In 1971, the Supreme Court introduced the *Lemon test*. It was intended to resolve Establishment Clause controversies. Both Pennsylvania and Rhode Island adopted statutes that provided for the state to pay for aspects of non-secular, non-public education. Tax-payers argued that these statutes violated the separation of church and state.<sup>118</sup> In an 8-1 decision for Rhode Island and an 8-0 decision in Pennsylvania, the court upheld that the statutes violated the Establishment Clause. The three-pronged *Lemon* test was created for a secular purpose, establishing a clear means to determine whether or not a law violated the Establishment Clause. The prongs were as follows: 1) “the statute must have a secular legislative purpose; 2) its principal or primary effect must be one that neither promotes nor inhibits religion, and 3) it must not foster ‘excessive government entanglement with religion.’”<sup>119</sup> The first and third held in this case, but the Court did not reach a holding with regard to the second prong. This shows that the Court certainly does not promote religion, but this decision also shows that an extra burden is placed on private schools when it comes to funding matters. The problem is that if “religious organizations such as these are truly providing secular services with no relevance to their religious beliefs, it is hard to think of logical reasons why they should have a right to insist that certain religious standards or elements be a part of them.” Indeed, by the Supreme Court’s defining of what is “pervasively sectarian” also “opens a way for officials administering a program or the lower courts to pressure

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<sup>115</sup> Ibid, 70-71.

<sup>116</sup> Patrick et. al., 144.

<sup>117</sup> Ibid, 144.

<sup>118</sup> *Lemon v. Kurtzman* (403 U.S. 602 (1971)). *Oyez*.

<sup>119</sup> Ibid.

religious agencies to give up certain religiously motivated practices.”<sup>120</sup> This theme is not new, as we saw during Kuyper’s time in the Netherlands. Kuyper wanted to prevent the secularizing state from placing pressure on religious groups to give up parts of their religious nature for the sake of receiving equal financial treatment. According to Kuyper, this equal treatment could be achieved if the state recognized that its role is not to determine if the funds allocated are being used for secular purposes. If they do, what would be left is secularism - and this is something Kuyper wanted to avoid.

Justice Burger argued on the other hand, that oversight into the matters of private schools inherently entangles the state with religion because these schools are completely intertwined with religious character. The religious character of these schools gives rise to the entangling church-state relationships the religion clauses sought to avoid.<sup>121</sup> Justice White, half concurring, half dissenting, noted that there “was no proof that religion would invade secular education or that the government oversight of the use of public funds would be so extensive as to constitute entanglement.”<sup>122</sup> Although his dissent does not directly address the disadvantage, he recognized that the public schools would also lose out because of the statutes’ discontinuement. To keep it in place for public schools but not for private schools would surely be an obvious sign of disadvantaging, if not discrimination on the basis of religion. In a similar case, *Board of Education v. Allen* (1968), the law’s purpose was to benefit *all* students regardless of the *type* of schools they attended. On this ground, the New York statute did not violate the First Amendment. This was because the “financial benefit [went] to parents and children, not to schools.”<sup>123</sup> Justice Burger admits that total separation between church and state is not possible: “in order to determine whether government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authorities.”<sup>124</sup>

About two decades prior, Justice Douglas provided a justification for the accommodationist position in the 1952 *Zorach v. Clauson* case. He stated:

“...When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups.”<sup>125</sup>

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<sup>120</sup> Monsma et. al., 43.

<sup>121</sup> Justice Burger, Opinion. comp. Muñoz, 181.

<sup>122</sup> “Lemon v. Kurtzman.” *Oyez*.

<sup>123</sup> “Board of Education v. Allen” (392 U.S. 236 (1968)). *Oyez*.

<sup>124</sup> Justice Burger, Opinion, comp. Muñoz, 180.

<sup>125</sup> Patrick et. al., 139.

Although it could be argued that the “religious nature” of the American people has faded to some extent over the decades, the significance of Justice Douglas’s writing is that he recognizes that a strict wall of separation may cause injustice to religious peoples by default if not purposely intended. On the other hand, constitutional historian Leonard Levy has argued that “the establishment clause separates government and religion so that we can maintain civility between believers and unbelievers as well as among several hundred denominations, sects, and cults that thrive in our nation.”<sup>126</sup> Looking back to Justice Black’s assessment, who agreed in upholding of the wall of separation (although recognized that a total separation is not possible), argued that this meant no laws can be passed that aid one religion, all religions, or prefer one religion over another. What is the Court to do about the second prong in the *Lemon* test? The Court decided that a violation of any one of the three components is sufficient to render a law unconstitutional.<sup>127</sup> This suggests that it would make it essentially “easier” to ignore the second prong altogether, because in recognizing it, the Court would have to admit that there is no neutral ground upon which it can assess whether a state law promotes or hinders religion, because it will always do one or the other. Furthermore, in 1983, Justice Burger asserted the Court’s unwillingness to be confined to any test and the use of this test has not been a precedent “nor a prerequisite for the resolution of an establishment clause dispute.”<sup>128</sup> Justice Rehnquist argued that the original intent of the framers of the establishment clause was to prevent the establishment of a national religion or preference of one denomination over another. The establishment clause, Justice Rehnquist stated, “was not intended to prohibit the federal government from providing ‘non-discriminatory aid’ to religion.”<sup>129</sup>

The *Lemon* test has survived because accommodationist positions, such as nonpreferentialism, have failed to uphold consistent support from a majority of the justices. Justice Thomas concluded that “establishment clause jurisprudence is in ‘hopeless disarray.’”<sup>130</sup>

### *Zelman v. Simmons-Harris and Locke v. Davey: The principle of neutrality*

The 2002 *Zelman* case and the 2004 *Locke* case are significant because they pose similar questions, yet “resolved” differently. In *Zelman*, a scholarship program provided tuition aid in the form of vouchers for certain students in the Cleveland City School District in Ohio so that they could attend schools of their parent’s choosing. Both religious and non-religious school participated in the program. The tuition aid was distributed directly to the parents based on financial need and where the aid is spent depends solely on where the parents choose to send their children. In the 1999-2000

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<sup>126</sup> Ibid, 137.

<sup>127</sup> Ibid, 142.

<sup>128</sup> Ibid, 142.

<sup>129</sup> Ibid, 143.

<sup>130</sup> Ibid, 143.

school year, 82% of the participating private schools were religious and 96% of the students participating in the scholarship program were enrolled in these religious schools. A group of taxpayers filed suit, arguing that the program violated the Establishment Clause. The Rehnquist Court argued in a 5-4 decision that the program did not violate the Establishment Clause. Justice Rehnquist wrote that the (Ohio) program was neutral with respect to religion and provided benefits to “a wide spectrum of individuals, defined only by financial need and residence in a particular school district.”<sup>131</sup> In other words, the role of the state ended with the giving of funds. The choice of *which* school that funding would be used for was left entirely to the parents. This case was significant in that it gave a *de facto* pluralist outcome. But there was no real commitment to such pluralism as seen in *Locke v. Davey*.

In *Locke*, a scholarship program created by the Washington state legislature in 1999, gave money to academically gifted students. A degree in the field of theology was not included in this program. Davey was awarded this scholarship and chose to attend a private Christian college to follow a double major in pastoral ministries and business management/administration. At the beginning of the 1999-2000 academic year, Davey learned that he could not use his scholarship because of his study choice. He would have to write a letter to certify that he would not study theology in order to receive the scholarship. Davey refused to do this, forfeited his scholarship money, and filed suit, arguing that the state constitution’s ban infringed on his right to free exercise of religion as stated in the First Amendment. What is important to note is that the scholarship check is written to the student. The school receives the check and hands it to the student, and the schools cannot use it for any expenditure. The school verifies that the student is enrolled and the check goes to the student.<sup>132</sup> The same Rehnquist Court as in *Zelman* argued in a 7-2 decision that the free exercise clause does not require a state to fund religious instruction the same way they fund secular instruction. They rejected Davey’s argument that the state scholarship program was not neutral to religion and argued that “the State has merely chosen not to fund a distinct category of instruction.”<sup>133</sup> Justice Rehnquist asserted:

“In the present case, the State’s disfavor of religion (if it can be called that) is of a far milder kind. It imposes neither criminal nor civil sanctions on any type of religious service or rite. It does not deny to ministers the right to participate in the political affairs of the community. And it does not require students to choose between their religious beliefs and [721] receiving a government benefit.”

When asked how the student’s right to free exercise of religion is violated, Jay Sekulow, advocate for Davey stated that the argument is not that the student doesn’t have the free

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<sup>131</sup> Ibid, 143.

<sup>132</sup> “*Locke v. Davey*,” (540 U.S. 712 (2004)). Oral Argument. *Oyez*, minute 28:00.

<sup>133</sup> Ibid.



exercise to pursue a degree in theology, but that his exercise is burdened as a general benefit was available to a student and a religious classification was used to deny the student these funds.<sup>134</sup> Sekulow further pointed out that the state should be equal and not target out religion as a point for exclusion. He argues that this is precisely what neutrality would be and how it would apply: “the minimum requirement of neutrality is law not discriminate on its face.”<sup>135</sup> Justice Scalia argued that “when the State withholds that benefit from some individuals solely on the basis of religion, it violates the Free Exercise clause no less than if it had imposed a special tax. [Furthermore], if the religion clauses demand neutrality, we must enforce them in hard cases as well as easy ones.”<sup>136</sup> Thus, I reassert that “neutrality” was upheld in the *Zelman* case but not in the *Davey* case.

### Public Funds and Pluralism

In the *Locke* case, Justice Scalia argues that “generally available benefits are part of the baseline against which burdens on religion are measured.”<sup>137</sup> In the case *Committee for Public Education and Religious Liberty v. Nyquist* (1973), where aid programs for non-public elementary and secondary schools provided reimbursements and tax reliefs for low income families, the Court used the *Lemon* test to hold that the state program was too involved with religion and therefore violated the Establishment Clause of the First Amendment. Justice Burger argued that “there is no genuine nexus between tax exemption and establishment of religion” on the one hand, and on the other Justice Brennan argued that “tax exemptions and general subsidies...are qualitatively different.”<sup>138</sup> An exemption involves no transfer, whereas a subsidy involves direct transfer of public funds. Yet, in this case, it is only the parents that receive the direct benefit so that they can send their children to the schools of their choosing. Justice Brennan argued that in striking down the program, they were holding to the principle of neutrality as was done in *Everson* and *Allen*. He writes in his opinion that the difficulties faced by private schools is not a reason for the Court to adjust the limits on governmental involvement with religion found in the First and Fourteenth Amendments. He adds, “quite understandably, these difficulties can be expected to lead to efforts on the part of those who wish to keep alive pluralism in education to obtain through legislative channels forms of permissible public assistance which were not thought necessary a generation ago.”<sup>139</sup> Here again, we can see a recognition of the efforts to maintain pluralism in education, but a real commitment to it is lacking.

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<sup>134</sup> Ibid, Oral Argument, minute 28:58.

<sup>135</sup> Ibid, minute 45:00.

<sup>136</sup> Justice Scalia, Opinion, comp. Muñoz, 512.

<sup>137</sup> Ibid, 511.

<sup>138</sup> Ibid, (“Walz v. Tax Comm’n” (397 U.S., at 675)) 208.

<sup>139</sup> Justice Brennan, Opinion. comp. Muñoz, 208-9.

If the states are to hold to this “principle of neutrality” in regards to scholarship programs, financial aid, tax exemptions, or reimbursements, then states have to realize that their role ends with the people the funds go to. Kuyper would argue in that if parents or students are the direct beneficiaries of these aid programs, the state cannot also say where that money will be spent. He would assert that this would be a commitment to neutrality and pluralism rather than leaving religion out. The state could only regulate in so far as to make sure that the original intent for the money is indeed used for education. In *Locke*, Justice Scalia noted that “the State could also simply abandon the scholarship program altogether. If that seems a clear price to pay for freedom of conscience, it is only because the state had defined that freedom so broadly that it would be offended by a program with such an incidental, indirect religious effect.”<sup>140</sup>

In Chapter 4, I will address in more detail, the liberty of free choice and exercise for parents, the role of the state and how Kuyper’s idea for the state and education in regards to religious freedom can manifest itself in the U.S.

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<sup>140</sup> Justice Scalia, Opinion, “*Locke v. Davey*” (Cornell University Law School, Legal Information Institute).

## Chapter III: England and Religious School Funding - A Comparison

Funding for religious schools is not simply a matter that happens overnight. There are many considerations that need to be taken into account and it is crucial to highlight both the upsides and downsides of such a feat. Turning to England, we will see a system which in fact recognizes that complete church and state separation is impossible. We will also see the growing concerns pertaining to state funding and religious schools particularly in the case of England. These concerns are important to take into account as they can apply to both the U.S. and the Netherlands as well.

### The School System: Past and Present

In most of Europe, “the history of schooling is not one of privatization, but of gradual incorporation of the private sector into the state sector.”<sup>141</sup> Until 1944, only Roman Catholic, Anglican, and Methodist and some Jewish schools benefited from this provision in England. Although other religious schools were not legally excluded, it was recent pressure of these minorities that got the ball rolling in their direction. It was no easy route however, as England went through many phases and Education Acts to get to a point of equal funding for religious and non-religious schools. The move to establish a national system failed in 1802 and 1833, but the latter did end up with government giving a £20,000 grant to aid “private subscription for the erection of school houses.”<sup>142</sup> The Victorian government at that time recognized the need to ensure that education was provided, but still left funding up to charities and other religious organizations and would only provide financially where help was needed. Since the beginning of state education in 1870, policies have undergone significant changes in England. Defining the English schooling system has been confusing at times. In a study on the English schooling system, the official term for private schools in England is actually ‘independent.’<sup>143</sup> But even these schools are to an extent bound to the state.<sup>144</sup> It is interesting to note that “while state-funded religious schools in the Netherlands are designated as private schools, most schools (apart from some fully-private) in England entered into arrangements with the state. They became state-maintained but the churches or charities retained ownership of property.”<sup>145</sup>

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<sup>141</sup> Geoffrey Walford, “Funding Religious Schools in England and the Netherlands: Can the Piper Call the Tune?” *Research Papers in Education* (2001): 360.

<sup>142</sup> *Ibid*, 361.

<sup>143</sup> *Ibid*, 362.

<sup>144</sup> *Ibid*, 362.

<sup>145</sup> *Ibid*, 369.

\*The National Curriculum defines detailed programs of study for each subject included and has to be followed by each school. Religion is not a NC subject and is set locally in agreement with appropriate local religious education committees. This allows for a well-rounded education without the meddling of state

The 1998 School Standards and Framework Act ((SSFA) UK Parliament 1998a) resulted in four categories of state-funded schools in England. Community schools, perhaps best compared with the public school in the Netherlands, Foundation schools, Voluntary Aided and Voluntary Controlled schools make up the education sector. All schools follow the National Curriculum\* and all schools with a religious character can have collective worship distinctive of the religious body concerned.<sup>146</sup> In brief, Community Schools may not have a religious character and Foundation Schools, formerly known as “grant-maintained”, may and are exempt charities from which they enjoy some financial advantages with voluntary donations. Voluntary Aided and Voluntary Controlled Schools enjoy a degree of autonomy and the main difference lies in the degree of government control over these schools. (Descending order degree of autonomy: Voluntary Aided, Foundation, Voluntary Controlled.) “While these schools retained their religious character, they became an integral part of the state maintained local authority system... partly for reasons of fairness and partly because such schools are recognized by Government as potentially having certain qualities that might be more difficult to develop in some Community schools.”<sup>147</sup> Religious schools were not meant to be private and separate from the state, but incorporated into the state-maintained sector.

The Education Act of 1870 allowed the State to become involved in the provision, maintenance, and organization of its own elementary schools and a national system was established, but one where responsibility for provision was still shared by many different providers.<sup>148</sup> Built on this idea was the Education Act of 1944 and it is perhaps most significant for the education system and funding for religious schools in England. It also led to the inclusion of Jewish schools in state-funding. “Various Education Acts for England have been a battlefield between government and representatives of the churches.”<sup>149</sup> The introduction of grant-maintained schools through the 1988 Education Act was perceived by many as an indirect challenge to the control of the churches. If a voluntary-aided school opted to become grant-maintained, the churches no longer had to pay 15% of capital expenditure (such as building funds).<sup>150</sup> The National Society and the General Synod of the Board of Education were suspicious, warning: “the absence of any continuing financial input from the church could strengthen the arm of any future government wishing to abolish church schools.”<sup>151</sup> This remains a fair point even today,

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with religious matters. Secular inspection teams are sent to ensure rigid quality and are not chosen by the schools themselves to prevent biased reports. Religious inspectors are chosen by the schools to ensure that a genuine inspection takes place for the religious aspects of the schools (Walford, 370).

<sup>146</sup> Robert Jackson, “Should the State Fund Faith Based Schools? A Review of the Arguments,” *British Journal of Religious Education* (2003): 90.

<sup>147</sup> Walford, 362.

<sup>148</sup> Ibid, 361.

<sup>149</sup> Ibid, 364.

<sup>150</sup> Ibid, 364.

<sup>151</sup> Ibid, 364.

and must be considered when discussing the potential problems surrounding faith-based school funding.

### **Policy and Pressure Groups**

In the 1980's, it had already been noted that if Christians and Jews would have access to public funds for their religious schools, others would "as a matter of equity, justly demand the same."<sup>152</sup> Removing religious believers from the community schools on the other hand, could remove the chance for social mixing and cultural understanding that was provided by the community system. At first, the Labour Party was unsympathetic to the idea of state funded religious schools on the grounds that they had the potential for increasing religious, racial, and cultural divisiveness. Their change of heart came when they realized that the racism children from ethnic minorities faced was in fact within the community schools. Many of these children were religious. The concern was on the part of parents and children, specifically South Asian religious minorities, as it seemed that their languages and cultures were not respected or fostered within community schools. Research revealed a high degree of racism in the community school system.<sup>153</sup> In the shift of policy, "the Party upheld the right of religious minorities to establish Voluntary Aided Schools, on the grounds that they already existed for some religious groups and on the condition that they were educationally sound, fiscally secure, and did not operate on the basis of race."<sup>154</sup> The subject of how religious groups in education were to operate proved to be a complex and sensitive area however. The Labour Government of Tony Blair for example discovered this in 2005 when the Schools Minister for England published a list of practices by which faith-based schools could best contribute to inclusiveness and collaboration. A controversy developed, bringing already existing concerns about the negative implications of faith-based schools with regard to social cohesion to the forefront. One of the government's proposals was that a certain number of children outside the faith community were to be admitted to the school when parents so desired. Some faith schools were content with this proposal, but the Roman Catholic church strongly opposed and eventually it was let go.<sup>155</sup>

Another factor at play is that the majority of children in the UK attend community schools. This shows that "the debate on faith schools in the context of religious diversity is only one specific aspect of the issues that arise in the relationship between religious diversity and education."<sup>156</sup> The British Humanist Association for example argues for the "phasing out" of religious schools because they believe they are the cause for division in society. They argue that unless religious schools can be persuaded to "become inclusive and accommodation institutions," they should

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<sup>152</sup> Paul Weller, *Religious Diversity in the UK: Contours and Issues* (Continuum, 2008) 134.

<sup>153</sup> Jackson, 90.

<sup>154</sup> Ibid, 91.

<sup>155</sup> Weller, 134.

<sup>156</sup> Ibid, 135.

eventually all become types of community schools.<sup>157</sup> But who is supposed to accommodate and on what grounds? Furthermore, is ‘exclusivity’ negative? Are there times when it is appropriate to be exclusive? In the case of England, the pressure for faith-based schools to be funded equally as community schools was less a matter of exclusivity, but a matter of protecting those who adhere to a faith community and those who do not.

There were a few key religious pressure groups that also spurred government to take action in their direction. “The legislation that permits these new faith-based grant-maintained schools was strongly influenced by continued campaigning from an interlocking network of pressure groups which represent a range of ‘reluctant’ private schools,”<sup>158</sup> Walford writes. The most prominent pressure groups have been the Christian Schools Campaign (CSC), which represents about 65 private evangelical Christian schools and Islamia Schools Trust and the Muslim Parliament. Other groups such as the Campaign for State Supported Alternative Schools (CSSAS) in 1979 encouraged the establishment of small, “democratically-organized” schools funded by the state. The CSSAS supported non-fee-paying schools, and the schools were to be “non-selective on grounds of ability or aptitude and would not discriminate on grounds of race, sex, or religion.”<sup>159</sup> The campaign advocated for a democratic, open, and non-hierarchical school and flourished for some time, but eventually lost members and by 1984, vanished. Various Muslim groups presented a different kind of pressure for diversity of schools and the funding thereof. As the Muslim population grew, the pressure for equal funding grew with it. Halstead shows that “independent and government-financed Muslim schools are thus permeated by an Islamic ethos supporting their ‘unshakeable faith.’”<sup>160</sup> Muslim schools provide parents a means to further their ethos and sense of morality in their children instead of having the one option of community schools. This is no different for other religious schools. Religious schools are alternatives to secular schools. Secular schools are at times overlooked in the “worldviews department”, even though they too, teach a certain ethos and way of life. All too often, secularism is seen as the neutral path for society, and yet it is evident that people continue to search for meaning and education other than “perceived Western materialism and permissiveness.”<sup>161</sup> In the absence of schools promoting an Islamic faith, Muslim parents had often opted for other denominational schools rather than secular schools and there were some of those who struggled to pay private Muslim

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<sup>157</sup> *BHA Policy on Religion and Schools: A Better Way Forward* (2002, 2006): 3.

<sup>158</sup> Geoffrey Walford, “The Christian Schools Campaign - A Successful Educational Pressure Group?” *British Educational Research Journal* (1995): 452.

<sup>159</sup> *Ibid*, 453.

<sup>160</sup> Marie Parker-Jenkins, “Equal Access to State Funding: The Case of Muslim Schools in Britain,” *Race, Ethnicity and Education* (2002): 277.

<sup>161</sup> *Ibid*, 277.

school fees. It took around 15 years for Muslim schools to obtain funding partly due to underlying fears that they were potentially divisive.<sup>162</sup>

The 1993 Education Act finally made it possible for minority religious schools to enter into the state-maintained sector, funded by central government. Under the 1998 SSFA, most grant-maintained schools have become voluntary aided schools (receive funding from the central government via local authorities) and are subject to the same restrictions as all similar other schools. As of 2000, the only directly central government aided schools are the City Technology Schools and the Labour Government's new school, the Academy. The rest (except for a few private) receive funding from the government through their local agencies and other supporting sponsors. By 2006, there were around 6,874 state-funded schools with a religious character, representing around 35% of all the schools in the state sector.<sup>163</sup>

Figure 4.1: Type of Religious School funded by the State # of schools

Anglican (Church of England)	4,659
Roman Catholic	2,053
Greek Orthodox	1
Seventh-Day Adventist	1
Other Christian Denominations	115
Jewish	36
Muslim	7
Sikh	2

Data from Paul Weller's *Religious Diversity in the UK: Contours and Issues*, (2006-2008) 132.

### A Comparison Across Continents

Advocates for private school funding, whether in the U.S., England, or the Netherlands base their arguments on the perceived need for greater diversity of provision, efficiency, and effectiveness in the private sector, and the right of parents to have their children educated in schools of their choosing. Other arguments focus on the notion that funding all schools would lead to greater ethnic and class equality. In the United States, parents essentially “pay twice” if they choose a private education option for their children. Whereas in England, people pay no school fees and countries such as

<sup>162</sup> Ibid, 279-80. (See also: Walford, “Funding Religious Schools in England and the Netherlands,” 372).

<sup>163</sup> Weller, 132.

the Netherlands and Denmark hold a wide variety of state-funded schools.<sup>164</sup> In the Netherlands, pillarization was an important development and the Dutch system was stable because of the “cooperation at the elite level at the same time as segmentation at the mass level. By accepting a number of ground rules that emphasize compromise and consensus, the various groups were able to exist fruitfully.”<sup>165</sup> It can be said that although the system in the Netherlands was largely built upon cooperation and the agreement to disagree, tough matters that were hard to solve lead to the society’s inability to develop at times.

In England, state control on Voluntary schools has been increasing over the decades, perhaps more so than is the case in the Netherlands (although they too have been faced with similar dilemmas). Kuyper argued that it should not be the state’s role to meddle with the content and running of the schools. Its job was one of solidarity and subsidiarity. Amidst the growing secularization among religious schools and the growing hand of state control in England and the Netherlands, the desire of parents and churches to start their own private schools remains.<sup>166</sup> But at what cost will this come in the future? Some aspects of European law on education related issues may now even “override national law in the same way that Federal law challenges State law in the U.S.”<sup>167</sup> When looking at the public school sector in the U.S., it’s easy to see that the wide variety of actors make it near impossible for any real improvements to take place - and this is not even in the private sector. What would it mean for the U.S. to adopt a policy like that of England or the Netherlands? In England, the many players on the field of education make it hard to see who is in charge and what the schools are left in charge of. The fact of rising globalization too, has made the Dutch take a second look at their education policy, arguing that religion perhaps is best left in the private sector. Is state-funding of religious schools a good idea after all if, as examples show, increasing state involvement deems inevitable?

I will look at some of the arguments against religious school funding in the English context. These arguments are not bound to England alone however. The Netherlands and the U.S. face similar opposition to state-funding on some of these very arguments. Furthermore, not all religious schools seek out to become part of the state-maintained sector and give reasonable explanations for why they wish to remain outside of it. A thorough examination of both sides is crucial. I am not arguing whether religious schools are inherently beneficial or detrimental to society, for that is another argument altogether. Rather, I wish to highlight the reasons why some think that *public funding* of religious schools should exist or not.

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<sup>164</sup> Walford, “Funding for Religious Schools in England and the Netherlands,” 360.

<sup>165</sup> Ibid, 366.

<sup>166</sup> Ibid, 377.

<sup>167</sup> Ibid, 378.



## Arguments Against Religious School Funding

Unrest and conflict in Oldham, Bradford, and Leeds in 2001 stirred up opportunism of far-right political groups to show that social cohesion is disrupted when young people are separated. The riots happened between the growing British Asian communities and the city's white majority. The riots and the electoral success of the British Nationalist Party (BNP) the same year, raised the question if British society was becoming less cohesive. The BHA points to faith-based education "in contributing to divisiveness" and the 2001 Cattle Report stated that if faith schools were to remain in existence, they should take a minimum of 25% who are not of the same faith.<sup>168</sup> "The assumption that the state should have strong religious affiliation is inherent in the British national consciousness," and yet ICM polling of 2006 showed that 64% of voters think that the government should not fund faith based schools.<sup>169</sup> In a 2014 survey by Opinium, 58% of voters believed that faith schools can control who they wish to admit into their schools and are free to teach about only their religion, but should not be funded by the state. 70% said "the taxpayer should not be funding the promotion of religion in schools, 60% said such schools promoted division and segregation, 41% said they were contrary to the promotion of a multicultural society [and] fewer than 30% said they had no objections to faith schools being funded by the state."<sup>170</sup>

Some of the main arguments made against state funding for religious schools are that these schools:

- Limit the personal autonomy of the pupils;
- Erode social cohesion through separating young people of different religious and non-religious backgrounds;
- Impose a restricted view of religion on pupils;
- Disadvantage other schools through selection procedures that "cream off" the most able students;<sup>171</sup>
- Indoctrinate pupils with ideas that may be counter to democracy and harbor potential views that promote exclusivity.<sup>172</sup>

The argument that "children have the right not to be indoctrinated into the religion of their parents" puts into question the autonomy of the child and the parent.<sup>173</sup> Ward has shown that a number of youths preferred to be educated in culturally diverse

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<sup>168</sup> Stephen Ward, "Religious Control of Schooling in England: Diversity and Division," *Intercultural Education* (2008): 318.

<sup>169</sup> Ibid, 315.

<sup>170</sup> Toby Helm and Mark Townsend, "Taxpayers' Cash Should Not Be Used to Fund Faith Schools, Say Voters" *The Guardian* 14 June, 2014.

<sup>171</sup> Jackson, 93.

<sup>172</sup> Gerald Grace, "Faith Schools: Democracy, Human Rights and Social Cohesion," *Policy Futures in Education* (2012): 503. See also: Parker-Jenkins, "Equal Access to State Funding: The Case of Muslim Schools in Britain."

<sup>173</sup> Ward, 319.

schools. One example from the 2001 Cattle Report, showed that young people from ethnic minority groups indicated that they prefer to be educated in culturally diverse schools. The report stated that young people emphasized the need to break down barriers and “preferred integration on many levels and those who had experienced schools with a mixture of faiths, races, and cultures were very positive about their experiences.”<sup>174</sup> The 2001 Ouseley Report showed similar sentiments. The report stated that “some young people have pleaded desperately...to overcome the negativity that they feel is blighting their lives and leaves them ignorant of other cultures and lifestyles.”<sup>175</sup> In light of the argument that religious schools impose a strict view of religion on children, humanists argue: “that young children lack the cognitive competency and experiences to make judgements about religious claims is due to the notion that information about other religions is likely to be biased in religious schools. [Furthermore], although schools might not set out to indoctrinate children, the processes referred to amount to a subtle form of indoctrination.”<sup>176</sup> Humanists argue that the individual autonomy argument trumps that of the rights of parents.

Another argument is that religious schools erode social cohesion through separating young people of different religious and non-religious backgrounds and funding this would not encourage the diversity and cultural mingling that many liberal and neoliberal agendas hold to. This raises the question as to whether or not the democratic state should fund such activity. “It appears that state funding is accepted as a means to support a wish to increase the numbers of young people going to church,”<sup>177</sup> Ward writes. He points to the increasing problem the church faces in attracting young people to its services. The funding for religious schools could enhance this mission and states should not give financial aid to this. Religious schools are seen by some scholars such as David Hargreaves as “havens for particular moralities, in which home and school are jointly committed to the transmission and living experience of a shared moral and religious culture, while key adult members of religious communities are regarded as their spokespersons and negotiators.”<sup>178</sup> The Ouseley report on community separation in the city of Bradford for example, points out “a very worrying drift towards self-segregation.”<sup>179</sup> The desire of young people to overcome cultural and religious divisions seems evident, but it also points out “a fear of confronting all-white and all-Muslim schools about their contribution, or rather lack of contribution, to social and racial integration and segregation in schools.”<sup>180</sup> Programs of cross-cultural contact within the

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<sup>174</sup> Ibid, 318.

<sup>175</sup> Ibid, 318.

<sup>176</sup> Jackson, 94.

<sup>177</sup> Ibid, 96.

<sup>178</sup> Ibid, 95.

<sup>179</sup> Ibid, 95.

<sup>180</sup> Ibid, 95.

schools through classes or other means are pushed for by various groups and organizations.

Because the mechanism of selection for religious schools is not the same as for community schools, the most able students are “creamed off,” leaving other local schools with the rest of the remaining students. The “mechanism of selection means that parents who are prepared to manage their lives to attend church, or to manipulate the situation and present themselves as faithful, can ensure their choice of school. Those schools not blessed with power of selection are left with the children of parents who do not choose to join the selection race.”<sup>181</sup> This argument is brought forward by education authorities throughout the U.S. as well. They argue that the public school system maintains a diversity among students from different levels, asserting that this creates a “drive” for the less-advantaged students to do better and for schools to perform better.<sup>182</sup> Ward argues that the faith school is a product of the class-based and socially divisive education system in England.<sup>183</sup> Furthermore, as ethnographic studies have revealed how religious and cultural elements have changed over time and interacted with one another through migration and globalization, religious schools, rather than moving along with these changes, “could set out to promote a particular view of orthodoxy... rather than reflecting the diversity of tradition to be found on the ground.”<sup>184</sup> Despite the arguments that religious schools could foster intolerance, the New Labour Party’s enthusiasm for religious school funding has not lessened. Ward argues that the Party’s interest is more closely linked with economic gains and intertwined with politics than it lets on. He writes that for the government, the neoliberal agenda of raising standards through diversity and competition is increased and the “attempt to manufacture social capital from the benefits of religious ethos” is central, rather than the “blanket idea” of offering equal opportunities to minority faith groups.<sup>185</sup>

Not all religious schools or parents seek funding in England. The research of Madood and Virdec show that many Muslim families for example, do not seek single-faith Muslim schools. Many families said that they would prefer an inclusive community school, where there was sympathy and respect for their cultural norms and beliefs. This suggests that if community schools were in fact inclusive and respectful of religion, the demand for Muslim schools would go down.<sup>186</sup> What is of interest as well, is that while it became possible under the 1993 Education Act for minority religions to enter into the state-maintained sector of funding, only one evangelical Christian school applied, three

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<sup>181</sup> Ibid, 96.

<sup>182</sup> Milton Friedman, “Free to Choose: What’s Wrong with Our Schools?” (1980) Documentary.

<sup>183</sup> Ward, 320.

<sup>184</sup> Jackson, 96.

<sup>185</sup> Ward, 317.

<sup>186</sup> Ibid, 317. See also: Nasar Meer, “Muslim Schools in Britain: Challenging Mobilizations or Logical Developments?” *Asia Pacific Journal of Education* 2007.

Muslim schools (including the prominent Islamia school), one Seventh Day Adventist, and one Sikh school applied at the time. The reasons for this are complex, but focus mainly on the constraints schools fear they would face both now and potentially in the future. Many schools argued that while the conditions may be appropriate now, future governments may make changes which could make it hard for religious schools to be autonomous in nature. In having received funding, they worry that later it might be impossible to move back to private status. One headteacher from a private school in England pointed out:

“Any acceptance of government funds is an immediate weakening of the independent status of schools, and is not acceptable in any circumstances. How can one realistically accept money from a governing body and then refuse its requests?”<sup>187</sup>

Schools outside the state-maintained sector believed that education was broader than ‘the basics’ and led to the belief that if they accepted state money, “they might be at the mercy of any whim of any future government about what they should teach.”<sup>188</sup> Another headteacher pointed out that it would be difficult - and deemed irresponsible - for government to simply hand over money without control or influence on what is happening.<sup>189</sup> In the Netherlands for example, there has been a slight increase in the number of full private secondary schools which charge quite high fees. They have the freedom to set their own examinations and are seen as a slight move towards elitism. They can be compared to some extent, to the private schools in the U.S., where upper-middle- or high-class families can afford to send their children to such schools of their choosing. English Voluntary schools have three interlinked trends that have been increasingly evident over the past 50 years:

1. A proportion of funding that the government requires voluntary schools to contribute to the capital and maintenance costs of school buildings has gradually reduced. Currently it is at 10-15%;
2. The schools have become increasingly regulated and controlled by the state such that their distinctiveness has somewhat declined;
3. Many religious schools have become more secularized making them less attractive to parents who do hold their religious beliefs at the center of their lives: which in part explains why some parents and churches wish to start their own new private schools.<sup>190</sup>

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<sup>187</sup> Walford, 372-3.

<sup>188</sup> Ibid, 373.

<sup>189</sup> Ibid, 375.

<sup>190</sup> Ibid, 377.

It is no secret that not only in England, but in the Netherlands and other parts of Europe, the state has increased regulation and control of all schools - including private schools.

England is a useful example to draw lessons from with regard to direct financial aid and the complications this entails for the autonomy of religious schools. Even some indirect aid given through local education authorities seem to have caused alarm for some religious schools in light of control and regulations. The concerns English religious schools have are valid and reasonable. The church and state are more intertwined than that in the U.S. We must also not forget that the U.S. was well aware of past issues surrounding church and state matters and wanted to prevent similar conflicts in the new establishing colonies in the 18th century onward. With the English and Dutch education systems as useful tools to draw from, the next chapter will look at various responses and tie these into the big picture of religious education funding, the role of the state, and how Kuyper's model for sphere sovereignty might serve as a useful guideline for ensuring that religious freedom can be upheld.

## Chapter IV: Kuyper's Sphere Sovereignty Model - A Commitment to Pluralism

*“Freedom unrestrained by responsibility becomes mere license; responsibility unchecked by freedom becomes mere arbitrary power. The question then, is not whether freedom and responsibility shall be united, but how they can be united and reconciled to the best advantage.” - Carl L. Becker*

In her book, *The Impossibility of Religious Freedom*, Sullivan argues that in the legal sense, religious freedom is impossible because it requires the state to demand proof that religion is *indeed* religion. This limits religion only to the “legal” spectrum and does not do justice where justice is due. Her argument rings valid when we apply it to the court cases examined in Chapter 2. She argues that instead of prioritizing what the state dictates, it is important to recognize that there are other demands besides state ones that call our attention. Despite what secularism tells us, religion and culture fall under these demands. Sullivan thinks that the state cannot protect religious freedom justly, and as we can see from the *Lemon-test*, there is a certain truth to her claim. The test was created for a secular purpose, with the goal that the state would not get entangled with religion. The state was to be neutral towards religion and “neutral” in this case meant *no* funding. Neutrality, as best defined in light of government action, can be said to be “neither favoring nor burdening any particular religion, nor favoring or burdening religion as a whole or secular systems of belief as a whole.”<sup>191</sup> It was Justice Stewart who noted that when this goal of neutrality is fully realized, the Constitution “indispensably [then] protects the freedom of each of us be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not to worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government.”<sup>192</sup> Were this actualized in practice, there would be the commitment to pluralism. But, as Sullivan shows, when the state or Court determines to define religion in a legal sense, it becomes hard for religious people to make a decent claim as many cases have shown. In *Warner v. Boca Raton* (1999), a case about whether or not people’s religious freedom was burdened with the City’s law that no gravesite decorations were permitted in the cemetery, Judge Ryskamp stated that the “plaintiffs were required to prove that their conduct reflects some tenet, practice, or custom of a larger system of religious belief.”<sup>193</sup> Sullivan points out that the distinction he makes is elusive:

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<sup>191</sup> Monsma et. al., 6.

<sup>192</sup> Ibid, 7.

<sup>193</sup> Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton University Press, 2018) 94.

“It is both difficult to establish with the available testimony, and symptomatic of the constraining nature of the available language. If the plaintiffs’ activities fall into the second category, that is, that they are understood to reflect merely ‘a personal preference,’ then one could argue that the modern disestablishment and ‘privatization’ of religion has created forms of religion that *cannot* be legally protected, because they are insufficiently institutionalized. Personal preference in religious matters is arguably exactly what the First Amendment religious clauses guarantee.”<sup>194</sup>

To find what is and is not protected under the First Amendment cannot be solved on a hard line because it is difficult to find any religious practice that could not arguably be understood to be a “tenet, practice, or custom of a larger system of religious beliefs.”<sup>195</sup> In *Warner*, another test to determine the “religiosity” of a practice was set up. Sullivan argues that the current reading of the First Amendment suggests that “when the government gets into the business of defining religion, it gets into the business of establishing religion.”<sup>196</sup> The results have proven to be discriminatory. In these cases, “to define is to exclude, and to exclude is to discriminate.”<sup>197</sup> Where would be the Court’s limit in defining? Justice Scalia wrote in his dissenting opinion in the *Locke* case:

“Today’s holding is limited to training the clergy, but its logic is readily extendible, and there are plenty of directions to go. What next? Will we deny priests and nuns their prescription-drug benefits on the ground that taxpayers’ freedom of conscience forbids medication for the clergy at public expense? This may seem fanciful, but recall that France has proposed banning religious attire from schools, invoking interests in secularism no less benign than those the Court embraces today. When the public’s freedom of conscience is invoked to justify denial of equal treatment, benevolent motives shade into indifference and ultimately into repression.” [734]<sup>198</sup>

Sullivan makes a case for why religious freedom clauses should not exist in the legal system. These could very well be protected under free speech, freedom to assemble, and other protections granted by the Constitution. Feldman argues, like Sullivan, that religious belief and expression should be protected under other constitutional provisions but that there is “no longer any warrant for singling out *religious* freedom as a special constitutional commitment.”<sup>199</sup> Feldman asserts that in a modern liberal state, it is unacceptable for the government to “act on theological rationales,”<sup>200</sup> as was the

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<sup>194</sup> Ibid, 95.

<sup>195</sup> Ibid, 97.

<sup>196</sup> Ibid, 101.

<sup>197</sup> Ibid, 101.

<sup>198</sup> Justice Scalia, Dissent, *Religious Liberty and the American Supreme Court*, comp. Vincent Philip Muñoz, 513.

<sup>199</sup> Steven D. Smith, *The Rise and Decline of American Religious Freedom* (Harvard University Press, 2014): 139.

<sup>200</sup> Ibid, 139.

case in the days of the founding fathers. He writes that he does not argue in disfavor of religion, but asserts rather, that this would be in the interest of religion. In part, it could be asserted that to remove the term *religion* off the list, placing it under the same protection that others receive, such as freedom of speech, press, and so on, cases that *inherently* deal with religion - like that of *Locke* wouldn't exist anymore. Sullivan and Feldman's arguments are compelling at a theoretical level. However, Kuyper gives us a practical principle to manifest within the established framework of our time. Although terms like 'religion' are problematic at times, they *are* terms we use in everyday life and recognized in law. Therefore, I suggest that we need to look for a pragmatic approach to uphold religious liberty as guaranteed in the First Amendment.

It would be strange to say that a country as diverse as the U.S. should pillarize as the Dutch did in the nineteenth century. The Netherlands today is for the most part de-pillarized, but the benefits of pillarization remain: state-funding for all schools. Pillarization in some sense was a means towards *tolerance* - the actual definition of the term. It is at the same time an acceptance that individuals are not isolated in society, yet also an understanding that sometimes our stark differences will not simply disappear if we only say "I agree to disagree." *Tolerance* is not the same as *acceptance* - one can tolerate something without having to accept it. As Inazu pointed out, all people, religious or secular, need the space to live out their differences equally. Kuyper understood this when he argued for sphere sovereignty. What was essential to the emancipatory process of sphere sovereignty Kuyper argues, is that "these minorities were being more and more financially supported by the government and were finally accepted as firm and vital pillars of society as a whole."<sup>201</sup> A similar 'pillarizing' approach among the Dutch for present migrant groups such as the influx of Muslims, "is preferable to both policies which regard immigrants either as just normal citizens, as seems to be the case in Australia, or as temporary residents, as seems to be the case in Germany."<sup>202</sup> The former policy, although perhaps well-intended, harvests potential to ignore the genuine differences among peoples, while the latter creates an "us" versus "them" schism. Charles Glenn addresses the American 'winner take all' mindset that embitters our political discussions and asks if we could accept the principled pluralism that served as the basis of a lasting pacification in the low countries.<sup>203</sup> To do so, Carlson-Thies and Monsma pointed out "it would require neither that we agree completely with each other about our deepest beliefs - nor that we stop trying to convince each other about what we think is best. Principled pluralism simply asks us to agree to respect each other's convictions not only in private life, but also in public life."<sup>204</sup>

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<sup>201</sup> Sturm, "Educational Pluralism - A Historical Study of So-Called 'Pillarization,'" 293.

<sup>202</sup> Ibid, 294.

<sup>203</sup> Charles Glenn, "Rediscovering Sphere Sovereignty in the Age of Trump," *Center for Public Justice* (2017) Lecture.

<sup>204</sup> Ibid.



Kuyper in 1873 argued that the centralizing state was growing into a “gigantic monster” to which citizens would eventually be powerless against. “Have not all independent institutions whose sovereignty in their own spheres made them a basis for resistance yielded to the magic formula of a single unitary state? Once there was autonomy in the regions and towns, autonomy for families and different social ranks, autonomy for the courts as well as for the universities, corporations, and guilds and now the state has annexed all these rights.”<sup>205</sup> Kuyper limited sources of authority, providing a basis of democratic pluralism, protecting the freedom of faith communities as well as of individuals. Article 12 of Kuyper’s manifesto states in regard to education that:

“It desires the state (unless compelled by lack of vitality among the citizens) to abandon the premise that government is called upon to provide education; that it prevent government schools, if need be, from being misused for propaganda for religious or antireligious ideas; and so extend to all citizens, irrespective of their religious or pedagogical views, equal rights also in the matter of education.”<sup>206</sup>

Those involved with keeping the school are first and foremost, the parents, Kuyper argues. The argument in chapter 3 made by humanists and others that children have the right “not to be indoctrinated,” would have to face the European Convention on Human Rights (2000) Article 14, “The Right to Education.” It states that citizens have:

“The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions and these rights shall be respected.”<sup>207</sup>

In the U.S., the right of parents was confirmed in *Pierce v. Society of Sisters* (1925). The private schools involved argued that the Compulsory Education Act, which required every child between 8 and 16 to be enrolled in a public school, violated parents’ right to choose. The Court held that “the child belongs to the parent and not the state. The right of parents to direct the education of their children “is a most substantial part of the liberty and freedom of the parent.”<sup>208</sup> The private schools in *Pierce* argued that they did not question the right of the state to regulate private schools in the interest of public welfare. The *Pierce* case shows both the Court’s recognition that the state’s role is not to dictate *where* parents send their children and acknowledgment that private schools are not rebellious toward the state. Private schools too, accept that they fall under similar regulations like that of public schools. In yet another case, the Supreme Court explained

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<sup>205</sup> Abraham Kuyper, Chapter 13: Education, *Ons Program*.

<sup>206</sup> Ibid.

<sup>207</sup> Grace, 501.

<sup>208</sup> “*Pierce v. Society of Sisters*.” (286 U.S. 510, 518 (1925)). Rpt. in *Private Schools and Public Power*, E. Vance Randall, 63.

that “in *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are ‘fundamental’ or ‘implicit’ in the concept of ordered liberty...[the activities included] are matters related to marriage, procreation, contraception, family relationships, and childrearing and education. In these areas it has been held that there are limitations on the State’s power to substantively regulate conduct.”<sup>209</sup> This case example serves as a response to the argument that the child is autonomous and shows that the rights of parents are to be protected and state involvement over this area is limited. At the same time, it responds to the assumption that private schools supposedly harbor unwanted dogmas against state-citizen cooperation.

Second, Kuyper states that in religious schools, the religious body is involved with education. They ensure that a child receives spiritual and moral education. The religious institution is in connection with the parents and makes a commitment to ensure that their child will be instructed according to the principles and doctrines fitting to the religious body. The teachers also, “can lay claim to independent rights in education.”<sup>210</sup> They ought to be ensured a position in which they can do their work effectively in line with academic standards. They are bound to this task and hold a connected relationship with both the parents and the religious body. Informed of what is expected of both the parents and the religious body, the teacher or professor “has to judge whether or not his/her professional conscience allows him/her, and whether his/her art enables him, to teach *in that spirit*...”<sup>211</sup> The roles are connected yet distinct.

Finally, as sphere sovereignty argues for ultimate authority in its own sector, it sets restraints as well as goals. Each sector has its own distinctive goal and purpose. Education is neither an agent of only the family or the state, but is accountable to both yet maintaining its own distinctive role. “The state’s interest in circumscribing the liberty of parents and children through compulsory education and laws and regulations is itself limited. It is limited in providing a basic education that will enable children to participate effectively and intelligently in our open political system and to be self-sufficient participants in society.”<sup>212</sup> Sphere sovereignty would best apply to the state’s role with regard to education in the 21st century if the state:

- 1) “Places emphasis on the ends instead of the means.” The goal is that knowledge is acquired and that academic skills are achieved. *How* they are accomplished is not the role of government to dictate;
- 2) Is concerned “with the possession of basic skills and essential knowledge - the minimum required to function in a society;”

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<sup>209</sup> Ibid, 97.

<sup>210</sup> Kuyper, Chapter 13, Section 163.

<sup>211</sup> Ibid, 163.

<sup>212</sup> “*Wisconsin v. Yoder*.” (406 U.S. 205, 221 (1972)). Rpt. in “*Private Schools and Public Power*, E. Vance Randall, 75.

- 3) Places careful attention that they do not step into areas that may result in the intrusion on fundamental rights, such as the freedom of religion, speech, conscience, and assembly;
- 4) Recognizes that there is a “wide latitude of discretion in developing appropriate regulations to ensure that its legitimate interests in education are protected;”<sup>213</sup>
- 5) Substitutes in the event that a school fails at its tasks, and establish procedures that would assist in settling disputes that may arise among church and school, parents and school, church and state, etc.;<sup>214</sup>
- 6) Subsidizes where local communities and families can no longer provide, but do so as a last resort “because it can only achieve its objectives using coercion and because it is so remote from the needs it is trying to meet.”<sup>215</sup>

The last point is especially important for equal funding of private and public schools. Subsidiarity means “to help.” The state should “*help* families obtain an education for their children.<sup>216</sup> In the U.S., this relationship has been reversed. The government instead, through many different actors and unions, has taken over the role that belongs to parents and the unique character of the schools. These problems exist because instead of allowing parents a real choice as to where they wish to send their children, the state dictates this through where they allocate their money, leaving parents who otherwise need the financial assistance with only one school choice: the public state school. The parent and family are at the center of decision-making, whereas the state merely provides financial assistance to the families who need it the most. This was recognized by Judge Rehnquist in *Zelman* when he asserted that the state’s role ends in the allocation of funds. *Which school* the parents choose to invest that money in, is left to the parents themselves.

Of course, there comes the issue of accountability and regulations of the government and the school. The state defines measurable academic objectives and is to intervene upon failure. Glenn argues that it should not impose a “one-size-fits-all” approach on every school as can be seen throughout the public schools in the U.S. He states that accountability is consistent with educational pluralism. It is concerned with outcomes, not how they are achieved.<sup>217</sup> The school should be accountable not to society, but to the families who have entrusted it with their children. This means that parents should be empowered to make that choice. The state is to show that the regulation “serves not only a rational relationship to a legal state objective but that it serves a compelling or crucial state interest” and that the particular regulation selected by the

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<sup>213</sup> Randall, 76.

<sup>214</sup> Kuyper, Section 164.

<sup>215</sup> Philip Booth, “Catholicism and Capitalism,” *Institute of Economic Affairs* (2009): 66.

<sup>216</sup> *Ibid*, 66.

<sup>217</sup> Glenn, Lecture.

state “is the least restrictive means available to accomplish its compelling state interest.”<sup>218</sup> The oldest and most central tenet of American constitutionalism according to Laurence Tribe is that “all lawful power derives from the people and must be held in check to preserve their freedom.”<sup>219</sup> The state has the right to intervene, but, as John Rawls had said, in the event of conflicts rising over state intervention in private affairs, the state must justify its “curtailment of basic liberty rights” if it is going to be just in its dealings.<sup>220</sup> Furthermore, Rawls’ theory of justice holds that “free reason leads different agents to different religious, philosophical, and moral beliefs” and Alan Gewirth argues that “all these beliefs logically entail the same set of human rights.”<sup>221</sup> Rawls and Gewirth’s theories are significant in that they are secular and require the state to be neutral among religious beliefs but that it should not favor secular over religious beliefs. Clear objectives must be set by the state if accountability is to flow from both ends. The regulations should flow from clear and explicit educational goals and there needs to be an objective connection between the regulation and what its goal is “in order to be a proper restriction of personal liberty.”<sup>222</sup> The stride for sound policy in the U.S. with regards to education has always been a contentious one, depending on the politics of the time and the leaders in office. Extensive regulations “unjustly impose the state’s preference and thus becomes ethically problematic... the choice must be a *bona fide* option. Attempts by the state to emasculate the option of private education do not take seriously the right of parents to direct the education of their children.”<sup>223</sup> I have argued in this thesis that the overarching theme in the U.S. of zero aid to religion in education has been a form of injustice and calls for reform. As Kuyper writes, the goal is “not to oppose the mixed secular form of education for those who want it, but to challenge the supremacy, the monopoly of the mixed school (the neutral school) and to demand alongside it equal and generous legal space for every life expression that desires its own form of education. Demand justice for all to do justice to every life expression.”<sup>224</sup> Thus, the state must “recognize the other sovereign spheres, support the sovereign spheres, and resolve conflict between the spheres.”<sup>225</sup>

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<sup>218</sup> “Thomas v. Review Board, Indiana Empl. Sec. Division.” (450 U.S. 707, 718, (1981)), rpt. in *Private Schools and Public Power*, E. Vance Randall, 74.

<sup>219</sup> Randall, 81.

<sup>220</sup> Ibid, 81.

<sup>221</sup> Michael Freeman, “The Problem of Secularism in Human Rights Theory,” *Human Rights Quarterly* (2004): 396.

<sup>222</sup> Randall, 89.

<sup>223</sup> Jackson, 93.

<sup>224</sup> Glenn, Lecture.

<sup>225</sup> David H McIlroy, “Subsidiarity and Sphere Sovereignty: Christian Reflections on the Size, Shape, and Scope of Government,” *Journal of Church and State* (2003): 754.

## The Social Issue: Race, Segregation, and Vouchers

There is of course a flip-side to school choice that needs to be addressed. This is in regard to race and segregation, which are in some cases an inevitable side-effect of school choice. In England, one of the reasons why the Labour Party had changed its policy on state funding for religious schools “was to avoid incidents of racial conflict and to create an environment that was conducive to learning for ‘black’ and Asian children.”<sup>226</sup> Ethnic and cultural diversity can be met in two ways according to Ward: either by having a diversity of schools, or having diversity within the school.<sup>227</sup> However, as noted earlier, various studies have shown that community schools have not been all that inclusive, which caused the Labour Party to take action toward what they deemed to be a more inclusive policy - religious school funding. Jackson writes that “in England, the segregation issue is not confined to the dual system of education. In some areas there are *de facto* segregated schools, because economic conditions, patterns of residence and parental choice taken together result in virtually all-Muslim or all-white schools within parts of a single town or city.”<sup>228</sup> Halstead argued that a plurality of schools is the result of “voluntary apartheid” and sees this as the most equitable way to organize education, insisting all the while that all cultural and religious groups should to be educated in a way that allows them to participate fully in a democratic society while maintaining their unique beliefs. There does remain the dilemma that segregation is at times, a result of such a system. In the Netherlands, an informal form of “voluntary apartheid” on an ethnic basis is considered undesirable by the Dutch government and wide circles.<sup>229</sup> The problem of “black” and “white” schools in a number of major cities throughout the Netherlands result from poorer immigrant families sending their children to the neighborhood schools, whereas richer white families will end up sending their children to “white” schools further from their neighborhoods on the assumption that “black” schools have lower levels of academic standards. “This grass-roots ethnic segregation does not in any way run parallel with the ideological segregation between public and private education regulated by law.”<sup>230</sup> In other words, ideological segregation between schools - such as Muslim or Hindu schools, is not the same as segregation based on race and ethnicity. The segregation of “black’ and ‘white’ schools is diametrically opposed to the notion of the multicultural society that is based on pluralism, equality, mutual contacts, and respect, a notion almost unanimously accepted in Europe.”<sup>231</sup> Part of the problem still remaining in the Netherlands today is cultivating a culture that can handle the difference among religions, inevitably linked to ethnicity,

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<sup>226</sup> Jackson, 94.

<sup>227</sup> Ward, 322.

<sup>228</sup> Jackson, 94-5.

<sup>229</sup> Sturm, 293.

<sup>230</sup> Ibid, 293.

<sup>231</sup> Ibid, 293.

and deal with fear and underlying assumptions that feed into ethnic segregation in schools. Difference *does* require risk.<sup>232</sup>

Segregation on the basis of race is no stranger to America either. It wasn't too long ago that Bob Jones University, a fundamentalist evangelical college in South Carolina blatantly vouched for the strict separation of "whites" and "blacks," and did not admit African-Americans. Evangelical leaders had "boasted that because their educational institutions accepted no federal money, the government could not tell them how to run their shops - whom to hire or not, whom to admit or reject."<sup>233</sup> After the implementation of the Civil Rights Act, the IRS made inquiries into the university and its segregation policies. This led evangelical leaders to alert the Christian school community about what could happen if government got involved with the affairs of evangelical institutions.<sup>234</sup> Various evangelical leaders mobilized its community on false premises and the effects of such are still visible today. The "lost voice" of religion is not only due to the fact that enlightenment liberalism and secularism took the dominant voice in society. Religion (or perhaps more of what it has become: *civic* religion) is, in part, to blame. "It's cultural dominance, its anti-Catholic fervor, and its intellectual shallowness" contributed largely to its setback of inclusion in the public realm.<sup>235</sup> School choice and religious freedom do not come without its problems.

Furthermore, Jackson writes that segregated schools "are failing, not simply because 'black' schools tend to be in areas of economic deprivation, but because 'white' students are unprepared for future life in an increasingly mixed society."<sup>236</sup> Rapid spread of public charter schools and programs such as voucher distribution, tax and tuition credit programs have shown that school level autonomy is appealing to millions of parents and those who choose to work at these schools. These programs exist in ad hoc arrangements because of negotiations and demands to address particular situations.<sup>237</sup> But the conceptual framework guiding these developments is still lacking, making them fragile and inconsistent or even harmful in some effects. The programs are not substantial enough, according to Glenn. This is because the problem lies with the system - "the government operated public school that represents the norm from which all of them are permitted exceptions."<sup>238</sup> Freedom within a framework of accountability is needed, Glenn asserts. As we have seen in chapter 2, government-run schools taking a "one-size-fits-all" approach, make it hard to address the difference among students as a whole. It is no secret that many of the poor and minority parents and children in inner cities tend to be concentrated in schools that, "by the account of even the most liberal

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<sup>232</sup> Glenn, Lecture.

<sup>233</sup> Randall Balmer, "The Real Origins of the Religious Right," *Politico* 27 May 2014.

<sup>234</sup> *Ibid.*

<sup>235</sup> Monsma, et. al., 21-22.

<sup>236</sup> Jackson, 94.

<sup>237</sup> Glenn, Lecture.

<sup>238</sup> *Ibid.*

observers, are among the worst in the nation.”<sup>239</sup> Studies have shown that how families choose their residence indicated that the quality of local schools is “an important influence... this means also that wealthier families tend to choose houses in school districts where per capita spending for public schools is higher”<sup>240</sup> and poorer families are left in districts where spending is lower. This is especially visible in inner-city schools where bureaucratic regulation is the greatest because it is “teeming with diverse, conflicting interests of political salience - class, race, ethnicity, language, religion” - and are faced by severe problems deeply rooted in the “urban socioeconomic structure.”<sup>241</sup> As income and ethnicity are often interlinked, sorting students by the price of their homes segregates them by race and ethnicity. Moe asserts that democratic control is detrimental to the school system. The solution, they argue, is that autonomy and competition among schools can combine to address these problems.

Vouchers are simply certificates of government funding for a student at a school of his/her choice or his/her parents' choice. Originally the idea of Milton Friedman, vouchers acknowledge that people want different things from the schools and should be left free to choose and pursue those differences. Moe states that “a truly American system of education... would give parents a maximum of choice” and keep government control of the schools minimal. To make such a choice possible, “it would provide parents with vouchers.”<sup>242</sup> Although the government has *some* role to play in education, the role was to be subsidiary, according to Friedman and was not supposed to *supply* education.<sup>243</sup> Friedman adamantly challenged the idea that the state can be the educator of its citizens, shaping them and their loyalties in response to the state's priorities. The voucher system matches with the principle of sphere sovereignty as it recognizes the sovereignty of the parents and the limited role of the state. However, as great as a voucher system might sound for school choice advocates, it must address the question of race and segregation within the schools at the same time. The main argument opponents of school choice and vouchers bring forward is that it will harm society's most disadvantaged children. Elmore and Fuller suggest that “the exacerbation of existing segregation by race, social class, and cultural background is the most likely result of expanding school choice...because the value families place on education correlates highly with race, class, and cultural background.”<sup>244</sup> The separation of choosing and non-choosing families will directly impact the system as the quality of classmates changes. It will separate “low-income and minority students who already are most vulnerable, and it will remove the most politically active parents from

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<sup>239</sup> Terry M. Moe, *Schools, Vouchers, and the American Public* (Brookings Institution, 2002) 34.

<sup>240</sup> R. Kenneth Godwin, et. al., *School Choice Tradeoffs: Liberty, Equity, and Diversity* (University of Texas Press, 2002) 27.

<sup>241</sup> *Ibid*, 23.

<sup>242</sup> Moe, 15.

<sup>243</sup> *Ibid*, 15

<sup>244</sup> Godwin, 24.

neighborhood schools, thereby reducing pressure on these schools to improve.”<sup>245</sup> As stated in chapter 3, opponents argue that vouchers will allow schools to cream off the “good students,” leaving the “bad” students behind in bureaucratic public schools. In the Netherlands, studies have shown that voucher systems have increased ethnic and socioeconomic segregation.<sup>246</sup> In the United States however, two publicly funded voucher programs in place long enough to study their impacts, have shown so far that socioeconomic segregation was not a question. These programs in Milwaukee and Cleveland showed the positive effects of voucher assistance by limiting financial assistance to either low-income families or to families in low-income areas, thus showing no increase in segregation by income or ethnicity.<sup>247</sup> Of course, these are two examples. The voucher program is slow in making its way across the states due in large part to the fierce opposition from interest groups, government organizations, and teachers unions, among others. Nevertheless, the stride continues as 27 states already have some form of private school choice and 14 states, plus Washington D.C. have school voucher programs.<sup>248</sup>

The current system is already segregated as is, with the middle and upper class, “white” being able to afford private schools, while the poor remain in the public school system because that’s the only option they can “afford.” Moe states, “social equity demands that real choice be extended to the disadvantaged, allowing them to leave bad schools, seek out better ones, and exercise the kind of control advantaged people already have... and while some private schools might discriminate against the disadvantaged, or that choice would favor some parents over others, this is what regulations are for.”<sup>249</sup> One way to prevent segregation according to Godwin is to use “incentives and regulations that make sorting by income, ethnicity, and student ability less likely.”<sup>250</sup> The amount of segregation depends on how the program is set up. As we saw in the cases of Milwaukee and Cleveland, the vouchers were limited to low-income families, giving them the choice to move schools where they saw fit. The voucher system was met with enthusiasm from Milwaukee’s parents.<sup>251</sup> The established tradition in political science of top-down forms of democratic control show how schools are buried under bureaucracy.<sup>252</sup> This “equity for the disadvantaged” counts just as much for ethnic minorities as it does for families who want to send their children to religious schools but simply cannot because they do not have the means to pay for it.

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<sup>245</sup> Ibid, 24.

<sup>246</sup> Ibid, 29.

<sup>247</sup> Ibid, 29.

<sup>248</sup> “How the School Voucher Debate Is Playing Out in Indiana,” *Public Broadcasting Service* 14 Mar. 2017.

<sup>249</sup> Moe, 29.

<sup>250</sup> Godwin, 36.

<sup>251</sup> Moe, 33.

<sup>252</sup> Ibid, 31.



## Conclusion: Sphere Sovereignty for the 21st Century

*“It would be unfortunate if a politically correct progressivism were to deny the reality of the challenge to social solidarity posed by diversity. It would be equally unfortunate if an ahistorical and ethnocentric conservatism were to deny that addressing that challenge is both feasible and desirable...The task of becoming comfortable with diversity will not be easy or quick, but it will be speeded by our collective efforts and in the end be well worth the effort.” - Robert Putnam*

Sullivan writes that the right to freedom of religion exists beyond the state. Kuyper would agree with her that this is true, but as we are not free from the state, some guaranteed protection from the state is necessary. In this thesis, I have argued that Kuyper’s theory of sphere sovereignty can uphold a commitment to religious freedom in the education sector in the U.S. in a pluralistic 21st century. To do so, it is crucial to grasp what the role of the state actually is and where its sovereignty ends. It also requires recognizing that other spheres in society serve unique roles and that no sphere is ultimately absolute in its power, but work in relation to one another. Peter Berger stated:

“The ‘megastructures’ of societal life cannot work for human flourishing without assistance from other collective entities. States and corporations need to look below themselves for moral sustenance, providing room for the significant influence of those living subcultures from which people derive meaning and identity. Such entities protect us from the all-encompassing tendencies of the state on the one hand, and from an isolated individualism on the other.”<sup>253</sup>

The state’s role is finite, nor can it provide the same provisions as other spheres in society. Chapter 1 gave us an outline of Kuyper’s principle of sphere sovereignty and how it established a framework for the Netherlands to address the fact of pluralism in an equitable way. In the Netherlands, the beginning point of “voluntary apartheid has helped cultural minorities to work themselves up from a disadvantaged position towards equality - while promoting social harmony, solidarity and commitment on the national level.”<sup>254</sup> Pillars in Kuyper’s time were not merely private organizations but *pivotal* parts of society as a whole. They allowed for the integration of many cultures. “This may have been costly to some extent, but it was truly democratic and an effective means of emancipating members of minority groups into full-fledged and equal citizens of a complex society.”<sup>255</sup> Although it would be strange to argue that the United States should

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<sup>253</sup> Richard J. Mouw, “Some Reflections on Sphere Sovereignty,” *Religion, Pluralism, and Public Life*, ed. Luis E. Lugo (W. B. Eerdmans, 2000) 90-91.

<sup>254</sup> Sturm, 293.

<sup>255</sup> *Ibid*, 293.

turn to pillarization as the Dutch did back in the day, there are some lessons in tolerance and neutrality that can be taken away from the low countries.

As we saw in chapter 2, the current set-up of the education system and funding is buried under layers of bureaucracy and regulations. Private schools, although placed at a greater distance from such bureaucracy, are able to serve those who can afford it. I have argued through various court cases to show that the current set-up of church and state separation has placed religious people at a disadvantage when it comes to education and state funding. I have argued that the state's involvement with education is too convoluted. The Court's ambiguity on cases dealing with education and the First Amendment have shown different outcomes, often with the intent of protecting church and state separation, but as Monsma stated, once you take religion out of the equation, what is left is secularism, not neutrality as is hoped for. Although a student like Davey was not prohibited from studying pastoral ministries, the burden placed on him through the denial of funds on the grounds that it would go towards religion is a higher burden than for students who choose a secular study. First Amendment cases have always been a contentious point for the courts and I argue that it is because a clear role for the state with regard to education has not been set. This is true for the public school system, as we can see the effects of federal, state, and local involvement in education as bureaucratic and stagnant. And we can see this more evidently in the cases dealing with funding and private education. In leaving religion on the outside, I have argued that the state by default "handicaps" religion as its community is left to provide for itself. The state's role is not to provide a specific type of education but to assist parents in allowing them to make the choice themselves. This, I argue, would be a real commitment to religious freedom as guaranteed in the First Amendment and a recognition of the definition of *neutrality* as vouched for in America's public philosophy. Last but not least, the recognition of the limited role of government to solidarity and subsidiarity in regard to education allows for a commitment to principled pluralism in the 21st century.

Teachers of denominational schools throughout England worry that the sacrifices for state-funding are too high, as we saw in chapter 3. In this thesis, England serves as a modern-day comparison to the U.S. and the Netherlands to show the costs and benefits of financial equalization of all schools. Already the state has become increasingly involved over the past decades about how money is to be spent and how the results of such funds are calculated. In contemporary England most of the funds are distributed through local education authorities and not directly through government anymore. We also saw the important role various pressure groups played in the goal for financial equalization. As studies have shown, the desire for parents to send their children to a school they see fitting is evident. England does not take a one-size-fits-all approach, but allows for the existence of diverse ideas about what education does for a child. Yet, the question of who's in charge and to what extent remains a discussion in England still today. The comparison between these three countries serves as a critique as well as a

discussion about the various obstacles and concerns that come with the venture of equal funding of religious-based schools.

Chapter 4 shows us that Kuyper and his followers relate much more to us today than we might think. A determined resistance to what was - and is seen - as the overreaching of government into sensitive domains of community and personal life is not new to the 21st century. Too many governments have “looked upon schooling provided under independent hospices as a rival to state sovereignty and a danger to national unity.”<sup>256</sup> Glenn argues that there is a culture war going on. It is between those who, like Kuyper, argue that different worldviews have a right to exist and should not be hindered expression and those who vouch that only a single perspective, enlightened modernity or secularism must prevail. “A vast energy of an all-embracing life system of secularism, and the absolute claims that leave no room for the assertion of alternative interpretations of reality” impose on those who have other ways of living.<sup>257</sup> This secularist orthodoxy insists that religious beliefs remain private and that they will eventually die away as they don’t bring any significant roles in public behavior. “There is a new intolerance, which tends to see institutions and organizations based upon religious convictions as fundamentally illegitimate.”<sup>258</sup> Skillen shows that, “a just state is one that upholds structural pluralism as a matter of principle, not as an uncomfortable or grudging accommodation to interest groups or to individual autonomy or to its own weakness.”<sup>259</sup> Sphere sovereignty is a way to think about and argue for an appropriate allocation of responsibilities for education and other domains which can be used to create consistent policies. It limits the role of government to general oversight, provides resources where needed, and ensures that youths are instructed. But it can neither educate and inform the hearts and minds of the children, nor can it stand in the shoes of parents through means of where it allocates funds and where it does not. As we saw from Justice Rehnquist in the *Zelman* case, he asserted genuine choice for parents among public and private schools when he recognized that the state's role ends with the giving of funds.

Some of the main arguments for school funding include that religious schools can provide a positive response to racism. This is not always the case, as we saw from an example mentioned in chapter 4. Scholars such as Steven Ward argue that the very purpose of a religious school is to be exclusive and therefore is divisive by definition. Contrary, Halstead and McLaughlin argue that religious schools are “no more divisive than segregation by age, gender, ability, language, and subject specialism.”<sup>260</sup> The goal of this thesis is not to argue about the nature of religious schools, but that religion,

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<sup>256</sup> Glenn, Lecture.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid. See also: James W. Skillen, “Reformed...and Always Reforming?” *Church, State, and Citizen*. Ed. Sandra F. Joireman (Oxford University Press, 2009) 53-72.

<sup>260</sup> Ward, 320.

contrary to what secularism holds, will in fact, remain a part of life, however changing it may be, and must be given the same justice and those who do not hold to a religion. Religious freedom is protected under the First Amendment and as long as it stands, it must be protected in such a way that “state power is no more to be used so as to handicap religions, than it is to favor them.” If this is to be followed, I argue that religious schools must be able to be accessed equally as public schools are for the sake of that religious freedom. Through Kuyper’s principles lined out in his sphere sovereignty theory, I seek to show that education in the 21st century in the U.S. could look much different if the state recognized its limited sovereignty and the sovereignty of other spheres around it.

A voucher system would leave parents and students to freely choose where they want to attend school, as is their right, and leaves the government’s role limited, as Kuyper’s theory of sphere sovereignty would hold. It allows for the equal flourishing of many different worldviews and religions, without the excessive entanglement of government. A true commitment to pluralism, as well as a commitment to the American ideal of “freedom” mapped out in the Constitution and the Bill of Rights, requires both the individual and the state to recognize the “distinction between assimilation and accommodation - between approaches which impose a secularist view of religion and approaches which take the religious beliefs of children and parents seriously.”<sup>261</sup> The government should not, as seen over time in England, be a central player in education. Funding in that way causes religious schools to outweigh the costs and benefits for such a system, leaving some to make choices out of fear of future regulations. In the U.S., government programs aimed at helping the quality of education have changed as the political landscape changes over the years. In different times and with different worldviews, both Friedman and Kuyper assert that the government’s role is mainly subsidiary. Friedman suggests that in regard to church-state separation, vouchers would not violate this mandate, as the government’s role ends with the giving of the funds to the parents. Many legal scholars argue that there is “nothing in the Establishment Clause to prohibit vouchers... so long as parents (rather than governments) are the ones who decide which schools get the public money.”<sup>262</sup>

It is not just government agencies that undermine educational pluralism, but “a prevailing educational theory,” Glenn argues. The prevailing orthodoxy that today’s public schools seek to bring, “is not some form of civic virtue, but rather the current platitudes about tolerance and non-judgmentalism.”<sup>263</sup> Respect for ways of life based upon obedience to tradition, faith or group norms are not taken seriously since these lead allegedly to lives that lack authenticity. Glenn further asserts:

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<sup>261</sup> Jackson, 97.

<sup>262</sup> Moe, 30.

<sup>263</sup> Glenn, Lecture.

“Nor does it, for all the talk of freedom, approve of public policies that support institutional accommodation of the cultural pluralism of democratic societies. Cultural pluralism is celebrated only so long as it limits itself to service expressions: to music, and dance and foods, but feared when it invokes fundamental beliefs and differences that go all the way down. There’s no problem with that position in a free society, provided that the liberal education so defined is only one of a variety of educational options, equally accessible on the basis of parental decisions.”<sup>264</sup>

Sphere sovereignty insists that no functioning society can be based solely on “individual possessors of rights but [that it] calls for structural pluralism: social, economic and political arrangements that allow communities drawn together around shared convictions about how life can flourish living side by side and cooperate in common tasks, respond to common challenges, and [draw] upon qualities of character and loyalty that cannot be developed in the naked public square.”<sup>265</sup> Kuyper writes that “*religion* is a word that refers to different ways of life or different life systems. [Moreso] religion is not simply one of life’s many functions or institutions; it is the way human beings are bound together in all dimensions of life in allegiance to the true God or false gods. People may be divided in their allegiances... but they cannot escape the demands of such a commitment. Even naturalism, secularism, atheism, (which claim that there is no higher authority) is a way of life.”<sup>266</sup> A real commitment to pluralism entails recognizing the difference between the role of the state and the role of each individual in society; not on a superficial level, but out of a confidence in one’s beliefs, secular or religious, and that one’s own beliefs may flourish among many.

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<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

<sup>266</sup> James W. Skilen, “Why Kuyper Now?” *Religion, Pluralism, and Public Life*, ed. Luis E. Lugo (W. B. Eerdmans, 2000) 369.

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