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THE STATE AND RELIGIOUS EDUCATION

by
ROBERT C. HARTNETT, S. J.
and
ANTHONY BOUSCAREN

Edited by Charles Keenan, S. J.

THE CALIFORNIA SCHOOL TAX REFERENDUM

Supreme Court On Released Time
Dr. Conant On Private Schools
Catholic Schools Are American Schools

AN AMERICA PRESS PUBLICATION

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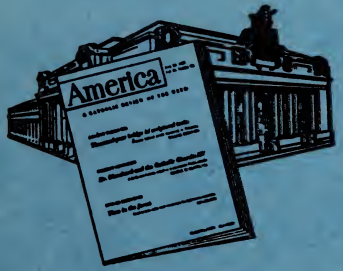

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We will be very pleased to receive two copies of any comment or review you may make of this title.

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(*This formula is now in general use in the Archdiocese of New York*)

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By Anthony T. Bouscaren

1. The McCollum Case: Government May Not Aid Religion

MONDAY, APRIL 28, 1952 will go down as a landmark in American constitutional history. On that date the U.S. Supreme Court, by a 6-3 decision, put limits on the sweeping ban on "aid to religion" it had laid down five years earlier and upheld the New York type of "released time" religious teaching. The case was that of *Zorach v. Clausen et al.* (members of New York City's Board of Education).

Tessim Zorach and Esta Gluck, Brooklyn parents, had challenged the constitutionality of New York State's "released time" law, which permits off-the-premises religious instruction of public-school pupils one hour each week during school hours. The plaintiffs were said to have children attending, respectively, Protestant Episcopal and Hebrew Sunday schools. What they objected to was adjusting the public-school day for purposes of religious training by private groups.

The case was on appeal from State courts. The New York Court of Appeals, with one dissent, had held the RT program constitutional in July, 1951 (AM. 8/4/51, p. 433). The eyes of all those concerned with Church-State relationships under our Constitution were turned toward our highest tribunal in Washington. Would the court extend or limit the McCollum

decision? More broadly, would it interpret our Federal Constitution as requiring almost unlimited secularism in public education, and, indeed, in American public life generally? Or would it interpret our law as allowing enough cooperation with religionists to introduce a religious leaven into public education—if only through the release of pupils one hour a week for this purpose?

Everson-McCollum Background

The importance of the Zorach decision calls for an entire chapter on the constitutional and social setting in which it was rendered. A separate chapter will treat of the majority and minority opinions in the case.

In the Everson (1947) and McCollum (1948) cases, the Supreme Court adopted and applied a truly revolutionary doctrine of "separation of Church and State" under our Constitution. Let us re-examine exactly what it was.

Everson v. Board of Education of Ewing Tp. (New Jersey), decided on February 10, 1947, was the famous "bus ride" case. At issue was a State statute which allowed local school districts to reimburse parents *from tax funds* for the cost of bus rides for children attending nonprofit, nonpublic schools, such as parish schools. The court divided (5-4) in favor of the constitutionality of the New Jersey statute.

Though close, the *decision* satisfied the proponents of nonpublic religious schools. It was the constitutional *doctrine* which Justice Black then evolved that caused alarm. The doctrine was promptly challenged by the present writer in the America Press booklet *Equal Rights for Children* (1947). At that time, however, relatively few people seemed to realize how dangerous the Everson doctrine was.

Why did so few people then take alarm? The reason was twofold. In the first place, the court's deci-

sion (that such reimbursement was legal) was rather inconsistent with the premises of the dogmatic and wholly novel "separation" doctrine from which the decision was supposed to flow. Hence the case really confused the issues. Protestants did not appear very happy about the ruling, which favored Catholics, and failed to realize how the new doctrine could be turned against Protestants. Catholics, on the other hand, saw that the ruling safeguarded their rights, so they seemed to say: why get high blood-pressure about the doctrine it was based on?

The Black doctrine in the Everson case, however, was of much more far-reaching significance than the decision in favor of bus rides for children attending nonpublic schools. The new doctrine consisted of three unprecedented propositions, enunciated by Justice Black:

1. "The 'establishment of religion' clause of the First Amendment means at least this: neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another." (The unprecedented insertion was "aid all religions.")

2. "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to preach or practise religion." (This whole proposition was unprecedented, but the phrase "in any amount, large or small" was radically so, since there is an old legal maxim that "the law is not concerned with very small matters." It runs, *de minimis non curat lex.*)

3. "That Amendment [the First] requires the state to be neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary." (This is perhaps the most revolutionary novelty in the Black doctrine, that Amer-

ican governments must be *neutral,* not as between different sects, which was our traditional doctrine, but as between believers and unbelievers. Hundreds of cases can be pointed out in which "neutrality" is a chimera: the state must favor one side or the other, belief or unbelief. Our governments have always, *in general,* favored belief, *e.g.,* by chaplaincies, tax exemption and dozens of other ways.)

The McCollum Case

The country had to wait only a year to be hit between the eyes by the implications of this triumph of secularism in our legal system. It was hit by the famous McCollum decision on March 8, 1948, the formal title of which was *People of State of Illinois ex. rel. McCollum v. Board of Education of Champaign County, Ill., et al.* This was the Champaign "released time" case. It involved no statute but simply the practice whereby public-school pupils were "released" one hour each week for religious instruction.

In Champaign, this instruction was given *in public-school classrooms,* as it was in many other localities. In all, about 800,000 pupils were receiving on-the-premises RT instruction in the United States in 1948. Apart from this circumstance, the Champaign RT program was similar to all other RT programs, whether conducted on or off public-school premises. An interfaith Council of Religious Education, consisting of representatives of the Catholic, Protestant and Jewish communities, supplied the teachers at no cost to taxpayers. Enrolment was perfectly optional, at the behest of parents. The privately engaged teachers of religion furnished reports of attendance to the public-school authorities, since the teaching was done during a period when pupils were required by law to be in school. In Champaign, the superintendent of schools had to approve of the teachers, merely to make sure

that they were able to teach. Children not attending RT classes were kept busy with secular studies.

Mrs. Vashti McCollum, a professed atheist and mother of ten-year-old Terry, whom she withheld from RT classes, objected to this program on constitutional grounds. She said it was an "aid" to religion, that it "embarrassed" Terry, etc. It can be admitted that some of the administrative features of the Champaign system were imperfect. There was no reason why they could not have been corrected.

Justice Black, however, for an 8-1 court, declared the Champaign RT arrangement unconstitutional. After describing it in detail, he declared:

> The foregoing facts . . . show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program. . . . Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. That is beyond all question a utilization of the tax-established and tax-supported public-school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth). . . .

Harking back to his novel doctrine in the Everson case, Mr. Black thereupon ruled Champaign's RT system unconstitutional.

Did this mean that RT programs not involving the "use of tax-supported property for religious instruction" were also unconstitutional? The McCollum decision left this issue in grave doubt. Justice Frankfurter, in the course of a lengthy concurring opinion, encouraged those who hoped it did not. He said that RT, "as a generalized conception, undefined by dif-

ferentiating particularities," was not at issue in the McCollum case. In so many words he emphasized the truth that only RT *as it operated in Champaign* was being ruled out.

Reactions to McCollum

The McCollum decision caused a terrific furor. Why? It may seem unkind to say so, but the chief reason seems to have been this: it dealt a staggering blow to the favorite Protestant solution to their generations-old educational dilemma. This dilemma was how to combine their undeviating allegiance to the public school with their equally binding commitment to religious education of the young. In so far as the McCollum decision imperiled *all* RT programs, not merely the Champaign type, it threatened to be a death-blow. Protestant leaders who had little enthusiasm for RT were likewise shocked, both because the decision was a long step towards secularizing American society and because it threw a roadblock in the way of various efforts to restore some religious elements to public-school teaching.

Jews had never been enthusiastic about RT. In Champaign, for example, they had not held classes for several years before the legality of the program was questioned. Jewish leaders seem to have an instinctive dislike, even an abhorrence, of anything in public life which tends to identify Jews as Jews, Christians as Christians, etc. At the same time, in the name of religious liberty, Jewish parents demand that their children be excused from public schools on Jewish holidays. In itself, this demand is reasonable enough, but how it rhymes with their opposition to RT as "divisive" escapes me.

In any case, Jewish leaders tended to go along with the McCollum decision and to withdraw their cooperation from off-the-premises RT programs. It soon

became apparent that the Jewish community was almost solidly behind the Everson-McCollum doctrine of absolute "separation of Church and State." There were exceptions, of course. As with Protestants, it was probably true that the more concerned a Jew was about the growth of secularism, the more difficult it was for him to embrace the McCollum decision without deep misgivings.

The National Education Association had never taken kindly to RT, either. The chief reason, in my opinion, is that RT publicizes the great vacuum in the public-school system. RT practically says: "Since the public schools cannot fully educate a child, religionists must take over to make up for the deficiency." Much of the talk about "moral and spiritual values in the public schools" has been an attempt to sell the American people a secularistic substitute for religious instruction.

The cold war, which became hot in Korea, has awakened our people to the truth that the global conflict today is to a great extent a conflict between religion and irreligion. They are demanding that our school system take heed of the religious content in our American tradition. Since the public schools cannot deliver on this demand, the NEA is anxious to show that they can deliver something "just as good" in the form of "moral and spiritual values."

The NEA Educational Policies Commission's *Moral and Spiritual Values in the Public Schools* (1951) was an elaborate and (certainly from a public-relations point of view) an impressive effort in this direction. The only mention of "released time" occurs in a paragraph appraising the reader of the ban laid down in the McCollum decision on the Champaign plan. There is no suggestion that off-the-premises RT might still be constitutional, much less any expression of hope that it might be. No, the NEA is not at all

friendly to this expedient, devised to teach what the public schools cannot teach, namely, religion.

Secularistic liberals welcomed the McCollum ban. In fact, they eagerly embraced the whole Everson-McCollum doctrine. Mrs. Agnes Meyers of Washington, D. C., has been one of the most articulate of them, but she is only one among a great number.

Catholics, of course, deplored the decision as forcing American society farther down the road to unbelief. The hierarchy severely criticized it in their November, 1948 statement, the full text of which appeared in the *Catholic Mind* for January, 1949.

Finally, the nation's State courts and many members of the legal profession found the Black doctrine of absolute "separation" rather confusing and far too dogmatic. Mr. Robert F. Drinan, S.J., did a round-up for AMERICA, "McCollum decision: three years after" (2/24/50, pp. 611-613), in which he documented the reactions among lawyers and judges.

PROBLEM BEFORE THE COURT

In the Zorach case, the Supreme Court faced a serious dilemma of its own making. To have condemned off-the-premises RT would have been to broaden the McCollum decision and to have dismantled RT programs enrolling perhaps two million pupils. Moreover, it would have increased dissatisfaction with the public schools. On the other hand, to adjudge New York's RT legal meant modifying the Everson-McCollum doctrine, only recently adopted. How the court saved the religious rights of parents without *too obviously* jettisoning the Black doctrine will be shown in the next chapter.

2. The Zorach Case: Retreat from McCollum

AGAINST THE background of the triumphant secularism of the Black doctrine on "separation of Church and State," we can now see how far the Douglas doctrine adopted by the Supreme Court in the Zorach case has gone to rescue us.

NEW YORK'S RT PROGRAM

What was before the court on April 28, 1952? It was the alleged unconstitutionality of New York State's released-time program.

The history of off-the-premises RT in New York City and State is rather interesting. This method of reaching public-school pupils with at least an hour of religious instruction each week was tried out there in the 1920's. The present writer recalls reading in the late Dean E. P. Cubberley's *Public School Administration* his simple explanation of why the experiment failed. The Catholics, he said, supplied the teachers, but Protestants and Jews were at that time unable to supply them. Constitutional objections to the program were then raised, too, but the State judiciary upheld the system.

In 1940, the State Legislature wrote into its Education Law the provision that "Absence for religious observance and education shall be permitted under

rules that the commissioner [the State Commissioner of Education] shall establish" (§ 3210, subdiv. 1 b).

The commissioner duly issued his regulations providing for purely optional dismissal of pupils one hour each week, on written request of their parents. The school authorities kept records of registrations and weekly reports of attendance. New York City's Board of Education issued supplementary rules, prohibiting any announcement in the schools relative to the program and throwing full responsibility for attendance upon parents and the religious organizations conducting the program.

A Popular Program

This time RT caught on very well, probably because by 1940 the American public was beginning to realize the relevance of religion to the world conflict between democracy and totalitarianism. By 1952, some 105,000 out of less than 600,000 pupils enrolled in New York City's public elementary schools were also enrolled in RT classes. Upstate, another 120,000 were in attendance. So out of about 1.5 million children in the State's public grade schools, 225,000 (or one in seven) were getting released-time religious instruction. For the country as a whole the proportion of pupils in RT classes is less than one in ten.

Besides being aware of the undeniable popularity of the program in New York, perhaps the court realized that 67 per cent more children are attending Protestant day schools today than in 1937. The total is only 187,292, but it symbolizes the growing dissatisfaction of Protestants with government schools from which religious education is excluded.

More important, the nine justices of the Supreme Court had to face squarely the unquestionable fact that countless, literally countless, forms of cooperation between government and religion have been meshed

into our political and social system in the course of our history. With the expansion of the "welfare state," more and more occasions for such cooperation are arising. The Everson-McCollum doctrine enunciated by Justice Black would require a dismantling of all these arrangements, some of them going back to the very infancy of the Republic.

Even the proclamation of Thanksgiving Day once a year by the President of the United States stood in open conflict with the Black doctrine. It is an "aid" to religion. It contravenes the alleged "neutrality" between believers and unbelievers which the court wrote into the First Amendment in 1947. It costs money to publish that proclamation every year, too. Thus it runs afoul of the Black prohibition on the use of any tax, "large or small," to "support religious activities or institutions, whatever they may be called." This is perhaps the least expensive but the most deeply rooted of the American traditions that "violated" a law that never existed—that is, until discovered by Justice Black in 1947.

The Douglas Revision

The first thing to do with a plainly bad law is at least to revise it. The obvious way to revise a law read into the Constitution by a court is for the court to repair its own bungling the first time the opportunity arises. Put simply, that is what Justice Douglas and five of his colleagues did in the Zorach case.

Mr. Douglas himself had concurred in the McCollum decision. Even apart from this circumstance, the easiest way to retreat from a bad ruling is to "distinguish" the present case from the one in which the error was committed. So Mr. Douglas, for the court, began by pointing out that what he and his colleagues had found particularly offensive to "separation of Church and State" in the Champaign (McCollum) case was

absent in the New York (Zorach) case. The RT instruction in New York was not given in public-school classrooms, for example. "All costs," he declared, "including the application blanks, are paid by the religious organizations."

In the McCollum case, the court had placed great stress on the circumstance that "the operation of the state's compulsory education system thus assists and is integrated with the program." This is the "coercion" argument. "Pupils compelled by law to go to school for secular education [note the assumption that the reason for compelling pupils to go to school is to get merely secular schooling; this was one of the points at issue, whether the whole purpose of public education had to be exclusively secular] are released in part from their legal duty upon the condition that they attend religious classes."

Meeting the objection that even the New York system involved such compulsion, as Justices Black, Jackson and Frankfurter in their dissents vigorously insisted it did, Mr. Douglas waxed somewhat heated. "It takes obtuse reasoning," he rejoined, "to inject any issue of the 'free exercise' of religion into the present case."

No one is forced to go to the religious classroom and no religious exercise or instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any.

The record before the court, he went on, showed no evidence of coercion of any kind. It it did, a "wholly different case would be presented." The court therefore threw out "coercion" as an argument that either the "free exercise" of religion or the "no establishment" clause of the First Amendment had been violated.

The most important part of the majority opinion was that which dealt with the meaning of "separation of Church and State" in so far as that "principle" or "doctrine" was enshrined in the First Amendment. The court began by declaring: "There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated." This is undoubtedly true. The controversial issue has been: *how "absolute" is this constitutional separation?*

Most of us have been content to deny that it was ever meant to be absolute. Many writers have come to the edge of the distinction Mr. Douglas proceeded to make, but (unless memory has failed me) none ever "hit it on the head" the way he did. After accepting the general idea of "separation," Mr. Douglas observed:

And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute.

This is an excellent analysis. The question is not: are the religious prohibitions of the First Amendment "absolute"? The question is: in regard to *what* are they "absolute"? Mr. Douglas has answered the question as clearly as can be by saying: *precisely in regard to laws* 1) *"respecting an establishment of religion," or* 2) *"prohibiting the free exercise thereof."*

This makes "separation" (as the late Michael Williams used to say) "ineluctably clear." If government and religion must be kept *absolutely separate,* they can have no relations with one another. But if there are only two relationships they absolutely must avoid

(government action "prohibiting the free exercise" of or "establishing" religion), the field is left open for all other relationships which fall short of these two specific prohibitions.

That is precisely what Mr. Douglas, for the court, went on to declare to be our fundamental law:

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.

This sort of sense is not very "common," unfortunately. Nor is what follows:

> Otherwise the state and religion would be aliens to each other—hostile, suspicious and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution.

The court then cited the "references to the Almighty that run through our laws, our public rituals, our ceremonies" to prove that, unless its new definition of the scope of the First Amendment is the only valid one, we would be "flouting" that Amendment right and left. "The nullification of this [N. Y.] law," warned the court through Mr. Douglas, "would have wide and profound effects." This sentence alone shows that the majority had become aware of the vast and truly chaotic implications of the Black doctrine.

"We Are A Religious People"

What proves beyond all dispute that the Supreme Court has radically revised the Everson-McCollum doctrine on "separation" is its reaffirmation of the proposition that "we are a religious people whose in-

stitutions presuppose a Supreme Being." We force no one to believe; we show "no partiality towards any one group" of believers. (Without saying it in so many words, the court thereupon rejected the alleged "neutrality" of our governments as between believers and unbelievers. It did so in the following passage:

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. That would be preferring those who believe in no religion over those who do believe.

This is a magnificent statement of the political truth that the *state* must protect and promote the existing social organization of *society* whenever political programs rub shoulders with existing voluntary associations and popular customs. Unless it does so, the multiplication and expansion of public services will gradually cause the forcible erosion of freely established nonpublic agencies in social life.

This is the great danger of the "welfare state." It can be just as hostile to freedom as totalitarian regimes, even though the absorption and displacement of free institutions proceed at a slower pace and less perceptibly. Mr. Douglas at least caught a glimpse of the way religion was being "angled out" of American life when he observed:

But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.

When the constitutional history of our era comes to

be written, will not Mr. Douglas be singled out as the jurist who perceived this lurking danger in time and arrested it? For this reason, in my opinion, the Zorach decision will be recognized as a great piece of jurisprudence.

When Mr. Douglas declared, in his conclusion, that "we cannot read into the Bill of Rights such a philosophy of hostility to religion," he really reversed the inevitable momentum of the Everson-McCollum theory.

The Three Dissents

The only way to deal briefly with the dissenting opinions of Justices Black, Jackson and Frankfurter is to single out what seems to be their common fallacy. They all insist on the element of "coercion" inhering in any system whereby the compulsory public-school system is "adjusted" to "cooperate" with religious arrangements.

Any shadow of "coercion" inhering in such arrangements, they seem to forget, is cast by the coercion inherent in the kind of public-school system we have set up. Compulsory public schooling (through taxation, school-attendance laws and the severe economic pressure on parents to send their children to tax-supported schools) exercises an unfair and unjust coercion on parents and pupils to begin with. This coercion is applied to all, *to the often insurmountable disadvantage of believers in religious education.*

All released-time does is to try to *reduce* this unfair and unjust coercion, to bring it within tolerable limits, to ease the still serious burdens which State governments impose on those who 1) are coerced into paying taxes to support a secularized public-school system, 2) are coerced into sending their children to some school, and 3) are coerced, through economic pressures out of all calculation more severe than the nebulous "coercion" of RT, to send them to schools

that violate their religious beliefs about the kind of education they are obliged to afford the young they have brought into this world.

In adducing the "coercion" argument against RT, Justice Jackson thought it appropriate to reveal that he himself sent his children to "privately supported church schools." If all fathers were able to earn $25,000 a year, of course, the economic coercion on parents to send their children to public schools would be much less compulsive. Very few of them, however, have Mr. Jackson's great talents. Our system would still be unjust, but people would not feel the injustice so keenly.

If the "coercion" issue is viewed in proper perspective, therefore, RT will be seen for what it is: an expedient whereby existing compulsions, working serious injustices upon believers, are alleviated.

Conclusions

Catholics feel that Mr. Douglas should have resorted explicitly to parental rights to justify the majority ruling. This observation is largely valid. He could have cited the unanimous Oregon decision of 1925 on this score.

Even without such resort, however, the Douglas opinion is monumental. The chimera of "political ostracism," the grotesque attempt to exclude religion as an "untouchable" from the purview of government, has come to an end.

From the point of view of dogmatic secularism, the Everson-McCollum theory was perhaps "a noble experiment." The court tried something unheard of in human history: to lay down a rule of law whereby government had to ignore its own citizens in one of their most important relationships, their religious relationships. The warden of a Federal penitentiary, whenever a minister of religion asked access to a

prisoner, was supposed to say, apparently: "I am absolutely neutral. If I let you in, I'm 'aiding' religion. If I keep you out, I'm interfering with 'the free exercise thereof.' I don't know what to do."

Yes, the learned justices danced on the point of the needle of neutrality for five long years. Six of them, persuaded (it seems) by Mr. Douglas, decided that was about long enough. It surely was.

3. Dr. Conant Raises The "Divisive" Bogy

THE ADDRESS delivered by Dr. James B. Conant, president of Harvard University, to some five thousand public-school educators attending the meeting of the American Association of School Administrators in Boston on April 8, 1952 caused quite a stir. The AASA is a powerful arm of the National Education Association. No group would so warmly welcome an attack on the "dual system of education" in the United States, public and nonpublic.

The basic issues into which Dr. Conant rather heavy-footedly moved concern the momentous struggle between religion and secularism in American society and the preservation of religious and educational freedom. Dr. Conant, however, did not deal with these as the dominant issues. In fact, his scant concern for educational freedom is alarming. The only place he mentions it, and there only implicitly, is where he says: "Diversity in American secondary education is assured by our insistence on the doctrine of local control."

True, he mentions the competition between religious and nonreligious education, but chiefly in connection with Australia. Harvard's president, it seems, had recently visited that country, and he was prompted by this experience to express his alarm over the fact that Protestant secondary schools "down under" enrol

more students than tax-supported state schools. Although he admits that a system of schooling which suits one country may not suit another, the possibility that Americans might, if given the opportunity, veer away from public high schools seems to have shaken him.

A Confused Address

Perhaps it will help if we take point by point what strikes this writer as evidence of rather confused analysis on the part of Dr. Conant.

1. The title of the talk is "Unity and Diversity in Secondary Education." Dr. Conant meant, it seems, to confine himself to issues relating to high schools. The arguments he uses, however, go far beyond that one level of schooling. They seem to amount to a condemnation of all nongovernmental schools at all levels. To say the least, this sort of argumentation is confusing. It should be noted, in passing, that late in his address he does "plead with those who insist on sending their children to denominational schools that they might limit their insistence on this type of education to the elementary level."

2. Dr. Conant upholds civic and educational *unity* as his ideal, but he plumps for an educational structure (a state monopoly of secondary education) which leads directly to *uniformity* and *regimentation.* He says that "we shrink from any idea of regimentation, of uniformity as to the many details of the many phases of secondary education," but he does not seem to "shrink" from uniformity in the *substance,* because at the very end he states: "In short, can we have both uniformity and diversity in secondary education? My answer is that we can." If he has read Plato's *Republic* and Aristotle's *Politics,* the latter's warning that Plato was confusing uniformity with unity does not seem to have impressed him.

3. Dr. Conant asks two loaded questions, under the impression, it seems, that the rest of us should drop dead at hearing them. The questions are loaded because he asks them of the "critics" of the public schools. People ought to be able to prefer nongovernmental schools for their children without being smeared as "critics" of the public schools—just as people ought to be able to prefer to send their sons to Harvard without being labeled "critics" of municipal and State universities.

Harvard's president wants to know: "Would you like to increase the number and scope of private schools?" I would, because a great many American Catholics, for one thing, want to send their children to Catholic high schools but cannot because there are not enough of them to supply the demand. As for other nongovernmental schools, if parents want them and they are good schools, yes. His second question is this: "Do you look forward to the day when tax money will directly or indirectly assist these schools?" Indirectly, certainly. This happens now in half the States and there seems no reason for not "looking forward" to the day when more States will provide such welfare services as bus rides and, with State cooperation, school lunches to children attending nonpublic schools. Any crime in that?

As for direct state support, this is a question which can be decided only by the American people. We have had such support in the past, in various ways. But the prohibition against tax support of sectarian schools is entrenched in State constitutions. Catholics are divided on the desirability of tax support of their schools. Whether the American people will ever decide to remove these constitutional barriers is quite doubtful. Nobody is going to shout down those of us who believe that a more just system could be devised. Dr. Conant

can argue against any change. Others can argue in favor of it. In the end the American people will decide. Isn't that the democratic way—the way of free debate and discussion? It there anything "un-American" in all this?

4. Dr. Conant charges that "many sincere Protestants, Jews and Catholics . . . believe that secondary education divorced from a denominational religious core of instruction is bad education." His answer to them is that "they erroneously assume that the tax-supported schools are not concerned with moral and spiritual values." Not at all. Such people are simply well enough posted on this subject to realize that "a denominational religious core of instruction" and what goes by the name of "moral and spiritual values" are not at all the same thing. The difference may mean nothing to Dr. Conant, but since he has no authority in this field and since the difference means a great deal to the "many sincere Protestants, Jews and Catholics" he refers to, the president of Harvard could not have left them more unsatisfied by what he apparently thought was an answer.

5. "We do not have and have never had an established church," says Dr. Conant. He is wrong, but not so completely wrong as when he goes on to say: "To my mind, our public school should serve all creeds." If there is one thing the public schools cannot serve it is religious *creeds.* He no doubt meant to say, "children of all creeds." The trouble is that the public schools, apart from such indirect assistance as "released time" religious instruction, cannot serve many millions of American parents and their children in the way they most want to be served through the school system, namely, through formal religious instruction. Again, this may not matter to Dr. Conant, but it matters to many millions of American citizens and taxpayers.

6. Throughout the address, Dr. Conant confuses "private" education in the sense of rather exclusive schooling, such as that given at Groton, with nongovernmental schooling generally. He says he is "emotionally committed" to the public schools. No doubt. His emotions can hardly serve as a rule for those who see important values in other types of education.

He admits that criticism of the public schools on the ground that they do not adequately provide for gifted students has some "validity." Later he reverses his field by rejecting the suggestion that some (whom he erroneously identifies with the "well-to-do") should get a different high-school education from others (whom he erroneously identifies with "the poor"). The confusion in Dr. Conant's social philosophy—in his concept of democratic "equality," for example—is somewhat too serious for treatment here, though one feels that it is the root of his other confusions.

In any case, by confusing two altogether distinct types of nongovernmental schooling, Harvard's president has moved away from, rather than toward, the time when he hoped that the lines would be "clearly drawn and a rational debate on a vital issue can proceed." One has to stick much more closely to the rules of logic to bring about that happy eventuality.

7. Dr. Conant entirely ignores the problem of producing leaders in American democracy. Here his trouble lies in the field of political science. He says that in the United States "all the people" govern. His own political scientists at Harvard, for some of whom this writer has the highest respect, could have reminded him (if necessary) that ours is a *representative,* not a mass, democracy and that the great function of the electorate is to choose representatives to do the governing. Our people probably have enough common

sense to know that our schools must produce men and women of exceptional talents and training for this function. Harvard itself has undergraduate and graduate programs designed to this end, and the entrance requirements are high. Harvard, in a word, does not work on the Jacksonian principle that *anybody* can be a good public official. It certainly does not work on the proposition that "all the people" do the governing in the United States.

8. Dr. Conant properly expects the public schools to teach the young "the distinction between decisions arrived at by 'due process' and those obtained by social pressures—by duress . . ." Yet what is he doing but building up social pressures against nongovernmental schools? He cannot impair them very much by "due process of law" because their right to exist was unanimously upheld by the U.S. Supreme Court in the Oregon school case in 1925.

Questions For Dr. Conant

If it be permitted to put several questions to the president of Harvard, after doing him the courtesy of answering those he has put to us, perhaps the following might be in order:

1. Dr. Conant, do you think the state has the right to set up a monolithic, monopolistic system of tax-supported education which imposes upon all children, regardless of the conscientious objections of their parents, a creed of secularistic ethics? Do you think the application of the coercive power of the state to mold all children into a secularistic uniformity is consistent with democratic religious and educational and cultural freedom? The "diversity" you speak of, dealing with "details" of the high-school curriculum, is not the religious and cultural diversity great writers on democracy, certainly from Lord Acton on, have held up as the hallmark of democratic liberty. Your

"diversity" deals with details. We are concerned about the substance.

2. You object to Quebec's school system because it perpetuates "two different cultural groups." Now, since religion is the most precious part of many, if not most, culture systems, Dr. Conant, is your aim to generate in the United States, through a secularized public-school system to which every child should go, a monolithic, secularistic, uniform culture?

You cite Tocqueville, the perspicacious French author of *Democracy in America* (1835). One of his famous observations was his warning of the danger that the United States would one day face in the form of "the tyranny of the majority." That danger is now here, Dr. Conant. Don't you think that perhaps you have moved far over on the side of "the tyranny of the majority"?

3. Where does higher education fit into your condemnation of a "dual system" of American education, Dr. Conant? Perhaps because Harvard is the most richly endowed of American universities ($203 million; Yale, the next highest, has $130 million) and because Massachusetts has nothing at all formidable in the way of a State university, you do not feel the squeeze of State universities with biennial appropriations from State legislatures running into the tens of millions. Private universities in other sections of the country, however, faced with such competition, are properly concerned about their survival.

More important, those of us whose "emotional commitments" are to colleges and universities counting no multi-millionaires among their alumni and friends, whose educational efforts are bent in favor of very ordinary young men and women, many of them really "poor," cannot understand your disdain for nongovernmental schools. You were talking about secondary education, of course, but your arguments sound statist

in our ears, and we deeply dislike the idea of the president of the wealthiest private university in the world siding with the state monopolists. We have a right, we think, to expect our richly-endowed elder brother to fight our fight for the preservation of colleges and universities free from state domination, even if the price of their freedom is to have to manage without government funds.

4. What evidence have you, Dr. Conant, for the sweeping assumption on which you have based your alarming address? This assumption is that nonpublic education is somehow a threat to American unity. We deny it. It's up to you to prove your very serious charge. Were you following the elementary rules of logic when you built an address of national and perhaps international, significance on an unproved and, we think, unprovable assumption? If you have profound reasons for questioning the democratic right of nonpublic high schools to exist in the United States, shouldn't your address have been devoted to an airing of them so that people could evaluate your reasons? Of course, if your assumption is no more than an "emotional commitment," the absence of reasons is explained.

Let me say this, Dr. Conant, in all seriousness. There are millions of Americans, besides the 28 million American Catholics, who love America every bit as much as you do and for reasons which you apparently do not understand. They love America precisely because, in the full tide of the unfolding of democracy, America protects their "cultural diversity" and their right to enjoy the kind of religious and educational liberty denied today in many of their homelands. The kind of statist thinking in your address is the only kind of thinking that could weaken the bonds of their patriotism. You have already impaired civic unity in this country. If the same kind of thinking spreads, it

will set up a chain-reaction of dissension in this country such as you will be the first to deplore and regret. And where will your drive for cultural uniformity stop? Aren't books and the press and radio and TV "dividing" our people? Aren't labor-management squabbles? Are you thinking of imposing "uniformity" on all these democratic differences?

5. Finally, are you really *afraid* of democracy, Dr. Conant? Are you afraid that people are making free choices in the selection of schools for their children that offend your "emotional commitment" to governmental schools? Isn't this being afraid of the very feature that distinguishes democracy from totalitarian systems—freedom of choice in the field of culture?

Honestly, Dr. Conant, I fear you are losing faith in democracy. But don't be afraid. So long as American democracy is true to itself, it will easily survive the imaginary dangers that plague you. What it cannot survive, and nowhere on earth has survived, is a "managed culture," a school system completely taken over by the state for fear of "deviationists." When government achieves a monopoly of the teaching of history and the generation of "values" in the minds of the young, democracy has received a mortal blow. Let's keep our government limited, in the ancient democratic tradition. The last thing we want to see in this country is education, at any level, under the total domination of the state.

4. Community Relations of Catholic Schools

Some 2,000 Catholic educators from all over the United States met April 15-18, 1952 in Kansas City, Mo., for the 49th Annual Convention of the National Catholic Educational Association. The theme of this meeting, "Catholic Education and the American Community," embraced a host of questions to which insufficient attention has been given.

Up to the present, Catholic educators in the United States have had to concentrate on their most immediate needs. With relatively meager resources, they have had to apportion almost every moment of their time and every dollar of their funds to the erection of buildings and the recruiting of teaching staffs—the very skeleton of a school system. In high schools and colleges they have had to outfit laboratories and stock and manage libraries. Extracurricular activities, of course, not least among them athletics, have absorbed time and money.

In this relentless and ever-expanding process, we have become ingrown. Opponents label our system a "segregated" school system. In a sense it is: but not in an altogether evil sense nor wholly through our own doing. Through state monopoly of public educational funds, the American people have driven us into segregation as the only way to preserve our distinctive

educational content and purpose. All private schools have been increasingly segregated in this sense, and for the same reason—to preserve their freedom to be different.

The time has now come for us to study how to offset the disadvantages of being different while retaining its advantages. We can offset them, I think, and must —for our own sake as well as the sake of the American community at large.

"Society" and "Community"

To grasp the problem with which we are dealing, we must understand exactly what is meant by "society" and "community" and how they differ, not only from one another, but from the "state."

"Society" expresses a very general concept. As used by sociologists (and their science is by definition the science of society), "society" means the all-embracing network of relationships by which human beings carry on their lives together in an orderly way. There is a world society. There are national societies, such as the French or American. One can speak, indeed, of Latin-American society, or Pan-American society, or European society, since under certain aspects the people embraced by such terms do lead a life "together" in an orderly way. Similarly, one can speak of "economic society," and even apply that term to larger or smaller areas and populations.

Used in its broadest sense, as sociologists use it, "society" is seldom applied to anything less comprehensive than a national society, though an area like our own South may be large enough and distinctive enough in its traditions and in its social and economic relationships to admit of the term "Southern society."

The term "American society" therefore includes just about everything in the United States which has any social significance. It includes our economic system

and all its elements. It includes our family life and even all individuals in their relations with others. It includes our cultural life (education, science, religion, literature, the arts) and our recreational life (entertainment, sports and diversions of all sorts). For reasons that will be explained below, it seems better to use the term "society" so as to exclude political life, which comes under the concept of the "state" rather than that of "society." The latter is then a "residual" rather than an "over-all" term.

The idea of "community" is characterized by greater intimacy and immediacy than "society." It is best verified in the neighborhood or the small town. People there have *more in common.* They may all have to use the same shopping center, the same public library, the same postoffice, read the same newspaper and so on. We talk about "community spirit" or "community chests" or "your local communities." The accent is on cooperation among people who have frequent face-to-face contacts in the same neighborhood, town or city. Here, too, we can single out particular aspects of living together and speak of "your local religious communities" or even "educational communities."

The important thing about both "society" and "community" for our present discussion is that *they include everybody.* An individual, a family or an institution can be a "good" or a "poor" member of a community. It cannot become a nonmember. If we are going to improve the "living together" of Catholic education and the American community (with the accent on *local communities*), we must find ways and means of "unsegregating" our schools, so to speak.

St. Mary's Academy of Oskaloosa, for example, must be made an institution which *all* the people of Oskaloosa regard as "one of our schools." If people say, almost as an afterthought, "Oh, I forgot, the Catholics also have a girls' high school here," that attitude of

"nearly forgetting" simply proves that St. Mary's has failed to establish itself as *one of the schools of that community.*

How to Go About It

To be very specific, what can Catholic schools do to weave their way into the life of their local communities?

First of all, they must *want* to. I am taking it for granted my readers understand that Catholicism really cannot set up a society (in the full sociological sense of the term) within a society, or even a community within a community. In a way that is precisely what our enemies accuse us of wanting to do. But living together in a community does not permit of separate communities: everybody has to use the same streets, the same stores, the same transportation facilities, has to face the same social problems of housing, recreation, public morality and so forth. The social environment *common to all* is what constitutes the community a community. We can help shape it but we cannot evade it.

Secondly, I think the best way to start is to study how those Catholic schools have proceeded which have succeeded best, so to speak, in "joining the human race" wherever they are situated. The University of Notre Dame, partly through athletics, partly through scholastic programs, partly through care in all its public relations, has (to my mind) done a very good job nationally. My impression is that Marquette University has done the same in Milwaukee, and to some extent nationally. Many schools, secondary and collegiate, have done the same on a lesser scale.

The basic formula, of course, is to *show interest* in the local community and its needs. Far too many schools think of their local communities only as sources of support for themselves. The University of Detroit

last summer did the reverse: it undertook to sponsor an expensive civic pageant commemorating the city's 250th anniversary—after the City Council had backed away from the financial risks involved. Bringing honor to a community through any sort of achievement is a sure way to its heart.

The ways and means of "communitizing" a school range all the way from cooperating in "Fire Prevention Week" or sending a flock of youngsters out to assist in "Clean-up Week" to putting the school hall at the disposal of civic groups. Providing well-trained high-school bands for community celebrations is a service people appreciate. We ought to resent being left out of community enterprises. Our aim should be to reach a point where people think of us first when they want civic cooperation.

How many of our parish schools, high schools or even colleges have ever invited public-school or other teachers and administrators and city officials to visit their institutions? Refreshments can be served and a spirit of cordial informality engendered. Business and professional leaders can be invited to address the students. Local newspapers are always on the lookout for educational and human-interest stories. The possibilities are endless—provided we don't insist on a "wall of separation" of our own building.

All these and similar means of integrating our schools with the local community are over and above the basic contribution they should make: that of graduating students whose after-school lives are distinguished by readiness to serve others. It might be a good thing if we made a practice of evaluating our graduates on this score.

To appreciate fully the dimensions of this problem of properly relating Catholic education to the American community, we must now turn our attention to what we mean by the "state."

"Society" and "community" arise immediately out of our dependence on one another for truly human and humane living. For social organization to endure and prosper, however, it must have a *principle of order,* which is provided by the political authority of the state. The state is the people politically (not merely socially and economically) organized. Political society is distinguished from nonpolitical society by the possession of something unique: the authority to lay down rules of conduct (laws) binding on all and enforceable, if necessary, through police action.

The state, of which government (legislature, executive and judiciary) is the organ, is *distinct* from society. Society is the area of freedom, the state is the area of coercive power. The purpose of this power is to preserve an ordered freedom, *i.e.,* to protect and promote a satisfactory type of social organization. The coercive power of the state is not the enemy of freedom but its guardian. By and large the state performs its function best the more it succeeds in establishing, through just laws and well-adapted social legislation, a political framework within which the creative nonpolitical (social, economic, cultural) forces of society and of local communities are encouraged to operate to their maximum effectiveness.

The state can fail to perform its proper function in either of two ways. One is through a lack of initiative, as when it allows the economically powerful to exploit the economically weak or allows private interests to pillage the natural resources of society or in any one of dozens of ways permits the benefits and burdens of social life to be apportioned without regard to social justice. The state can never bring about a perfectly just distribution of wealth, but it can and must try to minimize the obvious and gross violations of the proper

balance. We may not always know what are the precise requirements of social justice, or how to bring them about by state intervention. But we can often see what are intolerable and unnatural inequities. If the state fails to remedy them, it fails in its duty.

The other danger, perhaps more imminent today, is that of excessive and too far-reaching interference in the free areas of social organization. In trying to redress the balance in favor of social justice, the state often extends its coercive arm much farther into such fields as education, health and social welfare than is at all necessary or at all compatible with the nature of a free society. Ideally, the state should always aim to *assist* social institutions and agencies to perform their appointed tasks, rather than to *replace* them with public (*i.e.,* political) agencies.

A simple illustration will exemplify this principle. American society, left to itself, could not provide retired workers with even minimum protection against the hazards and hardships of impoverished old age. The Federal Government therefore invoked its taxing power to establish our system of Old Age and Survivors' Insurance. The intervention of the state was kept to a minimum: the levying of social-security payroll taxes on both employers and employes. At the age of 65, if they retire, workers get the benefits in checks from the Federal Government. They can use the money at their own discretion. If the Government had, for example, used this money to set up public old people's homes, it would have unnecessarily restricted the liberty of the aged to live wherever they preferred and to spend their benefits in whatever ways they found most congenial to their personal happiness. The disturbance of social customs and social organization (*e.g.,* of family life) has, in fact, been kept to a minimum. Indeed, social security has made it more possible for children to help support their parents at home

by providing them with social-security benefits to start with.

To some extent State and local governments have done the same with regard to health needs. Public-assistance benefits are given to private hospitals in payment of the hospital bills of the indigent. The Hill-Burton Act (Am. 2/9/52, pp. 499-501) helps by furnishing public funds for the erection of private hospitals. Here, too, the state is preserving and promoting *social* organization, instead of replacing it by an expanding *political* organization dominating the field of social welfare.

In the field of education, however, our public policy has been just the opposite. The States have substituted a system of public education, incorporated into the structure of State governments, for what might have become a flourishing nonpolitical educational system, assisted and regulated by the States.

American communities are too inured to this system to realize what they have lost. *The chief loss has been religious education.* In itself, religious education is part and parcel of the educational process. Not only Catholics but hundreds of thousands of Protestants accept this truth. But teaching religion is *not* a proper function of the state. By absorbing American elementary and secondary schooling into the governmental structure, our people have disabled their schools from providing the most important part of education, namely, religious education.

Even released-time religious instruction, which our people want as part of our social system, is still opposed by some—not because religious instruction is not desirable but simply because it cannot (the argument runs) be fitted into a system of schooling identified with our political system. The dilemma of trying to educate our young while finding the door shut on the knowledge they most need will remain insoluble so

long as our schools remain a department of government.

Catholic schools, at the cost of vast sacrifices on our part, must preserve the true concept of education unimpaired by the inroads of excessive politicizing of schools. We can prove to our local communities that our kind of schooling is superior. If we want to gain greater recognition than we have so far gained, let's not look to *governments* for such recognition. Let's look to the people of our own communities.

American *communities,* indeed, can learn to appreciate Catholic education as much more valuable than they have reckoned it to be. If, in the distant future, a more just relationship between public funds and *all* American education is to be devised, it must come from within the bosom of American communities. That's where we live and move and have our being. Unless we prove our claim to better treatment at that level, we shall never prove it, and the serious threat to freedom involved in the growing state monopoly of schools will keep gathering momentum. The very existence of our schools is at stake.

5. California: Tax Exemption for Private Schools

California is the only State in the Union which taxes nonprofit private schools of lower than collegiate level. Private colleges and universities are tax-exempt. These schools are owned and operated by religious, charitable and hospital organizations. Included are Catholic, Lutheran, Seventh Day Adventist, Episcopalian, Baptist and Methodist grammar and high schools.

In May of 1951 Governor Earl Warren signed Assembly Bill 3383, the Waters bill, which sought to confer tax exemption on these schools. This bill was passed 108-3, and was pronounced constitutional not only by the Legislative Counsel, but also by the office of the Attorney General of California. This legislation would have become law within ninety days had not an organization calling itself the California Taxpayers Alliance gathered sufficient signatures (five per cent of the State's registered voters) to qualify the issue for a referendum at the November general election. The result is that now a majority of California's voters must vote "yes" in November to sustain the law.

The California Taxpayers Alliance (not to be confused with the eminently respectable California Taxpayers Association) is urging a "no" vote, and is going out of its way to inject anti-religious bias and hatreds into the campaign. The character of the

Alliance's propaganda may be gauged from its leaflet "Why Californians Must Again Say No!". In words that might have been lifted from Paul Blanshard, this declares that the Alliance is engaged in "a battle against the continuing purposes of the Roman Catholic Hierarchy to attain political power through the control of all education by the diversion of public money for the support of their own parochial school system now."

Californians of many varied and contrasting religious, economic and political backgrounds have joined together to form Californians for Justice in Education. This organization comprises hard-working citizens who are donating their time and efforts to lift an unjust tax burden off the shoulders of the nonprofit private schools of less than collegiate level.

Background

In 1901 California granted tax exemption to Stanford University, on the ground that this university contributed to the public welfare by educating thousands of young Californians. In 1914 all other nonprofit private colleges and universities in the State were granted a similar tax exemption, and for the same reason. These schools included the University of Southern California, Loyola of Los Angeles, Santa Clara, College of the Pacific, St. Mary's and the University of San Francisco. Tax exemption to welfare institutions is also granted in California to churches, charitable organizations, YMCA hotels, orphan asylums, cemetery property and hospitals, according to traditional American practices. The granting of tax exemption to nonprofit private grammar and high schools merely extends to these the principles observed otherwise in California, and throughout the nation.

The great influx of population into California since 1944 has strained the school systems to the utmost.

Public schools taxed most of their districts up to the legal limit—five per cent of the assessed value of the property—and were unable to take care of further students. Nonprofit private schools engaged in building programs to help take care of the overflow. In San Francisco, one-third of all high-school children attend these nonprofit private schools, which are mostly parochial. California law provides that all children must attend school until they graduate from high school or reach the age of sixteen. The vast majority of California children are taken care of by either the public schools or the nonprofit private schools. Only an infinitesmal number attend fashionable "finishing schools" or other profit-making private schools. These latter do not qualify for tax exemption under the Waters Act.

Ever since the Oregon law forcing all children to attend public schools was declared unconstitutional by a unanimous U. S. Supreme Court in 1925, it has been settled law that attendance at parochial as well as other approved private schools satisfies State educational requirements. California parents sending their children to these schools have, however, been forced to carry a triple load found nowhere else in the United States. In addition to paying their fair share of taxes to support the public schools, these parents support financially the nonprofit private schools to which they send their children. The latter burden is a double one—the maintenance of the schools and the taxes imposed by the State on these schools. These parents are, in effect, penalized for exercising their inalienable and legal rights. No other State in the Union taxes nonprofit private schools.

The California Taxpayers Alliance is not opposed in principle to tax exemption for nonprofit private schools. It is not opposed to tax exemption for nonprofit private colleges and universities, or any of the

other tax exemptions for welfare institutions in California. It is opposed only to tax exemption for nonprofit private schools of less than collegiate character, and especially parochial schools. During the last session of the California legislature tax exemption was granted to tuna-fish boats and stud horses, with no outcry from the Alliance.

The Alliance is principally opposed to exempting grammar and high schools operated by religious groups, especially Catholic groups. Since this stand is inconsistent with its attitude on tax exemption in general, the Alliance knows it can win only by appeals to anti-Catholic bias and religious hatreds. It claims that tax exemption for these schools is a violation of the "principle of separation of Church and State." According to the Alliance, therefore, the other forty-seven States in the Union must be violating this "principle." Interestingly enough, no member of the Alliance has suggested that the principle is violated by tax exemption for church buildings. If exempting churches does not violate the Constitution, it is hard to see how exemption of schools violates it.

Furthermore, there were no protests from the California Taxpayers Alliance when the legislature granted tax exemption to Stanford, USC, Santa Clara and other colleges and universities of nonprofit, private character. Members of the Alliance were no doubt somewhat set back also by the recent U. S. Supreme Court decision regarding released-time programs in New York. The Court declared that the Constitution

> . . . does not say that in every and all respects there shall be separation of Church and State. . . . Otherwise the State and religion would be aliens to each other. . . . We find no constitutional requirement which makes it necessary for government to be hostile to religion and throw its weight against efforts to widen the effective scope of religious influence.

Increasing numbers of Californians are now aware of the tremendous welfare contribution being made by the nonprofit private schools. These schools, which meet the State educational requirements, directly save the State and all the taxpayers the full amount of educating each child in these schools. Every private dollar contributed to the construction and operation of a nonprofit school saves more than the tax dollar otherwise needed for a public school. Precisely because they recognized this fiscal fact, California legislators voted 108-3 to grant the tax exemption.

Savings for the State

It costs California taxpayers $203 per year to educate each student in the grammar schools, and $338 per year to educate each student in the high schools. Were the State forced to take on the 183,000 children now attending nonprofit private schools, it would cost $41.5 million a year. The average cost per pupil of school construction in California is presently $1,943. For the public schools to provide the additional space and accommodations for these 183,000 children would cost the California taxpayer $355.5 million. It has been estimated that current annual revenue derived from taxing nonprofit private schools amounts to something in the neighborhood of $750,000. This amounts to approximately the price of one pack of cigarettes per California taxpayer per year. Any businessman who can avoid spending $355 million to build schools and an annual $41 million to run them, merely by declining to levy $750,000 a year, would surely do so.

Assembly Bill 3383 (the Waters Act), amended Section 214 of the Revenue and Taxation Code of California by extending tax exemption to "property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital or charitable funds, foundations or corporations which

property, funds, foundations or corporations meet all the requirements of the section" (among which requirements is the nonprofit stipulation). In signing the Waters Act, Governor Warren said: "Colleges and universities conducted by such groups have been exempted from taxation by our [State] Constitution since 1914. The exemption authorized by Assembly Bill 3383 is in principle the same and accomplishes a like purpose."

Among the organizations supporting tax freedom for schools in California are the Los Angeles County Board of Supervisors, the San Francisco Board of Education, the American Federation of Labor and the Congress of Industrial Organizations. The Very Rev. James M. Malloch, Dean of St. James Episcopal Cathedral of Fresno, said of the Waters Act:

> The policy of exempting nonprofit private schools from taxation is thoroughly consistent with our good American principle of relieving such institutions as churches and hospitals from a tax burden which they cannot bear while rendering public service.

Mr. F. G. Ashbaugh, of the Religious Liberties Committee, Pacific Union Conference, Seventh Day Adventist Church, declared:

> The power to tax is the power to destroy. It is a well-established principle in America that in order to exercise religious freedom the church must be free of tax burdens. In the interest of separation of Church and State we strongly support tax relief for religious-sponsored schools.

The other States of the Union are unanimous, 47-0, in favor of tax relief for nonprofit private schools. The California legislature passed the Waters Act by a vote of 75-0 in the Assembly and 33-3 in the Senate. No important or well-known California civic group testified against the bill. The only organization that is opposing the tax exemption is the California Tax-

payers Alliance, an organization frankly opposed solely to tax relief for religious-operated schools. It remains to be seen whether California voters will support their legislature and Californians for Justice in Education by a "yes" vote in November. Senator Paul Douglas recently observed:

I hope that we may preserve differences in education. I am a believer in the system of public education, but I am also a believer in a system of education, standing beside the public system, in which parents who have certain religious standards and certain ideas of moral training may be permitted full freedom to send their children to this alternative type of school.

In the 1920's that theory of private education was challenged by the Ku Klux Klan. And in the State of Oregon a law was passed sweeping away all private schools. Let us be eternally grateful to the United States Supreme Court that by a unanimous vote they declared that law unconstitutional.

And I hope that that spirit never revives in America, because we need public education and we also need alongside the system of public education the alternative types which can develop certain values precious to some groups and in which, by competition, the two can strive for excellence.

Hitler and Stalin built their totalitarian states largely through monopolistic, state-controlled education. America will look with great interest to California to see if its people next November recognize the necessity and the value of private schools in their educational system.

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