EQUAL RIGHTS FOR CHILDREN

DEMOCRACY
RELIGION
CHURCH-STATE
SECULARISM
FEDERAL AID
CONGRESS
I AMENDMENT
XIV AMENDMENT
SUPREME COURT
PUBLIC LAW 346
LUNCH ACT
TAFT BILL
N. J. BUS CASE

Public Welfare Benefits for All American Children

by

Robert C. Hartnett, S.J.

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1.

Religion and Secularism in American Democracy

THE atmosphere of educational and religious circles in the United States today is charged with tension created by the assertion and counter-assertion of opposing claims about the "constitutionality" of extending public services to the children of private—or what might better be called *semi-public*—schools. The same tension arose in the Senate hearings on the Taft bill to grant Federal aids to schools.

The most striking thing about the dispute is its sterility. Who is the wiser when one side shouts that any form of state assistance to the children of religiously conducted schools contravenes the "great American principle" (for want of a more specific point of law to cite) of "separation of Church and State"? As Professor James M. O'Neill showed quite clearly in the June, 1947 issue of *Commentary*, a Jewish review, this is simply confusing the real issues by appealing to "categorical slogans and unhistorical myths." The technique being used is familiar enough. The entire advertising industry is built on it. It is known in psychology as the technique of *suggestion.* You merely keep repeating a few well-chosen words until the public, without any rational grounds or mental operation at all, finds the simple idea implanted in its consciousness. We cannot meet a real issue by avoiding the discussion of it. We cannot substitute slogans for the investigation of facts and the application of such historical knowledge and powers of reasoning as we possess to critical questions of public policy.

Assumption of Secularists

My contention is simply this: we must uncover what Justice Holmes very happily called "the inarticulate major premise" of those who are arousing heated opposition to any form of state assistance to children attending semi-public schools under religious auspices in the United States today. What is back of this relentless opposition? On what premise are educators and religious spokesmen operating when

they throw so much energy into the crusade to surround such children with every possible disadvantage and economic discrimination in the exercise of their constitutional right and the constitutional right of their parents—the right, namely, to freedom of education?

The answer is obvious. *The assumption they work on is that American democracy, for which the schools are preparing future citizens, has no religious roots, but is rooted in a secularistic, non-religious view of human life.* Mr. Justice Black worked on this assumption in his majority opinion in the recent case of *Everson vs. Board of Education of Township of Ewing*, the New Jersey school-bus case, decided February 10, 1947. Although he upheld the New Jersey statute providing free transportation for children attending private schools, he plainly considered that the First Amendment made our Constitution absolutely neutral towards the prosperity of religion as a bulwark of American democracy. He wrote:

> 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 to another.

The first sentence is perfectly accurate, although its inclusion of State governments comes, not from the First Amendment's declared restriction on Congress, but from the Supreme Court's extension of the restrictions of that Amendment to the States, by including it under the term "liberty" in the Fourteenth Amendment, which is directed against the States.

But the second statement goes too far in ruling out aid to "all religions." Those are the "weasel words" which betray the secularist assumption of this type of thinking. To aid one religion without aiding another would be discriminatory and in contravention of the guarantees of the Fifth Amendment, by which no person may be deprived of life, liberty, or property "without due process of law." It would be considered against "due process," as more fully explained in the Fourteenth Amendment where States are restrained, to favor one religious group at the expense of others. But to rule out any assistance, even indirect, to religious groups, however equitably distributed, is to construe our political system as unconcerned about religious life in this country.

The *practice* of Congress contradicts this implication. But we are not here concerned with practice but with principles. The assumption that our American democracy was ever intended to divorce itself completely from religion is unhistorical.

Religious Tradition of American Democracy

To make the issue as clear as possible, let us admit that, as our political system evolved, a secularistic tradition has taken root in the minds of many Americans. We have no wish to deny it. The protestations heard upon every side spring from this tradition. *But what right has it to claim a monopoly?* That is the assumption that cannot stand critical investigation. It can be shown historically: 1) that the opposite tradition, the religious tradition in American democracy, was the *original* tradition; and 2) that this tradition is *still vigorous*, is kept alive by millions of Americans and, as a matter of fact, is the tradition of practically all American Presidents. Secularists are trying to stamp it out. They are trying to marshal the power of the Federal Government behind their view that our Constitution is founded on principles repudiated by its Framers and repudiated by millions of present-day Americans. They are trying to force, by very subtle means, a gradual monopoly of cultural outlook upon this country as being the *only* really American view of human life and political organization.

To begin with, the Declaration of Independence is grounded upon a religious view of human rights and the purpose of government. They derive from "the Law of Nature and Nature's God." Jefferson said that the Declaration expressed "the sentiments of all America." Jefferson himself very much later became more secularistic. But as late as the publication of *The Notes on Virginia*, in 1784, he took a very theological view of the basis of human liberty. Of the moral evil of slavery, he wrote:

> And can the liberties of a nation be thought secure, when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but by his wrath? Indeed, I tremble for my country when I reflect that God is just; that His justice cannot sleep forever.

Jefferson wanted a nationally established church no more than

his Catholic compatriots. But to assume that he would side with people who want to dissociate religious ideas from American political thinking is to ignore plain declarations he made.

Now let us examine the Northwest Ordinance passed by the Continental Congress on July 13, 1787. In case anyone might object that this throws no light on the meaning of the First Amendment, we must remember that Madison introduced that Amendment in Congress in June, 1789, and that the Northwest Ordinance was *re-enacted* by Congress in 1791. Article III provided:

> Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Could Congress have made a clearer declaration of its conviction that the education of the citizens of American democracy should include religion? That ringing declaration is etched in stone upon the Liberal Arts building at the University of Michigan, a university of which Father Gabriel Richard was one of the original three co-founders. Many State constitutions adopted it.

Washington's Declaration

When President Washington decided to withdraw from public life at the close of the most patriotic and constructive career ever placed at the disposal of our nation, he summed up for his fellow citizens the wisdom that distinguished him who was "first in war, first in peace, and first in the hearts of his countrymen." Did he assume that our young democracy could thrive apart from religious convictions? "Of all the dispositions and habits which lead to political prosperity," he soberly declared, "Religion and Morality are indispensable supports." Our present-day educators believe they can inculcate morality without religion. Not so Washington. "And let us with caution indulge the supposition that morality can be retained without religion . . . reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle." He then insisted, as all the Federalists did, that morality grounded in religious belief was "a necessary spring of popular government." But that is not all. Washington directly connected the teaching of religious morality with the function of our schools. For he immedi-

ately added: "Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge."

These paragraphs, as a matter of fact, were composed by Alexander Hamilton at the request of the President. Hamilton, John Jay, Rufus King and Gouverneur Morris held these same convictions. Morris, whose contributions to the Constitutional Convention were considerable, phrased his belief in the very same terms. He opposed the French Revolution because the French overthrew the groundwork of sound popular government—morality rooted in religion. It is hardly necessary to state that Daniel Carroll and Thomas Fitzsimons, the two Catholic members of the Constitutional Convention, held the identically same view. Madison himself was religious, though the peculiar political involvement of the Episcopal Church in Virginia made him an extreme opponent of an established church in that State and on the national level as well.

To pretend that the *only* American principle is one of official neutrality towards religion as a public influence is to say that the man who held the nation together during the Revolution and whose chairmanship of the Constitutional Convention is always credited with the success of that body—our first President—did not understand the political system he saw to completion and presided over during its first critical years. It is saying that Hamilton, who more than anyone else made that system work, did not understand it.

Presidential Utterances

Who are the men who carried on this tradition of the inner connection between American democracy and religion as a public support of it? If you look through Richardson's edition of *The Messages and Papers of the Presidents* you will be amazed with what regularity our Chief Executives have attributed to Divine Providence the prosperity of our experiment in popular government and have *publicly* thanked God for His blessings and urged our American people to join in *public thanksgiving*. President John Adams in his First Inaugural Address of March 4, 1797 cited as qualifications for his high office

. . . a love of science and letters and a wish to patronize every rational effort to encourage schools, colleges, universities, academies and every

institution *for propagating knowledge, virtue, and religion* among all classes of the people, not only for their benign influence on the happiness of life in all its stages and classes, and society in all its forms, *but as the only means of preserving our Constitution from its natural enemies* . . . [italics added].

In his first Proclamation of a day of "solemn humiliation, fasting, and prayer," President Adams laid down these principles:

1. That "the safety and prosperity of nations ultimately and essentially depend on the protection and the blessing of Almighty God. . . ."

2. That "*the national acknowledgment of this truth* is not only an indispensable duty which the people owe to Him, but a duty whose natural influence is favorable to the promotion of *that morality and piety without which social happiness can not exist* nor the blessings of a free government be enjoyed. . . ."

3. That this duty, "at all times incumbent, is especially so in seasons of difficulty or of danger . . ."

4. That "all religious congregations" should "acknowledge before God the manifold sins and transgressions with which we are chargeable as individuals and as a nation . . ."

He then urged that our people, "through the Redeemer of the World," and through "His infinite grace," seek "repentance and reformation" as we are inclined to do "by His Holy Spirit." The interesting thing about this Proclamation is that it is frankly Christian and supernatural. Adams had taken a foremost part in American political affairs since the time of the Revolution. To say that he completely misunderstood the basis of our democracy is to suggest that such remarks received an unfavorable reception. But the Address of the Senate and of the House in reply to this Proclamation was most cordial. It is undeniable that the America of that day took it for granted that our safety and national well being depended on our religious spirit.

It is true that with Jefferson the religious note in Presidential proclamations becomes more perfunctory. But it is always there. Someone should publish in one volume all the proclamations of days of public thanksgiving and prayer of our Presidents. Such a volume would lay the ghost of the secularist assumption.

The most unequivocal statement of the religious basis of democracy is to be found in the Annual Message delivered in person before Congress on January 4, 1939 by President Franklin D. Roosevelt—who, incidentally, also urged a special day of prayer at other times.

> Storms from abroad directly challenge three institutions indispensable to Americans, *now as always. The first is religion.* It is the source of the other two—democracy and international good faith.
>
> Religion, by teaching man his relationship to God, gives the individual a sense of his own dignity and teaches him to respect himself by respecting his neighbors . . .
>
> In a modern civilization, all three—religion, democracy and international good faith—complement and support each other.
>
> Where freedom of religion has been attacked, the attack has come from sources opposed to democracy.
>
> Where democracy has been overthrown, the spirit of free worship has disappeared . . .
>
> An ordering of society which relegates religion, democracy and good faith among nations to the background can find no place within it for the ideals of the Prince of Peace. *The United States rejects such an ordering, and retains its ancient faith* [italics added].

Here we have the national spokesman of our American democracy, exercising his constitutional function of addressing Congress on "the state of the Union," upholding our "ancient faith" in religion as the backbone of free government.

How like the official pronouncements of President Washington is this sounding of the depths of American political philosophy! Roosevelt was no more afraid to declare his allegiance to religion as the foundation of our constitutional system than Washington and Hamilton. President Truman has followed in his footsteps.

American Political Philosophy in Summary

We may sum up this brief review of the sources and expressions of our political philosophy in these propositions:

1. The *original* political philosophy of the men who wrote the Constitution considered religion, and morality grounded in religion, essential to free government.

2. Our Presidents, as constitutionally elected representatives of our national political traditions, have *unfailingly* upheld a religious

view of American democracy. This is notably true of our annual Thanksgiving-Day proclamations.

3. The secularistic view which would make religion a purely private affair, unrelated to our national well being as a great state, *is a later distortion.* It had a handful of representatives in the early days —Tom Paine, John Taylor, Dr. Benjamin Rush—but none of them had anything much to do with the formation of the Union. Jefferson, after returning from France, became progressively more secularistic, though never entirely so.

4. This secularist view has achieved a certain monopoly in academic circles through the writings of V. L. Parrington, Carl Becker, Charles A. Beard, Charles E. Merriam and practically all American scholars. No widely-accepted writer has shown any interest in recognizing the original religious tradition in our democracy, nor shown any qualifications for appraising it.

5. The public-school system has canonized the secularist tradition through its inability, by and large, to agree on arrangements by which religion could be preserved in the curriculum. From this vacuum, many public-school educators have advanced to the extreme position of assuming that only a purely secularistic education is genuinely American. Any competing system is "divisive of national unity."

This widespread attitude is dangerously undemocratic. It looks to a state monopoly of education. It is moving, although only very gradually, in the direction of the familiar totalitarian technique of a politically "managed culture," or a monolithic educational cartel. This movement tends to undermine the distinguishing feature of democracy—cultural diversity and cultural freedom. People who are "alarmed" at freedom of education are alarmed at the most democratic freedom we have. It is an ominous intolerance, nonetheless ominous because it uses seemingly innocent and subtle means of eliminating what it dislikes by imposing on others economic discrimination in the name of nationalism.

It is worth noting that secularism and economic discrimination against children attending semi-public schools won a foothold in State constitutions adopted long after our Federal Constitution. The present drive is to impose it on the Federal System, where it would be an alien innovation.

2.
Congress and the School Question

IN ANALYZING the issues involved in the debate over the use of tax revenue to extend public-welfare services to semi-public schools, evidence has already been presented to show that the assumption that American democracy is secularistic ignores the deep religious tradition in our constitutional history. It was pointed out how consistently the Presidents of the United States have given expression to the original inner connection between religious beliefs and the groundwork of our popular government.

Let us now turn to more concrete and specific evidence showing that, as a matter of practice, our national Legislature has consistently, especially in recent years, included private institutions as beneficiaries of legislation by which Federal funds were appropriated for public-welfare purposes. If the First Amendment implicitly rules out any use of tax revenues by which religious institutions are benefited, however indirectly—as opponents of Federal aid to semi-public schools assume—then how do they explain the fact that a great majority of five hundred and thirty-one members of Congress, in voting on a variety of measures, have shown themselves quite unaware of any "great American principle" making such use of Federal funds unconstitutional? Congress has time and again taken the altogether reasonable view that if public-welfare services are to be extended to *all* the citizens of the United States, and even to non-citizens, then no one should be arbitrarily excluded from receiving such services because he seeks them in an institution well qualified to supply them, even though it may be conducted under private and often religious auspices. *Congress does not at all share the narrow-minded position that otherwise qualified health and educational services, meeting public standards, somehow become "un-American" when they are rendered by organizations motivated by religious beliefs.*

I am not here bringing into the discussion the closely connected

question of the constitutionality of State legislation in this field. The State constitutions now in effect were adopted long after the Federal Constitution. Nearly all of them contain prohibitions of the use of State revenue in favor of religious schools. This is a specific prohibition not contained in the Federal Constitution or in the First Amendment. These prohibitions can be interpreted narrowly or broadly. They do not prevent States from allowing tax exemption to religious institutions together with all other non-profit enterprises with an educational, cultural or other public-service purpose. They do not prevent nineteen States from providing free bus transportation for *all* the school children of those States, whether they attend governmental or non-governmental schools. They do not prevent the States of Louisiana and Mississippi from appropriating funds to pay for the textbooks of *all* the school children in those States, whether they attend governmental schools or not. State courts have upheld such legislation as compatible with constitutional provisions in the respective State constitutions prohibiting the use of State funds for religious purposes. And they do not prevent States from appropriating funds for temporary veterans' housing in denominational colleges.

Constitutional Provisions

All I wish to say about this issue as it relates to the constitutional provisions of the individual States is: 1) that the question be left to the people of the States to decide, without being prejudged by the assumption that American democracy cannot tolerate any public support of religious enterprises, however indirect, without undermining some imaginary "great American principle"; and 2) that opponents of such State legislation as does exist, having been defeated in their State courts in their attempts to destroy these arrangements, be constrained from distorting the prohibitions of the First Amendment of the Federal Constitution so as to introduce into our Federal system a hostility and discrimination against private schools and hospitals from which our national Constitution and legislation have been happily free.

Let us make no mistake about the general tendency of the present ferment on this question. The secularists are bent on *making a decisive change* in our national policy. They realize that the time

has come when more and more Federal funds will be expended for public-welfare purposes, especially in the field of education. They realize, with no small measure of alarm, that their previous efforts to starve out of existence religious education, and specifically Catholic education, have failed. Their attempts in Oregon and to a lesser extent in Michigan to make parochial schools illegal were struck down by the Supreme Court in the case of *Pierce v. Society of Sisters* in 1925, under the old Supreme Court. Their strategy now is to make out that the First Amendment, which on its face prohibits Congress only from establishing a national religion, actually embodies a "great American principle" erecting a "wall of separation" between American political society—State and Federal—and all forms of religious life, even to the extreme extent of disqualifying children from benefiting by public-welfare legislation because they happen to be attending non-governmental schools.

The Practice of Congress

For the sake of clarity, let us first bring under review about eight pieces of national legislation, apart from war measures, which prove that our Congress has never understood the First Amendment as erecting a "wall of separation" between our Federal Government and religious institutions in this country.

In the first place, of course, one thinks of the official chaplains engaged by Congress to open its own sessions. This is the oldest example of the inner connection Congress has recognized as existing between our national political system and religion. It is interesting because the custom derives from the days of the foundation of our Republic. It stands as irrefutable evidence that the secularist assumption is of much later origin, and is an intrusion.

To take another non-education example, we can cite the aid the Federal Government has given to private hospitals. Within the last few years the Federal Government has recognized the need of more ample hospital facilities in the nation's capital. The choice lay between constructing an institution to be run by the Government and allocating funds to private institutions to enable them to supply the desired services. The latter choice was made in the interests of economy. George Washington University and Georgetown University, the

latter conducted under Catholic auspices, both had medical schools and were therefore in a position to conduct hospitals. They received the funds with which to expand their hospital services so as to meet the public need. The fact that Georgetown University is a Catholic university was not found a sufficient reason for refusing to go through with an economical and efficient solution to a medical problem. Federal funds assist many private hospitals.

Congress has taken care in the Federal Internal Revenue Code, section 101(6), to exempt all non-profit educational, charitable, and religious institutions from the Federal income tax. Schools conducted under religious auspices have always enjoyed this exemption. Contributions made to such institutions are, of course, deductible from income taxes. Religious institutions are treated like all other charitable organizations in accordance with a well-established national policy.

Though we take it for granted, it is worth mentioning that the U. S. Post Office Department has always included religious organizations in its second-class, third-class and fourth-class mailing privileges. No one has ever suggested that the Federal Government should require religious publications to pay higher rates than others merely because religious interests enjoy the same advantage all publications enjoy by virtue of a postal rate which in effect is a form of subsidy. For the Post Office loses money through the use of such mailing privileges. No "wall of separation" has been erected there.

Now let us draw closer to the immediate issue and see how Congress has dealt with non-governmental schools.

NYA Program

The National Youth Administration was established in June, 1935. Early in 1935 an estimated three million people between sixteen and twenty-five years of age were on relief. The main object of the NYA program was to enable young people to attend high school and college and thus take them out of the overflooded labor market. Within a year about 600,000 youths were participating in NYA activities. They were employed part-time in the schools and colleges (or in vocation-training on-the-job) and earning enough either to defray the cost of tuition in large part, or partially to support themselves. They

worked in school libraries, or as laboratory assistants, or in professors' offices. Although the money they earned was paid out to them personally, the colleges profited by their services. *No discrimination was made between governmental and non-governmental schools and colleges in this national program.* The social problem was national in scope. The young people were dealt with as Americans. Congress did not try to dictate to them what schools they had to attend to qualify for the benefits of this public-welfare legislation. Thousands of them attended schools conducted under religious auspices. They were not penalized for their religious beliefs. Congress handled the program in a perfectly fair and American way.

The same can be said of our peacetime Reserve Officers Training Corps. This program was conducted through the Department of War. Army officers were put in charge of the program in any college which wished to include it as part of the curriculum. Whatever expenses were involved came out of Federal funds appropriated for the purpose. The important aspect of this program to notice is that it was not an emergency measure but a routine policy.

School Lunch Act

Neither was the Federal school-lunch program an emergency measure. This law, passed on June 4, 1946 provided an annual appropriation of $75 million to enable school children to get wholesome nourishment in school at reduced prices or even wholly free of charge. An additional ten million was voted for the purpose of improving dietary programs and lunch-room equipment in the schools. This form of "cooperative federalism" followed the familiar pattern of grants-in-aid by requiring the States to match the Federal disbursement by State funds. But the important phase of the Act, for our purposes, was that Mr. Flannagan of Virginia, who introduced the bill, took care that *all* the nation's children should benefit by it. No discrimination was allowed. If a State wished to avail itself of the grant, it had to allow its benefits to go to the children of non-governmental schools either through its own or Federal agencies.

Finally, the Legislative Reorganization Act of 1946 includes a pertinent provision. It seems that Congress felt that the educational opportunities of the young boys who serve as pages were inadequate.

Section 243(a) of the Act therefore authorized the Secretary of the Senate and the Clerk of the House to arrange with the Board of Education of the District of Columbia for the education of the pages. The District was to be reimbursed for any additional expenses. Then follows this paragraph:

> (c) Notwithstanding the provisions of subsections (a) and (b) of this section, said page or pages may elect to attend a private or parochial school of their own choice: *Provided, however,* That such private or parochial school shall be reimbursed by the Senate and House of Representatives only in the same amount as would be paid if the page or pages were attending a public school under the provisions of paragraphs (a) and (b) of this section.

Even in this matter of comparatively minor importance, Congress took care to protect students in their right to choose a private or religious education by placing at their disposal the same reimbursement accorded students who preferred public schooling.

Those who are determined to close the door of Federal public-welfare legislation on non-governmental schools pretend that Congress has extended such benefits to them in the past *only through emergency measures.* But income tax-exemption was not an emergency measure. Our postal regulations are not emergency measures. Neither was the R.O.T.C., nor the school lunch program, nor the provision in the Legislative Reorganization Act of 1946. The criterion Congress has used is *public need.* In fact, the need for Federal aid in education today seems to amount to an emergency need anyway. But even if it did not, it should go to all schools meeting the standards of public education, if Congress is to follow its historic and just policy.

World War II

The war brought forth several pieces of legislation which underscored this undeviating policy of Congress.

Although our armed services have always had chaplains, in peace or in war, at the Military and Naval Academies as well as in camps and aboard ships, Congress provided liberally for them in the vast expansion made necessary by the war. The problem was rather to find the clergymen to fill this need. The point is that Congress provided for the commissioning of these chaplains, and paid them the

same rates as other officers. This is a policy of supporting religion as such. It is an old policy. It knows nothing about a "wall of separation" between our system of government and religion.

The armed services paid the teachers, religious and lay, in colleges and universities with Army and Navy programs. Objections were raised to this policy by private individuals, but the authorities ruled out these objections. If the armed services wanted educational work to be done for them, they rightly and sensibly judged that they ought to pay for it. The mere fact that religious institutions derived some benefit from this policy was not considered to be any reason for declaring it in opposition to some vague idea labeled "a great American principle of separation of church and state."

When President Roosevelt announced his famous "GI Bill of Rights" in the summer of 1943, he proposed that every ex-GI should be enabled to go to college at the expense of the Federal Government. Congress implemented this proposal handsomely. Depending on their length of service, veterans were allowed up to $500 a year for tuition and books, and subsistence benefits. It certainly would have been the zenith of bigotry to tell veterans who had gone to private colleges before the war that they could avail themselves of the educational benefits of the GI Bill of Rights only if they changed to a non-religious institution of higher learning on their resumption of civilian life. No one thought of making such a far-fetched suggestion. For one thing, some States have no State university, and those that have could not have begun to accommodate the veterans. Congress, as was only fair, let the veterans choose their college, and the Veterans Administration remits the money for tuition and books on receipt of the bills. Tens of thousands of veterans are thus being educated, at Federal expense, in private and even religiously conducted schools.

The same schools are able to avail themselves of war-surplus materials on a par with governmental schools. It is "first come, first served."

When Senators Hill, Thomas and Taft sponsored a bill in the 79th Congress providing Federal assistance to the States for the purpose of "more nearly equalizing educational opportunities," they tried to reverse this well-established Federal policy of making educational benefits available to both governmental and non-governmental schools

on the same terms. Under the guise of scruples about not interfering with State and local control of education, their bill provided that the States were to be entirely unrestricted in their definition of what schools were to become the beneficiaries of the Federal grants. *They were fully aware that, almost without exception, the States discriminate against non-governmental schools.*

They were not consistent in their "hands off" policy, because they *did* go out of their way to prevent racial discrimination in the use of Federal funds, without any overly delicate fear of "interfering" with local discriminatory practices in racial relations.

A minority of the Committee on Education and Labor very properly objected:

> If enacted into law, this bill would compel the Federal Government to deviate from its long-established policy of absolute equity in any program of Federal aid to the States. . . . It will deprive children of the benefits of Federal legislation for no other reason than their failure to attend public schools.

The minority called attention to the utterly unfair provision in the 1946 bill whereby children between the ages of five and seventeen were counted in apportioning funds to States, although they were attending private schools and would thereby be denied the benefits. Senator Taft's 1947 bill followed the same pattern.

The Republican leadership in Congress has to assume responsibility for attempting to undermine our consistent national policy by introducing religious discrimination into its legislation. James G. Blaine's repudiation at the polls in the Presidential election of 1884 presents a striking parallel today. Mr. Taft might just as well revive in the 1948 Republican platform the plank in the Republican platform of 1876 calling for a Federal amendment "forbidding the application of any public funds or property for the benefit of any school or institution under sectarian control." For he has taken a roundabout way of achieving the same result by proposing that Federal aid to the nation's schools be channeled through the States in conformity with *their* discriminatory constitutional provisions. This is a backstairs method of leading Congress away from its truly American policy of offering assistance to all schools on equal terms. Labeling the stairways "States' Rights" cannot conceal the purpose of the maneuver.

3.

The Courts and Aid to Schools

IN CHAPTER ONE I challenged the assumption that the founders of our Republic ever meant to establish a democracy which would be entirely "neutral" towards religion. On the contrary, they publicly encouraged a religious spirit as the backbone of the public virtue called for in the experiment they were making of popular government. Our Presidents—notably Washington, Adams and Franklin D. Roosevelt—have kept this tradition alive.

It is one thing, indeed, to avow that the religious spirit is the mainspring of national character, and quite another to suggest that religious institutions in the performance of their specifically religious functions should be supported by tax revenues. No one known to the writer makes the latter suggestion. But opponents of Federal or State aid to non-governmental schools would rule out as unconstitutional any appropriations in aid of religious institutions in the performance of their *secular* and general-welfare functions, on the score that such aid gives support to religion indirectly. They talk as if, under our Constitution, religion were the great untouchable It suits them to discriminate against children attending non-governmental schools by depriving them of free bus transportation. This violation of "the equal protection of the laws" causes no scruples.

The plain fact is that attendance at non-governmental schools fulfills the requirements of State laws compelling parents to send their children to school just as well as attendance at governmental schools. Why? Because non-governmental schools fulfill the function of educating young citizens in conformity with the needs of citizenship just as well as governmental schools do. This essential identity of the two forms of education places both school systems in the same category as objects of general-welfare legislation. But people balk at extending to them the same Federal or State aid merely because some non-governmental schools *also* teach religion, and teach secular subjects under religious auspices.

More than that, they predict that dire consequences will follow in the wake of policies which Congress has actually endorsed for many

years without any "undermining" of the "great American principle of separation of Church and State." For our national Legislature, as was pointed out in Chapter Two, has provided for chaplaincies in the armed services, and has extended such public-welfare programs as the NYA, the GI Bill of Rights, the school lunch and reduced postal rates, together with tax exemption, to non-governmental schools and religious organizations. Congress saw no establishment of religion in these indirect benefits.

The First Amendment

At the time of the drafting of the Federal Constitution, the thirteen original States stood in various relationships to church establishments. In Massachusetts and New Hampshire the Congregationalist or Puritan Church remained as an established religion. Virginia, North Carolina, Georgia, New York and New Jersey had disestablished the Anglican Church during the war with England. In Virginia this change was accompanied by bitter sectarian strife. Only Maryland and South Carolina retained an Anglican establishment, Rhode Island, Pennsylvania and Delaware had never had a state church. With disestablishment the order of the day, none of the framers of the Constitution saw any danger of a national establishment of religion.

But the embers of religious contests were still warm in a few States, notably in Virginia. Enough anxiety was felt over the possible adoption of a national religious establishment to spur Madison, a Virginian, to propose an explicit amendment prohibiting such a maneuver. Congress consequently proposed and the States ratified the following First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

The recorded debates in Congress reveal a great disinclination to amend the Constitution at such an early date. Madison himself explained his proposition in mild terms:

> Mr. Madison said he apprehended the meaning of the words to be, that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience.

The purpose of this Amendment seems obvious on its face: it was

to prevent the new National Government from imposing on a people consisting predominantly of Congregationalists, Episcopalian and Quaker religionists, respectively, *any one religion*, since such a religion would inevitably violate the beliefs of adherents of all other religions.

The State and Religion

We must notice that the prohibition was laid upon Congress. The States themselves remained as free as before to maintain their religious establishments or create new ones. The Supreme Court so interpreted the First Amendment as late as 1845 in the Permoli case. Since the days of the Civil War, Congress has imposed a Federal "compact" upon new States admitted to the Union, requiring them to guarantee religious freedom to their inhabitants. But Connecticut did not achieve full religious freedom until 1818, and Massachusetts retained its Congregational establishment until 1833. New Hampshire required the profession of Protestantism in teachers and officials, and in 1851 decisively defeated amendments to the State constitution in favor of greater religious freedom. Neither in 1877, 1889, 1902, 1912, or as late as 1918-1920, could a two-thirds popular majority be mustered to strike out "Protestant" in the State constitution.

Beginning with the heavy influx of Irish and German Catholic immigrants into the United States about 1848, a new issue arose. Previously, Protestants had managed quite well in having the Protestant religion taught in the new-born public-school system which succeeded the older parochial-school system. But with the advent of Catholics this arrangement proved unsatisfactory. As this issue came to a head, the Protestants made a fateful choice. Rather than accede to Catholic demands for State support of Catholic schools, as the State was supporting the Protestant public-school system, they wiped religious instruction off the slate as a beneficiary of State aid. The public-school system more and more de-emphasized religion until it excluded it altogether.

Alarmed at the prospect of having Catholic schools beneficiaries of State support, State after State wrote into its constitution a prohibition against the appropriation of tax revenue for schools under religious control. Wisconsin (1848), Michigan (1850), Indiana

(1851), Massachusetts (1855), Oregon (1857) and Minnesota (1857) led the way. Between 1877 and 1912, twenty-six more States took such action. The impetus came from the spirit of Nativism, the Know-Nothing Movement, the A.P.A., and the Ku Klux Klan.

For a generation or two the fear of "Popery" proved much stronger than the Protestant zeal for religious instruction. Accordingly, these constitutional provisions were interpreted very narrowly. But our generation has witnessed a new searching of hearts on the question of the complete exclusion of religion from the curriculum and the complete exclusion of students in non-governmental schools from the ever-increasing benefits extended to students in governmental schools. Besides tax exemption, free bus transportation is permitted for *all* school children in nineteen States, and free textbooks in secular subjects to *all* children in two States, Louisiana and Mississippi. State courts have upheld such policies as compatible with the restrictive provisions in their State constitutions.

The Fourteenth Amendment

But an altogether new constitutional issue has been introduced by virtue of the interpretation given the Fourteenth Amendment by the Federal Judiciary.

The Fourteenth Amendment, adopted in 1868, was intended to prevent any State legislature from depriving "any person of life, liberty or property, without due process of law," from abridging "the privileges or immunities of citizens of the United States," and from denying "to any person within its jurisdiction the equal protection of the laws." Negroes were supposed to find shelter under these protections, but they have been about the last to succeed in doing so.

Since we are primarily interested in the judicial interpretation of the First Amendment as applied to public aid to children attending non-governmental schools, we now have to answer the question: How does the First Amendment enter into the Constitutional problem, since up to now the issue of State aid to non-governmental schools has been a matter for the States to decide within the framework of their own State constitutions?

The answer is fairly simple. It will be noticed that in the Fourteenth

Amendment the word "liberty" is not defined. But since 1923 the Supreme Court has interpreted it as including all the freedoms of the First Amendment.

This innovation in our constitutional system achieved by judicial interpretation has changed our Federal-State relationships. For freedom of speech, freedom of the press, freedom of assembly and freedom of worship, which Congress was ordered to respect through the First Amendment, must now be respected in the very same way by State legislatures. Attempts to abridge these freedoms, as by State or local laws restricting the activities of Jehovah's Witnesses or labor unions (picketing), have been struck down.

Moreover, several members of the present Supreme Court have adopted another new rule of constitutional interpretation whereby these freedoms are given a "preferred" position. They are more anxious to defend them than to defend the right of property under the Fourteenth Amendment.

Effect on States

In this way a peculiar change has taken place. Previously, only the States explicitly prohibited the use of public funds for sectarian purposes. As we have already noticed, the States have been liberalizing their restrictions on State aid in the field of education.

The Federal Constitution, up until 1923, was never invoked against the States in this field. But since then, by interpreting the word "liberty" in the Fourteenth Amendment as including the entire scope of the First Amendment, the Supreme Court has progressively hedged in State action by these Federal judicial standards. And at the same time the Federal standards have been tightened up judicially more and more. The result is that four of the nine members of the present Court aim at dismantling as unconstitutional even such meager assistance to the children attending non-governmental schools as the States have seen fit to extend in the form of bus transportation. The supporters of the Taft Federal-aid-for-education bill, which discriminates against non-governmental schools, are no doubt encouraged by this trend of the Court.

But the illiberal interpretation of the First Amendment is placing the Court in diametric opposition to the fair-minded policy of Con-

gress and the pro-religious tradition of the Presidency, both of which have seen no reason to exclude religious institutions from public-welfare programs merely because religion receives an indirect benefit from such programs. The Court is therefore leaning toward a hostility to religion shown by neither State legislatures and courts nor the legislative and executive branches of our national Government. And this is the Court which has often announced that the judiciary should refrain from imposing its personal political philosophy upon our constitutional system, leaving to legislatures the determination of public policy which is not openly in conflict with constitutional limitations.

The New Jersey Bus Case

Misgivings and uncertainties have arisen because of the opinions expressed in the crucial case of *Everson v. Board of Education of Township of Ewing*, decided on February 10, 1947.

According to a statute passed by the New Jersey State Legislature, district boards of education were empowered to arrange that parents of children attending any public schools and any "school other than a public school, except such school as is operated for profit in whole or in part," should be reimbursed for extraordinary transportation costs. Parents of children attending Catholic schools were thus reimbursed. The Court of Errors and Appeals of the State of New Jersey ruled that this use of tax revenues did not contravene either the New Jersey State Constitution or the Fourteenth Amendment of the Federal Constitution. A taxpayer, Everson, appealed this decision to the Supreme Court.

Mr. Justice Black upheld the decision of the Court of Errors and Appeals in an opinion in which Chief Justice Vinson and Justices Douglas, Murphy and Reed concurred, with Justices Jackson, Frankfurter, Rutledge and Burton dissenting.

But Mr. Black's opinion, obviously intended to be fair to Catholics, began by showing how opposed were Thomas Jefferson and James Madison, the sponsors of the First Amendment, to any form whatever of public assistance to religion. He declared that our Constitution required absolute neutrality as between believers and non-believers, and that any shadow of support for religion had to be

avoided. Yet at the end he handed down the judgment that in the present case the State Legislature of New Jersey was within its jurisdiction in extending public-welfare legislation to children attending schools which fulfilled the State requirements. It was not public support of religion, though it was on the boundary line.

Analysis of Opinion

The basic view of the First Amendment advanced in this opinion, on which the dissenters came to an opposite conclusion, seems weak. It is that the Amendment should be interpreted according to the extreme animus of Jefferson and Madison against any public support of religion, however indirect, in Virginia. Madison did not adopt the First Amendment; he only proposed it to Congress. Congress proposed it to the States, and the State legislatures through ratification made it part of our fundamental law. If the Amendment is not clear on its face, its meaning should not be extracted from the writings of Jefferson and Madison but from the intent of those who made it law. No attempt was made to show what this intention was, and much less to adapt it to new educational conditions.

Secondly, in neither the majority nor minority opinions was the public function of non-governmental schools placed in its proper legal perspective. The States *compel* attendance at school of all children between certain ages. Since the Oregon decision of 1925, it is certain that no State can require attendance at governmental schools. Attendance at other schools meeting State standards therefore fulfills the State requirement. Now any assistance given to such "other schools" is given purely and simply in view of the undeniable fact that they are satisfactorily performing a public educational function. Mr. Justice Jackson dissented because of the relationship of such schools *to the Church.* That is incidental. The relationship on the basis of which public aid is granted is the relationship of such schools *to the State.* Do they or do they not afford the education to American citizens which the State has the right to require? If they do—and that they do is incontestable, since every State considers them as fulfilling the law requiring school attendance—then they are fulfilling a public purpose. *This is the one and only reason why any State legislature ever places them in the same category with governmental*

schools. This is the essential fact. That schools are church-related in no wise affects it.

If the courts keep this fact before them and do not lose their way in the tanglewood of ideologies, subjective attitudes, and an entirely excessive alarm lest religion should in any remote way reap a benefit from undiscriminatory policies, the door will remain open for legislatures to determine in democratic fashion how the American people think non-governmental schools should be treated in view of the public service they render. If the Courts fail to do this, they will destroy national and State policies of long standing.

4.

Are Catholic School Children American Citizens?

IN THE cross-fire of emotionalism which marks the debate over the extension of tax-supported public-welfare services to Catholic school children, one essential fact seems to be overlooked: it is that Catholic school children are American citizens entitled in every way to "the equal protection of the laws" with all other American school children.

When a Catholic child is sent by his parents to a parochial school, he is carrying out a duty of American citizenship. He has no choice about going to school. The Catholic Church cannot attach any legal penalties to the failure of Catholic parents to send their children to school. It is the State which requires school attendance. When a Catholic child boards a bus to go to a distant school, he is therefore fulfilling a civic obligation. To enable children living great distances from schools to fulfill this civic obligation without imposing extraordinary costs of transportation on their parents, many States appropriate public funds to cover the bus fare. As everyone considers adequate schooling of young citizens to be essential to an enlightened electorate, this policy seems very well conceived. It is the only way of relieving some parents of an extraordinary expense involved in fulfilling the compulsory education laws, which oblige all parents.

Social Purpose of Education Laws

The purpose of such laws is social: it is not to insure that the next generation will possess the equipment necessary to pursue purely private satisfactions, but to insure that the grown-up citizens of the America of tomorrow will have the training they must have to be a credit and not a burden to the community. They must be able to make a living, to increase the total prosperity of the nation, to found a home and raise a family, to understand and conform to American ideals of living, to cooperate with others in community enterprises, and to vote and help form a sound public opinion. We want properly edu-

cated members of labor unions and of business organizations. We want likely prospects for the medical, dental, legal and other professions. The States are interested in providing such a body of citizens for tomorrow's America. So is the nation. The interest of the States and of the Federal Government in the field of education springs from the social implications involved. Thomas Jefferson displayed great vision when he pioneered in stressing the principle that educational opportunities should not be left to the accidental economic ability of some parents to pay for the schooling of their children.

One of the reasons why the United States has become the strongest and most productive and resourceful nation in the world is that we as a people have understood for over a hundred years the connection between national prosperity and an educated citizenry. Our task has been heavier than that of any other nation because we have absorbed into our population tens of millions of immigrants, many of them from countries where they had no chance to go to school.

Our school system, the most extensive and expensive in the world, has succeeded in moulding our people into a great national unity despite the circumstance that they have come here from all over the globe. The public-school system has carried its burden with remarkable success on this score. But it has not carried the burden alone. The Catholic parochial-school system has educated millions and millions of American citizens. Does anyone pretend that products of parochial schools have not shown themselves just as much a credit to the nation as the products of the public schools?

The Catholic schools have performed this notable public service under a great handicap. Catholic parents as American citizens have to pay the same taxes as all American citizens. From these taxes the public-school system receives its lavish support. But as Catholics want their children to be instructed in religion along with instruction in secular subjects, they have to dig into their pockets again, after paying taxes to support public schools, in order to make the voluntary contributions on which Catholic schools operate. Being denied tax support, that is the only way they can operate. Catholics pay double what others pay to educate American citizens the way our national well-being and our compulsory education laws demand. This

only means that Catholics are being penalized for practicing their religion.

Abetting A New Religion

The one thing our State constitutions and the First Amendment in our Federal Constitution was intended to prevent was the use of tax funds to discriminate in favor of any religious sect or denomination. But the present system actually does discriminate in favor of those parents who entertain the idea that religion consists merely of some simple formula like the Golden Rule and that the worship of God consists in doing your duty as you see it. This is a new form of religion widely held. The public-school system has to a large extent produced and propagated it. That system has made it economically convenient to practise the diluted form of Christianity into which much modern Protestantism has devolved, and has made it increasingly hard economically to practise any other form of Christianity.

That the public schools are actually promoting a diluted form of religion is proved by the State laws authorizing the reading of the Bible in twenty-two States. Four more States even require Bible reading. The Protestant version of the Bible is always used. Especially in smaller towns and rural communities throughout the nation the influence of Protestantism in public schools is considerable. To many present-day Protestants the public-school system, accordingly, seems to serve the religious needs of their children.

If anyone thinks that it is unfair for a Catholic to describe much of contemporary Protestantism as a diluted from of Christianity, produced and abetted by the public-school system, let him read what Charles Clayton Morrison, until recently the editor of the Protestant weekly, the *Christian Century* wrote in the issue of April 17, 1946. In an article entitled "Protestantism and the Public School," Mr. Morrison makes much of the influence of the public schools on Protestantism and declares:

> Protestantism has been greatly weakened in its inner character by this kind of education. Unlike Catholicism, the Protestant churches . . . have given to the public school their consistent and unreserved devotion. *The result is that their own children have been delivered back to their churches with a mentality which is not only unintelligent about religion but relatively incapacitated even to ask the questions out of which religion arises, to say*

nothing of answering them the way religion answers them. This result must not be thought of in terms of *children* only. For these children have become the adult membership of Protestant churches. *The mentality of the entire body of American Protestantism has thus been fashioned under the influence of the secularized public school.* [Italics added].

Mr. Morrison was saying, in effect, that our State legislation has appropriated tax revenues for generations to support a system of education the inevitable result of which was positively to neutralize the beliefs of American Protestants. This comes very close to subsidizing an easy-going, vague, undoctrinal form of religion.

My contention is: 1) that the sponsors of the First Amendment and of the prohibitions in State constitutions against State-support of religious schools never intended to promote such a type of religion, which they did not foresee as the result of their measures, and 2) that the narrow interpretation of those measures violates their purpose by supplying State funds to support one form of religion at the expense of others. If opponents of Federal and State aid to non-governmental schools had as keen an eye for *this* indirect support of diluted Christianity as they have for the indirect support of parochial schools they might come to view the issues in better perspective.

Civic Function of Catholic Schools

My main argument, however, is this: our Catholic schools are fulfilling a civic function, and the circumstance of their also fulfilling a religious function is no solid reason for penalizing American citizens who are exercising their constitutional right to have their children educated in religion in conjunction with their education in secular subjects.

The only reasonable basis for denying to children attending non-governmental schools the public-welfare benefits afforded children in governmental schools would be the failure of non-governmental schools to provide the civic training in view of which governmental schools are thought to deserve public support.

No one has been bold enough to try to prove that parochial schools fail to teach children secular subjects just as well as do public schools. Do children in parochial schools learn less American history? Do they fail to learn arithmetic, spelling, English composition, geography,

civics just as well as children in public schools? In competitions they frequently gain victories over public-school children. The graduates of parochial schools are at least as prompt as any others in enlisting in the armed services of their country in time of war. If there is any score on which Catholic-school children fail to measure up to public-school children, we would like to know what precisely that score is.

Mr. Jackson's Error

In the New Jersey school bus case, Mr. Justice Jackson wrote: "The function of the Church school is a subject on which this record is meager." He then went on to show how the very existence of the Catholic Church depended on its parochial schools, and concluded that any support of them was first and foremost a support of the Catholic religion.

That the function of a school-system embracing two and a half million American children and boasting of a history as old as that of the public-school system in this country should remain something of a mystery to a Justice of the Supreme Court of the United States is indeed deplorable. It should be a very simple matter to explain what is taught in a parochial school period by period. Its function is simply to provide the same education the public-school system provides—which presumably is no great mystery—plus religious instruction. It is true that Catholics attach great importance to instruction in secular subjects being given under religious auspices. But this is no mystery. Every teacher makes remarks in the course of a class in history or civics or literature which have a bearing on a student's general outlook on life. Every textbook boasts of some new emphasis or new point of view. In every school students are interested in various forms of extra-curricular activities, which differ in different schools. In Catholic schools some of these opportunities are used to inculcate Catholic attitudes and devotional practices. But these are beside the main point. People exaggerate things that are strange to them. The main point is that Catholic schools teach every subject taught in public schools. Parochial schools are not little seminaries. They prepare students for high school, public or private. If Catholic elementary schools did not accomplish as much as public

schools their graduates could not get along as well as they do in public high schools.

Under our Constitution, parents cannot be obliged by State laws to send their children to public schools. This was decided in 1925 after the State of Oregon had tried to give the public schools a monopoly of elementary education. *This decision was unanimous.* Not one Justice considered that Oregon had the right under the Fourteenth Amendment to single out one type of school—the governmentally operated school—and compel parents under threat of fines or imprisonment to send their children to that type of school.

Free vs. Tyrannical Governments

All eminent writers on democracy—Robert M. MacIver of Columbia University, Walter Lippmann, D. M. Brogan, Ernest Barker of Cambridge University, and others—point out how free government differs from tyrannical forms. It is not in the management of material things. Democracies can exercise great control over business, can erect government corporations, can take over public utilities, can foster systems of social security, compulsory health insurance, and a variety of public services.

The distinguishing mark of free governments is in the sphere of the mind. Freedom of speech, of worship, of the press, of association and discussion and criticism even of government itself, are the essentials.

Similarly, totalitarian governments are distinguished by the way they throttle these precious freedoms. When Russian Communists came into power they immediately put the press under strict governmental control. And they made the school system of Russia a compulsory system of Marxist indoctrination. Every child had to parrot the same Marxist verbiage, day in and day out. Religion was destroyed: churches were closed, priests were killed or exiled or forced to work on farms or in factories. The Communists enchained men's minds.

The Nazis did the same in Germany, only more gradually. Unless you adopted the entire Nazi ideology you could not keep your job as a street-car conductor or a public-school teacher. Soon religious schools were forced to close. The Nazis set out by fair means or foul

to capture the minds of German youth. No one was allowed to teach them anything except the Nazi racial myths.

This system, by which the press, the radio, the screen, the stage and the school fall under a political monopoly which the government exploits for political purposes, is called "managed culture." The totalitarian State cannot let people think for themselves. They must enslave their minds.

Democracies, on the other hand, glory in respect for personal philosophies and points of view. Within whatever limitations public order demands, we believe that everyone has a right to think for himself, since that is the only way anyone can think at all. And above all, we want to protect people in their right to think as they deem best about the ultimate questions of philosophy and religion.

To preserve our democracy we must preserve this cultural diversity. It is not enough to tolerate it. It is not enough to subsidize one type of culture and let others struggle along as best they can. If we want cultural diversity to enrich our national culture by providing tributaries to its main stream, we have to protect it against any form of monopoly, as we protect free enterprise against business monopolies. We have to guard against any form of economic discrimination which tends to starve out the diversified strains in our national culture.

As we pour billions upon billions of dollars into governmental schools, as we raise the standards of publicly-supported schools by spending more and more of the money of all the people to educate children in one type of school—the public school—we are making it more and more difficult for other types of schools to survive. This is true not only of Catholic parochial schools, but of non-Catholic schools of all types and of non-governmental hospitals and other social institutions. We are running the danger of gradually setting up a sort of cultural monopoly, all because of a vague fear of giving any public support to religion, however indirect.

Congress has long pursued the opposite policy of making public-welfare assistance available to all types of schools and hospitals meeting public standards. This system has worked very well. The States have leaned to some extent in the same direction in the matter of free bus transportation, and to a lesser extent, free textbooks.

But as bigotry has broken out after other wars—after the Civil War and World War I—so it is breaking out again and denouncing this policy as "un-American." The Taft aid-to-education bill, which will be introduced in the Senate in the next session, after having failed to come to a vote in two previous sessions, is an attempt to break with the non-discriminatory policy which Congress has pursued with undeviating consistency. Instead of making Federal aid available to all schools, governmental and non-governmental, on the same equal basis, as did Senator Aiken's bill in the last session, it provides that the Federal Government shall appropriate national tax revenues in conformity with the provisions in State constitutions. Now forty-six of the forty-eight State constitutions prohibit the application of tax revenues to any schools conducted under religious auspices. These State constitutions unfairly discriminate against one type of school, despite the fact that it fulfills the same public purpose as governmental schools.

Why should the Federal Government, which has been following a uniform policy of distributing national funds to all types of schools on an equal basis, surrender national tax revenues to be used to discriminate against the young American citizens who are learning loyalty to America and preparing themselves to serve her well in non-governmental schools? Our National Government has led the way in fighting against racial discrimination, and the Taft bill refuses to surrender to State discriminatory practices in racial relations. Why does it not stand up against similar discriminatory practices directed against religious groups?

The American School System

The reason is that its sponsors think the public-school system is the American-school system. It is not. It is only a part of it. Catholic schools are an important part of the American system of education. As American citizens we strongly resent the proposal to penalize us for fulfilling our civic obligation as Americans—educating our children in all that is necessary for good citizenship—in schools to which we feel obliged in conscience to send them and to

which we are guaranteed the right to send them under our Constitution.

No doubt those who fear that Catholics are scheming to "take over" the United States will ask: "But where will you Catholics stop in asking for Federal and State aid for your school children? Today you want only free bus transportation and a share in the supplemental funds the Federal Government is being asked to spend to equalize educational opportunities in the several States. Tomorrow you will want a share in the regular State and local appropriations for schools. You aim at throwing the burden of supporting your schools entirely upon tax revenues."

Well, the first thing we want is a continuation of present policies, national and State. America has made some progress towards treating us equally with other American citizens. We do not want to see a retreat from present arrangements which have worked well and seem only fair. For the rest, we are willing, now as ever, to let the American people decide how they want to deal with non-governmental schools. We have been very patient, and we will continue to be patient. When our fellow-citizens are ready to deal with us more generously than they have hitherto, that will be time enough for us.

Two Crucial Questions

And now let me ask two questions:

1) Are the opponents of Federal and State assistance to non-governmental schools willing to discuss this question on its merits? Are they willing to evaluate what we have to say with an open mind? Are they prepared to let reason and not inherited suspicions and religious bigotry decide what is basically a question of civic justice? This is the way we understand the democratic process, and we do not intend to be shouted down for stating our position.

2) Do the opponents of aid to non-governmental schools intend to try to put our schools out of business, or do they expect that our schools will continue to function? If they intend to try to put them out of business, they will have to undermine our Constitution first. But if they expect them to continue to function, do they want millions of American citizens to be educated at a serious disadvantage, or do they want them to get as good an education as America can afford to

provide for its youth? Doesn't it seem pretty inconsistent to pass a bill to "equalize" educational opportunities in the United States, on the score that the nation wants all its youth to get a good education, and in that very bill to cut off two and a half million American children from these improved educational opportunities?

We want politics to get mixed up with religion no more than anyone else. We see no danger of it. All we see is that pressure is being put on Congress to *introduce* religious discrimination where it has not been introduced before—in national educational legislation.

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