A Supreme Court BLUNDER

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ON March 8, 1948, the United States Supreme Court made a serious blunder. The honorable Justices were trying a case involving "the use of tax-supported property for religious instruction" and "the close co-operation between the school authorities and the religious council (of Champaign, Illinois) in promoting religious education." Their decision was that this "falls squarely under the ban of the First Amendment," which reads in part as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

An "establishment of religion," of course, is nothing less than a State-Church,

enjoying a favored position and all sorts of official privileges.

While this First Amendment binds only the Congress in Washington, in 1868 it was extended to the several States by the Fourteenth Amendment which declares that

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

That the Supreme Court made a mistake is obvious from the interpretation which American custom and generations of American jurists have always placed upon both the First and the Fourteenth Amendments.

A Godless Government?

It's true that the Founding Fathers of our Country wanted no official church in the United States. But this doesn't mean

that they foresaw or planned a government emptied of all religion. It was rather their idea that all religions should be equal before the State, and that the Government should help all of them impartially. They were religious men and they knew that only religion can produce a law-abiding citizenry. After all, it's belief in God that keeps the average person from rape and racketeering. The policeman with his mace and revolver is for the exceptional individual — the one who, without religious convictions and a sense of decency, can be kept in line only by physical force.

So close was the tie between religion and government in the early days, that, according to Carl Zollman in his *American Church Law* "While the Maryland Constitution required of all officers 'a declaration of belief in the Christian religion,' while the Massachusetts Constitution required of high executive and legislative officers a belief in the Christian religion and a firm persuasion of its truth, the fundamental law of Georgia, New Hampshire, New

Jersey, North Carolina and Vermont limited such belief to the Protestant religion and was designed to require a positive qualification of not being a Roman Catholic. The Delaware, Pennsylvania, and Vermont Constitutions further required an acknowledgment that both the Old and New Testaments are given by Divine Inspiration. The Constitutions of Pennsylvania and Vermont in addition exacted a confession of a belief 'in one God, the Creator and Governor of the Universe, the rewarder of the good and the punisher of the wicked,' while the Delaware fundamental law imposed a veritable confession of Trinitarian faith, professing 'faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed forevermore.' "

In other words, before a man could hold office in those States, he had to swear his belief along those lines!

To this day, as a matter of fact, the Constitutions of Arkansas, Maryland, Mississippi, North Carolina, Pennsylvania, South

Carolina, Tennessee and Texas exclude atheists from certain offices. Zollman says that Pennsylvania and Tennessee also require a belief in an afterlife of rewards and punishments. The fact that these provisions are still on the books shows that separation of church and state was never intended to mean separation of religion and the State—a fact nowhere more evident than in the history of public education in our country.

The First Schools Were Church-Schools

In the early years of our country's history, the schools were in the hands of the churches for the most part. They were mainly Protestant Parochial schools, supported and patronized by the Episcopalians, Presbyterians, Lutherans, Dutch Reformed, and other religious bodies able to bear the expense.

But New England was such a deeply religious section that town, church and school worked together practically as a unit — that is, the State had its finger in the school system, religious though it was.

"The New England schools, in the early period," we are told, "were just as religious as those of the middle colonies. . . . The early New England town was also a unified church organization and represented both the civil and religious government. . . . The State existed to serve the religious organization and may be described as a bibliocracy. Since the New England church and the New England state were, for all practical purposes, merely different aspects of a single unity, it seemed natural that the state should promulgate the first laws governing education."

This frame of mind is illustrated by the Northwest Ordinance, adopted by Congress in 1787, and stating that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education, shall be forever encouraged."

Religion the Partner of Education

Note the mind of Congress: because religion is necessary, schools shall be encouraged; the government is not to con-

duct, but to encourage schools which are to impart religion, morality, and knowledge.

Wilfrid Parons in *The First Freedom* points out that around 1800, various facts about the schools were becoming more and more evident:

"(1) The promoting of universal popular education became an urgent need in a democracy;

"(2) The multiplying sects in each State made it inadvisable to choose between them;

"(3) The job of running schools was beginning to be too big for many churches which were losing their congregations;

"(4) Popular opposition to church control of all the schools was a hard nut for the politicians to crack."

As a result, little by little, the support of these church schools was taken over by the State. Nothing was changed as to teachers or the teaching of religion. The difference was that whereas before the church had paid the salaries and shoul-

dered the expense, all this was now taken care of by public authority.

And this, remember, is fifty years after the First Amendment which, we are told, introduced the principle of separation of Church and State!

Horace Mann's Influence

It was Horace Mann who did more than any other individual to upset traditions in the matter of religion and public education. — But we must not forget that the Supreme Court is to follow not Horace Mann's reasoning, or the practices he introduced; it is the business of the Supreme Court to find out what the Constitution says and how it applies according to the mind of the men who wrote it.

Mann decided that the government must do more than "encourage" schools (as the Northwest Ordinance had put it). It was the work of the government, he thought, to run schools. But a State-run school could not favor any particular religion above another. Hence, State-schools should be "non-sectarian." So far so good. But the

next step in his thinking had no basis, either in logic or tradition! "Sectarian" schools should be denied State funds.

A non-sectarian school, in his mind, was a school that was religious without being dominated by any one denomination. It was Protestant, in other words, just as a union-service, held by several Protestant churches in the summertime, can rightly be called non-sectarian, or, perhaps more accurately, non-denominational.

Horace Mann was Secretary of the Massachusetts State Board of Education from 1837 to 1848. His action had wide influence. Parsons tells us that "between 1837 and 1875, fourteen State Constitutions were amended to forbid State funds for non-public schools."

Catholics, of course, owing to the exclusiveness of their beliefs, may not join in non-sectarian worship, so that the result of Mann's policy was the payment of public funds to non-sectarian Protestant religious schools and the denial of those funds to (sectarian) Catholic schools.

The Strength of Protestant Influence

The public schools went on for a long time under Protestant influence. The Protestant Bible was read aloud before classes each day. The school-boards were Protestant, and they chose Protestant teachers. Where one sect was dominant, the Pastor had a large influence in educational matters. Assemblies were addressed by the ministers, and baccalaureate services were held in Protestant churches.

Naturally enough, the Catholics protested and if, in the early nineteenth century, they were a small minority, their number soon increased so rapidly that they became a force to be reckoned with. What they wanted was exemption from this tax-supported Protestant school-system. And just as the Protestants got tax-money for the Protestant public-school system, so they claimed tax money, with equal justice, for a Catholic public-school system.

To shut off any such possibility, the different Protestant churches got behind legislation forbidding the use of State money

"intended for common schools, in sectarian schools which were not in the regularly administered system of common schools." But since most of the colleges were still under Protestant auspices, they took good care to see that colleges were excluded from this prohibition.

This proves, once again, as late as 1855, that there was no principle of separation of church and state. Otherwise, colleges also would have been excluded.

"The result of all this is well known," says Parsons. "Gradually, but inexorably, 'non-sectarian' lost its original meaning and now meant 'non-religious', 'with no religion at all'; 'sectarian' meant having any kind of religion. The result became that, where State money could not be given to sectarian schools, no religion of any kind could exist in tax-supported schools. The 'non-sectarian' public schools now meant a non-religious school. Sincere Protestants must have seen with increasing despair their hold on the public schools slipping away; today it is practically gone.

And the secularising unbelievers pushed with unrelenting vigor to strip away every vestige of religion from the public schools. Separation of church and the public school now at last meant separation of the school from religion. Separation of church and state gradually took on the same meaning, largely, no doubt, because of the influence of the struggle over the schools."

Why Amend the Constitution?

It must be said, though, that this false notion of separation has taken root mainly in popular thought—and, just recently, in the Supreme Court. It has never held sway in Congress. This is proved by the fact that from 1875 to 1947, resolutions have been brought forward twenty-one times petitioning for an amendment to the Federal Constitution forbidding the use of national monies for sectarian purposes. Clearly, if the separation idea were already in the Constitution, there would be no need to amend it.

And, as the Journal of the American Bar

Association points out, since March 8, 1948, when the Supreme Court blundered, Congress passed a $500,000 appropriation for a chapel at the Kings Point, N. Y. Merchant Marine Academy, and on May 28, the Post Office Department issued a postage stamp honoring the four Chaplains who went to a heroic death in the wartime sinking of the U.S.S. Dorchester.

One can only wonder how long it will take the Supreme Court to arrive at a reversal of their disastrous decision, thus helping to put the United States once again on that religious basis without which it cannot survive.

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