The Catholic Lawyer

Volume 1
Number 4 *Volume 1, October 1955, Number 4*

Article 5

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While Catholics may disagree with some statements that Professor Gardner makes in his thought-provoking article, they will welcome his distinguished support of the thesis, "that the state may, and ought to, regard all school children as equally worthy of its assistance . . . regardless of the religious instruction which [the schools they attend] may offer. . . . [I]t is the only doctrine which wholly succeeds in reconciling the state support of compulsory education with freedom. . . ."

LIBERTY, THE STATE, AND THE SCHOOL

GEORGE K. GARDNER*

THE PRESENT occasion for confirming our American faith is found in two recent decisions of the United States Supreme Court. In 1947 that Court decided that New Jersey did not take a step toward establishing a State religion by offering the same free transportation to pupils who attended schools governed by the Catholic Church as she offered for schools governed by her own municipalities.[1] In 1954 that Court decided that Kansas, South Carolina, Delaware, and Virginia must admit mentally qualified pupils to all schools administered by public authority without distinction of race.[2]

The first of these two decisions was rendered by a bare majority of five to four of the justices. The second was unanimous, but has been received with profound anxiety on the part of large numbers of those to whom it applies. Inasmuch as neither decision affirms anything more than the self-evident proposition that all citizens, regardless of religion or color, are entitled to have equal access to public services provided by public taxation, it behooves us to ask ourselves how it happens that the first decision inspired the dissent of four justices, and the second aroused the popular anxiety which it has. The answer to that question is, I think, fairly clear. It is that the education of the young involves far more than a public service. It involves the whole shape of the future and the ultimate issues of life. The deep feeling aroused by both these decisions offers abundant evidence that we have of late given insufficient

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[1] Everson v. Board of Education, 330 U.S. 1 (1947).

[2] Brown v. Board of Education, 347 U.S. 483 (1954).

consideration to the relationship between the state and the school. Let us then consider that relationship together today.

The nation of which we are citizens was conceived one hundred and seventy-eight years ago. The principles of its life are stated in "The unanimous Declaration of the thirteen united States of America," which begins with the following words:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
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> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

This is a spacious dogma, and is formulated in spacious words. To deduce its correct application to any specific problem requires us to give to every word of the Declaration its widest meaning and its fullest effect.

Let us begin with the word "men." Everyone now agrees that this includes women; and probably few would now deny that it includes children newly born. But no truth is more self-evident than the fact that no new-born child is capable of asserting for himself the rights set forth in the Declaration of Independence. Someone must assert these rights for him; and no human society can escape the necessity of deciding the legal question: "Who shall look out for each child?" We are assured by those who have inquired into the subject that mankind are, and have always been, well-nigh unanimous that each child's parents are that child's immediate guardians,[3] and indeed this seems self-evident in the nature of things. Now if all men and women are equal before the law, and if parents are the lawful guardians of their children, it must follow that the rights and duties of each married couple with respect to their children are equal to the rights and duties of every other married couple with respect to theirs.

The nation which was conceived in the Declaration of Independence was born in 1787 when its present Constitution took form. The first clause of the first article of the Bill of Rights annexed to that Constitution declares that:

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

"Religion" means the totality of a man's ideas about his relationship to the past and to the future, about his relationship to the other beings around him, and about the meaning and purposes of his life. The Constitution says that Congress shall not dictate, nor interfere with, any man's religion. It is now settled that the Fourteenth Amendment forbids any State government to do so; and

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[3] 8 JAMES HASTINGS (ED.), ENCYCLOPAEDIA OF RELIGION AND ETHICS 423 (1930):
"*Marriage.* Marriage has two main functions: it is the means adopted by human society for regulating the relations between the sexes; and it furnishes the mechanism by means of which the relation of a child to the community is determined. Owing to the preponderant importance which has been attached to the former function, the more strictly social functions of marriage have been largely overshadowed by its moral aspect, and it has not been sufficiently recognized that the function of marriage as the regulator of social relations may be of the most definite kind where the institution is of a very lax and indefinite order when regarded from the moral standpoint of civilized man. The institution of marriage may be regarded as the central feature of all forms of human society with which we are acquainted."

of course the prohibition applies *a fortiori* to the Supreme Court of the United States. Under the Constitution every man is free to determine his own religion—but here again the child does not stand on the same footing as the adult. No healthy child can grow up without acquiring ideas about his relationship to the past and to the future, about his relationship to the other beings around him, and about the meaning and purposes of his life. The ideas which he thus acquires will be largely determined by his associates and his environment. His associates and his environment will be largely determined by his guardians. If the child's parents are his lawful guardians, the child's religion must lawfully be left in his parents' hands.

Let us now revert to some of the other spacious words in which the Declaration of Independence formulates its dogma. If the premises which we have thus far advanced be accepted, certain conclusions must follow as to the meaning of some of these other words. "Life" cannot mean merely the opportunity to enjoy this present existence. It must include the right to have offspring; and the Supreme Court of the United States has so held.[4] "Liberty" cannot mean only the right to some free time and some measure of privacy. It must include the right to exert one's will upon the course of history, not only by speaking one's mind, but by imparting one's mind to one's children; and the Supreme Court has three times affirmed this right against all the authority of the State.[5] "Created" cannot refer simply to the biological processes of conception and birth, but must include education; for it is self-evident that at birth the creation of such "men" as the Declaration refers to is not yet complete. And here we encounter the fact that not only the rights, but also the obligations, of parenthood are implicit in the words of the Declaration and the First Amendment; for the Supreme Court has decided that it is within the scope of legislative authority to determine that only within the shelter of a monogamous marriage may the right to have offspring be exercised and the creation of new citizens of the Republic be carried on.[6]

It is not possible to deduce the authority of government to prohibit voluntary polygamy from any system of premises which sees in the concept of liberty the opportunity to escape either from the future or from the past. That authority can be deduced only from religion—from some idea about man's relation to the past and to the future—from the conviction that only a monogamous marriage is suited to the creation of men who are equal and who are endowed with unalienable rights.[7] Such a belief makes

[4] Skinner v. Oklahoma, 316 U.S. 535 (1942).

[5] Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

[6] Reynolds v. United States, 98 U.S. 145 (1878); Davis v. Beason, 133 U.S. 333 (1890).

[7] "Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound." Reynolds v. United States, 98 U.S. 145, 165-166 (1878).

sense only if parents have both the right and the duty to control the educational environment of their children. Mere procreation can be pursued as well—perhaps better—through polygamy as through any other regime.

The dogma that the education of children is entrusted by God to their parents was not, of course, an invention of the men who drafted the Declaration of Independence and the Constitution of the United States. On the contrary, they took this dogma so completely for granted that it did not occur to them to articulate it in direct terms. Long before 1776 this was the doctrine of the Church of England, expressed in the Form for the Solemnization of Matrimony;[8] and it was, and still is the doctrine of the Roman Catholic Church.[9] It will be helpful at this point to digress a little from our main theme and to point out a few facts of church history which are familiar to scholars, but the significance of which is not familiar to the American people at large.

American Protestants are sometimes encouraged to suppose that the Roman Catholic considers the Church as something ultimate to which everything else should be subordinated, and that this creates a danger lest the primary and essential cell of society, the family, with its well-being and its independence should come to be considered from the narrow standpoint of ecclesiastical power, forgetting that man and the family are by nature anterior to the church. This impression on the part of Protestants is not without its historic causes. Nevertheless it originates in a very fragmentary and imperfect knowledge of the whole history of the great Church which created Western Civilization out of barbaric tribes and the ruins of the Roman Empire, and from which every

[8] It has seemed appropriate to quote here from THE BOOK OF COMMON PRAYER OF THE CHURCH OF ENGLAND (Wright and Gill, Printers to the University, Oxford, 1774):

"*The Form of Solemnization of Matrimony:* Dearly beloved, we are gathered together here in the sight of God, and in the face of this Congregation, to join together this Man and this Woman in holy Matrimony, which is an honorable Estate . . . and therefore is not by any to be enterprised nor taken in hand unadvisedly . . . but . . . duly considering the causes for which Matrimony was ordained.

"*First.* It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name."

[9] In the New York Times of October 28, 1939 (p. 8, cols. 7 and 8), there will be found printed the Encyclical Letter of Pope Pius XII, dated October 27, 1939. This Encyclical contains the following passage:

"To consider the State as something ultimate to which everything else should be subordinated . . . cannot fail to harm the true and lasting prosperity of nations. . . . there would be danger lest the primary and essential cell of society, the family, with its well-being and its growth, should come to be considered from the narrow standpoint of national power, and lest it be forgotten that man and the family are by nature anterior to the State, and that the Creator has given to both to them powers and rights and has assigned them a mission and a charge that correspond to undeniable natural requirements. . . .

. . . . .

"The charge laid by God on parents to provide for the material and spiritual good of their offspring and to procure for them a suitable training saturated with the true spirit of religion cannot be wrested from them without grave violation of their rights.

"Undoubtedly [education] should aim as well at the preparation of youth to fulfill with intelligent understanding and pride those offices of a noble patriotism which give to one's earthly fatherland all due measure of love, self devotion and service. But on the other hand [an education] which forgot . . . to direct the eyes and hearts of youth to the heavenly country would be an injustice to youth, an injustice against the inalienable duties and rights of the Christian family, and an excess to which a check must be opposed, in the interests even of the people and of the State itself."

Protestant communion springs. For the truth seems to be that the church's official doctrine—at least from the twelfth to the sixteenth century—was that a valid marriage occurs whenever a man and a woman voluntarily and understandingly assume the obligations of that estate, whether or not a priest be present, and that the celebration in church is no more than a public acknowledgment of a sacramental relation which exists by mere force of the parties' consent. This is the source of the doctrine of common law marriage, which thus seems to have been originated by the Church itself.[10] It was not until the Protestant Reformation had torn the Western Church into fragments that the Council of Trent by its *Decretum de Reformatione Matrimonii*,[11] attempted to enlist the most powerful of all human passions in support of church unity by ordaining that no marriage should thenceforth be valid unless celebrated by a priest. We are told that the decree "was carried against the opinion of 56 prelates, who held that the church had no power to nullify the effect of a sacrament";[12] that "No attempt was made to introduce the decrees of the Council of Trent into England";[13] and that "Pius IV did request Mary, Queen of Scots, to publish them in Scotland, but the Reformation was on and she dared not do it."[14] It was not until 1753—only twenty-three years before the Declaration of Independence—that the King of Great Britain in Parliament emulated the Council of Trent by enacting that no marriage could validly be contracted otherwise than with churchly formalities, and even then he excepted the Quakers, the Scots, and the Jews.[15]

From this brief glance into history we may, I think, draw an inference as to why the Supreme Court decisions to which we alluded at the beginning of our present discourse have produced a sense of anxiety and confusion in so many minds. The Declaration of Independence was addressed to a young population, eager and able to embark without outside assistance upon the navi-

[10] This doctrine is explained in detail, and some of the supporting evidence is cited, in 2 POLLACK AND MAITLAND, THE HISTORY OF THE ENGLISH LAW 365-370 (2d ed. 1898).

[11] The following extracts are taken from the translation of the *Decretum de Reformatione Matrimonii*, which appears in OTTO E. KOEGEL, COMMON LAW MARRIAGE 22-28 (1922):

"Although it is not to be doubted, that clandestine marriages, made with the free consent of the parties contracting, are valid and true marriages, as long as the Church has not rendered them invalid; and consequently, that those persons are justly to be condemned, as the holy synod doth condemn them with anathema, who deny that such marriages are true and valid. . . . Nevertheless, the holy Church of God has, for most just reason, at all times detested and prohibited them. But, whereas the holy synod perceives that those prohibitions, by reason of man's disobedience, no longer avail . . . therefore, treading in the footsteps of the sacred Council of Lateran, celebrated under Innocent III, it ordains that, for the future . . . the marriage shall be proceeded with in the face of the church; where the parish priest, after having questioned the man and the woman, and having learnt their mutual consent, shall either say 'I join you together in matrimony, in the name of the Father, and the Son, and of the Holy Ghost,' or shall use other words according to the received rite of each province. . . . Those who shall attempt to contract marriage otherwise than in the presence of the parish priest, or of some other priest by the permission of the said parish priest, or of the ordinary, and in the presence of two or three witnesses; them doth the holy synod render utterly incapable of thus contracting and declares such contracts void and null, as by the present decree it declares such contracts void and annuls them. . . ."

[12] *Id.* at 22.

[13] *Id.* at 28.

[14] *Ibid.*

[15] Lord Hardwicke's Act (An Act for the Better Preventing Clandestine Marriages), 1753, 26 GEO. 2, c. 33.

gation of all the oceans and the conquest of the American West. The Declaration, and the Constitution which followed it, were formulated by men of English and Scottish extraction steeped in the fruits of two centuries of British Protestant thought. There were very few Catholics in the country, and most of the Negroes were slaves. For a full century and a half following the Declaration of Independence the culture of the American people was nurtured in the Protestant household, upon which government probably rested as lightly as it has ever rested in the recorded history of mankind. Throughout the same century and a half every striking event of history seemed to demonstrate that the culture thus nurtured and cherished was destined to control the world.

But during the last fifty years of this period—from 1876 to the 1920's—the course of history began slowly to change. In the South the Negro had been freed from slavery and set about, humbly and patiently, to acquire the mechanical and political technology of the whites. In the North the country was inundated by a new population from Europe, largely Catholic in tradition, which was employed under Protestant management in doing the heavy work of industrializing the economy. This population was eager to rise and to learn the new techniques of engineering, finance, and government; but it was not eager to adopt the Protestant religious doctrine which it instinctively recognized as no more than an offshoot of its own. Now that this process has run its course—now that the Catholic and the Negro have mastered the technical and political arts of our economy—the British-American Protestant finds his home invaded by radio and television and his children drawn off to great schools of unprecedented magnitude and efficiency,[16] conducted by a new caste of "educators," who seem every year to absorb a larger share of his income, and to play a larger part in the direction of his children's lives. The Supreme Court has confirmed his constitutional right to send his children to a private school or church school of his own choosing,[17] and probably all state statutes permit it, but such a school may be too remote for access, or may cost too much. Meanwhile, as a result of the legislation of the 1930's the State has assumed the vital function—formerly discharged by the family—of providing social and economic security for all its members. All this creates a situation without any real precedent in American political life. Surely never since the Declaration of Independence has the State assumed so formidable an aspect *vis-à-vis* the family and the household. Probably it has never done so since the days of the seventeenth century when the Puritan oligarchy attempted to govern every aspect of the life and thought of the colonists on the shores of Massachusetts Bay.

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[16] Brown v. Board of Education, 347 U.S. 483, 489-490 (1954): "An additional reason for the inconclusive nature of the [Fourteenth] Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost non-existent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. . . . Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown."

[17] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

The history of Western civilization permits us to plot—at least approximately—the trajectory of its social ideas. That trajectory discloses the steadily rising independence, and the steadily growing importance of the monogamous household occupied by one married couple with their children not yet of age. The doctrine that a true marriage results only and always from the free consent of the parties—the doctrine maintained by the Western Church up to the Reformation—must necessarily have had a strong tendency to release young adults from the control of their parents, their relatives, and their social superiors, and to encourage them to begin a new life on their own. It may fairly be inferred from the Council of Trent's *Decretum de Reformatione Matrimonii* already quoted[18] and from other well-known events of the Protestant Reformation, that that reformation was largely inspired by the belief that the Church, as represented by a celibate priesthood, had assumed too large an authority over marriage, and over the home. Finally, the well-known events of the American Revolution make manifest—what I have already tried to demonstrate by an exegesis of its state papers—that that Revolution was, in its ultimate essence, a rebellion of the monogamous household, occupied by a single family, against the economic authority of the State. It is not at all unreasonable to suppose that the inventiveness and expanding energy which have hitherto characterized Western civilization are the direct result of this release of the young adults from the control of old people and old institutions, and that unless this release continues to be practiced the inventiveness and expansion will cease.

The Protestant Reformation and the American Revolution both followed the discovery and opening of the Americas—an event which presented the peoples of Western Europe with a rapidly expanding world. Now that the frontiers of that world appear to be closing—now that the production of goods has been mechanized to a degree unprecedented in history—now that the State has assumed a vast and growing responsibility for defense, for subsistence, and for education — the monogamous household, occupied by a single family, confronts the alternative, either of finding itself recaptured by the Church and the State from which the Protestant Reformation and the American Revolution released it, or of bringing both Church and State into its service as agencies to sustain its life. That the first of these possibilities is real, and presents a genuine danger, is confirmed by two bits of evidence. The first is a decision rendered in 1937 by a German court of alleged justice.[19] The

[18] See note 11, *supra*.

[19] The complete report of this decision, which may be found in *Deutsche Justiz* (Official Gazette of the German Administration of Law, Bulletin of the Department of Justice), Ausgabe A, No. 47, p. 1857, published at Berlin, Nov. 26, 1937, has been translated by Dr. Anton-Hermann Chroust, formerly a sub-judge (Referender) in Bavaria, now Professor of Law, University of Notre Dame, Notre Dame, Indiana, as follows:

"PARENTS WHO USE THEIR EDUCATIONAL INFLUENCE ON THEIR CHILDREN IN SUCH A MANNER AS TO BRING THESE CHILDREN INTO OPEN CONFLICT WITH THE NATIONAL SOCIALISTIC IDEA OF COMMUNITY ABUSE THEIR RIGHT OF GUARDIANSHIP.

District Court, Waldenburg,
Silesia, November 2, 1937,
—VIII, 195—

Excerpts from the *ratio decidendi:*

The parents of the children belong to the sect of International Bible Students. Like all Bible Students, this sect is concerned not only with purely religious matters but also deduce from their religious premises the necessity to deny the simplest and most self-evident duties towards the State and the German people. Obstinately they refuse, even

second is a paraphrase of the opening sentences of a speech delivered in 1933 by the Ambassador of the Union of Socialist Soviet Republics at a public dinner tendered to him by citizens of Massachusetts at Boston on the occasion of the recognition of his Government and the acceptance of his credentials by the President of the United States.[20] Neither this speech, nor this decision, expresses the American conception of

on solemn occasions, to take part in the German salute, and by doing so express their disagreement with the principles upon which the new German state rests. Purposely they put themselves outside the German community. The father admits openly that even in case of war he would refuse to take up arms. The philosophy which the parents espouse is inimical to the will to resist by armed force, and, therefore, capable of impairing the foundations of the State.

This conviction of the parents is also transmitted to the children. Of course, the parents have denied this during the hearing; they have declared that they did not influence the children's general view of life (Weltanschauung). But such an attitude, as encouraged by the Bible Societies, dominates the whole of life. It is a matter of practical experience that such a philosophy of life, expressing itself daily in the narrow family circle, influences the children, even though it is not put in express words. Indubitable evidence has also been introduced to prove that in this case such active influence actually exists. The father, when admonished by the court, had to admit that he had already been penalized for not sending his children to National Socialistic festivals. The father, in this connection, also made the plausible statement that his children did not care for such meetings, and that they themselves had expressed the desire to be excused from going. This statement only goes to prove the strength of the influence which actually originates from the parents; and, furthermore, the degree to which the children have already succumbed to such influence.

This statement of fact compels us to the following juristic considerations:

If parents through their own example teach children a philosophy of life which puts them into an irreconcilable opposition to those ideas to which the overwhelming majority of the German people adheres, then this constitutes an abuse of the right of guardianship as expressed in Par. 1666 of the Civil Code. This abuse of power of guardianship endangers to the highest degree the welfare of the children, inasmuch as it ultimately leads to a state of mind through which the children will some day find that they have cut themselves off from the rest of the German people. To avert such danger the Guardianship Court has to take the necessary steps according to Par. 1666 of the Civil Code. A permanent remedy in this respect can only be found if the right of guardianship over the person is withdrawn from the parents, because only through such withdrawal we can be sure that the evil educational influence of the parents is eliminated and broken.

In accordance with the opinion of the Guardianship Court, the following must be admitted: the law, as a National Socialistic form of State order, entrusts German parents with the right to educate only on condition that this right is exercised in a manner which the people and the State have a right to expect—a condition which is not specifically expressed by the law but which must be considered as something self-evident. Here in particular we have to remember that all education must have as its ideal aim the creation of the belief and conviction in children that they are brothers forming a great nation; that they are molded into the great union of the German people together with all other German comrades through the sameness of their fundamental ideas. Whoever in the exercise of a purely formal right to educate his children evokes in those children views which must bring them ultimately into conflict with the German community ideal does not comply with those self-evident presuppositions. Therefore, out of purely general considerations the right to educate must be denied to such a person without the necessity of having to refer to the implicit presuppositions of Par. 1666 of the Civil Code."

[20] Here the author violates the principle that an attorney is not to testify as a witness in a case which he tries. But in the present instance he has no recourse except his personal memory of events at that dinner, which he does not believe to be at fault. A number of speeches had been addressed from the head table to the distinguished guest, speaking of him as "the Russian Ambassador" and recalling happy transactions between Boston and Russia in the past. The Ambassador began his response, in substance, as follows: "Mr. Toastmaster, Ladies and Gentlemen: The Union of Socialist Soviet Republics is composed of some fifty peoples, and—while of these the Russians are

equality between men, or between religions and races. We seek the equality, not of the melting pot, but of the self-directed home. "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement."[21] Americans will not willingly permit the trajectory of Western civilization to dip below the point which it achieved in England two centuries back.

What, then, are the principles upon which our present problems should be approached? We, the political heirs of the Declaration of Independence, cannot do otherwise than maintain the doctrine of that Declaration; and, if we truly and sincerely maintain it, we may justly ask others to do the same. Let us read the opening passage of the Declaration again:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume . . . the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> We hold these truths to be self-evident, that all men are created equal, that they are endowed by the Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

This does not say that the political bands which connect different peoples or different households are always unnecessary, nor does it say that they ought always to be dissolved. It does say that it may become necessary to dissolve them, and that that necessity arises whenever they have the effect, either of subordinating one of the two peoples or households to the other or of destroying the liberty or happiness of either one. No political bands are consistent with liberty and equality unless they are borne willingly out of mutual respect and a sense of common interests. When they are felt as restraints, when they must be enforced by compulsion, a "separate and equal station" affords the only recourse by which liberty and happiness can be preserved.

There is nothing contrary to this in the decision that compulsory segregation of the races is unlawful when practiced in a school system administered by public officers. That decision recognizes that the white and the black peoples pay the same taxes and vote for the same school boards, and asserts that under these conditions an "equal station" cannot be a "separate station" but must be a station in the same ranks. But if it be true, in any particular area, that parents will not willingly entrust their children to teachers of another color or to the companionship of children of a different race, then liberty and happiness demand the dissolution of so much of the political bands between the races as connects them in support of a publicly administered school system, and requires that they be permitted to provide for their children's education in some other way. One obvious way to do this would be for the state to credit each child of school age with a fixed sum of money, and to permit the child's parents to apply this money to the support of a school of their own

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both the most numerous and the most powerful — it is the policy of my Government to treat *all* the peoples for whom it speaks on the principle of *complete equality*. It is, therefore, the desire of my Government that I should be known as the *Soviet* Ambassador, and *not* as the Russian Ambassador."

[21] William Pitt, Earl of Chatham, in *Speech on the Excise Bill*, as reported in JOHN BARTLETT, FAMILIAR QUOTATIONS 230 (12th ed. 1948).

choice. Congress has adopted a similar method in the distribution of GI educational funds. There is nothing in the Constitution of the United States nor in any Supreme Court decisions which forbids a state to pursue the like course. On the contrary, this would be a direct application of the principle of religious freedom which the Constitution of the United States affirms. The question to be asked about such a proposal is not, "Does it violate the Constitution?" The questions are, "Is it necessary in order to give our children the kind of an education that we desire for them?" and, if so, "How can it practically be arranged?"[21a]

Let us now turn to the issue raised by the appropriation of public money to paying the expenses of children who attend church and private schools. I urge upon you, in all humility, that the Declaration of Independence requires that free public transportation, if offered to any school children, be offered alike to all school children, that the Supreme Court was indisputably correct in holding that the First Amendment does not forbid this,[22] and that the opinions of the four justices who dissented from that decision cannot be sustained. Surely a group of families sufficiently numerous to maintain an adequate school for their children cannot be denied the name of a "people." Surely there can be no stronger cause impelling one people to separate itself from another than the fact that the two peoples cannot agree as to what the character of their children's education ought to be.[23] And if—with respect to their schools—the two peoples adopt a "separate station," that station is not an "equal station" if both peoples are taxed to maintain a system of free transportation for school children which is available to only one.

The consequences of the Declaration of Independence do not stop there. The ultimate justification for state-compelled school attendance is nothing other than that the whole population must have training ade-

[21a] As this goes to press, the rapid transit trains in Boston are carrying an advertisement which depicts a nurse wearing on her face a disinfecting gauze filter and leaning solicitously over three babies in three bassinets. The legend reads "Just born—all Americans—don't infect them with racial and religious hate." In our present effort to put this wholly admirable sentiment into practice, it is worth while to remember that the babies run a much larger risk of infection from strangers breaking into the hospital than they do from the nurse. The people whose political ancestors wrote the Declaration of Independence and the Constitution are—and ought to feel—honored that men of other memories and other traditions should seek full membership in the society which they built; but full membership can be achieved only by a hearty acceptance of all the rules. Loyalty, and the civilizations which rest on it, are very delicate things. It is only in an atmosphere of confidence and affection that it is possible to transmit them from one generation to the next. Every racial and religious hate which exists, or is recorded in history, originated in the attempt of one people to impose its will, its company, or its ideas of life on another. To reciprocate the intrusion when opportunity offers is only human—but that is the way to make hatred deathless, as the whole history of mankind attests. It is only by waiting until both peoples perceive the necessity and the justice of solving their common problems together that racial and religious grievances can be cast into the dustbin of the past.

[22] Everson v. Board of Education, 330 U.S. 1 (1947).

[23] "Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 641 (1943).

quate to enable it to defend its boundaries and to sustain the activities which are indispensable to its material life. Attendance at school is no more required in the sole interest of the individual than is service in the armed forces. Both are limitations on freedom of choice imposed by practical necessity. The law ought to be eager to render these limitations as flexible and as bearable as practical necessity permits. There is no more reason in principle why the taxpayers should not make the same *per capita* contribution to the expense of a school administered by the authorities of a church or a parent's association as they make to the expense of a school administered by the authorities of a town or a county, than there is why the taxpayers should refuse rations and weapons to a volunteer military company merely because the company prefers to elect its own officers and to adopt its own drill manual and table of organization.

The doctrine that the state may, and ought to, regard all school children as equally worthy of its assistance, regardless of how the schools which they attend are staffed and governed, and regardless of the religious instruction which they may offer, is not just now very popular; but it is the only doctrine which wholly succeeds in reconciling the state support of compulsory education with freedom, and the arguments which can be offered against it will not bear examination in the light of the principles which we profess. As to some schools, it may be said that the proposal subsidizes the rich. The truth, I submit, is that it involves nothing more than compensating the rich for their contribution to the public service in like manner as they are compensated when they serve under arms. As to some schools, it may be said that it subsidizes religion and that the Constitution forbids this. The truth, I submit, is that you cannot bring up a child without imparting to it some religion, and that you cannot subsidize education without subsidizing religion in some way. The Constitution does not forbid Congress, nor does it forbid any state, to subsidize religion. It forbids Congress to "establish" religion, or "prohibit the free exercise thereof." If we read "prohibit" to include "place burdens upon" and "discourage,"[23a] it will, I submit, be apparent that a system under which all school children receive the same measure of support from the taxpayers comes closer to reflecting the spirit of the Declaration of Independence and the First Amendment than a system under which the right to receive any measure of support from the taxpayers is conditioned upon attendance at a municipally controlled school. A state school cannot escape being, in some measure at least, a state church. Only when Protestants are willing to recognize this fact, and to act upon it, can they fairly ask the Catholic Church to reconsider the Council of Trent's *Decretum de Reformatione Matrimonii*[24] and to follow its fifty-six dissenting prelates in holding that the Church exists to serve the family, not the family to serve the Church.

So my sermon comes to its conclusion. I have endeavored to confine it to principles. I have not attempted to formulate plans of specific action for the multitudinous occasions of life. Such planning is for the committee-room, not for the pulpit. The free peoples of this world are moving into an

[23a] There is, it seems to me, really no other way to read it. Neither Congress nor anyone else has any way of prohibiting anyone from doing anything except by placing discouraging burdens on the activity which it attempts to forbid.

[24] See OTTO E. KOEGEL, COMMON-LAW MARRIAGE 22-28 (1922).

era fully comparable—both in its magnificence and its challenge—to the greatest of their eras which have gone before. In such an era the practices of the past cannot be adopted as the only permissible rule of action. To do so is inevitably to frustrate and confine our energies and to leave unemployed, and therefore unfruitful, the talents entrusted to our care. But only by reflecting upon past failures and past successes can we discern those timeless principles of human action out of which all human successes must spring. These I have endeavored to point out, not relying on my own feeble reason, but on the records of the past victories by which we live. So I will close in the ancient spirit of New England by repeating the injunction which Pastor Robinson left with his flock of Pilgrims as they departed from Leyden for the voyage across the stormy Atlantic; that they strive—not to remember his doctrine too precisely—but rather to remember the sources from which he drew it; "for he was very confident the Lord had more truth and light yet to breake forth out of his holy Word."[25]

[25] These words of Pastor Robinson are reported by Edward Winslow in HYPOCRISIE UNMASKED . . . *Whereunto is added a briefe Narration of the true grounds or cause of the first Planting of New England* 97 (Printed by Rich. Cotes for John Bell at the three Golden Lions in Cornhill, neare the Royall Exchange, 1646).