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Editorial Comment

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Editorial Comment

A vast majority of lawyers in the fifty States were shocked to read the decision of the Supreme Court of the United States in *Engel v. Vitale* which declared that the prayer approved by the Board of Regents of the State of New York to be recited daily in public schools was contrary to the Constitution.

The prayer reads, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country."

Mr. George Reed, Associate Director of the Legal Department of the National Catholic Welfare Conference and a specialist in legal matters affecting Church-State relationships, has analysed the decision as being a very limited one covering only the prayer adopted by the Board of Regents.

In stressing his view that the Court's holding should not be construed as a categorical, all-inclusive prohibition against the recitation of prayer in the public schools, as such, Mr. Reed has stated:

Cases are already in the Supreme Court involving the constitutionality of Bible reading and the recitation of the Lord's Prayer. Only the action by the Court in this or similar cases will give us the answer to the full implication of the decision in *Engel*.

Until then, it is fair to assume that the *Engel* holding is limited to prayers composed by government. True, at one point in the decision, the Court refers to the business of writing or sanctioning official prayers as being beyond the scope of governmental authority, but the facts of the case only project for decision a prayer composed by the State. The holding is so limited.

Recently however, a short article in *Commonweal* magazine written by William B. Ball, Executive Director and General Counsel of the Pennsylvania Catholic Welfare Committee, has taken issue with Mr. Reed's narrow interpretation of the

Engel v. Vitale case. Under Mr. Ball's interpretation, the decision contains far more extensive implications than those suggested by Mr. Reed and constitutes a basic pronouncement on the fundamental, recurring constitutional problem presented by the interrelation of religion and government.

According to Mr. Ball, in his *Commonweal* article,

The decision goes far beyond the outlawing of prayers composed by government. Primarily it involves neither the fact a prayer was composed nor the fact government officials did the composing. What the court struck down was religious exercises or religious practices in the public schools.

In view of this difference of expert opinion as to the effect of the *Engel v. Vitale* decision, and of the great legal and social significance of the position adopted by the Supreme Court, *The Catholic Lawyer* has invited Mr. Ball to expound his analysis of the case at length in a two-part article, the first part of which appears in this issue on the immediately following pages. Entitled "The Prayer Case: Dilemma of Disestablishment," it poses the problems which in Mr. Ball's opinion are raised by *Engel v. Vitale*. The Autumn issue of *The Catholic Lawyer* will contain the second part of the article which will present Mr. Ball's solution to these problems.

Mr. Reed has also been invited but since his detailed analysis of the case has already appeared elsewhere in print and has received widespread publicity in both the public and Catholic press, he has confined his comments on the case, in this issue of *The Catholic Lawyer*, to its effect on the federal aid to education controversy. His article entitled "The 'Permeation' Issue in Federal Aid to Education" immediately follows the article by Mr. Ball.

Since experts differ on the interpretation to be applied to the *Engel* case, it is obvious that some clarification is needed as an aid in determining proper steps to be taken to combat its effect. It is hoped that the material on the case in this and subsequent issues of *The Catholic Lawyer* will help in some degree to achieve this clarification.

Elsewhere in this issue there appear three articles which center on the theme of the Church-State controversy. The first, written by the noted Boston priest and canon law authority, James A. O'Donohoe, defines the principles fundamental to the Church-State controversy and attempts to arrive at a practical, workable doctrine of Church-State relations which is, in addition, compatible with the tenets of Christian theology. The second, by New Jersey's prominent governor Richard J. Hughes, stresses the individual—his conscience, and the State and considers the problem of preservation of individual liberty in light of the Communist threat to our social and political system. The third, by Charles Whelan, S.J., is an important

and scholarly treatise on the "higher law" doctrine in Bracton and St. Thomas which seeks to define their respective approaches to the concept of divine law in the political order.

All three of these articles can be classified as responsive to the challenge which John Courtney Murray, S.J., has laid down with respect to the exposition of a public philosophy.¹ *The Catholic Lawyer*, as a forum for response to this challenge, will continue to devote a portion of each of its future issues to material by recognized experts on various aspects of this general theme.

A handwritten signature in black ink, appearing to read "Edward Tegen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

EDITOR

¹ 7 CATHOLIC LAWYER 270 (1961).