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An Exposition and Analysis of Policy Arguments Against FEDERAL AID TO PAROCHIAL SCHOOLS

ARTHUR A. NORTH, S.J.*

THE PRESIDENT'S MESSAGE to Congress, February 20, 1961 on federal aid to education initiated a public debate which revived many old problems and gave birth to new ones regarding the constitutionality and the propriety of federal aid to the parochial school. Present day Americans must find within the framework of our Constitution a viable solution to these problems or their failure to do so will have serious consequences for the American democratic way of life.

The opening paragraph of the President's message electrified the American people and presented to them a new vision of broad dimension. "Our progress, as a nation," he said, "can be no swifter than our progress in education. Our requirements for world leadership, our hopes for economic growth, and the demands of citizenship itself . . . require the maximum development of every young American's capacity. The human mind is our fundamental resource."

But the sweep of these ideas, "world leadership," "hopes for economic growth," "the demands of citizenship itself," "every young American's capacity," the human mind as a "resource," was soon to be contracted and deprived of its magnificent reach by a restrictive sentence. This, in effect, denied equal opportunity, equal treatment to several million American children and their families.

In accordance with the clear prohibition of the Constitution, no elementary or secondary school funds are allocated for constructing church schools or paying church school teachers' salaries, and thus non-public school children are rightfully not counted in determining the funds each state will receive for its public schools.

After many months of debate in the market place and in the halls of

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Congress by statesmen and religious leaders, by laymen and professional educators, old arguments against federal aid to parochial schools have been refurbished for duty in the twentieth century and have been met with remodeled refutations with the result that "the clear prohibitions of the Constitution" have lost some of their clarity.

Opposition to a policy of federal aid to elementary and secondary education stems from three basic positions held tenaciously by different segments of the American community. The first basic position questions the authority of the federal government in the field of public education. Under our Constitution, jurisdiction over education is not a power granted to the federal government but one reserved to the states. Consequently, any federal legislation in this area would be considered to be an interference with state and local "home rule" and might give credence to the fear that the federal government was planning the nationalization of education. This, it is held, would entangle education in national politics with all the evils consequent on such entanglement, including the control of educational policies for the whole nation. The second position, perhaps less understood though frequently discussed, revolves about the constitutional issue of Church and State and the location of the so-called Jeffersonian "wall of separation." Federal grants or assistance of any kind or description to private or parochial schools are considered by many as aid to a church, and all such aid, it is maintained, is a violation of the first amendment of the American Constitution as interpreted by the Supreme Court of the United States. In the *Everson* case, the Court, speaking through Mr. Justice Black, said:

[T]he "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.¹

The third position focuses its attention on and challenges the propriety of the parochial school system in our American democratic society. Although the first two positions are important and not necessarily irrefutable, an exposition and analysis of the third group may be more profitable in the present context. One does not have to be a lawyer or an expert to weigh and evaluate the evidence of certain policy positions and arguments against federal aid to the parochial school.

Purpose of the Parochial School

One explicit or implicit assumption of those who oppose aid to parochial schools is that the sole and exclusive purpose of the parochial school is the spreading of the Catholic religion. A Justice of the United States Supreme Court once likened the parochial school to that of an extended Sunday School. Another, the late Mr. Justice Jackson in his dissenting opinion in the *Everson* case, said:

I would be surprised if any Catholic would deny that the parochial school is a vital, if not the most vital part of the Roman Catholic Church. If put to a choice, that venerable institution, I would expect, would forego its whole service for

¹ *Everson v. Board of Educ.*, 330 U.S. 1, 15-16 (1947).

mature adults before it would give up education of the young, and it would be a wise choice.²

While these are but the opinions of two Justices of the Supreme Court, a large group of Americans, some ignorant, some intelligent, most very sincere, is convinced that the parochial school, because of its religious affiliation, is a strange, if not an undemocratic institution; that it therefore is not and cannot be a co-partner with the public school in the American system of education; and consequently, that it cannot be the object of public welfare measures. One may be surprised, and even shocked at this erroneous concept of the parochial school; one may think it ridiculous. Ridiculous or not, this concept is part of a widely accepted public image. It was reflected in the official testimony of several groups at the Congressional Hearings on Federal Aid to Education in 1961.

A spokesman for the Protestants and Other Americans United presented the official position of his organization in these terms:

In the American way of life, elementary education is a function of the democratic state, expressed through agencies of local government. To use public funds for competing sectarian enterprises in that educational area would discriminate against an American institution which is peculiarly the pride of our democracy.

An official representative of the United Presbyterians had this to say:

It is our conviction that parochial education accentuates differences, causing social cleavage.

The Conviction of the National Council of Churches put it this way:

Only the public school is established as a public concern of all the people, supported by adults, open to all children, responsible to the whole society. *This is the only American system.* That does not mean that the private and religious schools are un-American or less fully American.

Lest the full force of this last statement be underestimated, Bishop John Wesley Lord's policy statement for the same national organization should be cited:

It is my contention that the private and parochial system is only safe in a democracy so long as the public system is left strong and free to combat the undemocratic features of private school education.

These assertions have been made many times. They express the opinion of a considerable segment of the American public. Are they true? Is the spreading of the Roman Catholic religion the sole or exclusive purpose of the parochial school? Are these schools undemocratic, un-American and consequently outside the pale of welfare legislation?

Catholic parents desire for their children personal development and careers similar to those which non-Catholic parents seek for their children. Every parent hopes and prays that his children will become upright and conscientious men and women; that they will be devoted to God and Country; that they will be successful doctors, lawyers, statesmen, or businessmen, achieving honor and distinction in any one of the myriad walks of life. Every practical-minded and devoted parent is well aware that the road and the journey to adult happiness and a successful career begins with elementary and secondary education of a high quality. If the parochial school was merely an "extended Sunday school," if the normal secular subjects were not taught, or were not taught well in it, almost no

² *Id.*, at 24.

Catholic parent would be willing to handicap his children by sending them to a parochial school. All the laws of Church or State could not persuade a Catholic parent to deprive his child of the basic foundation for his future success and happiness. State authorities, moreover, could not accept as they do attendance at parochial schools as satisfying a compulsory attendance law. It should be noted, too, that Catholic grade school graduates have had their share of success in the scholarship examinations conducted by various states and the National Merit program. In both of these, a winner needs more than a knowledge of Catholic prayers and dogma.

Although the exclusive purpose of the parochial school is not the teaching of religion, the teaching of religion is certainly an essential function of the school. Catholic parents send their children to these schools for a twofold reason: because they believe in the importance of secular learning and because they recognize the need for moral and religious training. Secular learning taught in a religious atmosphere, where God and His divine authority is recognized and praised, where prayer and the duty one owes to God, his fellowmen and his country, are taught by word and example, more nearly prepares the student for the demands of adult life and conforms more closely with the fundamental nature of man than secular learning in a secular atmosphere.

Are Parochial Schools Undemocratic or Divisive?

This criticism of the parochial school is an old one. It is based on a misunderstanding of American democracy. Those who feel that the parochial school is undemocratic, or at least divisive, assume an erroneous concept of American democratic unity

and the essence of American freedom. For them, the chief source of democratic unity is the attendance of all children at the public school. In the public schools, so the theory runs, children of all religious faiths and of all nationalities associate, play and study together. This total association is expected to minimize or eradicate all differences and consequently result in a unity. According to this philosophy, it is likewise assumed that separate schooling aggravates consciousness of difference and that the child's recognition of this difference is quite disturbing to the child and harmful to American unity. This is a strange attitude, and an unwholesome educational philosophy in view of the undeniable pluralistic nature of society in the United States. Is it unsound, is it unhealthy, is it divisive for a child to learn about, understand, and tolerate difference in his childhood, when that child will spend his entire adult life with people who think differently, act differently, live differently. Where, except in a religious atmosphere in which the Fatherhood of God, the Brotherhood of Christ and Universal Redemption are studied and lived, can a more thorough understanding and appreciation of differences in races, creeds and nationalities be obtained? Democracy does not demand uniformity but on the contrary, if it is to be vital and viable, it not only tolerates but cherishes great diversity in race, religions and national origins.

The public schools have trained many great Americans. They have achieved notable success in the field of universal education. All Americans should pride and esteem them. No one can deny their value. But one may certainly question this absolute philosophy that the public schools are the chief source of American unity. Differ-

ences, even substantial social, religious or educational differences, are also important for genuine American democratic unity. A key purpose of democracy is to encourage freely chosen diversity. To deny this is in fact undemocratic and un-American. It is to deny the freedom under God which has been achieved within the framework of the American Constitution. This freedom has made American democracy famous and loved.

On two occasions in recent years, this absolutist outlook has been urged upon the Supreme Court of the United States and each time the Court has rejected it as un-American and unconstitutional. The claim for public schools as the principal foundation of democracy and national unity was first presented in the *Pierce* case in 1925. The Court unanimously rejected it, saying:

[T]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.³

The Court also heard this claim of educational absolutism during the difficult days of the Second World War. West Virginia, in order to stimulate the spirit of patriotism and national unity in the minds of its young children, required each child each morning to pledge allegiance to the American flag. Children who refused to do so were expelled and their parents were subjected to legal penalties. Although the aim of this regulation was a much needed national unity, the Court declared the state's action to be undemocratic and unconstitutional, deserving no place in America. The Court said:

Those who begin coercive elimination of

³ *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

dissent soon find themselves exterminating the dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. . . . [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is one fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . .⁴

For the unity, therefore, which is essential to our nation, uniformity of opinion, training, schooling or religion is not necessary nor is it necessarily healthy. The American consensus consists in the fact that all Americans, regardless of race, religion or national origin, intellectually and in their activities accept the Constitution of the United States and the governments it creates and authorizes. The unity resulting from this consent is a legal or political unity necessary for the achievement of the common good. This union of wills and actions in light of the common good does not demand total uniformity in all spheres of human life and culture but, on the contrary, demands freedom for diverse opinions, religions and educational systems. *E pluribus Unum* should neither be forgotten nor exaggerated. From many—one; from many people, many cultures, many religions, many states—one nation. This is the strength and the freedom and the greatness of America. Any attempt to create uniformity of opinion, culture, religion or education is undemocratic, and will produce only the dull uniformity and equality of the graveyard.

The parochial school and the public

⁴ *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 641-42 (1943).

school are different. While both teach secular subjects, the parochial school does what the public school is not allowed to do; it teaches religion. This difference cannot make one democratic and the other undemocratic or divisive. The parochial school is no more undemocratic or divisive than the fifty states of America. These states differ from each other in their geography, their products, their economy, their people and their interests and yet this vast difference does not make them undemocratic. Why then should the parochial schools be classified as undemocratic because they are different? They do not teach false American History, subversive political doctrines or erroneous geography. Are the fifty different and diverse states of our Union a divisive influence? Does diversity necessarily produce divisiveness? Are the political parties, labor unions, special-purpose social and business organizations divisive and undemocratic? Why, then, regard the parochial school as divisive and undemocratic?

The day that everyone must be a member of the same club, of the same labor union, of the same political party, will bring the end of democracy and freedom. The exercise of freedom of choice in a free nation cannot of itself be undemocratic or divisive; it is the precise purpose of democracy. American democratic theory not only tolerates but encourages freedom of choice, and the Constitution of the United States sanctions it. The exercise of a constitutional right clearly cannot be undemocratic. The creation and the continuance of the parochial school have been exercises of constitutional right. The parochial school contributes to the undivisive diversity which is the very fruit of the American way of life. The disappearance of the private

and parochial schools from the American educational scene would leave the nation with a monopolistic system which would in fact endanger democracy.

Does the Parochial School Serve the Public Welfare? Does it Perform a Public Function?

Under the American form of federalism, the people reside in and are citizens of not only the United States but also of the states in which they dwell. The powers of government have been distributed by the Constitution between the national and the states governments. The tenth amendment to our Constitution reads:

[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Since the Constitution does not delegate to the nation general authority over the field of education, its supervision and control is reserved to the states. Nevertheless, the states' control over education is not exclusive. It is shared with the parents. This principle has been acknowledged by the Supreme Court of the United States:

The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.⁵

Most political philosophers agree that the state or its government should not attempt to do for its people what the people can do, and do perhaps better, for themselves. Ordinarily, the primary objective or aim of a state should be the creation of an orderly state of affairs in which the peo-

⁵ *Pierce v. Society of Sisters*, *supra* note 3, at 535.

ple can develop themselves to the highest degree—physically, intellectually and morally. For development of this kind, education is clearly necessary. Because parents do not have either the ability or the time to give their children a proper and adequate education, and because the state requires an intelligent citizenry in our country, the governments of the fifty states, acting in the name and authority of the parents and of the federal constitution, offer facilities for education to their children.

From the earliest times in American history, the states have shared their educational function with private organizations—denominational and nondenominational. The earliest schools were in fact private, not public. As our educational system has expanded, private and parochial schools have worked side by side with public institutions to provide training—elementary to graduate level—for Americans. Their combined efforts have been remarkably successful. This sharing of a state function has not been restricted to the field of education. In many states, transportation and utilities have been furnished by private companies or corporations, as well as by public agencies. No one is shocked or surprised when the state grants these private organizations subsidies to assist them in performing a public function. In similar manner, since the parochial school is assisting the state in performing its educational function, the school is doing a public service and might appropriately be subsidized in doing it. Other nations in the world have recognized this public service character of private and parochial schools and have found means of providing subsidies for them. Our own national government, speaking through the Supreme Court, has acknowledged and approved the public service function of the

parochial school. Various states in the Union have also recognized it and have found means to assist materially in its implementation. In the *Everson* case, the Court sustained parents who were reimbursed by the state for bus expenditures in getting their children to and from school. Mr. Justice Black, speaking for the Court, said:

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose.⁶

Congress has also passed its judgment in the National Defense Education Act. The national legislature recognized the importance of education for national security and made available to parochial and private schools loans for equipment to teach such vital subjects as language, physical sciences and mathematics.

Two distinguished public servants, one the former president of the Board of Education of the City of New York, and the other the Senior Senator from Oregon, have attempted to demonstrate in a very simple way the public purpose or function served by the parochial school. Mr. Charles Silver, during the Congressional Hearings in 1961 on the President's proposal for federal aid to elementary and secondary schools, testified:

I welcome and endorse the proposals made to assist our children and our schools. . . . It is quite obvious that the staggering problems and complexities involved in organizing, financing and operating the largest school system in the world would be greatly increased, if it were not for the private and church-related schools, which provide the education for such a large segment of the elementary and high school youth in New York City. *They are,*

⁶ *Everson v. Board of Educ.*, *supra* note 1, at 7.

and have been for generations, partners of the public schools in this great work of education. These nonpublic schools presently enroll approximately 450,000 boys and girls. . . . Thus, one out of every three children in New York public schools. . . . If New York City were confronted with the situation whereby 450,000 additional children came into the public school system, this would entail a capital outlay of \$1 billion for the construction of school buildings. . . . It would increase the cost to the city by approximately \$200 million a year. . . . and a total of 18,000 new teachers would have to be employed. (Emphasis added.)

Senator Wayne Morse, commenting on the President's message to Congress on federal aid to education, said much the same.

I have argued before—and if I were to offer my amendment this year, which I shall not do, I would argue again that the *private schools of this country perform a very important service to all taxpayers.* If any one has any question about that, he has only to look at the hypothesis I always raise in debate on this subject matter: Suppose that today it were decided to close every private elementary and secondary school in America and the children now attending these schools appeared tomorrow morning at all the public schools in the United States. Then I think all taxpayers of the country, probably for the first time, would have a clear understanding of the *public service which is rendered the taxpayers by the private schools of the United States.* . . . So I never lose sight of two things in the debate on this matter: First, the *public service which is rendered by the private schools*; and second, the Child. (Emphasis added.)

It should, perhaps, be noticed that both Mr. Silver and Senator Morse stressed the public service function of the private and parochial schools in a dollars and cents formula. There is, however, another public service aspect of even greater impor-

tance, namely, the educational and cultural contribution made to the American democratic society. Senator Morse refers to this aspect in a different section of his comments:

I hold to the *educational philosophy that a private school makes a public contribution. It makes a public contribution in the sense that it gives educational training to the boys and girls who attend it to the same extent that a public school makes that contribution.* A private school goes beyond that . . . with religious training. But to the extent that it is making its public contribution in giving an education to the boy or girl, *the public benefits.* (Emphasis added.)

In view of the undeniable contribution, financial and cultural, which the parochial school makes to the nation and to the various states, it is disconcerting that a considerable number of Americans do not recognize it and attempt to ostracize the parochial school from the American system of education.

Will Federal Aid to Parochial Schools Weaken or Destroy the Public School System?

The presuppositions of this question help to explain the adverse attitude of some people to the parochial school and to its rightful position as a co-partner in the American educational system. This attitude is often based on a fear that federal aid to the parochial school will be the beginning of the end for the public school system. The expression of this fear is found time and again in the literature and public documents of organized religious groups which either do not operate parochial schools or have few of their children enrolled in such schools. Typical of such groups are the Methodists, the United Presbyterians, the National Lutheran

Churches and the National Council of Churches. Spokesmen for these groups have testified before Congress in the following terms:

The Methodists:

[W]e are unalterably opposed to the division of tax funds to the support of private and sectarian schools. In a short time the scattering process can destroy our American school system and weaken the foundations of duty.

The United Presbyterians:

[T]here is real danger that as parochial schools become strong, the public school system may be reduced to a second rate institution.

The National Lutheran Churches:

[W]e fear that the availability of low-interest governmental loans would encourage the expansion of existing parochial school systems both Catholic and Protestant, the formation of parallel systems by other groups, with a consequent erosion of the public school system and the fragmentation of American culture along religious lines.

The National Council of Churches:

It is entirely possible that Congress could pass legislation whose practical results would be the shattering of the American public school system as we know it today.

These official statements specifically use the words "fear" and "danger" in their concern over the possible fate of the public school system if parochial schools receive federal aid. These and other groups moreover, do not confine their objections to direct grants. They are often fearful that even long-term low-interest loans will be only the beginning of a total subsidization of the parochial school by the federal government with consequent adverse effects for public schools. The National Council of Churches, Protestants and other Americans United, and the American Jewish

Congress have in their official statements placed great stress on this point.

The National Council of Churches:

In all candor I must say that there would be others who would not object in theory to loans to be repaid at the prevailing rate of interest. But what many of these persons might support in theory, they will not in fact support, because of unhappy accumulated experience. One minor modification always seems used to warrant a major modification, and one major modification always seems to lead to another.

Protestants and Other Americans United:

The language employed by the Cardinal (Spellman) clearly implies a program which envisages the ultimate transfer of the entire expense of these denominational schools to the American tax-payer.

The American Jewish Congress:

It is plain that the low-interest loan program would be no more than the first step. The supports (sic) of Government aid to religious schools have repeatedly stated their belief that such aid should be given on the same basis as aid to public schools. Then, once low-interest loans are approved demands will be made for no-interest loans, then 100 year loans, and then for outright subsidies. Each step will be offered as justification for the next.

Are these fears rational? Certainly neither American Catholic parents nor the American Catholic hierarchy seek the destruction of the public schools. Catholics as a group have contributed their share of taxes for the support of the public schools in communities across the nation. The year 1960 was the high water mark for the approval of bond issues for education in the United States. \$1.8 billion, 81% of all bond issues were approved and Catholics played a part in this approval. A report of the National Tax Association completed in 1961 states:

The growth in school support in the post

war period has been on an accelerating rate. Increases in school revenues average \$527 millions annually from 1945-46 through 1952-53; \$940 millions annually from 1953-54 through 1960-61. The increase in each of the past two years exceeded \$1 billion.

This increase could not have taken place if Catholics, as a group, had not done their share by voting for bonds and paying taxes, yet all these monies were for the support of the public school system. Are not the Catholic parents who have contributed so much financially for the support of the public schools deserving of some aid for the schools to which they send their own children? Charles Silver, at the Congressional Hearings, had this to say about aid to parochial schools:

Personally, I am seriously disturbed that the President's proposals for Federal Aid make no provision for assisting the children in attendance at our private and church related schools. It is disappointing that no assistance of any type is proposed for the parents who, by their free choice, elect to send their children to nonpublic schools. This exclusion of children in nonpublic schools does *an injustice* to the *objectives we are trying to achieve*. (Emphasis added.)

Is it rational to believe that some aid to the parochial schools will of its own weight weaken or destroy the public schools? Financial support for buildings and equipment for the parochial schools can scarcely undermine the public schools which are totally supported by state funds now, and which will receive massive federal aid if the bills now in Congress become law. Even if the parochial and public school systems are considered, as they are in some states, to be competitors, minimum aid to one compared with maximum aid to the other cannot possibly weaken the public

system. Furthermore, competition of some sort in most fields of American life has always been regarded as a stimulus to progress. It has been an American belief, almost an American dogma, that fair and honest competition perfects the product and aids the consumer. State universities are better educational institutions precisely because large private universities exist. Both types of university have improved as a result of this competition. Federal and state aid to large private universities has not destroyed state universities. Large scale federal aid has gone to many distinguished private universities and yet the state universities have continued to grow, have attracted more and better students, have raised their academic standards and have become recognized leaders in the field of higher education. It is inconsistent to argue that competition in the area of higher education is a good thing, is a boon for the two types of colleges and universities but that competition on the lower levels of education is a bad thing, destructive of the public school system which is already financially stronger. If massive federal aid was given to the public schools and no aid given to the parochial, a healthy competition would in fact die. The parochial school would cease to be a competitor. The public school could then suffer the very fate its supporters say they fear. In the absence of competition, they could lose a spur to self-perfection. American education, which is pluralistic on the higher levels as well as on the lower levels, will not be weakened by financial aid, federal or state, but strengthened. For then the reach of excellence will be truly universal, and the aims of the President will be achieved. "Our twin goals must be: a new standard of excellence in education and the availability

of such excellence to all who are willing and able to pursue . . . the maximum development of every young American's capacity." If massive federal aid is given to the public schools without some comparable aid to the private and parochial schools, the capacities of several million young Americans will not be developed to their maximum. Both the state and the nation and a large segment of the American people will suffer. Speaking on this precise point, a noted public educator, Mr. Charles Silver, told the House Committee on Education:

In the course of our history, the contributions of public and nonpublic schools have created a *balanced effort* that *has enriched American education*. Any plan of Federal aid that *excludes nonpublic schools would tend to destroy this balance and do a disservice to our country*. What I am trying to say, in capsule, is that the relationship and the relative positions of the nonpublic and public schools are firmly established in the social and educational fabric of our society. If the Federal government enters directly in the field of education, it should maintain the status quo in this area. *The balance is a very delicate one. Unless it is maintained, all education may suffer, and Federal aid instead of a blessing, may become a divisive influence.* (Emphasis added.)

Today, both the public schools and their co-partners, the parochial schools, stand in need of added financial aid to achieve excellence in education. Both need more classroom buildings, better libraries, more qualified teachers and up-to-date equipment in order to serve adequately the normal, the retarded and the gifted students. Just as many of the states feel they can do no more without federal funds, so too the parents of the parochial school children, burdened as they are with taxes for the public schools, feel that they can do no more

without an equitable share of any aid which is granted. If the parochial schools cannot maintain a fair balance of educational excellence with their co-partners, the public schools, they may be forced to curtail their activities. This could easily lead to a monopoly in the important area of education. Monopoly runs against the grain in America, and would not be in harmony with the Constitution. The real fear or danger in this educational crisis is not that federal aid to parochial schools will sound the death knell to the public schools; it is that if massive federal aid is given to the public schools and all aid is denied to the parochial schools, the federal government will create in America a monopolistic system of education.

Will Federal Aid to Parochial Schools Bring Federal Control?

Public discussions about national problems have evoked from our statesmen and people alike various philosophies about government and its function. Some prefer stronger governmental control over almost all phases of American life. Others follow the Jeffersonian concept that the government which governs least, governs best. A third group maintains that on a selective basis, changing circumstances in our economic, political and social life call for more governmental control in a few areas of American life, and less governmental control in others.

The average American, like his forefathers, is suspicious of the extension of federal activities. Even the business man and the farmer, though both have fared well with federal largesse, are of the opinion that the flow of federal money to them has not been without the sacrifice of much self-reliance and initiative.

To say categorically that federal aid to parochial schools will not include some federal control would be naive. But, "control" can and does mean many different things. Its dimensions run all the way from a requirement of a simple accounting for public funds granted, to a total legislative and administrative supervision of the operation aided. He who pays the piper can call the tune or, in the language of the late Mr. Justice Jackson, "it is hardly lack of due process for the Government to regulate that which it subsidizes."⁷ Yet there are many different degrees in which the government needs or wishes to use its power. Education is admittedly a delicate field in which to allow governmental supervision. No American would readily allow the federal government to dictate from Washington academic policies for all schools, public and private, in this country. The American public would reject federal determination of the schools' administrative policies, and even more, any attempt by Washington to decide who was to teach, what he was to teach, and how he was to teach it.

Any and all attempts at this kind of federal control would sound the fire bell in the night. By raising the specter of a totalitarian state, it would be totally unacceptable to all Americans and all religious organizations, Catholic, Jewish or Protestant. Education under this type of control becomes a tool by which the government manipulates the thinking of its people. It is "brainwashing" on its largest and most effective scale. Russia, China and their satellites are infamous examples of governmental control of formal education and informal educational media.

There are, however, other countries—

England, France and Canada to name a few—which not only finance education on all levels, public and private, but do it without obnoxious control. On the other hand, even in our own country, fifty state governments already exercise considerable control over the private education which they do not finance, as well as over the public education which they do. The states, through their educational agencies, determine the qualifications for elementary and secondary school teachers. Teachers in parochial schools who wish certification must meet the same state requirements as those in the public schools. The state determines for all schools the length of the school year. Children in all these schools are subject to the state's compulsory attendance laws. And many states require the teaching of specific subjects in all schools, public and private. American parents accept the state's control and, for the most part, are quite satisfied with it. The states, through various agencies, also control private as well as public schools by fire regulations, building safety codes and sanitation laws. If federal aid were granted to parochial schools, would it bring with it a federal control similar to that of the states or would it be more dangerous? Some religious groups who sponsor parochial schools, the Lutherans of the Missouri Synod and the Baptists, see greater peril in federal aid.

The Lutherans, Missouri Synod, have thus stated their position:

The proper handling of money requires good stewardship. Any government that allocates funds must therefore concern itself with the use of those funds and must control their use. The degree of Federal control would be affected by the amount of Federal aid, by the permanency of Federal support, and by the process by

⁷ Wickard v. Filburn, 317 U.S. 111, 131 (1942).

which the funds are provided. . . . To the extent that the Church would receive support for its educational program from the government, it would be placing its program under government direction and control.

The Baptists-Joint Committee hold this view:

The American national interest would demand close regulation of all educational institutions with all the unfortunate compromises of freedom which occur whenever a government directs the thought and life of a church in a church institution.

That federal aid to parochial schools will bring federal control, at least to the extent of requiring an account of the expenditures of the funds granted, cannot be denied. But this accounting, even though it might involve some red tape, would scarcely be an obnoxious control or a novel one. There is hardly a college or university in the country which does not make a similar accounting to government agencies in Washington every year. In connection with numerous federal grants for research, this accounting does not interfere with the academic policies of the schools nor in the case of denominational schools, with the religious life or discipline. Again, since the federal government rightly eschews aid to "fly-by-night" schools or to fictitious educational institutions, and since Washington has thus far kept away carefully from direct involvement in accreditation, it might well demand that before a loan or a grant is made, the parochial or private school seeking such aid be accredited by existing school associations. The national government at the present time requires this of colleges and universities which receive federal grants, aid, scholarships or loans. And the requirement is really an incentive for a school. It stimulates the

school to meet accreditation standards and usually results in an elevation of academic quality. This is a form of control, too, but it is hardly obnoxious. Most private secondary schools seek accreditation anyway to assure their graduates' acceptance by colleges.

If one may judge the future relations between federal aid and federal control in education by past performances, federal aid to parochial schools will not automatically bring them under obnoxious federal supervision. The history of federal aid in other religiously sensitive areas reveals quite consistently the absence of serious federal interference.

Hospitals, both public and those under religious auspices, have received federal aid for construction, new equipment, training programs for nurses, research grants and facilities. Yet, the government has not interfered with the general administration or policy, religious or otherwise, of these institutions. An accounting and accreditation are demanded but little more.

Chaplains in Congress, the armed forces, and the military academies receive their salaries, chapels and equipment from the federal government. They are held legally responsible for the equipment, but they have maintained throughout the years full liberty to conduct their religious services in war and in peace as do their confreres in civil life.

In 1862, Congress passed the famous Morrill Act, establishing land grants for colleges. The act, among other things, provided endowment and support for colleges "having as their primary object to teach such branches of learning as are related to agriculture and the mechanic arts." Today there are sixty-eight such land-grant colleges, among which are to be found the

Universities of California, Cornell and Michigan. The total federal subsistence for these colleges is more than \$100 million dollars annually. None have complained of federal interference with their academic policies. Senator Fulbright, a former president and professor in one of these land-grant colleges, testifying before Congress on the Public School Assistance Act of 1961, made the following statement in reference to federal aid and federal control:

The University where I used to teach was created as a result of the Morrill Act. I taught there and was in the administration and I never detected one single instance of an attempt of the Federal government to manage the school or tell us what to teach or tell us to fire anybody or in any way influence the conduct of that University. Every state has use of these institutions, and if Federal control were a real threat, I would have long since heard of it.

According to the Constitution of the United States, the federal government has exclusive jurisdiction over the seat of its government. This means that federal authority controls education in the District of Columbia and yet it has not attempted to interfere with the private or parochial schools in that area. The national government has established various R.O.T.C. units in many colleges, public and denominational. Again it has not attempted to gain control of such colleges or to determine their programs of studies or to interfere in their academic life or religious policies.

Consistently through the years from its very foundation, the federal government has taken hundreds of measures to encour-

age and foster education on all levels through outright grants, scholarships, research, full payment of tuition for the veterans of World War II, for war orphans, and for pages in Congress. Millions of dollars have gone from Washington to high schools, colleges, universities and even to grade schools; to public and private schools, denominational and nondenominational schools; and yet, the federal government has not attempted to dictate what a professor may teach or to intervene in the religious or academic life of the school.

The National School Lunch Program and The National Defense Education Act service the elementary and secondary schools, public and parochial, without interfering in their academic or religious policies. The federal government has made specific efforts to convince the schools that in granting them aid of one kind or another, it does not seek to control. Even the recent Public School Assistance Act carries a written safeguard against any federal control. It reads:

In the administration of this title, no department, agency officer or employee of the United States shall exercise any direction, supervision or control over the policy determination, personnel, curriculum, program of instruction, or the administration or operation of any school or school system.

The long history of federal aid to education certainly corroborates the latest statement of federal policy in that area. It is not the federal intent that federal control should follow federal aid to education. Accounting, yes, control, no.
