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Article 8

Married Students and School Board Regulations

vided, the Court will be faced again with the issue of whether the use of expatriation as a punishment is constitutional.

Three methods of approach are available to the Court. First, the statute may be construed as only regulatory in purpose, and the imposition of expatriation found reasonably related to a congressional power. Secondly, a distinction in degree might be drawn between subversive crimes, with expatriation being allowed only in those cases where the acts done are inherently reflective of a voluntary renunciation of citizenship. Thirdly, the use of expatriation as a penalty for a crime could be condemned as cruel and unusual punishment and the section declared unconstitutional.

If there is a discernible trend in this area, it is away from any use of expatriation as punishment. This attitude has been urged by most commentators and international organizations.[32] The legitimate purposes of congressional legislation in this area are the establishment of methods by which an individual may voluntarily relinquish his citizenship if he so desires, and the reduction and regulation of individuals holding dual nationality.[33] The use of expatriation as punishment has, in the past, been confined to primitive societies and dictatorial states.[34] Considering the inherent value of American citizenship and the disabilities attached to the condition of statelessness, the use of expatriation merely as punishment is sufficiently arbitrary and capricious to be classified as cruel and unusual punishment. The restriction of the use of expatriation to situations where it is uniquely necessary to avoid international tensions would be more in accord with recent developments of the law, and the tenets of a democratic society which has traditionally recognized the dignity of man.

[32] See United Nations Universal Declaration of Human Rights, art. 15; Maxey, *Loss of Nationality,* 26 ALBANY L. REV. 151 (1962); Roche, *The Loss of American Nationality,* 99 U. PA. L. REV. 25, 70 (1950).

[33] The primary purpose of the Nationality Act of 1940 was the reduction of dual nationals, a group which has frequently caused international friction. See Maxey, *supra* note 32, at 181-83.

[34] ARENDT, THE ORIGINS OF TOTALITARIANISM 277 (1951).

Recent Decision: Married Students and School Board Regulations

It seems fair to say that there would be far fewer teenage marriages if our teenagers were not so long in finding social recognition. To me it seems highly important that society provide wholesome ways in which adolescents can express their healthy and natural desires to move into social adulthood as they approach physical and mental adulthood.[1]

A school attendance officer recently filed a petition in Family Court, seeking to compel a married fifteen-year old girl to attend school. The girl refused to attend on the ground that a housewife should not be

[1] The Education Digest, April 1962, p. 17, quoting Emily H. Mudd, Philadelphia Marriage Council.

compelled to do so. The court, in dismissing the petition, *held* that a married female child, when residing with and maintaining a household for her husband, is exempted from the operation of the compulsory education laws[2] which require full-time day instruction of all minors between the ages of 7 and 16 years.[3] *In the Matter of Rogers,* 36 Misc. 2d 680, 234 N.Y.S.2d 172 (Family Ct. 1962).

American educators are very concerned over the great increase in student marriages. Boards of education have reacted by adopting numerous policies and enacting regulations restricting activities or attendance of married students and otherwise attempting to discourage high school student marriages.[4] Some of the school boards' policies in this area are so severe and objectionable that they are challenged by court action.

The court in the *Rogers* case stated the basic problem and policy question discussed in every high school marriage case.

> The real issue here, to this Court, goes beyond whether this child . . . should be compelled to go to school against her will under the circumstances. There remains a very real problem as to the *effect* resulting from the association of a *married* fifteen-year old in school with other children of the same age.[5]

An awareness of the possible harmful effects married students may have on other impressionable school children and the acuteness of the social problems involved in teenage marriages is necessary in order to understand the courts' position in high school marriage cases.

It is generally agreed that early marriages, especially between teenagers still attending high school, should be discouraged. Investigators in this area have found that 65% to 85% of married high school girls "drop out" before graduation.[6] The number of "drop-outs" among male married students is also on the increase.[7] The divorce rate among couples who marry when both parties are in their teens is about twice as high as when both parties are between twenty and twenty-five years of age.[8]

The need to discourage these marriages becomes even more critical when one realizes that the average age of both the American groom and bride has dropped considerably. In the year 1890, the average wedding party consisted of a twenty-six year-old groom and a twenty-two year-old bride. Today, the young man is usually under twenty-three years old and his bride only twenty.[9] In light of the fact that these figures represent the *median* ages, one can readily realize that those who fall into the lower quartiles of this statistical study may very well still be in their teen years and still in high school.[10]

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[2] N.Y. EDUC. LAW §§ 3201-3229.

[3] N.Y. EDUC. LAW § 3205(1)(a).

[4] Kingston & Gentry, *Married High School Students and Problem Behavior,* 35 THE J. OF EDUC. SOCIOLOGY 284 (1962); Bolmeir, *Board of Education's Right to Regulate Married Students,* 1 J. FAMILY L. 172 (1961); 9 KAN. L. REV. 340 (1961); Hanson, *Teen-age Marriages,* NEA J., Sept. 1961, p. 26; Roach, *Board Rules Concerning Married Students,* Am. School Bd. J., June 1958, p. 56.

[5] In the Matter of Rogers, 36 Misc. 2d 680, 681, 234 N.Y.S.2d 172, 173 (Family Ct. 1962). (Emphasis added.)

[6] Kerckhoff & Rimel, *Early Marriage,* 36 THE CLEARING HOUSE 559, 560 (1962).

[7] *Ibid.*

[8] *Ibid.* Dr. Hanson, Superintendent of Schools of Rock Island, Illinois, in discussing the lack of success among high school marriages, reports that "one study shows, for example, that among 240 married couples of school age, only 16 couples were still living together after five years." Hanson, *supra* note 4, at 27.

[9] Hanson, *supra* note 4, at 26.

What possible harmful effects can the attendance of married couples have upon their classmates? The courts mainly consider: (1) the behavioral and moral influence of these teenagers who have more mature experiences and ideas than their classmates and who are removed from parental control and guidance, and (2) more importantly, whether the presence of married students will encourage other children to marry while in high school.

In the past, many local boards of education believed that expulsion, limitations on attendance, segregation of married students, and denial of participation in extra-curricular activities were necessary in order to discourage other student marriages.[11] Married students were to be treated as a special problem group and marriage per se was sufficient ground for these punishments.

There is no legal question as to the authority of a local board to adopt reasonable policies and regulations for the efficient day-to-day conduct of its schools.[12] The responsibility for the education of the young is primarily divided among parents, the church, and the state.[13] The powers of the state are substantial as is illustrated by the fact that it can compel an unwilling parent to send his child to school under a compulsory education law.[14] "The State is sovereign in the matter of the attendance of a child at school."[15]

There may be a legal question, however, as to the reasonableness of a specific regulation or its application. The courts recognize the local boards' authority and the expertness of board members, school trustees, and school administrators in the problems involved in the day-to-day conduct of schools, including that of discipline. Therefore they will only strike down a board regulation if a school board goes beyond its authority by adopting or applying a rule or policy that is unreasonable or arbitrary.[16]

In most cases, a victim of an allegedly unreasonable policy or rule initiates an action against school officials, but in the *Rogers* case it was to the contrary. This is only the third reported case involving the issue of whether or not a truant married child may be compelled, by court action, to attend school under a compulsory education law. All three cases involved married

[10] *Ibid.* A wide variety of "guesses" have been made to explain the great increase in early marriages that occurred in recent decades. Some of the more popular are: (1) an increase in emphasis on marriage and the family in recent decades leading to the belief that marriage is the be-all and end-all of human existence; (2) an increase in early social activity—many children are pushed into social maturity and they date, experience romance, love, and sex earlier; (3) the lessening of parental control and supervision of boy-girl relationships; (4) emphasis of the importance of sex gratification as evidenced by the importance of the sex motive in advertising; (5) war psychology, the draft, and fear of "the bomb;" (6) early marriage just manifests the teenager's desire to claim, "I am an adult," in a society where the lines between childhood and adulthood are blurred. See generally articles cited in notes 4 and 6, *supra*.

[11] Kerchoff & Rimel, *supra* note 6, at 562.

[12] Roach, *supra* note 4; see, *e.g.*, N.Y. EDUC. LAW § 2554(13); KAN. GEN. STAT. ANN. § 72-1623 (Supp. 1961); MICH. STAT. ANN. § 15.3614 (1959).

[13] For a philosophical discussion of the division of responsibility for education among parents, church, and state, see DUBAY, PHILOSOPHY OF THE STATE AS EDUCATOR (1959).

[14] See, *e.g.*, People v. Ekerold, 211 N.Y. 386, 105 N.E. 670 (1914); People v. McIlwain, 151 N.Y. Supp. 366 (Del. County Ct. 1915).

[15] De Lease v. Nolan, 185 App. Div. 82, 84, 172 N.Y. Supp. 552, 554 (3d Dep't 1918); *accord*, In the Matter of Rogers, 36 Misc. 2d 680, 234 N.Y.S.2d 172 (Family Ct. 1962).

[16] Cochrane v. Board of Educ., 360 Mich. 390, 103 N.W.2d 569 (1960); State v. Board of Educ., 202 Tenn. 29, 302 S.W.2d 57 (1957); Kissick v. Garland Independent School Dist., 330 S.W.2d 708 (Tex. Civ. App. 1959).

female high school students under sixteen years of age and their results were identical.

The first two were Louisiana cases[17] and that State's Supreme Court held in both cases that Louisiana's compulsory education laws do not apply to married students for they have been "irrevocably emancipated" by marriage. In the *Rogers* case, a New York court faced with the same issue also decided that the compulsory education laws did not apply to minors who enjoyed a marital status. The Court in considering the possible harmful effects of "forcing the association of a married fifteen year-old female with school children of such young and impressionable ages, especially where the former is not disposed to attend school. . . ." recognized that "the issue goes to the health, safety and welfare of more than just this respondent."[18]

The Louisiana decisions[19] relied on the wording of the Louisiana compulsory education law[20] which apply to any *child* up to the age of 16. The courts reasoned that since all married students are emancipated from parental control, they cannot any longer be considered *children* and therefore the laws do not apply to them.[21] On the other hand, the New York decision could not rely on wording, for the New York statute[22] applies to any *minor* up to the age of 16. The Court in the *Rogers* case found the compulsory education law to be inapplicable on the ground that it was doubtful whether the legislature gave any thought to the situation involved in the case. The Court went on to exempt married students from the compulsory attendance law for the policy reasons discussed above.

The only dissent to the rulings of the Louisiana and New York courts is found in two Ohio cases that imply, in dicta, that if the Ohio courts were presented with the same situation, they would rule differently.[23] In the first of these decisions the Ohio Supreme Court stated[24] that although marriage leads to truancy, it is no excuse for truancy under the Ohio compulsory education laws. The public policy of the state is that all children will have an education because an education is necessary to expose a child to his own potentialities and a free society cannot exist and advance without educated members. A very recent lower court opinion commented on this case. "It is apparent that the Supreme Court was of the opinion that marriage would not constitute a valid reason for failing to attend school in compliance with the compulsory attendance laws."[25]

It is quite unusual for a school board to attempt to compel a married child to attend school. Most married student cases involve board regulations that attempt to limit, deny, or restrict attendance. The two earliest higher court cases involving married high school students grew out of school board regulations designed to prohibit married girls from attendance. The first case[26]

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[17] *In re* State in Interest of Goodwin, 214 La. 1062, 39 So. 2d 731 (1949); State v. Priest, 210 La. 389, 27 So. 2d 173 (1946).

[18] In the Matter of Rogers, *supra* note 15, at 681, 234 N.Y.S.2d at 173.

[19] *Supra* note 17.

[20] LA. REV. STAT. ANN. § 17:221 (1950).

[21] *In re* State in Interest of Goodwin, *supra* note 17; State v. Priest, *supra* note 17.

[22] N.Y. EDUC. LAW § 3205(1)(a).

[23] State v. Gans, 168 Ohio St. 174, 151 N.E.2d 709 (1958); State *ex rel.* Idle v. Chamberlain, 175 N.E.2d 539 (Ohio C.P. 1961).

[24] State v. Gans, *supra* note 23.

[25] State *ex rel.* Idle v. Chamberlain, *supra* note 23, at 541.

[26] McLeod v. State, 154 Miss. 468, 122 So. 737 (1929).

was concerned with an ordinance of a Mississippi school board barring married students from school even though they might in all other respects be eligible to attend. In declaring this ordinance to be "arbitrary and unreasonable, and therefore void," the court rejected the following contentions made by the board:

> [1] the admission of married children as pupils . . . would be detrimental to the good government and usefulness of the schools . . . [2] marriage emancipates a child from all parental control of its conduct, as well as such control by the school authorities; [3] the marriage relation brings about views of life which should not be known to unmarried children. . . .[27]

The court said that marriage can be refining and elevating rather than demoralizing and concluded that it was commendable that married students wished to further their education.

In that same year, a Kansas court allowed a married girl, whose husband had abandoned her with a child conceived out of wedlock but born in wedlock, to attend.[28] The court held that her marriage and its surrounding circumstances should not prevent her from gaining an education.

Although no court has allowed a school board to expel a child solely on the grounds that she was married, courts do seem ready to allow boards to adopt regulations restricting attendance. A Tennessee court[29] upheld a school board resolution which temporarily expelled students for the remainder of the term if they wed during the school term, or for the term immediately following their marriage if they wed during a vacation period between terms. This rule was adopted because the school board believed that confusion and disorder usually occurred immediately after the marriage and during the period of readjustment. The court upheld the resolution as being reasonable and voiced its confidence in the professional judgment of the local school administrators who prompted its adoption. It reasoned that whatever might be said concerning permanent expulsion, a temporary suspension for a short period is not unreasonable if it is for the good of the school.

> Some secondary schools still expel students who marry. More often nowadays it is the practice to require that students who marry resign from all extra-curricular activities, including competitive sports.[30]

Generally, the latest high school marriage cases deal with the question of whether this new tool of the school board has been reasonably used. A Texas court, in 1959, upheld a resolution restricting married students to classroom work.[31] A great deal of weight was placed upon the results of a P.T.A. study indicating the ill effects of married students participating in extra-curricular activities, particularly with unmarried students.

A Michigan court, in the following year, upheld a similar regulation.[32] This case is most interesting, for instead of unanimously following the Texas decision, the court was evenly divided. Four judges voted to reverse the lower court ruling upholding the regulation and four voted to affirm, but one of the judges affirmed on the procedural ground that the whole issue was moot

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[27] *Id.* at 474-75, 122 So. at 738.

[28] Nutt v. Board of Educ., 128 Kan. 507, 278 Pac. 1065 (1929).

[29] State v. Board of Educ., 202 Tenn. 29, 302 S.W.2d 57 (1957).

[30] The P.T.A. Magazine, Sept. 1962, p. 26.

[31] Kissick v. Garland Independent School Dist., 330 S.W.2d 708 (Tex. Civ. App. 1959).

[32] Cochrane v. Board of Educ., 360 Mich. 390, 103 N.W.2d 569 (1960).

since the boys involved had already graduated from school. The closeness of this decision, according to one writer,[33] reflects the courts' growing unwillingness to allow the school boards to try to discourage high school marriages by discriminatory, punitive, or other means. This interpretation is not as yet supported by court decisions. Courts have upheld all school board regulations, short of complete expulsion, in every case, including this one. There seems to be a presumption of validity in favor of a school board's regulation.[34] On the other hand, the Michigan decision may be an indication of the trend which future litigation in this area will take.

The few cases that have been decided in the area thus far seem to establish the following rules: (1) married students cannot be compelled to attend school under compulsory education laws; (2) married students cannot be permanently expelled solely because they are married; (3) temporary and limited expulsion or suspension may be permitted; (4) restrictions and limitations on extra-curricular activities are permitted.

The divided court in the Michigan case, along with the current opinions and comments of many superintendents of schools and writers in the field of education, signal a coming change in this area. Restrictions, including those in extra-curricular activities, have proven ineffective in stemming the tide of teenage marriages.[35] Many have concluded that it is questionable whether punitive and regulatory measures are the answer to this social problem.[36] One Illinois school superintendent has stated, "like it or not, we must meet the situation with something more than disapproval and ostracism."[37]

The negative approach of the past is quickly losing favor among school officials. Its downfall is being hastened by surveys and studies in the area. A recent survey,[38] by the State Department of Education on disciplinary problems in Georgia schools, found that as a group married students do not create major disciplinary problems while in high school. The most frequent types of misbehavior found among married students are similar to those found most frequently among all high school pupils. Similar surveys have led many of the current writers to conclude that, generally, there should be no particular regulation of married students and they should be afforded the same treatment and regulation as all other high school students.[39] "We

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[33] Bolmeir, *Board of Education's Right to Regulate Married Students,* 1 J. FAMILY L. 172, 180 (1961).

[34] See, Cochrane v. Board of Educ., *supra* note 31, at 571.

[35] See, Kingston & Gentry, *Married High School Students and Problem Behavior,* 35 THE J. OF EDUC. SOCIOLOGY 284, 285 (1962).

[36] See, *e.g.,* Bolmeir, *supra* note 33; Kerckhoff & Rimel, *Early Marriage,* 36 THE CLEARING HOUSE 559 (1962). The authors of this latter article state at p. 562, "The best study that tried to link school policy to marriage rate found very little relationship." The authors were both members of the Michigan Youth Commission which will publish, in the latter part of this year, the findings of its studies on early marriages and the problems associated with them. A copy of this publication may be obtained by writing to the Michigan Youth Commission, 1447 Washington Heights, Ann Arbor, Michigan.

[37] Hanson, *Teen-age Marriages,* NEA J., Sept. 1961, p. 28.

[38] Kingston & Gentry, *supra* note 35, at 285. Of the 420 schools that responded to a questionnaire, 96.32% either saw no difference in the behavior of married and unmarried students or described married students as better behaved.

[39] See, *e.g.,* 9 KAN. L. REV. 340 (1961); *Opinion Poll,* The Nation's Schools, Nov. 1956, p. 86.

should be long past the time when we believe that passing a law or adding a family living class to the curriculum will solve most major marriage problems. . . ."[40]

The majority of school administrators today favor a policy allowing married youths to continue their schooling. In a nationwide survey among school superintendents,[41] seventy-eight per cent of those polled, although not endorsing the idea of high school marriages, believed that married students should be permitted to stay in school. One superintendent said: "Our present policy allows married students to continue their education. To date we have not been even slightly embarrassed."[42] A great majority also denounced any segregation of married students — seventy-eight per cent believed that they should not be separated from the unmarried students in extra-curricular activities and ninety-three per cent said there should be no segregation at lunchtime.[43]

Litigation in the area of married high school students is usually initiated by victims of allegedly unreasonable and arbitrary regulations. The trend today is not only to liberalize existing regulations,[44] but to finally eliminate all special regulation of married students. This development should lead to the disappearance of all litigation in this area.

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[40] Kerchoff & Rimel, *supra* note 36, at 562.
[41] *Opinion Poll,* The Nation's Schools, Nov. 1956, p. 86.
[42] *Ibid.*
[43] *Ibid.*
[44] An example of the current policy in Rock Island, Illinois is presented by Dr. Hanson, Superintendent of Schools, in NEA J., Sept. 1961, p. 26. "Marital Status: High school marriages are not socially or economically defensible. Hence, the deans and other personnel will counsel students against contracting them even though marriage does not bar attendance. In the event of pregnancy, the student will be dropped unless she is a senior in the last 6 weeks of the school year, in which case she will be denied the privilege of attendance but granted permission to study at home, present her work to the school, and if satisfactory, be granted a passing grade."