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Philosophy of the State as Educator

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BOOK REVIEWS

PHILOSOPHY OF THE STATE AS EDUCATOR, by *Thomas Dubay, S.M.*
Bruce Publishing Company, Milwaukee, 1959. Pp. 223. \$5.95.

Reviewed by
GEORGE A. TIMONE*

Problems involving basic educational policy at all levels of government seem on the increase both in frequency and importance. On the international scene, we read of an eloquent plea by a United States delegate before a commission of the United Nations for explicit recognition of the right of religious bodies to maintain schools. Bills involving federal aid to education again provide stormy debate. New York State is in the process of deciding whether the needs for post secondary education are to be met primarily by more and larger units in the State University or whether it is preferable to assist financially existing private colleges or, through additional scholarships, the students who wish to attend them. Locally, school districts are still groping for a formula to tell them the extent and limits to which they should teach moral and spiritual values in the public school and release children during school hours for religious instruction outside school buildings.

It would be an exaggeration to suggest that *Philosophy of the State as Educator* by Thomas Dubay, S.M. gives simple answers to these and other particular problems. It is fair to say that in this legal but

primarily philosophical study of the state's role as an educator, Father Dubay looks into the philosophical roots of the problem, draws out their consequences, then illustrates the principles and conclusions by indicating pertinent practices of the nations of the world. The book is documented with meticulous care by 175 citations and quotations. It contains a summary and an extensive bibliography. Its permanent reference value is also enhanced by an unusually good index.

The author develops his theme systematically by commencing in Part I with the philosophy of the nature and function of the state, from which he proceeds in Part II to a consideration of the state as an educator. Parts III and IV consider many particular problems involved in the state's role such as distributive justice, the control, regulation and inspection of non-public schools, academic freedom, compulsory education and international cooperation.

The author's major premise is a thorough and skillful exposition of the natural law principle of subsidiarity. For the collectivist the state is paternal; it is the provider. At the other extreme lies the individualist or *laissez-faire* state which sees itself as a mere umpire regulating as little as possible the free competitive forces

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of society. Between these two extremes, lies the principle of subsidiarity. This principle "... applies not only to the sovereign state but to all lesser government agencies and societies as well. A national government should not do what a regional government finds possible, nor should the latter undertake what falls within the competency of a local government."¹

The author demonstrates by authority (Pope Pius XI in *Quadragesimo Anno* and Pope Pius XII in *Summi Pontificatus*) and by reason the validity of this principle.² This, of course, is not exclusively Catholic doctrine. President Eisenhower has remarked that "The Federal Government should perform an essential task only when it cannot otherwise be adequately performed. . . ."³ This natural law principle bears more frequent restatement in this age when so many seem to believe that the facile solution to most problems, social and educational, is simply to turn them over to the Federal Government. Subsidiarity allows fuller development of the human person by allowing him activity and freedom in those areas in which he is capable, provided no harm be done to the individual or to the common good. It is bottomed on the premise that "when a man *unnecessarily* depends on others his own growth and personal dignity suffer."⁴ A state, too, loses in efficiency when it undertakes more problems than it can handle with effectiveness. It is true the world over that large scale government tends to a greater sluggishness as it grows. The author cautions us, however, that the criterion of subsidiarity is not always easy

to apply to concrete situations and that "The cry of 'creeping socialism' should not be uttered on the instance of any governmental intervention."⁵

The author then moves into a consideration of the principle of subsidiarity as applied to education. He criticizes the extreme individualist political philosophy of Herbert Spencer who argued that the state should be no more than a mere protector and that its entrance into welfare and education is an unwarranted intrusion. He is also critical of the milder form of individualism espoused by John Stuart Mill as unduly restrictive of governmental activity in a modern society. He is, however, in accord with Mill in vigorously opposing governmental monopoly over education at any level as despotic, "for once a government could mold opinions and ideas, it could do with the citizenry whatever it wished."⁶

Having disproved quite successfully the individualist philosophy of the state's function in education, which incidentally is now for the most part a matter of historical interest, Father Dubay proceeds to dissect statism in education which he subdivides into three categories, extreme, conservative and ordinary secularistic. The ancient classical exponent of the first group is Plato, who in his Book V of the Republic expounds the view that after birth the government should assume full control of the child from his parents. The modern dominant exponent of extreme statism is, of course, Communism. Conservative statism is an "educational philosophy of the state that assigns to government an excessive educational function and yet does not rule

¹ DUBAY, PHILOSOPHY OF THE STATE AS EDUCATOR 22 (1959) [hereinafter cited as DUBAY].

² *Id.* at 23.

³ *Time*, Jan. 17, 1955, p. 22, col. 2.

⁴ DUBAY 23.

⁵ *Id.* at 24.

⁶ *Id.* at 39.

out of life the need for religion."⁷ This is illustrated as far back as 1799 in Samuel Knox's *Essay on Education* as well as by certain recent pronouncements of the National Education Association.

Although the dividing line between conservative and secularistic statism is not always clear, the author regards Rousseau and Alexander Meiklejohn as principal authorities of the latter school. Since authority is manifestly necessary for the operation of society and the school, and since Meiklejohn contends that God is not the source of that authority, he finds it in the "pattern of culture," which means in effect that education is the agent of a social, cultural intention. We have here, says the author, "nothing but the custom theory in a new dress."⁸ Secularistic statism in education argues for a common system of education to reduce religious bias and believes non-public schools to be essentially divisive and undemocratic.

The state has a "vital and noble" but still an essentially supplementary and subsidiary function in education.⁹ The Church and the family are the primary educators; the Church because of her direct commission given to her by Christ,¹⁰ and the family because it flows from the very natures of all concerned because "before being a citizen man must exist; and existence does not come from the state, but from the parents."¹¹

The state's educational function is both protective and promotive. It must protect

the rights of the Church and the family, and beyond this, it has the duty to promote by positive means the citizen's educational welfare. This includes (a) assisting the initiative of the Church and family, (b) the establishment of public schools wherever and whenever such are needed, (c) exacting a minimum of education in its citizens, and (d) sponsoring programs of civic education aimed at the populace at large.

In applying basic philosophical principles to modern states, the author, by quoting their pertinent statutes, demonstrates that Communist countries, as may be expected, deny both parent and Church rights in education. This is also true of some so-called democracies. Mexico, for example, has a constitutional provision prohibiting religious corporations, ministers of religion and associations devoted to the propagation of any religious creed, from participating in any way "in institutions giving primary, secondary and normal education and education for laborers and field workers."¹² Norway and Switzerland unduly limit the Church's rights.¹³ The author finds that the nations with the most satisfactory constitutional provisions explicitly recognizing both Church and family rights are Canada, Spain, Liechtenstein, and especially Ireland.¹⁴

The author firmly sets the subsidiary function of the state as an educator against the notion that it is the primary educator of children. He points out that "it is no more such an educator than it is the primary farmer or physician. If private endeavor fails to farm or to heal efficiently, the state

⁷ *Id.* at 47.

⁸ *Id.* at 50.

⁹ *Id.* at 222.

¹⁰ *Matthew* 28:19-20 "Go, therefore, and make disciples of all nations . . . teaching them to observe all that I have commanded you. . . ." *Ibid.*

¹¹ DUBAY 58.

¹² *Id.* at 83.

¹³ *Id.* at 84, 85.

¹⁴ *Id.* at 89.

may step in and supply what is lacking, but it may go no further. So also, if private initiative is unequal to the educational task, the state may and must apply what is lacking, but nothing more."¹⁵

From the basic principles he has expounded, Father Dubay maintains that as a matter of distributive justice ". . . the state is bound to dispense educational tax money according to the reasonable needs of the primary educators." This does not mean building or maintaining schools for any group that may demand it, no matter how small or ill-equipped that group may be. It does mean that where the group is large enough to sponsor an efficient school, they as primary educators have a right in justice to expect assistance from tax moneys.¹⁶ The author points out that "The policy adopted in some modern nations of excluding denominational schools from State Aid merely enthrones the secularistic religion of a minority as the official attitude of the public system."¹⁷

In support of the feasibility as well as the justice of public support for private education, the author cites the English system and Gladstone's argument that there is, in effect, a suppression of freedom in the denial of governmental subsidy to one or another school system.¹⁸ "Consequently, [said Gladstone] you may well believe I contemplate with satisfaction the state of feeling that prevails in England, and that has led all governments [*sic*] to adopt the system of separate and independent subsidies to the various religious denominations."¹⁹ The constitution or statutes of

other modern nations, notably Canada, West Germany, Scotland and Netherlands permit the use of tax moneys for private as well as for public schools.²⁰

The "establishment of religion" clause of the First Amendment of our Federal Constitution, as interpreted by the Supreme Court in *Everson v. Board of Educ.*,²¹ and explicit provisions in thirty-eight state constitutions, all forbid the use of public funds to assist denominational schools. Although the possibility of a change in this policy seems quite remote, the author presents an effective case in basic principle as well as in the current practices of other democracies. This does not mean however that American Catholics now expect or want public funds for the general educational purposes of their schools. A large body of Catholic opinion would favor rejecting such funds if available because of the degree of control and loss of academic freedom they fear would inevitably follow such grants.

The practice of granting auxiliary services is treated briefly and approved as obvious distributive justice.²² Such services include transportation to and from school, medical examinations and school lunches.

Catholic parents have an unanswerable argument in urging that their children are entitled to auxiliary services on a basis of equality with public school children because these are health and welfare, not educational services; and further, they aid the child rather than the school. The *Everson* case so held. Still, at present only 19 states provide bus transportation for non-public school children; and at present the consti-

¹⁵ *Id.* at 222.

¹⁶ *Id.* at 106.

¹⁷ *Id.* at 110.

¹⁸ *Id.* at 109.

¹⁹ *Ibid.*

²⁰ *Id.* at 122.

²¹ 330 U.S. 1 (1947).

²² DUBAY 124-26.

tutions of twenty-seven states forbid the use of public moneys for lunches to non-public school children, thereby requiring the Department of Agriculture to administer the Federal School Lunch Program directly to such schools.

On whether, and to what extent, the state may exercise control over private education, Father Dubay demonstrates the division of opinion in the 19th Century among non-Catholic as well as Catholic political scientists and philosophers. By far the prevailing opinion, expressed again and again by Catholic writers, admits "both the right and the duty of the state to supervise education, to examine teachers and to inspect schools."²³

Panama, India and Syria are cited as among the few countries which expressly require private schools to admit all groups, irrespective of social, racial or political differences,²⁴ and it is stated that "The United States makes no regulation binding private education to admit or reject any particular group."²⁵ This statement while technically accurate seems to your reviewer to be rather incomplete in that there is no reference to state regulations. For example, the New York Fair Educational Practice statute makes it illegal for any non-public post-secondary educational institution to discriminate in admissions because of "race, religion, creed, color or national origin" but broadly exempts a "religious or denominational educational institution" and provides that nothing in the statute shall prevent such an institution "to select its students exclusively or primarily from members of

such religion or denomination or from giving preference in such selection . . . of its students as is calculated by such institution to promote the religious principles for which it is established or maintained."²⁶

There is a well documented analysis of international practices dealing with the teaching of religion in public schools from which these noteworthy conclusions emerge:²⁷

1. The teaching of religion (not merely about religion) in publicly supported schools is a common practice among the nations of the world (e.g. Scotland, England, Syria, Australia, Canada, Belgium, Brazil, Panama, West Germany, India, Sweden and Spain).

2. Such teaching is a common practice even in religiously pluralistic societies.

3. Among the free, democratic nations, the United States of America seems to be one of the few exceptions to the rule.

4. The various systems adopted for the teaching of religion in public institutions seems, on the whole, to work out well. The great majority of parents enthusiastically avail themselves of the program when it is available.

5. Finally, "The fears and obstacles to religious instruction in the public schools of the United States so often alleged by American secularists are shown to be vain and for the most part baseless. One may not raise up phantoms to counteract fact."²⁸

Most of us will readily agree with the author that "The religious formation given in the home or in Sunday school is no longer adequate in the world in which we live."²⁹ He also argues that it is, in a sense,

²³ *Id.* at 130.

²⁴ *Id.* at 138.

²⁵ *Ibid.*

²⁶ N. Y. EDUC. LAW § 313 (3)(a).

²⁷ DUBAY 160.

²⁸ *Id.* at 161.

²⁹ *Id.* at 147.

impossible for a public school to be really neutral in the matter of religion because "By omitting matters of religion the school is teaching by silence that it considers secular affairs of greater importance than religious ones."³⁰

Public school authorities and religious groups, recognizing the tragic incompleteness of education without religion, have made attempts within the limitations imposed by state constitutions and Supreme Court decisions,³¹ to ameliorate this sad state of affairs which throws the weight of publicly supported education too heavily on the side of the atheist and agnostic. These efforts have taken the form of various plans for the teaching of "moral and spiritual values" in the school building coupled with a program of "released time" for the teaching of religion outside the school building.

Although the Church alone has been divinely authorized and commissioned to teach morality as well as religion,³² this does not mean that the Catholic Church envisions herself as having a complete monopoly on moral truth. The state has a role in teaching morality stemming from its duty to preserve the community from harm and to protect and supplement the primary educators (i.e. the Church and family). Furthermore, much morality is based on mere natural law, and on the natural plane the state is competent. Therefore, "In its own public schools the state not only may but must provide for instruction in morality."³³ It is obvious however that instruction in right and wrong "cannot be separated

from religion if any appreciable result is to be expected."³⁴ To attempt to teach right and wrong without reference to religion is at best a truncated morality. A discussion of the "released time" programs is probably considered outside the scope of the author's scholarly work and is therefore not included.

The author briefly refers to the current practice in many public school classrooms or assemblies of Bible reading and finds this to be "decidedly sectarian."³⁵ This is one of the rare occasions on which the reviewer feels constrained to disagree with the author. Bible reading has been sustained in the courts³⁶ on the basis that it is not sectarian. It is true that some passages are sectarian in content or implication and that explanations, if permitted, would involve sectarian doctrine. It does not follow that the reading of *selected passages without note or comment* is a sectarian practice and constitutes the teaching of denominational tenets. We start, of course, with the premise that "We are a religious people whose institutions presuppose a Supreme Being."³⁷

These practices, the efforts at teaching of moral and spiritual values, the selected bible reading without comment, the recital in school of a simple invocation to Divine Providence³⁸ and the "released time" pro-

³⁴ *Ibid.*

³⁵ *Id.* at 148.

³⁶ See, e.g., *Lewis v. Board of Educ.*, 157 Misc. 520, 285 N.Y. Supp. 164 (1935), *modified*, 247 App. Div. 106, 286 N.Y. Supp. 174 (1936), *appeal dismissed*, 276 N.Y. 490, 12 N.E.2d 172 (1937); *Doremus v. Board of Educ.*, 5 N.J. 435, 75 A.2d 880 (1950), *appeal dismissed*, 342 U.S. 429 (1952) (jurisdictional grounds).

³⁷ *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

³⁸ The invocation recommended by the New York State Board of Regents is "Almighty God, we

³⁰ *Ibid.*

³¹ *Zorach v. Clauson*, 343 U.S. 306 (1952); *McCullum v. Board of Educ.*, 333 U.S. 203 (1948); *Everson v. Board of Educ.*, 330 U.S. 1 (1947).

³² *Matthew* 28:19-20.

³³ DUBAY 177.

gram of religious instruction are not an answer to the criticism of a secularistic education. They are however efforts to minimize its disadvantages and therefore, in the reviewer's opinion, merit our support.

On the question of centralization of educational effort and authority, there is an analysis of the arguments for and against centralization³⁹ and a review of the systems that obtain in various countries.⁴⁰ The principle of subsidiarity is applicable here. In educational policy, "subsidiarity means that a centralized arm of government ought

not to undertake the work of education if that work can be done effectively by a local unit."⁴¹

In this carefully documented volume, the author expounds basic philosophical principles and methodically applies them to practices here and abroad in the tremendously important field of education. He has done it well. This book is a worthwhile addition to the library not only of a Catholic lawyer but of anyone seriously interested in educational policy.