The Catholic Lawyer

Volume 8, Autumn 1962, Number 4 Article 4

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I AM PRIVILEGED to appear before the Committee as a representative of the Roman Catholic Archdiocese of New York at the request of His Eminence, Francis Cardinal Spellman, Archbishop of New York, whose views are embodied in the following remarks.

After careful study, I have come to the conclusion that the recent decision of the United States Supreme Court in *Engel v. Vitale,* declaring unconstitutional the New York Regents' Prayer, was a grave error in judicial judgment, a decision out of line with the conscience and religious heritage of the American people and one which foreshadows an ominous tendency to undermine cherished traditions of this nation. In my opinion, the error is too serious, the danger to our American institutions too immediate, to be left to the evolutionary process of corrective decisions by the Court itself. In my judgment, the indicated solution is an amendment of the Constitution. For reasons later stated, I respectfully submit that any such amendment should be directed to the underlying constitutional fallacy of the Court's decision—a misinterpretation of the no establishment clause of the first amendment—rather than to the narrow issue of a voluntary, nondenominational prayer.

As Archbishop of New York, Cardinal Spellman is directly and immediately concerned with the harmful effect of this decision upon the moral and spiritual welfare of the tens of thousands of Catholic children who attend public schools in the ten counties of the State of New York that comprise the Archdiocese of New York. Although the Archdiocese maintains and administers a parochial school system, consisting of 423 elementary and high schools with more than 216,000 children in attendance, it is, nevertheless, estimated that there are well in excess of 100,000 Catholic children in attendance at public elementary and high schools within the Archdiocese. The concern of Cardinal

† Statement submitted to the United States Senate Committee on the Judiciary at the Hearings on the New York Regents' Prayer Case.

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Spellman springs also from the apprehension of a patriotic citizen as to the long-range effects of the Court's decision upon succeeding generations of our country's children and upon the future general welfare of our nation. On the very day that the decision of the Court was announced, His Eminence publicly stated that he was "shocked and frightened" at a decision which, he said, "strikes at the very heart of the Godly tradition in which America's children have for so long been raised."

I am convinced that the Supreme Court's decision in the Regents' Prayer Case is based upon an erroneous interpretation of our Constitution, but nothing I say is intended either to undermine the Court's status or to impugn the motives of the Justices. As a representative of Cardinal Spellman and as a member of the Bar, I have the greatest respect for the Supreme Court as an institution. In taking issue with the Court, I am doing no more than what many Justices of the Court have themselves often done in their dissenting opinions and in their extra-judicial statements. The Court has never held itself out to be an infallible tribunal and, in fact, on many occasions has expressly or impliedly acknowledged its own fallibility by reversing earlier decisions. Indeed, the need for informed and constructive criticism of the work of the Court has been frequently stressed by responsible authorities. In 1898, Mr. Justice Brewer stated:

> It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the objects of constant watchfulness by all, and its judgments subject to the freest criticism.

And the late Chief Justice Harlan F. Stone has said:

> When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it.

Only recently, the President of the American Bar Association reminded American lawyers that:

> It is the inherent right and the highest duty of the Bar to analyze, criticize, make recommendations, and work toward improvement in both the rulings and the operation of courts, from the lowest to the highest level.
>
> Its right flows inevitably from the lawyer's status of citizenry, and it is underscored and emphasized by his professional standing and his devotion to juridical science.

With regard to this very decision, the Supreme Court has not been free from the criticism of many eminent constitutional lawyers, professors and judges of other courts. The Chief Justice of one of our midwestern states has, for example, declared that by this decision the Supreme Court has played "recklessly with the Constitution of this country."

In differing with the decision of the Supreme Court, I am by no means attacking the principle of separation of Church and State as set forth in the religious freedom clauses of the first amendment. The Catholics of this country not only respect that principle and revere it as part of our Constitution, but they are wholeheartedly in favor of it as one of the keystones of our liberties. Although individual Catholics may differ as to the ultimate ramifications of the Court's action in declaring unconstitutional the New York Regents' Prayer, they do not differ in their respect for and adher-

ence to the principle of separation that the Court attempted to apply in rendering its decision. Throughout the history of this country, spokesmen for the Catholic Church have made it clear time and time again that American Catholics are irrevocably dedicated to the constitutional principle of separation of Church and State, properly interpreted and properly applied. Adherence to that principle was enunciated in the early years of our nation by Archbishop John Carroll, the first Catholic Bishop of our country. Since then, that adherence has been reaffirmed time after time. More than forty years ago, Cardinal Gibbons wrote that:

> No establishment of religion is being dreamed of here by anyone; but were it to be attempted, it would meet with united opposition from the Catholic people, priests and prelates.

Essentially the same thought was reiterated in 1948 by Archbishop McNicholas, Chairman of the Administrative Board of the National Catholic Welfare Conference, who said:

> We deny absolutely and without any qualification that the Catholic Bishops of the United States are seeking a union of church and state by any endeavors whatsoever, either proximate or remote. If tomorrow, Catholics constituted a majority in our country, we would not seek a union of church and state.

In 1960, Archbishop Vagnozzi, Apostolic Delegate of the Vatican to the United States, made a public statement to substantially the same effect.

It is a fact of American history that a motivating factor in the establishment of the Catholic parochial school system in this country was objection to the indoctrination in public schools of Catholic children in the religious tenets and practices of other denominations. Catholics would make the same objection today to denominational teaching or services in our public school system. But this is a far cry from the practice which the Supreme Court has condemned in the New York Regents' Prayer Case. There, school children were merely given an opportunity voluntarily to participate in the saying of a short, simple, nondenominational declaration of dependence upon God and request for His blessings. This is not denominational religious instruction. On the contrary, the vast majority of Catholics believe that such a practice in our public school system is no more than a recognition that our public school system is not designed to make God a stranger in the classroom to those children who wish to acknowledge Him, and that it is no part of our national heritage to compel our public officials to turn their backs on the Supreme Being who, since the days of our Founding Fathers, has guided and watched over the destiny of this nation. It is in that connection and in that spirit that I voice my criticism of the Court's decision.

My disagreement with the decision is that the Court has misread history and misconceived and misapplied a great constitutional principle. In attempting to safeguard a clause of the Constitution that was originally intended to prohibit Congress from creating, or aiding in the creation of, a state religion, the Court passed lightly over its own observation that the prayer in question seemed "relatively insignificant," and proceeded to render a decision which, in the light of American history and the purposes underlying the first amendment, was unrealistic, extreme and doctrinaire. In short, the Court's proper concern with keeping the principle of separation invio-

late led it to declare a theory of absolutism with regard to the relations between Church and State, so that, even if not intended, the Court's decision may have the practical effect of prohibiting even the merest mention of God in the public school classroom. This was carrying to the extreme a constitutional principle which, reasonably interpreted and applied, should be a doctrine on which all Americans of goodwill, whatever their faith, could agree.

The alarming aspect of the Regents' Prayer Case is not so much the particular point decided as what the decision portends in terms of shaping our society. In legal effect, the decision amounted to no more than a declaration that a particular prayer composed by a particular state body could not be officially sponsored for use in the public schools of a particular state. But, in practical effect, it banned all such prayers, even though nondenominational and noncompulsory. As a result, the decision has a significance that goes far beyond the legal issue involved in that case. On the very day the Court's opinion was released, a leading figure in the fight against the nondenominational prayer declared that the decision

> makes it clear that all religious practices in the public schools, such as Bible reading, prayer recitation and religious holiday observances, are unconstitutional.

Within a few days others, adopting the reasoning of the concurring opinion of Mr. Justice Douglas, were asserting that the Court's prohibition seems to apply equally to prayers said at the opening of our courts and at the daily convening of our legislatures. It was soon announced by self-styled protectors of civil liberties that, on the strength of the Court's decision, an attack would be made on the use of the phrase "under God" in the Pledge of Allegiance to our flag. In the light of these interpretations, the Court's decision seems to forecast a drift toward a Godless society, toward the enthronement of secularism as the American religion. Our public schools are already being referred to in some quarters as our "secular school system." The ultimate objective of a well-organized, well-financed minority, ready at the most trifling excuse to provoke litigation, is to root out of American life all religious values. If they are successful, they will create an ideological vacuum which will be filled by secularism. If this comes to pass, it will threaten the stability of our nation for, as our first President said in his Farewell Address:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. . . . Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle. It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who, that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric?

Many students of the Supreme Court have observed that in interpreting our Constitution the Court keeps attuned to the temper of the times and to the manifest will and aspirations of the American public. This leaves room for hope that, if left to its own devices, the Supreme Court would in the course of time find opportunity to reshape its interpretation of the no establishment clause so as to bring it once again into line with the popular conception that has prevailed since the early days of this

nation. But for the Congress to stand aside and await that possibility would be to leave to chance and to the future predilections of a small group of men a matter that is presently vital to our way of life. The eyes of the world are upon this country, looking to us now for the kind of inspired leadership that will preserve our world from the aggressions of an alien society that has long since drained religion out of its own Godless way of life. I submit that the one sure, effective and early solution is an amendment to our Constitution which would remedy the result of the Regents' Prayer Case by correcting the Court's misreading of the no establishment clause.

In my opinion, any such amendment should not be directed merely at the Court's holding that the State of New York cannot constitutionally compose a nondenominational prayer for use in the public schools of that State. It should, rather, be directed at the malady that is at the core of the decision—the misreading of the historical intent underlying the adoption of the religious protection clauses of the first amendment. The root of the Court's error was that it lost sight of the fact that those who drafted the clauses intended not to prefer irreligion and Godlessness over religion, but to make certain that government, while cooperating with all religions, did not establish a state religion or prefer any one religion over others. I believe, then, that any constitutional amendment should go beyond a mere declaration that the voluntary recitation of nondenominational prayer is constitutionally permissible, thereby avoiding the serious risk that such a declaration would be misinterpreted to prohibit by implication traditional practices not specifically authorized. The amendment should rather make clear what our Founding Fathers themselves thought they had made clear, that our Constitution favors government cooperation with religion so long as such cooperation is devoid of favored treatment to any one religion or denomination. Such an amendment would do no more than restore to the first amendment the interpretation which the Supreme Court itself gave it in 1952 in *Zorach v. Clauson,* the New York released time case, when Mr. Justice Douglas, whose viewpoint now seems so extreme, had himself said:

> We are a religious people whose institutions presuppose a Supreme Being.... When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For then it respects the religious nature of our people and accommodates the public service to their spiritual needs.

I respectfully suggest that this Committee propose a constitutional amendment which would restore the original concept of the no establishment clause which was, as the learned Thomas Cooley wrote just before the turn of this century, to prohibit "the setting up or recognition of a state church, or at least the conferring upon one church of special favors and advantages which are denied to others." An amendment framed along these lines would revitalize the general sentiment that underlay the adoption of the first amendment. That sentiment, as Joseph Story, Supreme Court Justice and Professor of Law, said more than 125 years ago, was that religion "ought to receive encouragement from the state, so far as it was not incompatible with private rights of conscience, and the

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freedom of religious worship." In this way the American people can forever protect the no establishment clause from the doctrinaire absolutism of the secularists and restore a proper balance between that clause and the free-exercise-of-religion clause of the first amendment. One way to accomplish this would be to restate the first amendment so that the religious protection clauses would read:

> Congress shall make no law respecting the establishment of a state religion or, in encouraging religion, the preferment of any religion or denomination, or prohibiting the free exercise of religion. . . .

An amendment such as this would, in my opinion, strike at the heart of the doctrinaire and fallacious concept that there should be an absolute separation between Church and State. Such conceptual absolutism is impractical and unrealistic and if permitted to become imbedded in the first amendment could lead in the future only to other decisions that would be offensive to the religious traditions of the American people and potentially destructive to American institutions.

That concludes my statement. On behalf of His Eminence, Cardinal Spellman, I thank this Committee for the opportunity to present these views.