

In the last (Spring 1961) issue of TRADITION we presented an article by Prof. William Brickman arguing affirmatively for "Federal Aid to Private Schools." The present article by Prof. Guterman, who is professor of history in Yeshiva University's Graduate School of Education, is a rejoinder to these views and a defense of the position taken by most American Jewish organizations. Prof. Guterman contributed an article on Church-State relations to our Spring 1960 issue.

IN OPPOSITION TO PUBLIC FUNDS FOR RELIGIOUS SCHOOLS

One of the most crucial aspects of Church-State relations is the question currently being debated with much heat concerning the propriety of federal and state grants to private parochial schools. There is a distinction which must be drawn at the outset between the constitutional question involved in such grants and the practical policy to be pursued. The former raises the question of the differences between elementary and secondary, and higher education, and between grants and loans for construction and grants for faculty salaries. The latter poses the choice of a legislative policy to be conscientiously embraced independently of the constitutional issues involved.

It seems to me that is the latter alternative that needs laboring. It is with this point in mind that I have read with interest the recent literature on the subject and in particular the able presentation of the historical and current issues made by Prof. William Brickman in the last issue of TRADITION. Dr. Brickman, in my opinion, has performed a most useful service not only in examining the historical background of church-state relations in the United States, but in attempting to demolish the monolithic position taken by a great part of the Jewish community on the question of public grants for the support of parochial educa-

tion. One of the most distressing spectacles is that of certain persons setting themselves up as spokesmen for the Jewish community. From this point of view there is certainly an advantage in having a variety of opinions presented.

Yet, notwithstanding the cogency of Prof. Brickman's argumentation and the desirability of flexibility, it seems to me that the basic position taken by Jewish organizations in the past, in regard to public subvention to parochial schools, is correct. It is correct for reasons of policy as well as of constitutional law.

But first a few personal words of sympathy and counsel. The decision that a Jewish parent, or an educator associated with a Jewish-sponsored institution, must make on this question is admittedly a painful one. The rising cost of education as of other services has aggravated the issue. It has also thrown into perspective one particular deficiency, and that is the inability or unwillingness of some of the Jewish federated charities to assist Jewish day schools with funds. The monies which have trickled down from the federal government for construction of dormitory and laboratory facilities have proved a godsend to an institution like Yeshiva University. Without the grants from the federal government as well as from state governments, basic research would not only cease at many medical and scientific institutions, but their very existence would be in jeopardy. Yet high school education has not benefited to any extent from federal financial help and religiously sponsored schools of this type have not received support from state governments.

Notwithstanding this lack of support from governmental and charitable sources, the religious Jewish community has been able, through its own efforts, to maintain its day schools. If Jewish fund raising and disbursing organizations would accept their proper responsibility, the problem of financing these schools would prove less formidable. This kind of cooperation, of course, presupposes the existence of a true community spirit. All of this points up the necessity for better community organization and more adequate financing; but it does not establish a case for *governmental* support of these schools. We are dealing with communal tasks and challenges, not with claims to tax monies.

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The American community, it will be maintained below, has a responsibility to provide public education for all its youth, but not to subsidize sectarian schools. What may be a luxury or even a necessity for some of its citizens does not constitute an obligation for the state.

As a Jew committed to traditional values and to Jewish education, the author emphatically upholds the importance of the Jewish day school and its right to exist. As an American he insists that its standing and function in the community must be *voluntary*, and that in the long run the interests of American Jewry will be better served by keeping its purse strings free than by joining in any delusive drive for public funds.

The history of the state relations to private education generally parallels that of church-state relations. From the early years of the Republic, education became a bone of contention between religionists and advocates of public schools. The general tendency has been, in accordance with the church-state drift, in favor of secularization. But this has been a result not of deliberate policy, but of the fact that the multifarious sects in this country have been unable to agree on a positive program for the public schools.

As Professor Evarts B. Greene puts it in his *Religion and the State: The Making and Testing of an American Tradition* (1959), p. 120: "since no formula has been devised acceptable to all religious groups, it has been thought necessary for the state-supported schools to limit themselves to strictly secular subjects."

In the colonial period, education was regarded as either a family affair, or one concerning state *and* church. It was not generally treated as a secular matter. Thomas Jefferson's proposals for a system of education in Virginia that would exclude religious instruction from the public schools were in advance of the day and were only gradually carried out.

Nevertheless, the leaven introduced continued to work. F. Guizot, in his *Histoire Parlementaire* (vol. V, p. 125), speaking of the progress of civilization in general, considers the conception of the lay state as one of the greatest achievements of modern times. The lay state is a state which has its own religion —

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civism or patriotism — and is neutral in its attitude toward all other religions. This lay spirit, or secularism as we would call it (though this is not its precise signification), was promoted in the United States by immigration and by the increasing variety of religious sects.

The rivalry among these sects resulted in the restriction of public grants of money to public schools. This became law in New Jersey in 1844 and in Massachusetts in 1855. In fact, General Grant in 1875 proposed an amendment to the federal constitution which would have barred aid to any sectarian institution.

One of the most interesting examples of the way in which public schools profited from divergent religious claims is contained in the New York Schools controversy around 1840. Bishop Hughes of the Roman Catholic Church opposed the Public School Society program of instruction for its students which included what he considered Protestant religious teachings. The schools thus attacked were private schools though supported by public funds. The result of the controversy which brought the different points of view in regard to education into sharp alignment was the establishment of a City Board of Education which was to receive public funds to maintain schools with a predominantly secular curriculum.

The growing secularism and the faith in the special virtues of public school education were reflected in the Oregon Statute adopted in 1922 which mandated attendance at public schools of all students between the ages of eight and sixteen or until they had finished the 8th grade. The statute was found unconstitutional by the Supreme Court. One of the most noteworthy feature of the whole case was the dissenting opinion written by Justice Holmes. In it, Holmes upheld the right of the state to regulate in the fullest possible manner the education of youth. The distinguished liberal was accused of inconsistency because he was apparently promoting a state power at the expense of individuals and groups. Catholic critics of the Justice have been especially lavish in their barbs and have in several cases described his position as a totalitarian one.

I cannot agree with these critics and I believe that the Holmes

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position is defensible. Whether it is *desirable* for a state to compel attendance at public schools is one matter, but that such power should rightly belong to a state, I am inclined to support. It is only when compulsory attendance at schools exposes the pupil to religious influences or to other pressures inimical to his traditional beliefs or affiliations that the question of violation of individual rights arises. In other words, it should be the obligation of the schools to maintain as complete a state of neutrality in regard to religion as it is possible to achieve.

Failing the heroic solution posed by the Oregon statute, several measures have been employed to establish a *modus vivendi* between organized religion and the public schools. These stem from dissatisfaction with a secular education lacking in religious elements. Bible reading based on the use of biblical texts acceptable to Protestants, Catholics, and Jews, and released time for religious instruction come under this heading.

The interesting agreement reached around 1890 between several school districts in Minnesota and the Catholic Church, whereby Catholic parochial school buildings were leased to school districts and instruction divided between secular subjects and religion, was not successful and was soon abandoned.

In recent years, while the tendency has been to render the public schools more neutral, a form of indirect help has been granted to church schools by providing such services as bus transportation and text books from public funds. These measures have been found to be in accord with constitutional provisions in several states because they are founded on the idea of help to the pupils and not to the schools. They are based on financial rather than ideological or religious considerations.

Since it is so difficult to maintain neutrality, and since the needle may move to secularism as well as religion, several states have adopted means to combat this danger, a notable case being the anti-evolution statute of Tennessee.

A stable relationship between the public authority and education both public and parochial has thus not been achieved after many years of debate. The American "tradition" in this matter is easier to affirm than to define.

The trend, however, is unmistakable and, in a dynamic society

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like ours, the precedents of growth are as important as those of a departing past. It is as silly to argue from the pre-Civil War precedents concerning state and school ties as it is for the John Birch Society to condemn democracy because our government was originally a republic. The United States of today is not the United States of 1789 nor of 1840. The federal courts in their best periods have shown an awareness of this dynamism which has been characteristic of American social development.

The question that now confronts us is one of policy, one which should be grounded in historical experience. Jewish organizations which oppose Federal or State aid for parochial schools, it seems to me, are taking a proper stand concerning the formulation of policy both from the point of view of the national interest and from that of the Jewish community, for the following reasons:

In the absence of a regular church establishment which might at least, as explained elsewhere,* have a chance of controlling ecclesiastical power, the grant of public funds to parochial schools will simply deprive the state of a powerful tool for the improvement of the mind, and will promote the growth of a power which may be hostile to democratic ideals. After all, the ground rules of American political thinking and action have to be learned somewhere in order that this country remain one and not be divided into isolated religious groups. We pride ourselves on the encouragement that we as a nation give to the individual and the group, and the sociologists and the political scientists speak with pride of a pluralistic society. In order that this pluralism may survive in what may be called the social area, it is necessary that unity be achieved not only in the political field, but also in education, which is its foundation.

These considerations would prevail even if the religious groups which maintain private schools were many and small. Unfortunately, the existence of one system of such schools which potentially affects 24% of the American population is not a harbinger of unity. I refer, of course, to the Roman Catholic church which in many respects has an outlook on the basic matters included in the school curriculum which is distinct from

* See the author's article in the Spring 1960 issue of *TRADITION* — *Ed.*

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that of the country as a whole.

I recognize three basic positions on the subject of church-state relations that have molded and still mold modern ideas on the subject: the Catholic, the Protestant, and a third that I have called that of the lay state. Modern national arrangements are usually compounded of at least two of these elements in combination: the lay state and Protestantism, or the lay state and Catholicism.

The lay state which was in many respects a revival of the Roman state has, like the latter, what may be called a religion of its own (civism or patriotism), its own worship, and even dogmas. The paroxysms into which patriotic groups are thrown by slights to the flag have all the characteristics of religious manifestations. In some countries the lay state has advanced farther than in others. It is stronger in France, in leading circles, than it is in the United States.

In the United States, until recent times, Protestant principles have determined the relations of Church and State. This meant the separation of the two because of the multiplicity of sects. This also meant neutrality of the State in certain areas in which the denominations differed, such as marriage, divorce, and even education. In actual practice, this meant that the State could legislate as it saw fit in these and other areas when a consensus was attained. It did not mean, and perhaps could not mean, an indifference toward matters on which all the sects agreed, such as Sunday laws. It has never meant for the schools, for example, freedom from religion for either teachers or students.

We turn to the Catholic point of view. Neither Italy nor France, though countries of Catholic culture, for various reasons embodied the Catholic point of view in regard to the relationship of church and state in their respective legislations, but the Papal States did, prior to 1870. The official Catholic point of view, it goes without saying, has varied much less than the Protestant point of view. Aside from the medieval pronouncements of Popes like Innocent the Third and Boniface the Eighth, the modern Catholic position has been defined in the 19th Century by Pope Pius the Ninth, a conservative, by Leo the Thirteenth, not so conservative, and in the 20th Century by

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Pope Pius the Eleventh, a humanitarian and also a realist. But the basic position of the Church has remained stable. A distinction is made between thesis and hypothesis to allow for changes in practice which are not acceptable in doctrine. For example, Pius the Eleventh praised Chile for her regime of separation while pointing out that in principle this was unacceptable to the Church which insists on a Christian State.

What are, according to Catholic principles, the criteria of a legitimate Christian state? To list a few:

Control of education by the Church

Control of Marriage and Divorce

Control of Morals

Recognition of the true religion — exclusion of false ones

Efficacy of sacraments sanctioned by public laws, e.g. Baptism

Recognition of Church by State — even under hypothesis of false religion

Recognition of divine origin of Church Law.

Two cases which bring out most strongly the issues involved in the relation of a state to Roman Catholic parochial education are the Oregon case decided in 1925 and the Everson case adjudicated in 1947.

In the first of these cases, Mr. Justice McReynolds in delivering the opinion of the Supreme Court, declared:

The 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. 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. (Mark DeWolfe Howe, *Cases on Church and State in the United States*, [Cambridge, Mass.; Harvard University Press, 1952.] p. 340).

The most extraordinary pronouncement is in the dissenting opinion of Mr. Justice Jackson in the case of Everson versus Board of Education.

The majority of the Supreme Court sustained the action of a

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New Jersey school board which had compensated parents for payments made for transportation of children to Catholic Schools. Justice Jackson proceeded to analyze the functions of Catholic schools and the provisions of the Canon law by which they are bound.

He pointed out the almost ineluctable character of the historic conflict in "temporal policy between the Catholic church and non-Catholics" in respect to "their respective school policies." In words which did not mince the issue he described the nature of the conflict between state policy and Catholic ideas of education in the United States.

Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of value. It is a relatively recent development dating from about 1840. It is organized on the premise that secular teaching can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion.

Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.

The State cannot maintain a Church and it can no more tax its citizens to furnish carriage to those who attend a Church. The prohibition against establishment of religion cannot be circumvented by a subsidy, bonus or reimbursement of expense to individuals for receiving religious instruction and indoctrination (*Ibid.*, pp. 361-362).

What is it that makes a conflict inevitable and that renders the granting of State subventions to parochial schools a delusive measure destructive of the State power which granted it?

The modern state believes in the power of positive law to remedy social evils and it reserves the power to legislate within the bounds allotted by constitutional grant. The Roman Catholic church restricts the area of positive law allowed to the State and claims the divine mission to impose precepts of divine law in matters broadly classified as education, marriage, divorce, and morals.

The church is organized on an authoritarian and hierarchial system in which authority flows from above and not from below. The modern state is based on the theory and practice of self-

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government which accepts as its basis popular participation in and activation of decision making.

Striking illustrations of the differences in rationale between these two systems are contained in the series of cases defining the church as a corporation and the effects of ecclesiastical adjudications which Professor Howe includes in Chapters II and III of his *Cases on Church and State in the United States*. The effect of the decisions is to set off the Catholic church from all other corporations and to give it a status unique under common law, a status not of a self-governing corporate body but of a special kind of hierarchical and authoritarian enterprise.

What all this amounts to is that what in many cases is considered by American public opinion and law under the heading of politics is placed by the Church under the aegis of faith and morals.

A system of education which adopts as its basic premise a division of subject matter in the school between secular and divine that does not conform to the classification accepted outside that system cannot fail to divide the American public along political as well as religious lines.

It is true that the financial burden incurred by parents in support of parochial schools is becoming more crushing since, in effect, these parents are supporting two systems of schools; but on what grounds other than those of strong denominational conviction can one argue that it is the duty of the state to support private educational efforts, unless one were also to insist that the state has a commitment to support religious schools? Few would accept the latter alternative, for aside from Catholics, the advocates of subsidies generally take their stand on grounds of expediency rather than principle.

“Power corrupts; absolute power corrupts absolutely.” If this axiom of Lord Acton’s is true for state power, it is equally true and perhaps more so for church power, which after all, in the case of the Catholic church, bases its claim to authority on a supernatural origin.

But, it will be argued, the thesis sustained in the foregoing pages is a negative one because it places too much emphasis on one factor, the influence of the Catholic church, and ignores the

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positive virtues flowing from religious education in general.

The author is ready to concede that parochial education has advantages, some of them inherent, some of them only occasionally realized, over public school education. The former type of education is concerned with real rather than synthetic values and when properly administered surpasses in scholastic standards the public schools, which are all too often run on political principles.

Advocates of public education who bemoan the fate of the system in some communities and complain of the unfair competition from private schools might do well to look to their fences and try to offer their students an instruction equal in quality to that of their competitors instead of assuming that their public character justifies their educational deficiencies.

Notwithstanding these criticisms, I believe it is possible for public schools to equal and even exceed the standards of the best private schools. I believe it is possible for them to inculcate genuine values in the classroom and to do each of these things in a manner beneficial to the community at large. Furthermore, the public school can do what no private school can adequately do — initiate its students of all races and creeds into the civic traditions and practices of our great democracy.

If there is any disposition to deprecate the role of the public school in a democratic society and to exaggerate the benefits and stability of confessional schools in such a setting, the experience of several foreign countries should offer a useful warning against thinking in such terms. In France, Belgium, Holland, England, and Canada, the problem of subventions to religious schools has not ceased to agitate political life. To an almost equal extent, the problem of the religious neutrality of the public schools has been a bone of contention between religionists and secularists. Many causes are responsible for the anticlericalism that is a feature of public life in the Latin countries of Europe and to a lesser extent in countries of Teutonic culture, but pride of place may be accorded to the privileged position in education claimed by the established and non-established churches of the continent.

These churches have not been satisfied with the formula of

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Cavour, "A Free Church in a Free State," so far as education is concerned. The word "free" has merely meant "free from State control" but not "free from financial support."

It has been left to the United States to work out a formula, which, if it does not satisfy all schools of thought on the question of the role of religion in public schools, at least has disposed in clear terms of the claims of religious schools to direct subventions from the State.

The formula was a felicitous one for the United States which has seen religious organizations flourish as nowhere else and has been spared the ordeal of anticlerical crusades and church-state agitation which have been the lot of other countries.

Such a formula may not be suitable for other countries but it has proved eminently successful in the United States with its variegated religious heritage. Its main tenets should not be lightly modified, let alone discarded, even in a period of rising costs of private school education.

In the light of these considerations, it does not seem to me that the advantages to be obtained from public support of Jewish schools outweigh the disadvantages stemming from increasing national disunity, religious isolation, aggravated rivalry with public schools, and increased political controversy.