Parental Rights and State Education

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PARENTAL RIGHTS AND STATE EDUCATION

by

William A. Stanmeyer, S.J.

A Thesis Submitted to the Faculty of the Graduate School
of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Arts

June
1961
LIFE

William A. Stanmeyer was born in Chicago, Illinois, October 31, 1934. He attended Loyola Academy, Chicago, from 1948-1952; after graduating in 1952 he enrolled in the Liberal Arts College at John Carroll University, Cleveland. After two years, he entered the Society of Jesus at Milford Novitiate of the Sacred Heart at Milford, Ohio, on August 8, 1954; there he was enrolled in the College of Arts and Sciences of Xavier University, Cincinnati, Ohio.

He received the degree of Bachelor of Literature from Xavier University in June, 1958, and in August of that year began his philosophical studies at West Baden College, West Baden Springs, Indiana. He there entered the Master of Arts program at Loyola University, Chicago, Illinois, to pursue studies for the degree of Master of Arts in Philosophy. He finished his philosophical studies at West Baden in June of 1961.
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BIBLIOGRAPHY
CHAPTER I

THE PROBLEM IN EDUCATION

Education, perhaps the most important among the many domestic national
problems such as urban blight, farm surplus, delinquency, care for the aged, and
so on, each day is receiving a greater share of the thoughtful attention and en-
ergetic action of Americans. Typical of this upsurge in interest is the Gardner
Report of the President's Commission on National Goals, which notes that "up to
50 per cent of the college-age population by 1970" will be enrolling in colleges,
and concedes that "there is no likelihood that the federal government can escape
greater involvement" in education.\(^1\) To keep pace with a growing number of young
people who are seeking a college education, much money is being poured out, and
everywhere there is feverish activity purporting to improve our system of
schooling; still, both the quality and the quantity of the education that this
new financial effort will purchase have been subjected to searching and often
devastating criticism.\(^2\) Any interested reader of our daily press and magazines
can easily discover dozens of articles, many weighted with charts and statistics,
arguing the relative merits of various proposals; all of these articles indicate
the great change that is transforming American education: it is now a big-time

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\(^1\) Paul Woodring, "National Goals in Education," Saturday Review, XLIII
(December 17, 1960), 49. Also, New York Times (December 11, 1960), E 7.

\(^2\) H. G. Rickover, Education and Freedom (New York, Dutton, 1960); Albert
Lynd, Quackery in the Public Schools (Boston, Little, Brown and Co., 1953); Arthur
Bestor, Educational Wastelands (Urbana, University of Illinois, 1953).
business, a national concern.

Though feeling this concern, armed with his statistics, and aware of many of the arguments, the interested citizen may still miss a whole dimension of the education issue. He may believe in a need for "drastic action," for a "national crash-program." He may take it merely as a matter of course in our complex society that only the Federal Government can solve the problem. He may think that it should therefore extend its influence and subsidies in the field of education. Moreover, he will presume that the Government has the interest of all its citizens at heart, that it will thus in the course of time work out equitable laws to distribute funds to all who are needy, deserving, and competent students. In this last assumption, he may well be mistaken; for political questions, hotly debated, usually generate more heat than light, and the ethical and philosophical foundations of societal life may vanish, unconsidered, into some dark mental limbo far from the brilliance of the television screen and the searching arguments of legislative assemblies. But this is not as it should be. Underlying the contested questions of state control of economy, welfare programs, and increased taxation, other more basic questions must be discussed: the meaning of liberty and authority, the individual and community, citizen and state. That the problem today is not merely one of economics--taxes, grants, teachers' salaries, classroom space, etc.--has been recognized by no less an educator than Dr. James Bryant Conant, who notes that if people will interest themselves in education, "they will encounter some difficult but fascinating questions--problems which demand on the one hand a penetrating analysis of American life and on the other a clarification of our basic philosophy," for there is no clear agreement whether education is the property of
the individual and family and local government, or the state and National Governments. Increasing international threats and increasing domestic population move us to pay greater attention to certain inequalities in our educational scheme, and provide some powerful groups such as the National Education Association with what it claims is abundant proof that its long-standing demand for "Federal Aid to Education" should be heard.

Since the 1920's, the conviction has steadily grown that these inequalities pose a national problem, rather than simply an agglomeration of state or local difficulties. For over thirty years, Congress had to consider, almost continuously, various proposals . . . of federal support for public education. But, the fact that this question has been before the country so regularly without result is dramatic evidence of the deep-seated differences of opinion which surround it.

These conflicting differences of opinion have arisen from such diverse but very important questions as the modern application of the principle of subsidiarity, the role of our Constitution in setting out the relations of Church and State, the task of the schools as transmitters of culture in a pluralist society, and the significance of the long-admitted but now questioned rights of parents.

The best way to isolate the problem of the theory of parental rights in education would seem to be to exemplify current practice in general, then to abstract the philosophical presuppositions that may underlie the externals. The following is only a brief summary: an attempt will be made to limit it to

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current practice and the theory it embodies; historical discussion of the evolution of American education would be relevant only insofar as it helped to orientate the present inquiry, or illustrate a philosophical position of the past which is still important today.

The Federal Government began to move in a big way into the field of education just after World War II. Four examples will be adequate to set the stage for subsequent discussion; these are the "G.I. Bill" (1944) the School Lunch Act, the National Defense Education Act of 1958, and the education Bill that was debated in Congress last year in February. A brief summary of these is important; yet it is not necessary to inquire into details, for what is more important is the philosophy of rights behind them.

The G.I. Bill was the response of Congress and a grateful nation in trying to provide opportunities for returning veterans to continue their education, which had been interrupted by World War II. Tuition and other financial aids to meet expenses were supplied to each veteran who could meet ordinary scholastic requirements, regardless of the school he would choose to attend. The Government did not set up special "schools for veterans"; it did not allocate a number of scholarships to certain colleges—for instance, all the state universities but not privately-run universities; no schools were subsidized at all, and it can be argued that in fact the reverse was true: the schools themselves subsidized the education of these additional students, for whom they had to struggle to find adequate facilities. 6 What is more important, freedom of

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6 Virgil Blum, S.J., Freedom of Choice in Education (New York, Macmillan Co. 1958), pp. 25-33. This principle of direct subsidy to the person has been incorporated into a number of similar bills, Blum shows, such as the War Orphans' Educational Assistance Act of 1956, the Readjustment Act of 1952, and others.
personal choice—not to mention the (so-called) "principle of separation of Church and State"—was thus safeguarded. Personal choice, because a man could choose any accredited school he wanted, even if it were small, private, and/or religiously-oriented. The principle, because no aid was given directly to institutions conducted by religious groups. Thus, because the Bill did not appear to aid religiously-oriented educational institutions, the critics of "sectarian schools" as being "divisive" were appeased; though an emergency measure, the Bill was universally accepted as an excellent solution to a difficult problem. And what is pertinent to note here with emphasis is the fact that at last the Federal Government had been brought to underwrite the education—on the highest level only, of course, and temporarily, it was intended—of a large element of the American population. This was an important precedent.

Less well-known generally was another governmental act that was passed at about the same time: the School Lunch Act, set up in 1946, with the dual purpose of improving the nutrition of American school children and effecting useful disposal of agricultural surpluses. This act followed the "grants-in-aid" formula in legislation: The Government will give the states an amount of funds equal to the amount the state itself raises for the same end. An interesting point of this law, one which provides the point of departure for much discussion about "states' rights," is the way it enabled the Federal Government to provide

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Footnote:

Formal consideration of this "principle" falls outside the scope of the investigation here pursued; in itself it would provide matter for many books. Whether this "principle of separation" is an adequate ground to deny direct aid has been strongly controverted; see, for example, Joseph F. Costanzo, S.J., "Federal Aid to Education and Religious Liberty," University of Detroit Law Journal, XXXVI (October 1958), 1-46. It is now widely accepted that the "no establishment" clause of the First Amendment is a means to the following clause, which provides for "free exercise" of religion; it is not an end in itself.
meals for children in non-public schools—that is, for children who attended private and parochial schools. The Federal Government was to inquire of the state to learn whether its public administrative machinery was allowed under the current state laws to provide such a benefit to both public school and non-public school pupils. If the state could constitutionally do the job, the Federal Government simply left the entire administration of the program up to the states. But if the state could not do so—and about half of the states asserted that legal obstacles existed—then the Federal administrator was to withhold the Federal allotments in an amount proportional to the number of children in non-public schools. This amount was then to go directly from the Federal Government to the non-public schools, to reimburse them for part of their expenses, which they incurred when they themselves had to supply lunches to their pupils. In other words, when the legal machinery of a state was not adequate to provide a benefit sponsored by the Federal Government to all its schoolchildren, but only those in public schools, the National Government circumvented the obstacle by dealing directly with those schools and serving directly those pupils, who were not part of the state's public school system.

Here some observations deserve to be made. First, again there was given a precedent for the Federal Government to exercise some direct influence in the field of education on a national scale. Second, with apparently little effort the Federal Government saw to it that all the children partook of the advantage offered, even though the states, many of them, were officially disinclined to

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8Costanzo, p. 28. The Hill-Burton Survey and Construction Act of 1946 is another example of the use of public funds for institutions that perform a public service, regardless of the "sectarian" nature of the trustees; see Leo Pfeffer, Church, State, and Freedom (Boston, Beacon Press, 1953), pp. 174-179.
given this type of aid (indeed, any type of aid) to children in non-public schools. In the face of a "psychological climate of opinion" which is strongly adverse to "religious" or "sectarian" schools in general, and even more opposed to the use of "public funds for private purposes," as they claim, the Federal Government availed itself of a workable distinction between "personal" and "institutional" benefits; the former concern some tax-supported benefits—bus rides, chest x-rays, textbooks, lunches, and so on—that accrue directly to the individual child, and the latter concern benefits that are equally tax-based, but seem to aid the school directly—funds for libraries, laboratories, maintenance, additional construction, and so on. The use of such a distinction, however, cannot cover all contingencies, as the example of the National Defense Education Act of 1958 will show.

When a few years ago the Russian rocket began to circle the earth, many American educators—and with them a large segment of the American public—began to worry about how they might evolve a plan by which our education, which was seen to be drastically deficient in some essential areas, could be improved. It was natural, perhaps, that the proponents of "Federal Aid to Education" would seize upon this occurrence as an easy springboard from which they could hurdle the traditional obstacles to their program, and at last convince a sluggish Congress that only it could solve the education crisis and save America. As a

9Neil G. McCluskey, S.J., Catholic Viewpoint on Education (New York, Hanover, 1959), pp. 157-165. Father McCluskey writes on the types of aid that "classifying the forms of governmental assistance to education under sectarian auspices is not an easy task. Proponents of the 'absolute separation' theory usually lump all benefits together into a single forbidden category. . . . There is general acceptance, however, of the distinction between direct and indirect support to education. An outright grant of public land or money to a school is a form of direct support. . . . A scholarship . . . is indirect . . . ."
means to promote the notion that the common good requires Federal intervention in the ordinary affairs of education, the needs of the nation as a whole were stressed, and the Eighty-fifth Congress at last produced the National Defense Education Act (NDEA). The Act is explained briefly at its beginning:

In Title I, which states the philosophy of the Act, we read (1) that the security of the nation requires the fullest development of the mental resources and technical skills of its young men and women; (2) that we must increase our efforts to identify and educate more of the talent of the nation; (3) that no student of ability should be denied an opportunity for higher education because of financial need. It would be entirely reasonable to expect, then, that the benefits of this Act would apply indiscriminately to all students and all institutions. This is not the case.\textsuperscript{10}

The details of the NDEA show why this is not the case. It is a matter of some moment to see its particulars; for when we begin to see some of the theory behind the bill, and combine it with its successor of last year, we will find a certain pattern developing. This analysis will give adequate grounds for some reflective questions, by which we may formulate the problem that the subsequent chapters will investigate.

In Title II the Act makes provision for cancelling up to one half of any loan, plus interest, at a yearly rate of ten per cent for college students who will enter full-time teaching in a public elementary or secondary school. But no "forgiveness" or waiver of debt is granted to interest future teachers in non-public schools, where the pressures and needs are equally great. And Title III does the same type of thing: it makes money available to the states so that they can strengthen mathematics, modern foreign languages, and science instruction; the funds can be used, however, to buy materials and equipment to improve

\textsuperscript{10} Ibid., 171.
the teaching of these subjects in the public schools only. Again, Title V gives grants to the states to aid them in setting up programs of testing and guidance in secondary schools, programs intended to help students decide upon their vocational objectives. And it permits contracts with colleges and universities, both private and public, to help pay for training institutes to improve secondary school guidance counsellors. These contracts allow trainees preparing to engage in public high school guidance to receive $75 per week, plus $15 per week for each dependent, during the training period. 11

Strange as it may seem, these provisions, which simply ignore the private schools, equivalently renew—for the first time on a wide-scale national level—almost the exact practices which on the state level at the time of the School Lunch Act caused the Federal Government to set up an alternative program to bypass the constitutional difficulties alleged to exist in the states, and thus to see to it that all the children received equal treatment. Ignoring the non-public schools, these and other sections of the NDEA offer large financial inducements to teachers and students to support by their labors the public school; and conversely, these passages enact in law what amount to heavy economic pressures against the non-public schools. It seems, then, that a certain evaluation of those schools is expressed here; and it is not going too far to assert that such an evaluation must imply a philosophy of the role of those schools in our society, of the rights of the parents and students who support them, and of the rights of the Government under which the schools operate. For if they are equal to the public schools, they should receive equal treatment; but they are not

receiving equal treatment—nor are the students in them; therefore, they are not equal but inferior. But if they are judged to be inferior, what is the verification of such a judgment? On what philosophical grounds are they less worthy of financial aid, seeing that in the empirical order of turning out educated citizens, they do the same job as the public schools, sometimes a better job? Then too, what of the students and teachers in these schools; does the Federal Government have a right to impose conditions on their freedom of choice? If so, what are the bases of this right? Government may seek to justify restriction of citizens' freedoms only in pursuance of a higher good; does a certain philosophical understanding of the common good stand behind such a law as the NDEA? Such are a few of the questions we may use to guide this investigation; their pertinence is underlined by the following, the fourth and last example of current legislative efforts that have led up to, and formed the background for, the President's bill to Congress on education, which began such controversy in February of 1961.

In February of 1960 the Senate labored through interminable debate over what was called a bill "to authorize an emergency 2-year program of Federal financial assistance in school construction to the States." Actually, despite the limited express intent of the bill, questions of teachers' salaries, grants for scholarships, etc., appeared in profusion. What is important here is to note the formula by which Congress determined the children eligible to receive, through the various states, the Federal allotments. All children, between the

ages of five and seventeen, some under the term "school-age population," and are thus to be the beneficiaries of the per capita allotment by the Federal Government to the individual states; but though the private school children are counted in, when the census determines the population basis for distributing the funds, they are counted out—that is, they receive no money—when the funds are actually distributed. This janus-like provision which purported to be aiding "all" youth drew some interesting remarks from Senator Lausche of Ohio:

I call attention to the fact that in determining the population which is between the ages of 5 and 17, under this definition those who attend both the public schools and the parochial schools will be counted.

The point I wish to make is that the parochial schools now feel that they have been denied fair consideration by the Government. Under this provision, a double wound is inflicted upon the parochial schools, because, in calculating the school population, both those in the public schools and in the parochial schools will be counted. I submit that that is not fair on any ground. . . .

I dare go so far as to say that this arrangement has some of the attributes of dishonesty. We have no right to include parochial school children in the school-age population and to say that that is the factor which shall be used in determining what a State is entitled to receive as benefits from the bill.13

Senator Lausche then offered an amendment, by which persons who send their children to private schools or parochial schools would not be taxed for the money which would otherwise ordinarily go to the states for the public schools. In other words, money would go to the states for the benefit of the public schools alone, but the money which would be available, if the whole school population were considered, would be reduced by the amount which would otherwise be spent for children who attend the parochial schools. He pointed out that "by including the children who attend parochial schools in the determination of the total number, an additional tax burden is being cast upon the families whose

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13Ibid., 1917.
children attend the parochial schools."\textsuperscript{14} Whatever the reasonableness of this viewpoint, after a short exchange in debate, a vote was called for and the proposed amendment was rejected.

Reflection about the four instances of Federal Aid to Education that have been cursorily explained reveals some philosophical and legal implications behind them. The idea of subsidiarity is present, especially in the first two. Here there seemed to be little question of the power of lower or smaller groups to meet the problem, and so the Federal Government provided conditions under which the veterans received scholarships and the children received lunches from the stores of surplus food. And of course, a clear precedent was being set up for the activity of society at large, through its National Government, to promote some progress towards equity in some areas of education. However, the first two bills were not occasioned by the pressures that brought up the last two, and the recent "Task-Force" proposal; and it was not until recently, therefore, that the idea that the Federal Government has a general duty to support or underwrite all areas of education has gained currency. A recent article by Senator Joseph S. Clark of Pennsylvania, is typical of this more modern idea; he is quite certain that "The national government is the usual means by which a free people tackle a problem which is public in its character and national in its scope," and that "it is only our national government that can mobilize and direct the resources of our society when they must be mobilized."\textsuperscript{15} He

\textsuperscript{14} Ibid.

\textsuperscript{15} Joseph S. Clark, "Higher Education is a National Problem," Saturday Review XLIV (February 18, 1961), pp. 54-55. One thinks of police, fuel supply, recreation facilities, etc., and wonders if the Senator is quite accurate in holding that the national government is the usual way of solving such problems.
is quite certain that the Federal Government's role is not merely supplementary, but central to the financing of American education; though he admits that he does not have "the faintest idea how public aid should be distributed among such a complex variety of institutions" as comprise higher education in his home state of Pennsylvania, he does have strong ideas that "Federal aid should not be limited to special projects or research, or science, or defense-related subjects. It should be across the board. It should go to the heart of the university, not just to the periphery."\(^{16}\) Regardless of what any theory of subsidiarity might offer to support a contrary position, this idea of Senator Clark's, it should be recognized, arises in a context of emergency—the competition with the Russians in education—and yet, when once formulated, dispenses with the data from which it was drawn, prescinds from the current situation, and reveals itself basically as a philosophy of the role of the State in the life of the individual person. This is one philosophical presupposition that underlies the movement to appeal for Federal help.

Another facet of this philosophy becomes evident when one notes the shift in emphasis between the attitude that the Federal Government took toward individual freedom in the G.I. Bill and the School Lunch Act, and the later NDEA and the Senate Bill of 1960. The G.I. Bill approached the problem from the point of view of the person, and the School Lunch Act continued this policy with an application to private associations: it recognized the primacy of the right of these groups to be dealt with on terms proportionately equal to those given to governmentally-directed schools. But the latter two change their emphasis.

\(^{16}\) Ibid.
For the NDEA and the 1960 education bill approached the problem from the point of view of the welfare of the whole, of the collectivity; these two bills seemed based on the notion that personal preferences and rights are secondary; indeed, they seem to imply that it is up to the State, not the individual or any voluntary associations, to define those rights.

Sharp criticism ensued. It centered about the relation of State and the individual, in the delicate area where the internal commitment of a person's private conscience proceeds outward in activity to the external world of societal institutions and economic pressures. The two more recent bills—to say nothing of the current "Task-Force" proposal—are just examples of a growing trend; the specifics vary according to the nature of the envisioned legislation, but the whole movement has a central or core attitude about the priority of rights in education, and can thus be criticized as a whole:

The Federal Constitution guarantees freedom of choice in education. This freedom of choice is embedded in the First Amendment guarantee to freedom of mind and freedom of religion. On the basis of these constitutional liberties, parents have a right to send their children to church-related schools and colleges, and children and students have the right to attend such educational institutions.

Yet when parents and children exercise this right, they are deprived of all public educational benefits. Professor Wilbur G. Katz put it bluntly when he said that 'we exact a price for the exercise of this liberty.'

Liberty at a price—this is not liberty. This is the suppression of liberty. In human affairs liberty means the freedom to choose alternatives. But religious-minded parents and their children are placed in a dilemma, both horns of which are totally unacceptable. The state-devised dilemma is this: submit your child to a tax-supported secularized education or pay for your child's education elsewhere. There is no freedom of choice in these alternatives. In fact both alternatives involve a violation of constitutional rights. . . . 17

It should be noted that this stricture is not confined to an application on the

17 Blum, pp. 121-122.
National level only; on the contrary, as has been shown by the instances of the G.I. Bill and the School Lunch Act (and other sections in other laws could be mentioned), the Federal Government's policy has by no means been consistent, in regard to the role of private schools and the students therein. The trend at the present, at the very moment when pressure for "massive" outlays of funds on a national level is strongest, seems to be away from the impartiality towards all schools that now and then has enlightened the policy of the National Government; but if the National Government adopts a policy of "absolute neutrality" toward non-public schools—"in effect, totally ignoring them, and excluding them from any financial benefits of educational legislation—it will have simply raised up to the level of universal application a general attitude which predominates in the legislation of nearly all the separate states. The "liberty at a price" mentioned above is an analogous notion: sometimes the price is for "fringe" or "incidental benefits" such as bus-rides or text-books; at other times the price is for substantial like tuition and scholarships; always it is for institutional maintenance and expansion costs. To detail the various possible combinations and relations of personal benefits, institutional benefits, fringe or direct benefits, etc., would be tedious and unnecessary here; the general principle is what must concern us, and that principle is that somehow private schools (and the students who attend them, the parents who want them, the groups which sponsor them) do not deserve the same treatment as the public schools.

A vigorous protest against this principle has come from Dr. Francis Brown, a professor of Economics and a father of five children:

18 McCluskey, pp. 139-166.
People say that it is not true to claim that the Federal Government has nothing to offer to our children; they maintain that we can freely choose to send them to the public schools and thus have them enjoy not only the educational benefits provided by the state but also any that might issue from the Federal Government.

My reply is that an offer to bestow government benefits only on condition of accepting conditions unacceptable to one's conscience does not present a true choice. Such a proposition has always been, is now, and will always be a religious test. This is so in Moscow; it is so in Madrid; it is so in Chicago, Illinois.19

He goes on to note the position, later to be voiced by Senator Clark, that the National Government has a responsibility—Clark would say the prime responsibility—for the education of American youth:

The federal bills seek constitutional justification in a national interest in public schools, but they fail to explain why the nation has no interest in my children. Our oldest boy, Frankie, has an excellent mind and an inclination to science and might well prove to be a valuable asset in the service of his country, but he, too, is presently outside the pale of the proposed program. Does Congress appreciate that such a position hurts not only Frankie but also the national effort?20

In commenting on the NDEA, which is typical of legislation in this field, Father McCluskey observed that it was projected for the defense of the American people and offered support for the improved training of the nation's school population, and yet "simply because they are in religiously oriented schools, Catholic students and teachers are accorded second-class treatment for fear of non-Catholic protest that the benefits of the Act might incidentally benefit Catholic institutions."21 And so the enigma grows: programs ostensibly designed to make satisfactory education available to all our students in a time of peril

19Dr. Francis J. Brown, "Justice for My Children," Ave Maria, reprint (1960 no month or page given).

20Ibid.

21McCluskey, p. 172.
when the nation needs all its able citizens prepared to play their full role are criticized on the very ground of their expressed intent: they exclude some of the "all"; they were designed to make equal opportunity available, and instead they reduce the possibility of that opportunity's being made really equal. "My most strenuous objections to the proposed federal bills," says Dr. Brown, "is that they would incorporate into federal law the discriminations, religious tests and second-class citizenship under which Margaret Rose and Frankie [his children] presently labor on the state and local level." And in concluding his remarks about the NDEA, Father McCluskey said:

But the question remains unanswered: During these years, when the nation cannot afford to leave any talent undeveloped, wherever available, have not Catholics the right to expect that government-supported programs in counseling, testing, and guidance will include their children in parochial schools? If the federal government in the interests of the national defense and world leadership is going to help local communities to identify, guide, and subsidize student talent, it must do so indiscriminately. Where local prejudice or state constitutions make this impossible, the federal government should establish testing centers or language laboratories or science institutes independent of the public schools and accessible to all students.

With the foregoing facts and arguments as data, we may formulate the current problem in education: there is tension and disagreement over which theory of personal rights and State responsibility should guide education laws. This disagreement affects the thinking of a large number of the American people, and its concrete repercussions in terms of classrooms, teachers' salaries, tuitions, taxes, etc., affect all of the nation's youth, most directly those in private schools. To explain in detail the theory of parental rights, the theory of

22 Brown, "Justice for My Children."

23 McCluskey, p. 172.
the priority or supremacy of the State, and to criticize the latter theory in terms of the former will occupy the next three chapters successively. The final chapter will attempt to offer the direction that a practical solution to the problem might take.

A complicating factor in this whole problem is the role of the Church. In almost every discussion on the education question, someone brings up the question of "Separation of Church and State." Private education is one thing, but religious private education is another—at least in the minds of many. Private schools have not composed the backbone of the modern American school system, and not too many people have thought of them as any great threat, in any sense, to American ideals of democracy (except Dr. Conant, whom we shall consider at length in Chapter Three). But a school system that struggles to maintain a rugged independence of governmental controls is something of a paradox for many who do not share that system's religious orientation: whether with admiration or distrust, they may tend to view it as something "un-American." Of course, very few people in America are much concerned with the Church's theory behind these schools, until individual believers try to put that theory into practice. The practice, briefly, is this: there are many "independent" schools in this country, but on the primary and secondary levels these schools are largely run by a certain Church, usually the Catholic Church. So it happens that a religious body controls the vast majority of the non-public schools, simply because few other people besides Catholics, either as private individuals or as voluntary groups, care enough to work out education for their children without the direct supervision of the State. The right of the Church, or of any non-governmental association, to run accredited schools has been recognized by the
Supreme Court:

As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. 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. It has been generally understood in this country that this right is not a matter of mere sufferance, and that legislatures prescind entirely from deciding the religious merits of whatever parents or religious groups should choose to conduct a school. This ruling, in effect, expresses the fact that the public school system is a means to the end of an instructed citizenry; it shows that there is nothing per se necessary in the nature of this instruction or of the State that would require schools to be administered by elected or appointed public officials. The ruling clearly suggests that religious values and the "additional obligations" that stem from them are essential for the child, and that the State must not be inimical to the parent who tries to provide conditions through which the child may come to know and follow his own obligations and destiny. The theory is clear, but its applications have not been so consistently recognized.

Operating within this atmosphere, the Church and the religious parents who belong to the Church, have striven to provide a school system for all their children, on every level of education. These efforts spring from the conviction that religion must permeate education, and find their theoretical justification

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in the writings of the Popes, the most well-known source being the encyclical, "Christian Education of Youth":

The Church therefore is the educational environment most intimately and harmoniously associated with the Christian family... The Church and the family may be said to constitute together one and the same temple of Christian education... From this it follows that the so-called "neutral" or "lay" school, from which religion is excluded, is contrary to the fundamental principles of education. Such a school moreover cannot exist in practice; it is bound to become irreligious...

For the mere fact that a school gives some religious instruction (often extremely stilted), does not bring it into accord with the rights of the Church and of the Christian family... To be this, it is necessary that all the teaching and the whole organization of the school, and its teachers, syllabus and text-books in every branch, be regulated by the Christian spirit, under the direction and maternal supervision of the Church...²⁵

Such a theory, and the practices that follow it, complicates matters in a nation with the peculiar pluralistic "neutrality" toward religion that pervades Constitutional interpretations in the United States; we will see some of these at length in the two following chapters.

Besides the complication that the religion issue introduces to the discussion of parental and governmental rights in education, another complication arises simply from the terminology. It should be clarified before proceeding further. Partly to imply the confusion here and so to show the need for some explanation, the above discussion has used such terms as "separation," independent school," "public school" "private school," "State (or Government)," "aid," and so on, in an undefined and popular sense. Such usage does not impede discussion greatly; but a danger does lurk here, since a misapplication of a

term in an initial definition can vitiate a whole line of reasoning; the logic may be perfect, and the mistake nearly beyond detection. The following will clarify terms somewhat.

"Education." This word has a wide sense which means any experience that includes an intellectual content of some kind and tends to further a person's culture. It is of wider extension, therefore, than "schooling." Its narrower sense usually means the training that takes place through the instrumentality of schools. This is the ordinary signification, and the one that will be followed here. But for the purposes of this investigation, it should be stressed that the word is analogous when used in the context of "Federal Aid"; there are many ways of "aiding education." 26

"The State" and "Government" will be used interchangeably; the State is not the same as society itself, it "is only that part of the body politic especially concerned with the maintenance of law, the promotion of the common welfare and public order, and the administration of public affairs." 27 It is the organized and official apparatus of society. A semantic problem arises in the United States: between the city and local government on the one hand, and the National Government on the other hand, there is the "state" government. But since our questions about parental rights concern the relations of parents to government(s) on every level, we may use "State" or "the State" to signify government-in-general; when specification is required, some term such as "the various states" or the "National (or Federal) Government" will be inserted.

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26 See Notes 9 and 18, above.

"Public School" and its cognates. This is perhaps the most difficult word to define, without prejudging the issue through its connotations. In everyday language we know well enough what we mean by it, but the word "public" is here basically ambiguous, and often vitiates discussion by inserting a fourth term in a syllogism that in logic should have no more than three. "Public" carries in its wake many different connotations; managed for the public, by managed by the public, to be paid for by the public, available to the public, serving a public function, etc. 28 Throughout the following pages the meaning generally used will be that least apt to cause trouble: the notions of local-government—which-administers-schools—financed-by-a-general-tax. 29

28 For example, the "public transportation system" in Chicago was long in the hands of a private corporation; it was available to the public, it served a public need; but it sought to make a profit, and was not managed by the public. It is now directly run by the City of Chicago, and paid for partly by taxes.

29 The correlative of "public school" is "non-public school." This we will take to mean a school that is not financed through a general tax fund and under local government administration (say, through a school board). Three types are commonly noted, nearly synonymous: the "independent school," the "private school" the "parochial school." The first stresses the self-reliance of the association that runs the school; it does not fall back on a state government for funds; consequently it is not directly under a government administration, but is merely under the general public overseeing that insures adequate standards, scholarship requirements, etc. Of course, no school is entirely "independent"; it must conform to the State standards, to the desires of the group sponsoring it, and to the general cultural norms of the nation. . . . The "private" school historically has a slightly different nuance than "independent": it is usually very high-quality (and thus probably highly selective), it may teach courses not found in the ordinary public school curricula, it may require high tuition. The word is noted here because it can be used to insinuate that such a non-public school fosters "divisiveness" (cf. below, Chapter III). The third word stems from a description of a geographic administrative unit, the parish, but common parlance takes it to mean the "religious school," often called "religiously-oriented school"; the word is often linked even to high schools which are so oriented, even though these may not necessarily be run by a parish.

All these meanings are common sense; the basic dichotomy is between "State-operated" and "independently-operated," and the ordinary context will indicate any departures from the everyday signification of the words.
Finally, other terms, such as "Separation of Church and State," "pluralism," "divisiveness," etc., will be explained more fully by the context of their appearance than they could be explained in abstraction here.

The method in the following chapters will be to take representative writers who concern themselves with the relation of parental and State rights in education. Because of theological considerations that might deflect us from the main theme, the question of justice to a religious group will be discussed insofar as it is a religious group—a group of citizens, such as a family, who, whatever their religious convictions, happen also to be citizens, members of society. We will find that there are two poles around which the arguments will cluster: the family, through the efforts of the heads of it, the parents, will claim a prior right to educate; the counter-position to this claim gives the State equal or prior rights. Working out from the context of the current practice, which we have seen already, we propose to formulate the two philosophies, and compare the two through a critique of the latter. 30

30 Since the time the previous pages were drafted, the President has sent to the Senate and House a bill on education. It appears in: U.S. Congress, House of Representatives, Congressional Record, 87th Cong., 1st Sess., Monday, February 20, 1961, Vol. 107 (Washington, 1961), pp. 2284-2285. Chapter I, which explains the framework or context in which the problem of parental and State rights in education occurs, may be brought up to date as far as possible, by this short reference to the latest education effort from the Federal Government. The bill justifies the entrance of this highest level of Government into the field of education by saying that "Our requirements for world leadership, our hopes for economic growth, and the demands of citizenship itself in an era such as this all require the maximum development of every young American's capacity." It adds that "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 it." Thus, expressly, the bill claims to help all American youth. But Part I, on "Assistance to Public Elementary and Secondary Schools," says, "no elementary or secondary school funds are allocated for constructing church schools or paying church school teachers' salaries. ..." Thus it seems that children in church-related schools are not part of "all American youth"!
CHAPTER II

THE TRADITIONAL THEORY OF RIGHTS IN EDUCATION

This theory of rights in education is an extension of an overall understanding of man; it is based on a judgment of what is real and vital and of crucial importance in human nature. It starts from concrete experience, it watches man in action—reading, speaking, playing, fighting, praying—and from his normal activities concludes that he has a nature which is intellective or spiritual, social, and developmental. Man fulfills himself, but only gradually,

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1The two terms, "traditional theory" and "modern theory" are used to sum up, by a convenient semantic device, two general attitudes or approaches to the nature of man. In each, certain fundamental principles, sometimes only half-articulated and even only subconscious, cluster around a basic understanding of human existence. The title of this chapter might well have incorporated some cognate of the term, "the Natural Law," except that in the realm of the concrete problem of education, some people who would follow the "traditional theory," may not want to acknowledge their indebtedness to the Natural Law. It is profitable in this connection to consult J. Courtney Murray, S.J., We Hold These Truths (New York, Sheed & Ward, 1960), pp. 5-12.

In a way, the "modern theory" is no less in continuity with the past than its opposite. Many an age of history witnessed a State as supreme social unity, which demanded allegiance at all costs, whatever the sacrifice of individual rights. The "modern theory" seems to rediscover itself in various epochs; today the Communists think they are original; whereas they were foreshadowed by the Persians, Sparta, the decadent Roman Empire, China under Genghis Khan, Stuart England, France of the Revolution, Nazi Germany and others. Whatever latitude these might allow families in planning the destiny of their own lives, the official policy—should ever a conflict arise—was clear: the organized society is prior and posterior to the individual, he derives his rights from it, his good is whatever is its good. We call it "modern," however, from within the limited perspective of American history. Until the convulsions of 1914 and thereafter, post-Enlightenment man had nourished his politics with the food of the traditional theory: man had certain inalienable rights, and from this fact followed a philosophy of personal responsibility and a distrust of the omnipotent State. Traditionally, then, Americans hold the parents as prior to the State in educational rights; but recently this attitude has been challenged.
and this in a society of other men. Man feels an aspiration to freedom, and, first of all, to inner and spiritual freedom. The second essential form of this desire is the desire for freedom externally manifested, and this freedom is linked to social life and lies at its very root. For society is "natural" to man in terms not only of animal or instinctive nature but of human nature, that is, of reason and freedom. If man is naturally a political animal, this is so in the sense that society, required by nature, is achieved through free consent, and because the human person demands the communications of social life through the openness and generosity proper to intelligence and love as well as through the needs of a human individual born naked and destitute. 2

As a spontaneous center of rational freedom, a person, man defies definition; by means of and because of his body he struggles along the flatlands of space and time, by means of and because of his intellect he vaults upward and outward to the transcendent heights of the mystery of being itself; because of both his body and his mind he lives in a society of other men, in an imperfect but perfectible universe. He is never static. He has capacities which drive on to fulfillment; he seeks to know the truth, to do the good, to "personalize the universe." 3 And, as is quite clear from the "revolution of rising expectations" around the world, he wants to enjoy that good, to experience justice, to be treated—it all comes down to this—as a person, not a thing.


3 Emmanuel Mounier, Personalism, trans. by Philip Mairet (New York, Grove Press, 1953), pp. vii-32. Mounier's main concern is philosophy of man in the modern society. Though he is not a "traditional" philosopher, he does come to the "traditional theory"—by his own unique way. His own particular nuance is almost hyper-social, yet he transcends the collectivistic thinking that usually follows from such an orientation. He stresses the need for society to become "personalistic": man must impress the true human dimension upon institutionalized modes of living, these must recognize the spiritual aspect of man; they must not, as is the common problem today, "reify" the human and spiritual. For a series of brilliant essays on this point, see Mounier's Be Not Afraid: Studies in Personalist Sociology, trans. by Cynthia Rowland (London, Rockliff, 1951).
As spiritual, the intellect of man can "bend back" upon itself through reflection, take stock of personal conduct, and be both judge and jury in the constant trial of meeting consciously-recognized responsibilities. 4 Man may try to slough off any recognition that he cannot treat others as things, but in so doing he often reduces himself to the level of a thing; and he "depersonalizes society" at the same time. He realizes then, in reaction to the frustration he brings to the world, that he radically differs from all non-spiritual reality.

Since we are not trying to prove this conception of man is true, as in contrast, say, with a materialistic conception which would immerse man in matter, but only to describe this understanding of man, we cannot tarry to explain or even list some of the problems connected with the ontology of the person. It is sufficient to note that this has been the ordinary understanding of man, among those who accept some sort of natural law as the normative basis for man's personal and interpersonal strivings. He is social, he lives in community and the family. He has a nature that goals of which can be had only by the help of these larger communities. Man as a person is the foundation for these communities, they exist for him, they establish their own good in aiding him to find his good. 5 Rights stem from persons, from the dynamic exigency within the nature of man that drives toward its purpose-to-be-fulfilled; rights are grounded in functions that must be done, and these are determined by the ends of the very nature itself that is in question:

Rights are the projection of his (man's) personality into social living,
the ordered relation of operation among persons. It is because the person is what he is, the sole image of absolute value and independence, and a permanent being above all secular and temporary values, that his supreme value and the operative perfecting of his image of absolute value is a right, a claim and privilege and autonomy not to be interfered with. Human persons must live a human life. . . .

A right is a moral power to do, to have, or to claim something, free from interference by others. "Rights establish spheres of autonomy with the power to act in accordance with responsibilities designed in existential human ends." Some rights, because they are grounded on the very nature of man—which of course no man can lose—are inalienable; some rights a man may never reject or cast off, but often he may delegate their explicit exercise. "This distinction," says Maritain, "between the possession and the exercise of a right is, in my opinion, of serious importance." 8

As an incarnate spirit, as a spirit incomplete of itself but needing the society of others for its full self-realization, man through his sex drive brings other men into existence. Man naturally becomes parent and families


8 Maritain, Man and the State, pp. 101-103. In this place Maritain does not draw out the application for the field of education, though he does make an observation that has a connection with our topic: "The right to receive the heritage of human culture through education is also a fundamental, absolutely inalienable right: the exercise of it is subject to a given society's concrete possibilities; and it can be contrary to justice to claim the use of this right for each and all hic et nunc if that can only be realized by ruining the social body. . . ." Of course, if as matter of public policy this claim is made for all children, the State will acquire additional duties, as we will see.
begin. "The final cause of the family is the procreation of children, the completion of this process by nurture and education, the satisfaction of a natural inclination, and finally, the opportunity for a peculiar and unique mode of friendship."9 The special intersubjectivity in family life cannot be found in any other human society; it is necessary for both the parents and the children, as an atmosphere of care and concern and sharing through love that promotes their integral development as human persons. The act of generation, adequately considered, is no work of a mere moment; persons come into existence, and the fundamental characteristic of a person, his spiritual dimension, manifests itself through the dual powers of intellect and will, which need long training so as to learn to organize unruly centrifugal impulses into a single-minded and steadfast lifelong pursuit of what is true and good. Thus education belongs to the parents; to give birth to a living human body is only the first step in a process of giving birth to the fully mature human person.

Nor do parental rights in education signify a process of unilateral giving, with no recompense. If the parents are to be true to their own nature, and include their whole persons in their conjugal love, they must transmit intelligence and love, they must exercise their own powers of instruction and love upon their own creation. Their efforts to develop their children through their education will develop their own characters and personalities:

This extension of one's own person in the child is a natural perfection of a human nature and power, and demanded for the concomitant perfections attained in relation to that personal creation. The full dignity of the human person, the completion of his potentials, cannot be achieved without... the further development in the parent of parental dignity. . .10

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10 Croman, p. 146.
The foregoing, that it is the prerogative and responsibility of the parents to provide for, guide, and control the children's education, may be summarized in the words of a recent Pope:

God directly communicates to the family, in the natural order, fecundity, which is the principle of life, and hence also the principle of education to life, together with authority, the principle of order.

The Angelic Doctor with his wonted clearness of thought and precision of style, says: "The father according to the flesh has in a particular way a share in that principle which in a manner universal [sic] is found in God. . . . The father is the principle of generation, of education and discipline and of everything that bears upon the perfecting of human life."

The family therefore holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth. 11

The family has the right, but as everyone knows, it rarely exercises this right in any complete way. The traditional theory thus affirms the propriety of delegation of the exercise of the right to others. Men are living in a society that is comprised by a web of institutions and specializations; and the complexity of modern life serves simply to underline the fundamental incompleteness of the individual human, who needs help from other men and is not—certainly in modern times—self-sufficient even in the micro-society which is the family. Men have formed the State for a variety of reasons; it is an instrument of the groups and individuals making it up, and its function is external, temporal, in providing conditions wherein men may achieve their natural goals with a maximum of peace and justice. 12 Thus it happens that in almost inverse proportion as the parents find themselves unable to cope with educational

11 Pius XI, p. 12. Some who would affirm the priority of parental right may deny the relation of that right to God.

needs of their children, the State—or better, the subsidiary social units that seem to radiate out from the inner dynamisms of person and family, even as ripples flow outward from a central disturbance on the surface of a pool, in ever widening circles—finds itself better equipped to provide assistance to its lesser component associations and individuals, by setting up a framework of conditions in which parents may freely delegate their exercise of their right to educate to others—teachers—who stand in loco parentis.13

In modern America, this transferral of exercise of the function of education is taken as a matter of course. Parents may lack competence, concern, time, or what they take to be necessary "professional" training. Yet the child must be educated; his nature requires it. For his future happiness in a complex society, he needs it. And other members of society deserve, for their own safety, that the child receive training commensurate with the role he must later assume in furtherance of the common good. To these reasons current events have added another: the massive international ideological competition that history has imposed upon the world requires that all citizens, according to their capacity, be able to contribute to their nation's interest in that struggle.14

Thus the State may quite properly supplement, not supplant, parental exercise of their right to educate.

This is the principle of subsidiarity in action. It holds that government is justified in taking over a general social function only if it is a function that must be performed in the common interest but cannot adequately be performed

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14 See p. 10, note 12; and p. 23, note 30, above.
by lesser components of society, individuals first, then voluntary groups, local small government, etc., in ascending rank of social complexity. But that the State, or Government (on whatever level), should operate schools results from a concrete historical and social situation: there is no one else to do it. By no means is it something inherent in the very notion of democracy that Government operate schools. The parents retain their prior right, and Government is looked on as only one among a number of possible agencies or instruments that the parents may call upon to assist them in carrying out their right and duty:

The State is competent to do these things (establish schools, direct education in general, etc.) because its essential function is to promote the general welfare. But on the same principle it is bound to respect and protect the rights of the citizen and especially of the parent. So long as these rights are properly exercised, to encroach upon them is not to further the general welfare, but to put it in peril. If the function of government is to protect the liberty of the citizen, and if the aim of education is to prepare the individual for the rational use of his liberty, the State cannot rightfully or consistently make education a pretext for interfering with rights and liberties which the Creator, not the State, has conferred. Any advantage that might accrue even from a perfect system of State education would be more than offset by the wrong which the violation of parental rights would involve.16

Thus, whether or not exercise of the right to educate is had by the parents, control of the education offered—even in State-run schools—must reside in the parents. The schools are looked on as a continuation of home influence, since both the good of the child and of the parents requires that undue tension between school and home be minimised. This also, because as persons, the parents

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may be personally religious, and may want to hand this outlook on to their children; and/or they may have an ancestral heritage of culture that they want to bequeath to their children. The State would be utterly beyond its depth, if it were to seek to decide on the value of this or that religion or culture, and restrict its transmission from parent to child; thus the State's schools must reflect parental desires in education.\textsuperscript{17}

In rounding out our exposition of the traditional theory we may elaborate the notion that the schools must be a continuation of the parents and reflect their desires, by means of two correlative ideas about the responsibilities of the State: first, the nature of the common good; second, the self-imposed restriction of the State in education.

First, the "common good" it seeks to foster is a personal common good. It is thus analogous and not univocal: within the same framework of peace, order, and justice for all, different people will seek a good that is proportioned to their own personal inclinations, desires, talents, environment, etc. The common good is not that of an anthill or a beehive, in which each member acts only in order that the whole itself might subsist, and each part receives and partakes of the good of the totality only insofar as this betterment of the part redounds upon the totality itself. The common good for humans must be personal, it must profit the parts for themselves at the same time as it profits the whole of society.\textsuperscript{18} Thus, under pain of vitiating itself from within, the State-promoted common good can never disregard the personal rights of the

\textsuperscript{17}Murray, pp. 125-154. See also, Leo R. Ward, C.S.C., Religion in All the Schools (Notre Dame, Fides, 1960). The entire book is on this problem.

\textsuperscript{18}J. Maritain, The Person and the Common Good (N.Y., Scribner's, 1946), p39.
citizens who are to participate in it. And in education this would mean that
under the guise of promoting the common good, the parents' prior right to
educate cannot be usurped by the State.

Second, in the area of education, as in any other area, the State must
exercise real self-limitation, and so recognize rights. Might does not make
right. The State can obviously force compliance with any regulation it chooses
to impose; but in the traditional theory the State is an instrument of a su-
perior reality, the free persons who make it up. Thus, concretely, whatever
the justification of a compulsory-education law—and the prevailing social
pressures are such today that even without a law on the books, the vast major-
ity of urban and suburban youth would be compelled to attend school anyway,
just out of the need to partake in the social life which the school strongly
molds, and to comply with parental ambitions—the State must provide a frame-
work of opportunity in which all citizens may partake, all being equal before
the law:

Though in its substance it need involve no conflict with parental
right, the compulsion of the law involves the intervening government in
some responsibilities toward the parent-citizens. No law can be just if
obedience to it would require capacities which those subject to the law
would invincibly lack. A compulsory law would have to be followed by
arrangements that equalize the capacities of parents to obey it.19

All in all, we may sum up the traditional theory of parental rights in
education with this observation by the Supreme Court, which but echoes the
position here explained: "It is cardinal with us that the custody, care and
mutter of the child reside first in the parents whose primary function and

19Gorman, p. 42. This idea follows naturally from the overall position: the character of the State, in the traditional theory, is one of assistance to functions, not absorption of them; it must respect its creators, the people.
freedom include preparation for obligations the State can neither supply nor hinder.\textsuperscript{20}

In theory there is little but harmony among the interactions of parents, voluntary groups, and the organized society which is the State. But as theory is applied, numerous tensions appear. It is necessary, then, to consider the concrete American situation.

In broadest terms, two questions arise today: first, what is the value of "diversity" in our society (hence, in our education); second, what place may religion enjoy in education? These are in practice so intermixed that it is well-nigh impossible to treat one without encountering the other. To what extent do national unity and national need preclude primary parental control in education? Dr. Conant feels that "solidarity" is very important:

To be sure, those with sufficient income in some localities can bypass inadequate public schools by sending the children to private schools. And this is done to an alarming extent throughout the urban centers of the nation—more so than a generation or two ago. That this practice represents a retreat from our goal of equality of opportunity and thus diminishes our national solidarity needs no emphasis. Our free elementary and secondary schools should be the first concern of all thoughtful believers in American democracy.\textsuperscript{21}

Dr. Conant also speaks of "the whole philosophy of a democratic school system which endeavors to make society more fluid"; can the school be rightfully looked on as an instrument of the State, to promote a certain kind of society, as well as it is looked on as an instrument of the parents?\textsuperscript{22}


\textsuperscript{21}Conant, \textit{Education in a Divided World}, p. 193. One wonders how taking a child out of admittedly inadequate schools "diminishes" equality of opportunity. What sort of "solidarity" is this, that needs to have only one kind of school?

\textsuperscript{22}\textit{Ibid.}, 228.
How can a "neutral" State promote religious education? If the parents are convinced that religion must be provided as a pervasive atmosphere for the curriculum, and not merely as an extrinsic "part" to be added on at what is almost always an unsuitable time, must they avoid the schools that exclude this religious atmosphere? For that matter, can the State really maintain schools that are truly "neutral"? Some people feel strongly that this is impossible:

To leave religion out of such schools [the public schools] (save, in some places, for the perfunctory reading of a few verses of the Bible) is not mere neutrality toward religion; the indirect, even if unintentional, effect is to exert an influence against religion. In the days when the school taught only the three "R's" and a few other subjects like languages, history and geography it was not a serious matter if religion was omitted, for many other things were also omitted. But when everything important except religion is included our children are constantly being tempted to assume that religion is unimportant. There can be little doubt that the decline of interest in religion has been in very large measure due to its having no recognition in what is presented as a total education for life.

If parents do avoid these schools, and set up their own schools, have they thus acquitted their obligation to provide an education adequate to the demands of the common good; and if they have, what responsibilities towards the students in these private schools now devolve upon the State? For example, to take the "fringe benefit" of bus rides: the State may or may not choose to provide bus service for its school children; if it does provide this service for only those attending public schools, it then appears to discriminate against taxpayers.

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24 Pius XI, pp. 30-36.

whose children also need this transportation to private schools. Yet it is argued that for the State to provide such a service at taxpayers' expense—taxing all, many of whom would not share the religious outlook of the school to which the State-provided buses would bring the children—is very close to being support of a religion, and definitely would be such support if any money were given directly to the religiously-oriented school; the argument is clinched by the observation that "there is something fundamentally unjust about taxing one man to support another man's religion." So it is concluded that the State cannot offer benefits which are used "not for the broad, general purposes of democracy, but for the special religious purposes of a particular denomination," which use would violate the First Amendment. Thus the dilemma, in this area of bus service, and all the more in the vastly more substantial areas such as teachers' salaries, equipment expenditures, and so on: without a measure of public support proportioned to the needs of private school and pupil, the school cannot meet the competition of rising costs, and the pupil does not receive the service he deserves as a citizen; with the support, the State seems to enter into the field of religion, to promote "divisiveness," and to be using one man's taxes to promote another man's religion—an infringement of the conscience of the former.

Clearly, there is need for a hierarchy of rights. The traditional theory would certainly grant that in some areas the parents' rights are not absolute.

26"Twin Principles," St. Louis Post Dispatch, reprint(April 23, 1960), no page given. This sharp argument cuts both ways: the religious-minded taxpayer is taxed to support another man's irreligion. Thus he pays for an alien orientation of conscience, even as much as does his non-believing fellow citizen.

27Ibid.
For example, in case of extreme social emergency—war, epidemic—public authorities might assume full direction of schooling; or gross neglect of the child by the parent might force the State to step in on behalf of the child's rights; but such rare and contingent possibilities do not solve the day-to-day problem of private schools' existence. 28

Here the traditional approach, as interpreted today, would stress the right of the person as primary still, and hold that any "aid to a religion" in the case of religiously-oriented schools, is indirect, oblique, and cannot be made the reason for withholding welfare benefits from individual citizens. 29 "If indeed, as all agree, it is an expression of social justice when the government provides the total cost of public school education, why should the lesser provision of partial support of nonprofit private schools be offensive to anyone?" 30 It will hold that there is no question of privilege here, but simply of justice; and that the school, even as the State, is an instrument to serve the needs of differing peoples and so must accommodate itself to their legitimate needs and aspirations. 31 But all admit that in the interests of peace and harmony within the commonwealth, the followers of this position must often accede to the concrete demands of a rigid and opposing psychological "climate of opinion." 32

28 Gorman, p. 39
29 Blum, "The Right to Choose Your Own School."
30 Costanzo, p. 43.
31 Gorman, p. 50; Murray, pp. 125-154.
32 Herberg, pp. 143-147.
In enucleated form, this is the traditional theory. The notion of a hierarchy of rights will produce ramifications which must be explained later, when this theory is compared with the modern theory in Chapter IV. At this point, it will be enough to complete our investigation of the traditional theory by a glance at some other nations' varying solutions to the type of problem that the previous chapter outlined, and conclude with a few pertinent Court cases from our own country.

A few years ago, at least some parts of Canada had worked out a system in which education assessments went to the school system that reflected the faith of the taxpayer.33

Only two provinces in Canada have what Catholics (and many Protestants) consider an equitable system of primary education guaranteeing the school rights of religious minorities, Quebec and Newfoundland.

In Quebec there are two systems of education, Catholic and Protestant. Both are subject to a single superintendent of education. In practice, each operates with complete autonomy. Taxes for Catholic schools are paid by Catholics; taxes for Protestant schools by Protestants. In addition, the provincial government gives generous grants to both Catholic and Protestant schools. Protestants have acknowledged publicly that the educational system gives their minority generous treatment.

Quebec's Superior Council of Education consists of two committees, one Catholic and one Protestant. Each manages independently the educational affairs of its population segment, making all administrative regulations, approving all textbooks, and so on.

Taxpayers elect commissioners to administer school districts. Any minority, Protestant or Catholic, has the right to establish a commission for its own schools. The commission levies the school taxes, constructs and administers schools, appoints teachers. Catholic taxpayers pay their taxes for Catholic schools; Protestant taxpayers for Protestant schools.

School taxes are also levied against corporations and companies. These taxes go into a common fund called the "neutral panel." They are divided according to school enrollment where there is more than one school.34

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33 John E. Thompson, "In Canada: Taxes Support Separate Schools," Catholic Digest, XVII (March 1953), pp. 1-5.
34 Ibid., 1-2.
And, according to the same article, a variation of this procedure, giving at least some support or recognition to private or church-related schools, existed in Ontario.

The primacy of the right of the parents to determine their children's education has been recognized by many European nations. In Holland, for instance, private schools are given financial parity with State-initiated schools. This is on the elementary level, on which any religious group may request proportionate financial aid for building and maintaining a school, once the statutory number of pupils in a locality is reached. State-initiated schools are obligated by law so to arrange their schedule that instruction may be given to children in the religion of their parents' choice:

Such instruction may be given on the school premises or elsewhere. In the former instance, the hours of such instruction are determined through cooperative agreement between the school and the religion teacher appointed by the various denominational churches. Under certain conditions, the school premises may be turned over to the denominational body outside of school hours for such instruction. Should such instruction be given elsewhere than on school premises, the children are freed from school to attend. In privately-initiated schools, pupils belonging to a denomination other than that for which the school statutorily is maintained must be exempt from religion lessons.

In Scotland the State determines qualifications and certification of the teachers; the Church gives approval concerning religious belief and character:

Obviously there was great trust on both sides, and good will. But now, since 1918, the general situation in Scotland is that every Catholic child is taught by Catholic teachers in a Catholic school. The right of parents to choose the school for their children is guarded and protected, and does not become inoperative, as it can in the United States when the parents or

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36. Ibid., 198.
the parish lack money. Presbyterians, the most numerous group in Scotland, have their schools, and the Episcopalians theirs.\footnote{37} Besides the provision for parental participation in the direction of their children's education, the children in religious schools receive bus rides, lunches, textbooks, in a manner similar to the way they are given to the children in the national schools.\footnote{38}

In England\footnote{39}—as of a dozen years ago, at any rate—the situation was ambivalent, but some awareness was manifested by Government concerning the rights of its dissenting minorities. The schools of religious dissenters are called "Voluntary Aided Schools," and the managers or governors of these schools appoint teachers and control religious education. The governors must pay half the cost of structural improvements and exterior repairs as the price of greater private control. The Education Act of 1944 explicitly states that "so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents," and holds that "every Local Education Authority may, for enabling pupils to take advantage, without hardship to themselves or their parents, of educational facilities available to them" defray expenses of pupils at Non-Maintained (i.e., independent) schools.


\footnote{38} Loughery, pp. 207-209.

\footnote{39} Terence Quirk, "Britain Revamps Her System," \textit{The Right to Educate}, ed. Robert G. Hartnett, S.J. (New York, America Press, 1949), pp. 35-42. Italics added. There is an indirect pressure by the State against the private schools: "With the concurrence of the ... Minister of Education, voluntary bodies may build new schools provided they themselves pay the entire building costs." p.37.
A thorough study of these various attempts at a solution would be beyond the scope of this paper. The purpose here is to show that a number of other countries, with the same cultural heritage as our own, and more or less the same conception of the place of religion in the State—often, having even an "established" religion!—have been able to work out something of a balance in meeting the demands of all parties. England seems farthest from satisfying minority groups in this area of parental rights; yet all of these nations seem to have progressed farther than we have. Here, as will be recalled from the preceding chapter, the United States has followed an ambivalent policy on the national level; and on the state level, despite the permission of the Supreme Court, only a few states allow even the "fringe benefit" of bus rides for independent school students; nor have state-supplied textbooks in secular subjects been distributed to children in private schools, in the vast majority of states. Controversy rages over whether or not health benefits such as chest x-rays may be given to these children; and in allocating funds received from the Federal Government, even though these may have been based on a census of all the children in the state, the state Boards of Education almost invariably give these funds only to public school children. All of this, needless to say, is more than a little cause for anger for numerous parents who want a private-school education for their children.

As a theory, the traditional approach has some impressive court cases in its favor; to complete the discussion of this theory, some of these will be

41 Costanzo, pp. 29-30.
briefly mentioned.

The "Magna Carta" of parental rights is the Pierce case of 1925. The people of Oregon passed an initiative measure in 1922, effective in 1926, that would require children to attend a public school. A Catholic parochial school and an independent military academy obtained injunctions restraining officials from enforcing the law; the State of Oregon then appealed the granting of the injunction. The Supreme Court, in a unanimous decision, gave its opinion:

... the inevitable practical result of enforcing the Act under consideration would be destruction of appellants' primary school. ... [Yet] these parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious.

Under the doctrine of Meyer v. Nebraska 262 U.S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. 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.

Concerning the Meyer v. Nebraska case, Pfeffer explains that the laws under which the Court's decision was called upon did not outlaw parochial schools, but merely required that English be the language of instruction in all schools, and that no child be taught a foreign language until he had completed eight grades of elementary school.

The defendants in these cases were teachers of German in parochial schools who were convicted of violating the statute by teaching German to children—in the Meyer case by the use of a collection of Biblical stories. The courts, in reversing the convictions, relied not only on the constitutional right of German teachers to pursue a gainful occupation ... but also on the right of parents to have their children taught "Martin Luther's language" so that they might better understand "Martin Luther's dogma."
The importance of the *Meyer* case is great, and justifies a further quotation:

Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.

Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.

In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and state were wholly different from those upon which our institutions rest. . . . 44

The relations among parents, schools, students, and the State are complex.

A strong legal precedent has existed since 1930 when the supreme court of the State of Louisiana ruled that for the State to provide a public service, such as textbooks, for children attending parochial schools, such a benefit need only be viewed as an aid to the student, not to the religion that the student may profess, nor even to the school itself; the U.S. Supreme Court sustained this:

One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian, or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or non-sectarian. . . . The schools, however, are not the beneficiaries of these appropriations. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, though without result, in an effort to find anything to

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the effect that it is the purpose of the state to furnish religious books for the use of such children. . . . What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools.\textsuperscript{45}

In other words, whatever the public or official standing that religiously-oriented schools may enjoy in a community, the children attending such schools should enjoy—as citizens—the same rights and privileges as those had by the children attending public schools.

In two cases vitally important for the considerations of freedom of conscience which are one dimension of our general problem, the Supreme Court first ruled that a child may be compelled to salute the flag; then three years later, reversed itself in an exactly parallel case. In 1937 the children of Walter Gobitis, a Jehovah's Witness, were expelled from the public schools of Minersville, Pennsylvania, for their refusal to salute the flag in compliance with a school board regulation. The case was appealed back and forth up the ranks of the courts until it reached the highest court, where, in 1940, Justice Frankfurter delivered the majority opinion, which affirmed the propriety of the school board's rule:

The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. . . . National unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of treasured common life which constitutes a civilization. "We live by symbols." The flag is the symbol of our national unity. . . .\textsuperscript{46}

\textsuperscript{45} Butts, p. 171.

\textsuperscript{46} Pfeffer, p. 521.
The lone dissent in the case was voiced by Justice (later Chief Justice) Stone:

... it is a long step and one which I am unable to take, to the position that government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience.

... even if we believe that such compulsions will contribute to national unity, there are other ways to teach loyalty and patriotism which are the sources of national unity, than by compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions.47

An uproar of criticism followed; at the same time there followed an outburst of violence against the Witnesses. It was not long till the Court had a chance to reverse itself: in 1943 it ruled on the exact same type of case, dealing with an appeal of the West Virginia State Board of Education against which an injunction had been obtained by Walter Barnette, another Witness, whose children were being forced to salute the flag; the majority opinion in the Barnette case, written by Justice Jackson, is, according to Pfeffer, "an eloquent and epochal document in the history of the freedom of religion--although Justice Jackson expressly refused to base the decision on that freedom."48

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.49

Justice Jackson was well aware that the "national unity" concern was "the very heart of the Gobitis decision," and dealt with it accordingly:

47 Ibid., 522.
48 Ibid., 525.
49 Gorman, p. 46.
Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. . . . As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity.

As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. . . . Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.50

Finally, the Court has dealt more directly with the question of religion in and about the public schools, in a triad of cases: McCollum (1948) is perhaps the most well-known; it was preceded by Everson (1947), and—as is commonly acknowledged—somewhat reversed by Zorach (1952). Since this section seeks to give only some of those cases which directly or indirectly support the theory of parental rights in education—even religious education—we will conclude with elements of the decisions from this last case; even though the other two are extremely important, they may more fittingly be mentioned in the following chapter.

The "principle of separation of Church and State" was a moot point in the thinking that underlay these three cases. It is argued by ardent secularists that this "principle" must be literally absolute, so that in no way can the State "aid" a religion—whatever such aid may be. But Zorach affirmed the constitutionality of allowing "released-time" religious instruction off the public school grounds; a small point, perhaps, but what is more important is the tone of the Court's majority decision, enunciated by Justice Douglas:

50Pfeffer, p. 526., Quoting Justice Jackson.
The First Amendment within the scope of its coverage permits no exception (to the restriction against "establishment" of a religion); the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly.

Such a situation, Justice Douglas immediately observes, would have absurd consequences:

Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution.\(^{51}\)

The justification of the State's slight assistance to religious-minded people to help them perform duties demanded in conscience is a result of the nature of our society and the people who make it up; this is a modern statement of the traditional theory's position that Government must reflect and be responsive to the needs of its people—even if those are spiritual needs:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. 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 it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. . . . We find no constitutional requirement which makes it necessary for government to be hostile to religion. . . .

\(^{51}\)Blum, "Cases in Civil Liberties," Zorach case, pp. 2-3.

\(^{52}\)Ibid., 3-4. See also Pfeffer, pp. 156-159.
Two final observations may be made, to close this presentation of the traditional theory. First, although in the cases presented—and others could have been adduced—there were always some dissenting opinions offered (except in the unanimous Pierce case), there is ample evidence to show that the Court supports the notion of priority of parental rights in education. The Pierce decision is most important, as we have said; but almost equally significant is the reversal of the Gobitis ruling, and the admission that even for such a lofty aim as "national unity," religious conscience should not be compelled to an action repugnant to it. That this religious conscience may require external conditions for its exercise, and that these may legitimately be provided for or encouraged by Government;—such practical applications were recognized in the Zorach case. But to get the whole picture, we must explain something of the McCollum and Everson decisions; these more appropriately belong to the next chapter. It will be seen that the Court has not always been unequivocal on this point.

Second, considering the furor generated by the Administration's efforts in the spring of 1961, to pass an "education-aid" bill which explicitly prohibits aiding primary and secondary parochial schools because this would be clearly unconstitutional, it is puzzling to find that this type of case has never even come up, directly, and more puzzling to find that the peripheral opinions in other cases—dealing with released-time and school buses—are ambiguous, if not positively in favor of the grants and loans that are claimed to be unconstitutional. For the time being, let us leave this enigma unresolved, only pointing out that the "clear constitutional prohibition" is rather hard to find, and when one comes across what might be it, it is found to be quite unclear.
CHAPTER III
THE MODERN THEORY OF RIGHTS IN EDUCATION

There is perhaps no more apt way to demonstrate the dramatic divergence between the previous theory and the one about to be unfolded, than to quote two opposing court cases, one which makes no mention of parental rights in education, the other which bases its whole stand on those rights. The cases are triply interesting, since in addition to their direct contradiction of each other, they both occurred in the same state, New York, and had to do with the same problem, the question of the constitutionality of released-time for religious instruction in public schools. In Mount Vernon, New York, a court ruled out the practice in 1925, saying:

The fact that no particular denomination was favored or intended so to be by this action of the board of education does not affect the question...

I find nothing whatsoever in the Education law authorizing either the board of education, the state commissioner of education, or the education department to change, limit, or shorten the time of attendance...

Education law...prescribes the instruction required in public schools. Religious instruction is not one of them. Consequently it would be unlawful and unauthorized for a board of education to substitute religious instruction in the school in place of the instruction required. To permit the pupils to leave the school during school hours for religious instruction would accomplish the same purpose, and would in effect substitute religious instruction for the instruction required by law.1

But in White Plains, New York, another court passed it favorably in 1927:

It is natural that parents should wish their children to have religious instruction in any favorable opportunity. It is not thought wise that it should be given directly in the school. But, when children are assembled, they may be sent elsewhere. We are told that in 23 other

1Butts, p. 200.
States there are in force methods similar to those employed here. . . . They [the commissioner and the local authorities] recognize that all education is not acquired in the schools; that, except for subjects legally prescribed, the parents may select the studies their children shall pursue; that it is the right of parents to direct the destiny of their children and guide them along paths of filial duty, as well as in those of obligation to the state . . . and that a belief in religion is not foreign to our system of government.2

The contrast is startling. The former decision is cluttered with institutionalized thinking: it is sprinkled with terms such as "denomination," "Education law," "board of education," "state commissioner of education," "education department"; it manages to mention "pupils" only once—and one would never even guess that these pupils had parents! The latter decision notes that it is "natural for parents" to wish religious instruction for their children, that "it is the right of parents to direct the destiny of their children," that "parents may select the studies their children shall pursue." One could hardly imagine two philosophies of education more in disagreement than these two decisions.

The exclusion of parental rights by failure even to recognize or consider them is the negative side of the modern theory; the positive side stresses the prior right of the State. For instance, this juridical opinion handed down in an Oklahoma court in 1950:

It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right, the business of education belongs to it. That parents are ordinarily intrusted with it, is because it can seldom be put into better hands; but where they are incompetent . . . what is there to prevent the public from withdrawing their faculties, held as they obviously are, at its sufferance?3

2Ibid., 200-201.
3Loughery, p. ix.
An article that appeared, at first glance, to be equally absolute in affirming the supremacy of the State was written a few years ago for the magazine, The Nation's Schools: there it was held that our courts have developed a theory of public education which conceives of the school as a social agency and governmental institution. . . . Too often administrators and teachers look upon the school as a purely local or municipal institution of a charitable or philanthropic nature, created for the purpose of benefiting individual pupils and their parents. . . . Nothing, however, could be further from reality.

Our courts are in agreement in holding that education is a function of the state and that our public schools are not local but state institutions. . . .

Therefore, the power to create, administer, control and finance a system of public schools is . . . assumed by the state because education is essential to the attainment of the highest ends of the state—the guaranteeing and securing of the good order, peace and well-being of the state. In other words, education is a state function because it is an essential instrument in furthering the ends of the state. Education is essential to the safety, the welfare and the very existence of the state itself—it is essential to the economic, the political, and the social well-being of the state. In brief, the state supports schools for the welfare of the state.4

He adds, further on, that "The state maintains and supports schools for the purpose of furthering the ends of the state . . . all of us taken together in our collective capacity."5

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4 Lee O. Garber, "Why Courts Uphold State Control of Local Schools," The Nation's Schools, XLIX (March 1952), 62. Italics added.

5 Ibid. From the standpoint of a legal hierarchy of authority, Mr. Garber is correct. The State is, as he says, the source of authority for individual communities; local authority "is not inherent in the local community. Its source is the state. In education the state is supreme. . . . It may enact any law affecting education and the schools that it wishes. It may retain whatever authority it desires, and may delegate the remainder." (p. 62) Thus, he is dealing with public authority on two levels. The implication that readily flows from his position, however, is not as sound as that position itself: Mr. Garber does not mention anywhere, the rights of parents. Moreover, in his very article he concedes that what he holds does sound like totalitarianism. This is unfortunate, since his legal ground is firm enough. But he fails to correct the implication that he would want only the state-school to exist, and that its direction should fall to Government, not to the parents.
We may notice that in the view of Mr. Garber and in the view of the court in Oklahoma, the role and importance of "the public" or the State is considered first, and as a universal principle, regardless of time or place. Others who favor priority of the collectivity in education are more willing to admit that the traditional theory was once valid: "In other words, as long as the public concern was directed almost exclusively to the education of future voters and the unfolding of the personality of each child, a thousand very different schools might be considered an excellent idea." But now, he says, times have changed; World War II put the State into the education business with a vengeance; today we need specialists and cannot afford to let our talent go untrained. Thus we will need Federal "aid" for education; but--Dr. Conant may be less consistent than Mr. Garber--local control must be maintained: "Unless one were prepared to accept the continental tradition and establish a system of state schools, I believe no set of state regulations can insure schools of uniform excellence, and I for one would certainly not be prepared to argue for any such radical change in the basic American pattern." Dr. Conant does not want one big Government controlling education; he wants many little governments controlling education. But the many, as we shall see, can usurp parental rights as well as can the one. Dr. Conant is less doctrinaire than Mr. Garber, he seems to base his plea for Federal aid more on the pragmatic norms of the current situation, rather than on any a priori theory of the State; still, it may come to the same thing, since when the Government gives money it quite naturally and

6 Conant, The Child, the Parent, and the State, p. 17.

7 Ibid., 31, 52, 55, on Federal aid; 24-25 in favor of local control.
quite inevitably sets at least minimal standards, and thus it gradually begins to assume the authority to "enact any law affecting education and the schools as it wishes," as Mr. Garber suggests that it should. Believing that the danger of Federal control can be warded off, Dr. Conant is willing to run the risk, for the pressing needs, he says, require such a venture on the National level:

First, there is an overriding national interest in the education of all American children; this interest is underlined by population mobility and is more vital than ever before because of our struggle with Soviet imperialism. Second, in all the states there are many school districts which, even if they are large enough, are not performing the educational tasks they should because of lack of money. Third, in almost all states the present arrangement for combining local and state taxes is inadequate because the state is not in a position to allocate sufficient funds.

These are Dr. Conant's arguments, based on circumstances, for Federal aid. It will be observed that only the first contains much of a nuance that savors of philosophy. We should not conclude, though, that there is no philosophy behind including the State as a patron of education; he does have a philosophy, and it is based less on concrete empirical weaknesses in an overcrowded and under-financed school system than on an overriding conception of man and his society.

8 Congressional Record, 86th Cong., 2nd Sess., 1960, pp. 1764–1767. R.M. Haig, of Columbia, quoted herein, noted in 1939 that the demand for Federal "support of education is accompanied by the specification that there shall be no Federal control of educational policy. At once the interesting question arises: Can any jurisdiction take responsibility for levying the taxes without sooner or later being forced to take the responsibility for defending that expenditure and without being asked to answer taxpayers that the money is being spent in a proper manner? No mere audit will satisfy the demand. Sooner or later the jurisdiction which imposes the taxes will exercise real control." p. 1766.

9 Conant, The Child, the Parent, and the State, p. 52. Italics in text. Dr. Conant's concern for "all American children" is a basic refrain with him; it occurs in Education in a Divided World on pp. 85, 88, 108, 116, 128, 210, 228, and elsewhere. The NEA is equally benevolent; see: Educational Policies Commission of the NEA, Education for All American Youth (Washington, NEA Press, 1952). Strangely enough, "all" in both contexts is further specified to mean "some"—that is, only those children in public schools, not private schools!
Until recent times, Dr. Conant observes, a considerable body of opinion in our country held that what happened to children was a matter for the parents to decide. "The state should not come between a father and his son. I used to hear such arguments when I was young from those opposed to the movement to abolish child labor by federal and state laws. These arguments would sound archaic today." For the health of the young is now a concern of both the state and the Federal governments, and so the freedom of the parent is more circumscribed. More important, and more likely to arouse disagreement, Dr. Conant feels that the "taxpayer must support free schools (even if his children do not attend them) because schools, as ladders of opportunity, are an essential element in our democracy, a society which must be prevented from hardening along caste lines"; for "to the extent that educational opportunity is determined by geography or by family status, the increased importance of formal education in modern America tends to make for social stratification." "Not only parental pride already mentioned and economic inequalities now much in the public eye, but cultural patterns, religious forces, and group hostilities must be reckoned with if we are to move further in the direction of reducing inequalities of education." So far, this does not sound very ominous. But the family and the parents may overstep themselves, to the harm of the community, since there are "forces of social stratification inherent in family life."

11 Ibid., 13, italics added; Education in a Divided World, p. 41.
12 Education in a Divided World, p. 42.
13 Ibid., 65.
If the spokesman for parental rights is not yet inclined to demur, Dr. Comant leaves no room for doubt as to the conclusion of this line of thought: the independent or private schools—sponsored by thoughtless parents who do not sufficiently recognize the collective requirements of our society—are an evil:

The greater the proportion of our youth who attend independent schools, the greater the threat to our democratic unity. Therefore, to use taxpayers' money to assist such a move is, for me, to suggest that American society use its own hands to destroy itself.

I cannot help regretting that private schools have been established in the last twenty years in certain urban areas where a generation ago a public high school served all [italics his] the youth of the town or city.

A society which wished generation after generation to perpetuate class distinctions based on hereditary status would certainly demand a dual system of schools.

A dual system serves and helps to maintain group cleavages, the absence of a dual system does just the reverse.14

Of course, it is clear to everybody that if such a theory were to issue into practice, the "threat to our democratic unity" would have to be repressed by the majority, who are interested in maintaining that unity through the school which is threatened—the public school. What means they might use is not considered by Dr. Comant; in fact, the logical conclusion of his argument seems to have escaped him. To give him credit, however, which is deserved: if that logical conclusion were ever pointed out to him, he would repudiate it: "What sort of society do we wish to develop here in the United States? . . . Conservatives and radicals alike join in repudiating the totalitarian notion that the State as such is a mystic entity to be worshiped or a transcending force to direct the lives of ourselves or of our children."15

15 Conant, Education in a Divided World, pp. 2, 4.
Of course, we are all against sin; so Dr. Conant is on firm ground when he
denounces totalitarianism. But, though he is quick to repudiate "the totali-
tarian notion that the State as such is a mystic entity, etc.," Dr. Conant seems
at times to conjure up his own mystic entities which are quite worthy of some­
thing bordering on worship, or the opposite, anathema. As we have seen, one
notion that he feels deserves exorcism is the "dual system" of education; and
one that deserves reverence is "equality":

... a moment's consideration makes it plain that there is a fundamental
conflict between a general desire to give all children in a community an
equal chance and the special desire of each parent to do the best he can
for his own offspring.

Wherever the institution of the family is still a powerful force, as
it is in this country, surely inequality of opportunity is automatically,
and often unconsciously, a basic principle of the nation; the more favored
parents endeavor to obtain even greater favors for their children. [This
brings about the need for a bad situation, a] perpetual compromise.16

Some comments are in order. First, it is not at all clear, to this writer
at least, that it takes only "a moment's consideration" to make it "plain that
there is a fundamental conflict" between a general desire to give all children
an equal chance and each parent's personal desires for his own children. In
fact, one might wonder where this "general desire" came from, if it were not
somewhat rooted in the "special desire of each parent" for his own child. Is
it so "plain" that a conflict must necessarily arise? Second, what is this
"equal chance" for all children? Dr. Conant, as we noted at the bottom of page
54, is eager "to move further in the direction of reducing inequalities of edu-
cation"; but are the opportunities we want to have available for the children
to be analogously the same or univocally the same? That is, it would seem to

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16 Conant, Education in a Divided World, p. 8.
be a fair interpretation of Dr. Conant if one understood him to mean that the children should all receive literally the same opportunities. This seems to be the gist of his oft-repeated worries about "class stratification." Third, Dr. Conant has put himself into a rather unorthodox position regarding the institution of the family: the stronger the family ties, the greater the inequality of opportunity; but inequality of opportunity is bad, therefore—what may we conclude about the "institution of the family"? We may not conclude, most certainly, that Dr. Conant wants to abolish families (or praises divorce or free love or anything even more socially anarchic). But we may conclude that Dr. Conant wants to abolish the differences among families—i.e., in his words, "social stratification." Perhaps he would be willing to settle for abolition of the expression of those differences; since on his own testimony it is plain that some parents want more than what the general desire of the community makes available for their children. For the differences among families express themselves in the different types of treatment these families provide their children: concretely, some parents put their children in private schools. This is very bad for our nation, Dr. Conant tells us, for we should not have a dual school system. How will Dr. Conant prevent "the more favored parents" from trying "to obtain even greater favors for their children"?

One way to implement his philosophy of democracy is to use the schools as an instrument in shaping new social attitudes in the coming generation: "A unifying faith is . . . not a matter of words or intellectual concepts but of

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17 How much these ideas reflect a Socialist outlook we cannot investigate here. But it is necessary to point out that Dr. Conant assumes—and does not prove—that his understanding of "equality of opportunity" is the traditionally American view.
a direct relationship between men. . . . For this reason the present emphasis in many public schools on 'democratic living' is of the first importance. . . . A loyalty to the type of society we are slowly endeavoring to shape on this continent can be evoked to the extent that the school itself is a society exemplifying the ideals we extol."\textsuperscript{18}

We begin to see, then, that for Dr. Conant, the "American Way of Life" was created partly, if not wholly, by the system of free public schools: he speaks of "my deep conviction that the expansion of our free tax-supported schools in this country has been an essential element in our national life."\textsuperscript{19} It follows that anyone who impedes their growth and expansion in coming to serve the needs of an ever greater proportion of our youth is weakening our democracy. One need only ask himself, Dr. Conant would say, which is more important: the particular and usually provincial needs and desires of individuals, or the wider, overriding purposes of the whole of American Democracy? The answer is clear enough; and from it it is an easy step to deduce the necessary conclusion about parental rights. The "American Way of Life," which we will all share and enjoy, could hardly be risked because some parents want to separate their own children from the main stream of our culture: "... it is no coincidence that our economic way of life and our unique American tradition of education are found together."\textsuperscript{20}

\textsuperscript{18} Conant, 	extit{Education in a Divided World}, p. 109. If the race problem, for instance, is one's concern, this might be true; but his implication is that such is the prime purpose of the school, and only the public school can fulfill it.

\textsuperscript{19} Conant, "Education: Engine of Democracy," p. 11. Italics added.

\textsuperscript{20} James B. Conant, 	extit{The Citadel of Learning} (New Haven, Yale University Press, 1956), p. 35.
And not only are these two found together in the present; it is quite true that the institutions of the American public school system "were not only a product of the new forces but themselves powerful factors in directing the course of our internal history."\textsuperscript{21} In fact, to put the eulogy in one succinct sentence: "The free tax-supported schools are the sinews of our society: they are the product of our special history, a concrete manifestation of our unique ideals, and the vehicle by which the American concept of democracy may be transmitted to our future citizens."\textsuperscript{22}

Even though such an encomium, coupled with the foregoing strictures about private schools, would lead one to suspect that Dr. Conant seeks their eradication from the American scene, he claims that this is not the case: he was asked this very question after his controversial "Engine of Democracy" article, and replied with a personal letter to the questioner:

\ldots I should regard it as most unfortunate if in a community now served by a satisfactory comprehensive high school enrolling essentially all the students of secondary school age, this school should be replaced by a group of private schools, each drawing students from families differentiated on religious or economic lines.

That many people would disagree with me \ldots I am well aware. And I think every teacher in a private school ought to think through \ldots this great issue. \ldots There can be no question but that churchmen \ldots are anxious to expand \ldots the church schools. Some of these people desire to use tax money for this purpose, either directly or indirectly. In other words, they would change what has become the accepted American pattern of secondary education into one resembling the English pattern. \ldots I feel \ldots that to change the American picture by destroying or crippling our unique product—the comprehensive public high school—would be to undermine our democracy. \ldots Proponents of expansion of private schools and I would disagree. But because one type of institution should not be expanded is no reason for condemning it.\textsuperscript{23}

\textsuperscript{21}Ibid., 34.

\textsuperscript{22}Conant, Education in a Divided World, p. 1.

\textsuperscript{23}James B. Conant, Education and Liberty (Harvard U. Press), 1953 p. 136
Equivalently, Dr. Coeant is saying that private schools have a role to play in our society, if kept in their place; public schools have the role to play. The former may exist, should not be condemned, but should not be allowed—if at all possible—to expand; the latter should, of course, expand to meet the needs of "all American youth." And so, through a natural evolution, without bitterness or hard feelings, the private schools would gradually disappear.

Except for this slight reference to "churchmen," Dr. Coeant has moved on a different level, in his attack on the existence of private schools, than many of his fellow supporters of the public-schools-for-all theory. Others are much more prone to argue that it is the religious nature, as much as anything else, that in many of the private schools renders them unworthy of American democracy. An article in the Christian Century a few years ago took this position; it is somewhat typical of this genre of writing. The subheading of the article is a convenient rhetorical question that clearly suggests the expected answer: "Does the divisive influence exerted by parochial schools have a bearing on the future of American society?" The introductory paragraphs also suggest little doubt as to the outcome of the investigation the writer is making: "That many such

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24 We cannot help wondering how it can be said that a school is not really "condemned" (in fact if not in name)—to ultimate extinction in the competitive educational world—when all the public schools are mushrooming at a fantastic rate. If the private schools are to remain at the same size, while the graces of expansion (and tax funds) fall in rich abundance upon the public schools, is it not true that the cost-upsurge will price the former out of business? Not to grow is to die. See: Virgil G. Blum, S.J., "State Monopoly in Higher Education," reprint, Columbia, XXXIX (March 1960).

25 John W. Dykstra, "Parochial Divisions in American Life," Christian Century, LXXV (April 15, 1958), pp. 465-467. He discusses "in-group" and "out-group" attitudes of various minorities, and adds, "Deep schisms in a society can be avoided if there is an extensive overlapping of in-group affiliations." His conclusion is that parochial schools do not provide this; public schools do.
schools do a good job in the narrower sense of training their pupils in various subject matters is not open to question. But what is their effect in our society as a whole? Do they produce the kind of citizens that a democracy must have if it is to function well? Or do they rather exercise a divisive influence? 26

That parochial schools are divisive is obvious for at least two reasons: first, they fail adequately to combat religious bigotry; second, by stressing a partisan point of view they further unfavorable stereotypes of other groups, further impeding intergroup understanding:

Now no more effective arrangement for combating religious bigotry could be conceived of than the public school system. . . . In this setting friendship can develop among those of congenial interests and personalities without regard to religious affiliation. . . . Under these circumstances unflattering generalizations about members of another faith are not readily nurtured.

And since the schools increasingly monopolize the students' waking hours with extracurricular programs there is little opportunity for out-of-school contacts with children of other faiths. Moreover, in the religiously segregated schools courses in religion and social studies are likely to be taught from a partisan point of view.

. . . Catholic leaders seem to deny . . . that when people of different cultural backgrounds are given an opportunity to teach or study together valuable friendships are formed, unfavorable stereotypes are corrected, and intergroup understanding is furthered. It seems tragic that so much effort is being directed (in the parochial schools) toward elimination of the cultural benefits that are inherent in our public school system. 27

Thought the article does not draw out the ultimate conclusion, it is plain that consistency would demand State pressure against these "divisive" schools, until they no longer would be able to maintain themselves.

26 ibid., 465.

27 ibid., 465-466. The "partisan point of view" is gratuitously inferred not to exist in the public schools; the parents' viewpoint is not mentioned.
Besides their unique powers of combating bigotry, the public schools have other qualifications which should lead thinking Americans to terminate sponsoring private schools. It has been through free public education that we have been able to perpetuate the open opportunities of our society; it has been the public school system that enabled us to envisage the possibility of bettering our station in life. And with this material betterment, the public schools have brought about a moral betterment, and engendered the scientific method of thinking, so suitable to our age; this might be called "the public method of thinking to which the public school is dedicated."\(^28\) The mere consideration of how we would have been swamped by the immigrants and never been able to assimilate them, without the agency of the public school providing the "melting-pot," shows that here is one institution whose safety and expansion our society needs for its very existence; thus the privileges of individuals—should there be a conflict—must yield; just so does the part yield for the good of the whole. It may be true that the privilege which parents enjoy of educating their children in private schools has some benefits: "It insures freedom of private schools to deviate from what is generally accepted... [and] it leaves the public school relatively free to draw upon an objective and impartial scholarship in the selection of its teaching materials and in determining what it shall stress."\(^29\) But "the right of a child to attend a non-public school overlooks the


\(^{29}\) *Ibid.*, 121, 128, 133. The author adds that "To the degree that parochial interests intervene and seek to control this selection (of textbooks for private schools) they will exercise an unwarranted, even dangerous control over the education of children outside their legitimate spheres of influence." p. 122.
important fact that such attendance is not in all respects a public blessing. There are sound reasons for believing that private and parochial schools encourage a divisiveness at a stage in the development of children when they might better enjoy a healthy commingling with others in democratic fellowship. But when segregation is used to foster ways of thinking that set young people at odds with each other in significant areas of living and belief, it may become a political and social hazard."  

Divisive ways of thinking are dangerous; the private schools should not receive any money at all from the public coffers, because in these schools the State could not control the use of the funds, and so "there would be no effective supervision of the nature, quality, and integrity of the thinking promoted by teachers; or a tender concern for methods of inquiry and reflective thinking which are indispensable in the education of free men"; such a situation, paradoxically, "commits the democratic state in principle to the support of an education which it could not control—indeed, to what might be an undemocratic education."  

This supervision of thought does have some limits, of course: "To be sure, no school can or should seek to eliminate all differences among its pupils, but this does not sanction pursuing a policy that can result only in promoting differences in areas traditionally disruptive and dangerous to social unity."  

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30 Ibid., 130. It is not too clear what are these "significant areas of living and belief." Of course, religion is one. Since in promoting thinking that is "divisive" the churches are just as guilty as the separate schools, it would be consistent to treat them just as this author wants to treat the schools. The author's "democracy" leaves people little room to disagree on vital issues.  

31 Ibid., 135. Italics in original.  

32 Ibid., 196.
Our philosophy of the schools, in the modern theory as well as in the traditional theory, derives largely from their purpose. "Since the school is charged with a two-fold responsibility, one to the community and one to the growing person, the teacher's task in this area is complicated. As the agent of the community, he is concerned with the transmission of common values; as the teacher of the young, he is equally sensitive to individual style and sincerity of expression. . . ." 33 And the necessity of transmitting these common values acquires, for some, a moral imperative; so much so that Christians would be acting against what would be a right conscience if they did not support the public schools—especially if they went so far as to support other schools:

The point is that in America the Christian has a responsibility to contribute to a general education for all citizens of whatever faith and no faith. The Christian also has an ethical responsibility to contribute to the opportunities of each individual to develop skills and responsibilities. The only agency through which the Christian can exercise these civic responsibilities is the public school. He has, therefore, a moral duty to contribute to the maintenance of the public school at an efficient level.

This would still be a civic obligation if the public school was as Godless as it is said to be. In particular the public schools have a unique opportunity, of which they are much aware, to prepare future respect and understanding across class, racial and especially religious lines. 34

In supporting other schools, then, religious groups do disservice to their country, largely because the type of education they sponsor can in no way be checked or evaluated or directed by the community; it constitutes a kind of closed society, insulated within itself, and thus draws its adherents away from the social and civic attitudes that full participation in the life of society

33 Ibid., 209.
Roman Catholic parochial education is censored education. It is irresponsible education in the technical sense that it is not subject to the criticism and review of the community. From this point of view, I differ with my friend Will Herberg when he applies the term "public education" to Roman Catholic controlled education. It is as "private" as education can be. It is not merely separated from public review and criticism, but . . . can neither be effectively reviewed in terms of standards of ordinary academic competence, nor can its substantive content be criticized without seeming to attack the Church . . . But the right of supervision and review by the community at large is indispensable to public education. [This education] is controlled education . . . censored education, and part of a general strategy to establish enclaves of concentrated clerical political power, withdrawn from the democratic determination of policy by discussion. To that degree its graduates are crippled as contributors to the great dialogue of our common life.35

The foregoing position does not take into account the parents' religious persuasion, which may concretely urge them to support the parochial school, whatever the "right of supervision and review by the community at large"; for they may well believe that to supervise minimal standards of scholarship, health, patriotism, etc., is a vastly different enterprise from that wherein "the community at large"—which must be some organ of Government—undertakes to supervise the "substantive content" of a kind of education that differs from what "the community at large" will desire. But some writers are willing to include the role of the parents, explicitly, in their theory. They are yet able to accord the parents a secondary position, when it comes to any hierarchy to be set up among parents, individuals, churches, and the State. Such a position is taken by Robert Gordis, in his article, "Education for a Nation

35Ibid., 162-163. If this "criticism and review of the community" is to be effective in any practical sense, will it not also constitute a "censored education"? What if some parents freely choose this education? To "review and criticize" the "substantive content" of a religious education will mean, concretely, to urge particular restrictions on the religious teaching in question—and thus on the parents who sponsor it. Whither religious liberty?
of Nations." In this article, Rabbi Gordis shows himself fairly well aware of some parental objections to the current tax-structure, and the denial of any of their tax benefits to the private schools to which they freely choose to send their children: "The ethical argument for government support of parochial schools has particular force. Parents who send their children to these schools are bearing the onus of double taxation, both for the public schools, enforced by the state, and for the parochial schools, enjoined by their sense of religious duty. This works especially great hardship upon millions of American Catholics . . . though Lutherans, Jews, and other groups also conduct day schools under religious auspices." He further notes that one theoretical justification for a dual school system "would define the public school as the instrumentality created for such parents as do not wish any religious instruction for their children within the rubric of secular education, and the parochial school as the instrument of those parents for whom education implies a religious orientation organically related to the entire curriculum," and concludes, quite consistently that it would follow that "both groups of parents and both types of schools are equally entitled to governmental support, or, more concretely, to their proportionate share from the public-education fund to which all have contributed." He then notes further arguments—our typical American tradition, the pluralistic concept of our society, etc.—and then


37 Ibid., 14-15.

38 Ibid., 15.
begins his rebuttal.

To hold that "the school is merely a surrogate for the parent," Gordis says, is a mistake; for the schools have functions which are both more and less extensive than the parental obligation—less, because religion and ethics and behavior patterns, etc., are the functions of home and church; more, because "the school is concerned with the transmission of group values which society regards as essential for its survival and unity and which are not the primary concern of the parent (page 17). Then too, what of this argument from alleged parental priority? It is questionable; for it is obvious that man is not merely a biological creature but a social being, "and it is this second characteristic which sets him apart from the lower animals. Hence a child possesses concurrent and parallel relationships both to his parents and to society, and both are equally rooted in his nature" (Ibid). The rights of parents and the State are "parallel," but it is strongly suggested that if in practice there is to be some sort of priority, it belongs to the State; for it is the State's function to develop the social side of man's nature, while to parents are left the less extensive areas of development—biological nurture, transmission of familial culture-patterns, etc.; parental rights will undergo a proportionate limitation: parents have a right to establish parochial schools but "they have no right to claim the help of the state in maintaining them" (page 19). For the safety of society, the centrifugal tendency toward dis-

39 Italics in original. This seems to be a central position of the modern theory: not man's intellectuality, but his sociality, "sets him apart from the lower animals." Many who hold this position rarely go on to offer any distinction between the way even some "lower animals"—ants, bees, wolves, cows, and sheep, for example—are in a way "social," and the way man is social. Perhaps they do not see any distinction. See p. 110, n. 47, in criticism of this idea.
unity must be counterbalanced by "an equally powerful instrument for building unity and mutual fellowship. . . . Longer cords of liberty require stronger stakes of unity. There is no other institution in American life that can rival the public school in fulfilling this indispensable function for the present and the future" (page 22). The consequences for private schools are apparent, but might be illustrated also by a comparison with the lot of dissenters in other areas of social and civic life (pages 16-17):

Conscientious objectors must pay their taxes to the federal government, most of which are allocated today to military purposes. A group of citizens may feel that the sanitation system in their community . . . is inadequate or even hazardous to health. They cannot withhold their share of municipal taxes, in order to create their own system of garbage removal. There is nothing to prevent them from arranging for a private carting service to remedy the delays of the public Sanitation Department. A business concern or an individual may feel the need for more protection of property and life than the police department affords. He would not be permitted, however, to retain part of his taxes in order to pay for a burglar-alarm system, a private police force, or a bodyguard. In the field of education, the role of the state is far more central and inclusive than serving as the repository of a public-education pool.40

40 The following chapter will attempt a criticism of the general approach of the modern theory. But this argument from analogy should not be bypassed here. Such arguments are, of course, for all their imagery, rarely any more than supports or illustrations of other arguments from evidence. Their appropriateness is not better than their parallel with the point at issue. Gordis' arguments here appear to assume what is to be proved. He argues: A, objector pays taxes for military, though against it; B, citizens pay taxes for sanitation though against it (i.e., its inadequacy); C, businessman pays taxes for police, though dissatisfied; therefore (unexpressed), D: Catholics should pay taxes, though dissatisfied because they go to public schools only. The means-end parallel in the four examples is far from sufficient. B and C are irrelevant to D, since B and C in no way concern personal commitment to a philosophy of life, but deal with a momentary concern of practical convenience. A is not relevant to D, since in A the only way the State can attain its end (military strength) is through taxation (and without this, peace, order, justice for all, including the objector, will be in danger); but in D the State may attain its end (that its citizens reach a minimal level of education) in many ways: the State need not administer or control the education; it need only see to it that someone administers education. State taxation for armies is necessary, if peace is to be protected; State direction of schools is not necessary.
Gordis concludes, consistently with his purposes, that "Parents have a right to establish such schools, but they have no right to claim the help of the state in maintaining them" (page 19); and in fact, these parents might be going too far: "The extraordinary success achieved by Catholics in America in establishing their educational system suggests the need of a special self-restraint that cannot perhaps be logically justified but is a very real necessity none-the-less," for

It is a truism in the social-economic order that large aggregations of power, be they corporations or labor unions, because of their very size, create special problems such as monopoly, price-fixing, and the exercise of pressure on government which do not arise for similar groups of smaller compass and lesser influence. In the face of phenomena such as these, society must impose effective safeguards of its over-all interests.

Conversely, where the unit is smaller, society can afford the luxury of greater latitude... Were the Catholic school system small in extent, it would pose no challenge to the public-school system.41

41 Pages 25-26. The innumendoes and unbalanced view of the real situation here suggested, are amazing. Though his intention is something far different, Gordis seems, in his words about size and monopoly and pressure on government, to be describing the National Education Association and/or the public school system. For an authoritative description of the NEA, see: Edgar B. Wealey, NEA: The First Hundred Years (New York, Harper, 1957). On page 362 this work says, "Unesco was anticipated in Education and the People's Peace (published in 1943 by the Educational Policies Commission), which outlined plans for a postwar intergovernmental agency in the field of education." Italics added. On page 386: "The National Education Association, however, is more than its officers, directors, trustees, and executive committee. It is more than its executive secretary and staff. More than its many state and local affiliates. It is more, even, than its nearly 700,000 members and their annual representative assembly. It is also the thirty departments described above in Chapter 24 and the twenty-four committees and commissions described in Chapters 25 and 26. It is a 'gigantic education ganglion,' indeed!" (sic) The public school system, as is well known, educates about 36,000,000 students; the private schools, about 5.5 to 7,000,000 students. What sort of proportion of "large" and "small" can Gordis have in mind? What is the weakness in an institution that would fear the "challenge" of another, which other is not one-sixth its size and does not have the immense resources of compulsory taxes behind it?

And, perhaps more ad rem philosophically, what are the "effective safeguards" that "society must impose" because of "its over-all interests"? Who will decide those interests? Truly, the modern theory sounds a bit ominous.
According to the defenders of the modern theory, when a private and divisive system challenges the State system the danger to the unity of the nation is great; but they say that in fact, by careful watchfulness the legislative framework which we have set up may be maintained, and even extended—so that, in time, the danger from the mushrooming private school systems may be lessened. Despite excitement and acrid controversy, the actual concrete trend bodes well for an improvement of the situation; still, we cannot expect, nor can we try, to put these educational reforms—a unified, central system—in for all overnight. For prejudice is deepseated; we need evolution, not revolution. Almost every institution has its roots deep in some local community or some social or religious group; "perhaps some of the colleges have outlived their usefulness in their present form, but the processes of transformation will be slow; in the case of the privately supported ones this is particularly true."42

The slightly-veiled wish that independent schools would, like the Marxist State at the last moment of the dialectic of history, simply wither away, finds legal justification for its hopefulness in two Supreme Court cases, *McGillum* (1948), and *Eversen* (1947); it finds its political justification in the current laws and especially the current legislative attitude of the National Government.

To conclude our remarks about the modern theory, we will treat these briefly.

To work from the more known to the less known, we will note the current situation first. On February 20, 1961, the President sent to Congress a message on education; it contained some passages which offer some evidence that the modern theory has become the pervasive atmosphere in high policy-making circles in our country:

Our progress as a Nation 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 in an era such as this all require the maximum development of every young American's capacity.

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 it.

I recommend to the Congress a 5-year program of general Federal assistance for public elementary and secondary classroom construction and teachers' salaries.

The sums involved are relatively small when we think in terms of more than 36 million public schoolchildren, and the billions of dollars necessary to educate them properly.

The bill which will follow this message has been carefully drawn to eliminate disproportionately large or small inequities. In accordance with the clear prohibition of the Constitution, no elementary or secondary school funds are allocated for constructing church schools or paying church schoolteachers' salaries.

One may read the modern theory between the lines of this message. For example, the high confidence that education is the key to national progress, the claim that education is per se the responsibility of the State (the last paragraph says "These measures are justified on their own merits—in times of peace as well as peril, etc."). the alleged concern for "all"—echoing Conant and the NEA, the inconsistency of claiming to speak for all and then offering legislation for only some—the public schoolchildren, the mention of the "church schools" only for the sake of excluding them, the reliance on an alleged "clear prohibition of the Constitution" to defend this omission, the assertion that the bill eliminates inequities (even though six million private school children are to receive nothing, despite the fact that their parents must pay taxes to the tune of perhaps one billion dollars, to underwrite the subsidy to public

43 See above, p. 23, n. 30 Italics added.
school children)—all these expressed or implied facets of the proposed legislation indicate the modern theory in action. Even the reactions of amazed parents met the usual treatment, which is to receive "sympathy": Rabbi Gordis is strong on this point, for instance; he speaks of himself as "a non-Catholic who possesses a deep sympathy with the widespread desire of Catholic parents to give their children a Catholic education," and adds two pages later that "The vast economic problem confronting American Catholics in maintaining the far-flung parochial-school system deserves the sympathy of all their fellow-citizens, as surely as their achievement should command universal admiration." Others who favor the modern theory, but are, like Gordis, not openly militant about it, will express "sympathy," "pain," "concern," etc. Recently too, the press reported Secretary Ribicoff as feeling "sympathy" for the problems of parents who want their children in private schools, and the President as feeling similar sentiments. Unfortunately, it is money, not sympathy, which keeps schools going.

The justification for this omitting the private schools is the "clear prohibition of the Constitution." Clearly, what the President has in mind "is un-

44Gordis, pp. 24, 26, respectively.

45This is not to imply that any Government official of whatever rank does actually hold the modern theory as a philosophy of parental-State relations in education. Until a man writes a book to express his abstract principles and views or makes a series of public statements on the philosophy involved—as, for instance, Dr. Conant has done—one cannot conclude much about his private theoretical convictions. But de facto, whatever the theories involved, the Government has been (in the NDEA, for instance) and is now (in this message of the President, for instance) advocating a practice which perfectly accords with the modern theory's principles. If the modern theory were to be put into some concrete manifestation, one might ask, how else would this be done, but by such a series of measures as the NDEA, last year's education bill, and the "task-force" proposal of spring, 1961?
doubtedly the Church-State theory elaborated by the Supreme Court in the Everson, McGovern, and Zorach cases.\textsuperscript{46} The Everson case dealt with the constitutionality of a New Jersey law which provided state-supported bus transportation for children attending parochial schools. The core of the issue is as follows:

The only contention here is that the State statute and the resolution, insofar as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent overlap. First, They authorize the State to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment. Second, The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use of State power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the state. . . . \textsuperscript{47}

The basic problem was the phrase "establishment of religion"; the Court gave it a broad meaning:

The "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. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. . . . 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. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State."\textsuperscript{48}

\textsuperscript{46} Charles M. Whelan, S.J., "Only Higher Education, Mr. President?" America, CIV (March 11, 1961), 758. The writer says that to those who claim an open-and-shut case, "The answer is short and decisive. Mr. Kennedy's statement was erroneous, inopportune and unnecessary." p. 758.

\textsuperscript{47} Blum, "Cases in Civil Liberties," Everson, p.2.

\textsuperscript{48} Ibid., 2-3; see also: Pfeffer, p. 133.
However, the majority decided that the "wall" was not quite breached by the New Jersey practice in question, since the benefit of state-supplied buses went to the children, not to the school. "Since the parochial schools involved here meet the state's requirements for secular education, it is as much a use of public funds for public purposes when it is expended to transport children to these parochial schools as it is to transport them to public schools." The Court split as evenly as possible in this decision, five to four; perhaps the most well-known expression of the minority was Justice Rutledge's:

No one conscious of religious values can be unsympathetic toward the burden which our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' children's education, at the same time the added cost of instruction for their own. Nor can one happily see benefits denied to children which others receive, because in conscience they or their parents for them desire a different kind of training others do not demand.

But if those feelings should prevail, there would be an end to our historic constitutional policy and command. No more unjust or discriminatory in fact is it to deny attendants at religious schools the cost of their transportation than it is to deny them tuitions, sustenance for their teachers, or any other educational expense which others receive at public cost. Hardship in fact there is which none can blink. But, for assuring to those who undergo it the greater, the more comprehensive freedom, it is one written by design and firm intent into our basis law.

Of course discrimination in the legal sense does not exist. The child attending the religious school has the same right as any other to attend the public school. But he foregoes exercising it because the same guaranty which assures this freedom forbids the public school or any agency of the state to give or aid him in securing the religious instruction he seeks.

The McCollum decision, a year later, held that a program of "released-time" in a public school, in which children were excused from one hour a week of

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49 Ibid., 473.

50 Ibid., 475-476. Earlier in his dissent, he held that New Jersey was using its taxing power to support religion, and that "money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own." Italics added. See Blum, "Cases..." Everson.
their secular studies so that they could go to separate rooms of the school, where teachers of their own religious faiths would instruct them, constituted an "establishment of religion," and was therefore unconstitutional. Justice Frankfurter's concurring opinion may conveniently be used to summarize the philosophy of the Court at this time; it is certainly a basis for the modern theory's deliberate rejection of any type of Governmental recognition of or aid to a religiously-oriented school:

Separation means separation, not something else. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. . . .51

However, everything is not really so trim and neat; these decisions caused storms of protest, and there is strong legal opinion to the effect that these decisions definitely did not reflect American traditions or Americans' desires. We will note some of these points in the final chapter.

In brief summary, we may observe that we have presented data for the modern theory, and let it speak for itself, as it were. A formulation of the cumulative expressions of this chapter would come to this: the collectivity, or society, or "the State"—the word matters little—is prior in education; what is "divisive" may be tolerated, but the State must strive for "unity."

51 Ehlers and Lee, p. 125. Italics added. One might have thought that the flag or the White House or the Statue of Liberty is "the" symbol of democracy. Perhaps the nation had no symbol until 1825-50 or so. Also, who decides what is our "common destiny"? the secularist, or the religiously-oriented? or both?
The people who want this "unity" and a "unified school-system" have a variety of reactions to the idea of independent schools. Thayer is almost wildly antagonistic; the private schools are a real danger; abolish them. Dykstra is less heated, but equally critical of the dangerous results of such schools: they spawn bigotry. Conant shows gentlemanly superiority: these schools are an anomaly, an anachronism, not too dangerous, though, if kept carefully in check. Conant reveals sustained dislike, whereas Thayer and Dykstra almost seem to hate the idea of independent schools. Frankfurter practically echoes Conant. Conant and Gordis seem willing to accept the pragmatic fact of these schools, and work quietly to "keep them in their place" (an ever-diminishing one), rather than militantly seek ways to destroy them directly. Gordis goes Conant one better in taking an appearance of broadmindedness and tolerance: he states the arguments against his position, he concedes these schools their position; but when all is said and done, his "sympathy" seems to be a smokescreen, for he concludes, as do the others, that "the public" should have no hand in giving any financial support to the struggling independent schools, and expresses extreme uneasiness about the "challenge" that the independent-school David is making to the public-school Goliath. Nichols suggests an attitude of benign permissiveness: the independent schools have the privilege to exist because they can make a contribution; but he moralizes that we all have a duty in conscience to uphold the public schools, no matter how Godless they be, and complains with bitterness against the "uncensored" curriculum of the private schools. Garber shows only a studied ignorance of these schools, only implying that they exist by State sufferance. All of these probably share one another's sentiments to varying degrees; they all do agree on the primacy of the State.
CHAPTER IV

THREE CRITICISMS OF THE MODERN THEORY

We have looked at the two theories in isolation, and have now and then obliquely suggested unfortunate consequences to which the modern theory seems certain to lead. In this chapter a more fundamental and direct criticism of the modern theory will be undertaken, in order to put in bold relief, through a direct comparison, what we believe are its basic fallacies. A brief summary of the two positions will indicate the disagreement.

The traditional theory begins with man. It observes him in action, and finds that his nature—revealed through action—is intellectual and social, and that he is perfectible through a gradual process of interaction with others in society. He strives for this perfection; and it is not merely a material abundance that he wants, for the lives of hero and saint and social reformer and political leader as well as our own personal experiences testify that man feels hunger and thirst for justice and order as well as for bread. History and current events show his efforts to evolve a society fitting for his peculiar needs, a society with a maximum amount of freedom in which men might work to satisfy their own drive for personal development and at the same time contribute their proportionate share to the good of their fellows. Education flows out of this situation; both for the good of the child and the good of the parents it is the job of the latter to educate, to extend themselves in their children and thus
provide the intellectual and moral training that the children's nature demands, while simultaneously perfecting their own natures by meeting the demands on parental responsibility (which for multi-dimensional humans, means providing understanding and love as well as food, clothing, shelter). Usually they cannot provide formal education on their own; so they delegate the exercise of their right to others—often to the State, as the only organization extensive enough in time and space to undertake the process. The State's job is to provide for the "common good"; this is the external order of peace and justice in society, and altogether precluding from a citizen's personal decisions of conscience (most obviously in the religious sphere, where judgment on the validity of a philosophy of life is beyond the State's competence), provided such personal choices do not harm the common good.¹ Such a choice is often the decision by a group of parents not to avail themselves of the State-provided schools, but to establish their own; in reality, the prime source of initiative is the people: in one case they establish schools through the instrumentality of the Government, in the other they set schools up more directly, through the instrumentality of private free associations, formed for the purpose. The function of the State is subsidiary; it is to help the less-organized individuals and groups accomplish what they cannot do on their own; its use of taxing power and administrative techniques is a means by which citizens set up conditions that they need. Thus the State and its functions should reflect the needs of the people; in education this means that conditions and legal provisions for the "private" schools should be roughly the same as those for the "public" schools, since both are servants, instruments, for the people. Such is the theory.

¹ Pfeffer, p. 519-528. The norm is usually "clear and present danger."
The modern theory also begins with man, but lays stress on his social nature. Men live in society, depend on society, and society has a stake in their full development. The whole is greater than the parts. Men are intellectual, of course, but this intellectuality needs the accouterments of civilization. Men are free, also, but not absolutely free; their freedom must be circumscribed by the greater freedom of society at large. The process of marriage does indeed issue into children; the parents must provide physical conditions for the child's growth. The mental and social development of the child is a shared concern of both parent and society; but should the parent restrict the child's horizon to parochial interests—such as segregation of the child for training in a divisive religion—society rightly asserts its prior claim: for the good of both child and society itself, the State must gently but firmly override parental narrowness and free the child for his nobler function: life in society. Society must hand down a continuity of culture—in this country, the American, democratic culture. Because of varied religious and racial and ethnical origins, our society is fissiparous; yet attainment of the broad, general purposes of democracy requires concerted common effort in unity. Thus, both to hand down culture and to unify the nation, the State uses its public schools; it may tolerate divisive private schools, though, lest overly-quick elimination of them cause tensions. But it must ever keep a wary eye on such tangential movements; they tend to overflow their banks. The State must gradually absorb the functions of education, since any lesser societal unit, such as the parents or private associations or religious groups, are inevitably selfish in outlook, failing in the broad vision of universality and sense of national purpose that should characterize a citizen of a modern State. This absorption
is most painlessly and least obviously effected by a tax program which discourages the investment of private capital in privately-directed educational institutions, and thus at one and the same time hinders the foundation of new schools, prevents necessary repairs and expansion of old schools, and catapults the State-managed schools to new heights of excellence in equipment, teachers' salaries, etc. Coupled with the prestige-imbalance, and higher costs, rising population pressures gradually make it more and more apparent to private school supporters that they are failing to meet the competition, and they may even come to feel a certain guilt about submitting their students to inferior quality in education; some then decide they "must rethink the whole idea of why we are in education at all," and others may seek some share of the public money to help support the burden. When this happens the modern theory is ready: it quietly suggests that the students in the independent schools can get the same thing in the bigger, better State universities; it expresses heartfelt sympathy at the plight of the supporters of the independent schools; it expresses its sincere willingness to recognize the privilege that these schools have, to exist. But it adds that history, conscience, and especially the Constitution proclaim unequivocally the wrongfulness of assisting these schools with any tax-acquired benefits. To do so would be to promote divisiveness and to weaken the principle of separation of Church and State. Society, after all, is the final arbiter, and society, by and large, wants the public schools. Good enough for the vast majority, they ought to be good enough for all; the general needs of the Nation have priority over individual preferences. Such is the theory.

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2 Blum, "State Monopoly in Higher Education."
We might notice that his very tolerance of diversity tends to blind the traditional theory's supporter to the danger of the modern theory. This latter holds as cardinal the need for unanimity and non-divisiveness; thus it is committed to remove disharmony and tension through spreading its own position. It follows that it is militant, because its notion of conversation is the monologue, and as long as its rival is permitted a voice in the world of education, its own fundamental premise—one school system for one nation—is faced with a very concrete and three-dimensional denial. "Peaceful coexistence" it can never countenance, save as a temporary expedient, since "coexistence" requires two, and the core of the theory is the demand for only one. But the proponent of the traditional theory holds, also as an abstract and basic principle, that a plurality of educational systems, both as philosophies and in practice, is—if not a positive good, perhaps—certainly not positively bad. Thus he is likely to accept this current unresolved inconsistency in our public and official thinking; he would mistake the fact that the modern theory is no longer a semi-articulated, half-formed practical norm of conduct: it has been elevated to the level of principle, it is now an ultimate. Thus the proponent of the traditional theory must answer on the same level, and not merely point out the empirical fact that private schools have to be allowed to exist, since the public schools simply do not have the space to accommodate a sudden inrush of 15% more students; the answer to this pragmatic answer is simply: "Give us time (and enough money) and we will." The traditional theory stresses tolerance of diversity of approach; but under pain of permitting its own destruction, it cannot go to the extreme of being "tolerant" in principle, of the intolerance that is dogma in the modern theory.
The discussion is confused somewhat because the pronouncements of the modern theorists often do contain a respect for diversity. Dr. Conant, for instance, finds room for a certain kind of difference:

If anyone in the free world believes that a unifying philosophy is a goal to be desired at whatever price, then he should drive from the free sectors of Berlin eastward through the Brandenburg Gate [i.e., into lands controlled by Russia].

It is the absence of dissenters from the official dogma that signalizes the capture of the citadel of learning.

We in the free world through our schools, colleges, and universities seek to perpetuate that tradition of Western culture which emphasizes diversity, controversy, and tolerance. The Soviets seek uniformity and strict adherence to the dogmas of the creed of Marxism-Leninism.3

Of course, he means diversity and controversy within the one State-run school; it might be called "intramural diversity," as opposed to "intermural diversity."

Within the system there is to be diversity, but there is no deviating from the system itself: "Unity we can achieve if our public schools remain the primary vehicle for the education of our youth, and if as far as possible all the youth of a community attend the same school irrespective of family fortune or cultural background."4

Such a position, and all that is contained in its implications, we would criticize under three major heads: (1) the primacy of parental rights because of the nature of the person, (2) the nature of pluralism and an analogous "common good" because of analogous institutions, (3) the requirements of distributive justice. None of these points would hold, of course, under a philosophy

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3 Conant, The Citadel of Learning, pp. 8, 9, 67.
4 Conant, "Education: Engine of Democracy," p. 11. In the same place he says that the diversity that we do have is through "local responsibility" and our "flexible, decentralized concept of democracy."
of the totalitarian (super-) State; but both sides in this argument claim to adhere to a philosophy of the service-State, in a democracy. And their reason for this adherence is the nature of the person.

The premiss, the central conception of democracy as it is understood by both parties in this debate, is the conviction that it is the person as person that counts. The person, not as property owner, not as member of any class, not as the child of wealth or prestige—as Dr. Conant is quick to point out, not as belonging to this or that race or religion or group, but simply as person. The concept which gives vitality to democracy, for those on both sides, is "that as a person (a man) should be given equal rights and equal opportunities with others, and that these various distinctions are from this point of view irrelevant." And it may be argued that the centrality of the person holds good not only in justifying the general social conception of democracy, but also in finding a basis for the rule of law. In his book, The Modern State, the author just cited discusses the rule of law which is the object of every well-run government; he decides that as an ideal the rule of law is the establishment of a certain universality of order in conformity with the principle of justice, and then asks on what must such universality rest:

In answer we are driven back to the conception of personality. Since personality is the only intrinsic value we know, legal rights must either rest upon it or else conflict with the social welfare. When for instance the law safeguards property, it must not be because property has rights in virtue of its mere existence, but only because the legal rights of property are means for the achievement and development of personality, and therefore these rights should be so limited that they do not override other means necessary to that end. . . . The claims of personality

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are the only claims which command an underivative and indefeasible loyalty.

Professor MacIver has chosen the word "personality" as the central expression in this passage; he might well have used "nature," which he also mentions in this context, for nature here would mean the nature of man. And the nature of man as the traditional theory points out and the modern theory does not openly deny is the nature of a person, a spiritual being, an incarnate intellect which as intellect has a transcendent dimension that is beyond the State's legitimate interference. Perhaps the word that Professor MacIver has used is more expressive, since all things have a "nature" in an analogous way; but only self-conscious spiritual beings have a right to be called "persons."

That there is some sort of diversity among men both parties would agree. Yet there would be little diversity were all of us animals only; for the creative response to situations is absent among animals, even the highest; rare are the instances when animals even appear to act freely, to choose not to act even though all the requisite conditions are given. The followers of what is sometimes called the democratic creed will speak in praise of recognizing some "patterns of human relationships that are compatible with the dignity and worth of the individual," they will note that the democratic approach to social order is "essentially that of achieving order by orchestrating the widest diversities of individuality on the common theme of human needs and values," they will point out that the basic problem for a democratic society is to determine how to formulate a social context of intersubjectivity and "conduct our interper-

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sonal relationships with others as persons, as individuals.\textsuperscript{7}

The two writers just cited could probably be found in the camp of the traditional theory; but their position concerning the person is shared by the ardent proponents of the modern theory. For instance, V. T. Thayer, a strongly ally of Dr. Conant and Professor Butts in opposing "divisiveness" and thus opposing private schools, is quite certain that democratic values require the principle of the primacy of the person: he praises "the distinctively democratic values of respect for people as persons in their own right."\textsuperscript{8}

Again, Mr. T. V. Smith, whose book The Democratic Way of Life is no encomium on the Natural Law, and who consequently is somewhat hardpressed to justify a transcendent value for individual men, still will express certain notions of the person which, without stretching, fit in with those we have been presenting. For instance, in justifying the ideal of democracy as a way of life, he notes that popular government is not so much a good in itself, as a means to acquire conditions that fit the needs of men, and to give them the form of government that offers \textit{individual} men "the means to seek the good life in their own way"; for although it is important for men to govern themselves, the reason is "primarily so because this troublesome procedure is the only known guaranty that they can seek their own ends."\textsuperscript{9}


\textsuperscript{8}Thayer, p. 219.

\textsuperscript{9}T. V. Smith, \textit{The Democratic Way of Life} (Chicago, University of Chicago Press, 1926), pp. 101, 102. Italics added. His point is, roughly, that personal choice (in all its relativeness, to be sure) must be basic in determining a human society, and that society's government.
Another who holds the modern theory, Professor John L. Childs of Teachers College, Columbia University, has a position somewhat more articulate on the value of the person than the foregoing. A dozen years ago he suggested that all children should be required to spend half the compulsory school period in public schools, to offset the private schools' tendencies to fragmentize their lives in the community. But he still could hold that "the individual, the particular, is the end; society, the universal, is the means"; and the "supreme aim of education is the enrichment of the life of the individual, and the social inheritance is only a means to that end"; the experimentalist "sees man as an object of consideration, the individual as the final value"; "children are persons to be treated as ends just as truly as are adults." Some years later, the writer having evolved from being an experimentalist to being a pragmatist, his attitude on the person's value causes him to look askance on "undemocratic" schools:

It should be candidly stated that the pragmatic theory and practice of education is not favorable to dogmatic and authoritarian modes of thought. The pragmatists consider that the inner life of a person will be seriously divided against itself if he undertakes to combine in his own experience scientific and dogmatic ways of establishing beliefs and standards of conduct.

Robert Gordis, also, has a good word to say for the value of the person: he notes that both the State and the parents have grave obligations "to recog-

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The child as an independent personality.\textsuperscript{13}

Last but hardly least, among the many proponents of the modern theory who are convinced of the sacrosanct transcendence of the human person, is Dr. Conant himself:

Why is it important to safeguard the rights of the people with whom the majority does not agree? Those who base their case on history, utilitarian ethics, and practical politics can be staunch defenders of the American tradition of civil liberties. But those who affirm that our passionate adherence to the doctrine of personal liberty is a consequence of our belief in the sacrosanct nature of the individual have a still stronger case. To argue that the rights of the individual are a purely utilitarian invention is to deprive the characteristic American ideal of its cutting edge.\textsuperscript{14}

We believe there is a profound unanimity here between the two theories. If words are to mean anything at all, and if the men who have just been cited are to be taken at their word, then in external expression at least both sides agree on this one point of the worth of the individual person. We must then follow this premiss to its logical conclusion: in a free society, because of the inviolable nature of the person, the State or the Government is in the last analysis for the citizens and not the citizens for the Government. This last statement would be accepted by the proponents of the modern theory—and their foregoing pronouncements about the person as supreme in a democracy would scarcely permit them to deny it. But then it follows that they are inconsistent in not allowing the natural consequences of such a premiss to follow: on the level of principle, with their own premise, their position holding that the State's rights in education must supersede the parents', is a contradiction.

\textsuperscript{13}Gordis, p. 18.

\textsuperscript{14}Conant, \textit{Education in a Divided World}, p. 103. Italics added.
Dr. Conant, for instance, upholds one kind of diversity, and takes this position because he believes that democracy as we understand it requires local control of schools so that they may more faithfully reflect the needs of the people in a given locality. Different persons have different needs, etc. We believe that he is correct; but he does not carry this far enough, for he applies it only to the different educational and vocational needs of the varying communities—farm communities need agricultural schools, a commercial town needs business schools, etc. He fails to apply this idea to differing ethico-religious needs as felt by those localities. Or, for that matter, different intellectual needs, which perhaps only a private school could fulfill. Sometimes the former predominates, and people choose a religiously-oriented school even though the public school offers all the secular subjects competently and in a more congenial environment; sometimes the latter, and the people choose the private school (which may also be religious) because the public school does not give them what they want in quality. In other words, if the State is for its people and not \textit{vice-versa}, so too the school(s) must respond to the needs of the people. Which is instrument, means, and which is end? The school is a means, the person is the end (both sides say). Then a school system must not subordinate the human persons who support it, making them means to its own continuance as an institution; the persons must subordinate any school system to their purposes, which is the fulfilling of their personal needs. But some people, at least, find that private schools and these only can answer these needs; the private schools are thus justified as an extension of these persons.

Dr. Conant is also in favor of personal freedom for the student, and says as much explicitly:

A democracy, unlike a totalitarian state, cannot force its youth into what the authorities consider the appropriate groove of advanced education. In this republic of free men, no official can decree what line of study must be pursued.16

Our stricture, once again, is not that this is unsound; it is rather that he has not carried it to its logical conclusion, and applied it to all relevant areas. Let us rephrase it in order to apply it to those areas; it then reads:

A democracy, unlike a totalitarian state, cannot force its parents into (choosing) what the authorities consider the appropriate groove of advanced education for their children. In this republic of free men, no official can decree what school must be attended.

Doubtless Dr. Conant would agree with the second rendering, out of context as it is from many of his other pronouncements about the parents' role in education. After all, the "sacrosanct" nature of the individual that he has praised would apply to individual parents as well as students. But if we changed it further, would he continue to agree?

A democracy, unlike a totalitarian state, cannot force its youth into what the authorities consider is appropriate and make them avoid a private school for education. In this republic of free men, no official can decree that private schools are not to be attended.

Framed within the context of such loaded words as "democracy," "totalitarian state," and "republic of free men," the above carries a persuasive momentum that even Dr. Conant could hardly gainsay. Yet the cognitive element regarding the acceptability of private or independent schools is entirely contrary to his position, as we have seen earlier in frequent quotations. It comes to this:

16 Conant, Education in a Divided World, p. 204.
Dr. Conant would speak in favor of the priority of the person; but that person may not be the parent. He would praise diversity in education to reflect personal desires, but that diversity may reflect only certain personal desires—the secular ones. He hopes parents will maintain control of the educational system, but only those parents who choose his approved method of control—the Government—should maintain that direction; those who do it another way, by private associations, are a danger to the country. Thus he places priority of the person high, in some of his expressions; but the overall Weltanschauung and purpose of his writings is to form an atmosphere of educational thinking that would preclude any practical realization of the priority of function of the person over the State. He favors freedom; but not the exercise of freedom. We are not alone in this conclusion; Dr. Will Herberg, noted Jewish sociologist, has analyzed Conant's position:

The only ground on which the independent school can consistently be denied public recognition and public support is the contention that it is undemocratic and un-American because it withdraws children from the school system operated by the government. This is the line taken by James Conant, former president of Harvard. . . . "The greater the proportion of our youth who fail to attend our public schools and who receive their education elsewhere," Mr. Conant asserts, "the greater the threat to our democratic unity. To use taxpayers' money to assist private schools is to suggest that American society use its own hands to destroy itself." Mr. Conant does not carry his logic far enough: if private schools are really such a menace to American democratic society, they should be outlawed. Perhaps that is what Mr. Conant would like, although somehow he cannot bring himself to say so. His whole argument, however, points in that direction and rests on a conception of democracy far closer to a monolithic state totalism, where no rivals are tolerated in any field which the state chooses to enter, than to the pluralistic system (which is ours in America) . . . .

At this point, we may begin to bridge the notions of the person-as-alone,

17 Herberg, 127-128.
and the person-as-in-society. For the argument of Robert Gordis, with the additions to it by Comant, Thayer, and others, centers around the good of society. It comes to this: private schools are divisive—this is bad for society; public schools are unifying and cohesive—this is good for society.

To dispute this view, the follower of the traditional theory begins by showing that the "unity" here sought does not reflect men's natures: men are different, groups everywhere are different, it is senseless to try to abolish the differences. He would say that the question is not one of assimilation of differences, if that means reduction of these diversities to one uniformity. He would add that it is not a question of "toleration" of differences, for such tolerance, while perhaps a necessary first step to a broader outlook, is by and large, an insult. He would conclude that "It is not tolerance that is the issue. It is the reception of the differences into the unity of the whole society":

It is not because of diversity that we are in trouble. . . . The problem is not how to cancel these differences. . . . The problem is how to get along with these differences.

Nor are we seeking to end disagreements, to stop people from quarreling. . . . We are not seeking to discourage honest quarrels but only dishonest ones.

We are not seeking uniformity and we are certainly not seeking co-ordination. We do not want simply agreement between groups or even within groups. What we want is that these disagreements, these differences shall not tangle and balk our co-operation in our common concerns. That is what is so hard for us to achieve. That is what the primitive mind can never grasp. That is what the primitives among us forever resist—the co-operation of differences. There is our objective, not the removal of differences.


19 Robert M. MacIver, "What We All Can Do," Unity and Difference in American Life, p. 152.
This is good, as far as it goes. But on the level of principle it does not seem really to rebut Conant and Gordis, et al. The question is not so much whether there are differences, or whether some men like MacIver want to get along with diversity; it is whether there ought to be differences (to the extent that private schools produce them). Obviously, with extreme effort the State can abolish some differences: Russia and China have. The problem is: is such an action justifiable on the premises of democratic society?

Dealing with the relations of the common good and the person and human freedom, Jacques Maritain has noted a theme of human existence that could hardly be gainsaid by the proponents of the modern theory, so much in accord is it with the aspirations of democracy which they extol:

The chief aspirations of a person are aspirations to freedom—I do not mean that freedom which is free will and which is a gift of nature in each of us, I mean that freedom which is spontaneity, expansion, or autonomy, and which we have to gain through constant effort and struggle. And what is the more profound and essential form of such a desire? It is the desire for inner and spiritual freedom.20

Though Maritain expresses himself in somewhat poetical language, his observations seem innocuous enough; we can expect the proponents of the modern theory to accept every word here (though they might quibble about "inner and spiritual freedom"). This freedom is manifested when men seek their own ends, some of which are had through their own individual effort, some in free associations, some through the instrumentality of the State. In any event, man is seeking to become himself, to mature, to actualize his powers, to grow into an adult in the full self-consciousness of inner-directed personal freedom. To accomplish

20 Maritain, Education at the Crossroads, pp. 10-11.
such a goal, his inner freedom drives outward:

The second essential form of this desire is the desire for freedom externally manifested, and this freedom is linked to social life and lies at its very root. For society is "natural" to man in terms not only of animal or instinctive nature but of human nature, that is, of reason and freedom.21

Naturally a political animal, man organizes society—a fact that is not only "admitted" in the modern theory; it is that theory's bedrock. But with the next observation, concerning the cooperative life of man in community, the modern theory may feel that the fork in the road has been reached:

... it is obvious that man's education must be concerned with the social group and prepare him to play his part in it. Shaping man to lead a normal, useful and cooperative life in the community, or guiding the development of the human person in the social sphere, awakening and strengthening both his sense of freedom and his sense of obligation and responsibility, is an essential aim [of education]. But it is not the primary, it is the secondary essential aim. The ultimate end of education concerns the human person in his personal life and spiritual progress, not in his relationship to the social environment.22

Here the modern theory might demur. For practical affairs, it would prefer to

rule out any question of hierarchy of aims; and when it cannot, it signs an uneasy truce: Gordis, for instance, asserts a balance between the rights of the parents and the State in education; they are concomitant, he says, equally important. In practice this usually means the State has supremacy; he may not have considered Maritain's justification for his position "with regard to the secondary aim itself of which I am speaking, we must never forget that personal freedom is as the core of social life, and that a human society is veritably a group of human freedoms which accept obedience and self-sacrifice and a common

21 Ibid., 14.
22 Ibid., 14-15. Italics added.
law for the general welfare, in order to enable each of these freedoms to reach in everyone a truly human fulfillment." In other words, to those who would assert the primacy of the social life, Maritain would point out that this social life does not change its sources because it is considered collectively; it is still social life that is formed out of the dynamic interaction of persons. It is a personal social life, a personal society. Under pain of internal self-contradiction, society must reflect in its personalized nature, the personalized natures of the individuals that make it up. Both theories agree that society is necessary. But the society that is necessary—looked at in its communality—is not some society different from the one that could be foreseen and predicted (in its general structural principles) by looking at the single nature of a person, who with other persons will work to form society. What is personal in origin cannot (rightly) become impersonal in term.

Society exists to furnish the person with the conditions of existence and development that he needs; the human being cannot achieve his completeness alone, but only by receiving certain goods that are essential to him, through the help of society—not merely material goods:

I do not mean only material goods, of bread, of clothes and lodging, for all of which man depends upon the aid of his fellows; but also, and first of all, the need of their aid in acting according to reason and virtue, which corresponds to the specific character of the human being.

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23. Ibid., 15. Italics added.

24. Of course, de facto, society often does become impersonal. Such a degeneration is almost universally recognized today as perhaps the foremost general social problem: the very human desires and natural drives that have produced modern civilization have produced a dehumanized society.

Throughout human history despotic regimes have monopolized more than their share of history and more than their share of free humans' lives, occasionally ministering to their material needs, but failing to recognize the dimensions of "reason and virtue" by which men differ from brutes. Yet it is for the general human welfare that political authority holds its right to direct and to be obeyed. It is the abuse of power that directs subjects toward the private and individual good of the master—whether this be absolute king, aristocratic class, hereditary czar, members of "the Party," or even a vast majority in an elected assembly. Proper use of political authority directs free men toward the good, not of the one who directs, but of the multitude as a whole, or of the body politic—a common good which is desired by each component of the body politic, insofar as he is a part of it, and which is to flow back upon each one.26

Certainly the upholders of the modern theory, committed as they are to the philosophy of "democracy," cannot—and do not—claim that the "common good" is something of a Volkgeist that might well be above and immune to the needs of the little empirical elements, the ordinary citizens, that make it up. Nor would they praise as valuable an advancement to power and affluence by a favored few, whether it be government, business, army, or industry. For both positions, the Government must be "of, by, and for the people." So the goods of society that they want education to provide for our people must, on their own premises, be goods proportioned to the personal needs and aspirations of those people.27

26 Maritain, Education at the Crossroads, p. 98.

27 In a recent pamphlet, the NEA's "Educational Policies Commission," of which Dr. Conant is a member, said, "Respect for the individual implies the right to individual self-fulfillment. . . . If the schools are to serve the needs of both individuals and society, they must take account of human diversity . . . ." See: "An Essay on Quality in Public Education," (Wash., NEA, 1959).
The NEA and Dr. Conant and the others say they accept this notion; then they ought to accept its logical consequences:

But if one fails to grasp the fact that the good of the body politic is a common good of human persons—as the social body itself is a whole made up of human persons—this formula may lead in its turn to other errors of the collectivist or totalitarian type.... The common good is the good human life of the multitude, of a multitude of persons; it is their communion in the good life, on whom it flows back and who must all benefit from it.28

Whether isolated or as members of society, persons are persons. But the modern theory will discuss them as ends, as individuals, as deserving unhindered opportunity for responsible choice, when it considers them alone; but when it pursues the discussion into the realm of society at large, it suddenly subordinates them in its thinking, so that suddenly someone else is to choose for them what education fits their children—the "professional educators" who will assure them that the independent schools that they want are divisive. The modern theory denatures the common good it claims to fulfill by exalting society. The common good of persons is and must be the common good of parents—for they too are persons. The real independence for a person that this good seeks to provide is a real independence for every person—including parents. The common good which "flows back" upon the persons whose concerted and harmonious labors have helped to form is a common good that is fitting to the very desires and drives of those persons: the religious-minded parent cooperates with all the others, in fostering the common good; it should come back to him as an environment wherein he may freely exercise his personal choice. Yet it does not. The modern theory decrees that in the inmost area where spontaneous

freedom struggles for self-determination, in the direction of a man's own children toward their intellectual maturity and destiny, the State shall have precedence.

The State is to become the arbiter of religious choice. One ardent proponent of "public-schools-for-all," who would put "sectarian religious instruction" in the home and church, devotes a whole chapter to "Education in Moral and Spiritual Values in the Secular School." This may appear as a certain straining of the principle of non-contradiction, for the author is quite positive that religion is the job of the home, but also quite positive that spiritual values are the concern of the school—from which an earlier chapter has excluded those values. (It is interesting to note that the wealth of psychological arguments here, all aiming at proving the need for a "social experience" of "lived morality," are practically identical with some the religious-minded parent gives in his case for the religiously-oriented school.) To get out of the apparent contradiction, the author distinguishes the meanings of "spiritual values"; those to be encouraged by the school are secular values, divorced from sectarian religion; those which the school may leave to the parents in home or church are intrinsically religious, sectarian values. And the school authorities are to decide which "spiritual elements" of life are to receive psychological reinforcement within the school curriculum. But on what ground may a secular body tell parents that there is a real difference between "sectarian values" and "secular values"? On what ground may a school board or a Government department support schools that teach one orientation of conscience, but

not another? How may it justify telling parents that it knows what fundamental attitudes and outlooks on the meaning of life are best for their children? Nothing is more fundamental for a reflective person than the decision about what is right, wrong, and important in his life. Yet while eschewing totalitarianism, the modern theory would take the exercise of this right from the parents, and place it in the hands of a State agency.

For the modern theory, when there is a conflict of fundamental understanding about what is, say, "religion," it is the majority, not the minority, which is to define the terms for the minority. Thus, while claiming that the public schools are "neutral," the advocate of a single school system insists that these schools teach "secular values." To the mind of the minority, he is imposing a scheme of religion in practice while at the same time opposing a scheme of religion in theory. To tell the religious-minded parent that in the "neutral" schools his rights are not being violated is to beg the question; for besides the fact that it is admitted that certain values are accepted and certain ones excluded—such a choice being certainly no mark of "neutrality"—the religious-minded parent questions the very relevance and goodness of having a "neutral" environment at all. He does not want a "neutral" environment, but one that is religious. Moreover, he sincerely questions the right of the majority to tell the minority that it does not understand its own desires, and that what it takes to be a flagrant violation of its rights is no violation at all, and that what it takes to be almost a curse is really a blessing in disguise. What might

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30 Blum, "The Right to Choose Your Own School."

31 Francis Brown, "Justice for My Children."
be "good" for one element in society is not necessarily "good" for another, and it is this second group, and only it, that is competent to pass on what is good or not for it. Experience confirms this judgment: many white men may claim that segregation is "good for the Negro"; but the Negro does not say that. Many of the laissez-faire capitalists claimed that extremely long hours of work were "good for the laboring man—he likes it"; but the laboring man did not say that. Government must find out the needs of its people, and accommodate its agencies to those needs; only in a dictatorship do the people accommodate themselves to the whims of Government.32

Just as Government must serve the needs of its individual citizens, even if they be parents, so too must Government (and its agencies, and the schools) serve the needs of those individuals when they form themselves into groups. A few of the previous pages suggested this point, but dealt directly with the person as individual; now, the second line of argument against the modern theory will consider the point directly, working from the basis that persons form personalized associations, which within the wide human society also have rights. In America, these associations exist within what has come to be called a "pluralist society": "Among us there is a plurality of universes of discourse," says John Courtney Murray.33 And in determining the use of the schools, and the State's role in education, this pluralism must be taken into account.

The evident fact is that people join together to form a variety of associations, each with an end in view that the people acting alone could not secure—

32 Murray, pp. 135, 146-152.

33 Murray, p. 15. The reasoning to follow is drawn from the works of MacIver, Herberg, and Murray, all already cited.
at least not without grave inconvenience. In general, "pluralism" means the complexus of varying social groups within society; specifically, in the works that form the basis for these pages, it refers to religious diversity, and suggests the four basic orientations of religious thought that compose American society: Protestant, Catholic, Jewish, Secularist. Now among the associations that people form is the State, which has its own goals: justice, order, peace, the setting up of universal and external conditions of social order for society. Both theories admit that the State is to be servant, not master, of its people, of the community. But if the community's religions make it pluralistic, having a plurality of religious institutions, each of which claims a large number of adherents, the Government must serve it, nonetheless. It is not the job of Government to reduce pluralism to unity, because in effect this will be thought-control; and the Bill of Rights (a reflection of our aspirations as a nation) as well as repeated Supreme Court decisions, has always diligently excluded the Government from treading in the area of free men's minds. The Government is the custodian of the common good, but that good in a pluralist society must be defined in pluralist terms: this is something like a sociological application of the analogy of proportionality. What Murray says of the university can be applied with equal cogency, we feel, to any other unit of society, including the State itself:

... the university is committed to its students and to their freedom to learn. Its students are not abstractions. And whatever may be the university's duty (or right, or privilege, or sin) of non-committalism, the fact is that many of its students are religiously committed. To put it concretely, they believe in God. Or to put it even more concretely, they are Protestants, Catholics, Jews. The university as such has no right to judge the validity of any of these commitments. Similarly, it has no right to ignore the fact of these commitments, much less to require that for the space of four years its students should be committed to being scientific naturalists within the university, whatever else they may
choose, somewhat schizophrenically, to commit themselves to be outside its walls.

The major issue here is the student's freedom to learn—to explore the full intellectual dimensions of the religious faith to which he is committed.

Whatever the concrete formula may be, it [the university] must reckon with the factual pluralism of American society, insofar as this pluralism is real and not illusory. There can be no question . . . of the submergence of religious differences in a vague haze of "fellowship." It is not, and cannot be, the function of the university to reduce modern pluralism to unity.

As the university should not define certain areas of knowledge as beyond its competence—in effect, defining them out of existence for the average student, so the State may not define what needs of the people shall be met and what needs shall be left unrecognized; the community does this. It is the task of the State to provide the conditions necessary so that the people can meet those needs. When the needs are educational, pluralist requirements demand a pluralist educational structure within society. Historically, we have had a dual pattern of education—public schools, independent schools—because the people who wanted education wanted it this way. But little or no "public" aid has gone to the independent schools, even though the supporters of these schools are members of "the public."

The principle of distributive justice would require that a proportionately just measure of public support should be available to such schools as serve the public cause of popular education, whether these schools be specifically religious in their affiliation and orientation, or not.

Nonetheless, this dual pattern, with its legal denial of public support to church-affiliated schools, which never could have been defended by any manner of abstract argument, might once have been defended by a manner of sociological argument . . . that it fitted with the community's understanding of itself as somehow vaguely Protestant or secular; that it

\[34\text{Ibid., 135, 136. Italics added.}\]
was in accord with the nineteenth-century concept of American religious pluralism . . . that, in general, it approved itself to the public conscience as being necessary in the circumstances. None of these sociological arguments is presently valid. They have been basically invalidated by the alteration in the pluralist structure of American society.

The notion of "public education" as meaning a unitary and monolithic school system which singly and alone is entitled to public support has been rightly called . . . "an aberration in the general picture of our society, which is pluralistic."

Today a large number of the members of American society are people who want a religious education for their children. It is true that the State cannot accommodate each and every legislative enactment to each and every person's special needs; but it must strive that large segments of society, at least, enjoy conditions proportioned to their legitimate needs as they understand them. Thus one would expect that as the pattern of society has altered and assumed a new pluralistic structure, so too would the pattern of the school system. For religion, according to the First Amendment, is not to be interfered with by the State; and this not just a set of propositions in one's mind, but "the free exercise thereof." Then it follows that if the State is to be consistent with its avowed Constitutional declaration it must not only not demand religious conformity to some established Church as a condition, say, of holding office; it must also refrain from permitting economic pressures weightily prejudicial against the exercise of that religion; it must provide proportionate conditions for free exercise of conscience, even when that conscience chooses to support religiously-oriented schools. As Justice Douglas said in the Zorach case:

"We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its..."

\(^{35}\text{Ibid.}, 146-147.\)
adherents and the appeal of its dogma. 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 it then respects the religious nature of our people and accommodates the public service to their spiritual needs.

In other words, it is not the State's job to judge the worth of this or that religion; nor to pass on the rightness of any individual's conscience. One large body in society informs the State that its collective conscience requires a religious education for its children; the State must respond as a supplier of legitimate conditions. In the modern theory, however, it is the self-appointed interpreter of what democracy means who decides what groups shall legitimately receive any assistance or services from the State; and this decision is not on the basis of real need and inability of other groups (as it should be according to subsidiarity) but solely on ideological complexion. Such a policy forms a house divided against itself; it leads to a dangerous "majoritarianism" in which the various groups strive against one another, perhaps in uneasy coalitions, to gain the upper hand and reverse the previous policy, setting the instruments of society to their own service, to balance the previous sole service of the group that has just been displaced and become the minority. Only a solution on the level of principle, which recognizes the rights of all free associations, can make for lasting peace. The modern theory, however, "solves" the problem by denying the nature of society.

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36 [Blum, "Cases in Civil Liberties," Zorach, p. 3. Italics added.]


38 [Gorman, p. 47.]
The third criticism of the modern theory is similar to the first two, in that it begins from a ground held in common between the two theories. Here it is the desire of both that the citizen receive what is due to him. The modern theory is usually quite careful to restrict enunciation of this principle to the students' rights to "an education fully in accord with their capacities and rights." No American child, it is strongly stated, can do without educational opportunities that would enable the fullest development of his every capacity. Anything else would simply be unjust, unfair, inequitable. But this concern for justice is a two-edged sword. The parents have claims in distributive justice.

The State enters the field of education, because the parents do not (or cannot) comply with a reasonable demand for a certain standard of education for their maturing children. It does not pass a law, however, that all children should be in the schools it runs; but that all children should receive an education of a certain quality. In fact, the Pierce case prohibited any effort by the State to coerce parents by law, into accepting the public schools, the others being outlawed. Thus the State looks not to the administration of the schools, but to the good civic result that is to be accomplished through them. The Government does not demand that all schools be governmentally administered; it looks upon its schools then, not as an end in themselves, but as a means. But no means is necessary, if the end to be attained can be reached by other means—here, by independent schools. If Governmental control of education were essential for its success, the Government would have to be consistent, and force

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40 Gorman, p. 50.
the independent schools out of business or into Governmental hands. (It does not do this directly by law; it does it indirectly by taxation on these schools' supporters, as Blum shows in "State Monopoly in Higher Education." But so far in the United States the proponents of the modern theory have not openly claimed that the nature of education is such that only the State can do it; thus they are in an inconsistency again. For instance, Dr. Conant:

Dr. Conant was reported . . . as having told the congressional committee considering his nomination to the post of High Commissioner to Germany that his Boston speech . . . was "in no way anti-religious" and was not "against anything." I challenge the accuracy of both his statements. His Boston speech and the book under review [Education and Liberty] are both unmistakably "against religious schools" and are therefore clearly anti-religious in one way, viz.: they are anti-religious education.

If Dr. Conant believes what he says and is not against religious education, he ought to be. He ought to be against any system or practice which in his opinion constitutes a threat to American democracy or democratic unity, and clearly he should be against the existence of any system which, if expanded by public funds or otherwise, would destroy American society. If not, he must be lacking in a proper devotion to American democracy. . . . if the independent or parochial school "is genuinely anti-democratic, it not only should receive no tax funds or government encouragement, but it should in simple truth be destroyed.41

This brings up a fundamental principle: whatever the reason why the parent prefers an independent school, the Government may not condition participation in its welfare benefits on the surrender of Constitutional rights. Whatever the rights of some Church or other, the individual child or student has a personal and Constitutional right to share equally in tax-provided benefits. 42

The parents are taxed; the end of the tax is not the establishment of a certain school system, but their children's education. They must receive, in justice,

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41 O'Neill, p. 23. Italics in original.

42 Brown, "Justice for My Children"; Blum, Freedom of Choice in Education, pp. 151-152; also, Blum, "The Right to Choose Your Own School."
a proportionate share of the money collected. In the distribution of educational benefits, whatever they may be, the Government's correlative duty to this personal right is to the individual student and the individual parent, regardless of the school attended. Should the parent lose his right as a citizen to his proportionate share of the benefits that his own educational taxes have provided, simply because of his religion, he has had his conscience penalized. But Government's rights do not supersede its duty to the parents' conscience; it must provide freedom of choice that is unpunished—even if the choice is of an independent school. According to the Constitution, no citizen is in any way less entitled to his rights, simply for professing a certain creed; according to historic and current universal Government practice, no school is in any way less entitled to accreditation, police and fire protection, etc., simply for being independently run. In theory, everyone speaks well of freedom of choice, in some contexts at least.

But today the dilemma forced upon parents by rising costs and the current tax structure is this: reject their freedom of choice, and they may receive the tax-provided benefits—in public schools; exercise their freedom of choice in choosing an independent school, and they lose the tax-benefits—which their taxes helped provide. Certainly the canon of distributive justice requires that persons who stand equal before the law and its defined purpose shall be equal in relation to such burdens and benefits as that law entails. The proponents of the modern theory do not usually go so far as explicitly to suggest that the independent school be abolished; but they are quite happy to

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43 Gorman, p. 50; Murray, p. 146; Herberg, p. 127.
allow it to suffocate to death in a money-vacuum. Meanwhile, they all admit these schools have a right to exist. But if a right to exist, then a right to the conditions of existence—a fair share of the funds needed to continue to exist. In the abstract, it may be possible to divorce consideration of a right from consideration of the conditions requisite for its exercise. But in concrete practical affairs to refuse the conditions is to refuse the right itself (much as the Communists in Russia claim their people "have the right to a free election," but then see to it that there is only one possible choice, because there is only one party!). Thus, from the point of view of the independent school, distributive justice as an abstract ideal entails proportioned distribution of educational funds in the concrete.

To turn again to the parent. Distributive justice also requires a proportioned return of educational benefit; for it is a question of a tax investment under a compulsory law, and the Government assures the parents that as parents and/or as members of society they are receiving a fair return on their money: the education of children. But this must be without prejudice to conscience.

If the State cannot rightly coerce assent, it follows that it cannot rightly penalize dissent that is allowed. It is true that the State does not directly coerce the parental decision to enroll his child in a public school; but it does this indirectly, for it forces the parents who exercise their right to forfeit necessary enabling aid if they want to perform the same function by an independent means. If the State permits and even fosters an economic situation in which the parents' right becomes merely formal, even though these parents are constantly paying heavy taxes to support education, then it has in effect established a State monopoly—for in practice all are within the State system.
As Pius XI says in his encyclical on education: "... unjust and unlawful is any monopoly, educational or scholastic, which, physically or morally, forces families to make use of government schools, contrary to the dictates of their Christian conscience, or contrary even to their legitimate preferences." Yet the modern theory does set up this monopoly, and does deny parents their freedom of choice, even though it lauds a certain diversity, criticizes totalitarianism, and claims to espouse individual autonomy and freedom. It cannot be argued that the price-tag on private-school education is not great: in the first place, that is not true, it is great, and growing greater yearly; in the second place, that is not the point. The point is that in a democracy, as both theories understand it, all citizens are equal before the law; there should be no price attached to religious conviction. For ultimately, the rising cost makes that conviction impossible to exercise.

When private schools, especially religiously-oriented ones, point out this gross failure of society to safeguard distributive justice for all, the answer is sometimes this: the State offers the services of its public schools to all; if some are not satisfied with these services, it is their problem to provide their own substitutes, and pay the extra bill. This was the approach of Gordis, when he built up his three comparisons. The foregoing should make the fallacy in such reasoning apparent: the proper function of public authority is to aid the ones who naturally have a certain function to perform to fulfill it more easily. Creating State schools is one way; encouraging independent schools is

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44 Pius XI, p. 18.
45 See Above, p. 68.
another. The important quality is that these schools be adapted to the desires of the parents and pupils; many people find all they want in the public schools, but others in increasingly large numbers avoid these schools in favor of the independent schools. When the Government denies these people any aid that would help them carry out their desire for independent schools (though it is not loath to tax them for schools in general—public schools), it treats them unjustly. This situation boils down to a conflict between the two philosophies of education, and usually the hardest fighting is in the area of religious education. The traditional theory usually will say: "Religion should be part of the school training, formally"; the modern theory will say: "Religion should be left to the home and/or church." The modern theory tells its opponent: "Compromise, send your child to the public school for his secular knowledge, give him his sectarian knowledge at home." But is this really a compromise? The positions really are totally in opposition: one says "religion-in-school"; the other, "no-religion-in-school." When the man whose conscience leads him to want the former does in fact (because of economic pressure, usually) choose the latter, he has not compromised. He has capitulated.

46 Roger A. Freeman, "'D-Day' for Federal School Aid?" Social Order, reprint (April 1960), 173. "Public school enrollment climbed 42 per cent in the last 20 years. That is a spectacular expansion. Set beside the 147 per cent increase in private elementary and secondary schools, however, it does not look quite as impressive. Somehow the private schools managed to expand two and one-half times within 20 years not only without federal aid but without any public funds whatsoever."

Nonetheless, despite this optimistic picture of the vigor of independent education, increasing population pressures cannot be met, save in State schools. Our discussion of "State monopoly" applies to all levels of education, not just colleges; see: John J. Kane, "Can Our Parochial Schools Survive?" Ave Maria, XGII (September 10, 1960), pp. 5-8. The writer, head of the Sociology Department at Notre Dame University, shows that these schools' survival is very doubtful.
To summarize the burden of this chapter: we have given three criticisms against a philosophy that demands a single school-system, which is "an agency of the State." First, it fails to respect the genuine nature of man; it does claim high regard for the human person, but would deprive many persons of the freedom, independence, and self-determination that their personal nature demands, especially in so important an area as the direction of their children's education. Second, it fails to realize the nature of pluralism and an analogous common good; the institutions of society, which flow out of the concerted effort of a diversified people, must redound to their service and benefit in a diversified way. The statist philosophy would force a uniformity upon a society whose component groups desire self-identity, not a merging into an amorphous "unity"; this philosophy would wield the school-system into a "unifying agent," thus perverting the service-character of societal institutions, and forcing the component groups out of their own socio-religious culture-pattern, to which they have a right. Third, it fails to meet the requirements of distributive justice, which demands equality under the law, both as to burdens imposed and benefits received. The statist philosophy will tax all for education, recognize two kinds of school-system, and then return enabling aid to only one of these. This is unjust to the parents who want private schools, and who also should be treated as citizens equal under the law with any others. On these three points, then, we find the modern theory insufficient as a philosophy of education.

47 Gordis (page 67, above) proposed an innovation that deserves a word. He has the State in charge of the social education, the parents in charge of the individual education of the child. But this destroys the unity in education; the child is one being, and the parents are in charge of both aspects. Otherwise, State and parents act at cross-purposes, there is tension that harms the child and frustrates the parents. There cannot be two prime causes for one end.
CHAPTER V

CONCLUSION: TOWARDS A REASONABLE PRACTICAL SOLUTION

The effort of prudential judgment in practical affairs is always towards a harmonious balancing of all relevant facts, and on the higher level of theory, a similar formulation of hypothesis that includes in itself all relevant theories.\(^1\) Empirically, some of the facts are: the growing failure of independent schools to meet rising costs, the great need for schools for all our youth, the impossibility at the present time for the public schools suddenly to absorb a 15% increase in student population, the constant assertion of the NEA that it speaks for all American youth, our history and spirit of freedom as a prime right for all individuals, the real diversity among men, the desire in parents for an education for their child that will reflect their own philosophy of life, and so on. On the level of theory, some of the relevant principles are: the need to allow human nature the widest legitimate range wherein it may accede to the dynamic exigencies of its inner freedom—and in education this would mean allowing the parents to direct their children's lives whenever at all possible, the principle of subsidiarity holding all associations and especially the State as instruments or servants of the community, the analogy of being as applied to social phenomena and thus requiring that the common good be participated in diverse ways by a pluralistic community, the inner demand for justice that all

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\(^1\) Murray, p. 150.
men find as their prime concern when engaged in societal intercourse, etc.

We believe that efforts to balance all aspects and work toward a fitting solution will be made immensely more apt to succeed, if the problem is redefined. In the first chapter we touched on the ambiguity of terms. The dichotomy is set up when the follower of the modern theory asks something like, "How do you expect the public to use public taxes to underwrite a private school that has private interests and purposes?" Occasionally he will substitute words like "narrow," "sectarian," or "parochial" for "private" at the end of that question. However, if we define the problem in terms of not who runs the schools but who benefits by them and who causes them to begin, we find that "the public" does include people interested in private schools: they are members of "the public," their education is necessary to the "public" or common good, they pay taxes as do all others, etc. And perhaps most important, their schools perform a public function that is recognized as such by the State when it permits those schools to exist legally, allows children to fulfill the compulsory education laws by attending those schools, and with certain scholarship programs even encourages private citizens to go to those schools. The point is clearly put:

The American school system is not the same as the public school system . . . . It should not need to be said that Catholic parochial schools are thoroughly American in that the American people have made the irreversible decision in the legislative chambers and their courts that denominational and private instruction shall enjoy full recognition alongside the state-supported system. . . . Thus the parochial school system is just as American as the public school system.2

A man is just as much a member of "the public" when it comes time to receive

tax-based welfare benefits as he was when it was time for him to pay the taxes. This word "public" is tricky, and we may doubt whether we will ever find a viable substitute for the two terms, "public" and "private"; thus we will always have to be on our guard against prejudicing the discussion at the outset by faulty definition. The private school is "an instrument of public service under private auspices." 3

We have seen that another crucial definition is that of "unity." True, national unity is a desideratum; but it cannot mean univocality or uniformity. "Unity" itself must be clearly defined as an analogous concept: an anthill and a society of free men both have a unity, but there is hardly an univocal meaning to the term. The unity of a society of men is a unity-in-diversity. Neither profoundly difficult nor very modern is this notion, for Aristotle used it to criticize Plato's idea of a unity in society that Aristotle pointed out would lead to a rigid uniformity: society would be "one man"—a man in a straitjacket. 4

One more semantic difficulty is the identification of this school problem with questions of "separation of Church and State." The religious dimension is not the core of the problem; but injecting this dimension provides one more opportunity for the modern theory to prejudge the issue: it links Church with the private schools, State with "public" schools, and then the "separation" that was asserted to be necessary for Church and State naturally flows down upon their

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respective subalterns. Thus we have the State forever "separate" from any consideration of the private schools. Father Blum has noted this artifice, and commented on its results:

The failure of . . . parents to "lobby at the grass roots" to create a public opinion favorable to the civil rights of their children has enabled opposition groups to create a public opinion that is adverse to their children's legal rights. They have allowed the opponents of academic freedom to define the controversy in terms of absolute separation of Church and State, rather than in terms of freedom of mind and freedom of religion. Thus, besides allowing the antagonists of freedom to subvert the first amendment, they have given them a decisive advantage in the political arena. For he who defines the terms of the controversy has the controversy half won. 

The problem is one of freedom of an individual person's mind, not a theoretical absolute division between two institutions whose spheres of influence coincide and overlap in the concrete person: "The basic American principle of church-state relations is not separation but religious liberty. This liberty includes freedom . . . from restraint. Religious freedom has its limits, but they are not limits set by a principle of separation of Church and state." The cause of justice will be immeasurably served when parents point this out.

All this serves to point up the urgent need for a philosophy of man and society. Despite the modern theory's efforts to base recommendations for a public school monopoly of education on "current needs," the "challenge of the Soviets," etc., they are always forced to defend their exclusion of funds to private schools with a philosophical position. They make the public schools


6 Wilbur G. Katz, "The Case for Religious Liberty," Religion in America, p. 115. See also, Costanzo, pp. 41-42; McClukey, p. 150, quoting Katz: "Separation ordinarily promotes religious freedom; it is defensible so long as it does, and only so long."
an end in themselves, not a means; thus they show their misconception of the
relation of means and ends. They make "unity" such a necessity that at all
costs they would suppress the one kind of diversity, that of the mind, that
gives meaning to modern man's life in a largely impersonal society: thus they
show that they have never grasped a balanced solution to the ageless "problem
of the one and the many." They misunderstand pluralism: thus they show that
they do not realize for what it is, the inner dynamism of the incarnate spirit
that is man, as he seeks to create a framework of institutions proportioned to
his own needs. They claim they respect the parents' right to educate, but deny
conditions adequate to enable the parent to exercise that right: thus they show
their misconception of rights, which concretely require a complexus of condi-
tions for activity (for here, esse is agere, as it were, and to deny agere is
to deny esse). They claim that the majority is the determinant of the rights
and aspirations of the minority: thus they misconceive the true notion of demo-
cracy, that political order must be a rule by law and not by men, that some
rights are so tied up with the nature of man that no mere vote can change their
nature. They put the State's role first in education, and then claim that they
favor "democracy": thus they deprive themselves of any philosophical foundation
by which they could justify non-acceptance of Marxism, as practiced in Russia.

When we realize these weaknesses of the modern theory, a further natural
question arises: in what way may an expedient and just solution to the current
crude situation be accomplished?

The goal, of course, is justice: to secure a proportioned return of educa-
tional monies to every citizen, so that he can spend them to support any ac-
ccredited school. Some people object, however, that those most deeply concerned
by current injustice do not really care to press their claims, and so have abrogated their rights. But this is a mistake, since not-to-exercise a right at any given moment does not mean not-to-possess that right. Otherwise, a man who happens to be silent at any moment would have abrogated his right to free speech. Thus past acquiescence in a trying situation by no means invokes some "statute of limitations" by which a man must in the future continue to acquiesce in the situation. It follows, then, that the modern theorist's argument that parents in the past accepted the situation, and so can have no cause to complain now about that situation, is specious. With the Federal Government seeking to support all levels of education, in all states, it is a very new situation; besides, they always had cause to complain, even when they chose not to.

The common good is not double-tongued. It has not one reply for the official and another for the citizen. Hence, lack of protest from the citizen never heals a wrong inflicted upon him by administrative action.7

Whatever parents' right to put their case before the general public, some object that the "climate of opinion" is unsuited for such an effort. This is important, for in dealing with people we cannot simply apply "the right principle" and leave it at that. It was, in fact, the rigid application of "the principle of separation of Church and State" which (among other factors) has brought the religious-minded parent into the dilemma that is now his. To go to the other extreme, and try to apply the principle of distributive justice at once, and rigidly, could cause tensions of a magnitude equal to those we now endure. Will Herberg has some apt remarks in this regard:

The point of view I am presenting is the point of view of an historical conservatism. I think it bears directly upon the problems we have been considering. Take the religious school for example. I fully recognize the justice in principle of the Catholic claim to public support of parochial schools, even to the point of contributing to the tuition of pupils and the salaries of teachers; yet I think it would be misconceived to press such claims at the present time or in the foreseeable future. . . Policy requires principle, but it also requires a prudent and realistic understanding of the possibilities and limits of the historical situation.8

On the other hand, it cannot be gainsaid that there is a certain cultural inertia to deal with, and that a precedent once formed tends to petrify in the social thinking of lawmakers. Thus if current proposals in education are carried out, they pave the way for future proposals of a similar kind, and gradually the weight of historical precedent becomes so overbalanced in favor of what we have shown to be injustice, that no amount of legitimate political pressure and effort to transform public opinion will be effective. It would seem that from this angle, parents with a deep interest in seeing their educational rights vindicated, ought even now to work to present their case before the public. They are told, "Now is not the right time"; but they are never told when the "right time" will come.

An important aspect of that presentation to the public would be to define the various areas of "Federal aid," and to make sure that people are clear about the relevance of the "aiding a religion" issue. Religion is not intrinsic to the problem: the basic issue is, Who directs education? private associations? or the State? No one doubts that it is generally the religious-minded parent who finds his pocketbook pinched by distributive injustice, and of course it is this man who more than others is loath to withdraw his claim to a private school

8Herberg, p. 143. Italics in original. Parents may present their case, but be cautious in pressing for an immediate solution in concrete policy.
for his children, seeing that religious conviction is perhaps the deepest of all motives for an independent school education. But since the abridgement of rights occurs even with the non-religious parent, who may happen to choose the religiously-oriented school for other reasons, no one can doubt that the essential notes of the problem are simply the right of a minority group to assert its independent rights to care for the education of its young, in the face of the State's claim that it and it alone may educate. There are different kinds of "aid" at stake, and so as an immediate goal the proponent of parental rights ought to distinguish carefully among them; public disposition to recognize the right of an individual person to freedom of choice will be more easily brought to bear on legislators than a less certain disposition to aid institutions. (The argument goes to the extent of admitting all of these, all schools, to an equal position of sharing burdens and benefits before the law; but the current popular understanding of "separation of Church and State" may preclude realization of the logical consequences of the argument.)

We may now turn to the final stumbling-block, this alleged "principle." It is outside our competence to deal at length with Constitutional Law as such, but some important opinions of professionals ought to be put down here. One key point, as we noted above in citing Dr. Katz, is that "Separation" (derived by metaphorically expressing the "no-establishment clause" of the Constitution) is a means to the end of religious liberty: "nor prohibiting the free exercise" of religion is the goal of the Constitution's efforts. If people understood this,

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9 O'Neill, p. 21.
they might be less shocked when they are told that "separation" is violated, and more worried when religious freedom is abridged. A second point is that this "separation" is by no means clear: "Separation may mean anything from the total, absolute ending of all contact (of the sort brought about by death), to the kind of a dividing line that we have in the common phrase 'the separation of powers in the federal government,' or in the separation between one state and another, or between the federal government and the state."\(^{11}\) The disputants in the discussion might be reminded that the head may be separated from the torso, either by the neck or by the guillotine--the one is functional, the other fatal; and if they would press Jefferson's metaphor of a "wall of separation," it might be noted that he did not say a barricade: usually, walls do have doors. A third point, less semantic and even more relevant, is the method of determining the constitutionality of Government payments to an institution:

Everyone is talking at present as though it were the name on the Federal check which determined the issue of constitutionality: if it is P.S. 101, it is constitutional; but if it is St. Mary's, it is a betrayal of the American way of life. I submit that it is an incontrovertible principle of American constitutional law that it is the purpose, and not the payee, that determines the check's constitutionality.

The only constitutional issue in Federal aid to education is whether the First Amendment means that Congress may not advance the level of national education by any method which even indirectly results in benefit to religious bodies. There is no decision of the Supreme Court on this precise point.\(^ {12}\)

This position was exemplified some years ago when the Court of Appeals in Kentucky upheld the Federal statute against the contention that the Federal-

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\(^{12}\) Whelan, p. 759. Italics added.
state grant to church-affiliated hospitals violated both Federal and state constitutions; the court's verdict, in part, reads:

... private agency may be utilized as the pipe-line through which a public expenditure is made, the test being not who receives the money but the character of the use for which it is expended. ... The fact that members of the governing board of these hospitals, which perform a recognized public service to all people regardless of faith or creed, are all of one religious faith does not signify that the money allotted the hospitals is to aid their particular denominations. ... Courts will look to the use to which these funds are put rather than the conduits through which they run. If that use is a public one ... it will not be held in contravention of sec. 5 merely because the hospitals carry the name or are governed by the members of a particular faith.\textsuperscript{13}

In other words, institutions are a means; what is important is the service-function they fulfill. A fourth point, as Prof. Arthur E. Sutherland of Harvard University has pointed out, is that the Constitutional prohibition against an "establishment of religion" is simply no clear prohibition against aid to parochial schools; for such aid is more than a little distant from anything that could conceivably be called "establishment of religion".\textsuperscript{14} This position is entertained by no less a proponent of the Administration bill, which excludes private schools from any help, than Senator Wayne Morse:

So, I repeat today, simply for the Record, my challenge to anyone to establish by legal argument any violation of the Constitution of the United States in providing a policy of lending to private institutions in this country. ... Then, of course, there is another phase of this argument. We should not lose sight of what the separation-of-state-and-church doctrine really means in our constitutional history. When our Republic was born, 9 of the 13 Colonies had State churches or Colony churches. ... The so-called separation-of-state-and-church doctrine was written into the Constitution

\textsuperscript{13}Costanzo, p. 25, n. 60. Italics added.

in order to make clear that there was a prohibition against setting up a national church. That is the meaning of the separation-of-state-and-church doctrine.

It never was contemplated that it should be broadened to include denial by the Federal Government of the making to a private institution of an interest-bearing loan to be of assistance to that institution in carrying out a secular purpose.

We know the kind of old, bewhiskered argument that is used; it is said that there is nothing to stop their parents from sending them to public schools. But, Mr. President, liberty and freedom also encompass in my judgment, the matter of parental choice in regard to the precious sacred right of parenthood to judge, as parents, according to their sights (sic), the environment in which they wish their children to be brought up.

The point of Senator Morse's remarks is directed at loans to private schools; but we feel that in the light of their general tenor, and in the light of the previously given positions of some highly-regarded Constitutional lawyers, it is not rash to say that the case against the private schools has not been closed simply by the quick and easy invocation of a very ambiguous "principle."

Finally, we may add a very relevant observation of John Courtney Murray: the American legal tradition, in keeping with our general principle of the service-character of our Government, reflects the concept of "accommodation": the law fits itself to the legitimate needs of the people; for example, Government pays chaplains for the military, gives tax exemptions to the properties of religious institutions, etc. This might be called "aid to religion"; the point is that it is cooperation with religion. The Zorach decision rested on this notion: "...the principle that governmental aid to religion is not un-

\[15\] Congressional Record, 87th Cong., 1st Sess., 1961k p. 2248. Italics added. Senator Morse's words of concern and comfort for private school children were made, amazingly enough, only a few moments after he introduced the Administration's education message, summarizing its bill, which explicitly excludes any aid to primary and secondary private schools, and totally avoids any consideration of aiding the parent or student on this level, directly.
constitutional when it represents a legitimate accommodation of the public service to the religious and spiritual needs of the people."\(^{16}\)

These are some of the "relevant theories" which must be included with the relevant facts in any adequate philosophical formulation of the roles of the parents and the State in education. Against these are certain factors making for a Kulturstaat in America today. First, a growing awareness that an education which does not aim at the spiritual and moral, as well as the intellectual, formation of the child is an incomplete education. This awareness is in itself good, but it is evolving in a milieu in which a second factor is also operative: a determination that the schools which are to give this complete education shall be agencies of the state alone, and shall educate exclusively in terms of a secularist philosophy of life. Thirdly, there is a desire in certain quarters to make attendance at state schools obligatory for all American children. Underlying this program is a philosophy which conceives of the state as the guardian of the highest human values, and hence as the primary educator. This philosophy makes sense only on the assumption that the end of man does not transcend the state, but that human nature is wholly fulfilled in and through the state.

... political democracy is a safeguard against governmental tyranny, but it is no safeguard against communal tyranny unless it is based on a sound political philosophy which clearly and accurately defines the sphere of the state and respects the liberty of the citizen in all matters outside that sphere.\(^{17}\)

The concluding words in the statement just quoted bring us back once again to a quotation with which we began this study: as Dr. Conant suggested, we need "a clarification of our basic philosophy."\(^{18}\) For "the doctrine which is being shouted from the academic and legal housetops today is not traditional, even

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\(^{16}\) Murray, p. 152.

\(^{17}\) Canavan, pp. 494, 495. Many of our conclusions, even some of our terminology, may be found in this article, which came to our attention some time after the draft for this investigation, and some of the first pages, were composed.

\(^{18}\) See above, pp. 2-3, n. 3.
though it has a history of slow growth among us. It is new, and if presented in its full implications would be considered unacceptable by the majority of Americans."  

Some of the implications of and flaws in this modern theory we have tried to point out. We agree with Dr. Conant that "To be well founded an educational philosophy must be part and parcel of a comprehensive social philosophy." One of the reasons for such a wider view is that society and education within it are changing fast, and so need more than ever before some principles of guidance:

We are now in a time of historic change in education. The old traditions are falling apart under the pressure of the new necessities. And in a curious way the new necessities derive from a will to provide for all children the educational opportunities which the old traditions were designed to give to the few. . .21

No one can quarrel with a desire to provide opportunities for all; but we insist that the "all" be consulted, so that in their solicitude society and the State may provide opportunities consonant with the needs of a free, spiritual person, who must be in command of a destiny that transcends the competence of the State.

19 Canavan, p. 495.

20 Conant, Education in a Divided World, p. 230.

21 Beardsley Ruml, "Support, not Aid," Crucial Issues in Education, p. 237. It is true that the State does have a positive function in education, a direct interest which is beyond the securing of the parents' and the child's rights. Schools do exist, also, for the community. Today, for example, they perform a task which parents, as such, probably are scarcely interested in: supplying the Nation with trained professional and scientifically capable citizens. In another age, we might have had little reason to stress this function. Now the State can encourage such studies (as, say, science) as seem necessary for the common good. But to help should not mean to control. If we allow the State to control, we are likely to end up with something like Russia's travesty: they have an "official" botany, an "official" music, etc. This Thesis has stressed the evils of State control of education; in its efforts to show the philosophical necessity of parental primacy in education it has not intended to suggest that the State may not encourage or assist, even positively, in the program of educa-
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D. CONGRESSIONAL RECORD


E. UNPUBLISHED MATERIALS


APPROVAL SHEET

The thesis submitted by William A. Stanmeyer, S.J., has been read and approved by three members of the Department of Philosophy.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

2/2/1941
Date

Signature of Adviser