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Carl S. Meyer
*Concordia Seminary, St. Louis*

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# Friction Points in Church-State Relations in the United States

By CARL S. MEYER

The encroachments of aggressive churches, especially the Roman Catholic Church, and the voraciousness of power-hungry governmental agencies are dominant trends in church-state relations in the United States. Education remains the largest single area in which conflicts are found. Augusta, Maine, and Hartford, Conn., can bear ample testimony to this fact. However, there are other aspects of the question. The conflicts touch family relations, race relations, labor relations. Conflict arises from a desire to promote social reform, as in Ohio by the demands of pastors for anti-gambling legislation. The broader, more explosive question of integration in Virginia or Arkansas, by way of illustration, has drawn extensive pronouncements by churchmen and church groups. Adoption cases, as the Ellis case testifies, have raised religious questions in the courts. The broadening of the various areas in which conflict can occur seems pronounced. Within the major trends there are minor manifestations of conflicts based on questions of historical significance. Even current legislation, such as the question of the liability of churches for refugees, has caused friction.

Various incidents in their interrelationships and similarities can illustrate and make clear the major trends in church-state relations. Isolated incidents remain the concern of many who are unaware of the major questions which underlie the "incidents" and "friction points." A summary of current friction points may at least emphasize the need for constant vigilance as the price of religious liberty.

The constantly recurring feminine question of what to wear and the question of unemployment insurance have played a role

in the question of church-state relations. Why worry about what schoolteachers wear? It may involve the question of religious education in the public schools.

## Nuns in Public Schools

The wearing of a habit, the garb of a particular religious order, by one serving as a teacher in a public school has caused discussion, litigation, legislation, and judicial decisions. In 1894 the Supreme Court of Pennsylvania ruled "that the wearing of a religious garb by public school teachers was not a sectarian teaching or influence."[1] However, in his dissent Justice Williams pointed out: "This is not a question about taste or fashion in dress, nor about the color or cut of a teacher's clothing. . . . It is deeper and broader than this. It is a question over the true intent and spirit of our common school system. . . ."[2] In the following year (1895), the legislature of the state passed a law forbidding such a practice.[3] In 1910 the Supreme Court of Pennsylvania upheld the law.[4] In 1906 the Court of Appeals of the state of New York sustained a decision of the state superintendent in which he declared: ". . . that the wearing of an unusual dress or garb, worn exclusively by members of one religious denomination for the purpose of indicating membership in that denomination, by the teachers in the public schools during school hours while teaching therein, constitutes a sectarian influence and the teaching of a denominational tenet or doctrine which ought not to be persisted in."[5] In 1919 Nebraska forbade the practice by an act of the legislature. In 1923 Oregon followed suit. Circular 601, issued by Robert G. Valentine on religious garb in Indiana schools, called forth considerable agitation (1912).[6] More recently the

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[1] *American State Papers and Related Documents on Freedom in Religion:* 4th rev. ed. (Washington: Religious Liberty Association, 1949), p. 874.

[2] *John Hysong et al., Appellants,* v. *Gallitzin Borough School District et al., American State Papers,* p. 737.

[3] *American State Papers,* p. 739.

[4] *Commonwealth* v. *Herr, Appellant, American State Papers,* pp. 739, 740.

[5] *Nora O'Connor, Appellant,* v. *Patrick Hendrik, as Trustee of School District No. 9, Town of Lima, Livingston County, et al., Respondents, American State Papers,* p. 741.

[6] Alvin W. Johnson and Frank H. Yost, *Separation of Church and State in the United States* (Minneapolis: University of Minnesota Press, 1948), pp. 119—122.

case of *Gerhardt* v. *Heid* in North Dakota (1936) permitted nuns to wear their distinctive clothing while teaching in North Dakota public schools. The complaints had been entered, according to the court, "that while giving instruction they wore the habit of their order; and that they contributed a large portion of their earnings to the order of which they are members." It agreed "that the wearing of the religious habit described in the evidence here does not convert the school into a sectarian school, or create sectarian control within the purview of the constitution."[7] It decided furthermore: "The fact that the teachers contributed a material portion of their earnings to the religious order of which they are members is not violative of the constitution. . . . To deny the right to make such contribution would in itself constitute a denial of that right of religious liberty which the constitution guarantees."[8] But a popular plebiscite in that state resulted in banning the practice. The Roman Catholic bishops in North Dakota then permitted the sisters to wear "modest dress" while teaching in public schools.[9]

In New Mexico the same issue was raised. Perhaps of greater significance, however, is the case of *Harfst* v. *Hoegan* in Missouri. Much more than the wearing of a religious garb was involved.

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[7] *G. Gerhardt et al., Appellants,* v. *Etheline Heid et al., Respondents, American State Papers,* p. 748.

[8] Ibid., p. 749.

Paul Blanshard in testimony on tax exemption before a House subcommittee appealed to the committee to correct the practice of the Internal Revenue Service in exempting from income taxes those nuns who are on the public payroll, especially when nuns are teachers in the public schools. Robert Tate Allan's *Washington Religious Report,* No. 146 (November 20, 1956), pp. 3, 4.

[9] Leo Pfeffer, *Church, State, and Freedom* (Boston: Beacon Press, 1953), pp. 413, 414.

"Religious Garb in Public Schools Again," *Liberty,* XLII (Fourth Quarter, 1947), 25. F. H. Y[ost] wrote in that editorial: "The fact is that wearing of religious garb is a religious act. . . . Therefore, when nuns wear the religious garb, they are performing a religious act peculiar to their church. When they appear as teachers in public schools, paid from tax funds furnished by people of all faiths or no faith, the public school becomes a place for the parade of a unique act of religion, and the minds of the public school pupils are conditioned to the reception of other unique features of Roman Catholic faith and practice."

"North Dakota and Religious Garb," *Liberty,* XLIII (Fourth Quarter 1948), 26, 27.

Only a few states today permit teachers to wear clerical or religious raiments in public schools during school hours.

The question, however, is almost incidental to the larger question of the Roman Catholic Church and the public schools.

## Demands for Government Aid for Roman Catholic Schools

The Roman Catholic "line" on the school question was broadly given in the statement issued by the Administrative Board, National Catholic Welfare Conference, in the name of the bishops of the United States in November 1955. Ten archbishops (Detroit, Chicago, New York, Los Angeles, Cincinnati, Baltimore, San Francisco, Boston, St. Louis, and Philadelphia) were among the signers. "Freedom under God" was hailed as "America's dearest treasure." Freedom must be taught in the schools of America. "Her school system is not a closed, unitary creation of the state, a servile instrument of government monopoly, but one which embraces, together with the state-supported schools, a whole enormous cluster of private and church-related schools, including many of the most honored names in the entire educational world, and devoted to the education of many millions of the nation's youth." These schools, according to the bishops, are "an integral part of the American educational system." They are democratic schools. "Let this be fully understood," the bishops say, "private and church-related schools in America exist not by sufferance but by right." Catholic parents have the right to educate their children in Catholic schools, the right of conscience. There are 4,000,000 youths in Roman Catholic schools. They do not destroy the unity of the nation, for "religion itself is not a discordant factor in American life." The bishops, therefore, make an appeal to justice and equality. And here comes the very heart of the issue: "The students of these [private and church-related] schools have the right to benefit from those measures, grants, or aids which are manifestly designed for the health, safety and welfare of American youth, irrespective of the school attended."[10]

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[10] "The Bishops' Message on American Principles in Education," *The Catholic School Journal*, LVI (January 1956), 1—3.
See Robert Tate Allan's *Washington Religious Report*, No. 125 (November 30, 1955), p. 2.

Father William Ryan has maintained that the Roman Catholic schools are "public schools" or "common schools," to use his phrase, "quite as much" as are the schools which are tax-supported.[11]

Pastoral Letters regarding education have been issued in America, beginning with John Carroll in 1791. Some of them (e. g., the one in 1840) speak of a deficient monetary support of the Roman Catholic schools. Some warn against Erastianism and totalitarianism, materialism and atheism; many criticize public education.[12] There can be little doubt that the bishops' Letter was timed very carefully to influence, if possible, the White House Conference on Education.

The fallacy of the total argument is patent. Catholic schools have a right to exist; they are a part of the American educational system; therefore, they have a right to public funds. The right to exist does not mean the right to exist as tax-supported schools.

The freedom to maintain parochial schools was upheld by the Supreme Court of the United States in October 1924. The case of *Meyer* v. *Nebraska,* 252 U.S. 390, was cited to show that the Oregon law "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." The ruling set forth: "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." [13]

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CONCORDIA THEOLOGICAL MONTHLY, XXVII (February 1956), 135—137. The emphasis on the "patriotism" of Roman Catholic schools can be seen, for example, in an article for Roman Catholic teachers. Sister M. Augusta, O. M., "Foundation Stones of Catholic Patriotism," *Catholic School Journal,* LV (February 1955), 49, 50.

[11] In the *Commonwealth* for April 15, 1955, as quoted by Lawrence A. Cremin, "Public School and Public Philosophy," *The Christian Century,* LXXIII (September 12, 1956), 1051.

[12] Frederick E. Ellis, "Aspects of the Relation of the Roman Catholic Church to American Public Education," *The Educational Forum,* XIX (November 1954), 65—74.

[13] *Pierce et al.* v. *Society of Sisters, American State Papers,* p. 753.

This right does not mean that the government must recognize parochial or private schools through subsidies either for maintenance or for capital expenditures. The Roman Catholic Church has been consistent in trying to obtain public funds to support its parochial schools. It would be interesting to review this history—the struggle between the Public School Society and Bishop John Hughes in New York (1838—42), the Faribault plan, the Maple River case (1918), the Vincennes, Ind., case (1940), and in Missouri the *Harfst* v. *Hoegan* case. Space does not permit. The Dixon (New Mexico) garb, the North College Hill incident, the Bradfordsville (Kentucky) attempt, and the demands of the Catholic Daughters of America illustrate the tactics of the Roman Church. Its advocates have even voiced their opposition to paying excise taxes on school buses, asking to be put on the same footing as public schools. The denial of bus transportation for pupils of parochial schools was said to make "second-class citizens out of taxpayers who exercise their right to send their children to parochial schools." Perhaps the outcry in Indianapolis that Roman Catholic schools were being "shoved aside" because they were not included in a public school athletic league belongs to this move for a demand for equal recognition of Roman Catholic schools with public schools.

What Blanshard calls "a kind of hybrid school that is semi-public in nature" [14] has been one avenue through which the Roman Catholic clergy has tried to get public funds for the support of church schools. In some communities public schools are used in effect as parish schools — Lutheran congregations have done this too. But not all Roman Catholics insist on public funds for their parochial schools. Because the school board of Albemarle County, Va., had granted a Protestant religious education committee permission to hold released-time Bible classes in school buildings, Father J. Moore of Charlottesville wanted permission to teach

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[14] Paul Blanshard, *American Freedom and Catholic Power*, 16th printing (Boston: Beacon Press, 1951), p. 96. Blanshard says, p. 99: "In general Catholic priests do not attempt to move a parochial school into the public school system unless there is such a large preponderance of Catholics in the population that the maneuver can be executed without fear of repercussions."

For example, Ellis H. Dana, "School Row Stirs Wisconsin," *Liberty*, LXVI (Third Quarter 1951), 8—11.

Roman Catholic children Roman Catholic doctrine on schooltime in the public school building — an understandable and justifiable request.

The blast issued by Glenn Archer of the POAU (Protestants and Other Americans United) questions the terms "health, safety and welfare" used in the bishops' Letter. It says:

> The hierarchy in this statement carefully avoids specifying the benefits which it would include under the headings, "health, safety and welfare," but the record shows that its definitions are very elastic. *The Catholic World,* for instance, declared in its lead editorial of last April that "in the matter of erecting new school buildings, it's obvious that American children are entitled to the benefits of public welfare legislation regardless of race, creed or color." Surely, if even the erection of school buildings can be termed a "welfare" service rather than an "educational" aid, then there are no limits to the extent of the support which the government will be expected to grant to religious schools. Will it not be claimed that payment of school electric bills, teachers' salaries, janitorial services and the purchase of books, paper, ink, pens, pencils, and all other supplies are matters of government concern because they affect the pupils' "welfare"? [15]

About one out of four children born in the U. S. A. today is baptized a Roman Catholic.[16] According to *America,* the national Roman Catholic weekly, there are about 5,600,000 Roman Catholic children five years of age and under. In Rhode Island 65 per cent of the total births in 1954 were baptized Roman Catholics; 61 per cent of those in Connecticut; 50 per cent of those in New York and New Jersey; 63 per cent of those in Massachusetts (in 1953). On the basis of such statistics the observation is made in an editorial: "The nation's 5,600,000 pre-school Catholic children raise many question marks for state and federal governments. Those responsible for the public welfare cannot with justice lose sight of the fact that these Catholic children are Americans, whose parents have a full right to educate them in accordance with their consciences. These youngsters may not be voting citizens yet, but

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[15] *Church and State,* VIII (December 1955), 2.

[16] In 1954 there were 4,076,000 births in the United States; in the same year there were 1,115,835 Roman Catholic infant baptisms. *The Christian Century,* LXXIII (May 16, 1956), 604.

their sheer numbers cry out for just consideration in any government plans for our educational future." The action of Dr. Finis E. Engelman, Connecticut state commissioner of education, who initiated a survey of the present and future needs of private and parochial schools in Connecticut, was commended and recommended to U. S. Commissioner of Education Samuel M. Brownell. The data of the Connecticut survey is to be "available for cooperative planning for both public and private school expansion and welfare needs."[17] The situation in Connecticut has brought on a plea for co-operation, "the development of a partnership among all agencies of education, public and private, religious and secular, to meet the community need."[18] In that state a controversy on this issue of tax support for Roman Catholic schools has broken out.

Shall federal aid be available for church schools? The Phi Delta Kappa National Commission on the Support of Public Education declared:

> In view of the constitutional provisions relating to the separation of church and state and of the fact that the state is responsible for assuring that adequately supported public school services and facilities will be available for all children of school age, special care should be exercised to see that no public tax funds from any source are diverted to the support of sectarian or other nonpublic schools of any type, or for services to children in those schools that would involve extra costs because children are in attendance at such schools or that would in any way, directly or indirectly, aid or help to support such schools.[19]

The General Board of the National Council of the Churches of Christ in the United States of America adopted a statement in 1954 (May 19), which favored, without going into the question of auxiliary services or welfare benefits, federal aid to be administered by the state departments.[20]

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[17] "5,600,000 Little Question Marks," *America*, XCIV (February 4, 1956), 497.

[18] Richard Joyce Smith, "Aid to Private and Parochial Schools," *America*, XCVI (November 10, 1956), 156, 157; see pp. 152—157 for the entire article.

[19] "The Support of Public Education," *Phi Delta Kappan*, XXXI (January 1950), 203.

[20] *Phi Delta Kappan*, XXXVI (April 1955), 272.
The *Bulletin* of the Department of Religious Liberty, NCCCA, I (Septem-

The controversy commands respect. Such names as Robert A. Taft, Graham Barden, Father McManus, and Francis Cardinal Spellman are associated with the issue. Some sort of compromise will be sought. It may be that in time federal aid will be made available to the states and that the states will be allowed to determine whether nonpublic schools shall receive aid.[21]

The White House Conference urged federal aid for general school construction. This aid, the conference urged, should be administered through the states and the federal government should have no control over local school districts.

> The participants approved by a ratio of more than two to one [the report states] the proposition that the Federal Government should increase its financial participation in public education. Of those favoring such increase, the overwhelming majority approved an increase for school building construction. On the issue of federal funds to the states for local school operation, the participants divided almost evenly. A very small minority was opposed to federal aid to education in any form.
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> A majority agreed that all states and territories and the District of Columbia should be eligible for federal funds but that they should be granted only on the basis of demonstrated needs. . . .
>
> The administration of federal funds should be through the appropriate state agency for education. . . .
>
> The delegates almost unanimously opposed any federal control over educational use of funds in local school districts.[22]

The conference opposed federal aid for construction of private and parochial schools. The school aid bill introduced into Congress [1956] was not reported out of committee nor discussed either by the House or by the Senate. The question of segregation and aid to states requiring separate school systems for people of

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ber 1956), 1—8, is devoted to the issue of "Aid for Parochial Schools." It stresses aid to "tax-supported, public schools."

[21] Irwin Widen, "Federal Aid and the Church School Issue," *Phi Delta Kappan*, XXXVI (April 1955), 271—276.

Richard J. Gabel, *Public Funds for Church and Private Schools*, Dissertation submitted to the faculty of the Graduate School of Arts and Sciences of the Catholic University of America in partial fulfillment of the requirements for the degree of Doctor of Philosophy (Washington: Catholic University of America, 1937), has a comprehensive 855-page treatment of the past practices in this country.

[22] St. Louis *Post-Dispatch* (December 3, 1955), p. 1B, col. 1.

varied pigmentation played into the reluctance of congressmen to act on this measure in an election year.[23] Religious forces that want to be certain that on the state and local level, in some communities at least, there will be aid for the construction of parochial schools helped block a consideration of the bill.

In some instances the Roman Catholic Church has received state subsidies for its schools. During the school year 1951—52 in Missouri, according to the Missouri Association for Free Public Schools, the Roman Catholic Church received public funds for parochial schools to a total of $961,215.62. This figure was arrived at by taking the aid paid to the parochial schools which had been given the status of public schools plus the salaries paid to the nuns teaching in these schools. There were 25 such schools in 18 counties in Missouri (Bollinger, Chariton, Clark, Cole, Dunklin, Franklin, Henry, Lincoln, Montgomery, New Madrid, Osage, Perry, Phelps, Pike, St. Charles, Ste. Genevieve, Scott, and Warren); 94 nuns were employed in such schools; their salaries were paid out of public tax funds, $140,956. State aid in addition to these salaries amounted to $470,259.62; local taxes for the support of these schools have been estimated to amount to about $350,000. The present status of these schools is not known to this writer at this time. The use of tax funds, however, by Roman Catholic schools operated under the guise of public schools is hereby documented.[24] If further documentation be needed, the Pierz, Minn., case might be cited.[25] It has been said that in many communities in New Mexico, because of the encroachments of the Roman Catholics, "it is hard to find the line between parochial and public schools."[26]

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[23] "Federal School Aid Not a Lost Cause," editorial, *The Christian Century*, LXXIII (May 2, 1956), 541: "The thing that is lacking is a vociferous demand on the part of the church and labor that Congress make a beginning in dealing with our major cultural problem."
Robert Tate Allan's *Washington Religious Report*, No. 133 (March 31, 1956), p. 2, and No. 132 (March 20, 1956), p. 1.
The *Bulletin* of the Department of Religious Liberty, NCCCA, I (February 1956), 3.

[24] "State Aid to Parochial Schools in Missouri," *Liberty*, XLVIII (Third Quarter, 1951), 30, 31.

[25] Heber H. Votaw, "Parochial v. Public Schools in Minnesota," *Liberty*, XLVI (Fourth Quarter, 1951), 11—13.

[26] *The Christian Century*, LXXIII (December 5, 1956), 1436.

In Vermont the question of granting state aid to local school districts for students attending private and parochial schools has been a major issue. Some 95 Vermont communities are involved; about $20,000 in grants were made last year. Such grants have been declared illegal.

The questions about bus transportation, baccalaureate services, or free textbooks will be set aside. Instead, two groups of questions remain: (1) Does the "unto thee for good" of Romans 13 apply to "health and welfare benefits" for parochial school children? If so, where is the line to be drawn? Health examinations and polio shots, hot lunches, bus rides, textbooks and gym equipment — all of those — but not posture seats and green chalkboards to relieve eyestrain or books for the school library? Just where? (2) Do the Savior's words of Matt.10:42 apply to health and welfare benefits for schools? If so, must His disciples provide them for His little ones? The words read: "And whosoever shall give to drink unto one of these little ones a cup of cold water only in the name of a disciple, verily I say unto you, he shall in no wise lose his reward." Likewise Jesus says: "Verily I say unto you: Inasmuch as ye have done it unto one of the least of these My brethren, ye have done it unto Me" (Matt. 25:40).

The problem is not merely one of "state aid for church schools" but also a question of the basic obligations of the Christian toward the children (and young people) of the household of faith, a question of evidencing the love of Christ in love to the little ones, whose angels stand before God. The two are not necessarily contradictory. The state may render services to advance the temporal welfare and the common good; in genuine love the Christian may be deeply concerned about helping these lambs of the fold.

### The State's Educational Responsibilities

A proliferation of the larger question of the relationship between church and state in this area of education has been suggested. What about the question of responsibility? What standards can the state enforce? May the state prescribe minimum common understandings needed for citizenship? What about auxiliary services? supervision? welfare benefits? Twenty-two specific questions have been framed as follows:

1. Should the state department of education be regarded as supervising all formal educational efforts in the state or merely that portion of education supported by tax funds?

2. Should county, city, and district school administrative officials be regarded as supervising all formal educational efforts within their respective areas or merely that portion of education supported by tax funds?

3. Should the state license day schools operated by churches?

4. Should the state license teachers for day schools operated by churches?

5. Does the state have any responsibility for the quality of instruction in the church day schools?

6. Should the state require health and safety standards in church day school buildings and facilities?

7. Should state officials inspect church day school buildings and facilities to insure their meeting health and safety standards?

8. Should minimum curriculum requirements be made by the state for schools operated by the churches?

9. Should the state specify the course of study used by the church day schools?

10. Should officials of the state regularly visit day school plants operated by the church?

11. Should the children in church day schools be given free textbooks by the states which provide free texts to children in public schools?

12. Should states which provide free lunches for children in public schools provide free lunches for children in church day schools?

13. Should states provide free transportation on school buses to children in the church day schools as they do to children in the public schools?

14. Should faculties in church day schools receive the same advisory and technical services from experts in the state department of education given faculties of the public schools?

15. Should the state require instruction in the English language?

16. Should the state lend money to church day schools for building classrooms and dormitories?

17. Should the state give examinations in subject-matter achievement to students in church day schools?

18. Should state schools give credits to students for work done in day schools of the churches?

19. Should experience in teaching in church day schools be counted on salary schedules when teachers move to public schools?

20. Should teachers in church day schools participate in regular pension plans for teachers operated by the states?

21. Should tax-exemption status be affected by fees charged in schools of the churches?

22. Should relationships of state agencies to day schools operated by the churches be the same as to day schools operated by individuals or for profit? [27]

Consolidated schools with a broad base through larger school districts for taxation have the benefits of increased revenues. Better gymnasia and cafeterias and auditoriums are built; physical educational programs are expanded; bigger and better athletic fields are provided. More and more the cry is raised that the state should pay *all* the educational costs of *all* American youth to the end of the fourteenth grade. Community colleges should extend common education upward to that level, and this certainly with the most complete plants and the most adequate equipment which can be obtained. By this trend, if taxation for educational purposes is regarded as too heavy, church schools and private schools can be destroyed or their effectiveness can be seriously curtailed. The educational dollar — whether for public or church schools — still is much too small. Proportionally the richest country in the world is not spending enough on education. It may decide to spend all that it cares to spend on public education, leaving little or nothing for nonpublic schools. Then, too, the practice of charity will suffer and the welfare state will distribute its welfare benefits for children solely through public schools. Federal and state scholarships may be restricted to state schools, not merely to accredited schools (even though the state determines accreditation). There are those who have urged that tuition paid to church schools (at least on the elementary and secondary levels) should be deductible for income-tax purposes. Some want to make teachers

[27] Thomas van Loon, "Breaking Down a Big Question," *Phi Delta Kappan*, XXXVI (April 1955), 261, 262.

in parochial and private schools eligible for state teachers' pensions as well as social security.

The increased costs of administration, special services, consultants, and nonacademic staffs in the public schools may be questioned from the point of view of political economy. The "hidden costs" of free public school education for the students might be cited to show that the state should take over still more of the pupils' expenditures for school, preventing by that means drop-outs of economically poor students. Education might become more discriminatory, however, at least on the secondary level, without becoming undemocratic. Those with little aptitude for academic learning could serve society better in some other way than by spending fruitless years under the surveillance of professionally trained, pedagogical baby-sitters. To retain incompetents in school for longer and longer periods with ever-increasing benefits does not seem to be the most desirable way of advancing the common good.

Some very basic questions in education are involved in the area of church-state relations. The larger demands of the state, as well as the moves of the Roman Church to obtain public funds for their schools, need to be watched.

The matter of released time and the use of public school buildings for religious instruction has been settled by the Supreme Court of the United States. That these have been major points of friction cannot be readily denied. That these decisions have increased state control of education is evident — at least to the present writer. Released time has been banned in Delaware and in Nevada. In Vermont the conducting of Bible classes in certain public schools of the state was declared illegal. The attorney-general of Virginia in 1948 approved "nonsectarian" released-time religious instruction in the public schools of that state. A clarification of that ruling has been sought recently. In Idaho, Pennsylvania, and New York efforts are under way to devise some scheme for part-time religious instruction. The issue cannot be regarded as wholly decided.

In New York City the adoption of a policy calling for the teaching of moral and spiritual values in the public schools climaxed a controversy in which the violation of the principle of the separation of church and state was an issue. However, on Long Island

the display of the Decalog on the classroom walls of a public school has raised the question of teaching religion in a state school.

### Segregation and Church-State-School Relations

Besides the question of financial aid the question of segregation and racial discrimination is a major issue.[28] The White House Conference touched also on the question of federal aid for segregated schools. It did not make this a primary issue. The report states: "One table in 10 recommended that federal aid should be made available to states only for those districts certifying that they are conforming to the Supreme Court decision prohibiting racially segregated school systems."[29]

The segregation issue in its applicability to the schools is the "hottest" issue, political or social, confronting the nation today. Controversy was stirred up, e. g., by the refusal of the ULCA to endorse the Supreme Court decision on racial segregation in the public schools. Mixed motives governed the vote. One of them was the contention that the question of supporting a court decision did not properly belong before a church body. In Virginia the voters approved a plan to (1) provide private-school tuition to pupils in cities and counties that had closed the public schools rather than desegregate, and (2) pay tuition of any pupil who wishes to attend a private school in cities and counties that have desegregated. In Georgia the leasing of public schools for private-school purposes has been proposed. In Mississippi the voters have approved a plan which would permit the legislature to sell, rent, or lease school buildings to private corporations and to pay the tuition of pupils in private, segregated schools. On September 8, 1956, North Carolina voted on the "Pearsall Plan," which would allow the state to provide parents with tuition grants for use in "private nonsectarian schools." In Alabama the "Freedom of Choice" amendment to the state constitution permits a school power to "assign" pupils to schools. Nullification and interposition have been voiced. No private school that teaches "sectarian"

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[28] "Racial Segregation in Education," Sec. IV, in *Crucial Issues in Education: An Anthology*, ed. Henry Ehlers (New York: Henry Holt & Co., 1955), pp. 179—210.

[29] St. Louis *Post-Dispatch* (December 3, 1955), p. 1B, col. 2.

doctrines is to receive aid under the schemes now being considered. The question has been raised: Will the Roman Catholic Church take advantage of the situation to intrench itself in the Bible Belt? [30]

At Jesuits Bend, Erath, and New Orleans (Blue Jay Parents Club of the Jesuit High School), the race question has flared up into the open. Archbishop Joseph Rummel has pronounced for integration. However, while still declaring segregation "morally wrong and sinful," he has postponed integration and pronounced for a gradual policy.

The difficulties at Alabama U., the Gray Plan in Virginia, the boycott of the transportation system in Montgomery, Senator Eastland, Rector Kershaw (no emphasis on religion at the University of Mississippi?), the Manifesto of the Southern Congressmen, and the NAACP have been subjects of discussion and action by various clergymen of different denominations in widely separated sections of this country. It is not my purpose to discuss the segregation question as such. The plan for the control of state schools by "nonsectarian" organizations may cause either the deterioration of education facilities or the abandonment of education to private, semiprivate, or church-related groups.

### Foreign Affairs and the Roman Church

Turning aside from the issues connected with the schools, the observer notes that in the field of welfare work, labor relations, Sunday observance, there have been areas of friction. One of these was a hearing scheduled before a senate subcommittee consisting of Hennings, Langer, and O'Mahoney. It was never held. Edward F. Woods, a Washington correspondent of the St. Louis *Post-Dispatch,* reported from Washington on October 6 (1955): "Hearings on the questions of freedom of religion and separation of church and state were called off yesterday by the Senate subcommittee on constitutional rights, apparently in deference to the

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30 Paul Blanshard is reported to have said: "Will the racial gerrymandering in Southern school systems, designed to evade the Supreme Court's ruling on segregation, ultimately result in sectarian gerrymandering and destroy the American principle of church-state separation? . . . Most Americans are sincere believers in the separation of church and state and in the public school. They oppose the European policy of using public funds for assisting denominational schools. But today some Protestants in their ardent opposition to the Supreme Court's antisegregation ruling have forgotten that one of the by-products of

views of various religious leaders who said that a public inquiry could do no good and might lead to bitter controversy." Glenn Archer published his *Without Fear or Favor,* a statement he had prepared for presentation to the committee. It pointed a finger at the Roman Catholics; in fact, it also shook its fist at this church. Glenn Archer did not hesitate to blame members of the Roman hierarchy for the collapse of these hearings. Pfeffer, too, prepared a statement.

Similarly the bottling up of the treaty with Haiti is attributed to the influence of the Roman Church. The treaty does not contain the customary guarantees of religious liberty to our citizens.[31] The constitution of Haiti does have such a provision. Why is it omitted in the treaty? Is it because of the treaty to be made with Colombia? Is it because of a revision of the treaty with Spain? Is it to establish a precedent? Roman Catholics have expressed concern about the large number of Protestants in the U. S. diplomatic posts in the Philippines. In the Philippines, it may be noted incidentally, efforts are being made to introduce the teaching of Roman Catholicism into the public schools. The gift of $8,000,000 or more (it could be as much as $30,000,000) to the Roman Catholic Church to pay for additional war damages in the Philippines has rightly been called "an astronomical give-away." [32]

## Politics, Charity, Labor

In this country there are sporadic attempts to prevent the Gideons from distributing Bibles; in Tennessee Bible reading in public schools is an issue; and some have revived the question of sending an ambassador to the Vatican. In an election year the

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their program may be the weakening of the principle of church-state separation." Robert Tate Allan's *Washington Religious Report,* No. 129 (January 30, 1956), p. 2.

[31] Federal treaties, which belong "to the supreme law of the land," have contained guarantees of liberty of conscience, worship, and religious work. *American State Papers,* pp. 309—325.

[32] "Catholic Church Takes U. S. for Another $8 Million," *The Christian Century,* LXXIII (August 15, 1956), 940, 941.

For further details of H. R. 6586 see "As Congress Adjourned," *The Christian Century,* LXXIII (October 3, 1956), 1128—30.

Bernard H. Hemmeter, "A Birthright Worth Preserving," *Lutheran Witness,* LXXVI (February 12, 1957), 81, discusses the attempt of the Romanists to get Federal care for St. Joseph's Roman Catholic Church in Philadelphia.

question of a Roman Catholic candidate for President or Vice-President was raised widely, while the POAU urged each of the political parties to adopt a plank on the separation of church and state. Indeed the religious affiliation of candidates for, or holders of, public office is a perennial question of concern to the American citizen. "In a great many minds there is an uncomfortable uneasiness about the establishment of Roman Catholics in high places of government." In the present (the 85th) Congress of the United States there are 86 Roman Catholics, numerically second only to the Methodists, with 102 members.

Clergymen, under the sponsorship of the Federal Civil Defense Administration, are being briefed on their potential role in time of possible disaster, involving, too, their ministrations to the dying and the bereaved.[33] Government officials can here easily become guilty of ordering the functions of the church.

Tax discriminations in granting exemptions are said to have been made in favor of Roman Catholic organizations.[34] In Richmond, Va., revenue-producing property belonging to churches was declared taxable. The question of the taxation of church property is a broad one, demanding a consideration of circumstances surrounding each case, unless one asks for the taxation of all church property of every kind. In South Dakota the Hutterites won their court action against a state law disallowing communal farms. The ruling that the Ethical Society is not a religious group has focused attention on the issue "What is religion — for tax purposes?"

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[33] Homer A. Jack, "Prime Clergymen on Defense Role," *The Christian Century*, LXXIII (June 27, 1956), 781, 782.

At a one-day conference in Seattle the Civil Defense Administration was praised "for its attention to religious aspects in its city and state programs." *The Christian Century*, LXXIV (January 9, 1957), 50.

The *Bulletin* of the Department of Religious Liberty, NCCCA, I (June 1956), 2, points out in this connection: "Only the churches themselves can accept and define this responsibility."

[34] Robert Tate Allan's *Washington Religious Report*, No. 134 (April 20, 1956), pp. 2, 3.

Paul Blanshard in a hearing before the House Subcommittee on Internal Revenue Taxation on November 19, 1956, appearing for the POAU, was highly critical of tax exemption on the unrelated business income of religious orders which manufacture brandy and wine and sell them in the commercial market. Robert Tate Allan's *Washington Religious Report*, No. 146 (November 20, 1956), pp. 3, 4; *Church and State*, IX (December 1956), 1.

More controversial than the tax question is the question of public funds for denominationally controlled hospitals.

> Under the Hill-Burton Act, of 1945, $424,000,000 was allocated from Federal funds for the benefit of hospitals, through June 1951. It is not easy to identify with certainty the church control of hospitals, especially Protestant; as a result, analyses of allocations differ. One analysis, careful and conservative, lists allocations of $58,000,000 to Roman Catholic hospitals, $16,000,000 to Protestant, $2,000,000 to Jewish. Another tabulation indicates that 79 per cent of the church-affiliated hospitals are Roman Catholic and that they receive 78 per cent of the Hill-Burton allocations to such hospitals.[35]

Men like Paul Blanshard and Glenn Archer do not hesitate to use the Roman Catholic position on sterilization and birth control, and the instructions given to nurses regarding requests for a non-Catholic clergyman, Baptism, and assistance rendered priests, as arguments against state aid for Roman Catholic hospitals.

There is an area of tension here between church and society which involves an issue in church-state relations.

The state may subsidize hospitals for the general welfare and, therefore, may provide the needed subsidy for church-controlled hospitals without mixing church and state. The state does so "unto thee for good."

The Supreme Court of the State of New Hampshire has ruled that schools for the training of nurses operated in the state by Roman Catholic hospitals may receive state funds with the proviso that no "religious or other unreasonable discrimination in the enrollment of student nurses" be made. The Mississippi Supreme Court ruled (1950) that the Roman Catholic hospital in Vicksburg was to receive certain tax funds because the state was thereby "purchasing, with no little thrift, benefits for its indigent patients." In Raleigh, N.C., the attempt to turn over a 300-bed hospital

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[35] In *Bradfield* v. *Roberts* the Supreme Court decided (1899) that Federal funds might be granted to a corporation organized by nuns. Aid to hospitals, the court held, was not aid to religion. "Implicit in this decision," says Pfeffer, "is the holding that the Constitution would be violated by a grant of Federal money for *religious* purposes or to an institution controlled by a *religious* organization." Leo Pfeffer, "Judicial Applications of the Separation Doctrine," *Liberty*, LII (First Quarter 1957), 16.

built by tax funds to the Roman Catholic diocese has been resisted. Baudette, Minn., is the scene of a similar issue.

In Allegheny County, Pa., tax funds have been used to support church-related orphanages. There the Allegheny Common Pleas Court ruled two to one that the county could use municipal and county funds for support of such sectarian institutions, although it would not, the court said, be constitutional to use state funds for that purpose. This decision has been sustained by the Pennsylvania Supreme Court, which denied that thereby the principle of the separation of church and state was violated.

The adoption of children by foster parents of faiths other than the faiths of the original parents has been the cause of various bits of action by agencies of the government. In Maryland the legislature passed a bill (1955) that provided that children should be placed for adoption with foster parents of the same faith as their natural parents unless the natural parent or parents specifically requested otherwise. The Supreme Court refused to assume jurisdiction in a case appealed from Michigan in which a Roman Catholic child had been adopted by Protestant relatives. The Iowa Supreme Court reversed the ruling of a district court judge which would have compelled a divorced mother, a Protestant, to raise her son as a Roman Catholic, even though the divorce decree had so stipulated.

The churches of Denver in their concern for the aged have sponsored a housing project (financed through the Federal Housing Authority). In fact, the wider problem of the churches in relation to city planning is one that has received some attention.

Agitation against blue laws, the enforcement of municipal regulations against retail selling on the "Sabbath," and similar items occur with some degree of regularity. Both Protestant and Roman Catholic opposition has been expressed recently against Sunday selling in various business lines throughout the country. In Waupaca, Wis., attempts to ban Sunday celebrations were quashed by the city council. The harsh Maryland Sunday law is invoked from time to time to the annoyance of used-car dealers. In Flint, Mich., the city ordinance, making it illegal to sell furniture on Sundays, was declared void. Jewish rabbis in New York have asked the right for Jewish merchants to operate their establishments on

Sundays; Roman Catholics opposed such legislation. The New Jersey Supreme Court (December 17, 1956) declared a Sunday sales law, banning Sunday auto sales, constitutional. Thus examples of various kinds, involving the enforcing of Sunday laws, from religious or economic motives, could be multiplied. The sale and distribution of religious literature through door-to-door canvassing has been the subject of court litigations. It seems, however, that the courts have agreed that ordinances prohibiting such activities are unconstitutional.

A recent ruling by the United States Court of Appeals for the Seventh Circuit at Chicago (February 23, 1954) makes the Fair Labor Standards Act applicable to those engaged at least in printing religious literature. It might be very difficult in this case to show interference in church matters. Perhaps it depends on what words are emphasized. The court said:

> It seems clear, in the instant case, that the Fair Labor Standards Act is such a reasonable, non-discriminatory regulation by an Act of Congress, a regulation in the interests of society for the welfare of all workers, and that, therefore, the application of the provisions of this Act to the Pilgrim Holiness Church Corporation and to its employees, who work in the production, printing, handling, addressing and distributing of the books, magazines, pamphlets, leaflets and other printed matter issued by the defendant and to all other employees of the defendant whose work is necessary to the production of such goods does not violate the Constitutional provision guaranteeing the free exercise of religion.[36]

The court had also said: "While the First Amendment in the Constitution does guarantee the free exercise of religion, the right so guaranteed is not without limitations. The individual has the absolute power to believe in any religious doctrine he may choose but only limited power to act pursuant to that belief." The word "communication" is a broad term. "The word 'commerce' as used in the Fair Labor Standards Act is not limited to transactions where there are actual commercial sales of goods produced and transported." "Communication" is included under the term "com-

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[36] Mitchell, *U. S. Secretary of Labor* v. *the Pilgrim Holiness Church*, as quoted by Carl Seet, "The Minimum Wage," *Liberty*, L (Fourth Quarter 1955), 23.

merce." The questions therefore are timely. Does this decision preclude the rendering of services to the church (on an interstate basis) gratis? Must participants be paid on a minimum-wage scale? Much more important: Is such a decision an opening wedge into the regulation of the affairs of the church?

Akin to the question of wages is the question of unemployment compensation. In questions pertaining to the conscientious scruples of people in accepting jobs, hence needing unemployment compensation, state boards and commissions as well as the courts have ruled in favor of the claimants. A meatcutter at a kosher meat market in Washington, D. C., was granted the right of conscience to refuse employment on Saturdays. Seventh-day Adventists who were fired for refusal to work on Saturdays were eligible for unemployment benefits in Maine.

> . . . three lower courts and two State [Michigan and Ohio] supreme courts have to date been called upon to determine the availability of persons for work within the meaning of Unemployment Compensation Acts, despite their inability because of religious convictions to work from sundown Friday until sundown Saturday, in recognition of that day as the Sabbath. In each case, without exception, the courts have answered this question in the affirmative. The courts have held that for these claimants the proffered work was not "suitable," that in their refusal to accept such work they had not removed themselves from the labor market, but were "available" for work, and as such were eligible for unemployment compensation benefits, having met all the requirements of the law.[37]

The North Carolina Supreme Court ruled that Mrs. Imogene R. Miller, a Seventh-day Adventist, was eligible for unemployment compensation when she was fired for refusing to work after sundown on Fridays.

German Baptist Brethren of Covington, Ohio, have consulted with the National Labor Relations Board, because (labor) union membership conflicts with their religious convictions.

Zoning ordinances have been used to prevent the building of

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[37] Alvin W. Johnson, "Eligibility for Unemployment Compensation as Affected by Religious Scruples," *Liberty*, L (First Quarter 1955), 15. See pp. 10—16 for the entire article.

a Lutheran high school in Milwaukee by the Wisconsin Synod and the building of a church in Indianapolis by Jehovah's Witnesses. Jews in Sands Point, N. Y., were not permitted to occupy a recently constructed synagog.

Conscientious objector cases are perennial, it seems, under the Selective Service system. Even an agnostic claims the right to be such a conscientious objector.

The Quakers are "fighting mad," according to a report, because the government has destroyed two shipments of peace literature ordered from England. They have accused the House Committee on un-American Activities of interfering with religious liberties.

In almost every area of human endeavor there seem to be points of friction between some governmental agency and some church denomination. Whatever these points may be, the need for a clearer understanding of the relationship between church and state seems to be present. This clear understanding is generally lacking. Recently the American Lutheran Church adopted a statement which emphasized that the principle of the separation of church and state "must not be made to support the view that the state has no concern for spiritual values nor that the church has no interest in temporal realities." This is true. However, the distinctive functions of each must be recognized and kept separate. The campaigning for prohibition in Texas by churches and ministers was branded as dabbling in politics, as "both un-Christian and un-American." A Missouri Synod pastor raised the issue. He said: "If the state is not to exercise any form of control over the church, the church is not to exercise any form of control over the state." The efforts of any church denomination to compel the state to serve its interests, or the efforts of church groups to make the state subservient to them, must be resisted as strenuously as the efforts of the state to gain control of areas which belong to the domain of the church.

St. Louis, Mo.