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Who Stretched the Principle?

By
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THE PAULIST PRESS
401 WEST 59TH STREET
NEW YORK 19, N. Y.

Nihil Obstat:

JOHN TRACY ELLIS,
Censor Deputatus.

Imprimatur:

✠ PATRICK A. O'BOYLE,
Archbishop of Washington.

Nihil Obstat:

WILLIAM D'ARCY, O.F.M.CONV.,
Provincial Censor.

Imprimi Potest:

FRANCIS EDIC, O.F.M.CONV.,
Minister Provincial.

November 11, 1951.

PRINTED AND PUBLISHED IN THE U. S. A. BY
THE PAULIST PRESS, NEW YORK 19, N. Y.

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(Who Stretched the Principle?)

By Jeffrey Keefe, O.F.M.Conv.

IN 1799 the French National Institute of Science placed a metal bar in the Paris National Archives. The bar is called the *Metrè des Archives*. Although it is only 39.37 inches long, it is precious and important.

The bar is precious because it is made of platinum. It is important because it is the official norm and guide for the meter. The meter is the agreed basic measurement for all the scientific world and much of the commercial world besides.

Before a French mathematician named Jean Charles Borda cast the meter bar there were no international standard measurements. Just as a traveler must change money when passing from country to country today, scientists and business men had to change their weights and measurements then. The new system was devised to end confusion.

Even in the United States, where the common measures are yards, feet, and the like, the *Metrè des Archives* is important. Legend claims that the yard started out as the length of Henry I's arm. However, the U. S. Bureau of Standards decided it would be more convenient to standardize the yard by the meter. Just to be technical, a yard is $\frac{3600}{3937}$ meter. Therefore, if a meter stick does not equal the *Metrè des Archives* in length, or a yardstick does not equal the specified fraction, it is not a reliable measuring instrument.

Suppose by some mischance, say, of a careless die cutter, a large concern flooded the country with yardsticks more than thirty-six inches long. Once the error was noticed the company would be forced to recall the faulty instruments. It is difficult to imagine a manufacturer so foolish as to maintain that *his* was standard, and all others faulty. Even without the adverse testimony of previously sold yardsticks and the Bureau of Standards, the *Metrè des Archives* would refute the ridiculous claim.

Twelve years before Borda and his colleagues made their platinum bar, another group of men were engaged in establishing a guide. The Founding Fathers of the United States were intent upon drawing up a Constitution which was to be the supreme law of the land. Any future practice which did not square with this document would have no force in the United States of America. The Constitution was ratified in 1787, but shortly afterwards, at the insistence of several states, ten sections were added. These are the first ten amendments: The Bill of Rights.

Just as the platinum meter bar had been cast with the precision of mathematics, the principles of American law were chiseled verbally as precisely as possible. The men who framed the Constitution were familiar with law and were masters of English. Before any part was accepted it went through many revisions until the Fathers were satisfied that the various sentences expressed exactly what was intended.

The Founding Fathers were not unaware that even clear language could be read through a prism of prejudice. They realized unforeseen events would demand further interpretation. Therefore they provided for an interpretive body, the Supreme Court. Two such safeguards, exact wording and official interpreters, should leave little leeway for distortion of American principles.

AN AMERICAN PRINCIPLE

One constitutional principle all Americans accept is called separation of Church and State. A principle is a basic law. Separation means division. There is no doubt that the Founding Fathers made it fundamental to our national plan that Church and State be divided. Yet it is strange that the Founding Fathers did not include the words "separation of Church and State" in the Constitution. What they did say concerning separation is this: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Judging from much that is written in our daily papers and heard through other mediums, this sentence may need an introduction. It is the wording, in part, of the First Amendment to the United States Constitution. It is the wording arrived at after five previous formulas were found unsatisfactory. It is the wording which the first Congress decided best expressed the American principle of Church-State separation, after debates which ranged on this and other subjects over 109 days of summer heat in 1789.

It follows, then, that when anyone decries federal aid to parochial schools, or to parochial school children, released time religious instruction programs, Bible reading at public school assemblies, an ambassador to Vatican City, or any one of a half dozen similar practices, as being against the "sacred American principle of separation of Church and State," he must mean that these practices are against the First Amendment. For it is the First Amendment which legally expresses that principle. And it expresses it in these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This sentence is the yardstick for measuring U. S. separation of Church and State.

The question arises: to what extent are Church and State to be separated? A look around the nation reveals an astonishing fact. There are yardsticks on the public market of two widely varying lengths, each claiming to be official. One separation-yardstick is so long that it prevents all forms of co-operation between the federal government and religion. The other prevents only the most thoroughgoing kind of co-operation, namely, union with, or preference for a single Church. One forbids the federal government to show any favors to Churches. The other forbids a favorite Church.

Let it be stressed exactly what the point here is. No one claims an American has no civil right to oppose direct government aid to religion. However, if the basis of this opposition is the traditional American principle of separation of Church and State, the opposing party's case depends on whether or not that principle and tradition are violated by a particular practice. Any citizen may oppose fast driving. Yet the trooper should arrest only motorists who drive beyond the speed limit.

Makers and Breakers

It is the First Amendment that contains the American principle of separation. If the First Amendment allows, for example, the use of tax money for parochial school bus service, the objector must change the Amendment before he can appeal to it for support. The Constitution was reversed once in our history. The Eighteenth Amendment, which made prohibition law, was put out of commission by the Twenty-First. Nothing prevents the Constitution from being changed again in the same manner — by an amendment which passes through Congress and is ratified by three-fourths of the States. The legislature is the nor-

mal law-making and law-changing branch of our government.

The chief executive's principal function is to administer laws, not to pass or change them. Certainly no legal force can be attached to President Jefferson's note of courtesy to the Danbury Baptist Association, in which he coined the phrase, "wall of separation between church and State." Even if Jefferson (or anyone else) had advocated cutting off all government assistance to religion, his opinion does not make American law. However, it will be shown that he did not design such a high wall.

Nor can the Supreme Court rewrite the Constitution. The Court's function is to interpret, to explain, to develop. As Professor Emeritus Edward S. Corwin of Princeton points out, "the court has the right to make history, . . . but it has no right to *remake* it." [1] The duty of the justices is to decide what the Founding Fathers meant when they composed any particular article or amendment, and what future Congresses meant when they added the next twelve amendments to the Constitution. When Justice Black declares that the "establishment of religion" clause of the First Amendment means *at least* that "Neither a state nor the Federal Government . . . can pass laws which aid one religion, aid all religions, or prefer one religion over anothers," [2] the worth of his interpretation depends on its agreement with the "plain and ordinary meaning of its (the Constitution's) language, to the common intendment of the time, and of those who framed it." [3] These last words are Jefferson's formula for interpreting the Constitution. The same gauge will indicate the value of the late Justice Rutledge's view. He considered the First Amendment as "comprehensively forbidding every form of public aid or support for religion." [4]

Congress has never passed a proposal to change the First Amendment. In spite of this fact, many people believe this amendment says far more than the Founding Fathers intended. Justice Frankfurter calls this growth a normal development. He maintains that "the meaning of a spacious conception like that of separation of Church from State is unfolded as appeal is made to the principle from case to case." [5] Surely such a principle undergoes development in its application to new cases, especially those not foreseen by the lawmakers. But the "spacious conception" becomes specious when it begins to oppose the mind of its framers. It is no longer developing, but decaying. No one mistakes the increased size of the dropsy patient for development; it is disease. A baby cuts teeth and begins to chew his food; that is development. The parents draw the line, however, when he begins to chew glass and the cat's tail.

A little history will show that skillful secularists, aided by some strange and careless companions, have sold John Q. Public a faulty yardstick—a lengthened principle of separation between Church and State.

ANOTHER ISM

Secularists . . . secularism. They are becoming common words. What do they mean? Concretely, secularism is keeping God in heaven. It is leaving God out of family life, education, economics and politics. It is the divorce of morality from everyday living. Religious spokesmen of all denominations have warned against it. This "ism" is the spawning bed of all the evil "isms." The 1948 Annual Statement of the American Hierarchy defined secularism as "the failure to center life in God." Probably everyone has this failing to some degree. The present generation grew up in an atmosphere where it is an oddity to say grace with

meals, and news if a public figure mentions God. People hardly could avoid breathing some secularism into their system.

The secularist proper is the man or woman who adopts this ignoring of God and His laws as a philosophy of life. To him freedom is the right to do as he pleases. Religion is all right for those who want it, but they should keep it to themselves.

The secularist has managed to build a state educational system which ignores God as a matter of policy. Under the pretext of preserving Church-State separation, he seeks to give this kind of education a monopoly by halting government co-operation with education that includes religion.

Triple Victory

The militant secularists have scored three major victories in their campaign to keep religion within the four walls of the church building. Two of these victories were Supreme Court decisions, the Everson and McCollum cases.

Since February 10, 1947, the First Amendment supposedly means, as Justice Black wrote in the Everson decision, that neither federal nor state governments can give any aid to religion. Justice Jackson criticized even this sweeping interpretation because it did not forbid indirect as well as direct aid.

The case in question is *Everson* vs. *Board of Education.* The complainant was one Arch Everson of Ewing Township, New Jersey. He contended that reimbursement to parents of bus fares paid by their children attending nonprofit private schools was unconstitutional. Since parish school children were provided transportation, such use of public funds constituted an "establishment of religion."

The Supreme Court, in a decision split 5-4, said the Constitution did not agree with Mr. Everson. Justice

Black's majority opinion reasoned that although the First Amendment forbade "laws which aid one religion, aid all religions, or prefer one religion over another," [2] it does not cut members of religious bodies from "services so separate and indisputably marked off from the religious function" as, for example, bus rides to school. To deprive parochial schools from ordinary government services "would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them." [6]

Note that this opinion maintains that the government *cannot aid religion,* even in general. In spite of the favorable decision concerning pupil transporation, this unprecedented interpretation of the First Amendment gave the secularists ammunition for their second assault.

The second victory came a year later. This time an 8-1 majority held that the religious instruction plan of Champaign, Illinois, was unconstitutional. The Supreme Court agreed that the use of the public school to teach religion forged an establishment of religion. Mrs. Vashti McCollum, an atheist parent of Champaign, brought this case to the Court on the grounds that the plan, adopted at the request of the school children's parents, violated the First Amendment. The plan provided a weekly forty-five minute class in religious instruction on school time in the school building. Anyone who did not desire instruction was given a study period instead. Teachers for the eight-hundred Protestants and twenty Catholics were supplied by the respective religious groups; materials were likewise paid for

by the same. During this same case, the wording of the First Amendment seldom was mentioned. Most discussion hinged on "separation between Church and State," a phrase which does not appear in our Constitution.

The third secularist victory is perhaps the greatest. Through clever propaganda secularists have duped many people into thinking these decisions were warranted. They have shelved the actual wording of the First Amendment, ignored its history, and substituted their favorite metaphor, "the wall of separation between Church and State."

The reason the metaphor is popular with those opposing any sort of government aid to religion is twofold. First of all, it originated with Thomas Jefferson. The longer yardstick manufacturers like to claim that Jefferson designed their product. A second reason is that this slogan, like all metaphors, does not have a clear-cut meaning. A glance around the globe proves this. Holland has separation of Church and State in the form of impartial co-operation between government and the various sects. Generally, this has been the traditional U. S. type. France has shown a separation policy of antagonism, just short of persecution. Soviet Russia also "enjoys" separation of Church and State. This range of meaning shows the wisdom of Supreme Court Justice Reed's trenchant but ignored advice, "A rule of law should not be drawn from a figure of speech." [7]

A figure of speech means largely what its users want it to mean. Irresponsible and uninformed writers and speakers have repeated again and again that the Founding Fathers built "the wall" high and impregnable. True American separation, they say, is absolute; it forbids any and all co-operation between Church and State.

According to the adage, repetition is the mother of studies. Unfortunately, repetition is also the step-mother of error —adopting it, nourishing it, establishing it side by side with

her true children. The average citizen has neither the time for, nor does he suspect the need of examining the validity or origin of this so-called American principle. Although he is in no way antagonistic to religion, the secularists take advantage of his patriotism to deny religion aid and hinder its exercise. Realizing that public opinion is the motive power of democracy, the secularists have loaded a metaphor with a meaning foreign to the Constitution, then used it to mold the public's mind.

KEY QUERIES

To discover the really traditional American principle of separation of Church and State, two questions must be studied. What did the first Congress mean when it wrote that principle into the Constitution? And how have presidents, Congresses, and Supreme Courts reflected that meaning as they made tradition in the 160 years that followed?

Straight Reply

Query number one can be answered with a simple statement. The framers of the First Amendment wrote it to insure that no single religion could be made the official national sect. They desired equality for all religions in the eyes of the federal government. The amendment outlaws both preference and discrimination toward any single religion.

An established religion is a single Church supported by the government. It is the official religion of a state or nation. The upkeep of its clergy and places of worship is provided by public taxes. The Anglican Church in England, the Presbyterian Church in Scotland, and the Roman Catholic Church in Italy are "established." Establishment

of religion does not necessarily mean that other churches are not allowed to function. It does mean that only one is tax-supported.

It will surprise most readers to learn that nine of the original thirteen states had established churches when the Revolution broke out. When the Constitution was being drafted five states tenaciously retained them.

This background of the times reveals the reason behind the wording, "Congress shall make no law respecting an establishment of religion." The design of the First Amendment prevented Congress from passing *any* law, either for or against establishing an official church. First of all, the Federal Congress could not set up an establishment. Secondly, it could not disestablish an official Church which a particular state already had. The sole purpose of this First Amendment clause was to insure the states their own decision regarding establishment. One state, Massachusetts, kept something of an established religion until 1833—forty years after the First Amendment was ratified.

Father of the Constitution

The great promoter of the First Amendment was James Madison. It was Madison who had led the fight to disestablish the Episcopal Church in his native Virginia. Four years previous to the Constitutional Congress—against the faction led by Washington, Hamilton and Patrick Henry—Madison fought and defeated a bill in the Virginia State Legislature. This bill aimed to establish, not any one sect, but Christianity, as the official state religion of Virginia. Madison's opposition is used to "prove" that he was not simply opposed to exclusive public support of one sect, but what is more, that he was against any use of tax money to aid religion in general.

Madison's own words contradict this interpretation. In

A Memorial and Remonstrance, his masterly polemic against the proposed bill, Madison develops the reasons for his opposition. The feature he consistently fought was not equal aid to all religions, but any preferred status for a single sect, or particular group of sects. "Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" This passage from the *Memorial* testifies that Madison's objection to the bill was that it contained the principle of establishment — *preference* for one sect or group of sects, *discrimination* in its "exclusion of all other religions." Since the bill proposed exclusive support of Christianity, it was an establishment in effect.

However, the Virginia bill was a state affair. The First Amendment—the concern here—is a federal issue. Did Madison believe in the same principle for a federal law as he did for his home state?

Madison expressed his intentions most clearly during the debates concerning the wording of the First Amendment, which was not found satisfactory until the sixth version. Rather ironically, Madison aimed his remarks at objectors who feared the Amendment would be given too wide an interpretation and hamper tax aid for religion. The *Annals of Congress* record that Mr. Madison considered the amendment under discussion to mean "that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. . . . He believed the people feared one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform. He thought if the word national was introduced, it would point the amendment directly to the object it was intended to prevent." [8]

Compare with Madison's view the following interpretation, given by the late Justice Rutledge in his Everson dissent. For all practical purposes this view was adopted by the McCollum majority in 1948. "The (First) Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. . . . It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding any form of public aid or support for religion." [9] Rutledge's first sentence is directly opposed to Madison's stand as given in the last sentence from the *Annals of Congress* above. Rutledge's second sentence voices sentiments completely alien to the Founding Fathers' as subsequent points will show.

Wilfrid Parsons, S.J., presents a revealing item of history in his cogent treatise, *The First Freedom.*[10] Virginia refused to ratify the First Amendment because it did not measure up to that state's expectations. Father Parsons quotes eight State Senators as finding the First Amendment "totally inadequate," for "although it goes to restrain Congress from passing laws establishing any national religion," taxes might be levied for the support of religion, giving a single sect such favor that it gain an advantage over the others. This, they thought, equaled an establishment in fact, if not in law.* Virginia's objection was that the Amendment did *not* say what today's secularists would like it to say. It ruled out preferential support, but not equal aid.

* The Virginia argument is shown faulty by a parallel. Every adult in the United States has the right to vote. But if there are more factory workers than white collar workers, it would not result in unequal voting rights between factory and white collar workers.

The Phrase-Coiner

Thomas Jefferson is another Founding Father credited with drafting a separation rule which forbids "every form of public aid or support for religion." The secular propagandists take a single metaphor of Jefferson's, impose their own meaning on it, and claim it to be Jeffersonian doctrine even though it contradicts his entire writings and practices.

Jefferson's *Bill for Establishing Religious Freedom in Virginia* is also a source of longer yardstick propaganda. Here the secularists employ the most effective technique of propaganda today—taking quotations out of context. When, as Shakespeare observed, the devil doth cite scripture, he uses this same method.

A quotation from the *Bill's* first section is used fairly often. It asserts "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical." When a taxpayer puts school lunches into the stomachs of parish school children, he contributes toward the propagation of opinions which he disbelieves. Consequently . . . And so runs the argument.

If anyone reads the entire *Bill,* less than three printed pages, he finds it is concerned with compulsion, restraint and censorship in religious matters, all of which often follow an establishment in the historical sense of the word. The *Bill* is a protest against making any one religion official. Among other evils, this "tends also to corrupt the principles of that very religion it is meant to encourage, by bribing with monoply of worldly honours and emoluments, those who will externally profess and conform to it." A man does not "profess and conform" to religion in general, but to a particular brand. The tone of the whole preamble is one of

denunciation of the establishment of one religion as official, and against the solitary support of any single sect.

Jefferson's acts adequately confirm that he did not oppose equal aid for all churches. His *Religious Freedom Bill* states that opinion in religion "shall in no wise diminish, enlarge or affect their (men's) civil capacities." Anyone claiming to foster true Jeffersonian principles would not advocate laws which deny children their benefits of citizenship like bus service or lunch or health measures because their opinion in religion leads them to choose schools where religion is part of the curriculum.

The official acts of Jefferson consistently contradict any attempt to make him an advocate of absolute separation in the modern sense. Jefferson—and every other president—approved the use of tax money to pay chaplains in Congress and the armed forces. He sent the Senate a treaty with the Kaskaskia Indians which provided for government erection of a church, and payment of a seven-year salary toward the support of their Catholic priest. This is but one instance in a long line of government aid to Indian missions.

After his terms as president, Jefferson became rector of the University of Virginia, a state-supported institution. As president of this school Jefferson acted strangely for a supposedly zealous adversary of any government action which would "aid all religions." Realizing that the lack of knowledge of religion produced "a chasm in a general institution of the useful sciences," Jefferson proposed his plan for *Freedom of Religion at the University of Virginia.* In his estimation, the plan he offered "would leave inviolate the constitutional freedom of religion." He approved a proposal to establish religious schools "on the confines of the University." "Such establishments," he wrote, "would offer the further and greater advantage of enabling the students of the University to attend religious exercises with the pro-

fessor of their particular sect." Rooms were to be provided for this purpose "under impartial regulations." Jefferson's plan goes farther than that of the Champaign Board of Education which the McCollum decision labeled unconstitutional. James Madison, a principal author of the First Amendment, was one of the first to approve Jefferson's suggestion.

Second Inquiry

Question number two is this: How have a hundred and sixty years of practice reflected the American type of Church-State separation? More precisely, how has it reflected the First Amendment? Jefferson's administration has been reviewed. Madison's followed suit.*

U. S. history reviews a sixteen-decade line of government co-operation with religion. A sampling of practices includes chaplains in Congress, the armed forces, hospitals and prisons, Thanksgiving Day, government-built chapels and government-purchased furnishings according to the requirements of each sect, and the G. I. Bill of Rights providing eligible veterans with training in the ministry of any sect. All could be classed as a "form of public aid or support for religion," which Justice Rutledge alleged is opposed to the First Amendment. Such practices likewise "aid all religions" and are thereby illegal according to Justice Black's Everson and McCollum opinions.

* It should be admitted candidly that Madison later regretted some of these practices. He always gave the reason, however, that he considered them to border on establishment of a single sect. He criticized presidential proclamations of days of thanksgiving and fast on the ground that such recommendations tend to conform to the predominant sect. Likewise, he thought the chaplaincy in Congress was a "palpable violation of equal rights" since some men had to partake in worship which their conscience forbade them. (Cf. "Detached Memoranda," *The William and Mary Quarterly,* 3rd Ser., III, October, 1946, pp. 554-562. These were written about 1832.)

Perhaps the most devastating argument against the new and historically unsupported meaning of "an establishment of religion" is this. Since 1875, which roughly marks the beginning of belligerent secularism, no less than twenty-one bills have been proposed in Congress to amend the Constitution in order to forbid the use of tax money for sectarian purposes. In other words, almost a century after the First Amendment became law, no one was yet aware that it forbade such use of tax funds. Otherwise, why should anyone attempt to introduce an amendment to that effect? The first amendment of this type was proposed by James G. Blaine. It included the provision that "no state shall make any law respecting an establishment of religion." The date, 1875, is significant, because it is seven years after the adoption of the Fourteenth Amendment.

Enter, the Fourteenth

Remember that the First Amendment only forbids *Congress* to make a law respecting an establishment of religion. The intention of the Founding Fathers in prohibiting the Congress to make any law, pro or con, was to leave the states free to make their own decision regarding an established Church. However, now the argument is that the "establishment of religion" clause applies to the states through the Fourteenth Amendment. The date of Blaine's proposal was underscored because it closely followed the passage of the Fourteenth Amendment. At that time, evidently, the prohibition of any law respecting an establishment of religion was *not* considered passed to the states.

The Fourteenth Amendment followed the Civil War. It forbids states to "deprive any person of life, liberty or prop-

erty, without due process of law. . . ." The word "liberty" has never been exactly defined. The Supreme Court itself admitted this as late as 1923.[11] Through successive court cases the list of personal liberties protected from state interference by the Fourteenth Amendment has acquired constant additions. However, is the freedom from an Established Church a personal liberty of national citizenship? Or is it a state-liberty. The "no establishment" clause was inserted into the Constitution as a border line between Federal and State powers—to leave the decision on this matter to individual states.

Rather than another lengthy discussion, it is sufficient to make this point. *If* the Fourteenth Amendment does apply the prohibition of establishment to the states, it only applies it in the sense the Founding Fathers originally passed it: no sect shall be united to the national government, given exclusive support or preference over other Churches.

This is the sense the Amendment had until 1947. Then, along with longer hem lines, Justice Black's "new look" First Amendment appeared with a wider meaning. Recall that Black asserted for the Court, "Neither a state nor the Federal Government . . . can pass laws which aid one religion, aid all religions, or prefer one religion over another." [2] There is not a single historical event which favors anything but Black's last clause. What the Founding Fathers sought to prevent was government preference for a single religion. Every Congress, President and Supreme Court have mirrored this as the valid meaning of the First Amendment whenever it came into consideration before 1947. Now suddenly Americans are given a broadened concept which completely reverses the original purpose of the Amendment. For the new interpretation makes opinion in religion lessen

civil capacities. Proposing to prevent an establishment of religion, it actually prevents the free exercise thereof.

In May, 1949, the Supreme Court reversed a second decision of the Illinois Supreme Court. This was the conviction of Arthur Terminiello. He had been fined for a breach of the peace as a result of mob behavior which followed a speech he made at the Chicago Auditorium. Justice Frankfurter and three colleagues objected to this reversal. In the first paragraph of the dissent, Frankfurter gives the basic reason for their disagreement. It was that the majority decision had been reached on grounds not presented to the Supreme Court nor to the lower courts.[12] This violated a hundred and thirty-year-old Court rule of procedure that judges concern themselves only with the matter presented. They are not to act as defense counsel or prosecutor.

Defenders of the other Justices hold that this rule of procedure is a means to justice. If this means defeats justice, it should not be used. Again, this is a legal debate which takes more than a few sentences to argue. What is hard to understand is the qualms of conscience of the four Justices over the reversal of a hundred and thirty years of Court procedure, while they show complete aplomb at setting aside a hundred and sixty years of historical fact—precisely the situation when the First Amendment is interpreted as forbidding government aid to religion.

In another case Justice Frankfurter pointedly repeated a citation used by Oliver Wendell Holmes. The quotation urged that an amendment to the Constitution should be read in "a sense most obvious to the common understanding at the time of its adoption." [13] What conclusions are to be drawn from such a lack of harmony between theory and practice in the nation's highest tribunal?

HEART OF THE MATTER

The frightening omen is this. After a hundred and sixty years, during which a constitutional amendment has meant one specific thing, we now find it suddenly enlarged. Who extended it? The Congress did not propose any change. In in a democracy the legislature represents the people. As their representative, Congress has rejected twenty-one proposals to alter the First Amendment.

The new strategy is to promote new laws through the Supreme Court. When the Court says the First Amendment forbids public aid or support for religion, that strategy seems victorious. Can five men—five make a Court majority—change the Constitution? For this reason James M. O'Neill believes that the McCollum decision contains "the greatest threat to our civil liberties in recent times." Professor O'Neill calls questions like that of bus rides for private school children trifling compared with the question "whether the Justices of the Supreme Court shall pass on constitutional questions in the light of the language and meaning of the Constitution or in the light of their private philosophies of religion and education." [14]

Secularist propaganda ignores all but two Founding Fathers. The others never said or did anything which offers the possibility of being twisted to acclaim the type of separation which the secularists call traditional. This is the basic reason for the survey of Jefferson's and Madison's views and acts: to demonstrate that their position has been falsely presented, and that non-co-operative separation has never existed in American tradition, even among the most liberal of our national founders.

Perhaps the secularist kidnaping of Jefferson and Madison is due to the Deism of these two Fathers. They believed in God but considered organized religion a human invention. Finding some similarity between their respective philoso-

phies, today's secularists try to inject their own radical views on the relations between Church and State, and between religion and education, into the words of Jefferson and Madison. Certainly the third and fourth Presidents did not consider themselves infringing on the Constitution when they advanced co-operation with religion. Both realized the great service religion renders the nation by promoting morality among the citizenry. Equal co-operation with all sects has been the federal government's consistent pattern of action.

The new secularist version of the First Amendment actually reverses "establishment of religion" to read "religious establishment." At the religious institution where this pamphlet was written, state inspectors recently ordered the destruction of three blighted elms. Are there not grounds for refusal in the new type of separation between Church and State? For if Congress, and now the states, can make "no law respecting a religious establishment," logically such institutions are free from government regulations.

Reducing the loose interpretation to its absurd conclusions indicates that the framers of the First Amendment used "establishment of religion" in its historical, definite sense. Establishment is the legal union of a single sect with the civil authority. The letter of the First Amendment forbids a State Church. The principle involved forbids the government to show preference or prejudice, by granting favors to one religion which are not bestowed on all in the same circumstances. For example, if aid is given Catholic hospitals and refused those operated under Methodist auspices, it is clearly a case of favoritism. But if all sectarian hospitals are aided, the sects which do not operate hospitals validly cannot accuse the government of discrimination against them.

FOURTH ASSAULT

Flushed with three victories, the secularists' present efforts are to extend the wall of separation between Church and State through religion and education. Any suggestion that the Founding Fathers' brand of separation extended this far would be laughable, were it not for the sobering results of such a philosophy of education.

This is not a treatise on education. Nevertheless, these few remarks will reveal the logic of those who agree with Washington, Jefferson, Hamilton, Adams and Marshall, that religion belongs in education.

Have the secularists ever read Washington's Farewell Address? In it he warned: "Let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle." The Northwest Ordinance of 1787 declares in Article 3: "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Jefferson, urging his plan of religious instruction at the University of Virginia, gives every guardian food for thought with this: "It was not however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and his Maker, and the duties resulting from those relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation."

Purely secular education is not a long-standing Ameri-

can tradition. It did not become a feature of American education until after the Civil War. Horace Mann, credited as the father of the present public school system, did not envision education without religion. He did promote nonsectarian education, but insisted that as much religious education as possible be retained without teaching any particular sect. There may be some excuse for the lack of religion and the poor philosophy which the secularists evidence. But self-styled patriots ought to have a better knowledge of American history.

Allies

To those whose opinions are molded by headlines and sensational newscasters, the present Church-State and religion-education questions seem like a squabble between some grumpy Catholic bishops and the calumniated champions of freedom. Actually the bishops have non-Catholic company. Other intelligent citizens have appraised the new First Amendment interpretations. *The Journal of the American Bar Association* censured the McCollum decision, and cautioned that it may be one "ignored at the time and regretted in the future." Then the *Journal* exhorted, "It deserves thorough consideration now." [15] Responsible scholars from many universities have pointed to the absence of historical and constitutional basis for the new doctrine. Attorney General J. Howard McGrath stated that it resulted from a distortion of the Amendment and Jefferson's now famous phrase.

One of the chief cohorts of the secularists is the organization, *Protestants and Other Americans United for the Separation of Church and State.* Happily, this group by no means represents all Protestants, nor even most of them. Leading Protestants have spoken against the misinterpreta-

tion of traditional separation of Church and State. Among them are Dr. F. Ernest Johnson, formerly Executive Secretary of the Department of Research and Education of the Federal Council of Churches, Dr. Oswald Hoffman, Director of Public Relations of the Lutheran Missouri Synod, Dr. Henry P. Van Dusen, faculty president of Manhattan's Union Theological Seminary, and Dr. Reinhold Niebuhr, one of Protestantism's leading scholars.

Nor are Catholics alone in their attitude toward purely secular education. Dr. Johnson, who is also a professor at Columbia Teacher's College, observed a short time ago: "Public education has a moral obligation to the whole community *not* to cultivate the notion in children's minds that religion is left out of the picture because it is non-essential. . . . What the public school ignores will in the end be ignored by those it educates." The Episcopalian educator, Canon Bernard Iddings Bell, considers it one of the major defects of present secular education that it produces a citizenry of religious illiterates. These are not isolated opinions; they are representative of a great number of non-Catholic churchmen and educators.

Demanding Questions

If God exists and cares about our existence, and if our eternity depends on the tryout we call life, these are the most important truths of all. They are, as Jefferson reminded, "the ones most demanding of study and investigation."

An education which studiously avoids the pupil's relations with his Creator cannot impress a young mind with the truth that "all men . . . are endowed *by their Creator* with certain inalienable rights," a truth which is the basis of Jefferson's Declaration of Independence, and the back-

bone of democracy. Without religious conviction, young people arrive at adulthood cheated of St. Paul's declaration of independence: "We are no longer to be children, no longer to be like storm-tossed sailors, driven before the wind of each new doctrine that human subtlety, human skill in fabricating lies, may propound." (Ephesians iv. 14.)

The new yardstick of Church-State separation is also being used to separate Catholics from the rest of the nation by fostering unfounded suspicions. American Catholics favor separation of Church and State in the true American sense. Spokesmen for the last fifty years, from Cardinal Gibbons to Archbishop McNicholas, have repeated that Catholics have no designs on changing the First Amendment. Actually those preaching the new separation gospel are the ones trying to change the Constitution. And these "patriots" are circumventing the proper democratic process to do it.

The Free Exercise Thereof?

Another often repeated and more often ignored fact is this. The dispute is not whether children of parish schools get a book or bun or bus from tax money. It is whether any people should get *second class citizenship because they exercise their civil rights.* This is exactly the case when tax-paid-for auxiliary services are denied children because they exercise their civil (and natural) right to attend a parochial school. It morally hampers the free exercise of religion for those whose conscience dictates religious education.

The rebuttal is sometimes heard: no one denies Church members the right to build their own schools. They can have their own fire departments too if they like. But taxpayers are not obliged to buy ladders for them.

There is a proverb, "Every example limps." This one can hardly crawl. For fire departments and the like are

by their nature civil activities. Education is fundamentally a parental right. Some parents *allow* the state to educate their children. Others do not. The state has no valid objection to this as long as standards insuring good citizenship are observed. It is unjust for the civil power to deprive citizens of general tax benefits because they exercise that right.

The State does not have a monopoly on education. Nor should any American want it so, any more than he would desire a State monopoly on the press. Aldous Huxley wrote ten years ago that the role of universal educator for any state is "a position that exposes governments to peculiar temptations, to which sooner or later they all succumb, as we see at the present time, when the school system is used in almost every country as an instrument of regimentation, militarization and nationalistic propaganda." [16]

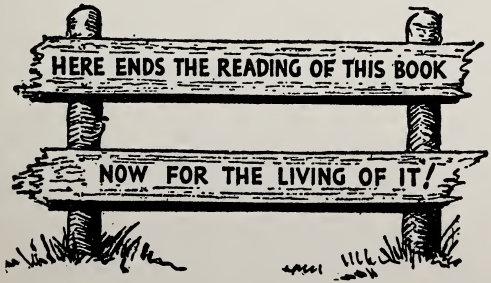
Let's Say It Again

New cases will appear before the Supreme Court. They will provide a return to tradition or a further rejection of it. The separation slogan is appearing more every day. On these counts a few points rate repetition.

The First Amendment to the Constitution expresses the American brand of separation of Church from State. It says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Therefore any law which impedes that free exercise is unconstitutional. So too, is an establishment, a union of one Church with the federal government, or its equivalent by bestowal of government preference on a single sect. This is the scope of the Amendment as the Founding Fathers viewed it and as the first Congress and original states approved it. The First Amendment does not outlaw co-operation. Nor does it legalize discrimination.

NO REDUCTION IN PRICE

The "revised" First Amendment is not solely a threat to religious sects. It represents a technique of law-changing which can rob any citizen of his civil rights. Americans must be alert. Inaction of the good citizen aids the efforts of the bad one. St. James' inspired admonition is: "If a man has the power to do good, it is sinful in him to leave it undone." (James iv. 17.) Each person can do a great deal simply by telling his associates about this counterfeit separation. Letters to editors can clarify hazy thought. Letters to Congressmen and public officials are always a help to those who must consider constituency as well as conscience. When separation of Church and State appears, be sure it is the traditional principle which has been a benefit to Americans of all religious convictions, and not the stretched secularist yardstick posing as constitutional law. The words of the Irish orator, John Philpot Curran, still ring true: "The condition upon which God hath given liberty to man is eternal vigilance."



CITATIONS

For the purpose of checking references, most of the cited works of Jefferson and Madison appear in the appendix of the book listed in number 14 below. The longest of them, Madison's *A Memorial and Remonstrance,* runs but six pages. Libraries also can provide Jefferson's cited works in the volume listed in number 3, and in *Democracy by Thomas Jefferson* (arranged by Saul K. Padover, Appleton-Century Co., New York, 1939). This last mentioned work is easily available in 35 cent Mentor edition.

[1] Edward S. Corwin, "Supreme Court as National School Board," *Thought,* December, 1948, XXIII, 681.

[2] *Everson* vs. *Board of Education,* 330 U.S. 1, 15.

[3] Saul K. Padover, *The Complete Jefferson* (New York, Duell, Sloan and Peace, Inc., 1943), p. 134.

[4] 330 U.S. 1, 32.

[5] *McCollum* vs. *Board of Education,* 333 U.S. 203, 213.

[6] 330 U. S. 1, 18.

[7] 333 U.S. 203, 247.

[8] *Annals of Congress,* I, cc. 758-59 (Washington, Gales and Seaton, 1834). *The Annals of Congress* is the former name for *The Congressional Record.*

[9] 330 U.S. 1, 31-32.

[10] Wilfrid Parsons, S.J., *The First Freedom* (New York, Declan X. McMullen Company, Inc., 1948) pp. 43-45.

[11] *Meyer* vs. *Nebraska,* 262 U.S. 390, 399.

[12] *Terminiello* vs. *City of Chicago,* 337 U. S. 1, 8-9.

[13] *Adamson* vs. *California,* 332 U. S. 46, 63. Holmes used this quotation in *Eisner* vs. *Macomber,* 252 U. S. 189, 220, citing *Bishop* vs. *State,* 149 Indiana 223, 230. The Indiana case gave Thomas M. Cooley's *Constitutional Limitations* (6th edition, pp. 69, 73, 81) as its source. Cooley (1824-1898) was an outstanding authority on constitutional interpretation. He likewise interpreted "establishment of religion" as preference for one sect over all others.

[14] James M. O'Neill, *Religion and Education Under the Constitution,* (New York, Harper and Brothers, 1949) Preface xi. The Protestant theologian, Reinhold Niebuhr, comments on this book: "I know of no treatise which will do more to clarify the mind of our citizens on this vexing issue of the relationship of Church and State in America." (Quoted from an advertisement in *The Saturday Review of Literature,* February 18, 1950, p. 23.)

[15] Editorial, "No Law But Our Own Prepossessions?" *American Bar Association Journal,* June 1948, Vol. 34, No. 6, p. 483.

[16] Aldous Huxley, *Grey Eminence* (New York, Harper and Brothers, 1941), p. 319.