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FEDERAL AID TO RELIGIOUS SCHOOLS

*Introductory Note**Joseph O'Meara**

The American people are confronted by a crisis of constitutional interpretation and educational policy, stemming from the Bishops' program for federal aid to parochial schools. As was to be expected, there has been much partisan clamor on both sides of the school-aid question but far too little rational discourse. That deficiency would be corrected if there were wide response to Monsignor Hochwalt's invitation: "... we'd like that whole question of whether we should or we shouldn't [receive financial aid from the federal government] and the constitutionality and desirability and all the rest of it to be discussed and discussed in depth by the appropriate people who can have that discussion, the American people."¹ The papers which follow this brief introductory note are intended to contribute to the dialogue which Monsignor Hochwalt has called for and which, indeed, is indispensable if the crisis is to be resolved wisely.

Perhaps most of what has been said thus far about federal aid to religious schools, both for and against, has been addressed to the constitutional problem. It is imperative, therefore, to emphasize that there is also involved a question of educational policy, as Archbishop Wright has pointed out.² In what follows I shall have a word to say about each of these two aspects of the matter, beginning with the constitutional question.

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1 Quoted from remarks made on the CBS television program "Face the Nation" April 6, 1961, by Monsignor Frederick G. Hochwalt, Director of the Department of Education, National Catholic Welfare Conference.

2 Wright, *Objectives of Christian Education in Contemporary Society*, 61 CATHOLIC SCHOOL JOURNAL 23, 28 (May 1961): "... the present argument is a debate on educational policy, not dogmatic theology, and making it a theological debate seriously damages America." His Grace emphasized, moreover, that "it is not a Catholic-Protestant fight and it should not be allowed to become one."

Federal aid to religious institutions is not necessarily a violation of the establishment-of-religion clause of the first amendment.³ That much is undeniable. It does not follow, however, that expenditure of public funds for religious institutions is always constitutional. At what point, then, does the permissible cease to be permissible?

There can be no such thing as separation of Church and State. It is an impossibility, as Father Ong has pointed out.⁴ Both occupy the same place at the same time and the entire exclusion of relationships and interactions between them is simply not possible. Yet the phrase "separation of Church and State" assuredly stands for something — something which is central to our American approach to life. How, then, is it to be understood? In other words, what is the essential meaning — the real point — of the establishment-of-religion clause of the first amendment? Is it not to insure that Church and State shall each be independent of the other?⁵

If this approach be accepted, the constitutional question depends upon whether, in a given case, the Church's independence would be impaired by the receipt of public aid. At some point, certainly, acceptance of a subsidy will impair the independence of the recipient. At what point? I have no ready answer. It does seem to me important, however, to recognize that dependence might come very quickly. What would happen to our economy if all foreign trade were suddenly shut off? Yet it amounts to a small part of the total of foreign and domestic trade combined.

In this view cases like *Cochran v. Louisiana State Board of Education*,⁶ relied on by proponents of federal aid,⁷ are distinguishable. For it hardly could be said that providing free textbooks to the parochial-school children, as well as to the public-school children, of Louisiana would or could make the parochial-school system dependent upon continuation of the State's bounty.

It is right that the constitutional question should be debated fully. However it be resolved, though, the question of educational policy must still be confronted. In France, according to Father George H. Dunne, S.J., of Georgetown University: "... the bitter struggle that has long gone on over this question [public assistance for parochial schools] has poisoned the political atmosphere and made the Church more enemies than friends."⁸

Could we reasonably hope to escape a similar tragic fate? There has been bitter anti-Catholicism in this country.⁹ Has it vanished? Will it vanish? Would we allow it to vanish? As our Catholic population expands, the financial needs of our school system will increase. Would we resist the pressure to ask for more

3 See, e.g., Professor Arthur E. Sutherland's letter of March 13, 1961, to Congressman (now Speaker) McCormack. A familiar example of federal aid to religious institutions is tax exemption, the constitutionality of which seems to be unquestioned.

4 ONG, *AMERICAN CATHOLIC CROSSROADS* 30 (1959).

5 See *Zorach v. Clauson*, 343 U.S. 306, 312 (1951) ("... there shall be no concert or union or dependency one on the other.")

6 281 U.S. 370 (1930).

7 See, e.g., pages 24-25 and 32 of the mimeographed study entitled "The Inclusion of Church-Related Schools in Federal Aid to Education," released by the National Catholic Welfare Conference on December 14, 1961. This study, it is understood, will shortly be published in the *Georgetown Law Journal*.

8 Dunne, *The School Question*, 74 *Commonweal* 247, 249-50 (June 2, 1961).

9 See, e.g., MICHENER, *REPORT OF THE COUNTY CHAIRMAN* 61-74 (1961).

and more aid from the public treasury? And if we should not resist, would not the political atmosphere be poisoned here as Father Dunne says it has been in France?

"From the standpoint both of history and of contemporary social reality," according to Father John Courtney Murray, "the only tenable position is that the first two articles of the First Amendment are not articles of faith but articles of peace. . . . If history makes one thing clear it is that these clauses were the twin children of social necessity, the necessity of creating a social environment, protected by law, in which men of differing religious faiths might live together in peace."¹⁰ Could they serve that purpose if federal aid for Catholic schools becomes a political issue?

It is easier to ask questions than to answer them. But it is not likely that wise answers will be forthcoming unless the questions are first raised and understood.

10 MURRAY, *WE HOLD THESE TRUTHS* 56, 57 (1960).