# GOVERNMENT AND THE RUIN OF PRIVATE EDUCATION

## An argument for tuition tax credits as a way to sustain nongovernment schools

by Daniel Patrick Moynihan

WHAT IS LIKELY to be among the most important debates on education in American history began quietly with three days of Senate hearings in January. Sen. Bob Packwood (Rep.-Oreg.) and I introduced a bill to provide tax credits to help pay the tuition costs of parents with children in nonpublic schools and colleges and universities. Our bill was distinctive in that fifty Senators were cosponsors. There were twenty-six Republicans and twenty-four Democrats, ranging from Sen. George McGovern (Dem.-S. Dak.) to Sen. Barry Goldwater (Rep.-Ariz.).

The hearings were distinctive in the strength of the views pressed upon us that this was a measure middle-class Americans felt *they* had coming to them. They had put up with and supported a chaos of government programs designed in aid of other classes and, for that matter, other worlds. Now there was something for them. For *education*. Just as notable was the strength of the opinions of the constitutional lawyers and scholars who testified that in their view there is no question that tuition tax credits are constitutional as a form of assistance to nonpublic elementary and secondary education. Catholics testified, of course. But so did Lutherans, and representatives of Hebrew schools and Baptist schools. A generation ago this was a Catholic issue. It is nothing of the sort any longer. It is an issue that reflects a broad revival of interest in religious education, an upheaval in constitutional scholarship, and a pervasive sense in American society that government has got to stop choking the life out of institutions that could be seen to compete with it.

What in a sense was not distinctive was the response of the Administration, which came early in February.

As is routinely now the case, the party in power and the President in office were pledged to some form of aid to nonpublic elementary and secondary schools. Just as routinely, whoever wins the election seems to break the commitment when the possibility of keeping it arises. What *was* distinctive in the response of the Carter Administration was that the President, in a White House news conference, announced that he was prepared, as a substitute for our bill, to spend $1.2 billion for the expansion of existing programs of college student assistance. This came just days after his first budget message provided next to nothing. You have got to not want something pretty badly to be willing to spend $1.2 billion to keep from getting it. As for aid to elementary and secondary schools, HEW Secretary Joseph A. Califano, Jr., at the same press conference, allowed that, wotthehell, Republican Presidents had promised the same.

This is the kind of behavior in an institution—the federal government—for which Marxists reserve the formulation: "It is no accident, Comrade."

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## In support of private schools

IN THE CONTEST between public and private education, the national government feigns neutrality, but in fact it is anything but neutral. As program has been piled atop program, and regulation on regulation, the federal government has systematically organized its activities in ways that contribute to the decay of nonpublic education. Most likely, those responsible have not recognized this; they think themselves blind to the distinction between public and private. But of course they are not. They could not be. For governments inherently, routinely, automatically favor creatures of governments. They know no other way. They recognize the legitimacy of no other institutions. Joseph Schumpeter's gloomy prophecy that liberalism will be destroyed through the steady conquest of the private sector by the public sector bids fair to come true in the United States, and in no domain of our national life is this clearer or seemingly more inexorable than in education.

It is remarkable that the bureaucracy gets away with this, for at the political level nothing is clearer than the avowed support of the parties and their leaders for private education, and for federal policies to buttress it. In its 1976 platform, the Republican party stated:

> *We favor consideration of tax credits for parents making elementary and secondary school tuition payments. . . . Diversity in education has great value. . . . Public schools and nonpublic schools should share an education fund on a constitutionally acceptable basis.*

The Democratic party platform in 1976

> *renew[ed] its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in nonsegregated schools in order to insure parental freedom in choosing the best education for their children. Specifically, the party will continue to advocate constitutionally permissible federal education legislation which provides for the equitable participation in federal programs of all low- and moderate-income pupils attending the nation's schools.* [In the interests of full disclosure, let me say I wrote the plank.]

Three years earlier, on behalf of the Nixon Administration, Secretary of the Treasury George P. Shultz testified before the Ways and Means Committee in support of a tax credit for nonpublic school tuitions. "The nonpublic school system plays a vital role in our society," Shultz said.

> *These schools provide a diversity of education in the best of our traditions and are a source of innovation and experimentation in educational advances which benefit the public school system and the public in general. In many American communities, they are an important element of stability and civic responsibility. However, education costs are rising, the enrollment in the nonpublic schools is declining, and an important American institution may be in jeopardy.*

Tax credits, he flatly predicted, will help "reverse this trend."

During his 1976 Presidential campaign, Jimmy Carter said almost precisely the same thing in a message to the nation's Catholic school administrators:

> *Throughout our nation's history, Catholic educational institutions have played a significant and positive role in the education of our children. . . . Indeed, in many areas of the country parochial schools provide the best education available. Recognization* [sic] *of these facts must be part and parcel of the consciousness of any American President. Therefore, I am firmly committed to finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools.*

In a major address just a few months ago, Education Commissioner Ernest L. Boyer echoed this sentiment. "Private education is absolutely crucial to the vitality of this nation," Dr. Boyer averred, "and public policy should strengthen rather than diminish these essential institutions." But the moment we got serious, as it were, and proposed legislation that might *do* this, Boyer, *as his office requires*, was on the other side. He was quoted: "We would be saying for the first time that the extra costs of private education are deserving of governmental support." This is their essential point: government has no responsibility to any form of education government does not control. It is a modern doctrine, as I shall discuss, and not always an especially honest one. With respect to "extra costs" our witnesses



Merlin Avillez

confirmed that, generally speaking, "private" schools, which is to say neighborhood Catholic, Protestant, and Jewish schools, spend about one-fourth of the per-pupil expenditure of their neighboring public schools. But the advocates of this doctrine are fierce and unshakable in their conviction that *theirs* is the cause of true liberalism, and that those who disagree are the instruments, witting or no, of the pope and the plutocracy. No argument is too weak to be advanced. The Department of Health, Education, and Welfare did not send an education official to testify at our hearings, but its assistant secretary for legislation was supplied with the boiler plate for the occasion: "An elementary-secondary tuition tax credit could undermine the principle of public education in this country." *Undermine!* When church-related schools existed and thrived in the United States generations before the public schools as we know them came into being?

If there is an argument, it is that the public schools are a threat to *their* existence. But this is not really what HEW meant. It meant that private schools undermine the principle of state monopoly. If the bureaucracy was to be open and say that private schools challenge and even defy that principle, then well and good. But the bureaucracy is never open, and often truly dishonest. The hapless assistant secretary was forced to say that our bill would "dry up local and state money for education." If there is one clear correlation in American education it is that wherever there is a large proportion of students in nonpublic schools, public expenditures for public schools are very high indeed. New York City is surely a prime example.

OUR BILL, the Tuition Tax Credit Act of 1977, would enable a taxpayer to subtract from the taxes he owes a sum equal to 50 percent of amounts paid as tuition. The credit is limited to $500 per student per year, which is to say that after tuition passes $1,000 per student, no additional credit is obtained. If the taxpayer in question owes no taxes, or does not owe the full amount, the Treasury will pay the difference to him. This is by no means the only feasible approach to the matter. Sen. Abraham Ribicoff (Dem.-Conn.) has for some time urged a formula whereby the credit would be a varying percentage of tuitions at different levels, this giving additional benefit to those paying higher tuitions. Another variation offers a flat tax credit for whatever the tuition may be, up to a cutoff point.

This past December, Sen. William Roth (Rep.-Del.) brought up on the Senate floor such a tax credit bill—with a $250 ceiling—and it passed by a vote of 61 to 11. Attached as an amendment to the Social Security Bill, it deadlocked the House-Senate Conference Committee until the House conferees agreed that this year the matter would be allowed to come to a vote on the House floor, where it would surely pass.

Almost any formula would entail legislation on the scale of the Servicemen's Readjustment Act of 1944 (the "G.I. Bill"), the National Defense Education Act of 1958, and the Elementary and Secondary Education Act of 1965, placing it among the half-dozen great educational statutes of our history. Although even now not much notice is being paid, this in a curious way is rather a positive sign. At our hearings in January, Rabbi Morris Sherer of Agudath Israel of America, a fifty-five-year-old national orthodox Jewish movement, observed that when he first testified on this subject—seventeen years ago, during the Administration of President Kennedy—it was "so shocking," as he put it, that the *New York Times* put his picture on the front page. But in the interval, he suggested, the climate had so changed, the idea of public support for nonpublic schools had become so widely accepted that he was sure "today, . . . seventeen years later, it will be relegated to page 99." In the event, not a line about the three days of hearings made it onto any page of the *Times*, albeit they came to the attention of the White House! But the rabbi made a point: there has been a vast change in attitudes on this subject such that it might reasonably be described as an idea whose time has come, and be judged to have made its way at least partially into that realm of political ideas so "self-evident" that few bother to express what almost every-

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one takes for granted.

Two-thirds of the tax credits that would be paid under this bill would go to defray the tuition costs of persons attending colleges and universities. A very considerable sum is involved; altogether the bill would cost the Treasury some $4 billion annually, and the bulk of these funds would be devoted to the central principle of maintaining diversity in higher education. But there is certainly no constitutional issue involved at the college level, and not much political argument either. The House Ways and Means Committee has not previously wanted to commit the money, and that is always a perfectly respectable contention. But should it change its mind, as it might well do now, the matter could be disposed of in an afternoon, as middle-income Americans have come to feel a genuine grievance over this matter.

These are the people who pay most of the taxes in America and get few of the social services. In the main, this has been fine by them. The social legislation of the past generation has been enacted primarily by legislators who represent such constituencies. But in the last decade it has come to be seen that taxes are preventing the education of their children, and this they will not have. In this sense, our bill is straightforward, and similar to many others that have somewhat different formulas but the same objective, one that Americans have pretty much agreed upon since the Northwest Ordinance of 1787.

The Administration's alternative is not bad legislation. It raises the income limits of a good program, the Basic Education Opportunity Grants, from $15,000 to $25,000. For what it may be worth, I drafted the Presidential message that first proposed the program. Sen. Claiborne Pell (Dem.-R.I.) has been an immensely devoted and immensely skilled advocate of this program and its "Pell Grants." The drawbacks are twofold with respect to the program itself. It leaves many families out. It puts all *other* families under a means test. One must see the form to believe it, and one must ask whether it is really necessary to create that much more digging into our private lives for the federal bureaucracy. (Tax credits work directly through the Internal Revenue Service and need involve nothing more than an extra line on form 1040. But the real problem of the Administration's response is that it leaves out elementary and secondary schools altogether.)

Ours is a distinctive measure, precisely with respect to the support it would provide to elementary and secondary schools that are outside the public school system. This involves an argument that has been going on from the beginning of the American republic, namely, support for church-related schools. Here we enter a dark and bloody ground where battles have raged for generations. And yet here, too, there is every sign that finally the matter is to be resolved. This would be an achievement of social peace that goes well beyond education policy, and rewards a certain elaboration.

## The origins of public education

IF YOU LIKE, the accepted interpretation of the Constitution is changing. It is changing back to its original meaning and intention, which in no way barred public support for church-related schools. After more than a century—a period in which religious fears, and, to a degree, religious bigotry, distorted our judgment about what was and was not constitutional—we are getting back to the clear meaning of the plain language in which the Constitution and the Bill of Rights are written.

The most notable element in this regard concerns the demystification of the First Amendment. Demystification is anything but a plain word with a clear meaning, but it is a useful concept that first appeared in Marxist literature, and is now making its way into more general circles. It embodies the argument that social groups commonly conceal *from themselves*, as well as from others, the true motives and interests that account for their behavior. All manner of myths grow up to explain and justify actions that are founded on a reality that for one reason or another no one wishes to admit. Frequently a condition of social change is to "demystify" such action, and to reveal the true sources of behavior.

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This is happening to the First Amendment, through an interaction of legal argument and historical studies. The historical fact is that education in colonial America was almost exclusively an activity of religious sects, just as in that period, as Bernard Bailyn writes (in *Education in the Forming of American Society*), "sectarian religion became the most important determinant of group life. . . . And it was by carefully controlled education above all else that denominational leaders hoped to perpetuate the group into future generations." In the diverse school systems of the time, we see a now-familiar phenomenon at work. Eighteenth-century Americans didn't necessarily *want* religious toleration; they simply had no choice, such was the number of religions. In time, public support for all manner of church schools was common and unremarked. Bailyn makes the nice point that it came about in part because there was no effective way to endow church schools. Back in England, endowments meant land, which meant tenants, which meant rents. But with free land on the frontier, American tenants could not be found, and so the church schools came to be supported by taxes.

With the founding of the American republic, the arrangement continued, for a time. As with much else, change first appeared in New York City. At the turn of the nineteenth century, public funds from New York State's "permanent school fund" were used to support the existing church schools and four private charitable organizations that provided free education for needy youngsters. In 1805, however, the state legislature chartered the New York Free School Society, which shortly obtained a "peculiar privilege," not shared by the other groups, of receiving public funds to equip and construct its school building.

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This favored status was soon challenged by the Baptists, whose schools were experiencing financial difficulties in the aftermath of a depression during the 1820s. The Free School Society responded by challenging both the integrity of the Baptist school organization and the legitimacy of *any* public money going to support schools associated with religious denominations. "It is totally incompatible with our republican institutions," the Society argued, "and a dangerous precedent" to allow any public funds to be spent "by the clergy or church trustees for the support of sectarian education."

Although New York Secretary of State John Van Ness Yates urged the legislature to support the Baptist position, his advice was rejected, and in 1824 the state turned over to the New York City Common Council the responsibility of designating recipients of school funds within the city. In 1825, the Council ruled that no public money could thereafter go to sectarian schools, and the following year, as if to reinforce the claim that it alone represented nonsectarian "public" education, the Free School Society changed its name to the New York Public School Society. Although it remained a private association with a self-perpetuating board of trustees, the Society obtained what amounted to legal recognition that only its version of education—nonsectarian but Protestant—would thereafter receive public support. The phrase "public school" that endures in New York—as in P.S. 104—is a legacy of this change in the name of a private organization.

By 1839, THE Public School Society operated eighty-six schools, with an average total attendance of 11,789. In that year, the Catholic Church also operated seven Roman Catholic Free Schools in the city, "open to all children, without discrimination," with more than 5,000 pupils in attendance. "Nonetheless," as Nathan Glazer and I wrote in *Beyond the Melting Pot* in 1963, "almost half the children of the city attended no school of any kind, at a time when some 94 percent of children of school age in the rest of the state attended common schools established by school districts under the direction of elected officers."

Catholics in the city began clamoring for an immediate share of public education funds, but were flatly turned down by the Common Council, notwithstanding even Bishop John Hughes's offer to place the parochial schools under the supervision of the Public School Society in return for public money.

As tempers rose, in April, 1841, acting in

his capacity of *ex officio* superintendent of public schools, Secretary of State John C. Spencer submitted a report on the issue to the state senate. Spencer was a scholar—he was Tocqueville's first American editor—as well as an authority on the laws of New York State. He began by examining the essential justice of the Catholic request for public aid to their schools:

> *It can scarcely be necessary to say that the founders of these schools, and those who wish to establish others, have absolute rights to the benefits of a common burthen; and that any system which deprives them of their just share in the application of a common and public fund must be justified, if at all, by a necessity which demands the sacrifice of individual rights, for the accomplishment of a social benefit of paramount importance. It is presumed no such necessity can be urged in the present instance.*

To those who feared use of public funds for sectarian purposes, Spencer replied that all instruction is in some ways sectarian: "No books can be found, no reading lessons can be selected, which do not contain more or less of some principles of religious faith, either directly avowed, or indirectly assumed." The activities of the Public School Society were no exception to this rule:

> *Even the moderate degree of religious instruction which the Public School Society imparts, must therefore be sectarian; that is, it must favor one set of opinions in opposition to another, or others; and it is believed that this always will be the result, in any course of education that the wit of man can devise.*

As for avoiding sectarianism by abolishing religious instruction altogether: "On the contrary, it would be in itself sectarian; because it would be consonant to the views of a peculiar class, and opposed to the opinions of other classes."

The Catholics got no satisfaction from the legislature, but the Public School Society was, in effect, disestablished in 1842. The legislature was persuaded, chiefly by Democrats of a Jacksonian persuasion, that the society was a dangerous private monopoly over which the public had no control. The new school law allowed the society to continue to operate its schools but only as district public schools under the supervision of an elected board of education and the state superintendent of common schools.

## Clarifying the First Amendment

Soon, a specifically anti-Catholic nativist streak entered the opposition to public support for church-related schools. President Ulysses S. Grant, looking around for an issue on which he might run for a third term, seized on the danger of papist schools. The Republican platform of 1876 declared:

> *The public school system of the several states is a bulwark of the American republic; and, with a view to its security and permanence, we recommend an amendment to the Constitution of the United States, forbidding the application of any public funds or property for the benefit of any school or institution under sectarian control.*

Observe. In 1876 there were those who thought that public aid to church schools should be made unconstitutional. But at least they were clear that the Constitution would have to be amended to do so. It is extraordinary how this so *obvious* fact got lost in the years that followed. We may hope that the matter has now been settled by Walter Berns in his devastatingly clear historical account, *The First Amendment and the Future of American Democracy*. What Congress intended by the First Amendment was to forbid the preference of one religion over another. At the time of the Revolution, nine of the thirteen colonies had *established* religions. The establishment clause forbids the *nation* from having *one*, this for the obvious reason that to have picked one religion over the others could have destroyed the Union.

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To repeat, it is astounding how this plain meaning became lost. We are not here interpreting the Dead Sea Scrolls, or the Upanishad. The House of Representatives debated the First Amendment during the summer of 1789.

Then, as now, the Congressmen spoke English. Then, as now, their deliberations were printed up overnight and placed on their desks the next morning. Thus, on August 15, 1789, in reply to Peter Sylvester of New York, who feared the draft amendment "might be thought to have a tendency to abolish religion altogether," Madison responded that "he apprehended the meaning of the words to be 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."

It is necessary here to insist that because the First Amendment does not prohibit aid to church schools it does not follow that the authors of the amendment favored such arrangements. Some did, some didn't. Madison surely would not have. The plain point is that this was left as a political choice, as an issue of public policy to be resolved however we chose, and changed however often we might wish.

Here, then, a friendly word for the nativists. Early Americans were considerably suspicious of non-English immigrants. Bailyn reports that even Benjamin Franklin was "struck by the strangeness . . . of the German communities in Pennsylvania, by their lack of familiarity with English liberties and English government," such that he helped to organize the Society for the Propagation of the Gospel to the Germans in America. Why ought George Templeton Strong in New York City of the 1860s *not* have wondered what would come

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of the flood of Catholic Irish, not half of whom, probably, spoke English, and yet be more fearful of the Central and Southern Europeans who followed, none of whom spoke English, none of whom came from a country where political liberties existed? How could he *not* have suspected the Pope of Rome? The only perceptible political preference of the papacy in that republican age was for monarchy. In 1870, as if for the purpose of outraging the rationalism of the age, the Vatican Council of Bishops, after nineteen centuries of blessed unawareness, discovered that the pope was infallible—a curious doctrine, and singularly out of harmony with its age. One would not, at the turn of the century, have been overly confident of the Russian and Polish Jews who were then arriving, with a religious faith that had never shown any great interest in political democracy, and an element of nonreligious who were all too well versed in the latest antidemocratic doctrines of the Continent. *But the point is that it all worked out.* German Protestant and Italian Catholic and Polish Jew have all produced recognizably American progeny, enough to calm the fear and perhaps even to arouse the patriotic fervor of the most nervous nativist of generations past. All that is behind us, and political choices that were at least understandable a century ago make no sense today.

## Supreme Court rulings

WHAT THEN HOLDS us back? The answer, simply, is the Supreme Court. For generations state legislatures have been passing bills that provide various kinds of aid to church-related schools, but for the last generation the Court has been declaring them unconstitutional in whole or in part. The degree to which the seemly disarray of eighteenth-century arrangements has persisted into the twentieth century is impressive. In 1938, eight states (Maine, Connecticut, New Hampshire, New York, North Carolina, Tennessee, Vermont, and Virginia) paid funds to private schools under certain circumstances. Two decades later, eight states (Alabama, Georgia, Maine, Nevada, New York, Pennsylvania, South Carolina, and Virginia) had constitutional provisions specifically authorizing public aid to private schools. But now the Supreme Court began to fight them, armed with the extension by the Fourteenth Amendment of First Amendment requirements to state governments. The decisive case, *the first of its kind*, was *Everson* v. *Board of Education* in 1947, involving a New Jersey statute authorizing school districts to reimburse parents for bus fares paid by children traveling to and from schools. The Court held that neither Congress nor the state legislature may "pass laws which aid one religion, aid all religions, or prefer one religion over another." Nor may any tax "in any amount, large or small, . . . be levied

to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." Now this was simply wrong. To cite Berns: "It does not accurately state the intent of the First Amendment." This has nothing in the least to do with whether the New Jersey statute was a desirable one or not. It is merely that incontestably the First Amendment did not prevent the New Jersey legislature from adopting it.

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Mr. Justice Black, who wrote the opinion, depended primarily on views of Madison and Jefferson, who, in 1784, got much exercised over a bill reported favorably by the Virginia legislature "establishing a provision for teachers of the Christian religion." The late Mark DeWolfe Howe of the Harvard Law School put it that in *Everson* the justices made "the historically quite misleading assumption that the same considerations which moved Jefferson and Madison to favor separation of Church and State in Virginia led the nation to demand the religion clauses of the First Amendment." This, he wrote, was a "gravely distorted picture."

The Supreme Court had no sooner ruled in *Everson* than it began to retreat from its ruling. Slow at first, this of late has become a genuine rout, and in all truth has become an embarrassment. In our hearings, perhaps the most passionate statements came from legal scholars who pleaded that the Court has got to be relieved of this enterprise in which it has got itself hopelessly mixed up. Pass a bill, our scholars urged us; declare it to be constitutional; the Court will be only too willing to agree.

The alternative is the present confusion verging on scandal. Not five years after *Everson*, recalling the evident duty of all American institutions to foster piety, the Court held:

> *We are a religious people whose institutions presuppose a Supreme Being. . . . When the state encourages religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. . . . The government must be neutral when it comes to competition between sects.*

From that not especially edifying passage, the justices seemingly abandoned their own standards of evidence, and even the dictates of reason, to justify the unjustifiable. In *Tilton* v. *Richardson* (1971) the Court was required to pass upon the constitutionality of the Federal Higher Education Facilities Act of 1963 insofar as it applied to church-related colleges and universities. Most of the statute was found constitutional, but only four justices could agree in an opinion. On their behalf, Chief Justice Burger noted that "candor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication."

It was necessary, of course, for the Court to find a serviceable distinction between church-related elementary and secondary schools and sectarian colleges and universities. Venturing toward those dimly perceived boundaries in his judgment for the plurality, the chief justice asserted that "there is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination."

Now surely this "contention" is an empirical statement whose "substance" is susceptible to verification. It is a statement by the justices that something is so. It is a statement, then, for which there must be evidence. The justices know about this sort of thing. When, in *Brown* v. *Board of Education* (1954), they held that segregated schools were *educationally* inferior to integrated schools, they cited evidence. One may argue as to how good the evidence was; that is the nature of social science. But the Court had no doubt that it needed evidence if it was going to say things like that. Very well, then. What is the state of the evidence concerning the greater or lesser impressionability with respect to religious indoctrination of seventeen-year-olds as against nineteen-year-olds, or rather, high school students as against college students, inasmuch as ages vary considerably? One doubts there is much evidence one way or another.

But the justices did not rely solely on this contention. "Many church-related colleges and universities are characterized," the chief jus-

tice wrote, "by a high degree of academic freedom, and seek to evoke free and critical responses from their students." What an extraordinarily patronizing endorsement! Would the justices have said the same of "many state universities"? Of "many Ivy League campuses"? What about "many elite preparatory schools"? Obviously not "many Catholic elementary schools"!

IT GETS WORSE. In a commencement address at LeMoyne College in May, 1977, I suggested that the problem was that the Court had been given "the thankless task of finding constitutional legitimacy for the religious bigotry of the nineteenth century, and that the quality of its decisions suggests the misgivings with which the deed has been done."

Forty-one days later, on June 24, 1977, the Court handed down its decision in *Wolman* v. *Walter*, which tested an Ohio statute dealing with expenditure of public funds to provide aid to students in nonpublic elementary and secondary schools. A three-judge district court panel had upheld the statute, and citizens and taxpayers had appealed. Mr. Justice Blackmun handed down what may be the most embarrassing decision in the modern history of the Court. It concludes:

> *In summary, we hold constitutional those portions of the Ohio statute authorizing the State to provide nonpublic school pupils with books. . . . We hold unconstitutional those portions relating to instructional materials. . . .*

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But where are we for the moment? We are at the point where the United States Supreme Court has solemnly found that books are safe but equipment (also "field-trip services") is not safe. Verily, the history of modern man, and assuredly the experience of the Catholic Church, teaches that books are the one truly subversive element in the culture! Maps may err. And, in the case of the Mercator projection, for example, may even give rise to erroneous views that there is a natural tendency for armies and glaciers in the northern hemisphere to move south. But in the end it is books that are to be feared, doubtless even to be forbidden. But no, says the Supreme Court. Beware, says the Court, of field trips. Clearly, and not the least in jest, the Court needs to be rescued from this. As the Court itself bids fair to plead. Observe the state of opinion of Mr. Justice Blackmun's brethren in *Wolman*:

> *Chief Justice Burger concurred in part and dissented in part.*
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> *Mr. Justice Rehnquist and Mr. Justice White concurred in the judgment in part and dissented in part.*
>
> *Mr. Justice Brennan concurred in part and dissented in part and filed an opinion.*
>
> *Mr. Justice Marshall concurred in part and dissented in part and filed an opinion.*
>
> *Mr. Justice Powell concurred in part and dissented in part and filed an opinion.*
>
> *Mr. Justice Stevens concurred in part and dissented in part and filed an opinion.*

In his *Wolman* opinion, Mr. Justice Stevens cites with avowed deference Clarence Darrow's argument in the Scopes trial on the great harm that comes to both Church and State whenever one depends on the other. This is not without charm, but must we really accept Mr. Darrow as a constitutional authority in such matters? Darrow was virtually a professional agnostic whose great triumph in the Scopes case was to elicit the admission from William Jennings Bryan that the Silver-Tongued Orator believed every word in the Bible to be true. Well, so does the thirty-ninth President of the United States, and no one thinks it especially hilarious. None of us knows as much as we knew in those fine old times in the hills of Tennessee. Even Darwin is having troubles.

## Politics and pluralism

IN RATHER STRIKING CONTRAST, the political realm has been far more pluralist and, if you will, liberal in these matters. In 1875 President Grant addressed the Army of Tennessee in Des Moines, exhorting his

schools in their community customarily educate their students at 25 to 40 percent of the cost of the local public schools. Without students, these schools will vanish. And with them will vanish a large measure of the diversity and excellence that we associate with American education.

I take pluralism to be a valuable characteristic of education, as of much else in this society. We are many peoples, and our social arrangements reflect this disinclination to submerge our inherited distinctiveness in a homogeneous whole.

**"Why should the anti-Catholicism of the Grant era be given a seat at the Cabinet table of a twentieth-century President?"**

Our private schools and colleges embody these values. They provide diversity to the society, choices to students and their parents, and a rich array of distinctive educational offerings that even the finest of public institutions may find difficult to supply, not least because they are *public* and must embody generalized values.

DIVERSITY. PLURALISM. VARIETY. These are values, too, and perhaps nowhere more valuable than in the experiences that our children have in their early years, when their values and attitudes are formed, their minds awakened, and their friendships formed. We cherish these values, and I do not believe it excessive to ask that they be embodied in our national policies for American education.

Tax credits for school and college tuitions furnish an opportunity to support these values. And they do so without raising any question of constitutionality. They are not a sufficient recognition of private education. But they are a necessary beginning, and a sound example of a public-policy idea whose time, one hopes, at last has come.

If we don't act, the question is likely soon to become moot. The conquest of the private sector is well advanced. In no small part as a result of its inequitable treatment at the hands of the national government, private education in the United States has taken a drubbing in the past quarter century. Everyone knew that elementary school enrollments would decline between 1965 and 1975—it was a demographic inevitability. But it is less widely known that nonpublic schools accounted for 98 percent of the entire net enrollment shrinkage, and that this loss of 1 million students represented more than one-fifth of their total enrollments.

At the college level, private institutions accounted for a majority of all students enrolled in 1951. Twenty-five years later, more than three-quarters of all college and university students were in public institutions.

At the elementary and secondary level there is surely a revival of Protestant and Jewish education, but the truth is that Catholic spirits have flagged. Some dioceses—New York is a prime example—press on. In others, the bishops have seemingly come to think that schools are not part of the vocation of the Church, and in any event it is hopeless, given the Supreme Court. It would be ironic for them to give up just as the climate of liberalism was changing in their favor; but it could happen.

The Catholic hierarchy will no doubt consider trying to prevent the creation of the Department of Education that the President has proposed, and no doubt they should. In its proposed configuration it will merely institutionalize at yet a higher level those prejudices that have systematically opposed and sought to bring about the end of church schools. Why should the anti-Catholicism of the Grant era be given a seat at the Cabinet table of a twentieth-century President? Of course, that is not what the President intends. It is not what the distinguished Congressional sponsors of Department of Education bills intend. It is not what the National Education Association intends. But is it to be avoided, in view of the attitudes prevalent within the bureaucracy that would inexorably move from the Office of Education to the Department of Education? Is it right that two-and-one-half centuries after the first Catholic schools opened their doors in New Orleans, the Cabinet of the United States should acquire a member who presides over a bureaucracy devoted to the demise of such schools?

There is something larger involved here. It is time liberalism redefined its purposes in the area of education. State monopoly is no more appropriate to liberal belief in this field than in any other. □