

March, 1947

GOVERNMENT AID TO CHURCH SCHOOLS - SUPREME COURT DECISION REVIEWED

The five-to-four decision of the Supreme Court of the United States, handed down on February 10, 1947, has produced tremendous repercussions throughout the Nation. The majority opinion as read by Mr. Justice Hugo Black presented an eloquent and convincing account of the background which explained the American espousal of the doctrine of separation of church and state, the repudiation of religious establishment from which the colonists fled Europe, from which they had a taste of the same suffering on these shores, causing the adoption of the First Amendment forbidding any further imposition of the evils of an official, state-supported church. After such a deliverance, when he announced that his group would uphold the New Jersey statute, which provides tax money payment to Catholics for the transportation of their children to parochial schools, the words sounded almost incredible. The vigorous dissent voiced immediately by Justices Jackson, Rutledge, Frankfurter and Burton showed how certain facts involved were neglected or failed of true construction.

The relative merits of the majority opinion and the dissenting opinions are so susceptible to evaluation, the Joint Conference Committee on Public Relations for the Baptists of the United States determined immediately to publish the opinions themselves, together with a legal analysis of them, along with its estimate and certain representative press opinions, to be embodied in a booklet so that the reading public might pass its judgment in the case.

An alert press was not slow to speak up, as shown in this issue of Report From The Capital. We consider this another encroaching step toward changing the Constitution in a manner to give the Catholic Church a privileged position, hence a long step toward altering the culture of the country. It could wreck the whole cherished public school system, for if one religious group can receive government aid in support of their institutions, then all should. What would be the effect of allowing two hundred and fifty-eight religious denominations to get support for their church schools? How different is the plea of public welfare as a reason than public welfare served by religion? Isn't payment of priests and church upkeep as logical?

Baptists do not propose to sit complacently by, but will raise an outcry in the hope that the country may become aroused to this threat. Already nineteen states in which Catholics are strong have passed some kind of enactment providing tax aid to church institutions. If denied a rehearing before the Supreme Court in the New Jersey case, Baptists will appeal to Congress not to enact pending educational bills into law which would extend Government aid to Church schools; they will appear in other cases which will come to the Supreme Court; and they will continue publicly and extensively to make their argument against this portentous danger to religious liberty.

CATHOLICS WRONG AS USUAL

Our Sunday Visitor, National Catholic Weekly: "Bigotry did its best to defeat the cause of private schools before the Supreme Court. The American Civil Liberty Union prepared an Amicus Curiae brief against it; so did the Southern Baptists; so did the Junior Order of United American Mechanics; so did the Seventh Day Adventists; so did another powerful organization which later withdrew its brief. And now bigotry will only begin to rant."

The above characteristic remark of Our Sunday Visitor contains three distinct errors in one sentence. First error: it says the Southern Baptists prepared a brief, whereas the Hon. E. Hilton Jackson, Chairman of the Joint Conference Committee representing the Baptists of the United States, North and South, white and colored, prepared the brief, which was not for Southern Baptists alone but for the Baptists of America. Second error: it says "another powerful organization which later withdrew its brief" entered the case, whereas the Clerk of the Supreme Court tells us no single brief was withdrawn, and furthermore we know that several other groups did desire to submit briefs against it along with Baptists but were not in time to qualify. Third error: it says "bigotry will not only begin to rant," whereas the reaction of the Nation's press as reflected in this issue of Report From the Capital indicates who is talking, and the Catholic editor could hardly stigmatize the secular press as guilty of bigotry toward the Catholics.

We welcome such a Catholic expression as this one from Our Sunday Visitor, because it will in future contests with the Catholic encroachments on the American Constitution everywhere afford a true indication of who is guilty of bigotry in this country.

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BAPTISTS DISCUSS COURT DECISION

The Joint Conference Committee of the Baptists of the United States, by reason of its backing the appellant in the New Jersey case in which the Supreme Court rendered opinions sustaining aid to Catholic parents in transporting their children to parochial schools, finds itself under heavy pressure to meet invitations for public discussion both in the press and on the platform. The Honorable E. Hilton Jackson, Chairman of the Committee who prepared the Baptist brief as Amicus Curiae, has consented to address the annual convention of Congregational Churches of Massachusetts in Boston; a mass meeting of Baptists in San Antonio, Texas; The Baptist Seminary, Ft. Worth, Texas; and the First Baptist Church Brotherhood in El Dorado, Arkansas. Dr. J. M. Dawson, Executive Secretary of the Committee, will speak to a meeting of Baptist pastors and others in Atlanta, Georgia, Monday, March 17. He has recently addressed audiences at Mississippi College at Clinton, the University of North Carolina at Chapel Hill, N. C., and Meredith College at Raleigh, N. C. on the subject. Resolutions deploring the Court's decision have been prepared for both the Southern Baptist Convention meeting in St. Louis the first week in May and the Northern Baptist Convention to be held in Atlantic City the week following.

NOTABLE COMMENT ON COURT DECISION

To give some understanding of the country's reaction to the decision of the United States Supreme Court upholding the New Jersey law which provides payment of public tax money to Catholic parents for transporting their children to parochial schools, we are printing a few out of the many adverse expressions.

The Washington Post: "Only a narrow gap divides the five Supreme Court justices who upheld the use of public funds for transportation of students to church schools from the four who took the opposite view. But that narrow gap runs to immense depth. For the principle at issue is one of the most fundamental in the American concept of government - the separation of church and state....School children's bus fare is one of many items in our national bill of education. If citizens can be taxed to pay this expense, they can be taxed to pay the salaries of church school teachers and the cost of buildings for religious educational purposes. When and if this happens, the dominant group in any community will be in a position to dip into the public purse to propagate its own faith and the separation of church and State, as we have known it in the past, will be nothing but a myth. The majority opinion carries strong suggestions that the court would not go that far. But the court has destroyed the only basis on which a rational distinction can be made. Its resort to expediency in this instance will deprive it of an anchor to tie to when the larger issues are raised. Justice Black's argument favoring his relatively small encroachment upon a constitutional principle reminds us of the young woman who tried to excuse her transgression of the moral law by saying that her illegitimate child was only a small one. It is the principle that is vital, as Justice Rutledge made clear in his powerful dissent, and not the amount of the assistance given. Taxes are wholly public. The religious function is wholly private. The two cannot be intermingled, in our opinion, without grave damage to both. We should think that every religious group interested in maintaining freedom in its relationship to the Deity would understand and appreciate this fact. For, as Justice Jackson wrote in his separate dissent: "If the State may aid these religious schools, it may therefore regulate them." In this sense, the court appears to have struck a blow at religious freedom as well as the separation of church and state, for the two are inextricably woven together."

Scottish Rite News Bulletin, Washington, D. C., pp. 1: "After reciting the law, fact and our tradition for 160 years, which the Roman Catholic Church (a foreign temporal power) has tried in every way to strike down, bit by bit, one is amazed at the reasoning of the Court in its findings....It will certainly occur to but few students of the First Amendment that the Supreme Court has, in the New Jersey Case, kept 'the wall between church and state high and impregnable' when it succumbed to an alleged welfare statute of that state to strike down that wall or at least to breach it....In holding that it 'must not strike that statute down' because it is 'a public welfare legislation' the Supreme Court did strike down the First Amendment, the greatest public welfare organic law ever evolved by man in his age-long fight for freedom and peace. The Court not only superimposed a state statute of alleged welfare benefits above the First Amendment but in doing so veered far afield from its own sound definition of that Amendment, which it gave at length....When the Court hears from the country in no uncertain terms it may be cogent enough in its processes to grant a rehearing."

Time, New York: "The Court, operating more as a debating society than as the Government's judicial mind, could produce nothing better than a 5-to-4 decision which settled little and solved nothing. It did show - and thereby took aback those who fondly imagined that the question had been answered long ago - that the relations of church and state were still, or again, an issue....The issue was not settled. In the past, the courts of six states had thrown out, as unconstitutional, laws similar to New Jersey's permitting transportation at public expense for parochial-school pupils. There was talk of drafting a constitutional amendment to bar the practice. The issue would be before the people for a long time to come."

The News and Observer, Raleigh, N. C.: "Last week in a five to four decision the Supreme Court of the United States struck the worst blow against the American complete separation of church and state of a century....For some years Catholic priests and others have been seeking to compel the State to transport children to church schools in

buses bought and operated by public taxation for the sole purpose of transporting children to the tax-supported public schools, and several States have passed acts permitting such transportation. The use of public money for church schools is contrary to the principles and policies which are the cornerstone of our republic. If the money appropriated for public education can be employed to transport children to the Catholic schools in New Jersey, or to Lutheran schools in Illinois, or Methodist schools in Michigan, public school money can be diverted not only to transport children attending all church schools, but it can be employed to pay teachers in church schools, erect buildings for church schools and go along toward undermining the whole public school system in the interest of the first steps of a return to the union of church and state....The narrow margin in the Supreme Court's reactionary decision gives rise to the hope of future overturning this dangerous departure from the rock-bed of hostility to anything that tends to overturn the Jeffersonian doctrine that has made this a country of religious freedom or any suggestion of church direction of public affairs.

Washington Evening Star: "The diversity and vigor of the court opinions evoked during the course of the litigation are indicative of the explosiveness of the issues involved. The New Jersey Supreme Court by a two-to-one vote ruled that the statute and resolution permitting payment of Catholic school students' fares are invalid. The Court of Errors and Appeals, by a six-to-three vote reversed that decision. And now the Supreme Court, by a five-to-four division, has upheld the New Jersey law and the township action under it....The dissenters pointed out that Catholic schools are bound to benefit by transportation aid, no less than they would by any other form of State subsidy; that Catholic schools are 'the rock on which the whole (church) structure rests' and that tax aid to a Catholic church school is 'indistinguishable' from rendering the same aid to the church itself. As for police and fire protection, Justice Jackson emphasized that these services are rendered not only to Catholic schools but to private schools of all description, whether operated for profit or not." At some length The Star insisted this was no small issue, and took its stand with the four dissenting Justices."

The Nation: "Not in a long time has the Supreme Court come up with a ruling as vulnerable as its recent decision that public moneys may be used to provide free bus service for parochial school....The reasoning of Justice Black appears to be shockingly loose....Nervously, haltingly, but surely, the Court majority has breached the wall of separation so carefully built up by Jefferson and Madison. We will hear more of this matter as other communities take their lead from the Ewing Township case. We can only hope then, that the Court will reverse itself, as it has on other occasions when its decisions have clearly misfired."

St. Louis Post - Dispatch: "If it were a unique and isolated instance, the Supreme Court decision in the New Jersey parochial school case might attract little attention. But this decision will not rest in some remote judicial plane. It lends abrupt support to an increasing and subtle encroachment on separation of church and state....The first real assault on the principle of separation of church and state came only after World War I....In the 30's parochial schools caught in the depression looked for public assistance. The chasm between church and state began to narrow....Amid the legal confusion it is clear that many citizens are now taxed, however indirectly, to support religious teaching in which they have no conviction....But the astonishing thing is that after so many years of study and jealously-guarded independence, religion is now considered so feeble as to need government help."

Chicago Daily Tribune: "We believe, with the minority of the Court, that the line between church and state should be strictly drawn and that this strictness will, in the long run, rebound to the benefit of religious organizations, and the preservation of

religious freedom...The teaching of religion should be encouraged in every way so long as it is carried out by the citizen himself in his home or through his church. It is not a matter with which any public body can safely concern itself, however indirectly."

The Christian Science Monitor: "Separation of church and state is a bulwark of religious liberty. To remove a stone from that bulwark is to weaken the fortress of religious liberty. In our opinion the Supreme Court, by its decision permitting the use of public funds to pay for transportation to sectarian schools, has torn down a whole section of that bulwark....The Court has opened a very wide door. Where will we draw the line? It might be well for the friends of religious liberty to carry a new case to the Court to permit it to call a quick halt to this breaking down of the separation of church and state - or even to reverse itself."

Alabama Baptist: "This decision of the Supreme Court is the most serious thing that has happened within forty years of our active life. It is the opening wedge whereby larger public funds will be asked for the support of Catholic institutions. The next step will be to get through Congress a bill to pay the teachers of Catholic schools out of public funds. The decision tends toward a union of church and state for which the Catholic church has stood since the church and state were united by Constantine, the Roman emperor, in 325 A. D. The decision tends to circumvent the Bill of Rights which separates church and state and guarantees religious freedom for all. And it will do more to widen the rift between Protestants and Catholics in America than anything else has ever done. More than that it is so loaded it will enter American politics, a thing which ought not to be done in this country."

Religious News Service, New York, Washington dispatch: "The Supreme Court decision in the New Jersey school bus case hit Protestantism generally and the Baptists in particular with the force of a judicial atomic bomb. As a result, it can safely be predicted that Monday, February 10, 1947, will be remembered in church history. For, as Arthur Rock, the New York Times columnist pointed out, the Supreme Court on that day did not end a controversy by its decision, but really gave birth to a continuing conflict. Protestant spokesmen here - other than the Baptists - generally restricted their statements to private expressions of opinion, but all of them agreed that the last has not yet been heard of the use of public funds for private schools. And that wasn't all. Protestant spokesmen here said freely, that the decision would stiffen their opposition to any federal aid-to-education measure, even the watered-down Taft bill that would allow the states to use the funds as state laws provide. The Protestants here have determined to fight every piece of legislation even remotely relating to cooperation between church and state more vigorously, but it remains to be seen whether their constituents throughout the nation feel the decision as keenly as the men in the capital."

The California Southern Baptist: "Baptists should never stack arms until men with such a warped sense of justice are shorn of their authority. All this coupled with the fact that President Truman still keeps his personal ambassador to the Vatican, Mr. Myron Taylor, on the job makes our patriotism stagger."

The Watchman-Examiner, New York: "The decision of the Supreme Court that public school funds raised by taxation may be used to pay for transportation of children to Roman Catholic parochial schools is the stiffest blow at the great American principle of separation of church and state since the Bill of Rights became law....The Supreme Court, however, has often shown sufficient ingenuity in the use of lawyers' language and the shuffling of its precedents - when its decisions have met with public disfavor - to correct its own mistakes. If sufficient numbers of Americans now tell the Supreme Court and their representatives in Congress what they think of this destructive decision, way may be found to change it."

The Christian Index, Atlanta, Georgia: "One does not have to be a lawyer, much less a Supreme Court Justice, to know that if public tax money can be used to take children to private, religious, schools, public tax money can also be used to support religious schools, hospitals and orphanages. There is no difference in principle and we may rest assured that the Roman hierarchy will press its victory to its logical limit....This decision will do more to fan the flame of religious strife in this country than Ku Klux Klans and Columbians could ever do. Intense and bitter controversy is bound to result if this decision is not reviewed and reversed. It is a body blow against the principles of separation of church and state and, if allowed to remain, is destined to destroy completely our Constitutional protection against the union of church and state. The decision forces every taxpayer to contribute to private religious schools. Unless the decision is changed, or a new Constitutional amendment adopted, soon millions of our tax money will be pouring from our public treasuries into Catholic institutions."

Bishop G. Bromley Oxnam, former President Federal Council of Churches: "If parents have the natural right to determine the education of their children, a privilege this Nation gladly gives, it follows that parents who refuse the benefits of these splendid public school educational opportunities....should pay for such private education as they insist upon. Otherwise, the Communist father and mother who may demand a Marxian education for their children may also call for private schools and logically ask for public support. Public funds should be used for public education."

The Standard, Chicago (Swedish): "Taken by itself this measure may appear to be quite insignificant, and many will look upon the act of the Supreme Court as a just and humanitarian one. Why should not the state have a right to spread its benevolent wing over pupils in Catholic schools as freely as over boys and girls in public schools? These arguments - the 'child benefit theory' and the extension of the police powers of the state - were also used by the majority in presenting its decision. But seen as a part of a definite program of advance by the Roman Catholic church of today this measure gains considerably in importance. It is another step closer to the fulfillment of the dream of a Roman state church in this country and farther away from the treasured democratic principle of separation of church and state."

Dr. Louie D. Newton, President, Southern Baptist Convention: "I see in the decision a dark shadow, now no longer, it may appear, than a man's hand, but portending a great and terrible cloud that may be drifting out over every hamlet and dale from Plymouth Rock to the Golden Gate to darken the torch of religious liberty."

The Baptist Review, Dallas: "National aid to parochial schools will be one of the great issues before the Congress in Washington. The National Catholic Welfare Conference with other Roman Catholic bodies will bring tremendous pressure on the senators and representatives to support such measures....It (the Roman Catholic Church) intends eliminating the public schools and every other institution which tends to create a non-sectarian unity within the nation....We are now passing through a period where the whole concept of democracy is being challenged....A bill has been introduced in the House of Representatives by R. J. Welch of California to appropriate \$150,000,000 this year (and more thereafter) for 'elementary and secondary parochial and public schools.' Catholic spokesmen for this bill justify it because 'it recognizes that parochial schools are semi-public because they serve the public good.' Let that specious argument soak in! To justify the appropriation of public monies to sectarian institutions on the ground that they 'serve the public good' would open the treasury of the United States to every denominational school and hospital in the country. The whole objective of such bills is, as the Christian Century well says, to 'abolish non-sectarian schools; let the state support the schools; let the church (the Roman Catholic) run them! Senator Aiken has introduced a bill, S. 199, which would, if passed, enable parochial schools out of tax

money to pay teachers, build houses, transport and equip pupils - in short, in the words of Dr. J. M. Dawson, 'provide what Protestants have long feared would be done under the Catholic appeal.' It is the solemn duty of every citizen to keep informed of this unrelenting, sinister, and wholly un-American fight of the Roman Catholic Church to feed at the trough of public monies for the support of their institutions."

Religious Herald, Richmond, Virginia: "The Roman Catholic Church has won a signal victory by this decision. The Supreme Court unconsciously gave 'the clock's hands a backward turn.' It is unfortunate that Protestants by complacency and compromise encourage this movement towards state religion. A statement of protest by the Baptist Public Relations Commission in Washington issued against the Supreme Court decision is made less effective by those who support the program to teach the Bible and religion in the public schools."

Western Recorder, Louisville: "Catholic education is the rock on which the whole structure rests, and to render tax aid to its church school is indistinguishable to me from rendering the same aid to the church itself. The State cannot maintain a church and it can no more tax its citizens to furnish carriage to those who attend a church. The writer cannot be accused of having a persecution complex. He would have been equally opposed to the decision had the point in question involved transportation of Baptist children. It is not, therefore, a matter of its relation to a particular religious group. Neither can any accuse us of being disloyal to either the whole or any branch of our Government. Loyalty to Government is a part of Baptist nature. Nevertheless, this is the long dreaded step toward the union of church and State - the support of religious groups from public funds. The decision in the writer's judgment will bring an unprecedented outcry. It will plant a fear in the hearts of the American public, lest the religious liberties purchased at so dear a price, shall under pressure be sacrificed. We as Baptists say calmly and without rancor that the decision is the most unfortunate act on the part of any branch of our Government within the memory of any now living."

The Churchman (Episcopal) New York: "When the Supreme Court handed down its decision in the New Jersey school bus case it hit Protestantism a wallop which may at last awaken it. Baptists, long champions of separation of church and state, spoke up immediately. Their Joint Conference Committee on Public Relations issued a blast against the decision that was heard 'round the nation...'The time is ripe, and rotten ripe', to use a line from James Russell Lowell, for Protestants to go to work against the political activities of the Roman Catholic hierarchy - as we have been gently insisting in this journal for several years. Because of their lethargy, due to their fear of being called 'bigots' and 'intolerant', Protestants got what they deserve in the Supreme Court bus bill decision."

The Christian Century (Non-denominational) Chicago: "Protestants can no longer be complacent in the face of such encroachments by the Roman Church. They should now see that the issue raised by the aggressive policy of this church involves much more than the determination of a legal point. It involves the ultimate character of American culture and the destiny of Protestantism in this country. A culture dominated by the Roman Church will be a different culture from one in which Protestantism is the ascendant faith. This incontestable fact should awaken all non-Roman citizens of the nation - regardless of their religious faith or lack of it - to see (1) that no further advances are made toward the goal of a privileged relation of this church with the government; (2) to undo by congressional action the effect of the two Supreme Court decisions which, as Justice Rutledge strongly says, mark the beginning steps toward that goal; and (3) to hasten the fulfillment of President Truman's promise to discontinue the American embassy at the Vatican. The membership of the Protestant churches must be aroused to an intelligent understanding of the issue which the Supreme Court's decision has not clarified. No

pulpit can be silent on this issue. The Protestant religious press can be counted upon to do its part. But the issue must be carried down to the grass roots of the churches, namely its voting members. As citizens, they have no more imperative duty than to exercise sharp vigilance in keeping open the forum of religious liberty. Neither the federal government nor the states must be allowed through blindness or pressure or sentimentalism to destroy this open forum."

Wohl and Way, Kansas City, Missouri: "The High Courts decision should be considered with great seriousness since this is the first time, it would seem, that the exact issues have been before that body. It sets a precedent for itself, and worse still, for the lower courts, where precedents carry great weight and are hard to break. There are, however, several precedents in lower courts where this issue has been tried and where Religious Liberty won. Non-Catholic groups, if at all observant, cannot fail to see that the lines are being drawn and that the traditional perpetrators of religious persecution are on the battle march in the courts, in legislative halls, through the myriad channels of education, through political maneuvering, and through pulpit and press. The niceties of apologetics are forgotten as in South America, the United States, and elsewhere they become openly hostile to all non-Catholics and alarmingly defiant to democracy. Any man that will call this timely warning of Baptists just so much 'rabble rousing' is, like the ostrich, burying his head in the sand."

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BOOK ON SUPREME COURT DECISION READY

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The eighty-page book containing opinions of majority and dissenting justices in the Supreme Court decision in the New Jersey bus case, together with legal analysis of same, along with editorial expressions of leading newspapers, and put out by the Joint Conference Committee on Public Relations for the Baptists of the United States, is off the press. The edition of one thousand copies is the gift of the Baptist Sunday School Board, Nashville, Tennessee, Dr. T. L. Holcomb, Executive Secretary. While more than two-thirds of the edition has already been exhausted, this office will be glad to send one copy to each applicant as long as the supply lasts. This publication is likely to be of historic interest.
