

AN X-RAY PICTURE OF NATIONAL CONTROL IN EDUCATION

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HIS whole business of federal education has been fed and pampered with publicity until the uninitiated can not see the bones for the fat. Diagnoses in abundance, consultations by doctors of the law, have so accumulated about this unwelcome creature, which has been haunting the national legislature since the Hoar Bill of 1871, that a skeletal X-ray picture of the basic principles of federal education, and a study of its true nature and right to existence among us, have become a necessity.

Our X-ray picture abstracts from politics; it abstracts from this or that bill, from the Smith-Towner, Towner-Sterling, Sterling-Reed, Curtis-Reed, Capper-Robison, and even the recent and subtle Brand Bill, all in their turn aiming at federal control of the schools. It is meant rather to expose briefly the answers to three elementary questions on the matter:

Upon whom does the obligation of education naturally rest?

To whom may it be conceded?

What practical effects would flow from federal control?

Catholics emphatically insist upon the major rights of the Church in education. Many of her enemies are spilling wit and money to give the national government a hand in educational control. They know that the friends of Catholicism are against it on principle; and they fear perhaps that Catholics in urging its unconstitutionality are but unfurling our glorious flag as a curtain of patriotic emotion to let insidious Catholicism sneak in. So in order to preclude such an interpretation and to lift from suspicion the true purpose of this analysis, the Catholic Church's claims in educational control will, as far as possible, be passed over. Anyway, if it can be established that parents of any creed are responsible *in conscience* for the training of their children, the right of Catholics to obey the Church will *a fortiori* be conceded.

The first question: Upon whom does the obligation of educating naturally rest? The home is the foundation of society. The parents who establish a home assume the obligation in conscience of fitting for life, for society, the plastic, unprotected powers of the growing child brought into the world by them. They are responsible for the completion of the sacred work they have begun. Next to his very self no worldly possession is dearer to the parent than is his boy or girl. If that child can not himself preserve his life, liberty, and happiness, which our federal constitution has rightly defined as the inalienable rights of all, who has the obligation by *natural right* of seeing to it that these are preserved for him? Certainly, the parents. If the individual parents are responsible before God and before their neighbors for the character of the child, may any temporal society, even by a unanimous vote, or may any other individual, shape and mold *against* the will and conscience of responsible parents the character of that child? Here would be a patent destruction of personal liberty.

Taxation without representation was deemed a major abuse in the overthrow of an established government. The very men who used that cry framed the constitution under which we live. What was their mind about the *individual's* right to raise and train his own children? Which is dearer to man's liberty and independence, the right to determine what is to be done with his money or the right to determine what is to be put into his child's heart and head? Beyond question, the latter. From this it is safe to conclude that the two following principles would be freely admitted by the framers of our federal constitution:

A man has the *natural* right, not conceded by the state, but which the state should protect, of raising, training, educating his own children, which right can not without grave cause be taken from him; and

Secondly, Without fully ridding himself of responsibility a man might concede or delegate part of the burden of his child's training to a more capable person, or, with proper representation and control, to a private society, to the local government, or even to the state. Anything less is worse than taxation without representation.

The first of these principles covers the natural right of parents and raises the question of a right under peculiar conditions allowing the local government or the state to act against parental consent. What constitutes the required grave cause is clear from any number of court decisions in the matter of custody. "Before the state can be

substituted for the right of the parent, it must affirmatively be made to appear that the parent has forfeited his natural and legal right to the custody and control of his child, by reason of his failure, inability, neglect or incompetency to discharge the duty and thus to enjoy the right."¹ "Whenever (for example) it is found that a father is guilty of gross ill treatment or cruelty towards his infant children; or that he has constant habits of drunkenness and blasphemy, or low and gross debauchery; or that he professes atheistical or irreligious principles; or that his domestic associations are such as tend to the corruption and contamination of his children; or that he otherwise acts in a manner injurious to the morals or interests of his children; in every such case the Court of Chancery will interfere and deprive him of the custody of his children and appoint a suitable person to act as guardian, and to take care of them, and to superintend their education. (But it is only in cases of gross misconduct that paternal rights are interfered with.)"²

Now the second question: To whom may the obligation of education be conceded? From the most, to the least, natural and theoretically ideal, five possibilities appear: a private tutor, a private society, the local government, the state, and the federal government. Pertinent to the first four of these is the second principle deduced from the spirit of our national constitution. That principle is repeated: Without fully ridding himself of responsibility man might concede or delegate a part of the burden of his child's training to a more capable person, or with proper representation and control, to a private society, to the local government, or even to the state.

The parent, as a rule, has neither the time, the means, nor the necessary qualifications to give his children the training obtainable from a staff of professional teachers in a well-equipped school. So the parent feels that he can better satisfy his obligation by uniting with his neighbors in the project. According to the parents' judgment, this group may be chosen by reason, for instance, of religious convictions, boundary limitations, membership in a civil society, county, or even state. Catholics, however, can not in conscience disregard the right of the Church in education. The Church has in this matter an inalienable right, not natural, but supernatural, superior to that of all her subjects.³

¹ *Mill v. Brown*, 31 Utah 473, 88 Pac. 609, 120 Am. St. Rep. 935.

² *Story*, *Equity Jurisprudence*, II, sec. 1341.

³ *Pope Pius XI*, *On the Christian Education of Youth* (Dec. 31, 1929).

A *private tutor* is close to parental control and has but a delegated right to educate the child. Both he and the parent, however, in preparing the child for social life, have the duty of satisfying certain demands of the state. These demands will be discussed below under the rights of the state.

A *private society* may be delegated by its members to educate. The parent, though, we insist, can not shift the conscientious responsibility he has by nature assumed when the child was born to his care. He may trust the society whose other members he knows to have the same ideals, religious faith, notions of character and training as he has. Here again the claim of a supernatural, superior right of the Catholic Church to regulate in everything concerning faith and morals can not rightfully be disregarded. Here also remember that the state has certain claims.

A *local government*, since it is nearer to, more closely responsible to, and more easily controlled by, the individual parent, and since it has a better understanding of local needs in education, is the next best educator. These facts always in mind, its rights and the state's are nearly the same.

The *state* is vitally interested in education. Its very existence depends upon the true worth of its individual citizens. Established "to promote the general welfare," it has a right to demand that its citizens be educated; but if the natural parental rights, God-given not state-given, of its citizens are interfered with in executing this demand, that is not promoting the general welfare; it is inoculating it with tyranny. The soul of state and federal rights in education lies squirming in that idea of general welfare. Now the thing is to discover to what extent the promotion of general welfare allows the *state* to share the parents' personal right; and then to see how much of this conscientious burden of the parent the *federal government* may borrow.

First, the *state*. Excessive state control will be lopped off by the hatchet of a free American's common sense. Any reasoning American knows, for instance, that even with a majority vote to support it, no state legislature could force upon the children of the minority, school subjects soaked in Russian communism, and yet preserve the natural and constitutional rights of that minority. *The mind of the majority does not make right and wrong*. The parent's right and duty, his conscience, his inalienable rights guaranteed unfettered to him by the Constitution, are bound by chains if he, against his will, must have his child taught what he feels is wrong. But who is to

determine what is right and what is wrong? Who may rule my conscience? The state? Not constitutionally.

The majority in Oregon thought the welfare of the state demanded it, and tried to prevent Catholics from keeping their children the entire school time under the healthful atmosphere of religion, tried to force Catholic children into public schools. The Supreme Court of the United States ruled the attempt unconstitutional as interfering with liberty.⁴ The majority in Nebraska, Ohio, and Iowa felt that the general welfare of their commonwealth demanded the exclusion of the German language from grade schools. The United States Supreme Court ruled against them as interfering unreasonably with the liberty of teachers, of parents, and of the children.⁵

Since the state cannot control the parent's conscience, it has narrow limits in educational control. Twenty-eight states recognize by statute the right of the parent to furnish *private* instruction if he prefer. State courts have clarified state limits. The Massachusetts court held, "The great object of these provisions of the statutes has been that all the children shall be educated, not that they shall be educated in any particular way. To this end public schools are established, so that all children may be sent to them unless other sufficient means of education are provided for them."⁶ And the Oklahoma court: "So long as the child's education was not neglected, we think these parents, under the constitution and laws of this state, had a right to manage and supervise the education of their child, if done in a fitting and proficient manner."⁷ For its own good, though, and for the child's, the state may, and must, require an education sufficient for good citizenship, for a life of at least external justice, for the citizen's ability to support and care for himself, to exercise his voting power, to maintain the state. Legislators may splash forth reams of foolscap advocating as demands of the state anything from bird study to a perverted study of the Bible, but what is unconstitutional is not a law and police power can not justly enforce it. Constitutionality is left ultimately to the judgment of the United States Supreme Court.

And it is not enough that a person be free only in the *means* he uses to educate his child, leaving the state free to determine exactly

⁴ Pierce v. Society of Sisters (1925), 268 U. S. 534, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A. L. R. 468.

⁵ Meyer v. Nebraska, 262 U.S. 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1446.

⁶ Commonwealth v. Roberts, 159 Mass. 372, 34 N. E. 402.

⁷ Wright v. State, 209 Pac. 179.

what the finished product must be. Suppose the state demands that the child learn dancing. Sufficient freedom is not given to an unwilling parent, then, by letting him choose the teacher. The state may ask of those who wish to remain members of it, whatever in education is *necessary* for the state's proper maintenance; it may not demand what is *merely beneficial*.

Lastly, the *federal government*. If the state may, then, pass education laws, choose school administrators, appropriate funds for education, and exercise limited control in the whole business, may not the federal government prong into the same principles and exercise educational control? It could if the federal constitution had not wisely forbidden it. Here is the first cause of friction.

Our Constitution says in the tenth amendment in the Bill of Rights, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In Section 8 of Article I, the powers of Congress are specifically enumerated with an introduction in these words, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and *provide for the common Defence and general Welfare* of the United States." In the expressed list of powers, the only words which even hint at education are those referring to patents and copyrights. But is educational control included implicitly in the right to provide for the general welfare?

The "strict constructionists" will allow to the federal government only those powers *expressly* enumerated or evidently intended in the Constitution. They, surely, would keep education at least within the individual states. But the "loose constructionists" would give to the central government powers which may be *implied* under "general welfare." May the "general welfare" clause be interpreted to include the right to educate the nation's children? The answer is, No. And education, therefore, is left "to the States respectively, or to the people." This negative answer can be deduced from the words of perhaps the most ardent of "loose constructionists," Hamilton. The argument (here recast and shortened) was lately exposed by U. S. Representative Henry St. George Tucker (Va.).⁸

Mr. Hamilton, in his report on manufactures in 1791, said that Congress, under the "general welfare" clause, could appropriate money for any object which was "general and not local." Mr. Hamil-

⁸ Hearings before the Committee on Education and Labor, U. S. Senate, 68th Congress, 1st Session, on S. 1337 (Sterling-Reed Bill), 1924, p. 126.

ton felt sure that there should be no objection to this generality, because such freedom in giving money to a cause would not "imply a power to do *whatever else* should appear to Congress conducive to the general welfare." Applying this now to education, Hamilton would have to say, "Congress may under the 'general welfare' clause, *give aid* to education in the states; it may *not establish* schools and school systems." But why should Congress have the power to support by taxation an institution or a system of schools which it is denied the right to create? If the purpose, the *object*, of the financial aid belongs to the state, even such financial *aid* itself is forbidden to Congress. Judge Marshall said, "Congress is not empowered to tax for those purposes which are within the exclusive province of the States."⁹

Judge Story has been cited as a "loose constructionist." But he says, "The power to regulate manufactures is no more confided to Congress than the power to interfere with the systems of education."¹⁰ Madison, speaking in Congress on the Cod-fishery Bounty Bill (Feb. 1792), pointed out some absurd consequences of over-loose construction: The Congress "may take care of religion into their hands; they may appoint teachers in every state, county and parish, and pay them out of their public Treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union."

Precedent in stretching the meaning of general welfare does not make a continued stretching right. Persistent wrong does not make right. It will never conform to the mind of the constitutional framers, who were education-minded men and yet omitted mention of education in the final document; who rejected the proposal of founding by the Constitution even a university for *adult* minds. The *child's* mind was too sacred for politics.

All this refers to educational *control*, interference in some way with states' rights in education, and ultimately a curtailing of parents' rights. Taking care to avoid interference, the federal government keeps within its rights by *suggesting and encouraging* educational progress; by exercising, as the present Bureau of Education does, an advisory, enlightening, edifying influence, prodding on to improvement, to higher ideals, the local governments, giving guidance to local self-activity.

⁹ Gibbons v. Ogden (9 Wheaton, 198-199).

¹⁰ Par. 1079, 1851 ed., v. II, p. 28.

The second cause of friction is the practical side of the issue. It uncovers the answer to our third question, What practical effects would flow from federal control?

To the knowing American a few touch-sentences will unfold the practical danger of having official Washington dabble with the minds of children:

A cabinet officer is not independent of politics. School curricula and methods are based on philosophies of life, and a cabinet officer's philosophy may clash with the parent's conscience. Think of sex education. Power conceded even for trial is difficult to recall. Congress is not fair to the people if it spends their money, gives it to individual states, without dictating how it shall be spent—consequently, federal meddling in child training. Congressional billion-dollar business can not estimate the value of a workingman's sweat-earned dollar. An educational mold cast by any one body, however efficient, will not meet the quite diverse local needs. New York, for instance, should have no claim on, nor obligation to pay for, the training of Nevada's children. Officialdom is infected with a hankering for power and control. Over-organization will tend to mechanize what is essentially a spiritual process. A small and innocent-looking concession of state and parental rights to the federal government will be but an opening wedge, a seed containing a tree.

We are done with this skeletal X-ray. It is seen that education is vivified by the parent and extended, farmed out, to society only inasmuch as it becomes necessary. Let the spirit of education control the body, the state; not the body dominate the spirit.

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