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THE FEDERAL BUREAU OF EDUCATION*

CLIFFORD E. McDONALD†

THE subject of the centralization of power in the national capitol has become increasingly important during the past two decades. No one can deny that boards and departments and bureaus possessed of nationwide supervisory capacity are becoming more numerous and cumbersome. Hitherto, most of the complaints and protests against such centralization of power have been founded upon economic reasons such as decreased efficiency, increased operating expense, or general unwieldiness.

The Federal Government is divided into three departments, i.e., legislative, executive, and judicial. Each is an independent unit, but in their operation, they are closely related; one department may aid another, but none can invade the field of another's operation, or usurp another's power of prerogatives. Each, in safeguarding the integrity of its own sphere, has constituted a check upon the others. Each has derived its original power from the Constitution itself and although, from time to time, one department has found it necessary to exercise its deterring power upon another, still it has been this cogwheel relationship of the three fundamental branches of government which has maintained the equilibrium of the increasingly complicated national administration.

It is a matter of common reasoning that these three fundamental branches of government must have assistance. It would be utterly impossible for the executive branch of the administration to supervise the operation of the United States mail; the supervision and management of the post-offices and roads has always been a federal charge. It is something which by its very nature would require a central unit of direction. Hence we have a postmaster-general delegated by the executive branch of the government. So too, the control of the army, navy, international relationships, other cabinet posts, interstate commerce, and in some respects, prohibition, is of necessity delegated to a central unit. But there are some nationwide institutions which have always been locally administered and which by their nature, can be so administered locally as successfully as from the national capitol. In a govern-

* Because of its timely nature, this article is offered instead of the discussion of "Cruel and Inhuman Treatment," as previously announced. The latter article, by the same writer, will appear in a subsequent issue.

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ment of the people, why then relegate such institutions to a cumbersome bureau, political by nature, and expensive and unwieldy in operation?

At the present time, there is much speculation in regard to the outcome of a proposed Federal Department of Education.

The question whether the judicial department of our government shall enforce the administration of a Federal Bureau of Education, authorized by the legislative department, when such bureau would control a subject matter not by its nature requiring nationwide supervision, and where such bureau would be repugnant to the spirit of our Constitution is the subject of this discussion; and the question rests solely upon the limits of our legislative power.

At a recent meeting, a group of men in a southern city, representing hundreds of thousands of fraternal associates went on record as favoring unanimously the founding and maintenance of a Federal Bureau of Education, situated at the national capitol, and having supervisory control of the school system of the United States. The chairman, in introducing a bill, proposing such establishment, which will be presented to Congress, said: "A well-informed public will never content itself with the negative idea that education is not a function of the federal government." He continued, "We cannot but insist at this time upon the existence of the principle that the right of a child to avail himself of the educational advantages of the public school system is superior to the right of the parent or any corporation, religious or secular, to shape in advance his intellectual allegiance, and we should unite with every movement which tends to the maintenance of such rights."

The speaker, in his enthusiasm, unwittingly betrayed nearly every vicious and unconstitutional aspect of his own cause, and thus enables us more easily to overcome the plausibility of the said cause.

I

"A well-informed public will never content itself with the negative idea that education is not a function of the federal government."

That children of residents of a given community should attend a school built and designed by the taxpayers of that community, taught by teachers of that or adjacent communities, and supported by that community and thoroughly conversant with the problems, financial, educational, moral, and social, and where corrective measures are expedited by members of that community, is not a negative idea but is a positive idea and a positive right.

Education is as common and of as high standard in this nation as in any nation. Each little district has its own school and its conduct has always been a sacred charge among our people. What reason then for a change to the more centralized administration?

II

"We cannot but insist—that the right of the child—is superior to that of the parent—."

In our modern civilization, it is difficult for us to believe that the speaker meant what he said above. The Spartans in ancient Greece tried to make children subject to the control of the government and deprive the parent of control of matters educational. As A. F. Mullen said in his brief to the Supreme Court in the case of *Lutheran Synod v. Nebraska*: "The fallacies of such legislation were clearly shown at that time, and have been demonstrated since. State monopoly of education is based upon the discarded philosophy of Plato and has no place in a democracy where the first concern of the government is the right of the individual."

In our liberal and democratic form of government, it would be preposterous to presume that intelligent parents would submit to the indignity of allowing their small children to be superior to them in the matter of the selection of schools.

Furthermore, to deny to a parent the right to employ whom he will for his child's instruction, would be an infringement upon the freedom of his power to contract.

"The word liberty—means freedom to make lawful contracts to the end of obtaining happiness."¹

III

". . . the right of the child . . . is superior . . . or to any corporation secular or religious."

Having seen the absurdity of allowing a child to be superior to the parent in his education at a tender age, the question of his right to religious education presents itself. The above words of the chairman indicate very clearly that he is referring to parochial schools, and that regardless of all else, the real result of this legislation would be the abolition of parochial schools.

The Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."² Is the abolition of the parochial schools a prohibition of the free exercise of religion? If so, then an act of Congress founding a Bureau of Education would be clearly opposed to our Constitution.

The fourteenth amendment to the United States Constitution guarantees the same immunities from state governments. It provides: "No state shall make or enforce any law which shall abridge the privileges

¹ *People v. Gillan*, 109 N. Y. 341, 17 N.E. 343.

² First Amendment, U. S. Const.

or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." The provisions of these amendments encompass the preservation of religious liberty.³

So then in regard to the parochial school, if a parent sees fit to protect his child by giving him the spiritual instruction which his conscience demands, and by virtue of a law he may not, then that law acts in contravention of those principles in our Constitution which guarantees freedom of speech and perfect religious toleration. Liberty does not mean merely the right to be out of jail or free from restraint; it means freedom of religion; freedom to speak, write, and contract; freedom to maintain private institutions at one's own expense; and freedom to have control of one's family.

It is not necessary to cite cases to prove these principles. They are fundamental truths which no legislature can circumvent or set aside by any proposed regulation.

Then can one assert that the legislative government exert its sole remaining resource, the police power, to protect the validity of the proposed Bureau of Education? It cannot be denied that the government may enact legislation for the purpose of securing good citizenship. But in so doing, it may not violate the right of the individual. We have seen that the right to control one's children and their education and the right to maintain parochial schools and contract with the same, are rights secured by the Constitution. As the police power is that "power inherent in our government to enact laws, within constitutional limitations, to promote the health, morals, safety, order, and general welfare of society," it would seem that the police power would be inoperative.⁴

IV

"And we should unite with every movement which tends to the maintenance of such rights."

Here the speaker urges the support of a Federal Bureau of Education regardless under whose auspices it is advocated.

But those who oppose this bill just as strongly as it is advocated by him, do so because it is unconstitutional on the following grounds: The enforcement of the enactment would be wider and more comprehensive than the bill itself implies; that in effect it is not a regulation of education but is either a subterfuge to end religious instruction in schools

³ See Cooley on *Prin. Const. Lim.* page 224.

⁴ *Adams v. Burdge*, 95 Wis. 390, 70 N.W. 347; *State ex rel. Zillner v. Kreutzberger*, 114 Wis. 530, 90 N.W. 1098; *Jones v. Froelich*, 115 Wis. 32; *City of Chicago v. Netcher*, 183 Ill. 104, 55 N.E. 707; *Smith v. Texas*, 233 U. S. 640.

or an infringement upon the positive right of man to be superior to the state in the matter of the ordinary education of his child.

The real result of this legislation would be the abolition of the parochial school. Whether this is done maliciously or incidentally is not for my discussion here. But the fact remains that the parochial school, and with it the right to religious education which is a part of religious freedom, would be seriously jeopardized and hampered should such an act be adopted by the legislative government.⁵

⁵ *Corfield v. Coryell*, 4 Wash. 371, 31 Pac. 321, *Home & Day School v. Detroit*, 76 Mich. 521, 43 N.W. 521, *Mich. Sem. v. State*, 115 Mich. 118, 73 N.W. 131, *Columbia Trust Co. v. Kentucky*, 138 Ky. 104, 129 S.W. 113, *Allgeyer v. Louisiana*, 165 U. S. 578, *Berea College v. Kentucky*, 211 U. S. 45, *Butchers Union Co. v. Crescent Co.*, 111 U. S. 756.