The Phyllis Schlafly Report

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Educational Freedom in America Today

Attack on Private Schools

President Carter continually reaffirms to the world that human rights is the core of his administration's policy. While "human rights" is subject to almost any definition, it would seem that one basic element would be the right to be considered innocent until proven guilty.

President Carter ought to apply his words to the Internal Revenue Service which is trying to legislate a new policy under which private schools are guilty until they prove themselves innocent. The proposed IRS regulation would judge any private school, which was started or expanded during the last two decades, guilty of race discrimination until the school purges itself of its alleged sins by specified acts that are prohibitively expensive. If the school doesn't obey to the satisfaction of IRS officials, the punishment is loss of its tax exempt status. Both compliance and noncompliance would be so financially costly that most private schools would be forced to close.

Back in 1925 in the case of *Pierce v. Society of Sisters*, the U.S. Supreme Court held that it is unconstitutional to require all parents to send their children to public schools. But the effect of the proposed IRS ruling is clear -- to bring to a halt the rapid recent growth of private schools and to force almost all pupils into public schools.

In the last decade, public schools have been rapidly declining in enrollment because of the falling birth rate and because of parental dissatisfaction with what the public schools teach and don't teach. Alarmed about empty classrooms and teacher unemployment, the bureaucratic push is on to require all children to attend public schools through use of the tax power.

As applied to religious schools, the proposed IRS ruling is so clearly a violation of First Amendment freedom of religion that one wonders how even the most arrogant officials have the gall to propose it. The proposed IRS regulation would require private schools to have a student body whose percent of minority children is at least 20 percent of the percentage of minority children in the local public school district.

This regulation would require the private religious schools to enroll enough minority pupils to satisfy the IRS percentage regardless of whether the minority pupils are members of that religious faith, and even if such enrollment could be achieved only by (a) enrolling them free while children of their own parishioners must pay tuition, or (b) dismissing children of their own parishioners in order to make places for minority children.

In the 1971 case of *Lemon v. Kurtzman*, the U.S. Supreme Court held it is unconstitutional for the state to pay salaries of parochial school teachers who teach only secular subjects, because that would involve "an excessive government entanglement with religion." Paying the salaries of science teachers isn't as much of a church and state "entanglement" as giving IRS the power to set racial quotas for the student body, faculty, and board members based on a percentage of flexible figures determined by surveying the population patterns separately for each public school district and then applying them to private schools which have no geographic relation to public school boundaries.

The proposed IRS ruling would be just as discriminatory and costly to secular private schools. Thousands of parents put their children in private secular schools because public schools fail to teach the basic skills (reading, writing and arithmetic) in a disciplined environment.

Minority children should have the right to attend a nondiscriminatory school at the taxpayers' expense. Internal Revenue should not have the power to destroy parents' rights to send their children to private schools at their own expense.

Litigation for Educational Freedom

A much-needed little pamphlet published by the Institute for Humane Studies in California, shows the interrelation of the four principal areas of litigation involving educational freedom today. The author, William B. Ball, has been the laywer on the freedom side of some of the important cases.

The first area involves the state laws requiring compulsory school attendance. Fortunately, the U.S. Supreme Court a half century ago abolished the totalitarian notion that a state could pass a law compelling all children to attend public schools. Now state laws require attendance at some schools, but there is a great variety in their provisions from state to state. Some require attendance until age 14, some until age 18.

When Wisconsin tried to force the Amish children to attend high school in violation of their religious be-

liefs, the Supreme Court said No in the case of *Wisconsin v. Yoder* (1972). Despite this case, prosecutors in many states have been bringing criminal charges against parents who send their children to religious schools the state does not approve of. Prosecutors in many states are seeking a broad enforcement of the law beyond the intent or language of the statutes.

The typical compulsory school attendance statute requires children to attend public school unless given equivalent education. But many states have been interpreting "equivalency" to mean attendance at a school "approved" by the state. If we want to preserve educational freedom, the definition of equivalency should not be allowed to obliterate religious, parental or educational rights.

The second area of litigation is in the enforcement of state standards on private schools. These standards can impose on the private schools an almost confiscatory level of expense. Regulations may be unreasonable, vague, petty, arbitrary, or costly. First Amendment values in education may be jeopardized by various governmental, health, environmental, or land use regulations.

The third area is the right of conscience in public education. The major cases are the 1962 and 1963 U.S. Supreme Court cases prohibiting prayer in public schools. *Engel v. Vitale* made unconstitutional a 22-word interdenominational prayer asking God for "blessings upon us, our parents, our teachers and our country."

But contrast that rule with programs used in public schools such as "MACOS" or "The New Model Me." These programs confront the core of a child's beliefs, invade his privacy and familial relationships, and directly attack religious values in many areas of morality. Where is constitutional "equal protection" when an atheist who objected to Bible reading and praying in public schools was held to prevail over the majority, while authorized school programs are permitted to ride roughshod over other people's religious and moral beliefs?

The fourth area is the denial of distributive justice in the use of tax funds, that is, the double financial burden paid by parents who choose to send their children to private schools.

Most private elementary and secondary schools do not want public funding because they know that he who pays the piper calls the tune. Most private religious schools do not want to go down the primrose path traveled by the formerly religious colleges which have secularized themselves in order to get public money.

But constitutionally, parents have a right to send their children to private religious schools. Should they be hobbled with arbitrary regulatory controls and financial discrimination as the price of exercising their First Amendment rights? Or should they be permitted an economically free choice in education?

Academic Freedom

Academic freedom was a popular slogan used by college professors and administrators 20 years ago to resist attempts by parents, taxpayers, trustees, or donors to influence campus conduct or curriculum. Under this theory, the campus is a privileged sanctuary which need not conform to values or guidelines set by any outside forces, even if such persons are financing the institution.

Although the theory contradicted the old adage that he who pays the piper calls the tune, the academic elitists pretty well established their immunity from outside influences. The 1957 Supreme Court case of *Sweezy v. New Hampshire* held that the State Attorney General was without authority to question Professor Sweezy whether he advocated Marxism in his lectures at the state university.

Today, however, college faculty and administrators have surrendered without a fight to the federal bureaucrats who have undertaken to supervise and regulate almost every aspect of higher education in both tax-supported and private institutions. Federal regulations govern student admissions, financial aid, confidential records, university research, faculty hiring, salaries and retirement. Title IX regulations specify requirements on facilities, equipment, access to academic programs, extracurricular activities, and athletics.

Federal regulations have become a major cost to the colleges. Some duplicate and overlap one another, some are confusing and ambiguous, others are meddlesome and trivial. In 1977 when Secretary Califano threatened 49 school districts and colleges with a cutoff of funds for failing to fill out their Title IX forms, it turned out that half the schools on the hit list had never received any HEW money.

HEW's behavior in trying to stretch its power beyond what Congress intended is a good lesson in how, if you give the bureaucrats an inch, they will take a mile. The Education Amendments of 1972 extend federal control to "any educational program or activity receiving federal financial assistance." But HEW promptly wrote the regulation to extend to "any educational institution receiving federal assistance," and now tries to regulate every program in every college receiving any funds for any program or activity.

HEW is also trying to extend its power by defining "receiving federal financial assistance" to include any college enrolling any student who receives any loan or grant, even though the college never touches the federal money. HEW regulations do not distinguish between massively supported colleges and the small independent and religious colleges which may enroll only a handful of students who receive government loans.

Probably aware of the weakness of its position, in May 1978 HEW sent a letter to colleges and universities asking them to sign an agreement "in order to be able to participate" in student assistance programs. If HEW has the legal power over small colleges which receive no direct federal aid, it doesn't need the colleges to sign a letter agreeing to submit to federal control. If HEW doesn't have the power under our laws, it is a highhanded piece of bureaucratic arrogance to try to bluff the colleges into complying.

So far there has been no federal regulation of curriculum, but many believe this is the next step. The Justice Department has already compelled the American Institute of Real Estate Appraisers to make changes in its textbooks and training courses in regard to what it teaches about the economic significance of a racially changing neighborhood.

Several years ago, Congress debated requiring certain course work for all medical students. There was also a vigorous but unsuccessful attempt to assert HEW curriculum control in its Title IX regulation by requiring the elimination of sexist materials in textbooks.

Colleges and universities have acquiesced in the galloping federal control because they fear a cutoff of

federal funds and/or being singled out for bureaucratic harassment or litigation. But federal regulations about schools, colleges and universities should be viewed as just as suspect as federal interferences with newspapers, public meetings, or any other exercise of our right to free speech -- at least by those who believe in academic freedom.

Title IX

Title IX of the Education Amendments of 1972 is the basic Federal law that prohibits discrimination based on sex in our nation's schools and colleges, kindergarten through graduate school. While a few Congressmen from both ends of the political spectrum voted against this omnibus law, there is no record that any opposed Title IX.

When this law was passed, however, Congress carved several exceptions from the comprehensive mandate against sex discrimination, namely, admission to single-sex schools and colleges, military and merchant marine schools, and seminaries. The persuasive arguments made for these exceptions show clearly that Congress was not willing to acquiesce in demands for a "gender-free" or unisex educational system.

There are more than a hundred all-women's colleges and a few all-men's colleges. Congress saw no reason to eliminate freedom of choice to attend those sex discriminatory colleges. Likewise, the law permits colleges to maintain sex-segregated dormitories.

When the Department of Health, Education and Welfare issued its preliminary regulation on Title IX in 1974, it ordered fraternities and sororities to be sex-integrated because fraternities discriminate against girls and sororities discriminate against boys.

Former Congresswoman Edith Green, the original sponsor of Title IX, stated that "it wasn't designed to do any of this nonsense," but HEW Secretary Caspar Weinberger argued that the law required it. In record speed, Congress passed an amendment to exclude from Title IX fraternities, sororities, YMCA, YWCA, Girl Scouts, Boy Scouts, Camp Fire Girls, and Boys Clubs.

In 1975 HEW demanded the sex integration of the high school conferences sponsored by the American Legion called Girls State and Boys State. Although no public funds finance this project, HEW claimed control because the Legion is permitted to put its posters on the school bulletin boards. Congress again amended the law to exempt the Legion conferences.

In 1976 HEW banned father-son and mother-daughter events from public schools because they discriminate on account of sex. Congress speedily passed another amendment stating that Title IX "shall not preclude father-son or mother-daughter activities." In 1977 HEW created headlines with its contradictory rulings on whether a Connecticut school can have an all boys' choir, or under what terms.

The purpose of Title IX, according to its author Mrs. Green, was to bring about equality of opportunity for women and to end discrimination in pay in our nation's schools and colleges. In recent speeches, she has expressed her sad disillusionment with what has happened to Title IX in the hands of the Department of Health, Education and Welfare.

Mrs. Green said that Title IX was not designed to force the integration by sex of physical education classes, choirs, father-son or mother-daughter banquets, fraternities or sororities. "In each one of these instances," she said, "the regulation grew out of the fertile imaginative brain of someone in the administrative branch of the government."

Our experience with Title IX shows clearly that there are many exceptions that reasonable people want in an absolute mandate against sex discrimination. It shows also that, unless restrained by law, the HEW bureaucrats will constantly try to force their unisex goals upon us.

It is time to reevaluate the great power HEW has to withhold federal funds -- a power that forces schools and colleges to comply with mischievous HEW regulations without any rational discussion of alternative methods of achieving desirable goals.

Snow and Crime

A favorite liberal dogma, oft repeated but never proved, is "poverty causes crime." The liberals insist on blaming criminal conduct on the economic and social environment instead of on moral failure.

After the New York City blackout of 1977, the liberals added another dimension to their analysis. Darkness causes crime. As UN Ambassador Andrew Young excused theft: "When the lights go out, everybody steals."

Those who believe in economic determinism and situation ethics now have a new cause of crime: snow. Or, to paraphrase Andrew Young, when too much snow falls, everybody steals.

One would think that, for normal children and teenagers, a big, unexpected snowfall would bring a day of good, clean (no pun intended) fun. What could be more exciting than a snow holiday with plenty of snowballs, snowmen, sledding, and similar delights!

When 20 inches of snow fell on Baltimore in February, looters broke into and vandalized more than a thousand stores. More than 330 looters were arrested and the city had to enforce a strict 7:00 p.m. curfew in order to avoid even more property destruction.

Our nation's capital, which was hit the same day with 19 inches of snow, was spared the same fate chiefly because the farmers (encamped in Washington, D.C. to protest low farm prices) used their tractors to clear streets and parking lots and to pull crowded buses and cars from snow banks. They more than repaid the city for the alleged damage their tractors had done to the Mall.

The snow did not break the store windows or carry off the merchandise. It was people --mostly young people whose years in school came after the U.S. Supreme Court banished prayers and moral training from public schools. Probably nobody ever taught them that it is morally and legally wrong to take property that belongs to someone else.

Society is necessary for human survival. Mutual consent and consensus on a system of thought and code of conduct are necessary to keep conflict to a manageable level and to develop a legal system which promotes the efficient functioning of a sophisticated society.

Force, represented by the police, can only protect us from a tiny percentage of criminals. In order for a society to function effectively, the overwhelming majority of its members must agree on fundamental rules of conduct. Among these rules, in the American system, is a respect for private property.

Justice John M. Harlan, in the U.S. Supreme Court case of *Boddie v. Connecticut*, wrote in 1971: "Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement

of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitely settle their differences in an orderly, predictable manner. . . . It is this injection of the rule of law that allows society to reap the benefits of rejecting what political theorists call the 'state of nature'."

Our nation has developed one of the world's finest legal systems for the "enforcement of a system of rules." Its prerequisite, however, the "erection . . . of a system of rules," is crumbling because it is not being effectively transmitted to the next generation in the schools. If the schools do not teach that it is wrong to steal and destroy other people's property, then the legal system will not be able to fulfill its part of the task.

The principal goal of the National Education Association this year is to persuade Congress to create a federal Department of Education. The NEA wants this new Department because it will channel more money into schools. The Department would be expected to open its doors with 16,000 employees and a $15 billion a year budget.

What our educational system needs today is more moral training, not more money. Unless a code of moral conduct is taught in the schools, we will lose the benefits of civilization and sink to that unenviable condition called "the state of nature" where everybody steals whatever he can get away with.

The Seven Deadly Sins

For centuries the Seven Deadly Sins have been considered a quaint artifact of the Middle Ages, useful to medieval scholars but beneath the dignity of sophisticated modern man. Every king and peasant in Christendom used to be able to recite the 1,300-year-old list: pride, covetousness, lust, anger, gluttony, envy, and sloth. Ask a high school student today to name them, and he will answer you with a blank stare.

Indeed, the whole concept of sin has faded out of American public life. In a misguided attempt to protect freedom of religion, the Supreme Court has outlawed any teaching in the public schools that smacks of religion, morality, God, or an afterlife. The World Book Encyclopedia does not even list an entry for sin. The result of sin's fall from fashion has been a shift of blame for misdeeds away from the individual to the entire society. While disclaiming responsibility, today's "Me Generation"seeks the short-term gratification of sexual promiscuity, childlessness, and material pleasure.

It is encouraging, therefore, to read of a political journalist who is trying to revive the Seven Deadly Sins. In *The Seven Deadly Sins Today* (New Republic Books), Henry Fairlie, a frequent contributor to the *Washington Post* and the *New Republic*, discusses the need for returning the notion of sin to everyday American life.

In particular, the Seven Deadly Sins are applicable to modern America because they all are forms of selfishness. The main enemy in the book is the present cult of the individual. "Looking at your life through the Seven Deadly Sins takes you out of yourself and places you in a really active relationship with your neighbors, your friends, your family, your society. That stops you from being selfish," Fairlie explained recently. He comes down a bit hard on jogging and cooking, but he is on target in condemning the pride of today's pseudo-religious self-improvement programs and the lust in singles bars.

"After the sort of relativism of the last 150 years, culminating in phrases of the '60's like 'everything is relative,' [my readers] are looking for some shared absolute values," he added.

Fairlie points out that the concept of sin should liberate rather than intimidate, since it sets an ideal standard of behavior and holds each person responsible for his actions, instead of that nebulous culprit called "society." "There is something enlivening in this, which reminds us that our lives, to a degree that counts, are always ours to make; that we may still choose to be more whole; that there is something more and better in us, on which we can call, than we have so far chosen to become. The understanding that we sin is a summons to life," the book states.

Other prominent social critics have advanced Fairlie's ideas in recent years, notably psychiatrist Karl Menninger in *Whatever Became of Sin?* and Harvard sociologist Daniel Bell. In a 1977 lecture entitled "The Return of the Sacred?" Bell expressed concern over what he calls the "Great Profanation."

The phenomenon of profanation, according to Bell, began in the 17th Century and is characterized by the growth of the idea of an "unrestrained self"; the decline of religion as a restraint on human impulses; and the decline of the belief in Heaven and Hell. Bell suggests that we are in a spiritual crisis which requires a religious answer, and he has "no doubt" that this answer -- a return of the sacred -- will soon arrive in world culture. "The exhaustion of Modernism, the aridity of Communist life, the tedium of the unrestrained self . . . all indicate that a long era is coming to a close," he said. "We are now groping for a new vocabulary whose keyword seems to be limits."

Religion and, more specifically, the doctrine of sin are all about limits on self-gratification. Let us hope that, in spite of the Supreme Court's banning of prayer and moral training in the public schools, the American people will once again recognize the existence of sin and the power it gives us to shape our destinies through free will and individual responsibility.

Phyllis Schlafly taught all her six children to read at home by the phonics method, and then entered them in school in the second grade. Their subsequent records in schools and colleges testify to the success of her "home and phonics" project.

Phyllis Schlafly earned a B.A. with Honors from Washington University in St. Louis in three years while holding a 48-hour a week job as a gunner and ballistics technician at the largest ammunition plant in the world. She received her M.A. from Harvard University, and recently received her J.D. from Washington University Law School. She is a member of Phi Beta Kappa and Pi Sigma Alpha.

In addition to her principal occupation as wife and mother, Mrs. Schlafly is the author of nine books, the publisher since 1967 of the *Phyllis Schlafly Report*, and a syndicated newspaper columnist. She has testified before many Congressional and State legislative committees, and is a frequent speaker on college campuses.

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