

THE BIBLE, RELIGION, AND THE PUBLIC SCHOOLS. By Donald E. Boles. Ames: Iowa State University Press, 1961. Pp. ix, 308. \$4.95.

THIS book is written by a non-lawyer. Its author is a member of the political science faculty at Iowa State University and Chairman of the Iowa Governor's Commission on Human Relations. Unquestionably his analysis of the legal aspects of the problem of religion in the public schools leaves something to be desired.¹ Yet, if the book suffers from the deficiencies of non-legal authorship, it also enjoys the benefits thereof. As a review of the reported decisions on the subject it is far inferior to Johnson and Yost's *Separation of Church and State in the United States* (1948), but it provides something not contained in that book. The author realizes that the problem of religion in public education is not merely one of law, constitutional, statutory or decisional, but one of interpersonal and intergroup relations as well. Indeed, it is on the non-legal note that the book begins:

The Eighth Grade pupils of P.S. 7 gradually quiet down after the morning tardy bell has finished ringing. The teacher picks up a copy of the King James Version of the Bible from her desk and announces, "We will begin the school day by reading five verses of the Scriptures as is required by state law." She opens the book and starts reading the Beatitudes from the Book of Matthew in a flat voice. (The state law also requires that the Bible be read without note or comment to avoid sectarian bias.) Harold, the Jewish rabbi's son, squirms uncomfortably as he listens to the words of the New Testament. Micky wonders uneasily about his parish priest's remarks regarding the King James Bible of the Protestants. George, son of "Freethinkers," sits scowling impatiently. Ann, listening intently, finds several things that puzzle her in the reading, but knows that she cannot ask questions, since the teacher is prohibited from commenting. The reading is finished, the teacher replaces the book, and the atmosphere of the classroom is cleared. But is it?

There is an air of simplicity about this presentation of the problem, yet there is a basic validity to it. Even from a purely legalistic approach, the psychological consequences of religious practices in the public schools as they affect

1. For example:

The court [Hackett v. Brooksville Grade School Dist., 120 Ky. 608, 87 S.W. 792 (1905)] concluded that neither the prayer nor Bible reading constituted sectarian instruction, since the children were not compelled to attend the exercises. P. 72.

The Kentucky constitution provides that no person "shall be compelled to attend any place of worship," and a Kentucky statute forbids the teaching of any "sectarian . . . doctrine" in the public schools. The court held that neither of these provisions was violated. Obviously, whether or not particular teaching is sectarian does not depend on whether children are compelled to attend.

The author's lack of legal training constitutes inadequate excuse for some more egregious errors. For example: "Judge Field [*sic*] dissented alone. He followed Justice Reed's opinion in the McCollum case." P. 162. Judge Fuld did dissent in *Zorach v. Clauson*, 303 N.Y. 161, 100 N.E.2d 463 (1951), but he could hardly have followed Justice Reed's opinion in *Illinois ex rel. McCollum v. Board of Education*, 33 U.S. 203 (1948), for Justice Reed dissented because the Supreme Court invalidated the Champaign released time program while Judge Fuld dissented because the New York Court of Appeals refused to invalidate the New York City released time program.

children of religious non-conformists are not irrelevant to a resolution of the constitutional issues.² There unfortunately does not appear to be any reported research on the question and it still remains an area for useful and meaningful investigation by social psychologists. There is, however, in some of the more recent litigation sufficient opinion evidence by qualified psychologists to support the assumption that religious practices in the public schools result in some psychological harm to many children of parents belonging to minority religions or to no religion.³

This fact may entitle the child to be excused from participation in the religious practice, but does it require that the practice itself be eliminated? In *West Virginia State Board of Education v. Barnette*,⁴ the Supreme Court held that children could not be compelled in violation of their conscience to salute the flag or to pledge allegiance to it. This was all the relief sought by the plaintiffs; they did not demand that the practice be enjoined. Yet from the Court's opinion it is quite clear that they would not have been entitled to such relief had they sought it.⁵ Should not the same reasoning be applied to Bible reading and other religious practices in the public schools—*i.e.*, excuse the dissenting child but permit the exercise for children wishing to participate?

The objection to this solution of the problem lies in the fact, supported by creditable expert opinion,⁶ that the act of separating oneself from the school community on religious grounds is itself likely to cause psychological harm to many children of minority religions or no religion. But does even this fact require a court to enjoin Bible reading or other religious exercises in the public schools? Must the schools refrain from teaching anything that might hurt the religious sensibilities of some child? Is it required, for example, to refrain from teaching the germ theory of disease simply because there is a Christian Scientist child in the class who would be embarrassed and uncomfortable if it is taught in his presence and equally embarrassed and uncomfortable if he were excused from the room so that it might be taught in his absence? Justice Jackson, in his concurrence in *People ex rel. McCollum v. Board of Education* recognized this dilemma in his remark that "it may be doubted whether the Constitution, which, of course, protects the right to dissent, can be construed also to protect one from the embarrassment that always attends nonconformity, whether in religion, politics, behavior or dress."⁷

Coupled with this dilemma is another, also recognized by Justice Jackson in his concurrence in the *McCollum* case,—the dilemma of the reality of an edu-

2. See *Tudor v. Board of Education*, 14 N.J. 31, 100 A.2d 857 (1953), *cert. denied*, 348 U.S. 816 (1954); *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 92 N.E. 251 (1910).

3. See transcripts of trial testimony in *Tudor v. Board of Education*, 14 N.J. 31, 100 A.2d 857 (1953); *Baer v. Kolmorgen*, 14 Misc. 2d 1015, 181 N.Y.S.2d 230 (Sup. Ct. 1958); *Chamberlain v. Dade County School Board*, Circuit Court, Dade County, Florida, Docket No. 596428 (1961).

4. 319 U.S. 624 (1943).

5. *Id.* at 630.

6. *Supra* note 3.

7. 333 U.S. 203 at 233 (1948).

cation which sedulously avoids all reference to religion, one of the most important realities of life. Said Justice Jackson:

Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a "science" as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.⁸

While Professor Boles recognizes both dilemmas, he does not give them the consideration they merit. Actually, they are not insoluble. The First Amendment, though adopted before the era of compulsory universal education, does not require the public school system to stultify itself by pretending that religion does not exist. The Amendment sought only to establish in the responsibilities of government a distinction between the sacred and the secular, between church and state, and it commands only that all institutions of the state, including its public school system, observe and honor that distinction. Of course, the distinction, like all human distinctions, cannot always be precise and exact. Undoubtedly there are instances—public school programs for teaching moral and spiritual values is such a one—where both the sacred and the secular assert reasonable claims of jurisdiction. But if the difficulty of division between what is and what is not properly within government competence requires or justifies a refusal to make a division, then the only alternatives are anarchy or totalitarianism.

The answer to the dilemma lies in the realization that religion itself may be a secular subject. Nothing in the Constitution requires public school authorities to remove all matter relating to religion from the curriculum. It does not, for example, prohibit the study of the Bible as a work of literature, or the *Missa Solemnis* as a work of music, or *The Last Supper* as a work of art. Nor does it command that the influence of religion upon human history shall not be taught. No violation of the First Amendment is involved in any of these since literature, music, art and history are all secular subjects properly within the competence of the public school teaching authorities.

It is to this type of teaching that Justice Jackson's remark concerning the difficulties of dissenters is pertinent. A Jehovah's Witness child who refuses to salute the flag (Justice Jackson wrote the majority opinion in the *Barnette*

8. *Id.* at 235, 236.

case) or a Christian Scientist child who refuses to attend the biology class may suffer some embarrassment because of their exercise of their constitutionally-protected right of religious nonconformity. But since flag saluting and biology are generally considered to be acts of secular conduct there is no requirement that the school discontinue the activity.

Where, however, an act of devotion or religious commitment is involved, the situation is entirely different. If the Bible is read not as a work of literature but as the word of God, the First Amendment places it outside the jurisdiction of government, and the practice might not constitutionally be engaged in even if there were no objection on the part of any parent and even if the public school community were religiously homogeneous.

Professor Boles' chapter, "Religious Group Attitudes and Pressure," is perhaps the best in the book, although here too he makes a number of egregious errors. He notes one of the most interesting phenomena in American religious history—the almost complete turnabout of American Catholicism on the issue of religious teachings and practices in the public school. For almost a century the Catholic Church and community had been perhaps the chief opponent of religion in the public schools, and the secularization of American public education is in large measure attributable to church-instigated or encouraged litigation by Catholic parents and to other forms of Catholic action. Today the situation is completely reversed, and it is the organs of the Catholic Church that are most articulate in attacking secularism in public education and defending religious teachings and practices in the public schools. The factors that may have caused this complete reversal are unfortunately not explored by Professor Boles.

The chapter on "Educator Attitudes" is rather meagre and dated. True, there is not too much published literature on current educators' views on religion in the public schools but there is enough available for a treatment of the subject less superficial than that contained in this book. However, the fact that the views of educators is deemed relevant in a book devoted largely to the law marks a degree of progress. In most of the court cases on the subject of religion in the public schools that this reviewer has tried he has found trial courts to have an unconcealed impatience with, if not hostility to, the views of public educators. A trial judge who welcomes expert opinion in the field of medicine or mechanics generally resents it in the field of education. He deems the question of religion in the public schools exclusively one of law and does not recognize the possibility that ascertainment of that law may be helped by a consideration of the educational consequences of the assailed practice.

On the whole it may be said that Professor Boles' book manifests a recognition of the relevance and importance of the less obviously legalistic aspects of religion in public education. For this we should be grateful although his treatment of these aspects still leaves much room for further consideration.

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