AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS

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TROUBLE DOWN UNDER:

THE VIEW FROM AMERICA

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Below is the column Edd Doerr, President of Americans for Religious Liberty, sent to Free Inquiry magazine, to which he has been a regular columnist for several years.

Toward the end of the 18th century the American national government's founders, following the lead of Jefferson and Madison in Virginia, incorporated in the Constitution 's First Amendment these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise". In 1802 Jefferson explained that these words built "a wall of separation between church and state." In 1878 the Supreme Court accepted this interpretation as authoritative. In the 1947 *Everson* and later rulings the Court continued to regard Jefferson's explanation as definitive. As recently as 1952 Congress approved the constitution of the Commonwealth of Puerto Rico, which reiterates the First Amendment language and even adds "There shall be complete separation of church and state."

Toward the end of the 19th century Australia's constitutional designers, consciously following the American example, incorporated into their 1901 constitution these words in Section 116:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and [borrowing from Article VI of the US Constitution] no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

So far so good. But . . .

Some years after World War II, under Australia's rather different national election system, the Catholic bishops began a push to get government funding for church-run private schools. Using a small religious political party, the bishops were able to get the two major parties to begin diverting public funds to the church schools. Alarmed, the supporters of public schools and church-state separation formed the Council for the Defence of Government Schools (D.O.G.S.) to offset this push but were unsuccessful. Finally, in the early 1970s the D.O.G.S. group, inspired by developments in the US, went to court to use Section 116 to block church school public funding. I might note that Americans Leo Pfeffer, C. Stanley Lowell and I were peripherally involved in the matter.

In early 1981 Australia's High Court, after years of expensive and troublesome effort by the D.O.G.S., ruled 6-1 in favour of government funding for religious schools. The court refused to look at the obvious intent of Section 116 and allowed British tradition on church-state matters to override the American precedents that were obviously the intent of Australia's constitutional designer. In his brilliant dissenting opinion, Justice Lionel Murphy, a man much like our Justice William Brennan, cited the history of Section 116, the work of

Jefferson and Madison, and such relevant US Supreme Court rulings as *Reynolds* (1878), *Everson* (1947), *Walz* (1970), *Engel* (1962), and *Davis v Beason* (1890). The full story behind the Australian school aid question and the D.O.G.S. lawsuit is told in detail in Australian lawyer Jean Ely's excellent 2011 book Contempt of Court [italics] (West Melbourne: Dissenters Press, 285 pp, ISBN 978-0-9870460-0-0 and obtainable from Arena Publications, Kerr Street Fitzroy). Ely was very much involved in the whole affair from early on and writes history from the inside. Further information on this matter down under is available on the web site of the Australian Council for the Defence of Government schools.

Ely gives a lot of credit in the D.O.G.S. effort to activist Ray Nilsen. I recall an incident in the 1980s when Reagan administration officials invited Australian education people to a conference in Washington on tax aid for church schools. Nilsen flew over to attend and I accompanied him to the meeting. When he entered the room the Australian officials went ballistic and shouted that the US officials should expel him from the public meeting. They refused.

Here's where matters stand in Australia today. About 3.5 million kids attend K-12 schools there: 68% in public schools, 20% in Catholic private schools, and the rest in "independent", Anglican and other religious and secular private schools. While total enrolment has grown by about 7% since 2000, public school enrolment slipped from 69% to 68%, while Catholic and "independent" enrolment increased by 11% and 37%, thanks to increasing tax aid from federal and state taxes.

Total spending for all K-12 schools for 2008-2009 was AUS$39 billion, of which $30 billion (79%) was for public schools and $8 billion (21%) for Catholic and other private schools. The non-public schools also received about 43% of operating income from fees, charges, donations and other sources. On average, tax aid to non-public schools amounts to about $5400 per student per year in 2008-2009. And here is an interesting twist: only 11% of public school funding is from the national government, with 89% coming from state and territorial governments; while for Catholic and other private schools 72% of tax funding is from the federal government and 28% from state and territorial governments. So Australian government support for non-public schools is wildly skewed to favour church-run and other private schools.

About 30% of young adults (15 to 24 years of age) from public schools were still studying versus 54% from non-public schools, suggesting that non-public schools serve a more advantaged population. Public funds flood into non-public schools while less advantaged kids in public schools go begging. And the same is happening with increasing frequency here in the US. The preceding figures, by the way, are from the Australian Bureau of Statistics.

Et aussi en France

In 1905 France separated church and state by law after centuries of often violent strife over religion and religious freedom. But beginning in 1959 under the Debre law France began subsidizing Catholic and a few other private schools. France's 2013 education budget includes over 7,000,000,000 euros for Catholic and a few other nonpublic schools.

Indiana's Black Tuesday

On Tuesday, March 26, 2013, the Indiana supreme court unanimously upheld the state's Republican instituted school voucher plan, the most expansive in the US, under which most of the public funds flow to Catholic and a few other church-run schools. The court essentially thumbed its nose at the obvious meaning and intent of Article I, Sections 3, 4, and 6 of the state constitution, which are supposed to protect "the rights of conscience" and the right not to be forced to support religious institutions and to prohibit the flow

of public funds to “any religious or theological institution”. The rationale is that the public funds are “dereligionized” or sanitized by being passed briefly through the hands of families. A worse example of magical thinking would be hard to find. I am embarrassed to be a native Hoosier.

A front page article in the New York Times [italics] on March 28 (“States Shifting Aid for Schools to the Families”) summarized the various state programs for diverting public funds to religious and other special interest private schools through vouchers and tax credits (tax-code vouchers) that are being pushed in Congress and state legislatures almost exclusively by Republican lawmakers. Lost in all this hubbub is the fact that most Americans clearly oppose this diversion of public funds. How do we know? Because over the past half century tens of millions of voters from coast to coast in 27 state-wide referendum elections have rejected vouchers, tax credits and other similar schemes by an average margin of two to one, most recently in Florida in November 2012. The details may be accessed in my long article “The Great School Voucher Fraud” at arlinc.org.

Rerouting public funds to sectarian schools is a direct assault on religious freedom, church-state separation, and democratic public education. It also damages our society by fragmenting our school population along religious, ideological, class, ethnic and other lines. Americans of all persuasions need to stand up and oppose these threats to our most important values and institutions. The courts will not save us.

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