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**RUITER, Michael Thomas, 1928-
EDUCAID--A RATIONALE AND A MODEL FOR
GRANTING FINANCIAL AID TO THE NON-
PUBLIC SCHOOL STUDENTS IN MICHIGAN.**

**Michigan State University, Ph.D., 1969
Education, general**

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1970

EDUCAID
A RATIONALE AND A MODEL
FOR GRANTING FINANCIAL AID TO THE
NONPUBLIC SCHOOL STUDENTS IN MICHIGAN

By

Michael Thomas Ruiter

A THESIS

Submitted to

Michigan State University

in partial fulfillment of the requirements

for the degree of

DOCTOR OF PHILOSOPHY

College of Education

1969

ABSTRACT

EDUCAID

A RATIONALE AND A MODEL FOR GRANTING FINANCIAL AID TO THE NONPUBLIC SCHOOL STUDENTS IN MICHIGAN

By

Michael Thomas Ruiter

Nonpublic elementary and secondary schools have always been a significant part of the total educational resources in the United States. These schools serve millions of American youth each year. In the State of Michigan 315,000 children are enrolled in the nonpublic schools during the 1968-69 school year. Nationally the percentage of nonpublic school students is about the same as it is in Michigan . . . approximately one out of every seven school children.

Until the 1960's nonpublic schools received scant audience in the educational forum and only token public funds were granted to them in a few states. However, recent decisions by the United States Supreme Court, acts passed by several states, and studies conducted by the State Department of Education in the several states all suggest that before long the nonpublic schools could be the recipients of public tax funds.

One of the most significant educational issues being debated by the citizens of our state and the nation today is the question of tax support for nonpublic schools. The debate will eventually be settled in the courts; but aside from all the arguments pro and con, the fact is simply that a revenue crisis faces the Michigan private and parochial elementary and secondary schools. Supporters of nonpublic schools are caught in a financial bind, and each year more schools are forced to close as a result of inadequate funding.

Michael Thomas Ruiter

Unless public assistance is proffered soon most of them will have no option but to terminate operations.

The role of nonpublic education is given historical review, and the evolution of both the public and nonpublic schools in the nation is explained. One of the purposes of this dissertation is to defend Educaid by exploring the philosophical premises which undergird the nature of education, and the meaning of educational freedom in the United States. The major purpose of the study is the development of a philosophically and administratively defensible model for providing public financial assistance to the students attending the nonpublic schools in Michigan. Rationale for the Educaid thesis is provided in a series of arguments, and a chapter is dedicated to the constitutionality question.

The proposed model advocates grants be paid to the parents of children enrolled in nonpublic schools, and the Intermediate School District is the agency through which the program is to be administered. As a result of this study the author is persuaded that the nonpublic schools have made an appreciable contribution to the education of thousands of children for which they have received no public support, and little appreciation. For generations they have suffered financial disability and social injustice, and their proponents are now "pressing" society for educational freedom without economic penalty. Public funds for nonpublic education appears to be constitutional; it is just, reasonable, and economically feasible. Recommendations for subsequent action to benefit all school children in the state conclude the study.

ACKNOWLEDGMENTS

The author gratefully acknowledges the assistance and cooperation of his guidance committee. Included were:

Dr. Fred J. Vescolani
Dr. James Heald
Dr. Dale Alam
Dr. James McKee

Special credit is given to Dr. Vescolani, committee chairman, for his counsel and encouragement throughout the author's tenure as a student at Michigan State University, and especially during the writing of this study.

Appreciation is also extended to the following persons who assisted in assimilating data, or offered constructive ideas:

Representative Peter Kok
Mrs. Claire Zuk
Dr. Virgil C. Blum
Dr. William Brickman
Dr. John Vanden Berg

My wife Jean has earned a special tribute. Her encouragement and willingness to shoulder alone the responsibilities of our home during my stay in East Lansing enabled the completion of this work. In addition, she is to be credited with typing the manuscript.

Michael T. Ruiter

May, 1969

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CHAPTER I

INTRODUCTION

Nonpublic* elementary and secondary schools have always been a significant part of the total educational resources in the United States. These schools serve millions of American youth each year. In the State of Michigan approximately 315,000 children attend nonpublic schools. They represent thirteen and three-tenths percent of all Michigan children from kindergarten through the twelfth grade. Nationally the percentage of nonpublic school students is about the same as it is in Michigan . . . approximately one out of every seven school children.

In 1968 a thorough study of Michigan's elementary and secondary schools entitled "School Finance and Educational Opportunity in Michigan" was published by the Michigan Department of Education. This significant work, under the direction of Dr. Alan Thomas of the University of Chicago, contains more than ninety pages devoted to the contribution and needs of the nonpublic schools in the state. Dr. Donald Erickson, one of the participants in this study, wrote a chapter regarding the nonpublic schools. In his initial observations he states that . . . "no comprehensive study of school finance in Michigan can logically ignore the state's nonpublic schools."¹ In reference to the large number (more than

*Nonpublic schools are defined as schools which although subject to pertinent regulatory controls of the State, are not governed by public agencies, but are operated by a church related or nonsectarian organization or association. For purposes of this study nonpublic schools will include all state approved independent, parochial, parent-owned, and non-profit private schools which provide a full, daytime program of education for children in grades kindergarten through grade twelve.

1. Donald A. Erickson, "Nonpublic Schools in Michigan" in School Finance and Educational Opportunity in Michigan, J. Allan Thomas, ed., (Lansing, Michigan: Michigan Department of Education, 1968), p. 209.

300,000) of children who are enrolled in nonpublic schools Erickson wrote,

These pupils demand consideration in their own right; the quality of the education they receive in nonpublic schools will affect the general welfare. The state could hardly pretend not to notice if nonpublic schools were able to underwrite only grossly inadequate programs for nearly one-seventh of all future citizens.²

Until the 1960's nonpublic schools received scant audience in the educational forum and only token public funds were granted in a few states. Recent decisions by the United States Supreme Court (ex. Board of Education v. Allen on appeal from the Court of Appeals of New York, re textbooks on loan to nonpublic school students, June 10, 1968), acts passed by several states (ex. Pennsylvania Nonpublic Elementary and Secondary Act for the purchase of instruction in secular subjects, June 19, 1968), and studies conducted by the department of education in the several states (ex. Michigan School Finance Study, 1968) all suggest that before long the nonpublic schools could be the recipients of public tax funds.

Political leaders in the nation and the state have voiced unmistakable concern for the financial welfare of the nonpublic schools. Richard M. Nixon while campaigning for the presidency made the following statements in Pittsburgh, October 28, 1968:

New conditions and new times require us to constantly re-evaluate our programs and policies. That is true as well about the relationship of government to our religiously affiliated schools. There is a significant role for religiously-affiliated schools in the future of our country. Along with state schools and other private schools, they have grown side-by-side in serving American people. Change has brought a new priority to the education of our young people. We must maintain a diversity of approaches to meet this national challenge.

I am very well acquainted with the concern that some have about any kind of public assistance to parochial schools. It is a complex problem, full of social and legal difficulties. But our schools today are faced with new responsibilities, new challenges and new burdens. In many cases, religious schools are performing indispensable community services and would seem to merit public support.

2. Ibid, p. 209.

In the meantime, a new Administration will proceed with the new approaches outlined in the Republican Platform and in my radio speech of last week - including federal funds in support of state-prepared, state-administered aid plans for private school pupils. For as I said then, it would be a tragedy of the first magnitude if private schools were driven out of existence.³

Congressman Gerald R. Ford, House Minority Leader, made these statements in Washington in an interview with the author on January 13, 1969:

Nonpublic schools have made significant contributions to the community, state and nation. I feel that the federal government has found the proper way for aiding nonpublic schools. That way is for the government to assist students, whether they are in public or private institutions. This formula has worked well on the federal level and it could be the way for states to make a contribution to education on a broad basis, and could appropriately be used by the states for nonpublic schools.⁴

In his State of the State message to the 75th Michigan Legislature Governor-elect William G. Milliken candidly expressed his views about the "plight" of the nonpublic schools. He said:

We must be diligent in our efforts to maintain diversification in education. Strong private and independent institutions have long demonstrated their value in all walks of American life. It would be tragic if circumstances should cause the private schools and colleges, religious-affiliated or otherwise, to deteriorate and disappear. This prospect is before us, and has led to proposals for State aid to education in nonpublic schools. You will be considering such proposals in the current session. I tell you candidly that I view the plight of the nonpublic school with deep sympathy.⁵

Considering the afore-mentioned facts and official expressions from government officials it is probable that very soon the Michigan legislature will enact a bill (s) to provide aid to the students enrolled in nonpublic schools. If it should both the public and nonpublic educational systems will be affected and administrative adjustments will be made.

3. New York Times, October 28, 1968.

4. The Grand Rapids Press, January 14, 1969.

5. Release, office of Lt. Governor Wm. G. Milliken, January 9, 1969.

A. STATEMENT OF THE PROBLEM

One of the most significant educational issues being debated by the citizens of our state and of the nation today is the question of tax support for nonpublic schools. The debate will eventually be settled in the courts; but aside from all the arguments pro and con, the fact is simply that a revenue crisis faces the Michigan private elementary and secondary schools. Unless public assistance is proffered soon most of them "could eventually be forced to close through sheer financial pressure."⁶

The "Children's Education Bill" designed to benefit children attending nonpublic schools was introduced in the Michigan Legislature in February, 1968. Although the Senate and House Education Committees took no action on the Bill, political pressure and general public interest have retained the concern and attention of our representatives and senators. On January 16, 1969 a joint legislative committee, under the chairmanship of Senator Anthony Stamm, released a report and recommendations for aid to the nonpublic schools. Other members of the house and senate have indicated their intentions to submit comparable proposals. Pending a means to raise the necessary funds, it appears very likely that the 75th legislature will approve a public act providing assistance to Michigan's nonpublic school children.⁷

Supporters of nonpublic schools are caught in a financial bind from which they cannot extricate themselves. Most of the private schools in the state are currently operating in a severe financial crisis. As a result of inadequate funding, each year more nonpublic schools have been forced to close. From the turn of the century until 1965 (with the exception of the depression years), private and parochial school population has continued to increase. However

6. Erickson, op.cit., pp. 265, 324.

7. Facts and opinions in this paragraph are based on conversations held with state senators and representatives in January, 1969.

since the 1965-66 school year the number of students in Michigan's nonpublic schools has continued to decrease. And each successive year the student loss is greater. In the 1964-65 school year 361,000 students were enrolled in these schools; four years later the enrollment had declined almost thirteen per cent so that the current (1968-69) population is 315,000. Over the past four years the student loss has been 46,000 students who have now transferred to the public schools to continue their education.

Circumstances which force students to transfer from the nonpublic to the public schools in the state at the same time compound financial problems in the public sector. Those 46,000 students "now enrolled in public schools are costing Michigan taxpayers -- state and local -- an additional \$28.8 million dollars. If the present trend continues, the figure on that price tag will reach the \$46 million mark next year . . . \$70 million the following year . . . and \$100 million in the 1971-72 school year." ⁸

The problem to be studied by the author is the development of a model for providing public financial assistance to the students attending the nonpublic schools in Michigan. This model will be framed within a context which identifies historical precedence and philosophical defensibility for such aid. It will also be supported on the grounds that partial investment in the education of nonpublic school children will be more economical to the tax-paying public than paying the full cost for educating these children in public schools.

In an effort to wrestle meaningfully with the many ramifications of this complex problem, attempts will be made to answer the following questions:

1. Can the state grant assistance to nonpublic schools when it is recognized that the nonpublic school curriculum is permeated with religious values?

8. Data obtained from a Report of the Joint Legislative Committee on Nonpublic schools of the Michigan Legislature, January 16, 1969, pp. 8-10.

2. Does aid to the nonpublic schools violate the principle of separation of church and state?
3. In a pluralistic society what is implied by a freedom of choice in education?
4. Would Educaid encourage divisiveness in our society?
5. Would Educaid result in needless duplication and waste of tax dollars?
6. In what form should aid be granted to students attending nonpublic schools?

B. PURPOSE AND SIGNIFICANCE OF THE STUDY

It is the author's thesis that all educational institutions which promote the general welfare of society should receive tax support for the services which they render. In-as-much as both public and nonpublic schools are educating children under the supervision of the state, and are thereby serving the public welfare in that they provide an "educated" citizenry, both should command the financial support of the state.

One of the purposes of this dissertation is to defend Educaid by exploring the philosophical premises which undergird the nature of education, and the meaning of educational freedom in the United States.

The major purpose of the author in proposing this study is to provide a working model which could be used by the state and the school districts as a vehicle for granting aid to students attending nonpublic schools.

Should aid be forth-coming, the means by which it is administered, and the impact which will be absorbed in both the public and nonpublic schools, are very important considerations. Yet few educators to date have voiced their convictions with supportive data on the subject. This I hope to achieve; if successful the study should be a meaningful addition to educational administration both in theory and practice. In summary, the significance of this study could be the creation of an educational rationale for granting financial aid to all of Michigan's school children, and a model for the administration of Educaid.

C. DESIGN OF THE STUDY

This study will combine the use of historical and descriptive research. It will provide facts and opinions about public financial aid to the nonpublic schools in the United States in general, and in Michigan in particular. According to Cook the nature and purpose of historical research in education is described as follows:

A knowledge of history has often been glibly defended as enabling us to avoid making the same mistakes in the future, or in some cases even to predict the future. There is a grain of truth in this, but it makes more sense to think of an understanding of history as providing us with a perspective on the future. Generally problems involving educational policy or processes can be studied by historical methods. Important issues facing education, such as the present ones of state-church relations and integration of public schools, must be approached with wisdom and understanding in order to move toward their solution. The historical background of these issues is invaluable in supplying wisdom and understanding.⁹

John W. Best gives the following definition of descriptive research:

Descriptive research describes and interprets what is. It is concerned with conditions or relationships that exist; practices that prevail; beliefs, points of view, or attitudes that are being felt; or trends that are developing. The process of descriptive research goes beyond mere gathering . . . of data. It involves an element of interpretation of the meaning or significance of what is described.¹⁰

One of the major purposes of this study is to construct a model by which financial aid could be channeled to the children attending nongovernmental schools in the State. In a logical approach to that primary objective it is essential to review the history of American education and to explain the educational philosophy which supported the evolvement of public and private education from the forming of the nation to the present time. This objective presupposes a defense for aid which can be supported by historical reference and philosophical logic. A

9. David R. Cook, A Guide to Educational Research, Boston: Allyn and Bacon, Inc., 1965, pp. 15, 16.

10. John W. Best, Research in Education, (Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1959) pp. 102, 103.

survey of the history of education in the United States and in Michigan will disclose Federal and State subventions to nonpublic schools during various periods in our history. Data will be obtained from the major books, documents, and files on the subject in conventional libraries, from the Michigan Historical Commission, and the State Law Library.

The author will attempt to show that tax funds for the education of children in nonpublic schools have been expended for certain educational services and the teaching of "secular" subjects, and have not yet been declared unconstitutional. He will also deal with the question of parents' freedom of religion in the education of their children under the Constitution. Argumentation will be supported with reference to historical events that surrounded the drafting of our Federal Constitution and Amendments, citation of Supreme Court decisions, and legal opinions.

After surveying the history and philosophy of American education in both the public and private schools, and after submitting philosophical and constitutional support for aid to the nonpublic schools, the various plausible options or formulae by which aid could be granted will be reviewed briefly. Last year Pennsylvania signed into law a "Nonpublic Elementary and Secondary Education Act". Undoubtedly this act will be tested eventually in the Supreme Court; if it stands the Constitutional test, the Pennsylvania school aid formula for nonpublic schools will probably serve as a model for many other states. On January 16, 1969 a Joint Committee of the Michigan Legislature submitted a plan for aiding the nonpublic schools. Other individuals and organizations have conceived proposals ranging from tuition grants to the purchase of secular education services. As interest in the subject increases other concepts will be born, each possessing its peculiar benefits and limitations. A compilation of alternate plans should make possible a comparative analysis for those educators who are interested in studying the options.

Finally the author will design a recommended model or proposed plan which he believes to be a medium by which tax funds could be tendered to the nonpublic school students in Michigan. This in essence will contain an approach to aid which meets constitutional standards, and which provides funds with adequate control without destroying the purposes or identity of the nonpublic schools. The proposed plan will attempt to prescribe a formula which will be simple to administer and void of expensive "red tape".

The following headings will introduce each of the chapters in this dissertation:

- I. Introduction
- II. History
 - 1. Brief history of American education showing the changing purposes from colonial times to the 1960's.
 - 2. History of federal aid to nonpublic schools.
 - 3. History of state aid to students attending nonpublic schools in Michigan.
- III. Rationale for state aid to nonpublic school students.
- IV. Constitutional support for state aid to nonpublic school students.
- V. Means by which state aid could be granted to nonpublic school students.
- VI. Model for granting state aid to children attending Michigan's nonpublic schools.
- VII. Conclusions and Recommendations.

D. ASSUMPTIONS AND LIMITATIONS

The study will be based upon very limited reference to the history of nonpublic schools in the nation, and will deal almost exclusively with the schools in Michigan. Therefore, the applicability of recommendations to other states should be assessed by those who might want to utilize the study, recognizing that it was designed to apply to Michigan in particular.

One of the greatest questions to be raised is the constitutionality of aid to the nonpublic school sector. It would be an idle exercise at best to advance a proposal which obviously could not meet both state and national constitutional standards. This study is being proposed considering the legislative precedents which have been tested and tried in the courts of Michigan and the United States, as they pertain to aid to nonpublic school children. However, no one can be certain that any law is constitutional until it is tested in court. It is assumed that the thesis would stand the constitutional test.

Finally it is assumed that on the basis of interest and concern which has been evidenced by the Michigan legislature (and which has been documented in preceding sections of this proposal), a bill will become a public act providing the proposed financial aid to the nonpublic students in the state. This study will have limited relevance unless in fact a bill will be passed by the legislature in the near future.

E. DEFINITIONS

1. "Nonpublic school" - all state approved independent, parochial, parent-owned, and private schools which provide a full, daytime program of education for children in grades K-12.
2. "Educaid" - public tax funds which have been earmarked for assisting, either directly or indirectly, the students who are in attendance in a state approved nonpublic elementary or secondary school.
3. "Pupil or student" - a resident of the state who is in attendance in a state approved elementary or secondary school, grades K-12 according to the compulsory school attendance laws.
4. "Secular subject" - any subject which is offered in the curricula of the public schools of the state, and which does not include any subject matter expressing religious teaching or the morals or forms of worship of any sect.
5. "Secular educational benefits" - providing of instruction in a secular subject to students attending nonpublic schools as long as the primary purpose of such instruction is directed to the secular education, and the primary effect neither advances nor inhibits religion.

F. REVIEW OF LITERATURE

A selected review of the literature will be made including books, periodicals, newspapers, doctoral dissertations, legal documents and other publications relating to the subject, Educaid.

Provisions in the state and national constitutions, and decisions rendered in many court cases will also be consulted. An analysis of educational services acts in other states, and in the nation will also serve as reference material.

CHAPTER II

HISTORY

A. History of American Education

This review of the history of American education is designed to depict the evolution of formal education from its birth to the present, and to demonstrate the changing roles of the church and state in both the public and nonpublic schools of our nation. In support of the proposition to grant public financial aid for the education of all children it is germane to understand the historically determined purposes for the establishment of compulsory education in the United States.

The early educational history of America can hardly be understood without some knowledge of the European background of the different religious conflicts which were precipitated by the Protestant Reformation. To comprehend it one has to know the primary motivation underlying Luther's action, as well as the action of Calvin, Zwingli, and Knox.

The idea was that of substituting the authority of the Bible in religious matters for the authority of the Church, and was in turn one of the results of the revival of the study of Greek and the recovery of the gospels in the original. This meant the substitution of individual responsibility for salvation for the collective responsibility of the Church, and meant that those who were to be saved in theory at least, must be able to read the word of God.¹

The earliest American settlements were due mostly to the desire to obtain religious freedom, and were a direct result of the warfare and persecution following the Protestant Revolt in Europe. Those who came to establish new homes in the New World did so that here "they might establish their churches, order their civil life, and bring up their children to worship God after the dictates of their own conscience."² They had come from nations where the church and state were not separated. In seeking religious freedom for themselves

1. Ellwood P. Cubberly, Public Education in the United States, Chicago, Houghton Mifflin Co., 1919, p. 9.

2. Ibid, p. 11.

however, some colonists did not want to extend the same freedom to those with whom they differed doctrinally. As a result in some colonies the union of church and state produced intolerance and provincialism.

America's first schools were conspicuously the fruits of Protestantism. All of the reformers had insisted upon the necessity of the Gospel as a means of personal salvation. This meant that "each child, girls as well as boys, should be taught to read so that they might become acquainted with the commandments of God and learn what was demanded of them."³ Practically all of the early settlers came from those countries and peoples which had embraced one of the Protestant faiths, and most came to enjoy religious freedom which they had been denied in their native land.

Those Puritans who settled New England probably contributed more than any other colonial group to the development of American education. They established practices which were subsequently adopted in all the states. Initially they had set up a form of government which combined the civil and religious into what became known as the New England town. Civic and religious experiences were lived in the "Meeting House" and in it

they met both as a religious congregation and as a civil government. The two were one in membership and spirit. Being deeply imbued with Calvinistic ideas as to religion and government, the Puritans founded here a series of little town governments, the corner stones of which were religion and education.⁴

The distinction between "public" and "private" or "parochial" schools was very remote throughout most of our colonial history. Quite understandably "whenever one denominational group enjoyed a dominant position the schools were, in a sense, under 'public' sponsorship, but this was only because in such cases church and state were one."⁵

3. Ibid, p. 11.

4. Ibid, p. 16.

5. Lloyd P. Jorgenson, "The Birth of a Tradition", Phi Delta Kappan, XLIV, No. 9, June, 1963, p. 407.

Providing for the education of the children was considered to be a proper function of the church, and all denominational groups assumed this responsibility. However, it soon became apparent that the voluntary efforts of churches and parents would not be adequate to guarantee that type of general education which was required to fulfill the objectives of the Puritans. Because too many of the parents were neglectful, "the leaders in the Puritan Church appealed to what was then their servant, the State as represented in the colonial legislature, to assist them in compelling parents and masters to observe their obligations." ⁶ As a result the colonists adopted the Massachusetts Law of 1642 which authorized town officials to make periodic checks with parents and with those who had been employed as teachers, to see if the children were being taught "to read and understand the principles of religion and the capital laws of the country." Five years later Massachusetts passed an ordinance which directed all towns of fifty or more families to provide schools.

Knight says:

the control of the schools established under this law was ecclesiastical and not secular, the teachers were ministers or were approved by the ministers, under the strictest vigilance as to orthodoxy, and the materials of instruction were religious. ⁷

The Ordinance of 1647 also committed every town of 100 families to provide a Latin Grammar School, which was a preparatory school for those boys who sought a university training. Cubberly states that these two Massachusetts laws were really the "foundation stones" upon which the American public school system was subsequently built. He quotes a Mr. Martin, an historian for the Massachusetts public school system, who stated that the fundamental principles which underlie this early educational legislation were:

1. The universal education of youth is essential to the well-being of the State.
2. The obligation to furnish this education rests primarily upon the parents.

6. Cubberly, op. cit., p. 17.

7. Edgar W. Knight, Education in the United States, New York, Ginn and Co., 1929, p. 106.

3. The State has the right to force this obligation.
4. The State may fix a standard which shall determine the kind of education and the minimum amount.
5. Public money, raised by a general tax, may be used to provide such education as the State requires. This tax may be general, though the school attendance is not.
6. Education higher than the rudiments may be supplied by the State. Opportunity must be provided, at public expense for youths who wish to be fitted for the university.⁸

Then Martin, in review of these principles, made a statement which captures the gist of educational policy as it pertains to responsibility for American public education at that time. He said:

. . . the idea underlying all this legislation was neither paternalistic nor socialistic. The child is to be educated, not to advance his personal interests, but because the State will suffer if he is not educated. The State does not provide schools to relieve the parent, nor because it can educate better than the parent can, but because it can thereby better enforce the obligation which it imposes.⁹

Our early educational history is characterized by three views of education which became evidenced in the types of schools which were established and the means by which they were established and the means by which they were financed.¹⁰ These types, which remained until the American Revolution, appreciably influenced subsequent development of American educational institutions. In New England the Puritan Calvinists had had a complete monopoly of both Church and State and thus were able to establish their own school system with a completely Puritan Protestant ethic. They believed in a religious conception of the State and supported common schools, Latin grammar schools and colleges, both for religious and civic purposes.

The middle colonies were composed of peoples representing different

8. Cubberly, op. cit., pp. 18, 19.

9. Ibid, p. 19.

10. Ibid, pp. 20-24.

Protestant denominations, and although all agreed upon the importance of one's ability to read the Bible, no sect was in a majority. Each parochial group established its own church schools, and approved ecclesiastical control of all educational efforts. They resented and resisted any state interference.

Southern colonies retained the attitude of the Church of England and established schools according to social class. The middle and upper class children attended either private or church schools, and many were taught by private tutors in their homes. Children of paupers and orphans were afforded a meager training in charity schools financed by both the church and contributions of the local community. Southerners at this time viewed public education as that which was intended primarily for the children of the poor and orphans; it was considered a type of charity for which the state had little obligation to finance.

The earliest American schools were parochial, that is, church sponsored and ecclesiastically controlled, and although some colonial schools were semi-public, without question the most prominent characteristic of all schooling was the permeation of religion in all instruction. The King James Version of the Bible and the shorter Catechism were the basic texts. Although the New England colonies were the most insistent on religious emphasis, in all of the colonies the religious purpose was predominant until the middle of the eighteenth century.

Financing compulsory education has always been a problem and a concern of the American people. The first schools were supported by donations from individuals and the church. When these proved to be insufficient land endowments and income from various public utilities, primarily mills and ferries, were the primary means of support.¹¹ Because of the tradition of church-state cooperation in education, public support for private and denominational schools was commonplace. In fact the early state constitutions and statutes actively encouraged the

11. Bernard Bailyn, Education in the Forming of American Society, Chapel Hill, N. C., University of North Carolina Press, 1960, p. 42.

practice. "Grants of both money and land were made extensively to schools of all levels. Indeed, public aid to denominational schools increased considerably until about 1820, and persisted, in diminishing but still significant amounts, until well after the Civil War."¹² When it became apparent that endowments and voluntary contributions were inadequate direct taxation was employed. New England first initiated a form of general taxation, and although of course it was not immediately adopted throughout the colonies, the various forms of school finance shared with taxation one important feature.

Everywhere in the middle colonies and in the south as well as in New England - the support for schools and even colleges came not from the automatic yield from secure investments but from repeated acts of current donation, whether in the form of taxes, or of individual, family, or community gifts. The autonomy that comes from an independent, reliable, self-perpetuating income was everywhere lacking. The economic basis of self direction in education failed to develop. It is the common characteristic which taxation shares with the other modes of colonial financing, and not its public aspects that gives it great importance in the history of American education."¹³

Consequently external control of schools became an established tradition. As a result American schools have continued to be sensitive to community pressure, directly reflecting the interests of their sustaining groups. This is generally true of both public and nonpublic Protestant schools.

Where the parochial schools were the prevailing type, education remained under church direction and control until after the establishment of our national government. However, in New England a change in the character of the schools began to take place around 1750. Here the schools were making the transition from a church into state sponsored institutions.¹⁴ The day of the monopoly of any one sect was over. Second and third generation people who had not known religious oppression turned from religion to new secular interests as their chief topic of conversation. The erection of the town hall where school business was

12. Jorgenson, op. cit., p. 408.

13. Bailyn, op. cit., pp. 44, 45.

14. Cubberly, op. cit., p. 44.

conducted rather than in the church, and the assessment of town taxes rather than church taxes, were contributing factors. By the time our national and state governments came into being, most of the citizens were principally ready to accept the idea that schools were basically state institutions. Since the interests of both the church and the state "were one and the same, there seemed no occasion for friction or fear. From this religious beginning the civil school, and the civil town and township, were later evolved,"¹⁵

Increasingly the political leaders were concerned with having a diverse body of European immigrants become assimilated in one nation. They believed that the public schools were the best media for making Americans out of Europeans. Gradually the citizenry began to acknowledge the necessity and legitimacy of the public school. At the same time many Protestants admitted the inability of the churches to meet the educational needs out of their own resources. As Sidney Mead expressed it, ". . . the task was too immense to be supported by voluntary churches that claimed as members only ten or twenty per cent of the total population. And so somewhat by default the state took over what had traditionally been part of the work of the church,"¹⁶

In addition to those factors already cited, many other ideas and events contributed to the transition from church-controlled to state-controlled education in our country from 1775 to 1825. With the birth of the new nation, with a national pride, and a national consciousness a common school for all community children possessed a natural emotional appeal. According to Cubberly there were four important educational movements (all arising in philanthropy) which supplemented each other and made the idea of a 'common school' attractive to many parents during the first half of the nineteenth century. They were the Sunday school,

15. Ibid, p. 45.

16. Sidney E. Mead, The Lively Experiment, New York, Harper and Row, Inc., 1963, p. 67.

the semi-public city School Societies, the Lancastrian plan for instruction (where one master teacher could assume responsibility for 100 or more pupils), and the Infant School Idea.¹⁷ Especially the Lancastrian School Societies, which provided educational opportunities for all children, united together both the humanitarians and the laboring class in efforts to obtain tax-supported schools.

As the concept of the common school continued to be more broadly adopted, the public school idea in Massachusetts, under the leadership of Horace Mann, was receiving considerable favorable attention.

Mann fully accepted the proposition, almost universally held in his day, that religious instruction was an indispensable part of the work of the school. However, he argued, the inclusion of the doctrines unique to any sect would alienate all other sects. The public schools would therefore have to be nonsectarian schools. As he and others of like mind often expressed it, the great 'common truths' of Christianity should be taught - ¹⁷ but anything more than this would be sectarianism and hence inadmissible.¹⁸

Quite understandably the movement to have the state assume responsibility for education stirred grave apprehension among many Protestants. However, during the 1830's and 40's a great influx of Roman Catholic immigrants affected the course of American educational history. They strenuously objected to the Protestant tenets and practices in the American schools. This "Catholic opposition to certain practices in the public schools served to unite Protestants in their support of these schools and to hasten the success of the movement."¹⁹ The Catholics had always had a few schools of their own. With democratic influence increasing their desire for education, and with thousands of fellow Catholics arriving from Europe they built many more.

In days when all education was in private hands this arrangement had been satisfactory. Their teachers and their children had been on equal terms with Protestants. Under a system of public education, however, they contributed in taxes to the support of the schools in which their teachers

17. Cubberly, op. cit., p. 100.

18. Jorgenson, op. cit., p. 408.

19. Ibid, p. 48.

were not allowed to teach, and could not have taught the required subjects anyway without violating their own consciences.²⁰

Besides, the Catholics like the Protestants did not want religion excluded from the schools; but they wanted to teach their own religion. In predominately Protestant America, Catholic control of the public schools was virtually impossible. Thus they preferred a parochial school system for the various religious denominations. When the Catholics demanded a fair share of the school fund and some state aid for the establishment of their own schools, the stage for the Protestant-Catholic battle was set. "Excepting the battle of slavery, perhaps no question has ever been before the American people for settlement which caused so much feeling or aroused such bitter antagonism."²¹ Rather than permit state funds to go to Catholic schools, Protestants "chose instead to support the option of what seemed to be at least from their vantage point - a more 'secular' school. Such was the logic that drove some Protestant churchmen toward a newfound commitment to public education."²² And so, Protestant denominations, each fearing the Roman Catholics, but also distrusting one another, became committed to a school that was more secular than they really desired. According to Costanzo,

the abandonment of state support for religious education in public schools was historically not motivated by any 'principle' of 'separation of church and state' or the 'wall of separation', or a fear of the camel's nose, but the phantasmagoria of papist, popish plots that danced in revelry in the minds of nativists and Know-Nothings and their progeny in succeeding decades.²³

20. Howard K. Beale, A History of Freedom of Teaching in American Schools, New York, Chas. Scribner's Sons, 1941, p. 98.

21. Cubberly, op. cit., p. 119.

22. Robert W. Lynn, Protestant Strategies in Education, New York, Association Press, 1964, p. 18.

23. Joseph Costanzo, This Nation Under God, New York, Horder and Herder, 1964, p. 188.

To some, such strong descriptive assessment may appear to be an overstatement, but the author believes it to be historically accurate. There appears little doubt that the strongest wave of anti-Catholicism that this nation has ever known, spread through the country at the same time that the common school had reached its popularity peak. These two contemporaneous developments bound together form the chief reasons for the rapid rise and growth of the public schools around which anxious Protestants rallied in the middle of the nineteenth century.

But to understand the nature of the Common School Movement it is necessary to recognize another factor. The educational leaders were predominately Protestant ministers. Such men as Calvin Stowe of Ohio, Robert J. Breckinridge of Kentucky, Caleb Mills of Indiana, and John D. Pierce of Michigan were all Protestant clergymen who were renowned leaders of public education in their respective states. So the common school was,

in its inception and development a distinctly Protestant phenomenon. And as the Catholic position on the school question came into prominence, the leaders of Protestant church groups surged forward to defend the public school. In so doing, they made explicit what they had always assumed - that the public schools were Protestant institutions.²⁴

As the enthusiasm for public schools (which were considered to be a sound defense against the growth of Catholicism) grew, enthusiasm for parochial schools diminished especially among the Episcopalians and Presbyterians. The Protestant clergy, educational reformers, and nativist political leaders were agreed on two major propositions: (1) that Bible reading (from the King James Version) and prayer must be encouraged (and if possible required) in the public schools, and (2) that public funds should not be used for parochial schools. By 1870 the support for Protestant parochial schools was almost gone. In that year the Episcopal Church Convention adopted a school policy position which said in effect that parochial schools are approved "where they are practicable", but noted that

24. Jorgenson, op. cit., p. 412.

they could never take the place of public schools, which should have the support of the church not only for patriotic reasons, but 'for the sake of Christianity itself'.²⁵ Even though Catholics and Protestants agreed that education could not be divorced from religion, "Protestants would not allow the application of state funds except for the support of public education that was under the influence of Protestant Christianity."²⁶

In 1875, President Grant addressing his remarks to the Grand Army of the Tennessee, in a speech in Des Moines, Iowa, established a national tone regarding the separation of education and religion. He said:

Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated for the support of any sectarian schools. Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and the state forever separated.²⁷

National devotion to the secular public school was so strong that the following year the House of Representatives proposed a constitutional amendment which would have prohibited the teaching of the "particular creed or tenets of any religion, or anti-religious sect, organization or denomination other than the reading of the Bible."²⁸ Although this resolution failed to pass the Senate, national sentiment generally would have applauded the amendment.

During the last 100 years of American history one can trace the gradual

25. Ibid, p. 413.

26. Costanzo, op. cit., p. 186.

27. President Ulysses S. Grant as quoted by Leo Pfeffer, Church, State, and Freedom, Boston, The Beacon Press, 1953, pp. 288, 289.

evolvment of the public schools from religiously oriented, to non-sectarian, to completely secularized institutions. As religion waned and secular and civic functions in the community, state, and nation increasingly received more attention, the public school program and purposes mirrored the objectives and philosophies of adult society. America was transformed from a primarily agrarian to an almost completely industrialized society. The evolvment of large cities had precluded religious uniformity in most locales. Necessity has compelled state and national involvement in education, and the sectarian differences in almost all communities have dictated an education for the masses which is non-sectarian in nature, and devoid of explicit religious teachings.

Cubberly quotes S. W. Brown in explanation of the secularization of America's public schools:

Differences of religious belief and a sound regard on the part of the State for individual freedom in religious matters, coupled with the necessity for centralization and uniformity, rather than hostility to religion as such, lie at the bottom of the movement toward the secular school.²⁹

I agree with Brown, but his explanation is incomplete. Americans are not hostile to religion as such, but Protestants have been fearful of and hostile to Roman Catholicism. As a result they "were destined finally to destroy what they had originally sought to preserve - religious instruction in the public schools."³⁰ The public school system as it has developed throughout the years, and indeed as it has continued in some parts of our country up to this time is essentially a Protestant school system. Therefore it is not surprising that until this decade (when the U. S. Supreme Court declared Bible reading and prayer in the schools to be unconstitutional) Bible reading as a devotional exercise was commonly accepted as part of the public school program. At the same time, "the idea that

29. Cubberly, op. cit., p. 173.

30. Jorgenson, op. cit., p. 414.

no public funds should go to support competing schools, notably parochial or religious schools, is another distinctive aspect of Protestant thinking."³¹

This policy of public support for public schools only was a policy forged by a predominately Protestant society, fearful of the Catholic minority, whose growth it aimed to curtail.

The victory obtained by the lobbyists of the last century for the various amendments to the State Constitutions forbidding aid to sectarian schools is possibly the most dramatic example in the nation's history of legislation through collective national anxiety. The anxiety grew out of fear that the nation's unity would not be secure, that the Protestant nature of the country might diminish and that European languages and customs might persist and create certain cultural 'pockets' within the land. The 'anti-aid' amendments, in which most Protestant groups acquiesced, gave a type of monopoly on education to the State.³²

But since the middle of this century the ecumenical movement, coupled with the growth in size and influence of Jewish and Catholic minorities has indicated that the demise of the so-called Protestant era in American history is taking place. Public schools can no longer embody just the Protestant ethos. In its stead appears to be the ascendance of American religious pluralism. This in turn will undoubtedly have an affect on church-state relations as they pertain to education. Court decisions favorable to the granting of aid to the nonpublic schools in the 60's indicates that perhaps a new day has dawned in American educational history.

31. Paul G. Kauper, Church and State: Cooperative Separatism, Michigan Law Review, Vol. 60, Nov., 1961, No. 1, p. 2.

32. Robert F. Drinan, Religion, The Courts, and the Public Policy, New York Mc-Graw-Hill Book Company, 1963, p. 41.

B. History of Federal Aid to Nonpublic Schools

The United States, instead of developing a single national system of education, has acquired as many systems as there are states. Public education came under the province of the states via the Tenth Amendment, which reserves to the states the powers not delegated to the federal government. Despite the fact that education has become a responsibility of the respective states, the federal government has always encouraged the expansion and improvement of education in the nation. From the earliest days in our national history it has aided in the establishment of schools and colleges. Even before the adoption of the Constitution, the Northwest Ordinances of 1785 and 1787 established a policy of disposing of federal lands to encourage education. Congress on a number of occasions, early in the history of our nation, granted land to both public and nonpublic religiously oriented institutions.

Although the federal government has granted considerable assistance to private and church related colleges and universities, the history of aid to the nonpublic elementary and secondary schools is extremely sparse. In fact prior to 1944 the only federal assistance to reach nonpublic elementary and secondary school children was noneducational child welfare benefits.

During the first half of the nineteenth century Congress granted some money directly to the states in an effort to subsidize education. These grants were in the form of aid to education in general. However "all permanent programs since the Morrill Act of 1862 have been for the purpose of supporting some specialized educational activity."³³ Pfeffer claims that efforts to obtain federal funds for specialized educational programs have been relatively successful, while efforts to obtain monies for general education have been a "dismal failure" primarily because specialized

33. Leo Pfeffer, Church, State, and Freedom, Boston, The Beacon Press, 1953, p. 480.

education proposals have been able to avoid the bitter controversies which have marked attempts to obtain aid for elementary and secondary education in general.³⁴ The primary obstacles which have prevented the enactment of more legislation beneficial to elementary and secondary school children appear to be aid to parochial schools, racial segregation, and fear of federal control. And the most bitter of these controversies, and the one which appears to remain unsolved, is the place of nonpublic schools in a program of federal aid.

During World War I a large number of young men were rejected by the military because they were illiterate. This dramatically demonstrated to the nation for the first time, that the federal government, as well as the states, has a responsibility for the education of all its children. As a result in 1918 and again in 1923 bills were proposed for the establishment of a department of education in order "to encourage the states in the promotion and support of education."³⁵ Both bills failed, as did subsequent attempts in the 1920's and 30's. Finally in 1944 as a result of World War II, congress passed the G. I. Bill of Rights which paid the education costs of veterans who elected to return to school. They received vouchers which were redeemable in any school of their choice. It is little known that the "federal government paid the education costs of 4,364,000 veterans in public, private, and church-related elementary and secondary schools. And, moreover, few people know that the government gives grants of \$110 a month for the education of war orphans who are attending church-related high schools."³⁶

Since 1944 congress has passed the following acts which have granted accommodations to the nations' nonpublic elementary and secondary school children.

34. Ibid, p. 481.

35. Ibid, p. 482.

36. Virgil C. Blum, A Review: JFK and Freedom in Education, Huntington, Indiana, Our Sunday Visitor, Inc., No. 249, p. 17.

All have been enacted by applying the doctrine of the privacy of secular effects, with the conviction that such federal aid benefits the student rather than the institution which he attends.

1. National School Lunch Act (1946). Funds made available for free noon-day lunches.
2. G.I. Bill of Rights (1952). To benefit veterans of the Korean War with basically the same provisions that were specified in 1944.
3. National Defense Education Act (1958). Nonpublic schools received federal loans for improving the teaching of science, mathematics, and foreign languages.
4. Elementary and Secondary Education Act (1965). The first three titles of this five title act make provisions for the nonpublic schools.

Title I - Provides remedial, therapeutic, and health services to the educationally deprived in low-income areas.

Title II - School library resources, textbooks, and other instructional materials loaned to students and teachers through the local public school district offices.

Title III - Supplementary educational centers and services such as counseling, remedial instruction, school health services, mobile equipment, visiting teachers, etc., all designed to attack educational deprivation and to improve the quality of instruction.

Many educators have hailed the 1965 Act as a major breakthrough in the federal government's long and frustrating history of attempts to support elementary and secondary schools. Time magazine stated that President Johnson "avoided the mistakes of his predecessors and produced an ingenious bill that neatly diffused the explosive issues,"³⁷ especially those which have been traditionally ignited when nonpublic school children benefit from public funds.

The federal government, in addition to assistance already cited, aids the nonpublic schools via tax benefits and preferments. This tax relief is nondiscriminatory and applies equally to all schools whether public or private. The government also aids non-public schools by allowing supporters who give them money to deduct the contribution from their taxable income.

37. "Time Essay," Time Magazine, Vol. 85, April 30, 1965, p. 44.

Even though the federal government has to date spent a minimum to assist elementary and secondary schools it appears very likely that it will be making proportionally larger contributions in the future. The failure of many local communities to provide adequate funds, and spiraling costs will undoubtedly precipitate a national concern for the welfare of education. If the federal government accepts a larger role in education, Congress will probably enact legislation which includes the nonpublic schools. Precedent has been established by spending public funds to achieve secular purposes through the education of all children in America's schools.

C. History of State Aid to Students Attending Nonpublic Schools in Michigan

Michigan's first schools were private and parochial. After the Indians, the first inhabitants were French Catholics. Later Protestants from New England and New York came to live in this territory. Both the Catholics and the Protestants were convinced that the education of children was the responsibility of the churches and their ministers. When in 1837 Michigan was organized as a state, and land grants were set aside for public schools, education came to be considered a function of the state rather than the church. However, the public schools continued to offer religious instruction well into the 20th century.³⁸

The diversity of religious denominations which characterized Michigan's populace, already early in her history, foretold the operation of both public and nonpublic schools in the state. As early as 1876 there were 170 private and parochial schools with an enrollment of 8,033 students. However "the statistics of this year as well as of the succeeding years were admittedly unreliable and incomplete, as it was difficult for the state superintendent to obtain accurate

38. W. Maurice McLean, The Constitutional and Legal Basis for Undivided School Support and Current Practice in Michigan, Ann Arbor, unpublished doctoral dissertation, 1950, p. 11.

information. Thus in 1884, the report showed 296 schools, with 636 teachers and 27,130 pupils, while the 1889 report showed an enrollment of only 18,107. While such an improbable decrease may prove the unreliability of the information, even the lowest figures indicate a sizeable number thus educated."³⁹

By 1900 approximately nine per cent of Michigan's schools were nonpublic. Knauss and Starring cite several reasons for the rapid rise of private and parochial schools near the turn of the century.

1. Immigrants who have been coming to this country after the Civil War desired to have their children attend schools in which (their) language was used.
2. The church felt an educational duty towards these thousands of new citizens, and the newcomers looked upon the church-centered schools as a means of retaining religious and cultural heritage.
3. Another important reason for the spread of the religiously oriented schools was the unwise action taken by the Detroit Board of Education in 1892, when it established a policy to hire only teachers who had attended public schools. This raised a furor of opposition, as it was regarded as a body blow at all private schools. Although the policy was modified later, the action left a long-lasting suspicion in the minds of the leaders of the parochial schools that the public schools were antagonistic to them.
4. In September, 1896, the (Detroit) board purchased four thousand copies of the book, Readings from the Bible, and ordered it to be read in all schools fifteen minutes each day. Protestant denominations as a rule favored the measure, while the opposition consisted of Catholics, Jews, socialists, and free thinkers. Supported by acting mayor George Beck, they brought suit against the board on the ground that the action was unconstitutional. Although the Michigan Supreme Court ruled in favor of the board in 1898, that body ordered the removal of the books not in use.⁴⁰

Michigan's educational system was basically framed in three of her Constitutions, 1835, 1850, and 1908, and in the first and second reports of the state of

39. James Knauss and Chas. Starring, "Michigan Search for Educational Standards," Vol. II of History of Education in Michigan, Lansing, Michigan, Michigan Historical Commission, 1968, p. 147.

40. Ibid, pp. 149, 150.

Michigan's first Superintendent of Public Instruction, Rev. John D. Pierce. His educational philosophy has been referred to as the " . . . educational constitution of the Commonwealth, " ⁴¹ He and Isaac E. Crary were educational crusaders who should be credited with the pioneer work of forging the public school system in the state. Both men were members of the Constitutional Convention of 1850, and Pierce served as a member of the education committee. In his capacity as state superintendent he continuously emphasized the importance of education for the masses. He believed that "in an educated and virtuous community there is safety; the rights of individuals are regarded, and property is respected and secure. It may safely be assumed as a fundamental principle in our form of government, that knowledge is an element so essential to its existence and vigorous action that we can have no rational hope of its perpetuation unless it is generally diffused, " ⁴²

Apparently Pierce's disapproval of the establishment of parochial and private schools can be traced "to his fear that they would serve to drain students and support away from public education, " ⁴³

Before citing the specific acts which have afforded some financial aid to nonpublic schools it is appropriate to quote those articles of the Michigan Constitution and the General School Laws which pertain to education in general and to nonpublic schools in particular.

41. Daniel Putnam, The Development of Primary and Secondary Public Education in Michigan, Ann Arbor, Michigan, George Wahr Publisher, 1904, p. 35.

42. Ibid, p. 36.

43. Mc Lean, op. cit., p. 18.

The Constitution of the State of Michigan states:

Article I - Declaration of Rights

Section 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Article VIII - Education

Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Section 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin. ⁴⁴

The General Laws of the State of Michigan provide:

1. The Superintendent of Public Instruction is hereby given supervision of all the private, denominational and parochial schools of this state in such matters as is hereinafter provided. (388,551 M.S.A. 15, 1921).

2. No person shall teach or give instruction in any of the regular or elementary grade studies in any private, denominational or parochial school within this state who does not hold a certificate such as would qualify him or her to teach in like grades of the public schools of the state. (388,533 M.S.A. 15, 1923).

3. The Superintendent of Public Instruction may conduct hearings, issue orders to comply, or close nonpublic schools. If the order of the Superintendent of Public Instruction . . . shall not have been obeyed within the time specified herein said superintendent . . . may close said school and prohibit the said person, persons, corporation, association or other agencies operating or maintaining such private, denominational or parochial school from maintaining said school or from exercising any of the functions hereunder until said order of the superintendent . . . has been complied with. The children attending a private, denominational or parochial school refusing to comply with the requirements hereof after proceedings herein set forth shall be compelled to attend public schools

44. James M. Hare (Secretary of State), The Constitution of the State of Michigan, Lansing, Michigan, Legislative Service Bureau, 1963, pp. 7, 36.

or approved private, denominational or parochial school under the provisions of the Compulsory Education Act, the same being Act, No. 200 of the Public Acts of 1905, as amended. (388,554 M.S.A. 15, 1924).

4. The Superintendent of Public Instruction . . . shall have authority at any time to investigate and examine into the conditions of any school operating under this act as to the matters hereinbefore set forth and it shall be the duty of such school to admit such superintendent, . . . to submit for examination its sanitary condition, the records of enrollment of pupils, its courses of studies . . . and the qualifications of its teachers. Any refusal to comply with provisions herein on the part of such school or teacher shall be considered sufficient cause to suspend the operation of said school after proceedings taken as stated in Section 4 of this act. (388,555 M.S.A. 15, 1925).

5. Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund. (388,557 M.S.A. 15, 1927).

6. In the following cases, children shall not be required to attend the public schools:

(a) Any child who is attending regularly and is being taught in a private, parochial or denominational school which has complied with all the provisions of this act and teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which such private, denominational or parochial school is located. (340,732 M.S.A. 15, 3732).

7. It shall be the duty of the principal, or any other person or persons in charge of every private, denominational or parochial school, at the opening of such schools and at such time as the superintendent or county superintendent of schools hereinafter mentioned shall direct, to furnish to the superintendent of schools of the district in which such . . . school is situated . . . , the name, age and grade of every child who has enrolled at such schools . . . (340,738 M.S.A. 15, 3738).⁴⁵

For more than one-hundred years Michigan's nonpublic schools have attempted to obtain public funds to assist in underwriting some operational costs.⁴⁶ The first appeal for aid occurred in 1853 when "Michigan Catholics asked for state money because they thought public schools had a distinctly Protestant character. They specifically objected to remarks by Ira Mayhew, the Superintendent of Public Instruction who pushed hard for school Bible reading."⁴⁷ These concerned

45. State Board of Education, State of Michigan General School Laws, Lansing, Michigan, Legislature Service Bureau, 1966.

46. McLean, op. cit., p. 63.

47. Detroit Free Press, February 9, 1969, p. 16B.

Catholic parents appealed to the state legislature for a fair share of the tax dollars. They requested the state to "share the school funds so that the taxes they paid would assist in the support of the schools of their choice."⁴⁸ This appeal produced a bill, but it was defeated, and the request for aid to nonpublic schools did not receive serious attention again until the twentieth century.

Not only had the nonpublic schools been unsuccessful in obtaining aid, but on several occasions opponents of parochial schools have expended great efforts in an attempt to close them. Michigan's nonpublic schools absorbed bitter attacks in 1920 and 1924 when certain forces sought to outlaw all of the state's private and parochial schools. During World War I antagonisms had been built up and produced a national revival of the Klu Klux Klan, whose prime motive was to destroy the Catholic power structure in America.⁴⁹ The attempt to abolish the nonpublic schools of Michigan in 1920 was spearheaded by the Wayne County Civic Association.

The Michigan legislature blocked the association's bill, which provided for a popular vote on an amendment to the constitution. Proponents of the bill finally obtained the requisite 10 per cent of eligible voters to sign petitions in support of an amendment, which was placed on the ballot for the November, 1920 election.⁵⁰

This amendment read in part:

All residents of the State of Michigan between the ages of five and sixteen years shall attend the public school in their respective districts until they have graduated from the eighth grade; provided, that in districts where the grades do not reach the eighth, all persons herein described in such districts shall complete the course taught therein.⁵¹

48. McClean, op. cit., p. 162.

49. Ibid, p. 163.

50. Donald W. Disbrow, "Schools for an Urban Society", Vol. III of History of Education in Michigan, Lansing, Michigan, Michigan Historical Commission, 1968, p. 87.

51. As quoted in Thomas F. Lewis, A Study of Attempts to Abolish Private and Parochial Education by Constitutional Amendments in 1920 and 1924, Detroit, unpublished doctoral dissertation, 1952, p. 9.

A comparable amendment was adopted in the state of Oregon in 1923 but was declared unconstitutional in the famous *Pierce* case two years later.⁵²

Catholics, Lutherans, Christian Reformed and other non-public school supporters banded together to oppose the amendment, and many administrators in both the public and private schools openly expressed strong objection to the proposed anti-parochial school bill. In July, 1920, the state attorney general announced that the proposed amendment was unconstitutional. But in October the state supreme court decided that neither it nor the attorney general could pass on its constitutionality until it was adopted. In a state referendum the amendment was defeated by a vote of 610,699 to 355,817.⁵³

As a result of the heated debates regarding the operation of the nonpublic schools, Mr. Delos Fall, a former state superintendent of schools, contended that the state department of public instruction could legally supervise private and parochial schools. Some leaders agreed, but others believed he was in error. His opinion nevertheless precipitated the interest of Lansing educational officials who represented all of the state public schools. Together they successfully worked for the passage of the Dacey Bill, which was passed into law in 1921.⁵⁴ This bill, which was previously cited, provided for the supervision of private, denominational, and parochial schools by the State Superintendent of Public Instruction.

Neither the decisive defeat of the amendment in 1920, nor the passage of the Dacey Bill quelled the nonpublic school opponents. Many of them doubted that the parochial schools were under sufficient state control. Another amendment was proposed in 1924. This time the private and parochial schools formed an association to fight for their corporate lives. The Public School Defense League championed the amendment, and once more the Klu Klux Klan was active.

52. *Pierce vs. Society of Sisters of the Holy Name*, 268 U.S. 510 (1925).

53. *Disbrow*, op. cit., p. 88.

54. *Ibid*, p. 89.

The usual crosses were seen burning in fields and on hilltops. On the Sunday before election, a Catholic parade of over 100,000 moved through downtown (Detroit) streets to Novin Field (the ballpark). Bishop Michael J. Gallagher presided over an impressive religious ceremony. Banners proclaimed: 'Vote No If You Love American Freedom. Kill Bigotry.' Most urban newspapers opposed the amendment. This time Catholics and Lutherans worked more closely together, and the vote was 760,571 to 421,472 against the amendment. More people in Michigan voted than in the presidential election in that year. ⁵⁵

Since 1924 Michigan's nonpublic schools have made a number of unsuccessful attempts to obtain public financial support. During the depression years most of the church-related schools were in dire difficulty, and some were forced to close. 'A number of bills authorizing some measure of state aid were introduced in the legislature during the sessions of 1933-34 and 1937-38 but did not pass. In 1945 and 1947 there were further unsuccessful attempts to secure state aid for nonpublic schools.' ⁵⁶

In 1939 the Michigan legislature adopted Public Act 38, which stated that the school districts may provide transportation for nonpublic school pupils within the school district. It permitted free transportation for private or parochial school students on a voluntary basis. Act 38 was amended in 1949 when the law was broadened to include nonresidents. However in 1955 Public Act 269 repealed the previous act and public transportation was again denied nonpublic school children. Two years later the legislature passed the School Aid Act (No. 312), which permitted allotments to public school districts for the transportation of nonpublic school children.

When in 1963 the "Fair Bus Law" was passed, it required all school districts operating free bus service to extend the service to nonpublic school students who were residents of the district. Senator Robert Vander Laan of Grand Rapids was the chief sponsor of the bill which to date has proved to be one of the larger indirect contributions of public aid to Michigan's nonpublic schools.

55. Ibid, p. 96.

56. Ibid, p. 96.

The Michigan Legislature passed two acts in 1965 which extended services to all school children. Public Act 341 was adopted to protect the public health of school children by providing health examinations and services on an equal basis to children attending public and nonpublic elementary and secondary schools. Act 343 authorized auxiliary services to children in both public and nonpublic schools. These services include health and nursing services; street crossing guards; speech correction; visiting teacher service for delinquent and disturbed children; diagnostic services for mentally handicapped children; consultant services for emotionally disturbed children; and remedial reading. "The state now spends roughly \$12 million a year in aid to nonpublic school students,"⁵⁷ for this service.

In 1968 the "Children's Education Bill" to provide state educational grants for the benefit of children in nonpublic schools, was introduced but no action was taken. However, a resolution was passed calling for the establishment of a Joint Legislative Committee which was to conduct an in-depth study of the present status of the nonpublic schools. In August this committee conducted five public hearings throughout the state, heard a total of 164 witnesses, and recorded reams of testimony. They have reported their findings and submitted recommendations to the 1969 Legislature. Time alone will tell, but it appears probable that Michigan's 315,000 nonpublic school children will soon be the recipients of public financial aid.

57. Detroit Free Press, February 9, 1969, p. 16B.

CHAPTER III

RATIONALE FOR STATE AID TO NONPUBLIC SCHOOL STUDENTS

To give meaning to subsequent argumentation in support of public aid to nonpublic education it is necessary initially for the author to identify his basic philosophical presuppositions as they relate to education, religion, and the function of government in a free pluralistic society. It would be highly presumptive to claim the capacity to comprehensively explain one's premises in a few succinct statements. At the same time a detailed treatise is neither necessary nor warranted here. So the following is written as a brief philosophical position upon which the rationale for aid will be constructed.

The education of children and young people is the process by which they are inducted into the complexities of their culture. It is the transmission of facts and opinions which are assimilated and become part of the person who receives them. "It is the means of making it unnecessary for each new generation to discover the art of living for themselves without benefit of the experience of earlier generations."¹ Education is the quest for knowledge and truth. Facts, figures, beliefs, and attitudes are all learned in the educational process. In formal institutions education is the medium by which teachers guide the development of persons. On the elementary and secondary school level the author believes the prime purpose of the school is to assist students to find answers to three basic questions: Who am I? Where am I going? How do I get where I'm going in a meaningful way? The student's real purpose in the educational milieu is to understand his being. The goal of the school is to help him reach that objective; in other words, the prime goal of education is the shaping and maturing of man.

1. Philip H. Phenix, Education and the Worship of God, Philadelphia, Penn., Westminster Press, 1961, p. 14.

Education is all of this and more. It inevitably presupposes some patterns of faith which in turn determine the character of what is taught and learned. Education is inextricably wed with one's religious commitment.

It is impossible to engage in educational activities without referring to religious convictions. Education is one of the most comprehensive forms of human activity there is. It is not merely the communication of certain facts that are poured into receptacles as water is poured into a glass. Education consists of one generation's transmitting useful knowledge to the generation that follows it. It is highly moral action. It involves endless selectivity. It involves judgment after judgment after judgment.²

There are those who would deny the relatedness of religion and education, but both public and nonpublic school authorities acknowledge that religious and moral values buttress all educational objectives. The National Education Association as prime spokesman for our nation's public schools has said:

The development of moral and spiritual values is basic to all other educational objectives. Education uninspired by moral and spiritual values is directionless . . . That educational purposes rest on moral and spiritual values has been generally recognized in the public school system. The Educational Policies Commission has previously declared: 'Every statement of educational purposes, including this one, depends upon the judgment of some person or group as to what is good and what is bad, what is true and what is false, what is ugly and what is beautiful, what is valuable and what is worthless in the conduct of human affairs.'³

It is self-evident that every school gives its children a moral and religious orientation. No teacher could say, for example, "I believe that man is good," without teaching explicitly or implicitly what he means by "man" and what he defines as "good". So all of education is housed within a value system of some sort, and the "educational process" is lived in the context of that system. Try as one might, it is virtually impossible to experience learning in a philosophical vacuum; it always takes place within the framework of one's value orientation. Education is intimately united with religion.

2. Joel Nederhood, "Our Nation's Schools", a radio sermon printed in Religion and the School, The Back to God Hour, Chicago, 1967, p. 69.

3. NEA, Moral and Spiritual Values in the Public Schools, 1951, p. 7.

Throughout the history of our nation the relationship of religion and education has been a much-debated subject. Today many Americans are deeply concerned about it. Because of the operation of both public and nonpublic schools, the topic is commonly divided into two sub-topics, namely, the place of religion in the public school, and the place of the nonpublic "religious" school in society. Even though I will dwell almost exclusively on the latter, the one sub-topic can hardly be discussed adequately without reference to the other. In both subjects we have the common denominators, education and religion. Earlier I had attempted a brief definition of education, and turn now to a consideration of the nature of religion.

Religion connotes different things to different people. To some it is a superstition; to others it is a special valid act and belief. To still others it is a comprehensive life-orientation.⁴ But basically all adults could embrace one of the above descriptions as an acceptable explanation of religion. For purposes of our discussion we can quickly discount superstition as an acceptable description because our nation and our respective United States have adopted, without dispute, the position that religion is necessary to good government. Substituting superstition for religion in this context would make further consideration an absurdity, in a nation avowedly "Under God".

A large segment of the American people believe that religion is a specialized type of activity which one practices at special times and in special places. Religion for them is "one kind of experience among many which can be either chosen or avoided."⁵ It is especially associated with formal ritualistic exercises conducted in a church or synagogue. For most of the adherents of this view, "God" is the supernatural being with whom you make contact in a special way on particularized occasions. This perspective compartmentalizes religion as one

4. Philip H. Phenix, Philosophy of Education, New York, Henry Holt and Co., 1958, pp. 77-82.

5. Ibid, p. 79.

among many facets of life's myriad experiences. As it relates to education, this view of religion would bring one to the conclusion that religion is a subject which one could elect to either include or exclude from the curriculum. But in and of itself it need not be related to the curricula. This view separates the sacred and the secular, and it tends to render religion irrelevant to the other concerns of life.

For the third group, religion is a world and life view which incorporates the totality of one's experiences. Nederhood describes this position in a few concise sentences. He says: "Religion consists in the deepest convictions of your person. Your religion is your honest, sincere conviction about who God is and who you are. Your religion is the state of belief that controls everything you do. Even if you are an atheist, you are religious."⁶ From this viewpoint everyone has a faith of some sort, and that faith is not restricted to outward expressions, but is primarily an inward dedication. Supporting all of life's experiences is a value system which provides the backdrop for decision making. No area of human endeavor, including education, can be freed of religious meaning. Consequently the home, the church, the school and every other institution through which education occurs, communicates a value system based on a total view of the meaning of life and of the world. As it pertains to education this definition implies that the curricula and all facets of the educational program are permeated with a value system, a particularized point of view, a religious dimension. No area or form of educational endeavor is void of religious meaning. Thus "one has no choice as to whether or not he will deal with religion, for the very act of choosing, no matter what the object, presupposes a guiding faith."⁷

6. Nederhood, op. cit., p. 69.

7. Phenix, op. cit., p. 81.

In summary the nexus between religion, morality and education is established on the supposition that religion is pervasive of the whole man, that morality is its first fruition and beyond limit in its scope, and that education is a process from which neither one nor the other can be excluded. To this third view of religion the author is committed, and his subsequent argumentation in support of aid for nonpublic school children is based on this same religio-philosophic presupposition.

I turn now to a discussion of the function of government as it relates to education in a free democratic pluralistic society. Ours is a "nation of the people, by the people, and for the people", and government is established to serve the people. The education of children is the responsibility of their parents. However, parents in our culture have elected to delegate or "farm out" some of their educational responsibilities. Either by delegation or by default (in the case of negligent parents) government may rightly possess responsibility for the education of its citizenry.

Even though the Tenth Amendment to the Constitution has long been considered as justification for the states' role as educator, it should be observed that those functions not specifically assigned to the federal government are the duties of the states or the people; by not specifying which, the framers of the Constitution made it easy for State governments to assume educational duties not willingly accepted by the people.⁸

Throughout history the state, the church, and the home have assumed responsibility for the education of children. To discuss the merits or demerits of each of these three institutions as the agencies for formal education is not necessary. However it is important to note that in the United States all three institutions are granted equal legal protection and the right of existence. In a pluralistic society parents elect to train their children in either public, parochial, or private schools. Freedom in a democracy contains opportunity to teach one's children in a way consistent with his own values and ideals as he elects to do.

8. Norman DeJong, Education in the Truth, Nutley, N. J., Presbyterian and Reformed Publishing Co., 1969, p. 122.

In the American society, a pluralistic society of some two hundred million people, citizens have different ideals or values to which they are committed. It is inconceivable that these two hundred million people will all have the same views on education. Because of this it is essential that the independent or nonpublic school exist; for freedom requires alternatives from which to choose, including the alternative which is consistent with one's own commitment. A person who has no choice is not free. Public education is a free choice only if alternative choices are available, and only if these choices are available without economic penalty. Such freedom does not exist in the United States today. ⁹

In the oft-quoted *Pierce* case, the United States Supreme Court stated that "the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public schools only. The child is not the mere creature of the State; those who nurture him and direct him and his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." ¹⁰ This significant supreme court ruling implies that parents are responsible for determining the type of education which their children are to receive. At the same time it does not deny the state a supervisory role, nor does it remove the responsibility of educational institutions from their obligations to the public welfare. So parents have the primary right in the education of their children. But at the same time the state has the right to establish minimum educational standards, which are required for good citizenship and the general welfare of the state and nation. Meanwhile, however, the parents retain the unquestionable right to say where and by whom their children shall be educated.

Thus government in education fills a supportive role. The Michigan Constitution states "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." ¹¹ Government encourages education by providing financial

9. John Vanden Berg, "Tax Support of Non-Public Education and Freedom", *The Reformed Review*, Vol. 21, No. 4, June, 1968, p. 43.

10. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

11. The Constitution of the State of Michigan, Article VIII, Section 1, 1963.

aid and by promoting conditions which are conducive to educational improvement and the general welfare. It is generally understood in a democratic pluralistic society that government must be neutral to all its citizens; that is none must be treated with deference. Unfortunately this is not the case in the United States as it relates to the government and education. Here the government has given preferential support to public schools, and has discriminated against the non-public schools. In assessing this condition John Vanden Berg has aptly summarized the consequences of the position taken by our government.

Parents have the right to send their children to religiously-oriented schools, yet when they exercise this right they are deprived of all public educational benefits . . . Liberty at a price - - this is not liberty. This is the suppression of liberty. A genuinely free society cannot impose on its citizens or demand from them, as a condition for receiving the benefits of public welfare legislation, any philosophic or religious creed. To do so would be to ask one to violate his conscience and religious convictions. It places government in a position to control the thought and belief of the people. In the field of education, the government, in effect says: 'Give up your notions that God is important in education, or forfeit your rights to the educational tax dollar'.¹²

The foregoing statements concerning education, religion, and the functions of government serve as a basic rationale for financial aid to nonpublic school children. Subsequent material in this chapter will deal with specific arguments for and against the proposition that Michigan's nonpublic school children should be the beneficiaries of public financial aid from the state. The author will advance arguments in favor of aid, and will give rebuttal to arguments which oppose it. The order in which the arguments appear has no relationship to their weight or importance. They are merely cited in alphabetical sequence.

12. Vanden Berg, op. cit., pp. 43, 44.

A. COMPETITION

The United States Chamber of Commerce in 1966 issued a Task Force Report on Economic Growth and Opportunity which urged aid to nonpublic schools on the grounds that competition between America's school system would be beneficial to all schools. That report states:

Competition with existing public school systems offers a promising means of improving both public and private education. If all parents, at every income level could choose between sending their children to public schools and sending their children to approved private schools attempting to attract and hold pupils, both public and private education would improve as schools attempted to attract and hold pupils. Businessmen should press for the fullest-possible consideration of proposals designed to enhance competition in education. Local, state and federal governments should consider legislation which would enable communities to adopt programs establishing a public-private option for all children. Universities and educational associations should sponsor symposiums to explore the advantages, appropriate procedures and possible pitfalls of establishing educational competition.¹³

The task force apparently believes that competition is healthy in education as it is in business and industry. Competition stimulates, motivates and encourages innovation in every other field of human endeavor. Why not in the educational marketplace? The suggestion is plausible.

America needs competing educational systems. Currently, the competitive position of the nonpublic schools is like that of the corner grocery store which tries to compete with well-supplied government owned and operated supermarkets that sell their merchandise at an eighty or one hundred percent discount. No businessman, no matter what the quality of his goods and the excellence of his services, could long survive such a disadvantageous competitive situation. Yet this is precisely the situation that non-public schools face today.¹⁴

In every other area of human endeavor we encourage competition

13. U.S. Chamber of Commerce Report, The Disadvantaged Poor: Education and Employment, Washington, D. C., Chamber of Commerce of the United States, 1967, pp. 68, 69.

14. Vanden Berg, op. cit., p. 44.

because of its inherent benefits. In fact the federal government has established anti-trust laws to preclude the evils of monopoly, and to abet competition in industry. Why then should the public school monopolize education where the potential for innovation and improvement is infinitely greater, and where the product is of incomparably more valuable? No one thing should be of greater concern to adult America than the health and welfare of the young. Why then a monopoly in education where competition is the imperative prerequisite for encouraging improvement, innovation, and freedom of choice?

A sound alternative to public education can be found in the nation's private and parochial schools, and if given financial aid they will preclude lethargy and enhance educational integrity in the public schools. Both public and nonpublic education would benefit from competition.

B. CONTRIBUTES TO THE GENERAL WELFARE

The nonpublic schools in Michigan perform a vital civic function when they provide thousands (315,000 in 1968-69) of children basically the same instruction in "secular" subjects that is afforded in the public schools. The constitution does not prohibit the state from paying for what it receives in service to children. If there were no private and parochial schools the state would have to pay for the secular instruction that children now receive in nonpublic schools.¹⁵ Viewed from a monetary point of view these schools represent an annual tax relief of millions of dollars in the state, and billions across the nation.

The Michigan School Finance Study of 1968 contains an extensive chapter regarding nonpublic schools in the state. Concerning the 'general welfare rationale' the report reads:

15. Leo Pfeffer, Church, State, and Freedom, Boston, Beacon Press, 1953, p. 435.

It would seem a broad and legitimate public purpose, first of all, to conserve the scarce educational resources, human and material, represented in Michigan's nonpublic schools, for these schools perform a function that would otherwise have to be provided entirely at public expense. It would be extremely onerous and costly to replace the materials, facilities, and personnel of the nonpublic schools, especially in metropolitan areas where they serve more than twenty per cent of the student population, as in Bay City, Grand Rapids, Saginaw, and Detroit. In addition, numerous nonpublic schools are under-utilized, including some inner-city Catholic schools whose erstwhile patrons have long since fled to the suburbs. When nuns stand ready to serve the poor and desks are unoccupied, the state could consider providing the finances to put these scarce, expensive capacities to use.¹⁶

Traditionally and historically the nonpublic schools have always been a part of the national educational establishment. Student credits from independent schools are accepted without question when they are transferred to state schools. Private and parochial schools may sue in the United States courts -- to wit the Oregon versus Society of Sisters case in 1925. Our nation and the respective states officially recognize nonpublic schools of any kind and on any level, as part of the national establishment.¹⁷ Thus nonpublic schools are both de facto and de jure part of the educational establishment in the United States, and as such contribute to the general welfare.

The nonpublic schools contribute to the general welfare in many ways,¹⁸ some of which have already been cited. Further explication is unnecessary, but one more example is warranted because the author considers it to be especially important to the health of the nation. Two of the prime objectives of education are the development of morally responsible men and women, and preparation for

16. Donald A. Erickson, "Nonpublic Schools in Michigan", J. Alan Thomas, ed., School Finance and Educational Opportunity in Michigan, Lansing, Michigan, Michigan Department of Education, 1968, p. 282.

17. Leo R. Ward, Federal Aid to Private Schools, Westminster, Maryland, The Newman Press, 1964, p. 23.

18. For an excellent treatment of this subject see Dr. J. Marion Snapper, "Contributions of Independent Education", Daniel D. McGarry and Leo Ward, Educational Freedom, Milwaukee, The Bruce Publishing Co., 1966, pp. 103-121.

responsible citizenship. Even the public schools consider the inculcation of moral and spiritual values to be extremely important,¹⁹ but because of the sanctions of the courts find it almost impossible to teach in any meaningful way. Most nonpublic schools operate primarily because they can teach (without inhibition or restriction) a particularized value system and provide a religious orientation to life. It is hardly necessary

to belabor the point that declining moral standards have affected adversely the stability of the family, the church, and the nation. Divorces, neglect of child training, a shaky loyalty to American ideals, crime and dishonesty of every stripe are too prevalent for comfort. Our modern society has largely failed to influence youth with Christian convictions or even with common every-day morality.²⁰

Religiously oriented schools strive for moral instruction in depth. They believe that the morally responsible person cultivates a loyalty to his God, to his fellows, and to his country. As a consequence "responsible citizenship comes naturally to the morally responsible person."²¹ Nonpublic religiously oriented schools, because they stress primary loyalty to God, intensify the motivation for loyalty to their country. They aid democracy because they inculcate the religious truths which are basic to democratic living.

19. National Education Association and the American Association of School Administrators, Educational Policies Commission, Moral and Spiritual Values in Public Schools, Washington, D.C.: The Commission, 1951.

20. Wm. Kramer, "Public Service of the Lutheran School", Wm. W. Brickman and Stanley Lehrer, Editors, Religion, Government, and Education, New York, Society for the Advancement of Education, 1961, p. 59.

21. Ibid, p. 60.

C. DISPROPORTIONATE BENEFIT TO CATHOLICS

America is primarily a Protestant nation, and many Protestants still retain a fear and suspicion of the Roman Catholic Church. These people are reluctant to approve public funds for nonpublic schools because most are Catholic parochial schools. They further believe that the Catholic schools could make the church more powerful. Maintaining these beliefs creates a defensiveness on the part of some Protestants and Jews who fear a danger to their own religious integrity and freedom.

In response to such thinking it should be pointed out that it is unfair and inaccurate to equate the church with the school. Their functions are not the same and should not be intentionally confused. Catholics are a minority in our nation, but they nevertheless have as much right as any other religious body to maintain and propagate their convictions without threat or fear of reprisal. Increasingly more Catholic schools are being operated by the laity, and the association of the clergy with the school systems is diminishing in every sphere - policy making, administration, and teaching.

Dr. Wm. Brickman, renowned author and educator, makes appropriate reply to those who protest aid to Catholic children. "If the Catholics will receive more benefits than other groups, it will be because they have more schools and more children. Protestant and Jewish schools also may receive aid, since the law cannot discriminate between one faith and another."²² Obviously aid to nonpublic schools, regardless of their religious affiliation, would be proportionate to the number of students who are the recipients of the benefits.

22. William W. Brickman, "The Debate Over Public Aid to Religious Schools" in Brickman and Lehrer, op. cit., p. 134.

D. DIVISIVENESS

Some opponents of nonpublic education contend that parochial schools divide American children along religious lines, and thus become a hindrance to cultural unity. In response to this allegation I think it should be noted that in 1969 the public school is no longer a tool for the Americanization of its citizenry. Will Herberg writing on this subject stated:

Today the older emphasis of cultural unity and the older fear of divisiveness are not merely out of place; they can well become an oppressive mark in the compulsive conformity that is increasingly the mark of our other-directed culture. Today the emphasis should not be upon unity, except of course the political unity of the nation, but on diversity. And in the effort to safeguard and cultivate diversity, the religious school has a significant role to play.²³

The charge of 'divisiveness' is something which is difficult to measure objectively, but fortunately reference can be made to two rather convincing studies made from substantive research regarding the effects of Catholic schooling on citizenship. Peter and Alice Rossi, combining data gathered in Florida and in several New England states, reached the following conclusions:

We could find no evidence that parochial schools tend to alienate individual Catholics from their communities. Parochial school Catholics are as involved in community affairs as anyone else of comparable occupational position. Furthermore, the choice of parochial-school education is apparently not so much a rejection of the public schools as a choice of something qualitatively different. It would appear that an improvement in the public schools would not materially affect their attractiveness to Catholics, for the greater pull of Catholic schools is based on religious qualities which the public schools have deliberately avoided We have been unable to find that parochial-school Catholics are very different from other Catholics.²⁴

In a more recent national study, Peter Rossi and Andrew Greeley reached the following conclusions:

In adulthood, subjects who had received an entire twelve years in Catholic elementary and secondary schools were no less likely than equally devout Catholics who had been educated in public schools to choose non-Catholics as their three best friends. The kind of school attended (public versus Catholic) had no notable impact on involvement in the 'secular' community in

23. Will Herberg, 'Religion, Democracy, and Public Education', John Cogley, ed., Religion in America, New York, Meridian Press, 1958, 1958, p. 146.

24. Peter and Alice Rossi, Daedalus XC, Spring, 1961, pp. 323, 324.

later years; on choice of one's neighbors, co-workers, or visitors; or on feelings concerning the importance of having friends from the same religious group.²⁵

When one observes the overall social situation in our American culture then he must admit that society is divided. But that is the nature of a democratic pluralistic society. To the extent that private schools are divisive, public schools are also divisive, in that they are living in a different educational milieu. "To be divisive is the choice we make when we declare for freedoms and for living in a pluralist society. We could reduce that choice and eliminate it. The dictator's society or totalitarian communism is not in great danger of the divisive effect which freedom entails."²⁶ Being divided into different school systems should not however be equated with "divisiveness".

Leo Pfeffer, referring to divisiveness, sees it stemming from other social settings and not from the nonpublic schools. He writes:

Our constitutional fathers were wise indeed, for experience has verified their fears. Wherever religion is brought into the public schools, sooner or later children of minority faiths or of no faith will suffer, sooner or later there is conflict, divisiveness and dissension.²⁷

Writing on another occasion regarding social stratification he says:

The intentional or de facto zoning which divides neighborhoods into upper class and lower class, Negro and White, Puerto Rican and native in the East, Mexican and native in the Southwest, results in public schools that are largely homogeneous in economic, social and ethnic groupings. Such homogeneity, if not completely absent in parochial schools, is far less prominent. If the children in parochial schools are all of one religion, they are likely to be of different social, economic, racial and ethnic origins.²⁸

Apparently divisiveness and segregation cannot be attributed to religious education, but rather to economic, social and racial factors.

25. As reported by Donald A. Erickson in Michigan School Finance Study, op. cit., pp. 275, 276.

26. Leo R. Ward, "Pluralism in Education in a Free Society" in McGarry and Ward, Educational Freedom, op. cit., p. 32.

27. Leo Pfeffer, "A New Religion in America", The Churchman, April, 1959, p. 9.

28. Leo Pfeffer, Creeds in Competition, A Creative Force in American Culture, New York: Harper, 1958, p. 81.

Fortunately for all Americans, community and national unity is not something artificially imposed, but rather is the harmonious coexistence and cooperation of a free people who enjoy political, philosophical, theological, and institutional differences while working for the common good.

E. DOUBLE TAXATION

Parents who elect to send their children to nonpublic schools frequently protest paying twice for educational services. First they pay for public education via taxes, and then they pay tuition costs for nonpublic education.

Horace Mann, generally regarded as the father of public education in the United States, in an annual report to the Massachusetts State Board of Education, pointedly identifies the injustice done to those who objected to sectarian teachings in the public school. Inadvertently he concurs with the double taxation objection raised by nonpublic school supporters. Says Mann:

Our system earnestly inculcates all Christian morals; it founds its morals on the basis of religion, it welcomes the religion of the Bible, and in receiving the Bible, it allows it to do what is allowed to do in no other system - - to speak for itself . . . if a man is taxed to support a school where religious doctrines are inculcated which he believes to be false, and which he believes God condemns, he is excluded from the school by divine law and at the same time that he is compelled to support it by human law. This is a double wrong.²⁹

And this is exactly the plight of the nonpublic school parent who is religiously opposed to the secular-humanism of the public school. While in fact he is obligated to endorse it with his taxes, he is at the same time forced by conscience to pay for operation of a nonpublic school.

Parents are by law obliged to provide an education for their children. They may elect to train them in either the public or nonpublic schools. This is freedom of choice in education; but those who elect the nonpublic schools must pay an additional price. Now freedom at a price is not freedom at all. And aside from

29. A. P. Stokes, Church and State in the United States, New York, Harper and Brothers, 1950, Vol. I, p. 471.

the inequity some poor parents are in effect coerced to send their children to schools which their conscience disapproves.

Nonpublic school supporters contend that these schools fulfill a public function in that they offer the same basic curricula as the public schools. They further argue "that all private education is, as a rule, under state supervision; and that it contributes substantially to the welfare and security of the nation. Ordinary logic and justice would demand, it would seem, that the government give help toward the secular instructional program of the religious schools."³⁰ Those who oppose aid to the nonpublic schools suggest all parents enroll their children in the public schools, thus avoiding the burden of double taxation. This suggestion is a naive over-simplification for reasons already cited. Besides, should all students enroll in public institutions, the tax load for all citizens would increase appreciably.

F. ECONOMIC FEASIBILITY

Considered from a purely pragmatic point of view, can the state afford to aid nonpublic education? When one computes the cost of educating children in public schools versus the cost of aiding the education of these same children in private institutions, it appears that the lesser financial burden would be to subsidize private education.

Some opponents of state aid to parochial and private schools contend that these schools will not close nor begin transferring students to the public schools. Rather they believe that the plea for financial assistance is simply a "cry" to solicit public funds for their own sectarian interests. The experiences of the nonpublic schools during the last few years is a matter of record and can best speak for itself.

30. Brickman, op. cit., p. 111.

Michigan "nonpublic school enrollments have declined by more than 46,000 students during the last three years (1965-68). These 46,000 students now enrolled in public schools are costing Michigan taxpayers - - state and local - - an additional \$28.8 million dollars. That's what it's costing Michigan taxpayers this year to educate children who could be attending nonpublic schools.* If the present trend continues, the figure on that price tag will reach the \$46 million mark next year . . . \$70 million the following year . . . and \$100 million in the 1971-72 school year.

At a time when our state needs every possible resource to sustain our public education system, it seems very serious folly for the state not to attempt to help nonpublic schools stay in existence. We in Michigan must preserve all our educational resources. To do otherwise can only lead to the detriment of the public school system with less resources available per enrolled child.

Nonpublic school authorities predict a further decline before the 1969-70 school year of at least 25,000 pupils. Unless some solution to the financial crisis is forthcoming, this would mean another \$18 million** to the taxpayers.³¹

To grant aid to nonpublic school children is obviously much more economically feasible than to provide for the education of these children in the public schools. In addition current levels of per-pupil support in public education would be more difficult to maintain if nonpublic schools were closed, aside from the tremendous costs that would be required to purchase or build the necessary buildings.

*Based on the average per pupil cost for educating children in the public schools during the 1968-69 school year.

**Based on the anticipated average per pupil cost of public education for the 1969-70 school year, as reported by the Michigan Department of Public Instruction assuming the requested funds would be granted by the legislature.

31. A Report and Recommendations of the Joint Legislative Committee on Aid to Non-Public Schools, Michigan Legislative Service Bureau, January 16, 1969, pp. 9, 10.

G. ENCOURAGEMENT OF UNDEMOCRATIC PRACTICES

Certain opponents of private education allege that sectarian and private schools because of their practices are bound to cultivate student attitudes which are contrary to our democratic ideals. "Such a definition of democracy suffers from shortsightedness and from a refusal to consider seriously the concept of cultural pluralism."³²

Democracy means citizens have the opportunity to encourage diversity within unity. It is a means of creating a social order in which individuality is maximized without infringing on the equal rights of all persons. Education in a democracy is "education for individuality-in-community, for being different from others in ways which will enhance the good of all, or at least not interfere with the self-determination of others."³³

Other nations which do not enjoy the benefits of democracy, have required all children to attend one monolithic type of school, but the American people have encouraged and maintained freedom of choice in the education of their children.

H. FOOT IN THE DOOR

Certain anti-aid spokesmen argue against proposed funds for nonpublic schools on the grounds that one form of aid will soon lead to demands for further aid, so all aid should be opposed. This argument was well summarized by Dr. Pfeffer when he wrote: "If hot lunches, why not bus transportation? If bus transportation, why not secular textbooks? If secular textbooks, why not non-religious supplies and equipment and why not the salaries of lay instructors teaching secular subjects?"³⁴ The author can only agree with Pfeffer's logic and say certainly, why not?

32. Brickman, op. cit., p. 122.

33. Phenix, Philosophy of Education, op. cit., p. 225.

34. Pfeffer, Church, State and Freedom, op. cit., p. 438.

To date not one of the benefits cited by Pfeffer has been declared unconstitutional by the United States Supreme Court. Decisions by the Court favoring bus transportation and secular textbooks merely confirm an affirmative position in favor of aid. As long as other requests have not been pronounced unconstitutional there is no reason why nonpublic schools should not continue to solicit more aid for their educational contributions to the welfare of children and the nation.

I. FREEDOM OF CHOICE IN RELIGION AND EDUCATION

The quest for freedom of choice in education, without penalty, is the heart of the issue in the struggle of citizens to obtain state aid for nonpublic school children.

Man's history is marked with his continuous struggle for freedom, and none of his battles have been as fierce as those when he fought for freedom of religion. All truly free societies claim freedom of religion.

And by freedom of religion it will be obvious that we cannot merely mean freedom of conscience and freedom to associate for the purpose of worshipping as one sees fit. For, once one is convinced that his faith touches not just his way of worship, but his way of life, then obviously freedom of religion will have to include freedom to act, and freedom to associate for the purpose of acting, on one's religious commitments in all spheres of human activity. Freedom of religion will comprise not only the freedom to establish and participate in churches that are expressive of one's religious beliefs and commitments. Equally it will comprise the right to establish and participate in schools that are expressive of one's religious beliefs and commitments.³⁵

Parents of nonpublic school students and their supporters take the position therefore, that the freedom of choice to select a school of their preference is inextricably a function of the freedom of religion. In other words, as Brickman points out, if the public law makers provide no subsidy for some schools, while granting financial support for others, then there is interference with liberty.³⁶

35. Nicholas Wolterstorff, Religion and the Schools, Grand Rapids, Michigan, Wm. B. Eerdmans Publishing Co., 1965, pp. 11, 12.

36. Brickman, op. cit., pp. 137, 138.

Parents are denied freedom of choice in education if they have to pay substantial costs for training their children in nonpublic schools, while free public schools beckon them.

The predicament of some parents is that while they are commanded by law to send their children to school, they are commanded by conscience to send them to schools which they can ill afford. Ward summarizes the problem by saying,

the primary issue is the effective right of parents to educate their children as the parents deem proper, and the immediate practical problem is to remove any actual infringement on this right. The actual infringement is complicated; it is at once psychological, moral, political and financial. What we must eventually achieve is a policy and practice providing for effective freedom of conscience and belief, and this is another way of saying that we must find ways to work out adequate provision for a thoroughgoing educational pluralism. ³⁷

If, in fact, Americans are to have freedom of choice in education without penalty, it presupposes financial aid to all officially recognized, legitimate educational instructions.

J. GOVERNMENT CONTROL

A sizeable number of nonpublic school supporters are hesitant to receive state aid, or they resist it altogether for fear of government control. And certainly it is a reasonable concern, for any governmental body which allocates funds must be responsible for overseeing the ways and means by which those funds are expended. Reasonable control must be expected from governmental officials, or they would be derelict in their responsibilities to the society which they serve.

Today every school in Michigan is under government control. The State Superintendent of Public Instruction is responsible for the supervision of all schools. ³⁸ Controls exercised by the State Board of Education, and other state

37. Ward, op. cit., pp. 140, 141.

38. The specific responsibilities of the state superintendent are cited in Chapter II of this dissertation.

agencies are very similar in the public and nonpublic institutions. Both systems comply with regulations regarding:

1. Certain specified courses of study.
2. Certain curriculum content.
3. Certification of teachers.
4. Extra-curricular activities.
5. Fire, safety, and sanitation standards.
6. Health standards for children and employees.
7. Plans of new school structures and building modernization.
8. Number of school days and length of school day (optional with nonpublic schools, but in most communities coincides almost identically with the public school).

Currently the only basic difference in state control between the public and nonpublic schools appears to be in the field of accounting and reporting. Like their public school counter-parts the majority of nonpublic schools are controlled by lay boards of trustees who establish policies in their respective community schools. State control is confined to broad general policy which affects school organization and decision making only from a distant detachment. The same relationship has been typical between the funding agency and the recipient schools on the federal level.³⁹

As was mentioned earlier, the "secular" programs of the nonpublic schools are already under the supervision of the state department of education with or without financial aid from the state. Directly and indirectly, public authorities affect teacher qualifications and curriculum content in practically every academic area except courses in religion. In this connection Brickman makes an astute observation when he says "it is interesting to note that there is no record of any serious challenge of the right of the state to control the religious school as an infringement upon the doctrine of separating church and state."⁴⁰ In view of the reality of state control of all education, it would be pertinent to ask the question whether it is not reasonable for the state to contribute toward the

39. Policies for the implementation of the G. I. and Korean G. I. Bill of Rights, the National Defense Education Act of 1958, and the Elementary and Secondary Education Act of 1965 are ample evidence.

40. Brickman, op. cit., p. 121.

"secular" program of the nonpublic schools which are already under the supervision of the state department of education.

No one can, with assurance, guarantee the control of the hand of government in education, but in view of historical precedence the fear of state control or interference is simply unwarranted. What controls do exist are for the welfare of all schools, and they in no way interfere with the objectives of nonpublic education.

K. PLURALISM

America is a pluralistic society. Our national motto *E pluribus unum* is testimony to the unity which exists amid differences. In a practical way pluralism implies a respect for the differences of others; it means honoring the options and rights of others despite extreme divergencies. In education, pluralism implies "that we allow, enjoy, and even promote freedom in the sources and methods of education, and freedom, within responsible limits, in the subject matter taught, and in the philosophies and theologies underlying the content."⁴¹ Pluralism in education is the right to choose between educational alternatives without penalty; it is the opposite of an arbitrary uniformity.

At the heart of the American democratic system is the opportunity for choice; this is true in all social institutions including education. One of the fundamental principles of democracy is equal opportunity under the law, and a companion principle is diversity. Our nation has always been characterized by a pluralistic educational system, the public and the nonpublic schools. Thus one could accurately say that we have a *de facto* educational pluralism with the freedom to choose the type of school in which he wants to educate his children.

41. Leo R. Ward, "Pluralism in Education in a Free Society", McGarry and Ward, Educational Freedom, op. cit., p. 23.

This freedom is as indispensable to the American citizen as the freedom which he enjoys in voting or in choosing his place of worship.

Winfield S. Fountain, in a plea for pluralism in America, stated his conviction that the challenges which face our nation are closely tied to the importance of keeping the United States "a strong, responsible, and viable democracy". He further stated that:

such strength, responsibility and viability are spawned in an open society, bound together in unity of ultimate national purpose, but nurtured on diversity of view, willingness to try the new, and courage to exceed the norm . . . A pluralistic educational system is essential to this type of 'national liveliness'. This system must encompass both the public and independent schools . . . it is in the best interests of the national welfare that a strong, pluralistic system of education be encouraged.⁴²

If Fountain's point of view can be defended, then certainly there is sound rationale to support the position that a pluralistic educational system justifies and needs the financial encouragement of our state.

L. PROLIFERATION

Some opponents of aid to nonpublic school children contend that support of private and parochial education would proliferate both political parties and parochial schools.

The fear that religious political parties with special interests would come into being because of the incentive offered by aid to nonpublic education is hardly a tenable argument based on historical facts. In the past no special parties have come into being as a result of either state or federal aid. However opponents to aid have organized politically with the stated purpose of destroying parochial education. In mid-nineteenth century both the Know-Nothing and Native American Parties were motivated by bitter anti-Catholic feelings.⁴³ Recent decades have

42. Winfield S. Fountain, "A Plea for Public Support of Pluralism in America", Phi Delta Kappan, XLIV, No. 9, June, 1963, p. 415.

43. Brickman, op. cit., p. 133.

not witnessed the formation of new parties stemming from the benefits of the hot lunch program, bus transportation, textbooks, or other federal and state aid.

Others argued that Educaid would proliferate parochial schools sponsored by religious groups who presently have no schools of their own. A corollary fear is that public schools would be decimated. The probability that more church groups would begin their own schools, if aid was granted by the state, appears to be dependent upon two factors -- the extent (amount) of aid, and the strength of conviction that a religiously oriented education is important for one's children. With the fast rising cost of education, and the continued resistance to increasing school millage proposals, it is not likely that parents, who currently send their children to public schools, would be attracted to nonpublic education even if the state would pay fifty per cent of the cost of education for the nonpublic school training. To pay the other fifty per cent from one's pocket is a greater price than most parents are willing to pay, unless they are extremely dissatisfied with public education. The strength of a person's conviction can be viewed by his willingness to pay for the things which he declares to be important to him. While some parents are denied a freedom of choice in education because the cost of paying for nonpublic schooling is prohibitive, the relief afforded by some state aid would entice those who traditionally have sent their children to the public school. If parents are satisfied with public education, why should they elect a private school for their children? Certainly some state aid could not logically affect their judgment so as to transfer their children to a school to which they had not had previous affinity; neither would they be attracted to a philosophy of education to which they had not been previously committed.

M. RACIAL SEGREGATION

Argument has been advanced that private and parochial schools siphon off middle-class white students, and for some parents these schools have served as an escape from desegregated public schools. Aid to these schools might encourage further racial segregation.

In a previous section (regarding divisiveness) reference was made to an observation by Leo Pfeffer. It warrants repeating here.

The intentional or de facto zoning which divides neighborhoods . . . results in public schools that are largely homogeneous in economic, social and ethnic groupings. Such homogeneity, if not completely absent in parochial schools, is far less prominent. If the children in parochial schools are all of one religion, they are more likely to be of different social, economic, racial, and ethnic origins.⁴⁴

Because of the costs inherent in nonpublic education, private and parochial schools have been largely a middle-class phenomenon. State aid would relieve the parents' financial burden and more low-income families could find it to be a more viable option. A formula could be designed to grant aid to nonpublic school children on a graduated schedule, giving preferential relief to low income families. Such a system would encourage desegregation. Dr. Donald Erickson has proposed some excellent ideas on this subject; they appear plausible and administratively feasible.⁴⁵

Dr. John A. Hannah, President of Michigan State University, and former chairman of the United States Commission on Civil Rights, and the Rev. Theodore M. Hesburgh, President of the University of Notre Dame, submitted a proposal that "the federal government, either by executive or, if necessary, by congressional action, take such measures as may be required to assure that funds under the

44. Leo Pfeffer, Creeds in Competition, A Creative Force in American Culture, op. cit., p. 81.

45. Donald Erickson, "Public Funds for Private Schools", Saturday Review, September 21, 1968, pp. 66, 68, 78, 79.

various programs of federal assistance to higher education are not disbursed to any public or private institution of higher education which discriminates on grounds of race, religion or national origin."⁴⁶ This same principle (excluding the religious prohibition) could be applied to the granting of public funds to non-public elementary and secondary schools, so that no support would be given to schools practicing racial segregation. Thus the argument of withholding money from nonpublic schools on the ground that segregation would be encouraged, would lose its validity.

N. RELIGION IN PUBLIC SCHOOLS

Writers who have opposed public aid to nonpublic schools have stated or implied that public schools teach no religion, and that nonpublic schools perform no public function. In fact, neither of these contentions are true. Proponents of aid have given considerable attention to the secular service rendered by non-public schools, but very little has been said about the religious character of public education. There is sufficient evidence that there are public schools in all parts of the country where the religious nature of the schools is conspicuous.⁴⁷

In the spring of 1957 the Michigan State University Committee on Church Related Programs undertook a survey to determine the role played by religion in Michigan's public schools. A questionnaire was prepared and distributed to 2,432 schools. This included all of the public schools in the state, except Detroit which did not wish to participate. A total of 1,036 were returned from elementary

46. United States Commission on Civil Rights, "Equal Protection of the Laws in Public Higher Education: 1960", Washington; U.S. Government Printing Office, 1961, p. 265.

47. See examples in Wm. W. Brickman, "Public Aid to Religious Schools?" Religious Education, July-August, 1960, pp. 280-282.

junior high and senior high schools. The schools reported the following occurrences of religious activities in the classroom:⁴⁸

	Never	Occasionally	Often
Prayers	478	287	253
Bible reading	642	292	84
Singing hymns	545	418	55
Teaching hymns	704	282	31

The following results were reported concerning the presence of religious material in the content of classroom study:⁴⁹

	Yes	No
Study of church history	439	579
Choral classes that sing hymns as part of their training	539	479
Teaching about religion and its place in American culture	467	551
Special program in character and moral training	198	820

Religious instruction and practices no doubt continued to this extent until 1961 when the state attorney general handed down an opinion that Bible instruction in Michigan public schools constituted a violation of both federal and the state constitution, and that the "local school boards should take immediate steps to end any such programs within their jurisdiction."⁵⁰ Subsequent United States Supreme Court decisions which have outlawed Bible reading and prayer in public schools have no doubt greatly reduced religious practices. So until the 1960's it is a fact

48. Robert T. Anderson, "Religion in the Michigan Public Schools", School and Society, May 9, 1959, pp. 228, 229.

49. Ibid.

50. Attorney General Paul L. Adams, as quoted in Damon Stetson, "Michigan Orders Bible-Study Ban", New York Times, March 16, 1961.

that religious instruction in the public schools of Michigan was commonplace. If an honest assessment could be made, it would be interesting to know to what extent religious practices still prevail, despite the rulings of the courts. Regardless of current practices, 'if it is contrary to the Constitution to pay money to a school conducted under religious auspices, it is equally unconstitutional to give tax-supported funds to schools which promote religion under public auspices.'⁵¹

Viewed from a different perspective where religion is not structured nor formalized it nevertheless exists. For one's religio-philosophic perspective can never be extricated from the educational forum. In this connection, Pfeffer says:

What we are witnessing today is the gradual emergence of a strange, new hybrid creed; an artificial religion; to obtain the aid and benefits of the machinery of our public educational system, a new religion is being evolved. The new public school religion has its own Deity. He resembles the Deity of Protestantism and of Catholicism and of Judaism for his name too is God. But he is far more mysterious than contemplated by any other faith, for he cannot be defined.

The new school dogma has its creed and dogma. It is called 'Common Core'. As its name indicates, like all else it is borrowing from the lowest common denominator of the creeds and dogmas of Protestantism, Catholicism and Judaism. The religion has its code of ethics. This is known as Moral and Spiritual Values. Of course, they resemble the code of ethics of the traditional religions. It is evolving as a full-fledged competitor of the older religions.⁵²

Religion has been a part of the program of the public schools. In some schools it still is, but formal religious instruction has been almost completely removed. In its place the public schools have adopted an almost undefinable deity which, for lack of a better word, we can call secular-humanism. Religion in the public schools? Of course, but it is an unoffensive non-sectarian religion which attempts to be impartial.

51. Wm. Brickman, 'The Debate Over Public Aid to Religious Schools' in Religion, Government, and Education, op. cit., p. 141.

52. Leo Pfeffer, 'A New Religion in America', The Churchman, April, 1959, op. cit., pp. 9, 10.

O. SEPARATION OF CHURCH AND STATE

The most frequently presented argument against federal and state support for nonpublic education is the contention that it is unconstitutional. Probably no problem is so confused, so lacking a universe of discourse, as the problem of church-state relations in the United States. In fact there appears to be no agreement of the meaning of the terms used in the argument. The author pretends no competency to interpret accurately the meaning of the "separation of church and state" as it relates to education; therefore argument must be sustained by those legal minds which have grappled with this complicated issue in depth.

There is no specific mention in the United States Constitution concerning a wall of separation between church and state.

The Jeffersonian phrase 'wall of separation' was contained in a private message to a group of Baptists, but it appeared nowhere in the legislative acts. In recent United States Supreme Court decisions, as well as in various writings on the church-state controversy, the doctrine of separationism is treated as a dogma. Yet, there is no such thing - and there never was in American history - as a full, complete, definite and thorough separation of church and state - - - - decidedly not in educational matters.⁵³

According to Katz "the only thing we really know about the original meaning of the 'no establishment' clause is that it forbade congress to disestablish as well as to establish religion. And the 14th Amendment certainly did not extend this prohibition to the states!"⁵⁴ The 1st Amendment (by reason of the 14th Amendment) prohibits the states from establishing religion or prohibiting its free exercise. Katz further contends that "neutrality rather than strict separation has usually been the 1st Amendment canon of interpretation, and neutrality should be required of both state and federal governments, whether by interpretation of the concept of religious liberty or by application of the establishment clause."⁵⁵

53. Brickman, op. cit., p. 115.

54. Wilber G. Katz, Religion and American Constitutions, Northwestern University Press, Evanston, Illinois, 1963, p. 11.

55. Ibid, p. 30.

Mr. Justice Douglas in the *Zorach* case (*Zorach v. Clauson*, 343 U.S. 306, re released time classes on school time outside public school buildings) expressed his opinion regarding the 'separation' interpretation. He said,

The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and in all respects there shall be a separation of church and state. Rather it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other - hostile, suspicious, and even unfriendly The state respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe . . . we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.⁵⁶

Paul G. Kauper claims that the state may subsidize nonpublic schools without violating the constitution, if the funds support that part of the education which is identifiable as secular in nature. He states that:

A principal reason to justify these expenditures is that parochial schools do serve a secular as well as religious purpose. To put the matter in another way, the church and state are engaged in concurrent functions. But we may also stress another reason, and this is that the state in giving some assistance to parochial schools is thereby making a meaningful contribution in support of the right of parents to send children to the school of their choice . . . consistent with the non-establishment principle of the First Amendment and the separation limitation derived from it, and in view of the interpretations given to this language and the practices that have been sanctioned, congress may grant some assistance to these schools as part of a program of spending for the general welfare, so long as the funds are so limited and their expenditure so directed as not to be a direct subsidy for religious teaching.⁵⁷

It is abundantly clear that answers to any of the questions in the church-state relations issue cannot be forced by employing broad sweeping statements based on a theory of complete separation, or on the theory that the state can do nothing which, in fact, aids religion. When can it be said that state aid to nonpublic

56. Douglas, as quoted by Paul G. Kauper in Church and State: Cooperative Separatism, Michigan Law Review, Vol. 60, November, 1963, No. 1, p. 11.

57. Kauper, Ibid, p. 40.

schools can be so tied to religious instruction as to make it an unconstitutional establishment? There apparently is no precise answer. However, if the relevant cases dealing with bus transportation, textbooks, and auxiliary services provide any answer at all, then it appears that the state can afford some support for non-public schools to the extent that they discharge the same secular functions as the public schools.

P. TRADITION

Some opponents of aid argue that public funds to nonpublic schools would constitute a repudiation of the traditional American policy of tax funds earmarked exclusively for public schools. First of all it should be noted that private and parochial schools were on the scene long before the public schools and have operated side by side with them since the advent of the latter. A review of the history of education in the United States discloses many subventions to parochial schools by both the federal and state governments. (See Chapter II for examples).

Granted the historical record of public support for nonpublic educational institutions, some will argue that in most cases there were reasons for aid without considering the religious nature of the schools involved. Brickman's rebuttal to this point is:

Why should one not say, . . . that federal funds to religious schools (where religion forms a part but certainly not all of the curriculum) are actually intended to help education rather than religion? Whatever reasons might be advanced to justify public support in particular cases, it is difficult to deny that in each instance a religious institution was involved in some way.⁵⁸

From the facts of United States history one may conclude that the American tradition may have been other than the prevailing common conception of it as regards aid to nonpublic schools. Governmental financial support to private and parochial educational institutions had as much claim to being a part of the American tradition as the policy of non-support.

58. Brickman, op. cit., p. 114.

Q. THREAT TO PUBLIC SCHOOLS

One of the major fears expressed by such organizations as Protestants and Other Americans United for Separation of Church and State, and Citizens for the Advancement of Public Education is that public aid to nonpublic schools would threaten the existence of the public schools. Quite naturally public educational associations resist proposals which would aid nonpublic schools because they imply a competition not previously encountered. But to say that aid to all schools would threaten public education appears to be an unwarranted claim.

Referring to the present state of affairs in public education, Donald Erickson, professor of education from the University of Chicago, states, "Something drastic ails the system. It needs drastic renovation and the shock treatment of being forced to compete for clients and support."⁵⁹ His thesis is that competition in education is healthy, and that it would be a stimulant rather than a threat. Experience from all other organizations and enterprises would seem to support this position.

No doubt existing nonpublic schools would be encouraged to expand their systems, depending of course upon the extent of aid. But expansion of private and parochial education can hardly be equated with demise or depletion of public schools. Avis has been good for Hertz, while it remains number two. The public school in the United States is properly the core of the total national educational enterprise, and if it is threatened by competition by other systems which represent only fourteen per cent of the nation's children, then it would seem time that we have an objective national assessment of what we are doing in education.

As was mentioned in a previous section regarding 'Proliferation', although aid to nonpublic schools will undoubtedly encourage their expansion, it is unreasonable to believe that the public schools will be eclipsed or even damaged by increased

59. Donald A. Erickson, op. cit., pp. 66, 67.

competition. By far the majority of parents will still prefer the benefits of a free education in which there is a minimum of explicitly sectarian religious education.

In the 1920's the State of Oregon sought to grant a monopoly to public schools. The Oregon case decided by the United States Supreme Court in 1925 established the constitutional status of private and parochial schools as legal institutions for the fulfillment of the state laws for compulsory attendance. In reference to public school priorities the opinion of Louis Marshall is worth citing. He said:

The nation is no more preserved by the public school than by other agencies. The Fathers of the Republic and a large proportion of our finest citizens never attended a public school, and today a large number of the best exemplars of Americanism have received and are receiving their education outside of public schools. ⁶⁰

Surely the public schools can be furthered without granting them monopolistic educational powers, and certainly they should not be threatened by aid granted to nonpublic schools.

Viewed from the reverse side of the coin, public schools will be hurt financially if aid is not granted to the nonpublic schools. The financial crisis has forced the closure of many nonpublic schools in Michigan during the past four years. Thousands of students have been forced to transfer to the public schools simply because their parents can no longer afford a double taxation and escalating costs. From a purely economic consideration, the state can't afford not to grant aid to nonpublic schools. It will be much less costly to pay a fraction of the educational costs for nonpublic school children, than to pay one-hundred per cent of it for those same children when they transfer to the public schools.

60. From a brief as published in Charles Reznikoff, editor, "Louis Marshall; Champion of Liberty", Volume II, Philadelphia: Jewish Publication Society of America, 1957, p. 963.

CHAPTER IV
CONSTITUTIONAL SUPPORT FOR STATE AID TO
NONPUBLIC SCHOOL STUDENTS

All the logical support which one might be able to muster in favor of state aid to benefit nonpublic school children is little more than an exercise in futility if the proposals advanced do not meet the constitutionality test. In view of the facts of history, and the volume of legal opinion which deal with the constitutional question, any categorical statement in support of or in opposition to aid to nonpublic school children is a naive oversimplification. Some of the best legal authorities have written entire volumes on the subject. The author has neither the training nor the competency to deal with the subject in depth; his position is based exclusively by reference to argumentation and legal opinions which can be logically and legally supported.

The federal government has limited powers under the constitution, and it has not been delegated any general authority over education. Thus education is a responsibility which resides with the respective states. Even though the federal government retains a general interest and does aid education, each of the states is primarily responsible for the educational programs in its province. Opponents to aid on constitutional grounds appeal to provisions in both our federal and state constitutions. So in considering any proposal for aid we must ask whether it violates either the United States or Michigan Constitutions.

The First Amendment to the U. S. Constitution states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This federal declaration is made applicable to the states by the Fourteenth Amendment, which relevant section reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of 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 laws.

The constitutional question resides in the attempt to make compatible the twin phrases in the First Amendment. Congress is assigned the almost impossible task of avoiding the passage of bills favorable to religion or religious groups, while at the same time it must avoid in any way inhibiting the free exercise of all religious bodies in a pluralistic society. From these twin phrases Jefferson had coined his 'separation of church and state' principle. In simple terminology, if this principle means anything, it means an absolute guarantee of religious liberty.

It does not mean that government is completely disassociated from religion. Almost every state constitution in its preamble points to the fact that the people look to the Supreme Being for guidance. Legislatures usually open with prayer; official documents are dated 'in the year of our Lord'; Sunday laws have been enacted and their enforcement upheld; church holidays have been made legal holidays. Our everyday life in America reflects Christian principles and beliefs (many of which have been derived from the Hebrew religion), and to this extent the separation of church and state has never been absolute.¹

Congress may neither establish nor disestablish religion; in other words it must remain as affirmatively neutral as is possible. Absolute neutrality is impossible but the law makers must pursue objectivity and fairness toward all religions, and thereby respect the plurality of American society, disallowing indifference and hostility toward any and all religions. In his opinion in the Everson case Justice Black summarized this interpretation of the First Amendment when he said: "The First Amendment requires the state to be neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their

1. National Education Association, National Education Association Research Bulletin, Washington, D. C., XXXIV, December, 1956, p. 171.

adversary. State power is no more to be used so as to handicap religions, than it is to favor them."² In recent decades the United States Supreme Court, with its decisions, has consistently advocated a neutral society, and has interpreted the First Amendment based on neutrality.

We turn now to specific court cases which deal with the constitutionality of state aid to nonpublic school children. In 1930, the nation's highest court concerned itself with the practice in Louisiana of providing free textbooks to children in the nonpublic as well as the public schools. Those who opposed this practice argued that state tax money was being spent for a private rather than a public purpose. By an unanimous decision in *Cochran v. Louisiana*, the high court upheld the right of the state to permit use of state-owned textbooks by pupils attending parochial schools, because "the schools are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation because of them. The school children and the state alone are the beneficiaries."³ Concerning the textbook law the court also said: "Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded."⁴ Thus the common interest was promoted, and the individual interests were incidentally aided, including the religious interests of parents; however the later was immaterial because it was incidental to the primary secular purpose of the law. By this action the court clearly approved the expenditure of public funds for the benefit of nonpublic school children because it was considered to be for a public purpose.

2. *Everson v. Board of Education of the Township of Ewing*, 331 U.S. 1. (1947).

3. *Cochran v. Louisiana State Board of Education*, 281 U.S. 370. (1930)

4. *Ibid.*

The United States Supreme Court in 1947 once again had occasion to emphasize the fact that education of children in nonpublic schools serve a public purpose in the *Everson bus-ride case*. New Jersey permitted some nonpublic school children to receive transportation at public expense, and opponents of this practice argued that it constituted an establishment of religion. The court sustained the practice and said that permitting transportation at public expense for parochial pupils did not constitute "the slightest breach" of the wall of separation between the church and state. In the decision the court said further:

It is much too late to argue that legislation intended to facilitate the opportunity of children to secure a secular education serves no public purpose. Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program.⁵

Since the primary effect of bus rides for school children is secular, any other benefit accruing from this welfare legislation is incidental. Therefore the court said in effect, if the primary aim of a certain law is the "general welfare" of the citizenry, then the fact that religious institutions are benefited, in the execution of the law, is really irrelevant to its constitutionality. And such a law does not constitute "establishment" of religion. *Everson* recognized the principle that children in nonpublic schools can be included in "general welfare" programs.

One of the more recent important cases dealing with this constitutional question was *Abington School District, Pennsylvania v. Schempp* (1963).⁶ Here some Unitarian parents of children in the public school brought suit in a federal court to declare unconstitutional a Pennsylvania statute requiring the reading without comment of ten verses from the Holy Bible on the opening of each school day. Their objection was upheld and the practice was declared unconstitutional. From this case was born what is now referred to as the *Schempp Test*. The

5. *Everson*, op. cit., 331 U.S. 1, 7.

6. *School District of Abington Township, Pennsylvania v. Schempp*, 374 U.S. 203 (1963).

court opinion also demonstrated an overlapping between the Nonestablishment and Free Exercise clauses of the First Amendment. Both the test and the overlapping appear in a portion of the opinion which follows:

. . . The Establishment Clause has been directly considered by this court eight times in the past score of years, and, with only one justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. . . . The Free Exercise Clause, likewise considered many times there, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority.⁷

Thus according to Schempp laws must have "a secular purpose and a primary effect that neither advances nor inhibits religion." This then can be called the doctrine of the primary of secular effects. As it relates to legislation providing tax funds for the education of nonpublic school children we then must ask the question:

What are the purpose and primary effect of such legislation? If either the legislative purpose or the primary effect of the legislation is to advance religion, the law is unconstitutional. On the other hand, if the purpose and the primary effect of the legislation is the education of children in secular subjects, the law is constitutional.⁸

The state can legislate for a public purpose; it may spend public funds for the secular effects and public purpose of educational programs even though they are achieved in nonpublic institutions. Or as Blum puts it,

The government's sovereign power to promote proper secular objectives is not paralyzed by incidental benefits which may accrue to religion as a by-product of its enactments. Such benefits are not the primary effect of legislation for a public purpose; they are incidental to the government's purpose, and irrelevant to the constitutional question.⁹

7. Schempp, Ibid, 374 U.S. at 222.

8. Virgil C. Blum "Our Federal Constitution and Equal Justice in Education" in McGarry and Ward, ed., Educational Freedom, op. cit., p. 139.

9. Ibid, p. 139.

The Schempp case was cited again in 1968 in the Board of Education v. Allen New York textbook case in which the Supreme Court upheld the constitutionality of a New York statute providing secular textbooks for students in both public and nonpublic schools. In giving the majority opinion Justice White stated, "this court has long recognized that religious schools pursue two goals, religious instruction and secular education." 10

Since Pierce v. Society of Sisters (1925) a volume of case law has confirmed the power of the states to insist that attendance at nonpublic schools, if it is to satisfy state compulsory attendance laws, be at institutions which teach certain prescribed subjects, employ certified teachers, and provide minimum hours and days of instruction. Citing Pierce, the court in the Everson case stated that "parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has the power to impose." 11

As we turn now to the constitutionality of state aid to the nonpublic school children of Michigan in particular, it is necessary to cite as background information the famous court decision which originated from a law in Oregon in the 1920's. There a law was passed which gave the state the ultimate right to determine the education of all children, and as a result they were required to attend public schools. The United States Supreme Court struck down the state law, and at the same time formulated policy for all states to follow since then, in these emphatic words:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize

10. Board of Education of Central School District No. 1, New York v. Allen, 392 U.S., 236. (1968).

11. Everson, op. cit., 330 U.S. 1, 18. (1947).

its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.¹²

So it is a constitutional right of parents to send their children to the school of their choice, as long as the school meets requirements and standards which the state may properly impose. By virtue of the *Pierce* decision parents have the right to enroll their children in either public or nonpublic schools, including those which are parochial or religiously affiliated. "The court in sustaining these fundamental rights placed a constitutional barrier in the path of state monopoly of the educational process, and of a state-directed program of forcing all students into the mold of a uniform secular educational process."¹³ With reference to the parents freedom of choice in education, Kauper adds his opinion in these words: "The public school is a cherished symbol of our democracy, but it may also be suggested that parochial and the nonparochial private schools, having their own important constitutional status . . . are an equally important and impressive symbol of our democratic and pluralistic culture."¹⁴ He added his last observation because of the expressed opinion of opponents to aid that they sense something almost un-American about nonpublic schools.

The state's compulsory school laws obligate parents to send their children to any school of their choice that meets the state's minimum educational standards and requirements. Any and all schools that satisfy the state's requirements thereby serve the public purpose underlying the compulsory school laws. It is obvious therefore that nonpublic schools which meet these requirements are an integral part of the total educational system within the state. These schools serve the same public purpose as the state-owned and operated schools, and they do not

12. *Pierce v. Society of Sisters*, 268 U.S. 535 (1925).

13. Paul G. Kauper, Church and State: Cooperative Separatism, op. cit., p. 35.

14. *Ibid*, p. 36.

exist by sufferance or tolerance, but by equal rights along side the public schools. If then the nonpublic schools meet the state's standards for education in secular subjects, it is not aid to religion to allow tax funds toward the cost of such education without discrimination.

Michigan's Fourth Constitution (1963) retained the wording of the 1787 Northwest Ordinance in the section pertaining to the encouragement of education. "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."¹⁵ Provisions of the state constitution pertaining to aid to nonpublic schools are not really specific enough to be meaningful, but they do state what is prohibited.

No person shall be compelled to attend, or against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose.¹⁶

Taxes may not be used to pay for courses in religious instruction, nor may public funds be allocated to remunerate those teachers who teach courses in religion. Neither may the state in any form channel funds to theological seminaries whose exclusive function is the training of personnel for the propagation of religion. Beyond this it says nothing prohibitive, except that by omission it totally neglects concern for the nonpublic schools. "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."¹⁷

15. Michigan Constitution, Article VIII, Section 1, p. 36.

16. Ibid, Article I, Section 4, p. 7.

17. Ibid, Article VIII, Section 2, p. 36.

Thus in Michigan currently it is accurate to say that the state must constitutionally support public education, and it may support nonpublic education.

Michigan legislative policy has demonstrated both opposition to and support for aid for nonpublic school children. According to the General School Laws, "Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund."¹⁸ The compiled school laws prohibit funds from the primary school fund to be used for nonpublic school children.

During the 1960's the legislature has however enacted two laws which have afforded indirect financial assistance to the nonpublic schools in Michigan. The School Transportation Law was approved in 1963, and the Michigan Auxiliary Services Acts were passed in 1965. These bills were passed by sizeable margins. Assistance in the implementation of the federal Elementary and Secondary Education Act of 1965 was further evidence of the state's willingness to help nonpublic schools attain their educational objectives.

In 1968 the Michigan Court of Appeals used the Schempp test in the case of *Alexander v. Bartlett* in which the constitutionality of the 1963 Bus Law was tested.¹⁹ The court ruled favorably on the law providing free transportation to all children whether they attended public or nonpublic schools. In effect the Michigan Court has said that the state constitution permits the state to aid nonpublic school children. Public aid to assist nonpublic school children is apparently on firm constitutional ground in Michigan.

In support of this conclusion, Dr. Paul G. Kauper, professor of constitutional law at the University of Michigan has written, what he has labeled, "A More Tenable Theory". Kauper has drafted some important principles which

18. General School Laws, State of Michigan, 1966, 388, 557.

19. *Alexander v. Bartlett*, 14 Michigan Court of Appeals, Oct. 25, 1968. At the time of this writing the exact page citation had not been determined.

support aid to nonpublic school children. They warrant serious consideration.

First, the state may properly require parents to send children to school. Secondly, parents have the right to send children to the school of their choice, including a parochial school if they so desire. Thirdly, the state may prescribe appropriate standards for all schools accredited under its compulsory education laws, including the prescribing of secular courses to be taught in all schools. It is plain from these considerations that when a parent sends his children to a parochial school, he is sending them to an institution that satisfies the public purpose of the compulsory education laws while at the same time exercising his constitutional right to have his children receive religious instruction. In short, public and parochial schools do serve some of the same functions. It is on this ground that a substantial argument can be made that . . . funds may be used to give some assistance to parochial schools in recognition of their secular functions under the compulsory education laws . . . In any event, any categorical assertion that any . . . assistance to parochial schools is unconstitutional cannot be supported by reference to any compelling authority.²⁰

Kauper's theory may not be "court-tight", but it sounds logical and appears tenable.

There remains one important issue which to date the courts have not yet faced. As was mentioned previously, the state must support public education, and it may support nonpublic education. Does not the exclusion of nonpublic schools from public funds operate as a restriction of the exercise of religious liberty in education? Do not all schools which meet the educational standards, imposed by the state have a legal right to public tax funds? In response to these questions Wolterstorff has given some cogent answers. Relating his observations to the affirmatively neutral position which the public schools must take on all matters religious, he says:

For the issue is not whether a school system founded on affirmative impartiality would manifest hostility to religion in general; the issue is whether it would manifest hostility to some particular religion or other. Quite obviously it would. It manifests hostility, for example, to those who consistently believe that the education of their children should be set in a Christian

20. Paul G. Kauper, "The Constitutionality of Aid to Parochial Schools", Phi Delta Kappan, Volume XLIII, No. 8, May, 1962.

perspective; and it aids those who, for whatever reasons, do not believe that the education of their children should be set in a religious perspective.²¹

He further holds that the state thus discriminates in a coercive manner, not withstanding the legal right of objectors to establish their own schools.

Thus there is, as it were, an exemption clause in the requirement of public school attendance. Now the court has declared, in its school cases, that if a regulation by the government manifests preference among religions and irreligions, the fact that an exemption clause is attached does not save the regulation from being discriminatory and lacking impartiality. For to exercise one's right to provide one's children with a nonpublic school education one must be willing and able to give financial support to two different school systems. And common sense, as well as various of the court's opinions, tells us that a legal arrangement whereby a financial penalty is attached to the exercise of someone's religion can constitute an infringement on the free exercise of that religion - that is, can constitute coercive discrimination against that religion.²²

Legal opinion in support of this argumentation is not uncommon,²³ and from these cases it seems clear, from the court's views, one's religious freedom can be infringed upon if, by some legal arrangement, a special financial burden is attached to the exercise of his religion.

The opinion of the Court in *Braunfeld v. Brown* gives legal endorsement to this principle, and in part replies to the unanswered constitutional question.

If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. But if the state regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the state's secular goals, the statute is valid despite its indirect burden on religious observance unless the state may accomplish its purpose by means which do not impose such a burden.²⁴

Viewing the principles that the United States Supreme Court has established, strong argument can be made to the effect that the state is obliged by the constitution to support with public funds all schools which meet the state's minimum educational standards.

21. Wolterstorff, op. cit., p. 41.

22. Ibid, pp. 41, 42.

23. Reference can be made to *Abington School District v. Schempp* (374 U.S. 312), *Pierce v. Society of Sisters* (268 U.S. 510), *Murdock v. Pennsylvania* (319 U.S. 105) and *Sherbert v. Verner* (374 U.S. 398).

24. *Braunfeld v. Brown*. 366 U.S. 607 (1961) (emphasis added).

In anticipation of the probability that more public aid will be granted to nonpublic schools in Michigan, the author has reviewed a few of the major pertinent court decisions. It is obvious that the constitutional questions will not be answered nor the problems solved by reference to doctrinaire absolutes or legal metaphors. If the First Amendment is interpreted as absolute separation, with an impregnable and mountainous wall separating church and state, then the debate is over and all dialogue has ended. If not, then the courts will continue to search for interpretations which are clear and unambiguous.

To conclude, public financial aid for nonpublic school children in Michigan appears to meet constitutional requirements. The question is not closed, and the prospects for a broader interpretation look promising. Opinions of some of the most astute legal authorities are encouraging for the supporters of nonpublic education. Kauper has said "the government . . . may go farther and find that religion and religious institutions perform a useful and desirable function in the social community, even a public purpose, and within the limits imposed by the constitution their activities may be encouraged and formed by the state."²⁵ Leo Pfeffer, notwithstanding his strict interpretation of the First Amendment, and his opposition to aid, has admitted:

When the Everson decision is coupled with the Cochran decision they lead logically to the conclusion that the state may, notwithstanding the First Amendment, finance practically every aspect of parochial education, with the exception of such comparatively minor items as the proportionate salaries of teachers while they teach the catechism.²⁶

In contending that separation of church and state can never be absolute, Professor Wilber Katz has stated:

Except for occasional flights of rhetoric, no one contends either that absolute separation of church and state is required by the First

25. Paul K. Kauper, Church and State: Cooperative Separatism, op. cit., p. 13.

26. Leo Pfeffer, Church, State, and Freedom, op. cit., p. 476.

Amendment or that such a rule would be desirable. In determining the limits of constitutional separation, it is the concept of religious freedom which provides the criterion.²⁷

Freedom of choice in education, and an affirmative neutrality regarding religion in a pluralistic society would seem to indicate that the government must do what it can to provide tax funds to pay for the "secular" training of students in nonpublic schools.

27. Wilber Katz, "The Case of Religious Liberty", in Cogley, John, ed., Religion in America, New York, Meridian Books, 1958, p. 97.

CHAPTER V

MEANS BY WHICH STATE AID COULD BE GRANTED TO NONPUBLIC SCHOOL STUDENTS

The proposals which might be submitted as reasonable options by which aid could be channeled to nonpublic school children are limited only by the bounds of creative thought, and what one considers to be "reasonable". When, however, the various approaches are posited they can be reduced to several basic ideas; additional plans are little more than variations or modifications of other major concepts. In reviewing the literature related to proposals and to plans which are already operative the following means for granting aid have been discovered. Even though the ideas espoused are not all-inclusive, no major concept has been excluded. The order in which the plans appear in no way reflects their merit nor popularity among proponents. ¹

A. AUXILIARY SERVICES

The auxiliary services plan provides for the reimbursement of all services which are not directly related to the educational program. This would be an expansion of services which are already provided under the Michigan Auxiliary Services Acts (Public Acts 341, 343), 1965. In addition the state could employ all non-professional personnel including custodians, bus drivers, secretaries, etc. Costs incurred by the nonpublic schools for heat, light, water, and all maintenance for operation would be paid by the Intermediate District Office, and they would be reimbursed by the state. It is estimated that this plan would afford the nonpublic schools about fifteen percent relief in annual operating expenses.

1. This is only an identification of the various plans. It is not the author's purpose to weigh the merits or limitations of any of the proposals.

B. PROPERTY TAX DEDUCTIONS

The homestead of a person whose child or children are attending a non-public school in grades K-12 would be exempt from all local school taxes for those years in which he has children attending school. The amount of the exemption for all nonpublic school children in a taxing district would be reported by the district to the state, and the state in turn would reimburse the district to the amount of the composite community exemption. State financing would preclude penalizing public school districts which claimed large numbers of nonpublic school children.

C. PURCHASE EDUCATIONAL SERVICES

This plan advocates buying the services of teachers in "secular" subjects. Two methods of implementation have been advocated. One approach advances a contract between an appropriate state agency, and each of the nonpublic school boards involved in the program; here the nonpublic board would be reimbursed directly for the services of those teachers who are instructing in "secular" subjects.

The second method advances a plan where a percentage of the state aid formula would be paid to the Intermediate School District in which the nonpublic school resides. The Intermediate District would purchase professional service time from nonpublic school teachers, and would pay a portion of their salary. Under this arrangement no money would be paid directly to the nonpublic schools. Neither would the teachers be considered employees of the Intermediate District, but their contractual commitments and professional accountability would remain with the nonpublic school.

D. PUBLIC EMPLOYEES

The Public Employees Plan would require all nonpublic school teachers to contract with the Intermediate School District, and thus they would become public employees. All hiring and firing would be done at the discretion of the Intermediate Superintendent. Teachers of "secular" subjects would be on loan to the nonpublic schools, and payment for their services would be made from public funds on an equal basis with public school teachers. All expenses other than teacher's salaries would remain the responsibility of the nonpublic schools. In Michigan this is commonly called the "Britton Plan".

E. TUITION GRANTS

Educational grants to defray some tuition costs would be paid directly to parents or guardians of children in attendance in nonpublic schools. The amount of the grant would be a fixed sum for each of the "secular" subjects in which the student (s) was enrolled, and a maximum per pupil allocation would be established by the state legislature. Parents would be required to file application for the receipt of grants, and the Intermediate School District would verify enrollment and eligibility according to the provisions of the school act.

F. TAX CREDIT

This proposal allows the parents of nonpublic school children to deduct from their state income tax a certain amount based on a scale which considers both the number of children enrolled and the amount of tax liability. The scale would be so constructed that the lower the income, the greater the amount of deduction would be. Some have also advocated that a percentage of the cost of education could be applied as a tax credit against parents' local tax and/or state income tax without regard to income. Tax relief checks would then be forwarded to those families in the low income brackets, and the higher income families would be granted a credit against their tax obligation.

G. VOUCHER PLAN

This proposal would provide parents with an educational "voucher" which they could redeem at the school of their choice. Only those schools certified by an appropriate accrediting agency could "cash" the voucher. The value of the voucher would be a fixed sum for each eligible child, and any additional educational costs would be paid to the school by the parents. This type plan, recently advocated by Dr. Leroy Augenstein, member of Michigan's State Board of Education, prohibits rejection of any student at any school, regardless of creed, color or national or ethnic origin. All "trainable" students could demand admission into any nonpublic school which was accredited by the state, and which sought voucher plan membership.

H. DIRECT AID

Under this plan the state would pay directly to the nonpublic school involved, all or a percentage of the state allocation earmarked for the per pupil allowance in the public school district. The Intermediate School District Office would verify nonpublic school membership by the usual accounting procedures. The state aid formula or a fraction thereof would determine the composite allocation granted to each of the eligible nonpublic schools.

I. SHARED TIME

The shared time proposal advocates an arrangement whereby students spend a portion of the school day in the local public school even though their "home" school is a nonpublic institution. State aid for part-time students is pro-rated on the amount of time spent in public schools. No aid is tendered to the nonpublic schools. Thus for accounting purposes nonpublic students are dually enrolled. The public schools receive state aid proportionate to the time the students spend

in the public institution, and the nonpublic schools are relieved of full-time educational costs. Michigan leads all other states in the number of Shared Time Programs.² The most extensive programs are located in Cheboygan, Cherry Hill, and Bay City.

J. SCHOLARSHIP PLAN

State scholarships would be awarded to "low achieving" minority group children whose parents would prefer a religiously oriented education but lack the resources to purchase it. The state board of education would appoint a panel of competent professionals to serve as a student selection committee. The committee would be given state determined guidelines so that those students would be selected who could benefit the most. Scholarship monies would be channeled directly to the nonpublic school to underwrite educational cost. Dr. Donald Erickson, professor of education at the University of Chicago conceived this plan as a means

to conserve and utilize the existing capabilities of nonpublic schools for serving the disadvantaged; to reduce racial, socio-economic, and academic selectivity in the nonpublic schools, partly, as a means of avoiding educational 'dumping grounds' for the poor; and to encourage educational competition, broadening parental choice and promoting diversity, experimentation, and broad-ranging research.³

No doubt other plans for granting aid to nonpublic school children could be designed; ideas are almost unlimited. However the afore-mentioned options or some hybrid thereof are the currently discussed plans which have been designed by educators, law-makers and interested citizens. Should our legislators enact a law providing financial assistance to Michigan's nonpublic schools, several of the proposed plans appear to be plausible alternatives.

2. For an excellent treatment of this subject see Anna F. Friedlander, The Shared Time Strategy, St. Louis, Mo., Concordia Publishing House, 1966.

3. Donald A. Erickson, "Public Funds for Private Schools", Saturday Review, September 21, 1968, op. cit., p. 79.

CHAPTER VI

MODEL FOR GRANTING STATE AID TO CHILDREN ATTENDING MICHIGAN'S NONPUBLIC SCHOOLS

The purpose of this study has been to design a formula for granting aid to the nonpublic schools which could stand the "constitutional test", enhance both public and nonpublic elementary and secondary education, and possess provisions which would provide for economy and simplicity in implementation.

Necessarily the constitutional question will be decided in the courts. However on the basis of precedence and legal opinion as cited in Chapter IV it appears that the model being proposed would be supported by legal principles. In this connection the testimony of Detroit attorney and former federal judge, John Feikens, is encouraging. At a public hearing in Warren, Michigan Feikens stated: "The United States Supreme Court in several decisions has made it clear that constitutionally valid legislation can be written to help children attending public schools.

"On June 10 of this year, in Allen v. Board of Education, the court re-affirmed a position enunciated in 1963 in Schempp v. Board of Education, which in turn relied heavily on an earlier decision, Everson v. Board of Education.

"Essentially these cases set forth the conclusion that a legislature can provide secular educational benefits to children attending nonpublic schools as long as the primary purpose of the act is directed to the secular education and the primary effect neither advances nor inhibits religion.

"Summarized more simply: the legislature, if it wants to, can give help to the secular activities of nonpublic schools without violating the spirit or the letter of our state or national constitutions."¹

1. Testimony of John Feikens at Warren Public Hearing on August 14, 1968.

To satisfy the demands of both our federal and state constitutions it seems certain that the Michigan Legislature may enact laws which provide state funds to subsidize secular educational benefits to children attending nonpublic schools. However, the primary effect of such a law must be to aid children to receive a "secular" education which neither advances nor inhibits religion.

The proposed model is also intended to enhance elementary and secondary education, and to assure all parents a freedom of choice in the education of their children. Since it is only a proposal which hasn't been tested, obviously there is no supportive data to give credence to this position. Nevertheless experiences in other areas of human endeavor, as well as with the educational systems in other free nations are evidence that this contention is more than conjecture.² The author is committed to the idea that competition is necessarily stimulating in education as it is in other social and organizational settings. That aspect of the plan which affords preferential consideration to the educationally and economically deprived will free the public schools of the "dumping ground" image and will help share the responsibility for educating those who need the help most. Economically the proposal is bound to enhance education. If aid to nonpublic school children will halt the exodus to the public schools, naturally it will be cheaper for Michigan taxpayers to pay a fraction of educational costs for nonpublic schools than to pay the entire cost for public education.

The model contains basic guidelines and principles for implementation. It does not incorporate the minutiae which subsequently will be contained in general school laws. The basic concepts of the proposal are as follows:

1. The primary responsibility for the education of children resides with the parents or guardians. However, the state, exercising its police

2. Virgil C. Blum, Catholic Education: Survival or Demise, Chicago, Argus Communications Co., 1969, pp. 102-112.

power for the health and welfare of all citizens has the right to enforce compulsory school attendance laws.³ It may not however compel children to attend a public school; rather parents may elect to send their children to the school of their choice, be it public or nonpublic. Therefore, the state in fulfilling its obligations for the education of all children shall tender grants of money to the parents or guardians of children enrolled in the nonpublic schools of the state of Michigan to help defray part of the cost of providing the "secular" benefits of education for such children.

2. This proposal pertains exclusively to state aid for children attending nonpublic schools in Michigan. The amount of state aid tendered to parents of nonpublic school children shall be a percentage of the state aid formula based on the average membership of all the school districts in the state. In as much as a minimum of eighty-five per cent of the time and program of nonpublic school children is spent exclusively with classes and activities in "secular" subjects, the state aid formula for these benefits should be equivalent to eighty-five per cent of the state aid per pupil allowance.⁴

3. Pupils regularly enrolled and in daily attendance in a nonpublic school shall be counted by nonpublic school authorities under the direction of the superintendent of the Intermediate School District in which the nonpublic school is located on the fourth Friday after Labor Day in each fiscal year.

4. Only those parents who have filed written applications provided by the state, signed on or before the fourth Friday after Labor Day in each fiscal year, shall be eligible to receive educational grants from the state.

5. For parents of children attending nonpublic schools, to be eligible for the receipt of educational grants, the school which their children attend must have

3. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

4. The eighty-five per cent figure was obtained from officials in Michigan's Catholic, Lutheran, and Christian Schools.

filed with the state board of education a certificate that is complying with Title VI of the Civil Rights Act of 1964 (public law 88-352) in effect on January 1, 1968.

6. The state department of education shall forward a composite check covering the state aid obligation of each nonpublic school to the Intermediate School District Office on or before the fourth Friday in October of each fiscal year.

7. The Intermediate School District Office in each district where nonpublic schools operate shall prepare checks, as educational grants to each nonpublic school parent or guardian eligible to receive said grants on or before the fourth Friday in November of each fiscal year.

8. The state shall appropriate sufficient funds to be paid to the Intermediate School Districts for the administration of this program.

9. Regular audits of the Intermediate School Boards shall be required to insure proper accounting for the funds expended. Each nonpublic school shall be required to certify data as to student attendance.

10. To assure a privileged status for underprivileged children, and to attempt to equalize educational opportunity for all children, regardless of race, creed, color or economic and social status, it is recommended that the state also adopt a scholarship program for those families who suffer economic hardship. The state should design a scholarship formula where financial assistance is directly related to number of dependents and family income. Scholarships should be sharply graduated to give a "purchasing edge" to the poorest. The author recommends that those families with a gross income below \$5000 be granted scholarship vouchers to cover the difference between the standard state aid grant and the cost of education in the nonpublic school, with a maximum of all state benefits not to exceed eighty-five per cent of the per pupil cost of education in the state.

11. To demonstrate proficiency of performance, to provide a state-wide assessment of educational achievement, and to assure that students have learned "secular" subjects, standardized tests shall be administered to all students in both public and nonpublic schools in grades 2, 5, 8, and 11. This provides a strong constitutional safeguard to insure that the primary effect of the proposal meets the stated public purpose. These tests are to be prepared and provided to all schools by the State Department of Public Instruction.

12. Any nonpublic school association which plans to begin a school system must guarantee an average of not less than 20 students per grade and a minimum of 120 students in a six year school, a minimum of 160 in an eight year school, etc., before the parents are eligible for the receipt of state aid. The student-teacher ratio may not average more than 1-35. A new school system must place a percentage (to be determined by the state) of its capital costs in escrow for 25 years to guarantee that it is "serious" about education, and is not a "fly-by-night" organization with non-educational motives precipitating the request for funds.

13. All of the State Board of Education policies regarding curriculum for the public schools shall apply to the non-public schools also, except those which pertain to religious exercises, practices, and courses in religious instruction.

14. All other State Board of Education policies as they apply to the non-public schools shall continue in effect as they were in the 1968-69 school year.

15. All appropriations for the implementation of this proposal shall be paid out of the general fund, and no funds whatsoever shall be used from the state school aid fund.

This proposal was designed so that it would in no way impinge upon the essential religio-philosophic character and integrity of the nonpublic schools. Nor would it in any way reduce the vitality of the public schools. The amount of aid proposed will relieve the current economic crisis threatening nonpublic education without in any way interfering with the financial needs of public education. The purpose and primary effect of the proposal is the education of nonpublic school children in "secular" subjects, and therefore it should meet both our state and national constitutional standards.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

Writings about American education have emphasized the role of the public school in the formation of the American mind and society, and indeed the achievements of the public educational system have warranted this recognition. While some attention has been given to private and parochial schools, the full contribution of nonpublic education is rarely delineated. Educational historians treated religion rather extensively in the colonial period, and rather negligibly thereafter. Once again in recent decades, and especially in the 1960's the role of religion in American education has begun to arouse the interest of historians and commentators. The emergence of the church-state conflict in public education in 1962 and 1963 has made more people aware of the relevance or irrelevance in some cases -- of religion to educational problems and issues. The recent requests for state aid to assist nonpublic school children has received extensive coverage by the news media.

John W. Gardner in his book Excellence expresses his concern about an irony in our society. He says:

America's greatness has been the greatness of a free people who shared certain moral commitments. Freedom without moral commitment is aimless and promptly self-destructive. It is an ironic fact that as individuals in our society have moved toward conformity in their outward behavior, they have moved away from any sense of deeply-shared purposes. We must restore both a vigorous sense of individuality and a sense of shared purposes. Either without the other leads to consequences abhorrent to us.¹

The public and nonpublic schools of our nation have maintained a sense of shared purposes and have worked as partners in the educational enterprise while at the same time they have retained their individuality. Each has made a unique contribution to the health and welfare of the nation.

1. John W. Gardner, Excellence, New York, Harper and Row, 1961, p. 137.

As a result of this study the author is impressed that the nonpublic schools have made an appreciable contribution to the education of thousands of children for which they have received scant attention or appreciation. For generations they have suffered financial disability and social injustice, and their proponents are now "pressing" society for educational freedom without economic penalty. The following conclusions and recommendations are made with the sincere hope that they will contribute to a better understanding and concern for the needs of Michigan's nonpublic school children.

A. Conclusions

1. The first schools in the United States were nonpublic private or parochial institutions. Religion and religious education have played a significant role in the formation of the American mind and culture. Prior to a century ago, the religious element in both public and nonpublic education was preponderant in the United States. All through American history a very large number of public schools have taught and practiced Protestant Christianity to some degree. For all practical purposes they were publicly financed and controlled religious schools. Meanwhile there have been so many exceptions to the principle of church-state separation in education, that it is inaccurate to regard it as an established rule.

2. Nonpublic schools constitute a parallel to the public education system in that they provide the same essential secular services to children. With the exception of religious content and religious references, the curriculum of the elementary and secondary schools is substantially the same in public and nonpublic institutions. Thus, it may be said accurately that the nonpublic schools, which, although privately controlled, are in the public service, and are contributing to the growth and development of American society.

3. Education of elementary and secondary school children is the constitutionally granted responsibility of the state. Michigan's compulsory education laws clearly indicate that the State Superintendent of Public Instruction, the State Board of Education, and the Legislature must all concern themselves with the education of all children in the state.

4. Education is inextricably united with religion because learning experiences take place within the framework of one's value orientation. However it is now common knowledge that the blending of religion and education disqualifies a school as an institution eligible for financial support from the state. Therefore the appeal for public funds by the nonpublic schools must stem from a thesis totally aside from the obvious prohibitions of the Establishment and Free Exercise Clauses in the First Amendment. There must be a "secular" legislative purpose and primary effect that neither advances nor inhibits religion. If the purpose and the primary effect of the legislation is the education of pupils in "secular" subjects, school aid legislation should pass the constitutional test. The state may legislate for a public purpose; therefore it can spend public funds for a public purpose even though that public purpose is achieved through the agency of nonpublic schools.

5. On the basis of recent decisions by the Michigan Court of Appeals, and the United States Supreme Court it seems reasonable to believe that educational legislation could be drafted to benefit Michigan's nonpublic school children without violating either the state or federal constitution.

6. Most of the nonpublic schools in Michigan are struggling for survival because of severe financial difficulties. During the past four years 46,000 nonpublic school students have transferred to public schools; unless parents receive some financial relief from the state the decline in nonpublic school enrollments will continue.

7. The state can't afford not to assist the parents of nonpublic school children. It will be more economical to make a partial payment for educational costs in maintaining nonpublic schools than to pay the full cost for those children who are forced by financial coercion to attend public schools. Thus the continued existence of nonpublic schools also bears importantly on the future strength of the public educational system in Michigan.

8. In a free, democratic, and pluralistic society, which the United States professes to be, every school child should have the opportunity to obtain a free and equal education. Parents should have the option of educating their children in either public or nonpublic schools without economic penalty.

9. The price of freedom is not cheap. Equality and justice can never be assumed, even in our great democratic nation. Freedom and equality in education do not in fact exist in our state or nation. Those citizens who are committed to nonpublic education, because they desire a distinctive religiously-oriented education for their children, must persistently and vigorously campaign for educational freedom. If they tire, and become weary in the pursuit of justice, the demise of the nonpublic schools is inevitable.

B. Recommendations

The author recommends:

1. That all responsible educators and legislators in Michigan abandon all simplistic arguments on both sides of the Educaid issue, and work diligently to design aid-to-education formulae which will accentuate the advantages and reduce the disadvantages of such aid.

2. That for the welfare of the people in general and for the educational benefit of all school children the Michigan Legislature enact legislation immediately which will provide some state aid to assist in underwriting a quality "secular" education for all children. State aid presently being appropriated to school

districts for the educational benefit of children attending public elementary and secondary schools in Michigan should be extended for the benefit of nonpublic school children as well.

3. That Governor William G. Milliken appoint a "blue ribbon" committee composed of educators to design a model for state aid to all elementary and secondary school children in Michigan. To preclude perennial struggles on the state-aid to education issue, it is further recommended that this model contain a formula which will simultaneously aid both public and nonpublic school children.

4. That all citizens who believe in equal educational opportunities for all children continuously campaign in behalf of educational freedom in the legislative arena.

5. That the administrators and boards of education in both the public and nonpublic schools in all Michigan communities establish a Coordinating Council on Education. Representatives from all the school systems should be appointed to membership on the council. This will provide the vehicle by which all school systems, regardless of their affiliation, can cooperate in planning programs and sharing ideas in a climate which will enhance a community concern for the educational well-being of all children.

6. That the College of Education in each of our major state universities give more attention, than they have in the past, to the role and contribution of Michigan's nonpublic schools which educate approximately fourteen per cent of the state's children.

7. That organizations such as the Michigan Education Association, and Citizens for the Advancement of Public Education broaden their perspective and demonstrate concern for the welfare of all children in the state.

BIBLIOGRAPHY

BIBLIOGRAPHY

A. BOOKS

- Bailyn, Bernard, Education in the Forming of American Society, Chapel Hill, N.C.: University of North Carolina Press, 1960.
- Beale, Howard K., A. History of Freedom of Teaching in American Schools, New York: Chas. Scribner's Sons, 1941.
- Best, John W., Research in Education, Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1959.
- Blum, Virgil C., Catholic Education: Survival or Demise, Chicago: Argus Communications Co., 1969.
- Brickman, Wm. W. and Lehrer, Stanley, editors, Religion, Government, and Education, New York: Society for the Advancement of Education, 1961.
- Cook, David R., A Guide to Educational Research, Boston: Allyn and Bacon, Inc., 1965.
- Costanzo, Joseph, This Nation Under God, New York: Herder and Herder, 1964.
- Cubberly, Ellwood P., Public Education in the United States, Chicago: Houghton Mifflin Co., 1919.
- DeJong, Norman, Education in the Truth, Nutley N.J.: Presbyterian and Reformed Publishing Co., 1969.
- Disbrow, Donald W., "Schools for an Urban Society", History of Education in Michigan, Vol. III, Lansing, Michigan: Michigan Historical Commission, 1968.
- Drinan, Robert F., Religion, The Courts, and Public Policy, New York: McGraw-Hill Book Co., 1963.
- Friedlander, Anna F., The Shared Time Strategy, St. Louis, Missouri: Concordia Publishing House, 1966.
- Gardner, John W., Excellence, New York: Harper and Row, 1961.
- Herberg, Will, "Religion, Democracy, and Public Education", John Cogley editor, Religion in America, New York: Meridian Press, 1958.
- Katz, Wilber G., Religion and American Constitutions, Evanston, Illinois: Northwestern University Press, 1963.
- Knauss, James and Starring, Chas., "Michigan Search for Educational Standards", History of Education in Michigan, Vol. II, Lansing, Mich.: Michigan Historical Commission, 1968.
- Knight, Edgar W., Education in the United States, New York: Ginn and Co., 1929.

- Lynn, Robert W., Protestant Strategies in Education, New York: Association Press, 1964.
- McGarry, Daniel D. and Ward, Leo, Educational Freedom, Milwaukee: The Bruce Publishing Co., 1966.
- Mead, Sidney E., The Lively Experiment, New York: Harper and Row, Inc., 1963.
- Pfeffer, Leo, Church, State, and Freedom, Boston: The Beacon Press, 1953.
- Pfeffer, Leo, Creeds in Competition, a Creative Force in American Culture, New York: Harper, 1958.
- Phenix, Philip H., Education and the Worship of God, Philadelphia: Westminster Press, 1961.
- Phenix, Philip H., Philosophy of Education, New York: Henry Holt and Co., 1958.
- Putnam, Daniel, The Development of Primary and Secondary Public Education in Michigan, Ann Arbor, Mich.: George Wahr Publisher, 1904.
- Regnikoff, Charles, editor, Louis Marshall: Champion of Liberty, Vol. II, Philadelphia: Jewish Publication Society of America, 1957.
- Stokes, A. P., Church and State in the United States, New York: Harper and Brothers, 1950.
- Ward, Leo R., Federal Aid to Private Schools, Westminster Maryland: The Newman Press, 1964.
- Wolterstorff, Nicholas, Religion and the Schools, Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Co., 1965.

B. PERIODICALS

- Anderson, Robert T., "Religion in the Michigan Public Schools", School and Society, May 9, 1959.
- Brickman, Wm. W., "Public Aid to Religious Schools?", Religious Education, July-August, 1960.
- Detroit Free Press, February 9, 1969.
- Erickson, Donald, "Public Funds for Private Schools", Saturday Review, September 21, 1968.
- Fountain, Winfield S., "A Plea for Public Support of Pluralism in America", Phi Delta Kappan, XLIV, No. 9, June, 1963.
- The Grand Rapids Press, January 14, 1969.

- Jorgenson, Lloyd P., "The Birth of a Tradition", Phi Delta Kappan, XLIV, No. 9, June, 1963.
- Kauper, Paul G., "Church and State: Cooperative Separatism", Michigan Law Review, Vol. 60, No. 1, November, 1963.
- Kauper, Paul G., "The Constitutionality of Aid to Parochial Schools", Phi Delta Kappan, Vol. XLIII, No. 8, May, 1962.
- National Education Association, National Education Association Research Bulletin, Washington, D.C.: XXXIV, Dec., 1958.
- New York Times, March 16, 1961.
- New York Times, October 28, 1968.
- Pfeffer, Leo, "A New Religion in America", The Churchman, April, 1959.
- Rossi, Peter and Alice, "Some effects of Parochial-School Education in America", Daedalus, XC, Spring 1961.
- "Time Essay", Time, Vol. 85, April 30, 1965.
- VandenBerg, John, "Tax Support of Non-Public Education and Freedom", The Reformed Review, Vol. 21, No. 4, June, 1968.

C. DOCUMENTS, REPORTS, AND UNPUBLISHED MATERIAL

- Blum, Virgil C., "A Review: JFK and Freedom in Education", Huntington, Indiana: Our Sunday Visitor, Inc. No. 249, November, 1967.
- Erickson, Donald A., "Nonpublic Schools in Michigan" in School Finance and Educational Opportunity in Michigan, J. Allen Thomas, editor, Lansing, Michigan, Michigan Department of Education, 1968.
- Hare, James M., "The Constitution of the State of Michigan", Lansing, Michigan: Michigan Legislative Service Bureau, 1963.
- Lewis, Thomas F., "A Study of Attempts to Abolish, Private and Parochial Education by Constitutional Amendments in 1920 and 1924". Unpublished Doctoral Dissertation, Detroit, Wayne State University, 1952.
- Mc Lean, Maurice W., "The Constitutional and Legal Basis for Undivided School Support and Current Practice in Michigan". Unpublished Doctoral Dissertation, Ann Arbor, University of Michigan, 1950.
- Milliken, Wm. G., public news release, January 9, 1969.
- National Education Association and the American Association of School Administrators, Educational Policies Commission, Moral and Spiritual Values in Public Schools, Washington, D.C.: The Commission, 1951.
- Nederhood, Joel, "Our Nation's Schools", Religion and the School, Chicago: The Back to God Hour, 1967.

Report of the Joint legislative Committee on Nonpublic Schools of the Michigan Legislature, January 16, 1969.

State Board of Education, State of Michigan, General School Laws, Lansing, Michigan: Legislative Service Bureau, 1966.

U. S. Chamber of Commerce Report, "The Disadvantaged Poor: Education and Employment", Washington, D.C.: Chamber of Commerce of the United States, 1967.

U. S. Commission on Civil Rights, "Equal Protection of the Laws in Public Higher Education: 1960", Washington, D.C.: U. S. Gov't. Printing Office, 1961.

D. LEGAL REFERENCES

Alexander v. Bartlett, 14 Michigan Court of Appeals, (October 25, 1968).

Board of Education of Central School District No. 1, New York v. Allen, 392 U. S. , 236 (1968).

Braunfeld v. Brown, 366 U. S. 607 (1961).

Cochran v. Louisiana State Board of Education, 281 U. S. 370, (1930).

Everson v. Board of Education of the Township of Ewing, 331 U. S. 1, (1947).

Pierce v. Society of Sisters of the Holy Name, 268 U. S. 510, (1925).

School District of Abington Township, Pennsylvania v. Schempp, 374 U. S. 203, (1963).

E. GENERAL REFERENCES

Athearn, Walter S., Religious Education and American Democracy, Boston: The Pilgrim's Press, 1917.

Blanshard, Paul, "Religion in the Schools: The Great Controversy", Boston: Beacon, 1963.

Beggs, David W. III and McQuigg, R. Bruce, America's Schools and Churches, Bloomington & London: Indiana University Press, 1965.

Benson, Chas. S., The Economics of Public Education, Boston: Houghton Mifflin Co., 1961

Blum, Virgil C., Freedom of Choice in Education, New York: The Macmillan Co., 1958.

Boles, Donald E., The Bible, Religion, and the Public Schools, Ames, Iowa: Iowa State University Press, 1965.

- Brown, Samuel W. , The Secularization of American Education, New York: Russell the Russell, 1967.
- Drounin, Edmond G. , The School Question, Washington, D. C.: The Catholic University of America Press, 1963.
- Duker, Sam, The Public Schools and Religion, New York: Harper & Row, 1966.
- Katz, Wilber G. , Religion and American Constitutions, Evanston, Ill.: Northwestern University Press, 1964.
- Kauper, Paul G. , Religion and the Constitution, Baton Rouge: Louisiana State University Press, 1964.
- Mead, Sidney E. , The Lively Experiment, New York: Harper & Row, Inc. , 1963.
- Nichols, James H. , "Religion and Education in a Free Society", in Religion in America, Cogley, John, ed. , New York: Meridian Press, Inc. , 1958.
- O'Neill, J. M. , Religion and Education Under the Constitution, New York: Harper & Brothers, 1949.
- Rian, Edwin H. , Christianity and American Education, San Antonio, The Naylor Co. , 1949.
- Solo, Robert A. , ed. , Economics in the Forming of American Society, Chapel Hill, N. Carolina: The University of North Carolina Press, 1960.
- Stokes, A. P. , Church and State in the United States, New York, Harper & Brothers, 1950.
- Stokes, Anson P. , and Pfeffer, Leo, Church and State in the United States, rev. ed. , New York: Harper & Row, 1964.
- Taylor, Marvin J. , Religious and Moral Education, New York: The Center for Applied Research in Education, Inc. , 1965.