

"Excessive Entanglement"

Public speakers are always under something of a temptation to say what they know will be pleasing to their audiences. The temptation appears to have overwhelmed President Nixon on Wednesday evening when he addressed the Knights of Columbus in New York. For the most part, his address dealt with his economic program. But he was preceded by Cardinal Cooke of the Archdiocese of New York who told the assembled Knights without any sort of equivocation that the denial of governmental aid to parochial schools is "unreasonable and discriminatory" and that "despite the recent Supreme Court decision [forbidding such aid as violative of the Constitution] practical means can be found and will be found, to assist the parents of non-public school children." The President's response to this plea was a resounding "amen." He spoke of the importance of providing children with moral, spiritual and religious values and said that "as we see those private and parochial schools which lay such stress on those values close at the rate of one a day, we must resolve to stop that trend and turn it around." Then he added: "And you can count on my support." It is not altogether astonishing that this promise was received with cheers and whistles from most of the people present.

Cardinal Cooke is undoubtedly entitled to his view about the constitutionality of public financial aid to parochial schools and equally entitled to the ardent advocacy of it. But it is equally indubitable that his view is directly contrary to a long line of Supreme Court decisions on the subject. The most recent of those decisions, written for the court by Mr. Chief Justice Warren Burger, struck down two state statutes which provided public assistance for the payment of the salaries of teachers in parochial schools on the ground that they involved "excessive entanglement" between church and state.

The Chief Justice reminded the country, as Justices Black and Clark had done in earlier opinions, of the dangers inherent in church-state entanglement. The First Amendment to the Constitution was written specifically to avert those dangers for this country. The dangers are of two kinds. Perhaps the most important of them is the danger that secular intrusion into religious affairs would imperil religious liberty—as it did so gravely in all those lands where religious and secular authority were intermingled. Governmental aid to parochial schools would inevitably entail governmental supervision of the ways in which that aid was utilized. This would mean not only auditing of school accounts but limitations on the content and character of instruction. Religious instruction of any sort as

well as the recitation of prayers—the essential reason for the establishment of church-oriented schools—would have to be abandoned if the First Amendment were not to be robbed of all meaning.

A corollary danger is the serious likelihood that public and parochial schools would become rivals for the lion's share of public expenditures for education. "In a community where such a large number of pupils are served by church-related schools," the Chief Justice warned, "it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith."

The Chief Justice added some words which ought to serve as a tocsin to the American people—and above all to their President. "The highways of church and state relationships are not likely to be one-way streets," he wrote, "and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief." One need not look very far to perceive the unhappy consequences of church-state entanglement. It has produced tension and bitterness in Canada; and in Ireland, its legacy is disaster.

On the morning following his duet with the cardinal, President Nixon posed with Governor Nelson Rockefeller of New York for some news photographers. The President remarked to the governor that he had said to Cardinal Cooke the preceding evening, "I hope the Supreme Court was listening to your speech."

For any lawyer, let alone a President, that must be accounted a curious observation. Courts are not really supposed to be influenced by cardinals. And, of course, they are not supposed to be influenced by Presidents, either.

Presidents, however, ought to be subject to the influence of courts. We cannot refrain from expressing a hope that President Nixon will read the opinion of Chief Justice Burger on the subject of state aid to religious schools.