A Look at Labor

Freedom of Speech

By A. C. Tuohy

Freedom of speech is a precious right. Without it all of us would have to follow a party line determined by people who think they know better. One of the gloriries of democracy is that ordinary people have generally made the "right" decisions on crucial matters, when once they knew the issues involved.

Democracy has confidence in its little people. Dictatorship has not.

THIS DOES NOT MEAN, however, that freedom of speech is unlimited. We have the right to say whatever we please as long as we do not injure other people. We have no right, under free speech, to ruin someone else's character. Nor do we have the right to deny other people their rights. Nor could "freedom of speech" be used as a cloak to advance the violent overthrow of established governments.....

The Wagner Act limited, although it did not take away, the employer's right of free speech. Employers could not tell their workers that unions were "bad" things. Nor could they call union leaders "racketeers" and Communists.

Employers, however, always claimed that the Wagner Act prevented them from explaining their views on unionism to their employes. They objected to some things which the National Labor Relations Board prevented them from doing. For example, under the Wagner Act, the NLRB told employers that they could not force employes to attend a meeting on company time and property to hear an anti-union talk. The board argued that "compulsion" on workers to attend such meetings was an unreasonable extension of the employer's right to free speech.

THE TAFT-HARTLEY ACT made some changes in this regard. It gave employers the right to say anything they pleased to workers as long as they did not penalize workers for not following their advice.

Thus, under the Taft-Hartley Act an employer could tell his workers that they did not need a union. But if he refused promotions to workers who signed with the union, in spite of his talk, he would be guilty of an unfair labor practice.

The National Labor Relations Board recently interpreted for the first time what the employer could and could not do under this provision. It ruled that an employer could require his employes to attend a meeting and listen to anti-union speeches. This decision completely reverses the practice under the Wagner Act.

Trade unions most likely will find this board decision unpalatable. But their argument will not be against the board, but against the Taft-Hartley Act. It is most difficult to determine when an employer is penalizing his employes for their union activity. Many stores, warehouses, and small enterprises, are not organized because the employes are afraid. They sense that the first step made by anyone to bring in a union will mean unemployment. Unions know that it is difficult to prove that this "fear" has any foundation in reality.

THE FREE SPEECH section of the act, in spite of these fears by some trade unionists, may benefit trade unions, in the view of other trade union leaders.

As one experienced trade union leader put it:

"You can always depend on the employer to say the wrong thing.

"He'll get us more votes than anything we could have said."

It may not be injurious to trade unions to permit employers to freely express their opinions. The harmful nature of these statements will depend on circumstance. In some cases employer statements may make more timorous workers afraid to sign up with the union. In other cases such statements may be the very things which assure the union of victory.

Compelling workers lawfully to attend anti-union meetings may prove to be no unmixed blessing for employers. The fact that one employer found it useful, does not mean that it will help all employers.

Many workers will resent such compulsion. Anyway, forcing employes to listen to anti-union speeches was not uncommon under the Wagner Act. Some employers frequently had recourse to public address systems within their plant or business to get their message across to the employes.

Only time will tell how much or how little free speech for employers helps or injures trade unions. Only further interpretation by the NLRB will determine how employer "free speech" must further be restricted, if at all.

No Religion in the Schools?

U.S. Court Decision on Schools Called 'First-Class Mystery'

(This important article was written by the Rev. Wilfrid Parsons, S.J., noted scholar of Georgetown University, for the May issue of THE SIGN, a national Catholic magazine. THE SIGN editors have graciously consented to the publication of Father Parsons' article here.)

On February 10 of the year 1947, the Supreme Court of the United States, Mr. Justice Black reading the decision, declared by a vote of five to four that it was not unconstitutional for the State of New Jersey to reimburse Catholic parents for the bus fares their children paid riding to parochial schools.

FATHER PARSONS

... does detective work

However, in the course of his majority opinion, Mr. Black took occasion to say that the Constitution does forbid "laws which aid one religion, aid all religions, or prefer one religion to another" and all taxes which are levied "to support any religious activities, whatever they may be called, or whatever form they may adopt to teach or practice religion."

On March 8 of the year 1948, the Supreme Court of the United States, Mr. Justice Black again reading the decision, declared by a vote of eight to one that it was unconstitutional for the school board of Champaign, Illinois, to allow its public-school premises to be used by the local Council on Religion to give religious teaching on "released time." Mr. Black's grounds for the decision were the double prohibition which he had said in the New Jersey bus decision the Constitution lays on the States.

NOW MORE THAN two million children in public schools in three thousand communities in forty six States have been receiving religious instruction in one form or another of released time.

The vast majority of these

The McCollum case has startled the nation. Here is an expert analysis of its legal history by

Fr. Parsons, S.J.

children are Protestants. Their parents and religious leaders were stupefied by this sudden blow to a rather new institution which was flourishing all over the country and gave promise of contributing a real good to the nation. It was widely noted that the case had been brought by a lady in Champaign who styles herself an atheist.

To most people the case had all the earmarks of a first class mystery. Where in the Constitution, it was widely asked, does it say that such "aid" to religion is forbidden by it? How did a big majority of the Supreme Court arrive at such a conclusion?

Let us therefore, take it as a mystery story and do a little detective work on it. Let us go back through the course of events and see how this came about.

The first clue we get is that Mr. Black in both of his decisions, one favorable, one adverse, to religion, alleged in support of his position the First Amendment to the U. S. Constitution. What then does this Amendment say? It says "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." And this is all it says as far as religion goes.

WHAT, THEN, does the First Amendment mean? To find that out we should have to go back through what is called its legislative history, the form it had when it was first introduced, the debates that took place on it, the amendments it underwent, the final form it took as agreed upon by both Houses of Congress. That is a long story, and there is no room for it here. I have told that story elsewhere (in **The First Freedom**), but I can briefly summarize it.

From all the historical evidence available, this much is certain. The Amendment in the minds of those who introduced it, of those who voted for it in Congress, and of those who ratified it in the States, meant just two things: the Federal Congress shall have no power to favor by law one religion over another and it shall have no power to impose any one religion on a man's conscience.

In other words, it meant equality of all religions before the law, and liberty of all men's consciences before the law. There can be no historical doubt whatever that this is what it means.

Perhaps the best single authority we can produce for this is James Madison himself, the man who first introduced it and saw it through all the six or seven amendments it underwent before its wording was entirely satisfactory.

During the debate Madison said that he apprehended the meaning of the words to be "that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." Nothing could be clearer than that, could it?

BUT THIS ONLY deepens the mystery. The Amendment as it stands, whatever it means, obviously put a restraint only on the Federal Congress; it leaves the States free to do what they liked about establishing a church. As a matter of fact, several of the States had an established church then, and some of them continued to have one for many years after. It was clearly understood that the First Amendment bound only the Federal Government. How, then, does Mr. Black say that it binds the States and even local school boards?

The clue to this lies in the fact that in 1868 as an aftermath of the Civil War and to safeguard the rights of the Negroes, the nation adopted the Fourteenth Amendment which said that no State shall "deprive any person of life, liberty or property without due process of law."

Beginning in 1931 **sixty-three years after it was adopted,** the Supreme Court has decreed that this means that all the restraints which the first ten Amendments laid on the Federal Government were henceforth laid on the States as well, though it is certain that nothing was further from the minds of those who proposed the Amendment, voted for it, and ratified it.

Mr. Black, in both of his decisions, calmly assumes that the First Amendment, **as he interprets it,** binds the States as well as the Federal Government. You see how the noose is tightening.

But suppose the Fourteenth Amendment did "pass on" the First Amendment to the States. **It cannot pass on anything except what is in it.** And we have seen that all that is in it is that Congress shall not establish any one church or make any one kind of worship obligatory.

How then does Mr. Black say that Congress (and therefore the States) may not, by virtue of the First and Fourteenth Amendments, give "aid" to religious bodies, even though it preserves the principle of equality which the First Amendment so clearly enjoins?

The clue to this part of the mystery lies far afield. Mr. Black, and those who think with him, say that what the First Amendment really means is that in the United States there shall be separation of church and state.

This is something else again. There is no mention in the Federal Constitution, or in any of the State Constitutions (except ironically, Utah) of compulsory separation of church and state. Yet now the Supreme Court says that, for purposes of the law, the First Amendment and separation of church and state are interchangeable concepts.

There was, before the New Jersey bus case, no legal or constitutional warrant for holding that this is so. It suddenly pops up there, in a paragraph of Mr. Black's decision, as I noted above, in which separation of church and state is said to forbid all kinds of "aid" to religion. How did that come about?

WE FIND the clue to this, strangely enough, in the two dissents which were written against the decision in the bus case, one by Justice Rutledge and the other by Justice Jackson.

Mr. Rutledge's opinion was a historical disquisition on Madison's and Jefferson's fight in Virginia against the former Church of England, some six years before the First Amendment was adopted.

Out of this pre-history of the First Amendment we are asked to believe that the philosophical and religious notions of the two great Virginia statesmen are the key to the real meaning of the Federal Amendment. What is that meaning? No state "aid" shall be given to any form of religious worship.

JUSTICE REED

... bases his thinking on history

(We have seen already, of course, that whatever Madison's private opinions might have been, this was not what the Amendment he later introduced in Congress meant, after it had gone through the legislative and ratifying process.)

Mr. Jackson, in his opinion added another little point. Little, but of tremendous importance. He said that what is forbidden is both direct **and indirect aid.**

We see now that this set the stage perfectly for the Champaign released-time case. Hitherto, no mention was made of separation of religion from the schools, but only of the state taxing power from religious worship.

Moreover, there was absolutely no warrant for saying that the no-establishment clause, no matter what its meaning is, can be passed on to the States by the Fourteenth Amendment, by the very nature of the case. That clause was a provision dividing Federal from State powers, forbidding the first to establish a church and leaving the second free. It was in no sense comparable to the other provisions of the first ten Amendments, all of which have to do with private rights.

Consequently, to make the Champaign decision stick, several things had to be done first.

The no-establishment clause had to be declared binding on the States also; no-establishment had to be extended to mean separation of church and state; separation of church and state had to be made to mean no aid, direct or indirect, to religion.

None of these things had ever been done before, but we see now that the groundwork for them had already been laid in both the majority and minority opinions in the New Jersey bus case.

In the Champaign, or McCollum, case, the whole thing came out in the open; the statements of the Justices in the New Jersey case were given as the legal precedents for their decision now, though those statements, on the Justices' own showing, had no warrant in constitutional or historical precedent.

Consequently, to reach the decision, two hurdles had to be crossed; the historical argument had to be got out of the way, and the First Amendment had to be extended to mean separation in its new sense. (Counsel defending the Champaign school board, in a 168-page brief, had delivered crushing blows to both these two contentions.)

The hurdles were easily crossed, though the labor was divided. Mr. Black, in his decision, brushed the historical and constitutional argument aside in less than two lines, saying merely that his interpretation of the no-establishment clause was the true one, because he had said it was in the New Jersey case.

JUSTICE FRANKFURTER supplied the other key in his concurring opinion. In this he bypassed the First Amendment completely, and in its place he substituted what he called the "constitutional principle" of separation of church and state.

Moreover, he declared that this principle is an evolving concept and added these ominous words: the concept, he said, will be "unfolded as appeal is made to the principle from case to case."

This new doctrine of an evolving principle very neatly disposes of any historical or constitutional argument about the meaning of the First Amendment.

As each case comes up, the Court will only have to decide what is the present state of the "constitutional principle" in its current stage of evolution and base its decision on that. What that state was in 1789 or 1845, or even 1940, is no concern of the Court, but only what the "principle" means here and now.

This pragmatism has won its final assault on our highest court, and religion will be the first subject of experimentation. It is important that American citizens know what is going on, for it is not too late to raise a cry of alarm. All members of the Court openly expect a flood of cases involving separation of church and state.

The Champaign case, in fact, raises more questions than it solves, as perhaps it was intended to do. It will have been noticed that the words "aid to religion" have constantly come up in this story.

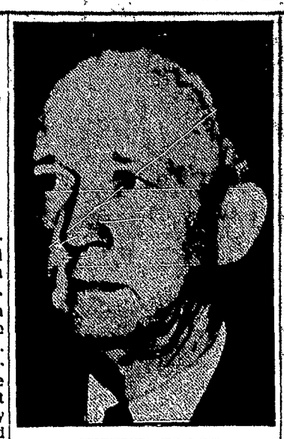
What do they mean exactly? The Court never says. But Justice Reed, in his lone dissent, based his thinking on the historical and constitutional aspects of the First Amendment and naturally reached a conclusion diametrically opposite to that of the majority which he termed "erroneous."

He also did this service: he said that the "aid to religion" that is forbidden by the Amendment is a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions."

He complements this by saying that such forbidden aid does not include "those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society" and he lists tax exemptions, free bus transportation, free textbooks, school lunches, and the like.

As for Mr. Frankfurter's "constitutional principle," Mr. Reed gives a long list of direct subsidies to religion which it has been the practice of the Government to grant, including Army and Navy chaplains and divine worship on government property, chaplains and prayer in both Houses of Congress, and compulsory chapel in the Naval and Military Academies on government premises.

Are these age-old practices, along with many newer ones,



JUSTICE BLACK

... brushes history aside in two lines

to be declared unconstitutional because the Court holds that an evolving principle now forbids them?

WHAT OF THE future? This much is certain. All forms of religious instruction are forbidden by the Court, if they take place on public-school premises.

What if they are off the premises? It is not clear. But Mr. Black affords another clue to future action when he also forbids the use of the state's compulsory-education machinery to aid religion, even indirectly.

Does compulsory school machinery also include the school officers who allow children to go out to receive religious education? Does it include truant officers who supervise school attendance of parochial-school children, or state school boards which approve their curriculum? I will not add to this list, for obvious reasons, but any reader can fill in for himself.

From all that has gone before, the reader will perhaps be able to see how the virus of secularism has at last reached our highest Court, which has hitherto been immune from it. Perhaps, after all, it was only a question of time before it did.

We have long known how widespread the infection was in the country at large. Yet, when it reaches the Supreme Court we are surprised and alarmed, and rightly so.

Moreover, as we have seen the New Jersey bus case decision contained within it a number of clues which, if we had read them aright, would have warned us of what was to come.

Does the new decision also contain some further clues to further action? This writer is convinced that it does, and it behooves us to study it carefully. It is too soon to draw certain conclusions.

Meanwhile, we can thank our fore-fathers in the faith in this country that they did not rely on having religious instruction in the public schools alone, but set up a great system of parochial schools.

We can strengthen and expand that system to take in even more children than we have at present. We can join forces with all moderate Protestants in taking measures to protect threatened parental rights.

And finally we can do a lot of hard thinking (and careful planning to protect our parochial-school system against those who will certainly attempt to use the Champaign decision to destroy it.

New Philippine Leader Termed Sincere Catholic

Manila —(NC)— Elpidio Quirino, who has become the second president of the Philippine Republic following the sudden death of his predecessor, Manuel A. Roxas, is generally conceded to be a man of sincere Catholic convictions, which he has consistently expressed in his public utterances.

The new President has often stressed the vital role of Catholicism in the progress of the Philippines and characteristic of his recognition of this fact are the following remarks in a recent address:

"Christianity has been an intimate part of our lives, and we should be ungrateful to deny that Catholicism has rendered an invaluable service to our people. It is a service we can never forget, because its effects are not only living and throbbing in us but stand in every town as imperishable monuments of the efficacy of the Cross and the might of God. Catholicism has taught us the beauty of humility, the nobility of mercy, the divinity of forgiveness and the miraculous powers of faith."

During the 1945 presidential election campaign he stressed the "imperative need of fortifying our moral fibre" and he repeated this plea in a recent address to the Catholic Women's League of the Philippines. He urged the League to dedicate itself to the carrying out of Catholic moral concepts which present a challenge that can be ignored by neither the State, nor religion nor by women.

Mr. Quirino has always been known as a good family man. He receives the Sacraments and his children were students at Catholic schools. His son, Tommy, was graduated from the Ateneo de Manila, and his daughter, Victoria, completed this month her education at the Assumption Convent school.

He never sought public office while the Philippines were under Japanese occupation. As a result of his refusal to cooperate with the Japanese Army he was imprisoned for a period in Fort Santiago, which has become known as the "Dachau" of the Philippines. His wife and two children were killed during the liberation of the Philippines on February 19, 1945.