

God, Caesar, and Child

Religion and the Constitution, by Paul G. Kauper. *Baton Rouge: Louisiana State University Press, 1964. 137 pp. \$3.50.*

MR. KAUPER is a law professor at the University of Michigan and a Lutheran lay reader who delivered the Edward Douglass White lectures at Louisiana State University in the spring of 1964. Out of them he has fashioned this helpful if cautious book. He speaks with due respect of Supreme Court decisions in recent cases applying the religion clauses of the First amendment. These guarantee religious liberty but prohibit government establishment of religion and Mr. Kauper clarifies the tension between these differential concepts. The Court has recently considered such things as Sunday closing laws, exemptions from military service on grounds of conscience, religious oaths required as a condition of public office, and Mr. Kauper is on the whole content with the results.

But public education is the issue in our time most likely to test the "wall between church and state," and Mr. Kauper gives special attention to the recent rulings which prohibited teacher-directed prayer and Bible-reading as tending toward the kind of religious establishment forbidden in the constitution. The author agrees that the older Protestant "hegemony" is declining in the land and that a new "pluralism" of religion and non-religion may support the judicial view. But he seems not altogether comfortable with some aspects of the Court's holdings, and rather hopefully suggests limitations on their scope.

An individual child, he feels sure, is still free to pray silently in public school. He states as a certainty (though a Maryland statute on the point has been challenged in court) that a school board may properly prescribe a period of silence and meditation in which a child may pray or read devotional literature. "Perhaps," he says, "school boards can find ways of giving opportunity for wholly voluntary participation by students in religious services congenial to their own faith, having no stamp of official approval and not conducted by a teacher. . ."

Perhaps. But note that all of Mr. Kauper's expectations assume young people already instructed

religiously and capable of devotional initiatives. What about the uninstructed? Properly the author says, as have the Justices, that school children should get their religious training at home or in church, and he notes that school-time release of pupils at parental request for off-premises exercises in religion has been authorized by the Supreme Court. But both he and the court majority argue that earlier faiths are receding, which means, if true, that there will be more and more children who do not get guidance at home or in church and are now to be denied even minimal intimations of religion in the school. Preparing as they are for citizenship, are they simply to be left in ignorance of concepts and commitments which may be essential to free government and which, as Mr. Justice Douglas has conceded, our own "institutions presuppose?"

Let us come to cases. The transcending public issue of the sixties is the Negro revolution. The leader of that movement is a Christian clergyman. No wonder, since without the Christian teaching that all men are brothers, being children of one Father, the Negro movement would lose its principal motif and much of its acceptance among the non-Negro majority. The spearpoint of this Negro movement is desegregation of public schools, commanded under judicial concepts reflecting the faiths outlined above (and not peculiar to Christianity). Yet the very Court which has enforced this essentially religious rule has excluded from the schools on which the rule will operate all guided experience of the spirituality which supports the desegregation mandate and conditions its absorption into the national consensus! And, as stated, by its own hypotheses the Court concedes that many children, both Negro and white in the desegregated schools, will lack home and church instruction in concepts that would sustain the newcomers and guide those receiving them. Difficult as is the question of communicating these concepts, Mr. Kauper is surely right in suggesting that the prayer and Bible decisions do not conclude the debate. The new administration program for Federal aid to education is abundant evidence of that.

For it is not that the majority Justices oppose state intervention as such in behalf of underprivileged children. Weighing the Federal food programs which provide hot breakfasts and luncheons for youngsters who get neither at home, no Justice is likely to protest on religious grounds or insist that feeding is a home function, hence forbidden to local school boards even in default of home performance. To put it briefly, the law as now construed countenances school nutrition of the body but

not those spiritual nourishments which fortify the individual, promote free government and support the Negro aspirations.

True, there are some who deny that constitutional and parliamentary government has roots in transcending ideas which good citizenship must assume. Frederick Watkins was conceding some years back that Christianity had ebbed, but he argued with some confidence that its social utilities could be captured and continued in a purely humanistic ethic. That, he explained, was exactly what had happened in China: when the old faiths died, Confucius managed to encapsulate their values and project Chinese culture into the future. Admittedly it was a long future, but Mr. Watkins published his book (*The Political Tradition of the West*) in 1948. Mao and his Communists took over in China the next year.

Not that Mr. Kauper and the majority Justices see anything like the end of religion in America. On the contrary, the "pluralism" of which they speak is evidence of vitality; and does not the new ecumenism widely visible in the western world to some degree counter their pluralistic qualms? Mr. Kauper has impressive things to say about religious freedom as separate and autonomous from other values in the First amendment, and of the feasibility, even the constitutionality of public aid for the strictly secular curricula (science, mathematics) of the financially hard-pressed church-related secondary schools. He is properly vigilant against the government controls quite likely to follow government aid to religion as such—even the secular activities supported in church schools would surely have to meet state standards. The prayer and Bible-reading decisions were criticized mainly because the outlawed exercises really didn't look very much like the establishment of a religion. But were the government actually to set up a church of its own, it certainly would try to run it.

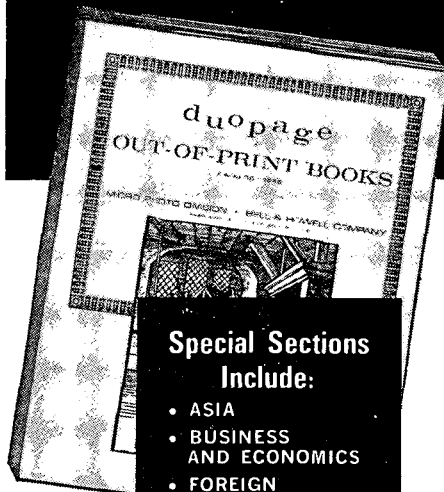
This last consideration makes it all the more regrettable that the author says so little about the exemption from various forms of taxation historically enjoyed by religious and other institutions considered socially beneficial. For here is the one time-tested device by which the state aids in ways automatically sterilized against state control. Yet the exemption privilege is also now under challenge and may yet impel the Supreme Court to ultimate conclusions about the role and place and value of religion in and out of school in the free societies. Mr. Kauper gives a good sketch of the general background and suggests some of the questions still awaiting answers.

Reviewed by c. P. IVES

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