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“Parent of the Country”

In November a federal appeals court rejected a challenge to a school-district survey of elementary-school students that contained privacy-invading, sexually explicit questions. The Palmdale School District in Los Angeles County had conducted the survey of children 7 to 10 years old. Their parents were told they could opt out, but they were left in the dark about the content. According to the notice parents received, the survey aimed to “establish a community baseline measure of children’s exposure to early trauma (for example, violence)” and to “identify internal behaviors such as anxiety and depression and external behaviors such as aggression and verbal abuse.” It turned out that of the 79 questions asked, ten related to the children’s thoughts about sexual matters.

Several parents were outraged, and when their complaint to the school district was dismissed, they went into federal court, claiming the school had violated their right “to control the upbringing of their children by introducing them to matters of and relating to sex” (*Fields v. Palmdale School District*). The district and appeals courts sided with the school district. It was not known if the parents would appeal to the Supreme Court. (The school district has stopped doing the survey.)

The Ninth Circuit Court of Appeals opinion is instructive for gauging the relationship between individual and state in modern America. Unfortunately, the ruling leaves little room for optimism.

Judge Stephen Reinhardt rejected the parents’ plea on essentially two grounds: that once parents choose a school for their children, they have no right to micro-manage it, and that under the *parens patriae* doctrine (“parent of the country”), the government may look after the mental health of children. Both arguments are pernicious.

The first is deceptively so. On first glance it is reasonable to hold that once parents choose a school, they have no right to dictate what goes on in the classroom. They have no such right with a private school. Why should they have it with a government school? The judge’s sleight-of-hand consists in ignoring that parents do not

freely choose their children's schools. Yes, they may opt for private schools or homeschooling over the government alternative, *but they must pay taxes no matter what they choose*. Moreover, in the 1920s the U.S. Supreme Court affirmed the states' power to regulate private schools comprehensively.

If a private school conducted a sex survey without fully informing parents, the matter could be handled contractually. As a last resort, parents could pull their children out and cut the school off financially. They can't do that with the government schools. Thus the system is rigged in favor of the state.

Judge Reinhardt further defended the school district by holding, "[T]he questioning can also be justified on the basis of an alternative state interest—namely, *parens patriae*. . . . [T]he School District's interest in the mental health of its students falls well within the state's authority as *parens patriae*. As such, the School District may legitimately play a role in the care and nurture of children entrusted to them for schooling."

The *parens patriae* doctrine is left over from the age of absolute monarchy, when the king, believed to be a descendant of Adam, was regarded as the father of his subjects. The famous exponent of that idea, Sir Robert Filmer, wrote in *Patriarcha or the Natural Power of Kings* (1680), "It may seem absurd to maintain that kings now are the fathers of their people, since experience shows the contrary. It is true, all kings be not the natural parents of their subjects, yet they all either are, or are to be reputed, the next heirs to those first progenitors who were at first the natural parents of the whole people, and in their right succeed to the exercise of supreme jurisdiction; and such heirs are not only lords of their own children, but also of their brethren, and all others that were subject to their fathers."

Parens patriae is one of those assertions by the state that is assumed to be binding, but that no one consented to. Considering that the government regards itself as the ultimate landlord, we shouldn't be surprised that it also sees itself as the ultimate parent. The American Revolution was indeed incomplete.

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The "housing bubble" is much in the financial news. But does this storyline distract us from all the ways government increases the price of homes? Raymond Keating investigates.

The role of entrepreneurship is familiar in the world of business. Far less appreciated is its role in the development of moral virtue. Douglas Rasmussen elaborates.

City planners around the country are increasingly coming to believe that one of their functions is to provide "free" Internet access to their residents. Max Borders sounds a warning against this trend.

The high cost of medical care is a fact of life that everyone must contend with. Those who would socialize medicine blame the private sector. But as Kirby Cundiff shows, the fault lies with interventionist government.

Innovation raises living standards, even in mundane products and services. To illustrate the point, Daniel Hager describes the evolution of the hotel.

Frédéric Bastiat described the modern state as an imagined device by which "everyone seeks to live at the expense of everyone else." Harold Jones revisits a philosopher who saw Bastiat's point a century earlier.

Labor law is unique because it is the only law under which someone can be forced to bargain and contract with someone else. George Leef looks at this law in the context of universities and professors.

Our FEE Timely Classic from 50 years ago is a reflection on the American Revolution by former FEE staff member Ivan Bierly.

Here's what our columnists have whipped up: Richard Ebeling recounts the history of FEE on the occasion of its 60th birthday. Lawrence Reed celebrates a past Supreme Court. Thomas Szasz considers inflation from another angle. Stephen Davies corrects misperceptions about trade. Russell Roberts wonders why the economy is always being threatened. And David Henderson, reading one writer's case for higher gasoline taxes, parries, "It Just Ain't So!"

The issue's book reviewers meditate on "fair" trade, America's inventors, government's bankrupt schools, and Civil War economics.

—Sheldon Richman
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