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### Insight

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**Q.** I am enclosing a brochure prepared for our State's Con-Con [Constitutional Convention] by a group of concerned parents. It argues that if a State refuses to subsidize tuition for nonpublic school students, in effect it "legislates" against them by denying "equal right" to an education. The paper also says that such a dictatorial procedure implies that "only the State has the right to educate," and "only the State knows what is best for its citizens." I'm sure you won't agree, but I'd like to see what your reaction is anyway.

A. As the kids sang coast to coast a few years ago, "Freedom isn't free."

Private education in a church-related school costs money. Lots of it. But the friendly separation of church and state in America has kept us from countless entangling alliances experienced—and still being experienced—in many other countries.

When the U.S. Government refuses to give in to parochial-school demands for cash, it proves that in this respect at least the state does know better than some churchmen what is best for its citizens.

One of the finest pieces of legislation ever passed in favor of our nation's Christian youth begins with the words, "Congress shall make no law respecting an establishment of religion."

**Q.** If the Mormons could be brought to trial and punished for having more than one wife, how are these people in communes and other groups who have more than one wife, or where wives are shared, getting around this law? Has it been set aside? Why don't the Mormons protest this discrimination by the U.S. Government?

A. In 1878 (Reynolds v. United States) and 1890 (Davis v. Beason) the Supreme Court defined Latter Day Saint polygamy as illegal by placing the Preamble above the Bill of Rights. The Preamble, you remember, lists the purpose of the Constitution "to insure domestic tranquility, . . . promote the general welfare," and so on.

The Court observed that marriage is both a "sacred obligation" and a civil contract fittingly subject to law, whereas polygamy tends to "disturb the peace of families, to degrade woman, and to debase man," and has "always been odious among the northern and western nations of Europe." It then concluded that the First Amendment could not condone plural marriage any more than it could permit human sacrifice, no matter how many religious tenets were attached to either.

Most of the communal sex blighting America today evades criminality by avoiding civil contracts. Polygamy is "being married to several women." Our contemporary adulterers don't *marry* anybody, or if they do, they usually marry only one at a time.

Before our twentieth-century courts and police can control communal concubinage, we shall have to revive the healthier aspects of the nineteenth-century social regard for marriage as "sacred" and polygamy (of any sort) as "odious."

Is there not something fine about the commandment, "Thou shalt not commit adultery"? (Exodus 20:14).

**Q.** A new veterans hospital is to be built in our town, right in the middle of our town, not on the edge of it. Private houses—homes where people have lived for many years—are to be torn down, uprooting dear old peo-

**ple and compelling them to build again at a sacrifice or move into old folks homes. How can it happen in America under our Constitution?**

A. Amendment V of the Bill of Rights does say that no one may be "deprived of life, liberty, or property," but it goes on to make two important provisos: (1) That this may not be done "without due process of law," and (2) that private property may not be taken for public use, "without just compensation."

In other words, if appropriate laws are duly voted by the people and followed by the authorities, and if just compensation is made, the Constitution does allow a citizen to be deprived of his property. (For that matter, every tax we pay legally deprives us of some of our property.)

The Preamble sheds light on the question. It says that a function of the Constitution is to "provide for the common welfare." When government determines legally that it is for the common welfare that private property be assigned to public use, it has the right of eminent domain to pay the owner for the property and take it away from him.

**In my last column I challenged readers to name the famous religious liberty defender who declared, "It is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions. One man's religion neither harms nor helps another man. It is assuredly no part of religion to compel religion." The answer is Quintus Septimius Florens Tertullianus in his "Ad Scapulam," no. 2. Tertullian lived from about A.D. 160 to 230.**