

unanimous Court) strong emphasis upon certain human and personal values—an emphasis which is the antithesis of statism. It spoke of education as “awakening the child to cultural values”; it spoke of the personal success of the child in life.¹⁰⁰ Above all, it rejected the notion that adequate state-provided plant, teachers’ salaries and curriculum went to make a real education where human personality—the “hearts and minds” of which the Court spoke—would be adversely affected.¹⁰¹ In its opinion the Court even went to the length of citing materials from the field of psychology in order to buttress its position that values of personality and related rights of conscience take precedence over “official” government programs of education, however competent these may be.¹⁰²

The *Meyer* and *Pierce* cases underscore the protection with which the American Constitution jealously surrounds individual rights in education. They both stress child-parental rights; by clear implication they attack the concept of a statist culture which would result from the permitting of government monopoly of education. Each gives strong basis for argument that governmental programs which result in denials to parents and children of choice in education according to the reasonable demands of conscience may be unconstitutional.

3. *Legislation as Constitutional Precedent*

While constitutional doctrines of judicial review vest in the judiciary the power ultimately to determine validity, the duty upon the legislative and executive branches to assess and to pass upon constitutionality is by no means on that account removed. Indeed, the doctrine of the presumed constitutionality of legislation rests upon the presumed scrupulous pursuit of that duty by the legislature.

No stronger answer is to be found to the argument that no aid may be afforded education in church-related schools than the fact that the Congress has in numerous ways over the years deliberately provided such aid. A list of forty-one such programs—all, by the way, consisting of grants and loans to church-related *institutions* (including educational institutions)—was issued on March 28, 1961, by the Department of Health, Education, and Welfare.¹⁰³ One of these programs, the Surplus

¹⁰⁰ *Id.* at 493.

¹⁰¹ *Id.* at 493-94.

¹⁰² *Id.* at 494 n.11.

¹⁰³ Senate Comm. on Labor and Public Welfare, *Constitutionality of Federal Aid to Education in Its Various Aspects*, S. Doc. No. 29, 87th Cong., 1st Sess. 37 (1961).