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Coercive Power of the Federal Purse

Use of the leverage of the government dollar to accomplish objectives which have nothing to do with the purposes for which the dollar is given has become dangerously fashionable, and there is no obvious constitutional basis on which to resist this encroachment.

The difficulty of obtaining review of a denial of a grant or a contract makes the allocation or withholding of funds easy to manipulate for vindictive or political purposes. This was precisely what was proposed in order to get back at Jerome Wiesner for his opposition to the antiballistic missile program.

There have been other less flagrant, but equally pernicious, efforts to use the leverage of the spending power to "discipline" educational institutions. The most notorious was Congressman Hebert's persistent effort to deny all Department of Defense grants to any institution which discontinued its Reserve Officers Training program.

Another example of use of the leverage of the government dollar is the proposed health manpower legislation. With laudable motive and seeming plausibility, this legislation seeks to remedy the shortage of primary care physicians and the obvious uneven availability of medical care throughout the country. It does not use the device of special assistance for the training of primary physicians, or special bounties for graduates who commit themselves to practice where they are most needed. It proceeds, rather, by telling the medical schools that all general support for medical education, the so-called capitation grants, will be withdrawn unless a school increases its general practice training and requires some proportion of its graduates to enter practice where there is a shortage of doctors. Were it not for the federal financial support it would be hard to find warrant in the Constitution for federal regulation of medical school curricula or for drafting graduates to serve in places not of their choice.

This same leverage is carried to far greater extremes in other federal legislation already on the books. It might be called the "now that I have bought the button, I have a right to design the coat" approach. Thus if we are to receive support for physics, let's say, we must conform to federal policies in the admission of women to the art school, in the provision of women's athletic facilities, and in the recruitment of women and minorities, not just in the federally supported field, but throughout the university. Even in the name of a good cause such as "affirmative action," this is constitutionally objectionable.

The farthest outreach of federal regulation under the banner of the spending power is the Family Educational Rights and Privacy Act, the so-called Buckley Amendment to the Education Act. Again, the purpose is laudable. Schools should not be able to build up prejudicial files on students against which the student has no redress if he has no way of knowing what is in them. But the end does not justify the means in this case either.

We all remember the warning of former President Eisenhower against the dangers of the military-industrial complex, but hardly anyone remembers that he went on to say, "The prospect of domination of the nation's scholars by federal government, project allocation, and the power of money, is ever present, and is gravely to be regarded."

High on the agenda of the legal profession, especially its scholarly branch, should be to see to it that, in terms of both limits on authority and redress against its abuse, the coercive power of the federal purse is made subject to a rule of law.

It is high time that we learn once again to ask not only "Is your objective worthy?" but also "Are the means you would use consistent with the values of the Constitution?"—KINGMAN BREWSTER, *President, Yale University, New Haven, Connecticut 06520*

Excerpted from a speech delivered to the Fellows of the American Bar Foundation on 22 February 1975.