

## Parental Freedom of Educational Choice

By James W. Skillen

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Glowing pride and tearful dismay, liberating joy and devastating sorrow--these emotional extremes pull at the hearts of American parents today as they try to raise and educate their children. Good grades in school bring pride to all; a child's early distaste for learning produces sorrow. A developing talent that allows a child to go on to college or to successful employment gives a sense of liberating fulfillment; academic or social failure in school that may threaten a child's maturation can break a parent's heart.

Today, perhaps more than ever before, schooling appears to be both increasingly urgent and deeply troubled, both obviously essential and clearly problematic. Citizens and public policy makers look for ways to promote the schooling of young people in order to secure America's future. But how should they promote it, and what, precisely, should they promote? Who should do what kind of promoting? Who is best equipped to educate children? How should schools and teachers best complement and supplement the learning patterns and moral training children receive at home and in their neighborhoods? How can government's education policies do justice to all of America's parents, students, and teachers? How can schooling best assist the development of moral, economic, and civic life for each citizen?

These and thousands of other questions come to the fore if one looks seriously at the educational challenge that faces American society and its families. Yet there is no simple answer to the questions just posed. We live today in a social and political context shaped by centuries of experimentation, policy making, and institutional development. Much of what exists is good and should be conserved; much is bad and needs to be reformed. But how do we sort out the good from the bad? How may we hold on to what is positive while genuinely overcoming what is negative?

To address even a few of these important questions one ought to present an argument that shows sensitivity to historical reality. One must help to dispel some of the perplexities and confusions we face and not simply spin out a yarn of wishful thinking or utopian expectations. Moreover, anyone who is concerned with the moral revitalization of American society must gain a clear understanding of the specific and differing responsibilities of families, governments, churches, voluntary agencies, schools, and other institutions. Realizing the need for this kind of serious reflection and argument, I want to make a case for the crucial importance of doing greater justice to America's parents and guardians who remain chiefly responsible for raising and overseeing the education of their children.

### **A BRIEF GLANCE BACKWARD**

Schooling was not defined by constitutional mandate at America's founding. Two or three hundred years ago, education was not conceived strictly as either governmental or non-governmental, as either religious or non-religious, as either belonging to the family or belonging to the state. Common law and tradition, which reflected diverse educational patterns in families, schools, churches, and other agencies, ruled the day. Not until the ideas of Thomas Jefferson, Horace Mann,

and others began to take hold in the 1840s did a system of government-run common schools start to dominate the American landscape.'

When European Catholic immigrants began to pour into Boston and New York in the 1840s, local and state governments decided it was time to organize schooling in a way that would help to solidify and promote a common culture. Over the next century and a half, a system of uniform, democratically mandated, bureaucratically governed schools came to be established. Cultural, religious, educational, and family differences were variously ignored, rejected, or celebrated depending on governmental decisions that reflected majority will and then, eventually, the Supreme Court's interpretations of the U.S. Constitution.<sup>2</sup>

In the nineteenth century, a white, Anglo-Saxon, Protestant (WASP) majority held an idea of society that led them to exclude Catholic schools from public recognition. The majority believed not only in the political principle of majority rule but also that some degree of cultural homogeneity is essential to the maintenance of a stable society. Therefore, as the majority turned over more and more responsibility for schooling to city and state governments, those governments moved to define Catholic schools as private, "sectarian" enterprises undeserving of public support because of their threat to the cultural homogeneity of a WASP society.

Catholic schools were not outlawed completely but were denied access to public funding and recognition. The consequence was that government gradually monopolized public funding and legal privilege for the benefit of a single system of schools, namely, the system run directly by the government itself. That system took as its purpose to train all children in a common way of life.<sup>3</sup>

The government-organized schools were called "public" because they were governed directly by public law as departments of either cities or states and were supported by public tax dollars. Catholic and other non-government schools, which the authorities defined as private or "sectarian," were allowed, for the most part, to govern themselves. Despite the fact that the non-government schools performed the same public service as did the government schools, they were permitted to exist only on the periphery of the public square so as not to interfere with the homogeneous common life of the majority culture. Catholics were, in essence, told that they could be citizens as long as their schools, like their churches, confined their activities to a private sphere and paid their own way. Consequently, Catholics were forced to separate their private, nonconforming lives from their civic lives.

At the time, the Protestant majority did not experience the same tension between their public and private lives because the Protestantism of the majority (including its King James Bible, moral codes, etc.) remained the dominant ethos of the so-called "nonsectarian" schools. Not until the 1960s did a growing number of Protestants begin to experience the exclusion that Catholics felt in the 1840s. The system of majoritarian school governance established by a WASP majority during the preceding century had become firmly entrenched. The dominant tendency was to define all traditional religious views as "sectarian." In the name of neutrality and "non sectarianism" those older views had to be dismissed from the government's increasingly "secularized" school system.<sup>4</sup>

A major point to stress here is that the governance of American education from the 1840s on has manifested a highly restricted sense of justice controlled by the idea that government should act uniformly in accord with majority will to advance a culturally homogeneous public program for society. Anything not approved by public governance or that appeared to exhibit diversifying cultural or religious tendencies has had to be pushed into private space. The full reality of

education--as it has actually taken place in diverse families, ethnic groups, churches, schools, and other distinctive circles of citizens--has consequently suffered maltreatment at the hands of public educational bureaucracies.

Anything not able to fit the majoritarian, homogenizing mold has had to be discounted or privatized and therefore either squeezed out of government-run schooling or redefined within those schools in ways that would accord with the governing will.<sup>5</sup>

Most Americans take the existing educational governance patterns for granted whether they like them or not. Those patterns are rooted in the conviction that the civic community is a simple republic whose members ought to govern themselves entirely through their representatives by majority will even while they agree not to tyrannize individuals and minorities in the legitimate enclaves of their private lives. Institutions such as families, non-government schools, voluntary associations, and churches are often, or usually, not recognized as having both a non-government character and a legitimate function in the public realm. The assumption underlying current patterns is that the public law may legitimately try to advance a general purpose of benefit without regard to the diversity of non-governmental institutions that might also be closely involved in that same public purpose. The civic community is conceived as a simple, homogeneous, single-willed (through majority) community, rather than as a pluriform, complex society in which government's actions should promote the public freedoms of diverse institutions and cultural traditions.

With respect to education these patterns have meant that the majority has often felt free to ignore or to overrule the desires for diverse schooling expressed by many families, churches, and non-government schools. When "the people" decide, through due process of law, to offer a public service, they simply assume that their actions are, by definition, good and legitimate since they reflect majority will. Whatever does not conform to the uniformly defined public educational purpose may then, with equal legitimacy, be eliminated or relegated to a private sphere. The central concept here is homogeneity of public life under government with an allowance for diversity and peculiarity outside the public domain.

Few in the 1840s imagined (and perhaps fewer today imagine) that the general public purpose of advancing education might be realized with much greater justice if the government's mandates and funding were to recognize the primacy of parental choice from among a diversity of school systems. Justice has been conceived too narrowly as the product of majority will that merely respects minority rights in private. Insofar as non-government institutions (such as families, churches, schools, and so forth) have exhibited diversity and/or dissented from the majority's decisions about schooling, they have suffered real injustice and discrimination in public life despite their supposed freedom in private. Protecting private freedom is not sufficient for the achievement of public justice. Not only have religious, philosophical, or cultural convictions of many citizens been thwarted; many citizens have also been put in the position of feeling alienated (to some degree) from the very democratic polity to which they belong. The simple majoritarian process, operating in a political system that aims for the homogeneity of the political community, leads to all-or-nothing decisions. The majority wins control of the public terrain; the minority loses and has to retreat into privacy.

A pluriform or pluralist conception of a democratic polity requires the adoption of quite a different posture when it comes to the governing of a complex society.<sup>6</sup> It is both more sensitive to the common law tradition and more alert to the fact that justice requires fair public treatment of the diverse, nonpolitical institutions in society and not simply the privatizing of everything that does

not conform to the programs inaugurated by a governing majority will. Freedom for parents to relate the morality of their homes to the full process of educating their children requires, I believe, the public justice of a pluralistic framework of school governance.

## **DOING JUSTICE TO EDUCATION IN A COMPLEX SOCIETY**

It is not hard to see that a society founded upon democratic governance should be concerned with the literacy and intelligence of its citizens. Enlightened self-rule is surely superior to self-rule that remains mired in ignorance. Moreover, if a democratic society is highly diverse and is being shaped by immigrants from many different cultural and linguistic backgrounds, one can see the wisdom of civic education that tries to give all citizens some knowledge of the republic they share in common.

However, when "the people" begin to legislate on matters of education, the complexity of society and of the educational process must be sorted out clearly if justice is to be done to all concerned. There is nothing inherent in literacy training and civic education, for example, that requires government itself to establish or control the agencies of schooling or to do all the educating of citizens. The fact is that schooling occurred for hundreds of years before government-run common schools were established. Moreover, basic literacy training and civic education are only part of what most schools and families want to provide for young students.

When government acts, its responsibility should be to do justice to its citizens. It must be able to answer questions such as: How should education be justly funded? For how many years of schooling should government subsidies (if any) be provided, and from where should those funds be derived? What is a just system for raising and distributing funds for schooling? Is it ever just for a government mandate or service to exclude anyone? Should schooling be required of every citizen by force of law or simply offered for those who want it? Should newer immigrants be given extra educational service if they start below the literacy level of natural-born citizens, or should a standard amount of schooling be offered to every person, regardless of the level at which he or she begins? What about the other institutions and agencies also concerned with education, such as families, non-government schools, churches, and voluntary associations? How can justice be done to all of them?

A utilitarian answer to these questions can never adequately address the demands of justice. To say, for example, that it is better to provide schooling for some citizens (instead of offering nothing) even if everyone cannot benefit, is to leave open entirely the question of whether it is just to educate some but not all citizens. To argue that government should do something to provide a greater good for a greater number says nothing about the justice of leaving some people at a disadvantage if education is not provided for them or if the means of providing the education is inequitable in one way or another. If an educational effort is to be initiated by government, its just character is of preeminent importance. And the demands of justice must be met by the manner in which government deals with all citizens and institutions of society, not simply by the fact that it is able to muster a majority vote.

One of the convictions underlying this essay is that justice has not yet been done to the citizens of the United States in regard to education, and one of the chief reasons is that parental responsibility has not yet been given its proper due.

## **TOWARD A SYSTEM OF FREEDOM WITH JUSTICE IN EDUCATION**

Taking into account the various elements discussed above, I am driven to the conclusion that a fundamental, pluriform transformation of the structure of American schooling is urgently needed.<sup>7</sup> Such a change is fully compatible with our constitutional system of government, including the U.S. Constitution's First Amendment, though such change will challenge the way the First Amendment has been interpreted by some members of the Supreme Court since the 1940s.<sup>8</sup> The changes required to do justice to all parents and children can be achieved by means of simple legislation at state and federal levels that will, however, in all probability, require changes in many state constitutions. The legislative and state constitutional changes will also have to be backed up by revised Supreme Court rulings. If the Supreme Court continues to stand opposed to the reasoning offered here, then a federal constitutional amendment may be necessary.

What will comprise a just system of education in which parental responsibility is finally given its due?

First, the obligations presently resting on parents or guardians (the principal parties accountable for minors) should henceforth be upheld in a non-discriminatory fashion. For example, to the extent that states, for legitimate civic reasons, mandate education for all children, they ought to allow, without any legal or financial discrimination, parental choice of the means of schooling, since parents, not the state, hold the principal responsibility for raising children and overseeing their education. Among other things, such non-discrimination entails a proportionately fair investment of public educational dollars in every child. Even among government-controlled schools today there is a highly inequitable distribution of educational tax dollars because of the residential, district basis of taxation and school funding. But in addition, the highly inequitable distribution of tax dollars that favors government-run schools only aggravates the injustice. The way to redress these financial inequities is to set up a new system of statewide (or even nationwide) distribution of education dollars to each school-age child (whether directly or indirectly) regardless of the school he or she attends. Whether the tax monies are raised through a property tax or some other means, the distribution should not be made on the basis of the residential neighborhood of the child as is now done. And since religious and other conscientious convictions of parents and their children ought to be respected under the First Amendment, governments have no right to mandate the education of all children and then to discriminate financially against those taxpaying citizens who choose religiously qualified schools for their children's education.<sup>9</sup>

Fairness and equity certainly may justify discrimination in some cases of funding. For example, handicapped or learning-disabled children may require a proportionately larger expenditure if they are to receive the same level of schooling. High school education costs more than elementary education, so a greater proportionate investment can be justified there. But beyond these and many similar reasons for proportional discrimination, there can be no justification for discrimination simply because of skin color, religious conviction, or differing pedagogical methods and philosophies of education that parents freely choose.

The First Amendment ought to be interpreted to protect each citizen's freedom to exercise his or her religious convictions without inhibition by government except where government must act to protect the lives, liberties, and properties of all citizens. If, for reasons of conscience, some parents feel compelled to educate their children in Catholic, or Protestant, or Jewish, or Muslim, or other faith-guided schools, then the First Amendment's protection of their religious freedom should also govern the distribution of public education dollars so as not to discriminate against them. Once we recognize that it is not necessary for government to own and run all the agencies of education, then government's support of a variety of different school systems can be recognized as completely

compatible with First Amendment requirements. The danger to the First Amendment arises when government puts its financial and legal support behind only one system of schools to the exclusion or disadvantage of others. That is the error that currently predominates. 10 Whether 5 percent or 95 percent of public funding goes to support religiously oriented schools, no infringement of the First Amendment's Establishment Clause exists as long as those schools are freely chosen by citizens without either compulsion or special privileging by government. Articles in many state constitutions that prohibit aid to religious schooling represent an unjust attack on the very meaning of the First Amendment."

The question of racial, cultural, and gender discrimination can also be met by means of the same pluriform openness to parental choice in education. As long as no child is excluded from equal educational opportunity, and as long as equitable funding follows every child to the school of choice, then government need only watch to protect the pluriform openness of the public terrain. If all parents and educators are free to choose and to establish schools of every variety--Montessori schools; schools with classically oriented curricula; Asian, Latin, European, or other culturally unique schools; religiously and philosophically distinct schools; and so forth--then no one suffers discrimination simply because different schools have different degrees of particularity and exclusivity. Government should indeed act to ensure that every child has access to adequate schooling, but its actions should encourage the opening of pluriform opportunities rather than hamper diversity in an attempt to force some kind of homogeneous public conformity."

Certain kinds of public, legal requirements binding on all parents and schools can be perfectly compatible with a pluriform system of school choice. For the sake of civic well-being and fairness toward every citizen, there is no reason why governments may not require a certain level of competence in English from children at different age levels, or a certain level of competence in basic civic knowledge. But these public mandates laid on all parents alike can be met by any number of means--in schools, at home, or by special tutoring agencies. Government's right to issue mandates for the protection and enhancement of the public welfare needs to be carefully distinguished from its right to own and operate educational agencies. The former does not grant a right to monopoly control of the latter. Basic linguistic and math skills, civic knowledge, and other educational achievements have been nurtured in America by Catholic, Jewish, Protestant, and other non-government schools for more than two centuries. Those skills can continue to be nurtured in a wide variety of schools equitably and proportionately supported by public funds.

A pluriform system that does full justice to parental choice can also do greater justice to educators, schools, tutoring programs, and more. There is no constitutional or other argument from justice that says government should be allowed to privilege its own agencies of schooling to the disadvantage of other agencies run by churches, parent associations, and independent educators. Once the distinction between state and society is made and once the distinction between governments and schooling is accepted, then government's ability to treat all parents and schools fairly becomes possible. Governments will always need to make laws to protect the public, and they may need to do many things in order to promote an educated citizenry. But all such actions should be based on prior foundations of justice that recognize the independence of families and schools. Government's consequent actions to promote the public good should build on the recognition of the right of parents to choose schools for their children without any financial or legal discrimination.