

## Introduction

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### I

After a long period during which the minds of most Americans turned to other matters, questions of education are now very much a central concern to them, both as parents and as citizens. Many of the issues that have begun to dominate the news and the speeches of political candidates have a long history behind them, such as school discipline, testing, character education, and issues of income and racial inequality. Accompanying them, however, has been a concern with school choice that suggests a departure from previous debates. Whether hailed as a needed kick in the pants or condemned as a radical attack on public schooling, school choice is a new terrain involving new ideas, new figures, new alignments, and new solutions.

Because it is so controversial an idea, school choice has generated an impassioned debate. A good deal of that debate involves questions of effectiveness. Scholars on different sides of the issue challenge one another's methodologies, findings, and, alas, motives. That is, except perhaps for motives, as it should be. Eventually the dust will settle, the statistical evidence will point one way or another, or perhaps both, and minds will (or will not) be made up. But it is also important to remember that questions of effectiveness are not the only questions raised by a greater emphasis on parental choice. Ideas about choice, like ideas about education throughout all of American history, touch on fundamental questions of our public philosophy: the kind of people we want to be, the requirements for economic and racial equality, the nature of the institutions we wish to see flourish, and our ideas about private and public character.

The essays assembled in this volume explore those aspects of the school choice controversy that touch on these essential moral, normative, philosophical, and religious concerns. This book seeks to broaden public attention and to further the public debate by addressing questions such as School choice for what? and School choice for whom? Both advocates and opponents of school choice at times get so involved in their criticisms of each other that they tend to neglect the fact that school choice, like all kinds of schooling, is intimately connected to

issues involving the nature of the person, citizenship, and the purposes of political life. Although school choice remains a “new” issue, many of the voices in the debate, on all sides, have become predictable, suggesting that is perhaps time to hear from even newer participants. In particular, we need to look to moral philosophers, theologians, and historians—even those who have not written on school choice before but whose concern with issues of equality, pluralism, and fairness has been long established—to offer guidance on an issue as contentious as school choice. School choice is too important an issue to be left solely to economics and educators.

## II

To provide a better grasp on the moral and normative dimensions of school choice, this volume is broken into four sections. One deals with issues of equality; a second with issues of pluralism; a third with the relationship between schools and other institutions that constitute the “social ecology” of society, such as families, churches, and neighborhoods; and a fourth with legal issues, especially, but not exclusively, with the relationship between school choice and First Amendment issues of religious establishment and religious freedom.

### *School Choice and Equality*

Whether public or private, religious or secular, elementary or secondary, schools in America have understood their mission less as the transmission of timeless wisdom and more as the means by which those lacking economic advantages could raise themselves up, through schooling, in ways that would enable them to pass on those advantages to their children. To be sure, not all American educators were in agreement on these goals; as Diane Ravitch’s book *Left Behind* shows, there long existed in America a group of educators who emphasized the need for schools to introduce students to the life of the mind. But such critics, Ravitch also demonstrates, have become forgotten voices as a consensus formed among professional educators to stress the role that schools ought to play in helping pupils adjust to the practical circumstances of everyday life.

So strong is this consensus that most critics of schooling these days, especially those on the left end of spectrum, do not object—however problematic they may find other aspects of schooling—to the tendency of schools in America to promote practical advantages over intellectual

discipline. Their point, rather, is that schools too often fail to achieve the objective of promoting equality that they say constitutes their primary justification, but reinforce instead the inequalities of capitalism. The same could be said of those who have criticized schools for the persistence of racial segregation within them. The essence of their criticism is usually not that segregation per se is bad, for under some circumstances they would defend the advantages of all-minority education; it is instead that segregated schools condemn those who attend stigmatized schools to greater risk of failure in a market-driven economic system.

When the idea of school choice was first introduced, questions of equality did not play much of a role among advocates, but they did among critics. Those who believed that the introduction of marketlike mechanisms into schooling was a bad idea often emphasized that vouchers would result in lower levels of public support for already underfunded inner-city schools and in that sense would harm the opportunities of the poor pupils who attended them. Carrying forward the consensus around the notion that the purpose of education ought to be one of furthering the goal of equality, they concluded that vouchers represented one mechanism among many that middle-class Americans often use to avoid their obligations to the poor. In this phase of the debate over school choice, the usual political terms held: the “right” was in favor of the market, while the “left” emphasized the importance of the state. No one who would have predicted at the time that eventually arguments for equality would become the major arguments in favor of school choice would have been taken seriously.

In his book *Choosing Equality*, as well as in his chapter in this volume, Joseph Viteritti asks the question of how we can justify allowing middle- and upper-class parents to choose schooling for their children without extending the same right to those who lack economic means. He also asks the same question with respect to choices involving religion, insisting that it is wrong for society to prevent parents from choosing a religious education for their children solely on the grounds that they cannot afford the cost. The debate over school choice, Viteritti believes, has shifted from one stressing freedom to one emphasizing equality. If he is right, a new set of issues are raised that require careful attention.

Those questions have already begun to be asked. Will school choice result in “skimming”? Should poor urban children be given vouchers while vouchers are withheld from their lower-middle-class peers? Should suburban parents be excluded from school choice on the grounds that they have mobility? Does the egalitarian defense of choice turn the property-tax-financing system of schools into an open question? Will the future politics around school choice change as the issue moves from one emphasizing freedom to one stressing racial

equality? What do debates about school choice teach us about the American preference for freedom over equality? Joseph Viteritti, Stephen Macedo, and I all try to address questions like these in our essays; we do so in different ways and come down on different sides of the debate. But what unites all three essays is the sense that school choice has entered a new terrain in which questions of justice and fairness will dominate the discussion.

### *School Choice and Pluralism*

The debate over school choice cannot be separated from larger questions of the appropriate role that schools should play in sustaining common ideas about national cohesion. America became the first country in the world to create a comprehensive system of public schools, at least in part because the American nation, unlike the French or British nation, was so young and composed of people of so many different nationalities. Without cohesion fashioned through an established church, without the grandeur of a literature that could extend back in time to Shakespeare or Milton, without a monarchy and its royal patronage, Americans created their nation consciousness through more modern means, including the use of schools to insist upon what were, despite the lack of an established church, essentially Protestant moral ideals.

From the first moment of substantial non-Protestant immigration to the United States, the question of whether schools should insist on commonality or encourage pluralism and diversity has been repeatedly posed—and never satisfactorily answered. Meeting hostility toward their religion and way of life, Catholics eventually opted to create a system of parochial schools. Jews, by contrast, resisted, until very recent times, a similar move and became enthusiasts for public education. When issues of racial equality came to America, they came in controversies over schooling; *Brown v. Board of Education*, in insisting on the unconstitutionality of segregated schooling, adopted the ideal of common values, but in more recent times the popularity of Afrocentric curricula suggests a move in the other direction. Americans are strongly committed to the integrationist and assimilationist nature of public schools, but also do not object if distinct religious or ethnic communities want to form their own schools and programs, so long as they do not, in the process, undermine generally consensual ideals.

Unexplored in these debates over pluralism is the question of school choice. If America moves in the direction of greater choice, including vouchers, will the result be greater respect for diversity? Or, in fact, will it be the opposite, greater public regulation of private schooling?

Aside from the important question of what might happen, there is also the question of what ought to happen. Should we encourage school choice because we want to encourage diversity? Or if we are truly committed to diversity, ought we to resist school choice? The essays in this volume by Meira and Sanford Levinson, Amy Gutmann, and Nancy Rosenblum address these questions. They do so, moreover, by concentrating not so much on ethnic or racial identity, but on religious pluralism, appropriately so because religious differences have, throughout the course of American history, been our most conflictual.

One does not have to agree fully with Louis Hartz to conclude that America was fashioned in the image of Lockean liberalism. The idea of individual rights, although it does not place emphasis on the priority of government over the individual, is crucial to the way Americans define their common ideals. Amy Gutmann and Nancy Rosenblum find the concept of school vouchers problematic to the degree that vouchers would enable parents or religious communities to impose their authority over the authority of the rights of individual members or those of the future citizens their children will someday be. Gutmann reminds us that pluralism, in and of itself, ought not to be the first virtue of schooling; a liberal-democratic society can insist on the importance that schools attach to liberal-democratic values. In her writings, especially in *Membership and Morals*, Nancy Rosenblum is a strong advocate for pluralism; in her essay for this volume, however, she argues that school choice and pluralism are not the same thing and that, indeed, children who attend schools chosen by their parents, especially if those schools are committed to only one way to the truth, may not be introduced to pluralistic ideals at all. Finally, Levinson and Levinson argue for the educational benefits that flow from the presence of a more diverse study body, an argument that leads them to conclude, against Gutmann and Rosenblum, that religious schools may be more deserving of vouchers than nonreligious schools are.

### *School Choice and Social Ecology*

Schools are one of many institutions, including churches, families, unions, and business corporations, in our society. One of John Dewey's contributions to education was to emphasize the institutional character of schools. Yet Dewey was somewhat tone deaf to real-life institutions, preferring to think of schools—or churches, for that matter—in ideal terms. It is preferable, in thinking through the implications of school choice, to focus on actual institutions, for it has become clear to thinkers from all over the political spectrum that the institutions which exist

in “civil society” are being transformed under pressures from both the market and the state.

While there has been a discussion of the effects that school choice might have on the institutional character of schools, there has not been sufficient attention to what might be called the “ecology” of institutions throughout American society. All schools, in a sense, including public schools, are part of civil society, for although public schools receive funding from the government, they also rely on voluntary associations like PTAs and PTOs. (Indeed, the question of whether such organizations are in decline has been a central element in the debate over civil society). In that sense, schools are like families, neighborhood institutions, and churches. If they flourish, so does society. If they atrophy, civil society is indeed in trouble.

We know very little about the effects that a greater emphasis on school choice would have on the voluntary character of American society. On the one hand, if school choice, by moving away from top-heavy public bureaucracies such as school systems in favor of charter schools or independent schools, would seem to promote those institutions that lie between the market and the state, in that sense it would have positive consequences for civil society. On the other hand, vouchers have often been linked to the market so completely that the emphasis on free choice they promote could undermine civil society by encouraging a kind of selfish egoism that disregards the needs of others. Choice, after all, is not necessarily a good in and of itself. We may believe that parents ought to be as free as possible in choosing schools for their children. Marital choice is another term for divorce. It is perfectly plausible to argue in favor of school choice because it will help children but against marital choice because it will harm them. But that is just another way of saying that because choice may be good in one area of life does not mean that it is good in all.

As with pluralism, religious institutions play a particularly important role when we think about the institutions that constitute our social ecology. In Europe, each country has usually established one religion as its official faith; America, no doubt due to its Protestant character, has placed a much stronger emphasis on the voluntary nature of church and sect. We have usually believed that religious institutions flourish best when left to the individuals who build their churches, collect the funds, publish the newsletters, and attend the Bible study groups. Since the question of school vouchers is so often linked to the question of whether religious schools will and should receive public funds, it is impossible to discuss the issue without considering whether vouchers

would strengthen or weaken the voluntary character of America's religious institutions. Arguments can be made on either side. Would an infusion of public funds into Catholic and evangelical schools restrict their freedom to teach the very religious principles they believe essential to education? Or are they so vital to the country that they ought not be punished by being denied the public support given to just about every other kind of voluntary association in America?

Charles Glenn has been one of America's leading commentators on this issue. In his chapter for this volume, he turns to the experiences of other countries to show that their religious institutions have not been corrupted by the receipt of public funds. The Dutch experience is in many ways the most relevant here, for Holland has been the leading Western country to finance its welfare-state activities through public support for voluntary organizations. Richard Mouw knows the Dutch situation at first hand and presents his view of the lessons it contains for Americans in his contribution. Finally Joseph O'Keefe, S.J., turns to the United States and the specific question of how and in what ways Catholic schools would and should benefit from the introduction of vouchers. While there is no particular agreed-upon point of view uniting these three authors, their conclusions tend to be more sympathetic to the idea that school choice would strengthen the social ecology of American life than those in the contributions of Rosenblum and Gutmann.

### *School Choice and Law*

As Tocqueville noted long ago, America's political questions eventually become legal ones. So do America's moral questions. And, if one can even presume to bring Tocqueville up to date, all moral and legal questions in America eventually seem to involve children and the schools they attend. If any of the issues that are addressed in this volume are ever to be resolved, it is likely to be the courts that resolve them in the context of decisions about what students ought to learn and who should have the authority to teach them. In the meantime, some of the most serious thinking about America's moral, religious, and normative concerns is done by legal scholars in the form of legal questions.

The reason that legal questions are so central to the debate over school choice is that schools have always played such an important role in the promotion of common values. In the absence of a strong state, schools became the public institution par excellence in America, and since the function of the law is to lay down rules by which public

institutions will be guided, the schools, for all their voluntary character, especially in the twentieth century, have had their decisions reviewed by courts. Can states compel all students to attend public schools? Should schools teach morality and, if so, whose morality should they teach? Can they require students to say prayers just as they say the pledge of allegiance? If so, should those prayers be to a specific god or to a generalized one? How should religion be taught in schools? Should it be taught after school or incorporated into the curriculum? Should those activities deemed too religious to take place during school hours be allowed to take place in school by after hours? At football games? At graduation ceremonies? Are schools under an obligation to respect the religious rights of non-Christians? Of nonbelievers? Since children are too young to make their own choices, should their parents choose for them? If they do, can they violate the rights those children would have as adults? The range of legal questions the courts have had to address involving the schools has been truly astonishing.

When the issue of school choice is overlaid on an already complicated—and often contradictory—jurisprudence, the difficulty of drawing firm guidelines increases. A number of advocates for school choice believe that choice without the ability to choose religious schools would hardly be a choice at all. (This explains why choice advocates in places like Milwaukee have relied on private sources of funds, thereby avoiding constitutional issues.) Were the U.S. Supreme Court, when it finally enters the area of school choice, to rule definitely against any voucher proposals that enabled parents to use public funds to send their children to religious schools, whatever remaining voucher proposals existed would attract neither many applicants nor much intellectual excitement.

The chapters by Martha Minow, Rosemary Salamone, and Michael Perry make clear that while religious issues are central to the legal debates over school choice, they are not the only constitutional issues that will need to be considered by the courts as they enter this thicket. Salamone reminds us that the notion of choice gives preference to private actions, but the question of what is actually private is a complicated one that affects many areas of constitutional inquiry. On the other hand, school choice is also, as Minow and Perry show, intimately connected with the Fourteenth Amendment's commitment to equality before the law. These three authors raise a series of at least crucial questions: Should the principle of choice be overridden if the consequence is racial segregation? Should the commitment to public schooling be overridden if the consequence is a violation of an individual's right to

decide with dignity how best to live? Because these questions have no easy answers, we can be sure of one thing: Should school choice ever gain greater public support and be widely adopted as a public policy in America, the constitutional and legal questions it will raise have only just begun to be addressed.

### III

On September 25, 2001, the Supreme Court granted certiorari and consolidated three cases (*Zelman v. Simmons-Harris*; *Hanna Perkins School et al. v. Simmons-Harris et al.*; and *Taylor, Senel, et al. v. Simmons-Harris et al.*) arising from the establishment of the Ohio Pilot Project Scholarship program in 1995 in Cleveland. The scholarship program provided tuition vouchers (paying up to \$2,250) to the parents of students in Kindergarten through eighth grade for use at participating schools, whether public or private. No public schools elected to participate in the program, and of the fifty-six private schools that participated in 1999–2000, forty-six were church affiliated. On February 20, 2002, with advocates on both sides of the question peacefully demonstrating outside its chambers, the U.S. Supreme Court heard oral argument in the consolidated Cleveland school voucher case. On June 27, 2002, the court ruled that the voucher program in Cleveland was constitutional.

As this case suggests, no one expects the issue of school choice to disappear from American politics any time soon. To be sure, school choice turned out not to have the irresistible force that many of its critics assumed it would have; in their view, America's commitment to capitalism was so strong that people would rush out to embrace choice in schools, an event that never happened. The 2002 U.S. Supreme Court decision, however, has given the pro-voucher forces new momentum. Indeed, it is likely that just at the moment when conservatives find themselves unable to build support for the idea, African American support for that decision will give the issue new life.

Focusing on the moral and normative aspects of school choice will not result in any immediate consensus; after all, disagreements about constitutional issues are as deep as those over pedagogy and economic methodology. That is why this book seeks no such premature closure over the questions it asks; its contributors range the gamut in religious views from evangelical Protestant to Catholic, Jewish to atheist, and they come as well from all points on the political spectrum. Authors were invited to state their positions with both passion and clarity. In addition to the essays that were commissioned for the volume, four

commentators, with backgrounds in philosophy, legal theory, and theology, were asked to focus on the implications of the issues raised in each of the book's sections. The objective has been to get behind the headlines over school choice. It is important not to forget that never-ending debates take place in American education because we have always made schools so central to the question of the kind of society to which we aspire.