



# School Choice and the American Family: A Moral and Civic Imperative

Inaugural Conference

## **School Choice as a Moral Imperative**

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Among the arguments for and against subsidized school choice, one path remains less traveled. Such neglect is a bit puzzling, for this trail appears to be the only possible entrance to every school of thought, or – at least – to every thought of school. The sign at the on-ramp bears the one word “authority.” Down this road lies the variety of means by which adults can mediate the destinies of children. One adult instrument is schooling. Our society makes it compulsory; but schools differ from one another. And, for every individual child one or more adult will select a preferred set of skills and values and will attempt, through some accepted form of schooling, to convince this student of their truth and importance. Adult sovereignty over the child’s experience shrinks and departs over time, but it is a reality for thirteen compulsory years of school. Whether they like it or not, even the “liberated” students of a school like Summerhill get sent there by the authority of those adults who happen to be their parents.

Whether authority gets exercised well – or at all – and whether or not it achieves the particular adult’s own ideological purpose, will vary; in any case authority is inescapable. Thus, whether I am a libertarian or the teacher’s union, I must ask first who it is that shall select the school experience for this child. That question sets the terms and limits for every debate about content, values, money, liberty, the best interest of the child and the common good.

This is not news. Plato insisted on locating authority his way. In The Republic he disempowered all parents, reducing them to an assembly line for babies who would remain strangers. We must not, he said:

“...[L]ightly suffer our children to listen to any chance stories... by chance teachers...”

“We must begin by censorship... and so shape their souls...”

Plato’s ideal State would locate authority in guardians groomed from birth to pass on to every child what Plato called “noble lies” – mythic invitations to the good life as he understood it. Plato’s project is a permanent possibility for any society, and, I will return to it a bit later.

I want first to issue an alert about my choice of words. I will use the word “family” here only sparingly, but with good intention. I revere that institution, at least as it has been understood in America; and I hope that this traditional meaning remains dominant. My wife and descendants agree; and I rejoice that even Norman Lear chose this model for his own comic conception of family. But, even if ambiguity about the definition of the institution should creep into American vernacular, this would not be my excuse here for focusing, as I will instead on the somewhat colorless term “custodial parent.” I do so, rather, because of the exclusive and unique legal authority that attaches, not to family, but to the office of parent. We love our family for countless good reasons. But it is mother and father not our aunts or siblings whom we must obey as lawgivers. Families, as such do not make and enforce law.

Nor does the State except indirectly. The State is the necessary back-up to the custodial parent. Each of the 50 states and the federal system recognizes that the authority of the parent precedes that of Caesar, both in time and meaning. And this broad agreement sets the pattern of rights and responsibilities that are peculiar to parent, child and government respectively. Custodial parents – whether natural or adoptive – enjoy a vast legal authority over the child; without consulting any manual or officer they make the rules and, with license from no one enforce them physically and intellectually up to the point of neglect and abuse. They decide diet, residence, hours, church, pets, exercise and television, and in general, they determine who else shall have access to the mind of this child, including those teachers who act as agents to serve the dual purpose of the parents – that is both to school the child and simultaneously, to satisfy the child's own right to be schooled.

Children's rights of the sort are quite real. They constitute a legal category distinct from adult authority. These rights of the child start exactly where parental discretion ends and where responsibility begins for both parent and State; children's rights correspond to adult duties. This is definitional; and note that the State's duty and its power to intervene come to an end exactly where the child's right stops. Beyond that point authority resides in the parent. One day soon we may discover where that point of intervention lies in respect of inoculation for swine flu. Is there a child's right to get shot? It's a fair question, but I leave it to you.

In any case the child has a right to be schooled, but it turns out that this right is subject to broad parental discretion about content and method; this discretion can be forfeited only by incapacity, abuse or neglect. In real life fewer than 1% of custodial parents are declared "unfit," and I will focus on the other 99%. By the way, when some parental breach of duty finally empowers the State to intervene, it does so "in loco parentis." Both the duty and the power devolve upon the State precisely as a substitute for the unfit parent.

The parent who is fit thus governs with a wide diversity both of aim and of method. The explanation for this authority of one specific individual person over another – an odd, perhaps unique relation in American jurisprudence – is not that parents always are good deciders. They are merely the best, both for the interest of the child and for the good of society. There are several reasons for thinking so.

First, the custodial parent is likely to care about the child as one of a kind; and such personal caring tends to improve both family relations and parental decisions. Call this love, if you will. It doesn't always happen, but it certainly happens more often with parents than with professional strangers. Personal caring can, of course, become obsessive and harmful or even abusive. In that event, the child has the right that some substitute assume the parental role. But the fact of parental caring (or love) remains a rough normality of our experience. And so we take it as a given in our law and practice.

A second reason: The custodial parent has a peculiar access to this child's mind and heart, hence a distinctive form of knowledge. It is the insight of someone who, over time, engages little George in mind and body watching him emerge in his own particular world – a world featuring the lady next door, the street noise, the dog, the siblings – what have you. Of course any mother can be wrong. But the general reliability of such day-to-day wisdom about this boy or this girl supports the parental sovereignty.

A third reason is the accountability – the reckoning – that looms for the custodial parent. Here is an adult facing a sobering prospect that has no parallel in the world of professionals – doctors, lawyers, educators – we who see our young clients for a time, do our best, wish everyone well and head on home. By contrast, the custodial parent, for better or worse and, to a degree, for life, is stuck with the long-term effects of whatever it is that adults have done or failed to do for this child. This uneasiness about a long future involving little Freddie can be

chastening. The parent who can avoid the passive role of spectator has every practical reason to exercise his or her authority wisely. There will be a reckoning. This parental dread of her own helplessness and its poisonous long-term consequences may help explain America's current fascination with the word "responsibility". I will return to that point.

First, however, I will describe the world of schools as I have known them. Since my own childhood schooling has become, more and more, a tale of two cities. People like myself now school in the one city; people less lucky do so in the other. The historic balkanization of schools into districts plus the widening gap in personal wealth, have influenced this shift. Perhaps few among our well-off citizens truly intended this anti-democratic sort of outcome, but there it is. We skipped to suburbia or to prep school in response to social and economic opportunity. Parents who could do so simply bought what seemed a better education. In the case of public schoolers, tuition was represented in the price of the house.

We still call such schools "public," and they do spend tax money. Does that justify the name? In ordinary conversation the word 'public' implies a place accessible to all. Central Park is public; the Mall is public – the sidewalks, the library. When we gave government schools this magic label – this democratic halo – what else could we have meant? And what today makes us so afraid (or ashamed) to recognize that government schools located in retreats such as my own in the Berkeley Hills are in fact more private – more exclusive – than the inner-city church school? We talk public, but we have acted private.

What would Plato say about this? Paradoxically, he might complain that it is these very children born to parents like me who get mis-educated by "chance" stories from "chance" teachers chosen by a "chance" parent. We all-too-human adults have created intellectual chaos by shopping in an open market of values – the very diversity that Plato fears. Students hear lies

that are not so noble from agents paid for by the state but chosen by chance parents. Plato pities the child of successful Americans lost in a wilderness.

For him the happy flip side is that the other half of our society learns the correct and uniform vision from its guardians. The child of the worker and the poor hears the tales told by right-thinking strangers. Such students are privileged to learn, not merely testable skills but the true picture of the good life and how to practice it – both for their own self-fulfillment and for the common good. Here, then, is Plato’s consolation prize. If this half of America gets less choice, that is all to the good – both for child and for society. They should be grateful. As Ben Johnson put it: “Heaven make me poor.”

Forgive the sarcasm, but ask yourself how it is that Americans of good will could justify this disenfranchising of ordinary citizens. Where are the egalitarians to invoke the 14<sup>th</sup> Amendment? No longer can the defense of such economic segregation depend on the Establishment clause; since Zelman, except, perhaps, for states with Blaine amendments, we could today empower ordinary people to choose any authentic school. What would be the objection? Well-off parents who make such choices today are admired or envied as responsible actors. And the outcomes of their decisions seem no worse than average.

I hear two plausible moral defenses of our two-track system; if the factual premises of these claims were true, they might be relevant. The first begins this way: Children of different social classes ought to get to know each other; this would be better for them and for society. Fine. I agree, but does it follow that we should limit choice to those parents who can afford it? Does this policy in fact diminish class segregation?

In practice I fear we have achieved quite the opposite. And here might be the lesson: If fellowship among social classes is an object, this society faces an option; America could either platonize all of us by universal compulsory assignment, or it could design fifty systems of

parental choice that prudently and patiently encourage our friendship by treating all of us with the dignity of choice. The first option – call it the Plato Project – is not available to us, partly because of Pierce v. Society of Sisters but, more, because parents who can do obviously prefer to maintain their own authority; this appetite for control within the family – this sheer decent prudence – is constantly demonstrated by actual behavior. Consider the consistent choices of our political leaders with their own children. If ever there is to be social variety in our classrooms, it will come by some well-designed version of universal parental choice.

The myth that choice itself promotes economic segregation has unintentionally been encouraged by the habit of interpreting the project largely as the efficient means to satisfy private tastes and raise children's test scores. These are good things, and choice, of course, does them; but it can do ever so much more. The public sector is beginning to understand and, on occasion, even accept this reality. Today Milwaukee, the suburbs of Boston and many systems of charter schools represent important and hopeful steps toward social inclusiveness and accessibility.

The technical designs that are available to stimulate social class integration range from intra and inter-district transfer, to charter schools and to diverse forms of vouchers and tax credits. All aim to empower parents to choose among participating schools that satisfy some sane standard of economic affirmative action. Access to a school can be insulated from parental wealth without eroding the ideological identity of a school – public or private. Such openness gives economic reality to what is a constitutional right. We have long made schooling compulsory – it is time perhaps to make it democratic.

The second plausible defense of the status quo returns us yet again to Plato's Republic. There is, we hear today, one best curriculum of human values – and society should deliver it, at least to those who can't afford to buy out of it. Indeed, many contemporary observers seem to assume that the American system has already accomplished this value conformity, and they

applaud. Though a bit undemocratic, imposing this uniform instruction about civic values sadly is necessary to remedy the social dysfunction rampant among the populations they have targeted. It is a genuine hope for democracy – at least someday – from the top down.

Among the problems raised by all this all-American curriculum of correct values for the underclass one is rather plain: In this country such a universal gospel could not and does not exist beyond the barest minimum – which consists of only two ideas that do in fact get taught in all schools. One is the institutional description of our form of government; the other is the duty to respect the law. Together these constitute the predictable part of any public school's value message; not surprisingly, these are ideas about which everybody already agrees. Private schools, with few exceptions, teach exactly this same good stuff; it is their principal distinction to add to this intellectual minimum a more specific vision of the good life. They go where things get interesting.

Meanwhile, this systematic restraint upon the free expression of public school teachers produces interesting effects. When faced with disputed questions of belief and value, the teacher has an option. He or she can strive to remain completely mute concerning values – especially the source of all value (and whether there even is such a thing or person). Such silence, of course, sends its own peculiar moral message. Other public teachers, however, manage to exercise an unpredictable but rather considerable freedom of speech. Every day the media report vivid examples of value diversity that make it to the public classroom or the school board. Parents of contrasting belief take offense at very particular and conflicting messages to students about sex, euthanasia, guns, animal rights, war, the environment, abortion, ethnic histories, gay marriage, health care, Al Gore movies, scientism, Columbus and corporate greed. The reality appears to be that these public teachers are human and occasionally behave so, sending – explicitly or implicitly – their own strong and contrary messages about the good life.

In the end it is difficult to find a common values curriculum. Exactly what it is that Caesar knows remains a mystery. No one has attempted seriously to assess the consistency of value teaching. Academia produces plenty of treatises about the teaching of values, but these describe only theoretical and – by the way – mutually incompatible curriculums. Nobody has yet begun to quantify the moral messages delivered in the classroom. If the media reports are valid examples, schools in fact teach a rich lottery of values; and to the extent that this is true, the child of the not-so-rich parent takes moral pot luck.

Note that I'm not objecting to value diversity as such; that is exactly who we are. But, given this cultural reality, might it not make more sense for all parents to choose their own brand? As an old lawyer I look forward to a credible scholarly assessment of our values curriculum. All schooling is coercive, and the lack of any rational connection between means and ends in public schools could someday interest our judges. If government intends to force the poor to hear some particular message, the message should at least be there.

Two conclusions then seem hard to avoid: first our schools segregate us by wealth; second, there is no common values curriculum that could justify coercive assignment.

Finally, a word about parental authority and civic responsibility. You can't have responsibility unless you have authority to make decisions and power to enforce them. All the media fuss about parental responsibility has not yet included this bedrock perception. Bill Cosby keeps picking on parents who disengage from school. He's right, of course, but this stick of his has two ends. When we treat parents as nobodies, many seem to take that message seriously and act accordingly. Given the school regime that is experienced by half our citizens, the natural response is passivity and despair. America has brewed the classic recipe for impotence and withdrawal by the adult; and the child too gets this message: the office of parent obviously carries little social or moral weight. Here may be the place to recall and honor the term "family,"

with its halo of mutual responsibility. If we do value family, our society had better see to it that American parents who are not so rich have real authority over who will have access to their child's mind for the prime hours of thirteen years.

Oddly enough, again, there appears to be no research exploring the behavioral and subjective effects of parents' having and not having choice; by subjective effects I mean the influence of this system upon both the self-perceptions of the child and of the parent – and upon their inter-relation as a family. Coleman and Bryk have shown us the positive impact of parental authority upon the school itself. But the effects upon the individuals within the family relation remain unstudied. Common sense should make us wary of any system that disables the wills of ordinary people. We may gradually come to accept a world in which strangers define the meaning of life. A prominent sociologist of schools and parents writes me privately that this question has too many political implications to invite research. Think about that.

As I wind up I hope that my focus on authority will not be taken to diminish the importance of adult choice to the value of individual freedom. But, the exercise of any adult's authority over a child is not a pure and simple act of freedom; and the media's unqualified use of the terms freedom and liberty here has contributed to a profound confusion about the very nature of parental choice which is – first of all – an act of authority. Nevertheless, there truly is freedom at stake in several important forms. One, of course, is the child's own future autonomy. Surely that objective depends in some degree upon the confidence of both the child and the parent in the responsibility and autonomy – and yes, the authority – of the parent. Our society desperately needs to rally the human self's perception of its own capacity, as together we quest for social responsibility and self control.

But note also that the choice of a particular school by the parent is, as the lawyers say, a “speech act.” It is a message by the parent to two distinct audiences. One is the child; the other is the world. This is First Amendment stuff – expression pure and simple. Lawyers, take note.

The other stakes in the school game are many and exceed both my capacity and my time. I conclude with the observation that the case for choice has never been more than half made, and that the other half deserves the making. It will not be exhausted by the wisdom of any particular moral or social science. We should all be encouraged by the diversity of the generous minds and hearts of those who have struggled so long to make choice a reality and, explicitly, of you who have chosen to be here today. There is an American people awaiting the fruits of your labor.