

Debating Choice

Nearly half a century has passed since the parents of a little black girl from Topeka, Kansas, entered a federal court room to argue that every child in America has an equal right to a decent education. Since then the political process has conjured up a remarkable array of schemes to demonstrate the nation's commitment to that ideal, but the results have been unimpressive. We have sent children on long bus rides into hostile environments; we have poured tons of money into faltering programs; we have tinkered on the edges of institutional reform; and we even have experimented with several forms of school choice—some to promote racial integration, and others to improve the academic opportunities available to disadvantaged children. Notwithstanding Linda Brown's courageous efforts to fulfill the promise of equality and a range of well-intentioned government actions, race and class remain the most reliable predictors of educational achievement in the United States.

Over the last decade, several new approaches to choice have been introduced, emboldening the campaign to upgrade the quality of education. The most popular of these involves charter schools—a form of choice limited to public schools that has been adopted in thirty-six states and the District of Columbia, raising hopes that a new supply of innovative institutions will appear across the educational landscape. The most controversial approach to choice is school vouchers, which would provide government funding for families to send their children to private and reli-

gious schools. A modified version of vouchers has been implemented in Milwaukee and Cleveland that is targeted to benefit children whose families meet specific criteria of financial need. Florida passed a statewide voucher plan in the spring of 1999 aimed at students who attend chronically failing schools.

The common feature of all choice programs—whether public or private—is that they are designed to increase the range of educational options available to students beyond the public schools normally found in their school districts. Most choice advocates of today believe that empowering parents to select the schools their children attend will promote competition and provide an incentive for all schools to improve. The choice concept, however, has a diverse and complex lineage.

Social scientists trace the idea to a provocative voucher proposal put forward by economist Milton Friedman in the mid-1950s, where the Nobel laureate envisioned a system of schools that was publicly financed but privately run.¹ The Friedman plan, designed to significantly reduce the role of government in elementary and secondary education, was especially well received by free market advocates, and until today stirs the imagination of many who gravitate towards a more conservative political agenda.²

Different forms of voucher plans appeared in the early 1970s. They were put forward by people like TheodoreSizer, Christopher Jencks, John Coons, and Stephen Sugarman,³ individuals whose writings were more commonly associated with a liberal social agenda. Their respective proposals focused on the educational needs of underserved communities and bear a striking resemblance to the programs more recently enacted in Milwaukee and Cleveland.

Support for charter schools has also emerged from different segments of the education community. One of the first proponents of the idea was Albert Shanker, the late president of the American Federation of Teachers, who saw charters as a way to upgrade the quality of public schools.⁴ Among the most articulate champions of charters today are Arizona Education Commissioner Lisa Graham Keegan and former Minnesota school teacher-turned-researcher Joe Nathan—one a proponent of vouchers, the other vigorously opposed.

School choice means different things to different people. Never wholly owned by either the political right or the political left, choice can be adopted to advance a variety of policy objectives depending on how it is designed. My goal in this book is to explain how choice might be applied—crafted, if you may—to advance the goal of equality. I will take as my starting

point the enunciation of the principle as it was pronounced in the landmark *Brown* decision. That awesome mandate handed down by the Supreme Court in 1954 was an ambitious proposition even by today's standards, pledging not only equality of educational opportunity for blacks, but full partnership in the American experiment—including its legal, social, economic, and political structure. The opinion was a perceptive discourse on the critical role that education plays in a free society, and I hope to build on its insights and the constitutional tradition from which it was fashioned.

Much can be learned from the rich experience that we have had with various forms of school choice. There is encouraging evidence to suggest that, if properly constructed by policymakers, school choice can function to upgrade the educational opportunities of all children, and, in the process, that it can strengthen the health of American democracy. Some of the evidence remains cloudy. We cannot fully anticipate the outcome of a proposition that has not been fully tried. But we do know that the present situation in education is intolerable. We are also aware of the measures that policymakers have taken to alter the pattern of educational inequality thus far; and it is clear these approaches have proven unsatisfactory.

I do not mean to suggest that school choice, in any form, will serve to cure the lingering inequality that has afflicted America for so many years. Nor do I feel obliged to make such a claim in order to justify its application as part of the treatment for what ails our schools. Unlike scientists in the medical profession, education researchers have never discovered the equivalent of a miracle drug to deal with education's most daunting maladies, and they probably never will. We are well advised, therefore, to administer prescriptions that may help alleviate some of the immediate pain and show promise of contributing to a long-term remedy. School choice, when properly formulated, can fit the call.

To properly determine the contribution that school choice can make to improve education, we must have a better sense of the prevailing condition. This kind of diagnosis does not come easy in education, because there is not a clear consensus among professionals about the nature of the problem, its gravity, or whether a problem exists at all.

It is difficult to fault Americans for lack of commitment when it comes to their schools. Since 1970 per capita spending on education has risen by 63 percent.⁵ Increased spending has not been translated into a commensurate improvement in academic performance. Even though we spend more money per student than all but two members (Austria and Switzerland) of

the Organization for Economic Cooperation and Development, students in the United States consistently score below their peers in other nations on international assessments.⁶

In the United States, per capita spending on elementary education is \$5,300, compared to an international average of \$3,310; for high schools, the American amount is \$6,680, compared to \$4,340 elsewhere.⁷ Despite the higher spending, in 1996 American eighth graders scored right smack in the middle on the Third International Math and Science Test. A report released in 1998 showed that in comparison to students in twenty-one other countries, our high school seniors scored eighteenth in math and science, just ahead of Lithuania, Cyprus, and South Africa.⁸ Taken together, the scores suggest that American students fall further behind their international peers as they move through the grades.

Some scholars challenge the validity of the above comparisons, and rebuff claims that American education is not doing well.⁹ They point out that at least part of the spending disparity can be explained by the overall higher cost of living in the United States. Several of our competitors—Canada, Denmark, and Sweden—actually spend a higher proportion of their domestic national product on education than the United States does. Mindful that for generations Americans have tolerated the practice of leaving the country's poorest unschooled, some commentators remind us that we now educate a larger portion of the school-age population than ever before, and that students tend to remain in school longer. Never before, they explain, have schools been asked to deal with a more destitute population, overwhelmed with poverty, social decay, and unfamiliarity with the American language and culture. All the while, they point out, Americans enjoy a level of technological comfort that is unsurpassed in the rest of the world, and our economy remains among the strongest, as the rest of the globe recoils from crisis to crisis.

In an attempt to offer a balanced perspective on our current condition, Lawrence Stedman has made several observations that speak more directly to the central issue of this volume.¹⁰ Stedman believes that there actually has been little decline in the knowledge base of American students over the past thirty years. The problem, he points out, is more nuanced: a stagnation in knowledge and skills over time when the demand for them has escalated, and a persistent gap in achievement defined by race and class. While it was once possible for an unskilled person to make a respectable living without possessing a high school diploma, the prospects have become more difficult for the postindustrial economy of

the twenty-first century. The lack of a decent education places people on the margins of life, with little chance for betterment. The change in the structure of the economy has severe repercussions for those who lag behind academically.

The test score gap between blacks and whites was the subject of a recent volume edited by Christopher Jencks and Meredith Phillips. In their comprehensive introduction to the research findings, Jencks and Phillips explain that although some strides have been made in closing the performance gap since 1970, the typical black student scores below 75 percent of his or her white peers on most standardized tests and below 85 percent on some national assessments.¹¹ A subsequent volume edited by Susan Mayer and Paul Peterson presents a number of studies indicating that the gap in basic skills evidenced by test scores goes a long way in explaining the disparity in earnings among racial groups.¹² Additional evidence suggests that educational and earning disparities are associated with racial differences in crime, health, and family structure. This leads Jencks and Phillips to propose, "If racial equality is America's goal, reducing the black-white test score gap would probably do more to promote this goal than any other strategy that commands broad political support."¹³

Who Wants Choice?

Phi Delta Kappan, a magazine widely read by educators, has been conducting a Gallup poll on public attitudes toward schools for more than thirty years. In 1994 pollsters began to ask whether respondents would support a proposal that allows parents to send their children to a public, private, or parochial school of choice, with the government paying all or part of the tuition. When the question was first posed in 1994, only 45 percent favored the idea, but since then the balance has shifted. In 1996 support declined to 43 percent. Then for the first time a slight plurality of those questioned in 1997 (49 percent versus 48 percent) expressed support; and support has been gradually mounting ever since.¹⁴ Beneath the evenly divided totals within the general population is a more dramatic dichotomy between certain population groups. Those most sympathetic to the idea of vouchers are blacks (62 percent to 34 percent), nonwhites (61 percent to 36 percent), people in the \$20,000 to \$30,000 income bracket (55 percent to 43 percent), people in the \$10,000 to \$20,000 income bracket (53 percent to 42 percent), and manual laborers (53 percent to 44 percent). Those opposing vouchers tend to cluster among suburban residents

(51 percent against to 45 percent for) and people in the \$50,000 or above income bracket (57 percent to 41 percent).¹⁵

These findings, indicating a racial and class divide in attitudes towards vouchers, are replicated in a 1997 study by the Joint Center for Political and Economic Studies in Washington. Its authors found that 57.3 percent of blacks and 65.4 percent of Hispanics supported vouchers, while whites were more evenly divided (47.2 percent in favor, 47.4 percent opposed). The data represented a significant increase in support for vouchers among both blacks (10.6 percent) and whites (4.8 percent) over the short period of a year.¹⁶ The latter study also shows that the attitudes various subgroups had toward the voucher question were at least casually related to their respective levels of satisfaction with local public schools. While a majority of whites (60 percent) rated their local schools excellent or good, only 34.3 percent of blacks and 39.4 percent of Hispanics did the same.¹⁷

The polling results are not stunning. Although some suburban school districts have taken on many of the negative characteristics commonly attributed to their urban neighbors, most suburban parents are content with the public schools that their children attend, as they should be. Their schools are relatively safe, well financed, physically attractive, and educationally effective. Located in smaller districts, where relationships with administrators and teachers can be more personal, it is easier for suburban residents to feel connected to the institutions their children attend. Choice, even in its more moderate forms, might actually impose new burdens upon these communities. By allowing students from more troubled inner city districts to cross boundaries into their schools, choice might force many suburban parents to confront social and educational problems they thought they were escaping by relocating out of the city. By and large, there is not as strong a motivation for middle-class suburbanites to attend private schools; and even if there were, nonresidential day schools are more commonly located in or near the city.

For all the reasons that white suburbanites resist choice, inner-city parents find it attractive. Safety is a real concern in many urban schools, where students have been known to remain home just to avoid the threat of being assaulted by one of their own classmates.¹⁸ The large impersonal factory model schools these systems inherited from the nineteenth century are difficult to identify with, and their often dilapidated state of repair is an indignity for students and teachers alike.¹⁹ More important, a large portion of these institutions are not academically effective, as evidenced by standardized test scores that are reported year after year.

A study released by *Education Week* in 1998 revealed that most urban public school students around the nation are failing to perform at even the most basic level of achievement.²⁰ Only 40 percent of fourth and eighth graders who attend city schools scored satisfactorily on national exams in reading, math, and science. In contrast, nearly two-thirds of all students in suburban and rural districts met or exceeded standards. These statistics were based on national trend data taken from the National Assessment of Educational Progress (NEAP), which reflects the performance gap defined by race and the concentration of minority children in urban districts. While 24 percent of all students in the United States attend urban schools, 35 percent of the poor and 43 percent of racial minorities do. It should not be surprising, therefore, that minority parents seek to expand the educational options available for their children.

Another national survey was completed in 1998 by Public Agenda in cooperation with the Public Education Network.²¹ Once again, black parents expressed strong support for school choice, with 60 percent saying they would switch their children from public school to private school if money were not an obstacle. What is more noteworthy about the latter is its documentation of a strong consensus between black and white parents concerning what they want from their public schools. This study built on research that Public Agenda had been conducting over a period of several years. In 1994 the large majority of black (91 percent) and white (95 percent) parents agreed that ensuring safety, maintaining order, and teaching the three Rs are the hallmarks of a good education.²² What drew attention to the 1998 report was the admission by black parents (80 percent) that they wanted schools to place a higher priority on raising academic standards than on the achievement of social goals such as racial integration. When asked further, 77 percent of those black parents emphasized the need to raise and enforce academic standards in failing schools so that students receive passing grades only when they have learned what they are supposed to learn. Many felt that teachers ignore their children or set low expectations for them simply because they are black. Most (60 percent) believed that underachievement among black students is not confined to inner cities, and more than half (54 percent) said that the problem affects students regardless of family income.

Education researcher Lisa Delpit insists that there is a serious cultural dissonance between many white educators and minority parents who have different aspirations for children. While the former emphasize the “humanized” open classroom and a more fluid approach to assessment, black

reformers seek to focus more on the development of basic academic skills that will eventually grant children entrée into the mainstream of society. Black parents want to see their children perform well on standardized academic tests so that they can demonstrate beyond a doubt that they deserve an opportunity to enjoy the full benefits of living a middle class existence. As Delpit explains:

Many liberal educators hold that the primary goal of education is for children to become autonomous, to develop fully who they are in the classroom setting without having arbitrary outside standards forced upon them. This is a very reasonable goal for people who are already participants in the culture of power and who have already internalized its codes. . . . But parents who don't function within the culture often want something else.²³

White parents interviewed in the Public Agenda survey seemed to agree that black children do not have the same educational opportunities as their own, but the white parents expressed less urgency about correcting the situation. When asked, 54 percent admitted that black children do not attend good schools, but 63 percent believed that a majority of white students do. While 54 percent of black parents said that the problem of educational inequity is “a crisis that must be addressed quickly,” only 33 percent of whites saw it that way. A total of 74 percent of blacks and 57 percent of whites thought that giving more money and resources to failing public schools is an excellent or good idea, but there was widespread concern among both groups that measures must be taken to ensure that the additional money be used well. While 54 percent of the black parents supported the idea of giving a private school voucher to students attending failing public schools, only 36 percent of the whites did. An equal percentage (55) of blacks and whites supported the implementation of charter schools.

Although scholars may argue back and forth about the efficacy of the American educational system, one fact is evident: we have not done a good enough job educating the children of the poor, a disproportionate number of whom are blacks and Hispanics living in urban environments. The poor seem to know this better than anyone else. For too long, the so-called debate about education reform has been a conversation among middle-class actors—politicians and professors, journalists, and jurists—about how to elevate the position of the least advantaged members of society.

Policymakers who aspire to achieve educational equality can no longer avoid listening very carefully to what the poor and underserved have to say. Many, frustrated with the status quo, are ready to move beyond the old remedies and to try something different. Like the victims of a chronic health crisis, those who suffer the harshest pain are most inclined to try new medicine. Having the least to lose and the most to gain, they are prepared to accept risk of experimenting with a different treatment. Nevertheless, as many professionals are wont to advise, the risks inherent in change may be real, especially when improperly formulated; and they cannot be dismissed lightly.

Reasonable Doubts

The implementation of choice programs has provoked a considerable amount of anxiety and criticism within the scholarly community, much of it well founded.²⁴ The principal arguments commonly registered by those concerned generally fall into three broad categories: educational, constitutional, and civic. Although the three are interrelated, for now we will take each in turn.

Respected research on both public and private choice programs suggests that parents who take advantage of school choice tend to be better educated and more astute than those who do not.²⁵ There is a suggestion here that poor parents are not as well informed about the educational options available for their children or aware of the advantages that certain schools may hold over others. Such unevenness in the ability of parents to make intelligent decisions could result in a sorting process that leaves the poor behind in failing institutions, while better prepared students exit to choice schools that are academically superior. Under these circumstances—often referred to in the literature as “skimming” or “creaming”—low-performing institutions could grow worse as weaker students remain concentrated in them. Given the strong correlation between race, class, and performance, this sorting process could actually contribute to segregation and aggravate the problem of educational inequality.

The scenario considered here grows even more bleak when vouchers are introduced. Once the principle is established that dollars will follow students, it is predicted that a disproportionate number of middle-class families will remove their children from public schools and place them in private or parochial institutions. An evacuation by the middle class would effect not only low-performing schools, but the entire public school sys-

tem. The transfer of tax dollars from public to private institutions would create financial stress for school districts, many of which are already faced with severe fiscal problems. The loss of a middle-class constituency to nonpublic institutions would motivate political leaders to further divest funds from public schools.

The worst outcome envisioned by skeptics is a form of educational apartheid, with middle-class children attending high-performing private institutions and poor minority students trapped in an inferior system of public education. Skeptics point out that the free market has not served poor people well in other consumer areas, and there is no guarantee that newly emerging private schools will do so either. Just take a quick walk through some inner-city neighborhoods, and you find that the supermarket, drugstore, or movie house that was once there has either closed down or moved on to greener pastures, where the income base is more promising.

Notwithstanding the educational arguments that are often made against voucher proposals, some of the most significant challenges that stand in their way are legal in nature. Constitutional scholars contend that government aid to parochial schools or tuition assistance to the students who attend them violates the Establishment clause of the First Amendment.²⁶ On more than one occasion, their position has been upheld by the Supreme Court of the United States.²⁷ Legal constraints are further complicated by a federalist system that allows each of the fifty states to set its own legal standard for the separation of church and state. Many of the states have “Blaine amendment” provisions in their constitutions that lay down more prohibitive criteria for separation than those found in the First Amendment.²⁸ This is why most of the legal challenges launched against voucher programs over the last five years—such as those in Wisconsin, Ohio, Vermont, and Maine—have been fought in the state courts.

At the heart of these constitutional concerns is a deep appreciation of the role that education plays in preserving the health of our democratic institutions.²⁹ For more than a century, the public school has been a principal vehicle for conveying the values that define the American civic culture, a unique mechanism for carving a single people out of a diverse population of groups and individuals brought together by historical accident. Critics question how choice might compromise this cohesive process. They fear that choice would ultimately be divisive and would allow schools to become places that accentuate our differences, with different religious, ethnic, cultural, and ideological clusters setting up separate academies. Both charter schools and vouchers could provide a mechanism for

radical organizations, religious or other, to use tax money to establish schools that promote intolerance and undermine the principles of American democracy. If allowed to flourish with abandon, school choice could ultimately have a detrimental effect on civic life, our sense of citizenship, and our viability as a free people.

So why, if it is so dangerous, toy with the idea of choice at all?

The Case for Choice

From the material that has been presented thus far, it is apparent that discussions on the merits of school choice operate on two different levels. As intellectuals engage in esoteric discourse on the abstractions of distributive justice, market dynamics, religious liberty, and civil society, the poor understand on a more visceral level that it is their children who are trapped in inferior schools. The intuition of the latter, for whom the stakes are more immediate and personal, is evident in the polls. The discussion bespeaks an illuminating insight on the issue, underscored by the fact that choice already exists for many if not most Americans.

Most Americans have the economic wherewithal to live in or move to communities where the schools are at least adequate,³⁰ and quite a large number have the means to afford private or religious schools that reflect their own values. The poor do not have ready access to the same kinds of institutions. In a survey released by the National Center for Education Statistics in 1997, one in five American parents indicated that they exercised choice in selecting their child's school, and an additional two in five suggested that the quality of schools in particular neighborhoods was a factor in deciding where to live. Among parents whose children attend assigned public schools, 60 percent of those with incomes of \$50,000 or more said that school quality was a factor in choosing a residence, as opposed to 40 percent of those with an income of \$15,000 or less.³¹

As a group, poor people exercise relatively little choice when it comes to deciding what schools their children attend. Beyond the social science evidence, we know that to be true because it is inconceivable that so many parents would send their children to the kinds of schools the poor typically attend if they had an alternative. From the perspective of educational equality, these are the most compelling arguments for choice: the fact that some Americans have it and some do not; the realization that the availability of choice is very much a function of economics and social class; the sad admission that the lack of choice has consigned an entire segment of

the population to schools that most middle-class parents would not allow their sons and daughters to attend; the constant reminder in the polls that many of those who do not enjoy choice really want it for their own children.

In the past, we have provided poor children with access to better schools by putting them on buses and sending them to other neighborhoods for an education. That kind of choice is no longer acceptable. In a later chapter, I will explain why I believe that policy was ill conceived and detrimental to the disadvantaged, as well as to their communities. For now, let us stay with the choice issue.

The available data depicting who chooses under the current system sheds important light on issues that were raised earlier, in anticipating the negative effects of a public policy that would extend choice to a wider population. Especially when viewed in conjunction with information on parental satisfaction, the material suggests that concerns about the evacuation of public schools by the middle class may be overstated. Public education is doing a lot better than the evacuation thesis implies. According to the Gallup poll cited above, 64 percent of all American parents give their child's school a grade of A or B, with another 23 percent assigning a grade of C.³² As already noted, satisfaction is even higher among middle-class and suburban families. There is little reason to expect that choice would prompt a wide exodus by satisfied parents, especially since many have found a way to exercise choice under the current arrangement.

Viewing the evidence as a whole—assessments of school performance, feedback on parental satisfaction, and the polling data on school choice—it is reasonable to predict that minority, poor, and urban parents are more apt to utilize the exit option if choice is extended as a deliberate form of public policy. Thus fears of a “skimming” effect may also be exaggerated. This is not to say, however, that other problems will not arise that need to be addressed in the context of policy design. Strapping dollars on the backs of departing students will indeed bleed school systems of precious dollars. However, limiting the amount of a voucher to the per capita cost of educating the child in his or her home school district could assure a net financial result that is neutral. There is no justification for a fiscal policy that either rewards or penalizes children who exercise choice.

The anticipated exodus of students from low-performing urban school districts—while a positive development for the underserved—could present other complications. One is capacity, the availability of space in desirable institutions to accommodate students seeking alternatives. Notwithstand-

ing constitutional issues that will inevitably arise, the capacity problem is an argument for extending choice to nonpublic schools. Capacity could also be enhanced by adopting a vigorous charter school plan that serves as a mechanism for creating a large number of new institutions within the public domain.

Under normal circumstances, leaving an inner-city public school to attend a private or parochial institution would allow minority students to be educated in a more racially integrated environment than that to which they generally are accustomed. Under certain circumstances, the large transfer of underserved students to newly opened charter schools could result in an overrepresentation of poor and minority students in charter institutions. Some observers would classify the latter result as a form of segregation. We might argue over the terminology. It is unreasonable, nonetheless, to equate the once horrible situation that existed prior to *Brown* with the recent development of charter schools. One involved the exclusion of children from institutions on the basis of race; the other involves the voluntary inclusion of children in institutions to advance their educational goals. One was determined to limit opportunity, the other to expand it.

Whether or not school choice gets implemented as a broad-scale strategy to improve education, there will always be some parents who are more informed, more alert, and more aggressive at finding the best schools for their children. We see it now within public education. Some parents are just more adept at calling up appropriate information and working the system to ensure that their children get access to the best schools possible. It is reasonable to assume that a disproportionate number of those who fit the description are better educated themselves and enjoy a number of other social advantages. The question before us is whether a comprehensive system of school choice will alleviate the existing inequities or exacerbate them. The worst-case scenario envisioned by choice critics is a stratified system of education in which white and middle-class students attend the most desirable schools, while minority and poor children are left behind in failing institutions that nobody else wants to attend.

It might be sobering to note that the terrible nightmare imagined by choice opponents is not a far cry from the situation that now exists, more similar perhaps than most Americans would care to admit. Choice can help to turn things around, if it is designed to do so. Education policy cannot in the short run change the dynamic that occurs when more advantaged parents work the system for the benefit of their own kids. But it can change the system so that the economic impediments that stand in

the way of disadvantaged parents are removed, or at least lowered. If school choice is to be adopted as a mechanism for reducing inequality, then public policy must be designed specifically to benefit poor children who attend inadequate schools. The long-term goal must be to enhance the educational options available to disadvantaged populations so that their opportunities more closely resemble the opportunities that pertain to the middle class.

The best way to guarantee that no child is left behind in a failing school is to adopt a policy that does not tolerate the perpetuation of failing schools. Of course, nobody wants failing schools. The problem is that we sometimes pretend that we do not know what to do with the children who attend such schools when it is suggested that we close them down; so the typical response is to leave them there and try to do better. It does not work very well for those unfortunate kids left behind.

A more reasonable response to the problem would be to give these children access to more schools: regular public schools, charter schools, private schools, and parochial schools. Poor parents may not be as sophisticated as their middle-class counterparts, but they seem to know what they want for their children, and it is not very different from what others want: safe learning environments with high academic standards. As Milton Friedman told us long ago, giving more parents the power to choose the schools their children attend could provide a needed incentive for regular public schools to do a better job at educating all children. Releasing public dollars from the hold of moribund systems could also offer an impetus for new schools, public and private, to come into existence.

The plan I have in mind, described fully in chapter 8, borrows from those that have appeared before. Because it is specifically targeted to help the poor, it has a great deal in common with the redistributive social policies usually identified with a liberal public agenda. Like the plans put forward by Friedman and other free market advocates, it places a great deal of hope in the power of competition, assuming that real competition will be encouraged; but rather than eliminate the role of government in education, this plan seeks to change it. In addition to running its own schools, government would have an important responsibility for enforcing quality control for all schools, public or private, that participate in a tax-supported choice or voucher program.

The various perspectives introduced from the left and right sides of the political spectrum have more in common than many of their respective proponents would be inclined to believe. In the next three chapters, I will

mine the considerable experience and evidence that has gone before to explain why, how, and under what conditions school choice can be enlisted in the campaign to advance educational equality. In the course of that journey, it will become more apparent that the choice debate in America is not just a philosophical meditation, but it is a highly politicized controversy that involves powerful groups with a great deal at stake (substantively or ideologically), all of whom claim to be speaking in the best interests of children. The academy is not removed from these intense battles.

It is impossible to do justice to the choice debate without entering into the perennial, sometimes tedious, methodological and substantive discussions that occupy academicians concerning the relative performance of public and nonpublic schools. I intend to explain why I am persuaded that inner-city parochial schools are more effective in meeting the educational needs of poor children than are typical public schools in the same neighborhoods. Given the fierce arguments on the topic that have divided researchers long before this volume was imagined, I have no illusions of convincing those who are inclined, for one reason or another, to disagree. I would urge them, however, to try to go beyond the empirical quibbles, and to recognize, as many of its critics implore, that choice is ultimately an issue that concerns significant political and legal values that are similarly compelling.

Most empiricists would agree that there is no substantial evidence to suggest that choice would be educationally harmful to disadvantaged students. Given the inequality inherent in the status quo, that knowledge not only limits the risk of further experimentation, it is encouraging—if not obliging—to move the matter forward. I actually am prepared to take the case further, beyond the important issue of test scores. I intend to argue that there are collateral benefits to extending school choice that are germane to the larger questions raised earlier. Which takes us back to the corollary issues of law and civil society, which will occupy the second half of the volume (chapters 5–7). The issues are closely interrelated, for if our Constitution is anything, it is a blueprint for a vibrant democracy. If, in the process of improving education for disadvantaged children, we were to compromise precious freedoms protected by the First Amendment or undermine civil society, we would have achieved a hollow victory.

Once again, I find the criticisms launched by choice opponents, now on different grounds, unpersuasive. In these instances, the threats they alert us to are not just overstated, they are in some respects wrongheaded and counterintuitive. If I may turn the critics' arguments on their heads, I will

propose how a carefully crafted system of school choice, while advancing educational equality, could also serve to enhance religious liberty and invigorate civil society. Before doing that, however, we need to have a better understanding of the principles that underlie the Constitution.

The Constitution and Civil Society

Does the Constitution require such a rigid separation of church and state so as to prohibit aid to students who attend religious schools? In truth, the word separation does not appear in the First Amendment. While they rejected the idea of an established church, the authors of the Constitution did not otherwise act as though they perceived there to be a serious legal tension between government and religious organizations, at least not to the extent that strict separationists do today. To the contrary, the document was produced in an age when the productive interaction between government and religious institutions was quite common.³³ At the Founding, the very notion of political community was based on the composition of religious congregations.³⁴ Education, to the degree that it was conducted in an organized fashion, was overseen by the clergy, usually with the support of local taxes.³⁵

While the argument has become commonplace within the American legal establishment, translating disestablishment into absolute separation represents a giant conceptual leap, even for imaginative legal thinkers. It is an unusual interpretation of religious freedom among modern Western democracies, especially when applied to education.³⁶ The legal construct, with all its authority, is a relatively recent judicial invention within our own system of jurisprudence.

So far as education was concerned, the Supreme Court itself did not invoke the famous Jeffersonian metaphor denoting a “wall of separation” until 1947.³⁷ It was much later, in the 1970s, that the wall was raised to such an extraordinary height that any incidental aid to sectarian schools was proscribed, regardless of the larger benefits that might have ensued. The prohibitions required by these decisions led one distinguished constitutional scholar to comment that the Supreme Court had begun to confuse freedom of religion with freedom from religion.³⁸ It appeared that religious institutions were being singled out for exclusion from government-sponsored programs that had been made available to others on a universal basis, raising other constitutional questions.

This rigid notion of separation has been relaxed by the Rehnquist Court. Applying First Amendment reasoning (the Free Exercise clause specifically) and the Equal Protection provision of the Fourteenth Amendment, the Rehnquist Court on several occasions has ruled that religious institutions cannot be discriminated against in determining eligibility for participation in government programs, effectively joining free exercise and egalitarian considerations.³⁹ As lately as 1998, the Supreme Court refused to hear an appeal of a state court decision in Wisconsin that upheld the constitutionality of the Milwaukee school choice law providing public funds for children to attend parochial schools.⁴⁰

The Supreme Court has recognized a significant analytic distinction between financial aid that is given to religious institutions, which is generally suspect, and aid that is appropriated to individuals who attend these institutions, which is generally permissible. This is not a recent conceptual innovation. The distinction dates back to a decision handed down in 1930,⁴¹ and it has been applied throughout the modern history of the Court.

As the U.S. Supreme Court appears to be moving in an accommodationist direction on funding, the state courts have become a more intense battleground for the legal struggle on school vouchers, where opponents are increasingly reliant on more restrictive Blaine amendment provisions within the state constitutions. The conflict between national and state standards on the issue of separation raises some interesting questions concerning American federalism and has the makings of a genuine constitutional crisis.

Our system of federalism permits the states, using their own criteria, to define rights more broadly than the national government does; but they cannot apply their own rules—either by constitutional provision, legislation, judicial decree, or administrative action—to abridge protections contained within the United States Constitution. Imposing strict standards of separation to prevent children in religious schools from taking advantage of publicly funded choice programs raises serious concerns regarding the free exercise and equal protection guarantees of those affected. As with other restrictions on choice, such rigidity is most burdensome on the poor, who cannot afford a religious education when they desire it. Although choice proponents have taken comfort from the Supreme Court's refusal in 1998 to hear the Wisconsin case, the rights of some individuals remain in a precarious position until the Court sets clear standards for the states that are consistent with its own.

Blaine amendment provisions, found in more than half the state constitutions, are a notable illustration of the kind of inverted logic that has

influenced church-state relations for more than a century. While many strict separationists point to the Blaine amendment as a legal mechanism to protect religious freedom, an examination of Blaine's history shows that it was borne out of a spirit of religious bigotry and intolerance directed against Catholic immigrants during the nineteenth century. It was not conceived in the spirit of the First Amendment but to impose restrictions that its advocates thought were missing from the Constitution and Bill of Rights. The ugly politics that produced Blaine provide a dramatic illustration of the dangers inherent in a situation where government institutions maintain a legal monopoly over funding for elementary and secondary education.

The meaning of the First Amendment, and the proper balance between its two religious clauses, is best understood in a larger constitutional context. The Bill of Rights was written to protect individuals from excessive government by delineating the legal boundaries of personal freedom. The thought of employing it to narrow the range of choices available to individuals appears to be somewhat self-defeating. The legitimate constraints imposed on government by the Establishment clause⁴² must be measured against an array of political values that are essential to a free society. The most obvious of these contending values is found in the Free Exercise clause of the same First Amendment. Less apparent, but similarly compelling in a twenty-first century civilization, is the value of an equal opportunity for every person to receive a decent education. This value is not explicit in the Constitution, but it was stipulated by the Supreme Court in *Brown* on the basis of the Fourteenth Amendment as instrumental for a broader political, economic, and social equality so essential to democracy.

While strict separationists are inclined to draw upon the wisdom of Jefferson in interpreting the Constitution, it may be more enlightening to consult with Madison, whose model of political pluralism shaped the design of the document and the government that it produced and whose vision of political pluralism was a strong foundation for the egalitarian ideal that we still strive to achieve. Neither of the two men were consistent in their writing on religion. However, Madison was more appreciative of the role that religion could play in fostering a healthy democracy; his insights would later be echoed by Tocqueville and confirmed in a substantial body of research performed by contemporary social scientists.⁴³

Neither Madison nor Tocqueville could have anticipated that by the nineteenth century the common school would play such a crucial role in melding a diverse people into one nation. They would have been equally

surprised, however, by a secularist mentality that held that only public schools could foster the values essential for democratic government. There is no evidence to support such an assumption. To the contrary, the record suggests that parochial schools in the United States have been quite effective in preparing their students to assume the responsibilities of democratic citizenship.⁴⁴ There is nothing inherent in a religious education that is anathema to the ethos of democracy, whether it is paid for by parents or with the assistance of public funding.

It may be that some extremist religious groups would seize upon vouchers as an opportunity to establish schools that undermine principles so dear to a free society. They, along with radical political groups, may also view charters as an avenue for advancing a public agenda that is harmful to American democracy. The appropriate way to deal with such threats is through proper public vigilance, not by denying choice to the great majority of faith-based communities or others who cherish the American way of life. Imposing strict standards of separation to prohibit government funding for those who desire a religious education for their children can create severe burdens for deeply religious people, the very ones that the First Amendment was designed to protect.

Once again, in anticipating the risks inherent in change, we must come to terms with the intrinsic limits inherent of the status quo. With all the talk about how school choice or vouchers might weaken the social fabric of American democracy, the level of civic involvement that has thrived under the current educational arrangement is wanting. “Bowling alone” has become a popular metaphor for American attitudes towards community.⁴⁵ The public lacks confidence in government institutions and political leaders; participation in elections and community life is in decline; and, most disturbing from the perspective of this book, the social capital needed for meaningful participation is unevenly distributed.⁴⁶ To state the issue more precisely, educational inequality is a corrosive correlate to political inequality. If we are committed to bolstering the health of American democracy, it is essential to replenish an interest in civic life, and it is imperative to find ways for involving those who are disaffected. But we must start by providing all citizens with a decent education. Religious institutions can be instrumental on all of these counts.

Over the last several decades policymakers have engineered a variety of plans designed to strengthen the voice and influence of poor people in the political process. They have attempted to work around the deficient education that serves to cap the political power of the poor. While well mean-

ing, many of these schemes were out of touch with both the needs and strengths of the very people they were trying to help. Decisionmakers failed to recognize that improving education was an essential first step to meaningful participation in public life; nor did they fully appreciate how the church could be such a valuable resource for improving education and invigorating public life.

One of the great paradoxes of the policy process is that decisions made on behalf of the weak are rarely made by those who are supposed to benefit from them. The cultural dissonance that Lisa Delpit points to in the classroom often shows its face in the realm of public policy. Separation of church and state is a white, middle-class legal and social construct that is out of step with the ethos of the black community and undermines the black community's most significant local institution. In no American community since the Founding has the church played such an essential role in civic life.⁴⁷ During slavery the church was the only institution in their midst through which blacks could develop a sense of self apart from their frightening surroundings. The black church was also a major organizing force within the civil rights movement of the 1950s and 1960s.⁴⁸

In more recent years religious congregations in both black and Hispanic neighborhoods have assumed an important role in community development efforts to provide jobs, housing, and social services to those in need.⁴⁹ The church is not just limited to a spiritual function. It is the most significant force for social change available to poor people. Some innovative ministers within urban congregations have begun to start their own church-affiliated schools as an alternative to the failing public schools in their communities. They understand the importance of a good education as a foundation for all other forms of social progress, and they see the religious mission of their schools as a strong antidote to the social decay that surrounds them. Alongside these church-run schools, one also finds a new sector of black independent schools, many of which were started by the clergy but which no longer have a church affiliation.

The expansion of black religious and independent schools has been inhibited by the absence of public assistance for poor parents who cannot afford the tuition. In the meantime, precious tax dollars are invested in government-run institutions that fail generation upon generation of disadvantaged children. While they wait for local public schools to improve, parents are encouraged, under the banner of racial balance, to send their children to other communities to acquire a suitable education. There can be no real hope for improving the quality of civic life in poor communities

so long as public policy prevails that inhibits the power of the church or denies children access to decent neighborhood schools.

What Follows

In chapter 2, I will examine several competing definitions of equality and discuss their relevance to education policy. Then I will consider a number of ways in which the goal of equal educational opportunity has been pursued since the *Brown* decision of 1954. The methods explored include racial integration, increased spending in the form of compensatory education programs and school finance reform, and political empowerment. A review of the research literature regarding each of these approaches shows that they have had a minimal effect on the academic performance of poor and minority children, and in the end serve as ineffectual proxies for the enhancement of educational opportunity.

Chapter 3 explores various kinds of school choice programs and their relevance to the goal of educational equity. I will critically consider these approaches, explaining the significant differences between various voucher proposals and an assortment of public choice programs that have been tried, such as magnet programs, controlled choice, interdistrict choice, and charter schools. Each approach speaks to a different conception of equality. A close review of these programs and their implementation indicates that many were designed in ways that compromised the wants, needs, and interests of disadvantaged communities.

Chapter 4 will focus on the role that nonpublic schools—private and religious—can play in advancing the educational opportunities of underserved populations. Here I will consider the complex political alliances that shape various choice and voucher programs. I will review the relevant social science research on nonpublic schools, the experience with voucher experiments in Milwaukee and Cleveland, and the evolution of privately supported voucher programs throughout the nation. Thus far the evidence on these programs remains encouraging but inconclusive. Nonetheless, given our chronic failure to address the educational needs of disadvantaged communities, the information we have offers no reason to discourage further experimentation.

Chapter 5 will focus on the constitutional issues. I will begin with an examination of the principles that shaped the writing of the Constitution, comparing the influential perspectives of Jefferson and Madison and explaining why the latter is more useful for understanding the First Amend-

ment. I will then discuss how, in the context of a strong secularist philosophy that dominates the public school curriculum, legal prohibitions against vouchers impose a particularly heavy burden on poor people with a strong religious identity who may want to educate their children differently. A review of First Amendment jurisprudence will show that the more accommodationist position assumed by the Rehnquist Court on the question of state aid to parochial school children is in keeping with a long-standing American constitutional tradition. This reading of the Constitution has significant implications for advancing the goal of equal opportunity in education.

Chapter 6 will deal with state constitutional law, which in recent years has become a more significant legal obstacle to the implementation of school choice programs than the First Amendment. Here I will trace the evolution of state jurisprudence and its connection to the common school movement. The legal prohibitions that followed continue to set the parameters of the choice debate in many states. A review of the cases currently working their way through several state judicial systems reveals a fundamental tension between federal and state standards of separation in need of remedy by the federal courts.

Chapter 7 explores the connection between education and civic involvement. It begins by reviewing the research on the present state of community and political life in the United States. Then it examines the role that inner-city churches can play as a resource for addressing the related problems of educational and social inequality that afflict poor communities.

Chapter 8 will serve as a conclusion, drawing on lessons learned from the preceding chapters to propose a set of policy recommendations to further the goal of equal opportunity in education. This agenda is premised on the need to break the empirical connection between academic achievement and the demographic markers of race and class.