

Justice for Education

by James W. Skillen



Education is one of those important aspects of life that the United States Constitution does not touch directly. Simply stated, the Constitution was written to define the framework

for the federal government's various branches and offices, not to stipulate the government's relation to all areas of society. The simplicity of the federal Constitution was partly made possible because the state governments' on-going role in many social aspects of society, such as education, family life and voluntary associations, could be taken for granted.

Today we are well aware, however, that many aspects of our common national life cannot simply be taken for granted. They require vigilant attention, sometimes even constitutional attention, in light of disagreements about the rights and responsibilities of individuals, families, schools, churches and other organizations in relation to state and federal governments.

In *Disestablishment a Second Time: Genuine Pluralism for American Schools* (Christian University Press/Eerdmans, 1982), Rockne McCarthy, William Harper and I argue that the growing tensions over education in America will not be resolved without a fundamental change in the legal and political structure of schooling. The states and the federal government, we agree, do have an important responsibility to promote fair and equitable educational opportunities for all citizens. Without this, the general welfare of the United States and all its citizens cannot be

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assured. The need today is for a different understanding of how that important government obligation is related to the responsibilities of parents and educators.

First, Americans need to move away from the mistaken assumption (which is not constitutionally mandated) that government's responsibility for education requires it to monopolize public schooling. Various court cases, such as *Pierce v. Society of Sisters* (1925) and *Mueller v. Allen* (1983), as well as state and federal legislation all show this assumption to be both inadequate and wrong. Parents do have the right to select schools of their choice for their children. Governments do have the right to promote educational diversity.

Growing tensions over education in America will not be resolved without a fundamental change in the legal and political structure of schooling.

Though a government monopoly does not exist and may not be allowed legally, still educational policy persists in discriminating against parental choice and against equitable opportunity by allowing governments to give economic and legal privilege to their own schools.

Justice will only come to American schools and American citizens when the following criteria are met: Parents must be able to freely select schools without financial penalty. Schools must be able to offer their services on a fair and open market without discriminatory treatment due to their philosophy of education. Children must have the opportunity to obtain the best free education regardless of their skin color, the district in which their

home is located and the nature of their religious beliefs.

Despite all the well-intentioned efforts of the dominant public school establishment to promote free and fair schooling for every American child, it has not succeeded. Public schooling based on geographic districting and taxation will always be inequitable. Public schooling that assumes governmental rather than parental "principalship" can never do justice to families. And public schooling that pretends to serve everyone fairly by excluding viewpoints that do not meet a general test of secularity can only provide a highly prejudicial and discriminatory education.

Justice requires limited government, recognition of parental principalship and the type of pluralism that is genuinely nondiscriminatory with respect to race, religion, educational philosophy and geographic location. □

Editor's Note: An update of Skillen's *Disestablishment a Second Time: Genuine Pluralism for American Schools* was published last month in *Democracy and the Renewal of Public Education*, edited by Richard John Neuhaus (Eerdmans' Encounter Series, volume four). Skillen's article is titled, "Changing Assumptions in the Public Governance of Education: What Has Changed and What Ought to Change."