SPEECH

A HOPE FOR PUBLIC EDUCATION*

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There is a problem of justice in the public schools that is basic, structural, enduring and quite unnoticed by the reformers who cry for educational equity. They have been deceived by appearances. I think for such a perceptive audience as this, an old and simple story may suggest how they could have been so innocent:

Patrick and Mary O'Toole had been long and happily married. They had four strapping sons who all went to Notre Dame and became All-Americans, living out Patrick's dream. Regrettably, a fifth son turned out badly. He was weak of sight and of limb and inordinately fond of books. He went to St. Louis University and took honors in poetry. Patrick was long suspicious about the boy, and when poor Mary was on her death bed, he urged confession. "Mary, you're going to meet your Maker. Now is that boy an O'Toole or is he not?" He got his response: "Faith, Patrick, that boy is an O'Toole, but the other four are Finnegans."

Plainly, it is easy to be distracted by names, and I am convinced that this explains the mesmerized condition of many who would see themselves as reformers of education. They seem to imagine that we have a public system that is in need of repair. My guess is that they have never thought a moment about whether it is public or not.

I would begin, then, by asking whether the word "public" has sometimes been a mislabel for some of our institutions, at least some of our government operated institutions of primary and secondary education. What is meant by the term "public

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school?" When you look at schools in California, for example, and travel to Beverly Hills or to Palo Alto, you find the schools called public inhabited only by people rich enough to buy houses in those places. What could be more private than a school in which the entry ticket is the deed to a house in such enclaves of wealth? Are they exclusive? Just try enrolling if you live over the district boundary. A tax-supported institution, indeed, but as private as they come.

If you can afford to and would prefer to live in the city, you have a private alternative to Palo Alto. You can pay tuition. But so far, then, all we’ve described are two kinds of private schools. There are some other kinds. There are, for example, subsidized church schools in which mostly working class families pay a small tuition and the church adds a little more. How do we classify them? Are they purely private? Or, because they are open to people from all income groups and from all over the area, not just from Palo Alto, should they in realistic terms be thought of as public?

And what then about that broader range of tax-supported schools found in San Francisco, Los Angeles, and perhaps St. Louis? Are these schools public? The children who use them are there largely because they’ve been sent. Somebody in government discovered that their family lived at a particular address, heard they had a child and sent them a note saying, “Your child goes to the George Washington School.” Lo and behold the assignment of little Susie to the school was made without human hand or eye being laid upon the child. Now that may be public, but if so, it is only in the sense that the decision was made by something called public. It is not public in the sense that the school is open irrespective of place of residence or economic status. If the idea of public includes the concept of open access to all citizens, it is hard to conclude that we have public education anywhere or ever have had it in this country. We ought to think about whether we really wish to label our government-operated schools as public until they open their doors to all.

“Public” is an old label. It was part of a 19th century justification for giving educational control to families who could afford it and withholding it from those who could not. This justification had two aspects to it. First, when tax-supported schools were first put together in this country, it was hoped that education, along with the rest of life, would become scientific. The 19th century optimists, if that is what they can be called,
saw a future in which education would be like physics, sending us step by step to the stars; ultimately it would be as much a science as those hard sciences with which they were so infatuated.

Second, the 19th century founders felt very deeply that there was an American way of life, a mainstream to which those who came to these shores were to adhere. You could trust that way of life to be perpetuated through the new government schools, indoctrinating those arriving by the millions from Europe and other places. Thus, we would all advance step by step toward being true Americans as the State of Oregon said in *Pierce v. Society of Sisters.* Oregon had declared in 1922 that it would create what it called "ideal citizens" by forcing all to go to government schools. Other blessings were predicted by the official state pamphlet on the issue; the language is worth sharing:

Mix the children of the foreign born with the native born, the rich with the poor. Mix those with prejudices in the public school melting pot for a few years while their minds are plastic, and finally bring out the finished product, a true American.

We might note, parenthetically (and perhaps pathetically) that even the architects of this Utopia saw separations of rich and poor in school as a social problem. For that very reason some good-hearted innocents to this day wish the state had prevailed in *Pierce.* I have hope of solutions for this problem that are more respectful of human dignity.

What has happened to the two assumptions of a scientific education and a mainstream view of the good life? The scientific view of education obviously is in tatters. Everyone agrees that children ought to read, write, and add, but just how this is to be effected is a matter of deep dissension. There are many ways of teaching (or failing to teach) reading and mathematics and just as many schools of conflicting professionals. Meanwhile, on the side of values, the schools and the society somehow failed to mass produce the ideal American. What they got instead is a deep and abiding pluralism. People have different views as to what the good life ought to be, how children ought to be brought to relate to the world about them, and what their values ought to be.

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1. 268 U.S. 510 (1925).
What we observe (thank goodness) is a world where values are very much in conflict; and even on the issues where there is consensus, there is profound disagreement about the means to achieve the end. Both assumptions of the educational statesmen popped like balloons. In such a world the questions can no longer be how to get a mainstream result when children graduate from high school and how to structure our system best to produce the true American, but rather, where to locate the power to decide what education is all about. There is no public definition of either the proper ends of education or the means of education. There is indeterminacy at both the levels of instrument and value. It can only be asked: Who gets to decide? Shall we continue to let the rich decide for themselves and the rest be driven?

Society needs a theory about the good decider. Of course, it cannot be a truly scientific theory. It cannot, for example, be value free. It will be a theory drawn from one's own social and personal commitments. There must be some sense of the proper aims of the educational system. These can be quite varied and one must choose. After all, an educational system could be designed with the aim to increase our military power, or our gross national product, or to make people more relaxed or more prepared for economic recessions. In California, we could have a thousand different purposes expressed among the public, and we do. I will give you only a few of my own preferred objectives for education, and I will spend more time on one than the others; that one is the best interest of the child. The others I will touch upon later are quality of education, consensus in society, racial integration, professionalism in teaching, and the effect on the family.

Let me begin by conceding some of the difficulties of this kind of analysis. The best interest of the child is not a self-defining idea. Indeed, if you accept that as your starting point, it seems at first to put you right back where I was just a moment ago. That is, best interest is a cover for a very pluralistic set of values. People have different ideas about what the best interest of the child is, and I might add that the means too are very much in doubt. There is indeterminacy at both levels. You see it expressed throughout our society in various acts of government. Take, for example, the question of whether a child shall be removed from a home for reasons of neglect, in one case because the mother is a drunk and in another because she is living with a
man who is not her husband. One judge will think the latter is important and another will think the other thing is important. Whether you will get the child removed from the family will depend very much upon which judge you drew in the original lottery, (this in fact is the way the system tends to work in California). Now, in such a situation you must ask yourself not what is the best interest but what kind of decider would most likely serve the best interest of this child?

I will give you my criteria for deciding how to allocate such power over children.

One is that better decisions are generally made by an adult who decides about an individual child he knows. In these cases the adult decides on a personal basis, not treating as a class children he has never met, such as those living in a geographically defined attendance area. An individualized personal decision can incorporate input by the child and can rely upon the personal knowledge of the adult being aided but not dominated by the professional.

The second criterion is that the adult decider must care about the child altruistically; and the third is that he or she must be responsible for the outcome of the decision. Responsibility implies reciprocal effects upon decider and child; a bad decision that hurts the child will hurt the decider and a good decision will be good for both.

If you take this oversimplified view and apply it to the possible competitors for this job of decisionmaker, of course you see where I come out. I would suggest a strong presumption favoring somebody who is very intimate with the child. In general, at least in this society, (unless we are prepared to abandon the child to a full-time keeper for whom we will pay through the tax system and appoint as a government super-parent) we are talking about the parent in all but rather special cases. The parent alone will know the history, the desires, the expressed and implicit wants of the child. The child is most likely to get his own voice into the system through his relationship with the parent.

As for the criterion of caring, I certainly do not mean to imply that superintendents, counselors, teachers and so forth do not have a warm feeling for children. But they do not care in the same sense as parents. Indeed, if they do, there is something very strange and dangerous about them. I hope they are not motivated as parents but as professionals. I hope they want to do a job for every child who will be with them for nine months dur-
ing the year. Recall, however, that they can go home and forget about the child at the end of the day and at the end of the year and move on to other children next September. It is the parent basically, if anyone, who cares about the individual child. I do not pretend that all parents care enough about their children. We are not describing Utopia. We are discussing relative qualities of two kinds of institutions.

As to the criterion of responsibility, of course, the family wins hands down. It may be that teachers on occasion get fired and it may be that they get disciplined. Parents, however, experience responsibility every day of their lives in an enduring and inescapable way. They will not move on to some other relationship at the end of June. They will live with the consequences of the child’s education for at least the period of the child’s minority, day in and day out, summers, winters, and probably long after school days have ended. It is the parent (with the child) who ultimately bears the burden of a failed education.

Now if those qualities of hearing the child’s own input, of caring most about the child and of bearing responsibility make for good decision-making, then it strikes me that power, at least presumptively and for most purposes, ought to be lodged in the parent to make the educational decision. This is not an anti-professional bias. Indeed, the whole point is that the role of the school and the role of the teacher-bureaucrat is not at its best when conceived as one dominating the family or one in which the family and the child are a captive audience because of their economic status. Professionalism ought to be conceived of as a relationship born in liberty, equality, and self-respect for both parties. It is possible to imagine a system in which families are choosers. We could, for the first time, have a truly professional relationship in teaching.

Parental decision in education is easy to imagine; it is the present system that is hard to rationalize. Empowering the parent to choose the child’s school involves none of the problems posed by the case of the neglect petition I earlier described. There the issue is whether to remove the child from the family. In that situation, by definition, a third party must always decide whether to thwart the parental will. In education, the parental will need not be thwarted at all, if we can simply alter the structure so as to empower the ordinary parent to make the decision made today by the wealthy.

What can be done about the present system to put parents in
a position where they can make effective decisions? Some of us would propose to build a new element into the existing system, not to destroy it but to perfect it. To that end we have drafted a state constitutional initiative based upon California realities but easily adapted to any state.²

The proposal would maintain the existing public schools as they are. No one wants to abolish tax-supported, publically-operated schools organized in districts. Most Americans want to attend such publically-owned and operated schools. “Publicness” is a value for most families. Thus, we would like to leave the existing thousand and some odd school districts in California untouched.

But we would also like to add a new kind of public school. Entrance to the new public school and payment would be by state-supplied voucher. It may be thought of as a G.I. bill for children. Each family would have its share to spend in any of the new public schools, each of which would be organized as an independent, nonprofit public corporation. Each school would exist and thrive or fail by its capacity to attract families.

These new public schools would also be very much deregulated, so that publicly administered institutions could offer the full range of school types. We would like to put the new public schools in the position of private schools today, with respect to curriculum, discipline, who they hire to teach and administer, and which facilities they choose. We have designed the initiative so that school districts could create one or any number of these new kinds of schools if they choose. They could be governed in different ways. Under individually tailored articles of incorporation, boards of directors could be very different from one another. One school could be run by a tyrannical headmaster; another by the teachers and students. One school could be a “touchy-feely” open-door kind of school; another could be nail down the desks and no recess. There could be vocational education as the medium of learning the three R's. There could be schools based upon Shakespeare, or science, or whatever.

The idea, of course, is that there are different preferences and needs out there in the world that need recognition and expression. Children can profit by being connected with such schools because they are schools in which the children feel good about education and want to learn.

² See Appendix, infra.
The new public schools would have as a counterpart in the private sector what we call New Private Schools. Before I describe them, let me say that there still will be traditional private schools, which will live on their capacity to attract tuition from families and grants from foundations and parishes. There is no requirement that a school enter into the new system. It could remain utterly private should it so choose.

The New Private School would be formed under any legal model, whether a sole proprietorship, partnership, or a profit or nonprofit corporation. The school would be entitled to establish its own curriculum, its own hiring practices, its own facilities, and its own code of discipline. Specifically, the school would have the same degree of freedom it experiences today under the California Education Code, and that degree of freedom is very broad. There are no clumsy requirements limiting hiring to certificated teachers; there are merely minimal requirements with respect to curriculum, and facilities requirements are basically the local fire and safety codes.

These elements form the core for the school's identity, and for these purposes we would like to see private schools constitutionally protected from further legislative intervention. They should be permanently free to be what they want and to mandate a curriculum of whatever kind they think appropriate, including, of course, religion if they so choose. With respect to religion, the only limitation would be that the child who is required to take the religious curriculum may not be made to profess belief. There is a difference between accepting instruction on the one hand and, on the other, having one's conscience forced by a required symbolic assent to a particular creed.

The effort is to build a harmonious and varied system, involving public and private institutions encumbered by only three limitations I must now describe. One limit is with respect to admission. If schools were entitled to exclude in ways familiar to us, we could have as much racial and economic segregation under vouchers as under the present system. We would like to diminish this segregation. The current draft gives the new voucher school control over 75 percent of its places. It could not discriminate as public schools do so effectively today by use of the child's residence. No longer should Beverly Hills in its new public schools and in its new private schools exclude children who happen to live in Watts. Nor could such schools discriminate against children because of physical disabilities. In
short, they would be entitled to use intellectual criteria for that 75 percent, but they could not use physical disability nor residence.

With respect to the other 25 percent, the school would be required to give priority to low-income families. Thus, if the school had a hundred places and only twenty low-income applicants, those twenty would have an automatic right to admission. If it had forty low-income applicants, it would then be entitled to choose among these applicants to fill the twenty-five places. Note this would provide an incentive to schools to recruit a pool of low-income children.

Another rule limits the school's capacity to charge over and above the amount of the voucher. Schools may charge additional tuition for families that are not low-income families, but they can do so only consistent with a family's income. They would establish a scale of differential charges, and families would pay accordingly. Of course, if the school wants to charge extra, it runs the risk of pricing itself out of the market.

The final kind of regulation is information. Any system based upon choice is going to require some system of disclosure and publication. We do not have it today; knowledge about public school options is hard to come by without rather extreme individual parent effort at penetrating the system to discover the basis for assignments and how to get them changed and so forth.

A good information system is especially important because there will be parents, at least in California, who will not be literate in English. These people will not learn what is available simply by receiving a book in English describing all of the wonderful schools from which they can choose. Thus, the proposed system includes an opportunity for personal counseling by a new kind of professional supported in large part by mini-vouchers for such parents with special informational needs. Perhaps more importantly, if the system is adopted, the informational effort will be greatly supplemented, and perhaps ultimately made unnecessary by the efforts of voluntary agencies, some church related, others based in communities or ethnic groups. It is in the tradition of voluntarism to help people understand what is available in a market; this would be a familiar challenge for such institutions.

A voucher system of this design provides a family with choice. It is not perfect, but it seems to have greatly magnified the options for all income classes. It is not revolutionary in the
sense that it is destructive of existing institutions. It merely makes available to families new kinds of institutions. Nobody has to move from his present school if he does not want to, but only if parent and child are dissatisfied and think they can find a better one.

We think that kind of choice would work a great improvement in the quality of the California schools. Achievement is highest when people are related to an institution by choice and want to be there in the first place. Pupils will not be apathetic or truant when they are where they have chosen to be. Hostility, violence, and apathy come when one has been pressed into a mold against his will. In a free system pupils will connect intellectually and emotionally with the institution, wishing to share its goals and come together as people do in any community worth the name. The only way that we can ever be sure of success is by choice.

James Coleman\(^3\) and Andrew Greeley\(^4\) have recently completed national studies of the relative performances of children in public schools and in Catholic parochial schools. Criticize their methodology; check them out closely. If they are correct, it seems that low budget private schools which spend less than half what is spent in the public sector and which have teachers who are grossly underpaid somehow are teaching children a great deal more. Coleman and Greeley studied the same kind of children, controlling for parental education, aspiration, income, and the rest. The children who benefit the most, curiously enough, are those most disadvantaged by social class. Some kind of magic is going on, but whether it can be transferred to other institutions of choice remains to be seen. It is our faith and our hope and our life experience that it can.

What about the effect of choice upon consensus in society? There are critics who say systems which invest power in the family will be essentially divisive. On this question, one simply has to choose one of two theories. Historically, what we have done to get consensus is to tell ordinary people they will go to school together, whether they like it or not, in a school and with a curriculum designed for them by a political mechanism, including

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4. A. Greeley, Catholic Schools in a Declining Church (1976).
the educational bureaucracy. The thesis is that the melting pot will produce tolerance among the children who experience one another in that kind of relationship. There is nothing wrong with the theory. We simply have no data to support it. We have a hundred years of experience and, of course, we cannot tell what things would have been like without it. We do not know whether we would have more or less consensus today if instead of that relationship, we had let people do what they please and said to them, "In this society we trust not only rich parents but also the rest of you to make judgments about your own children."

There is a theory, after all, that trust begets trust and that the best way to build consensus and toleration is to let people know that their opinions are just as respected as those of the powerful and the wealthy. I happen to believe that second theory.

What about racial segregation? It is our conviction that whatever you decide to do with judicial compulsion, do not stop there. Use the opportunities that are afforded by voluntarism to let children go beyond whatever it is that the judge is going to do to or for them. Consider the situation of the child in Watts who is refused passage across the Los Angeles boundaries that the court thinks are impermeable. That child might prefer to go to a private school in Los Angeles or a public school in nearby Glendale across the boundary; he would rather likely prefer this to a white school an hour and a half away in the San Fernando Valley. I find it very difficult to credit the rationale forbidding this option. There are schools very near to Watts, to East Los Angeles, Washington, D.C., and many other ghettos of this country, in which there is opportunity for integration. Some of these spaces are private, some are public; they are waiting for children to come voluntarily.

The Los Angeles voluntary busing program involved tens of thousands of children until it was slaughtered by judicial compulsion. Fortunately, that decision has been at least temporarily abandoned. Who knows what will come next? Perhaps the place that choice can be most effectively applied is the District of Columbia, which is relatively small in geographical extent and 95 percent black. Today many government employees in the District of Columbia at the G.S. 15 level are paying tuition to send their children to public schools in Virginia and Montgomery County, leaving behind those who cannot afford to pay. Others, of course, use private schools in and out of the district.
What could be a more easily imagined form of racial integration than giving children in the District the opportunity to follow to those same schools and to the others that would form. It is a tragedy that educational reform in the District fell into the hands of the tax limitation movement, which recently put on the D.C. ballot a tuition tax credit initiative. Happily it was soundly thrashed, but what an opportunity lost to extend educational freedom to all, instead of merely to those with substantial incomes!

I will touch very briefly upon what our own proposal could do for teachers economically. In California, we spend $85,000 per classroom ($3000 per pupil at an average size class of 28.6 pupils). Our teachers are paid an average of $20,000 to $25,000 a year. Where the rest of the money goes is an interesting question. It is not irrelevant that there are numerous expenditures in modern public education which are not for the classroom teacher and which are not characteristic of the highly successful private school of the inner city or the suburbs. There does not seem to be much connection between the success of the school and the level of its administrative cost.

Finally, the most important value at stake is family life. We feel anything that could be done to strengthen the responsibility and the power of parents is worth doing. Presently at age five, a child discovers that those on whom he has relied and in whom he has total confidence, suddenly are stripped of authority and power with respect to the most basic relationship outside the home. From that time, the prime hours of the child's day are determined and dominated by an alien and relatively remote institution.

I could think of no better change for the health of the family, than for the child to cease to see that his parents are weak and unable to help him, but rather to discover that, in education as elsewhere, when he has a problem, there is someone to go to. The family could remain what it is in the early years of the child's life—an authoritative advocate. It could become again, with respect to education, as it is in wealthy families, a little political community in which people exchange different ideas about what is good and in which they have influence upon one another. The Alum Rock experiment did teach us one

5. See generally J. MECKLENBURGER, EDUCATION VOUCHERS: FROM THEORY TO ALUM ROCK (1972) (Voucher experiment involving the Alum Rock Union Elementary School District).
thing; it is that children, by the time they reach the seventh grade, have as much influence upon the choice of the school in an open system as do the parents. They move from a state of complete domination by the parent in the early years, through a stage of equality and on to a stage of adolescence in which they are relatively autonomous in their choice of school. That is a description of families working as families are supposed to work; assisting their children to become over time an autonomous person deciding for himself. And, if that is a reality to which family choice can contribute, I think it is worth considering.

. APPENDIX

AN INITIATIVE FOR EDUCATION BY CHOICE

The following section shall be added to Article IX of the California Constitution:

Section 17 The people of California have adopted this section to improve the quality and efficiency of schools, to maximize the educational opportunities of all children, and to increase the authority of parents and teachers.

(1) New Classes of Schools

(a) In addition to the public schools and private schools presently recognized by law, there shall be two new classes of schools together known as scholarship schools.

(b) Private scholarship schools are private schools eligible to redeem state scholarships.

(c) Public scholarship schools are schools organized as public corporations eligible to redeem state scholarships.

School districts, community colleges and public universities may establish public scholarship schools. Each school shall be a public non-profit corporation governed by rules fixed by the organizing authority at the time of incorporation. Such schools are free common schools under section 5 of this article; section 6 of this article shall not limit their formation. Except as stated in this section, public scholarship schools shall operate according to the laws affecting private scholarship schools.

(d) Scholarship schools shall be eligible to redeem state scholarships upon filing a statement indicating satisfaction of those requirements for curriculum, teachers and facilities which applied to private schools on July 1, 1979; the Legislature may not augment such requirements. No school shall lose eligibility to redeem state scholarships except upon proof of substantial violation of this section after notice and opportunity to defend.

Scholarship schools may not advocate unlawful behavior or expound
the inferiority of either sex or of any race nor deliberately provide false or misleading information. They shall be subject to reasonable requirements of disclosure. The Legislature may set reasonable standards of competence for diplomas.

No school shall be ineligible to redeem state scholarships because it teaches moral or social values, philosophy, or religion, but religion may not be taught in public schools or public scholarship schools; a curriculum may be required, but no pupil shall be compelled to profess ideological belief or actively to participate in ceremony symbolic of belief.

(2) **Admissions to Scholarship Schools**

Scholarship schools may set enrollment and select students by criteria valid for public schools under the federal constitution other than physical handicap and place of residence within the state.

Each scholarship school shall reserve at least thirty percent of its places for children of low income families who apply by a date fixed by law. If fewer have applied, all shall be admitted; if more have applied, the school may select among them in any manner otherwise consistent with this subsection.

(3) **Finance**

(a) Every child of school age is entitled without charge to a state scholarship redeemable by scholarship schools and adequate for a thorough education as defined by law. Scholarships shall be equal for every child of similar circumstance differing only by factors deemed appropriate by the Legislature; they shall reflect the educational cost attributable to physical handicap, and, for children of low income families, the cost of reasonable transportation. No scholarship shall be less than eighty percent of the average scholarship for children of similar grade level. A private nonprofit scholarship school shall use scholarship income solely for the education of its students. The Legislature shall provide for an appropriate division of the scholarship in the case of transfers. Nothing required or permitted by this section shall be deemed to repeal or conflict with section 8 of this article or section 5 of Article XVI.

(b) Scholarship schools shall not impose charges for educational or related services in any form other than state scholarships; nor, except as in subsection (2) shall access to any school be affected by family wealth.

(c) The average public cost per pupil enrolled in scholarship schools shall approximate ninety percent of that cost in public schools. Public cost here and in subsection (3)(d) shall mean every cost to state and local government of maintaining elementary and secondary education in the relevant year as determined by the Department of Finance according to law; it shall not include the costs of funding employee retirement benefits which are unfunded on June 3, 1982.
(d) For school years 1982-83 through 1987-88 the total public cost of elementary and secondary education shall not exceed that of 1981-82 adjusted for changes in average personal income and total school age population. The Controller shall authorize no payment in violation of this sub-section.

(e) Excess space in public schools shall be available to scholarship schools at actual cost.

(4) Rights

(a) A pupil subject to compulsory education who attends a scholarship school may continue in that school unless she or he derives no substantial academic benefit or engages in serious or habitual misconduct related to school which impairs the education of others. With fair notice and procedures each school may set and enforce a code of conduct and discipline and regulate dismissals. No pupil enrolled in any such school shall suffer discrimination on the basis of race, religion, or gender.

(b) The Legislature shall assure provision of adequate information about scholarship schools through sources independent of any school or school authority. Non-literate parents and others with special information needs shall receive a grant redeemable for the services of independent education counsellors.

(5) Transitional Provision

The Legislature shall promptly implement this section, ensuring eligibility for scholarships at least of one-fourth of all pupils in school year 1984-85 and a similar additional number yearly thereafter.