

“THE DIVERGENT PROPOSALS SUGGESTED A PROSPECT FOR ALLIANCE AMONG FREEDOM-SEEKING CONSERVATIVES AND LIBERTARIANS ON THE ONE HAND AND EQUITY-SEEKING LIBERALS ON THE OTHER THAT WOULD MAKE THE SCHOOL CHOICE PROGRAMS OF THE 1990S A REALITY.”

The modern case for school vouchers was first made by the Nobel laureate economist Milton Friedman, who introduced the concept of “vouchers” into the American lexicon. Acknowledging that Americans would not support the government’s getting out of the education business altogether, Friedman advocated the next-best thing: instead of providing education as a monopoly supplier, the government would finance it, in both public and private schools. Every child would be given a voucher allowing the student to redeem it at a school of the parent’s choice, and the schools would compete for the vouchers. Friedman’s proposal contained two insights that formed the intellectual foundations of the contemporary school choice movement: that parents, rather than government, should choose where children attend school and that the rules of economics are not suspended at the schoolhouse doors.

ends, the differences were substantial: Friedman advocated universal vouchers while Coons and Sugarman wanted to target them to disadvantaged populations; Friedman preferred a lightly regulated system while Coons and Sugarman believed substantial government oversight would be necessary. Still, the divergent proposals suggested a prospect for alliance among freedom-seeking conservatives and libertarians on the one hand and equity-seeking liberals on the other that would make the school choice programs of the 1990s a reality.

In the 1970s, the widespread closure of Catholic schools created a crisis for the public schools that would have to absorb them. In response, New York and Pennsylvania—two states with large Catholic school populations—enacted “parochiaid” laws designed to financially prop up religious schools. The assistance took the form of

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VOUCHER WARS: LAYING THE GROUNDWORK

by Clint Bolick

Friedman’s ideas gained currency mainly in conservative intellectual and policy circles, but in the broader realm of public policy they remained a decidedly minority perspective. The handful of school choice activists, such as Martin and Mae Duggan, who created the St. Louis-based Citizens for Educational Freedom, were passionate and persistent, but few in number.

The support base for school choice began to expand and diversify in the 1970s when two liberal Berkeley law professors, Jack Coons and Steven Sugarman, began to consider school choice as a means of delivering educational equity. If forced busing plans had failed, Coons and Sugarman argued, why not give vouchers to poor and minority parents so they could choose the best education for their children? Although Coons and Sugarman adapted Friedman’s proposals to their own

direct subsidies to the schools and financial assistance to private school students’ parents.

In 1973, the U.S. Supreme Court struck down parochiaid in *Committee for Public Education v. Nyquist*. Because the aid was restricted to private schools—most of which were religious—and those who patronized them, the Court concluded that the “primary effect” of the aid programs was to advance religion. But in a footnote, the Court reserved an important question: “whether the significant religious character of the statute’s beneficiaries might differentiate the present cases from a case involving some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian°–nonsectarian, or public°–nonpublic nature of the institution benefited.” *Nyquist* put an end, for the time being, to notions of school choice while at the same time

suggesting a possible course—what later would be dubbed “neutrality”—upon which school choice proponents could craft new innovations.

The idea might have died with that Supreme Court decision had the government schools turned out a consistently decent product, but they did not. Particularly alarming was the decline in urban public schools. In 1954, the U.S. Supreme Court had proclaimed in *Brown v. Board of Education* that education, “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” Massive resistance led to stern remedies, especially forced busing, which were well-intentioned but had the devastating impact of ruining inner-city schools and, ironically, exacerbating conditions of segregation. Whites (and middle-class blacks) fled to the suburbs, depriving urban public schools of their support base and leaving poor, mostly minority student populations in rapidly worsening schools.

The problems of urban public schooling were symptomatic of a broader decline in public education. The 1983 study *A Nation at Risk* chronicled a systematic crisis in American education. Meanwhile, starting in the early 1980s, social scientists, including the eminent sociologist James Coleman, began producing findings that private and religious schools were succeeding where government schools were failing in educating minority schoolchildren from low income families—findings that have continued unabated ever since.

Finally setting the stage for a school choice movement in the 1990s was a pathbreaking Brookings Institution study by John Chubb and Terry Moe, *Politics, Markets & America’s Schools*. Chubb and Moe set out to discover why suburban public schools and inner-city private schools generally produced good academic outcomes while inner-city public schools were disasters. They found that whereas the first two types of schools were characterized by strong leaders with a clear mission and a high degree of responsiveness to parents, inner-city schools were not. Instead, urban public school districts were run by bloated bureaucracies whose principal constituencies were not parents, but politicians and unions.

A crucial distinguishing factor was the element of choice: Suburban parents could send their children to private schools or move to different communities if they were dissatisfied with their public schools; likewise, private schools were entirely dependent on satisfied parents. But inner-city public school parents were captives: They had no choice except to send their children to whatever public school they were offered. And in school districts with tens, if not hundreds, of thousands of students, they were powerless to do anything about it. Introducing choice in inner-city public schools—crucially, giving parents the power to exit the system altogether—would force the system to respond to its customers rather than to politicians and special-interest groups, Chubb and Moe concluded. Their findings created a scholarly foundation for school choice not merely as an escape valve for children in failing government schools, but as an essential prerequisite for systematic public school reform.

At the same time, a remarkable Pennsylvania lawyer, William Bentley Ball, was somehow managing to navigate a hostile judicial environment and to produce legal precedents favorable to religious liberty and parental autonomy. Among other landmark cases, Ball litigated *Wisconsin v. Yoder*, in which the U.S. Supreme Court held that Amish children could not be held to comply with compulsory high school requirements that were contrary to their religious beliefs. Ball kept the flickering promise of *Pierce v. Society of Sisters*, a 1925 Supreme Court decision that struck down an Oregon law that required all children to attend government schools, alive and laid the jurisprudential groundwork for the legal defense of school choice in the 1990s and beyond.

What was lacking was political leadership; what was abundant was a wide divergence over how to proceed. Division was apparent even among libertarians, a natural support base for expanded educational freedom. Many, if not most, libertarians believe in a strict separation of school and state—as Ayn Rand put it, for the same reasons that we support separation of church and state—because it is inherently dangerous to allow the government to create and instill an educational dogma. But some believe it as an

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"THE BEST MEANS OF FORMING A MANLY, VIRTUOUS, AND HAPPY PEOPLE WILL BE FOUND IN THE RIGHT EDUCATION OF YOUTH. WITHOUT THIS FOUNDATION, EVERY OTHER MEANS, IN MY OPINION, MUST FAIL."

—GEORGE WASHINGTON

ideal, with a pragmatic desire to move incrementally in that direction through school choice, while others support it as a nonnegotiable absolute.

The problem with the latter perspective is that if there is one idea that surely derives support from a vast majority of Americans, it is that it is a proper and important role for government to provide (or at least enable) education; and the absolutist perspective leaves intact (indeed, it aids and abets) a status quo in which nearly 90 percent of American schoolchildren are enrolled in government schools. In any event, even among the majority of libertarians who support school choice, some support a broad range of efforts (including vouchers) to expand competition and parental autonomy, while others support only tax credits and deductions, which do not entangle the government with private schools. All libertarians, of course, favor limiting the government's power to regulate private schools.

As the 1980s ended, the pressure for educational alternatives was palpable and growing, but leadership and direction were all but nonexistent. If those two ingredients were found, the stage would be set for the birth of a potent school choice movement.

Clint Bolick is Vice President and National Director of State Chapters at the Institute for Justice, which he co-founded in 1991. For the past 12 years, he has led the nationwide effort to defend school choice programs, culminating in *Zelman v. Simmons-Harris* in the U.S. Supreme Court. This article is excerpted from his new book, *Voucher Wars: Waging the Legal Battle Over School Choice*, published by the Cato Institute.