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**Freedom and  
Accountability**  
*An International  
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**T**he ongoing debate on “public” versus “private” schools is no longer centered on the right of nonstate schools to exist—a recent worldwide survey by the Organisation Internationale pour le Droit à l’Éducation et la Liberté de l’Enseignement found that only Cuba and Vietnam prohibit them—but on whether they should receive public subsidies to provide parents an effective choice of schools. A distinct issue, no less pressing, is the extent to which government may interfere with the mission and operation of nonstate schools, under a general theory of child protection or as a condition for financial support.

In recent years, there has been in most Western democracies a slow but very marked shift in the allocation of responsibility for the organization and control of education, in the public as well as the nonpublic education sector, through decentralization of various aspects of decisionmaking to the local school community. In some cases this shift has been motivated by concerns of managerial efficiency alone; in others, it reflects a deeper understanding of the appropriate role

and, thus, the necessary *autonomy* of civil society institutions.<sup>1</sup> A distinction must be made, according to this view, between “vertical subsidiarity”—decentralization—and “horizontal subsidiarity” that recognizes distinctive spheres of responsibility.

While “autonomy” has become a fashionable watchword in education policymaking, there is also an increased stress upon accountability for meeting common standards. A new generation of education legislation in Europe, the United States, and elsewhere stresses core curriculum, common standards, and final attainment targets. This emphasis is combined with a growing flexibility in regulation of how schools achieve those results. As this policy shift has taken place, it has removed much of the reason for a distinction between “public” and “private” schools. If both are held to similar outcome standards, and both are allowed to organize instruction and (in some cases) appoint staff without external approval, the differences between the two sectors become less and less significant. This has been especially evident as new models of schools have emerged that are neither clearly public nor clearly private, such as “grant maintained” and then “foundation” schools in the United Kingdom, and “charter” schools in the United States. For such schools—and indeed any schools that are encouraged to develop a highly distinctive approach to education—parental choice is a necessity: children cannot simply be assigned to a school that has a distinctive character, nor can such a school flourish if parents do not fully support its mission.

This combination of school autonomy, external standards,

1. Gianfranco Garancini, “La dimensione giuridica dell’autonomia,” in *Dalla legge 59/97 ai decreti-regolamenti: quale autonomia per la scuola e la formazione professionale?* edited by Gino Dalle Frate (Trento: Trento Unedizioni, 1998), p. 18.

and parental choice has created a whole new set of policy questions. In a study of two dozen countries,<sup>2</sup> we have sought to understand the different answers that Western democracies have found to those questions.

### **Does the State Have an Obligation to Provide Funding to Approved Nonstate Schools?**

The internationally recognized right of parents to choose nonstate schooling for their children has not, in most countries, carried with it an obligation on the part of government to fund that alternative schooling through providing subsidies to schools that it does not operate. Put another way, the allocation of financial resources to government-operated schools but not to alternative schools that meet the same conditions does not, under present international legal norms, constitute unlawful discrimination. While most wealthy democracies provide public funding for nonstate schools, they do so as a matter of a protected *right* in only a few.

The question of equitable financing of nonstate schools has arisen in many countries, once they are recognized by government as equivalent to its own schools and their diplomas are accorded official status in recognition that the education provided meets appropriate standards. After all, if a school is providing a public service for which funds are appropriated by the government, should it not receive a just share of those funds, based upon the number and type of pupils served?

While there is an issue of equitable treatment of *schools*, there is also an even more pressing issue of equitable treatment of *parents* who wish to exercise their right to make decisions about the schooling of their children. Obviously, exercising the

2. Charles L. Glenn and Jan De Groof, *Freedom, Autonomy, and Accountability in Education*, 2 vols. (Utrecht: Lemma, 2002).

right to education in other than government-operated schools will be financially impossible for many families if they must pay the full cost of that education. In addition to social injustice, the government fails in its obligation of neutrality toward religious and philosophical positions if it so organizes the educational system that there are strong incentives for parents to choose secular over religious education. The principle of strict neutrality insists that government should not seek to influence either positively or negatively the choices that people make “for or against any particular religious or secular system of belief. It should neither advantage nor burden religion.”<sup>3</sup> A government committed to strict neutrality would fund equally qualified schools without regard to their religious character, and would demonstrate that it was strictly fair by favoring neither religion nor secular ideologies—nor the lack of all convictions.

The high-water mark, to date, in international recognition of an *effective* right to educational freedom, supported by an appropriate share of public resources, is expressed in the so-called “Lüster Resolution” of March 1984, in which the European Parliament stated that “In accordance with the right to freedom of education, Member States shall be required to provide the financial means whereby this right can be exercised in practice, and to make the necessary public grants to enable schools to carry out their tasks and fulfill their duties under the same conditions as in corresponding state establishments, without discrimination as regards administration, parents, pupils or staff.” The inclusion of “educational services” in GATT negotiations could well lead to a generalization of this principle.

3. Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies* (Lanham, Md.: Rowan & Littlefield, 1997), p. 10.

Most Western democracies, in fact, have a tradition of educational freedom and maintain funding practices that encourage a great deal of diversity. There is a group of countries where the right to financing of nongovernmental educational institutions of compulsory education is stated in the constitution, explicitly or implicitly in the right to education and the right to freedom of education. The most notable examples are the Netherlands, where the constitution provides that nongovernmental schools be fully financed from public funds, and Ireland, whose constitution recognizes the right of parents to send their children to the schools of their choice and requires the state to “give reasonable aid” to private schools. The Spanish constitution opens the way to subsidy of nongovernmental schools by an “agreement” (*concierto*) between the authorities and the school. In other countries, public funding of nonstate schools has been established by law or by court decisions though not explicitly in the constitution. This is the case in France, where government enters into contracts with (mostly Catholic) schools to provide educational services. Public funding is also provided to approved schools in Austria, Belgium, Luxembourg, Denmark, Sweden, Finland, Norway, Iceland, Germany, Australia, New Zealand, Russia, most provinces of Canada, and South Africa.

There are also a few countries included in our survey that do not provide direct funding to nonstate schools, even while recognizing that they provide a service equivalent to that provided by public schools. These include Bulgaria, Greece, and (with certain exceptions) Switzerland, Italy, and the United States. The United Kingdom does not fit neatly into any of these categories. Protestant and Catholic schools have a strong presence within the public systems (an overwhelming one in Northern Ireland), but no public funding is provided to strictly private schools since the abolishment of the “assisted places

scheme” under which scholarships were provided on a means-tested basis. The exception is the handful of “city technology colleges” that are legally nonstate though publicly funded. This brief description, however, does not do justice to the complexity of the arrangements, which include the charter-like foundation (formerly grant-maintained) schools. The question of government funding raises two subsidiary issues:

#### What Percentage of the Costs of Nonstate Schools Is Publicly Funded?

The amount of funds awarded to nonstate schools varies from no support at all to as much as 100 percent of the expenditure of public schools. In some countries there is a difference in funds awarded to schools that are religiously distinctive and those with a distinctive pedagogical approach. This unequal treatment has been appealed, unsuccessfully, to the European Commission on Human Rights. In a number of countries, the funding provided is in principle equivalent to the expenditure of public schools in the same circumstances. These include Belgium, the Netherlands, Finland, and several Canadian provinces (for Catholic school systems). In other countries, the public funding is set at some percentage of public school expenditure, with the difference sometimes explained by the greater obligation upon public schools to serve pupils with special needs. These include Austria, Germany, Sweden, Denmark, Ireland, France, Norway, Portugal, Spain, the United Kingdom, Russia, a number of Canadian provinces, two Swiss cantons, New Zealand, Australia, and (to a limited extent) Italy. Nonstate schools in the United States benefit from various subsidies for textbooks, meals, transportation, and teaching equipment, though not for operating costs or salaries.

### Can Parents Choose Schools Regardless of Family Income?

We were concerned to determine whether the various arrangements made it possible for parents of limited means to exercise the freedom to choose schools based upon their own convictions. Obviously, this does not necessarily follow from a formal right to establish nonstate schools or even from the provision of subsidies. Most Western democracies, as we have seen, provide public funding of nongovernmental denominational schools. The enrollment in these schools is either free, or—in case fees may be charged—the fee levels are limited or related to certain (usually marginal) services.

In a number of countries, tuition in approved nonstate schools is completely subsidized, but parents may contribute to the cost of education (typically, of supplementary services not provided automatically in all schools) on a voluntary basis. These include Belgium, the Netherlands, Ireland, Portugal, Spain, Sweden, the United Kingdom, Finland, and Iceland, and, in the United States, schools currently receiving “vouchers” in Milwaukee, Cleveland, and Florida. In Italy some nonstate primary schools receive a government grant that covers part of their costs and are forbidden to charge tuition, but they must make up the difference from “voluntary” contributions as well as inflated charges for services such as meals and transportation, which reduces their ability to serve families unable to pay a substantial tuition.

There are also several countries where nonstate schools may charge fees (even if they receive a grant from the state), but the fee levels are restricted or related to certain budget items. Because the German constitution does not permit any segregation of pupils based on parents’ financial means, fees demanded by nonstate schools are moderate. Nonstate schools

reduce charges to pupils of parents with limited financial means. In Luxembourg, the state takes responsibility for the range of operational costs not covered by fees. Fee levels are being kept quite low to prevent discrimination against children from disadvantaged backgrounds. In France, in the case of *contrat d'association* schools, families can be asked for contributions only for certain specified purposes: cost of religious instruction and ceremonies, sports or classroom equipment, or payments on the mortgage for the facilities. *Contrat simple* schools may charge fees for the costs not covered by government payment of teacher salaries. In either case, the school's contract must specify in detail and justify the costs that will be charged to parents, and this is subject to verification by government inspectors.

According to the Danish constitution, all children of school age are entitled to free instruction in primary schools, but at schools that offer alternatives to the public system there will often be a user-charge to supplement the state subsidies. In Norway, approved nonstate schools at the elementary and lower-secondary levels are funded 85 percent of the expenditure of public schools and those at the upper-secondary level at 75 percent. They are allowed to charge fees to make up the difference. In other countries, virtually all nonstate schools charge tuition and the amount of the fee is not restricted by government. These include the United States, Austria, Greece, Bulgaria, the United Kingdom, and Switzerland. Indeed, in all the countries that subsidize nonstate schools there are also tuition-charging schools that remain outside that system.

### **Is the Distinctiveness of Subsidized Schools Protected by Law and Policy?**

Public funding can become an “ambiguous embrace” that prevents schools from maintaining a distinctive pedagogy and



thus also prevents parents from having actual choices, whatever the situation may be in theory. Although in most countries national education authorities still prescribe which subjects will be taught or attainment targets, there have been significant measures of decentralization in recent years, which has in turn provided more scope for pedagogical innovation. Policymakers are primarily concerned to balance the freedom of parents to choose a distinctive school with the right of each child to receive an adequate education, rather than to protect the distinctiveness itself, though obviously choice has little meaning if it is not among schools that differ in significant ways.

Nonstate schools—even if they receive little or no public subsidy—are typically forced to respect government regulations on curricula, attendance, admissions, quality assurance, inspection and control of accountability, the certification and employment of teachers and other categories of staff, and school buildings. This obligation is tied to the recognition of their diplomas and to compulsory school attendance requirements. Although in most countries national education authorities still prescribe which subjects will be taught or set attainment targets, there have been significant measures of decentralization in recent years, which have in turn provided more scope for pedagogical innovation. The primary concern seems to be to balance the freedom of the parents to choose a distinctive school with the right of each child to receive an adequate education, rather than to protect the freedom of the school to be distinctive.

Government fails in its obligation of neutrality when it imposes conditions upon religious schools that make it impossible for them to offer a distinctive alternative to a secular education. There are thus limits to the reach of government in seeking to promote, for example, its social agenda through regulating civil society institutions. “Courts essentially have said that states may not destroy the nonpublic educational sector

by incremental regulation.”<sup>4</sup> There is a growing recognition, indeed, that the school’s own context, *its mission and culture*, the self-organizing and self-evaluating capacity of the school are all tremendously important elements in school quality.<sup>5</sup> Education authorities can be highly prescriptive. There is little scope to offer alternative pedagogies in Greek schools, for example; in Portugal, schools must implement national curricular plans (although government inspection of nonstate schools may not extend to the ideological, philosophical, or religious basis of the teaching); in Luxembourg, denominational schools (except the one Waldorf school) offer the same syllabus as the public system. The Swiss educational system, though under cantonal control, is generally one of the least flexible in Europe, with few opportunities to create distinctive schools and with a top-down approach even to pedagogical decisions.

Other systems allow subsidized nonstate schools to develop a distinct profile while implementing the compulsory national curriculum. This is true of the Netherlands, where nonstate schools have considerable autonomy to develop distinctive approaches to meeting the goals set by education authorities, and may define a distinctive character that government must respect. In Finland, nonstate schools can obtain approval to serve as alternatives for the years of compulsory schooling and the school may obtain public funding even though the curriculum may be significantly different from that prescribed nationally. In Sweden, nonstate schools can have a distinct profile and may comply with specific teaching prin-

4. Donal M. Sackel, “Regulating Nonpublic Education: A Search for Just Law and Policy,” *American Journal of Education* (May 1988): 394–420, esp. p. 399.

5. R. Standaert, *Inspectorates of Education in Europe, A Critical Analysis* (Leuven: Acco, 2001), p. 115.

ciples or be denominational or specialized in particular subjects; subsidized schools must develop work-plans that illustrate how they will ensure that the national requirements are met. In Spain, schools are required to work out an educational project taking into account a required core curriculum; in some cases this direction-setting project is religious, in others pedagogical, and in many it is both. Nonstate schools in Australia have been required since 1999 to follow the curriculum framework established by the respective states, but a school may adapt or supplement the curriculum according to its specific religious affiliation or educational philosophy.

In Germany, nonstate schools must pursue the same objectives and provide a level of education similar to that of public sector schools, but are not restricted to the same curriculum. In France, the Constitutional Court ruled that safeguarding the distinctive character of a school under contract is required by educational freedom. Each intermediate and secondary school is required to develop and implement a *projet d'établissement*. Schools with a *contrat d'association* offer the same curriculum as the public sector. Those with a *contrat simple* must make reference to the curriculum of the public sector education. Unsubsidized schools must respect basic standards of required knowledge and skills. In Italy, the unitary character of the national educational system is protected through the national definition of curriculum goals, timetables, and specific learning objectives, but the curriculum laid down nationally may be supplemented with elective courses. Each school must develop an educational plan that serves as the "fundamental constitutive document" of the cultural and programmatic identity of the school and makes explicit its curricular, extracurricular, and organizational arrangements.

Yet other countries allow nonstate schools broad freedom to shape the education they provide. In Belgium, the govern-

ment sets goals, but schools are free to determine the way in which they will reach them. In Ireland, the law gives explicit recognition to the need to protect the ethos of subsidized schools. Denmark has a long tradition of educational freedom; and its laws, policies, and practices encourage a great deal of diversity (based on denominational preferences, pedagogical theories, or political and social leanings), both outside the public sector and within it. In New Zealand, individual schools are allowed to develop a distinctive approach to education. In the United States, nonstate schools have broad—in some states, almost unlimited—discretion to shape their educational mission and choose their own standards.

There is, however, a further dimension to this issue of school autonomy, which requires attention and has become controversial in a number of countries. Most educational reform efforts in recent years have attempted to affirm the professional discretion of the individual teacher, so as to provide a significant measure of freedom to those in the best position to understand the needs of each child. This has been intended to raise the status and thus the attractiveness of teaching at a time when it seems more necessary than ever to attract highly competent individuals into the classroom. As the influential Carnegie report on the status of teachers put it, “within the context of a limited set of clear goals for students set by state and local policymakers, teachers, working together, must be free to exercise their professional judgment as to the best way to achieve these goals.”<sup>6</sup>

However, pedagogical freedom is not limited to the individual teacher, but is also expressed at the school level, where the effort to provide a reliably and coherently distinctive

6. Carnegie Forum on Education and the Economy, *A Nation Prepared: Teachers for the 21st Century* (New York, May 1986), p. 57.

school may require some limitations upon the discretion of teachers. Parallel to the stress on teacher professionalism, there is a growing conviction that effective schools are characterized by a clear focus. The distinctiveness of schools may be described in terms of their internal organization or external context, but we are concerned here with something less tangible: the ways in which two schools that are formally similar both internally and externally may in fact function in very different ways and have very different results. Important as is the environmental framework within which a school functions, and the resources that it may devote to its mission, “a school’s culture, or more specifically its climate, seems to be the determining factor in its success or failure as a place of learning.”<sup>7</sup>

There is yet a third level of pedagogical freedom, that of the group of schools that seek to have an essentially common character in distinction from other schools. Montessori schools, Waldorf schools, Solomon Schechter schools, and—at least when a consistent effort has been made to realize a distinctive approach—Catholic and Protestant schools are not “on their own” but have a shared understanding of how their mission should be carried out. Formal or informal groupings of schools can be an important support for consistent educational pluralism, and governments in some countries—Australia and the Netherlands are good examples—acknowledge and negotiate with these intermediate structures. Although, under the international legal standard, everyone enjoys the freedom to organize education, the “organizing power” bears the legal responsibility for each school. In this sense, individual teachers have no “freedom of education,” though of course (as occurred in Poland after the fall of the communist regime) two

7. S. C. Purkey and M. S. Smith, “Effective Schools: A Review,” *Elementary School Journal* 83, no. 4 (March 1983): 427–52, esp. p. 444.

or three teachers may start a school and themselves become the “organizing power.”<sup>8</sup> Many of the new charter schools in the United States have, similarly, been started by teachers, who thus possess the recognized legal status to control their schools under the terms of the charters issued by state and other authorities.<sup>9</sup>

Since every pedagogical situation is different, compulsory uniformity is most unsuited to good education. While central government is responsible for the provision of schooling, and thus for the resources required, for planning as needs and demands change, and for quality assurance, it is up to educators to take responsibility for the process of education. This requires that their responsibility be exercised within clearly demarcated boundaries, which nevertheless allow a school to manifest a distinctive character based upon its ethos. The ethos of a school, as we use the term, is that coherent set of beliefs about education, relationships, and the meaning of human life that underlies the character of some schools. In other—perhaps most—schools both ethos and distinctive character based upon it are simply missing, never having been thought through or considered necessary. The definition of their work is “based on decades of interest group negotiation and mandated responses to particular problems”; for teachers and administrators in such schools, “accountability means doing as well as possible on the statistics kept by the central office. It does not mean reaching and implementing a contract with individual students, teachers, or families,”<sup>10</sup> much less developing a

8. See the examples and discussion in Charles L. Glenn, *Educational Freedom in Eastern Europe* (Washington, D.C.: Cato Institute, 1995).

9. See Chester E. Finn, Jr., Bruno V. Manno, and Gregg Vanourek, *Charter Schools in Action: Renewing Public Education* (Princeton, N.J.: Princeton University Press, 2000).

10. Paul T. Hill, Gail E. Foster, and Tamar Gendler, *High Schools with Character* (Santa Monica, Calif.: RAND Corporation, 1990), pp. ix, 53.

coherent ethos to guide their practice. The character of a school that has a deliberately chosen ethos finds expression in the school's program of studies, rules for behavior, and expectations for staff and pupils. It is, to borrow a term from ethics, a settled disposition for the school to function in consistent ways.

In addition to its importance for school quality and for the satisfaction of the desire (and right) of parents for particular forms of schooling, the deliberate distinctiveness of some schools can have legal significance. The *caractère propre* or distinctive character of a French nonstate school under contract with the government has considerable significance as a result of the provision of law adopted in 1977 that teachers "are required to respect the distinctive character of the school" (*Loi Guermeur*, article 3). There is now an established body of law in Spain, Germany, Belgium, the United States, and the Netherlands, as well as in France, spelling out the implications of school distinctiveness, especially for personnel policy. A central consideration is always that it should be possible to substantiate in concrete terms whether or not the work of a teacher is consistent with the character of the school that employs her. This implies that character is expressed in clearly identifiable ways. A teacher could pay lip service to the ethos of a school, but there should in theory be no way to counterfeit compliance with its distinctive character—if that character has really been worked out in the details of educational practice.

It is coherency between the pedagogical project of an individual school and that of its "network," and, even more importantly, between the individual school's plan of action and the teaching style exhibited in classrooms, the messages communicated verbally and nonverbally to pupils, that makes pedagogical freedom a reality. In the practical organization of what occurs in a school, in the curriculum, timetables, teaching

resources, objectives, evaluation techniques, and relationships among those involved, social and philosophical values and interests are expressed. Educational projects and educational objectives are not value-free, but are reflected in the organization and functioning of the school, all the more so since education is not purely an individual learning process but also a social phenomenon—part of the society that influences it and is influenced by it.

Belonging to a network of schools can be an important safeguard against subtly drifting away from an educational mission, as occurs with many schools, whether as a result of government requirements, of professional norms that influence teachers, or of the demands of parents who do not share the original vision of the school. Effective schools, while they are attentive to the concerns of the teachers and the parents at any given moment, are nevertheless also guided by a long-term sense of mission that cannot constantly be renegotiated and revised.

The freedom of a school to be distinctive, and of the sponsors or network of a school to be consistent about educational purposes, can be in tension with the freedom of teachers to educate according to their best professional judgments or personal convictions. A teacher participates in a school as an employee, with a set of duties spelled out (typically) in an employment contract, but also as a mediator—at least in theory—of the mission and identity of the school. The teacher-as-mediator is bound by a moral contract that cannot be specified in detail, but is of the utmost importance to her and also to the school and its sponsor. This situation to a large extent sets the tone for the relationship between the school management and the teacher. Importantly, it sets certain limits on the freedom to teach. One of these derives from the special nature of the profession, which involves working in the cause of the per-



sonal development of the young. Part of the teacher's role is to be an example of good character, of conviction, and of intellectual vigor, but in the exercise of that role he or she needs to exert the utmost care not to misuse the influence obtained on the minds of youth. Here we touch upon an issue about which it is difficult to be precise. After all, "the distinction between true education and indoctrination is one of the most important educational distinctions to make,"<sup>11</sup> and we cannot hope to add to a subject about which so much has been written by philosophers and psychologists. Nevertheless, the distinction is unavoidable, both for the school and for the teacher, though it has a somewhat different significance for each.

It is legitimate, both legally and morally, to organize a school around a particular educational mission; indeed, as we have seen, a school that does not have an explicit ethos and purpose that has been translated into supportive instructional activities is not likely to be educationally effective. For some schools (for most nonstate schools in most countries) an important part of that ethos and purpose is religious. Such schools seek to give children and youth a foundation in a particular faith-community through the content of the curriculum, the way in which it is taught, and the community life and ceremonies that form an important aspect of a good school.<sup>12</sup> Does that constitute "indoctrination," in the sense of an illegitimate manipulation of pupils with the goal of preventing them from thinking for themselves? Faith-based education may fall into indoctrination, of course, as may an explicitly "secular" edu-

11. Elmer John Thiessen, *Teaching for Commitment: Liberal Education, Indoctrination, and Christian Nurture* (Montreal: McGill-Queen's University Press, 1993), p. 18.

12. See Edward A. Wynne and Kevin Ryan, *Reclaiming Our Schools: A Handbook on Teaching Character, Academics, and Discipline*, 2d ed. (New York: Macmillan, 1996).

cation, but almost all religious educators would insist that it is their goal that their pupils think for themselves on the basis of a particular tradition, including questioning and criticizing that tradition.

Society is best served by a variety of communities, “little platoons” in Burke’s phrase, within which loyalties and convictions can be shaped and moral norms internalized through example more than through precept. This is why “we need a plurality of schools, each beginning with its own conception of the present and the particular, but each also committed to fostering growth toward normal rationality and autonomy. . . . The best guarantee against institutional indoctrination is that there be a plurality of institutions.”<sup>13</sup> International covenants and laws and the laws of Western democracies recognize the value of such schools, and most acknowledge that they serve a public purpose by providing public funding for them as well as recognizing their diplomas as equivalent to those delivered by public schools.

The teacher’s freedom to express opinions, then, is limited by the pedagogical project that the school community has set as its goal. On the other hand, by becoming part of that community the teacher is more than a mere employee, and the school leadership has a duty to involve the teacher in specific aspects of working out how the school’s freedom to educate is to be exercised in all aspects of school life. Freedom to exercise their profession supposes that teachers are partly involved in bearing responsibility for the school, a responsibility that they assume collectively.

13. Thiessen, *Teaching for Commitment*, p. 274.

### **Can Subsidized Schools Use Religious Criteria in Selecting Staff?**

Perhaps the most difficult issue in other countries, as in the United States, is how subsidized schools can retain their distinctive character while complying with laws against employment discrimination. Insisting that the rules and conditions of employment be the same for teachers in nonstate schools as for those in state schools could jeopardize the distinctive mission of the former. There must be room for additional rules for the nonstate school that complement the common statutory provisions that apply to all schools. Specific provisions must be in force between the organizing body of the school and members of its staff concerning specific incompatibilities and other issues in the light of the characteristics of the school's pedagogical project.

The borders between private and public law are becoming increasingly blurred. Authoritative voices in some countries argue in favor of abolishing national regulations for school staff, and the distinction between a statutory and a contractual legal position has become so small that the dismantling of the status of public civil servant as a possible strategy is being considered. The so-called "process of inclusion in public law" of nonstate educational establishments—stressing their contribution to the general interest (since they issue diplomas with effects in civil law, provide compulsory education, and substitute for the public system)—describes these schools as providing a *functional public service*. A period in which quite rigid regulations for state schools were applied with little variation to subsidized nonstate schools has been succeeded by a tendency on the part of legislators to leave ample room for

customized staff policies, in both official and nonofficial establishments.

In many countries, the status of the staff of nonstate schools has become more “state-oriented,” while that in public schools has become “freer.” This shift in policies governing terms of employment has meant that the government stresses framework arrangements rather than detailed regulations. Such an “emancipation” of schools can lead to greater equality between public and private schools. There is, however, still a large variation among countries in the degree of centralization and government regulation of staff management. In most countries, although staff of nonstate schools must have the same formal qualifications as those in public schools, the nonstate schools have some freedom concerning recruitment of teachers and can require within certain limits that a teacher uphold the mission and the distinctive character of the school.

In some cases, private schools are not required to employ staff with the same qualifications—which, in practice, means the same formal training—as staff in public schools. The leadership of nonstate schools in Denmark is free to select qualified staff taking into account the schools’ program and goals; nonstate schools may dismiss teachers if they do not support the mission of the school. In the United States, some states require private schools to employ state-certified teachers but most do not. Other countries require that nonstate schools employ staff with qualifications equivalent to those in state schools, but the schools may add other criteria related to the mission of the school. This is the case in Austria and Germany. In Belgium, subsidized schools have the right to freely recruit their personnel within provisions of the education legislation that provide general conditions for the recruitment of teachers with the necessary qualifications. Those requirements being met, boards do

not have to explain why they have chosen an applicant and they may make decisions about employing and dismissing staff based upon the religious or pedagogical character of the school. In the Netherlands, nonstate schools must employ teachers who meet the standards for public schools, and they must provide instruction that is equivalent to, though not necessarily identical with, that provided in public schools. Teachers in a Catholic school, for example, must work loyally for the fulfillment of the goals of the school, including those reflecting a distinctive worldview. In Spain, nonstate schools have complete freedom concerning recruitment of teachers, limited only by the requirement that candidates hold the necessary qualifications for teaching a certain subject at the particular level for which they are appointed, as established for teachers in the public sector. In France, the director of a nongovernmental school may take religion into account in deciding whom to accept for a teaching position in the school, since she or he has responsibility for protecting the distinctive character of the school. The Canadian courts have upheld the right of religious or educational institutions to require conformity to beliefs and lifestyle standards on the part of staff. In New Zealand, boards of all schools have authority to hire teachers according to the particular needs of their school rather than having to accept whoever was sent by local government. Integrated schools (private schools that have joined the state system) are free to use religious criteria in appointing key staff. The issue has not yet been resolved in the United States.<sup>14</sup>

14. See Charles L. Glenn, *The Ambiguous Embrace: Government and Faith-based Schools and Social Agencies* (Princeton, N.J.: Princeton University Press, 2000), chap. 6, "Employment Decisions."

### **How Is Accountability Provided for School Quality?**

All countries in our study exercise some control over the quality of education provided by nonstate schools, whether or not these are publicly funded. Most provide for accountability through a combination of

- Prescribing the subjects that must be covered, and the hours for each, at each stage in the educational program, in publicly funded private schools as well as in public schools,
- Maintaining a system of school inspection, whether national or regional, and
- Administering, directly or indirectly, a system of examinations at the end of secondary education that have highly significant consequences for the future of students.

In general they do not attempt to provide for accountability through using standardized test scores to rank or rate individual schools (though England and many states in the United States do so), or prescribing books, materials, or pedagogical strategies to be used by schools. They vary in whether grade-to-grade promotion standards and graduation standards are set externally or by each school.

Most of these nations

- Pay for education nationally or regionally in a way that largely eliminates unequal spending on the basis of the relative prosperity of different communities but may also reduce local decisionmaking, and
- Provide additional funding to meet the needs of pupils who require more intensive educational services, often through

the designation of certain schools or groups of schools as requiring a higher level of support.

School-level autonomy varies significantly among these nations. Most set standards for teacher qualifications, pay, and working conditions at the national or regional level, and these standards may apply to nonstate schools.

One of the most significant ways in which national policies differ is the extent to which hiring decisions are made at the school level. This can be a crucial issue for schools seeking to manifest and to maintain a distinctive character. Many require the sponsor, board, or staff of each school to develop explicit educational plans and assessment strategies, which serve as a vehicle for accountability in a context of autonomy. The provision, in most of these nations, of public funding for schools that differ from the state system in religion or pedagogy has the effect of encouraging philosophical diversity and school-level decisionmaking alongside a substantial degree of curriculum alignment. In some countries the overall responsibility for the supervision and inspection of nonstate schools lies with the central government. This is true of Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and New Zealand.

In other countries, the overall responsibility for supervision and inspection of schools is laid upon regional or local levels of government. The United Kingdom has three separate educational systems, covering England and Wales, Scotland, and Northern Ireland. In Belgium, responsibility for schools rests with the linguistically defined communities, in Germany with the *Länder*, in Spain with the Autonomous Communities, in Canada with the provinces, in Australia with the states, and in Switzerland with the cantons. In Austria, responsibility is shared among local, provincial, and national authorities. In

most of the United States, the state government entrusts the supervision of private schools to local education officials.

There are also a few countries in which government exercises little or no direct supervision over schools that it does not directly own and manage. Denmark is the only country in our study that does not exercise control over the standards of teaching staff and teaching. Ensuring the quality of nongovernmental schools is left up to parents, who can select the person who will supervise their compliance with the quality requirements for public subsidy. Parents may also ask municipalities to perform monitoring functions on their behalf. Supervision of schools by the national government that funds them is concerned almost exclusively with the accuracy of their financial accounting, which is closely monitored. Legislation in 1999 established the Danish Evaluation Institute to provide systematic quality assurance and evaluation of all levels of education. In Sweden, there is no national school inspection system; subsidized nonstate schools are held accountable to the national curriculum frameworks by the fact that their pupils take national examinations at the end of elementary and lower-secondary school, and municipalities may inspect the activities of schools to which they award grants. There is also no national inspectorate in Iceland or in Norway, where school self-evaluation plays an important role in maintaining the quality of education. Australia has no formalized inspection system for nonstate schools, which may voluntarily participate in the Monitoring Standards in Education Programs.

### **Does Government Oversee the Teaching of Values in Nonstate Schools?**

From an American perspective, the question of government involvement in nonstate schools may seem odd, though in fact



much of the opposition to vouchers has warned that private schools might use them to teach racist or otherwise dangerous beliefs.<sup>15</sup> In most countries, in fact, it is generally accepted that subsidized nonstate schools have a right to uphold the religious traditions on the basis of which the school was established, but sometimes this is within limits. As we have seen, legislators and other policymakers have begun to think about education in a new way, less as a standardized product to be provided in a routinized way through bureaucratic procedures, and more as a diversified process responding to the infinite variety of interactions between pupils and those educating them. To put it another way, education is coming to be appreciated as a function of civil society (of the “third sector” or “mediating structures”) in all its pluralism rather than of administrative rationality.<sup>16</sup> This new way of understanding education is accompanied by a recognition that it is inappropriate that “the state [has] an unchallenged monopoly on the generation and maintenance of values.”<sup>17</sup> Government’s task is not limited to the provision of financial resources to the organizers of education and to drawing up a regulatory framework for fiscal accountability. Government may seek to promote valid social goals through the educational system, though it should be noted that such efforts must be balanced carefully against the right of nonstate schools to represent to their pupils an alternative way of understanding the world.

For example, it seems well established that governments

15. See, e.g., James G. Dwyer, *Religious Schools v. Children’s Rights* (Ithaca, N.Y.: Cornell University Press, 1998).

16. David Osborne and Ted Gaebler, *Reinventing Government* (Reading, Mass.: Addison-Wesley, 1992).

17. Peter L. Berger and Richard John Neuhaus, “To Empower People” (1977), republished in *To Empower People: From State to Civil Society*, edited by Michael Novak (Washington, D.C.: American Enterprise Institute, 1996), p. 190.

may insist that all schools teach in ways that promote respect for human rights, including the rights of women in employment and in citizenship, but it is not so clear that this implies that religiously conservative schools may not teach that women will achieve their greatest fulfillment as mothers. Here we have a distinction between a rule of economic and civic life, on the one hand, and a personal preference on the other; presumably it is not the business of government to insist that schools seek to shape preferences. Religious instruction as well as teaching from a religious perspective is accepted—often even required—in subsidized schools (as well as in public schools in most cases) in Austria, the United Kingdom, Germany, Finland, Sweden, Norway, Iceland, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Australia, Canada, and Russia. All these countries make provision for “excusal” or for alternative moral instruction on a nontheistic basis for pupils on parental request. In France, government funds the secular instruction in almost all Catholic schools, but the religious instruction is separately funded to preserve the official *laïcité* of the State.

A number of countries require that all schools promote certain values regarded as essential for a democratic society. In New Zealand, approval of a nonstate school requires that it “provides appropriately for the inculcation in the minds of students sentiments of patriotism and loyalty.” In South Africa, schools have a major role in building societal consensus around a set of goals intended to promote civic peace and cooperation. The Spanish constitution requires that private schools provide instruction on the basis of respect for the principles of human and civil rights. In Sweden, private schools (whether subsidized or not) may receive approval only if the instruction they provide is based upon such democratic values as open-

ness, tolerance, and objectivity. This does not preclude the school from having a confessional character.

### **May Subsidized Schools Discriminate on Religious Grounds in the Admission of Pupils?**

Most Western democracies forbid discrimination on the basis of religion in the provision of public services, but the situation may be different when those services are educational and when some providers educate on the basis of a religious or philosophical viewpoint. In a number of countries, a subsidized school may use criteria for admission of pupils that are appropriately related to the educational mission of the school. In Austria, nonstate schools may select pupils based on the religion or the home language of the applicant. In Belgium, the school board can deny admission provided that the grounds are not based on improper criteria by which human dignity could be at stake, and nongovernmental schools can use religious criteria in admissions. In Canada, it is in principle accepted that Catholic schools give preference to Roman Catholics to give effect to their denominational rights, though many admit students regardless of their religious background. In Denmark, a nonstate school is free to determine what criteria to use in admitting and dismissing pupils. In Ireland, the Minister of Education is authorized to issue regulations governing the admission of pupils to subsidized schools. The Education (Welfare) Act states that the board of management of a recognized school “shall not refuse to admit a child as a student except where such refusal is in accordance with the policy of the recognized school concerned.” For example, a Catholic school could decline to admit a non-Catholic child if a Catholic were seeking the same place, or if so many non-Catholic children had been admitted that the identity of the school were

threatened. Similarly, in Australia enrollment preference may be given to a student whose family is a member of the relevant church or religious body. In the Netherlands, the board responsible for each nonstate school or group of schools has the authority to admit or deny admittance. In Germany, nonstate schools are in theory free to admit pupils who, in the school's judgment, are most likely to benefit from their program. However, it is forbidden to admit only children from wealthy families. In Portugal, nonstate schools have the right to decide whether to admit applicants, without any nondiscrimination requirement, and may adapt admission policies that give preference to children from specified religious denominations. In Russia, the admission criteria registration procedures are defined by the founder of an educational establishment in its charter.

Other countries do not allow such admissions criteria. Private schools receiving vouchers and public charter schools in the United States, if oversubscribed, must use random selection among applicants; other, unsubsidized, private schools may use any admission criteria except race. To be legally approved, a nonstate school in Sweden (whether subsidized or not) must admit all pupils who apply, within its limits of capacity, and they must be open to all and free of charge to receive public funding. In Norway, publicly funded nonstate schools must accept applicants without regard to where they live, and must accept any applicants who would meet the admissions requirements of equivalent public schools. *Centros concertados* in Spain must admit pupils on the same basis as public schools, without applying religious criteria, but in choosing a school with a religious *ideario*, parents are accepting the religious instruction and related practices on behalf of their children. In Italy, nonstate schools that seek recognition as equivalent to public schools must admit any applicants who

are willing to accept the educational project of the school. In addition, extracurricular activities that presuppose or demand commitment to a particular ideology or religious confession may not be required. Finally, in France, the *loi Debré* explicitly forbids schools under contract from discrimination in admission. Although the school under contract may not seek to impose belief, parents who enroll their child in a nonstate school can be asked to sign a contract that requires them to respect the way the school operates.

### **May Parents Choose to Educate Their Children Exclusively at Home?**

It is a common misconception that compulsory education also means compulsory schooling. In most countries, it is the provision of education that is compulsory—not schooling—and parents can provide proper education at home. However, in most countries (the United States is the great exception) only a small number of children are schooled at home for academic or social reasons. Home schooling is legally permitted and also monitored by education authorities in Austria, Belgium, Denmark, Italy, most of Switzerland, Iceland, Ireland, France, Norway, Portugal, the United Kingdom, Australia, New Zealand, Canada, the United States, and Russia. In Finland, the constitution provides that “Instruction given at home shall not be subject to supervision by the authorities.”

Other countries in principle forbid home schooling but make exceptions in particular cases. In Spain, home education is allowed for children who would not normally be able to attend school, while in Greece, in the Swiss cantons Schaffhausen and Ticino, and in the Netherlands, home education is admissible for children with individual educational needs. Although the South African School Act provides for the reg-

istration of a learner for education at home, there does not appear to be an express right in this regard. Finally, some countries—Germany, Sweden, Bulgaria—have compulsory school attendance.

### Conclusions

Educational freedom is one of the ways in which a society provides itself with local institutions capable of engaging commitment on the part of ordinary citizens, especially parents, creating the social space for institutions where children can be nurtured on the basis of a coherent worldview of the sort that, in a pluralistic society, no democratic government would be able—should be able—to impose. If Montesquieu was correct that “it is in republican government that the full power of education is needed,” it is nonetheless essential that this power be exercised in ways that are consistent with the requirements of freedom and respect for the pluralistic nature of our societies. By making use of policies that permit and even encourage different means of reaching common educational standards, educators working in nonstate schools (and in truly autonomous state schools also) provide an opportunity for themselves and for parents to exercise other essential rights as well: freedom of conscience, free exercise of religion, freedom of association, and freedom of speech. A diverse provision of schools is thus a necessary response to the growing diversity of cultural, worldview, and educational demands in a free society, and does justice to societal pluralism.

Educational freedom is not a matter simply of allowing for or supporting alternatives to state schools; it also extends to the functioning and influence of public schools. In a number of countries it has begun to be apparent to legislators and other policymakers that the inevitable communication of values by

state schools requires that the parents of the children who will be exposed to these values be involved with decisions about the curriculum and how it will be taught. The fact that parents have typically not chosen the public school that their children attend (in contrast to parents of children in nonstate schools) makes it all the more necessary that they have a voice in what and how the school teaches.

There are several current tendencies that appear in most of the countries covered by our survey. One is a greatly increased emphasis upon the autonomy of individual public schools, accompanied by an emphasis upon standards for educational outcomes. In effect, this is the “horse trade” proposed by Lamar Alexander on behalf of the National Governors Association in 1986: “We’ll regulate less, if schools and school districts will produce better results. . . . [These] changes will require more rewards for success and consequences for failure for teachers, school leaders, schools, and school districts. It will mean giving parents more choice of the public schools their children attend as one way of assuring higher quality without heavy-handed state control.”<sup>18</sup>

“Autonomy” is a constant theme in educational policy discussions, but it is usually closely associated with standards. As one might expect, the increased stress upon outcome standards has implications for publicly funded nonstate schools. As standards for public schools become more explicit and with heightened consequences, inevitably they are extended to their rivals—“free schools” as they are called in Belgium. This leads to the second tendency that we have noted: the distinction between public and nonpublic schools is becoming increasingly meaningless. As public schools enjoy more autonomy,

18. National Governors Association, *Time for Results* (Washington, D.C., August 1986).

and nonstate schools are subjected to more accountability for results, it becomes harder and harder to tell them apart. This is obvious when we consider charter schools in the United States. Although they are legally “public” schools, they operate very much like nonpublic schools, and are really indistinguishable from nonpublic schools in most other Western democracies: publicly funded, publicly accountable, nondiscriminatory, awarding publicly recognized diplomas, but owned and controlled by a nongovernmental board and free to express a highly distinctive educational character and to select teachers who support that character.

The time seems to be approaching when we will distinguish between schools that provide “public education,” with public accountability, to any child whose parents accept the particular educational mission of the school that they select, and schools that do not do so. Schools in the first category, whether they are operated by local or state government or by nongovernmental sponsors, should receive public funding on the basis of the public service that they offer. This is already the case with privately operated hospitals, day-care centers, nursing homes, colleges and universities, and social agencies of all kinds. The religious character or the private legal status of these institutions have, rightly, not been a barrier to the recognition of their public contribution. The same should be true of nonstate schools, including those with a religious character, which provide public education that meets public standards. There will also continue to be schools that are truly “private” and that are unlikely to seek and should not receive government funding, such as elite independent schools.

Welcome as is the *Zelman* decision of the United States Supreme Court to those who care about educational freedom and social justice, it should not prevent us from continuing to urge that public policy be authentically neutral as between



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religious and nonreligious institutions, without requiring recourse to the excuse that the funds are passing through the hands of parents. Other Western democracies have not required that fig leaf, and it is high time for American public policy to grow up and fund public education in any school that provides it effectively and fairly.