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—**Liberalism
and School
Choice**

PETER BERKOWITZ

I

The debate over school choice presents a puzzling spectacle. On one side are the proponents of choice. In response to the longstanding crisis of our inner-city public schools, they favor more charter schools (schools that directly receive state funds as a result of commitments made in the school's charter). And far more controversially, they favor provision by the state of cash vouchers for parents to use (or if they prefer, not use) at participating public and private schools. In the field of education, the proponents of choice stand for innovation, experimentation, and a diversity of approaches. Interestingly, they are generally thought of as the conservatives.

On the other side are the opponents of school choice. Their response to our failing public schools is to seek to strengthen them, usually by spending more money. The opponents of

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choice stand with entrenched interests, especially big city school boards and teachers unions. They defend the status quo, particularly concerning school governance. And they warn ominously that even small changes to a system that has its roots in the nineteenth century will undermine our shared civic culture. Quite interestingly, they are generally thought of as liberals or progressives.

In one respect, the apparently conservative and apparently progressive positions in the debate over school choice do line up as one would expect. The proponents of choice, in the spirit of much conservative public policy, press for market-based reforms. The opponents of choice, following in the footsteps of most progressive public policy, put their faith in the state. But there is no good reason to suppose in advance of investigation that the market always advances entrenched interests and the state is always a force for progress. Indeed, in the case of school choice there is good reason to reject these propositions.

The considerable confusion and paradox in the opposing positions in the debate over school choice testifies to the inadequacy of our political labels. It also reflects a disagreement about the facts concerning the most effective means to bettering public education, and thus the need to think through more clearly the critical question of government's role in the education of our nation's children as well as the educational role of other crucial institutions and associations, in particular the family. And it invites a reconsideration of the question that underlies much of the disagreement between the proponents and opponents of school choice: what are the ends of education in a free society?

All the confusion and paradox are on display in the United State Supreme Court's 5–4 decision in June 2002 in *Zelman v.*

*Simmons-Harris*¹ upholding the constitutionality of the Ohio school voucher program. Sorting things out requires not only clarifying the legal issues at stake in the case but laying bare the disagreement about the purposes of a liberal democracy that underlies both the debate about what the Constitution requires, permits, or prohibits in the area of school choice and about the educational policies that would best serve the public interest.

II

The United State Supreme Court's 5–4 decision in *Zelman* was not really as close as it seems, at least not if the quality of the constitutional arguments of the five-justice majority is weighed against the quality of the arguments of the four-justice minority. As in sports, the final score can be deceiving. But the tendencies of the bad arguments employed by the dissenters are revealing.

Commonly, progressives or left-liberals criticize conservative judges for elevating abstract principle and formal rules over the real-life situations of the disadvantaged. Yet in dissent Justices Stevens, Souter, Breyer, and Ginsburg displayed an aversion to disadvantaged people's actual choices in favor of choices made by the federal government, a strong preference for rigid principle over concrete political reality, and a strange solicitude for speculative future harm to the body politic at the expense of manifest actual harm to flesh and blood low-income citizens in the here and now. Since such tendencies seldom play so prominent a role in the thinking of the more liberal justices—they are likely to emphasize context, pragmatic considerations, and substantive justice, particularly for the least

1. 122 S. Ct. at 2460 (2002).

well off in society—what brought these tendencies to the fore in the case of school choice?

Judging by the overheated rhetoric and intellectual inadequacies of the dissents, the answer, I think, is a profound distrust of religion and the conviction that the state has an obligation to rescue citizens from its clutches.

The majority opinion, written by Chief Justice Rehnquist and joined by Justices O'Connor, Scalia, Kennedy, and Thomas, is relatively straightforward. As a response to Cleveland's failed public schools, among the very worst in the nation, Ohio crafted a school choice program. The program gives low-income urban parents a variety of options for the education of their children, including cash vouchers that parents can use if they wish to send their children to participating public schools, or participating private schools, religious or secular.

Of the parents who chose the voucher option in the 1999–2000 school year, 96 percent chose to send their children to religious private schools. But the families who chose the voucher option—about 3,700—represent only about 5 percent of the more than 75,000 eligible Cleveland families; the rest chose other options offered by the program, including community schools, magnet schools, and keeping their children in public schools and receiving tutorial aid from the state.

The majority opinion held that the Ohio program and those like it are constitutional, and do not violate the Establishment Clause of the First Amendment, so long as they are neutral in respect to religion and permit parents to exercise “true private choice.” Private choice is truly exercised when “government aid reaches religious schools only as a result of the genuine and independent choices of private individuals.”² Because of

2. *Zelman v. Simmons-Harris*, 122 S. Ct. at 2465.

the variety of options that Ohio offers Cleveland schoolchildren and their parents, no reasonable observer, held Rehnquist, could view the program as advancing or endorsing religion. In choosing to use vouchers to send their children to religious schools, Cleveland parents, stressed Justice Thomas in his concurrence, were exercising their fundamental liberty to educate their children as they deem best.

The dissenters disagreed vehemently. But among themselves they agreed that the harsh realities and unquestioned harms suffered by low-income, mostly minority schoolchildren in Cleveland should not be allowed to override the hallowed principle of strict separation of church and state for which, they asserted, the Establishment Clause has always stood.

In his dissent, Justice Stevens showed his unyielding allegiance to the principle of strict separation by going so far as to argue that the magnitude of the educational deprivation suffered by the Cleveland students and the complexity and indirectness of the interaction between church and state in the challenged program (of which the majority made much) had no bearing on the Ohio program's constitutionality. Never mind "the severe educational crisis that confronted the Cleveland City School District when Ohio enacted its voucher program,"³ Stevens wrote. Never mind "the wide range of choices that have been made available to students *within the public school system*."⁴ And never mind "the voluntary character of the private choice to prefer a parochial education over an education in the public school system."⁵ What was absolutely decisive in Justice Stevens's mind, and what rendered the "Court's decision profoundly misguided," was that in viola-

3. Id. at 2484.

4. Id.

5. Id. at 2485.

tion of the Establishment Clause, it “authorizes the use of public funds to pay for the indoctrination of thousands of grammar school children in particular religious faiths.”⁶

Such indoctrination, Stevens explains, can only lead to political disaster of monumental proportions. “I have been influenced,” Stevens concludes, “by my understanding of the impact of religious strife on the decisions of our forbears to migrate to this continent, and on the decision of neighbors in the Balkans, Northern Ireland, and the Middle East to mistrust one another. Whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy.”⁷

Justice Souter, in a dissent joined by Justices Stevens, Ginsburg, and Breyer, decried the “doctrinal bankruptcy”⁸ of the majority’s opinion. Though he too acknowledged that the situation in the Cleveland public schools was dire, he insisted that the rigid principle of strict separation left him no choice: “If there were an excuse for giving short shrift to the Establishment Clause, it would probably apply here. But there is no excuse. Constitutional limitations are placed on government to preserve constitutional values in hard cases, like these.”⁹ Souter, however, did not actually find the case a hard one. In the Ohio program, he held, “every objective underlying the prohibition of religious establishment is betrayed.”¹⁰

Indeed, for Souter the “enormity of the violation”¹¹ was all but unprecedented. Citing a sentence fragment from Jefferson’s

6. *Id.*

7. *Id.*

8. *Id.* at 2486.

9. *Id.*

10. *Id.* at 2498.

11. *Id.*

“Bill for Establishing Religious Freedom” in Virginia, Souter appeared to embrace the uncompromising view that any tax money that in any way reaches a religious organization is antithetical to freedom.¹² Then, citing a sentence fragment from Madison’s “Memorial and Remonstrance,” Souter seemed to argue that every form of indirect aid to religion involves the state in the shackling of young minds.¹³ And citing no authority and offering not a scintilla of evidence from any source, he warned of a political crisis stemming from the “divisiveness permitted by today’s majority.”¹⁴

Justice Breyer, in a dissent joined by Stevens and Souter, proclaimed that he wrote separately “to emphasize the risk that publicly financed voucher programs pose in terms of religiously based social conflict.”¹⁵ According to Breyer, “avoiding religiously based social conflict” has always been the underlying purpose of the Establishment Clause.¹⁶ Citing University of Chicago law professor Philip Hamburger’s exhaustively detailed new book *Separation of Church and State*, Breyer creates the impression that in the twentieth century the Court elaborated an Establishment Clause jurisprudence that strictly separated church from state in large measure to protect Catholic minorities from persecution by Protestant majorities.¹⁷ Permitting the Ohio program, according to Breyer, represents an abandonment of the doctrine of strict separation and with it an abdication of the Court’s responsibility to protect minorities. Indeed, he believes the program to be “contentious” and “divisive” and to threaten “religious strife.”¹⁸ Like Justice Sou-

12. *Id.* at 2499.

13. *Id.*

14. *Id.* at 2502.

15. *Id.*

16. *Id.* at 2505.

17. *Id.* at 2504.

18. *Id.* at 2507.

ter, however, he fails to offer any evidence that the Ohio program has generated these unhappy consequences or planted their seeds.

The more liberal justices, then, were in agreement that school vouchers fall afoul of the doctrine of strict separation of church and state, and that strict separation serves the core purpose of the Establishment Clause, which is to avert the breakdown of social and political life that comes from conflict over religion. This interpretation of the Establishment Clause and the doctrine of strict separation is wrong—and just why it is wrong is demonstrated at great length by the very scholarship on which Justice Breyer relied—Philip Hamburger’s richly documented study of the history of the doctrine of separation of church and state.

Contrary to Justice Breyer, what Hamburger actually shows is that “the constitutional authority for separation is without historical foundation.”¹⁹ In the eighteenth century, according to Hamburger, the Establishment Clause was thought by most Americans to protect religious liberty by preventing an establishment of religion by the federal government. It was not thought to interfere with a variety of common contacts and cooperation between church and state. Indeed, the Constitution’s prohibition on an establishment of religion by Congress was seen as consistent with—and a protection of—the establishments of religion that existed at the time in several states. In that context, Jefferson represented a distinctly minority view. He advanced the doctrine of strict separation as an expression of his general anticlericalism, seeking to go beyond the prohibition on national establishments to a ban on contacts and cooperation between church and state. The doctrine of

19. *Separation of Church and State* (Cambridge, Mass.: Harvard University Press, 2002), p. 481.

strict separation picked up steam in the mid-nineteenth century, and reached full speed in the twentieth century Establishment Clause cases.

Contrary again to Justice Breyer's view, however, throughout its history, Hamburger emphasizes, the doctrine of strict separation has been primarily used not to enlarge the sphere of religious liberty, which was the original purpose of the Establishment Clause, but to restrict and subvert the liberty of religious minorities. In the nineteenth and twentieth centuries strict separation of church and state was not, as Justice Breyer suggests, the principle that restrained majorities in their intolerance of Catholic minorities. Quite the contrary. As Hamburger demonstrates, strict separation was used to advance that intolerance: Protestants with nativist sympathies invoked it to deny aid to Catholic schools, while at the same time they saw it as permitting public aid to public and private schools that taught a generalized Protestantism. From the perspective of those who led the way in establishing the authority of the doctrine of strict separation in twentieth-century constitutional law, what was "divisive" was not the subtle establishment of a majority (Protestant) religion (or later the establishment of a secular orthodoxy), but the reluctance of Catholics to send their children to the majority's public schools, and thereby participate in the establishment of Protestantism (and later of secular orthodoxy). Eventually the anti-Catholic implications of the doctrine of strict separation were broadened to include a more general suspicion of all religious organizations.

So while Justice Breyer and his fellow dissenters are wrong about the historical lineage of the doctrine of strict separation and the actual purposes to which it has been put, they share a purpose with strict separationists of the past. Betraying a hostility to any religious education different from the education the majority receives, the more liberal justices use the doctrine

of strict separation to limit the reach of such religious education. The hostility can be seen in their rhetorical strategy, which cuts against Court precedent: they focus on where government money ends up—religious schools—and downplay how it gets there—private decisions made by parents to improve their children’s educational opportunities.

The hostility of the more liberal justices to the use of government funds at religious schools in turn often seems to be rooted in hostility to religion itself. This hostility or prejudice can be seen in Justice Stevens’s equation of education at religious schools with “indoctrination.” It can be seen in Justice Souter’s view that religious education deprives the faithful of freedom of mind. And it can be seen in the view expressed most forcefully by Justice Breyer that religious education is incurably divisive. The not-so-subtle message of all the dissents is that religion teaches intolerance and encourages anti-democratic propensities, and for this reason the state must limit to the extent possible the flow of government money to religious schools. This view of religion, at once patronizing and frightened, does not deserve establishment as a constitutional principle.

Vouchers are not a solution to all the ills of our nation’s public schools, though they can be crafted to be consistent with efforts to reform failing public schools, and indeed thoughtful proponents of vouchers see them as part of such reform. Furthermore, vouchers have held little appeal for the suburban middle class, whose members are generally satisfied with the public schools that their children attend. But vouchers and school choice receive strong support from some low-income parents who want alternatives to the broken-down public schools their state and city governments offer them. An interpretation of the Establishment Clause that forbids such programs is in tension with the imperatives of justice. As it

happens, such an interpretation is also in tension with the original and more constitutionally sound understanding of the Establishment Clause. Moreover, an interpretation of religion that sees it as incurably divisive and contrary to the best interests of freedom and equality is at odds with the original and more theoretically sound understanding of the liberal tradition.

III

Just as the more liberal justices on the Supreme Court argue that school choice is unconstitutional on the basis of a flawed understanding of constitutional doctrine and American history, so, too, many liberal political opponents of school choice oppose it on the basis of factually dubious or incorrect charges about the effects of school choice on students and on public schools more generally. In fact, the evidence is mounting that the expansion of choice through charters and vouchers certainly does not diminish, and likely improves, academic achievement. Recent empirical findings, many of which have been the result of studies conducted by Paul Peterson and colleagues, strike hard at the anti-choice movement's central criticisms and more than meet its legitimate concerns.²⁰

The critics see school choice as a sinister and many-sided threat to democracy. They charge that school choice programs appeal to white elites who wish to separate their children from blacks and to religious parents who wish to separate their children from the secular world; that such programs, furthermore, deprive students who take advantage of them of diversity in the classroom, weaken public schools by draining away state money and creaming off the best students, and generally sub-

20. See *Charters, Vouchers, and Public Education*, ed. Paul E. Peterson and David E. Campbell (Washington, D.C.: Brookings Institution Press, 2001).

vert the nation's shared civic culture by teaching a narrow, intolerant sectarian creed. That is to say, the critics believe that the consequences of school choice are generally and for the most part illiberal and antidemocratic.

The facts tell a different story. Mounting evidence suggests that the appeal of school choice programs is strongest among low-income parents in districts with poorly performing schools, and that the primary reason such parents have for taking advantage of choice does not concern diversity or religion but the opportunity to place their children in schools that will provide a better basic education.²¹ The evidence also indicates that charter schools do a better job of providing diversity in the classroom than do regular public schools.²² In addition, evidence shows that programs that provide cash vouchers do not decrease per-student spending in public schools.²³ Far from weakening public schools, some school choice programs, by creating competition for students, may actually improve public schools.²⁴ And contrary to warnings issued by academic political theorists (often teaching at elite private universities) that private schools, especially private religious schools, will fail to teach the values and principles crucial to sustaining a pluralistic democracy, studies show that private schools appear to teach political tolerance more effectively than do public schools.²⁵

In sum, market-based remedies to the crisis of our public schools seem to be on the side of progress, liberalism, and

21. Terry Moe, "Schools, Vouchers, and the American Public," *ibid.*

22. "Chester E. Finn Jr., Bruno V. Manno, and Gregg Vanourek, "Charters, Vouchers, and Public Education," *ibid.*

23. Frederick M. Hess, "Revolution at the Margins," *ibid.*

24. *Ibid.*

25. Patrick J. Wolf, Jay P. Greene, Brett Kleitz, and Kristina Thalhammer, "Private Schooling and Political Tolerance," in *Charters, Vouchers, and Public Education*.

democracy, while insistence that the state is the primary solution to the ills that afflict our public schools seems to reflect a misguided attachment to order and the old ways of doing things. Why is it so hard for so many who see themselves as progressives to see this? Why is the left wing of the Democratic Party so hostile to school choice?

IV

The political root of progressive hostility to school choice no doubt can be traced to the Democratic Party's unseemly dependence upon the teachers unions, which except for increased state spending per pupil, and higher salaries and greater benefits for teachers, have never seemed to have seen an educational reform that they have liked.

The intellectual root of the progressive hostility to school choice goes deeper, however, and it can be traced to a homogenizing tendency that arises within the liberal tradition, going back to Locke, and including Montesquieu, Madison, Mill, and many others, of the fundamental moral premise of the natural freedom and equality of all. That tradition underlies our constitutional order, and it links right and left in our politics today. Its homogenizing tendency is not the tradition's only or essential tendency but it is a powerful one. Homogenizing liberalism wants all individuals to be autonomous, free agents who through the exercise of reason have transcended narrow communal and religious attachments and are bound together by their shared capacity for choosing how they shall live. And homogenizing liberalism wants the state to take responsibility for ensuring the achievement of rational autonomy by its citizens, for the state alone has the resources to rescue children from negligent or sectarian parents and, through public education, instill autonomy. The achievement of rational auton-

omy, the homogenizing liberal believes, is not merely good for the individual but perhaps the highest good and both a benefit and duty of citizenship in a liberal state.

Alas, in pursuing this ambitious educational program, homogenizing liberalism betrays an illiberal impulse and threatens the freedom and dignity of the individual. Even as thoughtful a political theorist and as committed a liberal as Princeton's Stephen Macedo, in the name of autonomy, wants our public schools to form individuals in a single mold. "We have every reason," Macedo writes, "to take seriously the political project of educating future citizens with an eye to their responsibilities as critical interpreters of our shared political traditions—that is, as participants in a democratic project of reason giving and reason demanding."²⁶ Actually, we have good reason to reject such a state-organized and administered political project. Precisely because of the importance of education to a free citizenry, the task of politics should be to the extent possible to protect public education from politicization. Insisting that the state take responsibility for educating all students in Macedo's mold would be well and good if it were among a liberal state's legitimate aims to raise up a nation of citizen political theorists. Perhaps not incidentally, Macedo's view of education might also have the effect of transforming those who have made political theory their profession into the supreme citizens.

Recently (2003), from a very similar perspective, Macedo's Princeton colleague Amy Gutmann has sought to assess the case for school choice.²⁷ Gutman declares that "vouchers are

26. Stephen Machedo, *Diversity and Distrust* (Cambridge, Mass.: Harvard University Press, 2001), p. 165.

27. Amy Gutmann, "Assessing Arguments for School Choice: Pluralism, Parental rights, or Education Results," in *School Choice: The Moral Debate*,

both the most celebrated and the most criticized of the new reform ideas for publicly funded schooling in the United States.”²⁸ Her aim is “to carefully examine their promise,”²⁹ and to discuss the “strongest arguments in favor of vouchers.”³⁰ She concludes that the arguments are generally quite weak. But her assessment is riddled with flaws: it tends to adorn the arguments for school choice with implications and consequences that do not follow, it raises irrelevant and obscurantist objections, and it asserts imperiously but fails to show that the true arguments for vouchers are the most maximal and controversial arguments.

Gutmann addresses first what she calls the argument for school choice from “pluralism.” In what proves to be a typical procedure, she cites a snippet from the position of distinguished legal scholar Michael McConnell: “The ‘core idea’ behind vouchers, McConnell argues, is that ‘families [i.e., parents] be permitted to choose among a range of educational options . . . using their fair share of education funding to pay for the schooling they choose.’”³¹ To which Gutmann replies, “If this is what pluralism means, then the nonvoucher school system in the United States is certainly pluralistic.”³² She further contends that the demands of the school choice advocates who argue from pluralism have already been met by the system currently in place and therefore vouchers are superfluous. This argument is plain silliness: pluralism is not some sort of fixed quantity of alternatives, but rather a systematic orientation or

ed. Alan Wolfe (Princeton, N.J.: Princeton University Press, 2003), pp. 127–48.

28. Gutmann, “Assessing Arguments,” p. 127.

29. *Ibid.*

30. *Ibid.*, p. 128.

31. *Ibid.*

32. *Ibid.*, p. 129.

openness to new alternatives and experiments. Moreover, it is equally unresponsive to the best pluralist arguments for school choice for Gutmann to complain that the evidence is lacking that the vouchers *promote* pluralism.³³ Put aside for the moment that she does not address the studies that suggest that students in private secular and religious schools actually may develop more pluralistic and participatory dispositions.³⁴ The fact is that the strongest argument for school choice only requires that vouchers be *consistent* with pluralism, which Gutmann does not deny.

Gutmann's assessment of what she calls the "parental rights" argument is similarly flawed. For starters, she subtly reworks it, substituting an extreme and indefensible version for the balanced and respectable version she actually cites. Another distinguished legal scholar, Charles Fried, argues, according to Gutmann, that, "the right to form one's child's values, [and] one's child's life plan . . . are extensions of the basic right not to be interfered with in doing these things for oneself."³⁵ To put Fried in his place, Gutmann invokes a few phrases from John Stuart Mill, who in *On Liberty* did deride the view that "a man's children were supposed to be literally . . . a part of himself," and adamantly denied the presumption that parents have a right to "absolute and exclusive control" over their children.³⁶ Fair enough, but the extreme views Mill condemns are not implied in the fragments from Fried that Gutmann quotes nor does Fried argue for them elsewhere. Notwithstanding Gutmann's obscurantism, the serious moral and constitutional question is not whether parents have rights with

33. See *ibid.*, pp. 129–36.

34. See, e.g., Wolf et al., "Private Schooling and Political Tolerance."

35. Gutmann, pp. 136–37. See also Charles Fried, *Right and Wrong* (Cambridge, Mass.: Harvard University Press, 1998), p. 152.

36. Gutmann, p. 137.

regard to their children. They do. Nor is it whether those rights are absolute. Of course they are not. The question is how far parental rights extend, and where and under what circumstances do the state's right and obligation to ensure that each child receive a basic education clash with parents' right and obligation to educate their children in accordance with their best judgment about what serves their children's best interests.

The argument for school choice in no way depends on the illiberal argument that Gutmann imputes to Fried as the essential argument, that parents' rights over their children are absolute. It does depend on the sensible and decent argument, consistent with liberal principles, that a special relation obtains between parents and children, that parents have both a right and a duty to educate their children, that that right is limited by the purpose of education, which is to enable children when they reach maturity to govern their own lives, that the state has an interest in ensuring that children acquire the basic knowledge and skills they need to maintain themselves as free citizens, that this goal can be achieved in a variety of ways including public and private schooling, and that consequently the state ought to grant parents wide but not unlimited latitude concerning decisions about how their children should be educated. By the way, this more refined liberal position, which indeed supports school choice, is also, contrary to what Gutmann implies, entirely consistent with the extended account of education John Stuart Mill provides in Chapter 5 of *On Liberty*. Indeed, though one would never guess it from the use Gutmann makes of the truncated phrases she adduces from *On Liberty*, Mill clearly believed that the primary responsibility for ensuring the education of children lies with parents.

Gutmann also attacks the strand of the parental rights argument that emphasizes the rights of, or what the state particularly owes, poor parents and their children. She insists that

proponents of vouchers who think that poor parents whose children attend woefully deficient public schools should have the same opportunity that rich parents have to send their children to private schools misunderstand the true character of their argument:

The problem with defending vouchers as a second or third best response on grounds of fairness to poor children is that the inner logic of voucher proposals—and the aim of many proponents—is equal public financing for all parents, regardless of their income and wealth, to pick a private or public school for their children at public expense, not good schooling for all children.³⁷

Gutmann is wrong about the inner logic of voucher proposals, and she does not even offer an argument to refute. The fact is that there is no inconsistency in holding that voucher plans are one among many remedies for chronically failing public schools, and that they can be crafted to be consistent with, indeed complemented by, simultaneous efforts to improve public schools.

As were her assessments of the supposed fallacies of the arguments from pluralism and parental rights, so too is her assessment of the fallacies of what she calls the argument from “educational results” defective. She quotes prominent political scientists John E. Chubb and Terry M. Moe as arguing that a voucher plan “has the capacity, *all by itself* to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways.”³⁸ But in the very next sentence in her rendition of the argument, she changes it: “Vouchers uniquely have this capacity, advocates say, because competition in a free market is the only way of really improv-

37. *Ibid.*, pp. 139–40.

38. *Ibid.*, p. 140.

ing the quality of just about anything people want in the world, and parents certainly want better schools for their children.”³⁹ This time she does not cite Chubb and Moe or for that matter any of those “advocates” who believe that the market is a remedy to *all* the defects of social life. Perhaps she abandons citation because it interferes with her creation of a strawman. Her rendition certainly is not Chubb and Moe’s argument: the claim that a voucher plan can bring about *all* the desired transformations in education is not the same as the claim that *only* a voucher plan can bring about the desired transformations.

The strongest argument from educational results is that since all other remedies have failed, and since the teachers unions have a stranglehold on the bureaucracies that control schools and have given marching orders to the Democratic Party to resist any and all market-based reforms (a political reality about which Gutmann says precisely nothing), injecting market incentives into the system can have a salutary effect. Gutmann notes that so far the data do not show marked improvement in the test scores of the students in voucher plans and do not suggest that “school choice by itself is anything close to a surefire way of improving the education of a sizable proportion of students at risk.”⁴⁰ But why should voucher plans have to meet a higher standard than public schools? And since when must a remedy for a massive injustice—in this case the quality of inner-city education—be “surefire”? Why is it not enough that the available evidence is that carefully crafted voucher plans can provide a partial remedy for a small proportion of students who are suffering as a result of broken-down public schools?

39. Ibid.

40. Ibid., p. 142.

In the end, even Gutmann is forced to admit that some forms of school choice are defensible and desirable:

. . . it must also be said that some voucher programs—those which target the children most at risk in inner-city schools—offer long awaited hope for at least some parents. If inner-city public schools do not improve and suburban schools continue to be off-bounds to inner-city parents, it will become politically harder and democratically less defensible to oppose subsidizing private schools that are willing and able to provide a better education on a nondiscriminatory basis to at least some otherwise at-risk students. Some private schools in our inner cities—Catholic schools especially—have demonstrated that they are able to do this for a small but significant number of inner-city students.⁴¹

What Gutmann does not acknowledge is that the forms of school choice to which, at the end of her article, she grudgingly gives her blessing, and reluctantly allows are consistent with democratic imperatives and constitutional constraints, are precisely the sort of the programs the Court upheld as constitutional in *Zelman*.

It should not be as hard as it has proved to be for liberals such as Macedo and Gutmann to appreciate the liberal imperative in the realm of education to give choice a chance. It is a charm and a strength of our constitutional democracy that it provides for more than a single way of being a good citizen and a good human being. Of course public life depends upon a common culture and shared moral principles. And literacy, toleration, and respect for the rule of law are essential, and should be encouraged by the state, through public education and through some sort of minimum national standards. But there is no good reason to suppose that expanding the range of options available to parents for the education of their children

41. *Ibid.*, pp. 147–48.

will produce a generation less able to govern themselves. Moreover, it needs to be better appreciated that those who care for themselves and their friends and their family, who obey the law, and prefer fly-fishing or stamp-collecting or serving lunch to homeless men and women at a community soup kitchen to spending their evenings and free weekends engaged “as critical interpreters of our shared political traditions” also deserve our respect as good citizens and good human beings. Indeed, our country is large and capacious and tolerant enough to recognize as good citizens and good human beings those who not only do not choose to place critical interpretation of our shared political traditions at the core of their lives, but who believe that there are spheres of life in which the ideal of autonomy has a subordinate role.

We need to resist the homogenizing liberalism that seeks to compress all citizens in a single mold. And we have good grounds, rooted in the liberal tradition, for doing so. For coexisting in the liberal tradition alongside the ambition to homogenize is an aspiration to respect individuals and render public life more secure by blending, in politics as well as in the individual soul, the variety of human goods. And on reflection this blending liberalism does better respect individual liberty and our choices about how to live our lives.

It is, however, a confusing feature of the history of our ideas that in the liberal tradition John Stuart Mill is an outstanding representative of both kinds of liberalism. His *On Liberty* famously evokes the hero of homogenizing liberalism, the autonomous, freely choosing, self-sufficient individual, under no authority save his or her own reason. In the name of autonomy, homogenizing liberalism officially opposes state meddling in an individual’s private affairs, except to prevent harm to others. It promotes liberty of thought and discussion as the best of means for forming strong, independent individuals

capable of understanding and dealing with the complexities of moral and political life. And it understands individuality as an exalted ideal capable of achievement by only a few extraordinary individuals. In reality, however, the homogenizing liberalism that takes its cue from Mill is often eager to wield the authority of the state to regulate private affairs so as to liberate individuals from the ways of life it deems hidebound, cramped, or fettered, which is to say religion and tradition and hierarchy; it is partial to thought and discussion that presupposes or affirms the good of autonomy; and it seeks to impose the exalted ideal of individuality through state regulation of public education.

But the same Mill also teaches, in *On Liberty* (and throughout his voluminous writings), that the claims of individual liberty must be heard fairly and harmonized with those of society and custom and tradition, both for the good of the individual and for the good of society:

Unless opinions favourable to democracy and to aristocracy, to property and to equality, to co-operation and to competition, to luxury and to abstinence, to sociality and individuality, to liberty and discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due. . . .⁴²

Moreover, in *Considerations on Representative Government*, Mill insists that modern constitutional democracy is urgently in need of both a party of order and a party of progress, a conservative party and a progressive party, because each party

42. *On Liberty*, in *Essays on Politics and Society*, ed. J. M. Robson (Toronto: University of Toronto Press, 1977), chap. 2, p. 251. See also: *On Liberty*, chap. 2, p. 245; and *Considerations on Representative Government*, in *Essays on Politics and Society*, chap. 2, pp. 383–89.

focuses on an essential interest of the state and each by itself neglects the essential state interest to which the other is devoted.⁴³ And in essay-length tributes, Mill passionately argued that any free country would benefit enormously, as had England, from both the contributions of Jeremy Bentham, who determinedly if one-sidedly showed the dependence of progressive political reform on the power of the cold, calculating intellect, and of Samuel Taylor Coleridge, who tenaciously though tendentiously taught the wisdom of the heart and the reason of tradition.⁴⁴ In so arguing, of course, Mill also displayed the utility and the truth of that blending liberalism that seeks to reconcile opposing moral and political positions and competing human goods.

Mill's account in *On Liberty* of the state's limited but vital role in education also reflects the spirit of blending liberalism.⁴⁵ Active involvement of the state was necessary to correct the neglect of "one of the most sacred duties of parents," that of providing one's child with "an education fitting him to perform his part well in life towards others and towards himself."⁴⁶ It was "almost a self-evident axiom, that the state should require the education, up to a certain standard, of every human being who is born its citizen."⁴⁷ Parents who failed to cultivate the moral and intellectual capacities of their child committed a "moral crime" that obliged the state to step in.⁴⁸ Mill did not want the state itself to be in the business of pro-

43. *Considerations on Representative Government*, preface, p. 373. See also *On Liberty*, chap. 2, pp. 252–53.

44. "Bentham," and "Coleridge," in *Essays on Ethics, Religion, and Society*, ed. J. M. Robson (Toronto: University of Toronto Press, 1969).

45. This discussion draws on my *Virtue and the Making of Modern Liberalism* (Princeton, N.J.: Princeton University Press, 1991).

46. *On Liberty*, chap. 5, p. 301.

47. *Ibid.*

48. *Ibid.*, pp. 301–2.

viding a universal education: he feared intractable controversies about the content of the curriculum; and in the event of agreement, he feared a uniform education that cultivated nothing so much as uniformity of opinion. But Mill did want the state to enforce a universal standard of education through the administration of public examinations. Parents would be held legally responsible for ensuring that their children acquired a certain minimum of general knowledge. Payments from the state would be provided to parents who could not otherwise afford basic education for their children. In addition, the state would provide certification through examination in the higher branches of knowledge. To prevent the state from improperly influencing the formation of opinion, such examinations—in particular in the fields of morality, politics, and religion—would be confined to facts and opinions on great intellectual controversies that had been held rather than to the truth or falsity of those opinions.⁴⁹ In sum, Mill saw the goal of education as disciplining the mind but not in preparing children for a politically engaged life; he ascribed to the state a variety of obligations in the field of education but he emphatically denied it a monopoly; and he held that the primary duty for the education of children resides with parents.

Given what we now know, and viewed in the light of a blending liberalism, progressives and conservatives alike should welcome further experiments in school choice. Such experiments certainly do not pose a discernible threat to public school education in America. Nearly 90 percent of American children continue to be educated at conventional public schools, and the proportions are unlikely to change significantly anytime soon. Indeed, part of the experiment in school choice should involve new forms of public schools, prominent

49. *Ibid.*, pp. 302–5.

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among which are the charter schools already in place. And certainly we should do what we can to improve public schools. Meanwhile, for those in greatest need, for those children of low-income parents who seek an alternative to chronically decrepit inner-city public school education, the preliminary results strongly indicate that choice programs do no harm, and appear to do some good. This finding alone gives good reason for the party of order and the party of progress to work together to give school choice a chance.