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CATHOLICS AND U.S. EDUCATION POLICY

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Catholic educational policy in the United States has developed through court battles and attempts to influence the Congress and the White House to protect the interest of Catholic parents, students, and schools. This essay reviews Catholic participation in the American political system through the lens of the "child benefit theory" and urges greater Catholic involvement in the future.

Throughout American history, Catholics have been outside the U.S. educational mainstream. During colonial times, the settlers viewed education as a means to advance Puritan, Anglican, and other Protestant religious beliefs, particularly in New England and the Middle Atlantic regions. In the South, education served a more pragmatic purpose, that is, to provide individualized learning for the wealthy class of planters through the use of private tutors. Later, the Methodists and the Baptists developed the common school to teach more relevant subjects and to insure character building as part of the curriculum. In all cases, however, the U.S. educational infrastructure was controlled by Protestants and served their notions of religious and economic well-being for their communities. Catholics were not part of this early society. Their numbers were few, and those who did come to the New World were usually among the poorest and least educated in their homelands.

Thus, Catholics viewed American education differently after their arrival in the colonies. They separated themselves socially and educationally from the Protestants and used schooling both offensively and defensively. Catholics saw education as a way to inculcate their own religious and cultural beliefs and protect their children from the many evolving Protestant edu-

cational laws. Catholics felt their children were victimized (Laycock, 1986) by being required to read the King James version of the Bible and being forced to recite the Lord's Prayer in a manner they considered heretical. As a result, Catholics chose to establish their own schools to counter the de facto Protestant educational system in the United States during the post-colonial period.

By the end of the Civil War, however, the numbers of Catholics coming to the United States began to swell; and their religious views, which were considered foreign, were now also considered to be suspect. Papists all, the Catholics were known to be loyal to Rome rather than to the U.S. and a threat to the religious freedom that the early settlers sought to gain by coming to the New World. Thus, by the end of the Civil War, nativists and other anti-Papists who feared the growing Catholic population moved to limit their increasing social influence. They created a political movement embodied in the Know-Nothing Party and agitated for what came to be known as the Blaine Amendment. It was a bill introduced by President Ulysses Grant in 1875 and passed by the House of Representatives to prohibit the use of federal monies for religious education (i.e., Catholic schools on both the national and state levels). Although it failed enactment by only two votes in the Senate, the Blaine Amendment's bias remains the unofficial public policy of the federal government toward parochial schools.

CATHOLIC JUDICIAL CHALLENGES TO U.S. EDUCATION POLICY

As the Catholic population continued to grow at the turn of the 20th century, so did the number of its schools. Soon, however, various states and local school boards looked at this phenomenon with alarm and began to challenge their very existence. As a result, Catholics took legal action to redefine U.S. educational policy through assertive judicial action. They soon established themselves as antagonists in the public education arena, acting as both litigants and *amicus curiae* (friend of the court), to change the status quo in the areas of school choice and child benefits.

In 1923, the Oregon state legislature passed a law compelling children to attend the state's public schools. Effectively denying the right of parents to direct the education of their children, the law was challenged by Catholics on the basis of a lack of substantive due process. In a case that went all the way to the Supreme Court, the Justices held in *Pierce v. Society of Sisters* (1925) that the child is not the mere creature of the state. Holding for the Catholic parents, the Justices reasoned those who nurture him and direct his destiny have the right, coupled with the duty, to recognize and prepare him for additional obligations.

Using the courts then, Catholics became the first minority group in American society to challenge U.S. educational policy and to win the right to decide where and how their children would be educated. Thus, Catholics sowed the first seeds of the current school choice issue. They also learned quickly that the most effective way to redress their future educational grievances, in light of the Blaine policy, would have to be through the judiciary.

In 1930, Catholics began a long series of legal battles to win child benefits for their students who attended parochial schools. At that time they challenged the actions of the state of Louisiana for refusing to provide funds for textbooks for students in Catholic schools. In *Cochran v. Louisiana State Board of Education* (1930), Catholics argued that using state funds to provide textbooks for students in parochial schools provided each one with an essential child benefit. In other words, they viewed state assistance in the lending of textbooks akin to providing firemen and policemen to assure public safety. They argued that books were an integral part of education and a right that all students had by nature of the fact that they were students. Again the Supreme Court ruled for the Catholics, establishing another new standard in U.S. educational policy, that of child benefits.

With their school system becoming well established, Catholics faced another major child benefit challenge in 1947. At that time the state of New Jersey enacted a law that allowed public monies to be used to transport students from Ewing Township to a parochial high school in Trenton. That transportation was given to all students because Ewing Township did not have a secondary school. The law was challenged in *Everson v. Board of Education* (1947) on the basis of both the 1st and the 14th Amendments, that is, that it violated the principle of separation of church and state and that public monies had been used for private purposes.

Both Cardinal Francis Spellman of New York and Cardinal Samuel Stritch of Chicago believed that the case would have a profound impact on the viability of the Catholic educational system and took charge of the case. Stritch, most concerned with the freedom of religion implications of the case, prevailed on John Courtney Murray, the leading Catholic moral theologian of the day, to head up a legal team within the National Catholic Welfare Conference to write an amicus brief in support of the state of New Jersey (Formicola, 1995). In it, Murray articulated the major Catholic theological principle of church and state: that the purpose of such relations was to maintain the freedom of the Church to teach, rule, and sanctify its adherents (Formicola, 1995). Just as importantly, however, he also clarified the Church's major educational principles as well. First, he claimed that schooling fell into a sphere of interdependence between church and state, a major responsibility of the church, especially as it dealt with character and spiritual development. Second, he contended that education was a church obligation that the state should protect, or one to which it should at least accommodate.

And third, he argued that church members, acting as parents, had the primary right to choose and guide the education of their children, as the Supreme Court had already ruled in *Pierce v. Society of Sisters* (Kurland & Casper, 1975).

These arguments were juxtaposed and used to articulate the relationship between church and state with regard to Catholic educational policy. Simply put, he maintained that the parents' role in the education of their children is a primary one and that the state's role in education is a secondary one granted to it by its citizens. That fact was never challenged in the decision handed down in *Everson*. Instead, the Court chose to rule narrowly, allowing the state to pay the cost of busing students to parochial school and maintaining that it could do so because it represented a child benefit. It ignored most of Murray's theological and historical arguments and instead focused on a broad definition of the establishment clause of the First Amendment. That explanation made *Everson* a landmark case in church/state law, setting down the parameters of the modern notion of separation of church and state.

Although the Church had gone on the record stating its legal and theological claims for educational accommodation, the Court's lack of attention to them prompted Murray to retort, "We have won on busing, but lost on the First Amendment" (Formicola, 1995, p. 56). Little did Murray realize, however, that the principles he articulated in the amicus brief in *Everson* and the child benefits theory and practices articulated in both *Cochran* and *Everson* as led by Catholics would serve as the basis for a myriad of legal claims for child benefits in the future. Such cases as *Board of Education v. Allen*, *Wolman v. Walter*, *Mueller v. Allen*, *Witters v. Washington Department of Services for the Blind*, *Board of Education of Kiryas Joel Village School District v. Grumet*, *Zobrest v. Catalina Foothills Board of Education*, and *Agostini v. Felton* attest to this fact.

In 1968, the Supreme Court enlarged the principle of child benefits by allowing indirect assistance to students. In *Board of Education v. Allen* (1968), it reiterated the right of the state to expend public funds for textbooks in parochial schools, and in a further step, in *Wolman v. Walter* (1977), it added testing, diagnostic services, and guidance fees to the list of child benefits allowed to students in nonpublic institutions.

One of the most compelling cases dealing with child benefits was decided in 1983, when the Court, in *Mueller v. Allen* (1983), allowed parents to take a tax deduction for certain education expenses—including private school tuition—for children who attended any school in Minnesota. The case, which is cited regularly, has the potential to serve as a precedent for federal tuition tax credit, a possible form of school choice.

In the same vein as *Mueller*, in 1986 in *Witters v. Washington Department of Services for the Blind*, the Court ruled that vocational funds granted to a blind man could be used as a "benefit" to attend a seminary. And in 1993, in

the case of *Zobrest v. Catalina Foothills Board of Education*, a deaf student who had been denied the right to an interpreter because he attended a parochial school was granted relief in his action against the community. Acting as a litigant in the case, the United States Catholic Conference (USCC) for the National Council of Catholic Bishops brought suit against the Catalina Foothills Board of Education, arguing that Jimmy Zobrest had been denied his child benefits because he was Catholic. In a change of jurisprudence, the Catholics argued for personal rather than institutional rights, and won child benefits on the basis of a discrimination suit.

Catholics have continued to file amicus briefs to support both child benefits and school choice. In the early 1990s the USCC became involved in the case of *Board of Education of Kiryas Joel Village School District v. Grumet* (1994). In that case, the Satmar Hasidim of Monroeville, New York, attempted to establish an incorporated village within their town to be known as Kiryas Joel, a condition which would allow them to set up a special school to educate their handicapped children. They did this in order to comply with two Supreme Court decisions, *Aguilar v. Felton* (1985) and *Grand Rapids School District v. Ball* (1985), which held that providing remedial education, even at a neutral site, for students in a parochial school was unconstitutional. Arguing that the students' disabilities were compounded by the added burden of having to attend a school outside their environs, the Hasidim argued for a permissible zone of accommodation by the state to assist them in their plight. The Catholics sided with the Hasidim, arguing for a complete reversal of *Aguilar v. Felton*.

The Court ruled against the Hasidim. But in a concurring opinion written by Sandra Day O'Connor, the Justice provided the orthodox Jews with a legal means to sidestep the decision. Following her directions, the Hasidim complied, and again the case is wending its way back to the Court.

Of special interest, however, is the fact that the call for a reversal of *Aguilar* as argued by the Catholics in their amicus brief became a reality. In 1997, the Court in *Agostini v. Felton* agreed to rehear a case and for the first time in its history reversed itself. Again, Catholics had been extremely important in bringing about a change in public policy regarding the legality of child benefits and assuring that remedial education could be provided in parochial schools for all students.

Today, Catholics are again in the judicial forefront, playing a key role in the area of child benefits. *Mitchell v. Helms* (1999) was argued before the Supreme Court in the fall, and its decision is expected in the summer of 2000. It is being watched very closely because there are many who believe that if child benefits are enlarged to the extent that this case may allow it could have implications for public vouchers and, ultimately, for school choice.

Mitchell v. Helms (1999) deals with a law that was passed by the Board of Education of Jefferson Parish, Louisiana, to provide funds for special ser-

vices and instructional equipment to implement the Clinton administration's proposal to link all classrooms—including those in parochial schools—to the Internet. A group of Louisiana taxpayers opposed the legislation and brought suit against the state, arguing that computers had such a limitless reach that they could be used for religious as well as educational reasons. The 5th Circuit Court of Appeals agreed and held that the law allowing for such child benefits was a violation of the principle of separation of church and state. The Catholic-school parents challenged the ruling and were joined in their suit by the Clinton administration. Together, they appealed to the Supreme Court, arguing that public assistance for information technology did not violate the law, nor did it support any type of religious indoctrination.

This argument was based on the *Lemon* test, a three-pronged test established in the decision of the case of *Lemon v. Kurtzman* (1971). In that case the states of Pennsylvania and Rhode Island attempted to supplement the pay of teachers in parochial schools with public monies because they taught secular subjects. The Court rejected the legislation and established a three-prong test to determine if legislation violated the principle of separation of church and state. It consisted of the following questions: 1) does the legislation serve a secular, legislative purpose? 2) does the legislation advance or hinder religion? and 3) does the legislation create an entangling alliance between church and state? In *Mitchell v. Helms* (1999), Catholics and the Clinton administration argued that the expenditure of monies for computers did not hinder or advance religion. They contended that the *Lemon* test was not violated.

The case has generated 21 amicus briefs, an unusually large number of presentations for this type of issue. They include arguments from the National Education Association, the American Civil Liberties Union, the Baptist Joint Committee, and others opposed to the extension of such child benefits. On the other side, the United States Catholic Conference, the Catholic League for Religious and Civil Rights, the Knights of Columbus, the public law firms of the Becket Fund, and the Institute for Justice support the parochial school parents. Conservative groups such as the Rutherford Institute, the Pacific Legal Foundation, the American Center for Law and Justice, the Christian Legal Society, as well as government entities such as the city of New York and the state of Ohio are also involved.

The arguments of these groups are important, to be sure, but it is those of the USCC that reflect the nature of the Catholic interest in the extension of child benefits beyond the state of Louisiana. Their amicus brief contends that the Court's First Amendment jurisprudence has evolved; that it is no longer arbitrary or situational; that it is instead more flexible and concerned for the fundamental needs of people. Second, they called on the Court to continue its precedents guided by history and experience, especially those that accommodate developing educational needs. Third, they called on the Court to apply

the principles of *Agostini* in the context of other types of governmental aid. Fourth, they argued that the principle of separation of church and state was not violated by the Jefferson Parish legislation because it served a secular purpose, did not hinder or advance religion, created no entangling alliances, and met all the *Agostini* criteria. In short, the USCC concluded that the expenditure of federal funds for Title II of the Elementary and Secondary Education Act of 1965 was a valid continuation and expansion of child benefits.

The decision in *Mitchell v. Helms* (1999) is expected to be a landmark one because it may be a stepping stone to increased educational aid and vouchers. Should that occur, scholars agree that greater pressure would be brought to bear on the Supreme Court to hear a challenge to the issue of school choice, particularly since the high court refused to hear just such a case last year.

Jackson v. Benson (1998) was a test of the constitutionality of a program originally enacted in Milwaukee in 1990 and held constitutional at the state level in 1992. The program, known as the Milwaukee Parental Choice Program (MPCP), allowed up to 1% or 1,000 economically disadvantaged pupils in the Milwaukee public schools to use their state share of education funds as full payment of tuition in nonsectarian private schools. Those schools had to meet certain state standards and agree to participate in the program. Later, a new plan, enacted as part of the 1995 state budget bill, increased the number of children eligible for the program to 15,000 and included religious schools among their educational options. In 1998 a suit brought by Warner Jackson, the Milwaukee Teachers Education Association, and others contended that the Milwaukee Parental Choice Program violated the First Amendment as well as the public purpose doctrine of the Wisconsin Constitution. And in a more specific challenge, Jackson and groups questioned the continued eligibility of those children who were enrolled in the program in September 1995. The Supreme Court, however, refused to hear an appeal, and the state of Wisconsin decided to protect its own program rather than risk its loss by pursuing further federal action to get the Court to hear the case.

Now, however, with the Court's involvement in *Jackson v. Benson* (1998) and the legal pressure that the Catholic Church and other interested parties are bringing to bear on the question of vouchers, it is possible that the issue of school choice will again come to the fore. As of this writing, the court has refused to accept the Milwaukee school choice case, thus leading to speculation that until the Justices themselves have a clearer commitment to the issue, no one side would be willing to hear the case. School choice is too volatile an issue to be argued until it becomes more certain that a clear win is possible.

CATHOLICS AND EDUCATIONAL LEGISLATION

Catholics have not been as successful in their attempts to influence federal legislation as they have been in the judicial arena. While the failed Blaine Amendment of 1875 closed many legislative doors to Catholics, those metaphorical portals were sealed tight in 1948 with the enactment of the Barden Bill. Officially denying the expenditure of federal monies to nonpublic schools, the Barden Bill was so strongly supported by the Congress that three major attempts to overturn it in later years failed. The Mills-Byrnes Bill in 1972, the Roth Amendment in 1977, and the Vanik Tuition Tax Credit Act in 1978 were all attempts to provide funding in some form from the federal government, but all lacked Congressional approval.

In 1997, however, two major bills were introduced in the 105th Congress, both of which seemed to have the potential to resuscitate Catholic hopes for federal funding for their parochial schools as well as to advance the possibility of school choice in the future. One was a plan to provide scholarships to low-income students in the District of Columbia, and the other was a program to establish tax-free education savings accounts.

At that time, Representative Charles Taylor (R-NC), chair of the House Appropriations Subcommittee of the District of Columbia, attempted to overhaul the District's ailing \$4.2 billion budget. What he recommended was that the poorest children in Washington each receive a \$3,200 voucher to help defray the cost of public, private, or religious education in Maryland, Virginia, and the District of Columbia. Supported by key members of Congress, particularly House Speaker Newt Gingrich (R-GA), Senate Majority Leader Trent Lott (R-MS), and Senator Joseph Lieberman (D-CT), the notion evolved into a bill that would have given 2,000 scholarships to low-income students in the District of Columbia. Both the House and the Senate passed the legislation, and the USCC lobbied hard for the bill, but to no avail. President Clinton vetoed it, claiming that it had the potential to undercut public education.

At the same time, Senator Paul Coverdell (R-GA) and Representative Robert Torricelli (D-NJ) jointly introduced S1133 and HR2645, bills that would have allowed parents, corporations, and foundations to put up to \$2,500 a year in after-tax dollars into tax-free savings accounts. Their bill would have allowed the funds to be used later to pay for tutoring, school fees, home computers, preparatory test courses for college, or private or parochial school tuition for grades K-12. Heavily lobbied again by the USCC, the bill was approved by both the House and the Senate with a \$2,000 cap. But the President again vetoed the legislation. The education savings accounts (ESAs), however, represented a bipartisan shift in congressional sentiment, and gave a glimmer of hope to Catholics about an extension of child benefits and public funding in the future (Morken & Formicola, 1999). Currently,

ESAs are on the agenda of the Congress again and are being considered for passage.

The role of Catholics in these legislative efforts to change U.S. educational policy has changed significantly since their early attempts to bring in a moral theologian to preserve the viability of their schools and to attain child benefits for their students through the courts. With more than 8,000 elementary, middle, and secondary schools enrolling over 2.6 million students in the United States, Catholics now represent a *de facto* educational system within the American infrastructure.

CATHOLIC LEADERSHIP STRUCTURES

Who are these Catholics in charge of Catholic education? In the United States they include, first, the policy-making organization known as the National Council of Catholic Bishops (NCCB) and their administrative arm, the United States Catholic Conference. Its Education Office has often been concerned with monitoring legislation for child benefits and school choice, both in Washington and the various states. Its members also lobby, gather information on experimental projects, and sign off on legislation and governmental communications that speak for the bishops about education. The Education Office recently worked with Capitol Hill staffers to help enact the Coverdell-Torricelli Education Savings Account Bill in 1998 as well as 2000 and interfaced with the White House and the Department of Education to enlist their support on the legislation.

Another Catholic group involved in education consists of the teachers and administrators in the field, embodied in the National Catholic Educational Association (NCEA). A non-policy-making body, the NCEA is charged with carrying out the bishops' educational policies and the Church's social teachings in the classroom. It is an advocate on behalf of Catholic education which is committed to school choice, leadership development, and the preparation of teachers.

A third part of the Catholic educational infrastructure is composed of the individual bishops who are responsible for the functioning of the schools within their particular diocese. While each is guided by the policies set down by the NCCB, each plays a part in making and implementing Catholic educational policy in their particular diocese in the context of its needs. Each interacts with a variety of organizations to advance the goals and the mission of the Church. Thus, the archbishops of New York, Boston, and Chicago, for example, might have general educational policies in common, but pursue the interests of their schools in different ways (Morken & Formicola, 1999).

Recently, Catholic policy makers have employed a strategy that can be described as partnering. Partnering is an attempt to support all efforts by all groups for all types of child benefits and school choice, the latter including

public and private vouchers, charter schools, scholarships, interdistrict transfers, and home schooling. Partnering is different from time to time and place to place; and subject to hierarchical interpretation. It is not rigid or locked into time constraints. It is often ad hoc or anecdotal. In most of these political partnerings, the Catholics are the major players, providing leadership, resources, expertise, and experience to those groups with whom they now interact (Morken & Formicola, 1999).

Thus, the political action of the three major groups of Catholics in matters of education—the NCCB/USCC, the NCEA, and the individual bishops as the leaders of the schools in their dioceses—are difficult to categorize. They act in both a hierarchical and a decentralized way; and the dynamics of their activities vary over time and by state. Yet, even in the midst of this multipronged attempt to have an impact on the federal and state legislative processes, they have been able to forge alliances and create a place for themselves within the interest group infrastructure for the good of their schools.

CATHOLICS, THE WHITE HOUSE, AND EDUCATION

American presidents have been inconsistent in their treatment of Catholic education. They were ignored until 1961 when the first Catholic president, John Kennedy, requested \$2.3 billion for construction costs and teachers' salaries in private and parochial schools. The Congress quickly denied it, but Kennedy was nevertheless able to secure passage of the Higher Education and Facilities Act. For the first time, funds were available for the construction of buildings for nonpublic colleges. Lyndon Johnson, soon after, made the most significant change in financing both public and private education. As part of his Great Society legislation, the Elementary and Secondary Education Act was enacted, permitting direct school funds for a variety of remedial and other child benefits in public and private schools.

It was not until 1980, however, and the campaign of Ronald Reagan that Catholics felt they had a presidential candidate who would aggressively pursue government funding for nonpublic schools. Support for tuition tax credits had been part of the Republican platform in 1972, 1976, and 1980; and one month before the election Reagan promised the members of the NCEA at their annual meeting that their passage would be an integral part of his legislative agenda. Reagan gave the impression that a major change in U.S. educational policy was about to occur. After his election, Reagan did send two versions of a tuition tax credit plan to the Congress, but financial constraints and the priority of Reaganomics prevented the Congress and the President from expending any political currency to support the issue.

The Department of Education, however, under Reagan appointee William Bennett, tried to institute a voucher plan designed to give low-income fami-

lies \$600 per year so that they could use the money to choose from a variety of public and private schools for their children. Again, a lack of congressional support ended the voucher initiative and the potential for the advancement of school choice until the present.

Since the Reagan administration, little effort has been made to change the educational status quo in America. President Clinton has staunchly supported public education, calling for greater expenditures to put it back on track. In his book *Putting People First* (Clinton & Gore, 1992), he called for fully funding Head Start, establishing national education standards, and instituting a federal system of examinations to measure students' and schools' progress. While he supported reducing class size and incentives to recruit and hire teachers, he also called for helping states to develop choice programs within the public schools. However, little was done in this regard. In fact, in 1996 when Clinton was challenged by Republican presidential candidate Robert Dole's support for vouchers, the President responded with a financial package for public education in order to stave off the possibility of school choice in the future.

CATHOLICS AND THE FUTURE OF EDUCATION POLICY

Catholics have made significant inroads to bring about change in American education policy, changes that have made a difference in their attempts to provide education based on religious principles, citizen involvement, and career preparation—but there is a long way to go. Legal challenges have been the most effective means of bringing about change in the past and have the most potential to bring change in the present. But the thrust of Catholic support for enlarged child benefits and eventual school choice must also come from greater legislative and executive pressure for educational change.

The upcoming presidential and congressional elections represent an opportunity for the three major Catholic institutional bodies, the USCC/NCCB, the NCEA, and the local bishops as independent educational agents, to join with parents and others concerned with the course of U.S. public and parochial education. Together, it is possible for all of them to have a political impact on the public debate on this issue. Without partisan involvement, the Church's institutional bodies can still set guidelines for public policy on education as it relates to vouchers and school choice and challenge candidates to debate the issues. All candidates at the federal, state, and local levels should be challenged to articulate and defend their views on education in the public arena. It is the obligation of Catholics to stay informed of pressing issues, to participate in the political process as political candidates, and to demand issue-oriented campaigns. Only in this way can an informed Catholic citizenry concerned with the critical issue of the course of U.S. edu-

cation in the future have any hope of influencing significant political change to advance its agenda.

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