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ABSTRACT

In 1985 the Supreme Court ruled that funding school districts for purposes of aiding children at the parochial schools they attend is unconstitutional. Now it is virtually impossible for parochial schools to receive aid. In order for Chapter 1 of the Education Consolidation and Improvement Act to serve all eliglbe children, including those enrolled in religious schools, funding should be allocated on the basis of the individual child. The child is the best unit of funding for the following reasons: (1) funding the individual allows by-passing the public school system (and state systems as well), providing direct support for the family and children, permitting them to attend parochial schools; (2) funding the individual places the locus of decisionmaking as to what kind of schooling a child should receive with the family, where it rightly belongs; and (3) funding the individual creates an education market, allowing families to "shop" for schools, and schools to compete for clients. Political considerations are examined, and the history of parochial schools in America is reviewed. Alternatives to using the public school system to deliver Chapter 1 services, such as allowing local education authorities to issue their own vouchers to local parochial school students, are discussed. A brief list of references is included. (BJV)

FUNDING THE INDIVIDUAL? AN ESSAY ON THE FUTURE OF CHAPTER 1

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FUNDING THE INDIVIDUAL? AN ESSAY ON THE FUTURE OF CHAPTER 1

The subject of this essay on the future of Chapter 1, the nation's major Federal aid to education law, is framed as a question, "Funding the Individual?" The title is a query because the High Court leaves no choice: it has declared institutional funding unconstitutional. The Justices ruled in 1985 that funding school districts for purposes of aiding children in parochial schools did not pass constitutional scrutiny. The Justices found the use of public schools' employees on the premises of sectarian schools "entangling." Then, as Congressman Augustus F. Hawkins, Chair of the House Committee on Education and Labor, observed:

> On July 1, 1985, the Supreme Court in Aguilar vs. Felton held that the method most commonly employed by local educational agencies to serve private schoolchildren under the Chapter 1 program—that of public school teachers providing instructional services on the premises of nonpublic sectarian schools—was unconstitutional. (After Aguilar vs. Felton, 1986, p. vi)

Would that we could ask the question, "How should services for poor youngsters who attend religious schools be provided?" but the legal rationale for providing aid to parochial school children through the services of public school teachers is gone. With the Aguilar decision in 1985, on-site provision of these federally sponsored services is no longer legal. While new "off-site" options have been tried, they have met with only very limited success. Mobile Chapter 1 vans, brought to the curbside of the private school, portable classrooms parked nearby, and other bizarre remedies have been attempted but they are at best awkward administrative contrivances born of desperation.

No rational person or rational process would produce such practices. They are clumsy, expensive, inconvenient, even dangerous; they are clearly educationally unsound. On what educational basis would private school students be required to travel miles to a nearby neutral site at a public school and back, removing them from their schools and denying them valuable class time, just for a few minutes of remedial reading or mathematics? It is no wonder, then, that services to parochial school youngsters have dropped by 35 to 40 percent between the 1985 and 1987 school years, with the loss of nearly $75 million in Federal funds.

Ironically, few wanted this decision. The Supreme Court Justices heard not a single complaint that public schools' teachers were using Chapter 1 money and time to teach catechism, Talmud, or liturgy. Local school superintendents seemed to appreciate the responsibility of sharing Chapter 1 services with parochial schools; after all, it meant additional employment for their teachers. Even teacher unions, which have opposed services to private schools, welcomed the additional pay and membership that Chapter 1 provided. And parochial schools had overcome their fear of becoming involved with the government and had actually come to depend on the Chapter 1

teachers to help the least able and poorest students in the religious schools.

The Court itself seemed trapped in its own interpretation of the first amendment, prohibiting the "establishment" of religion while ignoring the equally important "free exercise" clause. If the modest practice of dispatching public employees to parochial schools "forges a symbolic link" between church and state, "entangling" the two, two alternatives remain: abandon Chapter 1 for parochial school children altogether or by-pass public schools. The Court leaves supporters of aid no choice but to seek direct student aid, "funding the individual."

The issue, however, is more complex and interesting than simply designing a programmatic response to a Court ruling; it raises fundamental questions about the role of government and the education of the public.

We shall suggest in this essay that the child is the best unit of funding. We shall argue that we should fund the individual for several important reasons:

- Funding the individual allows by-passing the public school system (and state system as well), providing direct support for the family and children, permitting them to attend parochial schools.

- Funding the individual places the locus of decision-making as to what kind of schooling a child should receive with the family, where it rightfully belongs.

- Funding the individual creates an education market, allowing families to "shop" for schools, and schools to compete for clients.

The reasons for prohibiting direct public services to private schools, while enigmatic to the uninitiated (and some veterans as well), have been developing for the last fifty years. As we noted, in school cases, the Court has systematically emphasized half the first amendment. Establishment of religion is abjured by the courts; and to make matters worse for religious schools, a special twist is added to "test" whether religion has been "established." In theory, public funds can go to religious institutions if the monies serve a purely secular purpose. But the tripartite test developed in Lemon vs. Kurtzman (1971) makes it virtually impossible for parochial schools to receive funds:

> First, the statute must have a secular legislative purpose; second its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster "an excessive government entanglement with religion." (cited in After Aguilar vs. Felton, 1986, p. 7)

The court in Lemon created a Catch 22 situation. To meet criteria one and two, public officials must monitor and supervise public employees on the premises of parochial schools, violating the third test. Hence, to fulfill its responsibilities to see that remedial reading teachers are not preaching the Gospel, leading their pupils in prayer, or performing other forbidden religious acts, the public system must walk the halls and inspect the Chapter 1 classrooms. They must become, in a word, "entangled."

In New York City, for example, the Court in Aguilar was aware of the school district's attempt to prevent the teaching of religion, in that supervisory staff:

> took specific steps to be sure that its Chapter 1 classes were free of religious content. It instructed its personnel to avoid all involvement with religious activities in the schools to which they were assigned; it directed them to keep contact with private school personnel to a minimum; and, most important, it set up a supervisory system involving unannounced classroom visits. (After Aguilar vs. Felton, 1986, p. 10)

To be absolutely sure that government funds were not being used to "establish religion" in sectarian schools in New York City, public officials had to become excessively entangled, violating the third "test". It was a lose-lose situation, for if supervisors ignore the actions of remedial Chapter 1 teachers, then they ran the risk of overlooking serious examples of religious practices performed at government expense. But by inspecting, the Court said, agents of the state:

> had to visit and inspect the religious school regularly, alert for the subtle or overt presence of religious matter in title I classes . . . [Such] detailed monitoring and close administrative contact . . . violated an underlying objective of the establishment clause to prevent as far as possible, the intrusion of either (church or state) into the precincts of the other. (cited in After Aguilar vs. Felton, 1986, p. 10)

The theory, then, of purely "secular" purpose without corresponding "entanglement" seems to be a practical impossibility in elementary and secondary education; the court has created a legal Gordian knot which cannot be easily cut, so long as the public schools are the agents to deliver services to sectarian school students.

Alternatives in Theory

There are alternatives to using the public school system to deliver Chapter 1 services. We shall spell them out in the next section. Now, however, we must consider in theory some other basis for funding religious schools, one that avoids the problem that the off-site provision presents. Direct aid to parochial schools has

been attempted since the beginning of parochial school education. In the nineteenth century, when state governments had no places for burgeoning school enrollments, legislatures willingly funded private sectarian schools directly. As McCluskey (1969) notes, "the State of New York had given financial aid to every institution in the City, practically all of which were operated by churches" (p. 60).

While this form of direct aid gradually disappeared, a theory of government aid began to emerge. Designed to overcome the argument that public aid was supporting private schools, the argument was advanced on behalf of the child.

"Child benefit" theory is based on the idea that public support is not for the religious institution, but the child, in the same way that medical assistance is for the patient, not the doctor or hospital. The institution is simply the instrument through which the benefit is derived. In attenuated form, this theory has been used in the United States for the past thirty years to allow public funds to reach disadvantaged children in parochial schools. The aid was channeled through the offices of the local public schools, and worked reasonably well in the period 1965 to 1985, the first two decades of Title I/Chapter 1. Because this pragmatic and practical accommodation has been found unconstitutional, a new, more direct form of "child benefit" must be devised, one that funds the individual, not the system on behalf of the child.

Direct benefits to children under Chapter 1 may require a policy as radical as a Chapter 1 voucher. One less radical alternative, however, deserves serious attention. Permit quasi-public secular agencies to act on behalf of parents, preventing "entanglement" while permitting "free exercise." In other developed democracies, public funds have been made available for students to attend religiously affiliated schools since the nineteenth century. Their purpose is to preserve religious freedom. It is an irony that nations with "state churches," like Denmark, Holland, and Great Britain, are now more sensitive to the needs of other religious groups than purely secular states.

The Danes, for example, provide money for private schooling to parents who find government schools objectionable for any reason. The government is explicit about its reasons for providing the opportunity for parents to have virtually complete freedom of choice in education: "It should be possible for people to choose an alternative kind of education for their children, should they wish, whether their reasons for this be ideological, political, educational, or religious" (Doyle, 1984a, p. 11).

Even more striking, perhaps, is the example of Australia, which, upon independence, adopted—nearly verbatim—the language of the U.S. Constitution's first amendment. Not surprisingly, when the practice of funding religious schools became widespread in Australia, a lawsuit ensued. Infelicitously named the DOGS suit (Defenders of Government Schools), the plaintiffs lost six to one; the Australian High Court ruled that so long as the state treats all religions

equally, including irreligion, no "establishment" of religion has occurred and the individual's "free exercise" of religion is duly protected (Doyle, 1984a).[1]

By way of contrast, the U.S. Supreme Court has by now got itself into an impasse as regards public funding for education in religious schools. Having struck down almost every scheme designed to fund institutions, only funding "individuals" (families and their children) remains. Although "individual" funding schemes may not pass judicial scrutiny either, a few recent developments in the courts suggest that the High Court may look more favorably on an approach that gives public resources directly to families.

In Minnesota, in the case of Mueller vs. Allen (1983), the U.S. Supreme Court decided that a "tuition tax deduction" law was constitutional because the benefits went equally to all families which incurred expenses for the education of their children (whether paying fees to a private or public school) and because there was no evident entanglement of church and state. The family simply "claimed" the costs of education against their state income tax, a scheme requiring no direct public intrusion into private religious life.

And in the Aguilar decision, Justice Powell appears to invite a Chapter 1 voucher plan, one which could be operated without government supervision in parochial schools:

> Our cases have upheld evenhanded secular assistance to both parochial and public school children in some areas [see Mueller vs. Allen] . . . . I do not read the Court's opinion as precluding these types of indirect aid to parochial schools . . . . In the cases cited, the assistance programs made funds available equally to public and nonpublic schools without entanglement . . . . The constitutional defect in the Title I program . . . is that it provides direct financial subsidy to be administered in significant part by public school teachers [and supervisors] within parochial schools—resulting in both the advancement of religion and forbidden entanglement. If, for example, Congress could fashion a program of evenhanded financial assistance to both public and private schools [see Mueller again] that could be administered, without governmental supervision in the private schools, so as to prevent the diversion of the aid from secular purposes, we could be presented with a different question. (Aguilar vs. Felton, 1985)

One purpose of this essay is to see if such a program, one that serves all needy children equitably yet removes the public school system from the business of serving parochial schools, can be fashioned. It is likely, given Justice Powell's opinion, that the High Court would welcome some way out of the dilemma its opinions have created. Denying poor children access to special education services, solely because their parents exercise religious choice, must offer little comfort to the Court. The justices have created a "Scylla and

Charybdis" situation for both religious schools and for the Federal judiciary.

As David Ackerman of the Congressional Research Service notes:

> If a governmental agency channels public aid directly to a sectarian school and the aid is not by its nature or as a result of controls imposed by the agency limited to secular use, the aid program . . . is likely to be found by the courts to have a primary effect of advancing religion and thus be unconstitutional. If, on the other hand, the agency imposes a strict monitoring system to be sure that the aid provided is not used for religious purposes, the aid program . . . is likely to be found to involve excessive entanglement between church and state and also be unconstitutional. (After Aguilar vs. Felton, 1986, p. 10)

By way of contrast and illustration, in the case of Bowen vs. Roy, the Court has offered a strikingly different ruling. Mr. Stephen J. Roy and Karen Miller, Native American parents of Little Bird of the Snow, were informed by the Pennsylvania Welfare Department that their Aid to Families with Dependent Children (AFDC) benefits would be reduced unless they complied with the statutory requirement that all household members receive a social security number. Mr. Roy sued, and in court testified that the use of a social security number would "rob" Little Bird's "spirit." To require Little Bird to get a number violated fundamental religious tenets, or would force the family to give up their AFDC funds.

> The Court found that while an individual may not compel the government to act in accordance with his religious beliefs, neither as a general rule may the government require that an individual breach a religious precept in order to avoid losing governmental benefits to which he would otherwise be entitled. (Foltin, 1986, p. 1)

Political Considerations

But "funding the individual" is more complex than legal and constitutional history alone would indicate. There is a political legacy as well. We must consider political history in assessing recent and future developments.

That Chapter 1 exists at all was due to delicate political compromises worked out by President Lyndon B. Johnson and Congress in the 1960s, that eliminated longstanding roadblocks to Federal aid to education. Since the middle of the 19th century, three stumbling blocks had prevented the creation of significant Federal programs for elementary and secondary schools in the United States: the three Rs of race, religion and "republicanism" (with a small "r"). Republican ideology and democratic practice led to a fear of nationalized education systems and a corresponding preference for local control. To

oversimplify only slightly: Southerners feared that Federal aid would lead to integration; Northerners feared that it would perpetuate racial segregation. Protestants feared Federal aid would lead to public funding of Catholic schools; and Catholics were afraid it would not. And finally, the nation as a whole feared the loss of local control with Federal aid.

These impediments were partially removed by 1965. First, President Johnson's Civil Rights Act of 1964 put to rest Northern fears about Federal aid perpetuating racial segregation; and Southerners, however reluctantly, recognized the end of separate schools by race. Second, the design of the Title I legislation (which started as demonstration projects, left up to local needs and decision-makers) put to rest fears about the loss of local control. Only the religious aid issue remained, and President Johnson brilliantly finessed it. By allowing the public schools to hire public school teachers for Title I programs in parochial schools, and to operate and control the program of "ancillary services," Johnson convinced the public school lobby that they had much to gain and little to lose. After all, why not share education services with all needy children, even those in parochial schools? Either count the Catholics in or lose the entire program, Johnson argued, for the Democratic coalition depended on the Northern, urban (and Catholic) vote as much as the Southern, Protestant supporters.

It appeared in 1965 that literal "funding the individual" was not necessary at the elementary and secondary level. (It is noteworthy that in higher education Federal policy was—and is—to fund the individual.) Title I, then, was designed to have public schools serve parochial school youngsters, in their own schools. While a number of eligible denominational school pupils were not reached by Title I, the approach was a realistic way to solve a thorny political problem.

Enter Aguilar. With this ruling, the Court struck down twenty years of political accommodation and cooperation between private and public schools by destroying the basis for the historic compromises and political coalitions which had brought the very program into being in 1965, and had sustained it through subsequent reauthorizations between 1965 and 1985.

Congress must now act to renew Chapter 1, and it faces the same problem it did two decades ago: how to serve all eligible children, including those who select religious schools.

Legal Scholasticism

In the abstract, the distinction between funding "individuals" and "institutions" would not seem very important. After all, the ultimate target of a human service program—however it is funded—is the individual in that program, not the program itself. An institution is simply a "delivery system." Institutions exist not for

themselves, but to carry out large-scale goals. Picture the formal education of some 43 million children without "schools". Chapter 1 programs would be inconceivable without some institutional setting in which to operate them. If the distinction between funding individuals and institutions has meaning, it is that to oversimplify only slightly, funding individuals reflects a view of society in which the individual is paramount. A decision to fund institutions reflects a view of society in which institutions are more important.

The practical implications of whichever funding mechanism is selected are far-reaching. Letting the individual select the institution introduces choice into the equation. It is not that families will elect a non-institutional alternative for their children's education; rather, by funding individuals, families can select the institution they desire. Choice among institutions places the client in the driver's seat, not the institution. Such schemes as Pell Grants, food stamps, housing allowances, and the GI Bill are all examples of institutions serving the recipient, rather than the clients having to use the funded institution.

Even if Aguilar had not been decided as it was the debate about funding individuals or institutions would be germane. Think of the program latitude available if there is no institutional barrier to funding individuals or institutions. For example, the decision to construct great blocks of public housing, rather than using housing vouchers or negative income taxation, is a programmatic decision. Housing officials are not forced by the U.S. Constitution to fund the housing authority instead of the families who need the housing. Similarly, the decision to permit the indigent ill to be treated at a religiously affiliated hospital, at public expense, is made without pressure of constitutional prohibitions; so too, food stamps may be issued rather than having people queue at government commissaries. In these examples, government has determined that the programs are better if choice is allowed and institutions serve that choice, rather than the other way around—not because the Court has ruled one way or the other.

In fact, in virtually all areas of social service, some plan for funding the individual can be found, even if that person, family, or group elects to use that right in a religious institution. Mothers on public assistance can bear their children in a Catholic, Jewish, Methodist, or Lutheran hospital, at public expense; the elderly poor can live in housing owned by a church; crossing guards for a busy street in front of a church or synagogue are frequently provided by the local government. Students can opt to attend a religious university and the government will offer the same grants and loans. And the indigent can be buried in hallowed ground at government expense.

Our point is not that "institutions" are bad; to the contrary, they are good. But without choice, the tyranny of institutions appears; they become unbridled monopolies.

A case reported in The New York Times is informative. In 1985, a newly appointed director of county welfare in Sacramento,

California, decided to end the practice of cash payments to individuals on general relief. Concerned, perhaps, that they might spend their meager allowances on drink—or God, forbid, something worse—he withheld cash payments altogether. In their stead, he substituted a clean, well-lighted place, a dormitory, with bathing and eating facilities, and a set of rules about behavior and schedules. Participants in the program were required to arrive before a certain time, bathe as necessary, help with kitchen chores, sweep up, police the grounds, and leave early the next morning. Beneficiaries could repeat the process each day but they could not take up permanent residence in the center.

For his pains, the administrator was sued. The charge was that his new scheme was undignified, it stripped the beneficiaries of their independence and choice; indeed, his scheme looked much like the poor houses of the 19th century, as his detractors asserted. Perhaps he could have rejoined that his program looked much like Jane Addams' Hull House, but on this matter the newspapers were silent. Was this plan the best or worst aspect of liberal or conservative policy-making? In such opera bouffe tales, one cannot always tell (for a more complete discussion see Doyle, 1984b).

In matters of education, however, the Court takes a different tack: it disallows funding of religious schools, though the same church receives public aid for its health, recreation, housing, and social functions. At a more exalted level, Congress may open with a prayer, recited by a chaplain whose salary comes from public funds, before debating a bill to aid churches in their roles as providers of care; more humbly, servicemen and prisoners in jail may have access to chaplains on the public payroll.

Public support is provided for a wide variety of individual transfer payments which may be used in religious settings to people across the spectra from infirmity to vigor, from youth to age, from poverty to wealth. These payments in cash or in kind, are designed to permit the individual to forge his or her own relationship with institutions, including religious or secular ones. This is true with nearly everything, it appears, except elementary and secondary education (Doyle, 1984b).[2]

Private School History

The role of private, religious institutions in American life is not new. As we have already noted, in the mid-nineteenth century, states supported a wide variety of schools which were run by churches. Public schools were, at first, schools for children who could not get into an existing church school, i.e., the poor. The well-to-do, and those who lived in vigorous religious communities, had access to private education.

A close look at the schools of the 1820s reveals two kinds of "religious" schools. In New York, for example, the "common" or

"public" schools were Protestant, controlled by the leading citizens of the town, village, or borough. The curriculum included the King James' Bible and Protestant prayer. They represented an effort to Americanize, sanitize, and civilize the hoards of new arrivals who flocked to the nation from dozens of different nations, language groups, and religions. The mission of the "one best system" was to uplift and reform, to inculcate a common culture.

The other schools were Roman Catholic, schools designed to counter the Protestant pressure to conform and even convert. Bishop John Hughes, for example, proclaimed that every Catholic child should have a Catholic education; and state governments at first were willing to fund these institutions.

In New England, these Catholic schools were known as "Irish" schools, as apt a euphemism as one can image. Here too the government provides support. But by the early 1850s, as Horace Mann's dream came true and the "free schools" became numerous and powerful, the Catholic schools were systematically disestablished, not by Court edict as was the pattern in the 20th century, but by legislative action. For the purpose of this essay, we need not dwell on anti-Catholic sentiment; the process of denying funding is more important than the reasons why: state legislatures simply cut them off.

As Catholics grew in number and local political strength, anti-Catholic sentiment increased, and a major effort to amend the U.S. Constitution to forbid aid to Catholic schools was launched. Named after its chief sponsor, James G. Blaine, it failed nationally, but was enacted by a number of states where it survives in their constitutions to this day.

In the 1940s, however, as Catholics came to real power in the industrialized states (New York, New Jersey, Michigan, Massachusetts, Illinois and Rhode Island, for example) and were able to get state legislatures to pass direct aid laws, opponents sought redress in the courts. The principle of the "separation of church and state" became constitutional doctrine, disallowing numerous plans to aid private schools. Building loans, teacher salary schemes and other forms of special aid were struck down. A decade and a half after Everson vs. Board of Education (1947), the public schools themselves were denied explicit devotional activity. The separation doctrine has had two ironic outcomes, then: children in religious schools were denied public support, those in the public system could no longer engage in group prayer. It is a far cry from the 19th century effort to make religion an integral part of school in both the private and public sectors.

Not only does the present antipathy to religious schools have historical roots, it also arises in a pedagogical sense as well. After all, Chapter 1 is designed to improve the educational performance of individuals; school-based programs, from a pedagogical standpoint, are simply an instructional strategy. Do individuals learn better, which is to say more and faster (as well as more

amiably), in group settings? Is there an academic or intellectual critical mass, in which a certain minimum number of youngsters is necessary to succeed? These questions, though intrinsically and practically interesting, are not germane to this essay except as they illuminate the ways in which Chapter 1 might be thought about, unencumbered by the weight of Court decisions.

If there is a "critical mass" of youngsters which improves learning, that fact would have only limited bearing on whether we should fund individuals or institutions. If groups of students provide a more effective "instructional" target, then it would make sense to "target" funds to groups of students. But that objective too could be achieved by funding students rather than institutions; individual student eligibility could be predicated on concentration requirements. In any case, the debate about funding individuals or institutions does not hinge on pedagogical considerations. Rather, it should hinge on fundamental questions of individual liberty and dignity; today it hinges on narrow court interpretations.

There is a methodological dimension to the question of funding the individual that deserves brief note. It arose when the original Elementary and Secondary Education Act of 1965 was passed. As noted in the congressionally mandated study of the mid-1970s:

> Since 1965 Congress has considered reformulating its funding objectives to allocate funds on the basis of low achievement instead of poverty. In 1974 Congress decided to continue to allocate Title I funds on the basis of numbers of low-income children, while instructing the National Institute of Education (NIE), as part of the Compensatory Education Study, to explore alternate methods of funding (National Institute of Education, 1977, p. v).

This issue is more than methodological, however. The practice of funding programs, including targeting and concentration requirements, has meant that Title I funds are heavily concentrated in cities; suburban children who are poor—and poor students as well—have limited access to Title I services. And city kids who are poor but who attend schools in wealthier areas are denied aid by virtue of geography, not need. If individuals rather than programs were funded, funds would be more evenly distributed among students even if they would be less concentrated in specific schools.

Not surprisingly, the issue of funding allocations on the basis of test scores was not supported by The National Institute of Education study of Title I. The study concluded that it was not administratively feasible to pursue a strategy of using achievement test scores rather than poverty and achievement criteria for Title I funds allocation. No doubt the study was fully and fairly conducted, and given the realities of the day it would have been administratively difficult to pursue such a strategy. But that hardly puts the issue to rest. Individuals could receive Chapter 1 funds—or, dread word, vouchers,—on the basis of poverty criteria. Indeed, there is one important example of just such a program being tried. The Alum Rock

Voucher experiment in San Jose, California employed "compensatory vouchers" for all children who met specified poverty criteria. "Comp vouchers", as they were called, were in addition to the basic voucher, an amount equal to current per pupil expenditure in the district.

The demonstration—which lasted five years—had a number of interesting outcomes, but none more interesting than this: youngsters with "comp vouchers" became attractive to schools, because they brought with them substantial funds to be used for education programs on their behalf. For once in their lives, they were sought after, not rejected.

We have many other examples of programs in which the individual is funded on the basis of income, from food stamps, to social security, to medicaid, to Pell Grants, to the GI Bill. In each case, whatever difficulty attached to the decision to fund the individual was overcome by the importance of the policy. Individual funding was chosen for policy reasons, and administrative problems were solved in the larger context of the policy decision.

Title I vouchers have been so widely discussed they need not be described here. Suffice it to say, no serious analyst expects their immediate enactment. A related scheme, however, may have brighter prospects.

Local Option Vouchers (LOVs).

Another approach, which may gain wider support, would be to allow local education authorities to issue their own vouchers to local parochial school students, permitting them to buy the Chapter 1 services in a variety of places.

The advantages of LOVs over national vouchers is that control would be local: public schools that attempted direct aid to private schools might continue using local public schools or vans. But, if, after trying such approaches, the public and parochial school leadership decide that "it's not working," a simple voucher for children in the private sector could be used. In the event of significant disagreement as to whether services are equitable and effective, an appeals process could be used, much like the by-pass procedure now available for districts which cannot or will not provide Chapter 1 to private school children. If the appeals panel found that local public schools were not helping parochial school students equally, then a LOV could be invoked and the public system by-passed.

The political advantages of LOVs are several. Local school districts control their own funds which they can "privatize" when they need to. It also allows the coalition that has supported Chapter 1 for over 20 years to remain intact. Rather than pitting Catholics against teachers' unions, industrial states against the rest, the LOV proposal, like the President Johnson compromise of 1965, has the elements of "something for everyone." Public schools

continue to get the lions' share of Federal Chapter 1 funds; parochial schools have an out; and politicians serve all their neediest students and families. From a cost/benefit viewpoint, LOVs mean more service for more children for less money. With LOVs, the entire costly apparatus of buying and maintaining mobile classrooms, of transporting parochial schoolers long distances, or renovating neutral sites, is eliminated.

The final possibility merits brief discussion.

Family By-Pass

One measure, which might be done immediately, even before Congress reauthorizes Chapter 1, would be to declare a national "by-pass" to allow parents or groups of parents to become the by-pass "agent." In four states the Secretary has already declared the local/state program ineffective or nonexistent and has allowed "third parties" to be the funding agent for parochial school pupils. In states like Missouri, where the state constitution forbids aid to religious schools, the Secretary has invoked the Federal by-pass provision and has allowed local contract agents to be the conduit for funds to local Chapter 1 programs. Other states, such as Oklahoma, Wisconsin, and Virginia, have used by-pass provisions as well.

The virtue of "family by-pass" is also its vice. The Secretary could move without consulting Congress which would infuriate both Houses. The political fallout would be high. The Secretary could buy a year of services for parochial school children, but such an action would produce a furious reaction by the opposition. But like the Local Option Vouchers, "family by-pass" might be a blessing in disguise for public schools, which are saddled with the nearly impossible task of serving children in parochial schools.

Conclusion

One final issue warrants brief discussion before closing. The history of American aid to elementary and secondary education of any kind is replete with stories of religious tension and even bigotry. Chapter 1 is only one part of a long story. But in some important respects it is the most important part and as a consequence its demise is more poignant. Remember, Chapter 1 (then Title I) was the fulcrum by which President Johnson levered a reluctant Congress into a break with more than a century of tradition—his Title I compromise made Federal aid to elementary and secondary education a reality. No other President had been able to do so. With the exception of P.L. 94-142 (a civil rights act for the handicapped) no other President has enlarged it.

Even though the legislation was enacted, however, suspicion remained. Between the idea and the act "falls the shadow" as

T. S. Elliot reminds us. In the world of politics, the shadow is implementation. It took nearly two decades to overcome the suspicion and even hostility that characterized public-private school relationships; no sooner were they overcome than the Court stripped private schools of their right to participate. It is a consummate irony.

Equally ironic, but not surprising, public schools are not springing to the defense of denominational schools. The largess the public schools enjoy is a product of that compromise too; had private schools been excluded in the beginning, public schools would have no program. Now they have a program, with no private school participation likely, because there is only one instrumentality that is likely to survive judicial scrutiny, and that is "vouchers," a word which fills most public school educators with fear and loathing. The final irony, if Justice Powell's wording is taken to heart, is that "vouchers" just for parochial school children would not do. Justice Powell—and by extension, the Court—could only be satisfied by "Chapter 1 vouchers" for everyone, public and private school student alike. Then, all would be treated equally. Earlier, we noted that "one purpose of this essay" is to see if such a program could be fashioned. As we have tried to suggest, the intellectual task presents no overwhelming obstacles. The political task, however, is daunting. It is one thing to draft legislation, another to enact it.

The obvious solution, "Chapter 1 vouchers" is almost certainly destined to fail. The Administration is not prepared to order them by fiat or edict. The Congress, for a variety of reasons—not least opposition by powerful public school interest groups—will not enact such legislation in the near future. Instead, Congress appears to be moving toward a continuation of Chapter 1 as is with a small ($30 million) "sweetener" to help public schools buy more (perhaps 300 at $100,000 each) vans. More money hardly overcomes the inherent weakness of funding public institutions which can't effectively reach children in private schools. Our reading of the current situation is both straightforward and grim: Chapter 1 funding for children in religious schools will soon be over. An extraordinary period of American education history is coming to a close, not for lack of ideas, but for lack of vision.

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FOOTNOTES

1. See High Court of Australia, her Majesty's Attorney General for the State of Victoria (at the Relation of Black and Others) and Others, (Appellant), and Commonwealth of Australia and Others (Respondents), February 10, 1981.

2. The difficulty, even absurdity, of the present situation is revealed in the following hypothetical example. The government could, if it so chooses, give every child in the nation a cash payment in any amount the Congress could be convinced to appropriate. It might be five, five hundred, or five thousand dollars. Indeed cash benefits for children—family allowances—are the rule in every developed country, totalitarian or free. Such an allowance would withstand scrutiny in the United States so long as it were not earmarked for education. As a cash grant to be used for any purpose, from drink to transportation, it would pass court muster; similarly, if it were dedicated for food, housing, or health care, it would pass court muster, but not if it were for education.