

On the D.C. Opportunity Scholarship Program

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Anyone who has skimmed local headlines in recent weeks is well aware that the future of the D.C. Opportunity Scholarship Program (OSP) is in serious jeopardy. The U.S. Department of Education recently released a study that found that OSP recipients demonstrated greater gains in certain academic subject areas than their peers who were not awarded scholarships. This should go unnoticed by neither the current administration nor the program's opponents in Congress.

But the strongest reason we have for embracing school choice is often obscured, though it is deeply rooted in a principle we find across the best of the Western tradition of political and moral thought. Namely, the power to direct their children's upbringing and education is due to parents as a matter of natural justice. An early example of the application of this principle can be found in the work of medieval philosopher and theologian Thomas Aquinas.

Some of Aquinas's zealous contemporaries asserted that the state ought to mandate that children of Jews and other non-Christians be catechized and baptized against their parents' wishes. If one does not want the child to spend eternity in hell, they reasoned, one had better baptize the child and ensure that she receive the Sacraments, regardless of the convictions of the parents. While such a practice would be unthinkable in the context of modern Western democracy, history offers Aquinas no shortage of "very powerful Catholic princes," including Constantine and Theodosius, who presumably would have been non-dismissive of the idea. (Clearly, their notions of the proper relationship between church and state were far different than those of Madison or Jefferson.) But, as Aquinas notes, the bishops who had the princes' ears refrained from seeking the favor of mandated baptism or catechesis. Why?

According to Aquinas, the bishops had a clear conception of justice. Justice, he argued, demanded that parents be allowed to bring up their children as they see best. For, "it would be contrary to natural justice, if a child, before coming to the use of reason, were to be taken away from its parents' custody, or anything done to it against its parents' wishes" (*Summa Theologiae*, II-II, q. 10, a. 12). The state should not interfere in the absence of a compelling reason. (I take it that parents can forfeit their natural rights regarding their children through grave abuse or neglect, and the state here may intervene.)

The best in the American legal tradition affirms this conception of parental liberty. Aquinas would have been pleased, for instance, with the U.S. Supreme Court's 1925 ruling in *Pierce v. Society of Sisters*. In this case, the court struck down a KKK-backed Oregon statute that required all children ages 8-16 to attend public schools, a law which would have effectively shut down private and parochial schools. The court opined: "We think it entirely plain that the Act . . . unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."

The court remained agnostic regarding the superiority of one school system or educational philosophy over another. Rather, its argument was based on the rights and responsibilities of parents and the proper role of the state. To force parents to send their children to public schools would be undermine their ability to fully function as parents. Parents possess the responsibility of educating their children; the state has the responsibility to let parents be, well, parents. As the court noted, "the child is not the mere creature of the state."

Since the *Pierce* ruling, American parents have had the legal right to choose the type of educational setting they deem best for their children. Across the U.S., some parents choose traditional public schools, public charters or magnets; others elect to send their children to non-religious private schools or faith-based schools; still others opt to educate their children within the home.

Yet there is still one group that is excluded from this choice: the poor. They cannot afford tuition at non-public schools, and the long hours they spend at work to pay bills preclude homeschooling as a real option. They are, *de facto* if not *de jure*, forced to “accept instruction from public school teachers,” to borrow the language of the *Pierce* opinion, often in some of the nation’s most under-performing schools.

Ventures such as the OSP extend one aspect of justice to families from whom it would otherwise be denied, as the OSP serves families with a median annual income of approximately \$23,000. These are among the most underserved families in the District. If the program is terminated, most of current OSP parents will no longer be able to send their children to the school that they have deemed best for their child. To date, the program’s major shortcoming is that it is not larger in scope; it has approximately four applicants for every slot.

I want to emphasize what this argument for school choice is *not* about. It is not about propping up religiously affiliated schools or bailing out churches. It is not about creating free markets for the purpose of improving the performance of public schools through competition (though one would certainly hope that this happens). Social scientists and educational researchers will rightly be interested in the measurable outcomes of academic progress, but test scores cannot be the primary measure of whether such programs are successful. The relevant question is, rather, whether a given program helps ensure that parents have, in reality as well as law, the rights to which they are entitled precisely as parents. And to this question the answer is clear: the OSP is a resounding success.

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