

## Public Education as "Brutal Censorship"

RICHARD A. BAER, JR.

LIBERAL reaction to *Hazelwood School District v. Kuhlmeier*, the recent U.S. Supreme Court decision upholding the right of public school principals to censor the content of student newspapers, has predictably been critical. In his dissent, Justice Brennan refers to "brutal censorship" and claims that the Court teaches youth "to discount important principles of our government as mere platitudes."

Not surprisingly, conservatives generally have responded more positively to *Hazelwood*. Both liberals and conservatives, however, not to mention the Supreme Court itself, have failed to see that the school censorship problem involves much more fundamental questions than the issues that surfaced in *Hazelwood*.

For religious, ethnic, and ideological minorities, the basic structure of American education is *inherently* discriminatory and *unavoidably* involves serious forms of censorship. Talk about the public school as a marketplace of ideas notwithstanding, the truth is that many parents are forced to submit their children to a government-controlled school system that promotes a particular set of favored values (which I shall label "majoritarian," even though they frequently represent the values of one or more elite ideological minorities that have attained power to shape the curriculum). And to make matters worse, these same children must endure the additional discrimination of the school's eloquent silence regarding the beliefs and values basic to their own traditions.

Rich parents can exercise choice regarding their children's education, but, as Stephen Arons writes in *Compelling Belief* (p. 211), poor parents must submit their children to a state-controlled socialization process. Our present system of school finance, Arons continues,

discriminates against the poor and the working class and even a large part of the middle class by conditioning the exercise of First Amendment rights of school choice upon an ability to pay. . . . This arrangement seems no more defensible than denying the right to vote to those who cannot afford a poll tax.

Four structural features of our public school system are of critical importance for understanding the question of censorship. First, these schools have a monopoly on public tax monies. For parents who cannot afford private school tuition or do not have access to privately subsidized systems such as Catholic parochial schools, there is no choice but to submit their children to the ideological coercion of the majoritarian system. Even if schools do not promote particular religious beliefs and values—which I by no means grant—it is still necessary to ask how free minorities can be when they have little or no control over determining the values that underlie the school curriculum.

Second, the term "public school" is misleading. American public schools are *government* schools operated by employees of government. As a total set, they probably are not significantly more open to the general public than are so-called private schools. As University of California, Berkeley law professor John Coons observes, most of our better public schools are "geographically exclusive" and "functionally private." That is, genuine access is limited to those who have the money to purchase real estate in the better neighborhoods.

Third, it is a myth to think that we still have *local* schools in America. Long gone are the days when parents had significant control over the curriculum and the beliefs and values it teaches. Twenty-two states choose textbooks on a statewide basis, and fundamental curricular decisions are largely determined by state education bureaucracies, textbook publishers, and academic departments and schools of education.

Fourth, quite apart from the language of Supreme Court decisions, government public schools are marketplaces of ideas only in a very restricted sense. To what extent they *should* be marketplaces of ideas, particularly in the lower grades, is no simple issue. But in any case, the actual situation in government public schools is that *all* textbooks, *all* library books, and *all* curricular materials are selected, not by students or the parents of students, but by employees of *government*—teachers and state bureaucrats. And teachers often have very little say in the process.

### *Pluralism and Monopoly*

Government public schools—as is true of most nongovernment schools as well—are highly controlled rather than open marketplaces of ideas. Parents may protest majoritarian choices (and risk being labeled censors) but—with some notable exceptions, including feminists and racial minorities—their impact on the curriculum is likely to remain minimal.

Granted, selection is not identical to censorship, but at the very least it is a close relative. Every curriculum—unless it is a random and chaotic affair—presupposes, whether consciously or unconsciously, something about the nature of reality and the good life. Thus, radical environmentalist parents cannot be satisfied if a school pays merely passing tribute to their beliefs and values, while

at the same time fostering competition, unrestrained consumerism, and a control-oriented approach to math and science that conflict with their deepest convictions and violate their consciences. Similarly, parents who believe that the purpose of human existence is to love God and serve one's neighbor do not want their children spending the greater part of each school day learning how to be as successful as possible in a materialistic, self-centered, God-indifferent world.

The fact that minority views and interests are often ignored or distorted need not be attributed to ill will or narrowmindedness on the part of teachers or school administrators. It is rather the majoritarian and monopolistic *structure* of the system that makes it impossible to treat adequately particular traditions that make up the rich and diverse fabric of our pluralistic American society.

This is not to suggest that children should select their own textbooks. Genuine pluralism is not a matter of autonomous, isolated selves, particularly children, making "free" choices. It has to do rather with maintaining conditions that permit the long-term survival and flourishing of diverse religious, ethnic, and ideological *traditions* and *communities* of people. Thus, the important question is whether *parents* or *government* will be empowered to make the most basic choices concerning the education of children.

There is a great deal of talk at the moment of schools placing greater emphasis on character education and the teaching of a common morality. But that is no easy task. To be sure, Americans share many important values (it's hard to see how we could hold together as a society at all if that were not the case), but when it comes to *justifying* these moral commitments the situation becomes complex. Separated from the richness and power of symbol and tradition, morality is pretty anemic stuff. It's virtually impossible to understand the vitality and subtlety of Jewish or Christian ethics if one does not grasp the pivotal biblical insight that grace precedes law, the preface to the Decalogue the specific commandments, the gospel the ethical admonitions of the Pauline epistles. But how can government-operated schools do justice to such subtlety? And should we even want them to attempt it?

In *Tinker v. Des Moines Independent School District*, a 1969 case dealing with the right of students to wear armbands protesting the Vietnam War, the Supreme Court declared that "in our system, state-operated schools may not be enclaves of totalitarianism." Students "may not be regarded as closed-circuit recipients of only that which the state chooses to communicate."

But for dissenting minorities, the term "only" ("only that which the state chooses to communicate") may not be of primary concern. What worries Hasidic Jews, radical environmentalists, and Black Muslims, not to mention Catholics and Evangelical Protestants, is that our majoritarian government schools treat students as "closed circuit recipients" of *everything* the state wishes to communicate (including biased sex education courses, "values clarification," and humanistic psychology). Their main concern is not about silencing occasional student journalists, as in *Hazelwood*, but rather with the state's use of

legal and economic coercion to force them to submit their children to the schools. As Kenneth Strike of Cornell University asks, "Why should the state have the right to compel parents to submit their children to a curriculum which may lead the child to defect from the parents' values?" Is not this also a form of totalitarianism?

### *The State and the Big Questions*

University of Texas Law School dean Mark Yudof, writing in the *Wall Street Journal* (20 January 1988) maintains that "the principle that government should be allowed to speak on its own behalf, without admitting a cacophony of voices, should be unassailable. This is particularly true for public education." If government public schools limited their activities to the traditional "three R's," Yudof's statement would trouble me but not a great deal. But when government presumes to educate, that is, when it addresses the Big Questions—who we are and how we ought to live—then it should be viewed as incompetent to speak "on its own behalf." It is questionable how much has been gained if a government school establishment comes to replace the establishment of religion which an earlier generation of Americans so decisively rejected.

A government-controlled curriculum is troublesome enough. But to force students by law to attend a government monopoly school and then to insist—as does Justice Brennan—that schoolmates have the right to expose these students to virtually any set of beliefs and values that does not directly interfere with their classroom performance is to make the arrangement even more unpalatable for many parents. This further weakens whatever vestiges of local control over school values and subject matter parents still retain.

Professor Paul Vitz of New York University has carefully documented a particularly odious form of censorship in public schools—censorship by omission. He demonstrates how social studies textbooks distort American history by their omission of important facts relating to religion—particularly Christian religion—in American culture. (Native Americans and Buddhists do not fare as badly, but even they do not fare well.) These omissions become especially offensive when coupled with widespread promotion of the nontheistic humanistic beliefs and values of decision making, sex education, and home economics.

The history of the founding of government public schools in America does not add to one's confidence in their ability to respect minority interests. Historian Charles Glenn, in a book published by the University of Massachusetts Press this spring, makes a strong case that Horace Mann, probably the key figure in establishing our public school system, was motivated less by a desire to improve literacy and basic academic skills than by his zeal to "liberate" children from the sectarian religious orthodoxy of their benighted parents.

Horace Mann's conviction that his own superior moral and religious beliefs were based on reason and science and were therefore nonsectarian (in contrast to

the dogmatic, sectarian beliefs of orthodox Christians) would strike most contemporary theologians as arrogant and naive, appearing far sooner self-serving than self-evident. But it is much harder for us to see that the conviction so widely held today that we can neatly divide reality between the secular and the religious may—particularly in education—be just as untenable.

Whenever schools deal with the Big Questions, they are within a realm where religious neutrality is impossible. That is what *Smith v. Board of School Commissioners of Mobile County*, the 1987 Alabama textbook case, was all about, and the arguments of the fundamentalist plaintiffs—the Eleventh Circuit Court of Appeals notwithstanding—were, in my judgment, far stronger and far more consonant with the First Amendment religion clause than was the case of the defendants.

### *How to Bust the Monopoly*

What alternatives are there to a government monopoly system of school funding? Perhaps the most promising is the proposal to establish a program of education vouchers or entitlements that would enable parents to send their children to nongovernment schools (including religious schools) and thus enable minorities to escape state-imposed socialization with all the overtones of censorship that it inevitably entails. Eligibility to receive vouchers could be limited to schools that refused to discriminate on the basis of race and national origin, and the dollar value of vouchers ideally would be inversely adjusted to family income levels so that poor families would be in a position to compete effectively for the best schooling available.

Unfortunately, the mere mention of vouchers raises the blood pressure of most educators. Vouchers, they insist, would result in the Balkanization of America, not to mention the fact that they would violate the religion clause of the First Amendment by permitting parents to send their children to religious schools at public expense.

Those with sufficient historical perspective will quickly recognize this dire prediction of social fragmentation as virtually identical to that put forward at the time of the republic's founding by those who favored a state church. In part, the argument rests on the patronizing assumption that we cannot really trust people to make sound judgments about the education of their children. Furthermore, if government schools are essential to avoid fragmentation, then on what possible grounds can we justify exempting the rich and parents of parochial school students from also enrolling their children in these schools?

Would vouchers be unconstitutional? Actually, strong arguments can be made that family choice in education would more nearly uphold the intent of the First Amendment than does our present system of majoritarian schools. And in any case the Supreme Court needs to bring greater consistency into its First Amendment religion clause decisions, which more and more resemble Ptolemaic astron-

omy, epicycles and all. A Supreme Court that can hold state-funded rides for parochial school field trips to be unconstitutional but not rides to and from school knows something about the Constitution that is not available to ordinary mortals.

The Court's confusion centers in its failure to understand that when schools deal with the Big Question they inevitably interact with the realm of religion. John Dewey and other nontheistic humanists were right when they labeled their own philosophical systems religious, and Reinhold Niebuhr, not exactly the least among American theologians, was also right when he worried about an establishment of religious secularism. And as difficult as it may be for liberals to admit, even Judge Brevard Hand was right when he argued in the Alabama textbook case that secular humanism is a religion.

If we take seriously the logic of the Eleventh Circuit Court of Appeal's reversal of Judge Hand's decision, we end up with a *reductio ad absurdum* of frightening dimensions: government public schools may not propagate traditional Christian or Jewish religious beliefs and values but they are free to promote humanistic and atheistic beliefs and values.

But no fair-minded person can accept such a bizarre result as compatible with the First Amendment, and as long as the courts persist in reading the Constitution as permitting it, oppressed religious minorities will continue to fight the system.

Admittedly, political acceptance of a voucher system seems unlikely in the near future. But at the very least we might dare to hope that when the Supreme Court and the media discuss the interesting and important issues raised in *Hazelwood* they will not overlook the far more basic ways in which virtually every aspect of our majoritarian school system unavoidably casts government in the role of censor.