

reply: state power without state duties: notes on rightist education in America

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The U.S. right's programme for public education shows some of the same neoliberal, nativist, and authoritarian patterns as the countries discussed in this issue. In this comment, I discuss two implications of the recent rightward turn in federal and state educational thought in the United States. First, under right-wing governance, we are seeing a diminishment of the welfarist aspect of American public education. Second, we are seeing a weakening of the constitutional status of public education. I argue that these trends reveal the urgent necessity of affirming public education as a fundamental right protected by the U.S. Constitution.

Keywords: child welfare, government benefits, right to education, state duties, vouchers

The U.S. right's programme for public education shows some of the same neoliberal, nativist, and authoritarian patterns as the countries discussed in this issue (Editorial Team, 2024). Like Milei's Argentina (Wanschelbaum et al., 2024), much of the American right favours tax-funded vouchers and neoliberal "school choice." Today, numerous U.S. state governments under GOP control have implemented partial or universal voucher programmes, with more possibly to follow, despite the poor results in existing programs (Hager, 2024). In terms of nativism and authoritarianism, the U.S. right most resembles Alternative für Deutschland's attempts to impose state control over school curricula in Thuringia (Nikolai et al., 2024). In Florida, for example, the GOP state government has sought to restrict speech about American history and gender identity in public schools while encouraging a mix of classicism and vocationalism in higher education (Najarro, 2024). Under a second Trump administration, these policy patterns will likely receive ideological encouragement if not monetary incentives from the national government. The most troubling aspect of the current situation is that the U.S. right's overall vision for education includes virtually no *public* duties towards children – even as it depends upon the assertive exercise of governmental authority to reshape children's lives. In other words, the right in America seeks to use state power to determine how children learn without committing to the democratic principle that every child has an equal claim to an education.

I would like to discuss two interrelated implications of the U.S. right's educational programmes (this is far from an exhaustive list; I am focusing here on basic structural matters):

- *a diminishment of the welfarist aspect of American public education* (states that pursue neoliberal restructuring are devaluing the nutritional, medical, and social supports delivered by the public school);
- *a weakening of the constitutional status of public education* (states pursuing right-wing policies regard education more like a benefit than a right, i.e., a government provision that can be given or

taken away at any time).

Let me address these consequences in order. First, neoliberal restructuring policies, namely vouchers, degrade the welfarist project within public education by shrinking the mandate for compulsory schooling. Historically, state-provided public schools have functioned not only as learning centres but also as “the hidden behemoth of the U.S. welfare state,” delivering services such as daytime childcare, nutritional support, and social work (Steffes, 2012). Indeed, state governments have tended to overleverage school-based services as child-welfare services to compensate for their own – not to mention the federal government’s – austerity towards public welfare (Swope, 2024). What vouchers effectively do is shrink the state’s mandate to care for the whole child by shrinking the public school itself. As the state empowers parents to spend their tax-subsidised vouchers anywhere they like, including at private academies, its responsibility for children’s welfare lightens. A state government with less responsibility for welfare neglects poorer children first and foremost. Data show that states where voucher programs have gone into effect have siphoned resources out of public schools, where the vast majority of poorer children still enrol, toward private academies that favour more advantaged students (Wething, 2024). For students who do not have access to viable private options, this means a direct reduction in the support they can expect from their state government. It also portends a destabilisation of their day-to-day school lives as peers and resources flow in and out. Compounding the negative implications of vouchers on child welfare is the longer-term trend of cyclical cuts to public education during economic downturns (Allegretto, 2022). After the 2008 crisis, many U.S. states dealt with their budget problems by slashing support for public education, and except for the short-lived countercyclical federal subsidies for public schools during the COVID-19 crisis (Ross, 2024), the default policy position of the federal government and most of the state governments has been to increase school “accountability” instead of increasing investment (Shelton, 2023).

Second, the American right’s ideas weaken the constitutional status of public education. More than two decades ago, a United Nations Special Rapporteur for the Right to Education pointed out that vouchers undermine the global project of guaranteeing education as a fundamental human right by converting compulsory schooling into a privately-traded service. Delivering education as a privatised service disoblises the authoritative State Party to provide and protect it (Tomasevski, 2002). This worry has special relevance in the U.S. because the national Constitution does not protect the fundamental right to education. Rather, federal law supports formal equal access to the school systems operated by the fifty states (Brown, 1954) while demurring on substantive issues such as unequal school funding (Rodriguez, 1973). That said, in the absence of a constitutional right to education, federal judges have acknowledged that the vast majority of American families have come to depend on their state governments to provide public education as if it were a fundamental right (*Gary B. v. Whitmer*, 2020), and the Supreme Court affirms that the American Nation itself depends upon public education for its democratic self-maintenance (*Plyler*, 1982). In states where vouchers have become law, however, the default “right-like” status of public education has suffered major setbacks. This is because these states treat vouchers as if they were governmental “benefits” that they can distribute or revoke at any time. The State of Alabama is a case in point. In Alabama, the state government’s effort to exclude undocumented migrant children from full participation in the education system weakens education for citizen children as well. Under U.S. federal law, undocumented migrant children (i.e., children who do not have legal authorisation to reside in the United States) must be allowed to participate in compulsory schooling in their states of residence. Thus, Alabama cannot make laws that prohibit this class of children from accessing public schools anywhere within the state’s jurisdiction. But Alabama can and does exclude these vulnerable

children from participating in its vouchers program, thereby restricting their access to the full range of educational options proffered to citizens (Alabama, 2024). The state can do this because it views compulsory schooling more like a governmental benefit than a basic right, and in the United States, it is legal to withhold benefits from undocumented migrants (Mathews, 1976). Yet if education is a mere benefit, then the state could reduce or remove it for everyone, including the citizen, without technically infringing on anyone's rights. Here, then, we find complete complementarity – and not a little irony – in the American right's interlocking neoliberal and nativist agendas: by withholding full educational inclusion from undocumented aliens, rightist states are loosening educational protections for their favoured groups of children.

Generally speaking, the rightist political movement in American education aims to leverage state resources without upholding strong public duties towards children. In defence of its agenda, the American right often claims that it safeguards parental rights against unconstitutional state incursions. Parents, for example, who do not endorse the generic liberal-pluralist values espoused at the public school should be able to choose a different moral education for their children. Or parents who want to try out corporate-sponsored startup schools should be able to remove their children from their local district without assuming significant financial risk. But these arguments are question-begging. Why is it the taxpaying public's responsibility to fund an exit option from the public school so that people can pursue their private preferences (or, as very commonly happens, to fund subsidies for families who already do not use public schools)? And how does creating a funnel of public money for private academies establish a fair and equal playing field for all? Private schools do not have to take all comers; public schools do. Vouchers thus do not create an accessible exit ramp from state authority but in fact just open the door to private capture of that authority. Florida is the case study here. At the same time that the state legislature has implemented vouchers, it has also aggressively remade speech and curriculum standards within public schools, creating conditions more favourable to conservative ideology (Daly, 2024).

The trend toward rightist dominance over education in states like Florida, Arizona, Ohio, and Texas, is likely to accelerate under a new Trump presidency. That said, there is substantial popular scepticism toward school vouchers – and not just in the most progressive parts of the country. Wherever American voters have had a direct democratic say in whether their states should adopt education vouchers (e.g., on election ballot issues), they have roundly rejected them, including in conservative states like Kentucky (Schreiner, 2024). Yet negative public opinion toward vouchers has not stopped many state legislatures from imposing them anyway. Even after suffering political defeats on vouchers, leaders like Governor Greg Abbott of Texas have remained vigilant in trying to push them through the state legislative process (Schwartz, 2024). What the people want when it comes to education policy is not necessarily what the people will get from their elected representatives.

Although the right's agenda is ascendant in many states, there are signs that some states, like Michigan, affirm that the government does have obligations towards the children it compels to attend school. In a federal case called *Gary B. v. Whitmer* (2020), seven young plaintiffs from Detroit, Michigan, argued before the U.S. Sixth Circuit Court that their state government, which supervises Detroit's schools, violated their "right to literacy" by failing to teach them to read. After tarrying for a moment with the students' claim that the state had a constitutional duty to teach them to read, the Sixth Circuit concluded that literacy is an essential policy priority but not a claimable constitutional right. Even so, Michigan eventually settled with the plaintiffs, paying them \$280,000 USD toward remedial literacy training. Additionally, Michigan earmarked tens of millions of dollars

for direct investment in Detroit's failing school infrastructure and promised equalising reforms of the statewide system (Michigan, 2024). Michigan's actions were *reparative* and *promissory* in equal measure: *reparative* in that they acknowledged that the state was responsible for withholding something of fundamental value to the plaintiffs; *promissory* in that the state assumed responsibility for mitigating future educational deprivations. Although Michigan's actions are far from becoming a national standard, they show that it is at least possible for state governments to assume more responsibility for safeguarding public education's basic structure. Actions like these can do something to offset the U.S. right's educational platform; but only a broader constitutional reconstruction of the entire compulsory schooling system can secure public education as a basic human right of all children.

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