



INTRODUCTION by Charles L. Glenn and Ian De Groof

Glenn, C. L. & De Groof, J. (2012). Introduction. In C. L. Glenn & J. De Groof (Eds.), *Balancing freedom, autonomy and accountability in education: Volume 3 (I-VII)*. Tilburg, NL: Wolf Legal Publishers.

Background

A decade ago, we published a two-volume study of how more than two dozen national systems of education balance *freedom of parental choice, autonomy of school management, and accountability to common standards* of educational quality and equity (*Finding the Right Balance* volumes 1 and 2, Utrecht: Lemma 2002). This overview grew out of the meetings and publications of the European Association for Education Law and Policy, of which De Groof was founding President in 1993 and Glenn was also an original member.

Why did we focus on these three aspects of education law and policy for our study? While each is an important element of current education reform efforts, we were concerned that policy-makers do not always pay sufficient attention to the tensions among them. Thus freedom or school autonomy may be sacrificed to accountability, or accountability may be weakened in an effort to provide a wider range of choices for parents, or to give more decision-making authority to individual schools.

We were convinced that wise design and implementation can produce a successful balance among freedom, autonomy, and accountability, and that considering the approaches adopted by different educational systems could help policy-makers and others to think more resourcefully about both design and implementation. None of

the countries described had achieved the perfect system, but something could be learned from each of them.

Educational freedom is important because parents have a fundamental right, recognized in national and international law, to guide the development of their own children and therefore to choose a school in which they have full confidence. For many parents, this will mean a school that shares their own views about what is most important in life, their religious or philosophical worldview. To deny that choice, or to make it impossibly difficult for parents of modest means, is unjust and unworthy of a free society.

School autonomy is important because it is the essential precondition for the creation of schools with a clearly-focused mission, schools in which staff and parents and the controlling board or other authority share the same understanding of how best to educate. We are long past the days when educators could promise that they had a single formula for providing the best possible education to every child or youth. We know that different schools work best for different pupils, and that teachers find professional satisfaction (and enhanced professional status) in schools where they share a common vision with their colleagues.

Accountability for common standards is important because today's pupils will be the parents, adult citizens, and productive workers of tomorrow. Society has a strong interest in ensuring that they are well prepared for those roles, and that they share an understanding of the virtues required by a free society. Society also has an obligation to ensure that no child or youth is harmed by neglectful or abusive parents or schools. It would be unjust to simply let the choices of parents and the enthusiasms of educators result in some pupils (typically those most disadvantaged by economic circumstances if not also by ethnic minority status) receiving an ineffective education.

Our conviction about the importance of balancing these three aspects of educational policy has been reinforced in recent years by much significant research that was not available to us a decade ago. To cite just one study, Woessmann, Luedemann, Schuetz, and West (2009) used the PISA 2003 international student achievement test that encompasses more than a quarter of a million students from 37 countries to consider the relation between our three factors and national achievement levels, holding constant a host of background variables. They found that “rather than harming disadvantaged students, accountability, autonomy and choice appear to be tides that lift all boats... In particular, the additional choice created by public funding for private schools is associated with a strong reduction in the dependence of student achievement on SES” (xi).

In the first edition of our study, we included 25 country profiles, most of which we wrote on the basis of a variety of sources, and a second volume of essays on the legal

and historical dimensions of these issues, in the writing of which De Groof contributed the legal and Glenn the historical part. An abbreviated Italian version was prepared by Daniele Vidoni (*Un difficile equilibrio: Europa continentale e mediterranea*, Milan: Armando Editore, 2003) and another abbreviated version was published and widely distributed in Eastern Europe (*Education Freedom*, The Hague: Foundation for International Solidarity Eduardo Frei, 2004).

Several years later, we prepared a new and expanded edition in three volumes with a different publisher, and with some of the country profiles written by experts from the various countries, although the majority remained our work based on available sources and thus inevitably missed many nuances of the situations “on the ground” (*Balancing Freedom, Autonomy, and Accountability in Education* volumes 1-3. Nijmegen: Wolf Legal Publishing, 2004).

In the second and third volumes of the 2004 edition, we (and several co-authors) reviewed educational laws and policies in forty countries, seeking to understand how each (and, in some cases, its policy-making regions) has chosen to strike a balance among three dimensions or vectors of educational management:

the freedom of parents to make fundamental decisions about the education of their children, choosing among schools (or home education) which offer real alternatives;

the autonomy of those who are engaged with individual schools B their boards and their teachers and administrators B to shape and implement a distinctive educational mission; and

the responsibility of government, on behalf of society and of the interests of children, to ensure that every child and youth has the effective opportunity to receive an adequate education.

Our profile of each country placed present laws and policies in brief historical context and sought to assess how those laws and policies had affected the realities of freedom, autonomy, and accountability.

In the introductory volume, we provided a more in-depth discussion of the legal and the policy principles which undergird and are expressed in the commonalities and differences observed among the countries in our study. We began with a discussion of the sources and nature of controversies over educational freedom, asking why it is often challenged by those who in other respects are strong supporters of human rights. This was followed by an historical overview of the state role in regulating and providing instruction at the elementary and secondary levels, with special emphasis upon France.

The next sections discussed the primary characteristics of educational freedom as a human right, the policy framework within which this right is exercised or frustrated, and the legal framework created by national and international law. We then reviewed two of the primary dimensions along which educational freedom is sought: some parents and some educators are concerned especially with the religious character of schools, others with the cultural character, and we showed how each has both policy and practical implications. The following chapter discussed – primarily but not exclusively with reference to the United States – the then-recent phenomenon of ‘vouchers’ for school tuition. We went on to discuss the two crucial dimensions of the practical implementation of educational freedom: public funding for non-state schools and the extent to which schools— state and non-state alike – enjoy the freedom to shape a distinctive educational provision.

We concluded our discussion with a review of the principal issues, showing briefly how the various countries included in our study had chosen to address them. This was followed by a series of summary presentations of the situation in each country and an effort to compare the various countries with some methodological rigor; Gracienne Lauwers coordinated this aspect of the study with indispensable and intelligent diligence.

Realizing that the 2004 edition lacked, in most cases, the perspective of experts from the various countries and that the situation in some of those countries may have changed significantly, we decided that a new edition was called for.

The 2012 edition

For the new edition, we sought authors from countries around the world, and were delighted to be able to attract almost one hundred collaborators, all completely uncompensated as are the editors. Some are the authors of the standard works on education law for their countries, others are graduate students in law or educational policy. The country profiles that they prepared cover sixty- five national systems of education. In addition, we have included in a few cases the country profile from the 2004 edition for half a dozen countries for which, sometimes because of last-minute difficulties, we were not able to obtain up- dated texts; these are noted in each case. In the present volume, the chapters on Argentina, Cuba, and the Philippines are in this category.

We are keenly aware of the omissions from the roster of countries covered in these volumes, notably from Africa and the Middle East as well as Latin America. Repeated efforts to recruit an author for Turkey, for example, proved unsuccessful for one reason or another. We trust that readers will understand that a project carried out without budget or staff and in competition with many other obligations cannot hope to be encyclopedic.

Volume 1 includes integrative and overview essays by a number of authors focusing on particular dimensions of the country reports or on regions of the world which may share some commonalities.

Volume 2 includes twenty-nine profiles of national systems in Europe (though note that Flanders and Wallonia in Belgium are treated separately, as are England, Scotland, and Northern Ireland in the United Kingdom; a profile of Wales appears in Volume 4).

The present volume includes profiles of twenty countries scattered around the world. It is our pleasant duty to thank the authors, Nikoleta Mita and Juliana Latifi on Albania, Cara Stillings Candal (updating the 2004 version by Hugo Carranza and Rodrigo Agrelo) on Argentina, Brian Caldwell on Australia, Iryna Ulasiuk on Belarus, Nina Ranieri on Brazil, Derek J. Allison and Deani A. Neven Van Pelt on Canada, Francisco J. Leturia I. and Francisca Vallejo on Chile, Jorge Alberto Mahecha Rodríguez and Luis Enrique García De Brigard on Colombia, Daniele Vidoni on El Salvador, Margrét Hardardóttir on Iceland, Amos Zehavi (updating the 2004 version by Moshe Cohen-Eliya) on Israel, Mahasen M. Aljaghoub on Jordan, Rosa Elena Terán Morales on Mexico, Carol Mutch on New Zealand, Louay Constant, Charles A. Goldman, and Gail L. Zellman on Qatar, Rika Joubert, Willem van Vollenhoven, Johan Beckmann, and Justus Prinsloo on South Africa, Charles Russo on the United States, and Pablo Landoni on Uruguay. We have also included two chapters as published in the 2004 edition, by Daniele Vidoni on Cuba and Vivian Talisayon and others on the Philippines (though Professor Talisayon reviewed the text for the 2012 edition).

The longest profile (as was the case also in the 2004 edition) is of Canada, in which each province requires separate treatment and the accommodation of language and of religion adds further complications to a truly magisterial account. The profile of the United States makes no attempt to be as thorough, and indeed to do so for the fifty states and other jurisdictions, in the present context of constant policy innovation, would require the whole volume; it has therefore been supplemented with an essay by Cara Stillings Candal, a young researcher who has collaborated with us from the start, and by an overview of recent school choice initiatives by Paul DiPerna, who monitors them for the Friedman Foundation for Educational Choice.

The other country profiles in this volume speak effectively for themselves, and for their authors. It may be important to mention that those authors were in no case selected because they held particular positions on the hotly-debated issues of educational policy with which these volumes engage; they were simply asked to be objective. In some cases it would be instructive to compare what I wrote about a country in the 2004 edition and how the same country is represented in the 2012

edition, as an illustration of the significance of the points of view that we inevitably bring. We believe that this diversity of viewpoints is not the least of the merits of this collection.

The overall theme

If there is a unifying concern in the questions to which we have asked our authors to respond, it is the extent to which their countries promote and protect educational freedom.

“Educational freedom” is a phrase with several different meanings. It can refer, for example, to the style through which instruction is provided. Those who support education which allows children to decide for themselves what and how they will learn (often referred to as “progressive” often claim that it is more “free” than traditional teacher-controlled forms of instruction; whether it produces adults who are more intellectually independent is, of course, another question. Educational freedom can also refer to the freedom of individual teachers to express their views in the classroom. Of course, the manner in which a teacher chooses to express personal opinions may have the effect of limiting the freedom of pupils to develop their own independent opinions, which should warn us against using “educational freedom” in this sense as though it were an unambiguous and obvious Good Thing. In addition, the freedom of teachers to work in a school whose mission is consistent with their own views of education, and thus to be part of a team of mutual support, depends to some extent on a restriction on the freedom of teachers in that school to undermine that mission by promoting divergent approaches; there is thus a “duty of loyalty” in schools with a distinctive character.

Our concern in this study is primarily with a third application of the concept, the freedom to operate schools according to a distinctive understanding of education and with a fourth, the freedom on the part of parents to choose such schools. Our working definition of educational freedom, then, contrasts it with educational monopoly, whether on the part of the state or by another party, such as a religious organization. We are concerned with laws, policies and practices which support or limit freedom as exercised by parents and by those operating schools.

The *Universal Declaration of Human Rights* (1948) states that “parents have a prior right to choose the kind of education that shall be given to their children” (article 26, 3). According to the *International Covenant on Economic, Social and Cultural Rights* (1966),

the States Parties to the present Covenant undertake to have respect for the liberty of parents . . . to choose for their children schools, other than those established by public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to

ensure the religious and moral education of their children in conformity with their own convictions (article 13,3).

Similarly, the First Protocol to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* provides that “in the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions” (article 2).

This freedom of parents requires, in a pluralistic society, that distinctive forms of schooling be available, which goes to the question of school autonomy, and that choosing an alternative to a government-operated school not pose an inhibiting financial burden on the family.

It is relevant, for example, whether the board or the director/principal of an individual school can select a team of teachers who share the same vision for education, or whether teachers are assigned by government on the basis of criteria of formal qualifications and seniority.

The reader will find much more extensive discussion of such questions in the essays collected in Volume 1.

We believe that there is ample material for reflection in these country profiles, and we trust that they will serve to inform and stimulate the discussions of educational policy that increasingly are occurring on a global scale.

Finally, our deep gratitude toward the many authors who contributed to these volumes.

Charles L. Glenn and Jan De Groof

References

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