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Education: A Civil Right

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Education: A Civil Right

Abstract

Education has been a fundamental right in California since the passage of our original Constitution. Many believe that entitlement to education is even more deep-seated, that it is a human right, a natural right, and a civil right. If this is true, education is necessary for freedom, and the maintenance of a reasonable quality of life. If this is true, the expectations placed on our public education system are immense and more complex than one might suspect, if one examines and truly understands the nature of human, natural, and civil rights.

Education: A Civil Right

Gregory J. Dannis

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ONE OF THE PRESIDENTIAL candidates declared proudly during the debates that “Reading is a civil right.” I suspect that neither his opponent nor members of the viewing public ever thought to disagree with this seemingly self-evident truth. This statement, however, has resonated in my mind and bothered me ever since.

Education has been a fundamental right in California since the passage of our original Constitution. Many believe that entitlement to education is even more deep-seated, that it is a human right, a natural right, and a civil right. If this is true, education is necessary for freedom, and the maintenance of a reasonable quality of life. If this is true, the expectations placed on our public education system are immense and more complex than one might suspect, if one examines and truly understands the nature of human, natural, and civil rights.

A civil right is an enforceable right or privilege that, if interfered with by another, gives rise to an action for injury. These rights are inherent in a civilized society, and flow to every individual. They are absolute, not variable or situational, and are never to be tempered or tampered with.

What kind of rights are we talking about? The right to vote. The right to speak freely, especially about disagreeable subjects. The right to be free from discrimination based on status, such as race, gender, age, disability, and in some venues, sexual orientation. The right to not be deprived of your property without due process of law. The right to equal treatment and protection under the law.

These “natural laws” are codified in statutes, constitutions, constitutional amendments, and court decisions. These declarations do not *create* the rights; rather, they merely capture them on paper for all to see and follow. They appear in documents such as the Declaration of Independence, the Bill of Rights and, more recently, the Universal Declaration of Human Rights.

In our country, expressions of these rights are stated in the positive and the negative. The federal Constitution states what Congress “can do,” and the Bill of Rights secures individual rights, thereby setting forth what the federal government “cannot do.” Thomas Jefferson said, “A Bill of Rights is what the people are entitled to against every government on earth.” The Fourteenth Amendment ensures that no *state* “shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States...or deprive any person of life, liberty, or property without due process of law, or deny to any person...equal protection of the laws.”

When a right or privilege is labeled a “civil right,” it takes on great power. The state is obligated to protect it at all costs, and every individual expects to receive these privileges. It becomes a right that is deserved, and not a privilege that needs to be earned. Recently, however, we have seen a careless use of the concept of civil rights. Union buttons assert that fully paid health care is a civil right. Protesters decry the lack of adequate public housing as denial of a civil right. And, of course, there is that statement that got me started: “Reading is a civil right.”

Adequate health care and housing and the ability to read are unquestionably important to maintaining freedom and a reasonable quality of life. But if we begin to label *every* societal aspiration as a civil right, we dilute the true meaning of the term, and we instill in our citizens an unwarranted sense of absolute entitlement. The line between what truly comprises such a right and that which does not becomes blurred if not indistinguishable, and the sense of absolute entitlement challenges our education system from the outside and within.

Our legislature continues to act as if it believes that furthering and protecting the civil and constitutional right to an education demands hundreds of new laws every year. This year, the legislature passed bills that:

- Prohibit bus drivers from using cell phones.
- Urge the accurate and comprehensive portrayal of

human rights violations and other historical atrocities in social science textbooks.

- Would have established the “California Racial Mascots Act.” (An opponent called the bill “political correctness run amok.” The bill’s author called it a civil rights issue. The governor vetoed it.)
- Require employers to provide sexual harassment training to all supervisors.
- Amends the Education Code to more closely mirror the bases for discrimination set forth in the Fair Employment and Housing Act. These expanded categories will apply to personnel policies and practices, including failure or refusal to interview or hire an applicant, and to any question posed to an applicant.
 - Urge passage of the federal Employee Free Choice Act. (This law declares that “freedom to join a union is recognized as a fundamental human right,” and that “a worker’s fundamental right to choose a union is a public issue that requires public policy solutions, including legislative change.”)
- Would have allowed teachers to voluntarily solicit feedback from their pupils concerning a course taught or the teacher’s performance. (The governor said current law already permits this, and he vetoed the bill.)

Which among these bills reinforce the concept that education is a civil right, and which merely muddy the issue? A stark example of this distinction can be found in a vetoed bill that contained various declarations regarding the purpose of public education in California and set forth the principles which should guide the operation and future development of public schools.

Governor Schwarzenegger is in agreement with making California’s education system the best in the world, but he has cautioned that “great care should be taken that the goals and principles are achievable both fiscally and programmatically. This measure creates expectations that the state will deliver an educational system without providing specific programmatic changes needed to achieve the gen-

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eral goals and principles in the bill.” He continued, “While I agree with much of the intent expressed, I firmly believe government should deliver what it promises. While well meaning in its intent, I am concerned this bill could create grounds for litigation against the state in the future for failing to meet its ambitious goals.”

There, in simple words, is a message to not complicate the meaning of a civil right — in this case education — by increasing the already absolute level of expectation placed on the system.

Some may misconstrue this as a defeatist approach, as in “don’t make promises you can’t keep,” an obviously flawed slogan during an election campaign. But this is not the case. The point is that “extraneous legislating” detracts from the real work that needs to be done to protect our civil right of education, and it often overshadows legislative accomplishments.

For example, this year, due to the tireless efforts of Senator Dede Alpert, we finally have meaningful reform in the categorical funding system of our schools. Beginning in 2005-06, nearly 30 categorical programs representing over \$2 billion will be consolidated into six block grants organized according to broad goals instead of narrow programs. Districts will have more flexibility to transfer funds among programs and into programs that have encroached on general fund revenues.

This is real reform. And, it may enhance a district’s ability to protect, preserve, and deliver the civil right of education to its students.

There also is potential for reform in the recently released California Performance Review. In the area of K-12 education, the major recommendations include:

- Restructuring the role of the Secretary of Education.
- Regionalizing the educational infrastructure by consolidating County Offices of Education.

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- Eliminating unnecessary reports required by the Education Code.
- Establishing qualifications for chief school business officers.
- Establishing performance-based contracts between the state and school districts.
- Improving special education hearing and mediation processes.
- Balancing career technical education and college preparation in high schools.

According to the Legislative Analyst’s office, many of these recommendations are inferior to those made in previous studies, like the Master Plan for Education and the 1996 Report of the California Constitutional Revision Commission. Indeed, several of the recommendations are controversial, like the elimination of County Offices of Education. And some fly in the face of recent developments. For example, although one recommendation calls for more vocational educational opportunities, such courses have been in decline for decades, with the emphasis shifting to classroom academics.

This trend has intensified with the No Child Left Behind Act, which holds schools accountable for student performance on high-stakes, standardized tests and requires “highly qualified teachers” only in core academic areas.

The reality is that 38 percent of the country’s high school seniors who do not enroll in two- or four-year colleges would benefit from vocational education.

These kinds of new laws and studies represent the potential for *real* change and improvement of our education system. They display a true trusteeship of the civil right that is education.

By contrast, one might question how the civil right of education has been furthered by the legislature’s creation of:

- The Week of the Teacher.
- Children’s Memorial Day.

- Student Volunteer Day.
- Family Empowerment Month.
- Equal Pay Day.

All of these commemorations no doubt arise from good intentions, but with an education system under siege and attack, and a state on the brink of bankruptcy, does the drafting, amending, debating, and voting on these measures represent time well-spent? Do such measures acknowledge the immensity of the system and the obligations placed on it? California's 9,000 schools enroll 6.5 million students; they are overseen by thousands of elected school board members in addition to 58 county offices with their own elected boards. The K-14 budget accounts for 46.8 percent of California's \$79 billion general fund. Those precious dollars must be expended to provide not only a fundamental civil right, but to preserve a democratic society.

To address that challenge, our laws must be substantive, not merely symbolic, and written with an intentional lack of clarity, or driven by a legislator's primary goal of having his or her name on an education bill.

Williams and the Promise of Educational Opportunities

This year, there is no better illustration of education's status as a civil right than the *ACLU/Williams* litigation and settlement. One education advocate called the *Williams* case "the most important civil rights issue of our time," adding that "the cycle of low expectations for kids of color has to be broken."

The *Williams* suit was filed on May 17, 2000, the 46th anniversary of *Brown v. Board of Education*, on behalf of one million public school students throughout the state. At the heart of the case was the ACLU's claim that California was failing to meet its promise of equal educational opportunities embedded in American law and public policy.

In response to the lawsuit, former Governor Davis, who proclaimed himself to be the "education governor," countersued the local school districts, asserting that any wrongdoing was their fault and not the state's. The governor spent \$20 million in legal fees pursuing what lawyers call a "scorched earth" litigation strategy, part of which involved reducing students to tears during depositions and deposing the ACLU's top expert for 17 days.

Everything changed with the recall election. The new governor said the ACLU was right — all children in California were not receiving an equal education. The new governor ordered that the case be settled, and it was. The governor signed five pieces of legislation that will set aside \$1 billion to repair deteriorating facilities in 2,400 low-performing schools; another \$139 million will be spent this year for textbooks, along with \$50 million to assess facility needs. Initially, most of this money comes from shifting funds, not additional revenue to the schools.

The new laws also set up a uniform complaint procedure for students, parents, and teachers to identify inadequate instructional materials, teacher vacancies and misassignments, and emergency or urgent facility problems.

County Offices of Education will bear primary responsibility for monitoring compliance with the new requirements, including conducting announced and unannounced inspections of schools. Fiscal Crisis and Management Assistance Teams also may play a role in reviewing teacher hiring practices, teacher retention rates, and the extent of teacher misassignments. Current principal training requirements have been augmented to include personnel management, including hiring, recruitment, and retention practices, and insure the sufficiency of instructional materials.

Regardless of one's opinion concerning the *Williams* settlement, one cannot deny that it returned the focus to education as a civil right — something every child deserves, not is required to earn. Rather than passing thousands of new laws to embrace *this* new reform or to create *that* new program, or to add yet another mandate onto the overburdened

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system, the *Williams* case compelled us to return to the core issue: Are we providing the *minimum* level of educational services to all children, regardless of color or income? Can we say we are providing them with their civil right to an education? To date, the answer apparently has been no.

Laws and Lawsuits as Catalysts for Change

Our state superintendent claims, "Since the filing of the lawsuit, we have made some real, positive steps forward in our schools." This may or may not be the case. The real question, however, is why did it require a lawsuit to enforce a universally recognized civil right?

We are accustomed to lawsuits and litigation being catalysts for educational reform. *Brown v. Board of Education*. *Serrano v. Priest*. Whenever a civil right is involved, the public to which that right flows always will ensure that the entitlement will be received in full. This year is no different. Our state Supreme Court has decided when student poetry is a criminal threat. It has held that an employer is liable for all acts of sexual harassment by supervisors. Our United States Supreme Court ruled that parental custody laws shielded the pledge of allegiance from extinction, and proved what we already knew — that Mom is more powerful than God.

Our Courts of Appeal have held that an employer must protect its employees from sexual harassment by non-employees. In coming months, the state Supreme Court will decide whether a school district is accountable when a charter school collects money from the state and does not provide the level of instruction and educational materials for which the funds were earmarked.

More lawsuits on the horizon will clarify, expand, or constrict the contours of this civil right we call education. One district is suing the state over an Education Code provision and accompanying anti-discrimination regulation defining "gender." A federal court soon will decide whether a high school student may wear a t-shirt to school with a message condemning homosexuality. Once again, the conflict between constitutionally protected speech and a district's

latitude to regulate arguably disruptive student speech will be resolved.

Laws intended to preserve and protect educational civil rights will continue to be the primary source for more challenges. Unhappy voices over No Child Left Behind grow louder every day. The promised level of funding has never materialized. Will the emphasis on testing really result in better-educated kids? Or, as teachers teach more and more to the test, will we discover that, in the long run, spoon-feeding teaches us nothing but the shape of the spoon? Even if we produce a vast population able to read, will it be able to distinguish what is worth reading?

Equally troubling is the chronically underfunded Individuals With Disabilities Education Act. Statewide, the number of special education pupils remains at the prior year level of 10.10 percent of the total K-12 pupil enrollment. But population is shifting to include those whose disabilities are more costly to accommodate. Statistically, the number of students with a specific learning disability, which is relatively low-cost, is decreasing, while the number of students with autism, requiring higher-cost placements and programs, continues to rise by nearly 20 percent.

All the while, the originally promised 40 percent funding level is stuck at 20 percent of the average per pupil expenditure. An Assembly Joint Resolution passed this year "petitions" Congress and the President to live up to their 40 percent promise; to do so would mean over \$1 billion more in annual revenue for California education.

This brings us full circle to the origin of civil rights in this country. Our founding fathers cried for an end to taxation without representation and petitioned the King for independence. Now our state legislature is petitioning the equally distant elected kings in Washington for the same relief.

An Educational Bill of Rights

When we fully understand education as a civil right, we appreciate not only its challenges, but also its beauty. It seems our critics always far outnumber our supporters. It is easy to

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criticize, and too many take pleasure in the exercise. But that robs us of the pleasure of appreciating some of education's finest achievements. If not for education, there could be no informed debate over whether medical benefits, housing, union affiliation, or indeed, reading, are civil rights. Only if we can fulfill our obligation to make this civil right a reality will other fundamental rights be achieved and preserved.

How can this happen? Well, it *is* happening, despite the many obstacles placed in our way. Thousands of school board members, superintendents, principals, teachers, and staff already know this to be true. Perhaps we should heed the advice of Thomas Jefferson and create our own "Educational Bill of Rights" to guard against the government of which we are a part. What might some of those rights be?

First, board members, superintendents, principals, teachers, and staff must be enabled through adequate support, resources, and time to perform their jobs to their full potential.

Second, with all due respect to the well-meaning but largely uninformed reformers, lawmakers, and critics outside and within the system, take the time to understand what public education really is, what it really needs, and what it does not need. Alternatively, please get out of the way and let the rest of us do our jobs and fulfill our commitment.

Third, every law, rule, regulation, and initiative substantively (not symbolically) must embrace the primacy of

our educational mission to serve all children. If education truly is a civil right, the circumstances that gave rise to the *Williams* lawsuit simply cannot be tolerated.

Fourth, if education is to remain a civil right, there must be as much emphasis placed on the "civil" as there is on the "right." This means a tangible recognition of the critical position public education holds in our civilized society.

Finally, if education is indeed a universal, civil right, there cannot be a system of funding that perpetuates a chasm between the haves and the have-nots. Civil rights are absolute, not variable depending on the historical happenstance of funding schemes.

We know better than to claim our system of public education is as good as it can be. We know it can improve. After all, only mediocrity can be trusted to always be at its best. We also know that education always will be at the center of controversy because there is nothing simple about the profession we practice and the service we provide. There is no pure right or wrong, or

black or white. The greatest controversies usually are not amenable to a "one size fits all" approach, even when confronted by the most well-intentioned who share the same goals.

But we can be certain of one thing: if we allow educators the tools, the time, and the freedom to use their talents without obstructions, education forever will be the most prized civil right in our nation. *

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