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Should Religious Schools Be Publicly Funded? Issues of Religion, Discrimination, and Equity

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ABSTRACT

This issue offers a critical opportunity to reflect on an enduring question in education: Should religious schools be state-funded? To facilitate this reflection, this issue offers six studies from Canada, Spain, and the United States. Each delves into the unique relationships between state-funded schooling and religion in their respective contexts. In particular, these studies examine how the relationships have shifted due to numerous factors, including changing legal rulings, political ideology, demographic shifts, global migration, and education privatization. The authors carefully integrate (and interrogate) the histories and places where they conducted their analyses. Taken together, these studies offer invaluable and timely insights into the intended and unintended consequences of state funding that expands school choice, marketization, and privatization, particularly with respect to religion. This issue thus aims to inform the ongoing debate about the (potential) impact that publicly funding religious schools has on equity, segregation, and discrimination. Ultimately, we hope this issue highlights the importance of a nonsectarian approach to public education so as to create an inclusive education space wherein all human identities are welcomed and affirmed.

In just a few years, the Court has upended constitutional doctrine, shifting from a rule that permits States to decline to fund religious organizations to one that requires States in many circumstances to subsidize religious indoctrination with taxpayer dollars.

–Justice Sotomayor, dissenting (*Carson v. Makin*, 2022, p. 808)

Should religious schools be publicly funded? This question has been at the center of public funding debates for decades and, in some countries, for centuries. Some jurisdictions fund religious schools fully with public money, some fund them partially or with strings attached, and others do not fund these schools at all. But within that set of choices, the ground has been shifting.

We started working together on this issue in spring 2022, following our panel session at the American Education Research Association's annual conference. The panelists examined the intersection of religion and school choice in PreK–12 schools in different countries. It was a timely response to two recent major U.S. Supreme Court decisions, *Espinoza v. Montana* (2020) and *Carson v. Makin* (2022), both of which held that states were engaging in antireligious discrimination by refusing public funding for private religious schools at a time when public funding was available to private schools that did not engage in religious teaching and proselytization.

There has been a corresponding acceleration around the world toward the expansion of school choice, including expanding funding (or advocacy) for religious schools (MacGillis, 2024; Verger et al., 2016; Welner et al., 2023). Hence, in this issue we develop and share those panel papers and seek to

further inform the ongoing debate over public funding for private religious schools in different countries and jurisdictions, with a particular focus on issues of discrimination.

The authors in this issue engage with policy-relevant questions about how rapidly changing legal, political, and economic landscapes have weighty impacts on the goals of public education vis-à-vis religious education. Some of us are struck by Justice Sotomayor's dissent in *Carson v. Makin* (2022), as noted in the quote above. Her dissent also includes important reminders that taxpayer funding for private religious schools would encourage discrimination: "While purporting to protect against discrimination of one kind, the Court requires Maine to fund what many of its citizens believe to be discrimination of other kinds" (citing the Maine schools' "policies denying enrollment to students based on gender identity, sexual orientation, and religion") *Carson v. Makin*, 596 U.S. 767, p. 809 (2022, Sotomayor, J., dissenting). In our increasingly multifaith and multiethnic societies, the implications of publicly funding private schools run by religious organizations include multiple issues related to discrimination, segregation, and their associated inequalities and inequities (Blaiklock, 2022; Frankenberg et al., 2003; Wilson, 2022; Yoon et al., 2022).

This issue thus provides a critical assessment of the intersection between such religious educational institutions and the expansion of parental school choice and school marketization. In particular, the articles look at three countries—Canada, Spain, and the United States—wherein the relationships between schooling and religion have shifted due to numerous factors, including changing legal rulings, political ideology, demographic shifts, global migration, and increasing secularization. This issue illuminates how legislators and other policymakers, school leaders, advocacy groups, and parents (via participation in their children's school enrollment) have been leading or responding to changes in the legal, policy, and institutional contexts of public and private schools. It also explores how such legal and policy changes have impacted the identities of religious schools and their enrollment patterns (by religious status). More importantly, the articles examine the (potential) impact these changes have on segregation, equity, and discrimination based on one's religion, race, ability, language status, social class, sexual orientation, and gender identity.

Together, these articles offer timely research that engages with the critical issues in key debates. They also offer place-specific research in which histories, traditions, and contexts are significant in our understanding of the enduring and emerging issues around public funding for religious schools. The authors heed and highlight the contexts in which they conducted their research by delineating and analyzing the particular histories of religious communities, educational arrangements, and funding policies. The studies included here do not view questions of publicly funding religious schools strictly through the economic lens of cost-benefit analysis. Instead, they carefully integrate the histories and places wherein they carried out their research, reflecting a recent and compelling call to think spatially, sociologically, and ecologically about education and policy (Lenhoff et al., 2022; Potterton et al., 2020; Yoon, 2023). We hope this issue encourages readers to pay closer attention to the current trends and decisions that are likely to have lasting effects on the education sector and society more broadly.

Discrimination

Three articles in this issue delve into critical issues of discrimination in voucher-receiving private schools in the United States. The U.S. Supreme Court has issued decisions in recent years that diminish Establishment Clause concerns while elevating Free Exercise claims that amplify individuals' right to religious freedom. This has created dilemmas that may not be readily apparent to those outside the United States, since it is constitutionally (and politically) problematic in the United States for bodies receiving public subsidies to be subject to regulations. Religious schools in the United States, by virtue of their religious status, operate with minimal legal constraints compared with, for example, traditional U.S. public schools and to publicly subsidized religious schools in Europe and Canada. Likewise, there are fewer accountability mechanisms for U.S. religious schools than for their religious counterparts in other countries that recognize and require legal protections for the human rights of all students, whether those students are enrolled in religious or secular schools.

The articles, which focus on U.S. constitutional issues, remind us how the Court had been, until two or three decades ago, skeptical of the constitutionality of using public money to support religiously affiliated institutions providing PreK–12 schooling. The first article, by Preston Green, Bruce Baker, and Suzanne Eckes, recalls how multiple public schools were privatized to avoid desegregation after the second Supreme Court case in *Brown v. Board of Education of Topeka* (1955), requiring only that schools desegregate with “all deliberate speed.” They describe the origins of school voucher programs, spurred on by White parents who wanted their children to attend private schools at which racial discrimination was allowed (for a comprehensive history, see Hale, 2021). It took almost 10 years before one such voucher program was declared unconstitutional by the Supreme Court in *Griffin v. County School Board of Prince Edward County* (1964). Yet, Green and his colleagues point out that some private religious schools have continued to ban interracial friendship, socialization, dating, and/or marriage based on their religious beliefs, thereby, (re)producing racism and White supremacy. The authors make the compelling case that allowing more public funding or vouchers for religious private schools is tantamount to public support for discrimination and racial segregation.

The second article, by Kevin Welner, further explains how legal changes allowing—or even requiring—taxpayer-funded vouchers for private and religious schools are likely to undermine the rights of students. The article analyzes the likelihood of discrimination against different groups of students under different school-choice policies. Welner concludes that discrimination based on gender identity and sexual orientation is particularly likely to gain legal protections when religious schools contend that such discrimination arises from their religious beliefs.

In reading Welner’s article, we are reminded of the case of a high school student, Marc Hall, who attended a publicly funded Catholic school in Ontario, Canada, and was not allowed to bring his boyfriend to the prom. While the Ontario Superior Court later ruled that he had the right to do so, U.S. courts may not step forward in the same way. Indeed, Welner argues that increased public funding for religious private schools in the United States will intensify the *outsourcing of discrimination* (against minoritized communities), which he defines as the use of vouchers to shift public funding of education away from public schools, wherein students are protected, to private schools, wherein discrimination is much more likely to be permitted. This raises moral questions that should concern all people of conscience, regardless of their stance on religious school choice. Welner also provides a flowchart that helps us make sense of the various twists and turns in policy and law that could lead to protections or a lack of protections in voucher schools and charter schools that are operated by religious institutions—a new phenomenon that the U.S. Supreme Court’s recent decisions have precipitated. The flowchart helps to clarify what is a complex and evolving legal issue and may also serve as a useful pedagogical tool for legal and policy educators wanting to teach about this issue.

Potential problems related to discrimination are also discussed in the article by Stephen Kotok, Catherine C. DiMartino, and James Coviello, which focuses on Catholic schools’ operations in the public space in New York City. Their research suggests, for example, that religious schools in the United States often prefer hiring staff, especially teachers, who share the school’s faith so that these teachers can provide the kind of religious education the school wants to inculcate in its students. This and the other articles in this issue, thus, raise timely questions about various types of discrimination—targeting employees as well as students—that can increase as religious schools receive more public funding. Accordingly, expanding school choice via vouchers for religious private schools needs to take these matters into account, especially as religious schools pursue their beliefs in ways that result in discriminatory policies and practices.

Who makes decisions and under what circumstances?

Decisions about whether to allow public funding for religious schools are, depending on the country and the jurisdiction, made by either courts or political leaders. Further, the nature of those decisions depends on a bundle of complex factors, systems, circumstances, and meanings. In some countries,

these decisions were made centuries ago, while in other countries significant shifts have happened only in the past few decades (Verger et al., 2016).

The articles from Welner and from Green and his colleagues discuss the pivotal role played by the U.S. Supreme Court in transforming the national context to one strongly favoring the growth of voucher policies and the funding of religious institutions. Relatedly, Kotok and his coauthors note the significance of the composition of the Court (that is, the ideological views of its Justices), in addition to the growing prominence of those with Catholic backgrounds in key decision-making positions in the United States (including President Joe Biden).

To those outside the United States, it may be surprising to discover how much power the Supreme Court has over decisions about education funding and, thus, the extent of its influence on educational processes and outcomes. Focusing on Canada's Ontario province, Ee-Seul Yoon's research shows that, in contrast, power lies with the provincial government in deciding on funding for Catholic schools. In 1985, the political majority in the provincial government changed the policy on funding for Catholic schools without the electorate's direct support. This exercise of political power to direct public money to a particular religious group may, in turn, be surprising to readers from the United States, wherein the Establishment Clause requires neutral treatment of different religious groups—prohibiting benefits to one group that are denied to others.

Digging deeper into such decisions and the power associated with them, Sue Winton's article explores discursively how policies about public funding for religious schools change in particular contexts. Her research compares the history of two Canadian provinces—Alberta and Ontario. Ontario does not provide public funding for private (and largely religious) schools, while Alberta does. Winton's research explores changes in these approaches to school funding through discourse coalitions that have shaped storylines over the past three decades (1990–2020). Winton's work shows how different individuals and groups can influence policy change by forming a coalition discursively (rather than as a unitary group). She also illustrates that understanding these changes requires a broad analysis that extends beyond merely looking at those who are in positions of decision-making power. These analyses, she contends, must focus more, as she does in her research, on the importance of the historical, political, and economic contexts that shape policy decisions about whether (and which) religious schools should receive public funding.

Heterogenous policy implementation at the school level

It is important to note that not all religious private schools want to receive public funding, in part, because of the government regulations attached to the funding in most countries (although this regulation is minimally significant for the vast majority of religious schools in the United States). How the schools that receive public funding implement government policies and directives also varies. While court decisions and governments' institutionalization of public funding for private religious schools are supposed to create consistency in implementation across educational jurisdictions, implementation is (and will be) uneven across schools and across states or provinces. It should be noted in this regard that some religious leaders would consider an increase in public funding a welcome opportunity to expand religious education, while others may view it warily as a threat of increased government oversight. Moreover, while some religious institutions adhere to racist, xenophobic, or anti-LGBTQ+ stances, thereby practicing discrimination, others may be more committed to human rights and responsive to the secularization and diversifying effects of global migration that define the era.

Private religious schools that choose to accept public resources or subsidies must decide how that participation might impact factors such as their mission, approach, and enrollment. Kotok, DiMartino, and Coviello examine how Catholic school leaders understand, interpret, and navigate the legal shifts in funding for Catholic education in New York City. Their study shows that leaders who currently participate in public–private partnerships can aim to strike a balance between religious traditions and non-Catholic student enrollment (and public funding). The leaders studied by Kotok

and his colleagues see the potential to evangelize non-Catholic students and families, even while managing to comply with the state regulations for receiving public funding. Their research details a shift in how religious school leaders walk this tightrope as they negotiate between religious traditions and programming. Yet, their study also pinpoints aspects of religious beliefs that are ingrained in these schools' approaches to teaching and hiring staff, illustrating how changes implemented at the school level will differ depending on state politics that influence regulations and funding mechanisms.

Clara Fontdevila, Adrián Zancajo, and Antoni Verger's study explores related questions in the context of Spain, especially in the region of Catalonia, where private Catholic schools receive subsidies from the government for primary and secondary education. Catholic schools in Catalonia have faced declining enrollment, due to the rise of secularization, global migration, and low birth rates. The authors explain how religious schools have adapted to changing circumstances by using three different approaches to education. One is described as *confessional*, with an evangelizing mission among schools that are most closely tied to founding religious communities and have relatively strong market positions, especially in socially affluent areas. The second approach is characterized as *cultural*, meaning that these schools see their role as educating students to understand the history and tradition of Catholicism. These schools tend to be less strongly tied to the founding religious community and are located in more mixed-income areas, with relatively weaker market positions. The third approach is found among the schools that focus more on teaching the values of Catholicism in relation to humanism and spirituality. Referred to as *value-centric* schools, they tend to be located in low-income areas and enjoy greater autonomy from the founding religious community. This study shows that religious schools in Catalonia adapt their school cultures, including their approach to religious practice, substantially in response to market pressures.

More broadly, the studies presented in this issue provide timely illustrations of how different religious schools have adapted their educational programming, expectations, and school cultures to the shifting policy and demographic landscapes.

Effects on equity and segregation

Religious interest groups have been advocating for public funding for religious education for decades. The study by Kotok and his coauthors, in particular, shows how some religious leaders have called for an increase in public funding to ease the financial pressures on Catholic schools. Winton's study adds that some religious organizations and groups have advocated for funding all religious schools, not just those that observe the Catholic faith. While Winton focuses on two Canadian provinces, this is also very much the case in the United States. For the leaders and congregations in these churches, as well as for the students in their schools, state funding can be a crucial tool for keeping the doors open.

As argued by Welner and by Green and his colleagues, however, while there may be benefits for some religious schools, there may be detriments for others. In the United States, such decisions about public funding should thus be based on whether they serve the common good and are consistent with constitutional principles. These authors contend that public money should be used to improve social cohesion and engagement of all members of society. It should be allocated intentionally, moreover, for every member of society, to advance goals such as antidiscrimination, inclusion, and equity.

In this regard, the articles by Green and his coauthors and by Welner provide examples of how some religious private schools have encouraged discrimination and exclusion. Further, focusing on the context of Toronto, Canada, Yoon's study critically examines the spatial effects of publicly funded Catholic schools on equity and segregation. She finds that with full public funding, the secondary schools in the Toronto Catholic District School Board (TCDSB) have expanded their purposes and reach. These TCDSB schools are no longer considered an option that simply offers a Catholic education or a Catholic environment in which students learn. Rather, they have become a distinctive part of the school-choice ecosystem in the city's growing school market. In fact, TCDSB schools and their specialized Arts, Gifted, French, and Academic (AGFA) programs of choice have emerged as an important factor in the growing segregation between schools in Toronto. One

reason for this is the TCDSB's decision to add more AGFA programs in the schools located in affluent neighborhoods, making its choice programs inequitably distributed in Toronto, which was recently dubbed Canada's most unequal city (Statistics Canada, 2022). As Yoon's study demonstrates, public funding for TCDSB schools has contributed to the increase in segregation and inequity in an increasingly unequal city.

Concluding discussion

Cumulatively, the articles in this issue raise troubling questions about the increasing growth and impact of public funding for religious schools and the expansion of school choice. Through legal, historical, discursive, and geospatial analyses, this group of established and emerging scholars provides nuanced and contextualized insights that we hope will stimulate discussion and debate about the intended and unintended consequences of public funding that expands school choice, marketization, and privatization, particularly with respect to religion. As the world moves further down the road of education privatization, we believe this issue will serve as a valuable forum, especially by drawing on historical and contemporary lessons from Canada, Spain, and the United States.

We hope, in particular, that the articles will encourage readers to ask critical questions about publicly funding private religious schools that engage in practices of discrimination, indoctrination, and segregation. While there has been solid research exploring school choice and marketization, religious education, and school funding, we see a need for more research on the intersection of two or more of these areas. Particularly underresearched are the implications for, and of, faith-based schooling in the increasingly dynamic context of publicly funded school choice and the growing school marketplace in which the lines that separate the public from the private sector are increasingly blurred. Some behaviors of religious private schools, as illustrated in the studies in this issue, offer insight into how growing public funding for private religious schools might shape school practices and increase niche schooling.

In addition, this issue calls for more research on how local- and school-level politics impact the relationship between education and religious institutions, suggesting areas for future research. For instance, discrimination based on race, sexual orientation, and gender identity were key topics of the articles by Welner and by Green and his coauthors. Yet, the leaders who were interviewed for the studies by Kotok and his colleagues and by Fontdevila and her colleagues did not discuss issues of discrimination at length. Future research could helpfully examine the nature and extent to which religious school leaders conceptualize and address issues of discrimination, exclusion, and segregation.

Relatedly, questions about gender dynamics or hierarchy (for example, the fact that Catholic priests are overwhelmingly male) are noted in the article by Fontdevila and her colleagues. If public funding is to be provided to religious private schools, these issues of gender in leadership representation will become increasingly salient. Public funding for religious institutions prompts the need for greater equity, or at least clearer answers to broader questions about gender and race.

Yoon's study points to the need for more research on the geographies of publicly funded religious schools or publicly subsidized private religious schools across unequal cities. This line of research would help us better understand how state funding for religious schools may (inadvertently) reproduce sociospatial inequalities. Additionally, more study is needed of the differences in tuition fees among (religious) private schools and how these differences might lead to greater socioeconomic segregation.

In short, this issue raises many questions about the state's role and responsibility in making decisions about providing and funding private religious education. Public finance and funding are explicitly and implicitly connected to how we collectively think about the role of the state or government in collecting and distributing scarce resources for societal well-being. Changes in public funding for religious private schools have redefined—or at least attempted to redefine—what is public versus what is private. In the United States, in particular, public schools have long been represented—truthfully, in most cases—as fully taxpayer-funded and secular. They have also pursued an ideal of

providing an education that includes all children, who can learn to live together in a society with diverse, heterogeneous, and even opposing beliefs, ideologies, and traditions. This does not mean children or staff cannot have a religion; a nonsectarian approach to public education is more about creating an inclusive education space for all, free from indoctrination (into particular ideologies) or proselytizing (of particular religious beliefs), in the service of the ideals of inclusivity and diversity.

At their best, public schools or publicly funded schools have pursued an ideal of inclusion and antidiscrimination in their policies and practices in the classroom, in admissions, and in employment; they have operated as spaces in which all human identities are welcomed and affirmed. Yet, as the articles in this issue illustrate, religious schools have consistently adapted to the changing legal and market landscapes, and those adaptations have often resulted in discrimination against and exclusion of minoritized communities. This is why, as more and more public funding is now being channeled to religious schools, researchers need to pay attention to the equity implications of this changing landscape. We hope this issue responds to that need and encourages others to do the same.

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Joel R. Malin is an Associate Professor of Educational Leadership at Miami University. His scholarship focuses on knowledge mobilization, research–practice–policy connections, and the politics of education. With Chris Brown, he has recently authored two edited volumes, *The Role of Knowledge Brokers in Education* (Routledge, 2020) and *The Emerald Handbook of Evidence-Informed Practice in Education* (Emerald, 2022).

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Kevin Welner is a Professor of Education Policy at the University of Colorado Boulder School of Education and (by courtesy) at the School of Law. He's also the Director of the National Education Policy Center, housed at CU Boulder, which works to build bridges between the research world and the broader public.

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