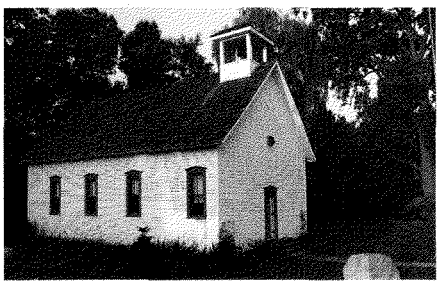

Associated Press, Midland Daily News

School Choice—Really

Back when our great-grandparents were children, trudging barefooted through blizzards to one-room schoolhouses warmed by the patriotic heat of Parson Weems and *McGuffey Eclectic Readers*, school "choice" meant just that: Parents had the *choice* of whether or not to send their young 'uns to the education factory. They lost that choice—but maybe everything that dies someday comes back.

Massachusetts was the first state to enact a compulsory schooling law, in 1852; by 1918 every state in the land of the free had abolished what had once seemed a basic freedom. The compellers blamed feckless American parents for bringing coercion upon themselves. As B. G. Northrop, secretary of the Connecticut State Board of Education, said in 1872: "To bring up children in ignorance *is* a crime and should be treated as such."

Compulsory education went fist in velvet glove with child-labor laws. The mines, mills, and farms in which young people labored were being emptied of children, as enlightened, usually childless progressives made war on the rights of rural and working parents to raise their children as they saw fit.

Parental resistance to compulsion was fierce. Coercive education was said to be "monarchical," "un-American," "un-Constitutional," and "inimical to the spirit of free democratic institutions." In 1848, the *North American Review* remarked of a typical parent in this original choice movement: "To compel him to educate his children would have been an invasion of his rights as a free-born Rhode Islander, which would not be endured."

From the start, compulsory education relied on military metaphors and brute threats. Educationist Calvin Stowe told the Ohio legislature in 1836, "A man has no more right to endanger the state by throwing upon it a family of ignorant and vicious children than he has to give admission to the spies of an invading army." One nineteenth-century zealot extolled the state's "right of eminent domain" over the minds of children. All in all, kid, you're just another brick in the wall.

What the anarchic American system needed was the lash of Prussian discipline, or so Americans were told. Martin Luther's 1524 letter to German rulers was widely quoted: "The civil authorities are under obligation to compel the people to send their children to school." Those authorities eventually obliged, when in 1717 Friedrich Wilhelm decreed that "parents are required on pain of heavy punishment" to place their children in state-run schools. A vast surveillance network of truant officers, police, and collaborating clergy saw to it that *Mutter und Vater* did their parental duty.

A 1914 U.S. Bureau of Education propaganda campaign aimed at the six Southern states lacking compulsory-education statutes praised the ruthless Teutons: "The successful enforcement of compulsory education has long been an enviable feature of the German school system."

Compulsion was the wave of the future, warned the agents of the Bureau of Education. Arguments for parental choice were "specious, superficial, and obsolete," declared the iron-fisted William H. Hand. The abolition of choice was "both modern and democratic." And so schooling became yet another basic function of the family expropriated by the state.

Except for the Amish, most Americans went supine before the statutes. Compulsory education gradually became one of those long-settled matters, like the existence of the income tax. The odd dissenter was written off as quaint or demented—until the 1960s and '70s, when a wave of New Leftish critics of Big Education, led by Paul Goodman and John Holt, took the paddle to what Goodman called "compulsory miseducation."

What the early progressives had found admirable—the regimented Prussian pedigree of forced schooling—the New Leftists found repellent. As Judson Jerome argued, "Compulsory education, like compulsory love, is a contradiction in terms. Where there is compulsion, a person... learns to be docile or rebellious; he learns to sit still for long hours without thinking; he learns to fear or hate or be sickeningly dependent upon authority figures.... If schools remain, the first business of the day should be to establish clearly and unequivocally that anyone is free to leave."

Ivan Illich, among the most prominent of the radical critics of schooling, called for a new amendment to the Constitution: "The state shall make no law with respect to the establishment of education." Illich died several months ago. His amendment, a mere 38 states shy of ratification, is an adorably truant orphan just waiting to be adopted.

—Bill Kauffman

Inside Expert

Constitutional Conservative

If the Supreme Court uses two current cases against the University of Michigan to overturn the use of racial preferences in college admissions, Americans will have Michael Greve to thank. As a founder of the Center for Individual Rights, Greve led the initial litigation in both cases. Born in Germany and the holder of a law degree and a doctorate from Cornell University, Greve currently heads an AEI project that seeks to protect American federalism. He spoke with TAE *senior editors Eli Lehrer and Karina Rollins.*

TAE: Are racial preferences at public universities Constitutional?
GREVE: No, they are not. The 14th Amendment presupposes racial neutrality. The Constitution is colorblind. Conflicts along racial lines are more pernicious than any other imaginable division. The only baseline on which everyone can agree is one of absolute, uncompromising racial neutrality.
TAE: Courts haven't upheld racial preferences in decades. Why do they persist?
GREVE: Courts have also never decisively prohibited them, and that creates all sorts of room for political infighting. An awful lot of people crowded into the lifeboat of preferences. It started out about blacks, then, in order to sustain itself, the system mushroomed and crowded additional favored constituencies under the principle of compensatory preference.
TAE: What do you think the chances are of the Supreme Court finally making a decisive statement on racial preferences in the University of Michigan case?
GREVE: I think it's a foregone conclusion that the University of Michigan will lose both cases. I don't see any way to save the university's position. My personal hope is that the Supreme Court will recognize the need for a clear conceptual rule. It has to realize that the specific mechanics of the system don't matter; the only way to get beyond race is to…well…get beyond it.
TAE: The Bush administration's brief in the Michigan case argues against the university's racial preference scheme, but takes for granted that diversity is a good thing. Are the Bushies not going far enough?
GREVE: They take an intellectually incoherent position. There are a million ways to get racial diversity without discriminating. You could simply have a lottery. The result would be that the University of Texas Law School, for example, would no longer be number 12 in the country, it would be maybe number 45. Do universities love diversity so much they are willing to surrender their elite status to achieve it? I don't think so. They prefer to use racial discrimination and quotas so they can have it both ways. That's why I think the claim that diversity is a "compelling interest," is insincere.
TAE: How would you rate the Bush administration's general record on federalism—respecting the rights of states, and keeping a balance between national and local governmental power?
GREVE: C-. Just short of destructive. There's this abomination of an education bill, which is just the pits. And there's been a complete lack of imagination as to how mandates might be lifted from the states to help alleviate their current fiscal problems. The answer isn't for the feds to give the states more money.
TAE: During the 1950s and '60s segregationists used the rhetoric of states' rights. This gave federalism a bad name. How can the image of federalism be rehabilitated?
GREVE: First, we need to stop talking about states' rights. The idea that federalism empowers states is a misconception. Federalism puts the states under competitive pressures. Once you conceptualize it from that vantage point you see that federalism doesn't consist of giving states the right to trample on their own people.
TAE: So how does this philosophy you've just articulated apply to the tobacco settlement? What's wrong with the settlement?
GREVE: It's emblematic of many things that have gone wrong in recent American federalism. The tobacco deal granted some states permission to exploit their sister states. In the end, no state can opt out.
TAE: Many Americans believe that trial lawyers have become too powerful. What are some concrete achievable steps to reign in the power of trial lawyers?
GREVE: Trial lawyers take what the system gives them. The problem is that today's system gives them too much. The present Supreme Court is not willing to rebuild the Constitutional protections that stopped this.
TAE: You live here and defend the U.S. Constitution, but you're not a U.S. citizen. Why?
GREVE: I'm a refugee from the German welfare state. But I loathe the U.S. Immigration and Naturalization Service bureaucracy. That's all there is to it. If I could become a citizen by filling out a form on the Internet I would do so in a second.