

[Columbia Law Professor Explains Why Public Schools Are Tearing America Apart](#)

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By [Joy Pullmann](#) OCTOBER 25, 2021 *The Federalist*

Smearing parents fed up with their kids' schools as "domestic terrorists" seems to be a wild, incendiary charge with little basis in reality. Yet it's the basis on which the U.S. attorney general has convened an FBI task force to surveil and intimidate parents who object to what their children are being taught, and how they are being treated, with public tax dollars. The organization that colluded with the Justice Department to create the pretext for chilling voters' speech [has backed down](#), but the FBI threat remains.

School lockdowns have clarified and accelerated the deep, irreconcilable differences among American parents and citizens about how to educate children. Americans want completely different things from their kids' schools, often *opposite* things. It's simply impossible to teach both that there's a hierarchy of races and that all humans are created equal, let alone to teach "both sides" of other education flashpoints, such as whether to teach social justice or actual math in math class. Schools have to choose.

K-12 schools are largely choosing the political establishment over the wishes of the people who elect them and provide their children as the pretext for schools' public funding. The political establishment that [benefits](#) from public schools' monopoly on teaching future voters what to think is being increasingly direct about this arrangement.

In 1996, Hillary Clinton [told Americans](#) "it takes a village" to raise a child. That was the soft sell. Today, we're getting the hard sell: "I don't think parents should be telling schools what they should teach," said Virginia gubernatorial candidate Terry McAuliffe in a September debate.

As Democrats were forcing millions of American children to stay home for yet another school year while their international peers were safely learning in person,

a Harvard University conference suggested banning at-home education. One of its organizers, a Harvard Law professor [complained](#) that homeschooling is “a realm of near-absolute parental power. . . . inconsistent with a proper understanding of the human rights of children.”

California’s governor, and [forthcoming federal coercion](#), also communicate contempt for parents’ authority by substituting their own in mandating COVID vaccines even though [Centers for Disease Control data show](#) these injections pose greater health risks to children than COVID does. Demands for substituting nonparental authority in the place of parents cause even weirder manifestations, such as from this teacher on TikTok.

Contempt for the kind of self-government that starts with families also comes out in the [thousands of teachers openly defying](#) — with legal backing from top Democrat Party donors — laws enacted at parents’ behest that seek to ban the teaching of things like critical race theory.

Regardless of how it comes out, all these incidents point to what’s at the real center of today’s virulent debate about public schools: Whether parents or bureaucrats should control what kids learn. This has been at the crux of all the debates about public education going back to when Progressive Era do-gooders started American schools’ path towards nationalization.

Using Schools to Co-Opt Other People’s Kids

Columbia Law professor Philip Hamburger goes back to this history in [a Friday Wall Street Journal essay](#) explaining why public schools will remain a fierce culture war battleground until lawmakers make them release their grip on America’s kids. “[T]he schools remain a means by which some Americans force their beliefs on others,” Hamburger writes. “That’s why they are still a source of discord.”

He notes that the steady transference of American K-12 education from private, mostly church-run schools to government agencies was planned to control what the next generation of voters believed. In the late 1800s and early 1900s, this manifested through the effort by the white, Anglo-Saxon Protestant establishment to convert Catholics by putting their kids in Protestant-ish public

schools. That eventually turned into an effort by secularists to convert Christians of all kinds by banning Christianity from public schools. Both succeeded.

“[T]he idea that public education is a central government interest was popularized by anti-Catholic nativists. Beginning in the mid-19th century, they elevated the public school as a key American institution in their campaign against Catholicism,” Hamburger notes.

...As today, the hope was to liberate children from their parents’ supposedly benighted views and thereby create a different sort of polity. Now as then, this sort of project reeks of prejudice and indoctrination. There is no lawful government interest in displacing the educational speech of parents who don’t hold government-approved views, let alone in altering their children’s identity or creating a government-approved electorate.

Indoctrination Is Unconstitutional, In Two Ways

Today, public schools don’t merely shift children from one denomination to another but outright replace Christianity with the secular religion most visible as identity politics, as former U.S. Attorney General Bill Barr [detailed in June](#). That’s why Barr [warned](#) Americans that public schools are “the greatest threat to religious liberty in America today.”

This is backed up by [numerous studies](#). A [2020 scholarly review of research](#) on this topic concludes that “especially increasingly secularized government control of education... can account for virtually the entire increase in secularization around the developed world.”

“The heavy-handed enforcement of secular-progressive orthodoxy through government-run schools is totally incompatible with traditional Christianity and other major religious traditions in our country. In light of this development, we must confront the reality that it may no longer be fair, practical, or even constitutional to provide publicly-funded education solely through the vehicle of state-operated schools,” Barr said.

Hamburger complements and extends Barr’s argument that public schools in their current form amount to an unconstitutional establishment of religion by also suggesting they amount to an unconstitutional restriction on Americans’ freedom of speech.

“The public school system, by design, pressures parents to substitute government educational speech for their own,” Hamburger writes. “Public education is a benefit tied to an unconstitutional condition. Parents get subsidized education on the condition that they accept government educational speech in lieu of home or private schooling.”

He notes that this especially disadvantages poorer parents, but it affects everyone by allowing government to decide what future voters believe about its limits and powers. Using public resources to convert children to government-preferred political and religious ideologies is not only unconstitutional, Hamburger observes, but it also inflames social division.

The temptation to indoctrinate the children of others—to impose a common culture by coercion—is an obstacle to working out a genuine common culture. There is no excuse for maintaining the nativist fiction that public schools are the glue that hold the nation together. They have become the focal point for all that is tearing the nation apart. However good some public schools may be, the system as a whole, being coercive, is a threat to our ability to find common ground. That is the opposite of a compelling government interest.

The public school system therefore is unconstitutional, at least as applied to parents who are pressured to abandon their own educational speech choices and instead adopt the government’s.

What Parents Need Is Direct Control of School Dollars

Real political power is measured, not in viral videos on social media, but in winning elections and subsequently making real changes to institutions and the flow of money. What really would put pressure on schools is defunding them and replacing their leaders, either through voting in better leaders or moving kids to a better school.

Voting in better leaders is risky, takes a lot of time, and is subject to reversal in the next election cycle. Our children’s upbringing shouldn’t be so precarious. Instead, legislatures should give parents a way out of spending their children’s entire school careers on battles to the death (or next election) over, to cite just one example, whether to mask and quarantine all the kids.

It's ultimately not about the masks, or the critical race theory, or letting boys into girls' bathrooms: it's that our education system forces people to fight over which faction gets to control people who hate what they believe. That dynamic makes these fights bitter and existential. They don't have to be.

If schools won't relinquish their power, they should be made to. It's not fair for schools to hold children hostage. Parents shouldn't have to force everyone else aboard to get what they want.

Hamburger offers a fresh avenue to truly ending these zero-sum culture war battles: "asking judges to recognize—at least in declaratory judgments—that the current system is profoundly unconstitutional. Once that is clear, states will be obliged to figure out solutions. Some may choose to offer tax exemptions for dissenting parents; others may provide vouchers. Either way, states cannot deprive parents of their right to educational speech by pushing children into government schools."

Joy Pullmann is executive editor of The Federalist, a happy wife, and the mother of six children. Check out her recommended classic Christmas picture books, "[The Read-Aloud Advent Calendar](#)," and her bestselling ebook, "[Classic Books for Young Children](#)." [Sign up here](#) to get early access to her next full-length book, "How To Control The Internet So It Doesn't Control You." A Hillsdale College honors graduate, [@JoyPullmann](#) is also the author of "[The Education Invasion: How Common Core Fights Parents for Control of American Kids](#)," from Encounter Books.