
SCHOOL CHOICE
AND SOCIAL
CONTROVERSY

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School Choice and Public Funding

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Most of the objections that lawyers and policy analysts have made to the traditional approach to funding public education in America rest on the principle that it is unfair for wealth to make a difference in the public schooling that children obtain. Starting in 1968, they have generated a flood of school finance litigation, which has now reached more than forty states. There is an important, but generally unnoticed, connection between this school finance reform movement and the public school choice movement discussed throughout this book. More precisely, the expansion of public school choice may lead to reforms in school funding that could eliminate many wealth-based inequalities. Furthermore, if private school choice is subsidized in a manner that provides fair opportunities to poor children, this reform may also help to eliminate public school finance inequalities. The movement for subsidized school choice may thus be understood to be part of a larger movement that has sought to reform the financing of elementary and secondary education generally.

The Basics of Public School Finance

If there were no public funding of education, it seems fair to assume that American families would be expected to provide for their children's school-

ing, just as they are expected to provide for their housing, nutrition, health, and other needs. For two main reasons—children's rights and the common good—the education that many parents would provide on their own could be considered inadequate by society, justifying, indeed requiring, public funding.

The Why of Publicly Funded Education

Although Americans tolerate significant inequalities among adults, certain inequalities among children are widely thought to be inconsistent with our nation's deep commitment to democracy, meritocracy, and capitalism. Most Americans believe that before some adults are to fairly enjoy the advantages, wealth, power, high status, and more, children must have a reasonably fair chance of attaining those advantages. Because education is widely thought to be especially crucial to competing for these advantages, a system that brings children to the brink of adulthood having experienced highly unequal educational opportunities is thought unjust by most.

Leaving education entirely to be provided by parents would surely yield a pattern of highly unequal educational opportunities for children. Many parents are very poor, and they could not afford to provide much education on their own. Private charity would help somewhat—but not enough. In addition, some parents would not sufficiently value the education of their children, perhaps out of ignorance, perhaps out of selfishness. Of course, poor and neglectful parents can fail their children on dimensions besides education; the public funding of education is socially attractive because innocent children are seen to be the central beneficiaries. By contrast, it is much harder to think about offsetting significant other inequalities children face without also directly benefiting their parents, who may or may not be thought deserving of that support. In an imaginary world, children could borrow money to finance their own education, paying it back later when they reap its financial benefits. A significant amount of higher education is funded this way. In the real world, however, this is implausible for young children.

The public funding of education in the name of children's rights (or child welfare) overcomes the shortcomings of leaving the funding of education to the family. It may also be thought of as an institutionalized way of allowing all children to, in effect, borrow now and repay later—as an intergenerational compact in which grateful, financially able adults show their gratitude by funding the schooling of the next generation. Notice how these are also the same two images employed in defense of the social security program, our other very large universal social assistance scheme.

Alternatively, public funding of schooling may be seen as redistributive, as in the welfare model, providing needed assistance when the family is poor or neglectful. Some might believe that this rationale would justify targeting the public funding of schooling to only a small proportion of children. It might be argued in response that, as a practical matter, even those parents we do not consider poor would also often have great difficulties funding their children's education, because the costs of schooling tend to be bunched early in their adult lives. Hence universal public funding of schooling may also be thought of as a way that families can finance their own children's education over the whole of their adult working years.

A second argument for public funding of education is that the education of children benefits the rest of us by forming an informed and participatory electorate, thereby bringing democracy to life and justifying our ideas of self-governance; it provides people with a route to financial and personal contentment and hence works to protect the rest of us from the externalities of crime, unemployment, and the like; and by helping to overcome ignorance, education promotes tolerance, thereby facilitating peaceful coexistence in our highly diverse society. From this common good perspective, society at large has a strong self-interest in collectively paying what is necessary to achieve a widely educated population, at least up to some basic level.

The How of Publicly Funded Education

In the United States, public funding of elementary and secondary education is largely (but not entirely) reserved for the public schools.¹ More than 90 percent of the money for American public education comes from local and state taxes. Although individual states vary enormously in the proportion provided by each source, nationwide the state and local shares today are about equal (and have been relatively equal for more than twenty years).² Generally speaking, school taxes that are locally assessed and collected (primarily property taxes) are spent by the local school district.

The proceeds of state taxes, like sales and income taxes, are typically allocated by the state to local school districts in one of two ways. Some funds are provided on an unrestricted basis (general aid). Other funds are given in support of a specific program or for the benefit of specific pupils (categorical aid). State categorical aid funds tend to be aimed at an educational need that has been identified by the state; general aid tends to be aimed at financial need. General aid is typically provided in an amount that is inverse to the capacity of the local community to raise its own money; in

other words, more general aid per pupil is provided to school districts with less wealth per pupil, generally measured in terms of the assessed value per pupil of the real estate in the district.

Less than 10 percent of the funding for elementary and secondary education comes from the federal government, and it is almost all categorical aid, primarily for the special needs of children with disabilities or those from low-income families.

Objections to the Present Method of Publicly Funded Education

Since the late 1960s, school finance reform advocates have made several claims about what they see as the unfairness of our conventional public school funding arrangements. The basic objections are inequalities among states, among districts, and within districts. These inequalities rest on the same idea, however: wealth matters too much. Wealth differences among the states importantly contribute to the enormous differences in the resources provided to public education from state to state. Indeed, a 1997 study found that interstate spending differences on public school students are twice as large as intrastate differences.³ For example, in 1997 per pupil spending was \$8,548 in Connecticut, \$6,038 in Oregon, and \$4,541 in Louisiana.⁴ It is not surprising that lawyers have paid little attention to these inequalities. They are not the product of congressional action, and so it is difficult to imagine that they could be legally challenged. It is perhaps surprising that policymakers have devoted so little energy to this issue. The explanation for this inattention apparently lies in their resignation to the fact that the federal government is destined to play a minor role in the financing of elementary and secondary education. As long as the federal government continues to provide less than 10 percent of the funds, not a great deal of interstate equalizing could be achieved, even if that were the goal.

In principle, the federal government could, of course, play a much larger role. In most industrialized societies, after all, the federal government is the primary (often exclusive) source of public school funding. In America, federalism is so entrenched that perhaps our very different pattern goes unnoticed. Moreover, of late our federal government has been trying to shed, not add, major financial commitments. Hence it is probably just wishful thinking that Congress might decide to pay for even one-third of current annual spending in the United States for elementary and secondary education.

This is not to say that fairness requires that spending on education be equal everywhere in the country. First, there are legitimate cost differences from place to place. Second, children have unequal needs, and this implies

the desirability of unequal spending per pupil; and to the extent that needier children are not randomly distributed among schools, this also implies the desirability of unequal spending at the school level. There is also the delicate matter of taste or effort. Even if it is unfair if wealth differences (in their family, their community, or their state) yield highly unequal amounts of school spending on children, that does not answer the question of whether it is unfair if spending differences result from a differential willingness to make a (tax) effort for education—whether by the child's state, community, or family.⁵

Within states, the inequalities that have gained the most attention are those among school districts, inequalities that have arisen from the traditional reliance, noted earlier, on local taxes (primarily property taxes) to fund public schooling.⁶ Some school districts have a much greater fiscal capacity than others to deal with their educational responsibilities. So even though state aid tends to go in greater amounts to poorer districts, throughout the twentieth century wealthier districts have been able to spend considerably more on their pupils. Using various state constitutional provisions and legal theories, lawyers have tried to get courts to break the connection between local wealth and local spending and, in turn, to force spending to better reflect differential costs and needs.⁷ In the 1970s and 1980s, most of these lawsuits were called equity cases, and their focus was on district-to-district input (spending) differences arising directly from district wealth differences. Since 1989 a majority of the lawsuits have been termed adequacy cases, and their focus has shifted toward output (achievement) differences and the unequal spending required on some pupils to bring about adequate outcomes for all. As of the beginning of 1999, supreme courts in at least sixteen states have declared their traditional school finance systems unconstitutional on either equity or adequacy grounds or both. This is only partial success.

The major impact of most of the successful school finance cases to date (whether equity or adequacy claims) has been to cause the state to increase its spending on public education, primarily by boosting the spending levels in the formerly low-spending, low-wealth districts.⁸ Nevertheless, across the United States children living in wealthier school districts have access to better-funded public schools; this is true both in most states where courts have not ordered school finance reform and even in many states where courts have ordered reform.⁹

Inequalities within school districts have gained far less attention than have interdistrict inequalities for several reasons. First, these inequalities do

not arise from the same structural reasons as do interdistrict inequalities. Second, the official data demonstrating these inequalities are not as readily available. Third, from the perspective of lawyers, it is not clear how these inequalities might be legally attacked. A few cases, directly based on claims of racial discrimination, have been filed over the years, but not a great deal has come of this effort.¹⁰

From a policy perspective, three sorts of intradistrict inequality have been of greatest concern. One concerns differences in the condition of the schools themselves: some schools are bright, clean, and well equipped; others are woefully dilapidated, a condition that all too often exists in the parts of town where poor families live. A second concerns a common practice in the allocation of teaching resources. In many school districts, individual schools are entitled to receive from the central district a certain number of teacher slots for a certain number of pupils. Whoever is hired to fill the slot has her or his salary paid by the district, regardless of the salary amount. According to the typical teachers' union contract, teachers have seniority rights to available teaching jobs within districts, and it is common that the more senior teachers tend to exercise those rights to avoid the "worst" (or "hardest") schools and to cluster in the "best" (or "easiest") schools. The result is that the schools serving the neediest, poorest, and lowest-achieving pupils often have many fewer dollars per pupil spent on their core teaching force. Although having younger and less experienced teachers can carry some advantages (enthusiasm, more recent training, more openness to new ideas), on balance, it is probably worse for a school to have a lower-paid teacher corps. A third concern has to do with pupil needs. The basic argument is that, even though federal and state categorical aid programs do target extra funds to pupils with extra needs, those unequal needs have not been adequately met, especially the extra needs of pupils from low-income families.

The upshot is that, even in some relatively wealthier urban school districts, the neighborhood public schools that children from low-income families have access to are much less adequately funded to meet their educational needs than are the public schools located in neighborhoods where higher-income families live.

New Remedy, Old Problem

In sum, the children's rights and common good arguments for funding public education have carried only so far. As far as most state legislatures and school district leaders are concerned, children attending public schools are entitled only to some politically determined minimum level of spend-

ing. Many observers agree that this minimum is insufficient to serve the common good, and it is surely insufficient to satisfy any meaningful notion of children's rights. In short, equal educational opportunity for all American children remains but an aspiration. As a result, the ongoing battle to achieve real equality of opportunity will no doubt continue in courtrooms and legislatures around the country.

The argument advanced in this chapter depends upon the little-noticed connection between school finance reform efforts and the school choice movement. The drive to expand school choice may itself put considerable pressure on the conventional school finance structure and, if successful, could bring about more equality of educational opportunity than decades of litigation and direct legislative policy reform have achieved.

Public Funding of Public School Choice

Why do we traditionally fund access to only the local public school? Speaking generally, in the school financing system just described each child receives a public subsidy that may be used (almost) exclusively at his or her local public school. Can this be justified? One might argue that, since local people are funding the school, it is only the local school to which a child should have access, but this argument hardly takes us very far. It does not explain why children do not routinely get to choose from among all the schools in their local district; yet intradistrict choice options are far more the exception than the rule. Further, a substantial share of the funding in most states comes from the state itself. Anyway, just because much of the funding has traditionally been local, that does not explain why it should be so.

At one time it might have been argued that many people lived out their lives where they grew up, so that decisions about the common good from education, as well as the contours of a child's educational rights, were aptly made locally. In reality, of course, Americans have long been much on the move, and that is decidedly so today. Hence the country now is clearly not a series of rather isolated communities. In the past it might also have been argued that the public school is a common school in the sense that what goes on in all public schools is pretty much the same, and simple expediency might justify local assignment. If it does not matter where you attend, the easiest thing for the administration is just to send you to your nearest school. Today, however, no one believes that all public schools are the same.

To be sure, assigning neighborhood children to the local public school can bring the added benefit of making the school a community institution

in the geographic sense. In fact, many Americans cherish their local public school, often rating it far higher than public education in general. Indeed, a preference for neighborhood schools may lie behind both support for public school decentralization reforms (proposed and adopted) that give more power to the school site and opposition to involuntary busing for purposes of school integration. Nevertheless, Americans are now very much accustomed to being part of communities that are not geographically based. For example, people rarely select a church because it is the closest one to their home. They tend first to pick their religion; even then, they might well select a congregation in their faith that is not nearest to where they live. People belong to the Sierra Club or the National Rifle Association, and some of them may care passionately about the community feeling that such membership brings. These are not geographic communities; they are communities of interest. Many find community in the college or university they attend, but higher education attendance is not based on the neighborhood one lives in.

The reality is that the narrow nature of the public school subsidy that has traditionally been available to the individual child has served to keep some children out of other children's neighborhood public schools, whether they are located elsewhere inside the district or in another district. Put bluntly, it has meant that those communities with means, or access to wealth, have been able to provide greater funding for the public schools that serve their own children.

Most school finance reform efforts aim at equalizing the quality of schools from place to place, a strategy that rests on the assumption that children stay put. A different approach, however, is to permit children to use their public subsidy at public schools other than their local schools. This solution permits them to shift to a better school—which is, of course, exactly what public school choice is designed to achieve. Moreover, permitting children to attend other than their neighborhood public schools threatens to undermine the existing school finance system and may pave the way to eliminating what have been said to be its inequalities.

Intradistrict Choice

About one in ten schoolchildren currently attend magnet, alternative, and other choice schools that are run directly by the districts in which they live. Some other children are permitted to transfer into neighborhood schools that are located in other neighborhoods in the district. A small number of districts have abolished neighborhood schools, thereby forcing all families

in the community to make a school choice for their children. The funding for these intradistrict choice arrangements is ordinarily an internal matter for the district to work out from its regular funding sources (local, state, and federal), but the mere existence of intradistrict choice may call into question the way that the district has historically funded its neighborhood schools.

Some families will opt out of the neighborhood public school for reasons of educational program or convenience. This is a central purpose of school choice and implies nothing about the way the district's schools are funded. Other families will opt for a nonneighborhood school because their school of choice is better run (that is, it is more effective). Another main purpose of school choice is to permit selection on this basis, with the additional hope that it will prompt currently inefficient schools to become more productive. Suppose families opt for schools because those schools have more resources available to perform their task. Although school choice facilitates selection on this basis, it has not conventionally been touted as an objective of the choice scheme. To be sure, sometimes local specialty schools may be better funded than the average school in the district precisely because the district has decided to showcase them or because it is eager to attract pupils to them. Ordinarily, however, since all families will not be able to gain entry to the better-funded schools, combining intradistrict inequalities with school choice is a recipe for discontent.

Families that successfully gain entry to the schools with a richer resource mix will not complain; nor will those who run such schools. Unsuccessful aspirants and heads of the resource-poorer schools, however, have good reason to protest. Of course, even without school choice, those attending (and working in) schools with relatively fewer resources to do their jobs may complain. Yet with choice, families are clearly encouraged to think beyond the local school and to make comparisons; in turn, they are more likely to know more about schools other than their local school. School principals who lose families on this basis will have new grounds for protest. This pressure that school choice places on intradistrict inequalities has, of course, existed for as long as these types of intradistrict choice have existed. The charter school movement puts additional pressure on intradistrict inequalities.

Interdistrict Choice

More than a third of the states now permit children to attend public schools located outside their home district without gaining the approval of

their home district. Although this option is currently used by relatively few families even in states with active interdistrict transfer schemes, it is a growing form of school choice. When this type of school choice is made, how should the transferring child's education be paid for? There are basically two options available to the states: one is to have the child's district of residence pay tuition to the receiving school district; the other option is to treat children as though they are living in the districts in which they are enrolled (even though their families pay property taxes to the district in which they reside). Either way, interdistrict choice exposes and puts pressure on interdistrict school spending differences.

If the district where the child lives has to pay tuition to the district where the child wishes to attend, the first question becomes how the level of tuition is to be set. If the amount is determined by per pupil spending where the child wishes to attend, and that is a high-spending district, the sending district is bound to complain. Why should it spend more on its resident children it does not educate than on those it does educate? In any event, where will it get the extra money? Suppose the tuition required for interdistrict transfers is set at the spending level of the lower-spending sending district. Then the receiving district may well object and is likely to resist entry of such students (by declaring itself full). This, however, undermines the basic goal of the school choice scheme, the free transfer of children across district lines.

The problems do not go away if the child is instead treated as living in the district of attendance rather than where the child actually lives. The sending district probably is not much affected. Having one less pupil to educate both decreases its costs and increases its wealth per pupil; it probably suffers a reduction in state aid approximately equal to its savings from losing the student (at least over time). A high-spending receiving district, however, will probably be adversely impacted. Having one more pupil to educate increases its costs; and while that also lowers its wealth per pupil, if it is a wealthy district its increase in state aid (if any) is likely to be less than its increased cost (at least over time). Some may conclude that, on moral grounds, one should favor this arrangement, in which transferring pupils are treated as living in the district where they attend, precisely because this solution burdens richer receiving districts (and perhaps even drives down their existing wealth-advantaged per pupil spending). The trouble is that districts like this would have a financial incentive to resist in-transfers, thereby undermining the school choice scheme.

Moreover, although parents who do successfully transfer their children to higher-spending districts are likely to be pleased, those who are left

behind are likely to be unhappy at seeing their neighbors' children obtain spending advantages in other districts. Parents are especially likely to be irate if they try to transfer their children but are unable to because of the limited number of open places in the receiving district (or if they are, perhaps because of transportation complications, unable to apply for a transfer to the other district). As with intradistrict transfers, once families are encouraged to make comparisons, school resource differences that, in the past, may have been unknown or rather abstract to them may now be vividly appreciated. As with intradistrict transfers, those principals and superintendents who lose pupils have even more reason to complain (who likes to be unpopular?) about the underlying inequalities.

Plainly, if there is to be more and more interdistrict choice, the underlying inequalities between districts become more and more intolerable. Indeed, the more that interdistrict choice is exercised, the more incoherent it becomes that schools are locally funded in the first place. Why are those families whose children transfer from District A to District B still helping to fund District A's schools? Indeed, why are the residents of District A still paying local property taxes to support the local schools when the pupils attending those schools are less and less from the local community?

Charter Schools

How should charter school funding be arranged? First, assume that a school is chartered by a local school district. In that event, one solution would be to treat the school's pupils as part of the district load and have the school's funding come from the district's overall budget. State funding would be the same as if the students attended traditional neighborhood schools, and the district might try to treat the charter school just as it treats its neighborhood schools.

In many districts, regular public schools have their teacher positions funded, rather than having district-average, per pupil, lump sums paid over to them. Charter schools, however, generally want the flexibility of configuring their staffs in innovative ways, of paying their teachers differently, and so on. This wish makes them push for a lump sum per pupil. How should the district deal with this demand? If it pays the charter school the districtwide average, the district could well find it more expensive to fund a charter school than a comparable school it runs itself—that is, assuming the charter school is a conversion of an existing public school filled with an inexperienced staff. Notice also how a policy of making a per pupil allocation to charter schools might create a strong financial incentive for many

existing public schools to convert to charter schools and a disincentive for other existing schools to become charter schools. These complications of charter school funding, even more than conventional intradistrict school choice schemes, will put pressure on districts to eliminate the inequalities that now arise from the funding of teacher positions. If a district abandons funding teacher positions for its charter schools, it may well have to do the same for its ordinary schools.

This is not the end of the story. What if the charter school has (or expects to have) a disproportionate share of the district's high-cost pupils? It would then no longer want from the district a lump sum equal to the district average spending per pupil. Instead it would want a per pupil amount adjusted for the needs of the specific pupils it enrolls (or a categorical lump sum addition for that extra need). Without that, it might be financially foolhardy for certain existing schools to convert to charter schools and very difficult for new charter schools to serve their pupils well. These forces will pressure school districts to take more care than they do now in deciding just how much of their budgets to allocate for special pupil needs, both in charter schools and in regular schools.

In short, the development of district-funded charter schools could lead the way to having districts, on their own, eliminate some of the objectionable features found in the traditional approach to intradistrict school funding. Whether this will actually occur, and when, is another matter. So far, in practice, many of those who have created, or wish to create, charter schools object to local district funding altogether. Some object to the built-in inequalities already noted. Some claim that local funding discourages districts from granting charters in the first place—or at least causes districts to drag their feet in paying to charter schools the sums they are due. There has also been some gamesmanship by districts; for example, some districts push charter schools to take far less money than what the district spends on its own pupils.¹¹ Hence many charter school supporters push for state, rather than district, funding.

Another factor that encourages state funding of charter schools should be emphasized. Suppose a charter school draws a fair number of pupils from outside the district in which it is located. If it is funded by its local district, this, of course, raises the equity problems of interdistrict choice. But there is more. If a charter school draws pupils living in many districts, the school might be better off obtaining a charter from the local district spending the most per pupil. Of course, for the reasons explained earlier, some wealthier districts may be reluctant to grant charters to schools that will

draw in new pupils from outside the district. To the extent that they do, this will probably create a situation that will surely seem unfair to charter school operators. Those charter schools created by higher-spending districts are likely to have more resources with which to compete for pupils than those created by lower-spending districts.

Consider the alternative approach to funding charter schools: having the state directly fund them. This probably strikes many as an especially apt solution for schools that receive their charters from an agency other than a local district, such as the state board of education or a state university (which are chartering bodies in several states). Many claim that all charter schools should be funded in this way. Yet this solution creates other problems and pressures. If a poorer, lower-spending district loses pupils to a charter school and those pupils are no longer counted as part of its enrollment, the result is the same we saw earlier when pupils who transfer out of a district are no longer treated as belonging to the sending district. The district probably comes out financially about even over time. If, however, a wealthy, high-spending district loses pupils to charter schools and those pupils are no longer counted as part of its enrollment, that district enjoys a gain. It in effect becomes even wealthier because its educational burden is lightened and its loss of state aid, if any, is likely to be much less than its cost savings. This not only magnifies existing inequalities but also affects the state's financial obligations.

First, if the state funds charter schools, although it may save considerable sums from a reduction in the state aid it formerly provided to poorer districts for their students who now attend charter schools, the state will likely save little or no money when pupils transfer into charter schools out of higher-spending districts. To the extent that occurs, the state will have to come up with new funding to replace savings enjoyed by already rich districts. Second, and perhaps more fundamentally, at what level should the state fund charter schools? Should it be at the level of lower-spending districts, higher-spending districts, the state average, an "adequate" level, or something else? Whatever sum the state selects raises questions as to the fairness of having quite different sums spent on the schooling of individual pupils depending upon which type of school they choose.

Moreover, if charter schools are generously funded, they might well draw off many more pupils, especially from currently low-spending districts. Those districts would likely adopt one of two very different responses. Some might object that it is unfair that they must remain lower spenders when charter operators get more money; others might take advantage of

the state's generosity and convert all of their schools to state-funded charter schools. When the state reckons with this latter possibility, however, it might become reluctant to fund charter schools at generous levels.

Even if charter schools are fully funded by the state at less generous levels, a local community that now spends that sum or less on its public schools might still decide to convert all of its public schools to charter schools. Its citizens might realize that not only would its pupils not suffer reduced spending, its taxpayers would seemingly be completely relieved of paying local property taxes for schools. Widespread reaction of this sort, of course, would put large new financial burdens on the state and could well prompt the state to take over the property tax for its own uses. Once it goes down that road, it is hard to see how the state could tolerate wealthy districts spending as much as they now do per pupil when the state average is considerably lower.

As with local funding of charter schools, if the state fully funds charter schools, there will be pressure on the state to adjust the payment for the nature of the pupils actually enrolled in the charter school (as well as its location in a high- or low-cost part of the state). Indeed, it is especially crucial in the charter school setting that sufficient extra money is provided for high-cost pupils. Otherwise, charter schools will be tempted to discourage, reject, or later exclude those students, thereby denying them the same rights to choose that have been extended to others. In short, once we start thinking about charter schools drawing pupils from many communities and being founded by other than local school districts, it is hard to come up with any fair or coherent funding arrangement that will allow charter schools to thrive and that will also maintain the inequalities of the traditional school finance system. This is why a big expansion in charter schooling may eventually so undermine our old system of financing neighborhood public schools as to require the ending of those inequalities that have for so long been built into the structure of local, wealth-based, public school finance. Although a shift to full state funding of all public schools is not the only possible remedy to the problem, it is the simplest to imagine.

Of course, the scenario sketched here might not transpire. Entrenched interests may force charter school funding to remain at the district level, as though the charter school were just another local school; and in turn charter schools open to outsiders may form primarily in relatively lower-spending districts. Rather than successful school choice reform driving school finance reform, conventional school finance arrangements may strangle efforts to expand choice in the public sector.

Funding Choice in the Private Sector

If the children's rights and common good arguments justify taxpayer support for elementary and secondary education, it is yet not clear why this financial support should go only to those who attend public schools. Note that, in a world of subsidized education, choice is not about the abstract right to select a school for one's child. That right is already guaranteed to parents by the U.S. Constitution. The real issue is whether the family's choice is subsidized.

At one time, in some small communities, there were not enough children to fill more than one school. Such education might be viewed as a natural monopoly. If there is to be but one provider, perhaps it should be the government—although notice that the local school might also be provided by a regulated private provider. In any event, this condition rarely applies now. Even if it is assumed that young children should travel only a short distance from home to school, in most places there are enough children in reasonable range to support more than one school, especially because it is by no means obvious that significant economies of scale are achieved in larger schools for younger children.

If there is a principled defense of the (near) exclusive funding of public education, we should look for it in the underlying reasons for public funding of education at all. Basically, the argument must be that only through public education can society be confident that pupils will be steeped in tolerance and the values of democracy and that the money will be used to bring about their education. By contrast, the strongest fear must be that were nonpublic schools equally subsidized, they might turn out to be subversive, intolerant, or fraudulent, thereby undermining, instead of achieving, children's rights and common good objectives. A more moderate argument for exclusive funding of public education is that private education too much promotes private, rather than public, goals. This outlook is reflected in one conventional understanding of the religion clauses of the First Amendment—that is, while religious exercise must be ensured, it ought not be subsidized.

Supporters of subsidized private school choice, of course, reject the premises of both the stronger and the milder arguments against the funding of nonpublic education. They see private schools as promoting public objectives in the same way that they see private providers as serving the public good in programs like food stamps, medicaid, and section 8 subsidized housing. But in America the political reality from nearly the begin-

ning of our system of public education has been largely to restrict public funding to public schools.

Private School Tuition

The tuition charged by private schools varies enormously. Most private schools are religious schools. Their tuition levels tend to be low—very low indeed at many elementary schools in some parts of the country. This is possible first because religious schools generally make do with rather lower spending per pupil as compared with the public schools. They tend to have lower-paid teachers, tiny administrative staffs, and no frills; many have substantially more pupils per classroom. Second, sometimes these schools benefit from using facilities and other subsidies provided by the church with which they are affiliated, so that their true costs may be substantially greater than the tuition they collect.

Other private schools, especially those aimed at children from well-to-do families, have very high tuition levels. These schools tend to spend more per pupil than is typically spent in public schools, often opting both for smaller classes and more administration, including college and personal counselors, admissions and financial aid directors, fund-raisers, and the like that public schools tend to go without or to spread very thin.

State Aid to Private Schools

In the period between 1875 and World War II, there was widespread political and societal hostility toward private schools, especially Catholic schools. In the late 1800s a majority of states adopted constitutional provisions (generally called Blaine amendments) designed to prevent their legislatures from ever providing any assistance to these schools. Before then, before we had public education in the way we know it today, some states financially supported both Protestant and Catholic schools.¹²

After World War II, this legislative hostility began to thaw, and some states began to pass modest measures especially aimed at assisting pupils enrolled in private schools. Public officials realized that the public schools were getting away with not having to educate pupils who would otherwise be a substantial burden on the public purse; they appreciated the reality that taxpayers had an interest in making sure the private education sector did not collapse financially. Moreover, parents of children attending private schools complained about having to pay twice, and some modest assistance might ameliorate those complaints. The willingness to provide any assistance to private schools also signaled an acknowledgment that these

schools were not undermining the collective educational goals for the country's children. But although the U.S. Supreme Court agreed that states could offer religious school users both bus rides and textbooks, in a series of decisions issued during the 1970s, it put substantial roadblocks in the way of further public support of religious schools.¹³

In recent years, the Supreme Court has eased its opposition to certain types of state assistance to pupils attending private schools, including religious schools. Minnesota enacted a law that made a limited amount of private school tuition payment deductible for state tax law purposes, at the same time granting a similar deduction for education costs connected to public schooling. The Supreme Court upheld this measure. The Court also upheld the provision of federal compensatory education services to low-income children attending religious schools.¹⁴

As a result, in many states private schools benefit from public support in several small ways. The conventional approach remains one of permitting private school students to participate in certain categorical aid programs, most commonly receiving not only free bus rides to school or free textbooks but also a range of targeted, clearly secular, educational services. How much financial aid, if any, is actually provided in any state remains, of course, a matter of state politics, and in some states powerful opposition still exists to assisting private school users. Moreover (as discussed in more detail in Frank Kemerer's chapter in this book), some state constitutions are so restrictive that financial support that would be allowed under the federal constitution is nonetheless forbidden.

Although private nonprofit schools also benefit indirectly from the fact that voluntary charitable contributions to them are typically deductible under state and federal tax laws and from the fact that in some states their property is not subject to property taxes,¹⁵ all of this assistance taken together still constitutes a very small amount of financial support of private schools as compared with public schools.

Experimental Funding Programs for Private Schools

There have been growing calls for much more generous funding of pupils who choose to attend private schools, and recently two communities have experimented with schemes that provide considerably more financial aid. In both plans, public funds are targeted to needy children.

Milwaukee's plan came first and has gained the most attention. By the end of the 1998–99 school year, it provided about 6,000 children from low-income families with scholarships worth about \$4,400 a year. Cleveland's

plan is newer; as of 1998–99, it had about 3,500 participants, who received scholarships worth up to \$2,500 a year.

From the start, the Cleveland plan has permitted families to use the scholarships at religious schools. The Ohio Supreme Court found this aspect of the plan constitutional but concluded that the program ran afoul of technical state rules about legislation.¹⁶ The Ohio legislature repassed the plan in 1999, and opponents shifted their legal attack to federal court. The Milwaukee plan originally applied only to nonreligious private schools, but in 1995 it was extended to cover religious schools. This decision was challenged in court, and in June 1998, the Wisconsin Supreme Court upheld the plan as constitutional under both the Wisconsin and U.S. Constitutions. In late 1998 the U.S. Supreme Court declined to review the case.¹⁷ As Jesse Choper explains in his chapter in this book, it is not certain how the U.S. Supreme Court will rule on these schemes when it eventually confronts the issue.

Other Funding Programs for Private Schools

Although the Milwaukee and Cleveland plans are the most discussed schemes of public funding of private school choice, they are not the only such plans. Vermont has for decades allowed small school districts to be nonoperating. Instead of running schools, they purchase schooling elsewhere for their pupils. In some districts, this has meant that all the children are sent to a neighboring public school. In others, it has meant that all the children are offered places in a specified private school. In still others, the district has been willing to pay for the child's education in a variety of schools, both public and private. It is this latter arrangement—when families have a choice that includes some private school options—that has attracted the greatest attention of advocates of school choice. Eventually, the Vermont scheme was challenged in court, and in 1999 the Vermont Supreme Court held the funding of religious school choice illegal on state constitutional grounds.¹⁸

Thirty years ago, before there was school litigation on behalf of children with disabilities and before there was federal statutory protection of the education rights of children with disabilities, many public schools refused to educate such children, at least those with the most serious disabilities. In some places, these children were allowed to attend special private schools at public expense. Although the public school treatment of children with disabilities has changed considerably, the tradition of a small wedge of private schools specializing in the education of the disabled continues. Some-

times the public schools eagerly support sending the child to such a school. Sometimes the parents have to fight, perhaps through appeals processes, to win that remedy for their children. Altogether, these specialized private schools now enroll less than 2 percent of all private school pupils (around 90,000 pupils nationwide).¹⁹ Some other children with disabilities attend ordinary private schools, where, as Laura Rothstein explains in her chapter in this book, they are supposed to receive public financing for the special education services to which they are entitled.

In some communities, the local school district has financial arrangements with private school providers to take over the education of small numbers of certain at-risk children who are seen to be poorly served by the public schools (such as children who are chemically dependent, pregnant, or well behind grade level in achievement). In effect, the local public school district contracts out the education of these pupils to specialized private schools if the families of these pupils choose to enroll them in such schools. In the Minneapolis program, the local school district basically puts up the funds that it would otherwise spend on these children, and most of the participating nonprofit schools supplement that money with their own fundraising efforts so as to provide the extra dollars required to serve this high-cost population.²⁰

Charitable Funding of Private Schools

Some years ago a private foundation was formed in Indianapolis that offered to provide small scholarships to enable children from low-income families to attend private schools, usually low-tuition private schools (which were usually religious schools). This type of charitable tuition organization has caught on, and as of the summer of 1999 programs broadly patterned on the Indianapolis model were said to exist in sixty-five cities, serving some 57,000 children.²¹ Moreover, two new nationwide programs serving 40,000 additional pupils were announced in 1999 for the 1999–2000 school year. Usually in these programs the foundation pays half of the child's tuition, up to a limited ceiling. These schemes are publicly supported in the sense that contributions to these tuition organizations are themselves tax deductible.

Arizona passed a measure designed to attract far more money on behalf of this approach. Under the law, any Arizona taxpayer may obtain a 100 percent state income tax credit of up to \$500 a year by making a contribution of up to \$500 to a qualifying tuition organization.²² Under this measure, contributions are not really charity; the Arizona law, in effect, allows

taxpayers to write a check on the state treasury by directing a portion of their tax payments to a tuition organization instead of the government. (Oddly, the Arizona law does not require that the money be paid out by the tuition organization only to low-income families, even though this has been the practice of the organizations in operation to date.) This Arizona measure was challenged in court, but in early 1999 it was upheld by a divided Arizona Supreme Court.²³

The Future of Public Funding for Private Schools

Increased public funding of public school choice is both a threat and an opportunity to those who favor public funding of private school choice. The threat is that much of the demand for choice will be satisfied, and so there will be little enthusiasm for further expanding subsidized choice. The opportunity comes from the reasons that the society has welcomed public school choice: it could spill over to subsidized choice for all schools.

The Productivity Claim

Some advocates of publicly funded school vouchers valid for use in private schools argue that competition will produce more effective schools. They claim that both children's rights and the common good will be better served by having public and private schools compete for pupils. Public funding of private schools has been seen as the way to bring the power of the market and competition to elementary and secondary education in the way, for example, that Federal Express and United Parcel Service have brought competition to the U.S. Postal Service. Opponents of private schools often talk about the risk of fraud, pointing to arguably analogous fraud problems in Medicaid, in private trade schools, and the like. Supporters of wide-open school choice counter that public education in the urban centers is the real fraud.

It is at this moment unclear how expanded public school choice will play out for private school choice supporters on this issue. If most states were to adopt so-called strong charter school laws, permitting easy access to the creation of this form of schooling, opponents of public funding of private schools are sure to argue that the charter schools will provide enough competition. If charter schools also remain relatively unregulated, this argument may well be persuasive, or at least it may make the public want to wait to see how competition in the public sector plays out before expanding subsidized choice to the private sector. The productivity argument for funding private school choice may be especially weakened if charter schools

are permitted to contract with private entrepreneurs to deliver significant aspects of their program.

The Pluralism Claim

Other advocates of subsidized private school choice emphasize pluralism. They argue that tolerance would be promoted by trusting parents and by allowing a wide range of family groups with similar values to have their own schools. Rather than undermining our democratic values (as school voucher opponents claim), supporters insist that empowering the ordinary family to take charge of its children's educational goals is fundamental to our democracy. The current scheme, they argue, is designed to socialize the children of the working class and the poor in ways determined by elites, the result of which is interclass resentment. In other words, our commitment to the rights of children and families is incomplete if public subsidy is available only in the public sector.

Yet if strong charter school legislation is widely adopted, it is possible that a charter would be granted to nearly any respectable group that would otherwise have started a private choice school in a regime that gives out vouchers or scholarships. One major exception to this, however, is the religious school, which it is fair to assume will not be able to become a charter school. Although this fact may arouse the passion and political zeal of families seeking religious education for their children, it will also satisfy those who believe in a high wall of separation between church and state, regardless of whether aid to users of religious schools is permitted by the U.S. Constitution. The other side would emphasize fairness to families with religious beliefs: Why should they have to pay twice to get the schooling they want for their children? Moreover, some pragmatists would argue that the religious-based controversies that now haunt public schools—school prayers, the teaching of evolution and sex education, and so on—would largely disappear if those with strong religious beliefs were enabled to form their own schools with public support.

Competing attitudes toward religious schools are not the only issue here. Some would favor stopping with a strong charter school regime just because that approach imposes at least a minimal political filter on who can begin a school.²⁴ A market filter alone, they worry, will not keep out kooks, hate mongers, and con artists. Private school choice supporters counter that it is preferable to rely on statutory limits to exclude socially unacceptable schools, for example, by requiring disclosure from participating schools and by prohibiting participating schools from teaching racism.

The public stances taken on the issue by leaders of the have-nots could be decisive. In the past, for example, African American leaders have widely opposed school voucher schemes, making it difficult for supporters to convincingly claim that black children would benefit. This near unanimity may be crumbling, as surveys reveal strong support for choice among ordinary African American families, as black families participating in the Cleveland and Milwaukee plans like what their children are getting, as the federal courts are pulling out of the school desegregation business, and as the education achievement of all too many African American children remains too low.²⁵

Other Issues in the Funding of Private Schools

Assume that much more generous funding of private school choice occurs. Would this development create additional pressure to eliminate the public school finance inequalities discussed in this chapter? Or might it bring about greater inequality? The answer depends upon the specific way in which private school choice is subsidized.

Milton Friedman, the Nobel laureate economist, has proposed a system of unregulated school vouchers in which all children would receive a subsidy equal to, say, half of what is now spent on average per pupil in the public schools.²⁶ As Robert Bulman and David Kirp discuss in their chapter in this book, a proposal of this sort was put to the California voters a few years ago and badly defeated. This scheme, I believe, would increase inequality of educational opportunity. Poor families could hardly expect to purchase high-quality schooling with such a sum; nor could they afford to add significantly to it.²⁷ Rather, these vouchers would be used mostly by well-to-do families, who could add to the public subsidy from their own income. Moreover, economic segregation would increase even further under the Friedman plan, not only because schools could charge as much tuition as they wish but also because they could admit or deny any pupils they wish. In short, the Friedman plan magnifies the traditional inequalities of the public school system, using the government in a way that ensures that the rich are able to provide greater educational opportunities for their children than the poor can provide for theirs.

Yet there are ways of funding private school choice that are friendlier to the poor. For one, the subsidies for private school attendance could be offered exclusively to children from low-income families. That is what the private foundations that have stepped into the field are now doing, and it is what Milwaukee and Cleveland have done. Other variations might target subsidi-

dized choice to low-achieving children, students attending low-performing schools, at-risk pupils, and so on.²⁸ Indeed, Florida passed a "failing school" scheme in 1999.

Alternatively, participating private schools could be funded like charter schools. Were that approach adopted, many would also favor imposing at least two key requirements on participating private schools that parallel requirements often (but not always) imposed on charter schools: the school would be open to all applicants (with excess demand handled by lottery); and no tuition could be charged beyond the public subsidy. If a private school did not comply with these requirements, none of its students could obtain a public subsidy. This regime, which basically mirrors the plan that Sweden has put in place in recent years, would give children of the poor much greater access to private schools of their choice than the Friedman plan does.

Of course, not all supporters of subsidized private school choice support public regulation of admissions and tuition. Some argue that private schools ought to be able to have academic selection criteria if they wish, pointing to public choice schools like Bronx Science. Other people argue that it would be unfair if participating religious schools could not favor children of local parishioners. This issue haunts charter schools too, when founding parents want their children to have preference. In practice, the concern about insiders is not likely to be a serious problem in a regime in which everyone has choice, but the selection issue is a thorny one.

The opportunity to charge extra tuition is often justified by its supporters in the hope that this would facilitate the participation of today's elite private schools, schools that now generally charge considerably more than the public funding would likely be. Because giving schools the right to charge more risks pricing out low-income families, this concern has generated compromise proposals to guarantee the poor fair access to extra-tuition schools. One idea is to require private schools to means test their tuition add-ons and to require them to guarantee low-income families a reasonable share of the school's places (say, 20 percent).²⁹ Such a regime might not only draw today's elite schools into the subsidized choice plan but also prompt them to recruit talented children from low-income families. It might also be compatible with a scheme that permits selective admission of the other, say 80 percent, of the school's pupils.

In contrast to the Friedman voucher plan, schemes for subsidizing private school choice that are friendly to the poor would put pressure on existing public school funding arrangements. First, assume that districts would have to pay for private school choice for everyone in the community who

exercises it. Under this scenario, one might initially imagine that many district leaders would object to picking up the new cost of all the students in the community who already attend private schools. In response to that, some would say that it is only fair that communities that have been getting a free ride are now forced to pay for those students. Both of these viewpoints exaggerate what is at stake. It is important to remember that the poorer districts would gain substantial new state financial support for these extra pupils, not only because they increase the district's average daily attendance but also because they reduce the district's measured wealth per pupil. In poorer school districts, the state would fund these pupils up to approximately the state-guaranteed spending amount anyway.

Even so, if the basic scholarship (or voucher) amount were set somewhere around the state's average spending per pupil, then low-spending districts might actually have to spend more on the pupils who leave them for private schools than they spend on their own pupils. That would certainly be objectionable. Could this problem be fairly solved by having the scholarship amount vary with what the local district now spends? I doubt it. If, on the one hand, this means that students from low-spending districts will have to top up their scholarships to meet their school's regular tuition, that seems unfairly harsh on the poor. On the other hand, it seems zany to force participating private schools to accept in full payment of their tuition whatever value of scholarship the pupil presents, if for no other reason than this would give the schools incentives to avoid pupils with low-value scholarships.

This line of analysis may suggest to some the desirability of full state funding of scholarships that would not vary in amount based on the financial circumstances of the child's home district. For reasons discussed in connection with charter schools, this solution raises other problems. Most important, it is still probably not a stable solution for some children who opt for private choice to get a subsidy that is greater than what their district would have spent on them, while others get less than what would be spent on them if they remained in their neighborhood schools. But that would remain true as long as the traditional, underlying school finance system remains in place.

Conclusion

An expansion of subsidized public school choice and of subsidized private school choice that is friendly to low-income families threatens the linkage between the local tax base and the local public school, which has been the

basis for the publicly subsidized U.S. public education system for more than a hundred years. As a result, school choice might pave the way to a reexamination and reform of school funding across the board, an outcome that thirty years of litigation have only partially accomplished.

What might that reformed school finance system look like? The most readily understood solution would be for the state itself simply to take over the full funding of elementary and secondary education, possibly relying on a statewide property tax for a substantial share of the needed revenues. Under this approach, both choice schools and conventional public schools would receive their funding from the state. Indeed, state funding might well flow directly to local schools, bypassing local school districts altogether.

Under this approach, the state would decide how much money to provide to each pupil (whether enrolled in a local public school, charter school, or participating private school). Earlier I mentioned the need for the state to set a basic amount for the typical child, with upward adjustments for children with special needs and those living in higher-cost communities. But if full state funding of education occurs, the state would have to be more precise about it. Moreover, it could now aspire to be more scientific, drawing on the research emerging from the literature on school financing. These studies provide insights into, first, how much money ought to be enough to allow an average school with average children to bring a substantial majority of them (say 80 percent) up to high educational standards (say the top quartile of pupils on similar tests given around the world) and, second, how much extra money should be supplied to schools facing higher costs because of their location or their pupils in order for them to meet the same achievement target.³⁰ In terms of the arguments for public funding of education made at the start of this chapter, these adequacy goals operationalize what constitute children's rights and the common good.

It is certainly possible to combine full state funding of education with a largely hands-off approach to the regulation of schools that many believe is essential if school choice is to have a chance to succeed in America. Sweden and other countries have so far nicely managed this balancing act; but in other nations, such as the Netherlands, public financial support of private schools has been accompanied by considerable regulatory control.³¹ Because of these concerns, some school choice advocates seek to give participating choice schools state constitutional protection from state regulation beyond that currently imposed on the state's private schools; such a provision is a common feature in proposed state constitutional initiatives seeking to establish school choice plans.³²

Besides the issue of regulatory freedom, there is the issue of spending freedom. In the public school finance field generally, some of those who have fought the interdistrict spending inequalities that arise from local wealth differences nonetheless oppose full state funding as the remedy. They argue that local public school districts still ought to be allowed to spend extra money for their schools, provided it is raised on a wealth-neutral basis. Some favor variety in school spending because they believe, as a practical matter, it helps ensure higher average spending on schooling.³³ Others believe, in principle, that communities may have different tastes for education, which the state ought to accommodate (with wealth removed as an influencing factor, adequacy should be determined locally). To achieve this result, such solutions as "district power equalizing" and "guaranteed yield" are usually proposed. These schemes rely upon a redistributive state aid formula that permits poorer districts to generate as much money per pupil as richer districts with the same local tax effort.³⁴

This sentiment toward decentralized funding decisions could be even stronger in a world of widespread charter schools and voucher schools. After all, despite the experience in Sweden and other countries, some may find contradictory the combination of uniform state funding of education and family choice of schools for their children. If so, a variation on district power equalizing—family power equalizing—would permit variety in a school's per child spending without disadvantaging the poor.³⁵ Under this plan, the state would subsidize a fairly wide range of school costs (tuition obligations), and schools could locate themselves anywhere along this continuum, from say \$4,000 to \$9,000 a year per child. Families wanting to send their children to charter or voucher schools that are relatively more expensive, or perhaps even to more expensive conventional public schools, would have to make a proportionately larger contribution toward that greater cost from their own income. To use some arbitrary numbers by way of illustration, a family might not be required to pay anything for a \$4,000 scholarship but would have to contribute 2 percent of its income for a \$6,000 scholarship and 5 percent for a \$9,000 scholarship. This would mean that a family with an income of \$30,000 would contribute \$600 toward the \$6,000 scholarship and \$1,500 toward the \$9,000 scholarship; a family with an income of \$10,000 would contribute \$200 and \$500, respectively; a family with an income of \$100,000 would contribute \$2,000 and \$5,000, respectively. In each case the state would make up the difference. Since a scheme like this is inherently means-tested, it would thereby permit those

low-income families who cared to send their children to more expensive schools pretty much as easily as higher-income families.

One final point. The analysis so far has envisioned that a rapid expansion of school choice will put such pressure on today's basic school finance scheme as to require its reform. It is also possible to imagine the causal connection running the other way. In school finance litigation to date, plaintiffs have sought structural remedies—that is, new systemic arrangements that eliminate the inequalities of the traditional finance system. Suppose instead, however, that aggrieved children sought individual rather than group remedies. More specifically, suppose they asked for individual scholarships of fair value as their damages for the unconstitutional deprivation they have suffered.³⁶ Were such relief granted, then the school finance reform movement and the school choice movement would be joined in a symbiotic relationship arising from the other direction.

Notes

1. See generally James W. Guthrie, Walter I. Garms, and Lawrence C. Pierce, *School Finance and Education Policy* (Prentice-Hall, 1988); Allan R. Odden and Lawrence O. Picus, *School Finance: A Policy Perspective* (McGraw-Hill, 1992).
2. U.S. Department of Education, *Digest of Education Statistics, 1994*.
3. William Evans, Sheila Murray, and Robert Schwab, "Schoolhouses, Courthouses, and Statehouses after Serrano," *Journal of Policy Analysis and Management*, vol. 16 (1997), pp. 10–31.
4. U.S. Department of Education, *Digest of Education Statistics, 1997*.
5. Stephen D. Sugarman, "Two School-Finance Roles for the Federal Government: Promoting Equity and Choice," *Saint Louis University Public Law Review*, vol. 17 (1998), pp. 1–29.
6. John E. Coons, William H. Clune, and Stephen D. Sugarman, *Private Wealth and Public Education* (Harvard University Press, 1970).
7. For a review of school finance litigation, see Paul Minorini and Stephen Sugarman, "School Finance Litigation in the Name of Educational Equity"; and Paul Minorini and Stephen D. Sugarman, "Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm," both in Helen Ladd, Rosemary Chalk, and Janet Hansen, eds., *Equity and Adequacy in Education Finance* (National Academy Press, 1999).
8. Evans, Murray, and Schwab, "Schoolhouses, Courthouses, and Statehouses." Whether this change by itself has had a substantial impact on pupil achievement is another matter, although one is entitled to be somewhat skeptical. See also Thomas A. Downes, "The Effect of Serrano v. Priest on the Quality of American Education: What Do We Know? What Do We Need to Know?" in *Proceedings of the Eighty-Ninth Annual Conference on Taxation* (Washington, D.C.: National Tax Association, 1999).
9. U.S. General Accounting Office, *School Finance: State Efforts to Reduce Funding Gaps between Poor and Wealthy Districts* (1997).
10. The most well known is *Hobsen v. Hansen*, 327 F.Supp. 844 (D.D.C. 1971).

11. To be sure, many believe that charter schools ought to be more efficient and so ought to get by on, say, 85 to 90 percent of what regular public schools spend (provided that reasonable funding for the cost of school facilities is also included). A fixed discount could at least guarantee charter schools a clearly defined sum. Yet even this has proved illusory when districts require charter schools to purchase certain services from them and then charge what the charter schools view as excessive sums. This in turn has caused charter schools to seek to buy such services (like purchasing, accounting, maintenance, and insurance) in the private market. For a disheartening story from Arizona about districts selling school charters for a fee, see Steve Stecklow, "Arizona Takes the Lead in Charter Schools: For Better or Worse," *Wall Street Journal*, December 24, 1996.

12. Denis Doyle, "Vouchers for Religious Schools," *Public Interest* (March 1997), pp. 88-95.

13. *Everson v. Board of Education*, 330 U.S. 1 (1947), and *Board of Education v. Allen*, 392 U.S. 236 (1968); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); and *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973).

14. *Mueller v. Allen*, 463 U.S. 388 (1983); *Agostini v. Felton*, 115 S.Ct. 2510 (1995).

15. *Walt v. Tax Commission*, 397 U.S. 664 (1970).

16. *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999).

17. *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Jackson v. Benson*, 578 N.W.2d 602 (Wis.), cert. denied, 119 S.Ct. 466 (1998).

18. *Chittenden Town School District v. Vermont Department of Education*, 1999 Vt. LEXIS 98 (June 11, 1999) (finding that it violates the state constitution's Compelled Support Clause for a district to reimburse tuition paid to a sectarian school when, as in the existing Vermont program, there are no adequate safeguards against the use of such funds for religious worship). Maine, too, has quietly operated a similar plan for quite some time, but for many years its districts refused to support attendance at religious schools because of a legal opinion issued by Maine's attorney general. That restriction was challenged in two similar cases, but in 1999 both the Maine Supreme Court and a federal appeals court ruled that it would be unconstitutional to extend the Maine program to such schools. See *Bagley v. Raymond School Department*, 728 A.2d 127 (Maine 1999), and *Strout v. Albanese*, 178 F.3d 57 (1st Cir. 1999).

19. National Center for Education Statistics, *Private School Universe Survey, 1995-96* (U.S. Department of Education, 1998).

20. John E. Coons and Stephen D. Sugarman, *Scholarships for Children* (Berkeley, Calif.: Institute of Governmental Studies Press, 1992), pp. 69-71.

21. Center for Education Reform (<http://edreform.com/pubs/glance.htm>), August 9, 1999.

22. A.R.S. Section 43-1089 (1997).

23. *Kotterman v. Killian*, 972 P.2d 606 (Az.), cert. denied, 1999 WL 278906 (1999). In 1998, a bill closely resembling the Arizona plan was introduced in California (AB 2110 Khaloogian).

24. Paul T. Hill, Lawrence Pierce, and James Guthrie, *Reinventing Public Education: How Contracting Can Transform America's Schools* (University of Chicago Press, 1997).

25. "Blacks are the group most likely to support . . . choice, with 59% in favor." "The 30th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes toward the Public Schools" (<http://www.pdkintl.org/kappan/kp9808-a.htm>), August 9, 1999; Paul E. Peterson, Jay P. Greene, and Chad Noyes, "School Choice in Milwaukee," *Public Interest* (Fall 1996); *Board of Education of Oklahoma City v. Dowell*, 498 U.S. 237 (1991); *Freeman v. Pitts*, 503 U.S. 467 (1992); *Missouri v. Jenkins*, 515 U.S. 1139 (1995).

26. Milton Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962).

27. Although poor families could afford to send their children to many existing religious

schools, if there is space, it is hard to see how new good schools could get going on such a limited budget.

28. See generally John E. Coons and Stephen D. Sugarman, *Making Choice Work for All Families* (San Francisco: Pacific Research Institute, 1999).

29. Under the proposal made by Coons and Sugarman, *Scholarships for Children*, children of the poor are guaranteed the places if they apply. Under the Kemerer proposal in this book, the school has to actually enroll a minimum share of low-income pupils for any of its pupils to gain state subsidies.

30. Ladd, Chalk, and Hansen, *Equity and Adequacy in Education Finance*.

31. Peter Mason, *Independent Education in Western Europe* (London: ISIS, 1997).

32. Coons and Sugarman, *Scholarships for Children*, p. 11.

33. For discussion of this issue, see Caroline Hoxby, "All School Finance Equalizations Are Not Created Equal" (Harvard University, March 1996); Evans, Murray, and Schwab, "Schoolhouses, Courthouses, and Statehouses."

34. Coons, Clune, and Sugarman, *Private Wealth and Public Education*.

35. For an early discussion of this idea, see *ibid.*, pp. 256-68.

36. John Coons and I proposed this remedy as amici in the briefs we filed in Los Angeles and Kansas City school segregation cases, but we were ignored by the judges. Even more to the point, Allan Parker of the Texas Justice Foundation in San Antonio sought to intervene on behalf of vouchers for low-income families in the *Edgewood v. Meno* school finance litigation on August 13, 1993. After providing an opportunity to amend the petition, the district court dismissed the claims with prejudice, a decision the Texas Supreme Court refused to disturb. Said the latter, "We do not prescribe the structure for 'an efficient system of public free schools.' The duty to establish and provide for such a system is committed by the Constitution to the Legislature. Our role is only to determine whether the Legislature has complied with the Constitution. The Gutierrez appellants now ask the Court to go beyond this role, and to prescribe the structure of this state's public school system. For the reasons stated in our prior opinions, we decline to do so" (citations deleted). *Edgewood I.S.D. v. Meno*, 893 S.W.2d 450, 481 (Tex. 1995). See also Michael Heise, "State Constitutional Litigation, Educational Finance, and Legal Impact: An Empirical Analysis," *University of Cincinnati Law Review*, vol. 63 (1995), p. 1735.