

# Education Policy Analysis Archives

Volume 8 Number 37

August 1, 2000

ISSN 1068-2341

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A peer-reviewed scholarly electronic journal  
Editor: Gene V Glass, College of Education  
Arizona State University

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## **The Arizona Education Tax Credit and Hidden Considerations of Justice: Why We Ought to Fight Poverty, Not Taxes**

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### **Abstract**

The current debate over market-based ideas for educational reform is examined, focusing specifically on the recent movement toward education tax credits. Viewing the Arizona education tax credit law as a voucher plan in sheep's clothing, I argue that the concept of justice underlying the law is a crucial issue largely missing from the school choice debate. I question the libertarian conception of justice assumed by voucher and tax credit advocates, and argue instead that a contemporary liberal democratic conception of justice ought to undergird attempts at school reform. A call for educators and policymakers to concentrate energies on efforts to help needy students rather than on efforts to channel tax dollars toward self-interested ends concludes the article.

This article is one of four on the Arizona Tax Credit Law:

- [Welner: Taxing the Establishment Clause](#)
- [Wilson: Effects on Funding Equity](#)
- [Rud: Moral Considerations](#)

Why will conservative politicians and policymakers put money and effort behind voucher plans – a reform idea wholly lacking evidentiary support – yet they will make symbolic efforts at best to break the cycle of poverty, which is perhaps the most serious problem facing the United States in general and public schools in particular? Worse yet, these same persons claim to support vouchers primarily because they will benefit the neediest students. Presidential candidate George W. Bush, for one, touts vouchers (or "scholarships" as he prefers to call them) as the great hope for children and schools. In the state of Arizona, voucher initiatives have repeatedly failed to gain legislative support (Garn, 1999), so the Republican-dominated legislature passed a bill to establish a state-wide education tax credit for private school tuition, in essence a voucher in sheep's clothing. I focus here on an analysis of Arizona's education tax credit as a recent and popular example of market-based reform. School tax credits are seen as different from vouchers, and thus are becoming state law and policy with little public notice or debate.

As the political climate surrounding education policy becomes increasingly tolerant of market-based educational changes like voucher and education tax credit plans, a fundamental question is largely missing from the debate: What conception of justice undergirds these plans? And, intricately connected to this, what implications do these market notions have for social justice for poor students and students of color? I will attempt to answer these crucial questions. I shall argue that even though proponents of education tax credits and other such school choice plans claim to be most concerned with improving education for disadvantaged students, in fact, poor students and students of color will ultimately be further disadvantaged by such schemes. In so doing, I will examine Arizona's education tax credit law by placing it within the larger debate over voucher plans, relying often on the Milwaukee, Wisconsin, voucher program as an example. I shall then use this examination of the issues surrounding education tax credits as a backdrop in assessing what I take to be opposing concepts of justice assumed by the proponents and opponents of education tax credits.

## **The Arizona Education Tax Credit**

For four years running, the Arizona state legislature voted against a school voucher plan. After this string of defeats, in 1997, Republican legislators formulated an alternative school choice bill, this time in the guise of education tax credits (Laitsch, 1998). The bill was passed into law, (Note 1) allowing Arizona state income tax payers to claim two different types of dollar-for-dollar tax credit. First is a private school tuition tax credit of up to \$500 that can be donated to a School Tuition Organization (STO), which then awards tuition scholarships to students who wish to attend private or religiously affiliated schools. Such tax credits closely resemble privately funded voucher programs, within which private organizations establish so-called scholarship funds for students in private schools (Witte, 2000). These organizations are usually religiously affiliated and have varying selection criteria. For example, in Indianapolis, low-income students could receive up to \$800 toward private school tuition, which would cover roughly half of their tuition. Of course, families would have to cover the rest (Witte, 2000). The second Arizona tax credit is a \$200 credit that can be donated to public

schools for use only on extra-curricular activity fees (e.g., band uniforms or sports equipment). (Note 2)

Soon after the tax credit law was enacted, the Arizona Education Association and others brought suit challenging its constitutionality. In *Kotterman v. Killian*, the Arizona Supreme Court upheld the constitutionality of the education tax credit law on January 26, 1999. The United States Supreme Court refused to hear the appeal. Thus the high court sent the message that the tax credit law could stand as constitutional in the state of Arizona. However, by not hearing the case, they declined to issue a ruling with direct national consequences on the question of education tax credits. By extension, the high court declined as well to rule on the question of vouchers, as an education tax credit is a form of voucher, though not widely recognized as such. In fact, the U.S. Supreme Court also declined to hear a case specifically regarding Milwaukee's voucher program (Pardini, 1999). The Justices seem to be reserving judgment for the time being.

## **Conflicting Ideas of Vouchers**

Although the debate over education tax credits is just heating up, the debate over vouchers has been boiling over since the voucher idea was first introduced by Milton Friedman in the 1950s (Friedman, 1955). There are two major strands in the debate over vouchers, one concerning freedom and the other concerning equity. Of course, the issues within each are complex and overlap significantly. The first strand centers on the broad issue of freedom of choice. Supporters of vouchers argue that parents need more freedom of choice when it comes to their children's schooling, and they believe that vouchers will provide the avenue for those choices. Parents will not be forced to support failing public schools with their tax dollars, especially if they would prefer to send their children to private schools. Once parents threaten flight to better-achieving private schools, the argument goes, the public schools will be forced to improve in order to be able to compete. Voucher foes disagree, arguing instead real freedom of choice will exist only for higher-income parents. They believe that tax money is better invested in public schools that are available to all children. The issue is less about free choice than it is about self-interest. After all, parents are at least nominally free to enroll their children in private schools whether or not vouchers or tax credits exist. Some wealthy families that choose private schools simply do not want their tax dollars supporting public schools if their children are not attending them. Some voucher proponents calling for greater school choice contend that private school vouchers will allow families greater control over their children's schooling, particularly where it concerns religion and morality. With education tax credits and many voucher plans, students can attend religiously affiliated schools, thus enabling them to learn according to their parents' values (e.g., creationism instead of evolution). Opponents declare this an unconstitutional breach of the separation of church and state. Public monies, they maintain, must not go to support private, religious education.

The second strand of argument over vouchers and education tax credits focuses on the issue of who really benefits from these initiatives. Defenders of vouchers often try to take the high ground by arguing that voucher and tax credit plans primarily benefit the least advantaged students and families. With a voucher or tax credit, poor families, they say, will no longer be held captive in bad public schools. They will be able to send their children to private schools for a better education. According to voucher opponents, the least advantaged students are not only not the primary beneficiaries of voucher plans, they are the ones who are most likely to be harmed. Most voucher plans, and the Arizona education tax credit, do not restrict private school tuition aid to needy students.

Therefore, there exists a risk that higher-income families will take most advantage of the voucher opportunities, leaving the neediest students in underfunded public schools. The vouchers and tax credits thus function as subsidies for middle- and upper-income families.

In what follows, I will delve more deeply into these two strands of argument, paying close attention to Arizona's education tax credit and Milwaukee's voucher plan.

### **Strand One: Vouchers and Tax Credits as Freedom of Choice**

According to John Chubb and Terry Moe (1990), a free market in schooling will respond to and rectify what they see as public school failure (at least as defined by academic achievement as measured by standardized test scores), stemming from a system of direct democratic control. Democratic control by means of elected school boards, they contend, is responsible for the creation of an unwieldy bureaucracy of school governance that erodes student achievement, parent satisfaction, and educational innovation. Under market-based reform, education would instead be treated as a consumer good. Individual schools would perform well or risk students and parents taking their "business" elsewhere. Families would have greater freedom to have their children attend better private schools as well as parochial schools more in line with their moral values. In addition, these new public schools, unfettered from democratic structures, would rise to the higher levels of academic achievement claimed for private schools (Chubb & Moe, 1990).

Chubb and Moe's (1990) arguments exemplify those of school choice proponents in general. The concern for greater freedom of choice can be separated into three main issues. These are: 1) unfair taxation, i.e., it is unfair to force parents to give their tax money to public schools when they would rather send their children to private or parochial schools; 2) private school performance, i.e., private schools promise higher academic achievement; and 3) moral values, i.e., religious schools better support conservative moral values.

#### **Unfair Taxation**

In *Kotterman v. Killian*, the Arizona Supreme Court looked favorably on education tax credits for private and religious schools because such schools were said to serve the public interest by relieving parents' tax burdens. Critics of vouchers and education tax credits fear the loss of tax dollars for public schools. This fear appears to be warranted. A study of the Milwaukee voucher program has shown that the Milwaukee Public Schools lost over \$22 million dollars that they would have received from the state were there no charter schools or vouchers redeemed at private schools (Miner, 1998/1999). Tax credit advocates, however, do not see tax credit money as belonging to the state, since, because the money is donated directly to STOs or schools by the taxpayers, it is never actually in the state's possession. This was the reasoning used by the majority of the *Kotterman v. Killian* justices, who overlooked two things. First, if state income tax money is withheld from a person's paycheck and that person makes a \$500 donation to an STO, then when she or he receives the tax credit, the state is in effect returning the \$500 – money in the state's possession – to the taxpayer. Second, tax credit donations to STOs or public schools are not simple philanthropic donations of individuals' own money; by taking advantage of the tax credit, individuals are choosing where to place their tax dollars. Without such a choice, that money would go to the state.

In the same vein, if voucher plans do not reduce public school funds, then why

would Governors Jeb Bush and George W. Bush both use the threat of federal vouchers to punish schools whose test scores do not improve? George W. Bush has proposed taking money from federal Title I programs targeted on the neediest students and schools to finance vouchers for students in low-performing schools. His plan stipulates that after three years without test score improvement, Title I funding would be taken away from the school and given to the state to set up voucher programs for students (Herman, 1999). It is doubtful, however, that such a plan would withstand the inevitable court challenge.

The nature of taxation is connected with citizens contributing to the public good. If public tax dollars are used to subsidize some students' private school attendance, then tax monies are contributing to some citizens' private good. Foes of education tax credits have legitimate worries about increased inequality and segregation brought on by such school choice programs (see Cobb & Glass, 1999). In Dan Goldhaber's (1999) optimistic view, school choice efforts could break the ties between low-income neighborhoods and poor schools, which could result in fewer white and higher-income families fleeing to suburban school districts. Of course, changing school funding schemes could have this effect as well and would focus on improving public schools rather than escaping them.

Consider the state of Florida's recent school voucher law, which holds that public school students in schools that received failing grades on their state school report cards for two consecutive years could receive vouchers that use tax dollars to fund private school tuition. In March, 2000, it was declared unconstitutional by a state judge. The judge ruled that the voucher law violated the state constitutional mandate to provide students with a free education in public schools (Hallifax, 2000). (Note 3)

Still, the voucher proposals keep coming. New Mexico's Republican Governor Gary Johnson has proposed the most comprehensive U.S. voucher program yet (Janofsky, 2000). Underlying Johnson's proposal is the assumption that private schools are better than public ones; many politicians play into this assumption by proposing voucher and tax credit plans to help families escape public schools. Perhaps it helps avoid the more important discussion about what ought to be done to improve those public schools that are not serving children well.

## **Private School Performance**

Those in favor of tax credits and vouchers contend that private school students by and large have better academic achievement than public school students. As such, more students should be provided with the opportunity to attend private schools, and school choice plans should help them afford the costs. This argument is compelling, because as it stands, only middle- income and high-income families can afford private school education for their children. Tuition tax credits and vouchers, then, can make the difference for some lower- income families. The problem is that this logic assumes that private schools do indeed provide students with a better education than do public schools. Goldhaber (1999) points out that on average, private schools tend to produce higher standardized test scores, and high school graduation and college attendance rates. However, and this is the key point, Goldhaber also mentions that this finding does not take account of the differences between private school selection criteria and public school open admissions (Goldhaber, 1999). In fact, the findings on student achievement do not support the contention that private schools do a better job educating students (Goldhaber, 1999; Witte, 2000). Consider that when John Witte (2000) compared the reading and math achievement of Milwaukee Choice students and Milwaukee public school students, he found no statistically significant differences. This finding led him to

conclude that "the battle and politics over vouchers may have more to do with money and with the allocation of power than with education" (Witte, 2000, p. 157).

In addition to perceptions of higher achievement, private schools are also perceived as having more involved and active parents. Similarly, it is often the most involved parents who take advantage of school choice opportunities (Witte, 2000). As such, these involved parents leave the public schools rather than using their energies to help improve them. According to Witte

One could...reasonably argue...that if these students and families remained in their prior [public] schools, they could exercise considerable influence in attempting to improve those schools. [Choice] Parents were educated, angry, involved, and had high expectations for their children. If engaged and given the opportunity, they could push the public system rather than leave it (Witte, 2000, p. 73).

It defies common sense that in order to foster improvement in the public schools, we should shift more good students, active parents, and financial resources to private schools. It seems that this would render public schools less likely to improve. In a review of the empirical literature regarding school choice, Goldhaber found that competition does seem likely to spur public schools to change (Goldhaber, 1999). But why promote public school reform in ways that risk making them worse? Why act as if schools and students in poor neighborhoods deserved to be punished for having to deal with myriad issues that high-income schools do not face? Why not instead foster action by involved parents within the public system?

## **Moral Values**

Overall, approximately 85% of all private school students attend religious schools (Witte, 2000). Although it is reasonable for families to choose to send their children to schools that uphold their religious tradition and moral values, it is not right for them to do so using public tax dollars. To do so threatens the separation of church and state. In upholding the constitutionality of Arizona's tuition tax credit, the majority opinion in *Kotterman v. Killian* stated that before the tax credit initiative, low-income parents

may have been coerced into accepting public education. These citizens have had few choices and little control over the nature and quality of their children's schooling because they have been unable to afford a private education that may be more compatible with their own values and beliefs. Arizona's tax credit achieves a higher degree of parity by making private schools more accessible and providing alternatives to public education. (Note 4)

Three points can be raised regarding this portion of the *Kotterman* court's opinion. First, the Justices appear to place considerable value on an education that is in harmony with families' moral values and beliefs. They are presumably referring to the generally conservative moral values espoused in religious schools. If tax credits are to be valued because they help achieve greater economic parity, then why should moral values play a part in their defense? Second, the Justices assume that the inability to afford private school has *caused* low-income parents to have "few choices and little control" over their children's education. Poverty and isolation are more likely to have caused these families'

educational difficulties, and simply placing children in private schools is not likely to solve the problems associated with poverty. Third, the Justices ignore the fact that the tax credit also makes private school more affordable for students already enrolled as well as other middle- and high-income students. Subsidizing the attendance of economically privileged students at private schools will not help Arizona achieve the higher degree of parity the Justices seek.

Thus far, it has been the Catholic Tuition Organization of Phoenix and the Arizona Christian School Tuition Organization, both of which support schools affiliated with their respective religions, that have benefited disproportionately from the Arizona tuition tax credit (Schnaiberg, 1999; Wilson, 2000). As of January, 2000, these two STOs had received over \$1,375,000 of the total \$1,800,000 donated to 15 of Arizona's STOs (Center for Market-Based Education and the Goldwater Institute, 2000). Apart from reporting to the Arizona Department of Revenue on the amount of their scholarship money that was allocated, there is no accountability for how the STO scholarships are disbursed. While donors cannot designate a donation to benefit their own children directly, there is nothing stopping them from, say, earmarking their donation for a friend's child. The STO has complete freedom to determine how money is allocated among applicants and the amount of aid each will receive (Center for Market-Based Education and the Goldwater Institute, 2000). In addition, as Justice Feldman points out in the dissenting opinion in *Kotterman v. Killian*, "contrary to the majority's assertion, the [tax credit] statute promotes support of religious schools. It does this without prohibiting use for sectarian instruction, thereby allowing direct state subsidy of religious instruction and observance." (Note 5) In essence, Arizona tax dollars are funding the teaching of specific religious and moral values.

We arrive at what Kenneth Howe (1997) identified as a case of the slippery slope. Once voucher and tax credit plans are introduced, even the most restrictive ones, they tend to slip toward subsidy of religious schools and toward benefiting primarily higher-income students as well. The Milwaukee voucher experiment provides an example of how the slippery slope can turn a successful limited voucher program into a program to subsidize religious school attendance. Beginning in 1991, only low-income students from Milwaukee public schools were eligible to receive approximately \$5,100 to attend nonsectarian private schools. By 1995, the program had expanded to include religious schools, and by 1999, 69% of the participating choice schools were affiliated with a religion (Witte, 2000). Once the Milwaukee Choice program expanded, it changed in significant ways. By the 1998-1999 school year, only 23% of "choice students" came from the Milwaukee Public Schools; the rest had already been enrolled in private schools; 55% of these were already private school students or new private school students, and 22% were continuing choice students. Perhaps the best evidence of the slippery slope phenomenon is that the mayor of Milwaukee has proposed removing the program's income restriction, which will likely result in private school subsidies for higher-income families (Witte, 2000).

Or consider the Cleveland, Ohio program. It began with many fewer restrictions than Milwaukee's, and as a result, saw discouraging results. The voucher schools were mostly parochial, the vouchers were not specifically targeted toward needy students, and it subsequently became a program primarily benefiting students who were already attending private schools (Witte, 2000). Despite the evidence that voucher and tax credit plans will inevitably encounter the slippery slope phenomenon where they end up benefiting mostly high-income students and private and religious schools, school choice supporters continue to insist that these programs are designed to help the neediest students and schools.

It would be difficult to dispute the notion that many public schools are in need of improvement; studies by Jonathan Kozol (1992) and Jean Anyon (1997) provide compelling stories of the plight of urban public schools. In that regard, voucher proponents join with liberals in decrying the sorry state of some public schools. However, school choice advocates ignore evidence that the democratically controlled U.S. public school system is doing a remarkable job. More people than ever are guaranteed a free education, and the U.S. high school graduation rate is at its highest point in history (Berliner & Biddle, 1995). Market-driven reform supporters stretch facts when they paint the public school system as an unredeemable villain. Yes, it is crucial for our neediest students that something be done to improve the school infrastructure, teacher quality, and achievement in the poorest schools. But market-based ideas such as vouchers and tax credits hold little, if any hope for beginning that long and complicated process. Vouchers and tax credits are far more likely to do further harm to poor students and students of color.

## **Strand Two: Vouchers and Tax Credits as Benefit for the Least Advantaged**

Proponents of school vouchers and education tax credits argue that these programs serve primarily to combat the inequality faced by low-income students. Opponents claim the opposite, viz., that vouchers and tax credits will serve to perpetuate the already unjust funding disparities between public schools in high-income and low-income areas and consequently, hinder progress toward social justice goals.

Andrew Coulson (1996) looked historically at market-inspired reforms and maintains that such fears of injustice are unfounded. He complains that opponents assume that too many families would not actively find out about the options for choice. In making the case for market-driven change, he writes that "Members of the minority groups assumed to be incompetent or uninterested in their children's education are foremost in defending their ability and prerogative to choose" (Coulson, 1996, p. 3). This is a misleading characterization of an important objection to market-based choice schemes. In implying that choice opponents discount the intelligence and power of low-income parents and parents of color, Coulson dismisses the very real danger that a large portion of low-income families are harmed by voucher and tax-credit plans. In initial data analyses of donations in the first year of the Arizona education tax credit, Glen Wilson (2000) found that the education tax credits exacerbate the already disastrous inequities in Arizona public school funding.

With the Arizona education tax credit, only taxpayers can benefit from this so-called expanded choice. Families that do not earn enough to pay taxes – those whose children are arguably the poorest and most in need of expanded options – will not be able to contribute either to their children's public school or to an STO. Thus, the likelihood of their pursuing the benefits of these tax credits seems remote. Why then, as Coulson (1996) notes, do some low-income families seem to support vouchers plans such as these? Voucher advocates often point to the fact that the Milwaukee voucher program was initially strongly supported by urban African American parents (Witte, 2000). The abstract promise of vouchers and tax credit monies to pay for a better school for one's children is indeed hard for many families to resist. The problem comes when the voucher plans are put into action. Wisconsin state Representative Polly Williams, an outspoken early architect of Milwaukee's voucher program, learned this first-hand. Within five years of the outset of the Milwaukee program, Representative Williams and most other African American leaders in Wisconsin had rescinded their support of the

program. (Note 6) In Cleveland, no African American leaders support the voucher plan (Witte, 2000). They were disillusioned once the promise that the voucher plan held for urban students in general and students of color in particular failed to materialize. Worse, the voucher program was expanding and was benefiting principally higher-income families (Witte, 2000). Representative Williams pointed out that "This is what you call hijacking the program. There are people in the coalition who never intended to help low-income children." (Quoted in Witte, 2000, p. 170). According to Timothy McDonald, Chair of the national African American Ministers Leadership Council, "Inner city parents whose schools are not performing well are desperate for solutions and the Religious Right is exploiting that frustration. This is really an attempt to divide the African American community against itself" (Rethinking Schools, 1999, p. 2). Voucher and tax credit plans often use the term "scholarship" rather than voucher to skew perceptions of the program. For example, the Cleveland program is called the Ohio Pilot Project Scholarship Program, and Florida's vouchers are termed opportunity scholarships by Governor Jeb Bush. Why not just use the language of vouchers? If there is nothing to be ashamed of or opposed to regarding voucher plans, then why are such circumlocutions employed?

Vouchers and education tax credits serve to perpetuate *status quo* class arrangements within schools. As Howe (1997) observed,

we've now taken our first step on a slippery slope and will inevitably slide to the bottom, where privatized schooling will be there to greet us. The only remedy for this problem is to demand significant restrictions, to keep equality of educational opportunity at the forefront, and to insist on continued efforts to improve existing public schools (Howe, 1997, p. 123).

Perhaps an even better remedy would be not to allow voucher and tax credit plans in the first place. Perhaps then we could go about the work of improving schooling for poor children without the distraction and detraction of market-based choice schemes.

One is drawn to Witte's conclusion: "the most plausible explanation for the continuity and expansion of vouchers has little to do with aiding poor, minority students, and much more to do with distributing subsidies to those who now attend private schools, or would do so in the future" (Witte, 2000, p. 158). Data on the first year of the Arizona tuition tax credit show that poor students and students of color indeed are not receiving the majority of the financial benefit (Wilson, 2000). In Presidential Candidate George W. Bush's plan for education, parents could place up to \$5,000 per year in tax-free education savings accounts to be used for K-12 private school expenses. The current limit on such accounts is \$500 per year for college fees (Johnson, 2000). In the spirit of education tax credits, this type of tax-free saving serves to benefit wealthier families. If a family puts \$5,000 into a tax-free savings account to be used for private school tuition, and they are in, say, a 25% tax bracket, then they are gaining \$1,250 tax dollars. The corollary effect of this, of course, is that the tax dollars available to fund public schools are significantly reduced. In addition, poor families would have a much harder time contributing to such a savings account, and so could not take advantage of either the tax break or the additional funds to put toward private school tuition, if they so desired. It is difficult to believe that school choice proponents such as Bush still attempt to have the public believe that they are really just trying to help our neediest students. Perhaps we should not be surprised, given the presence of similar attempts in our nation's history. It was also argued that the doctrine of "separate, but equal" would be in the best interest of people of color. Even the U.S. Supreme Court supported that position

in *Plessy v. Ferguson* (1896).

In addition to the harm that vouchers and tax credits do to low-income students is the harm that they may do to students with disabilities. By virtue of the fact that private schools need not make any adjustments for students with disabilities, private schools are much less likely to serve this group of students than are public schools, who are required by law to do so. Consider that under Milwaukee's Choice plan, private schools do not have to accept students with disabilities; these students can, in essence, be officially excluded (Witte, 2000). The issue of students with disabilities provides further evidence that voucher and tax credit plans are not truly concerned with aiding the least advantaged students.

Both Witte (2000) and Goldhaber (1999) found that families with more formal education are more likely to take advantage of opportunities for school choice. Because he looked at all types of choice program and not just a restricted one like Milwaukee's, Goldhaber also found that higher-income parents are more likely to use charter schools, vouchers, and the like when they were available. These outcomes could be predicted, especially when we look at data from the Milwaukee voucher program showing that information about the program reached families most often through personal contacts and word-of-mouth (Witte, 2000). If the same is found to be true in Arizona, then it is much less likely that poor students and schools in poor neighborhoods will learn about and benefit from the tax credit in large numbers. It is no wonder then that Goldhaber concludes that "unfettered school choice would likely lead to increased racial and economic segregation (Goldhaber, 1999, p. 23).

For a public school donation to fall under Arizona's tax credit rules, it has to be earmarked for activities for which there are *extracurricular* fees, say, for example, a Spanish class trip to Spain. The public school tax credit thus raises two major problems. First, the extra-curricular activities for which these donations can be used are rather unlikely to significantly improve students' academic experience. While there are certainly benefits to be had from having better band uniforms, or traveling to Spain, perhaps money could be better spent on teacher salaries, for instance, so that lower-income schools can at least try to compete with higher-income schools for the best prepared teachers. Second, there is no guarantee that anyone will volunteer to donate anything to the neediest public schools. However, we can imagine that school administrators would try to take advantage of the tax credits and mobilize parents and members of their community to make their donations. But, again, which schools would be more likely to have the time and energy to devote to such a campaign? Higher-income schools, to be sure. I am *not* saying that educators and families in low-income schools do not care or do not value education, as has been suggested in other research (Coulson, 1996; Goldhaber, 1999). (Note 7) What I *am* saying is that if parents are struggling to provide food and shelter for their children, and if educators are struggling to keep kids safe and in school, it seems unlikely that these parents and educators will manage also to wage a community campaign for tax credit donations. Who cares about new band uniforms if the school has no band? In addition, the tax credit money that wealthy families contribute to public school extra-curricular activities does not go into the state's general tax fund, leaving the state less money to fund social programs that could help poor students and their families.

## **Opposing Conceptions of Justice**

How can it be that voucher and education tax credit programs are held up simultaneously as 1) needed help for both the disadvantaged and the unsatisfied, and 2)

yet another way that the wealthy and powerful can help themselves to the detriment of our neediest students? The problem is that the opposing camps are, in many ways, entering into the debate holding vastly different assumptions about freedom and, most importantly, about justice. Whether one supports vouchers and education tax credits depends largely on which set of philosophical assumptions one holds. One set of assumptions—those that voucher proponents subscribe to—stems from a libertarian conception of justice. The other set—those that voucher opponents subscribe to—stems from a contemporary liberal democratic conception of justice. In the next section, I explore these opposing ideas, settling on the liberal democratic conception as most genuinely concerned with important considerations of justice for the least advantaged students.

## **Libertarians Versus Contemporary Liberal Democrats**

Libertarian theories of justice are primarily concerned with issues of freedom and individual choice, specifically as exemplified in the free market. As long as the distribution of goods stems from free exchanges, any inequalities in the distribution that result are just (Howe, 1997). Therefore, justice is served when society functions as freely as possible, there is little state involvement in the affairs of individuals, and persons are free to choose the good. Hence, school choice plans like education tax credits fit perfectly with these notions of justice. By allowing citizens to determine for themselves where (at least part) of their tax money will go, and allowing them to have greater choice as to where to educate their children, according to their own belief system, tuition tax credits serve libertarian notions of justice well. It simply does not matter to libertarians that this is unfair for families and schools in low-income neighborhoods. The education tax credit is therefore seen by its proponents as one more device for empowering parental choice. Defenders of school choice view it as being fair and just, arguing that the system of financing public education is coercive and discriminatory. According to libertarian theory, the tax credit is available equally to all; low-income parents have the same chance as anyone else to use it. If they do not take advantage of the opportunity, it is their own choice. The entire notion of market-based educational change thus assumes a libertarian conception of justice.

While there is some merit to the virtues of freedom and of choice, libertarians run into significant problems when contemporary liberals (myself included) question them on the aims of education in a democracy and on the actual outcomes of education tax credits for the neediest students. First, tax credits, which add up to public financial support for private and parochial schools, are detrimental to the major aim of education to prepare all students for democratic participation. Second, while Arizona tax credit supporters claim it will indeed result in expanded choices for low-income students, the actual outcomes of the first year of the tax credit program show that this is not at all the case (Wilson, 2000). Advocates of education tax credits are operating under an impoverished notion of social justice for students, especially low-income students. They are asking the wrong questions, and trying to fix the wrong problems. Instead of combating the woes of low-income public schools head-on, they are attempting to shift the emphasis from reform and social change to an emphasis on individual freedom (Cookson, 1992). But this notion of freedom is empty, as it is disconnected from both the sociopolitical context and a concern for others, resulting in a type of politics of disconnected freedom. Within these politics, parents and students are merely self-interested consumers who would use the libertarian free market rationale to justify fleeing public schools, or, at least, finance summer cheerleading camp. Yet public

schools are the very institutions that serve to sustain a notion of education that aims to prepare all students for meaningful and critical participation in our democracy. Contemporary liberal theories would advocate instead a sense of reciprocity, within which persons do not act only in their own self-interest, but instead aim to act fairly and justly by trying to understand intimately the perspectives and standpoints of others (Gutmann & Thompson, 1996; Rawls, 1971). According to John Rawls, the leading liberal democratic theorist of justice, the only way that any inequalities, such as the ones exacerbated by education tax credits, can be tolerated is if they serve to make all students somehow better off (Rawls, 1971). Education tax credits simply do not fit into this stipulation.

Nonetheless, it seems that, *prima facie*, school choice proposals like education tax credits are in keeping with the tradition of democratic education (Gutmann, 1987). Parents have more freedom of choice, public schools feel compelled to improve in order to compete with private and parochial schools, and poor families have an increased opportunity to place their children in the best schools. However, as Howe (1997) points out, school choice schemes are actually incompatible with equal educational opportunity and democracy. Libertarian advocates for education tax credits tout this reform without taking into account the social and political context underlying the inequalities they contend tax credits will help minimize. In actuality, market-based educational reforms allow us to avoid rather than deal with debates over the nature of schooling in a democracy (Gutmann, 1987). David Berliner and Bruce Biddle (1995) remind us that while the free market generally guarantees efficiency, it does not guarantee equality (Berliner & Biddle, 1995). This is certainly true, and libertarians are aware of this point. Nevertheless, the guiding philosophy behind market-based schemes does not hold the concepts of equality and justice paramount. As long as everyone has nominal freedom of choice, justice will be done.

Libertarian theories, then, allow market-driven reform proponents to idealize the notion of freedom, conveniently forgetting that, as contemporary liberals argue, the state cannot be neutral about civil rights (Moses, 2000). That is to say, left to their own devices, there is little guarantee that private and parochial schools will pay any attention whatsoever to issues of equality and social justice. What is more, history shows that private and parochial schools will not pay any such attention, and may in some instances be designed so that they may exclude certain students. Chubb and Moe (1990) claim that it is good that private schools are separated from democratic political processes. Contemporary liberals disagree, responding that that is precisely the problem if we truly care about social justice. Perhaps libertarians do not. They should.

## Concluding Thoughts

Consider the following two student cases.

1. Jonathan is a young boy who is having behavioral difficulties in his public elementary school in the inner city of Newark, New Jersey. In recent weeks, Jonathan has switched from living with his father to living with his mother. When he passes his father on the street, his father refuses to even say hello to him. Since Jonathan began living with his mother, his father ignores him. (Note 8)
2. Harold is an elementary schooler in Los Angeles whose mother works an alternating shift in the local hospital's laundry. She is the family's sole source of financial support. His father left when he was five and is now in jail. Harold has for years been labeled a distracted problem child. His mother usually does not

have time to attend parent-teacher conferences to discuss Harold's situation. (Note 9)

In the first case, Jonathan is just one example of the children in his elementary school who Jean Anyon (1997) describes as having "hard lives" (Anyon, 1997, p. xiii). A teacher in the school describes the myriad troubles faced by the children she teaches: "Derrick's father died of AIDS last week;...One girl's father stole her money for drugs...One boy had a puffy eye because his mother got drunk after she got laid off and beat up the kids while they were sleeping" (Anyon, 1997, p. xiii). In the second case, Harold's mother is having great difficulty being her family's sole provider. A medical problem is plaguing her, she has little time to spend with Harold, and she seems resigned to a life of poverty.

Think again of the debates over education tax credits. Is it likely that Harold's mother or many of the parents of students in Jonathan's school will be able to donate their \$200 tax credit to the school, or \$500 to a School Tuition Organization? Will they then help their child apply first for a private school tuition scholarship, and then for admission to a private school, and last obtain transportation to and from a private school that is not in their neighborhood? Would a private school even choose to admit students like Jonathan and Harold? If the parents were able to donate their \$200 tax credit to the public school, for what would the school use the money? There is no school band or science laboratory or athletic team in need of new equipment. The things the students need most are not fee-driven extra-curricular activities; they need functional bathrooms, bilingual teacher aides, and up-to-date classroom computers (Kozol, 1991). Of course, in no way do I mean to imply that low-income students do not deserve to participate in extra-curricular activities, only that the things that Arizona's \$200 tax credit will pay for are not the highest priority for school improvement. Perhaps in some schools in higher-income neighborhoods that is not the case. However, tax credit proponents claim that they will help revitalize poor public schools that serve needy students. I do not see how, for it does not even seem that the tax credits were formulated with such students in mind.

It would be best, and most just, to focus school reform efforts on improving public schooling, especially for the neediest students, and celebrating what is good about public schools, rather than demonizing public education in an effort to serve special interests, as proponents of school choice tend to do. In the interests of justice, it is liberal democratic rather than libertarian market principles that should guide public schooling. It is public, not private, education that is a primary good in the United States, for at its best, it serves the critical social purpose of educating all students for meaningful democratic participation (Gutmann, 1987). In the end, education tax credits and other school choice schemes will not help to reform public schools that do not successfully serve that social purpose or diminish social inequalities. Rather, they will result in injustice by exacerbating the very inequalities that they claim to erase.

Education tax credit schemes cannot change the fact that school funding is largely based on property taxes. Family incomes and therefore neighborhood and housing situations determine children's school possibilities and too often a school's quality as well. This is a serious fundamental problem. Schools in poor areas ought to receive more state dollars than their wealthy counterparts. Perhaps restricted school choice plans (like the original Milwaukee voucher program) may help some students. That is perhaps acceptable. But realistically, the case cannot be made that market-based reforms will save children from poverty or even save them from unfair school funding arrangements (Traub, 2000).

As Berliner and Biddle (1995) document, overall public schools in the U.S. are doing a good job (Berliner & Biddle, 1995). Similarly, in his journey across the U.S. to visit public schools in places such as New York City; Chicago, Illinois; Hattiesburg, Mississippi; and Tucson, Arizona, Mike Rose learned that public school "classrooms offer a collective public space in which America is being created" (Rose, 1996, p. 10). This, despite rampant poverty and racism. Imagine the possibilities if we were to focus our collective societal energy and power on eradicating poverty rather than on things like self-interested tax credit schemes.

## Notes

1. A.R.S. § 43-1089 (1997).
2. Apparently, these donations can also be deducted from one's federal taxes as well - in essence providing a double benefit. See paragraph 148 of the dissent of *Kotterman v. Killian*, 972 P.2d 606 (1999).
3. As of this writing, the state was in the process of appealing the decision to the 1st District Court of Appeals (Hallifax, 2000).
4. See paragraph 22 of the majority opinion of *Kotterman v. Killian*.
5. See paragraph 93 of the dissent of *Kotterman v. Killian*.
6. In fact, only one African American leader, Dr. Howard Fuller, continues to support Milwaukee's voucher plan. (For the complete story, see Chapters 7 and 8 of Witte, 2000).
7. Goldhaber (1999) suggests that better-targeted publicity can help low-income families find out about school choice opportunities because they "may have less knowledge about the workings of the educational system and the value of education" (Goldhaber, 1999, p. 23). Better-targeted publicity about options cannot hurt, but there is no need to perpetuate the idea that low-income people do not know the value of education.
8. This story comes from a case described in Jean Anyon's book *Ghetto Schooling* (Anyon, 1997).
9. Harold's story is recounted in Mike Rose's book *Lives on the Boundary* (Rose, 1990).

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