
Charter Schools and the Public-Private Synthesis

With Christopher Lubienski

On Tuesday, October 5, 1993, Michigan Governor John Engler stood in front of an assembly of state legislators with a 20-gauge sawed-off shotgun and voiced his support for school choice. Engler brandished the gun, “confiscated from a student, to dramatize school violence and promote his plan to allow parents more leeway in choosing the schools their children attend” (Basheda, 1993, p.8a). According to the armed governor (Engler, 1993):

The total funding level of schools will be determined by how many students they can retain or attract. The schools that deliver will succeed. The schools that don't will not. No longer will there be a monopoly of mediocrity in this state. . . because our kids deserve better.

The unusual spectacle did not end there. Engler asked a 9-year-old student, Rory, to stand up from his reserved seat in the gallery. Rory's family wanted to transfer him from their small rural school district to one with a gifted program, but their request was denied by the home district seeking to retain per-pupil funds. “It was a small district,” according to Rory's father, and “children are dollar signs in their system.”

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The connection between Rory's plight and the shotgun was telling. Engler was portraying a public school system in a deep state of crisis due to its governance structures—"Public education is a monopoly, and monopolies don't work" (quoted in King, 1993). The link was clear: public schools fail in promoting academic excellence just as they fail to promote character and values because they rely on a captured clientele. Shielded from competition, they have no incentive to respond to the preferences of parents. Engler declared: "It's because of experiences like yours, Rory, that we need real change. This plan's for you" (see Basheda, 1993; Engler, 1993).

Engler was a principal figure in a loose coalition launching a comprehensive choice system for public education in Michigan in the 1990s. Charter school—or "public school academies," as they are called in Michigan—represent a central element in these education reforms.

One of the most widely-discussed reforms in education, charter schools are a new breed of public school—a hybrid that mixes elements of traditional public schools (universal access and public funding) with elements usually associated with private schools (choice, autonomy, and flexibility). The movement is part of a larger set of national and international trends toward subjecting the delivery of public services to market forces.¹ This, its proponents hope, will make education and other public services more efficient and responsive. It is, in short, an attempt to harness private interests and institutions in the service of public interests.

Unlike more strident privatization efforts like school vouchers, however, charter schools enjoy broad-based support among both liberals and conservatives. For liberals, charter schools provide a way to embrace notions of choice and competition—popular in the abstract—without moving to a full voucher system. For conservatives, charter schools serve as a stalking horse for vouchers—a modest first step in acclimating the public—skeptical of the details of voucher plans—to the virtues of choice and competition in education. While polling evidence suggests that Americans are still relatively unfamiliar with charter schools (Public Agenda, 2000), it is clear that the concept is much less controversial than vouchers.

The fact that the charter concept is so politically ambidextrous has contributed, no doubt, to the movement's impressive growth over the past decade. Indeed, the movement has grown from 2 charter schools in Minnesota in 1992 to more than 2,000 schools in 37 states and the District of Columbia as of the 2000/01 academic year (Center for Education Reform, on-line). In spite of this impressive growth, charter schools comprise only 0.2 percent of public schools nationwide. If the movement were to continue at its historical rate of growth, however, the number of charter schools could grow to nearly 10,000 by the year 2010.² While this is unlikely, it does serve to illustrate the impressive rate at which the charter movement has expanded.

With the charter school movement nearing its ten-year anniversary and charter schools high on the new president's education agenda, it seems appropriate to pause to take stock of what we have learned from the first decade of charter school experience. This book provides an in-depth examination of the charter concept as it has been operationalized in one of the nation's most populous states—Michigan. Having one of the oldest and strongest charter school laws in the country, Michigan provides important insights into how a similarly robust national charter school movement might affect the delivery of public education. Thus, close examination of the Michigan case will offer important insights to policymakers in states considering the option of new charter school laws, in states considering amendments to existing laws, and to national policymakers seeking to influence state-level charter school policy and practice.

In examining charter schools through the lens of Michigan, we pay special attention to the charter concept's mix of public and private elements. How successfully have charter schools balanced public and private? To what extent have charter schools managed to harness private interests and institutions in the service of public educational goals? In short, what's public about charter schools?

The remainder of this chapter both explores the charter concept in detail and introduces the basic notions of "public" and "private" used throughout the book. Throughout, readers should bear in mind that our discussion of the charter concept is a distillation of the movement's goals and the mechanisms by which it seeks to accomplish these goals. In later chapters we assess how the actual operation of Michigan charter schools measures up against these abstract ideas.

What Are Charter Schools? A Crash Course in the Charter Concept

At the heart of the charter concept lies a bargain.³ Charter schools will receive enhanced autonomy over curriculum, instruction, and operations. In exchange, they must agree to be held more accountable for results than other public schools. Standing at the center of charter school accountability is the charter document itself. A charter is an agreement between a school and an authorizer—the public body that grants the charter. The charter document prescribes the conditions under which the school will operate and the goals it must accomplish in order to remain in operation. Schools that fail to live up to the promises set forth in the charter risk being closed—either through failure to get their charter renewed or, in extreme cases, immediate revocation of the charter and closure.

Figure 1:2 illustrates the essential components of the charter concept using what policy analysts and evaluators call a "logic model." Logic models identify

the goals of a policy design and the instruments and techniques used to achieve those outcomes. The remainder of this section elaborates this logic model by discussing how the charter concept restructures schools' environments, the "opportunity space" created by this restructuring, and the mechanisms by which the schools are held accountable.

Restructuring Schools' External Environments

The charter school logic model shown in Figure 1:2 contains three parts. On the far left are a set of policy changes—brought about mostly through changes in state law—that alter the legal, political, and economic environment in which charter schools operate. We call these "structural" changes because they seek to fundamentally alter the conditions under which schools operate. The point of these structural changes, however, is not to prescribe charter school actions in great detail but to enhance school autonomy. We may think of these structural changes as creating an opportunity space in which charter schools may experiment (RPP International, 1998).

Thus, the charter concept is rather different from other education reforms in that it seeks not to prescribe specific interventions but to change the conditions under which schools develop and implement educational interventions. This has led some critics to charge that the charter concept is an "empty vessel" or an "all-things-to-all people" reform (see, e.g., Wells, et al., 1998). To others, this aspect of the reform is liberating for schools, since it allows them to select interventions most appropriate for a given group of students.

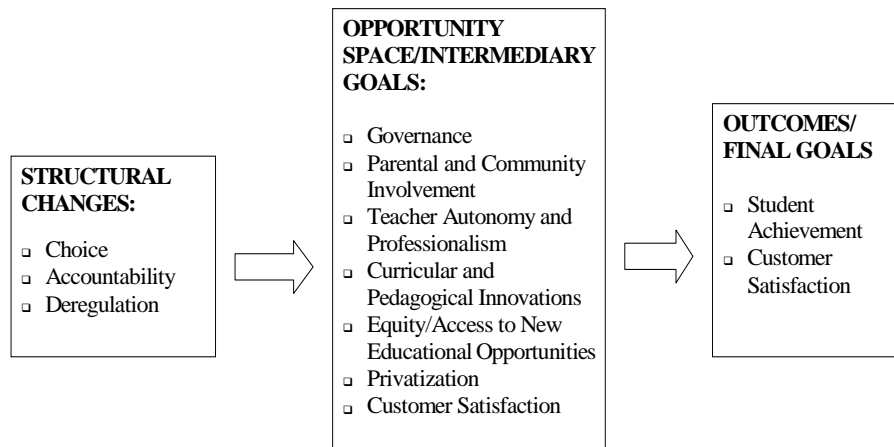


Figure 1:2 Illustration of the Charter School Concept

One of the most important ways in which the charter concept seeks to change schools' external environments is through *choice*. Charter schools are

schools of choice in that, with some exceptions, students from any district or locale may attend any charter school.

According to the theory, choice improves schools through two distinct mechanisms (Hoxby, 2000). The first is through competition. Most charter schools receive the lion's share of their funding through voucher-like allocations that travel with pupils. If a student chooses to attend a charter school, that school receives a fixed-sum payment. As a consequence, schools that fail to attract and retain students will, in theory, go out of business. Since charter schools cannot gain a leg up on competitors by lowering their "prices," they must compete primarily on quality (Solmon, Block, & Gifford, 1999). Thus, the charter concept postulates that, other things equal, competition for students will raise the quality of charter schools and that schools failing to compete on quality will be forced to close.

Second, choice also works through a sorting process. Where there is a wide variety of schools from which to choose, and where each provides a different mix of services, customers will choose the mix of services that best meets their educational preferences. The result will be schools that cater to a relatively narrow range of educational preferences. Choice advocates (see, e.g., Chubb & Moe, 1990; Hill, Pierce, & Guthrie, 1997) argue that such sorting by educational preferences will reduce the amount of time schools spend resolving conflicts, leaving them more time and energy to devote to developing and implementing educational programs. Choice advocates also argue that the very act of choice will leave students, parents, and teachers disposed to work harder to support the schools they have chosen.

Yet another way in which the charter concept seeks to restructure schools' environments is through a mix of *deregulation* and a new form of *accountability*. Traditionally, public schools have been accountable primarily for the educational processes they employ. These include curricula, teaching methods, and the structure of the school calendar. The implicit assumption behind this sort of accountability is that state- and district-level policymakers possess enough knowledge to prescribe inputs and processes that are likely to generate favorable student outcomes. Charter proponents—indeed, critics of "big government" in general—charge that central policymakers, in fact, have no such knowledge; and that "one-size-fits-all" approaches to education should be replaced by approaches that empower teachers and principals to prescribe inputs and processes on their own. This new accountability holds charter schools accountable for outcomes—many of them articulated in charter documents—and then employs deregulation to allow them to choose their own means for arriving at those goals. Charter proponents, in short, contend that school-level personnel are in the best position to assess and respond to specific students' needs.

Defining the Bounds of the Charter School “Opportunity Space”

The charter concept's deregulation of school processes, however, is far from complete. All charter school statutes require that the schools continue to abide by laws concerning civil rights, the safety and health of their students, and standards of fiscal accounting. Some laws require charter schools to adhere to state educational performance standards, take state assessments, and the like. Most laws set certain policy goals against which we may evaluate how charter schools use their autonomy. While it is perhaps fair to call these “intermediate” rather than “final” or “bottom line” goals, it is clear that the grant of autonomy to charter schools is no blank check.

One such intermediate goal (found in the middle box of Figure 1:2) is the enhancement of opportunities for parental and community involvement. As an empirical matter, one might expect that parents who choose schools would be more engaged than those who had not. Beyond that, proponents of the charter concept contend that such involvement is a valuable resource that will ultimately lead to higher student achievement and other positive outcomes. Indeed, nearly four decades of research on student achievement has found that family and community characteristics can explain much of the variation in student achievement as measured by standardized tests. Thus, one might suspect that schools that work with home and community will be able to leverage improvements in student outcomes.

A second intermediate goal in most charter school laws is enhanced professional autonomy and opportunities for teachers. Charter schools are schools of choice for teachers as well as parents and students. It is reasonable to suppose, therefore, that teachers who choose to work at a school based on their agreement with the school's vision will be more willing to go the extra mile for the school. The call for teacher autonomy is in many ways grounded in the claim that the best educational interventions are targeted to the needs of individual students and that teachers are in the best position to select and implement interventions appropriate to particular students. Moreover, a body of research literature suggests that teacher collaboration and collegiality is correlated with a more positive learning climate and, ultimately, higher student achievement (Lee & Smith, 1996; Louis, Marks, & Kruse, 1996; Marks & Louis, 1997).

A third intermediate goal for charter schools is that they will develop innovations in curriculum, instruction, and governance. Put another way, proponents argue that charter schools will function as public education's R&D sector. As such, the benefits of charter schools will extend to noncharter students as traditional public schools adopt and emulate these innovations.

Finally, some charter school advocates hope that the schools will provide rich laboratories for experiments in the use of privatized services. According

to these advocates, schools will run more efficiently by “buying” rather than “making” such goods as lunches, nursing and dental services, and special education services (see, e.g., Hill, Pierce, & Guthrie, 1997). One of the most controversial forms of privatization has been the use of private educational management organizations (EMOs). The level of EMO involvement ranges from the provision of just one or two services to full operation of the school, including payroll and accounting to the selection of teachers, principals, and curricula. At last count, some 10 percent of charter schools nationwide were managed by EMOs (Center for Education Reform, 2001). This estimate, however, is likely too low. While advocates claim that use of EMOs has made charter schools more effective, critics question whether EMO-managed schools retain their “public” quality and whether they produce the results they promise (see, e.g., Miron & Applegate, 2000).

Accountability for What? The Question of Outcomes

The concept of accountability lies at the heart of the charter concept; indeed, it is the price the schools pay for their autonomy. As we have seen, charter proponents have in mind a particular kind of accountability—accountability for outcomes, as opposed to accountability for inputs and processes. This, however, begs two additional questions. The first is “accountability for which outputs and outcomes?” That is, which outcomes shall serve as the primary indicators of charter school quality? The second question is “accountability to whom?” That is, who shall decide whether charter schools are making sufficient progress toward their goals? We begin with the first question.

As we have seen, the charter concept identifies a number of intermediate goals for which charter schools are to be held accountable (teacher autonomy, parental and community involvement, and so on). The most commonly noted “final” outcomes are student achievement and customer satisfaction. Thus, Figure 1:2 places these two constructs at the far right-hand side of the logic model. The representation in Figure 1:2, however, fails to capture the level of controversy over which outcomes charter schools ought to be accountable for.

The first conflict is over how important the intermediate outcomes are in relation to the final outcomes. Often, advocates of charter schools, choice, and privatization couch their discussions of education outcomes in terms of efficiency. This view is usually contrasted to the more traditional view that public education should, in addition to producing bottom-line academic outcomes, serve as an agent of political and civic socialization and as a tool of social change, particularly on equity and distributional issues.

Choice proponents’ emphasis on efficiency is not surprising given that many such advocates have backgrounds in business and economics and are used to having ready access to bottom-line accounting data. It is also linked with reformers’ desire to make schooling less political and less bureaucratic.

Yet, a little reflection on the concept of efficiency suggests that talking about educational goals in terms of efficiency only serves to obscure more fundamental differences in opinions about the ultimate goals of education. As Stone (1988) has argued,

Efficiency is a comparative idea. It is a way of judging the merits of different ways of doing things. It has come to mean the ratio between input and output, effort and results, expenditure and income, or cost and resulting benefit (p. 49).

Thus, while efficiency focuses our attention on bottom-line outcomes over inputs and processes, it can tell us nothing about which outcomes are worth pursuing. Thus, far from resolving questions about what we ought to do, the concept of efficiency presumes that we have already agreed on outcomes. Technical efficiency, in short, can help us decide how to get somewhere, but it cannot tell us where we should go.

So where should public education take us? Proponents of charter schools and privatization often seek to narrow the range of goals for public education (Lubienski, 2001a), in the most extreme cases to achievement as measured on standardized tests. For some, this narrowing is a moral imperative. Christian conservatives, for instance, often view choice and privatization as a way of breaking what they see as the dominance of secular culture and values in traditional public schools. When combined with efforts to reduce the separation of church and state, such a narrow focus on achievement and test scores creates a space in which religious communities can create a set of civic institutions that better comport with their own moral values. Put another way, such actors often seek to narrow the range of outcomes for which schools are *publicly* accountable in order to create more space for a set of parallel *private* educational institutions.

For others, the narrowing of publicly enforceable educational goals is less a moral than a pragmatic decision. Here the claim is that schools function more effectively when they focus on a narrow range of activities. Often, such goals are reflected in clear and concise mission statements. Those who hold this position are often not fundamentally opposed to the broader range of goals that traditional public schools seek out (e.g., equity, citizenship education, and so on). Rather, they believe that schools have been torn in too many directions by a panoply of cross-cutting mandates (see, e.g., Chubb & Moe, 1990).

The second conflict is over how policymakers and citizens should balance the values of student achievement and customer satisfaction. While many charter advocates argue that both are important, some *laissez faire* market conservatives view customer satisfaction as the paramount aim of public programs and agencies. Advocates of this position hold that a policy decision

or outcome is good only if its customers think it is good and continue to “vote with their feet” for the service. Proponents of this position also maintain that it is the customers—parents, guardians—and not public officials who are best suited to know what is good for children.

Accountability to Whom?: The New Politics of Education

To ask the question “accountability for what,” however, raises still another question: who shall decide whether charter schools are making sufficient progress toward their goals? This is the question of “accountability to whom?”

At the heart of this question lies a debate over the nature of education as a social and economic good. Traditionally, education has been viewed as a “public good.” Advocates of choice and privatization, by contrast, generally regard education as essentially a private good (Englund, 1993; Lubienski, 2000). In layman’s terms, a public good is a good in which the public has a clear stake. Public policy analysts have formalized this notion somewhat by defining public goods as those goods that have significant “spillover” costs and benefits (“externalities”) associated with them.⁴ As English philosopher John Stuart Mill characterized the distinction, a public act is one that has “other-regarding consequences,” whereas a private act is one that has only “self-regarding consequences” (Mill, 1989). Or, to paraphrase U.S. Supreme Court justice Oliver Wendell Holmes, my private right to swing my fist ends where your chin begins. Few, if any, goods are purely public or private; most fall somewhere on a continuum between the two. Thus, whether education (or any other good) is public or private is open to some debate.

Clearly, education possesses characteristics of both public and private goods. Private good dimensions of education include the human capital skills that individuals acquire in school and take with them to the job market. Public good dimensions include the inculcation of a set of civic values and a common core of cultural meanings. However, one and the same aspect of education may have both public good and private good characteristics. The human capital skills just mentioned are consumed not only by the individual who carries them but also, through positive externalities, by other citizens who benefit from wealth and cultural value generated by that individual. Similarly, cultural and civic values can also be consumed by individuals as they derive personal pleasure from participating in politics and from enjoying cultural artifacts (e.g., museum trips). Levin (2000) summarized the ambiguity of the public/private good distinction in education as follows:

The problem is that schooling takes place at the intersection of two sets of rights, those of the family and those of society. The first is the right of parents to choose the experiences, influences and values to

which they expose their children, the right to rear their children in the manner that they see fit. The second is the right of a democratic society to use the educational system as a means to reproduce its most essential political, economic and social institutions through a common schooling experience (p. 4).

Whether education is construed as a public or private good has tremendous practical consequences. Generally, policy analysts argue that public goods are best distributed through democratic majority rule while private goods are best distributed through market processes.⁵

Traditionalists, while not denying the private good aspects of education, generally emphasize the public good aspects. This is not surprising given that they are also more likely to view public education as having broad social goals such as equity and socialization. Drawing upon an intellectual framework from the field of economics, these traditionalists point out that markets generally do a poor job of producing public goods. This is because of the “free-rider” problem, according to which each individual has a incentive to sit back while others produce public goods.⁶ Such situations, according to this framework, are prime examples of market failure and cry out for intervention through democratic processes. In short, the fact that education is a public good, along with the fact that markets generally underproduce public goods, necessitates that schools are accountable to the entire citizenry—or at least most of it.

Advocates of choice and privatization do not deny the public good aspects of education but argue that the private good components are more important. This comports with their narrower view of the goals of public education. These advocates also argue that government intervention through majority rule is just as likely to create problems as to correct any market failures.

Critics of traditional government-run public schools cite two sets of problems with control by majority rule, one moral and the other practical. The moral argument notes that wherever there is not a unanimous majority behind a public decision, majority rule produces winners and losers. Thus, as Chubb and Moe observed (1990), “in this sense, democracy is essentially coercive. The winners get to use public authority to imposed their policies on the losers” (p. 28). Transactions in a well-functioning market, by contrast, enable each person to improve his or her welfare, since no rational person would engage in a market exchange unless it left him or her better off. Thus, where democratic politics necessarily subjugate the will of the minority to that of the majority, markets—in theory, at least—create only winners and are therefore more compatible with the value of individual autonomy.

The practical argument against democratic control of schools is more complicated. Critics often begin by noting that schools are hindered by the excessive bureaucracies they labor under. By limiting school officials’

flexibility to adapt to the needs of their particular students and communities, such bureaucratization limits their effectiveness. Many critics ascribe these problems to “provider capture,” or the tendency for schools to be under the influence of teachers’ unions and others who insist on stifling regulations in order to ensure their own job security. Others (e.g., Chubb & Moe, 1990; Hill, Pierce, & Guthrie, 1997) place the blame for this bureaucratic sclerosis on the features of democratic politics. Chubb and Moe (1990), for instance, claimed that bureaucratic structures arise when majorities seek to insulate their victories against future coalitions through rules and regulations.

The best way for groups to protect their achievements from the uncertainties of future politics, is through formalization: the formal reduction or elimination of discretion, and the formal insulation of any remaining discretion from future political influence (Chubb & Moe, 1990).

The key to the bureaucracy problem, based on this argument, is not rogue elephant bureaucracies but democratic politics itself. The solution, therefore, is to replace democratic control with an alternative answer to the “accountability to whom” question.

The alternative control mechanism suggested by choice-based reforms like charter schools is market accountability. Unlike democratic/political accountability, market accountability requires that schools be evaluated primarily by individual consumers (parents and students). The principal mechanism of accountability is the threat that customers will vote with their feet by leaving the school. Given that state funding under charter laws is tied to the individual student, large enrollment losses could mean financial insolvency and, ultimately, closure.

Market accountability, then, effectively suspends normal democratic processes. Instead of having to convince majorities of their worth, schools must satisfy one customer at a time (Lubienski, 2001a). Moreover, market accountability places most of the influence over schools in the hands of parents and students, while minimizing the role of other stakeholders. Chubb and Moe (1990) characterized the difference as follows:

Under a system of democratic control the public schools are governed by an enormous, far-flung constituency in which the interests of parents and students carry no special status or weight. When markets prevail, parents and students are thrust onto center stage, along with the owners and staff of schools; most of the rest of society plays a distinctly secondary role, limited for the most part to setting the framework within which educational choices get made (p. 35).

By placing students and parents (not democratic majorities) at the heart of school accountability, the charter concept seeks a radical transformation in the politics of education.

What's Public About Charter Schools?

Charter schools, as we noted at the beginning of the chapter, are a hybrid form of school, combining elements of traditional public schools and those usually associated with private schools. Like vouchers and other more strident forms of privatization, charter schools are schools of choice, which means that they risk closure if they fail to attract and retain "customers." Proponents of choice and privatization—in education and elsewhere—argue that market-based systems work by creating incentives for private sector actors to produce goods valued by the public. This argument is perhaps best crystallized in the title of a book by former Council of Economic Advisors chair Charles Schultze—*The Public Use of Private Interest* (1977). Critics, however, have charged that charter schools are not really public at all and that charter school laws use public funds to subsidize private behavior with few redeeming public purposes.

This issue is especially relevant in Michigan, where nearly three-fourths of all charter schools are operated by private educational management companies (EMOs). Thus, one of the key questions we wish to raise in this book is whether charter schools retain enough of their public character to be considered public schools. In short, what's public about charter schools?

The issue of public vs. private is far from academic.⁷ On November 1, 1994, the issue nearly stopped Michigan's new experiment with charter schools dead in its tracks. On that day, a Michigan circuit court declared that public school academies, in spite of their name, were not public after all. As a consequence, the court held that public funding of the schools was unconstitutional. At the center of the dispute lay the Michigan constitution's "parochiaid" amendment, which was approved by referendum in 1970. The amendment, among the strongest of its kind in the country, expressly prohibits government support of nonpublic schools. Specifically:

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, preelementary, elementary, or secondary school (Art. VIII, sec 2).⁸

The plaintiffs argued that the charter school law violated this constitutional provision. They also argued that the charter school law represented an unconstitutional delegation of authority over public schooling. Citing the

Michigan constitution's requirement that "the legislature shall maintain and support a system of free public elementary and secondary schools," the plaintiffs argued that the legislature had essentially abdicated its responsibilities to private sector entities.

In rendering their decisions, the Michigan courts had little legal precedent to go on. Indeed, no constitutional provision, statute, or court case has provided a clear definition of "public" in the case of schooling. Plaintiffs, in their legal briefs, relied heavily on an 1989 opinion of the state's attorney general regarding public aid to an Indian school. Citing a 1945 court case from the state of Connecticut, the opinion articulated a two-part test to determine whether a school is public. First, the school must be under the "exclusive control" of the state. Second, the school must be "free from sectarian instruction" (Office of the Attorney General, 1989).

A Michigan trial court agreed with the plaintiff's use of the two-part test from Connecticut and that Michigan charter schools failed the first of the two tests (the court did not address the second test). For the justices signing the majority opinion, the most damning fact was that the law allowed privately- and self-selected boards to control the schools. The opinion acknowledged that the law allowed authorizers to determine the manner in which board members were selected and that the authorizers (usually public universities or school boards) are themselves public bodies. However, the fact that the boards were generally constituted *before* the charter application led the justices in the majority to conclude that charter schools were, ultimately, *not* under the "exclusive control" of the state. Two years later, a Michigan appeals court upheld the lower court's decision, concluding that the schools are "run by an essentially private entity, outside the realm of public control" (p. 5), and thus violate the law.

The Michigan Supreme Court took the opposite view in considering a 1997 appeal. Echoing dissenters in the lower court decisions, the high court challenged the lower court justices' reading of the charter school law. The majority opinion disagreed that the charter school law constituted an improper delegation of authority. More importantly, it challenged the assertion that schools are public by virtue of being under the "exclusive control" of the state. Specifically, the majority opinion noted that while the constitution requires that the legislature "maintain and support a system of free public elementary and secondary schools," there is, in fact, no requirement that those schools be under its "exclusive control." Having rejected the notion that schools must remain under the state's *exclusive* control, the opinion went on to demonstrate three mechanisms by which the state maintains effective partial control. First, the schools' charters may be revoked by authorizing bodies for failure to live up to their promises. Second, since the authorizers are themselves creatures of the

state, this comprises an effective form of partial control. Finally, the justices noted that the state controls the flow of money to charter schools.

The Supreme Court majority also addressed the lower courts' concern that charter schools are essentially under the control of private boards. Here, the court disagreed with the lower courts' rulings that control over the *selection* of board members was insufficient. Control over process, according to the justice, provides ample opportunity for control, and the legislature may change that process at any time.

Formalist and Functionalist Views of Public-ness

Though the lower court and Supreme Court opinions arrived at very different conclusions on the Michigan charter school law's constitutionality, both sides of the argument appear to have accepted a common set of tacit assumptions. In particular, all three opinions accepted the notion that charter schools involve a delegation of legislative authority to lower-level units and that whether these units are public or not hinges mainly on the extent to which the people and their elected representatives retain control over them.

Since issues of delegation and control are properties of institutional forms, we refer to this view as the formalist view of public-ness. This view holds that schools (or other institutions) are public if they are either publicly owned or controlled by citizens or their duly constituted representatives. On this definition, a charter school is public if there is some chain of political authority and influence that links voters to school decisions. This linkage may be mediated through various elected representatives, including school board members, state legislators, and others (Lubienski, 2001a).

Choice proponents, however, suggest a more flexible *functionalist* definition that more closely resembles the economic definition discussed above. On this view, a school (or other institution) is public not by virtue of lines of authority and chains of influence, but by whether it performs important public functions. This view is fully consistent with the notion of "the public use of private interest"—no matter who owns charter schools and no matter who controls and manages them, they are public so long as they serve public purposes (i.e., produce positive externalities), such as raising student achievement.

Once again, this view is illustrated by a judicial decision, this time from the state of New Jersey. In a 2000 decision, the New Jersey Supreme Court responded to an appeal over a case involving two local school districts' challenges to the granting of charters in their catchment areas. Unlike Michigan, charters in New Jersey may be granted only by the state department of education, with local districts acting in an advisory capacity. As in Michigan, plaintiffs invoked the notion of delegation. In particular, school

officials disputed decisions to locate charter schools in their districts on the grounds that the state's charter school law constituted, among other things, "an improper delegation of legislative power to a private body" (New Jersey Supreme Court, 2000).

As we have seen, the Michigan courts, when faced with a similar question, presented arguments about institutional forms and mechanisms of control. More generally, the Michigan courts sought to determine whether charter schools were an appropriate *means* by which the legislature could deliver public education. The New Jersey courts, by contrast, were less concerned with whether charter schools were a permissible tool in and of themselves and more concerned with whether charter schools might reasonably produce appropriate public *outcomes*. Thus, the court reasoned that

The choice to include charter schools among the array of public entities providing educational services to our pupils is a choice appropriately made by the Legislature so long as the constitutional mandate to provide a thorough and efficient system of education in New Jersey is satisfied (New Jersey Supreme Court, 2000).

In short, although government should *support* public education, there is no need for government to *run* it.

Unlike the formalist view of public-ness, the functionalist view focuses not only on how education is delivered, but also on whether the techniques used serve important public functions. This definition has the important consequence of opening the delivery of public education up to organizations that have traditionally been considered private. In the words of former Michigan state board of education president, W. Clark Durant.

. . . we must also have multiple educational providers who have the motivation of ownership and accountability. Let's have public corporations for a new kind of public education. Let's allow educational entrepreneurs to raise capital in the public markets . . . enormous resources are available . . . Banks and financial service companies might start a school of business and finance. Automobile makers and their suppliers might start a school for engineers and other related professions. Our houses of faith can create and/or expand existing schools to offer a program to touch the heart and not just the mind (pp. 363-4).

Thus, private schools can serve the public in the same way that private restaurants can nourish their patrons as well as any government program feeds the public, or in the same way that for-profit media outlets complement

public broadcasting in providing knowledge of public affairs to the public. As for traditional public schools, this perspective holds that they are often understood not as “public schools” but as “government-run schools” (Lubienski, 2001a).

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The remainder of this book seeks to assess just how public Michigan charter schools are according to both the formalist and functionalist definitions. On the formalist side of the equation, we examine the extent to which charter schools remain accountable to citizens and their elected representatives. On the functionalist side, we assess whether Michigan charter schools are serving the public purposes their proponents claimed they would, including equity, student achievement, professional opportunities for teachers, innovation, and customer satisfaction. Before turning to those issues, however, the next two chapters provide important information on the policy climate that produced the Michigan charter school law and an overview of the law's major components.

Notes

1. See, for instance, Savoie (1994) for a survey of the privatization of a variety of public services in the United States, Canada, and Great Britain. Other relevant sources include Walford (1996), Miron (1997), and Whitty, Power & Halpin (1998).
2. The number of charter schools as a proportion of all public schools was derived by dividing the total number of charter schools in 2001 reported by the Center for Education Reform [on-line: <http://www.edreform.com>] by the total number of public schools as reported by the National Center for Education Statistics (NCES, 2000). Projections were derived by estimating a quadratic regression on past growth rates and then making out-of-sample predictions based on the estimates. Details are available from the authors.
3. This discussion draws upon a large number of sources on the charter school concept and policy theory. These include: Budde (1988), Bulkley (1999), Finn, Manno & Vanourek (2001), Hassel (1999), Kolderie (1990), Nathan (1996), RPP International (1998), Wohlstetter & Griffin (1998), and Wohlstetter, Wenning & Briggs (1995).
4. This discussion simplifies the policy analytic definition somewhat. Most policy analysis and economics textbooks define public goods in terms of two conditions, both of which are related to the notion of externalities. First, the good must be “nonrival”; that is, the addition of other consumers must not affect the good's usefulness to those already consuming it. This property is also known among economists as “jointness of supply.” Second, a public good is “nonexcludable”; that is, it is impossible or impractical to exclude free-riders

from enjoying the good. Private goods are goods that lack these two qualities. Readers may consult Olson (1965) and Stiglitz (1988) for more complete discussions of these concepts.

5. This is because the externalities associated with public schools implies that one person's decision to consume a good (or a certain amount of a good) commits other individuals to consume similar levels. Consider, for instance, the regulation of toxic chemicals. Air pollution is a strong candidate for democratic decision making since individuals in a given area must all consume the same amount of air pollution, regardless of their individual preferences.

6. The free-rider problem is a consequence of positive externalities. If you are engaged in an action (e.g., cleaning the house) from which I can benefit without contributing, then I will have an incentive to let you do the cleaning while I sit back and enjoy its benefits.

7. Frank Kemerer and Catherine Maloney (2001) have explored the complexity of the legal issues defining the public vs. private nature of education. Their work also examines the legal issues regarding accountability in independent private schools, in public schools operated by private companies, and in publicly funded voucher programs.

8. <http://www.state.mi.us/migov/Constitution>