

PUBLIC DOLLARS FOR PRIVATE SCHOOLS: THE CASE OF TUITION TAX CREDITS. Edited by Thomas James¹ and Henry M. Levin². Philadelphia: Temple University Press. 1983. Pp. viii, 271. \$29.95.

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One can grow a mite weary of tuition tax credits, even though they have never been written into the Internal Revenue Code. The proposal itself—and the disputes it always ignites—has been with us for so many years as to resemble the man who came to dinner. Nor are chances great that this feisty and loquacious guest will depart anytime soon. Indeed, a renewed effort to enact federal tuition tax credit legislation is sure to be part of the second term agenda of the Reagan administration.

For the record, a tuition tax credit is a credit against the income tax otherwise owed to the Federal Treasury by a person paying tuition to an approved school (or college) on behalf of himself or a dependent. From the tax code perspective, it resembles the child care credit and certain other expenses that one can subtract directly from taxes due; in this respect it differs from a deduction, which is a subtraction from taxable income and which yields a greater or lesser “value” to the taxpayer depending on his bracket. A credit is worth the same to every taxpayer, regardless of his marginal rate, provided he owes enough tax to subtract it from. (A so-called “refundable” tax credit would yield an actual payment from the Treasury to any taxpayer eligible for a credit that exceeded his tax liability.) The maximum amount of the credit varies with the specific provisions of the legislative proposal; the most generous versions Congress has considered in recent years would confer a credit of fifty cents against each dollar of tuition paid, up to a maximum credit of \$500 per student per year. Some versions include college as well as elementary-secondary school tuitions; a few have even been restricted to college (and other postsecondary) education. But the real political interest—and major controversy—attaches to the tax credit as a source of financial relief for the parents of children attending private schools at the elementary-secondary level.

The contemporary wave of interest in this idea began to roll in

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around 1971, a time when private school enrollments were plummeting and Catholic parochial schools were closing their doors at a rapid rate, seemingly for want of students. What to do about this situation—which at the time looked grave indeed—was among the questions President Nixon gave to a national commission on school finance that he established in 1970 and to a special panel on non-public schools that he created within it. Enactment of a federal tax credit for private school tuition was one of the panel's recommendations, rapidly embraced by the Nixon administration and a number of Congressmen, especially Representatives from the urban Northeast where faltering Catholic schools were most heavily concentrated.

The tax credit recommendation was the product of two hopes. First, proponents reasoned that dwindling private school attendance could be ascribed to the onerous burden of tuition payments that, if offset in part by the government, could be borne by more families that already had the will to patronize private schools but could ill afford to. Second, the tax credit, being among the most indirect of all forms of government aid, is less vulnerable to constitutional challenge on the ground that it violates the establishment clause. Or so its advocates hoped. Because the Supreme Court over the years had rejected any number of more direct state subsidies of nonpublic elementary and secondary education, aid proponents reasoned that a tax credit had a better chance of withstanding that kind of lawsuit, which was bound to be filed by the vigilant church-state separation groups that are always concerned about such things. Not only would there be no direct payment of government funds into the coffers of the private schools (the vast majority of which were—and are—church-affiliated); unless the credit were refundable there wouldn't even be an actual payment from the Treasury to the tuition payer. The government would simply receive less revenue than it otherwise might expect. The taxpayer would find it easier to send his children to the school of his choice. And the private schools would benefit either from the ability to raise their fees or from added enrollment of youngsters whose parents would be less oppressed by current tuition rates.

No one could be certain that either side of this complex equation was correct. Would the Supreme Court actually view a tax credit as a different sort of beast than a direct subsidy program? Would indirect financial assistance to parents truly boost private school enrollments or enable the schools to raise their fees, thereby balancing their books without additional students? This was not knowable. But neither was the obverse. As is so often the case in

public policy debates, a sort of conventional wisdom quickly arose in which all of the values of pluralism, diversity, and choice in American education were embodied in the tuition tax credit strategy, while the secularists, statists, and public school monopolists were arrayed in the opposition. As much as any legislative proposal of recent times, this one conjured up villains and heroes, demons and angels, in the eyes of participants on either side.

Repeatedly through the decade of the 1970's, Senators and Representatives introduced tuition tax credit bills. It was not exactly a partisan proposition. Though Republicans were more apt than Democrats to favor it, some of the strongest proponents were liberal Democrats from the Northeast, men such as Abraham Ribicoff, James Delaney, James Burke, and Daniel Patrick Moynihan. Indeed, it was Moynihan, in partnership with Oregon Republican Bob Packwood (and Ribicoff and Delaware's William Roth), who became a prime sponsor of the best-known tax credit proposal of the era, commonly called the "Packwood-Moynihan Bill," which came very close to passing Congress in 1978.

The Carter administration and the public school establishment teamed up to beat this legislation, and after considerable effort they succeeded. (Their principal weapons were the billion and a quarter dollars that President Carter offered as a countermeasure designed to aid middle-income college students through established grant and loan mechanisms, which diverted the tax credit support that would have come from the higher education community; and the recruitment of several Southern Senators who were prepared to assert that at the elementary-secondary level tax credits would subsidize "segregation academies" and foster a new era of racial separation and discord.) Although tuition tax credit measures have been introduced into Congress at every session since then, and since 1981 have enjoyed strong White House support as well, in retrospect it appears that the fracas over Packwood-Moynihan in 1978 represented the apogee of political interest in this measure at the national level, that passions (on both sides) have since ebbed somewhat, and that the subsequent reenactments of this legislative drama have been a bit ritualistic. In early 1985, as I write, it seems likely that the reenactments will continue indefinitely into the future, but I cannot identify a single serious observer of the political or educational scene who expects the outcome to change.

It was in the heat of national interest in tuition tax credits at the end of the 1970's that Stanford University's Institute for Research on Educational Finance and Governance (IFG), a federally supported school policy analysis center, began to pay closer atten-

tion to this proposal and commenced the project that gave rise first to a much-publicized symposium in late 1981 and, two years later, to *Public Dollars for Private Schools*, a collection of essays originally prepared for that symposium.⁴

With the benefit of hindsight, we can also see that even as interest in the tax credit was cresting, the major problem that had given rise to this solution was resolving itself. After a long slide that began in the late 1960's, private school enrollments leveled off in the mid-seventies and by decade's end were slowly rising. We can also see that, in aggregate terms, the decline that looked so worrisome to the President's Commission on School Finance in 1971 was not a general problem of private education but a specific phenomenon of the Roman Catholic parochial schools. Because these were the largest segment of private education, their severe loss of students made it appear as if nongovernmental schooling as a whole was very ill. But in fact the non-Catholic sector of private education never shrank and—especially as *public* school enrollments dwindled in the seventies—it actually came to represent a larger fraction of the total school population. Moreover, by the early 1980's, total enrollment of Catholic schools was stabilizing, and other segments of private education, notably the Protestant fundamentalists, were growing rapidly. Because government data on private school enrollments have never been entirely satisfactory, particularly with regard to students attending newly opened schools, and because some of the fundamentalist schools were disinclined to participate in surveys, this revival was not well-documented or widely acknowledged. The most recent estimates by the National Center for Education Statistics (using some new techniques for locating schools and students overlooked earlier) indicate that private school enrollments in 1983 represented 12.2% of all students, still not quite back up to their historic peak of 13.9% in the mid-sixties.⁵

This is not the place to venture an explanation of the precipitous erosion of Catholic schooling during the decade from the late sixties to the late seventies, save to note that it had multiple causes, not all of them economic. Nor will I try to account for the recent

4. In the interest of full disclosure, let me note that I participated in the event—though not in the book—as the “affirmative” side of a televised debate on the merits of tuition tax credits that was held in conjunction with the symposium. American Federation of Teachers president Albert Shanker spoke for the “negative” side.

5. By “historic,” I am talking about this century. Public schools did not even come into existence until the mid-nineteenth century, and for a long time the distinction between public and private was ambiguous in communities whose children attended “academies” that were substantially financed with public resources but operated under more or less private auspices. This arrangement persists today in a few New England towns.

surge of interest in non-Catholic private schooling except to observe that it has had something to do with the spread of Protestant fundamentalism and something to do with widening concern about the lackluster quality of public education. The essential point, not without some historic irony, is that insofar as the rationale for tuition tax credits was to "save" private schooling from vanishing, the malady was curing itself even as the proposed remedy was attracting the greatest interest—and being rejected.

There are several other persuasive arguments, apart from institutional salvation, for supplying public financial aid to private schools and to families attending them. First, many people believe that educational diversity, competition, and choice are inherently preferable to uniformity, homogeneity, and monopoly, and that therefore society should assist private education. Second, families that do patronize private schools—and in most cases pay tuition in order to do so—also pay taxes in support of public schools; this double financial burden is thought by some to be unfair and thus a sound reason for government to redeploy resources so as to lighten it. Third, while the right to send one's children to private rather than public schools was vouchsafed by the Supreme Court in 1925 (in *Pierce v. Society of Sisters*), it is a hollow right for poor families that lack the wherewithal to exercise it. The society should therefore devise affirmative measures to make available to low-income families the kinds of educational options that the well-to-do can obtain for themselves.

Depending on which of these policy objectives one is most eager to achieve, various measures can be devised involving different levels of government and promising greater or lesser attainment of the desired outcome. Tuition tax credits may be a means to one or more of these ends, but ought not be regarded as an end in themselves.⁶ They are not the only conceivable means, nor necessarily

6. At the level of symbolic politics and rough justice, tax credits do emerge as a reasonable objective in their own right. The major federal school aid programs enacted in 1965 and thereafter are based on a very important political concordat. The Catholic bishops agreed to stop blocking education aid, which they had done very effectively up until then, provided that private school students were assured their fair share of the federal monies to be committed. Congress wrote that assurance into law, but created a clumsy mechanism that has never worked satisfactorily from the standpoint of private schools. They do not receive their aid funds in cash, nor do their students ever see a penny of it. Instead, local public schools are expected to provide educational "services" to private school youngsters. Study after study has shown that private school students have in fact received only a small fraction of the services to which they are entitled. Thus the quest for tuition tax credits that continues in 1985 is in part a crusade for remediation of a clearcut injustice of two decades' duration, an injustice worsened in July 1985, by a Supreme Court decision blocking the simplest way of delivering compensatory education services to disadvantaged youngsters attending sectarian private schools.

the surest or most efficient. A state might, for example, organize its entire school finance system into a "voucher" scheme whereby all school-age children are entitled to chits worth whatever sum of money the state is prepared to devote to their educations and can use these to purchase instruction at the schools of their choice. (A locality might do this as well.) Alternatively, the state or federal government could supply aid in the form of grants or scholarships to students attending private schools, even while it also pays for the operation of public schools, much as is done at the college level, and such aid might—like most student assistance in higher education—be apportioned under a means test. The possibilities are many, limited only by one's policy imagination and, of course, by the political and legal obstacles to enactment and implementation.

It should be noted, too, that even the appearance of vibrant institutional health among extant private schools does not mean that these other policy objectives are being achieved, or that there is not a legitimate case for devising workable means of achieving them. Educational choice at the elementary-secondary level is in most cases a reality only for middle- and upper-income families. (The exceptions generally depend on privately funded scholarship programs.) Private school enrollments are skewed to the more prosperous portions of the population. Competition is not very lively, if it is present at all, among the schools in particular communities. The double-payment burden continues to be heavy for many of the families that elect private schooling.

But as is usually the case with policy debates, for every argument there is a counterargument, for every claim a counterclaim. Private education, it is said by some, is a luxury, like membership in a country club; people cannot be prevented from purchasing it for themselves, but society's obligation is fulfilled by supplying public schools. The double-taxation argument is no more persuasive to adherents of this view than is the claim that society should provide taxi fare rebates to people who do not favor public buses or subways. As for the principle of educational diversity and choice, it is fiercely opposed by those who contend that the public school ought to be a "common school," a great democratizing experience in which all are treated alike, regardless of their personal characteristics or family backgrounds, and in which each receives the uniform core education that all participants in adult society should have. (This does not actually occur in many public schools, but the rhetoric endures.) The contention that private schooling should be accessible to the poor as well as the rich is turned on its head by

individuals who assert that private schools *are* a bastion of privilege and that the last thing a liberal society should do is help them to enroll more students, even poor youngsters who want to attend them but cannot afford to do so.

Then, of course, there are the “big four” arguments against any sort of public aid to private education. First, that most private schools are church-affiliated, that subsidizing attendance at them is inseparable from state aid to organized religion, and that this violates the Constitution. Second, that many private schools practice selective admissions and that some of these discriminate on the basis of race or ethnicity; to assist students to attend them is to encourage segregation and thus to violate more constitutional principles, not to mention sundry civil rights laws. Third, that to succor private education is necessarily to damage public education, if only by denying it resources (and presumably students) and that this goes against the grain of the republic. Fourth—in stark contrast with the previous point—to supply government aid to private schools is inevitably to snarl them in a web of government regulations, thus to diminish their distinctiveness and their independence, and thereby to erode the very attributes that make them desirable elements of a diverse culture and an open society.

These allegations, too, can be paired with counterarguments. Concerning the establishment clause, proponents of school aid argue that the Founding Fathers meant to bar government preference for a particular religion, not to preclude measures that may have the indirect effect of assisting religion in general. The racial discrimination allegation can be rebutted by noting that most private schools have virtual “open admissions” policies, that only a handful engage in racially discriminatory practices, and that adroit legislative craftsmanship (and suitable enforcement mechanisms) can keep that handful outside the domain of aid recipients. As for the “death of public education,” though this is invoked with intense fervor by those who want people to believe it, the fact is that even at its high-water mark, private education attracted less than fourteen percent of all children; that only a feverish imagination can conceive of private schools luring a huge proportion of public school students, no matter what the aid arrangements; and that, in any case, if public schools cannot hold onto students save by compulsion and the denial of alternatives, then they have so little going for them that we need not tarry over their institutional welfare.

The hardest of the “big four” arguments to rebut is the last, the contention that aiding private schools, however indirectly, will in time cause so many regulations to be applied as eventually to leave

them indistinguishable from the public schools. It is hard to identify a single major sector of American society where once-private institutions retained their full sovereignty after they became major recipients of government aid. Consider the private colleges and hospitals, just for openers. Perhaps the most that can be said is that virtually all states regulate private schools today, beginning with fire and safety requirements and often going on to matters of curriculum, teacher qualifications, and student achievement testing. So, too, does the federal government, if only through the terms and conditions associated with tax exemptions conferred by the Internal Revenue Service. (Save for a handful of "proprietary" institutions, all private schools either possess or covet these exemptions.) Hence additional regulations would yield a difference only of degree, not of kind; it might be worth enduring them in order to benefit from the additional aid; and since the aid would presumably be optional, each school could determine for itself whether the benefits exceed the costs.

These generic issues get some of the attention they deserve in the present volume, though its focus on the specific policy mechanism of tuition tax credits limits its value as a general guide to the larger questions. Unfortunately, once one acknowledges that private schools do not face imminent extinction, the tuition tax credit no longer looks like an ideal way to achieve the most compelling social policy objectives associated with public aid to private schools. That's not to say the mechanism couldn't be redesigned to meet other objectives: a tax credit, after all, can take as many forms as a direct grant program. But in the specific versions that Congress has considered, which are the versions scrutinized in the James-Levin book, the tuition tax credit is more satisfactory for solving the problem that no longer exists than for, say, fostering real educational choice among low income families or engendering lively competition among schools.

It also needs to be said that Levin and James recruited a panel of authors who, with only a few exceptions, did not find it difficult to contain their enthusiasm for public aid to private schools. The major exception is Nathan Glazer, whose chapter is the only one among thirteen in this volume that leaves the reader with the sense that aid advocates may have the better of the argument. A couple of other writers are equivocal or noncommittal, but the overall effect of the book is to depict tuition tax credits—and, by implication, other forms of aid to private schools—as at best inconsequential, at worst quite harmful. Nor is it clear in every instance that such conclusions are entirely the product of "objective" analysis. Aid to

private schools turns out to be one of those public policy issues where the analyst's conclusions often follow predictably from his values and his politics. This may well be true at some level with every significant policy dispute; I cannot here take up the general question of objectivity in applied social science. But in this instance we are dealing with an exquisitely sensitive political issue on which practically everyone has strong convictions. It would be too much to expect the contributors to a book on the subject not to let their convictions color their conclusions.

Nevertheless, *Public Dollars for Private Schools* is worth reading. Despite some predictable unevenness among its essays, one can learn a lot about private schools and about the political, economic, social, legal, and educational implications of aiding them with public funds. There is an absorbing historical chapter by one of the brightest young analysts, coeditor Thomas James; an enlightening explanation by Joel Sherman of how other pluralistic democracies have dealt with these same issues; a good deal of economic analysis, including a solid piece by Richard Murnane; an adequate if routine summary of the legal and constitutional issues by Donald Jensen; and a pair of spirited essays of a "pro-con" nature by Glazer and David W. Breneman, who doesn't like tuition tax credits but is openminded enough to point out that serious advocates of educational choice ought to consider vouchers.

It is usually the fate of policy analysts to produce their best work long after the actual policymakers have made up their minds about an issue and, often as not, after the issue itself has been more or less resolved in the political arena. Had this book appeared five years earlier, it would have been a bestseller, at least in Washington. Today it seems a bit passe, for most of the air has gone out of the tuition tax credit balloon. But that does not mean the dilemmas of public policy toward private education have disappeared or that the underlying issues don't still need debate, analysis, and deliberation. As I write, the Supreme Court is pondering the first amendment acceptability of a set of arrangements by which private school students benefit (or, more commonly, don't) from existing forms of federal aid, such as the big Title I program that provides compensatory educational services for disadvantaged youngsters. Several governors are weighing voucherlike schemes for educational finance at the state level. A number of states are roiled by dissent over the proper amount of public regulation of private schooling and—its logical extension—"home schooling." These dilemmas are apt to be with us for a very long time to come, even if they do not center on the specific policy mechanism of federal tuition tax credits. For

at the heart of American education is an ambiguity that we have never resolved, in all likelihood cannot and probably should not resolve. Is the education of the child fundamentally an extension of home, parents, community, and sect? Or is it fundamentally a process of socialization into citizenship, into the "public culture," and into a set of life choices that transcend the boundaries of one's immediate circumstances? It can be either; for most of us, it is some of each; but we aren't likely ever to reach consensus about how much it is the one and how much the other. Hence we aren't likely ever to settle the profound political controversies that underlie and surround the narrower issues examined in this book.

THE CONSTITUTION: THAT DELICATE BALANCE.
By Fred W. Friendly¹ and Martha J. H. Elliott.² New York:
Random House. 1984. Pp. 339. \$17.95.

*Mark Silverstein*³

Soon after the Supreme Court's decision in *Powell v. Alabama*, Felix Frankfurter (then America's best known Harvard law professor) wrote a piece for the *Times* explaining the meaning and significance of the decision.⁴ Within a few days he received a note from Justice Harlan Fiske Stone:

I liked your piece in the Times about the Scottsboro case. I doubt if you realize how important it is that judicial action be interpreted to the common man. Just at the moment I am getting violent letters from many people who seem to think that in the Scottsboro case we passed on the guilt or innocence of the petitioners, and starting with that assumption the writers draw the conclusion that the Supreme Court has now started out on a course which will afford no protection to the innocent victims of assault.

Frankfurter quickly replied:

How generous you are in your encouragement, that you should note so modest a piece as the one in the Times about the *Scottsboro* case. When the request for it came from the Times, urging the need of a correct exposition of the meaning of the decision, I was under great pressure. . . . But just because I feel as strongly as you do about the importance of clarifying judicial action to the laity, I felt it in the nature of a public duty to yield to the request of the Times.

Doubtless I do not realize the extent of such a need, certainly as you are made to feel it from the correspondence which comes to you from time to time. Indeed I

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 4. Frankfurter, *A Notable Decision*, N.Y. Times, Nov. 13, 1932, § 2, at 1.