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Book Reviews

PUBLIC DOLLARS FOR PRIVATE SCHOOLS: THE CASE OF TUITION TAX CREDITS. By Thomas James and Henry M. Levin. Philadelphia: Temple University Press, 1983. Pp. 271. \$29.95.

*Reviewed by William T. Hartman**

With the recent *Mueller v. Allen* decision upholding Minnesota's use of tuition tax credits and the current proposals before Congress to establish tuition tax credits at the federal level, *Public Dollars for Private Schools* is a timely book. The use of tuition tax credits would represent an important shift in national education policy by significantly increasing public support of private elementary and secondary education at a time when federal funds for public education have been reduced. While there has been a great deal of debate on this topic, it has been largely subjective; since there has been little direct research, claims of both advocates and critics of tuition tax credits are generally speculative and determined by ideological position. The purpose of this collection of essays is to assist and improve this debate by exploring the critical issues surrounding tuition tax credits, examining the potential outcomes of such a proposal, and marshalling whatever relevant information may be available.

The book uses a multi-disciplinary approach to analyze tuition tax credits. The contributors come from a variety of different perspectives—economics, political science, sociology, history, public policy, education, and law. This is a definite advantage in analyzing a complex problem which is not neatly compartmentalized, but cuts across many different fields. The different perspectives are quite valuable in understanding the issue more fully. The approaches vary from analyses based on relevant theory from economics or sociology to analyses of available data on costs, distribution of benefits, and consumer and private school behaviors to subjective speculation of the effects of tuition tax credits. Taken together, the collection presents a thorough review of a complicated and multi-faceted problem.

The first section of the book, "The Interpretive Framework," contains four essays discussing various aspects of the relationship between the

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public and private sectors in education. In particular, the essay by Henry Levin is very useful in describing a general framework for understanding the issues involved in tuition tax credits and the dominant position of values in the debate. The other essays in this section provide helpful perspectives on the historical development of the different public and private education sectors, the utilization of tuition tax credits in other countries and implications for the United States, and the social and political consequences of tuition tax credits.

The second section of the book concerns itself with analyses of the concept of tuition tax credits. The first two essays, one which argues for tuition tax credits and the other against, are the only "advocacy" essays in the book. The importance of personal values is made very clear as the authors' differences are derived from the differing importance they place on "freedom of choice" and on the social impacts that they envision. The other essays in this section examine the critical issues of what the costs of tuition tax credits might be, who the likely beneficiaries are expected to be, and the legality of tuition tax credits under the U.S. Constitution.

In the final section of the book the essays analyze specific claims concerning tuition tax credits made by both critics and advocates. The particular aspects discussed are government regulation of private schools; possible enrollment shifts from public to private schools under the financial incentive which tuition tax credits would provide; the impact on how students would be sorted along income, class, and race lines; and finally, the claim of improved student performance in private schools.

Several consistent themes and concerns appear in a number of the essays. The lack of hard data or evidence on the effects of tuition tax credits is pointed out by many of the authors. This means that the outcomes of any tuition tax credit plan will depend critically on the details of the plan—the size of the credit, the proportion of tuition to which it applies, and whether the credits would be refundable to families who pay little or no federal income tax. The principle beneficiaries under a tuition tax credit plan are generally adjudged by the authors to have higher incomes rather than lower, to be white rather than minority, and to be associated with religious groups. Whether they are viewed as "winners" or as deserving recipients of public support depends on one's point of view. The most cited concerns in the volume about the implementation of a tuition tax credit scheme are the possible shifts in enrollment from public to private schools; the types of students who will transfer; the potential for student stratification along income, ethnic, and religious lines and the concurrent loss of a common national educational experience; and the costs of tuition tax credits.

The authors have taken care to emphasize analysis rather than advocacy in their essays in an effort to present a balanced picture. However, it is doubtful that supporters of tuition tax credits would find much comfort in this book. This is not due to a bias on the part of the authors, but rather to the orientation of their investigation. The authors focused their analyses on the impact of tuition tax credits on social equity, and, by and large, concluded that tuition tax credits would increase the inequities already present in society. Had they had a different orientation (i.e., the primacy of the individual over society) and asked different questions related to achieving this goal, their conclusions undoubtedly would have been different as well.

This is a very useful book for broadening one's thinking about tuition tax credits. Utilizing a variety of perspectives to analyze the issues is an effective approach. There is some overlap among the essays, but this functions as a unifying and reinforcing aspect for the book. The essays themselves are well written and, correctly for a book of this purpose, aimed at a broad policy-oriented audience. It is hoped that it will reach this audience, as the issues, questions, information, and framework for examining tuition tax credits presented by *Public Dollars for Private Schools* could certainly improve the nature of the debate, as well as the possible outcomes.

SPECIAL EDUCATION POLICIES: THEIR HISTORY, IMPLEMENTATION, AND FINANCE. Edited by J. G. Chambers and William T. Hartman, Philadelphia, Pa. Temple University Press, 1983, Pp. 291. \$29.95.

*Reviewed by Jeffrey J. Zettel**

Special Education Policies: Their History, Implementation, and Finance is a book well worth reading by those interested in the implementation, funding and administration of special education programs. It is well written, logically conceived, and easy to digest. After a brief introduction which describes the volume's basic purpose and overall content, the book is subdivided into three major sections. The first depicts the historical development and evolution of special education policy in the United States. The second focuses on many of the more salient obstacles which have inhibited local educational programs from successfully implementing such policy fully into actual practice. Finally, the third and final section deals with problems of special educational finance.

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The first portion of the book provides an excellent overview of the historical development and emergence of special education policy at the local, state, and federal levels. It contains three chapters. The first, written by Marvin Lazerson, presents a marvelously detailed and yet succinct narrative of the general history of special education in America. While the author describes a consistently emerging pattern of societal and governmental interest in the education of handicapped children, he also points to two opposing philosophies that, in his opinion, concurrently motivated this interest: (1) the humanitarian concern over the plight of handicapped children; and (2) the views of many others to "control" and separate this population from the educational community in order to protect the so-called normal students. Lazerson also identifies four central contexts seen as forming the basis for the emerging revolution which would take place in special education during the mid 1970's. These were: 1) an extraordinary expansion in the size and cost of special education; 2) parents demanding access to and adequacy in special education; 3) the spillover of the Civil Rights movement determined to prevent segregation, stigmatization, and de facto second-class citizenship through improper classification; and 4) special educators and related professionals willing to join parent lobbies on behalf of handicapped children.

The second chapter written by Jack Tweedie describes a variety of the judicial and political strategies used by the special education movement to prevent the exclusion of handicapped children from public education. The chapter very nicely contrasts the use of state and federal litigation by the handicapped to that used by advocates during the civil rights and poverty movements in the 1960's. In addition to this judicial intervention, Tweedie further portrays some of the activity which was likewise taking place in many of the state legislatures and in the United States Congress to institutionalize and fund many of the rights that were being won through this litigation. The detailed insight that Mr. Tweedie has obviously obtained through his personal interviews in writing this chapter becomes most apparent. For individuals wanting a flavor into the personal philosophies and thinking of some of the key actors who participated in the promulgation of P.L. 94-142, this chapter is well worth the reading.

In the final chapter of the first section, David Kirp offers the reader a comparative analysis of the British and American approaches to the education of handicapped children. In the British system, Kirp found handicapped children to remain substantially dependent upon what he labels as being "caring professionals." He further contends that British parents have very limited access to assessment data and to the rationale of professionals who identify their children as handicapped. Likewise,

according to Kirp, British parents have very little recourse in arguing with school officials over the appropriateness of special education programming for their children. Litigation and administrative appeals are practically nonexistent in Britain. The American system, on the other hand, according to Kirp, is much more rights orientated. The parents of handicapped children in the United States have historically turned to the state and federal judicial systems when they found school personnel unresponsive to their needs. As such, they continue to exercise this right through the use of due process hearings and complaint procedures established by P.L. 94-142 and related state legislative mandates. Tied to the two previous chapters which presented a historical review of special education in America, Kirp's dialogue offers the reader yet another perspective—a comparison of British and American contemporary social policy related to education of handicapped children.

The book's second section focuses on the implementation of special education policy by identifying a number of procedural and programmatic difficulties which were found initially to inhibit education programs from successfully institutionalizing such policies into local practice. Jane L. David and David Greene, for example, in the initial chapter of this section describe three broad classes of obstacles they found which prohibited the full implementation of P.L. 94-142. These included: (1) the limited resources and financial base of special education; (2) the organizational and political characteristics of local schools; and (3) the lack of a defined policy base from which educational personnel can draw upon to help them define what services and programs are appropriate to meet the needs of individual handicapped children.

A second major area of concern—the use of local due process hearings to resolve disputes in implementing P.L. 94-142—was addressed in a chapter by Michael Kirst and Kay Bertken. In the mid 1970's, many advocates and parents of handicapped children saw the availability of impartial hearings to be a powerful mechanism for educational change. In examining the impact of these hearings throughout the State of California in 1978-79, Kirst and Bertken found this impact to be at best minimal. The results of their investigative study demonstrated that special education hearings at this point in time were not a widespread phenomenon, nor did they directly impact a large number of students. Less than one percent of the state's special education population were found to be relatively expensive and time consuming. The data suggested that minorities and low-income parents used the hearing process less often than their numbers in the eligible population would have suggested, while relatively high-income parents were found to use this process more. At the time of this research, the most frequent issue debated in hearings

in the State of California was whether handicapped children should be served in private schools at public expense. Eighty-two percent of the hearings sampled centered on the issue of private school placement. Kirst and Bertken conclude by acknowledging the limitations of their study and by indicating that the impact of due process hearings in settling disputes and in protecting the educational entitlement of handicapped children deserves longitudinal study. While this is most certainly true, one should not overlook the contribution of this chapter as the basis for such further investigation.

In the final chapter of the book's second section, Gary Brewer examines the issue of the provision of related services to handicapped children and the need to coordinate the efforts of educational and social service systems in providing them. In addition to identifying many of the organizational and practical barriers which often discourage the provision of adequate related services to handicapped children, this chapter also provides a description of the results of a federally-funded project which created twenty-five directional centers across the United States whose functions were to coordinate the delivery of these services to handicapped children.

The third and final section of the book deals with yet another barrier to the full implementation of special education policy—the lack of adequate financial resources. In his chapter entitled, "Projecting Special Education Costs," William T. Hartman indicates that his study projected in 1980 that it would take an additional \$4.5 billion to enable all school-aged handicapped children to receive an appropriate education. According to the author, however, such projections are very difficult to make. Definitions regarding the handicapped are not consistent across the states. Hartman found considerable variation to exist among states as to 1) the basic categories of handicapped children each was identifying and serving; 2) the specific requirements each was maintaining with regard to their eligibility; and 3) the age ranges that were either mandated or allowed by states. The lack of commonly accepted or agreed upon standards for special education eligibility and service among the states, according to Hartman, also leads to another serious problem—the considerable variation in actual programs and services being provided at the local educational level as well. To come to grips with such variation and to help public policy makers define the amount of funds being incurred by districts in providing special education programs, Jay G. Chambers and William T. Hartman in the second chapter of this section propose a model. The model they propose is entitled the Resource-Cost Model (RCM) and is described in great detail throughout their chapter. The authors conclude by indicating that their conceptual framework for this

model is not limited solely to special education. It can readily be generalized to all types of educational programs and could even be developed into a comprehensive educational funding system.

The editors in their introduction specified that the intention of this book was to offer some insights into the special education policy process from a variety of perspectives to provide both researchers and policy-makers with a set of alternative frameworks from which the issues of policy might be evaluated and considered. From the perspective of this reviewer, they have achieved their purpose.

WHEN GOVERNMENT SPEAKS: POLITICS, LAW, AND GOVERNMENT EXPRESSIONS IN AMERICA. By Mark G. Yudof. Berkeley, California: University of California Press, 1983, Pp. 306. \$28.50.

*Reviewed by Monique Weston Clague**

In a broad sense, *When Government Speaks* is about education. Within the tightly woven fabric of Yudof's book, education, in the more limited sense of what is communicated and learned in schools, constitutes a major, indeed in importance, if not in the number of pages, the most significant strand. For it is in public schools that governments communicate with a captive audience of most of our citizens-in-the-making.

Yudof is concerned about existing and potential dangers which inhere in government's preeminent role in the modern communications process. With their tremendous power to speak through the mass media, to acquire and to falsify information, and to control selectively its dissemination, governments threaten, if unchecked, to tell the citizens not only what to think, but what they may learn and think about. These dangers are greatly augmented by modern technology and the extensive dependency of masses of people on the welfare state, factors of which the framers of the Bill of Rights could not have conceived.

In its critical purpose, *When Government Speaks* challenges the "myopia" with which most legal scholars (e.g., Shapiro, Meiklejohn, Dahl, Freund, Hand, Gelhorn, Commager) and judges have addressed issues regarding freedom of expression. This myopia, characterized by Yudof as near obliviousness to government's increasing role in our complex communications process, is attributed in large measure to the limitations in which traditional first amendment theory has enveloped our thinking.

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Yudof's quarrel with traditional, and prevailing, first amendment theory is that, by focusing almost exclusively on the protection of individual, private expression from majority tyranny, it misprizes the majoritarian processes that constitute the essential mechanism for government by consent of independent thinking citizens. As a consequence, it is not equipped for the task of addressing the dangers which government's own expressive activities pose to majoritarian democratic processes.

In its constructive purpose, *When Government Speaks* seeks, through its "government-expression perspective" to supplement, but not to supplant, the government-suppression perspective of traditional first amendment theory. It is grounded in an empirical theory about the nature of modern communications, and fired by an explicit normative political theory.

To the extent that first amendment theory does concern itself with an empirical model of freedom of expression as part of a political process, and not simply with protecting the sanctity and independence of isolated individuals, it generally posits a one-way flow of communications from citizens to governments. If citizens speak freely governments may listen. Simplistic, static, and unidirectional, this model, Yudof argues, seriously misconceives social and political phenomena. He presents an alternative empirical model, one indebted to modern theories of cybernetics and the applications that have been made of them to organizations and politics by social scientists (Kenneth Boulding, Herbert Simon, Karl Deutsch, and Andrew McFarland, among others). Communications in a modern democratic state is depicted, borrowing a term from Philip Bobbitt (p. 22), as a "mutually affecting" relationship between citizens and governments. Citizen perceptions and communications do influence governments, but government's responsive, manipulative, educative, noisy, and dishonest communications influence citizens in return, and so on and on in a dynamic interactive process. "Mutual feedback," perhaps cybernetics most celebrated concept, helps us take into account what first amendment theory tends to ignore; that is, government's impact on the understandings, messages, and behaviors of citizens.

A theory that seeks to describe reality does not prescriptions make. Yudof's normative political philosophy—liberal democratic pluralism—assumes that responsibility. But a normative theory which is attentive to the realities of the world it seeks to order has a far better chance of bridging the gap between its ideals and departures from them than one that does not. That is a major aspiration of Yudof's book. Moreover, liberal democratic pluralism, Yudof contends, with Charles Black and others, is not simply a self-proclaimed preference; it is an ideal "based on the relationship between the text and the structure of democratic gov-

ernment embodied in the [American] Constitution and American institutions and in the pervasive assumptions and general purposes underlying the First Amendment" (p. 158). (If this is true, one wonders how most legal theorists could have failed to grasp it.) The hero of this political ideal is the "self-controlled citizen"—an informed, tolerant, participant in the democratic society, thus committed to resolve disputes peacefully through majoritarian electoral processes. The general principle that should guide all decisions regarding freedom of expression is the need to protect the citizen's intellectual autonomy (self-control) from government attempts to indoctrinate and deceive, as well as to silence. Individual liberty and majoritarianism must not, as traditional first amendment theory would have it, be viewed as opposites. Instead of contraposing them within a false dichotomy (p. 145), they should be understood as "mutually enhancing and protecting" (p. 141). Put in other terms, as against anti-pluralistic and anti-individualistic metaphysical constructs (e.g., the group mind; Robert Paul Wolff's "community of the whole; a general will that wills the general will), the collective morality Yudof attributes to the American political community is not distinct from the interests of the *mutually tolerant* citizens who comprise it.

What, then, are a few of the many practical implications of Yudof's government-expression perspective? First, Yudof in no way suggests that courts give up their traditional role of vindicating free expression rights of individuals and private groups on the margin of the political spectrum. However, insofar as *When Government Speaks* attends to government suppression of private-sector expression, it urges the judiciary to take into account the societal interest in counteracting government messages—to treat plaintiffs in traditionally structured first amendment litigation as champions of majoritarian processes, not as victims of majority tyranny. In going beyond (but not against) individualism, the government-expression perspective supports first amendment protection for powerful, "establishment" institutions. For they have the "resources, energy and expertise" (p. 161), as isolated individuals do not, to reach the mass of citizens with a variety of messages with which to counter abuses of governmental expression and secrecy. (Yudof does not share Charles Lindblom's pessimism about the dangers of corporate domination of public opinion in market-oriented economies.)

But the most significant restraint on private expression (and ideas that give rise to it) stems from government control over access to "vital policy information," and potentially, from its domination of communications networks, and not from government censorship of private speech. Thus, the practical purpose of *When Government Speaks* is to determine when governments, above all their most dangerous branch, the executive and

its agencies, should be constrained to silence; when they may, as well as should, legitimately speak; and when they should be required to reveal information they control.

Of these three determinations the last produces the most clear-cut, though not simplistic (Yudof is never simplistic) recommendation. Yudof contemplates constitutionalizing a "right to know" (p. 249), a presumption of access to information governments will not voluntarily reveal, rebuttable only by compelling countervailing reasons (e.g., defamation, invasion of privacy, violence, prejudicing the outcome of criminal prosecutions). Such a right is implied by the democratic imperative that citizens acquire (with major assistance from the private press) information with which to make informed choices, countering government attempts to "engineer" (p. 178) or to "falsify consent (p. 249).

Governments should not only be forced to reveal information (forced to speak, so to speak). Their communications must also be limited in the interest of protecting pluralistic, liberal democracy. They should not, clearly, be permitted to monopolize (as in France) radio and television, to use public broadcasting for partisan purposes, to coopt the mass media. Government should not, in the content of their messages, promote racial hatred, religious intolerance and other anti-democratic values, or perpetrate falsehoods and about political opponents. Who, Yudof asks, should play policeman? Should the courts, through the creation of a constitutional limit on government expression? The answer, given the analytical difficulties of establishing a standard "for distinguishing constitutional from unconstitutional government expression" (p. 170), and of the relatively greater institutional competence of legislatures, is negative. The imposition of controls on abuses of government—executive branch—speech should be the responsibility of legislative bodies. It is a responsibility, Yudof points out, which Congress has proven itself quite capable of assuming (p. 62, 185). It is also a responsibility which multiple nongovernmental voices can perform and which can be facilitated by a "deliberately fostered pluralism" (p. 89). Here the courts, by adding a government-expression perspective to their consideration of traditional first amendment claims against government attempts to limit private expression and information-gathering, do have a major role to play. But to constitutionalize limits on government expression risks judicial overkill—of restricting permissible and necessary government speech (as well as the constitutionally protected "private" speech of government employees). For there is "an affirmative side of government communications" (p. 42).

Governments should, for example, sponsor and conduct research, and publish its results, informing the public of environmental and safety

hazards which private interests create. Governments should communicate policy positions (democracies do require leadership), and they should express democratic values. And where more powerfully do governments have a forum within which to do so than in public schools?

Indeed, since children are not born tolerant, or committed to the peaceful resolution of disputes through democratic processes, governments, through their schools, should socialize children to these values; they must be widely shared in order to sustain and perpetrate a system which enhances self-controlled citizens. The legitimate socialization/indoctrination to system-supporting, democratic values implies some predictable limits to indoctrination. Governments, for example, exceed legitimate bounds of expression, quite apart from establishment clause considerations, when they sponsor prayer and Bible reading, an activity inconsistent with pluralism and tolerance. (Though Yudof does not discuss voluntary, student-generated, extra-curricular religious expression in public schools, the government-expression perspective implies that it should be protected in the interest of limiting the power of government to inhibit what students may think and learn about.)

Less clearly implied, but impelled by Yudof's greater concern with the "perils" of government domination of the communications process, than with the unlikely possibility of insufficient, legitimate socialization, is the conclusion, in opposition to the Supreme Court's decision in *Ambach v. Norwich*, 441 U.S. 68 (1977), that the right of aliens to teach in public schools should be affirmed. Their presence interjects an element of diversity, thus limiting, as the aliens' brief urged, and as Yudof phrases it, "the discretion of the state to achieve its socialization objectives" (p. 223). The perils of government domination, above all when the audience is "quasi-captive" and immature, argue for further, pluralizing counterweights: a right to academic freedom for public school teachers, precisely because they are the agents through whom governments pursue their socialization objectives; a first amendment right protecting student editors of publicly-supported, student newspapers; a right of access to outsiders, "subject to the *Tinker* caveats of substantial disruption" (p. 226). In sum, Yudof's government-expression perspective argues for the expansion as well as reinforcement of individual first amendment rights to promote the collective, democratic good.

When Government Speaks exemplifies the depth, breadth, and sophistication of Yudof's prodigious scholarship. For that reason it will never make a best seller list. That, of course, is not its purpose. George Orwell's *Nineteen Eight Four*, the work of a polemical visionary, which Yudof never once references, has entered that list. *When Government Speaks* will undoubtedly, as it deserves to, enter the list of leading

scholarly works on the first amendment. Entered there, it may well succeed in arming an influential elite of legal scholars, judges, perhaps even some elected officials, for the challenge presented by government's capacity to abuse new information and communications' technologies. Perhaps, also, its amendments to first amendment theory, presented in more condensed form and with less academic prose (high in quality though it is) will stimulate the thinking of a large number of teachers and administrative leaders of the nation's schools. Co-author of the text *Educational Policy and the Law*, Yudof has already produced a medium for doing so.