

Vouch for it? Vouchers and religious schools: Vouchers and religious schools

by [David Heim](#) in the [July 29, 1998](#) issue

The founder of this magazine, Charles Clayton Morrison, was fiercely opposed to any form of government support for parochial schools. No doubt he would have been distressed by last month's decision by the Wisconsin Supreme Court, which ruled that tax money can be used to send poor children in Milwaukee to religious schools. Morrison, who was editor of the Century until 1948, was a strict separationist on church-state issues, and he thought any scheme that allowed tax dollars to find their way into the coffers of religious schools (he was mostly worried about tax money going to Catholic schools) undermined religious liberty and violated the "no establishment of religion" clause of the First Amendment.

But the Wisconsin judges were not worried about "establishment." They were focused on that other clause of the First Amendment--the one guaranteeing "free exercise" of religion. They didn't see why parents, who can already cash in their vouchers at secular private schools, should be denied the ability to use them at religious schools as well. To deny them this choice would be to infringe on their "free exercise" rights.

In many debates about church-state relations the "no establishment" types in the Morrison tradition are pitted against those with a more expansive view of "free exercise." But, as a number of legal scholars have argued lately, it's a mistake to set the argument up this way--as if the two clauses of the First Amendment are competing with each other and the struggle is over which is more important. The point of both clauses is to protect religious liberty, and the "no establishment" clause is designed to buttress the "free exercise" clause, not to act as a counterweight to it.

The chief result of this insight is to expand the areas in which government can indirectly support or accommodate religion. A government action that supports religion is not necessarily objectionable so long as the action doesn't support or "establish" one religion over another or favor a religious view over a secular one. And to the extent that the government action furthers the free exercise of religion, it may be constitutionally required.

The Milwaukee voucher program fits this description. Though state money will find its way to religious schools, the state is not "establishing" a religion, for it is neither endorsing religious schools over secular schools nor endorsing a particular kind of religion. It is simply allowing parents to choose a religious school with the same freedom they have to choose another private school with a certain educational philosophy or a certain kind of curriculum. It's hard to see how a plan that allows parents to choose every sort of private school except a religious one is not a hindrance to free exercise.

The legal debate on this issue is far from settled, of course. The U.S. Supreme Court has yet to rule on the validity of a Milwaukee-style voucher program. Nevertheless, there is increasing acceptance in the courts and in Congress (and among the general public) of voucher plans in which the government gives a check not to a religious school but to parents, who are free to use the voucher at the school of their choice. Voucher plans, in this respect, resemble the popular GI Bill of 1944 which gave tuition stipends to military veterans for use at a school of their choice--which could be a religious school like Wheaton or Notre Dame as well as a secular private college or a state university.

In theory, the use of vouchers could transform the educational landscape, leading to the proliferation of elementary schools and high schools run by Catholics, Lutherans, evangelicals, fundamentalists, Jews, Unitarians, Buddhists, the Nation of Islam and many other communities of faith. The prospect of such pluralism at the level of primary and secondary education may give us pause; it may make us worry a bit about the fragmentation of the culture. But it would be hard to say that such diversity jeopardizes religious freedom.

Vouchers are not a threat to religious liberty. Whether they are educationally and socially a great idea is another matter, however.

It's not clear, for example, that vouchers by themselves will, as widely touted, revitalize American education through the power of parental choice and market forces. Vouchers may give some kids a shot at better schooling--which is not to be sneezed at. And they may stimulate public schools to perform better. But they may also serve to skim from the public system the most talented kids and those whose parents are most involved in their education--the kinds of kids who would probably do well at any school.

Meanwhile, left behind in the increasingly desperate-for-money public schools may be the poorest of the poor and those with physical and mental handicaps. If this scenario develops, vouchers will exacerbate rather than solve the problems of public schools. In any event, the more voucher plans succeed, the more support (not less) the public schools will need. This is not something voucher proponents tend to talk about.

Lots of other practical questions remain: What if a poor black kid can't find a private school that will take him? What if the religious school he wants to attend won't take him because he has a learning disability? What if the school won't take him because he's black? Such questions of equity will have to be addressed if voucher plans are to merit widespread support.

One solution would be for voucher programs to require participating schools to adhere to rules barring discrimination on the basis of race and ethnicity. They could also require participating schools to admit a certain percentage of students with disabilities. But private schools are not likely to want either to relinquish control over such matters or to incur the added costs of making their programs accessible to the handicapped.

Religious schools will certainly be wary of voucher programs that ask them to dilute their religious emphasis. A little-noticed provision of the Milwaukee plan allows voucher students to abstain from a school's religious activities. For example, a voucher student attending a Catholic school won't have to attend mass. Naturally, this arrangement does not warm the hearts of Catholic educators, and Catholic schools may choose not to participate in a program that so constrains their mission.

Advocates of vouchers, in their rush to extol the virtues of privatization, have not been eager to consider these complications that arise in trying to balance equity and choice. They should be pressed to do so. Voucher plans may spawn creative public-private partnerships. But we need a much more explicit discussion about the terms

of those partnerships if they are to serve both religious communities and the public good.