

Can a Charter School Not Be a Charter School?

Shawgi Tell, *Nazareth College, Rochester, New York, USA*

Abstract

Charter schools are, by definition, contract schools. Charter means contract. To understand this fundamental feature of charter schools and the limits that stem from this aspect, this paper analyzes the topic of contracts and what contracting means for coming to terms with charter schools. This analysis locates charter schools in the realm of the market (i.e., the private sector) and helps us appreciate the non-public, privatized nature of nonprofit and for-profit charter schools. From this perspective, typical statements such as "there are some 'good' charter schools out there" or "what can be done to improve charter schools?" become superfluous. The main question becomes: are privatized, contractual, marketized education arrangements consistent with the requirements of democracy and a modern society, or do we need a government that takes up its social responsibility to ensure a fully funded, high quality, free public education system open to all?

Keywords: *charter schools, contracts, division of labor, exchange relations, privatization*

Introduction

Charter schools are, by definition, contract schools. Charter means contract. However, few, if any, writers and commentators refer to charter schools as contract schools. The failure to recognize and appreciate this core attribute of charter schools frequently causes charter school debates to focus on secondary and diversionary issues (e.g., an obsession with scores on curriculum-narrowing high-stakes standardized tests produced by for-profit corporations). This, in turn, tends to increase confusion and incoherence. To help readers develop an understanding of this fundamental feature of charter schools and the limits that stem from this aspect, this paper analyzes the topic of contracts and what contracting means for understanding and discussing charter schools. The contractual character of nonprofit and for-profit charter schools determines their essence and helps us understand why charter schools are continually plagued by so many problems and do not live up to the rhetoric about them.

To ground and orient readers, the paper begins with some basic factual information about charter schools. The point is to give readers an introductory descriptive overview of charter schools, not a detailed point-by-point analysis of each fact. The paper then provides several definitions of “contract” and “charter,” followed by a brief survey of the historical, political, economic, and philosophical roots and contours of social contract theory. This theory provides the basis for contracts and contract law in modern societies. It governs how relations work in the marketplace and why exchange relations occupy center-stage in contemporary capitalist societies. Here, among other things, I reference the Age of Enlightenment and key architects of social contract theory in order to establish the contractual nature of charter schools. Within this, a key connection is made between economic, legal, and psychological relations in society because these relations assume a new form with the rise of capitalist relations and the concomitant demise of feudal relations. Special emphasis is placed on the idea of exchange relations because

exchange relations are the main relations in societies based on advanced commodity production and they condition most other relations in society. All of this lays the basis for the argument that the word “contract” is a market category and that contracting and outsourcing are, particularly under neoliberalism, forms of privatization.

Contracting is a way to expand the claims of private interests on public assets and authority while restricting the claims of the public to public assets and authority. To put it another way, privatization is a way to restrict the claims of workers and government on accumulated social wealth while expanding the narrow claims of major owners of capital on this socially-produced wealth. Thus, for example, so-called “Public-Private Partnerships” (PPP’s) are really mechanisms for expanding the narrow claims of private interests over public assets, wealth, and enterprises—usually in the name of “efficiency,” “cutting costs,” “better results,” or “working together” for “mutual gain.” In practice, however, such arrangements enrich a handful of individuals at the expense of the public.

Importantly, as the rate of profit continues to fall for major owners of capital, the state will be used more aggressively to escalate the privatization of education (Ball, 2012; Blacker, 2013; Giroux, 2015; Lipman, 2011; Ross & Gibson, 2007). It is not an accident that charter schools continue to expand rapidly despite extensive research showing that they are plagued by serious problems (Fabricant & Fine, 2012; Karp, 2010; Lipman, 2011; Lubienski & Weitzel, 2010; Miron & Urschel, 2010; Giroux, 2012; Saltman, 2010; Weil, 2009). In their own way, each of these researchers point to the corporate takeover of public schools and different aspects of the privatization of education. To be sure, under neoliberalism the state plays a bigger, not smaller, role in transferring public wealth and authority to the private sector (Petras, 2012; Porfilio & Malott, 2008).

This analysis locates charter schools squarely in the realm of the market (i.e., the private sector) and helps us recognize and appreciate the inherently non-public, privatized nature of nonprofit and for-profit charter schools. From this perspective, statements such as “there are some ‘good’ charter schools out there” or “what can be done to improve charter schools?” become superfluous. The main question becomes: are privatized, contractual, marketized education arrangements consistent with the requirements, demands, and needs of the times, or do we need a government that takes up its social responsibility to ensure a fully funded, high quality, free public education system open to all? Such a government would enshrine and affirm the public will, not private, narrow, or sectarian interests.

Charter School Facts

Charter schools are typically defined as tuition-free, publicly funded, performance-based, non-sectarian, public schools of choice open to all. They are exempt from many, if not, most local and state laws, rules, and regulations, which is why they are often called deregulated schools, “autonomous” schools, or schools “with no rules.” To put it another way, they are marketized schools. Just as business enterprises are supposed to operate with few or no regulations, so too charter schools are supposed to be “free” in the same sense.

Charter schools generally hold the status of a nonprofit corporation or a for-profit corporation. For-profit charter schools are typically owned or operated by Education Management Organizations (EMO’s) (Miron, Urschel, Yat Aguilar, & Dailey, 2011). EMO’s are typically private organizations that manage public schools under contract and include entities such as Edison Learning, Mosaica Education, National Heritage Academies, and Victory Schools, to name a few.

Most, if not, all charter schools administer the same curriculum-narrowing high-stakes standardized tests used in public schools. Even though both types of schools have to use such unsound tests, charter school advocates tend to embrace such tests more readily than public schools and often boast that they will raise scores better than public schools. Charters, or contracts, are typically five years long, and a charter school that fails to be “accountable,” that is, ensure high test scores on a continual basis, may have its charter revoked by its authorizer. Most of the time, charter schools are closed for mismanagement, which includes problems such as fraud and embezzlement. The Center for Education Reform, which supports charter schools, reminds us that, “Fully 24 percent of all charter schools that are closed do so for reasons related to administrator or sponsor misbehavior. Sponsors of these schools may deliberately misspend, misrepresent, or refuse to hold the charter school accountable to its contract” (2011, p. 9). The true figure is probably higher. In most states charter school authorizers are state boards of education, school districts, certain nonprofit entities, or colleges and universities.

The nation’s first charter school law was established in Minnesota in 1991. Within a few years, nearly half the country had passed legislation enabling the creation and expansion of charter schools. Today, 43 states, Washington, D.C., and Puerto Rico permit charter schools. The following seven states still lack such legislation: Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia (U.S. Department of Education, 2014).

According to the National Alliance for Public Charter Schools, in 2013-2014 there were 6,440 charter schools in the U.S., comprising more than six percent of public schools. The same source notes that in the same year charter schools enrolled 2.5 million students (NAPCS, 2014a & b).

According to Miron & Gulosino (2013):

In 2011-2012, 36% of all public charter schools in the U.S. were operated by private EMOs (this includes both for-profit and nonprofit EMOs), and these schools accounted for *almost 44% of all students* enrolled in charter schools. The proportion of students in for-profit EMO-operated schools is slightly larger than the proportion of students enrolled in schools operated by nonprofit EMOs. (p. i, emphasis added).

It is worth noting that while hundreds of charter schools open each year, well over a hundred close each year. Thus, for example, in 2011-2012, 547 new charter schools opened and 150 charter schools closed across the country (Lake & Gross 2012). It should also be observed that, although the charter school “experiment” is now in its third decade, charter school oversight remains inadequate. Thus, for example, in different press releases and reports Greg Richmond, president and CEO of the National Association of Charter School Authorizers (NACSA), has made it clear that charter school accountability remains weak (see, for example, the *Introduction to The State of Charter School Authorizing 2013* by NACSA).

About ninety percent of charter schools are newly created while the remaining ten percent are converted from existing schools, a trend that seems to be growing (NAPCS, 2013). Most charter schools are small K-3 or K-6 schools, typically enrolling 200-400 students. Charters generally “serve the full range of grade levels, often in unusual combinations or spans” (*Education Week*, 2011, para. 4). In general, both the number of students enrolled in charter schools and the size of charter schools is steadily increasing.

Charter schools are typically based on diverse themes, missions, and pedagogies. Some are math- and science-oriented, while others are entirely arts-based or have a “back-to-basics” focus. Some are based on civic engagement, citizenship, and character

development themes, while others emphasize preparation for the military, homeland security, or work in the field of linguistics. While it is not the only one around, the co-ed Delaware Academy of Public Safety and Security in Delaware is a good example of a charter school that is part of the growing militarization of education. Saltman and Gabbard (2011) discuss the connection between the neoliberal agenda and the growing militarization and corporatization of education in their book *Education as enforcement: The militarization and corporatization of schools*.

Charter schools consistently under-enroll special education students and English Language Learners (Fabricant & Fine, 2012; Lubienski & Weitzel, 2010), have high teacher turnover rates (Stuit & Smith, 2009), pay teachers less than their counterparts in public schools (U.S. Department of Education, 2013), and do not outperform public schools using the narrow criteria of high-stakes standardized tests (Center for Research on Education Outcomes [CREDO], 2009 & 2013). In addition, 88 percent of charter schools lack teacher unions (NAPCS, 2010), and those that do have teacher unions tend to have weak unions and collective bargaining agreements.

Importantly, charter school laws define a charter school as a public school. Unfortunately, this designation has generated confusion over the identity, nature, and role of charter schools, leaving many in the dark about the status and meaning of charter schools. Some courts have even ruled that charter schools are not public schools (see Green & Mead, 2004, for a detailed discussion), while many charter schools operate openly as private for-profit entities (Miron & Gulosino, 2013), that is, they are directly operated by private for-profit entities that run schools as a business. Baker (2012), Saltman (2010), and others have written extensively about how and why charter schools are not public in character. One of the most significant shifts away from the public sphere and into the private sector is the elimination of publicly elected school boards in the charter school sector. This is

a major change in governance relations in the evolution of American education. Governance has to do with who decides what, which means that education is increasingly being decided by forces that differ markedly from the forces of the past.

Definition of “Contract” and “Charter”

As noted earlier, charter schools are contract schools. Contract is synonymous with charter. The *Merriam-Webster Dictionary* states that a contract is, “1a : a binding agreement between two or more persons or parties; *especially*: one legally enforceable. b: a business arrangement for the supply of goods or services at a fixed price <make parts on *contract*>.” The *Oxford English Dictionary* defines a contract as:

1. a. A mutual agreement between two or more parties that something shall be done or forborne by one or both; a compact, covenant, bargain; *esp.* such as has legal effects (see 2); a convention between states. b. *esp.* A business agreement for the supply of certain articles or the performance of specified work at a certain price, rate, or commission. 2. In a legal sense: An agreement enforceable by law. a. An accepted promise to do or forbear; b. An agreement which effects a transfer of property; a conveyance. (*Oxford English*, n.d.)

The *Oxford English Dictionary* defines charter as:

a legal document or ‘deed’ written (usually) upon a single sheet of paper, parchment, or other material, by which grants, cessions, contracts, and other transactions are confirmed and ratified. 1. A written document delivered by the sovereign or legislature: a. granting privileges to, or recognizing rights of, the people, or of certain classes or individuals. 2. A written evidence, instrument, or contract executed between man and man. (*Oxford English*, n.d.)

From these definitions it can be seen that “agreement,” “contract,” “bargain,” “covenant,” and “charter” generally mean the same thing. Connecting the dots above, it may be said that a contract or charter is a legally enforceable, time-specific, written, consensual agreement enshrining mutual rights and

responsibilities between two or more parties. A contract is fundamentally a legally-recognized *voluntary exchange relationship* between two or more parties and gives expression to economic, legal, and psychological relations in a commodity-producing society. Recognizing charter schools as contract schools raises the rigor of our conceptualization of charter schools and helps us recognize secondary and diversionary considerations when they arise.

Social Contract Theory

Social contract theory first emerged during the Age of Enlightenment in the mid-1600s to late 1700s in Europe. Opposition to feudal society, religious orthodoxy, divine authority, political absolutism, obscurantism, and tradition intensified greatly during this defining period. Alongside the scientific revolution, the Age of Enlightenment exposed the darkness, mystification, and backwardness that had plagued millions for centuries. Freedom of expression, public right, individual rights, science, inquiry, discussion, and free thinking came to occupy center-stage. For the first time in hundreds of years, millions were unshackled from the weight of the old and outdated. A breath of fresh air swept across Europe after a long dark slumber and propelled the emergence of a public domain, commercial society, and modern polity. Gripsrud, Moe, Molander, and Murdock (2010) state that:

For the philosophes of the Enlightenment, the idea of reason was inextricably tied to publicity and public argument. Reason is public in the sense that it does not recognize any authority other than the better argument, and its public use must be free to bring about a process of enlightenment.... The "public sphere" was understood as a sphere for critical discourse, placing all established powers and truths before the tribunal of reason. (p. 1)

Thus reason, argumentation, discussion, logic, publicity, and enlightenment reinforce each other during this period of renewal and produce a new authority in society. Under medievalism there

was no public sphere, let alone public right, public discussion, public authority, and public infrastructure. The break with the medieval order, represented by the Age of Enlightenment, brought forth the idea that people should be free to think and act for themselves and to demand transparency, accountability, and justifications for all views, opinions, and agendas. Blind faith and “might makes right” had no place in this new moral and social climate. Reason, not the sword, was the arbiter of truth and justice. Everything was subject to criticism and debate, to the “tribunal of reason.” Nothing was taken for granted. Stagnant ideas were challenged and replaced by modern definitions (e.g., what it means to be a “citizen”). In this vein, the seventeenth and eighteenth century salons of Paris and coffeehouses in England played a vital role in engendering vigorous discussion of the issues of the day. Society and the economy could not progress without enlightened and open discussion by men and women (Habermas, 1991). Importantly, this increased exchange of ideas paralleled the growth of exchange relations in the economy. As the division of labor and exchange of products grows more complex in society, there arises a need for more information and its broad circulation. None of this should be taken to mean that the Age of Enlightenment was perfect or without its problems and limitations. The point is that, historically speaking, the Age of Enlightenment marked an important break from many outmoded relations and, in doing so, set the stage for further developments in a different direction.

Significantly, the Age of Reason dealt a severe blow to the theory of the Divine Right of Kings that prevailed for centuries and in its place advanced new theories of the state, sovereignty, economy, society, government, and the individual. It rocked the foundation of the medieval political-economic order and portended great changes at home and abroad. Some of its key architects were Thomas Hobbes, John Locke, and Jean Jacques Rousseau. Along with others, they came forward during this period to articulate and justify a new social order and world outlook.

Underlying this cultural, intellectual, and political revolution were profound changes and developments in the economic sphere. Ascendant economic forces were increasingly clashing with the feudal order and its fetters. Prior to the birth of modern civil society, the economy was largely scattered, disorganized, and small-scale. Petty-production prevailed broadly. Large-scale cooperative production, that is, mass-organized production, did not exist. Estates, manors, and the like were the main units of production for centuries (Hilton, 1992).

However, it was only a matter of time for new economic forces to emerge and intensify the contradictions between the old and the new, and usher in a new political-economic order based on a different world outlook. Centuries of darkness and obsolete medieval political-economic arrangements were no match for the growing demand and movement for greater commerce, exchange, competition, science, technology, mass-organized production, individual autonomy, expanded rights, and new political-economic arrangements. New commercial and industrial interests were bound to prevail in due time.

The architects of social contract theory argued that governance and social relations in this new order are based on members of society agreeing to part with some of their "natural rights" in order to concentrate these in a state or sovereign that ensures "peace," "stability," and "good government," so as to overcome the "state of nature" characterized by a "war of all against all." As a sacred covenant that creates new rights and obligations, the social contract presupposes the voluntary consent of "rational" individuals who possess "natural rights" and submit to the "general will" to ensure "peace," "security," and individual prosperity. Without a strong central authority, fear, crime, and insecurity, it was believed, would consume all; anarchy and chaos would prevail.

Steinberger states that, "Hobbes and Rousseau both regard the body politic as something that has been created *de novo* [anew] out of the state of nature by a collective act of will that we call the social contract" (2008, p. 596). Civil society, the product of the social contract, is considered the opposite of the "state of nature." Poole (1980) points out that:

In Locke's state of nature individuals enjoy the [natural] rights to life, liberty and property, together with the right to protect themselves against any infringements of these rights and to punish transgressors. Entry into political society involves giving up the last of these rights (self-protection, punishment) in order better to preserve the first three. Of these, the last—the right to property—is the most significant. (p. 223)

The state produced by the social contract is thus a state for the repression and constraint of those who may undermine private property and deprive private property owners of their "natural rights" to life and liberty. Poole (1980) goes on to explain that:

The situation which obtains in the state of nature after the introduction of money is one in which *exchange relations are pervasive*, in which there is a class differentiation between those who own property and those who do not, and in which the mutual need of the two classes must be satisfied by members of one class exchanging their labor services in return for the means of existence. These are fundamental and defining features of the capitalist mode of production. (p. 227, emphasis added)

Macpherson (1962) argues that the main purpose of civil society is the protection and expansion of capitalist private property. He states that capitalist society "consists of relations of exchange between proprietors. Political society becomes a calculated device for the protection of this property and for the *maintenance of an orderly relation of exchange*" (p. 3, emphasis added).

The state, with its "legal" monopoly on violence, enforces the conditions for unfettered exchange and private wealth accumulation. The main aim of political society is to protect the

“natural rights” of “possessive individuals” to freely accumulate as much private wealth as possible (Macpherson, 1962). Here freedom and power emanate from possession, and it is the state’s job to protect this private property from transgressors and to punish them as needed. Should the state fail to do so, it may be overthrown.

While the social contract was revolutionary for its time and did indeed expand the sphere of rights to include many individuals who hitherto had no rights or few rights, the social contract did not end rule by an elite. It did not embrace everyone. “Natural rights” were not really equal. The system of “representative democracy” that emerged during this period was not broadly representative. Women, the poor, the laboring classes, certain minorities, and many others did not enjoy the fruits of the social contract because it benefitted mainly male property holders. For this reason, they were subjects, not members, of the political community.

To this day, sovereignty (supreme decision-making power) remains in the hands of those with the most wealth and private property, not the majority. The fight for genuine democracy continues in every corner of the planet. People everywhere are still struggling to bring the anti-medieval struggle to its logical conclusion.

Contracts, Commodities, Markets, and Exchange Relations

Historically, the rise of contract law “corresponds with the commercial revolution of the seventeenth and eighteenth centuries and the industrial revolution of the eighteenth and nineteenth centuries” (Oman, 2011, p. 2). Contracts are a direct product of the dissolution of the feudal system and the development of capitalism and the “free market.” They play a critical role because they “help to make markets possible,

creating wider, more robust systems of exchange” (Oman, p. 10). Indeed, “Contract is the quintessential legal institution of a market economy” (p. 1). And “At the heart of the market relationship,” says Oman (2011), “is the practice of exchange” (p. 11). Contracts, in short, codify and legitimize the new exchange relations that emerged out of the negation of the feudal political-economic order. They give form to the new market relations that multiplied alongside the growing division of labor and commodity production.

To further appreciate the significance of the idea of contracts and exchange, it is helpful to appreciate that we are talking mainly about relations in societies based on an advanced level of commodity production. A commodity is anything that can be bought and sold. All commodities possess both a use-value and an exchange-value; they are simultaneously objects of utility and bearers of value; they have a natural material form and a social form. Commodity-production therefore presupposes a social division of labor, but not just any social division of labor. Many early societies, for example, were based on a social division of labor, but this social division of labor never gave rise to commodity production and exchange (Marx, 1867/1983). Commodity production today, however, is the most developed form of commodity production precisely because labor-power itself, the precondition for the existence and expansion of capital, has become a generalized commodity. The capacity to work was rarely a commodity under previous economic models. Capital as an antagonistic social relation presupposes the wage-laborer and can expand only by extracting value out of the worker. As a general rule, the greater the social division of labor, the more the commodity form prevails in society.

The key point to grasp is that modern-day commodity production presupposes the existence of many *separate, independent, private, competing producers*. In this setting, producers engage in production for the sake of private profit and not for the

purpose of meeting social needs. Products are produced mainly for exchange and profit. Commodity production necessarily prevents private competing producers from operating according to a conscious plan to harmonize production and exchange so as to meet the needs of all. This is because competition, private property, self-interest, and the pursuit of maximum profits require rivalry, not cooperation. In this setup, winning and losing are seen as natural, normal, and healthy. Inequality is justified through the ideology of social Darwinism. Cooperation and balanced production and consumption are thus negated under advanced commodity production. Conscious coordination of the economy for the harmonious development of each of its components is blocked by private ownership of competing parts of the economy. Instead, the market “regulates” exchange, which is why “booms,” “busts,” “slumps” and “crises” recur regularly and tortuously. For this reason, “good times” and “bad times” are endemic to the so-called free market, which means that long-term security is elusive under advanced commodity production. Anxiety and uncertainty are permanent companions of the free market and its so-called invisible hand.

Under commodity relations, individuals are considered proprietors who enter willingly into exchange relations with each other to meet their respective needs. A has what B wants, and vice versa. The only way for independent proprietors to exchange what they possess with other private producers is by confronting each other in the marketplace. Of course, no one is certain what will be brought to market, how much will be brought to market, or even if one will find a buyer for their product. Hence the insecurity and chaos that often accompanies market relations.

In legal and psychological terms, the act of exchange between proprietors, or owners of commodities, constitutes a bargain, a *voluntary* agreement between two or more individuals exercising their free will—in short, a contract. In this view, free disassociated individuals willingly and consensually exchange

their commodities in their own self-interest. Consent presupposes acceptance at the cognitive level. It rests on the individual doing something willingly. In this utilitarian scheme, there is no such thing as society, only disconnected atomistic “equal” individuals—abstract individuals—who relate to each other as independent owners. Both the labor power and the product of labor of each proprietor is considered his and his alone, owing nothing to society and others. Skills and knowledge supposedly emerge from the isolated free-floating self and not from others, history, or society. The right to private property emerges from the stand-alone individual who apparently owes nothing to anyone. Cooperative labor and social ownership are thus precluded in this outlook; they do not shape or influence private possession. Indeed, cooperative labor implies cooperative ownership and goes against the idea of property for private exclusive use.

The doctrine of individualism, a main product of liberal ideology, necessarily prevails in such societies because the individual and private property presuppose each other. The interest of the individual is the interest of private property. The individual that emerges from the ruins of the feudal order and the rise of the new commercial and industrial order gives expression to a new form of private property, which the state is duty-bound to defend against any transgressions. Together, private property and individualism ensure exclusivity, inequality, and a realm separate from the public sphere.

It also follows from this logic that if there is no such thing as society, then there is no such thing as social responsibility, only individual responsibility. Everyone must therefore fend-for-themselves and in the end the “fittest will survive.” The “fittest” are the richest, the “best and brightest” who form the “natural aristocracy” or “meritocracy” in modern society. It is the “best and brightest” who then form the basis of “representative democracy.” It is thus not an accident that in Canada, the United States, and elsewhere prominent leaders are often millionaires or

backed by many millionaires. It is well-known that one must possess an enormous amount of money just to run a campaign, which is why millions are excluded from the electoral process.

From this brief overview it can be seen that contracts, exchange relations, private property, individual rights, and the “free market” presuppose and reinforce each other. Let us now connect this analysis to charter schools.

Charter Schools and Contracts

The National Association of Charter School Authorizers (2009) states that:

A charter school contract is the legally binding agreement executed by a charter school and its authorizing agency. This agreement stipulates the terms and conditions by which the school will operate and defines the rights and responsibilities of each party, including performance expectations and conditions for renewal. A charter school contract serves as both an administrative and performance agreement. (p. 1)

Note here the use of the words “legally binding,” “performance,” “agreement,” and “rights and responsibilities of each party.” These are the main elements of a contract.

In the current context, contracts are a mechanism to facilitate the neoliberal restructuring of education and society. Neoliberalism, broadly speaking, refers to the political-economic arrangements launched in the U.S. and abroad in the late 1970s to promote privatization, deregulation, and government abdication of responsibility for the well-being of the people in order to avert falling profitability for major owners of capital (Harvey, 2007; Petras, 2012; Roberts, 2009). Among other things, this top-down offensive has meant cutting many social programs, eliminating public right, and lowering living and working standards for millions (Giroux, 2010; Petras, 2012; Porfilio & Malott, 2008).

Contracting enables the privatization and commercialization of education. It does so by allowing private vendors to take schooling out of its traditional long-standing public arrangements and to place it in the private sector, in the realm of the so-called free market, subject to competition. Contracting, in this sense, is a different form of governance, specifically, “free market” governance. This is why charter schools are deregulated schools, “autonomous” schools—“free schools” that operate “innovatively” *outside* established public school governance structures. Thus, for instance, charter schools do not have to follow most state and local laws, rules, and regulations followed by public schools. The “free market” abhors rules and “barriers” because they are considered blocks to the unrestricted movement and expansion of capital. Boychuk and Mathis (2013) point out that, “In Ohio, for example, there are reportedly 200 state laws that do apply to public schools but not to charters. You see the results” (para. 16). In this vein, the headline of a January 12, 2014 article in *The Columbus Dispatch*, a major newspaper in Ohio, read: “Columbus has 17 charter school failures in one year” (Richards & Bush). The subtitle read: “Schools closing at alarming rate, costing taxpayers and disrupting the lives of hundreds of students.”

In this setup, schooling becomes a commodity. Education becomes a business, subject to the anarchy of the so-called free market. Schools literally come to be owned and operated by entrepreneurs and private sector contractors who treat schools as a business, students as a product, and parents as consumers. Humans, citizens, and public authority disappear in this marketized approach to a fundamental human responsibility. Business-centric logic comes to dominate all relations and arrangements.

To be clear, contracting replaces public control, governance, and standards with legally binding, performance-based agreements between private contractors whose main aim is to maximize profit

as fast as possible. It is helpful to recall that, "In 2011-2012, 36% of all public charter schools in the U.S. were operated by private EMOs (this includes both for-profit and nonprofit EMOs), and these schools accounted for *almost 44% of all students enrolled in charter schools*" (Miron & Gulosino, 2013, p. i, emphasis added). Many private EMOs are listed on the stock exchange. It is also important to observe that many nonprofit charter schools engage in for-profit contractual arrangements. That is, they are back-door for-profit arrangements. Saltman (2012) points out that:

Charter schools are often public in name but not in practice. Charters shift governance to unelected councils dominated by business people, and these councils redistribute decisions away from public community control. They sub-contract to private for-profit companies that drain public funds and can maintain financial secrecy away from public oversight. (p. 7)

As a general rule, none of the nation's 6,000 plus charter schools are governed by a publicly elected school board (Saltman, 2010). This marks a big shift away from public education arrangements established over the last 160 years. Corporate-style "boards of trustees" comprised of self-selected or appointed individuals are the norm in the charter school sector, and most of these individuals come from the private sector. Lecker and Cody (2014) remind us that, "Replacing school boards with unelected charter boards usually made up of people from outside the community takes away the community voice" (para. 7, section "Are charters helping children to develop into independent thinkers?"). Education historian Diane Ravitch makes a similar point in numerous writings on her blog at <http://dianeravitch.net>.

Privatization through contracting is a major mechanism for transferring public assets and authority to the private sector in the name of closing the "achievement gap" and "putting kids first." In this way, privatization eliminates public right under the banner of high ideals. The much-touted "flexibility" of charter schools to "innovate" is really a method for "cutting costs" in a

variety of ways while maximizing revenue and profits in a failing economy. It is not an accident that charter schools emerged in the U.S. during the rise of neoliberalism, shortly after the publication of *A Nation at Risk* in 1983. Their rapid expansion after 1991 suggests that this sector was propelled by rich and powerful individuals and groups. Elsewhere I show that there is little that is grass-roots about the charter school sector from its inception to the present. Charter schools have largely been a top-down capital-centered program from the very beginning (Tell, in press).

Public education is a \$600 billion enterprise, therefore it is not difficult to see why major owners of capital, desperate for new sources of profit in a failing economy, would turn to charter schools to maximize profits. Thus, for example, recently, Andrew Cuomo, Governor of New York, “has gotten more than \$4 million from charter school lobbyists and is pushing lawmakers to allow more [charter schools] to be established in the state” (Gonzalez, 2015). In 1996, the *New York Times* wrote that “public education is becoming an enticing market for private businesses” (Applebome, 1996, para. 1). A quick *Google* search also shows the continued heavy involvement of billionaire hedge fund managers in the charter schools sector. Even movie, music, and sports celebrities are entering this sector. Indeed, one can even get a Green Card for opening a charter school (Simon, 2012).

Funding for charter schools comes from three main sources: (1) hundreds of millions of dollars from public schools in the form of public per-pupil funding, (2) billions of public dollars from specific charter school programs at the federal level, and (3) billions of dollars from venture philanthropists such as Bill Gates, Sam Walton, and Eli Broad, to name a few (Kovacs, 2010). However, even with all these funds and more than two decades of experimentation, “the research shows that to date, high-performing charter schools are in the minority” (CREDO, 2013, p. 2).

But even here “success” is usually the result of selective, even illegal, student enrollment and attrition practices. In some states civil rights cases have been brought against charter schools for discriminatory enrollment practices. For example, a December 20, 2012 article from *StateImpact* states that, “The U.S. Department of Education is investigating whether charter schools in Ohio and three other states discriminate against students with disabilities” (Bloom, 2012, para. 1). It explains that:

The investigation by the department’s Office for Civil Rights is a “proactive compliance” review of charter schools and charter management organizations in Ohio, Pennsylvania, Texas, and Wisconsin in connection with low enrollment of students with disabilities. according to spokesman Jim Bradshaw. The review is also looking at similar issues for students learning English. (Bloom, 2012, para. 2)

Charter schools are notorious for consistently under-enrolling students with disabilities and English Language Learners.

Privatization Harms the Public Interest

Privatization, broadly speaking, refers to the transfer of public assets, wealth, and authority to the private sector, usually in the name of “greater efficiency,” “lower costs,” “better services,” and “serving the common good.” Privatization has intensified greatly nationally and internationally since the early 1980s. Water, healthcare, garbage collection, education, parks, libraries, roads, airports, armies, and even torture have all undergone greater privatization over the last 35 years, a period defined by intense downward pressure on the rate of profit for major owners of capital. Many social assets, enterprises, and programs built and secured through the efforts of millions of Americans prior to the early 1980’s have been cut altogether or greatly restricted, thereby shrinking the safety net for millions of people.

In education, privatization through charter schools, vouchers, mayoral control of schools, the “Common Core,” the No Child Left

Behind Act, and the Race to the Top Program, to name a few capital-centered policies, have all contributed to lowering the level of education and harming the progress of society (Lipman, 2011; Karp, 2010). All have undermined the public interest and the quality of education. The rich and their political representatives are eager to replicate and expand charter schools because these schools ensure guaranteed profits with little risk. *Contracting operationalizes this public-to-private wealth transfer.* Ravitch (2013) states that, "The transfer of public funds to private management and the creation of thousands of deregulated, unsupervised, and unaccountable schools have opened the public coffers to profiteering, fraud, and exploitation by large and small entrepreneurs" (p. 4). Saltman (2012) reminds us that, "Billions of public dollars are being dangled in front of states to induce them to expand privatized and managerialist school reform including charter schools, cash for grades, turnarounds, and other schemes" (pp. 4-5). But the K-12 realm is not the only sphere plagued by corporatization and privatization. Higher education is also being ravaged by the neoliberal agenda (Saunders, 2010).

In a public enterprise the two main claimants to revenue are workers and the government. When a third external private claimant lays claim to this public revenue through contracting, it necessarily means that workers and the government receive less revenue. Now a portion of the public revenue must be diverted to a private vendor. In other words, privatization ensures that narrow private interests seize a portion of accumulated social wealth. Unfortunately, taking money out of the economy and further concentrating it in the hands of the rich does not improve the economy or society; it increases insecurity and poverty.

In a 43-page report titled, *The decision to contract out: Understanding the full economic and social impacts*, Greenwood (2014) shows that outsourcing and contracting usually result in greater costs for the public, lower wages and benefits for

workers, inferior services, reduced accountability, elimination of public right, and greater corruption, waste, and nepotism. In the process, a handful of private investors become richer.

The National Education Association states that:

Privatization, or “contracting out,” is part of a broad campaign that seeks to transfer many parts of our community life, including the delivery of education services, into the hands of private, for-profit corporations. In many ways, the pushes for school vouchers and charter schools are parts of this same movement... Privatization is a threat to public education, and more broadly, to our democracy itself. (Privatization, para. 1, n.d.)

Henry M. Levin, director of the National Center for the Study of Privatization in Education at Columbia University's Teachers College, is quoted in the *Washington Post* as saying, “There's nothing in the literature [to suggest] that privatization will get you revolutionary results” (Labbé & Haynes, 2007, para. 3).

A November 17, 2012 article in the *Arizona Republic*, titled “Insiders benefiting in charter deals: Board members, school officials did more than \$70 mil in business,” sums up what takes place regularly in many charter schools across the country. Ryman reports that, “Board members and administrators from more than a dozen state-funded charter schools are profiting from their affiliations by doing business with schools they oversee” (para. 1). Similar articles can be found almost daily through a simple *Google* search. Such realities reveal the degree to which class power and privilege trump facts, research, evidence, and the public interest. They point to a disturbing increase in autocratic decision-making arrangements and reveal the extent to which contractual arrangements facilitate the transfer of public wealth and assets to the private sector.

Privatized and marketized education arrangements fall short of public standards of education in many ways. Perhaps one of the most damning and indicting statements on this front is one that comes from a major long-time supporter of charter schools, Margaret Raymond, Director of the well-known Center for Research on Education Outcomes (CREDO) at Stanford University. About 50 minutes into a 56-minute talk at the City Club of Cleveland on December 10, 2014, Raymond gave the following response to a question about charter school policy:

This is one of the big insights for me because I actually am a kind of pro-market kind of girl, *but the marketplace doesn't seem to work in a choice environment for education...* I've studied competitive markets for much of my career... *Education is the only industry/sector where the market mechanism just doesn't work...* I think it's not helpful to expect parents to be the agents of quality assurance throughout the state. There are other supports that are needed... I think we need to have a greater degree of oversight of charter schools, but I also think we need to have more oversight of the overseers... the authorizers. (emphasis added)

Conclusion

This paper began with the question: can a charter school not be a charter school? I have attempted to show that charter schools are contract schools and that contracts are a market category, which means that charter schools fall squarely in the realm of the "free market." And because they operate in the private sector, where competition and commodity logic prevail, charter schools necessarily differ qualitatively from public schools. It is thus a misnomer to call charter schools public schools. If anything, contract schools represent a *break from* public schools and the public sphere.

From this perspective, the issue is not whether charter schools are good or not, or how they can be improved, or whether they are nonprofit or for-profit. Rather, the main question becomes:

are privatized, contractual, marketized education arrangements consistent with democracy and modern requirements? Are they commensurate with the public interest? Why, it may be asked, doesn't government take up its social responsibility to ensure a fully funded, high quality, free public education system open to all? Education is a right, not a privilege or a commodity. Such a government must enshrine and affirm the public will, not private, narrow, or sectarian interests. It must also provide the rights to food, work, shelter, healthcare, and pensions with a guarantee. These are inviolable rights from birth to death, not privileges that can be given and taken away. Human rights cannot be waived or forfeited.

Government is required to uphold the public interest and put human rights in first place. Among other things, and consistent with the principle of separation of state and religion, no public funds should flow to privatized education arrangements. Just as private schools do not receive public funding, nor should any other privatized education arrangement receive public funds. Repeatedly calling something "public" does not automatically make it public. Nor does an entity automatically become public just because it receives public funds. Thousands of private organizations receive public funds, but no one stops calling them private. Charter schools are by their very nature privatized arrangements, which is why so many are owned-operated by private individuals and entities.

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Author and Correspondence Details

Dr. Shawgi Tell is an Associate Professor of Education in the School of Education at Nazareth College in Rochester, New York. Contact: stell5@naz.edu