



Charter Schools

Deep Capture of Education in Detroit

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About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

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Contents

PART 1: INTRODUCTION	1
PART 2: CURRENT DOMINANT NARRATIVE	3
The Problem	3
<i>Teachers' Unions</i>	4
<i>Over-Regulation</i>	4
<i>Monopoly on Education by the Government Regulation</i>	4
The Solution	5
<i>Accountability</i>	5
<i>Autonomy</i>	5
<i>Choice</i>	6
PART 3: ALTERNATIVE NARRATIVE	6
Decline of Detroit	6
Anti-Union	7
Lack of Restrictive Regulations	8
The "Free Market System" and Competition	9
PART 4: HOW DID THEY CARRY OUT THE DEEP CAPTURE:	10
CONCLUSION	11
ENDNOTES	13

ABSTRACT

Charter schools were introduced in the United States in the early 1990s as a solution to declining education outcomes. While the jury is still out on whether charter schools truly improve education outcomes, this paper examines the core values charter schools seem to embody and how they are repackaged corporate values. Using the example of Detroit Michigan, this paper looks at how the same principles that led to decline of the city of Detroit, and thus its public education system, were repackaged as charter school values to try to solve the public education crisis created by those principles.

Charter Schools

Deep Capture of Education in Detroit

PART 1: INTRODUCTION

In May of 2016, I worked at an after school program training teenagers to be social justice leaders. One afternoon as I walked in, I could hear the teenagers talking excitedly amongst themselves. I asked one of my students what happened, and he told me that most of the group had been out protesting a proposal laid out by the city that would increase the cap on charter schools. This proposal was being pushed at the same time that the city was experiencing budget cuts and “had” to decrease funding to Boston Public Schools.

“But wait,” I asked him, “Don’t you go to a charter school?”

“I do.” He said. “But that’s because my public school is not good enough and it won’t be if charter schools keep taking funding away from our real schools.”

This was the first time I had heard of someone describing negative aspects of charter schools. While I had heard stories of individual charter schools that were led by corrupt management and failed their students, those were usually seen as “bad apples”. Charter schools were seen as an objective good, bringing resources to students that may otherwise be left behind.

While the definition of charter school may vary from state to state, they are generally understood to be alternatives to both public and private schools. The National Charter School Resource defines charter schools as

“a public school that operates as a school of

choice. Charter schools commit to obtaining specific educational objectives in return for a charter to operate a school. Charter schools are exempt from significant state or local regulations related to operation and management but otherwise adhere to regulations of public schools — for example, charter schools cannot charge tuition or be affiliated with a religious institution. In other words, charter schools are publicly accountable — they rely on families choosing to enroll their children, and they must have a written performance contract with the authorized public chartering agency. Charter schools are also autonomous — they have more flexibility in the operations and management of the school than traditional public schools.”

The National Charter School Resource ¹

Essentially, charter schools are funded by the government, but they have greater flexibility in setting their curriculum, rules, and hiring teachers and administrators. In return, they are supposed to deliver on a certain set of outcomes or risk being closed or having parents simply choose to enroll their child in another school.

The idea gained traction in the early 1990s amidst protests from both sides of the aisle that public school education is “broken” and American children are being “left behind” as compared to their European and Asian counterparts.² In 1991, Minnesota became the first state to pass its charter school statute allowing charter schools to flourish in the state.³ In 1993, Bill Clinton became the first American President to mention charter schools as a way forward.⁴

However, charter schools have always had their detractors. Public school proponents worried that charter schools would leach money from chronically underfunded public school districts (the concern that my student expressed).⁵ Others said that charter schools did not produce results drastically better than public schools. However, the statistics on this last conclusion are mixed.⁶

This paper, however, does not debate the merit of charter schools. Instead, the paper looks at the ideological values underpinning the charter schools and proposes that those same values are what led to “broken systems of education” that charter schools sought to fix. To showcase this, I will be using the state of Michigan as an example, focusing specifically on the Detroit metropolitan area, and demonstrating that the same values that led to the start of charter schools in Michigan in the 1990s are the same values that contributed to the decline of Detroit, and consequently its public education system from 1950 onwards.

I chose Detroit for three reasons. First, while Michigan was not the first state to enact a charter school statute, it still remains the state with most deregulated charter school industry.⁷ Second, the decline of the city of Detroit from the 1950s is well known in national memory. Finally, three decades after charter schools first cropped up in Michigan, the state’s, and specifically the city’s, education outcomes remain poor.⁸

PART 2: CURRENT DOMINANT NARRATIVE

The Problem

In 1993, Republican Governor Engler signed a bill into law that effectively ending Michigan schools being funded through property taxes.⁹ However, instead of being stymied, Governor Engler saw this as an opportunity to enact a long-term goal of his: changing how education worked in Michigan entirely. He enacted a law where schools would no longer be funded by property taxes.¹⁰ Rather, he raised sales and tobacco tax to create common pool of funds.¹¹ Each student in the state had a specific sum of money attached to them which would go to whichever school the student enrolled at. Students could enroll at any public school in the state.¹² This was meant to alleviate the many injustices low income students faced in education.

School districts in Michigan certainly faced challenges then. There was a great outcome disparity in different school districts. This idea of separating property taxes from school districts and offering student choices in which school they could enroll at was supposed to be the first step in fixing these challenges. Charter schools, which became legal in Michigan in 1994, were the next step.¹³

Charter schools were seen as the solution to create systemic changes. Like other leading Republicans (and some Democrats) of that time,

Engler had inherited the political landscape from the 1980s “Reagonomics” period. So, it was no surprise that he was a strong believer in innovation, competition and deregulation. Engler’s rhetoric during that time was fixing a “broken system”.¹⁴ He, along with other charter school proponents, also had firm ideas of what exactly had broken the state’s education system in the first place.

Teachers’ Unions

Charter school proponents strongly believed that teachers’ unions impeded education reform and contributed to lower education outcomes. Unionized teachers were seen to have too much power in the education system, which the proponents believed should rest with the taxpaying parents.¹⁵ Unionized teachers were also portrayed to not be invested in the student community because their pay was not tied to educational outcomes.¹⁶ The idea was that if teachers could be fired more easily, they would be less “lazy” and more proactive about increasing test scores. Unions, according to the proponents, led to a lack of teacher accountability. Engler, in a speech about school choice, was said to have made a quip about how as students and parents chose which schools, teachers could choose whether they wish to stay in unions.¹⁷

Over-Regulation

Charter school proponents also believed that there were too many government actors in the education industry and too many inflexible rules governing the education system. Proponents believed that policymakers often subjected initiatives to tight control and regulation which caused unnecessary rules and hierarchy and added a level of complexity that was not needed.¹⁸ This was, of course, not a novel idea in the 1990s. The Reagan Revolution, with its ideas of deregulation, superiority of market forces, and small government, had already been dominating the political landscape for a decade.¹⁹ The education system was seen as another victim of unnecessary government intervention. Proponents for charter schools emphasized that it was families who should have a say in how their children were educated rather than a large impersonal government machinery, buffered by an out-of-touch bureaucracy.²⁰

Monopoly on Education by the Government Regulation

If there was one mantra that governed the push towards charter schools in Michigan, it was the idea that parents and students should have a “choice” in picking their schools. Governor Engler was believed to have

said that “competition was important, and while we had minimal competition with parochial and private schools in the state, we believed that much more could be done with competition in the public system itself, by enhancing competition from the outside.”²¹ Charter school proponents believed that government’s monopoly over schools meant that schools did not achieve market efficiency as they only had private or parochial schools to compete against, and public schools had the advantage of being free. If schools were made to compete with each other and fight for every student (each coming with government funding), they would automatically increase their value per dollar spent or face closure.²²

The Solution

Charter schools were the custom-made solution to these three problems. It was not surprising because charter schools were the product of the same minds who believed in the importance of using business solutions to solve every problem.²³ And the problems listed above were the same problems that people believed hindered businesses from profit maximization. While charter schools differed from state to state, there were three principles that made them stand out from regular public school.²⁴

Accountability

A big complaint against the traditional education system was that public schools were not being held accountable. Supporters of charter schools believed that charter schools were the way to fix the problem of accountability. The first step of accountability was to create a contract with the government, guaranteeing certain outcomes in return for having the right to operate a charter school and receive funding from the government.²⁵ Another major step was to tie student performance to teacher pay. Proponents believed that a major reason why students did not do well was because unionized teachers were not held accountable for improved student performance. So, by tying teacher pay to student outcomes, they would have a more meritocratic system where teachers were paid according to merit rather than a flat salary based on seniority.²⁶

Autonomy

Charter schools were also supposed to encourage autonomy. Unlike public schools that were deemed to be overburdened by regulations and

paperwork and the necessity of ensuring compliance with government rules, charter schools could make their own rules.²⁷ This was seen as a way to focus on “setting and reaching high academic standards for their students.” instead of being bogged down by paperwork.²⁸ The idea was that the more charter school administrators were set free of government oversight, the more they would be able to implement innovative ideas and achieve excellence.

Choice

Finally, charter schools were seen as a way to give parents choice in their children’s school. Charter school proponents saw this choice as a way to increase competition to improve among schools and ultimately produce better outcomes for students. They believed that competition was inherently good in every industry.²⁹ Schools that could not achieve the same level of efficiency and excellence would automatically fail, leaving behind only excellent schools.³⁰ If traditional public schools could not keep up with charter schools and innovate at the same level, they, too, would close. In fact, for some charter school proponents, this was the ideal situation.³¹ They thought that just by letting market forces control the educational system, it was almost inevitable that traditional public schools would eventually be replaced by charter schools and prove the hypothesis that business ideals in education works.³²

PART 3: ALTERNATIVE NARRATIVE

The above was the narrative that dominated as charter schools promulgated in the 1990s. Inherent in the approval for charter school is the belief that its three espoused principles are worthy. And certainly, words such as “accountability”, “autonomy”, and “choice” do sound appealing. However, in this particular context, these words actually stood for an ideology that is common in corporations and corporate law and that ideology, in the case of Detroit, Michigan, had actually led to the destruction of the public school system that became the “broken education system” that Engler and his cohorts attempted to fix with charter schools.

Decline of Detroit

The decline of the city of Detroit has been pretty well-documented.³³ One narrative presented for Detroit’s decline is that it was the city’s fault for being too dependent on the auto-industry which inevitably moved its factories to other cheaper locations. However, there is another narrative

that can lay the blame on the shoulders of corporate ideals, the same ideals that the proponents of charter schools espouse.ⁱ

Anti-Union

Traditional narratives of Detroit's decline almost invariably begin with the big automobile manufacturers moving out of the city and taking the jobs with them to exurban Detroit. As jobs left the city, people, particularly white people, followed, resulting in the loss of the city's tax base. Car manufacturers cited increased costs as a reason to move the manufacturing plants out of the city, and then eventually the state and finally country.³⁴ However, these increased costs were because the city was heavily unionized and demanded fair pay for its work in the plants.³⁵ Car companies, led by Ford, sought to avoid unions by moving to areas outside of the city where there was little to no union presence.³⁶ The car companies were seen as faultless for doing this because corporate law awards decision-makers that put profit maximization over everything.³⁷

While on surface, the principal of "accountability" in the charter school context looks nothing like avoidance of union labor that the automobile industry practiced, it turns out that when charter schools talk about accountability, they often also mean hiring non-unionized teachers and administrators.³⁸ While technically, charter schools are supposed to be held accountable for the student outcomes they promised the government, the management depends on teachers to actually work towards achieving these outcomes. Thus, they have an interest in hiring non-unionized teachers so that they can tie their pay to student outcomes and achievements and make the teacher's livelihood depend on how well a group of intellectually diverse children, whose performance depends on a multitude of factors, do on timed tests.³⁹ Thus, the same union-avoiding behavior that played a major role in the decline of Detroit and its public schools was presented as a solution a few years later to reinvigorate the declining schools.

ⁱ It should be noted that Detroit's decline cannot be separated from the racism suffered by its Black community. The corporate ideals did not work in isolation but in tandem with racist ideologies such as racial redlining.

Lack of Restrictive Regulations

Detroit's Black neighborhoods were often held responsible as one of the reasons people did not want to live in the city. They were seen as drivers of "urban blight" even though a large part of the reason why they did not thrive as much as white neighborhood was due to racial redlining, which was Black people not being allowed to benefit from New Deal legislation and racially restrictive covenants.⁴⁰ However, the city's Black population faced a further catastrophe when the city decided to build an expressway that would cut through the Black neighborhoods. Many Black homes were permanently lost and a significant percentage of the people living in those neighborhoods were forced to relocate to public housing. Some disappeared from the city altogether.⁴¹

The reason for building the expressway had two aims. One was to ensure that the car companies, now conveniently located outside Detroit, had unimpeded access to their suppliers and their consumers through the new expressway. The second reason was to turn Detroit and its surrounding area into an automotive city- a city where the people depended on cars to get around to the detriment of the public transit system. By doing this, the car companies were basically guaranteeing themselves a fresh supply of consumers.⁴² The government should have refrained from building this expressway whose aims so clearly benefited the corporations and caused irreparable damage to the city and its people but instead the government chose to favor the corporation.

The autonomy charter schools ask for looks quite different. On the surface, the schools just want to be left alone and come up with their own regulations, instead of bowing down to government mandated regulations.⁴³ However, in principle, the two situations are quite similar. The automobile industry, instead of asking to be unregulated, asked for a favorable government action, which is essentially what the automobile industry did – asked for government support of ideas that the industry both came up with itself and benefits from. Similarly, charter schools also ask for favorable government regulations so they can be "flexible" in how they approach the system. In both situations, what they are counting on is that the government does not interfere on behalf of people who may be affected by their actions and implicitly trust that what's best for the automobile industry or the charter school industry is actually what is best for everyone. For instance, while charter school board members are forbidden from hiring family members as contractors for the school, they are not bound by other conflict of interest regulations.⁴⁴ This means board members could offer

lucrative tax-payer funded contracts to friends, business partners and other related parties even if the contractor is not the best available resource for the school and its students without having to explain away the conflict of interest. And while charter schools board members are not shareholders in the traditional sense, they do function as the biggest beneficiaries of this rule whereas the school's students, arguably the biggest stakeholders, seem to get almost nothing out of this situation but instead like the urban Detroiters are shunted off to the side so corporations (the contractors are often for profit companies) could benefit.

The "Free Market System" and Competition

In Detroit, a major reason for the decline was that three car companies, General Motors, Ford and Chrysler, absolutely dominated the automobile industry.⁴⁵ This meant that each company had become large enough to employ enough of Michigan's people and produce enough of the country's supply of cars to exert power over the local, state and arguably the federal government.⁴⁶ This situation contributed to the Big Three (as the three automobile companies were known as) using government regulations to benefit their own stakeholders. One of the reasons why the Big Three were allowed to dominate so thoroughly was because the value of competition in the free market system was seen as an important social good which would allow consumers to pick only the best of products and ensure the survival of only the fittest. Thus, the automobile industry was protected from more stringent anti-trust regulations and generally any negative regulations which would have lowered the barriers to entry, ironically making it harder for other companies to complete.

The situation with charter schools in Michigan appears to follow a very different path from the automobile industry at first glance. Instead of three large companies providing all the charter schools in the state, Michigan has many big and small corporations providing charter schools all over the state and even within the city of Detroit. In 2017, Michigan had the third highest numbers of charter schools.⁴⁷ This is exactly what Governor Engler envisioned when he wanted to move away from the "monopoly" of the public school system.⁴⁸ However, unregulated competition rears its head in some other ways.

In Michigan, there is no direct centralized agency overseeing the charter schools. Instead, they are under the oversight of "authorizers" who are generally community colleges, state universities and local school district

boards. An authorizer is the one that approves a charter school's actions. However, authorizers are also financially incentivized. An authorizer may receive up to 3% of a school's per pupil funding.⁴⁹ Since, the number of children in Michigan is finite, an authorizer is incentivized to have as many charter schools under its authority and for those charter schools to have as many pupils as possible even if it means leeching pupils from other charter schools and public school in the area. Thus, there is competition as Governor Engler envisioned but it does not lead to quality education for all of Michigan's students. Since authorizers receive money per pupil, an authorizer has every incentive to keep charter schools open even if they are performing poorly because they still get the per pupil funding of whatever number of students remain in the school. So instead of one central publicly accountable government agency to monitor the wellbeing of students and ensure that a charter school is performing well and closing those that are not, authorizers do not shut down any charter schools under their authorization unless faced with immense public pressure.⁵⁰ Thus, while the trajectory of unfettered competition led to very different places in the two industries, the end result is still a negative outcome of the stakeholders who are supposed to benefit.

PART 4: HOW DID THEY CARRY OUT THE DEEP CAPTURE:

Despite carrying repackaged corporate ideals, charter schools have attracted politicians and influential people from both sides of the aisles. Even as my after-school students protested the increase in caps on charter schools, it was the liberal Boston and Massachusetts that proposed increasing the cap in the first place.⁵¹ While left-wing politicians such as Senators Elizabeth Warren and Bernie Sanders are speaking up against charter schools,⁵² there still remains a question how it managed to capture the American imagination to such a great extent. It is perhaps easy to see why Republicans gravitate to charter schools. Charter schools exemplify the values of small government and personal responsibility that form the foundation of the Republican party. However, many Democrats also believe in the value of charter schools as well. One reason of course is that some charter schools have been widely successful in some communities, particularly in predominantly African American communities where public school options were very poor.⁵³ However, I posit that there is another reason: wealthy "liberal" Americans also like the message charter schools sends about education inequality and how to fix it.

This proposition has been already circulating in more left-wing circles. In 2016, a Salon article examined why billionaires are attracted to charter schools.⁵⁴ The article asked why billionaires support charter schools so much. While it gave the cynical answer that charter school's anti-union, anti-regulations message appealed to wealthy people who wanted to dismantle support for unions and regulations nationwide, it also mentioned a less cynical answer.⁵⁵ This answer was that some wealthy people genuinely believe that what is truly wrong with the education system is simply how it is run and the lack of innovation.⁵⁶ This particular ideology was especially seen to be common with tech billionaires such as Microsoft founder Bill Gates⁵⁷ or Netflix founder Reed Hastings.⁵⁸ While it is near impossible to conclusively say whether someone who strongly supports a cause truly believes in the ideology behind it rather than supporting it for a self-serving reason, it is not difficult to conjecture why charter schools would appeal to the very wealthy Americans, especially tech billionaires, for reasons unrelated to their own profitability.

Charter schools focus on “stick” solutions. Inherent in the message of accountability, autonomy, and choice is that consumers (students and parents) and those who run the schools are people with complete agency who only need to restructure their way of thinking and acting to achieve success. Thus, school systems would be more successful and equitable if they only adopted these ideals whereas individual students would be more successful at schools that promote these ideals. This leads to the comfortable thought that the children America is failing every day through the school system are in complete control of their destiny and just need to be provided the right tools through the charter system. Thus, there is no need to take a harder look at how the system is structured on a more macro level and how income equality and racism affect education outcomes.

While the reason above may be mere conjecture, there is no doubt that billionaire dollars in support of charter schools lead to charter school friendly governments, especially city governments that are usually formed by Democrats.⁵⁹ And this is one of the reasons why charter schools have supporters on both sides of the aisle.

CONCLUSION

In 2021, nearly 30 years after their establishment in the United States, charter schools continue to remain a controversial topic. While there is certainly more research that can be done on their objective merit in

improving the public education system and what factors lead to their success, it is also important to focus on the values inherent in a charter schools and where they come from and what they hope to correct.

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