

**"COMMON," "SYSTEM," "UNIFORM," AND "EFFICIENT" AS TERMS OF  
ART IN THE EDUCATION ARTICLES OF STATE CONSTITUTIONS: A  
PHILOSOPHICAL FOUNDATION FOR THE AMERICAN COMMON SCHOOL**

by

Mary Jane Guy


Dissertation submitted to the Faculty of the  
Virginia Polytechnic Institute and State University  
in partial fulfillment of the requirements for the degree of

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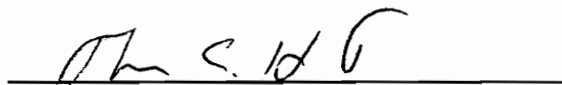
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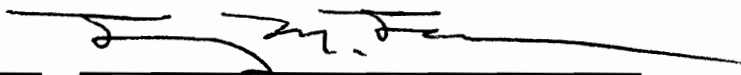
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Committee Chairman: Kern Alexander  
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(ABSTRACT)

One of the most important administrative problems in education today is how equitably to finance the school system of a state, since frequently the question of insufficient revenue and disparity between school divisions and states reflects a larger societal problem of commitment to public education. The proposal to restructure, if not refound the present educational system as a quasi-public marketing entity using educational vouchers now challenges the time-honored common school ideal.

This study provides a philosophical rationale for the American common school to aid legislators, jurists, and policymakers in interpreting key terms in the educational provisions of state constitutions. It assumes that the school financing policies of a nation reflect the value choices of a people as well as their priorities in the allocation of resources.

The terms selected for analysis: "common," "system," "uniform," and "efficient," are pregnant with meaning in the context of education. Defined etymologically and philosophically, they are "terms of art" because they suggest

ethical standards for a common school system. In the process of defining each term, the study examines the intellectual roots of the American common school, an institution its founders believed could unite the nation and ensure the common good. The present movement to privatize public systems, however, reflects a paradigm of laissez-faire individualism that encourages private self-interest and a divisive pluralism in contrast with an older, more egalitarian tradition of classical republicanism which has shaped the common school ideal.

The phrase "common good," associated with the public interest, is a rubric used to define "common" and other related root terms such as "commonality," "commonwealth," and "virtue." It defines "system" as an aspect of polity and suggests that the terms "efficient" and "uniform" have moral implications for school systems that have a public purpose of effecting a virtuous and enlightened citizenry for the preservation of a republic.

This multidisciplinary investigation emphasizes the duty of the state to educate in the republican, civic humanist tradition. It thus serves as a guide to policymakers required to make complex school finance decisions that will ensure equity and equality of educational opportunity for all citizens in every state throughout the commonwealth.

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**DEDICATION**

To

Samuel K. Alexander

The "James Madison" of Education Finance

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## CHAPTER ONE: INTRODUCTION

It is full time that a grand ideal of education for the masses, a faithful exponent of the demands of our American civilization should be framed for our schools.

Henry F. Harrington, Superintendent of Schools  
Bedford, Massachusetts, 1876.

### Overview and Statement of the Problem

In the United States today there is an inclination among elected officials and state legislatures to avoid confronting the controversial issue of equitably funding public schools, especially if it requires legislatures to mandate additional tax support. This study addresses the challenge to the American common school at a time when Americans, have little faith in their elected leaders to effect reform, and commitment to public education in general appears to be at an all time low.

The problem of equitably funding the nation's public schools is reflected in a political ethic shaped by the divisive forces of pluralism, factionalism, and a dominant public philosophy of laissez-faire individualism that no longer addresses the common good or general welfare of society. This study provides an ethical base for educational policy--a philosophical foundation for the support of the American common school, one of the few public institutions in America capable of resurrecting a standard of public virtue, a concept revered as the basis of all public enterprises since the early days of the Republic.

The discussion that follows demonstrates that the problem of school funding is part of a larger societal problem of commitment to public education where the common school founders' ideal of making education uniformly "republican" and infused with democratic purpose has somehow gotten derailed amidst the clamor for change and reform over the past decade.

### Problem of Commitment

The general problem--a crisis in public commitment to the financing of education in the United States--is multifaceted, of long duration, and has grown increasingly acute. This crisis has affected the funding of education and raised deep questions about the viability of the American common school. For the first time since 1971, lack of proper financial support headed the list of concerns about the public schools for 22% of Americans responding to the 24th annual Gallup/Phi Delta Kappa education poll of the public's attitudes toward public schools in 1992 (Elam, Rose and Gallup, 1992).<sup>1</sup>

Calls to radically restructure education evidence a public mentality no longer content with the educational establishment. Seventy-one percent of the American people in a 1992 national Gallop Poll sponsored by Education Week supported tuition vouchers (Lawton, 1992). Americans have chosen pluralism, interest group liberalism, and, in matters of education, individual school choice as a way to bring pressure against what some consider to be an unresponsive and inefficient educational system. In fact, the "New American School," proposed



by President Bush's "America 2000" initiative, is an attempt to redefine or "refound" the common school as a quasi-public-private entity to eliminate its "exclusive franchise" (Kolderie, 1990, p. 66).

The solution, in part, requires reexamination of the philosophical or moral foundation of the systems of public education which emerged in the early nineteenth century and were designed, in part, to promote the common values of the new nation and to help ensure the viability of the Republic. Especially the financing of public school systems, with its economic focus, cannot be isolated from politics and values or from its environmental or historical context. As Wood notes: "The financing of those systems of public education has been inexorably tied with the values and philosophies underlying the systems themselves" (Wood, 1987, p. 464). Educational finance is concerned with what ought to be the most desirable practices and procedures based on societal goals and cultural values.

Repudiation of public education by religiously conservative parents since the nineteenth century has now expanded into a movement for educational choice which includes a number of leading intellectuals who view a government monopoly of schooling as unwise or unjust. Critics as diverse as Milton Friedman, John Coons, Stephen Sugarman, the National Governors Association, Albert Shanker of the American Federation of Teachers, and Lamar Alexander, the current Secretary of Education, now endorsed school choice that includes

non-public alternatives as part of a national education initiative. As sociologist James Coleman pointed out in 1978:

The polarization of opinion about such plans reflects a division on very deeply held values, involving beliefs about the proper division of authority between the state and the family, beliefs about the dangers to social cohesion of deviant doctrines, beliefs about the relative abilities of professionals and their clients to decide what is best, and beliefs in the importance of maintaining the existing institutional order (cited in Coons and Sugarman, 1978, p. ix).

Critics as well as proponents of public schools have taken great care to set their critique in a context of social justice, especially since the ideal of equality and equality of opportunity as an object of social and educational policy has not been achieved. Ideals to remedy racial inequities have now been compounded by the current challenge of dealing equitably with the religious convictions of parents and students (Glenn, 1988) and dissatisfaction with the bureaucratic structure of schools (Chubb and Moe, 1990). The restructuring and financing of public education may require an entirely new political agenda, for as Daniel Bell observes, "... no such political demand can ultimately succeed...without being rooted in some powerful ethical system..." (Bell, 1973, p. 433) --a system in which justice is recognized as the primary virtue of the polity. Johns, Morphet, and Alexander write:

The school financing policies of a nation reflect the value choices of the people, the order of priorities they establish in the allocation of their resources, and their political philosophy (Johns, Morphet, Alexander, 1983, p. 1).

Others have observed the trend away from a unified system and toward privatization that has swept across the United States and Western Europe in the last decade. A new legitimation and infrastructure for advanced capitalism in a world of technical progress and capitalist growth based on private investment is sought with emphasis upon the proper development of human resources to halt economic decline (Reich, 1991).

Ethnic, cultural and class differences are exacerbated by disparity and malapportionment of financial resources so that the United States now ranks far below other nations in equity among citizens (Durning, 1990, p. 138). Research has also shown that the educational burden caused by an increasingly heterogeneous population in the United States will require an even greater commitment to the financial support of public education than ever before (Alexander, 1992).

The problem of social division and pluralism is not new but dates back to the nation's founding where the public school framers, such as Benjamin Rush and Thomas Jefferson, feared that heterogeneity of a people would undermine uniform and peaceful government. However, divisiveness and pluralism today is manifested as a problem of malapportionment of society's fiscal resources reflected in the financial provision of education. The problem of fiscal disparity in the schools requires reinvestigation of the connection between social and economic inequality and division within the nation and the nation's schools. It also requires redefinition of the notion of public interest to mitigate against an

excessive self interest or factionalism on the part of legislators who may be tied to selfish constituency interests, particularly since "The gap between our system's need for effective governance and the capacity of our elected officials to provide it widens at an alarming rate" (Wamsley, 1990, p. 114).

To bridge this gap, moral and ethical questions must become a focal point in any discussion of fiscal disparity between school districts. Alexander writes: "The solution must lie in the reasoned and philosophical determination of fairness in the sense of the common good and its achievement through governmental action" (Alexander, 1990, p. 272).

Redefining the common school and the "common school agenda," affords an opportunity to present the moral concept of fairness as part of the lexicon of public interest. Such re-investigation has been universally called for on both sides of the political spectrum at a time when a consensus on the moral content of education no longer appears to exist. Writes Charles Glenn in The Myth of the Common School, a book that now serves as a cornerstone for policy in the United States Department of Education:

The public school has largely abandoned the role that was of such central importance for Horace Mann and his contemporaries: developing character and conveying moral principles for which there was a societal consensus. It was this mission that gave the common school its almost sacred character in American life from the middle of the nineteenth to the middle of the twentieth century (Glenn, 1988, p. 287-288).

This "sacred character" of the public school was formulated by public officials in local and state government, municipal authorities, and legislators,

aligned with administrative and educational progressives--not teachers or lay persons outside of the establishment (Tyack, 1974). However, public officials, or administrative elites who influence public policy through the exercise of their administrative discretion, are responsible for the perpetuation and conservation of "regime values" which were "...brought into being by ratification of the Constitution that created the present American republic" (Rohr, 1978, p. 59). Public officials have taken an oath to uphold the Constitution which symbolizes not only the values and foundation of our society, but a frame of mind:

The Constitution does not just distribute power, it does so in a cultural context of principles and beliefs and expectations about appropriate social outcome of the exercise of those powers...A constitution not only presupposes a census of "views" on fundamentals; it also presupposes concern for its own continuance. Therefore, it presupposes efforts to predispose rising generations to the "views" and habits and dispositions that underlie institutional arrangement. In this sense, a constitution is not only an allocator of power; it is also the polity's frame of mind (Will, 1983, p. 79).

### Crisis in Educational Investment

The real issue, however, is lack of commitment or a "frame of mind" conducive to capital investment in public education in general. To what extent this problem signals a leadership crisis on the part of state legislators and public officials in the maintenance of educational systems through public taxation is not clearly understood or researched. According to Barnard (1948) and Selznick (1957), the preservation of institutional integrity is "one of the most important and least understood functions of leadership" (Selznick, 1957, p. 63). The

effectiveness of any organization or system is determined by value commitments that obligate or bind processes to specific courses of action and specific "...choices that fix the assumptions of policy makers as to the nature of the enterprise" (p. 55).

Needless to say, the level of public spending on education in the United States has been a matter of considerable controversy in recent years. When the ratio of K-12 expenditure to GNP is considered, the U.S. is now ranked ninth among the Organization for Economic Cooperation and Development (OECD) nations (Ram, 1991). With fiscal effort in the United States in 1975 nearly optimal, Ram shows that by 1985 the United States had underspent for public education in the range of 10 to 12 percent (Ram, 1991, p. 8-14). The American Federation of Teachers (AFT) notes that the United States in 1987 ranked 11th among 15 developed countries in public spending as a percent of the GNP (Nelson, 1991; Verstegen, 1992). The United States has devoted a smaller share of its resources to pre-primary, primary, and secondary education than most industrialized nations (Russell and Mishel, 1990).

Several explanations have been advanced for this poor international showing of fiscal effort for education on the part of the United States: (a) the deterioration in the position of the poor versus the rich in terms of per capital personal income<sup>2</sup>; (b) the increased fiscal burden thrust upon the public schools in America due to a growing demand to serve an increasingly heterogeneous population; and (c) the internal shifting of resources among the Federal, state

and local governments (Clark and Amiot, 1991) which has increased educational disparity among school districts (Alexander, Winter, 1991).<sup>3</sup>

International comparisons of expenditures for education are especially misleading when educational burden is considered. Phillips notes that American public schools are now educating pupils of a more differentiated poverty than 10 to 20 years ago and that the American student enrollment is more diverse or heterogeneous than that of other foreign countries whose educational burdens are much lighter (Phillips, 1991). Consequently, "the more diverse the population the greater the costs" (Alexander, Winter, 1991, p. 134).

Robert B. Reich, a noted economist concludes in The Work of Nations that a deficiency in effort mostly within the last decade impacts equality:

the average figures on per-pupil expenditure in the United States disguise growing disparities among states and among school districts. During the 1980s, federal support for elementary and secondary education dropped by a third. States and localities picked up the bill, but for some of them the burden has been especially heavy (Reich, 1991, p. 256).

Reich further argues that America's elite has retreated into a private utopia and forsaken its stake in the national good. According to Reich, the traditional sense of community has been replaced by a new sense of community with a rationale rooted in laissez-faire individualism that enables a "fortunate fifth" to resist public taxation and to quietly secede from the rest of the nation without bearing any responsibility to the other "poorer community" for community services and schools.

Where state governments have failed to correct for inequalities and disparity among school districts, many poor school districts with low fiscal capacity or an inadequate property tax base are now receiving less money per pupil than before:

Hundreds of poor local school districts receive less money per pupil merely because they have low fiscal capacity and state governments have failed to correct the inequalities. The result is that the standard of quality of education continues to decline in poor school districts relative to more affluent school districts (Alexander, Winter, 1991, p. 132).

Consequently, plaintiffs in school finance cases have called for the state to justify creating funding disparities by providing compelling reasons for such malapportionment caused by wide variance in effort and the property tax base. As Isaiah Berlin notes: "A society in which every member holds an equal quantity of property needs no justification; only a society in which property is unequal needs it" (cited by Alexander, Winter, 1991, p. 136).

Despite, industry's concerns about the need to build an infrastructure through education, corporate support of the public schools through philanthropy, educational "partnerships," corporate-funded scholarships for poor children, and corporation-school adoption programs diminished in the 1980s even as the economy boomed. Reich notes that in the 1970s corporate giving to education increased on an average of 15% a year, but climbed at a much slower pace in the 1980s. Corporate support of public education increased 5.5% from 1986 to 1987 and only 2.5% in 1988 over 1987, with most of this support allocated to



colleges and universities. Reich also reports that because only 1.5% of corporate giving in 1989 was directed toward primary and secondary schools, states and localities have been left with less corporate revenue to spend on schools and other community needs (Reich, 1991, p. 280-281).

According to the Advisory Commission on Intergovernmental Relations, corporate share of local property tax revenues dropped from 45% in 1957 to 16% in 1987 (Reich, 1991, p. 281). At the same, corporate executives proclaim the need for better schools (Business Round Table, 1989), and corporations have relentlessly pursued local tax abatements. GM's successful efforts to eliminate its taxes in Tarrytown, New York where a factory has been located since 1914, reduced local revenues by \$2.81 million in 1990 forcing the town to lay off scores of teachers (Rubenstein, 1990).

With corporations expanding their operations around the world, even less commitment and corporate revenue can be expected in the future in support of public education in the United States and a poor clientele (Reich, 1991; Salamon, Musselwhite, and De Vita, 1986). The consequence of increasing private disinvestment in education is a growing inequality in basic social and community services, declining economic and educational opportunity, and a widening of the gap between rich and poor (Phillips, 1990).

### Problem of Values

Political and moral vision has always played an important role in defining the purposes of education in a democratic republic. From ancient times to the American revolutionary period and continuing to our post-modern, post-industrial age, various philosophers and statesmen have addressed the role of education that requires integration of values and purpose within a community. Modern social and intellectual historians solemnly acknowledge a lack of communitarian spirit in 1990: "We have committed what to the republican founders of our nation was the cardinal sin; we have put our own good, as individuals, as groups, as a nation ahead of the common good" (Bellah, Madsen, Sullivan, Swidler and Tipton, 1991, p. 90).

How a society views this dichotomy between private interest and the public good in a republic will determine the kind of political and financial support a people give to its public schools. The founding fathers dealt with the problem of developing an effective democratic civic spirit in a commercial republic. The debate between private self-interest and public or common good waged by the Federalists and Anti-federalists, has never been resolved. In fact, some argue that "The tension between self-reliant competitive enterprise and a sense of public solidarity espoused by 'civic republicanism' has been the most important unresolved problem in American history" (Bellah et al., 1991, p. 256).

Throughout history, public or civic virtue and private self interest have been competing values that have struggled for ascendancy in the American

commonwealth. Many political theorists and philosophers have elaborated on various "civic values" which are integral to democratic society. Justice, equality, participation, and personal obligation for the public good provide unity in a democratic society, whereas freedom, diversity, privacy, due process, and human rights undergird pluralism (Butts, 1978).

The early proponents of public schools, Horace Mann, C. P. Cubberley, Freeman Butts, Lawrence Cremin and others argued that the political values of equality, liberty, and public virtue of the American Revolution became the principles which were incorporated into the political community, the constitutional order, the governments of the independent states, and eventually the new nation (Butts, 1978 and Cremin, 1980). The systems of public education which emerged from the early nineteenth century were designed, in part, to promote the common values of a democratic republic and to ensure continued viability of republican principles through a virtuous and educated citizenry and a quest for the common good.

However, a recent observation that "the will of the majority may establish legality, but not morality" (Alexander, 1990, p. 273) explains in part the recent crisis of public commitment to adequately fund education. This legal right-moral right dichotomy imposes an obligation on the state to morally effect the public interest. However, a state legislature may pass laws that allocate fiscal resources favorable to the majority while at the same time denying certain privileges to a minority. As Alexander explains, "a legal right may be bestowed by the majority

and may be legally enforceable, but it may not be moral as determined by the common good" (Alexander, 1990, p. 273).

As Alexis De Tocqueville (1963) notes, a nation's laws may reflect shared values, but "habits of the heart," human predilections, preferences, and deep seated prejudices, determine the true moral predilections of a people. Such predilections have produced such injustices as de facto segregation. Habits of the heart, which De Tocqueville believed to determine public morality and conscience throughout American history, may impose real limits because these predilections may reflect a lack of wisdom, a class consciousness, self-inflicted blindness or lack of moral consciousness, both individual and collective, that distort our understanding of ourselves and our ethical possibilities (Niebuhr, 1932).

Robert Dahl (1986) shows how several "historical commitments" that have evolved over time are now operating simultaneously and contributing to a confused sense of national purpose. The first commitment, made at the founding of the Republic, was to a liberal political and constitutional order that gives primacy to the protection of certain political and civil rights among its citizens. The second commitment, consolidated somewhere between 1800 and 1836, was the belief that the only proper constitutional and political system for Americans is a democracy. By 1900 the nation embarked on a third national commitment to the socio-economic order of corporate capitalism and attempted to remove many hardships and injustices through government action which allowed the concept of the welfare state to gain acceptability. As the battle over this third

commitment continued to rage, the nation committed to yet a fourth role as a world power. We are now experiencing the fifth in a series of roles or ideological "foundings." The New Deal and civil rights movements have now required us to redefine and implement concepts of justice and equity (Egger, cited in Wamsley, 1990, p. 114).

### Problem of Pluralism

If legislators in the twentieth century are remiss in their obligations to encourage the common good of society and the full participation of its members, especially in support of common schools, they may be examples of what Theodore Lowi has aptly labeled "interest group liberalism" (Lowi, 1981). This phenomenon is "the parochialization of the public interest, the fragmentation and erosion of public purpose and the centrifugal pressures that have franchised pieces of public authority to policy subsystems" (cited in Wamsley, 1990, p. 114).

Since the nineteenth century the acculturation process has been increasingly resisted in preference to parental and local values, ethnic and multicultural traditions, and increasing sectarianism. Americans have observed that pluralism which caters to special interests and multicultural values has caused the dissolution of the Balkan republics abroad and threatens to undermine national unity at home (Schlesinger, 1991). A political and economic system of

mutual advantage among individuals operating out of self-interest and engaged in diverse and often competing ends has fragmented the public interest, engendered strife, and proved ethically intolerable to students of American democracy who cherish the common good:

Pluralistic government systematically discriminates in favor of established stable bureaucracies and their specialized minority clientele...who lack political and economic resources....This condition is morally reprehensible and if left unchanged constitutes a fundamental, if long-range, threat to the viability of this or any political system (Frederickson, 1971, p. 311).

#### Problem of Leadership

The task of leadership to safeguard the public interest is difficult in a modern republic "...with a commitment to freedom and justice on the one hand and a commitment to a complex mixture of capitalism and state intervention on the other" (Wamsley, 1990, p. 115). Our political culture includes "a pernicious mythology concerning the public sector and public administrators which needs to be corrected before the American dialogue can enter a new and meaningful phase" (p. 115). A central issue of school finance is on what principles government officials should act to distribute goods and services to citizens in a society where "individual liberty, understood as noninterference, trumps social welfare and democracy" (Gutmann, 1987, p. 177).

Regardless of who provides the leadership of America in the future or what interests are represented, it is generally confirmed that the common good is

a desired goal and that virtuous, disinterested public leadership is needed. Simon reasons that just as an individual needs to be directed in the pursuit of individual goods, so a community may be unable to attain its own common good "without guidance or some means of authority that binds the various pluralisms contained within it into a common community of interests or civil society" (Simon, 1961, p. 61).

Political theorists have suggested various guides or moral standards to public officials. Dahl, insists that three criteria must be satisfied before any commitment for a truly democratic decision-making can be made: "political equality", "effective participation," and "enlightened understanding" (Dahl, 1986, p. 233). However, only by meeting the criterion of "inclusiveness" can America legitimately be called a "full procedural democracy" (p. 247). Pendelton Herring, one of the founders of modern political science, proposed at the time of the New Deal the rather elusive concept of the public interest as a standard for executing the law:

This is the verbal symbol designed to introduce unity, order, and objectivity into administration. This concept is to the bureaucracy what the 'due process' clause is to the judiciary. Its abstract meaning is vague but its application has far-reaching effect (Herring, 1936, p. 5).

Downs, defending his book, An Economic Theory of Democracy, for lacking a theory of the public interest, stated that the public interest serves "as a guide to and a check on public officials who are faced with decisions regarding

public policy but have no unequivocal instructions from the electorate or their superiors regarding what action to take" (cited in Goodsell, 1990, p. 100). For Flathman, the "politics of public interest" is a politics where other-regarding benefits are widened and common ground is enlarged" (Flathman, 1966, p. 48).

### Need for Common Ground

Public education has long been recognized as the common ground which forms the basis for a democratic polity to further the public interest. Universal popular education concerned primarily with shaping common attitudes and loyalties has been high on the agenda of political theorists in west European democracies and America since the nineteenth century. The first principle of republican theory is that self government requires education for citizenship. In 1954, the Supreme Court in Brown v. Board of Education found that education "...is the very foundation of good citizenship."

Republican theory contains two interlocking propositions that have advanced the concept of a public school system: (a) self-government requires education for citizenship; and (b) government has an obligation to educate for citizenship. By establishing an obligation to educate in their constitutions, the states have implicitly or explicitly embraced both propositions as a basis for public policy and the formation of the public interest (Hubsch, 1989).

In a republic, self-government depends upon objective knowledge, or the "diffusion of knowledge," as Thomas Jefferson, Horace Mann, and others have



demonstrated. An informed electorate is acknowledged in the constitutions of many states. For example, the Texas constitution holds "a general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people." The South Dakota constitution posits "...religion, morality, and knowledge being necessary to good government." The constitution of Idaho specifies: "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government" (Thompson, 1990, Appendix, iii).

Secondly, republican theory holds that government has an obligation or "duty" to educate for citizenship. Today, approximately forty-eight states recognize a constitutional duty to educate. State courts have consistently held that the system of public schools is a state system, under state legislative and executive control. This notion has been upheld by the United States Supreme Court in 1890 in Clark v. Haworth: "Essentially and intrinsically, the schools in which are educated and trained the children who are to become the rulers of the commonwealth are matters of state, and not of local jurisdiction."

Brown v. Board of Education concluded that education provided by the states is "a right" which must be made available to all on equal terms. But nowhere in the federal constitution can be found an explicit, affirmative duty of the federal government to educate. Nor does the United States Constitution provide a mechanism to force the states to comply. The federal government only prohibits the states from discriminating in providing access to the schools or

prohibits state officials from removing a student from school without procedural protections.

Lacking any philosophical basis for decisions, federal judges have looked to Brown only for equal protection issues relying upon the principles of rationalism and the doctrine of separation of powers to avoid conflict with the states in resolving the issue of education as a fundamental right.

However, the states have learned much from past litigation in the federal courts. First, no clearly articulated principle or rationale had established education as a fundamental right. Courts have operated from an abstract ideology of strictly equal opportunity and equal protection guarantees. Secondly, equal protection claims have generally applied only to specific disadvantaged minorities and have excluded the great majority of citizens. Thirdly, equal protection claims serve only to equalize educational opportunities and have not addressed specifically how to improve or maintain the quality of education for all students through the equitable funding of schools which is the major issue of school finance reform today.

A decade and a half after Rodriguez, state courts came to the forefront of education litigation to address inequitable funding systems. Without guidelines for interpreting state constitutions, the states themselves have never developed a constitutional rationale. Since Serrano v. Priest in 1971, twenty-six states have experienced legal challenges to their school finance systems at the appellate court level. Judicial challenges in fourteen state courts resulted in school finance

systems being upheld as constitutional and twelve state courts found their educational systems unconstitutional (See Appendix).

In all of the above school finance cases there was a "Serrano situation" (i.e., the wealth available to support the education of public school students was highly dependent on the student's residency and not on the wealth of the state as a whole). In New Jersey, Kansas, Wisconsin, California, Connecticut, Washington, West Virginia and Wyoming, the courts applied the traditional "strict scrutiny" test of equal protection to establish education as a fundamental right. Since no compelling state interest could be found in these cases, the fiscally inequitable finance systems were ruled unconstitutional. In West Virginia, New Jersey, and Washington, the state supreme courts defined a standard of education quality but left to the legislature a remedy that could use either fiscal or non-fiscal measures to bring the level of educational attainment within state constitutional limits.

However, more creative litigants and courts have applied the specific language of the education clauses in state constitutions in a more powerful fashion--as positive mandates for maintaining standards of quality education. These constitutional mandates have proved education to be a fundamental right and succeeded in establishing a minimum threshold of quality for educational systems that may have exceeded the minimum level required by the dictum of Rodriguez.

In three benchmark cases, Edgewood Independent School District v. Kirby (1989) in Texas, Rose v. the Council for Better Education, Inc. (1989) in Kentucky, and Abbott v. Burke (1990) in New Jersey, the courts addressed the states' obligation to provide equitable systems of education strictly under the positive educational provisions to provide a "basic," "adequate," or "thorough and efficient" systems of education. The argument for equitable funding focused on the substance of educational programs and the sufficiency or adequacy of state funding schemes in relation to specified outcomes of schooling and rested on the specific language of the state constitutional provisions. The term "efficiency" in these state constitutions served as a surrogate for broader issues of equal protection or due process.

Relying exclusively upon the interpretation of technical language in state constitutional provisions is a rather technical legalism, but it has generated a new kind of jurisprudence that now "...create[s] a solid core of state case law that exists wholly independent of federal law" in the absence of any other viable standard (Hubsch, 1989, p. 133). This new form of judicial review is distinct from the equal protection litigation in both federal and state courts:

The holdings are based entirely upon law created from state constitutional materials. It addresses issues of education quality rather than equality and therefore constitutes a viable and distinct doctrine of educational entitlement. It answers the call of the United States Supreme Court in Rodriguez for the states to take responsibility for what is essentially a state function. It satisfies the principle that judges must assume a role in enforcing the duties imposed by the state constitution. Finally, it provides a mechanism for implementation of the republican precept of education for self-

government which undergirds the education articles of the state constitutions (Hubsch, 1989, p. 133).

This new brand of jurisprudence has also demonstrated that republican principles embodied in the educational articles of the state constitutions are at least as vital to the maintenance of a democratic form of government as federalism, separation of powers, or classical liberalism in the natural rights tradition which has provided the basis of jurisprudence in school funding equity cases at the federal level in the past.

#### **Need for A Constitutional Rationale**

The affirmative duty of state government to educate for citizenship implies at least some adequate or minimum standard of educational quality that state legislators are obligated to maintain, although precisely what that standard is, is purely a matter of interpretation. Justice Powell, upholding the Texas finance system, admitted that the only practical standard that may be called upon in school finance cases is private, practical judgment, or the "limits of rationality" (Serrano v. Priest, 1976).

In accordance with republican theory, government educates for the good of the entire community, not necessarily for the good of the individual or a minority. Consequently, failure to educate suitably, sufficiently, adequately, minimally, or uniformly affects the community more than just the individual. By defining and enforcing standards of education quality, the state courts can

guarantee the right to an assured quality of education which the republican progenitors of the articles intended to create. Of course the courts can also through their opinions redefine, extend, or even subvert regime values through an unenlightened interpretation of the law.

The education clauses of the fifty states vary in their formulation of the state's duty to establish and maintain publicly funded schools. Each state constitution has its own particular wording and history to shape those standards. The clauses establish various qualitative standards such as "general and uniform," "general," "suitable," and "efficient," "thorough and uniform," "general and efficient," "uniform" and "adequate," "high quality," "quality," and "complete and uniform." Consequently, each state court has utilized a variety of theories both for criticizing and for refusing to criticize the state legislature's implementation of its constitutional duty, so there is little consistency on school funding equalization. Despite only twelve successful challenges to inequality of opportunity in the various states, school finance litigation is still not on the agenda of many states. The story of American education in the twentieth century is, by and large, a story of opportunity lost. State legislatures have been active in efforts to improve the quality of public schools, but many states remain reluctant to deal with the propriety of disparate expenditures by school districts which result in public schools in poorer communities receiving less per capita monetary support than schools in wealthier communities.

In many states where there are inner city minority populations or rural and small school districts faced with declining enrollments, aging facilities, limited curricula and diminishing political influence through redistricting, disparity is acute and will continue. Demographic change, new demands for entitlement, the growing disparity between rich and poor, and increasing pluralism, only further complicate the complex problems of fiscal scarcity and inequitable funding for American public schools.

The new jurisprudence based on interpretation of specific "terms of art" in the education articles of the various state constitutions holds much promise for educational finance reform. The education articles of the various state governments alone state clearly and positively the obligations of the states to education. This is in accord with republican theory which holds education essential to self government and which recognizes government as the source and the perpetuator of the attributes of citizenship.

Thus, while liberalism in the natural rights tradition remains the dominant idea that has influenced the role of the federal government with regard to educational opportunity and equality, republicanism better explains the historical background of public education in the United States and the incorporation by each of the fifty states in their respective constitutions of an explicit "duty" of government to educate its citizenry.

The public pressure for school reform and entitlement combined with recent equity litigation in state courts is raising education to a new level of

public policy concern. The urgency of reform suggests that a viable public philosophy is needed to address the claims of citizens now advocating a quasi-public form of private, entrepreneurial education in the United States. With clarification of republican principles inherent in the educational articles of the various state constitutions, this legal movement could gather additional momentum throughout the country.

### **Purpose of the Study**

A first purpose of this study is to define the terms "common," "uniform," "system," and "efficient" found in the educational provisions of state constitutions in order to provide a rationale for court decisions and other areas of educational policy. An equally important and related purpose is to provide a philosophical foundation for the American common school, for while public education is not part of the United States Constitution, the values of a society which created that Constitution set the stage for the development of a strong system of public schools.

The terms "common," "uniform," "system," and "efficient" defined etymologically, philosophically, legally, and historically are regarded as "terms of art." The exposition of these terms within the American intellectual tradition will demonstrate that the American common school is a republican institution requiring a moral as well as political obligation on the part of both citizens and government. By demonstrating that the financing of public school systems is



inexorably tied to the values and philosophies underlying the systems themselves, and especially the regime values of the nation, an argument is advanced for the continued public support of an extra-familial as opposed to familial system of schools.

A third purpose is to consider the fundamental values which form the foundation of American public school finance and to investigate how those fundamental values have been reflected in the work of some of the "founding fathers" of public education. Public school finance is a normative field concerned with what ought to be. The definition of specific terms in the state constitutions is intended to provide normative continuity in the field of education finance since it is a normative discipline concerned with what ought to be. Public school finance specialists prescribe desirable practices and procedures based on societal goals and cultural values. Even with its economic focus and relatively short history, the discipline is not isolated from politics and values. Modern practitioners in the field are actively promoting the equitable financing of public schools, not to mention jurists and legislators who rely on their advice and counsel. These practitioners require an understanding of the ideas and values of the "public school men" and others who have assimilated and transmitted the republican ideals and values to a modern generation unmindful, for the most part, of the larger tradition of civic humanism that has informed American public institutions.

## Need for the Study

There has been a vast amount of research and a good deal of non-significant results on such aspects of schooling as specific teaching and learning methods, efficiency, or equity without addressing basic moral and philosophical assumptions about the purpose of education in a modern, pluralistic state. This study, through the explication of key terms that mandate education in state constitutions, demonstrates how common schooling is deeply rooted in our thinking about the nature of the state and why the "common school agenda" continues to shape the concept of a shared national identity and purpose.

A century ago, Superintendent Henry F. Harrington of New Bedford, Massachusetts, expressed similar frustration with the perennial problem of a lack of a coherent public philosophy and commitment to education. In 1876, during the revision of Massachusetts Constitution, he noted that school systems have been established in the midst of conflict about American ideals:

The pioneer systems in various colonies or states, after which all subsequent organizations have been patterned, were not built up on any basis of clearly defined principals, deduced from the demands of American citizenship and American life. Of course there was an impassioned recognition of the comprehensive fact that the culture of a free people is essential to the preservation of its liberties, but nowhere was this great truth practically applied as a formative power, dictating studies and methods of study, and infusing into the spirit of school discipline the inspirations of its own peculiar life. In fact, most of our studies and methods were directly imitated from those of the schools of aristocratic Europe, with all their arbitrary limitations and exclusive purposes; so that they have been in ceaseless conflict with American ideas and needs... (cited in Sepinwall, 1986, p.333).

The point here is not that commitment to common values or a set of "clearly defined principles" requires a national system of education, but that educational systems must have a rational and ethical basis compatible with America's own unique regime values for legitimacy. American public schools have always responded to forces within and without the culture, but because of their organization, support, and control, they have been especially vulnerable to the strongest social forces.

The impact of business and industry upon education, along with the economic imperative of the free enterprise and capitalistic system under which industrialism developed, continues to furnish the rationale for education in the United States (Callahan, 1962). However, the early founders of the public school system believed that it was the role of the common school to provide a philosophical and moral basis for promoting the public interest and general welfare. This argument that links the common school with the purposes of government in general is especially relevant in our century of "special interest groups" where a new economic liberalism has made economics the main model for our common life and for our schools. This laissez-faire philosophy, along with a rising tide of sectarianism and religious fundamentalism, presently provides the rationale for public and private school vouchers which seeks increasing support for the private sector in the form of tuition tax credits (See particularly, Friedman and Friedman, 1980; Coons and Sugarman, 1978; Glenn, 1988; Chubb and Moe, 1991).

This economic imperative has been particularly stressed by numerous national commissions such as the National Commission on Excellence (1983) Task Force on Education for Economic Growth (1983). We are now involved in a public policy struggle over who is politically, morally, and economically responsible for equitable financing of education--debating whether education is a parental responsibility or right, whether it devolves upon localities, or whether education should be left to market forces, to state government or some combination of these.

Rather than looking to normative values or republican theory of the public interest, educational reformers continue to invoke a rationale of efficiency, seeking quantitative and behavioristic output measures without questioning whether such concepts taken from business may be misapplied to public institutions (Schon, 1963). Only recently have political scientists and public administration scholars begun to make the public versus private distinction in organization theory (Terry, 1990; Perry and Rainey, 1988; Rainey, 1983; Rainey, Backoff and Levine, 1976; Wamsley and Zald, 1973). Given our tradition of free enterprise capitalism, it is not surprising that business ideas and practices based on a "cult of efficiency" (Callahan, 1962) continues to provide a powerful rationale for educational policy and practice.

A normative trend in education finance has developed in response to the polarization of values that has taken effect in recent years between the laissez-faire paradigm and the new republican and communitarian ethic of civic virtue

and responsibility. Robert Nisbet of Columbia University in historical sociology, Robert Nozick of Harvard University in political philosophy, and Nathan Glazer also of Harvard University in education have called for the reassertion of private freedoms and pluralistic values. However, other modern educational theorists address the role of education in community. They draw upon an earlier classical and republican vision for education in America shared by Thomas Jefferson, Benjamin Rush, James Madison, Benjamin Franklin, Horace Mann, E.P. Cubberley, John Dewey and others in the twentieth century--who view education as an aspect of the whole state or community with a purpose of preserving and maintaining a republican form of government.

Each of these modern writers continue to wrestle with an age-old conflict sparked by the debates between Federalists and the Anti-federalists about the role of the public versus the private good in a republic.<sup>4</sup> Today school finance policies are as deeply embedded in our political philosophy and in the history of the republic as they are in economics and technical analysis. "The school financing policies of a nation reflect the value choices of the people, the order of priorities they establish in the allocation of their resources, and their political philosophy" (Johns, Morphet, and Alexander, 1983, p. 198). Any theory of governance assumes a set of ideas relating to the proper function of education in accordance with a chosen constitutional form, and within that form with efficacy. A theory of governance deals with issues such as the proper source of authority for national institutions, a recommended scheme for apportioning power among

and within the institutions, the kind of agenda that the government can manage, and general strategic notions about how to make the government work in practice (Caesar, 1981, p. 458).

However, as this study demonstrates, a theory of government is also one aspect of a larger "public philosophy." Political theory and philosophy affect education because they contemplate such questions as the ends of society which requires the interpretation of consensual values such as liberty, property, equality, democracy, and progress. The field of public school finance in particular embraces the role of government, its different levels in society and the role of a nation in the world. In this sense, a theory of governance may be more important to developing a "public philosophy" or philosophy of education in the United States than has been commonly recognized.

Since all of these questions relate to education and the formation and operation of public schools, they have been presented in this study on the basis of first principles. Nearly everyone can accept the broad framework of government established in the United States Constitution. However, any meaningful discussion of the role of education in a pluralistic society must address the convergence of many ideas that have had an important effect on the formation of our constitutions and public philosophy which has shaped public attitudes and beliefs about public schools.

Unfortunately, a general neglect of ideas has characterized all academic disciplines in recent years owing to a behaviorist orientation (Caeser, 1981).

Historians such as Richard Hofstadter (1973) have traditionally made fairly clear distinctions between the "liberal" and "conservative" frameworks or ideologies and between state-level conservatism and national-level liberalism. Both modern liberals and conservatives alike are equally committed to the imposition of moral principles through law, although they may differ practically as to which moral principles should be imposed. A genuine liberal or egalitarian, according to this dichotomy, for example, tends to view capitalism as an immoral social order and defines injustice according to distributions of wealth. The conservative or "libertarian" looks to the politics of individualism, private property, freedom of choice, religious tradition and local government. Each represents a distinct view of human nature and society that has evolved into a distinct public philosophy or ideology. This "...dialectic that has continued over time between the conservative and liberal positions is based on a profound, indeed generic, dichotomy in human thought about society and social processes" (White, 1990, p. 5). However, it does not fully describe the entire scope of American roots and inheritances that have gone into the creation of the American common school.

One of the American values least explored in relation to education is the concept of common good which has an ancient lineage. Some modern thinkers have gone so far as to argue that there is no such thing as the public interest or common good (Schubert, 1960). So it is to a wide range of philosophers and to the law--not the politicians or corporate executives--that one must look for a moral consensus about the proper role of education in a democratic state.

Today a new communitarian movement has emerged (Shapiro, 1991, p. 71), a "new civism" with an outpouring of proposals and projects to create more effective civic education programs in the schools that promote the "teaching of values." People are looking to the schools just as they did in the early days of the republic for an ethical social order. What is also needed is a moral and philosophical rationale for the public support of education in the United States.

A compelling ethical and philosophical argument, above and beyond the conventional, economic efficiency or cost-benefit rationale, is especially needed to guide jurists and state policy makers who are now required to prioritize competing public and private interest claims. Clarification of important language in state constitutions would strengthen public commitment to education at a time when education is in a weakened economic condition--especially now that the political debate over further proposed aid to private schools in the form of tuition tax credits and educational vouchers continues to escalate the perennial conflict between public and private interests.

By defining key "terms of art" in state constitutions, within the context of education and republican theory, this study provides a philosophical rationale that may assist policy makers and jurists in making important legal and financial decisions that will ensure the continued support for public education in the United States.



## Literature Review

This study is not the first attempt to address specific language in state educational provisions. Kern Alexander in the Journal of Education Finance (1989) calls the words "common," "system," and "efficient" "terms of art" in the educational provisions of state because they are pregnant with meaning and significance for school finance litigation. Such terms, he argues, have given legislatures broad discretion in creating school systems and have expanded the scope of the state's educational enterprise. The precise meaning of these specific terms of art will be developed in depth in this study.

Other studies analyze specific language of the educational provisions without defining any of the specific terms as terms of art historically, philosophically or etymologically in a context of republican theory. Honeyman, Thompson, Wood (1989) isolate the terms "adequacy" and "equity" for analysis; Underwood and Versteegen (1990) focus on "adequacy," "equity" and "excellence" within the context of changing equal protection analysis in school finance litigation. McCarthy and Deignan (1982) investigate the legal and statutory precedents for the term "adequacy." Sobel (1985) illustrates strategies for school finance reform legislation which include the use of key terms in state constitutions. Mize (1973-74) groups the terms of state constitutional provisions into three categories: "thorough and efficient," "cherish," and "systems." Sepinwall (1986) in a doctoral dissertation traces the social forces leading to

passage of the "thorough and efficient" amendment to the New Jersey Constitution.

Others explore the new legitimacy found in state constitutions which reflect the ideals of a republican government (Hubsch, 1980). Ground work for examining state constitutional provisions in the context of state litigation is provided by A.E. Dick Howard in his Commentaries on the Virginia Constitution (1970). Other dissertations explore fundamentality in the light of American political ideology and constitutionalism (Keating, 1981) and analyze post revolutionary thought in the formation of the constitutions of the thirteen original colonies (Schmidt, 1971).

All of these recent fairly studies build upon important normative foundations in the field of education finance. Ellwood P. Cubberley (1920) asserted that basic values such as adequacy, efficiency, equity, liberty, and legitimacy reflected the values of the American republic. Strayer and Haig (1923) develop a foundation program that provided a standard approach to state equalization formulas for half a century. Paul Mort (1924) adds another normative dimension to the Strayer-Haig foundation formulation when he defines a minimally adequate education in terms of special student needs, linking the concept of adequacy conceptually to the value of equity.

Several studies in the tradition of Theodore Schultz (1971, 1972, 1981) demonstrate that investment in education by local and state governments results in long-term economic and social benefits. DeYoung (1989) maintains that

expenditures for public education are an investment in society as a whole and the individual in particular. Some demonstrate that a high level of educational attainment is associated with lower crime rates, higher standards of living, better medical care and greater economic productivity (Cohn, 1979; Haveman and Wolfe, 1984). Rosenfeld, Bergman, and Rubin (1989) emphasize equality as well as efficiency to show that where education is not well-supported financially, communities suffer disadvantages that are not easily or effectively overcome without improvement in their base of human resources. Webb, McCarthy and Thomas (1988) show that equal educational opportunity cannot be achieved when it is seen as a function of local wealth.

Other scholars address the concept of education as a fundamental public interest. Kern Alexander's contributions to the theory and practice of educational finance, the history of public education, and constitutional reform in general are notable in Educational Need in the Public Economy (1976), and with K. Forbis Jordan, Constitutional Reform of School Finance (1973). Essays in Verstegen and Ward's The 1990 American Education Finance Yearbook: Spheres of Justice in Education Spheres of Justice (1990) draw upon theories of distributive justice and call attention to the basic moral issue of "fairness" underlying the present political and legal battles for equitable educational systems and other ethical questions not easily resolved.

Numerous educational, sociological, and economic theorists focus attention on the issue of economic disparity in schools and society, and on the

idea of mutual benefit and reciprocity as the foundation of a just society. The dichotomy between public and private interest has especially been explored, notably (Coons, Clune and Sugarman, 1970; and Wise, 1968); and most recently Phillips, (1990); Bellah, Madsen, Sullivan, Swidler, and Tipton (1985 and 1991), and Robert Reich (1991). Reich provides a new basis for economic theory and infrastructure in a highly significant recent study The Work of Nations (1991).

The field of ethics of public administration and policy is especially relevant to this study because educational systems are public bureaucracies or institutions. The public administration field is experiencing a normative revival of moral and political philosophy and recently generated a large literature of significant value to this study. Of particular value to this study is John Rohr's The Ethics of Bureaucratis (1989); Dwight Waldo's The Administrative State (1984), and The Refounding of Public Administration (1990) by Wamsley, Bacher, Goodsell, Kronenberg, Rohr, Stivers, White and Wolf who attempt to revive interest in the public good and its administration. These works precipitated a search for other philosophers, both ancient and modern, whose ideas and concepts on the nature of the common good and the role of education in relation to society and the democratic state provide the background reading of this study.

### **Procedures and Methodology**

The methodology in this study is the basic technique of historical and legal research that relies upon definition, description, analysis, and synthesis

through a preponderance of evidence and a variety of sources and disciplines to explicate the words "common," "uniform," "system," and "efficient," as "terms of art" selected from state constitutions. A definitional approach to each term requires a flexible, open ended, and multidisciplinary research methodology since the study itself is a literature review.

As a general procedure, the etymology of each term provides a broad definition leading to further multidisciplinary analysis of each term through the selected writing of philosophers, both ancient and modern. The definition of the terms draws upon the disciplines of political theory, economics, history, and sociology which requires a close textual analysis of the writings of the most pertinent philosophers, court cases, and public documents.

#### Method of Regime Values

Interpreting a republican theory of governance as it applies to education requires specification of the kinds of ideas that comprise the theory and especially how they evolve over time. The variety of sources of republican theory provide a basic ontology for the American common school. Selections are from classical and modern ideas of republicanism reflected in the writings of a variety of philosophers. Investigation into common good theory, for example, leads to the exploration of the utilitarians and the roots of this movement, along with the ideas of the framers and the early founders of common schools and the

writings that influenced the drafting of the United States Constitution within a context of modernism and egalitarianism.

The method of regime values is inclusive enough to demonstrate that there are values--basic, fundamental beliefs, assumptions or principles that support the meaning of the terms as they explicate the moral foundation of the American common school. Garms, Guthrie, and Pierce (1978) argue that public school finance policies are based on fundamental social values such as equality, efficiency, liberty and political responsiveness, and political acceptability. These principles generally reflect an ideal or standard of fairness, justice, or equality: the basic tenets of the common school. These values, or moral principles for a republican system of education are substantiated by the writings of the philosophers and other sources, such as public founding documents.

A second step in this method is to determine the moral relevance of the terms being defined relative to basic regime values and the equitable funding in education. Historians, though useful, have not been completely reliable in this study. No consensus on the meaning of equality, for example, can possibly be found among such diverse historians as Turner, Beard, Parrington, Boorstin, Commager, Genovese, Morrison, Plum, Schlesinger, or A. C. Van Woodward. Equality, depending on its context, can mean equality of opportunity, equality before the law, equal worth, or equality of income. "Property" can be interpreted as "big" business, a small farm, or gainful employment. "Freedom" can designate the right to abortion as well as Exxon's freedom from government regulation.

Philosophical discussion requires the exercise of personal judgment in the selection or exclusion of ideas and sources. Republican principles in the classical sense of civic republicanism provided a theses or structured framework for the interpretation of the "terms of art" as both process and idea, frequently contrasted to ideas of laissez-faire individualism rooted in the Enlightenment and modern libertarianism.

Some legal analysis elucidates principles, especially in common and natural law or public policy. Alexander Bickel notes how the language of due process and equal protection "...breed attitudes, they tend toward a mind set, they influence future thought and action" (Bickel, 1975, p. 6). Wood in The Creation of the American Republic (1969) notes the influence of law on public values. A network of jurisprudence therefore provides insight into the rich, complex and frequently confusing world of philosophical valuing. The study focusses primarily on the philosophical ideas that shape or influence decisions as well as the laws and opinions themselves in the common law, natural law or positivist traditions.

The terms "common," "system," "uniform," and "efficient" are selected for analysis and definition on the basis of frequency and power. They are all powerful resonators of fundamentality in education that allow one to focus on disparity issues from a variety of philosophical perspectives.

### Device of a Paradigm

The term "common" is especially significant. Under the device or rubric of "the common good," this study demonstrates a paradigm that the early proponents of common schools relied heavily upon, drawn in the main from republican theory. The concept of common good serves as a paradigm for the entire study in two ways: (a) it provides a rationale that undergirds the common school ideal, and (b) it demonstrates consensus implicit in the word "common" that requires a unification of differences in a pluralistic society. There is no attempt to define the term "common good" with scientific precision. It is generally treated as a normative concept dependent upon notions of both what is good or right which span the greater part of the field of moral philosophy.

The common good is a moral, communal concept implicit in the ideal of the American common school. This concept provides both a goal-seeking and a juridical framework or standard for the analysis of each of the terms in the study. Such republican concepts as "duty," or "civic virtue" represent ideal goals or conceptualizations for a democratic society. The common good therefore is a paradigm, goal or standard for an educational system perceived as an aspect of polity. The descriptors of "system," "common," "uniform" or "efficient," are terms of art because, properly defined, they explain the republican nature of the American common school as it was conceived by the founders within a context of civic humanism.



## **Design of the Study**

### **Chapter One: Introduction**

Chapter One presents a statement of the problem, the purpose, and need or justification for the study. It also presents a literature review of key works that provided a conceptual framework of civic humanism for the definition of all terms. It presents the procedures, design of the study, and the delimitations and assumptions.

### **Chapter Two: Common as Common Good**

The second chapter establishes the theme of the study: the common good as the basis of a republic system of schools. It introduces the word "common" in the phrase "common school" as a term of art. The word "common" is one of the most significant terms in state educational provisions and has been consistently used to describe a free, state-supported school system. The term "common" in this chapter is a foundational concept related to the common good and is a powerful descriptor of an educational system. When it is considered as a root word, linked etymologically, politically, and philosophically to other terms in the study, such as "commonality," or "commonwealth," the word "common" demonstrates a moral foundation for a universal, egalitarian, and inclusive common school system.

The chapter introduces the ideological conflict between common good and private interest theory that tends to support the concept of a "familial" as opposed to "extra-familial" system of schools. It demonstrates that the concept of private self interest is rooted in Lockean ontological individualism, the indifferent spectator theory of Adam Smith, and the utilitarianism of Bentham and Mill.

The chapter lays an intellectual foundation to suggest throughout the study that theories of private self-interest inspired by natural rights Enlightenment philosophy have encouraged the modern doctrines of pluralism and minimalist government and the policies of public-private-parochial school choice that now challenge the underlying assumptions of the American common school.

This chapter has also provides some historical background on the conflict of interest in the establishment of free common schools in the nineteenth century. Problems of class, representation, and equity against a backdrop of Enlightenment egalitarian expectation is briefly explored.

### Chapter Three: Common as Commonality

This chapter takes the root word "common" to elaborate on the meaning of community, an important concept relevant to the idea of the common good, and goals of the common school. Commonality is defined as common ground -- those traditions, mores, and assumptions that establish the basic unity of a diverse and heterogenous society. The chapter explores such commonly shared

or regime values as liberty, equality and equity that undergird the American common school. Other ideas of commonality are explored such as commonality of law and membership in community, and the relation of social contract theory to school equity and equality. Also explored is the sources of legislative authority through Rousseau's notion of the General Will. Such ideas are essential to public commitment to education.

One important aspect of commonality frequently neglected is the concept of property which is associated with privatization or elitism. The chapter shows that the concept of free, public, tax supported institutions accessible to all regardless of economic status involves the property right. James Madison's concept of property in human faculties is explored as well as the concept of "new property" to demonstrate that entitlement to education means full membership in society.

#### Chapter Four: Common as Virtue

The root word "common" as in "common good" is linked to virtue in this chapter. While the principle of "commonality" implies community mores, membership, and traditions that predispose a people to the common good in society, commonality alone is not sufficient without the ends or purposes of the state being known. This chapter establishes, through political philosophers, ancient and modern, that virtue is the end of the state. Virtue is a concept of

common good relevant to education because the common school is the vehicle of the state that promotes civic virtue.

Virtue is a vital principle of commonwealth believed to establish moral order in the state. Virtue has been defined in two ways: (a) as a characteristic of "inner soul," or character, and (b) as "civic virtue," or its "outer soul" of the state or polity that makes for judicious leadership and governance. Both aspects of virtue emphasized the importance of a virtuous and enlightened citizenry to a democratic republic, which is the provision of the American common school.

Various philosophical conceptions of virtue are presented. Virtue is discussed in the context of a number of frameworks, and as a moral imperative. It is defined etymologically and as a concept vital to the ethical state. The philosophers' definitions of virtue include benevolence, character, law, and fairness with practical application to education, finance, and disparity throughout.

The chapter also demonstrates a tradition of civic humanism in America with virtue at its center, in contrast with a laissez-faire conception of society, which, provides an alternative paradigm. The theme of a "partnership in virtue" in the tradition of civic humanism demonstrates that schools share with government the same end of state: a virtuous and enlightened citizenry.

## Chapter Five: Common as Commonwealth

Chapter Five builds on virtue theory. The problem being investigated is the relationship between virtue and how it is attained, and law. Virtue in this chapter is civic virtue, a political concept viewed as a foundation for government and law. The notion of commonwealth rests upon principles of reciprocity and public order inherent in the natural and common law traditions. The idea of commonwealth is presented to demonstrate the concept of rights and duties of both citizens and government, a perspective of mutual obligation that serves the virtuous end of the state.

The idea of a virtuous, republican commonwealth is presented to address modern libertarian claims of private self-interest and natural civil rights that tend to weaken commitment to public schools. The duty to educate described in this chapter is illustrated by various "cherish" or virtue requirements of state constitutions supported by such commonwealth values as civic virtue and obligations of citizenship revealed in an analysis of several American founding documents. The Burkean notion of prescriptive constitution clarifies the nature of positive and negative rights and demonstrates that duties are as important as rights to achieve a virtuous republic or commonwealth, or the common good which is the goal of the common school. The term commonwealth, in the main, expresses the Aristotelian notion of "polity" which is compatible with the ideal of the American common school. This chapter lays a foundation in political theory

to advance the notion of a republican system of schools viewed as an aspect of the polity.

### Chapter Six: System as a Term of Art

The term "system" with its descriptors "uniform" and "efficient" can be found in many state constitutions. The definition of system demonstrates that a system of schools is also an institution tied to the polity. That a system is a subsystem of the polity is demonstrated through modern general systems theory which provides an ontological conception of system based upon its organic properties. The ontological qualities of an educational system are described as well as those aspects of a system that demonstrate order, regularity, consistency and hierarchy found in bureaucratic systems reflective of Newtonian conceptions of the universe. Systems of education based upon these scientific assumptions are traced to the first systematizers of education, as well as to a republican system of education envisioned by the common school founders, Thomas Jefferson, Benjamin Rush, Horace Mann and others. The distinctive characteristics of a humanist system of republican civility is presented drawing upon the properties of both bureaucratic and ontological or open systems which demonstrate that an educational system is an aspect of polity.

## Chapter Seven: Uniform as a Term of Art

The term "uniform" more than any other descriptor of "system" suggests state control and centralization of authority, concepts feared and resisted by libertarians and pluralists alike, especially those who revere the time-honored tradition of local control.

This chapter demonstrates that uniformity in an educational "system" does not automatically imply bureaucratic centralization or control or that a unified system is destructive to civil liberty. Various problems and principles are discussed vital to a fiscally uniform, compulsory, and state-supported system of education such as "fiscal neutrality," parens patriae and "subsidiarity" defined within a framework of the common good.

The chapter demonstrates that the term "uniform" generally means sameness and is thus a standard of equality for system. A system in which there is fiscal neutrality, equal access and equal treatment, will ensure equality of opportunity at every stage of its production process. Uniformity also implies equal benefits, advantages or outcomes. The concept also implies a "level playing field" which is discussed as equal liberty within a framework of economic freedom, human capital investment theory, and the welfare state.

Uniformity also suggests inclusiveness in the form of equal access to a "universal" system of education characterized by wide-spread public support. The notion of universal education through a diffusion of knowledge is traced to the Greek learning society ideal, the Enlightenment philosophers, the early education

systematizers such as John Amos Comenius and Thomas Jefferson. It provides a powerful paideia for an inclusive common school system in America.

### Chapter Eight: Efficient as a Term of Art

Chapter Eight defines the term "efficient" as a term of art to mean more than economic efficiency or cost-benefit in the strictly economic sense of a value-free term, i.e. efficiency considered primarily as a mechanical or scientific concept expressing a proportion or ratio of actual results in comparison to energy expended. The term efficient is therefore defined in several different ways: as operational efficiency, as social efficiency, and as equity to show that efficiency in an educational system can only be measured or evaluated in terms of its public purpose.

This chapter shows that the principle of efficiency generally associated with scientific management, Benthamite utility, cost-benefit analysis and Paretian optimality generally is treated as a value-free, production function. The fallacies and limitations of this concept of efficiency are discussed.

Social efficiency, on the other hand, is defined as a philosophical ideal of the Progressive Era in America that moved the notion of value-free economic or operational efficiency and the "cult of efficiency" associated with Taylorism closer to equity. This definition of efficient demonstrates that the term is invested with moral significance well-suited to the purposes of public administration.



Lastly, viewed as a standard of equity for an educational system, the term "efficient" addresses the philosophical problem of ends versus means and the just distribution of educational benefits. The concept of diminishing marginal utility along with the Rawlsian "difference principle" demonstrates that an efficient system must be fair in its distribution of rewards and benefits by taking into consideration individual worth, individual differences, preferences, and needs to the advantage of the least advantaged. This definition of efficiency as equity thus enables plaintiffs to argue for fiscal equality for schools in court actions. The chapter thus demonstrates that a state cannot justify an educational system on the grounds of operational efficiency alone if it provides more educational benefits to the less needy and less to the more needy.

### Chapter Nine: Conclusion and Implications for Current Governmental Policy

The final chapter presents all of the above terms in a context of a proposed "refounding" of the public school system. It addresses several vital issues of educational reform which call into question the nature of public schools and the viability of their future support.

In this chapter the principles of common good that provide a rationale for the American common school are recast into two public interest models that have special relevance to vouchers and choice: the laissez-faire model, which is individualistic, entrepreneurial and predicated upon private self-interest; and the

"republican" model which is egalitarian, communitarian, and suggests that the American common school is a "partnership in virtue" among all the citizens.

This chapter suggests that the battle over the schools today is an ideological struggle based on two completely different conceptions of public interest. The chapter argues that the foregoing definitions of the terms "common," "system," "uniform," and "efficient," preclude any conception of publicly financed education as merely efficient or inefficient market mechanisms with a quasi-public role in society.

The term "common," used as a rubric throughout this study, suggests that the American common school is a democratic institution which, unlike any other, has the capacity to unite the American people behind the principle of common good or the public interest. The conclusion argues that systemic reform of education should therefore not, for the sake of a more rational consumerism, abandon the foundational use of the word "common" in describing any publicly financed system of education.

## **Delimitations and Assumptions**

### **Delimitation of Terms**

This study defines key terms in state constitutional provisions--but only those that strongly resonate the concept of an equitable school system or have the most profound implications for education and equitable funding. The terms

"common," "efficient," "system," and "uniform," were selected on the basis of frequency in the educational articles of state constitutions. In a content analysis of the education articles of the constitutions in the fourteen state school finance systems upheld in judicial actions, the term common was used five times; the term system was used twelve times; the term uniform was used four times; and efficient was used three times. In the thirteen state school finance systems overturned in judicial actions, including the 1990 case of Abbott v. Burke, the term common was used two times in state constitutional provisions; the term system was used ten times; uniform was used three times; and efficient was used six times (See Appendix).

While moral, legal and political argument is used to define each term and to demonstrate a philosophical foundation for the American common school, the discussion does not address the constitutional issues of due process or equal protection guarantees. In defining the terms appearing in state constitutions, this study deals only with the positive mandates--the specific language of what state constitutions themselves say education ought to be or mean. The terms are especially made valid and useful "...within a framework of consciously held values" (Waldo, 1984, p. 194). The study assumes that it is not necessary for all Americans to agree upon what "efficiency," "uniformity," or a "common system" are "in essence" in order to take their measure for purposes upon which all agree. The terms are "terms of art" in so far as they describe the nature and purpose of public schooling, and illustrate that they serve "ends that are important only in

terms of other or higher ends" (p. 195). The definitions are normative because they apply to all public school systems, since ideally the purpose of any public school system is the same.

### Common Good, Common School Ideal Assumptions

Since the common good is the purpose of education that is advanced in this study, each of these terms reflects fundamental moral values that began with a strong commitment to life, liberty, and property articulated by Thomas Jefferson in the Declaration of Independence. Subsequent philosophers, common school men, and laymen may differ practically over the degree of centralization, localization, or privatization to be tolerated in any school system. However, this study assumes that the common school ideal posits strongly held and shared republican values, especially during its great advances when educational leadership was provided by men and women known for their piety and devotion to public schooling (Tyack and Hansot, 1982). Barber writes of the founders of the republic whose basic values reflected concern for the common good of society:

To some degree they shared a republican concern for a government of excellence, a citizen body of virtue, a public order defined by fundamental law (the constitution or politeia) and conducive to well-being, and a community of moderation in which the governed would neither be abused nor be permitted to abuse themselves (Barber, 1986, pp. 43-44).

The common school ideal is thus philosophically advanced through the definition of each term. It is presented as an ongoing quest for excellence and virtue in the state, an ideal for public schools that has persisted throughout the nineteenth and twentieth centuries (See Cremin, 1980, Chapter Five; Schlesinger, 1991), which has outlived the common school founders. The "ideal" conception of the common school is therefore, because of its consistency and longevity, a more valid assumption for public policy than actual proposals to restructure education based on a productivity or efficiency standard alone, a concept devoid of common consensus or philosophical rationale. Policy makers striving to interpret efficiency, for example, must articulate a common purpose. They must ask: efficient for what?

David Tyack (1974), no defender of the educational "establishment," concedes that "...in the old goal of a common school, reinterpreted in radically reformed institutions, lies a legacy essential to a quest for social justice" (p. 12). This study argues the thesis that the legacy of the common school is the republican ideal of the common good inherent in its founding. The common good rubric used throughout the study guides the discussion of fundamental social values which now form the basis for current public school finance policies (Garms, Guthrie, and Pierce, 1978).

### Historical, Ideological Assumptions

This study is not intended to be a history of the American common school, or an "inspirational institutional history" as Tyack describes much educational history written in the United States (Tyack, 1974, Part Two). It focusses on two distinct intellectual traditions which have greatly influenced our conceptions of the American common school: the "republican," egalitarian, or communitarian tradition and the laissez-faire tradition of individualism and private self-interest. However, it is not intended as a morality play to deify the republican educational reformers for their ideology. It does recognize, however, that the common school founders of the first three decades of the nineteenth century (such as Benjamin Rush, Thomas Jefferson, and Horace Mann) were among the first of many common school men down to the present day who articulate a republican conception of a universal system of education in the United States. The study argues that it is basically this conception of public education that has made the American common school a legacy in our time.

Nor does the study scrutinize the motives of the various philosophers or common school founders from a standpoint of presentism to justify or denigrate a particular political ideology. This study makes no attempt to defend or exonerate individual champions of the public schools (either its past philosophers or present officials within the educational establishment) for any motives, inconsistencies, or assumptions they may have in order to rationalize the bureaucratization, inefficiency, or inequities of the present system.

The only concern is to show, in the process of defining key terms in state constitutions, that the early common school founders espoused a philosophy for public education in the United States compatible with the republican ideals and assumptions of the nation's founding. As Ward observes: "While public education is not part of the United States Constitution, the values of a society which created that Constitution set the stage for the development of a strong system of public schools" (Ward, 1987, p. 464).

The American Founding Fathers, especially those who drafted the first state constitutions in the thirteen original colonies, Vermont and Maine, tended to view all public institutions, especially churches, schools, as vehicles of the state with civic virtue at the center; Civic virtue was the end of the state (Schmidt, 1971). This concept of public purpose is articulated clearly in the American civic humanist or republican tradition from the early days of the Republic to modern times. Systems of public schools that emerged in the early nineteenth century were designed to promote the common values of the new nation to ensure the survival of the American republic (Ward, 1987). No such forceful argument can be easily attributed to either the protestant or capitalist traditions that have also shaped the development of public schools (see Kaestle, 1983).

It is important, therefore, that the common school ideal be treated as a reflection of republican, commonwealth ideals and values that are still relevant and viable as a public school philosophy. The republican tradition appears to be

largely ignored by school reformers, although it has been revived by intellectual historians in recent years (Storing, 1987; Horwitz, 1986; Hubsch, 1989; Ward, 1987; McDonald, 1985; Hart, 1984, 1989; Pocock, 1971, 1975, 1985; Schmidt, 1971). The fact is that the republican, communitarian ideology provides a distinct alternative to the market-based, public choice movement (Buchanan and Tullock, 1985) which derives its force from the laissez-faire and natural rights tradition. Both educational and intellectual history now require that these important distinctions within the American political tradition be made, especially since Americans are now in the process of restructuring American public schools without any apparent consensus or public philosophy.

This study also takes its ideological direction from the present field of public school finance--contemporary scholars who now look to earlier republican ideals and principles in dealing with the problem of inequitable financing of public schools. At the turn of the twentieth century, scholars such as George D. Strayer and Elwood P. Cubberley began a conscious effort to study public school finance. They sharply defined a view of the education of all children as being in the public interest and in the interest of the state just as Jean-Jacques Rousseau, Thomas Jefferson, and Horace Mann had done a earlier. Other educational finance scholars continue to rely on these shared values of the American regime, believing that "the school financing policies of a nation reflect the value choices of the people, the order of priorities they establish in the allocation of their



resources, and their political philosophy" (Johns, Morphet, Alexander, 1983, p. 1). Cubberley's views on the financing of education are especially relevant to the republican tradition and were prominent among Progressives. American Progressives, however, were not elitists; most, like Herbert Croly, appear to be nationalists and "commonwealthmen" who sought the general welfare or common good of the state in the republican tradition. Cubberley, despite several statements that rankle contemporary scholars, was one of the first public school men to insist upon "inclusiveness" as a matter of principle. This principle has now become the cornerstone of modern educational finance policy, and Cubberley now is regarded as a forerunner for equity by educational finance scholars (Ward, 1987).

Cubberley, like Thomas Jefferson, Horace Mann, is selected as a common school philosopher because he focusses on issues of adequacy, efficiency, and equity in school finance--issues which now comprise the normative approach to educational finance of many modern practitioners. The foundation program developed by Strayer and Haig, for example, which has been the standard approach to state equalization formulas for half a century, is based on the normative foundations of E. P. Cubberley.

Cubberley, like Jefferson, however, reflects a certain zeitgeist. He writes, for example, as a practical visionary: "Theoretically all the children of the state are equally important and are entitled to have the same advantages" although "practically, this can never be quite true" (cited in Ward, 1987, p. 469).

Likewise, Thomas Jefferson posited basic, timeless republican values and introduced the principle of inclusion in public education to a still aristocratic society. Both his writings and example, however, were limited by practical economic, social, and political circumstances that mitigated against granting Blacks full equality. Nevertheless, Jefferson, like Cubberley, proposed the principles of equality and inclusion that are now regarded as "national ideals...[that] spring not only from the beliefs and aspirations of founders but also...from the experience and efforts of subsequent generations" (Wilson, November, 1992, p. 69).

The historical Jefferson, a slaveholder, has been viewed as a hypocrite. However, revisionists have recently demonstrated that Jefferson believed in the full equality of Black people. Jefferson speculated in his Notes on Virginia that Blacks would one day be free, though he realistically doubted the practicality and efficacy of a fully integrated society in his own time (Wilson, November, 1992).

That Jefferson championed the full equality, emancipation, education, and training for self-sufficiency of the black race is demonstrated by a statement in the prelude to the Declaration of Independence, a statement subsequently deleted and rejected by Congress as part of the official declaration. In this document, he spoke of Africans as men and not a "separate category of beings," who were entitled to the sacred rights of life and liberty and the natural endowments of all men. Jefferson blamed the King of England for tyrannically directing the African slave trade, for waging cruel war against human nature itself and for

violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither...Determined to keep open a market when men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce (cited in Wilson, November, 1992, p. 72).

Jefferson believed in principle in the uniformity of rights and privileges: it was by virtue of the same rights that the Declaration proclaimed all men are created equal. The common school for Jefferson appears to have been a first practical step toward bridging the gap between a philosophical concept of natural rights and a practical, "system of laws and societal values which allows for the fullest expression of these rights" (cited in Wilson, November, 1992, p. 74). Also, the historical Jefferson "was sustained by a profound belief in progress" (p. 74). He wrote, at the age of seventy-three, that "laws and institutions must go hand in hand with the progress of the human mind" (p. 74). The common school for Jefferson was an ideal institution, a projection of human progress, liberty and civic virtue into the future.

Thus when this study utilizes the ideas of Thomas Jefferson, Elwood Cubberley, or Horace Mann as sources for republican values in American public education, it is because they projected cohesive ideals forward into history as goals of national purpose for a virtuous state. Abraham Lincoln also advanced the republican model in Jefferson's terms of "all men are created equal." In the context of civil war, Lincoln forged a deontological argument about what social

and political conditions ideally "ought" to prevail in a democratic republic of the future based on republican ideals.

This study therefore argues that the American common school is a continuously evolving educational ideal. It assumes that any "refounding" of public education should not take place without re-examining the original intent and purpose of the American common school in the light of America's founding philosophy, regime values, or the intent of its framers. If the American common school, in the course of its development, has perpetuated outworn practices that have ill-served the pluralistic nature of modern American society, it may be because many of the commonwealth ideals inherent in the common school have not been thoroughly explored.

This study does not, therefore, address recent polemical literature about the schools (Gross and Gross, 1970; Glazer and Moynihan 1963; Carnoy, 1972). It does not call for systemic change, or champion specific reforms. It suggests only that present-day educational reformers look to the intellectual traditions and assumptions that have shaped the American common school and restore a lost sense of civic autonomy and responsibility for American public education.

#### Self-interest Assumption

Another caveat is needed to explain the frequent use of the purely rhetorical phrase "predatory self-interest," derived from Reinhold Niebuhr and also used by John Dewey (Niebuhr, 1932, p. xiii) and others. Opting for private

school choice through a publically funded voucher plan does not always impute selfish motives. Private, parochial, and home schools have benefitted the commonweal; they have served many members of the public well, and have saved the American tax payer billions of dollars.

However, laissez-faire or libertarian philosophers emphasize that the public good in the tradition of private self-interest is not something that is consciously desired. It is not a conscious act of benevolence to further the common good.

Simply put, it is the difference between getting more for one-self and working for the common good. In addition, giving parents a "choice" about which schools their children attend may be a thinly veiled maneuver for allowing some people to avoid the inclusive nature of public schooling (Tye, September, 1992, p. 10).

Self-interest is "predatory" when it comes to issues of school finance; private property or advantage, once acquired, is not easily sacrificed through public taxation for the common good, especially by the middle class (Neibuhr, 1932). Advantage can be used against the disadvantaged, particularly when the rich or upper classes refuse to raise taxes (as in California's Proposition Number 13) to fund education adequately or to establish a minimum floor of opportunity below which no citizen should fall because of parental wealth or income. In this sense the phrase "predatory self-interest" is no more hyperbolic or extreme than Kozol's expression, "savage inequalities" (1991). Both expressions rhetorically dramatize man's basic sinful and greedy nature. They focus on what Reinhold Niebuhr calls the "brutal character of the behavior of all human collectives, and

the power of self-interest and collective egoism in all intergroup relations" (Niebuhr, 1932, p. xx). They reflect the view that "Any social justifications of unequal privilege are clearly afterthoughts" mostly..."to hide the nakedness of their greed" (p. 8).

The dictionary definition of predatory is "living by preying on other animals," "plundering," "robbing" or "exploiting" others (Halsey, 1973, p. 789). Self-interest becomes "predatory" when it is manifested as human greed or selfishness through a niggardly unwillingness to champion the cause of others as one would his or her own. Private self-interest, it is argued, can be "exploitive" if it seeks no common good at all, if it unconsciously creates inequality of opportunity, or derives benefit from the basic economic disadvantages of those less fortunate who cannot afford to participate fully in a highly competitive society where there is no level playing field and where only the rich and powerful reap the rewards in a game of life that is stacked against the poor or disadvantaged. This issue is addressed as "the problem of the few and the many" in Chapter One. Chapter Three on virtue describes benevolence and common good theory in some detail.

### Regime Values Assumption

It has been argued that America was formed on the basis of an Enlightenment ideology (Diamond, 1991, p.48) and a minimalist philosophy of government which posits only that the brokering of factions and private self-

interest is the basis of the political order. This assumption is refuted by the philosophers and statesmen selected to define the terms. This study assumes that values from classical, Christian and modern liberal philosophical traditions have also inspired a quest for human excellences beyond self-serving political ambition or the mere balancing of interests, i.e. that there is a public interest and a conscious will or desire for the common good, symbolized by the American common school.

As discussed above only those philosophers are discussed, both ancient and modern, who appear to have been most representative and influential in shaping intellectual concepts and traditions, and especially those philosophers that represent republican, civic humanist ideals.

First, the study assumes that the ideas which comprise an American public philosophy are not derived exclusively from philosophy, but also from other disciplines as well: economics, law, psychology, sociology, religion and political philosophy.

Second, an ideological balance is achieved by addressing the polarities of the American intellectual tradition. While the terms are defined, a thesis has limited the definition of those terms. That thesis is that the American common school is a reflection of a founding philosophy of civic humanism. Especially after the American Revolution, many conflicting views were advanced in the various constitutional conventions of the states where revisionist debates took place. Some of the earlier ideas reflecting the revolutionary tenets of the Founders no

longer seemed applicable to the changing national conditions, eastward expansion and national growth.

However, since that time, political, social and economic theorists have continued to draw upon the libertarian ethos of the natural rights tradition; others look to the classical republicanism of Burke, Aristotle, or Cicero. Both perspectives contribute to the ongoing public debate concerning the viability of the American common school as it operates in the public interest.

Third, the study assumes that a republican philosophy of the common good is a powerful paideia. The American common School did not emerge as a full-blown or packaged ideology. It was forged pragmatically over time in a process of reaction to increasing modernization, democratization, changing demographics, and reconsideration of the notions of the framers of constitutions and the many obvious challenges that national growth and expansion have brought to bear upon the relative weight and importance of republican ideas. A "republican" theory that has its roots in both Enlightenment and classical thought was still in the process of being formed at the time Horace Mann and his contemporaries proposed the founding of common schools in the mid nineteenth century and is still in the process of being formed.

The study also assumes that schools are an important instrument of ethical and moral government and the common good. Public schools have the potential to ameliorate social discord, pluralism, and to provide for greater equality of opportunity in the United States.



The problem with philosophy, of course, is that although philosophers may provide support of these republican principles, there are dissenters galore who have argued against them. Purely metaphysical speculations alone have not proved to be exclusively valid. Previous studies have eschewed metaphysics completely, and others have focussed on the existential situation of school finance, or on special court cases and rulings. Inevitably, however, they beg the more general questions which philosophers ruminates and assume: the American common school, like democracy itself is an ideal.

Several important distinctions about ethics limited the research and the selection of philosophers. For centuries, the philosophers have pondered the one supreme moral principle from which all moral rules are derived. This bottomless pit was assiduously avoided. An eclectic approach to philosophy utilizes concepts and ideas that best supported the principles of the republican model.

The moral landscape is full of philosophical theories and approaches. Philosophers like Rawls reason against the social contract theorists of Locke, Rousseau and Kant and reject utilitarian or consequentialist points of view by concentrating on an "univocal order of obligations" (Greene, 1991, p. 177). Rawls, unlike Bentham, and like Aristotle and Burke, concedes a moral order that frames all public institutions.

A modern moral reasoning approach has been balanced by more traditional approaches and perspectives to society and politics found in Aristotle, Cicero, Montesquieu, Burke, and other philosophers who have a deep

appreciation for the polity. This communitarian ethic and practical wisdom appears more suited to the policy arena of today. If any bias is evident in the selection or presentation of the philosophers, it is because of a preference toward the language of ideals rather than the language of rules. The ideas advanced, however, are meant to be feasible, or compatible within the American tradition of regime values. "The fact that authors as diverse in time and content as Aristotle and Rawls are concerned primarily with the justice of regimes is a sound indication of the perennial importance of this issue" (Rohr, 1989, footnote 40, p. 92).

In the final analysis, all other considerations must yield to identifying and explicating first principles. Few debate, for example, that liberty and property are among the American regime values, though equality is somewhat more controversial (Kendall and Carey, 1970). At minimum, the analysis assumes that any moral system, philosophy, or idea under discussion exalts both virtue and justice in some form as the basis for a common morality. In this regard, the "Judaean-Christian ethic" and the Bible are sufficiently objective to include as a basis of a well-known moral analysis of organizational life (Golembiewski, 1965) and is used as a legitimate reference.

An eclectic "regime values" approach holds out to policy experts the greatest promise for developing an ethical perspective for public education largely based on the American common school ideal. Though it takes time to live up to ideals, ideals at least encourage policy makers to elevate a moral

standard--to put a best foot forward in the public interest even if they are not obliged to do so. By utilizing a multidisciplinary, "regime values" approach, the terms "common," "system," "uniform," and "efficient" are defined within the perimeters of a common morality acceptable to public administration and the American experience. In sum, a balanced ideological or philosophical perspective is presented in so far as personal judgment and time constraints reasonably allow.

## NOTES

1. This year's poll 22% of respondents mentioned inadequate finances as a major problem, and 22% mentioned drug use. Seventeen percent mentioned lack of discipline; another 9% identified the closely related problems of fighting, violence, and gangs. "Typically, lack of adequate financing has been listed as a major problem for local schools by some 12% to 20% of poll respondents," particularly by professional and business people, and public school parents with college education and children with above average grades (See Elam, Rose, and Gallup, September, 1992, p. 64-65).
2. Table II from Kevin Phillips The Politics of Rich and Poor (1991) shows that inequality among economic classes has increased over the past decade. In 1969 the lowest quintile of the American population had 5.6% of the income and the highest quintile had 40.6%; by 1988 the lowest quintile had only 4.6% and the highest had 44% of the income. This growing gap between rich and poor in the United States is further substantiated by the World Development Report 1990 which shows that the United States has greater disparity or inequality among economic groups than other industrialized nations (cited by Alexander, Winter, 1992, p. 125).
3. Between 1980 and 1990 the Federal governments' fiscal effort for public schools declined from \$4.00 per \$1,000 of personal income to \$2.79. During this same period the fiscal effort of state governments remained the same, \$21.26 per \$1,000 personal income, while local effort increased from \$18.05 in 1980 to \$19.75 in 1990. Alexander however, argues that the consequence from a macro perspective of this increase in effort at the Federal and state levels was to put pressure on local school districts that had little fiscal capacity to raise the necessary resources for children in poor school districts (Alexander, Winter, 1992).
4. According to Herbert J. Storing, the Anti-federalists were typically more democratic than the Federalists. They were not as likely to view majority faction as the greatest danger of popular government, fearing with Patrick Henry more the tyranny of rulers than the "licentiousness of the people" (Storing, 1987, p. 40). The Federalists, on the other hand, desired leadership of an influential few, fostered republican virtue and self-restraint less than the Anti-federalists, and tended to rely more on the "diverse private qualifications available in the extended republic" to prevent tyranny from a majority faction (p. 41). Both, however, agreed that civic virtue was the essential ingredient in a republic which the Federalists found most ostensibly in "good administration" (p. 42-43).

## CHAPTER TWO: COMMON AS COMMON GOOD

The public interest may be presumed to be what all men would choose if they saw clearly, thought rationally, and acted disinterestedly and benevolently.

Walter Lippmann. The Public Philosophy

Every society rests on common, largely tacit, and unquestioned assumptions about who its members are, what kind of society they are, and what is ultimately important to them. Since the early days of the Republic, Americans have questioned and debated the intellectual roots of their national heritage that makes for coherence as a people. Living in a modern pluralistic and multicultural society has made it even more difficult for Americans to associate the traditional with the good, particularly with regard to educational policy.

This chapter defines the term "common" in educational provisions of state constitutions and argues that a nation's normative foundations are vitally important to public institutions like schools. The current debate in educational policy over the restructuring and financing of public schools addresses the issue of precisely what is "uniquely American" about the common school and precisely which traditions or beliefs should inform educational policy and financial support in the future--assuming, of course, that the common school still has a continuing role to play in shaping the process by which a people becomes a people. As

Ward argues: "Those who ignore the political [and philosophical] dimension of the American public school miss the essence of the public school and the reasons for its support" (1987, p. 467).

Defining the term "common" in this chapter as it relates to the common good and the public interest exposes the dominant paradigm of private self-interest associated with American pluralism. This public philosophy has greatly influenced public school policies such as low taxes, minimal government, local control, vouchers, and private school choice. At the same time there is another paradigm of public interest: a classical and republican philosophy of civic humanism that also characterizes the American common school.

The term "common" descriptive of school systems rather than the term "public," suggests that the common school is an ideal conception that reflects normative foundations. Tracing the normative foundations of the American common school helps to define what the public interest should be with regard to common schools, especially since the financing of educational systems "has been inexorably tied with the values and philosophies underlying the systems themselves" (Ward, 1987, p. 464).

A republican form of government assumes that its citizens will exercise duties as well as rights in the common interest of society as a whole, even as they pursue their own individual rights and private interests. Martin Diamond and other political theorists argue that America was formed primarily on the

basis of an Enlightenment ideology which established a tradition of minimalist government. This legacy posits that only the brokering of factions and private self-interest constitutes the real basis for civic virtue, political order and public responsibility in the United States (Diamond, 1986). Modern theories of natural right and the minimalist state have been traced to the concepts of individualism and limited government of John Locke, a science of human nature expounded by Bentham and the utilitarians, and other laissez-faire concepts.

This chapter suggests that a basic laissez-faire conception of public interest may not be entirely compatible with the common school as it was originally conceived by the common school founders. Concepts of equity, justice, and the common good that pre-date and include the quasi-Lockean assumptions of natural right have an equal claim to the common school.

The word "common" in this chapter is closely associated with the public interest or the common good. The "common good" is a rubric that presents the ideal of the common school against a background of public interest debate and theory from the English Whigs to modern capitalists and libertarians. A comparison of John Locke and Adam Smith suggests that the public interest is a political as well as economic concern. However, a close examination of their works suggests two different interpretations of the common good. Within a context of laissez-faire liberalism, Adam Smith provides an older, republican civic humanism which modern-day libertarians do not always associate with the Lockean tradition.

## Common School Ideal

Eric Voegelin observed that "Every human society has an understanding of itself through a variety of symbols" which reflect a peoples' own understanding of its place in the constitution of being and of its role in history, and especially in relation to some transcendent truth (Voegelin, 1952, p. 27). The founders of public schools, Thomas Jefferson, Benjamin Franklin, Horace Mann, Benjamin Rush and others spoke of the "common school ideal" as though it was a transcendent reality. The American common school is an ideal conception; it represents an object of striving for equality of opportunity and justice in American life and is thus a symbol of the national common good.

According to a "republican"<sup>1</sup> conception, the American public or "common school, along with other public institutions is a partnership in virtue among all citizens (Pocock, 1971), a public service based on civic humanism. The "republican" tradition in America

presupposes that the citizens of a republic are motivated by civic virtue as well as self interest. It views public participation as a form of moral education and sees its purposes as the attainment of justice and public good (Bellah, Madsen, Sullivan, Swidler and Tipton, 1985, note 5, p. 335).

That a free government is based upon virtue, balanced government, and liberty (Kaestle, 1983) has rarely been disputed. Historians have also observed that all human societies rely on commonality--a consensus or intellectual, if not religious or ethnic homogeneity (Scott, 1991, p. B1-B2). The American common school has been seen as an instrument for unity and solidarity vital to a positive



commitment to democracy. Today's multiculturalism opposes such a vision of American democracy made implicit in the language of education clauses of state constitutions that call for "common" schools.

After the War of Independence, the American founders sought to create institutions that would be uniquely American. They especially desired to make education "common," that is, part of a larger political transformation. The education reformers of the nineteenth century wanted to

make it public where it had been private; to make it uniformly republican where it had been ideologically or culturally pluralistic; to make it serve liberty and equality where it had fostered elitism or special privilege; to make it serve the public good where it had been a badge of personal preferment (Butts, 1978, p. 12).

Educational historian Freeman Butts makes a strong case for commonality-one homogeneous people, acculturation, and a sense of national purpose or the common welfare as a national ideal (Butts, 1978). He argues that while public education is not part of the United States Constitution, the values of a society which created that Constitution set the stage for the development of a strong system of public schools. The political values of equality, liberty, and public virtue became shared principles that "were incorporated into the political community, the constitutional order, and the governments of the independent states and eventually the new nation" (p. 9).

However, the founders of the common school had inherited the wisdom of their ancestors as well as a politics of ambiguity. The Declaration of

Independence and the Constitution and our governmental institutions and our dominant political practice were all repositories of mutually contradictory theories of human nature, of human potentialities, and of human destiny. Yet the common school founders, especially prior in 1830, were confident these differences could be reconciled through the common school--the one institution that could transform men into "republicans" and unite them in the new nation.

The public or "common" school envisioned by policy makers during the formative years of the American republic was based on four essential "republican" beliefs: that education was vital to the republic, that a proper education consisted of the general diffusion of knowledge, that virtue and civic responsibility were essential, and that a system of public schools and colleges were the best means of providing mass education on the scale required (Cremin, 1980, p. 46).

The common school as envisioned by Jefferson, Benjamin Franklin, Benjamin Rush, and Horace Mann would "first be free without burden on poor children or class. Second, it would be accessible to all not just the poor and a cross-section of the population and classes, a place where all people could socialize and learn together; third, it would be supported by public taxation; fourth, it would operate and be governed as a public, secular entity, free from special interest or sectarian control; and fifth, the school would be part of a system that existed uniformly throughout the state" (Alexander, Brock, Forgy, Melton, Watson, 1989, p. 148).

### Common as a Term of Art

The constitutions of the states of Indiana, Kentucky, Nebraska, New York, Ohio, and Oregon specifically make provision in their educational clauses for a "common" system of schools.<sup>2</sup> These educational provisions thus set forth definitive requirements for the establishment of "common" schools in language that gave legislatures broad discretion to create a school system. The word "common" therefore has special meaning in the context of education. Unlike the word "public," the word "common" is a "term of art" that reflects a political, legal, and moral conception of public interest applicable to public education in a republican form of government. The word "common" in the educational provisions of many state constitutions suggests a common benefit or good shared by all, the notion of a commonality of purpose in the founding of the new nation as well as a civic duty or responsibility on the part of both citizens and the state. Alexander observes that "Use of the term common as an adjective to define the schools implies that the schools are 'free...' The instruction was to benefit all in common and the costs were to be the detriment of all in common" (Alexander et al., 1989, p. 145). Governor Slaughter of Kentucky, seeking support for a system of public schools in 1820, projected the ideal of the common school as a vehicle for social justice long before all citizens, i.e. blacks, native Americans, and women were included in the system:

each child was equally important to the republic, that education benefitted all not just the person being educated, and all should

pay in common, and that they should receive the educational benefits in common (cited in Alexander et al., 1989, p. 146).

The word "common" also suggests the establishment of systems of education that would advance a democratic society. Free tax-supported, common schools were seen as necessary for the expansion of democratic ideas here and abroad and for the common good of all. In the early nineteenth century, many of the private academies had not been free and were financed by land sales, private tuition and fees so that many poor children could not attend (Alexander, 1989, p. 146). In 1820 when Governor Slaughter pressed the Kentucky legislature for funds to establish an educational system, he appealed to essential republican principles tacitly understood by most educated people throughout the commonwealth:

Education is more vitally important in a republican than in any other form of government; for there the right to administer the government is common to all, and when they have the opportunity of administering the government, the means of obtaining the wisdom requisite for its administration should be accessible to all (cited in Alexander et al., 1989, p. 147).

One of the first expressions of the concept of equity, was the description of a "republican education" described as an equitable system in relation to the idea of common schools by Orville Taylor in 1837. Taylor said that

the spirit of common schools--schools where the rich and the poor meet together on equal terms, where high and low are taught in the same house, the same class, and out of the same book, and by the same teacher--is a republican spirit. And this is a republican education (cited in Cremin, 1980, p. 85).

What makes "common" a "republican" concept is the classical idea of merit which eventually came to be applied to the concept of equity as "a level playing field." The common school must be free to all equally, and of sufficiently high quality so that it could be available to all--not just the poor or elite in a class-stratified society. By keeping class lines fluid, the common school "would tend to neutralize the undemocratic qualities" (p. 60) and would prevent extreme differences in economic status from undermining the structure of American society. The only nobility in the common school, Taylor argued, would be of "intellectual and moral worth" (cited in Cremin, 1980, p. 85).

Without this provision of disallowing any distinction between the rich and poor, the common school would be neither "common" nor republican. The cry of "Free, Equal and Republican" education in the early days of the Republic began with the early labor movement to counteract class division created by industrialism and aimed to destroy the "monopoly of talent" held by the higher classes--which has always been viewed as a form of democratic despotism (Cremin, 1980, p. 86). Robert Owen proposed a system that would be "open and equal to all" arguing that "the tax of ignorance" is "a much heavier tax than any tax for education" (cited in Cremin, 1980, p. 87).

According to this "republican" conception of the common school, a common school also existed for the purpose of training for the intelligent exercise of citizenship. It was an institution that reflected a commitment to democracy, universality, and equality. A republican vision of "moral education"

to mold a virtuous and enlightened citizenry inspired Jefferson, Horace Mann and others to argue for a general diffusion of knowledge that would ensure equality of opportunity and the survival of the republic (Cremin, 1980, p. 103). The public school, "standing as a principal of positive commitment to the American people," would have the total support of the whole community through its representatives rather than by sectarian groups. This commitment would ensure that the common good of all in society would be served.

The term "common" in common school is a republican conception of free public schools that is political, economic, and social as well as moral. It reflects a republican view of the state as a virtuous polity as opposed to the more modern pluralistic conception of the state based on private self interest or interest group liberalism with its concomitant perils of misrepresentation (Lowi, 1979).

Legal theory has now confirmed that "Public education is not merely a function of government; it is of government..." because common schools confer benefits on the individual and also provide for the advancement of civil society (Edwards, 1955). With its goal of equity, the American common school represents a transcendent reality. The spirit of natural law is embodied in the rules of equity which governed English common law transmitted through legal precedents and prescription to America (Stanlis, 1958, p. 38).

## Etymology of Common

In the Oxford English Dictionary (1989, Volume 3, pp. 564-568), the word "common" as a noun means "Belonging or shared equally by more than one," such as in a common tract of land city or town for use by the general public, or as in "tenants" in common. It also means "An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another." As a descriptive adjective, "common" means "shared, owned by several jointly, or belonging or pertaining to many or to the majority and one that is generally prevalent, of frequent or ordinary occurrence or appearance."

Other words derived from the root word "common," such as "community," commonality," "commonwealth," are basic to a description of a republican government and the rationale for establishing free public schools. This is especially true of the term "common good" which has become synonymous with the public interest. The notion of "commonalty" refers to "the great body of citizens, the mass of the people, excluding the nobility." The phrase "common right" is a term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, and which have their foundation in the common law."

"Commonweal" is not a technical term of public law, though it is often used in political science. The phrase "common weal," defined as the "public or

common good" or "welfare," had been part of the Constitutional debates and had long been associated with the notion of "common good" or the "public interest" in the Parliamentary debates in seventeenth and eighteenth century England and in the writings of Whig Parliamentmen and philosophers.

According to the Oxford English Dictionary, the word "commonweal" or "commonwealth" generally designates a republican frame of government, "...one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch." It designates "...the body of citizens living under such a government." Sometimes it may denote "...the corporate entity, or the government of a rural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government (or nation)."

Specifically, "commonwealth" means "...any of the individual States of the United States and the body of people constituting a state or politically organized community, a body politic, hence, a state, especially one constituted by a number of persons united by compact or tacit agreement (emphasis supplied) under one form of government and system of laws." This definition of "common weal" or "commonwealth" not only explains the official title of several of the states (such as Pennsylvania, Massachusetts, Virginia, and Kentucky), and the English government during the Protectorate of Cromwell, it conveys the important notion of a binding social contract upon the people in a republic to live up to their duties and responsibilities in maintaining a republican form of government.



### Common Good as Public Interest

The term "public interest," especially since the Enlightenment, has been associated with achieving the "common good" in society. Cassinelli suggests: "The public interest is a standard of goodness by which political acts can be judged; action in the public interest, therefore deserves approval because it is good" (Cassinelli, 1962, p. 44). The terms "public" and "interest" therefore are closely related to common good and the term "common" itself. They suggest, however, a dichotomy between public and private concerns and also ethical connotations. Cassinelli explains that as an ethical concept, the public interest operates differently from such concepts as "federalism," or "bureaucracy," which are tools of analysis, and "efficiency" which is a standard of measurement (p. 45-46). The word "public" means "...that the ethical value in the standard of the public interest applies to every member of the political community: it is a value to be distinguished from something advantageous to one person and disadvantageous to another (p. 46).

On the other hand, the word "interest" "... indicates the valuational meaning of the standard; it refers to something we should be "interested in" even though we may not be, and it could be replaced by "profit," "welfare," or "benefit." Therefore, "to say that an action is in the public interest is to judge it consistent with a political situation that is beneficial to everyone, if not immediately at least in the long run, and whether or not everyone realizes it" (p. 46).

### Classical Common

Terms such as "community," "common good," "commonwealth," that are etymologically related to the word "common" have explained the true nature of the political community in a republic since the days of the ancient Greeks and Romans. The counterpart to "commonwealth" in ancient Greece was polis interpreted by Aristotle to mean the "community of communities" (Strauss and Cropsey, 1973, p. 83). A true understanding of the polis, however, was to be found in the theory, practice, speech and deed of each generation. According to Aristotle, the polis could be either a democracy, an aristocracy, or an oligarchy, but it could not be a homogeneous unity, nor could it reflect anything other than a patriarchal theory of the state, with communities formed over time out of families as part of the natural order (Politics, 1952).

It is important to note that the Aristotelian or communitarian conception of the republican state is not the rational or conscious act of a social contract between men in a state of nature of eighteenth century rationalism or Enlightenment theory. For Aristotle, the state was evolutionary. Political unity of the polis is like the essential unity underlying the variety of animals in a species. The polis is a community in the sense of having or sharing things in common, embracing something common to everyone, but in an heterogeneous moral order (Strauss and Cropsey, 1973).

However, Aristotle in his Politics (1952) anticipated the present conflict between public and private interest when he asked, is perfection achieved by

making common everything than can possibly be common, or by making some things common and others not? Or by making nothing common? He believed that to push for complete unity in the polis would change it into a family and a family into essentially one man. This would not unify but would destroy the polis, because it would create centralization and tyranny. The foundation of a republic, according to the ancients, was a moral order, a morality which consisted of subordination of private and pluralistic interests to the public welfare. This he believed was impossible if the distinction between private and public interest was abolished (Strauss and Cropsey, 1973). Thus Aristotle identified the nature of the political community or polis, the classical concept of the public good, and the underlying tension between private interest and public good which the American constitution eventually attempted to resolve in its provisions for representation in a democratic republic.

Today it is difficult not to associate the modern notion of a New World Order or global common good to the "Gaia hypothesis" of antiquity. Common good theory in general reflects the "Gaia hypothesis" after Gaia, the ancient Greek earth goddess who represented a role of interdependence and cooperation of all organisms in the evolutionary process (Harmon, 1988, p. 126-127). The Roman poet Virgil proclaimed: Novus Ordo Seclorum, a new order of the ages is born" (cited in Harmon, p. 134). Harmon explains that the Greek concept of paideia as a model of the society to come meant that education was not a segregated activity, but the conscious aim of society. The Athenian was educated

by the culture, by paideia. This societal as well as individual quest for the Divine Center or Highest Good, was paideia, the educating matrix of the society. The paideia is the "highest and central theme or project which a society has when it does not have to expend a large fraction of its effort simply supplying the necessities of life" (p. 129). The gais hypothesis was posited as an ideal of the common school, an institution that would unite society behind a lofty conception of the republican state.

Since the Greeks and Romans, then, the common good of summum bonum (D'Entreves, 1965; Gunn, 1969) has projected a moral order in a republic as the prime goal of the national public interest. This philosophy of republican humanism, until the Enlightenment, suggested to moderns the concept of a commonness, or "connectedness" of our decisions, private actions, and institutions. Public interest theory therefore attempts to convey the notion of a moral and social order. Rowland Berthoff, in a ground-breaking study of order and disorder in America, argues that social stability is far from being the whole of order which men subvert or abandon "at their own grave peril." It consists of the economic values of production and their equitable distribution as well as the entire foundation of "loftier values of mind and spirit" that comprise the common good as the public interest (Berthoff, 1971, p. xiii).<sup>3</sup>

## **Free Common School: Conflict of Interests**

John Dewey's perceptions of the need for commonality in a pluralistic society of the twentieth century reinforces an earlier belief in a moral, learning society. He believed that the American common school could unify the community where there may be no discernible commonality of interest to achieve the common good. Dewey believed that in the American common school there is a source of power in numbers whereby all, the one, the few, and the many would come to know and participate together in the common good of the regime in order to be able to effect its outcome, despite the conflict of pluralism:

There is too much public, a public too diffused and scattered and too intricate in composition. And there are too many publics, for conjoining actions which have indirect, serious and enduring consequences are multitudinous beyond comparison, and each of them crosses the others and generates its own group of persons especially affected with little to hold these different publics together in an integrated whole (Dewey, 1927, p. 127).

By the end of the nineteenth century, the constitutions of numerous states would hold education essential to self-government recognizing state governments as the source of the perpetuation of the attributes of citizenship. This, however, was the result of a long and bitter debate over the true nature of the public interest in a democratic society and how it could be best represented.

### Problem of Few and Many

The issue of just representation reflects a basic problem of educational policy: How can legislated policy of a state reflect the general will or common

good of the community without merely reflecting the summation of particular individual interests? Today we expect that state legislators in protecting their own private constituencies and vested interests in election may not act fairly in allocating the state's tax resources among children in all school districts of the state (Buchanan, 1975). This is because, as Alexander explains, "...local interests of constituents to whom they [the legislators] are responsible demand that their neutrality have certain codicils" (Alexander, 1990, p. 277). The problem of conflict of interests or class with the common good is as old as the republic itself and was also a concern of English libertarians.

#### Problem of Class

John Stuart Mill in his Essay on Government saw the "many, the few, the one" as three modes of protection of the public interest in the English community whose consideration exhausted the entire subject of power in government (Mill, 1937, p. 5). For Mill, however, who was no democrat, "the interests of the representatives to be identified with those of the community" (p. 69) would best be served by an elite few who ought to guide because "the people are not capable of acting agreeably to their interests...." (p. 70). They were "the class which is universally described as both the most wise and the most virtuous part of the community, the middle rank...which is not the aristocratical" (p. 89).

Mill, in this classical statement of utilitarian theory of the Benthamites in 1819, saw that securing a proper relation between the individual and authority was as a matter of public interest. Today the public interest debate continues to require enlightened public administration whether "the mass of the people...seldom judge or determine right" or not, for "...a democracy that proceeds according to justice would not exercise paternal authority without also taking care to practicing thorough dedication to the production of autonomy" (Simon, 1986, p. 35). This problem of the one, few, and many lay at the heart of Federalist/Anti-Federalists debates and still has not been resolved.

### Stake in Society Theory

The founders of the republic and the public schools addressed the Herculean task of reconciling individual liberty with the responsibility of group membership. Throughout the history of American education, the concept of the public school has reflected the perennial problem of "the few and the many" first articulated by Alexander Hamilton in 1787. For Hamilton, and others, a moral order consisted of its power base, those that had a stake in society:

All communities divide themselves into the few and the many. The first are the rich and well born the other the mass of the people....The people are turbulent and changing; they seldom judge or determine right. Give, therefore, to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second; and as they cannot receive any advantage by a change, they therefore will maintain good government (cited in Farrand, 1937, p. 37).<sup>4</sup>

The first crisis of the American public interest was seen in the conflict between the Federalists and Anti-Federalists over power and distribution (Storing, 1981). At the time of the founding of the American republic, the Anti-Federalist wanted to extend the concept of representation and republican government to reduce the influence of aristocracy and privilege. Centinel presents the clearest and fullest case for simple, responsible government. He attacked John Adams' notion of balanced government fearing it required "a powerful hereditary nobility" to be effective. In America, he said "we must recur to other principles, one of which was virtue:

A republican or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided; in such a government the people are the sovereign and their sense of opinion is the criterion of every public measure..." (cited in Storing, 1987, p. 58).

The Federalists, best represented by Madison's Federalist No. 10, on the other hand, wanted to moderate the majority principle which some feared would produce an aristocratic representation concentrated on the interests of the most able, ambitious, and wealthy, as opposed to the frugal, industrial and modest democracy representing a common yeoman class. Eventually, the notion of the middling class and a "natural aristocracy" would prevail, providing an acceptable rationale for leadership within the American community based on a combination of merit, civic virtue or responsibility, equality of opportunity, and other regime values which now constitute "the civic republican tradition" and now offers "...the



best hope for reconstitution of commitment to civic virtue and the public good in America" (Bellah et al., 1991, pp. 252-253).

By "public virtue," republican theorists envisioned sacrifice, discipline, simplicity and intelligence and hoped that teachers, ministers, and parents would create and maintain a virtuous citizenry (Kaestle, 1983, p. 5). Republican thought emphasized the natural virtue and intelligence of a landed yeomanry. But it would take the common school movement to convince many Americans that intelligence and virtue of the people could not necessarily depend upon the vagaries and biases of private instruction and that a nation or state would necessarily require the implementation of systems of education supported by public funds for the good of all of all classes and individuals in society.

Madison, for example, recognized diversity or "permanent and aggregate interests" in the republic and sought to reconcile them through the structure of government, but the Anti-Federalist consistently sought social and political order with homogeneity or unity as an ideal and equality at least as important as liberty (cited in Storing, 1981, p. 250). Despite the many disagreements among the Framers in establishing a republic, however, "...all were agreed that...Republican government...could survive only if animated by a spirit of virtue and concern for the public good (Bellah, Madsen, Sullivan, Swidler, and Tipton, 1985, p. 253).

Madison, balancing between the conservatism of Adams and Hamilton against the republican idealism of Jefferson and Paine, stated in Federalist No. 45

that "...the public good, the real welfare of the great body of the people, is the supreme object to be pursued" and also wrote in Federalist No. 71 that "...the people commonly intend the PUBLIC GOOD" (cited in Draper, 1982, p. 47).<sup>5</sup>

This "stake in society" theory of Hamilton reflected an elitist notion of laissez-faire for the protection of private self property has tended to perpetuate the interests of wealthier classes, or those with vested interests. It is "an official political modernity as laid down by Hobbes and Locke" reflecting the American parchment regime (Strauss and Cropsey, 1973) of the Federalists Papers, the United States Constitution, and the Declaration of Independence and other public utterances and documents. However, a notion of a common good was also expressed by Madison and the Anti-Federalists. With a continual broadening of the educational pyramid since Hamilton's day, the public school evolved to represent more democratic values and assumptions. Principles of justice and fairness, for example, grew increasingly important to the public school enterprise especially after Brown vs. Board of Education (1954).

#### Concept of Level Playing Field

Economic freedom is now recognized as essential to political freedom by both liberals and conservatives alike (Kendall and Carey, 1966; Hayek, 1980). Economic justice in particular has become a vital principle of democracy and the common school through human capital investment theory (Schultz, 1971, 1972). Thus, the public school mission came to include equality of opportunity as a

reflection of American regime values associated with economic liberty and justice metaphorically expressed as "the level playing field" (Kozol, 1991).

This image of equity implies that all children will have an equal chance for economic success at the starting gate of life, especially if schools provide equitable educational opportunities to ensure that all have an equal stake in society (Robinson v. Cahill, 1973). The republican idea of equality or equity is closely related to the common good conceived as economic liberty, meaning the right to protect as well as to pursue property as an aspect of citizenship. James Madison in Federalist No. 10 (1961, pp. 56-65), described a "factious spirit" that could subvert the public good into special interest groups or factions, particular vested property interests, insisted upon a system of checks and balances in the U.S. Constitution to ensure artificially that the common good as equity in society would obtain.

Educational disparity between rich and poor school districts is a recent manifestation of the "few and the many" problem in school finance litigation and by the general opposition of traditional anti-tax forces that reinforce geographic insularity and solidify areas of wealth and privilege. School financing schemes that are not wealth neutral simply do not ensure the common good which is the goal of the republican state. Economic liberty cannot be achieved when educational facilities or revenues are unequal and "uneven playing fields reflect a dark unspoken sense that other people's children are of less inherent value than our own" (Kozol, 1991, p. 177).

Kozol's metaphor of the "level playing field" thus not only suggests the problem of the "one and many" in our time, but dramatizes the idea of the public schools as a social leveler. This concept of the common school has been persistently challenged by libertarians, and is now exacerbated by ethnic and class rivalry.

That is why the social element that makes up a commonwealth, i.e. the "common folk," or the community that should be represented, rule or have influence, was frequently debated at the time of Constitution convention. That a free government was based upon intelligence and virtue of its people was rarely disputed. "Republicanism united concepts of virtue, balanced government, and liberty" (Kaestle, 1983, p. 4). However, establishing the power, authority, and influence in the middling class as an elective principle became associated with majority rule as it defined the concept of a political community as well as its capabilities and determination to serve the common good for the benefit of all of its citizens. A majority today represents a plurality of interests, at times barely discernible. In the early days of the Republic, the majority will was no less difficult to discern. It was challenged by private interests, the elite or wealthier class of Americans whose "stake in society" precluded the establishment of the free common school.

### Tax Support: Clash of Interests

An important aspect of the common school was that it would in fact be "free," meaning that all students could attend without tuition and the costs born by the polity from revenues gained from public taxation. The movement toward free, public, nonsectarian schools, however, would not be achieved without a bitter struggle. In the early nineteenth century people had only begun to grasp the benefits to society and to the commonwealth of universal public education. Henry Barnard, a proponent of free public schools, believed that if such a bill passed in his state, it could not be enforced even at the point of a bayonet (Cubberley, 1962/1934, p. 164).

E. P. Cubberley saw public opposition as a manifestation of the unresolved conflict between public and private interest:

Excepting the battle for the abolition of slavery, perhaps no question has ever been before the American people for settlement which caused so much feeling or aroused such bitter antagonisms....Many thought that tax-supported schools would be dangerous for the State, harmful to individual good, and thoroughly undemocratic. There was danger, too, of making education 'too common'...It was argued that education demands a leisure class and that the poor do not have then necessary leisure, that it was not possible for the government to provide a general educational system, and that all such proposals represented the deliberate confiscation of the property of one class in society for the benefit of another class (Cubberley, p. 1920, p. 164).

Reinhold Niebuhr's thoughts on the unresolved tension between public and private interest sheds some light on the virulence resulting from "entrenched

predatory self interest" (Niebuhr, 1932, p. xiii) of this early opposition to public support for schools:

Since education is to this day both a tool of propaganda in the hands of dominant groups, and a means of emancipation for subject classes, it is easy to understand the hopes and fears of the privileged classes when they first began to yield the privilege of education (Niebuhr, 1932, p. 122).

The public school men argued strongly against tuition in any form, for they believed that the principle of equality was inherent in the very concept of a "free common school." For Horace Mann the goal of education was precisely to reduce class distinctions. This could be accomplished only if all children were provided with a free education financed by revenues from taxes levied on everyone equally (Butts, 1960, pp. 33-48). Mann in The Tenth Report to the Massachusetts Board of Education in 1846 argued that Universal Education was the "great equalizer" preventing servile labor and the domination of capital:

If one class possess all the wealth and the education, while the residue of society is ignorant and poor, it matters not by what name the relation between them may be called; the latter, in fact and in truth, will be the servile dependents and subjects of the former. but if education be equably diffused, it will draw property after it, by the strongest of all attractions; for such a thing never did happen, and never can happen, as that an intelligent and practical body of men should be permanently poor (cited in Alexander and Alexander, 1985, p. 30).

For Mann the ideal common school would have all the elements essential to education in a republic. It would be a school for the common people (not just paupers, etc.), but common to all people of economic strata, creeds, classes and

backgrounds to foster mutual respect in adult life and social harmony (Cremin, 1980). Unfortunately, this dream was not universally shared at the time.

Vehement opposition to tax supported public schools may have been encouraged by the fashionable writings of Jeremy Bentham and Adam Smith who championed the cause of private self interest, or laissez-faire individualism. An Inquiry into the Nature and Causes of the Wealth of Nations, published in 1776 became well known to Americans and influenced the way Americans defined the "common good" and their options for attaining it (Cremin, 1980, p. 129). This work was a treatise on economic history dealing with various systems of political economy (mercantilism) and public expenditures and taxes. Smith preferred private entrepreneurial or familial instruction. He was opposed to publicly endowed higher education because endowments eliminated exertion of effort which would affect the quality of education which was something to be earned. He believed that education was one public institution "which, though they may be in the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small number of individuals, and which it therefore cannot be expected that any individual or small number of individuals should erect or maintain" (cited in Cremin, p. 129).

Cremin suggested that Smith's doctrine influenced the American intelligentsia and created an ambivalent attitude toward publicly financed

supported education" (Cremin, p. 130). At worst, Smith's utilitarianism reinforced notions of class division, which had been prevalent in political philosophy since the time of Plato's philosopher kings, while demonstrating not a little contempt for the masses. For Smith, the common people would be spared the existence of a "bovine stupidity" if they could acquire habits of decency and order in schools or churches (p. 130) which he was not inclined to support.

Horace Mann had also read The Wealth of Nations. He Americanized the doctrines of political economy and converted the concept of capital into human terms (Cremin, 1980, p. 134). In the Tenth Annual Report of the Board of Education in 1846, he countered Smith's argument saying that the richest depositories were not the gold or silver mines of Massachusetts but the developed faculties of the population, but "wide-spread mental development" (cited in Alexander and Alexander, 1985, p. 30).

Eventually, the broad base of taxation of public schools would come to rest on the assumption that "The wealth of the State must educate the children of the State" (Cubberley, 1934, p. 286), but many "republicans" at the time of the founding of public schools had been influenced by both Locke's and Smith's laissez-faire notions and continued to believe that only the poor would benefit from free public schools.

Another influence was the utilitarian individualism of Benjamin Franklin. Franklin had expressed many republican convictions and the social utility of a Christian life, but he had also become a symbol of the archetypal poor boy



whose desire for self interest or improvement created a new utilitarian model of human life:

for many of those influenced by Franklin, the focus was so exclusively on individual self-improvement that the larger social context hardly came into view. By the end of the eighteenth century, there would be those who would argue that in a society where each vigorously pursued his own interest, the social good would automatically emerge. That would be utilitarian individualism in pure form (Bellah et al., 1985, p. 33).

Utilitarian individualism and the notion of class interests, or public versus private interests had been at the center of debate during long periods of political and constitutional turmoil in both England and America. The public school founders like Horace Mann extended this debate into the nineteenth century believing that class distinctions would be reduced, if not eliminated, if all children could be provided with a free public education financed by revenues from taxes levied on everyone. Yet the republican notion of the "common good" appeared confused in the minds of Americans despite extensive writings and theorizing on the subject. In the bitter legislative fights for tax supported public schools in America, religious and private interests groups and wealthy members of society felt that their "vested rights" had been diminished by the extension of learning universally throughout society (Cremin, 1980, p. 132).

### **Common School Enlightenment Background**

As Americans stand at the crossroads in support of public education in the twentieth century, the great public issues have prompted some to ask: "What is

Traditional amongst Us?" (Kendall and Carey, 1970, p. 3). Intellectual historians have attempted to document the roots or paideia of the American order.<sup>6</sup>

Russell Kirk writes: "Upon our knowledge of those roots may depend what sort of order America and the world will have by the end of the century" (Kirk, 1974, p. 9). In The Creation of the American Republic (1969), Professor Gordon Wood focussing on the kind of citizenry was thought by our Founders to be required for the preservation and development of the American Republic, assumes that the republic was designed to insure liberty as well as the common good.

The concept of free common schools developed early in the original colonies, but it was not until the Enlightenment of the eighteenth century that a new political philosophy would provide the justification needed for tax-supported schools--that education was essential to the welfare of the state.

The class-oriented English educational system was neither free nor universal, and the English tradition of "rate bills" had required parents to pay tuition for each child to supplement inadequate school revenues, even as late as 1867 in America. The government of Massachusetts was the first to acquire a public endorsement of education in 1647 to prevent the populace from falling prey to "the old deluder, Satan." However, this statute which mandated the rudiments of a public education system did not provide the financing for the schools (Alexander and Alexander, 1985, p. 22).

The public school eventually emerged as a major institution in American society because it came to be seen as essential to the vitality of American

democracy (Cremin, 1980, Chapter Five). The financing of public schools through public taxation, initiated by the Puritans, eventually developed through "a variety of systems, including rate bills (tuition), local property tax revenues, and nascent, emerging systems of state support for local schools" (Ward, 1987, p. 467).

Enlightenment ideas as well as a Christian vision of the millennium encouraged this public tax initiative for the establishment of a system of free common schools in America, especially the Enlightenment belief that human beings were perfectible through education, and that social institutions were capable of perfecting society. Thomas Jefferson's faith in rationality was the epitome of Enlightenment philosophy that was also manifested in a wholehearted acceptance of modern theories of natural law. A consequence of this acceptance was a belief that individual human rights proceeding from natural law were possessed by all men equally and absolutely by the mere fact of humanity, even slaves (See Wilson, November, 1992). "Nothing is unchangeable but the inherent and unalienable rights of man," Jefferson wrote in a letter to Major John Cartwright near the end of his life--and by the inner logic of this doctrine, such rights could not be conceived except as "EQUALLY the possession of all" (cited in Lee, 1961, p. 12). An important aspect of the common school was that it should be free and open to all children equally, where rich and poor like could meet and learn. The legislative commission in Kentucky in 1822 advocated

"... a system of practical equality, in which children of the rich and poor, meet upon a perfect level, and the only superiority is that of the mind" (cited in Alexander et al., 1989, p. 147).

Americans, through Jefferson and other enlightened statesmen, gave tacit acceptance to the concept of the "social contract" found in the Declaration of Independence as the basis of equality, social morality and free government. Since morality is not natural to man, they learned according to John Locke, that men must establish the best social, governmental, and educational institutions through right reason to resolve the problem posed by the perennial conflict between the individual or self-interest and community and especially as an antidote to excessive, potentially corruptible, governmental power. In a letter to J. C. Cabell, Jefferson noted that the "people at large," thus schooled, would be "enabled to know ambition under all its shapes, and prompt to exert their natural powers to defeat its purposes..." (cited in Madson, 1974, p. 27). John Locke's notion of tabula rasa in his Essay on Human Understanding confirmed the need for public education in a republic, for without any innate moral sense, man must be trained and educated by the state to become a socially and politically responsible individual (Strauss and Cropsey, 1973).

However, not all Americans and philosophers have agreed with Locke that there is no innate moral sense or normative foundation to serve as the basis of individual character or regard for the common good of society. The problem of

the few and many therefore reflects a confused perception of the American order. It began with the serious questioning of values as Americans separated themselves politically from the Old World. Much disorder occurred in American life after 1800, the year of the "Jeffersonian revolution," which brought to power more democratic leaders. That disorder has grown more ominous through the "Jacksonian revolution" (Kirk, 1974, p. 442), and the civil rights revolutions of the twentieth century. Americans today are most familiar with the doctrine of private self interest, or the private pursuit of "life, liberty, and happiness." This is a "juridical" conception within the "the tradition of liberalism, which is a matter of law and right," that has apparently existed, without colliding or overlapping, alongside a tradition of "republican humanism, in which personality was considered in terms of virtue" (Pocock, 1971, p. 45). It is highly debatable whether this paradigm of private self-interest and not "republican humanism" provided a rationale for the founding of the common school<sup>7</sup>.

The subtleties of private interest doctrine reveal themselves through John Locke and Adam Smith. Both were proponents of laissez-faire. However, Locke was a product of the Enlightenment of the Age of reason whereas Smith was one of the philosophers of the Scottish Enlightenment<sup>8</sup>. With the new emphasis upon man as a sentient being from the influence of Rousseau as well as Hume, the Lockean theory of natural rights based on pure reason has come to be regarded as an insufficient explanation of the common good (Strauss and Cropsey, 1973).

Many theorists in the Lockean tradition, such as Jeremy Bentham and John Stuart Mill, had failed to distinguish adequately between a common good of a community and the aggregate goods of a number of individuals. This became the source of contention between the Federalists and Anti Federalists in America (Storing, 1987). As an alternative to a polity for the security of rights, the Anti-Federalists with their vision of a small free republic advocated a virtuous citizenry through a "classical model" of republicanism (Horwitz, 1986, p. 136) to ensure the common good.

Between Locke and Smith, however is the modern school of natural law which provided a "common good" alternative to the liberal, natural rights tradition, philosophers that were also known to the American Founders. For example, there were other Whig philosophers who did not share the Lockean claim of natural rights. Chief Justice Matthew Hale (d. 1676) was extremely hostile to all self-interest and tried to dissociate the national good from that of particular persons. With this in mind, he insisted that "the community considered as a community is a distinct thing from the particular persons that are integral of that community (Gunn, 1969).

This provides insight into Locke's position which influenced American political theory at the time of the Founding. Earlier than Locke, Bishop Stillingfleet in discussing the public good had taken unusual precaution to address the ambiguities of the concept. Quoting Suarez' A Discourse Concerning the Unreasonableness of a New Separation (1689), he wrote:

there are two sorts of laws...which respect the public good; some which concern ipsum statum reipub. et utilitatem communitatis; the general state of the commonwealth, and benefit of the community: Others which concern bonum commune mediante privato; that common good which results from every man's good (Stillingfleet cited in Gunn, 1969, p. 299).

Although the martyred Algernon Sydney was not an original thinker, Americans admired his feeling for noble republican causes. His remarks about "public good," "public interest" and "salus populi" fill most his 1702 Discourses Concerning Government. Sydney believed that in his own private capacity, a man might not challenge the public good. However, when united with others and dealing with matters such as the protection of rights, Sydney saw no alternative to let him determine the public interest. He feared a general assault upon those "public interests" of men in their estates. Halevy suggested that Sydney's understanding of an identity of interests anticipated Adam Smith and harmony of interests theory (Gunn, 1969).

Ironically, the law took the same position of primacy of private rights over public interest and supported the concept of limited government. The famous common law English jurist Blackstone who was widely read in America, produced his version of the public good in the Commentaries. He too was writing in the natural rights tradition of Locke and on the issue of public good, sounded surprisingly like Bentham:

in vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or not.

Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law (Blackstone, 1969, p. 239).

Liberal thought at the time of the American founding then was largely based upon the premise that the public good was most obviously and immediately related to the preservation of private rights, and the inflammatory writings of Thomas Paine drew upon the Lockean tradition of limited government. However, most of the Whig philosophers and statesman of the time just before the American Revolution believed that the common good assumed a connection between the welfare of the community and that of its members:

The virtue of a public interest conceived in terms of maintaining private rights was that it reduced the lustrous and distant goal of a public good to proportions that were comprehensive to private persons...so they might both understand it and do something about maintaining it without prejudicing their legitimate private interests (Gunn, 1969, p. 323).

Few, however, could agree with Hobbes with the necessity to emphasize the restraining function of authority. The Madisonians took a more moderate, Lockean view of limited government and with Harrington, Cunningham, and Sydney accepted the fact that it was necessary to balance private interests against each other, which explains Madison's Federalist No. 10 and his theory of factions. In America the tendency toward self-interest and away from the common good, encouraged Madison, however, to see "factualism" as having an economic basis that resulted in unequal distribution of property (Alexander, 1990, p. 274). Madison observed factionalism as "a number of citizens...who are



united and activated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community" (Madison, 1961, p. 57). The classical concept of concordia discors had also allowed people with contrary interests of one sort to join together for a common interest of different sort. Thus the notion of checks and balances in government reflected the idea that the common good might be preserved as one self interest checked the extravagances of another in the American Constitution (Gunn, 1969).

It should be clear then why the tension and equivocation underlying tax support for public schools may have resulted from confused priorities about what the traditional good was (Kendall and Carey, 1970). Here Storing suggests that Jefferson and the Anti-Federalists, for example, did not see the end of government as civic virtue, but

...as the security of individual liberty, not the promotion of virtue, or the fostering of some organic common good. The security of liberty does require, in the Anti-Federalist view, the promotion of civic virtue and the subordination (not, in the usual case, "sacrifice") of individual interest to common good; but virtue and the common good are instrumental to liberty and the resemblance to preliberal thought is superficial (Storing, 1987, p. 83).

Many modern scholars, such as Hayek, Friedman and others emphasize the liberty and utilitarian individualism of the Lockean tradition in America--a tradition that they interpret offers a basically economic interpretation of human existence. Others see another side of Locke--values reflected in the American

public school such as the "excellence and quality of work, virtuous behavior, order, moderation, and moral restraint" that "can be traced directly from the work and writings of John Locke" (Ward, 1987, p. 466). American values are also derived from other works of eighteenth century political and social philosophers such as Hobbes, and Montesquieu, and the classic writers such as Cicero and Plato. Cranston also de-emphasizes Locke's libertarian influence when he writes that

Among the philosophers of the modern world, John Locke has always been held in especially high regard in America. His influence on the Founding Fathers exceeded that of any other thinker. And the characteristically American attitude toward politics--indeed, toward life--can be thought of as "Lockean," with its deep attachment to the rule of law, to equal rights to life, liberty, and property, to work and enterprise, to religious toleration, to science, progress and pragmatism (Cranston, 1986, p. 82).

Bellah et al. (1991), however, argue that utilitarian individualism alone explained Jefferson's adopting the view of society as arising from a contract that individuals enter into only in order to advance their private self-interest. After all, Jefferson had appropriated Locke's phraseology for the Declaration whereby Locke had advocated the protection of "life, liberty, and property" (Locke, 1967, p. 304), and "...according to Locke, society is necessary because of the prior existence of property, the protection of which is the reason individuals contractually enter society" (Bellah et al. 1991, p. 336).

Another important source for the American conception of public interest came from the writings of the Physiocrats in France. Their works were well known, particularly by Adam Smith. Claims for a natural order in which self-interest harmonized with the public good were made in response to national power, especially military aggrandizement and national honor. Dupont de Nemours and Mirabeau, for example, both attacked the notion of the private interests of men, especially leaders with a public interest (Gunn, 1969).

However, in the writings of the physiocrats as in the English libertarians, property was the basis of any public interest. Most felt that without protecting the rights of property, no public interest existed. As a result of the Enlightenment, the English, French and Americans all believed that the public interest was a condition where private rights were protected and that the free function of private interest would preserve the common interest (Gunn, 1969).

To what ultimate source of authority should American conscience appeal in attempting to reconcile this conflict of interest over the establishment of the free common school? To judge from the overall character of The Federalist, Americans would have a large commercial republic in which the widest possible range of private interests would be fostered. For the first time a system of republican government was framed to give "fair play" to the actions of human nature, however unvirtuous. However, as Wood writes: "No attempt was to be made to "pervert, suppress, or ignore the evil propensities of all men" (Wood, 1969, p. 429)--as though "the development and maintenance of public virtue as a

force to protect the nation from decline and eventually death" (Ward, 1987, p. 467) was never a goal of society--or the American common school.

In the founding enterprise where did the founders look for legitimacy: to the generic Rights of Man, individual self interest, the God of the Deists, the God of Christianity, natural and common law, the General Will of Rousseau, or the classical republican tradition? Ultimately most nineteenth century Americans looked to the "laws of nature and nature's god" just as Jefferson in the Declaration of Independence had proclaimed them. A defense of private interest and the Lockean utilitarian doctrine of happiness is upheld in the Declaration:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness (Italics added). To secure those rights, government had been instituted among men.

But how precisely do we interpret these words as a normative foundation for the common school? It appears Jefferson substituted the term "happiness" for the more selfishly connotative term "property" of Locke and Blackstone as a matter of pure political expedience. Kirk explains that Jefferson choose this word because it is possible to be happy without possessing property--and because the protection of property alone, tacitly excluding other benefits of a good civil social order beyond life and liberty, was not a notion especially attractive to those supporters of the Revolutionary cause who were poor in the world's goods (Kirk, 1974).

The word "happiness" as a substitute for property had been first ascribed to Burlamaqui, whose writings were widely circulated in the colonies (Kirk, 1974). Mandeville in his Fable of the Bees, written near the end of the eighteenth century, much respected by Adam Smith noted:

a wide extent of dominion is necessary to the wealth and happiness of a people. And as to that, it must be considered that the happiness of a community, is nothing but the happiness of the private individuals who compose it (cited in Gunn, 1969, p. 320).

James Wilson, a principal signer of the Declaration, wrote in 1774 that "the happiness of the society is the first law of every government" (Kirk, 1974, p. 404-405). In the context of the utilitarian or individualist tradition and the Declaration, the term "happiness" appears synonymous with that felicity obtained when the "common good" is achieved--the perfect blending of public and private interest supported by natural law.

### Roots of Public Interest

The republican idea of the "public interest" is fundamental to systematic political thought, legal argument, and an understanding of the common school ideal. Although ambiguity still surrounds the term "public interest," there have been well-defined patterns in the use of this expression which had replaced an older term of the "summum bonum" of the Greeks, the "common good" of scholastic philosophy, and the "salus populi" of the Romans by the middle of the seventeenth century (Gunn, 1969, p. xii).

The most famous set of ideas about the public interest came from English individualism, especially out of the seventeenth century Whig parliamentary debates. Harrington and other Whig philosophers attuned to the Enlightenment after the Interregnum debated the public versus private interests and laid a foundation of the public good (Gunn, 1969). The Whig republicans, and especially James Harrington in his Oceana (1689), argued as humanists against both Locke and Hobbes whom they perceived as advancing private self interest without harmonizing individual designs with the public good. Harrington disclosed three concepts, the "reason or interest of state," the "common interests of mankind," and the "public interest," a term for the common good that Sir Rohan brought with him to England from France (Gunn, 1969, pp. 84-85).

Along with Harrington, the seventeenth century Whig Parliamentmen, philosophers, and clergymen, most notably Harrington, Algernon Sydney, Joseph Lee, Richard Cumberland, and James Tyrell, advance the concept of the modern state as "an instrument for protecting the rights of the members" (Gunn, 1969, p. 289). John Locke seems to fit into this liberal tradition because of his emphasis on the natural law as a justification for natural rights. However, Gunn notes that his position on the concept of the public interest or common good is more similar to that of Hobbes and was quite conventional within the new individualism (Gunn, 1969).

### Lockean Roots of Laissez-faire

A close reading of Locke's Second Treatise reveals a concern about power that some have interpreted far exceeds concern for the common good, especially as far as the duties of government and its limits for the protection of property and individuals are concerned. Gunn observes that Locke seemed unaware of the difference between aggregate goods of a number of individuals and a common good belonging to the community (Gunn, 1969). Gunn, however, endorses a the interpretation of Locke which argues that Locke believed in a common good which could be derived mainly in the satisfaction of everyone's individual interests, each individual's concern for protecting his property being one of them.

It is apparently this "ontological Lockean language of individualism" which modern common good theorists and communitarians believe "seduces us at every turn" away from our connectedness with public institutions (Bellah et al., 1991, p. 86). Bellah et al. argue that Lockean individualism is "ontological" because it rests on the assumption of the social contract and the individual as a primary reality who has the right of revolution to completely undo the social and political order. To understand the common good one must first know what state all men are naturally in, that is, man's "ontology" or nature of being. According to Locke, man's "ontology " is a state of nature or natural freedom derived from natural equality. However, with only reason and "without a common superior on earth to judge between them" (Locke, 1967, p. 202), a man in a state of nature has no habitus or moral principles to guide him--only his own private, individual,

rational will. Believing that the individual was sacred above all else, Locke espoused the doctrine of limited government and utility where all men are judges in their own case, and the law of nature is nothing more than the sum of the dictates of reason with regard to all men's "mutual security, peace and safety." Man "puts himself under an obligation to everyone of that society to submit to the determination of the majority, and to be concluded by it," (p. 202). But as Strauss and Cropsey note, this individual power of consent and the right of revolution "does not qualify the subjection of the individual to the community or to society," only his right "to resist society or the government whenever his self-reservation is endangered" (Strauss and Cropsey, 1973, p. 232). Raphael argues, however, that Locke by "subordinating natural law to natural consent, revealed that the natural propensity to unlimited accumulation was inconsistent with his natural law" (Raphael, 1967, p. 10). Thus from the philosophical discrepancies and inconsistencies with regard to the natural law in Locke's Treatise on Government modern libertarians have derived a philosophical justification for predatory self-interest: rational men can legitimately seek unlimited property at the expense of others; they have a natural right without ethical limitation and an economic liberty protected by government to accumulate wealth limited only by competition.

Bellah et al. (1991) argue that the only thing that sets Locke apart from Bentham and Mill in his ontological individualism is his notion of natural rights developed from the natural law, which he prefaced with such adjectives as



"human," "natural," "inherent," or "inalienable" (p. 54). Raphael notes that once we realize that Locke gave property the extended meaning of life and liberty, the natural right is a right to be left free, free to do as one chooses, or free to enjoy the fruits of one's labor (Raphael, 1967). This Lockean paradigm of laissez-faire, sanctioned by an appeal to natural rights, Raphael argues, has infused the spirit of modern individualism and capitalism with a moral justification and force for unlimited freedom of choice above and beyond the common good of society.

Jeremy Bentham and John Stuart Mill are linked to Locke for their doctrine of utility--private self interest manifested as pleasure and pain, and for the concept of the sum or aggregate interest. Their utilitarian "sum of interest" theory, or aggregation of private interests, is the idea that unfettered private interests add up to or comprise a common good and thus have moral justification. Self-interest is a private utility that requires a felicific calculus, to benefit the greatest number of individuals (Bentham, 1948, 1973; Mill, 1957).

#### Relevance of Private Interest Theory to Common School

As a practical matter of efficiency in public school systems, the utilitarian cost-benefit theory, until the work of Cubberley, Strayer, Mort, and their colleagues, dominated the field of American public school finance. However, these school finance theorists re-directed the normative foundations of school finance to the more egalitarian republican notions of adequacy and equity as well

as efficiency to meet the republican requirements of inclusiveness and civic virtue in a modern democratic state (Ward, 1987).

Given the highly popularized individualist and rationalist tradition of minimalist government, it was only natural that private citizens in America might resist taxation for the public schools. This resistance to government and especially fear of federal control has now become "traditional" amongst us (Lu, 1991). Clearly the public interest philosophers have shaped our conception of the common good and the way we finance public schools as well as our commitment to public education. According to Berke, Sacks, Bailey and Campbell "...debates over federal support for education have pinched the most sensitive nerves of the American body politic..." (cited in Lu, p. 545).<sup>9</sup> Bellah et al. (1991) argue that the Lockean concept of limited government has led some to a "dogmatic belief in the autonomous individuals who develop independently of the web of institutional life and institutions" which characterizes the market mentality that now challenges even our educational institutions (p. 93).

Today the American common school is in the process of being restructured and redefined by modern private interest theory which has opened an insurmountable array of moral and legal issues involving vouchers and private school choice. The free-market conception of the public school regards students as consumers rather than citizens. A voucher tax policy that includes both public and private schools seeks to replace the American common school with shopping mall education that exalts private choice at the expense of the common good.

Educational reform, characterized by an ideal of corporate efficiency and freedom of choice contrast sharply with an older, the classical "republican" and more egalitarian civic humanism that originally inspired the American common school.

The modern spirit of laissez-faire has also discouraged trust of public officials and government in general. Milton Friedman cites James Madison in this regard who wrote:

If industry and labor are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislators could point out (cited in Friedman, 1962, p. 3).

Bellah et al. (1991) argue, however, that Adam Smith, Jefferson, Madison, Hamilton, and most eighteenth and nineteenth century thinkers believed in a higher natural law beyond the atomistic, or self-interested individualism that emanated from a Hobbesian or Lockean state of nature:

From whatever religious perspective they had, they trusted to a providential design perceived in nature which demonstrated the possibilities of a self-regulating political economy that included not only market and government but an active public life as well (Bellah et al., 1991, p. 92).

From a public interest standpoint, the doctrines of laissez-faire and pluralism are now manifested as "choice" and a plurality of interests which is basically "anti-institutional." Private self-interest operates with a relentless logic of its own that "separates the market from the polity" and "the sphere of economics from that of politics" (p. 92). Bellah et al. compare laissez-faire economics to a game of monopoly "which would have made perfect sense to

John Locke." "[T]he market is a self-regulating device whose rules exist independent of common agreements about the conduct of social life (p. 83).

Theodore Lowi in The End of Liberalism describes the present public philosophy in the United States as "the amalgam of capitalism, statism, and pluralism" (Lowi, 1979, p. 17). A less complicated version of this amalgam of private versus public interest was present in the early days of the Republic when initial attempts were made to establish public, tax-supported schools. Private self-interests conflicted with the common good of the community then no less than they do today.

### **Common Good as Harmony of Interests**

However, the clash between private and public self-interest theory and its application to the establishment of common schools should not be viewed as a "morality play."<sup>10</sup> The doctrine of a harmony of interest provides a balance between these two conceptions of the common good. The following description puts these two main traditions of public interest into perspective:

In the individualist tradition, the public good is usually identified with the sum of private benefits. In the republican tradition, the public good is that which benefits society as a whole and leads to what the founders of the American republic called public happiness. It includes everything from adequate public facilities to the trust and friendship that makes life something to be enjoyed rather than feared. On the other hand, the Republican tradition closely linked to the Biblical tradition presupposes that the citizens of a republic are motivated by civic virtue as well as self-interest. It views public

participation as a form of moral education and sees its purposes as the attainment of justice and the public good (Bellah et al., 1991, p. 335).

Locke's individualism has been championed generally by modern libertarians and laissez-faire economists seeking a moral justification for private self-interest as the common good. Yet as Russell Kirk argues, the English utilitarian, natural rights philosophers, especially, Hobbes, Locke, Bentham and Mill, were philosophers of utilitarian individualism. They had no affection for the Christian concept of a "community of souls" or a perception of divine guidance or Providence (Kirk, 1974, p. 22). With the exception of references to "tacit consent" by later generations to the social compact, Locke has nothing specifically to say about the Christian view of society as a bond between God and man, among the dead, the living, and those yet unborn (Kirk, 1974). Unlike Rousseau, Locke makes no precise references to charity, soul, conscience, morality, virtue, nobility or love in all of the Second Treatise (Locke, 1967).

Yet to be fair to his legacy, John Locke tried to restrain arbitrary government in seventeenth century England so that it would not interfere with the right to estate, from which he argued comes the common welfare (Kirk, 1974). Locke did not believe in a "State of Liberty" wherein "man had uncontrollable liberty." Liberty was "not a State of Licence," and he wrote that "no one ought to harm another in his Life, Health, Liberty or Possessions" (Locke, 1967, p. 289). Clearly, Locke is not a philosopher of predatory self-interest, but

he has worn many faces and masks that has invited misinterpretation (Dunn, 1969).

Nevertheless, the pursuit of private happiness and personal advantage has no serious meaning if individuals are at odds with themselves and their kind. A mere civil collaboration that Hobbes and Locke provided for in the social contract is not exactly what inspired other common-good philosophers such as Rousseau, whose moral and political writings (along with other philosophers, such as Hegel, Heidegger or even Neitzche) demonstrate a need to elevate men above the level of elementary self-interest (Strauss and Cropsey, 1973, p. 175). Nor is pure, unmitigated private self-interest what ultimately inspired Adam Smith, who is considered the real father of laissez-faire--not John Locke. "Utility is the motive of Locke's individualism, and this was what had made him the first great Whig thinker" (Kirk, 1974, p. 126). Edmund Burke, however, was the last. Both Edmund Burke and Adam Smith viewed the public interest as a balance or "harmony of interests" that was part of a providential design.

### Providential Harmony

Edmund Burke (1968) agreed in Reflections on the Revolution in France that there existed genuine natural rights and a genuine social contract. Society is a contract or a partnership, but it is not a commercial concern to ensure private profit alone. More than any philosopher of the eighteenth century, Burke

believed in community and the common good expressed not through narrow abstract natural rights (which would leave out consideration of most moral relationships) (Kirk, 1974), but through a harmony of interests that extended into posterity.

One of the greatest rights which men possess in society, Burke believed, is the right to be restrained from actions which will destroy their neighbors and themselves--the right to have some control put upon their impulses and appetites for the "common good" and to live in harmony (Burke, cited in Kirk, 1974).

After the French Revolution, Burke wrote in defense of social harmony and the "common good" by appealing to what Locke had ignored. For by the time of the French Revolution, John Locke's argument in the Second Treatise had grown too weak to sustain a tolerable social order John Locke had relied upon the principle of self-interest in his discussion of the common good. But Burke reminded Englishmen and Americans of his time of the love of neighbor and the republican sense of duty (Kirk, 1974).

Essentially, Burke appealed back beyond Locke with touches of Richard Hooker and the medieval Schoolmen to an idea of community far warmer and richer than either Locke's, or Hobbes' aggregation of individuals. The true compact of society, according to Burke, is eternal: it joins the dead, the living, the unborn, and we all participate in this spiritual and social partnership, because it is ordained of God and natural law (Burke, 1968).

This Burkean notion of the hand of Providence and perpetuity is also found in Adam Smith. It is no more ethereal than Rousseau's concept of the General Will as the source of human right and the common good. These communitarian concepts were more spiritual or communitarian than Locke's notion of the social contract. According to Kirk, Locke's Civil Government demonstrated the sufficiency of individual interest and private judgment in politics; his essay on Human Understanding was intended to establish an individualism of the mind and prepared the way for rationalism. Locke was neither Deist nor skeptic, but "he did intend Human Understanding to be a weapon against Catholics, Authority and Tradition" (Kirk, 1974, p. 290).

Public interest theory, however, since Burke and mitigated by the natural law tradition, classicism, and Christianity, has continually sought high moral ground--a harmony of interests as the common good. It is precisely this link to the civic humanist tradition that sets Adam Smith apart from Locke.

### Invisible Hand Made Visible

It is surprising that Edmund Burke, a conservative, would ever come to be associated with Adam Smith and the utilitarians.<sup>11</sup> Between Locke and Adam Smith, however, stands the school of natural law which had not been impaired by the philosophy of self-interest (D'Entreves, 1965). With the new emphasis upon man as a sentient being from Rousseau as well as David Hume, the theory of natural rights, based on pure reason, came to be regarded as insufficient for



rationalizing the true meaning and derivation of the common good (Strauss and Cropsey, 1973).

### Moral Sentiment in Laissez-faire

With Adam Smith, as in Burke, we see that, in addition to reason, the will and the affective emotions implied that man is affected not only toward himself, but toward his species. This was emphasized by the ancients whose concept of civic humanism concerned the city state as a whole and the welfare of all its citizens. It was also emphasized by Adam Smith who wrote Wealth of Nations (1937/1776) and Theory of Moral Sentiments (1976/1759) about the time of Rousseau's Second Discourse when the "reduction of human life to its emotional foundations was enlarged to become the ground of duties as well as rights" (Strauss and Cropsey, 1973, p. 627). Thus Adam Smith's famous elaboration of the principles of free enterprise, or liberal capitalism has "earned him the right to be known as an architect of our present system of society" (p. 607).

Smith, however, is not the dogmatic proponent of laissez-faire that modern capitalists claim him to be. Like Edmund Burke or David Hume, whom he admired (Winch, 1978, pp. 71-75), Smith must also be understood for his humanitarian sentiments, especially noted in the frequently ignored Theory of Moral Sentiments which calls the Lockean ontology into question.

True, in Wealth of Nations, Smith was a proponent of laissez-faire. He attacked the feudal mercantile system to make for free-trade. He made no

apologies for human greed or selfishness and in Theory of Moral Sentiments (1976, p. 464) he wrote: "It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest." He thought that Dr. Mandeville's conclusion that private vices are public benefits "bordered upon the truth" (p. 487).<sup>12</sup> He fashioned this most polemical portion of the Wealth of Nations which expresses the doctrine of modern capitalism and the minimalist state in purely economic terms:

The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations (Smith, 1776/1937, p. 508).

The economic community, according to Smith, was divided into those who live by rent, by wages, and by profit, but all three of these socio-economic orders were "inseparably connected with the general interest of the society, bonded by the "Invisible Hand of Providence" (Smith, 1937, p. 508). Men, need not think or even rationally determine their own gain when by the beneficent arrangement of Providence their actions can serve the public interest:

[When the entrepreneur] intends only his own gain...he is..led by an invisible hand to promote an end which has no part of his intention.... By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it....The statesman, who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but would assume an authority which could..nowhere be so dangerous as in

the hands of a man who had folly and presumption enough to fancy himself fit to exercise it (Smith, 1937, p. 205).

These passages from Wealth of Nations comprise the classic statement of laissez-faire: private pursuit, public gain. It gives the impression that government has no business regulating the affairs of men whose self-interest unwittingly benefits others. However, Wealth of Nations also contains the notion that economic competition is governed by rules outside human control, drawing all resources in their train including people and their talents (Bellah et al., 1991).

Smith believed like Locke that a man was entitled to his labor, but also that the division of labor generally increased society's wealth and tended to level the disparity between rich and poor. Yet his vision of the Invisible Hand of Providence in The Theory of Moral Sentiments was a moral one, guided by an "Impartial Spectator" (Smith, 1759/1976, pp. 146-47), the "quintessentially public citizen" (Bellah et al., 1991, p. 92).

#### Impartial Spectator: Virtuous Commercial Citizen

Smith's "Impartial Spectator" is an imaginary being who represents man's hand in viewing and judging each individual's action as well as Providence over time. He is a virtuous, commercial citizen with a concept of the common good. This imagined judgment of general humanity directing conscience toward an all-seeing humanity opposes predatory self interest (Smith, 1976). It suggests that a constructive standard of "universal mankind" is important to theories of the

common good, not grasped by modern capitalist theory, which is nowhere to be found in the ontological individualism of Locke.

For Smith, a combination of imagination, sympathy, and the need for the love and approbation of men led him to draw upon moral, sentient feelings to describe an economic capitalism within a context of the natural sociability of man. When we consider Smith's views in Theory of Moral Sentiments we see that Smith was far more Aristotelian or Burkean in his view of the social contract, than Lockean. A product of the Scottish Enlightenment, Smith realized that man is in all his economic transactions tied to humanity by bonds of sense and feeling. The perfection of human nature is "to feel much for others and little for ourselves..." and to restrain our selfish, and to indulge our benevolent affections..." (Smith, 1976, p. 24). It is this psychological bond of sympathy in Smith's moral theory that distinguishes his capitalism from Locke's based on reason and the social contract.

He concluded his Theory of Moral Sentiments with a passage on natural jurisprudence, justice, and the rules of natural equity, meaning by all of them "a system of those principles which ought to run through, and be the foundation of the laws of all nations." Justice in this case means to do "everything which [one's] equals can with propriety force him to do, or which they can punish him for not doing" (p. 75).

Thus Smith's Impartial Spectator aims at morality and preservation of society beyond pure unadulterated, private self-interest. There are in Smith

certain "inconveniences" and "disadvantages" associated with the commercial spirit that require certain virtues and mechanisms of "sympathy" essential to social harmony and beneficence (p. 50). The rich and powerful are led by an "invisible hand" to "divide with the poor the produce of all their improvement" (p. 50). Laissez-faire policies would emancipate men, under mild government to seek individual happiness freely, but only if it is compatible with the common good. If the rich and powerful despise or neglect the poor laboring people and strive to elevate themselves, it is owing to "corruption of our moral sentiments" (pp. 56-57) and conspicuous consumption or abuse of power. It is the primacy of sentiment over reason, or moral perception, which ensures that each capitalist or owner "will receive no more than the meanest peasant" (pp. 162-163).

Smith was not alone in stressing the connection between economic pursuits and ancient prescriptions for private and public virtue. An important economic theme in the Wealth of Nations is the "frugality and good conduct" which is an essential background to the selfish "desire of bettering our condition" as more people are drawn into the widening circle of commercial relations whereby "every man...lives by exchanging, or becomes in some measure a merchant" (p. 12).

Among those benefits or entitlements to the working classes that made commercial society a harmonious or a just society was "the property which every man has in his labour, as it is the original foundation of all other property, so it is the most sacred and inviolable" (cited in Winch, 1978, p. 89). But along with

the fruits of one's labor came a standard of equity<sup>13</sup> that we do not find in Locke, or in Marx's labor theory of value:

what improves the circumstances of the greater part [of political society] can never be regarded as an inconvenience to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, clothe and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged (Smith, 1937, p. 36).

Because moral "irregularities" lie around the root of the distributive order, Smith recognized that such conscious acts require "the most sublime and godlike nature which human nature is even capable of discerning (p. 142), "unless government takes some pains to prevent it" (p. 50). Consequently, human agencies, such as educational systems and government itself must serve as a basis for moral sentiment to ensure the common good. Capitalist production definitely required restraints from the law of nations, government, education.

### Legacy of Responsible Laissez-faire

Smith's Impartial Spectator represents a number of forces that do more than protect the natural rights of individuals in their pursuit of self-interest. The "wisdom of nature" imparts a fairness to transcend particular interest and ultimately guides men's efforts throughout history in an evolutionary process in the expectation of an ultimate good. Thus Smith's laissez-faire theory "...is animated by a search for methods of institutionally liberating every man's natural

instinct of self-preservation in the interest of external, politically intelligible freedom and peaceful prosperous life for mankind as a whole" (Strauss and Cropsey, 1973, p. 626).

Smith especially argues for reasons of state or the common good. He repeatedly recommends a moral state with the aid of government to rule out and restrain any private interests that conflict with the national common good, particularly private religious interests.<sup>14</sup> In sum, "the invisible hand" is made visible in those laws of nature that instruct man to approve of what conduces to morality and what conduces to preservation. Along with the underling doctrine of unintended and unforeseen benefits of private ambition and interest in Wealth of Nations, we find that ambition and the pursuit of material gain in Theory of Moral Sentiments is a corruption to our moral sentiments--an illusion that is important nevertheless because it "rouses and keeps in continual motion the industry of mankind" (Smith, 1976, p. 50).

Clearly, Adam Smith is more than "the founding father or evil genius of 'economic liberalism'" (Winch, 1978, p. 70). The Wealth of Nations is an "extended treatise on the reciprocal relationship between commerce and liberty" (p. 70). It also contains a pervasive concern with injustice and oppression and an interest in equity, considered as fairness or equality of opportunity and access. The moral and philosophical basis of these ideas is found in Theory of Moral Sentiments.

### Libertarian Laissez-faire

Adam Smith demonstrated how a regime produces liberty, commercial prosperity as well as justice. However, modern interpretations of seventeenth and eighteenth century liberal theory have frequently neglected this civic humanist aspect of laissez-faire and focussed instead on the Lockean strand of individualism and reason as a basis of choice, a minimalist state to protect that freedom, and the unfettered pursuit of happiness or self-interest without moral obligation. Thus, Lord Keynes said,

the ground was fertile for a doctrine [of public interests] that, whether on divine, natural, or scientific grounds, State Action should be narrowly confined and economic life left, unregulated so far as may be, to the skill and good sense of individual citizens actuated by the admirable motive of trying to get on in the world (Keynes, 1926, p. 15).

Today the proponents of private self-interests are self-styled "libertarians," a term that has replaced "economic liberalism" (Hayek, 1988, p. 403) within the lexicon of laissez-faire. F.A. Hayek, a chief expositor of the conservative, laissez-faire concept of minimalist government defines "libertarianism" as the doctrine "upon which the American system of government is based." Hayek traces its roots to James Madison, the father of the Constitution (Hayek, 1960, p. 409), and argues that Madison's theory of factions bears the Lockean stamp of minimalist government and desire to control power in the state.

Here is where the intellectual tradition of public interest appears to have become derailed, leading to a misconception of the "invisible hand" and the



positive role of government in public life and institutions. Hayek, associating Madison with Lockean individualism, does not recognize that Locke objected merely to "arbitrary" power and not power per se in the state. Cole (1973) argues that John Locke had made a clean break with Thomas Hobbes and proposed his version of a social compact among the people in opposition to arbitrary rule. Hobbes and other theorists, however, fearful of anarchy, advocated the social contract to ensure the power of the monarchy, either by the divine right of kings, government by direct interposition of God, or by might (Hobbes, 1962). Cole argues, however, that the Convention Parliament of 1688 that accused King James II of subverting the constitution of the kingdom, was championed by Locke and the Parliamentarian Algernon Sydney who both protested the "arbitrary" power of the monarch who had ruled since the days of Magna Carta for the common good of the state (Cole, 1973, p. xvii). Locke wrote in The Second Treatise:

Political Power then I take to be a Right of making Laws...for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Common-wealth from Foreign Injury, and all this only for the Publick Good (Locke, 1967, p. 286).

Peter Laslett interprets Locke's brand of laissez-faire as "Liberty is what is left untouched by regulation" (Laslett, 1967, p. 20). Laslett notes that even in Locke's most authoritarian mood (during the anarchical period between the death of Oliver Cromwell and the Stuart Restoration) Locke was a constitutionalist:" "[I]t was legal, not arbitrary authority which he championed,

‘a body of laws so well composed’ that their preservation ‘was the only security of this nation’s settlement’” (Laslett, 1967, p. 20).

For modern libertarians like Hayek, however, liberty or freedom from restraint is a primary value which tends to give free reign to theories of public choice that ignore the need for consensus (See Buchanan and Tullock, 1965). Nevertheless, Hayek insists that the term "libertarian" comes closest to describing the modern conservative preference for a minimalist state in the tradition of the English Whigs (Hayek, 1988, p. 407) for whom "the chief evil is unlimited government," since "nobody is qualified to wield unlimited power" (p. 403). Libertarians, Hayek says, are opposed to the "crude rationalism of the socialist" who would reconstruct all social institutions out of individual reason" (p. 406). Fear of socialism and a neo-Darwinian survival- of-the-fittest doctrine of self-interest is the modus vivendi.

Clearly today’s laissez-faire conservatives have misinterpreted Lockean individualism and also have failed to acknowledge the civic humanist tradition represented by Smith and others,<sup>15</sup> whose progressive economic assumptions contain the language of equity, virtue and corruption to describe the dangers to moral identity and citizenship posed by the advance of commercial society (Pocock, 1971).

### Common Good as Liberty

For F.A. Hayek, liberty is not only the most salient regime value and objective of government, it is the prop of the modern state and the common good itself. Liberty provides "...an argument for principles and against expediency in collective action..." which makes the preservation of property and the state itself possible: "If freedom were not treated as the supreme principle, the fact that the promises which a free society has to offer can always be only chances and not certainties..would...lead to its slow erosion" (Hayek, 1988, p. 68).

Libertarian freedom to Hayek is a negative concept: it means freedom from coercion.<sup>16</sup> Especially important is "freedom of will," which Hayek claims scientific determinism has now destroyed (p. 16.). Liberty also has an ethical dimension in Hayek's libertarian model. Coercion is defined as "...such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another" (p. 20). Coercion is therefore an evil that reduces the individual to a "bare tool in the achievement of the ends of another," regardless of the morality of those ends. It follows, that whatever coercion is granted to the government "...must be reduced to a minimum and made as innocuous as possible" (p. 21).

### Freedom of Choice: The Calculus of Consent

A Lockean libertarian premise of the right of revolution establishes the moral supposition that all men are free to act as they wish--unless some justification is advanced for restricting that freedom. Thus the right to natural liberty, or the "presumption of liberty" (Raz, 1986, p. 8) is a moral choice or assumption that can be denied only by a sort of self-destructive act, i.e. tyranny on the part of the state.<sup>17</sup> In modern choice theory there is no shared commitment to the common good.<sup>18</sup> Thus the modern laissez-faire model goes even beyond the minimalist state of Locke to a presumption of unrestrained liberty.<sup>19</sup>

The most powerful case against central economic planning and the minimalist state is the free market economy model developed by Mises, Friedman, and Hayek. They argue that freedom of choice or tacit consent is the basis for market institutions. The Mises-Hayek argument, however, is primarily epistemological. The idea of a free market as an epistemic device is politically important. The expression of choice (as through public opinion polls), not deliberation, or consensus, determines the general will and needs of a people. Knowledge of economic opportunities and services is for the most part tacit, embodied in skills, customs and practices of a society. This is difficult to discern by any central authority or through political processes, because knowledge is local, fleeting, costly to collect and to ascertain. Thus Mises-Hayek argue that

freedom of choice or "tacit consent" is the basis for market institutions and the moral order itself (Gray, 1982).

### Burden of Choice

Liberty, nevertheless has "the burden of choice," for "liberty and responsibility are inseparable" (Hayek, 1988, p. 71). Responsibility in society, however, goes only so far: it "presupposes a capacity for rational action on the part of those in society who can be held responsible" (pp. 76-77) without anyone serving as the ultimate judge of another person's values and without infringing on "the equally protected sphere of others" (p. 790). This is a modern version of what Locke in the Second Treatise called man's "Natural Freedom" where he had stated that an agent is not by nature subject "to the Will or Authority of any other Man" (Locke, 1967, p. 287). Locke says that all men are naturally in "a State of perfect Freedom to order their Actions...as they see fit...without asking leave, or depending upon the Will of any other Man" (p. 287).

According to Milton Friedman, corporate executives cannot exercise freedom of choice as an act of social responsibility because to "...refrain from increasing the price of the produce...is extremely difficult since in a free enterprise system, they must do good at their own expense" (1962, p. 40). Gilder (1981), however, demonstrates that corporations without any sense of social responsibility have seized the political ground left vacant by citizens, political parties, and other mediating institutions, and are now unrestrained

players in a pluralistic system that exercise amoral leadership. According to Gilder, corporations "exist to pursue their own profit maximization, not the collective aspirations of the society," while portraying themselves as "good citizens" (p.331). They now have an "anti social profile" (p. 352) that is derived from an efficiency, "cost-cutting imperative" that, according to Etzioni (1988) has caused corporate crime and coverup.<sup>20</sup>

Public choice political economists, such as James Buchanan and Gordon Tullock, today differ little from classical cost-benefit theorists in their amoral assumption that consumers not only know what they want, but they should get what they want--whether it is a moral choice or not. E. A. Mishan writes: "All...the economic data used in a cost-benefit analysis, or any other allocative study...is based on this principle of accepting as final only the individual's estimate of what a thing is worth to him at the time the decision is to be made (Mishan, 1976, p. 318). Furthermore, the concept of consumer "willingness to pay" in welfare and cost-benefit theory assumes passive representation on the part of legislators who simply give people what they want without thoughtful deliberation (Schelling, 1968, p. 161). Since it is believed that representatives as well as individuals are ruled by narrow self-interest and seek personal political and economic benefits rather than broader public concerns, more "direct-democracy" devices and processes, such as public opinion polls, the initiative,

referendum, and recall, are required to achieve a true harmony of interests (Buchanan and Tullock, 1965, p. 20).

### **Doctrine of Pluralism**

Critics of pluralism today observe that special interests and multicultural values which threaten the dissolution of republics abroad also undermine national unity at home (Schlesinger, 1991). Others have noted that pluralism has given rise to interest groups entrenched in a pluralistic political system that threaten the life of the regime (Frederickson, 1971).

### **Ethics of Pluralism**

Pluralism appears as a new ideology of the twentieth century, but it is little more than the harmony of interest doctrine, a variation of the doctrine of private self interest operating in collectives--groups, coalitions, or political PACS jockeying for first place within the political system without concern for the common good as the nation as a whole. "Interest group liberalism" (Lowi, 1979, p. 35) is celebrated as an ethical system because it appears to provide a plurality of laudable private and public ends. It appears to promote a politics of incremental change while maintaining long-term stability based on a politics of consent (Connolly, 1969, p. 4).<sup>21</sup>

Some have argued that American pluralism is "the very foundation of our free society and government" (Drucker, 1966, p. 440). The most elaborate

defense of pluralism can be found in John C. Calhoun's A Disquisition on Government published after his death in 1852. According to Calhoun's "rule of the concurrent majority," every major interest in the country, whether regional, economic or religious, possesses a veto power on political decisions directly affecting it. Pluralism is thus more than a rule of political expediency; it is a basic principle of free government based on interests rather than on principles. It is a rule of compromise without which "...there can be...no constitution (p. 440).<sup>22</sup> Drucker, however, notes that rule of a "concurrent majority" was unable to resolve conflicting principles or ideology, evidenced by the aggravated sectional differences resulting in the American Civil War. "In practice, pluralism tends to resolve sectional and class conflicts at the expense of the national interest" (p. 441-442). Calhoun's contention that the national interest is equal to the sum of all particular interests, particularly breaks down over foreign and industrial policy (p. 443).

American pluralism is a manifestation of the doctrine of private self-interest. It is the sum of interest striving to become a harmony of interests. Like the doctrine of utility, the doctrine of pluralism has been justified on the grounds that "In Pursuing his own interest, the individual pursues that of the community, and in promoting the interest of the community he promotes his own" (Carr, 1964, p. 42).

In pluralism we find the Benthamite concept of maximization of private interests, or "the greatest good for the greatest number" which raised the concept



of an aggregate or sum of interests to the pinnacle of ethical theory. James Stuart Mill gave the harmony of interest doctrine an ethical standard that it "...should be the general rule: every departure from it unless required by great good, a certain evil" (Mill, 1965, p. 48). In this way the doctrine of harmony of interests came to be seen as a substitute for classical virtue.<sup>23</sup>

Lowi notes, however, that the "harmony, felicity, or public order that libertarians hoped for has never been realized" (Lowi, 1979, p. 7) and that "...capitalist ideologues became disloyal to the intellectual spirit of liberal economics...and closed their minds, particularly to Smith's notion that the market should produce important social as well as narrowly economic benefits. Lowi observes that neither Malthus nor Ricardo shared in the optimism of Smith's harmony of interest theory.<sup>24</sup> "It takes something of an optimist to believe that such relationships, if left alone, produce nothing but felicity" (p. 11). Capitalists assumed that society would somehow take up the social slack created by the market, but instead "... modern industrialized societies made Smith's "Invisible Hand" as visible as possible through government regulation and control (p. 15).

In addition the anticipated harmony of interest became derailed by Darwin's Origin of the Species and economic determinism (Carr, 1964).<sup>25</sup> Carr notes that since Darwin's biological law of nature and survival of the fittest doctrine, philosophers such as Spencer, Marx and Hegel sought justification for a new moral order through history, instead of from any conscious human endeavor. They saw humanity progressing from strength to strength, sacrificing

its weak on the alter of free economic competition. The doctrine of utility and laissez-faire disguised as a harmony or plurality of interests was tenable only if interests of the weak were eliminated:

The good of the community (or, as people were not inclined to say, of the species) was still identical with the good of its individual members, but only if those individuals were effective competitors in the struggle for life (p. 43).

Carr notes that the old harmony of interest rationale is still defended by internationalists and capitalists "...since its well-being necessarily carries with it some measure of well-being for other members of the community and its collapse would entail the collapse of the community as a whole" (p. 80).<sup>26</sup>

Adam Smith also advanced the notion of a "global common good," in Wealth of Nations from an evolutionist perspective, whereby nations, like individuals pursuing self-interest unconsciously contribute to the good of the entire world community through international trade. Robert Reich, however, argues that this harmony of interest doctrine is no longer viable in today's global economy (Reich, 1991, p. 15).

### Incorporated Pluralism

Despite its defenders and detractors, the modern practice of pluralism suggests that power, not social equity, is the new legitimizing principle. Pluralism exists "Where the absolute claims of one social group, or cluster of groups are

among the contestants in the legislative struggle and... final decisions are made on the basis of power in one form or another" (Griffith, 1962, p. 15).

The old harmony of interests doctrine has now become "incorporated pluralism" (Lowi, 1969, p. 116). Lowi explains that incorporated pluralism occurs where

The government has vested interest group liberalism through powerful administrative agencies that are not responsible to the electorate and keeps group interests in constant confrontation with one another in Congress (p. 116).

The transition from laissez-faire-harmony of interest theory to pluralism, or "interest group liberalism," Lowi says evolved through a "process of absorption" and "from self-regulation through economics to self-regulation through politics" (p. 22).<sup>27</sup> Incorporated pluralism is where powerful private interests groups have the sanction and support of government. The corporate community, one of the most powerful interest groups in America, for example, continues to enjoy protective tariffs and the immutable principles of laissez-faire. Its only justification is that might makes right.<sup>28</sup>

Suppressed minorities now seeking power and influence have turned to "interest group liberalism," coalitions and the like, because the political process has broken down (p. 22). Pluralism assumes that the primary political unit is no longer the individual, as Locke had proposed, but the group. The regulating mechanism is no longer economics, as Smith had suggested, but political

consensus between interest groups. This requires more positive action and greater participatory democracy. Pluralism views the political system

...as a balance of power among overlapping economic, religious, ethnic, and geographic groupings. Each 'group' has some voice in shaping socially binding decisions; and all major groups share a broad system of beliefs and values which encourage conflict to proceed within established channels and allows initial disagreements to dissolve into compromise solution (Connolly, 1969, p. 3-4).

### Pluralist Consensus

The problem with pluralism is that small, unrepresented minorities are excluded. Since the early days of the Republic the notion of majority rule, or popular sovereignty has been one of the most controversial aspects of the nation's founding. In this battle over the true public interest to achieve a consensus or majority vote on any issue, the Federalists' position

required no more than the elective principle, and the traditional definition of republics, which emphasized the love of country and the obligations of citizenship more than the pursuit of interest. But the Anti-Federalists addressed the needs of the majority who would benefit and rule and precisely who this majority should be that must become sufficiently enlightened to rule (Utley, 1988, p. 59).

This debate involving entitlement or the right to rule on behalf of the public interest or "common good" of the entire community has still not been resolved (Bellah et al., 1991). The common interest has frequently been construed as a majoritarian ethic in modern times. Private, special and local interests are seen as enemies of the common interests as implemented by

political parties, organizations, or interest groups which both synthesize and transcend the narrow demands of special interests in order to win the support of a majority of the people. V. O. Key observes: "Political parties as a whole must attempt to gain the support of a larger constituency, and this endeavor requires a program at least ostensibly in the public interest." He further distinguished between political parties and pressure groups: "The pressure group must appeal to the partial interest; the political party, to the common interest" (cited in Schubert, 1960, p. 177). James MacGregor Burns presented the reductio ad absurdum of the majoritarian argument in his book on Congress in which he states that:

In a democracy, majority rule is assumed to be the best means of discovering and satisfying the "public interest." The most democratic, stable, and effective type of majority...is a popular majority--namely, one half of all the pooled votes throughout the nation, plus one (or more) (cited in Schubert, 1960, p. 42).

This pragmatic, majoritarian formula has come to be known as the doctrine of pluralism (Lowi, 1969). It has led to the rejection of a more idealistic metaphysics of absolute common good posited by the philosophers over the centuries which suggests also the inclusion of a variety of minority interests, the concept of majority interest as well as the concept of public or civic virtue as a powerful ideal behind republicanism. For Burns "The problem arises when majority rule, in the strict sense of the term, is thrown overboard for the sake of exploiting some mystical unanimity or general will" (cited in Schubert, 1960, p. 35).

Thus whatever constituency best reflects the "popular will" or the "general will" of all the people within a pluralistic society as determined either by the machinery of government, political parties, or the President who can speak for all the people collectively in the nation, or the "mystical unanimity of general will" determines the common good. Determining the seat of political responsibility and power within a republic or "political community" then defines the nature and purpose of the public interest in that community.

This perennial problem of majority rule or consensus has been addressed by Glendon Schubert:

Some argue that special-interest groups (or pressure groups) provide an essential avenue of functional representation, and that the requirements of a pluralistic society demand broad access by such groups to decision-making points in government; for these group theorists, the public interest is the resultant of the group struggle. Others consider special interests to be "selfish," and envisage a morality play in which the Common Good is pined in a never-ending conflict with selfish, private, Special Interests (Schubert, 1960, p. 13).

Schubert's viewing the establishment of the Common Good as a morality play draws attention to an essential characteristic of republican government--that of civic or public virtue. Schubert notes, for example, the belief that "Men of Good Will must ensure the triumph of Virtue over Vice and, hence, the ultimate victory of the Public Interest over its many enemies" (p. 13) as the ultimate end of government.

The problem of ensuring the public interest or common good defined as "the triumph of Virtue over Vice," for the benefit of all citizens in a pluralistic

republic is a matter of political ethics and morality as well as power. That citizens in a republic must be virtuous and capable of just government has been a goal of the great champions of common or public schools no less than social and political philosophers over time.

"Consensus" is the rubric of pluralism. However, in the context of republican government, consensus is rarely examined as the right or the good. It is only the most expedient political alternative (Connolly, 1969, p. 12).

According to Berle, the public consensus is "the body of those general, unstated premises which have come to be accepted."<sup>29</sup> The problem with consensus is that the link between private concerns and public issues are highly biased. Some underrepresented minorities or groups in society have not developed a voice to be heard and some very legitimate concerns are never channeled to the public arenas for debate (Connolly, 1969).

### Pathology of Pluralism

In the new world order, political effectiveness still requires a moral as well as a power base, a co-ordination of morality and power, "coercion and conscience," "enmity and good will," "self-assertion and self-subordination" which is present in all political societies (Carr, 1964, p. 96). Today's critics of pluralism find "interest group liberalism" not to be in the public interest defined as the common good. The pluralistic system appears to lack justice because it is

statist, and because it creates an inherent bias that bestows advantages on portions of society.

Hauerwas (1981) and other public interest theorists argue that pluralism sees society as an aggregate of human communities rather than as itself a human community as Aristotle had with the polis. The assumptions of pluralism, namely that the balance of interest achieved by the free bargaining of groups in society will achieve the greatest possible justice and common good for the greatest number, does not allow the state to plan or act in the interest of forming the good society. Pluralist political theory does not allow for commonality of interests through some legitimatizing principle or authority. Consequently, "...pluralism prevents the possibility of the society from serving the interest of the whole" (p. 234).

Lowi argues that pluralism as an unethical public philosophy because it is only a process.

Interest-group liberalism seeks pluralistic government, in which there is no formal specification of means or of ends. In a pluralistic government there is, therefore, no substance. Neither is there procedure. There is only process (Lowi, 1979, p. 63).

As an answer to the problem of government power or participatory democracy, it is a "pathological adjustment to the problem" because it seriously "impairs legitimacy" by converting government from a moralistic to a mechanistic institution that allows the law "to become anything that eventually bargains itself out as acceptable to the bargainers" (p. 62).



Others also note that the doctrine of pluralism allows for no pursuit of the common good or public interest. Wolff, for example, argues that pluralism "...rules out a concern for the general good in practice by encouraging a politics of interest group pressures in which there is no mechanism for the discovery and expression of the common good (Wolff, 1968, p. 259-260).

However, Drucker believes that "factions can be used constructively if they are encompassed within a frame of unity...or when "...there is no ideological split within the country." He agrees with Calhoun that "...the pluralism of sectional and interest compromise is the warp of America's political fabric--it cannot be plucked out without unravelling the whole" (Drucker, 1966, p. 446).

Despite its critics, pluralism now forms a strong belief system within which public policy is formulated. Hauerwas observes that pluralism embodies American ideals of limited government, creates an open society, recognizes consensus and the need to establish peace between groups. It makes politics non ideological, and avoids questions of public authority since sovereignty is parcelled out among groups so that no one group is at a disadvantage (Hauerwas, 1981). But at base American pluralism is still the doctrine of the private self-interest of groups seeking, not so much a harmony of interests in the modern state, as its own political advantage to the exclusion of others.

### Guidelines for Pluralism

The problem with pluralism is in relating individual needs and interests to social norms so that there is some ethical legitimacy. Americans today have glimpses of an American order through the dark glass of ethnic and cultural pluralism for which there is no apparent harmony, and much civil strife. But a moral order reflects more than a vague notion of social stability. It also consists of "the permanent things,' ideas and institutions of an abiding order..." (Kirk, 1974, p. 443) that all citizens share in common. It is this perceived moral order that gives political, moral and social sanction to public institutions like the American common school.

Therefore, some standard of the common good as public interest is needed beyond the "rigorous assertion of ego-centered individual rights" (Pocock, 1985, p. 50). "Free consumer choice" has been suggested as a criterion of "legitimacy" (Buchanan and Tullock, 1965); but neither choice nor efficiency provide a normative standard.<sup>30</sup> Others have emphasized that what is needed in a pluralistic, multicultural society at minimum is "intelligent good will" (Griffith, 1962, p. 17) and especially those "deferences to tradition, ethnic culture, religious faith," which Lawrence Cremin called "republican civilities" (Cremin, 1980, pp. 107-147).

Without the "republican civilities" or "commercial humanism" of Adam Smith, it is doubtful that American institutions like the American common school can long endure. In the present context of modern pluralism, the natural rights

philosophy of Locke and Hobbes is thin gruel. Hobbes and Locke had argued juridically: we have rights, rights constitute sovereignty, rights should not be impaired. They presented for posterity a law-centered paradigm without context of culture, tradition or regime values. But the Lockean paradigm alone leads to a "radical misunderstanding ...of the relations between right and virtue...and especially the concept of manners" (Pocock, 1985, pp. 47). "Manners," declared Burke in his Letters on a Regicide Peace (1796) "are of more importance than laws...they aid morals, they supply them, or they totally destroy them" (Burke, 1826, vol. 8, p. 172). What Burke had in mind was ordini, the need for framing a classical order through manners perceived as the study of natural and civil law or jus gentium (Pocock, 1985, pp. 49). Pocock writes:

We are now in the era of a revived and modernized natural jurisprudence, based on the notion that an intensive study of the variations of social behavior throughout space and time would reveal the underlying principles of human nature on which the diversities of conduct were based and from which lois took their esprit (p. 49).

Pennock has provided several guidelines for a the public interest within the politics of pluralism (Pennock, 1962, p. 179). First, he argues, the public interest should not be confined to interests that are recognized by those whose interests they are (speed laws, for example). Second, both public and private interests should include the concept of posterity or "future interest" of those who are not yet born. Third, private interests include individual enjoyments, satisfactions, fulfillments that come only in and through society or the state

which assumes that our interests are primarily social and that society and the state are valuable in themselves (p. 180-181). And fourth, anything that is part of the public interest is recognized by individuals as an interest that they share because they want to see it furthered.

### Conclusion

The present controversy over tax-supported schools requires re-examination of the roots and traditions that have formed American institutions. The political and economic ideas that comprise concepts of public and private are complex and often riddled with inconsistencies. For example, Locke's view on property, the natural law, and especially his reverence, like Smith, for the labor theory of value, has become the basis for a new public morality of the common good through the development of human faculties and education in our time. But both Locke and Smith are most closely associated with private self-interest, minimalist government, and laissez-faire although neither used the phrase.<sup>31</sup>

Both Locke's Two Treatises on Government and Smith's Wealth of Nations, spoke for a revolution from the feudalistic forces in Europe and introduced a new species of economic man to the modern world. Both works are foundational works of modern economic and political thought. They share basic ideas about private self-interest, yet suggest a dichotomy of values.

The concept of laissez-faire extrapolated from Locke and Smith by Benthamites, utilitarians, and modern capitalist theorists has now become the

accepted, if not dominant American paradigm of pluralism and capitalist, economic theory (Diamond, 1986). It is referred to as non-interventionism, or "ontological individualism" (Bellah et al., 1991). Most agree that their basic tenets of laissez-faire have done as much as any to shape the whole landscape of life as we live it today.

Three basic tenets emerge from the early utilitarians who have influenced modern capitalism and shaped the public interest in our time: that (a) the prime psychological drive in man as an economic being is the drive of self-interest; (b) that men exist within a natural order of the universe which makes all the individual strivings for self-interest add up to the social good; and (c) that the best program is to leave the economic process alone.

This chapter has suggested that this economic liberalism or laissez-faire conception of the common good is the modern paideia that undergirds interest group liberalism, the pro-choice movement for vouchers, and the lack of tax support for the public schools. For example, the voucher policy and concept of free market schools points toward a market system--a laissez-faire model. In this model people have exclusionary rights over their property, assets, fruits of their labor, and may choose to opt out of a public education system, or not support the schools with public taxes.

However, many have begun to question the assumptions of this paideia to ask whether, in an age of scarcity, such a public philosophy or paradigm adequately supports the common good, benefits the minority or disadvantaged,

or whether corporate capitalism as we know it and as it applies to individual choice in a democratic society is not inherently immoral and lacking in social responsibility.

Neither Madison nor other American Founders envisioned democracy functioning in a large republic with a plurality of factions operating outside the constitutional process as we have today. One of these conflicts of interest pertaining to schools is how to establish a more distributive taxing policy to ensure greater opportunities for the economically disadvantaged. This policy can be construed as a battle between public and private predatory self-interest. Private interest groups or individuals can see school tax policies that force the public to level up as a violation of the natural right to property that deprives individuals of autonomy.

For example, the recently proposed Hawkins Bill, or The Fair Chance Act, suggests that considerations of political and economic justice cannot afford to be silent in the choice or preference of one economic system or tax policy over another. From a public interest perspective, legislation such as the Fair Chance Act would compel states and individuals to do the morally right thing in promoting universal education. However, from a private interest perspective, such federal legislation would promote uniformity in violation of constitutional federalism and attack the revered concept of a minimalist state through centralized planning, denial of local autonomy, and natural human rights.

Whether the federal government is perceived as "liberator," "captor," or "equalizer" depends upon one's perception of the true public interest. If one concedes that the "common good" is synonymous with the public interest, preferring one political or economic model as a rationale for the financing of the public schools boils down to basic deontology as well as teleology. Most agree that a public philosophy should address the issue of where the pool of collective assets should come from in a society.

Some may well argue that the roots of the American order are the social ethos of the age of Enlightenment. Today we see efforts to disestablish the American common school and opt instead for a free-market institution which appears to be founded upon the "soulessly rational calculation and the cold, mechanical philosophy of Bacon, Hobbes, Locke, and Newton" (Pocock, 1985, p. 50). The tensions between virtue and commerce, private self interest and public benefit present an ongoing dialogue that obliges Americans to redefine the American public interest if the American common school. "Liberty concerns have emerged from time to time concerning the right to send children to non-public schools in the 1920s, interest in tuition tax credits and vouchers in the 1970s and the 1980s, and continual battles against loss of local control. However, "These normative values are not necessarily in conflict with one another, but exist in creative tension." (Ward, 1987, p. 474. The determination of which

paradigm is to shape the future direction of the American common school depends on circumstances and public understanding of its normative foundations.

This chapter, "Common as Common Good" serves as prologemena to further definitions of "common" as a term of art as it relates to the American common school. It has introduced many themes associated with the terms common and common good. It demonstrates through an examination of public interest theories that the American common school is an ideal of egalitarian civic humanism in conflict with a dominant paradigm of private self-interest whose roots have been traced to a Lockean ontology and private self-interest theory. It has suggested that the founders' task of reconciling individual liberty with the responsibility of group members, the problem of the few and many, are still critical to the continued tax support of public schools. The interrelated theories of private interest that undergird modern capitalist and pluralist economic and political theory demonstrate a dialectical tension between individual freedom and public necessity and the need for common ground or consensus upon which to build continued support for public education in the United States.

Subsequent chapters will demonstrate fully an alternative "classical republican" conception of public interest more conducive to the American common school. Beginning with the next chapter on "commonality," normative theories of social equity, community, justice and commonwealth, rather than economic theories of public utility or juridical concepts of nature right, will provide a civic humanist foundation for the American common school.



## NOTES

1. The term "republican" does not refer to the contemporary Republican Party, but rather to a form of representative government that originated in ancient Greece where public authority rests with voting citizens and their elected officials. It is derived from the Latin respublica meaning a state that is a public thing (Halsey, 1973, p. 847). According to Russell Kirk (1974, p. 415), the term "republic" means "public concerns"--or "the general welfare expressed in political forms."
2. The Constitution of the state of Indiana mandates a system of "common schools, (Art. 8, Sec. 1); Kentucky provides for a "system of common schools throughout the state"(Sec. 183); Nebraska mandates "instruction in the common schools." (Art. 7, Sec. 1.); New York calls for "free common schools" (Art. II, Sec. 1); Ohio mandates "common schools throughout the state" (Art 6, Sec. 2); and the Oregon constitution calls for a "system of Common schools" (Art. 8, Sec. 30).
3. Berthoff explains that at the base of a true order "lie the economic values, necessary but subservient, of adequate production and equitable distribution of material goods. Upon that system rest the specifically social values of satisfactory relationships among men in a reasonably stable, secure institution, the system with which social history is primarily concerned. But a stable social structure is less important in itself than as the foundation, in turn, for other, loftier values of mind and spirit--esthetics and intellectual achievement of some excellence and perhaps even what is variously called self-fulfillment, redemption from sin, and salvation of the soul" (Berthoff, 1971, p. xiii). See also Russell Kirk (1974) and Simone Weil (1952, pp. 10-11).
4. According to Hamilton's paternalistic theory, society divides itself into the few and the many. The few are men of property, of education, of quiet judgment; their economic position, together with their experience and knowledge, enables them to resist the whims of the moment and to conceive and perseveringly to carry out long-range policies on behalf of all of society and the common good. See Alexander Hamilton, Speeches in the Federal convention, in Works (1904, I, p.401).
5. Wills argues that Madison looked to representation, as Montesquieu had before him in France, as the governmental institution that would refine not only public opinion but civic virtue as well (See Wills, 1981, pp. 177-264).

6. David K. Hart (1989, March/April, pp. 101-105) notes an increasingly intense debate about the Founders' intentions concerning civic obligation in the new Republic. He suggests that proper understanding of the civic humanist tradition requires a re-examination of John Locke and the contractarian philosophy that has informed the libertarian, laissez-faire tradition. (See Bellah et al. The Good Society (1991). See also Kendall and Carey, Basic Symbols of the American Tradition (1970).
7. In The Foundations of Modern Political Thought, Skinner contrasted these two paradigms in his exploration of civic humanist politics as far as 1530. Pocock says this study dealt with the problem of resistance within the civil order, or the juridical tradition. "Civil law, ...presents us with possessive individualism in a form long predating early modern capitalism, and it presents us with an ancient form of that separation and recombination of authority and liberty which political theorists term liberalism..." which is a matter of law and right" (J.G.A. Pocock 1985, p. 44). This tradition of law and right contrasts with the humanist tradition that focussed on the individual of virtue within the community devoted to the public good where "ideas of suum cuique, of distribution and of justice were...inherent in the civic republican tradition" (p. 42).
8. For a thorough discussion of the Scottish Enlightenment which includes the science and moral philosophy of such philosophers as Francis Hutcheson, Hume, Berkeley as well as Adam Smith, see M.A. Steward (1990).
9. For a general discussion of the historical development of federal education programs, see Johns, Morphet and K. Alexander, The Economics and financing of Education, pp. 330-39. See also, Lu (1991, pp. 543-564) who describes the traditional resistance to a greater federal role in education manifesting itself in education finance as a preference for local and state control, as emphasized in the Rodriguez decision. Berke, Sacks, Bailey and Campbell (1972) cited in Lu note: "Federal aid to education has probably stipulated more controversy per dollar than has any other domestic aid program. Over its long history, debates over federal support for education have pinched the most sensitive nerves of the American body politic, the nerves of religion, race, and states' rights. Frequently, those debates center on questions of educational finance."
10. Tyack argues that E.P. Cubberley and Horace Mann viewed the supporters of public education as the children of light, and the opponents of public education as "enemies of democracy" or "selfish men of small vision" (See Tyack, 1974, p. 80).

11. According to Maynard Keynes (1926, pp. 10-13), "the nineteenth century performed a miraculous union of harmonizing the conservative individualism of Locke, Hume, Johnson, and Burke with the socialism and democratic egalitarianism of Rousseau, Paley, Bentham, and Godwin," gave special credence to the idea of a divine harmony that combined or synthesized Individualism and modern Socialism, thus ensuring the survival of the ideas of laissez-faire.
12. Mandeville's work "The Grumbling Hive: or Knaves Turn'd Honest," was a popular pamphlet in England in 1705, reprinted as The Fable of the Bees: or Private Vices, Public Benefits; with an essay on charity and Charity Schools and a Search into the Nature of Society. In this work the "grumbling hive," is human society in which "The worst of all the multitude/Did something for the common good... "Thus vice nursed ingenuity/which join'd with time and industry/Had carry'd life's conveniences,/It's real pleasures, comforts, ease,/To such a height, the very poor/Lived better than the rich before;/And nothing could be added more" (Mandeville (1714) cited in Adam Smith (1937), "Introduction," to Wealth of Nations (Ed.) Edwin Cannan, p. lii and liii).
13. John Pocock's work on eighteenth century civic humanism demonstrates the way that theorists like Smith employed the Machiavellian language of virtue and corruption to describe the dangers to moral identity and citizenship posed by the advance of commercial society (See J.G.A. Pocock, 1971, pp. 101-3, 146).
14. Smith argues that the sovereign or executive power is justified in curtailing the "authority of religion" which "is superior to every other authority," because "The fears which it suggests conquer all other fears." Particularly the "clergy of every established church constitute a great incorporation...Their interest as an incorporated body is never the same with that of the sovereign, and is sometimes directly opposite to it. Their great interest is to maintain their authority with the people..." over and above the state or sovereign who represents the common good (See Smith, 1937, Part III, Article iii, p. 749).
15. Winch (1978, pp. 70-102) notes that the commerce and liberty theme was utilized by Smith's predecessors, Montesquieu and Hume and also appears as a leitmotif in the writings of other Scottish historians of civic society such as Lord Kames, Adam Ferguson, William Robertson, and John Millar, reflecting a "shift towards a more complex and qualified story...told with a detachment ...that borders on cynicism...an attitude...of 'historical

pessimism." Winch particularly notes Smith's indebtedness to David Hume (pp. 72-76).

16. The distinction between "positive" and "negative" liberty has been popularized by T.H. Green and originated with Hegel. See The Works of T.H. Green, (1885).

17. Gerald Gaus (1989, p. 98) observes in Locke "...the claim to natural liberty provides a point of departure for all further ethical and political justification, providing a presumption against interference and placing the onus of justification squarely on those who would limit liberty." Once established, it follows that all further justificatory ethics and political philosophy becomes a defense of liberty-limiting principles, duties, etc.

A free society tolerates the freedom to act meritoriously as well as wrongly (p. 79), as Milton argued in Aeropagitica. It requires that abilities "be put to the right use" (p. 80), but no one can coerce others to use them correctly (p. 80). The uses of responsibility, then, are totally for the benefit of the individual--and this is the heart of the classic expression of private self-interest for profit or personal gain: "The main function of the belief in individual responsibility is to make us use our own knowledge and capacities to the full in achieving our ends" (p. 80).

The prime focus of the laissez-faire model is the autonomous individual--individuals with inalienable or inherent natural rights that must be protected at all costs by a minimalist state according to a libertarian reading of John Locke. Social commitment extends only as far as a person can personally relate to "specific moral communities" (Hayek, 1988, p.27). At base, all men in their essential character and capabilities are particularists; they can only be expected to provide for those closest to them.

As Leo Strauss (1968) notes, such "consumption technology," or radical individualism and subjectivism could easily lead to nihilism. If the good and the right can be judged only by individual feeling, then there is no objective basis for advocating any policy standard, including an individualistic one like consumer sovereignty (See also Strauss, Natural Right and History, 1950, Chapters 1 and 2).

18. The concept of "neutrality" in public choice theory means that no ideal of productive enterprise is favored over another. "Justice is satisfied by the allocation of initial endowments and is violated when persons are denied freedom to exchange their endowments or to withdraw from market exchange in the service of an ideal of productive association that they prize" (See Gray, 1962, p. 43). Individual choice and preference thus has no room for welfare economics. Mishan observes: "all data in benefit-cost

analyses are based on the principle of accepting as final the individual's estimate of what a thing is worth to him at the time the decision is to be made" (See E. J. Mishan 1976, p. 318).

19. For analyses of liberalism that focus on the presumption in favor of liberty, see S.I. Benn (1988), especially chapters 5 and 6. Joseph Raz (1986, pp. 8-12) criticizes "the presumption of liberty" in The Morality of Freedom.
20. According to Professor Amitai Etzioni of George Washington University, 62% of the fortune 500 corporations were involved in one or more "significant illegalities" in the decade from 1975 to 1984. Approximately 42% were identified in episodes of corrupt behavior. Fifteen percent, nearly 75 major corporations, were involved in five or more cases. Professor Etzioni's findings were reported to the U.S. Sentencing Commission. See Etzioni (1988).
21. Connolly (1969, p. 4) argues that "It combines the best features of individualistic liberalism of John Locke, the social conservatism of an Edmund Burke, and the participatory democracy of a Jean-Jacques Rousseau."
22. John C. Calhoun writes: "It is an instrument of compromise in all constitutional governments and in absolute governments of force. Specifically: It is indeed, the negative power which makes the constitution,--and the positive which makes the government. The one is the power of acting; --and the other the power of preventing or arresting action. The two, combined, make constitutional government..." (cited in Drucker, 1966, p. 437).
23. Because of Smith's Providential element, Christian apologetics in Victorian England approved the doctrine of harmony of interests. Its solidly rational basis for morality and for love of neighbor was an enlightened way to love oneself (Carr, 1964, p. 43 citing The Temporal Benefits of Christianity Explained). Carr notes that it eventually provided a moral justification for capitalism, thus ensuring its power and dominance. He argues that with the expanding economic prosperity and unparalleled capitalist production, the doctrine of harmony of interest rooted in laissez-faire individualism even postponed the class issue for a time; it argued for an equitable distribution that was also a goal of capitalist production.
24. Thomas Malthus (1773/1798) did not share in the optimism of harmony of interest theory. Instead, in his laws of population, he showed the dismal effects of industrial society which negated the harmonious

- function. His Essay on the Principle of Population (1798) demonstrated that as the supply of food goes up at an arithmetic rate, the population goes up at a geometric rate, so that scarcity was an important by-product of the market equation. In addition David Ricardo in Principles of Political Economy and Taxation (1773/1817) showed that division of labor and population growth meant that the amount of products available for distribution could never be enough. Lowi notes that moments of prosperity would be short-lived and sheer survival would be the norm as the price of labor was reduced. Subsistence, not felicity, would be the result of the laissez-faire 'automatic economy'...if other things are left equal and no deliberate effort is made to interfere" (Lowi, 1979, p. 9).
25. The concept of evolution is reflected in F.A. Hayek's most recent moral defense of capitalism. See The Fatal Conceit (1988).
  26. However, the discrepancy between economic theory and practice has given way to a clash of interests. This spells "...nothing less than the complete bankruptcy of the concept of morality which has dominated political and economic thought for a century and a half" (Carr, 1964, p. 62). For these reasons Carr argues that internationally, "...it is no longer seriously possible to believe that every state, by pursuing the greatest good of the whole world, is pursuing the greatest good of its own interests, and vice-versa" (p. 62).
  27. Lowi (1979) explains the origin of pluralism thusly. First, conscious control rather than automatic self-control became the predominant factor of modern conduct with the self-regulating mechanisms shifting from market competition to group competition, "...from self-regulation through economics to self-regulation through politics." This in turn encouraged statism as political leaders embraced positive government. This in turn led to the reclassification of laissez-faire as a conservative doctrine. Pluralism replaced capitalism as the new liberalism or public philosophy "by a process of absorption as it is an amalgamation of the three" (p. 22).
  28. The doctrine of "justice is the right of the stronger" rests on an earlier untenable assumption of Hobbes and Machiavelli of Might Makes Right. Hobbes, for example, argues that "Before the names of Just and Unjust can have place, there must be some coercive power" (See Thomas Hobbes' Leviathan, 1651, Chapter 11).
  29. M. Berle's theory of pluralism is found in Power Without Property (1959). According to Berle, the "unstated premises" is activated only when "ambition counters ambition" with university professors, specialists, responsible journalists together constituting the forum of accountability"

(p. 113). See also on the matter of consensus John Kenneth Galbraith's American Capitalism: The Concept of Countervailing Power (1952).

30. Moralist Gerhart Niemeyer explains in depth how and why efficiency has become the central value of the regime: "Economic efficiency judged in terms of consumer satisfaction has indeed become the accepted formula for the public interest, so much so that the merit of newly emerging political entities is assessed almost wholly in terms of rising standards of living.. . Incoming administrations seek to identify themselves above all with two goals: the economic satisfaction of as many citizens as possible and superior national defense. Of these two, the second depends on the first, since defense secures only whatever the public interest maintains at home, which in our case is an aggregate of individual utilities" (Niemeyer, 1962, p. 1).
31. According to John Maynard Keynes (1926), the economic doctrine of laissez-faire is not a formal economic doctrine, but what political philosophers, rather than economists, have generally accepted as a harmony of social and individual interests. The phrase "laissez-faire" was first used by the Marquis d'Argenson about 1751 in advocating that to govern better one must govern less. It cannot be found in the works of Adam Smith, Ricardo, or of Malthus. Adam Smith's famous passage of "the Invisible Hand," reflects the moral philosophy of Paley rather than any economic dogma associated with free trade and demonstrates a theistic and optimistic view of a world order found in his Theory of Moral Sentiments, rather than in formal economic theory (Keynes, 1926, pp. 23-28).

### CHAPTER THREE: COMMON AS COMMONALITY

In a civilized society we all depend upon each other.

Samuel Johnson. Boswell's Life of Johnson (1791)

This chapter interprets the word "common" as commonality and builds on the previous discussion of "common as common good." It traces the roots and basic principles of a common culture and a common school within a pluralistic society. Chapter Two examined theories of public interest and pluralism and questioned the legitimacy of the public utility paradigm of laissez-faire in which economic efficiency and the aggregating of individual preferences provides a standard of public interest. Common good as commonality demonstrates an alternative to pluralism and a public philosophy based on self-interest.

Commonality is demonstrated as a communal concept or principle of association that can be thought of simply as common ground, i.e. those values, ideas, traditions that demonstrate a common inheritance upon which to establish public institutions like schools. Concepts such as liberty, equality, equity and property, law, community, are all regime values cherished by a culture. This chapter attempts to explicate those values in a context of the common good, a principle of association that establishes an expectation for the support and maintenance of common schools.



The chapter therefore approaches commonality as a political concept and addresses issues of sovereignty, consensus, and membership. This warrants an explanation of the general will of Rousseau and its implications for a public philosophy that unites all citizens through active participation in the quest for common good in opposition to factionalism and interest group liberalism.

The common good as commonality also asks us to examine the rights of property as a matter of entitlement and redistribution. This argument proceeds from a general discussion on property, the true nature of the property right in the context of natural rights philosophy, and "new property" rights compatible with the public interest, particularly the right to education which James Madison argued was a property interest.

In this discussion of commonality, various philosophers are examined for aspects of polity essential to public institutions. The social contract theory provides a context for the theories of Locke, Rousseau and Rawls on property, natural right, sovereignty and equity. D'Entreves, Ritchie and other theorists are examined for their concepts of natural law. Habermas, Wolff, and Lindsay are contemporary scholars examined for the meaning of membership in community. The chapter thus aims to demonstrate that the concept of common good as commonality is central to American life and provides a philosophical basis for the American common school.

## Quest for Commonality and Common School Ideal

From colonial times to the present, some Americans have engaged in an ongoing quest for national identity. This is essentially a quest for commonality, i.e. those social, religious, moral, and educational constructs that unite Americans as a people. However, the ongoing struggle for a common ground and common schools has been challenged in recent years by ethnocentric pluralism. Arthur Schlesinger argues that a denial of commonality "is now being engaged on a variety of fronts--in politics, in voluntary associations, in our churches, our language--but in no arena more crucial than our system of education" (Schlesinger, 1991, p. 64). Schlesinger asserts that the bonds of cohesion have grown so tenuous that it makes little sense to "...exalt cultural and linguistic apartheid" any longer:

The question America confronts as a pluralistic society is how to vindicate cherished cultures and traditions without breaking the bonds of cohesion--common ideals, common political institutions, common language, common culture, common fate--that hold the republic together (Schlesinger, 1991, p. 25).

In this way the fears of Thomas Jefferson about a divisive republic have come to be realized. In 1785 Jefferson worried whether immigration would create a heterogeneity of peoples that would render the nation a "distracted mass" (Jefferson, 1782, p. 85). To avoid this disharmony, Benjamin Rush suggest to Jefferson that the state be "tied together by one system of education" (Rush, 1806, pp. 6-7).

Today compulsory education and a common curriculum in America do not necessarily require that all children go to the same kind, or common schools. American liberalism has allowed for like-minded parents and religious organizations to sponsor private schools based on the "associated principle," of "parental interest and ideology" (Walzer, 1990 p. 258) or religious preference. However, many philosophers and theorists have argued that a democratic state requires inclusive schools that prepare all future citizens for political life where the "distribution [of education] "is determined by what the school is for and not simply by what it is" (Walzer, 1990, p. 244). Aristotle, no less than Hirsch (1988) or Bloom (1984) in fifth-century Athens, argued that the ideal of membership in a democratic community is best served if all are taught the same things, because all citizens must grasp a body of knowledge. In opposition to the educational practices of his own city state, Aristotle argued in his Politics that "the system of education in a state must..."be one and the same for all and the provision of this system must be a matter of public action" (cited in Barker, trans., 1984, p. 370). For Aristotle, commonality in education meant that "Training for an end which is common should also itself be common" (p. 391).

Modern theorists have revived this Aristotelian assumption of commonality and looked to the common school as providing a "common currency of political and social life" (Walzer, 1990, p. 244). But while communal provision for public education enhances the competence of individuals and the integration of (future) citizens, some recognize that "schoolchildren in an important sense serve

themselves" (p. 255). Walzer therefore suggests that "associative principles" of commonality be accepted as an educational standard since the crucial need in society today is for "every child to grow up within this democratic community and take his place as a competent citizen" (p. 258).

The public/private school "voucher plan" is thus viewed as a pluralist proposal by common school advocates. They argue that tax money for educational purposes is turned over to parents to spend on the open market (Coons and Sugarman, 1978) which in turn could lead to a pluralist educational system and the founding of many kinds of new schools that cater to a wide range of parental ideologies, religious preferences, and interests. Such schools would be "specifically designed" for "the reorganization of like-minded parents" (Walzer, 1990, p. 259). In addition, the voucher plan

would help to create, a society in which there was no strong geographic base or customary loyalty but, rather, a large and changing variety of ideological groups--or better, of groups of consumers brought together by the market (p. 259).

In such an "uncommon" system, "citizens would be highly mobile, rootless, moving easily from one association to another" (p. 259). Moves would be choices that enable parents to avoid the compromises of democratic politics where participants are more or less permanently bound together. Albert Hirschman also notes that citizens with vouchers in their hands could always choose "exit" over "voice" (cited in Walzer, 1990, p.259). In other words, citizens of a modern democratic state or republic could practice the politics of

exclusion over inclusion. For these reasons, some contemporary critics of this educational policy do not object to parental choice so long as it provides "ideological diversity on the margins of a predominantly public system" (p. 260).

Walzer's "associative principle" is nothing more than the Aristotelian principle of commonality applied to modern educational systems where children are brought together into a common learning environment just as they will one day come together as citizens (Dewey, 1961). This conception of a common, democratic education has been shared by social and political philosophers as diverse as Aristotle, Thomas Jefferson, Horace Mann, John Dewey, Arthur Schlesinger, and R. H. Tawney (1964) who advocated a career open to talents and protested the exclusivity of the English culture as a result of caste and class.

Public administration theorists and economists have also expressed concern about the fragmentation of American society and culture. They offer evidence to indicate that public confidence in the American value paradigm is rapidly declining (Frederickson, 1971, p. 4). Most recently, economist Robert Reich describes an American society of vanishing economic borders where the only common bond uniting Americans is income, and with a gap widening between the incomes of rich and poor, separating city dwellers from suburbanites, urbanites from and rural (Reich, 1991). The key to commonality, according to Reich, is a sense of community: "We learn to feel responsible for others because we share with them a common history, we participate with them in a common culture, we face with them a common fate" (Reich, 1991, p. 310).

The new communitarians attempt to explain what is meant by "community." Ignatieff notes that "We think of ourselves not as human beings first, but as sons, and daughters...tribesmen, and neighbors. It is this dense web of relations and the meanings which they give to life which satisfies the needs which really matter to us" (cited in Etzioni, 1990/1991, p. 5). Etzioni speaks of a "responsive community," one that has a moral responsibility to all of its members:

The community...cannot be sustained unless its members dedicate care, energy, and resources to shared projects and do not allow the commons to be consumed by private pursuits. The community has a moral standing coequal to that of the individual (Etzioni, 1990/91, p. 2).

The call for enhanced social responsibility and commitment to the common good, however, must not sacrifice individual freedom. Commonality must find expression "in ways that do not curtail even excessive individual rights, recognizing new duties, or revitalizing old ones" (Etzioni, 1990/1991, p. 3). Jean Jacques Rousseau recognized the principle of commonality in the eighteenth century. He assessed the problem in The Social Contract as essentially a conflict of priorities between the individual and the collective and expressed the need

to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before (Rousseau, 1988, p. 191).

The philosophers demonstrate that where there is no common ground, beliefs, or "form of association," to unite a people, all sense of community,

cohesion, and commitment are lost; the common good as commonality simply does not exist. However, "forms of association" must also recognize the integrity of the individual. Habermas (1979) suggests, for example, that commonality should not be viewed as a stifling mediocrity or sameness. It should reflect a perceived reality of the common good that includes excellence and a creative quest of a moral good as opposed to mere balancing of private self interests. This requires a perception of man that is essentially social or moral, rather than strictly political. The quest for commonality and the common school ideal also requires a "contextual" dimension (Flathman, 1966).

### **Etymology of Commonality**

Formal definitions of "commonality" provide a framework for discussion. The word commonality is derived from the Latin communalitas, meaning a "community," particularly a "free or self-governing community," "commonwealth" or "common people" who have "possession in common" (Oxford English Dictionary, Volume 3, p. 568-569). The Oxford English Dictionary further defines "commonality" as "belonging to the community or state," "a body corporate" or "general body of the community," which suggests a common political and social heritage (p. 568).

Commonality also has less formal definitions that define the nature of social community. It implies, not simply that all men are equal, but that all members of society, including the more advantaged and the less advantaged,

must have common ground or vantage point from which equitable decisions are to be made. For example, commonality is described as "the state or quality of being in common with, or shared by, others, cf. commonness." This "commonness" does not necessarily suggest that people are entitled to equal things, a baseness, or even a stultifying sameness or uniformity. It suggests the common ground or denominators that can be shared or experienced in common.

Commonality also suggests a "community of function, structure, or purpose." This definition suggests some framework that will facilitate impartial decisions, provide for equal treatment, or neutrality. Lastly, commonality suggests a shared public philosophy. The dictionary defines commonality as a "shared feature" of a political or social community. It means "commonalities of views, attitudes" experienced as members in a community who have "their shared philosophical underpinnings,"--assumptions or beliefs that unite people and provide a sense of belonging or sharing in the community.

It is important to identify those "shared philosophical underpinnings," that provide essential common ground. Commonality, therefore, is too complex a concept to be explained by etymology alone. Habermas (1979) argues that it reflects a perceived reality of the common good, a unity or solidarity that requires excellence and creativity in the interest of or pursuit of a moral good, as opposed to indulging in mere selfish self interest. Commonality then in the context of the common good addresses the idea that the common good or public interest is actively sought as a goal or ideal of a virtuous community.



The common good as commonality represents that good of society beyond the individual or group interests that may happen to comprise it in fact. The common good as commonality thus implies more than simply the sum of individual or group interests, or balancing or harmonizing of interest. It is a good that is shared in common. This requires a perception of man that is essentially social, rather than political--a "contextual" dimension (Flathman, 1966).

The common good as commonality is not an abstract model of the good society. It suggests that the purposes of the community grow out of its common life and that the purposes, traditions and values which constitute social relations are constantly developing and growing. For some, the demand of the common good is to seek, form, and maintain a rational community. Commonality in this sense does not describe community as only an "...efficient means to such desirable political ends as peace, order or distributive justice" (Wolff, 1968, p. 192). Rather, "It is an activity, an experience, a reciprocity of consciousness among morally and politically equal rational agents who freely come together and deliberate with one another for the purposes of concerting their wills in the positing of collective goals and in the performance of common actions" (p. 192).

### **Commonality as Social Contract**

One way the philosophers have approached the principle of commonality has been through a hypothetical social contract. The social contract is a heuristic

device that describes "the total alienation of each associate, together with all his rights, to the whole community." In this ideal situation "each gives himself absolutely," with "...conditions...the same for all..." so that "...no one has any interest in making them burdensome to others" (Rousseau, 1988, p. 192). These words, written by Rousseau in the eighteenth century, express more than altruism. They describe the common good as commonality based upon consensus as well as freedom of choice as an aspect of polity that morally binds citizens to effect the common good.

Gerald Gaus (1989) observes that the idea of the social contract has been revitalized in our time. It provides the kind of compromise needed in the twentieth century to accustom the forces of radical individualism to the common good. He notes that "The notions that an action is morally acceptable or belief 'true' if they would be the object of universal consensus under ideal conditions," has been adopted by professional philosophers mostly in Germany and the United States (p. 89).

Rousseau's interpretation of the social contract established commonality as a principle of sovereignty. The social contract enables men to identify with the common and still retain individuality: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity we receive each member as an indivisible part of the whole" (Rousseau, 1988, p. 192). The social contract therefore has long been a hypothetical construct which ascribes "...the total alienation of each associate,

together with all his rights, to the whole community." In this ideal situation "...each gives himself absolutely," with "...conditions...the same for all..." so that "...no one has any interest in making them burdensome to others" (p. 192). Rousseau's social contract, effects more than altruism. It explains commonality that is associated with the notion of the corporate general will: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity we receive each member as an indivisible part of the whole" (p. 192), hopefully with the option that "while uniting himself with all, [the citizen] may still obey himself alone and remain as free as before" (cited in Lindsay, 1962, p. 236). Lindsay (1962) argues that Rousseau's theory of the general will "was stated as a theory of sovereignty" (p. 236). In the Hobbsian/Austinian theory of legal positivism, law is a command subsequent to the recognition of the authority of some person or persons (Ritchie, 1952). Because Rousseau could find no person or body of persons who ought to be obeyed exclusively, no one individual has authority over others and no one individual or collection of individuals can be the source of the rightful authority of law, society has supreme authority over us. It is to the moi commun to which we owe all that we are (Lindsay, 1962), for, according to Rousseau in his Discourse on the Origin of Inequality (1973/1755, p. 206) what makes the will "general" is that "each necessarily submits to the conditions he imposes on others."

John Rawls (1971) is a modern "contractarian" who reinstated Rousseau's Enlightenment ideas of the social contract with a concept of universal justice grounded in reason. To it he added the hypothetical "original position." For Rawls, the idea of a contract in an imaginary place of collective bargaining is not a state of nature. The original position was not created to demonstrate sovereignty as in Rousseau, or to protecting natural rights against the incursions of government as in Locke, but to demonstrate "justice as fairness."

Rawls wrote A Theory of Justice (1971) to avoid the weaknesses of utilitarianism, to provide a concrete method for making difficult decisions, and to honor individual persons even though utilitarian theory of the greatest good for the greatest number had emphasized the importance of happiness or the general good as part of a theory of justice. He therefore extrapolated from the social contract theories of Locke and Rousseau, and the deontology of Kant. He developed a modern social contract to provide a procedural interpretation of Kant's notion of autonomous choice as the basis for ethical principles. Rawls intended that the moral principles chosen by the contract would govern the basic structure of a well-ordered society (which could include a network of institutions such as common schools) and determine to a large extent what everyone's life chances would be within a moral order.

In Rawls' hypothetical "original position," principles of justice (and moral philosophy in general) are to be the outcome of rational choice. Rawls asks us to imagine a group of people gathered to choose principles for assessing the

justice or basic structuring of society. For the principles to be just, they must be chosen in a situation that is fair where no one can use to unfair advantage such contingencies as "natural endowments" or "contingencies of social circumstance" (Rawls, 1971, p. 15). Hence, principles of justice will be the result of fair choice--"justice as fairness" (p. 12).

To make the circumstances of choice fair, Rawls proposes that these representative persons choose from behind a "veil of ignorance" (p. 11) by which they will choose two basic principles of justice: equal liberty (p. 302) and the "difference principle" (p. 15) which ensures that the policies of society would be decided in terms of the least advantaged, i.e. policy would choose to "maximize the minimum" (pp. 152-156).

First, because all people in the original position would want to secure their own equal liberty, they would establish:

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all (p. 302).

And secondly, as rational beings they would reject the utilitarian principle "which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others" (p. 14). Those in the original position would not risk lesser income only for the benefit of others and would choose the "difference principle" instead:

Social and economic inequalities, for example inequalities of wealth and authority are just only if they result in compensating benefits

for everyone, and in particular for the least advantaged members of society (p. 15).

They choose to have the minimum benefits of society rather than the maximum because in the original position and behind a veil of ignorance, they cannot judge unfairly. They do not know what positions they hold in society and are ignorant of even their own particular goals or life-plans which prevent them from selfishly selecting principles in their own favor and not in the favor of the least advantaged members of society.

However, all individuals do know and share certain things in common in the original position. First, they know that society is subject to "circumstances of justice" (p. 137) and that cooperation is therefore possible and beneficial (pp. 126-127). Questions of justice arise in situations only because of scarcity and conflict of interest. Second, they must know something about economic theory, social organization and human psychology (pp. 137 ff.) in order to make some predictions about the likelihood that principles chosen can be strictly adhered to without undue stress or "strains of commitment" (p. 176). Also in the original position, all parties are mutually disinterested. That is, they have no particular interest in each other's aims and purposes. They are rational and know that they desire more of the primary goods of life if possible. And they are not "envious," i.e. preferring to gain in primary goods even if others gain more than they do (p. 143).

The social contract is thus a hypothetical bargain struck without the kind of jealousy or envy that would make any one in the original position refuse gain for themselves accompanied by greater gain for others. In short, in Rawls' original position no one knows what would give an unfair advantage.

Thus for Rawls, the social contract is a way for men regardless of race or ethnic origin to formulate rules that would be acceptable to themselves, regardless of their station in any society at any time that would also be applicable and good for all. The contract is a rational consensus that ensures justice as fairness.

Other modern philosophers (Habermas, 1975; Ackerman, 1980) may trace their intellectual roots to the Age of Reason or to Kant in the nineteenth century. Habermas (1979), for example, has devised an ideal free speech situation and argues that rational consensus is a truth based on the best argument. Consensus then is a process and product of evaluation and judgment. According to Habermas, four validity claims are needed for a consensus to be rational: sincerity, comprehensibility, truth, and normative agreement. Problematic assertions are redeemed through critical discourse characterized by radical equality among participants. For Habermas, in an ideal free speech situation, only the best argument is pursued, with an eye toward replacing an accepted consensus with a rational consensus.

For Walzer (1983) the community itself is a "sphere of security and welfare." He redefines the social contract as moral obligation because the

greatest need is community itself, or the need to experience a common culture, religion, politics. "It is only under the aegis of these three that all the other things we need become socially recognized needs, take on historical and determinant form." The signers of a social contract

owe one another more than mutual aid, for that they can owe to anyone outside the community. They owe mutual provision of all those things for the sake of which they have separated themselves from mankind as a whole and joined forces in a particular community" (Walzer, 1983, pp. 64-65).

Walzer's version of the social contract emphasizes the concept of membership and the "distributive community." He defines the social contract as "an agreement to redistribute the resources of the members in accordance to some shared understanding of their needs, subject to ongoing political determination in detail. Thus the contract is a moral bond, rather than a political one "... for the act of distribution connects the strong and the weak, the lucky and the unlucky, the rich and the poor, creating a union that transcends all differences of interest, drawing its strength from history, culture, religion, language, and so on" (p. 83).

Thus the character of community is defined by its communal distribution and associations which automatically requires consideration of membership, power or autonomy, and authority within that community which its members are morally bound within the social contract to embrace. "The closer and more inclusive it is, the wider the recognition of needs, the greater the number of social goods that are drawn into the sphere of security and welfare" (p. 79).



Rousseau himself had argued that the social contract was a farce if goods and services were not distributed in accordance with the general will (Rousseau, 1988, pp. 250-52).

### **Commonality as Regime Values**

The term commonality suggests a shared culture or sense of purpose that holds publics together. This can be history, culture, language, a sense of nationhood, or national expectation. Commonality can also be defined or explained in terms of regime values. Regime values reflect a common heritage that Americans have always valued and cherished.

One commonly shared belief is that the common school has a responsibility to transmit and reflect the values of the regime. A recent public opinion poll commissioned by the New York State United Teachers (NYSUT) tells us that "scrapping the common heritage in favor of separate histories of separate groups is not what ordinary citizens expect at all from schools" (Shanker, 1992).<sup>1</sup>

### **Definition of Regime Values**

As an alternative to humanistic psychology and political philosophy, regime values provide a method of analysis that rests on three considerations: (a) that ethical norms should be derived from the salient values of the regime, (b) that these values are normative for public officials because they have taken an

oath to uphold the regime, and (c) that these values can be discovered in the public law of the regime (Rohr, 1989, p. 68).

The term "regime" is not herein used in the journalistic sense of the "Carter regime," or the "Reagan regime." John Rohr explains that the term "regime values" most closely approximates what Aristotle meant by "polity." Aristotle in Politics had made a distinction between state and society, and also expressed the principle that laws reflect the values of the regime, which must be supplemented by empirical findings (Rohr, 1989, footnote 90, p. 68). Regime values then are the values of society as a whole, as opposed to the values of the "state," which suggest only the authoritative aspects of political society.

To distinguish between those values that the liberal tradition perceives to be for man outside of the State, or in a state of nature, Rohr notes that regime values "refer to the values of that political entity that were brought into being by the ratification of the Constitution that created the present American republic" (Rohr, 1989, p. 67). Regime values can be principles found in court decisions and various public documents, or as Jefferson said, "in the elementary books of public right" (Berns, 1991, p. E1) that have come to be cherished over time. For example, from John Locke's Second Treatise of Government and the Declaration of Independence we learn that the fundamental values or rights retained by the American people are the right to consent to government and its corollary, the right to withdraw that consent (Berns, 1991, p. E4).

Arthur Schlesinger (1991) recognizes the importance of regime values to a culture growing increasingly pluralistic. He refers to regime values as cherished or republican principles. Until the American Revolution, he argues, basic republican principles were not articulated or synthesized in any part of the world; yet, he notes, these republican principles or values that have made a common culture and all Americans "new men." These values or principles "define the American nationality," and "empower people of all continents, races and creeds" (Schlesinger, 1991, p. 25).

At the very least regime values suggest an "awareness, however slight, of the indirect consequences of human association and of the need to assert control over these consequences" which is important to most Americans. Thus any concept of public justice must address the question of how the public interest can be determined authoritatively and rightly whenever there are divisive interests or a conflict over values (Meyer, 1975, p. 87).

### Commonality in Liberty and Equality

Americans today urging cultural diversity seem frequently confused about what values of the regime they share in common. De Tocqueville (1983) notes that liberty and equality are easily confused because men cannot become absolutely equal unless they are entirely free. He further notes that the ideal state toward which democracy tends is one where the people participate in government: "As no one is different from his fellows, none can exercise a

tyrannical power; men will be perfectly free because they are all entirely equal, and they will all be perfectly equal because they are entirely free" (De Tocqueville, 1963, p. 94).

De Tocqueville also notes that freedom and equality are two unequal things. Men in democracies "prefer equality to freedom" (p. 95). They have "a natural taste for freedom," but "an insatiable passion for equality in freedom." In fact, "They will endure poverty, servitude, barbarism, but they will not endure aristocracy" (p. 97). A conflict over what equality really means, whether it is the common expectation of it, equal treatment before the law, or equality of opportunity suggests that "In our age freedom cannot be established without it, [equality] and despotism itself cannot reign without its support" (p. 97).

"Equality in freedom" or "equal liberty" implies just or fair distribution of goods and services that people share in common, equal facilities, opportunities, benefits, advantages that ensure a fair chance at success. A complete definition that links liberty and equality was provided in Young v. Commonwealth (1903). It is defined in the context of economic freedom to mean more than "freedom from restraint: "It means not merely the right to go where one chooses, but to do such acts as he may judge best for his interest, not inconsistent with the equal rights of others." This means that a person is free to pursue anything that "may be best adapted to his facilities, and which will give him the highest enjoyment." Liberty especially means "to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his

livelihood by any lawful calling...to enter into all contracts." All these freedoms are implicit in the Declaration of Independence which states that men are created equal and endowed with the same inalienable rights.

Equality as expressed in the Declaration of Independence, or in Brown v. Board of Education (1954) today seems like an illusive ideal, especially when we try to ensure equal outcomes or equal facilities and advantages for all students. Equality has been consistently difficult to define though it is "central to the understanding of much of recent and contemporary public administrative practice" (Waldo, 1984, p. 224). Consequently, equity appears to be a more relevant or potent regime value for education today than equality.

### Commonality in Equity

Social equity is an ancient concept that is especially relevant to public education. Unfortunately equity, applied to school settings, like equality, is similarly illusive and disappointing in its realization. It is "something close enough to equity to silence criticism by approximating justice, but far enough from equity to guarantee the benefits enjoyed by privilege" (Kozol, 1991, p. 177). Equity is only approximate, but "the imperfection falls in almost every case to the advantage of the privileged" (p. 178). At best equity involves inputs or outputs is an ongoing process. "Holding out on establishing standards and assessments until we are sure that everything is absolutely fair...is an excuse for

doing nothing," and this would also "be terribly unfair to all our students" (Shanker, 1992, p. 6).

Many values are implicit in the value of equity: a commitment to good government, to the common good, to republican principles of duty and responsibility, to principles of justice and fairness vital to the commonwealth. However, equity in the language of the law is distinct from other regime values: it is an ancient moral precept that offers an ethical dimension. Black's Law Dictionary provides this definition:

In its broadest and most general signification... [equity] denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men,--the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his due. ".It is therefore the synonym of natural right or justice. but in this sense its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law (Black, 1957, p. 72).

Equity, according to Blackstone, is a concept imbedded in the "higher" natural law (Blackstone, 1969). It is a term widely used in ethics, law and jurisprudence that "connotes ideals of justice, fairness, equality, mercy, judgment according to law, as well as judgment that bypasses or transcends strict law in the interest of conscience, humanity, natural law, or natural justice (as distinguished from justice according to law): judgment according to the spirit, rather than the letter of the law" (Konvitz, 1973, p. 148). What all of these historical uses of the term have in common is "the notion that equity is a claim

or a right not known to the strict law, yet one which the law does or ought to recognize" (p. 148).

This notion that equity is "justice that goes beyond the written law" can be attributed to Aristotle who provided the locus classicus of the notion of equity (p. 149). In Nichomeachean Ethics Aristotle says that the nature of the equitable was a correction of law "where it is defective owing to its universality" (1904, Book 5, p. 67). In the Rhetoric Aristotle made it clear that actions which should be treated with lenience are cases for equity, especially those that are the consequence of misfortune, error, and human weakness where one looks to the intention of the legislator, not to the letter of the law, and especially

not to the action itself, but to the moral purpose; not to the part, but to the whole; not to what a man is now, but to what he has been, always or generally; ....to prefer arbitration to the law court, for the arbitrator keeps equity in view, whereas the dicast looks only to the law, and the reason why arbitrators were appointed was that equity might prevail (Rhetoric, 1986, Book 1, p. 13).

Equity is also associated with justice, righteousness, or virtue in the Hebrew Scriptures where the Hebrew term yosher is given the meaning of equity (Konvitz, 1973, p. 151). Isaiah (11:4) says that the ideal rule shall "decide with equity for the meek of the lands" (Thompson, 1983, p. 708). The psalmist (98:9) says the Lord "is come to judge the earth...with righteousness, and the peoples with equity" [yosher] (Thompson, 1983, p. 614).

While the rationale and precedents for equitable adjudication came from our Hebraic-Greek-Roman heritage, which flowed directly into the canon law,

and into the secular law where the Church had influence, it was in the Anglo-Norman and Anglo-American legal systems that equity won its clearest formulation. "Equity remains the spirit by which the law is reformed, in one way or another to become more responsive to the moral demands of society" (Konvitz, 1973, pp. 152-153).

### Equity and Equality Compared

Equity is therefore to be distinguished from equality and is therefore a different regime value. Equity implies more than simple equal treatment, it is "a refinement of the concept of justice" (Alexander, 1990, p. 284). Equity contains an ideal of distributive justice that is "roughly equivalent to fairness" (Raphael, 1976, p. 172). Broadly defined, "equity" is a synonym for natural right or justice that encompasses the principle of fairness. It suggests that the government treat individuals impartially based on "subjective evaluation of individual needs, deficiencies, and abilities" (Alexander, 1990, p. 285). Equality, on the other hand, means being treated alike in conformance with a common standard (p. 285). According to D. D. Raphael, however, "fair shares" is not the same as "equal shares" (1976, p. 172). Raphael looked to Plato and Aristotle who defined arithmetical equality as providing equal share to all alike, irregardless of worth, and enlarged on Aristotle's perception that only "geometrical" or "proportionate" equality is truly fair, i.e. giving unequal shares to unequal persons (Alexander, 1990, p. 285). Modern moral reasoning in a diverse and



pluralistic society, however, requires that we qualify differences among people. It is now "fair to discriminate in favor of the needy, or the meritorious, or the able, and unfair to discriminate between people who are equally needy, equally meritorious, or equally able" (Raphael, 1976, p. 173).

### Equity as Fairness

Because social equity has lacked a full ethical content and treatment, it has not received the attention it deserves until recently. Equity as in the natural law is a universal principle of justice which in terms of natural law is timeless. John Rawls provides a promising alternative to natural law philosophy as an ethical foundation for a code of equitable public administration that also serves as a modern public philosophy. "Political philosophers now must either work within Rawls' theory, or explain why not" (Nozick 1968, p. 183). Nozick goes on to say:

Not since the writings of John Stuart Mill has there been such a wide-ranging, systematic work in political and moral philosophy capable of inspiring a vision of contemporary justice to unite a people as Rawls' Theory of Justice (p. 183).

For Rawls self-respect is the basis of commonality and equity among all men. Whether the least advantaged or the most advantaged, all individuals are entitled to self-respect.

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by the greater good shared by others. It does not allow that the

sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interest (Rawls, 1971, pp. 3-4).<sup>2</sup>

Rawls rejects Benthamite equality that disregards basic human differences owing to a sum or aggregation of utilities. As we have seen, for Rawls the social contract represents only a methodology, a way to propose a hypothetical condition, or "original position" that will practically engage all men in an act of reason that will ensure a consensus of what is both equitable and good as in natural law. The initial choice situation is therefore not a state of nature from which to claim natural rights. It is a way to continually resolve ethical impasses and ensure equity through a process of moral reasoning. Explains Hart:

The purpose of such discourse [in the original position] is not to bargain and negotiate about the maximization of personal utilities. Rather, it is the method by which all can arrive at the deontological foundation of justice (Hart, 1974, p. 6).

Justice, in other words, is what any reasonable person ought morally to expect and strive to achieve.

In Rawls' "original position" we only know that we will accept no more for ourselves than we would for others. All participants are adults of normal intelligence capable of participation as equals by virtue of the gift of reason. Thus, in the original situation, everyone's self-esteem is enhanced. Furthermore, "Since the original agreement is final and made in perpetuity, there is no second chance" (Rawls, 1971, p. 176). Finality occurs because anyone rationally

following the rules governing discourse in the original position would always arrive at the same identical principles.

In the original position the "difference principle" is predicated upon the principle of "equal liberty." No organization has the right to deny anyone basic liberties, nor can it infringe upon the individual's basic liberties upon grounds that it will provide greater economic benefits, greater pleasure, or some such utilitarian or efficiency criterion. An individual must be allowed to realize his own nature and to fulfill his own life plan.

These two principles are a moral imperative that define commonality as equity. Homogeneity is achieved when there is a consensus based upon what is "right." The right then becomes the agreed upon moral foundation for the private achievement of whatever goods individuals could then desire. The common good is what all can share without neglecting anyone unnecessarily and without unduly favoring anyone.

Utilitarians, however, maintain that whatever maximizes the good is right (no matter who is left out in the bargain--i.e. Pareto optimality). However, in The Right and the Good (1930), W.D. Ross observes that the concept of "greatest good for the greatest number" violates concepts of justice. One could break a promise or even harm someone any time more "good" could be accomplished by doing so. Consequently, Rawls purposely reversed the order of "good" and "right" by making the "right" prior to the greatest good as a matter of moral principle to allow for many varieties of the good. He argues that classical

utilitarianism violates the demands of justice by permitting losses to some to be compensated by gains to others: "It may be expedient but it is not just that some should have less in order that others may prosper" (Rawls, 1971, p. 15). He argues that "justice denies that loss of freedom for some is made right by a greater good shared by others" (p. 4). Rawls therefore concludes that utilitarianism appears not to respect differences between persons (p. 27).

Rawls' second principle, the famous "difference principle," focusses on the fair distribution of social and economic goods within society. For Rawls the common good means that the collective efforts of society should always be equitable, that is, concentrated on behalf of its less-advantaged members. There is a common base of goods and services to which all in society are entitled. This "irreducible minimum" of primary goods (such as self-respect, rights and liberties, powers and opportunities, income and wealth) are due every man and must be met. Disparities in income and status are only acceptable if they increase the index of primary social goods for the least advantaged. The "difference principle" is "...a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred" (p. 76).

According to this concept of equity, the abilities and talents of students in a school for example would not prevent a gifted student from having the necessary support to develop his talent. The fruition of that talent benefits all. However, the less advantaged, to appreciate and benefit from that superior

talent, would have the advantages of a superior education. Thus any inequalities work to the advantage of all. "This simple example can be extended into all areas of human endeavor. It provides for both equity and for the development of abilities (either as creator or appreciator) that enhance self-respect" (Hart, 1974, p. 8).

### **Commonality as Property**

#### **Property as Regime Value**

With the great defense of property throughout the ages as the bulwark of liberty and security in society one wonders then why property was excluded from the Declaration of Independence. Russell Kirk explains that the property right is so fundamental and common to society as not to have been named:

The fact is that all enlightened governments have respected rights of property, and that in accordance with Locke and social contract theory governments were formed for its protection (Kirk, 1974, p. 54).

Jean Jacques Rousseau, however, observes in his Discourse on the Origin Inequality (1752/1775) that the entire concept of civil society and institutions rests on a faulty assumption of property as private self interest:

The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society (Rousseau, 1952, p. 348).

It will be argued in this section that property is a "salient," yet controversial regime value (Rohr, 1989) because it speaks to private, vested interest as well as to the common good through its uses and instrumentality. Property, as an aspect of commonality, is a regime value on a par, if not exceeding other regime values in its relevance to education and the common school as a vehicle of the common good. Because it is both an "constitutive" and "instrumental" value, property can be directed to the common good or the higher political and moral ends of society (Rohr, 1989). Like liberty, property is a "broad and majestic" concept (Alexander and Alexander, 1992, p. 645).

Philosophers since the Enlightenment have argued that property was one of the most vital rights of man and the very basis of civil society. Rousseau, for example asserted that property was "sacred" in its potential to serve the common good:

the right of property is the most sacred of all the rights of citizenship, and even more important in some respects than liberty itself; either because it more nearly affects the preservation of life, or because property being more easily usurped and more difficult to defend than life, the law ought to pay a greater attention to what is most easily taken away; or finally, because property is the true foundation of civil society, and the real guarantee of the undertakings of citizens: for if property were not answerable for personal actions, nothing would be easier than to evade duties and laugh at the laws (Rousseau, 1988, p. 151).

Leonard Levy (1963) argues that property rights in the early days of the Republic were considered even more "fundamental" than freedom of speech, religion, press, and assembly, as their protection was already provided for in the

original text of the Constitution. Gottfried Dietz (1963) notes that property unlike equality and other first amendment freedoms, is posited as a basic right throughout the United States Constitution. For example, the word property in the due process clauses of the Fifth and Fourteenth amendments does not rank below liberty. Further, Article I, Section 10 prohibits the states from impairing the obligation of contracts. The Bill of Rights protects property. The Fifth Amendment states that no person can be deprived of life, liberty or property without due process of law and that private property cannot be taken for public use without just compensation. The Seventh Amendment guarantees trial by jury in common law suits involving property.

### Property Rights Versus Human Rights

Property is one regime value that is also the most contentious. The development of civil liberties since 1937 has relegated property rights far down on the scale of social justice.<sup>3</sup> Rohr (1989) observes that compared to liberty or equality in the era of interest group liberalism, property rights have been eclipsed as a regime value within the family of human rights. A tax on property in the early days of the republic as a requirement for voting placed an exclusive value on membership in society. Political power has traditionally been vested in property ownership. This has eventually led to the question in education finance of how legislators can ensure a just and equitable distribution of the common

goods to each member of society, if they themselves represent an elite class privileged by possession of property.

Assumption of power through property would have been regarded as a perversion of the original meaning of property, according to philosophers and American Founders-- a violation of public trust invested in the legislature, whose duty in society was to preserve and protect the common good. John Locke wrote in the Essay: "Our Business here is not to know all things, but those which concern our Conduct." He trusted that men "...have Light enough [reason] to lead them to the Knowledge of their Maker, and the sight of their own Duties which are in the use as well as organization of things (Locke, 1947, p. 290).

The notion of property as commonality, a right which should be shared by all and denied to none that legislatures were duty-bound to protect, has been denigrated in recent years. Today we distinguish between property rights and human rights which made little sense in the early days of the republic (Rohr, 1989) when "...property rights were valued by the framers as highly as other rights..." (McClellan, 1971, p. 237).

Rohr attributes this decline in the primacy of the property right to irresponsibility during the "big business" era when "robber barons" abused the principle of laissez-faire by operating "sweatshops" in complete disregard for the welfare of workers or the national common good and in pursuit of private interests and self gain. Such social outrages were caused by "corporate greed,"



and thus "The rights of property were transformed into engines of oppression against the poor" (Rohr, 1989, p. 246).

The concept of class division on the basis of wealth and property associated with power and privilege throughout the capitalist era was further encouraged by Karl Marx in the twentieth century who taught that social power in modern capitalistic society is derived from ownership of the means of production. According to communist ideology, power that is not shared is disproportionate property; it is abusive and corrupt, causing division in society.

To a great extent, this negative view on the ownership and distribution of property was instigated by Locke himself, one of the original theorists on property, whose inconsistencies, especially in The Second Treatise and his famous "turfs" passage continue to evoke controversy (Tully, 1980). The controversial passage from Chapter Five is:

Thus the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore I have digg'd in any place where I have a right to them in common with others, become my Property, without the assignment or consent of any body. The labor that was mine, removing them out of that common state they were in, hath fixed my Property in them (Locke, 1967, p. 28).

Some have argued that this passage provides a theoretic base of modern socialism--that to the laborer belongs the product of his toil. Others read into it an exploitive, predatory self-interest whereby any capitalist employer of labor is entitled to the entire produce created by servants if he could get it (Macpherson, 1972).

Property came to be viewed as a cause of factionalism by Madison who found that "The diversities in the faculties of men from which the rights 'of property originate, are...an insuperable obstacle to uniformity of interests" (Madison, 1961, p. 58). Madison further noted that:

From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors ensues a division of society into different interests and parties" (p. 60).

Madison, therefore argued, like John Locke, that "The protection of these faculties, [i.e. the abilities, intelligence, and talents men have to acquire property] was "the first object of government" (Madison, 1961, p. 58).

#### Property as Instrumental Right

Of all the regime values, therefore, property is the most basic or mundane right primarily because it is an "instrumental" or "constitutive" regime value. Unlike other traditional civil liberties (religion, speech, press, assembly), which are "transcendental" rights constitutive of the common good, the property right gives people a chance to achieve dignity and security (Rohr, 1989, p. 246).

The freedom that property confers is itself part of the common good. It is valued not because of what it does but because of what it is and, as such, is a constitutive element of the common good (p. 245).

For Justice Joseph Story in the nineteenth century, property was also a means to an end, the end being a moral order--a free and just society in which

every man was entitled to the rewards of his industry and ability, and to what he had inherited from his ancestors (McClellan, 1971, p. 234).<sup>4</sup> Story and others in his day equated property rights with civil rights because all forms of property are sacred and provide a basis for other freedoms known together as civil liberties. Unlike the modern Court which has elevated First Amendment freedoms, Story regarded economic freedom as the desideratum of all liberty insured by the property right. In his inaugural address as Dane Professor of Law, Story insisted, like Rousseau, that:

The sacred rights of property are to be guarded at every point. I call them sacred, because, if they were unprotected, all other rights become worthless or visionary. What is liberty, if it does not draw after it the right to enjoy the fruits of or own industry? What is political liberty, if it imparts only perpetual poverty to us and all our prosperity? What is the privilege of a vote, if the majority of the hour may sweep away the earnings of our whole lives, to gratify the rapacity of the indolent, the cunning, or the profligate, who are borne into power upon the tide of a temporary popularity? (Story, 1852, p. 299).

To see the importance of property in promoting the common good, or as a regime value "capable of generating a type of freedom and independence" that leads to the common good and "personal security" (Rohr, 1989, p. 246), it is necessary to examine the various "instrumentalities" of the property right. These are discussed below within a broad definition of a dual concept of property stipulated by Madison:

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property and the property in rights (cited by Rohr, 1989, p. 225).

### Property as Common Good

The philosophers have attempted to explain precisely how property is a common good in relation to the principle of commonality. Ever since the social contract, it has been assumed, at least among natural law writers, that government is a human artifact (Tully, 1980) entrusted to a legislative power which, according to Locke, consists in a majority decision of all men in the commonwealth to form a government. In the formation of a commonwealth, the purpose or final end of the legislature is the protection or preservation of property. Locke wrote: "Their Power in the utmost Bounds of it, is limited to the public good of the Society. It is a power, that hath no other end but preservation" (Locke, 1967, p. 135). Throughout the Two Treatises on Government Locke describes the common good, good of society, or community as the purpose for which a commonwealth is instituted.

Miller observes from Locke the notion that the public good is a principle of justice governing society in two ways. As an "aggregative principle" it refers to the total amount of good enjoyed by a particular group. However, as a "distributive principle" it refers to "the share [emphasis supplied] of that good which different members of the group have for themselves" (Miller, 1976, p. 19).<sup>5</sup> The preservation of life, liberty and happiness, or in Locke "property," thus requires security in a commonwealth. As Locke wrote, political power "...can have no other end or measure...but to preserve the Members of that Society in the Lives, Liberties, and Possessions" (Locke, 1967, p. 286). It is thus

the duty [Italics added] of legislatures to preserve both property and the public good" (Locke, cited in Miller, 1976, p. 19).

In Locke, property and the common good are used interchangeably as the final cause or end of political community: "the end of government itself...is the public good and preservation of Property" (Locke, 1967, p. 35). The essence of commonality in a commonwealth, is the belief that all those who have entered into the contract can expect to be protected in their property which is perceived as a common good.

#### Property as Equity

It was Rousseau, however, not Locke, who first illustrated that property was instrumental to equity. Particularly in matters of taxation of property, the principle of equity was evoked to avoid the deception arising from avarice and self-interest: "We have to consider the relation of quantities, according to which, ceteris paribus, the person who has ten times the property of another man ought to pay ten times as much to the state (Rousseau, 1988, p. 302). Rousseau also advocated equalizing the advantages of society away from the rich and the powerful: "...the imposition [of taxes] ought not to be in simple ratio to the property of the contributors, but in compound ratio to the difference of their conditions and the superfluity of their possessions" (p. 303).

Equity in society could be achieved with individuals acting as a "corporate and collective person" with responsibility to become of service as a social

instrument of the common good. Individuals acting collectively and severally would thus exhibit a new moral stature consistent with the higher developments of their natural faculties and sentiments (Rousseau, 1988, p. xiv).

James Madison defined property as "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual" (1961, p. 59), and noted that "the most common and durable source of factions has been the various and unequal distribution of property" (p. 59). He believed with Locke and Rousseau, however, that property had a "larger and juster meaning, it embraces everything to which a man may attach a value and have a right, and which leaves to every one else the like advantage (cited in Meyers, 1973, p. 186).

The greatest threat to the security of property, was unequal taxation. According to Madison: "A just security to property is not afforded by that government under which unequal taxes oppress one species of property and reward another species; where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor..." (cited in Meyers, 1973, p. 187-188).

### Property as Distributive Justice

Once the commonwealth has been so constructed and construed, Locke describes in chapter five of The Second Treatise precisely how the laws should regulate the right of property. All individuals yield their actions and possessions

to the community so that in a sense their possessions also belong to the community. It therefore follows that men "...have such a right to the goods, which by the Law of the Community are theirs" whereby men make "positive laws to determine Property." From this it follows that Government is obligated to distribute to each member the civil rights to life, to the liberty of preserving himself and others, and to the requisite goods or "means of it." This we now understand is a governmental duty from natural law and the public good, backed up by the threat of legitimate revolution so that government ensures that each law-abiding member has these items or "estates" cited in Two Treatises:

It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life (Locke, 1967, p. 302).

Thus commonality as property, as John Tully (1980) interpretsd Locke, suggests a fundamental principle of entitlement as well as distribution, i.e. "the preservation of society and every member thereof in a free and peaceable enjoyment of all the good things of this life that belong to each of them" (p. 109). Tully argues that the fundamental principle of justice that a legislature must ensure, according to Locke, is the equitable distribution of common goods to each member and especially the concept of to each the products of his honest industry.

Thus Locke's Chapter Five of The Second Treatise has served as a model for the just distribution of property to ensure a comfortable subsistence for

everyone based on both Need and Inheritance. According to Tully, both Locke and Pufendorf held that the share of the goods of the community belonging to each is determined by the labor of each for the public good, and that a worker is not entitled to the whole product of his labor, but, as Locke wrote, must leave for others some of the "necessities of the public" or "...the peace, riches and public commodities of the whole people" (cited in Tully, 1980, p. 59).

Commonality as property, according to Tully's interpretation of Locke, is neither communism, nor complete laissez-faire. Private property and common ownership are mutually related--not mutually exclusive. Private ownership is the means of individuating the community's common property and is limited by the claims of all other members. It's just distribution requires prudence on the part of legislatures to further the common good (Tully, 1980, p. 170).

It thus appears that neither Locke nor the American founders were defenders of unconditional private property. Jefferson worked to abolish primogeniture and entail in Virginia, and Adams had drafted the Constitution of Massachusetts to include a bill of rights that would assure to all citizens: "the security of his person and property" believing that all people would be considered free "...in proportion to their property" and that "a nobility or gentry, in a popular government not overbalancing it, is the very life and soul of it" (cited in Handlin and Handlin, 1969, p. 29). The Handlins note that Madison, Adams and Jefferson believed that property was an essential principle of commonality; property provided unity in diversity, political responsibility, and commitment, as



well as economic opportunity especially if it was common, i.e, if everyone could lay claim to it.

### Property as Natural Right

We learn that property is a natural right from Locke's "Workmanship Model" of God as maker and man as his workmanship in the Essay Concerning the True Original, Extent, and End of Civil Government. The primary goal to preserve Life, Liberty, Health, Limb or Goods of another follows goods that are acquired from man's special relation to God in a servant/ Sovereign Master relationship (Tully, 1980, p. 4). Locke says this model is the "Foundations of our Duty and Rules of Action" from which "...the measures of right and wrong might be made out" (cited in Tully, 1980, p. 4).

Locke, in refuting Filmer's Adamite patriarchal theory of the state, noted that Scripture revealed that the world is a "gift" given to mankind in common and that natural reason teaches that men have a right "to meat and Drink, and such other things, as Nature affords for their subsistence" (p. 25). It is especially important to observe that Locke calls the right which all men have to the things necessary for subsistence "property", i.e. all rights and materials are property. Barbeyrac argues that this is why Locke's theory of property is also construed as a theory of rights: "Locke meant by the word 'property' not only the right which one has to his goods and possessions, but even with respect to his actions,

liberty, his life, his body; and in a word, all sorts of right" (cited in Tully, 1980, p. 7).

This is different from the act of possession or a "property in," a thing which a person "comes to have" in the process of individuation of the common gift from God (Tully, 1980, p. 4). The right or property that all men have to things necessary for subsistence is merely a consequence of the right which all men have to their preservation and is derived by "natural reason" (Locke, 1967, p. 305) which requires prudence on the part of governments to secure.

### Lockean Dilemma

Gerald Gaus (1989) argues that moral justification for a redistributive state can be found in deontologically based contractual theory. Gaus argues that redistributive capitalism is more in the tradition of Rousseau than Locke. Rousseau, he says, articulates a morally unified outlook on property while Locke's falls short of the mark for a system of property rights that works to the benefit of everyone (p. 90).

Contractualist political theory in general reveals two competing accounts of the relation between property: the state of nature and the social contract. Modern libertarians like Macpherson (1972) look to Locke because they maintain that exclusionary property rights characterize the state of nature, and that the main end of government is to secure them just as Locke stated in Two Treatises of Government: "The great and chief end...of Men's uniting into commonwealths,

and putting themselves under government, is the Preservation of their Property (Locke, 1967, pp. 368-369).

On the other hand, as Tully observes, Locke's Workmanship Model indicates that Locke saw private property as a common good, a good to which all are entitled as a "gift of God." However, Gaus argues that this common good interpretation of Locke on property "is to miss the real contribution of Locke to the natural law tradition." For, Locke in reality made a break from the earlier common good theories of Grotius and Pufendorf and "justifies exclusionary property rights without any appeal to consent or compact" (Gaus, 1989, p. 90). Locke held in The Second Treatise on Government that "in Governments the Laws regulate the right to private property" (Locke, 1967, p. 320). However, Locke also insisted that government could not take property without the consent of the people.

The Lockean dilemma is whether property rights are moral (and therefore exclusionary) because they exist prior to the social contract which places limits on the contractual agreement, i.e. it constrains or limits government. If this is true, Lockean government per se is not strongly redistributive (Gaus, 1979, p. 90). Robert Dahl notes that modern libertarians who resist redistribution in a capitalist state have embraced Lockean laissez-faire (Dahl, 1985).

Gaus argues that Rousseau in his version of the social contract, posited a redistributive society by holding that property was not antecedent to political society. Rousseau argues that "the State, in relation to its members, is master of

all their goods by the social contract" (Rousseau, 1974, p. 179). This does not necessarily mean that Rousseau favored collective ownership, for he argued strongly that "the right of property is the most sacred of all the rights of citizenship, even more important in some respects than liberty itself...." (Rousseau, 1974, p. 138). However, Gaus argues that any reading of Rousseau on the social contract reveals that Rousseau's property right, in contrast with Locke's restrictions or limits on government to protect private property, presupposes that the state through the social contract has extensive authority to redistribute property (Gaus, 1989, p. 90).

Gaus notes that "The failure of the Lockean to justify a complete account of property rights in the state of nature leaves the way open for followers of Rousseau to regulate holdings, through the social contract, to promote the common good" (1889, p. 100). For this reason modern political theorists such as Robert Dahl (1985) have rejected the Lockean contractual treatment of property and embraced Rousseau's interpretation of natural rights as promoting a more distributing society.

In the final analysis John Rawls (1971) is the consummate contractarian and provides a compromise. From the standpoint of the original position, Rawls addresses the redistribution of property in the tradition of Rousseau. Rawls shows that a just distribution of property is possible and that even a diverse set of values among individuals can generate a moi commun, common morality, or the common good. His "difference principle" represents the most recent

formation of a principle in the contractarian tradition that relates directly to redistributive shares and offers to an economic system "some principle ensuring that everyone significantly benefits from the system of property rights..." (Gaus, 1989, p. 110).

Rawls' deontological argument for a distributive society is essential to the argument for equitable educational finance in public education. He offers in the social contract tradition an "unconstrained teleology" that "justifies basic principles of right by showing that they best advance what each and every person has reason to value" (Gaus, p. 92) while at the same time ensuring that the distribution will be fair.

Thus the principle of commonality demonstrated through property and contractualism shows that any publicly justified arrangement is equitable that works to the advantage of all--even as it promotes what each person values.

### Property As Economic Freedom

A great nineteenth century American, Joseph Story agreed with Locke and the whole Anglo-American legal tradition that "one of the great objects of political society is the protection of property" (cited in McClellan, 1971, p. 233). McClellan observes that unlike Marshall on the early court who indicated property to be an end in itself, Story (who was well-acquainted with the economic theories of Adam Smith, Thomas Malthus (1773/1798) and David

Ricardo (1773/1817), helped to establish property as the foundation of all freedom and especially economic freedom.

Judge Joseph Story arrived at this conclusion from the concept of property as economic freedom established by ancient philosophers, common law jurists, and statesmen such as Edmund Burke and the authors of The Federalist as it had been borne out by experience, reason, and the natural law (McClellan, 1971). If a court failed to defend contracts, it failed to protect property of every sort and abrogated its duty to protect all the personal liberties of man.

Security implies the power of the state or community to regulate the means of production or economic enterprise so that a person can be secure in his property and person. Various Supreme Court decisions, however, have demonstrated an "instrumentalist" view of property that advances economic liberty for individuals and the common economic good or development of the nation as a whole.<sup>6</sup> Story, for example, in his dissent in Charles River Bridge v. Warren Bridge (1821) argued in terms of "what property can do to promote the public interest," and it is this common good aspect of property as an instrumental value which makes property "...a salient value in the American regime" (Rohr, 1989, p. 243). In the mid 1960's the concept of property as a common good was advanced further by Robert Reich (1964, 1965) who identified "new property," which confers a freedom that is itself part of the common good or general welfare. For example, we now recognize that personality as a property cannot be denied its fullest development before the law through the garnisheeing

of wages as in (Sniadach v. Family Finance Company (1969)). This "new property" case and others required the courts to rethink property and problems of procedural due process. The right of property is of course, protected by "due process of law" in the Fourteenth Amendment.

Several "new property" cases such as Board of Regents of State Colleges v. Roth (1972), Perry v. Sinderman (1972), and Goldberg v. Kelly (1970) demonstrated that certain attributes of "property" interest were protected by procedural due process. To have a property interest in a benefit, a person must have more than an abstract need, desire or expectation of it; a person must have a legitimate claim of entitlement.

#### Education as Property Right

That education is a fundamental right, protected by "due process of law" can be traced to the property right broadly construed by Locke. It is found especially in Madison's argument that property be construed as personality and "faculties," and therefore a right which all people have in common whether they have material goods or not afforded the protection of Government (Madison, 1961, p. 58). According to Madison, property may be a tangible asset, such as land, merchandise, or money, or an intangible asset such as opinions, conscience. Its distribution and protection by the state ensures equality, equity as well as security to all in common, though not in the same degree.

Madison, explaining the Bill of Rights drew upon the writing of John Locke to note that a person "... has an equal property in the free use of his faculties, and free choice of the objects on which to employ them." He has "a right to his property" as well as "a property in his rights." Property is an instrumental regime value that allows all citizens "free use of their faculties and free choice of their occupations." It is comprehensive including non-material possession of opinions, faculties, and their communication:

He has a property of peculiar value in his religious opinions, and in the profession and practices dictated by them. He has property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights (cited in Levy, 1988, pp. 276-77).

Horace Mann, in his Twelfth Annual Report in 1848 also accepted a broad definition of property to include "intelligence," or faculties, which he described as the "grand condition," developed through education, that would be "instrumental" to a wealthy, economically prosperous nation and the advance of civilization:

For the creation of wealth then--for the existence of a wealthy people and a wealthy nation--intelligence is the grand condition...That political economy, therefore, which busies itself about capital and labor, supply and demand, interest and rents, favorable and unfavorable balances of trade; but leaves out of account the element of a wide-spread mental development, is nought but stupendous folly (Mann, cited in Cubberley, 1920, p. 600).



Today the property right ensures the right to a livelihood, achieved through the development of one's faculties (a form of "intangible" property) through the educational process or through employment. In Dixon v. Alabama v. State Board of Education (1961) and Goss v. Lopez (1975) a liberty and property interest protected students from arbitrary suspension from school. The Supreme Court argued that public school administrators had "deprived plaintiffs of their rights to an education without a hearing of any kind, in violation of the procedural due process component of the fourteenth Amendment" (cited in Alexander and Alexander, 1992, p. 304).

According to the Supreme Court in Goss v. Lopez, "property" includes individual interest created by state rules and statutes entitling all citizens to a certain benefit:

When a state creates a public system of education to which all children are entitled to attend, each child is vested with a property interest therein (Alexander and Alexander, 1985, pp. 53-54).

The Supreme Court found that "Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary" (cited in Alexander and Alexander, 1992, pp. 306-307). In McClain v. Lafayette County Board of Education (1982) the Court found that "At the very minimum...students facing suspensions and the consequent interference with a protected property

interest must be given some kind of notice and afforded some kind of hearing (cited in Alexander and Alexander, 1992, p. 310).

These school cases have increased the sense of awareness of an individual's stake in society, the importance of the development of all human resources and intelligence as "the grand condition" for the economy of the nation (Schultz, 1971, Reich, 1991) and reinforced Madison's broad definition of property. Beginning with (San Antonio Independent School District v. Rodriguez (1973), property would be linked to equity in educational finance and a just distribution of public taxation to ensure the right to an equal education with equal services and provisions, a right to develop the faculties and talents of all children to the fullest, regardless of parental wealth or geographical location.

### **Commonality as Law**

Libertarians and communitarians alike have appealed to principles of natural justice that can be found in the "higher" natural law. The natural law provides legal and philosophical principles that overcome differences and provides a common bond among men. The basic regime values or rights claimed by Americans, such as "liberty," "equality of opportunity" or "property," and "equity" are embodied in a system of natural laws of universal validity dating to antiquity. It is no accident, therefore, that equity, a value essential to a republican system of common schools finds its basis in the common law of

Blackstone which is reflective of the natural law, the "common patrimony of all men" (D'Entreves, 1965, p. 10).

### Law as Public Philosophy

There is sufficient evidence to believe that the concept of natural law has served as America's public philosophy.<sup>7</sup> Yet few Americans today know precisely what natural law is or can explain the reasons for its persistent vitality (Berns, 1991).<sup>8</sup> E.H. Carr (1964) argues that natural law is what the majority defines in their best interest. Walter Lippman (1937) and others argue that natural law is a necessary precondition of genuine constitutional democracy.<sup>9</sup>

Most Americans associate the higher natural law with the cause of natural or "inalienable" human rights, derived from "nature" and "Nature's God" that affixes their station in life as described by Jefferson in the Declaration of Independence. The justice of natural law is sensed to be an eternal and immutable principle operating on all men alike, regardless of ethnic or religious inheritances, and somehow higher than positive or man-made law:

Jefferson, who was a deist, and others, knew they stood in the stream of John Locke and understood that they were founding the country upon the concept that goes back into the Judeo-Christian thinking that there is Someone there who gave the inalienable rights (Schaeffer, 1981 p. 32).

Americans have always felt a security in their common stock of justice because it is perceived to be a "higher or ultimate law, proceeding from the

nature of the universe--from the Being of God and the reason of man"

(D'Entreves, 1965, p. 8). The natural law implies that "all men are equal before the law of last resort--that is, it is somehow above law-making, or that "law makers' after all, are somehow under and subject to law" (p. 8). Its legacy is a common tradition of human civility that runs continuously from the Hellenistic Age through the Middle ages to the American Revolution of 1776 and beyond:

But for natural law the petty laws of a small peasant community of peninsular Italy would never have become the unusual law of an international civilization. But for natural law the great medieval synthesis of godly and worldly wisdom would not have been possible. But for natural law there would probably have been no American and no French revolution, nor would the great ideals of freedom and equality have found their way into the law-books after having found it into the hearts of man (D'Entreves, 1965, p. 13).

Natural law theorist D'Entreves asserts that next to the Bible, no book has left a deeper mark upon the history of man than the Corpus Iuris Civilis.

Devised by Justinian, it is at once the law of state (ius civilis) and the law of nation (ius gentium) used in all international discourse, and the law of nature (ius naturale) which expresses an even higher standard, namely "that which is always good and equitable (bonum et aequum)" (D'Entreves, 1965, p. 19).

Philosophers and statesman alike continue to evoke such illusive concepts as the "natural law" and the "rights of man," even in an age skeptical of absolute and immutable values. They perceive that law is more than merely a command from the will of the majority of those in power. That is because the natural law is

perceived to transcend immediacy of the moment, current values and biases and is "a plea for reasonableness in action" (D'Entreves, 1965, p. 78).<sup>10</sup>

### Law as Custom

Commonality as law suggests that all peoples are governed either by law or by custom which in part are their own and in part common to all in like condition. This is an important contribution of Canon or Church law for centuries (D'Entreves, 1965, p. 33). Through our inheritance of English common law, Americans as a people are united in an indissoluble bond within and even beyond the nation state--to a common moral order in a world community which is perceived to be both equitable and good.<sup>11</sup> From the natural law we somehow share the knowledge that human existence is meaningful; that human beings possess equal dignity and rights; and that political and legal forms are more than the product of arbitrary will justified in human terms.

However, we have special difficulty in determining specifically what are moral rights beyond what the majority in its own best interest defines them to be. "To escape such difficulties people have appealed to the Law of Nature" (Richie, p. 80), or, as in the case of Rawls, they have sought some "universal validity purported to be a rational foundation" (D'Entreves, p. 28).

### Law as Right

Oxford Professor David Ritchie (1952) argues that "Natural rights are not identical with moral rights, because in many cases people have claimed that they had a natural right to do things that were not recognized either by the law of the land or by the prevalent public opinion or by the conscience of the average individual" (p. 80). Thus they are really those rights which in anyone's opinion would be recognized by the public opinion, or they are the rights which one thinks "ought to be recognized" or sanctioned by one's ideal society, "whatever that may be" (p. 80).

To base natural or fundamental rights on external authority of any kind thus involves "an obvious contradiction," because natural rights "are supposed to be the very criterion by which the worth of the external authority itself can be judged" (p. 82). Theologians hold that right and wrong are dependent upon the will of the Deity, which shows a "craving for absolute certainty," and a type of thinking characteristic of Thomas Hobbes, who substituted de facto government for natural rights (p. 83). By "natural rights" Hobbes meant simply those powers which an individual has apart from all human institutions, so that natural rights are equivalent to natural might (Hobbes, 1962). All rights that a man has in the civil state ultimately depend simply on the will of the sovereign person or persons to whom the individual has handed over his natural rights acquired from a state of nature.

Thus, from a Hobbsian perspective, all rights must depend on the will of the de facto government, and natural right means nothing except force. Ritchie notes that Bentham, Austin, and most English jurists of the positivist tradition have accepted Hobbes's account of rights in the civil state ("natural" rights being discarded altogether) as perfectly true of legal rights. Because Hobbes made no distinction between legal and moral rights, his theory remains "the most remarkable example of a philosopher basing obligation simply upon the external authority of the State (Ritchie, 1952, p. 97).

If this is not an entirely satisfactory explanation of natural rights, one can always resort to the principle of Utility as advocated by Bentham and Mill in opposition to both custom and external authority. Bentham, in defiance of both Authority and the Law of Nature, set up "the greatest happiness of the greatest number," as a criterion by which to judge what ought to be. However, as Ritchie notes, utilitarianism, based on principles of pleasure and pain, is hardly a starting-point of ethical thinking or a virtuous conception of life. Utilitarianism does not apply to any ethical theory that starts from a conception of the self as rational and universal, nor does it "take into account..."those who are to live hereafter" (Sidgwick cited in Ritchie, 1952, p. 97). Thus from Rousseau's time onwards "the appeal to Nature is made as much against the Utilitarian Rationalist as it is made against the advocates of authoritative law and dogma" (p. 87).

There is only one aspect of the Law of Nature missing from Ritchie's summary which can serve as a basis for the common good or consensus. If we really expect the natural law to represent the consent of the human race, then it must be based on reason, and reason is the one thing that all men have in common.

### Law as Reason

The "reasonableness" of natural law addresses all aspects of social and political striving. It tends to make humans cower in obligation before the great "unknown giver" of life and reason; it embodies the idea of "a difference or contrast between the ideal pattern of society which is expressed by the law of nature, and the positive legal institutions which confront us in the reality of human interrelations" (D'Entreves, 1965, p. 32). In short, it enables us to strive for ideals of human nature, and for a society of liberty, equality and fraternity, not to mention faith, hope and charity, ideals we share in common.

Central to the natural law philosophy is the concept of the gift of reason. The notion of equality can be traced to the Christian natural law tradition as well as the natural law of Greece and Rome. In the Christian tradition, God, the great law-giver in Acts 10:34 is "no respecter of persons" and there is "no favoritism" (Thompson, 1983, p. 1206). From both the classical and Christian natural law, however, we learn that Reason is what all men have in common.



Cicero formulated the fundamental equality of all men and equality before the law based on this concept of reason:

Those creatures who have received the gift of reason from Nature have also received right reason, and therefore they have also received the gift of law, which is right reason applied to command prohibition (cited in D'Entreves, 1965, p. 22).

The notion that all men are equal before the law is deduced from basic human reason that unites them. We also note from Cicero that "And if they have received law, they have received Justice also. Now all men have received reason; therefore all men have received justice" (p. 22).

In claiming the "inalienable" rights of life, liberty and the pursuit of happiness, we do so on the basis of human reason as it appeals to "Nature" and to "Nature's God." St. Thomas Aquinas, the great medieval theologian, argues that man through reason can glimpse the eternal divine order on which the whole of creation ultimately rests (D'Entreves, 1965, pp. 38-40). Aquinas wrote that the Natural Law is nothing else than "the participation of the Eternal law in rational creatures" (cited in D'Entreves, p. 40). However, in Jefferson, "the self-evidence of natural law has made the existence of God perfectly superfluous" (p. 53), for the "laws of nature," were to Jefferson (writing in the skeptical Age of Reason) "the laws of natures' god" themselves (p. 52).

Two traditions, therefore, form the basis of our understanding of law, custom, and political rights such as liberty, equality, equity or freedom of choice. From an older natural law tradition we learn custom, obligation, and civic duty;

from the revolutionary or Enlightenment era and a more modern natural law, we know about natural or inalienable rights and liberty.<sup>12</sup> Despite these apparent contradictions in the natural law philosophy, there seems to be one common perception of its general meaning which explains its perennial appeal and source of authority, justice and commonality:

This is the belief that there exists in nature and/or human nature a rational order which can provide intelligible value-statements independently of human will, that are universal in application, unchangeable in their ultimate content, and morally obligatory on mankind (Sigmund, 1971, p. viii).

It is this basic rationality that ensures public morality in our time, which Rawls (1971) demonstrates is the basis for commonality. Justice as fairness is above all a regime value that all reasonable persons in society have come to expect and strive to achieve. Rationality is a criterion of the just community, and reason is one thing that all human beings apart from beasts have in common.

### **Commonality as Community**

Commonality implies shared experiences, a shared human nature. It may also involve the "content" of a possible common good, a specific set of beliefs or values that all individuals share in any particular time or place. Most importantly, commonality implies a collective cherishing of culture and its traditions which serves as a basis for rational consensus formation. This act of cherishing itself provides a common ground of belief:

A society politically organized as a rational, deliberate dialogue, collectively cherishes its culture and traditions, and engaged in productive enterprises which are collectively enjoyed in themselves as well as for their products, can truly be said to pursue a public interest" (Wolff, 1968, p. 194).

Wolff argues that the common good as commonality does not supersede private interests; it complements or completes them (p. 194). "Amour social," he says is acquired through mutual provision. For where a principle of mutuality, reciprocity or fairness prevails, it can be said that the common good as an ideal prevails. To conceive of the common good as commonality, first requires men to believe that the notion of a general good is a possible reality (p. 164). The common good then is not merely an aggregate or harmonizing of private goods. Like the common school, it is an ideal embedded in the concept of community itself.

This distinction between private and interpersonal values of community emphasizes a "reciprocal consciousness, which is the key to the discovery of the general good" (p. 183). This is engendered by "feelingful ties of loyalty and trust, participatory democracy of town meetings, men working in cooperative production--things that conservatives long for in a cherished past and liberals crave in a longed for future" (p. 184).

A community therefore is a group of persons who together experience a "reciprocity of awareness" within the categories of affective, productive, and rational community. The affective community is a community bound by tradition and culture where the sharing of traditions and culture is solemnized or

celebrated in weddings, funerals, holidays and the like and where people relate to one another traditionally. The "affective community" is "the mutual awareness on the part of each that there are others sharing the culture; and that through such mutuality we are many together rather than many alone. Men can therefore deliberately choose to cherish their culture and through that cherishing to bind themselves to one another" (p. 187).

Both Montesquieu (1689/1748) and Rousseau (1712/1762) argue that commonality, or a true "reciprocity of awareness," could occur only in a small state or republic. The American Founders (particularly the Anti-Federalists) also feared that democracy could not work in a large commercial republic (Storing, 1987). However, they believed in a "virtuous" republic, and Madison argues in Federalist No. 10 against tyranny of the majority. The bigger the republic the better because "the greater number of citizens"..."brought within the compass" of a republic "renders factious combinations less to be dreaded" than in small republics:

Extend, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other (Madison, 1961, p. 69).

Furthermore, Madison argued that the machinery of government itself would balance out factions: "The regulation of these various and interfering

interests forms the principal task of modern Legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government" (p. 59).

### Rational Community

John Rawls' conception of the rational community is in the spirit of natural law (1971). Reason is a means to justice, or as Aquinas suggested, it is an apprehension of justice. Rawls argues that individuals would rationally choose and agree on two principles of justice if everyone chose from an original position of self- and social ignorance. One can be rational in a comprehensive and selfless way, however, only if those factors that drive self interest are excluded from calculation and choice. Hence the hypothetical "veil of ignorance" which excludes all forms of self-and social knowledge.

Rawls' "original position," therefore is not state of nature characterizing the ontological individualism of John Locke or Hobbes. The original position makes it "impossible to tailor principles [of justice] to the circumstances of one's own case," which rules out self-self interest (1971, p. 18) associated with one's personal inclinations, aspirations, wealth, gender, skills, intelligence or ethnicity. The only commonality is the gift of reason:

It seems reasonable that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on. Obviously the purpose of these conditions is to represent equality between human beings as moral

persons, as creatures having a conception of their own good and capable of a sense of justice (p. 19).

Rawls' "deliberative rationality" (1971, p. 421) is what makes men "capable of a sense of justice." "Our good is determined rationally by the plan of life that we would adopt with full deliberative rationality if the future were accurately foreseen and adequately realized in the imagination." As a "principle of right," the common good is based upon a contingent and relative morality: "The claims of the self at different times are to be so adjusted that the self at each time can affirm the plan that has been and is being followed" (p. 423). Full "deliberative rationality" therefore involves a social conscience: "While it may be possible for individuals or whole societies even to achieve happiness entirely by sheer spontaneity without mishap," it would rarely be without regret, and we would still need a concept of individual or societal good "in order to assess whether he has really been fortunate or not" (p. 424). "Goodness as rationality leaves this question [of circumstances surrounding decisions] to the person and the contingencies to the situation (p. 424).

The rational community therefore is not merely the efficient means to such desirable political ends as peace, order, or distribution justice. It is "a reciprocity of consciousness among rational agents who freely come together and deliberate with one another for the purpose of concerting their wills in the positing of collective goals and in the performance of common actions" (Wolff, 1968, p. 109). Or as Rawls also argued:

Properly understood, then, the desire to act justly derives in part from the desire to express most fully what we are or can be, namely free and equal rational beings with a liberty to choose. (Rawls, 1971, p. 256).

Thus freedom of choice, a laissez-faire principle that has always been associated with the doctrine of private self-interest, involves a great deal more than mere personal desire or preference. Freedom of choice requires a moral perception or capacity for self-respect and commonality, which philosophers over time have variously described as "the gift of reason," a "reciprocity of consciousness," a "deliberative rationality," or even a "desire to express most fully" that we are free, equal, rational beings.

As an answer to a morally bankrupt doctrine of pluralism based on liberal self interest, Rawls theory of justice provides a normative justification for the concept of social equity in our time. Rawls does not spend much time discussing liberty per se; his concept of justice includes liberty as an aspect of rational choice. Rational choices would be made to promote the common not the private good. Consensus is not left, however, to the "Invisible Hand" of Adam Smith (1759) interpreted through a libertarian lens. It is a matter of a conscious and willing act of reasoned choice, a moral or ethical consciousness.

### Commonality as Membership

Flathmann (1966) suggests that commonality also has a "contextual" basis and is an experiential concept. It suggests equals actually living in a community

where a legitimate commonality is practically experienced as a matter of membership--a free association of individuals. Our modern democracy can be understood historically by reference to the experience of the small religious society with which it began: The Puritans.

According to Lindsay (1962), the men in the Puritan societies of New England were serving a purpose beyond themselves. Their higher moral or "religious" purpose was conceived of as expressing itself through each individual, and was something therefore to which each individual had something to contribute. Furthermore, the Puritan societies were small enough for common discussion. The principle guiding the common life was something to be elicited through common discussion--the Quaker Meeting.

Given a society of this kind where membership was of primary importance, decisions can result

which may not be the will of any one but willed as the result of the discussion--the will of the society, because there has been thinking together, but the decision as to what the society should do is based on endeavor to elicit what the common life requires. It needs thinking and discussion as well as willing--co-operative thinking and co-operative willing (Lindsay, 1962, p. 23).

The common life must be consciously willed and produced, especially in a large society such as the United States. However, it may be experienced unconsciously by individuals through participation or "membership" in voluntary associations, or as "members" of institutions. The religious and economic life of society develops through institutions, such as common school, which have their



own development. Thus membership itself is an important aspect of commonality.

### Politics of Exclusion

Membership, however, can also be denied through exclusionary laws, social customs, prejudice, or wealth. Membership in a political community is therefore an aspect of sovereignty and is defined by the franchise. Membership can be exclusive as in an educational power structure where, according to "redistribution politics in education," a person has one vote but "the power and significance of that vote is not equal, even after reapportionment" (Johns, Morphet and Alexander, 1983, p. 193). The people who pay into the system and receive the benefits of education, for example, may not be the power elite made up of families that send children to parochial schools, the wealthy retired, or older persons on low incomes who do not vote for greater taxes to equalize resources among school districts.

The fact is "that political opinions are inevitably rooted in economic interests" (Niebuhr, 1960, p. 5) and this aspect of membership in a voting constituency can imperil democratic institutions like schools causing "adversity to both redistribution and equalizing of expenditures" (Johns et al., 1983, p. 193).

In the past, membership blocs or educational coalitions consisting of administrators, boards of education, state educational agencies, teachers and the like had "mutually developed financial goals in support of common schools"

(Johns et al., 1983, p. 153). However, the power of this membership group or voting block has given way to the "virtues of local control" which have created a new, more influential "self-interested, class-based regime," characterized by an inability to cooperate and share financial resources (Lu, 1990, p. 55).

### Fellowship of Equals

The ideal example of political democratic association founded on consent is typified by the Puritan commonwealth. Lindsay (1962) argues that the doctrine of the "priesthood of all believers" shows that the Puritans came to believe in the concept of equality, not because of abstract rights and theories of the Enlightenment, or even a hypothetical state of nature or reason, but from the practical experience of living in a small, democratic community. Theocracy notwithstanding, Lindsay argues that the Puritan status of equality was based on membership through active participation of the community in town meetings, which is what actually makes government by consent viable.

In this respect the American common school has continually enlarged the scope of membership and become more inclusive making for a more egalitarian society. Because of such Supreme Court opinions as Plessy v. Ferguson (1896) and Brown v. Board of Education (1954), school membership no longer excluded a population based on racial discrimination. Pennsylvania Association for Retarded Children v. Commonwealth (1971) initiated educational opportunity for handicapped children. Exclusionary practices have been challenged in Mills v.

Board of Education of the District of Columbia (1972), and in 1975 the Education for All Handicapped Children Act gave all handicapped children access to a free and appropriate public education and related services to meet individual needs.

The principle of commonality as membership inclusion was first evident in the Puritan congregation. As Lindsay (1962) notes, in Puritan New England, all were congregationalists and the self-governing congregation was the Church. All were equally called of God which outweighed any differences in ability, character or wealth. All were equally called upon to contribute to the common discussion about governance in their small society. In this voluntary society, democracy was genuinely experienced. The Quaker meeting was an "active experience of a satisfactory democratic life which rested on consent and on the resolution of differences by discussion" (p. 150), which has been Dewey's formula for the American common school as participatory democracy ever since (Dewey, 1927, 1989). Both the Declaration of Independence and the Virginia Declaration of Rights set forth principles of egalitarianism and

assume an active, self-reliant society, not constituted or shaped by government action, but capable of spontaneous organization in time of need, a society where the sort of claims which Hobbes made for the state are obviously absurd. They both assume that this society is in some sense a society of equals...and more concerned to restrain than to encourage governments (Lindsay, 1962, p. 120).

We thus developed a notion of membership in community where institutions and voluntary membership in them is a concept of community apart from

government. Thomas Paine writes:

It is to the great and fundamental principles of society and civilization--to the unceasing circulation of interest, which passing through its million channels, invigorates the whole mass of civilized man--it is to those things infinitely more than to any thing which even the best constituted government can perform that the safety and prosperity of the individual and of the whole depends (cited in Lindsay, 1962, p. 124).

There are signs that this heritage of trust in the voluntary membership and participation in democratic institutions is eroding and along with it our sense of commonality. Instead of seeing public institutions working closely within the framework of the polity, individualistic Americans today "fear that institutions threaten their freedom and are not properly limited" (Bellah, Madsen, Sullivan, Swidler and Tipton, 1991, p. 10).

The Puritan concept of "a fellowship of equals" within an institutional framework of the town meeting or the Church has been lost. Instead an "anti-institutional ideology" holds that modern institutions, including schools, are "objective mechanisms that are essentially separate from the lives of the individuals who inhabit them" (Bellah et al., 1991, p. 12).<sup>13</sup> Lindsay (1962) notes that the utilitarians would eventually "... combine a demand for an efficient state with a demand for laissez-faire in economic activities" thus replacing the spiritual/communal man with the economic man (p. 137).

The principle of commonality, however, implies shared experiences, a shared human nature, shared institutions within a frame of polity. It also involves the "content" of a possible common good, that is, a specific set of beliefs

or values that all individuals share in any particular time or place. It implies a collective cherishing of culture and its traditions which serve as a basis for rational consensus and the support of public institutions such as schools. Various New England State constitutions have incorporated "cherish" or "virtue" provisions in the educational articles (Mize, 1973). The act of cherishing itself provides a common ground of belief:

A Society politically organized as a rational, deliberate dialogue, collectively cherishes its culture and traditions, and engaged in productive enterprises which are collectively enjoyed in themselves as well as for their products can truly be said to pursue a public interest (Wolff, 1968, p. 194).

Wolff argues that the common good as commonality does not supersede private interests; it merely complements or completes them (p. 194). However, merely knowing or realizing the possibility of aspiring beyond laissez-faire goals of private interests should be sufficient to draw most people at least to the ideals of "a fellowship of equals" to inspire a love of that community (p. 164).

Commonality is an ideal that requires

the mutual awareness on the part of each that there are others sharing the culture; and that through such mutuality we are many together rather than many alone. Men can therefore deliberately choose to cherish their culture and through that cherishing to bind themselves to one another (p. 187).

To "deliberately choose to cherish" the culture suggests an act of will, a rational as well as virtuous community (Simon, 1986).

### Commonality as Fraternity

Another important aspect of community is fraternity. While only the French used the revolutionary slogan, "Liberty, Equality, Fraternity," the "sense of fraternity," the concept of brotherhood, is basic to the notion of common good as commonality. For Rawls, "fraternity" is more important in the long run than altruism for achieving the common good because

In justice as fairness men agree to share one another's fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit (Rawls, 1971, p. 102).

Commonality then implies a common bond in the community--something that is shared in common. That common bond is agreeing to share the fate of one another which creates a fraternal bond among men. Rousseau said of the social contract: "...each gives himself completely, so that, in the first place, this stipulation places an equal burden upon everybody; and nobody, for that reason, has any interest in making it burdensome for others" (Rousseau, 1954, p. 19). Commonality as the common good is a moral concept, as we will see in the next chapter because, that bond consists of "...the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off" (Rawls, 1971, p. 105).

What makes this fraternal order of mutual obligation possible, according to Rawls, is simply nobless oblige. This beneficent desire is founded upon a sense of fraternity where the more advantaged have a moral duty to themselves

to deploy their talents in the service of the least advantaged because they themselves fared so well in their own **inherited** social position. This act of nobless oblige in turn bestows self-respect upon the most advantaged.

The common good as commonality implies a "fraternal order," which has been defined in The Macmillan Dictionary as "an association of men organized for their mutual benefit or attainment of a common goal" (Halsey, 1973, p. 409), an order based upon the principle of reciprocity. Acts of generosity or largess are for mutual advantage which increase the power and solidarity of a community as a whole.

### Distributive Community

Walzer (1983) argues that "The community is itself a good--conceivably the most important good that gets distributed" (p. 89). He notes that "human society is a distributive community" whereby individuals share or hold in common, or as justice most equitably allows, those goods and services that make up a society in which all come to live together in common to share, divide and exchange. Politics and ideology are simply attempts to distribute membership, power, honor, knowledge, wealth, physical security, work and leisure, rewards and punishments, food, clothing and shelter--a host of goods and commodities. This "process character" of the community depends on understandings shared among the citizens about the value of cultural diversity, local customs and distribution of goods and services (p. 89).

Membership is the actual sharing of goods and services which engenders a love for and identification with the community as a process. Rousseau linked love of country to membership in the community and noted that communal provision teaches the value of membership: "How shall men love their country," Rousseau asked, "...if it is nothing more for them than for strangers, and bestows on them only that which it can refuse to none" (Rousseau, 1950, p. 30). Rousseau (1973/1755) recognized the principle of reciprocity in a distributive community. An act of sovereignty, such as a law is equitable as well as "absolute, sacred" and "inviolable" in the social contract because it is mutual and common to all. He explained:

the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus from the very nature of the compact, every act of Sovereignty...every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognizes only the body of the nation..." (Rousseau, 1973, p. 207).

Likewise, the Scottish philosopher David Hume also notes the importance of a general communal provision to "the body of the nation" that spends public funds to benefit all or most of its members in common (churches, storehouses, irrigation works, burial grounds (cited in Raphael, 1973, pp. 231-232). Thus, every community through its communal provision is a welfare state providing for the needs of all of its members in common (Walzer, 1983, p. 68).



## Commonality as General Will

### Dilemma of Sovereignty

Common as commonality is therefore a political concept concerned with the nature of community and power shared within the community. Since membership in some human community is the primary good we distribute to one another, it follows that membership structures themselves determine "...with whom we make choices, from whom we require obedience and collect taxes, and to whom we allocate goods and services" (Walzer, 1983, p. 31).

In more recent times no less than at the time of the nation's founding, Americans have been involved in polemics about the nature of popular sovereignty and the true representation of the public interest as well as with justice in a republic entrusted to representative assemblies.

How to achieve or be most responsive to the general will of the people for the "common good" is a matter of distributive justice. Harold Lasswell in 1936 described this challenge to popular sovereignty by defining politics as the science of "who gets what, when and how" (Lasswell, 1936, p. 34).

M. J. Sandel in Liberalism and the Limits of Justice (1985) questions whether any unitary standard of common interest can even be expected in a pluralistic society:

Society is best arranged when it is governed by principles that do not presuppose any particular conception of the good, for any other arrangement would fail to respect persons as beings capable of

choice; it would treat them as objects rather than subjects, as means rather than ends (cited in Versteegen, 1991, p. 3).

When the American government was formed, the people affirmed sovereignty in the legislatures of the states and with the understanding that government would be responsible to the will of the people for their good, advantage and protection. Thus, the concept of sovereignty was essential to a republican form of government and individual states, and the people's own elected representatives were those in whom the sovereignty power was deposited. Lincoln had said in the Gettysburg Address that sovereignty was "Government of, by, and for the people."

Wood (1969) argues that in the early days of the Republic, arguments that the people retained the right to instruct their representatives vested by law and constitutions in the sovereign state legislatures some feared would undermine the collective will of the community. Such a view, it was believed, would bring every thing back to the chaos which had existed prior to the social compact Benjamin Rush, for example, in 1787 feared that a popular radicalism that did not rightly construe the role and function of republican representative government meant that "the people of America have mistaken the meaning of the word sovereignty." He made an important distinction:

It is often said that "the sovereignty and all other power is seated in the people." This idea is unhappily expressed. It should be--"all power is derived from the people." They possess it only on the days of their elections. After this, it is the property of their rulers, nor can they exercise it or resume it, unless it is abused (cited in Wood, 1969, p. 374).

According to Wood, Americans from 1790 on have found themselves increasingly pressed to determine precisely what the bounds of legislatures should be to prevent government by an oligarchical tyranny. Rawls and others have returned to the concept of nobless oblige trusting in moral good sense of our leaders. The founders tried to distinguish between lawful and unlawful resistance to legislative authority (Wood, 1969). The desire to control and restrict the elected representatives in their power continues to dominate politics in contemporary America. Alexander posed the perennial problem of popular sovereignty:

The question must always be asked as to whether a certain legislated policy of the state is for the general will and common good or is merely reflective of the summation of particular individual interests (Alexander, 1991, p. 275).

### Sovereignty in the Social Contract

Rousseau made sovereignty an issue of the social contract and was one of the first to address this problem of alienation within the political community. He saw it as a conflict between liberty and equality:

The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each while uniting himself with all, may still obey himself alone, and remain as free as before (Rousseau, 1950, p. 191).

The social contract, he said provides a solution to the problem for the common good for "...each man, in giving himself to all, gives himself to nobody;

and as there is no associate over which he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has" (Rousseau, 1988, p. 192). The common good as commonality is the act of association itself where the general will of all, rather than individual desire creates a binding obligation or political responsibility: "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, [Italics added], we receive each member as an indivisible part of the whole" (Rousseau, 1950, p. 192).

#### Common Interest to Unite

Unlike Madison's theory of factions, Rousseau believed in a "corporate capacity," i.e. that people would consciously desire the common good. Rousseau conceded that "...each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen or "corporate person." In fact "His particular interest may speak to him quite differently from the common interest: his absolute and naturally independent existence may make him look upon what he owes to the common cause as a gratuitous contribution, the loss of which will do less harm to others than the payment of it is burdensome to himself..." (Rousseau, 1950, p. 194).

Furthermore, sovereignty within the social contract is "inalienable" and "indivisible." He argues that the "will either is, or is not, general; it is the will

either of the body of the people, or only of a part of it. In the first case, the will, when declared, is an act of Sovereignty and constitutes law: in the second, it is merely a particular will, or act of magistracy" (p. 201). Sovereignty in this sense, based on the consent of the whole people cannot be divided. "To be general, a will need not always be unanimous; but every vote must be counted: any formal exclusion is a breach of generality" (p. 201).

Rousseau asserts that the general will always tends to the public advantage. However, he concedes that in the process of deliberation people may be deceived because they do not always know what is in their own best interest:

Our will is always for our own good, but we do not always see what that is; the people is never corrupted, but it is often deceived, and on such occasions only does it seem to will what is bad (p. 203).

That governments deceive is evidenced by the Reagan mandate for universal prosperity that resulted in dashed expectations of the common good when regressive tax and spend policies precipitated a widening gap between rich and poor (Phillips, 1990; Reich, 1992). Rousseau, however, never really adequately addresses the minority will<sup>14</sup> which, if not general, is bad, which we know is not the case.

The idea that the general will is "for our own good," gives expression to the concept of unconscious or tacit consent within communities. If care is taken to put only general questions to the people, they are bound in answering the question, to say through a process of consent, what they will to be a rule for

everyone as for themselves. Rousseau argues that this is a question assuming a moral attitude, and unless there is intrigue and wire-pulling, men will agree and the general will be right (Rousseau, 1950, p. 203). The point is that in the intrigue of political deliberation the common good must of necessity encounter opposition. However, the common good will prevail only if the general will is desired and is truly general, that is obligatory, and also mutual such that "we cannot work for others without working for ourselves" (p. 202). The general will be general and morally correct when men think of "each" as meaning himself and also considers his own self interest in voting for everyone: "...the general will to be really such, must be general in its object as well as its essence; that it must both come from all and apply to all..." or it loses its moral force" (p. 203).<sup>15</sup>

Controversial political decisions will be directed to private self interest, not because of numbers, but because there is no common ground or "interest to unite":

what makes the will general is less the number of voters than the common interest uniting them; for, under this system, each necessarily submits to the conditions he imposes on others; and this admirable agreement between interest and justice gives to the common deliberations an equitable character which at once vanishes when any particular question is discussed, in the absence of a common interest to unite and identify the ruling of the judge with that of the party (p. 206).

According to Rousseau, a law that is common to all, i.e. "absolute, sacred," and "inviolable," will be the result of a moral choice or will. The moral or right

general will within the social contract will ensure equality because it results from all citizens who "bind themselves to observe the same conditions" and to "enjoy the same rights" that they would impose on others. The ideal of sovereignty then is equity and justice that must consciously be sought as the common good (p. 207).

The most important notion of Rousseau's general will is that the general will is the will for the general good (Lindsay, 1962, p. 135). Basically, this is a will for a rule which should apply to every one, for if what we demand we are demanding not for ourselves alone, but for every one, our will is general. This type of willing involves a moral being, which explains the emphasis upon civic virtue in the republican tradition.

Lindsay (1962) observes another important aspect of the general will. It is the will of something that is general. This notion corresponds to the notion of "affective community." Rousseau's "corporate person" is the community itself that is cherished or valued as a moral person that has a will of its own however it is expressed. One need not accept the will of society, except "...when the view that the general will is the will of the community is combined with the view that the general will is what each man wills when he is concerned for the general will." For it will then follow "... that the will of the community is the will of each when he is sincerely thinking of the general good" (Lindsay, 1962, p. 135).

Thus, Rousseau's concern about the spirit of the common life of the community is quite different then from the modern notion of consensus or

"incorporated pluralism." Consensus that involves the concept of the general will goes beyond the political doctrine of a mere sum of votes of a majority in a plebiscite, or the balancing of interests, or factions through government machinery. The community, the commonwealth or "polis," or "corporate person" was itself a regime value that should be cherished. When the people are united in the polity, they are the polity, and so the common good is more important as an object of policy than any sum of private or group interests.

"To say that the spirit of the common life is the sovereign principle by which legislation should be guided..." is the essence of civic humanism (Lindsay, 1962, p. 242). Rousseau in the final analysis argues in A Discourse on Political Economy that the general will can only be made general by bringing all the "particular wills" into conformity with virtue. Since "virtue is nothing more than this conformity of the particular wills with the general will," it is necessary to "... establish the reign of virtue" (Rousseau, 1950, p. 372). Civic virtue is the height of republican civility. Virtue in commonality is an important focus in the next chapter on the common good as commonwealth.

### **Conclusion**

This chapter attempts to identify those values and precepts of commonality that undergird the American common school ideal. It lays a groundwork for subsequent discussion on the nature of virtue and civic virtue in



a democratic republic essential for a proper civic autonomy required of all public institutions, and especially the American common school.

The title "common as commonality" means that social structures, regime values, and the concept of community developed through law and political life creates social conditions whereby individuals can develop capabilities for mutual cooperation for the benefit or common good of all. This chapter demonstrates that individuals can exercise the general will of all for the common good if they exercise right reason and their faculties as a property right, acquire awareness of the common good, and learn to cherish the culture of which they are a part.

The concept of common good as a basis for commonality has been explored through regime values, law, communitarian ideals, through Rawls' theory of justice, Rousseau's theory of the General Will, and through an analysis of property as a principle of distribution and common good. The views of Locke and Madison as well as well as notions of "new property" developed through Supreme Court cases show that property, traditionally believed to promote only selfish private interest, also serves the common good and ensures entitlement to education by which all can develop talents fully.

Lastly, the notion of commonality as General Will provides a political dimension that redefines the public interest as the general will, or "corporate body," a concept of commonality rooted in the classical ideal of "polity." Rousseau's notion of the general will as "corporate body," addresses the problem of universal and particular, individual and collective, and stands in opposition to

laissez-faire, harmony of interest theory. Sovereignty, properly conceived, is a shared responsibility of all individuals in the state and is an instrument for social equity.

By discussing and identifying basic regime values and the intellectual and communitarian inheritances that all Americans have in common, "common as commonality" reaffirms the public interest and demonstrates the values and assumptions that have gone into the making of the American common school.

## NOTES

1. Three-quarters of the New Yorkers responding to this poll consider teaching "the common heritage and values that we share as Americans" to be "very important." In fact, more African-Americans and Hispanics believe it's "very important" to teach the common heritage than whites. The numbers are 70% of whites to 89% of African-Americans and 88% of Hispanics. There is strong agreement across ethnic groups that the public schools should teach "both the traditional events of American history and the contributions and experiences of America's ethnic and racial populations." Furthermore 925 respondents (88% of African-Americans and 85% of Hispanics), said that responsibility for transmitting the ethnic heritage was the job of the family. (See Albert Shanker's "Don't Stop Teaching the Common Heritage" in The New Republic (May, 1992, p. 13).
2. See especially Section 67 of Rawls' Theory of Justice (1971), "Self-Respect, Excellences and Shame," pp. 440-446.
3. McClosky (1962), Oakeshott (1962), and Hayek, (1960), for example, observe that cases involving liberty of economic choice have taken a back seat to First Amendment freedoms. Professor Robert G. McClosky notes that since about 1937 the Supreme Court has been rebuilding constitutional foundations and opened up controversial new areas of constitutional supervision in such decisions as Palko v. Connecticut, Burstyn v. Wilson, and Brown v. Board of Education. Michael Oakeshott (1962) asserts that to be deprived of the right of voluntary association or private property is a far greater loss of liberty than to be deprived of the right of free speech. See also Friedreich Hayek, The Constitution of Liberty, pp.11-22.
4. Story wrote in his Commentaries (1833): "The obligation of every contract, then, will consist of that right, or power over my will or actions, which I, by my contract, confer on another. And that right and power will be founded to be measured, neither by moral law alone, nor by the laws of society alone; but by a combination of the three; an operation, in which the moral law is explained, and applied by the law of nature, and both modified and adapted to the exigencies of society by positive law." See Story, Commentaries on the Constitution, iii, Section 1272, p. 243.
5. Locke, like Suarez and Cumberland, Aristotle, Rawls and others discusses the common good as a distributive principle, and thus as a principle of commonality. If the public good, as Locke notes, is the natural end of

preservation in a political society or commonwealth, it is also equivalent to the good or preservation of each.

6. American constitutional law confirms that property has been viewed as a traditional means to further the public interests. In tracing the right to contract, attempts were made in Dartmouth College v. Woodward, Home Building and Loan Association v. Balisdel, Gibbons v. Ogden and Charles River Bridge v. Warren Bridge to protect property reflecting an abiding conviction of a relationship between secure property arrangements and authentic human freedoms, freeing business from state regulation, and encouraging commercial property to old, static and privileged property for the national good (See Rohr, 1989, pp. 226-241).
7. Sources known to Americans that emphasize the natural law philosophy are Locke's Second Treatise, Emmerich de Vattel's The Law of Nations or the Principles of natural law Applied to the Conduct and Affairs of Nations and Sovereigns (1758); Sir William Blackstone's Commentaries on the Laws of England (1771); Jean Jacques Burlamaqui's Principes du Droit Naturel (1747). Americans knew also of Sir Edward Coke whose Institutes and Reports contained such decisions as Calvin's Case (1608) and Bonham's Case (1609) which defended the superiority of the natural and common law to acts of Parliament; decisions cited by James Otis in The Rights of the British Colonies Asserted and Proved (1764). Natural law doctrines of limited government and inalienable rights can be found in such court cases as Marbury v. Madison (1803); Caldver v. Bull (1798) where Justice Chase spoke of "certain vital principles of our free government;" in Chisholm v. Georgia (1793) where Chief Justice Jay appealed to "reason and the nature of things;" in the Slaughter House Cases (1873) when Justice Field found a constitutional basis for his natural law thinking in the Fourteenth Amendment guarantee of "the privileges and immunities of the United States Citizens. There are many other quasi-natural law interpretations, many cited in dissenting opinions, giving the Court broad discretion in determining both the substance and procedure of a free and democratic society (See P.E. Sigmund, 1971, chapter on "Natural Law in America" pp. 98-111).
8. Walter Berns (1991) notes that for some it is a philosophical or religious doctrine; for others, history. He notes that Professor Laurence Tribe opposed the appointment of Judge Robert Bork because of Judge Bork's unwillingness to appeal to the "natural law" or natural right" when interpreting the Constitution, and opposed Judge Thomas because he did.

9. See especially Lippmann's later views in The Good Society (1937), pp. 344 ff. The classic exposition of Leo Strauss has made the idea of "natural right" a central focus in Natural Right and History (1950).
10. D'Entreves argues that "The primary function of law is not to command but to qualify; it is a logical as well as a practical proposition. The notion of law has much wider implications than the professional lawyer would have us believe...Legality is an aspect of moral experience which extends far beyond the legal field proper" (D'Entreves, 1965, p. 78).
11. According to Decretum Gratiani (ca. 1140) "mankind is ruled by two laws: Natural law and custom. Natural law is that which is contained in the Scriptures and the Gospel" (cited in D'Entreves, 1962, p. 25 ). This statement reflects the oldest collection of Church or Canon law. What we know today of natural law, however, has come to us via the English common law, law based on custom and precedent reflecting natural law as indicated by Blackstone on equity (McClellan, 1971). Gratian held that canon or church law had boldly asserted that natural law goes back to God and is absolutely binding over all other laws: "Natural law absolutely prevails in dignity over custom and constitutions" (cited in D'Entreves, p. 34). But all strands of the natural law (the Greek, the Roman, the medieval) boil down essentially to this dichotomy: "...divine laws are based on nature, and human laws are based on culture, which may leave little room for a system of ethics based on man's fallen nature alone-- unless through man's light of reason" (D'Entreves, 1965, p. 35).
12. Because the latter is a secular civic autonomy based on pure reason whether god willed the rights or not, scholars have argued that Jefferson's modern natural law is a theory of rights based on ontological individualism rather than a theory of law per se. These "unalienable (or natural) rights, however, are secured by the First Amendment. See discussion of natural law versus natural rights in Chapter Four: "Common as Virtue" of this study.
13. They argue that Americans have forgotten that autonomy is only one virtue among others and that our sense of responsibility and care is exercised mainly through institutions. They argue that all institutions are educative and that the school, particularly the university, is the 'church' of our secular society" (Bellah et al., 1991, p. 16). This individualist assumption of our culture suggests that we use institutions for our own ends, without being fundamentally involved or influenced by them: "Our problem is how to educate ourselves as citizens so that we really can

'make a difference' in the institutions that have such an impact on our lives" (Bellah et. al., 1991, p. 19).

14. We also do not know whether the result of a vote is the general will or the will of all. Rousseau simply explains that in a general vote the particular wills cancel out: being particular and selfish, they are opposed to good. If a man finds himself in a minority, he must conclude that his was a particular will. It appears he is saying that the minority is always wrong or reflective of selfish desire or evil ambitions, which we know is not the case.
15. The apparent unresolved ambiguity from a moral standpoint is the role of law. Is the law an expression of the general will because it is right, or is it right because it is recognizably general? Furthermore, Rousseau advocates the concept of sum of interests generally, but distinguishes morally between majority rule or "will of all" (which could be fallible because it consists only of the sum or particular wills and the general will: "There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than a sum of particular wills; but take away from these same wills the pluses and minuses that cancel one another, and the general will remains as the sum of the differences" (See Rousseau, 1950, p. 203).

## CHAPTER FOUR: COMMON AS VIRTUE

There can be no patriotism without liberty, no liberty without virtue, no virtue without citizens; create citizens, and you have everything you need; without them, you will have nothing but debased slaves....

Rousseau. A Discourse on Political Economy

This chapter revives an older paradigm of civic virtue in the tradition of classical republicanism. As the quote by Rousseau above suggests, the chapter addresses the need for virtue as a standard, norm, or criterion of citizenship vital to the administration and maintenance of public institutions. It also posits that virtue is the end of the state and that the American common school serves as its vehicle and implementation.

It also argues that what is needed to ensure a just educational system and renewed commitment to the American common school is a proper civic autonomy defined by a standard of what is "right," "good," and equitable. That standard is "virtue," a standard of the common good that the philosophers demonstrate is preemptive of justice in a democratic republic.

The "right" and "good" associated with virtue are complex philosophical ideas that span the greater part of the field of moral philosophy. This chapter therefore discusses virtue from a variety of perspectives. An overview or framework of how virtue has been perceived and treated throughout history is

provided. A basic etymological definition demonstrates the principal characteristics of virtue.

Virtue is presented from two distinct perspectives since there are two aspects of virtue: private virtue relative to "order of the soul," and public or civic virtue relative to "order in the state". Drawing upon this philosophical assumption, a discussion of virtue and the ethical state is provided with practical considerations for the American common school. Considerations of virtue in economic and political life relative to our constitutional and public leadership and citizenship requirements are provided. Theories of a "natural aristocracy of virtue and talent" and "administrative conservatorship" demonstrate the importance of virtue to public school leadership, administration, and equity. The chapter concludes with a virtue centered paradigm of classical republicanism vital to the American common school. It therefore argues for renewed commitment to the common good as end of state as an alternative to efficiency and private self-interest masquerading as incorporated pluralism.

### **Common as Virtue: A Moral Imperative**

However secure our traditions, mores and beliefs, common good as commonality alone is not sufficient to ensure a moral "order" or the common good in a democratic state. What is required is virtue, virtue in citizens and virtue in public life promoted through institutions like the public schools. The American common school is an instrument of a moral order that has powerfully



shaped the character, understanding, and expectations of American values and mores for nearly 160 years.

We have traditionally thought of the American "order" as "law and order." However these concepts are not necessarily related (Kirk, 1974, p. 5): "An order is bigger than its laws, and many aspects of a societal order are determined by beliefs and customs, rather than being governed by positive laws. The word "order" suggests "a systemic and harmonious arrangement"--whether in one's own character or in the commonwealth. The concept of a moral order can also reflect civic duty and the enjoying of certain rights in a community, as in a "civil social order." (p. 2).

The problem of virtue has been addressed by individuals who created the republic, formed the constitution, and developed the institution of common schools which stand as monuments of political wisdom. The founders attempted to reconcile the immense differences resulting from "the claims of individual person" with the claims of the social order or common good. They devised public institutions and constitutions to establish a relation between virtue and freedom. All too often it seems that Americans dichotomize these values. Some emphasize virtue and a moral order; others, freedom, self-interest, and the integrity of the individual. A proper definition of virtue or common good in a commonwealth does not depict citizenship as a bifurcation of values: liberty, on the one hand, and virtue, commitment and responsibility on the other (Meyer, 1969, p. 29).

One way to diagnose the problem of defining virtue is that there are two roots of order in the United States of America: (1) the roots of the moral order, or "order in the soul," and the roots of the civil social order, or "order in the republic" (Kirk, 1974, p. 5). The "inner order" of the soul and the "outer order" of the society or polity are intimately linked to the ends of the state, i.e. there can be no virtue in the state without a virtuous and educated citizenry. When the founders spoke of a novus ordo seclorum (McDonald, 1985), they recognized that order was the first need of the commonwealth. They understood that it is not possible to live in harmony in a democratic republic unless there is "some principle of order by which we do justice" (Kirk, 1974, p. 6).

### Virtue and School Equity

In recent years the state courts addressing aggrieved plaintiffs from poor school districts have been willing to assign to education "an inherent or natural preeminence" (Alexander, 1991, p. 341). Entire state systems of education have been struck down by invoking the positive requirements of state constitutional provisions to restrain legislative authority. These cases pose an important ethical question about the morality of this authority: "Can the state, by its own laws, create unequal opportunity by disproportionate allocation of its fiscal resources?" (Alexander, 1991, p. 351) without requiring, as Isaiah Berlin has noted, that the deviation be based on some "special reason" for unequal treatment? (cited in Olafson, 1961).

This ethical question addresses a special crisis in public philosophy on the part of civic and educational leaders who lack clear guidelines for public administration. One speaks of the "leadership crisis, the "energy crisis," the "education crisis," but rarely of a "moral crisis" and the need for civic exemplars in positions of authority. Americans are not sure exactly what the "self-evident" truths of the state are that should be manifested in public policy, much less whether these truths provide a moral basis for civil authority.

Establishing and maintaining equitable institutions such as public schools with equal facilities and equal opportunity by law requires special insight into the moral purposes of state. Policy decisions require the highest qualities of character and moral integrity if the goal of the common good of the state is to be achieved. They require a good understanding of civic virtue.

The equity question is in part a moral crisis exacerbated by a confused intellectual tradition. Two conflicting ideologies: a neo-individualist libertarian and an older egalitarian, communitarian or "republican" philosophy known as civic humanism, now compete for the moral imagination of Americans. We have seen in the chapter "Common as Common Good" that many have rejected the notion of common good or public interest on the basis that "we do not need to account for a totally inclusive [public] interest, because one does not exist" (Schubert, 1966, p. 51). Others argue that no one moral conception of justice is possible in a modern pluralistic state (Rawls, 1971, p. 225).

D. K. Hart notes the academic debate surrounding the founders' intentions of civic obligation in the new republic. Conventional wisdom has it that they argued for an "ethics of duty," derived from a law-centered paradigm. But there is a growing opinion that the Founders were much more comfortable with the virtue-centered paradigm of civic humanism, and its attendant "ethics of character" (Hart, 1989, p. 102) than we are today.

In the civic humanist tradition, a successful and moral government is one that promotes the civic character of its citizens and public servants. The founders believed "that the development of the individual toward self-fulfillment is possible only when the individual acts as a citizen, that is as a conscious and autonomous participant in an autonomous decision-making political community, the polis or republic" (Pocock, 1971, p. 85). They genuinely believed that government should be "a partnership in virtue [italics added] among all citizens" (p. 85).

Thus the concepts of "virtue" and "civic virtue" have great significance for equitable administration of public schools. When those in public authority do not act out of ethical principles and are guided only by expediency and an electorate devoted to predatory self-interest, there is no public will to overcome disparity among school districts. Equity and social justice through education is not possible. Visions of the common good alone may not impute a democratic process even though a common will or public opinion of some sort may emerge from the complex jumble of individual and group influences and volitions. Some

moral authority, rational unity or sanction is needed. The present inquiry assumes that in the process of convoluting or rejecting the concept of the public interest, civic virtue must be reclaimed as a goal of government.

### Virtue as the End of State

This chapter demonstrates "virtue" to be a guiding principle of a moral order made possible in great measure through the American common school. When we speak of "order," or a virtuous state, or the common good, therefore, we are speaking about the end or purpose of government in general. Public schools serve the ends of government and are an instrument of the polity. Public schools are first and foremost "an aspect of the polity" (Alexander et al., 1989, p. 149).

The philosophers for centuries have argued that the common good or virtue is the end of the state. Americans, however, have not been so sure. Some believe in the principle that "the political order must be a free order if men are to have the maximum possibilities of achieving virtue" (Meyer, 1969, p. 50). Some have argued that "the free society has come to take priority over the good society" (Bozell, cited in Meyer, p. 50). Meyer argues that for some freedom has declined as virtue has declined:

The recovery of the one demands the recovery of the other; the recovery of both is the mission of conservatism today. Virtue in freedom--this is the goal of our endeavor (p. 51).

We are still dichotomizing whether virtue preempts freedom or the other way around.

Montesquieu (1952/1748) made it clear in his Preface to The Spirit of Laws said that "political" virtue was the end or purpose of government--"the spring which sets the republican government in motion" (Montesquieu, 1952, p. xxii). When the American founders, who had read Montesquieu and other republican philosophers, spoke of a "virtuous and enlightened citizenry," they logically associated virtue with education and education with the end of state. The "New Secular Order" would be a moral order capable of producing justice.

Freedom, however, had a primary role, but there could be neither freedom nor justice without virtue. According to Meyer (1969), the concept of common good or virtue in commonwealth presents this dialectic: Virtue is a "metaphysical" or moral end of government; freedom is a "political" condition of those ends, and the establishment of public institutions like schools is a "practical, creative act" of binding the social moral and political structure itself into a harmonious unity. The end of state is a compromise worked out between virtue, freedom, and justice in a commonwealth:

The principle that the political order must be a free order if men are to have the maximum possibilities of achieving virtue is... inextricably linked in the tradition of the West and the tradition of the American republic with the principle that the goal of men is virtue (Meyer, 1969, p. 50).

The American common school therefore has an important role in achieving the ends of state and especially if "the goal of men is virtue."

The founders recognized an important principle lost to us today: virtue preempts justice. This means that there can be no justice without virtue and that virtue, as the end or purpose of state, incorporates justice. The proper relation between virtue and how justice is attained through law and constitution is "civic virtue." As Montesquieu says, a "political" or "civic" virtue is the linchpin of republican government. Virtue is first defined as the "order in the soul" before it becomes civic virtue in the state or "some principle by which we do justice" (Meyer, 1969, p. 50).

Legislators who dispense justice without virtue fall short of effecting a moral American order which has always been associated with the highest good attainable. That virtue is the end of the American state is evidenced by currency emblazoned with "In God we Trust," and in the Pledge of Allegiance that proclaims "one nation under God"-- "God" in the minds of most Americans being generally associated with the ultimate source of good, virtue, or justice. Through these and countless other symbols of the American tradition, Americans have come to understand that there can be no justice, and no order unless legislators themselves are guided by virtue.

### Paradigms of Virtue

A paradigm of virtue (a) encourages civic autonomy, (b) provides government by persuasion, (c) transcends the corruptions of power, and (d) produces civic exemplars that can ensure justice and fairness in public

administration. Properly defined, virtue constitutes the high moral ground of every lawyer, parent, child, or school coalition that mounts an equity suit to challenge educational disparity. Those who attempt to establish education as a fundamental constitutional right under each state's constitution especially require moral as well as legal authority.

Martin Diamond notes that the phrase "The American Way of Life" suggests that Americans have always thought about politics in terms of a universal morality (1986, p. 40). Americans more or less expect a moral political, legal and social order and have always been a "morally judging people who make moral judgments all the time" (Goldwin, 1986, p. 2), usually without knowing or questioning their philosophical or moral premises. Chief Justice Warren, for example, asked of complex legal decisions: "But is it right, is it good"? (Sowell, 1991, p. 21). History has shown that interest groups are "greatly strengthened if they can connect their cause to moral principles" (Goldwin, 1986, p. 4). Virtue, then, is not only an individual goal, it is a concept of moral and legal authority essential in a democratic republic.

"Virtue" conjures images of Christian piety and Puritanical repression when contrasted with the more modern "enlightened self-interest". However, throughout history it has provided a powerful paradigm for society. The paradigm of civic virtue, or the virtuous community, permeates cultural and intellectual history and literature and is reflected in a variety of traditions--humanistic, socialistic, biblical, as well as classical or republican. The following



examples illustrate the ongoing quest for virtue in society and the ongoing dialectic about the meaning of virtue in society.

### Two Paradigms

One of the main currents of Renaissance humanism absorbed by American culture was the belief that the community was founded in virtue. One of the earliest visions of an ideal, virtuous commonwealth has been translated through Utopian literature into the moral vision in America. John Winthrop, governor of the Massachusetts Bay Colony first described the ideal commonwealth as an ethical community in America, a "city set upon a hill" (Winthrop, 1965, p. 58). The utopian visions of ideal communities of Robert Owen, the Oneida communities of Alfred Noyes in nineteenth century America, can be traced to earlier models of Christian or Renaissance Humanism.

People who have read More's Utopia down through the centuries have not done so because of his philosophy of law, or because of his sense of authority, or ideas on the problems of government, or religion, but for More's brilliant vision of a virtuous society.<sup>1</sup> In More's Utopia (1984), however, the fundamental idea was that if the prince received a good, humanist education as a child, he would be better equipped to govern in a more civilized manner to ultimately benefit the entire kingdom. These were also Erasmus' assumptions of sovereignty when he wrote the Education of a Christian Prince. This ideal of moral governmental

leadership is reflected in More's own words to Raphael in the dialogue of counsel:

But it seems to me that you will do what is worthy of you and this generous and truly philosophic spirit of yours if you so order your life as to apply your talent and industry to the public interest, even if it involves some personal disadvantage to yourself (More, 1964, p. 57).

More also presented in his vision other sources of social guidance than the prince himself, specifically Aristotelian natural law to promote the common good, and his depiction that law leads men to virtue. But the image of moral leadership through education remains Utopia's most vivid contribution to civic virtue.

Civic virtue would receive a different treatment by Machiavelli, whose Principe (1950) gave the world an image of the great man or leader subscribing to a practical prudence in which being evil was more useful and efficient than being good based on a the political practices of Cesare Borgia. His Prince might deceive, lie, commit crimes, even murder, if this benefitted the common good or welfare of the state. Machiavelli's Prince became a prototype for leadership of dictatorship in general.

Each of these paradigms reflect two conceptions of virtue in society: a civic humanist perspective, and a laissez-faire perspective of self-interest. The first emphasizes virtue, valor, and order; the other, freedom, self-interest, expedience and the integrity of the individual. True citizenship, however is not a

bifurcation of these values. It is both liberty and virtue, commitment and responsibility.

The men who created the American republic and framed the constitution and the institution of common schools produced a monument of political wisdom. They attempted to reconcile the immense differences between these two conflicting paradigms: "the claims of the individual person with the claims of order, or the relation of virtue to freedom" (Meyer, 1969, p. 29).

The concept of common as virtue addresses this dialectic. Truth and virtue are metaphysical or moral ends of government; freedom to seek them is a political condition of those ends, and public institutions like schools are the binding glue and creative force behind social, moral and political structure of society itself.

### Etymology of Virtue

Three basic etymological definitions of virtue are presented in the Oxford English Dictionary (1989, Volume 19, pp. 675-677). First, the definition of virtue pertains to character. Virtue is a "quality of persons," originating from the Latin virtute or virtus meaning manliness, valor, or worth. According to this definition, a man possessed of virtue would display excellence, such as "manly qualities, manly excellence, courage or valor." Virtue as excellence applied to individuals making up the polity suggests a standard of both a physical and moral nature, i.e. an "influence working for good upon human life or conduct."

Virtue as a concept of excellence can be learned through formal learning processes, custom, or tradition. It is also associated with compassion and concern for common humanity. Virtue reflects character traits associated with being "humane," "gentle," "kind," "polite" or "courteous in behavior to others."

Secondly, virtue suggests moral order or authority. The etymological definitions of virtue as character suggest that virtue is not easily attained unless it rests upon some higher power or principle(s) which serves as a justification or foundation for human conduct. Virtue appeals to sources of authority, as "...the power or operative influence inherent in a supernatural or divine being," an "embodiment of power, or an act of superhuman or divine power," as in the "virtues wrought by God's hand." Virtue is "conformity of life and conduct with the principles of morality, voluntary observance of the recognized moral laws or standards of right conduct" which encourages "abstention on moral grounds from any wrong doing or vice" (p. 675).

Thirdly, virtue is defined as citizenship. When combined with the Latin word "civic," virtue suggests a higher standard of "civic-mindedness," or "public spiritedness." This suggests, solicitude and consideration of others as well as obligation. "Civics" as an academic subject, is "that part of political science which is concerned with the rights and duties of citizenship." The concept of "civic virtue" however is more inclusive of society. It "pertains to the private rights of citizens" as well as to "the whole body or community of citizens." It results from the educational process and is recognized as a process of "becoming

or befitting a citizen." It therefore suggests being "educated," "well bred," "refined," "polished," "not barbarous," and "civilized in the arts of life," qualities learned through education.

The word "civic" can actually be traced to the French "serment civique" which suggests obligation or duty. For example, "an oath of allegiance to the new order of things, demanded from citizens in the French Revolution." A society is "civil" if it is characterized by a "proper public or social order" or is "well-governed." The term civic virtue then suggests the concept of a moral order that specifically relates to education, duty, and loyalty to the state (p. 234).

## Conceptual Frameworks of Virtue

### Republican Framework

A definition of civic virtue can be found at least in part in the political theory of classical republicanism.<sup>2</sup> The "language of republican" thought was a common idiom at the time of the American Founding...all spoke this common tongue" (Diamond, 1986, p. 20). Virtue was the focus of the formation of the republic, the one ingredient that united the founders, however much their ideologies collided

The priority of a civic obligation rooted in citizen virtue was central to the beliefs of the Founders for--regardless of their prudent

checking and balancing--their idea was a nation defined by the superior moral character of its citizens (Hart, 1989, p. 102).

To a degree Americans have always shared a republican concern for a government of "excellence," a citizenry of "virtue," a public "order" defined by fundamental "law" (the constitution or politeia) and conducive to "well-being," a "community" of "moderation" in which the governed would not be allowed to be abused or to abuse themselves (Diamond, 1986, p. 21). All of these words suggest the concept of virtue in the republican tradition.

Essential to the founders was "a counter theory of civic republicanism," most recently labeled communitarian.<sup>3</sup> This view of human nature was grounded in Aristotle, who says in the Politics (1952) that humans by nature are not self-contained, isolated creatures in a state of nature, but are "polis dwelling" animals, nurtured by the state (Book I, p. 471). A more modern communitarian view of this Aristotelian conception acknowledges that "communities create individuals, individuals don't create communities, and that communities or the state itself binds us together in a web of support and obligation" (Schuman, 1992, p. B2).

The tradition of civic humanism assumes that a nation is only as good, moral, or prudent as the citizens that comprise it. The purpose of a virtuous and well-ordered commonwealth is best reflected in the classical notion of polity<sup>4</sup> which Edmund Burke, of all the eighteenth century philosophers respected by the American Founders, argued against the "natural rights" excesses of the French

Revolution. This important tradition provides a moral underpinning of our modern state--a theory of collective morality. It is not based on private whims, abstract individual rights, or abstract reasoning, but on communal experiences and the "ethics of character" with virtue at its epicenter. It also assumes that government and all public agencies within the "polis" or political community have a civic responsibility or trust.

### Psychological Framework

The moral psychology attendant upon this interpretation of the founding values basically expresses two following propositions: first, all individuals have an innate need to love self; and, second, all individuals have an innate need to love others. "These needs are coequal and synergistic: neither derives from the other, and the full actualization of one is dependent on the full actualization of the other. Their mutual actualization constitutes the purpose of human life" (Hart, 1989, p. 102).

In the "republican" theories of virtue the principle of self-love is superior to self-interest. In the political realm, self-love is manifested as the quest for "civic virtue," a drive for human "excellence" that presents the community with unique and vastly useful members with genuine concern for the common good. Cicero presumed that virtue was the basis for community, a fundamental human need to care for one another without which "there can be no natural tie between

one human being and another, and once you abolish that, you abolish all society..." (Cicero, 1913, Volume 23, p. 15).

Virtue in great measure is a psychological concept. "Love of self" and "love of others" seem like simple psychological requisites of virtue until we realize that "self love" can also be "hedonism" or "public utility" --an attempt to obtain or avoid pleasure or pain through the satisfaction of predatory self interest. Jeremy Bentham, the self-proclaimed founder of the "sect of the utilitarians" (1773, p. 13), defined virtue as "self-regarding prudence" (p. 90). However, the republican concept of civic humanism, which originated with the Greek and Roman philosophy, arises out of an innate need to "love" the best that is in self, and those excellences or "virtues" press toward other-regarding love, i.e. the common good for actualization in the world.

Loving, of course, is an intuitive or sentient act that does not draw upon human reason. So when we speak of concern for the common good or the general welfare, we cannot avoid the concept of conscience, feelings, or intuition reflective of some innate moral sense that stimulates feelings of affection. A "love" of the common good the Stoics, the Christian fathers, and other philosophers, even in the Age of Reason, have found to be the basis of all civil society and virtue.



### Philosophical/Juridical Framework

Virtue as a philosophical concept is generally synonymous with justice and the common good. Philosophers of each generation have analyzed these twin concepts of virtue: the "good" and "right" in the following way:

They conceptualize basic phenomena in human life: the good, that men are purposive, or goal-seeking beings who have desires and aspirations; and the right, that men carry on their lives in groups that require some modes of organization and regulation involving practices, rules, and institutions (Edel, 1973, p. 382).

Virtue then is both a goal-seeking and a juridical concept. As Earl Warren indicated, virtue is both "what is right," and "what is good". Like the law of nature (ius naturale), it corresponds to "that which is always good and equitable" (bonum et aequum) (D'Entreves, 1965, p. 19). Civic virtue requires right action through a virtuous citizenry and a conscious quest for the good. Both aspects of virtue are essential to the definition.

The "good" implies both the pursuit of personal excellence or a higher social good stimulated by both self-love or other-regarding love. What is "good" addresses the quest for the common good. Virtue then is a subordinate means to the common good and requires an act of will, judicious acts, or some basic objective character or motivation in pursuit of the good life as the ideal of universal common good (Edel, 1973, p. 383). It also suggests a love of the common good. The concept of "right" on the other hand, is a juridical concept. In the sense of doing what one "ought," virtue belongs to a branch of philosophy called deontology. A sense of "right" as duty or obligation is therefore not the

same as "good" which is an object of desire. A juridical view of virtue sees ethics as a system of laws, rules, principles, or a plan that enjoins human beings to moral law, or to some binding principle of obligation to what is right (p. 174).

### Political Framework

#### Virtue in Political and Economic Principles

Certain principles of equity, justice, equality, fairness, mutuality, reciprocity, or neutrality require virtue. Such political and moral principles embrace the notion that the advantage should go to the already disadvantaged, or that each person must be willing to submit to the same conditions that they are willing to impose on others. Such concepts as equity, fairness, benevolence are all characteristics of virtue.

Virtue, and especially civic virtue, can be a political as well as an economic conception which makes the basic principle of equity a practical political and social reality. The partnership in virtue theory draws upon such principles to conceptualize a moral order.

#### Partnership in Virtue Concept

George Will observes that many philosophers over time have resisted the notion of "government merely regulated by isolated individuals who choose only

to associate for self-interested reasons" (Will, 1983, p. 160). Will argues that our founding philosophy is an ideal of public spiritedness that spans generations.

This classical republican notion poses an alternative to a laissez-faire conception of government and is compatible with the common school ideal as developed in the United States. It is the idea of a conscious commonwealth commonly desired first enunciated by Cicero:

a commonwealth is the property of a people. But a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good (cited in Will, 1983, note 14).

The eighteenth century English statesman, Edmund Burke, provided a powerful paradigm of an extended morality for a nation where values and institutions were public inheritances of the common good. He perceived a divine prudence that is part of an "eternal social contract" or natural order which holds all things in their places and confirms that despite change and the molding together of "the mysterious incorporation of the human race"... "in what we improve, we are never wholly new" (Burke, 1968, p. 307).

For Burke, political expediency as well as Divine Prudence is that quality of virtue which is the basis for an eternal contract, a "partnership in virtue" that binds all men to previous and future generations. This contract provides an important goal for civic virtue in a well-ordered polity and excellence for American intellectual life beyond mere commercial striving or rivalry. Burke wrote in his Reflections on the Revolution in France:

...the State ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico, or tobacco, or some low concern....It is to be looked upon with other reverence, because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born (cited in Will, 1983, note 15, p. 155).

This "partnership in virtue" includes all institutions, traditions as well as individual human needs and differences. It imparts a conception of impartial justice and fairness because all men are part of the same moral universe that consists of rights as well as responsibilities. Burke's eternal contract, like Adam Smith's "Invisible Hand" (1937), embraces the concept of Providence, the notion of a purposive and teleological universe with a basis in natural law.

John Rawls' contract is also based on consent of the fullest development of the moral will in which one generation builds upon another a moral order:

We are led to the notion of the community of mankind the members of which enjoy one another's excellences and individuality elicited by free institutions, and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and given pleasure to all. This community may also be imaged to extend over time, and therefore in the history of a society the joint contributions of successive generations can be similarly conceived (Rawls, 1971, p. 523).

Thus the "partnership in virtue" theory throughout generations posits high, all-encompassing ideas and expectations of virtue binding upon the polity as a whole. However, to achieve this Ciceronian ideal, Edmund Burke found that "a

revolution in sentiments, manners, and moral opinions" (cited in Will, 1983, p. 156) may be required.

This republican paradigm of civic virtue as we have seen is not only of classical origin. It rests on a variety of assumptions about the common good ranging from the social contract of Rousseau (1973), the Puritan conception of commonwealth (Handlin and Handlin, 1969), the Greek and Roman ideals of polis, or "polity, and pietas or "piety" (duty) of a republic and its citizens.<sup>5</sup>

### The School in the Political Order

Glenn noted in The Myth of the Common School (1988) that this republican or communitarian model tends to encourage those

who assert the absolute right of the state...[or "society"] to control the education of the next generation of citizens in a way that minimizes the differences distinguishing citizens one from another in the interest of national coherence (1988, note 5, p. 3).

Such governance, however, is not control seen in the totalitarian states, but "stewardship" that operates out of moral principle. This is the meaning of civic virtue. Montesquieu, who influenced the founders as much as any philosopher, defined a republic as "...a self-regulating political society whose mainspring is the identification of one's own good with the common good" (cited in A. Hubsche, 1989, p. 95). This "mainspring" or linchpin of the state, according to Montesquieu, was "virtue," the very essence of the spirit of the laws.

A partnership in virtue implies that a democratic politics is deliberative and consensual debate for the common good--not merely the isolated or self-interested exercise of choice or consumer preferences, but a rational moral choice. Furthermore, a republican government would sanction and support public education because of the need to maintain an informed, enlightened, and virtuous citizenry. "Our form of government was dependent on the existence of virtue among the people. It was such virtue that they (the Founders) expected to resolve the tension between private interest and the public good. Without civic virtue, they believed the republic would decline into factional chaos and probably end in authoritarian rule" (Bellah et al., 1985, p. 35).

Horace Mann, the chief proponent of common schools in the nineteenth century, absorbed these ideas and made them the ideal of the common school. Mann acknowledged how hard it was to "make men republicans" (cited in Cremin, 1957, p. 48). In a government like ours, Mann wrote in the Ninth Annual Report:

each individual must think of the welfare of the state as well as of the welfare of his own family...[for]...however skillfully it [the intellect of a man] may have been trained, if it be not guided by a sense of justice, a love of mankind and a devotion to duty, its possessor is only a more splendid, as he is a more dangerous barbarian (cited in Cremin, p. 48).

This devotion to duty Mann knew was responsible for the civic virtue found in the Greek and Roman republics, which according to the classical moralists themselves, was called "piety," the Anglicized counterpart of which is

"common good." A pious man was one who subordinated his own desires to the claims of others--to the common good (Kirk, 1974, note 13, p. 103). A republican vision of "moral education" for the shaping of a shared national identity and to mold a virtuous and enlightened citizenry inspired the Jeffersonians and others to argue for a "general diffusion of knowledge" that would ensure equality of opportunity and the survival of the American republic.

### **Virtue as Benevolence**

#### **Founders' Concept of Benevolence**

Returning to the propositions that all individuals have an innate need to love self and that all individuals have an innate need to love others, we find that "While it has not been unusual to find defenders of self-actualization, almost no one argues for an equivalent imperative to benevolence" (Hart, 1989, p. 102). Yet benevolence was a central concern of eighteenth century philosophers who struggled with the moral problem of how to achieve virtue in the emerging "commercial republics" (Roberts, 1973, p.102). The founders' conception of benevolence has been neglected, either because many of them grounded their beliefs about benevolence as a foundation of society in deity, and contemporary scholars shy away from the subject (Hart, 1989), or because the laissez-faire concept of virtue has overshadowed it. The American Founders, however, were familiar with the philosophers of the Scottish Enlightenment, and they

drew many of their ideas from them (Koch, 1965). They had also read Rousseau and other philosophers. Because of these influences, "They presumed a fundamental human need to care for one another...and did not ignore the needs and possibilities of benevolence in achieving their ideal of government" (Hart, 1989, p. 103). Americans since Puritan days were also deeply receptive to their Christian heritage, although Deism may have undermined the concept of a benevolent God.

The innate moral sense from Rousseau to Hume to Kant and Rawls has had a powerful role to play in the concept of moral will. Rousseau's theory of the "general will" has become the source of the theory of the ethical state (D'Entreves, 1965), but few have seen it as a theory of benevolence. Rousseau argues that human will, arising out of conscience or the innate moral sense, caused a desire to do good to or for others. From Rousseau we learn that man in a state of nature is naturally good and that social institutions corrupt his innate goodness. In contrasting altruism (amour-propre) with love of self (amour de soi), Rousseau demonstrates that an individual never wants everything for himself, and nothing for others. Man is naturally good because his innate amour de soi (love of self) and his natural or innate piety, (love or concern for others) constitute the fundamental characteristics of human nature. He concludes that the General Will is or can be benevolent or virtuous. Thus the rational precepts of the General will, "find an echo in the heart of the 'natural' man" (cited in Cole,



1973, p. xiv). Benevolence is a habit of the heart as well as moral will guided by reason and natural law culminating in the General Will. Rousseau writes:

If natural law were written only on the tablets of human reason it would be incapable of guiding the greater part of our actions; but it is also graven on the heart of man in characters that cannot be effaced, and it is there it speaks to him more strongly than all the precepts of the philosophers (cited in Cole, 1973, p. xiv).

### Benevolence as Moral Sense

For the philosophers of the Scottish Enlightenment, the innate moral sense likewise provided the foundation of civic virtue. Benevolence theory based on innate feelings about love of self and love of others as well as sensation challenged the assumptions of John Locke and his tabula rasa theory of knowledge that had exalted pure reason.<sup>6</sup> The Scottish philosophers, namely Francis Hutcheson and David Hume, laid the foundation for a theory of benevolence, based on "other regarding" love in contrast to the Lockean and individualist view of private self-interest through rationalism. The moral sense theory proper, is best seen in the first two books of Francis Hutcheson, An Inquiry into the Original of our Ideas of Beauty and Virtue written in 1725. In this work and in a later work as Professor of Moral Philosophy at Glasgow, specifically his lectures published posthumously as A System of Moral Philosophy, Hutcheson relates virtue to the common good. He noted that (a) men can have disinterested motives, i.e, that they can act for the sake of the

good of others and not merely for their own advantage, and (b) that they can make disinterested practical judgments (Raphael, 1973, p. 230).

The moral sense<sup>7</sup> is a type of moral judgment in which the word "sense" means feeling. According to Hutcheson and David Hume, it is the capacity to experience feelings of "approval" and "disapproval" in ways other than by pure reason. According to Hutcheson, a moral sense is a feeling of "approval" we experience when we observe a person act from a motive of benevolence. For Hutcheson, virtue is the motive of benevolence approved by the moral sense. A contrary motive is vice disapproved by the moral sense.<sup>8</sup> Hutcheson's primary aim in moral philosophy was to refute an egoistic interpretation of ethics: "Virtue for Hutcheson is the motive of benevolence approved by the moral sense, and vice is a motive (usually partial to self or to a narrow circle) that overcomes benevolence and is accordingly disapproved by the moral sense" (Raphael, 1973, p. 231).

Hutcheson, David Hume, as well as Adam Smith have been associated with utilitarianism. They all distinguished several internal senses as different kinds of pleasant and painful feelings. Hutcheson notes, for example, a sense of happiness and misery of others, a sense of honor and shame, and a sense of decency or dignity associated with one's own sense of pleasure or pain. Hutcheson's main contribution to a theory of the innate moral sense, however was to establish the "disinterested" character of moral action and moral judgment (Raphael, 1973, p. 231). He made an important distinction between justifying

reasons that are concerned with means to ends as opposed to the approval of ultimate ends, such as a perception of the common good as a function of "sense" i.e., feeling (p. 235).

### Benevolence as Moral Sentiment and Common Good

It is David Hume who demonstrates that moral distinctions are derived not from reason but from the moral sense, and that human affections or feelings are the ground of morality. Hume's famous sentence in the Treatise of Human Nature (1896), written in 1740: "Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them" (cited in Raphael, 1973. p. 232), made him a skeptic in the Age of Reason and demonstrated that moral sentiments are "pleasures" and "pains" that "approve" or "disapprove" of what is good or virtuous. Hume substituted the word "sentiment" for Hutcheson's "moral sense," and distinguished between benevolence and justice as "natural" and "artificial" virtue, thus providing a link between justice and benevolence.

Hume's chief argument in the Treatise is that reason cannot move to action as passion can, and since moral judgment is a motive to action it cannot be an expression of reason. Reason may show us means, but "moral sentiment" selects ends. For Hume then "Virtue or morality is concerned with duty and obligation: the morally good is essentially what one 'ought' to do, and this cannot be found out by reason" (Strauss and Cropsey, 1973, p. 516).

Hume criticizes the "selfish morality" of Hobbes and Locke and argues against predatory self-interest: (a) because not all desires are for one's own good; (b) because without some prior desire, feeling or emotion (as opposed to reason), there would be no self-interest; and (c) because self-interest does not always command priority either for the individual or the state, as one could actually prefer a lesser good, or something that is not in one's self-interest based on feelings and not reason (Hume, 1876/1740).

In this way Hume, rejecting what he regarded as the "selfish system of morals" of Locke and Hobbes, argues for a just society based on civic virtue. The duties of obedience to government and the observation of the rules of justice he calls "artificial virtues," because unlike "natural virtues" that spring from instinct or impulse (such as a natural affection of parents for children), they are a consequence of human contrivance based on reason and the natural law (Hume, 1896, Book 3, ii, p. 1). Benevolence or virtue precedes justice which is also guided by the "common sense of common interest, arising gradually among men"..."by repeated experience" (Strauss and Cropsey, 1973, p. 523).

Benevolence, or virtue determines the rules of justice, and thus a true self-interest is the "natural obligation" all men have to the observance of justice in society. Justice is virtue and injustice vice because men recognize that justice is beneficial to society. Justice is further reinforced as duties of obedience to government by the "artifice of politicians" who dispense public praise and blame, education, and laws that teach men to regard justice as honorable. However, the

original motive for establishing justice is moral approbation or "moral sentiment" which provides "a sympathy with public interest" (Hume, 1896, Book 3, ii. pp. 2-5).

Thus the Scottish Enlightenment concept of virtue as benevolence, acquired through sensing or the moral sense, provided fertile ground for common good theory, the concept of civic virtue through moral obligation, and the concept of a universal law. Hume's theory of "natural virtues" and "artificial virtues" based on the sensing of pleasure and pain also paved the way for modern utilitarianism and public choice theory.

Jeremy Bentham, drawing upon Hume's concept of sensations of pleasure and pain, however, was the first to apply Lockean ontology to the modern commercial state: "By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness..." (Bentham, 1973, p. 67). In utilitarianism, viewed as a theory of benevolence or virtue, the words "happiness" and "felicity" (p. 66) represent the good, whereas "utility" represents the "right." However, in Bentham, pleasure, happiness, or felicity is the goal of man characterized by private self-interest rather than any disinterested common good as either Hutcheson or Hume had described.

Here is Bentham's "greatest happiness" or "greatest felicity" theory of virtue quoted in full, the classical statement of private self-interest derived from innate moral sense theory:

Nature has placed mankind under the governance of two sovereign masters, "pain" and "pleasure. It is for them alone to point ut what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The "principle of utility" recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law (Bentham, 1973, p. 66)

The end of the state for Bentham, then, is not virtue but "happiness," a collective sensation dispensed within a political or economic system guided by reason and law--not necessarily the natural law of old, but positive, man-made law produced by individual men of reason. Thus the doctrine of utility arising from the innate moral sense theory of the Scottish moral philosophers became a classic statement of ontological individualism which could easily lapse into the "chaos of subjectivity," unless some guiding or universal principle united all the different sentiments of men. Utilitarianism makes a virtue out of vice and congratulates human greed which could be generated from the basest of human passions not answerable to or informed by any higher moral law or moral will. Hume, however, was no less "subjective." He argued that "The passions do not always follow our corrections" (Hume, 1896, Book 5, p. 176). If, however, we are never mistaken in our feelings of pleasure and pain, individual moral judgments are "perfectly infallible" (Strauss and Cropsey, 1973, p. 520) and

private, self-interested choice, not the common good as justice, would reign supreme.

### Benevolence as Moral Will

The ultimate contribution of the Scottish Enlightenment to common good theory of virtue in the natural law tradition culminated in Immanuel Kant whose "categorical imperative" reflects the innate moral sense directing human choice and actions. Kant, drawing upon this eighteenth century tradition of benevolence that emphasized innate feelings or inclination, as well as duty and obligation found in Hume, greatly advanced the disinterested character of morality in more modern times. Natural law theorist, D'Entreves observes that in Kant's The Moral Law Groundwork of the Metaphysics of Morals "nobody had a clearer grasp than Kant had of the incommensurable difference between legality and morality" (D'Entreves, 1965, pp. 121-122).

Immanuel Kant transcended individual subjectivity by demonstrating that moral principles have the character of universal law, while feeling varies and applies only to the individual experiencing it. Moral feeling of reverence, for example, he says is only a consequence, not the cause of moral judgment, but essential to it. In Kant, writes D'Entreves, "values and norms coincide." He credits Kant with positing "the ultimate origin of law and at the same time the beginning of moral life proper...what men for over two thousand years have indicated by the name of natural law" (D'Entreves, 1965, pp. 121-122). Kant

distinguished the difference between legality and morality and suggested that virtue is the act of moral will in conformance with natural law:

A perfectly good will...[cannot]...be conceived as necessitated to act in conformity with law, since of itself, in accordance with its subjective constitution, it can be determined only by the concept of the good. Hence for the divine will, and in general for a holy will, there are no imperatives; "I ought is here out of place, because 'I will' is already of itself necessarily in harmony with the law. Imperatives are in consequence only formulae for expressing the relation of objective laws of willing to the subjective imperfection of the will of this or that rational being--for example, of the human will (cited in D'Entreves, 1965, p. 122).

In The Fundamental Principles of the Metaphysics of Ethics (1938), Immanuel Kant recognizes a universal first principle as the origin and ground of moral obligations. According to Kant, the principle of moral obligation in society is this: "So act that the rule on which thou actest would admit of being adopted as a law by all rational beings" (p. 200). By the "categorical imperative," Kant means that all imperatives of moral choice are either hypothetical or categorical. The first represents the practical necessity of a possible action to arrive at something that is willed (or may be willed), which, of course implies, a conscious moral act of "willing." The categorical imperative represents an action objectively necessary of itself without relation to another end, moral or otherwise. In real-life ethical situations, men and women would be seen to act on the basis of principle. This deontological standard of moral will advises them to "Act only on that maxim which will enable you at the same time to will that it be a universal law" (p. 201). Virtue obtains as principles of reciprocity and



obligation to others in society, especially if the act of willing is in conformance to natural law.

Kant illustrates his theory of moral will by describing several instances involving individuals seeking to know their actual moral duty to others, or societal obligation: a potential suicide, a person desperate to borrow money which he knows he cannot possibly repay, a person in conflict over possession of a gift, and a fourth who is well off while others struggle with deprivation which he could alleviate. Kant's "canon of the moral judgment" was simply that "...one must be able to will that the maxim of action be a universal law" which would in fact become a universal law of nature (See Kant, 1938, pp. 29-31).

Thus, one observes that Kant shares with Rousseau similar views on the nature and function of the moral will as it serves the common good in society-- but with a slight difference. Kant's moral imperative is pure rationality, whereas Rousseau found sanction for his General Will in rationality as well as in moral sense perception: "Natural law is graven on the heart of man" (Rousseau, cited in Cole, 1973, p. xlv).

### School Equity and Benevolence

The philosophers have enunciated several vital principles that can be applied to school finance and equity in education. First, Hume and Hutchinson emphasize, in contrast to Locke, the importance of sense feeling, an innate perception of right and wrong that all people have. This innate moral sense is

what prompts people to consider the harmful effects or unfair advantages of others.

Kant in his moral theory calls attention to the need for a universal principle or law that will morally bind or obligate all men equally in their duty to the state and the common good. It posits a way of thinking and acting in accordance with universal principles of justice instead of private self-interest.

The essential issue in a just distribution of state tax resources for public schools is that it is based on a rational principle or standard acceptable to all throughout the state regardless of the geographical location, wealth, or status. Kern Alexander has noted that this problem in educational finance occurs where legislative policy favors local vested interests. He asks:

Will the citizens of wealthy school districts agree to submit their children to the schools with the fiscal condition of the poorest school districts in the state? If they will not, then the distributional structure for the public schools of a state must be found to be morally deficient and not in keeping with the general will and common good wealth of a school district or living condition to observe the same restrictions or limitations in educational facilities and benefits and to enjoy the same conditions (Alexander, 1991, p. 295).

The categorical imperative addresses the obstacle to a uniform system of education when state policy allows wide disparities in benefits among children reflecting a sum or majority or dominant private, or particularized local interests and not that of the common good of all children throughout the state.

Kant's principle suggests, like Hume's theory of "artificial virtues," that in order for equitable policies to be made, individuals must consciously will or desire

commonality, justice and fairness in society because they are innately moral beings. That is, they have an innate moral sense--a heart, or feeling of compassion for others which encourages a conscious desire to share the same advantages, or be willing to sacrifice for the common good conceding to a principle of a higher natural law that is so rational and universally acceptable as to be morally binding on everyone. As Alexander notes, the legislature as well as the people must be willing to "observe the same restrictions or limitations in educational facilities," and "enjoy the same conditions" of education in accordance with equality and justice. School equity thus becomes a matter of conscious moral choice that draws upon the basic innate moral sense of all the people in the state--the legislator and tax payer alike, who, in support of a common system of education must "necessarily submit[s] to the conditions he imposes on others" (Rousseau, 1973, p. 206). A moral educational system eschews, as did Rousseau in The Social Contract, "the private will of the individual, tending only to his personal advantage" (Rousseau, 1973, p. 235).

Desiring or willing that others have like advantage is to reject the idea of dominance of class wealth and to adopt the principle of equity as a natural law to counteract social or economic dominance. As Walzer (1983) notes, individuals with dominance "can command a wide range of other goods...Dominance describes a way of using social goods that isn't limited by their intrinsic meanings or that shapes those meanings in its own image"(p. 10). A free and equitable educational system is one free from the dominance of

factions. According to the Kantian definition of virtue, individuals know and act upon the basis of an innate sense of justice which will be in conformance with a natural law of justice or equity which says such dominance by the wealthy few is not fair. They act upon a moral duty to others on the basis of a common or universal principle: "the principle of "fair benefit distribution" (Green, 1990, p. 233).

### Moral Paradox

Thus from the philosophers we derive certain moral principles that characterize a virtuous people: they are endowed with a certain moral sense of what is right and wrong; they love the common good; and they are willing to subordinate their choices to its requirements in a way that would be universally binding upon all. However, the doctrine of benevolence is a paradox, since benevolence, prompted by moral sentiments, can arise with or without the aid of a higher moral authority. Simon (1986) argues, for example, that "...the volition and intention of the common good are guaranteed by virtue itself, as an innate or moral will, independently of all authority." He notes that "Of this way we do not know...except that it is essential and basic; for it is not by accident or in any superficial fashion that the just love the common good and surrender for it their private interests" (Simon, 1986, p. 36).

The real problem that Madison recognized in Federalist No. 10, is whether the virtue of the private person regards the whole of the common good or merely

some private, factional aspect of it. Whether the moral will is a product of divine will or pure human sensitivity is irrelevant. However, Simon notes that "If, and only if, the latter is true, authority may have an essential part to play in the volition and intention of the common good" (Simon, 1986, p. 50).

Nevertheless, the principle of benevolence as love of the common good, has had an extraordinarily powerful hold on the consciences of men (p. 48) even though the act of individual moral will exalts the individualist ethic. Simon argues, however, people have recognized the common good and served it with devotion under such names as "public interest" or "greatest good of the greatest number" precisely because of their awareness of a "moral sense," and that is the same moral sense which also undergirds republican concepts of virtue, duty, and civic responsibility (p. 50).

In the American tradition of civic humanism a common path has been charted from individual moral sense theory to the deontological foundations of justice culminating in John Rawls. John Rawls, as we shall see, like Kant and Rousseau was able to link individual volition to a higher plain of law or justice. Unlike Hume, however, he bases the moral will on reason. Rawls' "original position," not unlike Kant's "categorical imperative," is based on the sanctity of the individual will, and can thus be construed to be ontological (Rawls, 1971, p. 1). However, Aristotle also influenced Rawls, for Rawls presents the "Aristotelian Principle" of motivation that trained the human capacity for virtue

and excellence in civil society (Rawls, 1971), and also relies on societal traditions and mores.

We turn now to Aristotle's theory of virtue as character that has influenced so many other philosophers through the ages and informed the American tradition of civic humanism. In Aristotle, however, we see that individual moral will alone does not carry complete authority. The individual is shaped by the society, its traditions, and laws that comprise the social order in which the individual lives as a responsible member of the polis or political community.

## **Virtue as Character**

### **Virtue as Character in Schools**

Schools have always had a function of establishing a moral foundation for the nation, a sense of commonality that overcomes class differences and reinforces basic values. Americans have noted the importance of a virtuous society through character and citizenship. The American common school is a microcosm of the macrocosm, a virtuous "education society" (Bellah et al. 1991, p. 176). The philosopher Albert Borgmann has said that "to educate is to enable and disable for life" (cited in Bellah et al, 1991, p. 176). A genuine "education society," however, means something more than a society with good schools:

It means a society with a healthy sense of the common good, with social morale and public spirit, and with a vivid memory of its own cultural past. Schools can contribute to that, but they cannot create it out of whole cloth and should not be expected to (p. 176).

Thus, we strive to bring these same principles to bear on public education, to reconcile the disparities and differences in society, or to make a "Good Society." The American common school especially must develop character or "human virtues" essential to "a healthy sense of the common good" (p. 176). Walter Lippmann outlines a non-sectarian blueprint for the American common school based on character formation which Horace Mann would embrace. He implies that a society requires virtue based on character:

There must be a strong desire to be just. There must be a growing capacity to be just. There must be a discernment and sympathy in estimating the particular claims of divergent interests. There must be moral standards which discourage the quest of privilege and the exercise of arbitrary power. There must be resolution and valor to resist oppression and tyranny. There must be patience and tolerance and kindness in hearing claims, in argument, in negotiation, and in reconciliation (Lippmann, 1937 p. 280).

Note here the many references to character traits in Lippmann's goal for a virtuous society: "desire," "capacity," "discernment," "sympathy," "moral standards," "resolution," "valor," "patience," "tolerance," and kindness". Lippmann demonstrates that the goal of achieving a "virtuous and enlightened citizenry" through character formation in public institutions like churches and schools has been a concern of philosophers and statesmen throughout history. Others acknowledge that education for citizenship is "not some quaint leftover from a

nineteenth-century curriculum. It is an essential task for a free society in the modern world" that now requires "cognitive competence" (Bellah et al, 1991, p. 176).

### Virtuous Character

The American founders of common schools, like Aristotle based their rationale for democracy on a system of public education and on the notion of character formation for civic virtue in a political community. In Nicomachean Ethics (1952), Aristotle observes that private property is rooted in human nature and that only the excesses of possessions are bad. The Nicomachean Ethics thus serves as a starting point for any systematic discussion of the subject of ethics in politics within the polis or community. In criticizing Socratic communism of Plato's Republic, Aristotle observed that the real cause of evil or human selfishness is not the absence of communism, but human wickedness. Consequently, what must be made common is not wives, children, or property, but a system of education (Strauss and Cropsey, 1973, p. 85).

### Virtue as Habit

Aristotle's concept of civic virtue as the moral force that binds the community is an aspect of "character" in both individuals and in nation states that can be learned. According to Aristotle, men are not moral by nature. "...moral virtue comes about as a result of habit, whence also its name ethike is



one that is formed by a slight variation from the word ethos Habit" (Ethics 1952, Book 2, p. 340).

In this work, Aristotle establishes the notion that ethics consists of virtues. There are several, most notably courage, temperance, prudence, and justice which are forms of habits that are learnable:

The things we have to learn before we can do them, we learn by doing them, e.g. men become builders by building and lyre by playing the lyres, so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts. This is confirmed by what happens in states; for legislators make the citizens good by forming habits in them, and this is the wish of every legislator, and those who do not effect it miss their mark, and it is in this that a good constitution differs from a bad one (Ethics, 1952, Book 2, p. 340).

Habits, however, according to Aristotle are not blind or unconscious acts. Habits arise from a moral disposition or innate moral sense.<sup>9</sup> For Aristotle, then virtue is a good quality of mind, an inclination or disposition.

Specifically, Aristotle observed that a good man would be in possession of or have a disposition toward four basic virtues: temperance, courage, prudence, and justice. When possessing these virtues, one freely abstains from doing wrong because it is wrong, and one freely does right because it is the thing to do. As Yves Simon translates Aristotle: "Virtue is the state of character which makes a man good (as man) and which makes him do his own work (as man) well because he has a proclivity for what is moral (Simon, 1986, p. 79): "By a man's disposition we mean precisely the unique arrangement of all his moral

traits. And when this arrangement makes him totally reliable and dependable in human affairs, we call both the man and his disposition virtuous" (p. 79).

### Virtue as Dependability

Since there is no agreed-upon definition of "virtue" in modern times, Yves Simon in The Definition of Moral Virtue (1986) argues that we must rely for the time being "...on the common understanding that virtue has something to do with human dependability" (p. 15) which Aristotle and his followers believed were attributes of virtue.

Dependability forms the basis of trust in civic society without which it is doubtful that anyone's virtue can be trusted. For Aristotle dependability is another aspect of habits or "uses," which is a compound product of nature, habit and reason. Virtue, Aristotle argues, thrives on instrumental habits, and these habitual behaviors become the essence of the public trust which consists of the most responsible, virtuous or "representative" citizens. Without consistency, or firm moral resolve of temperance, for example, or a habit of moderation, it is doubtful that an alcoholic can stop being an alcoholic or that others will ever trust him. All contracts and obligations in civil society would be a null and void.

Aristotle in the Nicomachean Ethics (1952) presents virtue as a rational principle, but it is also more. If we are trained in virtue, whoever succeeds in acquiring virtues will be characterized as a natural leader with an unshakable "dependability" in human affairs. Aristotle's notion of "making the citizens good

through the formation of habits" became a goal or end of constitutional government in the United States. This conception of virtue is reflected in the notion of "virtual representation," public responsibility, or trust. Legislators would be elected by the people as individuals who would act most virtuously, impartially, or responsibly to protect the public interest. Virtue itself as character would become a goal of education as well as government to ensure a moral social and political order and especially the "natural aristocracy."

Civic virtue for Aristotle is a combination of intellectual (reason) and character. It is the whole man ideal: "Virtue, then, is a state of character concerned with choice, lying in a mean, i.e., the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it" (Ethics, 1952, Book 5, pp. 377).

The expression "the mean relative to us" suggests that the correct choice of action truly depends on who and what we are--the caring and concerned individual whose actions are "determined by a rational principle." The problem of selecting the right values is perhaps greater for us in a pluralistic society than for Aristotle in a small, homogenous Greek city state. Ultimately, moral expediency applies: "What to do at the right time" can be resolved "by that principle by which the man of practical wisdom would determine it" (Ethics, Book 6, p. 390). That principle is "prudence."

### Virtue as Prudence

Prudence is one of the Aristotelian virtues that has both intellectual and moral properties; it appeals to both sense and reason. Burke called prudence, "the first of all virtues," because "nothing is good"..."but in proportion, and with reference" (cited in Kirk, 1953, p. 47). Prudence is more than a principle of expediency, or a necessary "trade-off" between irreconcilable differences (Sowell, 1987, p. 57). It is a quality of virtue essential to the common good. For Aristotle prudence is a guide to moral correctness, the essence of which is moral choice:

the origin of action...is choice, and that of choice is desire and reasoning with a view to an end....For good action and its opposite cannot exist without a combination of intellect and character. Intellect itself...moves nothing, but only the intellect which aims at an end and is practical (Ethics, 1952, Book 7, p. 400).

Aristotelian civic virtue then is eminently practical in the affairs of men. It is the virtue of prudence--the Golden Mean suggesting moderation in all things.

Aristotle writes:

Virtue, then, is a trained faculty of choice, the characteristic of which lies in moderation or observance of the mean relative to the persons concerned, as determined by reason, i.e., by the reasons by which the prudent man would determine it....Reared in its essence, therefore, or according to the definition of its nature, virtue is moderation or middle state, but viewed in its relation to what is best and right it is the extreme of perfection (p. 401).

Prudence is also "determined by a rational principle" which is utilized by "...the man of practical wisdom."<sup>10</sup> Aristotle noted that the "mean", i.e. justice, or what is on the balance "fair" as well as objective in contingent situations, is

determined by a rational principle which is a combination of intellect and character. This "rational principle" is prudence. Of all the Aristotelian virtues, prudence guides human inclinations in moral matters to justly determine what to do.

Prudence as a guide to the administration of justice based on a moral order was "Burke's most important contribution to political thought (Kirk, 1953, p. 212). For Edmund Burke, as for Rawls, prudence is that aspect of civic virtue that insures equal justice is a natural right. However, equal dividend is no right at all since the laws of nature make no provision for sharing goods without regard for individual energies or merits. In a "partnership of virtue" based on prudence, "all men have equal rights; but not to equal things:"

If civil society be made for the advantage of man all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by rule. Men have a right to live by that rule; they have a right to do justice, as between their fellows, whether their fellows are in public function or in ordinary occupation. They have a right to the fruits of their industry, and to the means of making their industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself: and he has a right to all which society, with all its combinations of skill and force, can do in his favor. In this partnership all men have equal rights; but not to equal things (cited in Kirk, 1953, p. 212).

Prudence therefore involves men in the practical operation of government that requires a moral distribution of justice. Unlike Bentham's utilitarian conception of "self-regarding prudence" (Bentham, 1973), Aristotelian or Burkean

prudence is a principle that determines precisely how far economic and political levelling, equality, liberty or security will be extended, considering all individuals fairly within a moral order.

Because of prudence, both Edmund Burke and Jeremy Bentham have been associated with utilitarianism (Will, 1983). However, Bentham's prudence is based on economic utility, the principle of counting all as one, rather than on a higher order of distributive justice (Bentham, 1973). It reflects the arithmetical equality of Aristotle who argued that "the just...is a species of the proportionate", i.e, proportional (Ethics, Book 5, p. 379) which requires considerations of "reciprocity." This is a "rational principle" whereby a man "does not assign to himself more of what is good in itself, unless such a share is proportional to his merits." It is especially regulated "according to law, and between people naturally subject to law...people who have an equal share in ruling and being ruled" (p. 382). Rawls made this justice proportional in accordance with the "difference principle."

Bentham's prudence, however, is based on the "presumptive will" of "utility," (Bentham, 1973, p. 85) which "neither requires nor admits of any other regulator than itself" (p. 86). Bentham writes: A "self-regarding prudence," makes for virtue "exercised by the performance of it" (p. 88). And "To be beneficial, an action must be so either to the agent himself or to another person or other persons or to both..." and "This virtue is termed beneficence" which must be based on "efficient cause" (p. 88). That "efficient cause" is "...any act,

habit, disposition or propensity...to give a net increase to the aggregate quantity of happiness in all its shapes taken together, ...and this effect...of happiness is produced on the part of any one individual, without the production of an equal quantity of unhappiness in any other" (p. 89).

For Burke, as for Rawls, prudence on the part of those entrusted to govern is not based on arithmetical equality. It "...relies on human nature; either as that nature is universal, or as it is modified by local habits and social aptitudes" (cited in Kirk, 1953, p. 108-9). Burke's prudence is a criterion for moral consensus in community based on the perception of a moral order or the "rightness" of things. According to Burke's eternal social contract, there is a wisdom or eternal providence which also prudently shapes our ends, a higher natural law or Divine Design perceived through the operation of true natural law which is demonstrated to reason and the senses in the context of social history. Through prudence, for example, we learn that "...the individual is foolish...but the species is wise, and, when time is given to it, as a species it always acts right (cited in Kirk, 1953, pp. 145-147). Prudence is not just the totalitarian exercise of will without reference to universal moral principles of justice.

## Virtue as Law

### Virtue as Reciprocity

For Montesquieu the common good depends upon rule of law animated by the spirit of civic virtue. His theory of virtue reflects the love of self and love of others characteristic of civic humanism. This moral psychology is spelled out in his famous The Spirit of Law (1952/1748). Justice in society and the common good not only depends upon acknowledging relations of justice antecedent to the positive law by which they are established, but by the principal of reciprocity which operates in and through the natural law permeating all relationships among men. The law or principle of reciprocity observable in nature operates thusly:

if there were intelligent beings that had received a benefit of another being, they ought to show their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence, if one intelligent being injures another, it deserves retaliation (Montesquieu, 1952, Book I, p. 1).

The principle of reciprocity itself is rooted in the natural law. Human society is held together by laws which Montesquieu defines as "the necessary relations arising from the nature of things" (p. 1). The deity has laws, the material world its laws, beasts their laws, and man his laws. Thus there is prime reason, in God, that is not an arbitrary, blind fatality operating in the world. Man's laws "...are the relations subsisting between it and different beings, and



the relations of these to one another." In this ordered universe of primal, legal relationships "diversity is uniformity" and "change is constancy" (p. 8).

Natural law is revealed to men in various ways. Man-made laws do not conform as precisely to laws operating in the physical universe because men are free agents. "God has therefore reminded him of his duty by the laws of religion, philosophy has provided against this by the laws of morality," and "legislators have by political and civil laws confined him to his duty." Man should therefore conform to natural law which Montesquieu defines as a "contingency" or a "potentiality" discerned by man even in a state of nature: "Before laws were made, there were relations of possible justice" (p. 3).

Therefore, all positive man-made law is predicated upon an understanding or awareness of natural law conceived as relationships operating as the principle of reciprocity. The best law demonstrates the principles of reciprocity and equality that form the basis of the common good, a principle of justice also articulated by Rousseau in The Social Contract (1973, p. 207) whereby citizens "all bind themselves to observe the same conditions and should therefore all enjoy the same rights." Law in the virtuous state also "...is that which best agrees with the humor and disposition of the people in whose favor it is established. The strength of individuals cannot be united without a conjunction of all their wills and the conjunction of those wills is the civil state" (Montesquieu, 1952, p. 3). As Rousseau argues, "every authentic act of the general will, binds or favors all the citizens equally" (Rousseau, 1973, p. 207).

Montesquieu's theory of law as virtue, like the principle of the social contract in Rousseau and Rawls, is relevant to the common school and education. It argues that the common good is the end of the state. Writing specifically "Of the Laws of Education," Montesquieu says virtue is the object or end of republican government (1952, Book 4, p. 13). Montesquieu also speaks to the principle of commonality and equality of opportunity inherent in the common school when he defines virtue as love of law, and love of law as love of equality.

#### Virtue as Love of Law

Love of law and principles of justice that it embodies is the beginning of civic virtue and a proper civic humanism essential to the maintenance of public institutions like schools. According to Montesquieu, the English failed to establish democracy largely because those "...who had a share in the direction of public affairs were void of virtue" (1952, Book 3, p. 9). He argues that wherever virtue is not a guiding principle, republics (and public institutions) fail (Book 6, pp. 135-146). Montesquieu defines virtue in the "Advertisement" or preface to The Spirit of the Laws simply as the love of one's country, that is, the love of equality. It is not a moral, nor a Christian, but a political virtue; and it is the spring which sets the republican government in motion, as honor is the spring which gives motion to monarchy" (p. xxii).

The politically virtuous man in a republic "loves the laws of his country, and is actuated by love of those laws." (1952, p. xxii). Montesquieu's concept of

virtue then is rule of law apprehended by reason and perceptions of relationships and interactions among men (1951, Book 1, p. 1), but it is also love of the law and love of the country which is essential for education in a republican government (Book 4, p. 15). Virtue then is a matter of conscious will to love and appreciate the law. This love of country and law involves tapping into a subjective emotion, feeling, over and above pure reason as in moral sense theory, but it is also reflective of Aristotle's volition, the desire for the common good that all in society should share in common.

Utley summarizes Montesquieu's view of civic virtue as the "spring" of republics thusly:

Virtue means here [in The Spirit of the Laws] patriotism, love of country--but not an abstraction; virtue means fraternity, a sense of brotherhood that unites the citizenry and makes each feel as a part of a more significant whole. Such patriotism or fraternity requires a genuine homogeneity in the way of life of the inhabitants. Only persons who share the same religious beliefs, the same education, the same family habits, the same economic status--who have grown up together, sharing the same decisive experiences of joy and sorrow--can look upon one another with an authentic sense of brotherhood. Virtue is therefore the love of equality, meaning the love of like for like and the love of and for a society that prevents sharp distinctions or pronounced diversity (Utley, 1988, p. 50).

The principle of reciprocity lies at the base of Montesquieu's definition of virtue as "spirit of law." He, like Aristotle and Burke, believed in a "partnership in virtue" based on certain principles of virtue that could be found in natural law. The common good depends upon a human society held together by natural laws of reciprocity which define ...the necessary relations arising from the nature of

things" (1952, Book 1, p. 1). In Montesquieu's ordered universe there are "relations of possible justice": "To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal" (Book 1, p. 1).

In Montesquieu we recognize, as in the philosophers Hume and Kant, the important principle that virtue is the end of state and is preemptive of justice. Montesquieu writes in The Spirit of the Laws: "Before laws were made, there were relations of possible justice" (Book 1, p. 1). It is the idea that virtuous men make virtuous or just laws and institutions benefiting the common good and not private self-interest.

### Virtue as Natural Law

There are now apparently two conceptions of virtue or the common good: one based on higher moral principles, as found in Burke, Aristotle, Kant and other philosophers in the civic humanist tradition; the other on private self-interest, as in Hobbes, Bentham, and the utilitarians. The debate over the role of natural law in society and a theory of virtue is far from ended.

### Natural Law vs. Natural Rights

The crux of the public interest controversy in America and the conflict between the laissez-faire and republican conceptions of civic virtue, centers on this debate. It is seen, however, as a debate between positivism and natural law.

This debate has divided political philosophy into two ideological camps, the libertarian and the republican. The former has adopted the natural rights concept of civic virtue based on harmony of interest theories emanating from the revolutionary social contract and modern natural law. The "republican" conception of virtue is derived from the classical conception of government and the natural law tradition emanating Greeks, Roman, and Canon Law, and the Aristotelians.

In general, natural law is a moral order that presupposes legal and moral deliberation through reflection. It is "normative for conduct and our legal artifacts" and appears as an antidote to legal positivism<sup>11</sup> (Hittinger, 1990). But the older natural law did not give primacy to individual rights over that of the common good or community as a whole. This is a function of modern natural law, which is product of the Enlightenment theories of individualism, rationalism, and particularly the "social contract" which established the moral collectivity of the State in the General Will (D'Entreves, 1965, Rommen, 1947).

With respect to the common good, the Natural Law philosophy has thus reinforced the concept of civic virtue as republican duty and responsibility. The natural law principle of reciprocity involves rights and duties and this enables men to chose good over evil.<sup>12</sup>

Reflecting Aquinas, Story writes of rights and duties:

From the moral government of God, and the moral capacity and accountability of man, we deduce his rights and duties...which are several. Especially toward other men; the duties of man include

'relative duties' which grow out of the 'corresponding rights of others.' Magistrates, for example, have a duty to exercise power and moderation and mercy as well as justice, whereas citizens have the duty to obey the laws and to support the institutions of society (cited in McClellan, 1971, p. 67).

An individual's rights are not absolute because the principle of reciprocity obtains.<sup>13</sup>

However, Story like many Americans, did not perceive the break in the natural law tradition, and thus much of his philosophy is infused with utilitarianism.<sup>14</sup> Unlike the Aristotelian foundation of virtue in the ideals of a good life within the political community in conformance with natural law, modern libertarians have rejected the notion of virtue as "good" or "right" in a system of "moral law." Specifically they reject grounding virtue in divine will or some natural order of inherent rationality.

The concept of civic virtue has thus become an ontological individualism resting primarily in a rational explanation of the State as a social contract. It is now in its public law phase with "security of expectations," the only primary good.<sup>15</sup> Maitland asked how political theory came to borrow from lawyers the notion of contract as the basis of state. Kant explained that it was the only way to set the natural rights of the individual within the framework of the state (D'Entreves, 1965, p. 57).

We are now living with a doctrine, embodied in modern capitalism, which "purposely sets out to construe civil society as the result of a deliberate act of will on the part of its components" (D'Entreves, 1965 p. 56). It is a philosophy

of civic virtue that some argue paves the way for totalitarianism as the exercise of amoral human will.<sup>16</sup>

Rommen (1947) concludes that if law is will, without any foundation in reality or precedent, it followed that natural law and positive law have no inner relation to each other. It is thus a short step to Machiavelli's Prince, Hobbes' Leviathan, and the modern doctrines of legal positivism, or the notion that the will of the absolute sovereign is law because no higher norm stands above him.<sup>17</sup> Such law is not conducive to civic virtue in the classical sense.

#### Natural Rights as Common Good

Natural rights as a basis for the common good are also debatable and variously interpreted under the newer natural law. The purpose of government, said Story, was not to grant "natural rights" to each individual, but to protect the "personal rights" of the whole people i.e. the common good (Story, 1852).

Above all, the common good or a virtuous society are achieved by rule of law, not rule of men. The Anglo-American system of public and private law, Story believed should reflect the eternal jus naturale. Man-made or codified law is the means by which man tries to conform to natural laws as the refinement of a grand metaphysical design into a canon of ethics for men of all ages to tender and administer as they see fit. For Story then, the common good as virtue is rule of law and the law is philosophical and practical as well as ontological:

In its widest extent, it may be said to encompass every human action; and in its minute details, to measure every human duty. It searches into and expounds the elements of morals and ethics, and the eternal law of nature, illustrated and supported by the eternal law of revelation... (cited in McClellan, 1971, p. 508.

### School Equity and Natural Law

What legal principles or practices should then be sought for public education that will ensure the common good and civic virtue within the ethical State? Hittinger argues that several methods can be employed reflecting the principle of "virtue as prudence." The natural lawyer will seek to know whether a particular act befits the natural end; a utilitarian will ask how the act impedes a social utility; a common lawyer will seek an analogy to fit the action to a rule in a prior cases. "A truly sane and modern natural law application would avail itself of all three in some attempt to reason effectively about human ends in some unified way" (Hittinger, 1990, p. 22).<sup>18</sup> As to the "social contract" as a political and moral basis of virtue and the common good, the "social contract" theory will continue to be circumspect (Raphael, 1967, p. 35).<sup>19</sup>

### Factionalism and Choice

Free, moral choice is desired in democratic education today, choice that transcends self-interest that will be good for the individual as well as for the state. Today, the interest of the haves and have-nots, wealthy and poor, provide a conflict of factions. In education the drift toward self-interest, interest



group liberalism, privatization away from the common good is a manifestation of the Madisonian "factionalism" (Madison, 1961, Federalist No. 10. Moral choice is not only a problem legislators have in resist taxing policies for schools that increase the general public tax burden, it is that their constituencies "force legislative action that is contrary to the expectations of fairness" (Alexander, 1991, p. 276).

Thus the problem of moral choice lies in the legislature itself which tends to operate on the basis of sheer number or majority rule reflecting the morality or immorality of a constituency. The implication for virtue in school policy is that in the final analysis the solution to the sovereignty problem resides in a higher form of justice. A natural law solution is suggested in nemo index in re sua, an ancient principle that means a person may not sit in judgement in his own cause (Alexander, 1991, p. 278). If legislators are morally incapacitated by local pressures from constituencies that they cannot allocate fiscal resources fairly and judiciously, this natural law principle is morally binding because it has acquired legitimacy through centuries of confirmation from rational men. Virtue in public policy, then, as Rawls and Kant argue, is ultimately rationality where reason expresses the natural law.

Arguments of unfair actions on the basis of sheer expedience, however, are not virtuous acts in conformance with principles of natural justice. The term "Nature," as defined in the next chapter, suggests universal principle. Uteley argues that "Since the Principle of Utility is intended to cover all moral questions

whatsoever, we should ideally get a decision in each case (Utley, 1988, p. 38). However, man-made decisions break down simply because as Mill argued: "a man has a right to do what he likes even if this impinges on other people in ways that they dislike" (cited in Barry, 1962, p. 142).

### Reciprocity in School Finance

The natural law principle of reciprocity can also guide citizens and legislators in policy decisions. The mutuality of relations, Montesquieu notes, constitutes "the spirit" behind the laws. We earlier discussed the principle of reciprocity in Rawls' "Difference Principle" and Kant's principle of moral will. In the practical world of public school finance, the natural, (not "original") position of wealth and poverty found in society may be arbitrarily solidified by school district boundaries or state methods of financing. Without exercising Montesquieu's principle of "virtue as reciprocity" it is impossible to defend educational programs for the more naturally talented unless corresponding programs for the least advantaged are at least fully funded. The "difference principle" of Rawls and the spirit of reciprocity of Montesquieu both demonstrate the concept that men and women agree to share the other's fate. This is the essence of common as virtue. To this foundation Rawls adds fairness which implies a conception of "reciprocity...a principle of mutual benefit" (Rawls, 1971, p. 102).

In school finance parlance this means that all children benefit from an educational system when equal advantage is awarded to all children, regardless of their particular deficiency. It is this principle of reciprocity and "social cooperation" that defines the purposes of the common school. Reciprocity in school finance means: "... that all pay in common and benefit in common" (Alexander, 1991, p. 287).

Human differences, are a natural fact, but the wealthier districts that give up some of their benefits to provide for at least an adequate or minimum standard of education in the poorer districts, according to the principle of reciprocity, will also benefit, for when all share the same experiences, all benefit, especially when the common good of the state is served (Pigou, 1924).

Virtue in the context of a public school policy setting is an ideal-regarding paradigm. It is a combination of principles that speak to the concept of rightness that all men know by nature to be instinctively right acquired from our innate moral sense, a sense of benevolence, a sense of prudence, habit, dependence, moral will, and especially reason--all properties of virtue which make human acts conformable with natural law and justice.

In defense of natural law as a basis of moral authority, Yves Simon observes:

People of debased conduct and skeptical judgment still find it natural [Italics added] to die for their country or for such substitutes for a country as a gang. And during the golden age of individualism the conscience [emphasis supplied] of men, in spite of what the theorists had to say, often recognize the common good

and served it with devotion under such improper names as "general interest" or "greatest good of the greatest number" (Simon, 1961, p. 50).

### Virtue as Fairness

Rawls in Theory of Justice (1972) provides in the concept of virtue as fairness a principle of moral authority that breaches the gap between the contractarian laissez-faire conception of virtue and the Aristotelian or classical and republican conception of civic humanism. In the natural law tradition, virtue is synonymous with justice. That is, what is the common "good" is also "right." There is no Hobbesian distinction between the law and right in Rawls. As in natural law, "what is right" is also "what is good." In Rawls (1971) the doctrine of utility is modified to include the moral will of Kant as well as Aristotle with his emphasis on character, volition, and prudence. The natural law principle of reciprocity of Montesquieu becomes in Rawls the principle of fairness that assures neutrality within the ethical state. This principle of reciprocity as fairness forms the foundation of a just society (Schaar, 1980).

Fairness in Rawls is a modern adaptation of Aristotelian prudence, the cardinal virtue of the ethical state. Fairness ensures both the equitable and the good, the good and the right. As in Aquinas, virtue is a conscious and deliberate moral act of will to reason, as well as a quest for justice or the common good. Rawls' "difference principle" allows for impartiality and neutrality in an ethical system of proportional justice. Rule of law for Rawls is equity, not arithmetical

equality where every individual is considered as one by the state or must scramble competitively to establish preeminence. Virtue is proportional justice or fairness, a principle that reflects both the aequus and the bonum of traditional natural law.

For Rawls justice is "the first virtue [Italics added] of social institutions." It is "The way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperatives" (1971, p. 7). Individual virtues are important to counteract basic inequalities: "men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances" which produce "deep inequalities." Virtue (or justice) then consists of "the role of its principles in assigning rights and duties" in accordance with principles of fairness or equity for "defining the appropriate division of social advantages" (1971, p. 10).

### Fairness as Rationality

Virtue in Rawls is also "goodness as rationality" (1971, p. 423). In accordance with this principle, a "rational individual [in the original position] is always to act so that he need never blame himself no matter how his plans finally work out" (p. 423). As in Kant and Aristotle, virtue is an act of intentionality, an act of "deliberative rationality." Thus, as Raphael notes, virtue is a conscious act of willing, an "aim of volition" (Raphael, 1976, p. 173).

"Deliberative rationality," Rawls says, "does not "...exclude the willing endurance of hardship and suffering, but it must be presently acceptable in viable good" (1971, p. 423).

In addition, goodness as rationality assumes "a contingent situation, relative to circumstances of time and place," but which must always reward all the members of society for contributing to the common good in ways consistent with justice" (p. 432). However, the definition of "good" is "purely formal". It states that a person's good is determined by the rational plan of life that he would choose with deliberate rationality from the maximal class of plans (p. 424) which requires mutuality and reciprocity in the original position "in a manner which justice as fairness permits" (p. 425).

#### Fairness as Character

Rawlsian virtue is also character, or individual excellence. Moral worth, says Rawls, is attributed to the possession of several broadly based "properties" (or virtues) (1971, p. 435), which are "tools" that ensure moral excellence: "...a good person...is one who has to a higher degree than the average person the broadly based properties...that is rational for persons to want in one another" (p. 437).

These broadly based moral virtues are intelligence, imagination, strength, endurance. Using the same hypothetical reasoning for goodness and justice, we can say that "...a good person has the features of moral character that it is

rational for members of a well-ordered society to want in their associates" (p. 437). Virtue requires the development of character in men as well as in institutions working on behalf of all individuals in society to achieve the common good.

A structured, well-ordered and virtuous society depends on a relationship between "right" and "good" defined in an "initial situation." Once the principles of justice as fairness are chosen, there is no need to force unanimity on all the members as the doctrine of utility does (p. 447). Secondly, in the original position, individual goods (needs or desires) may differ, but never the conception of right. "In a well-ordered society, citizens hold the same principles of right and they try to reach the same judgment in particular cases" (p. 448).

### Virtue as Fairness in Schools

Virtue, then, according to the philosophers, is a moral act of rational will on the part of individuals and legislators that enables social institutions like schools to accommodate individual differences. It draws upon principles of natural justice that everyone can support, such as mutuality and reciprocity.

If the common school is truly common, no one, in terms of justice or fairness, can be treated as more deserving than the next simply because he was born more intelligent--unless costly gifted and talented programs can benefit everyone else in society or the school. What is fair is that minimum adequacy be recognized based on the needs of the disadvantaged.

This application of virtue in the public sector involves a pro-active state in ways that are quite problematic. Alexander notes that "The dilemma is to justify certain educational programs because they have greater spillover benefits and reject others because their value for all persons is less certain" (Alexander, 1991, p. 288).

According to Rawls' "difference principle" no one should lose out on society's benefits: "no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return" (1971, p. 102). This we recognize as noblesse oblige, which taps into basic human benevolence and feelings of generosity. The point is that injustice resides in the institutionalizing of an inequitable distribution of services in public schools, i.e. "incorporated pluralism" (Lowi, 1969).

Thus, a virtuous, "well ordered society" acting upon such principles of virtue as "deliberate rationality," "fairness," "reciprocity," will be one "designed to advance the good of its members and regulated by a public conception of justice" (Rawls, 1971, p. 453).

In such a state, a common set of values and principles must be cherished. According to Rawls, that principle is "maximin" by which the least advantaged are assured benefits and where advantage is not created or "institutionalized" by an act of the state. Virtue is fair distribution.



## Virtuous State

### Virtuous Polis

There is no one English word that can define the polis in Aristotle's Politics (1952). It is a moral and communitarian concept of the state quite different from our conception of the antipodes of "the individual and the state," "church and state," or "state and society" and is in no way aggregate. The conception, however, has great relevance to common schools which are an aspect of a virtuous polity. Aristotle conceives of the "polis" as a living organism wherein everyone is united in the quest for the common good:

Since we see that every polis is a community, and that every community is established for the sake of some good--since all do everything for the sake of what seems to them good--it is clear that as all communities aim at some good, the one that does so in the highest degree and aims at the most authoritative of all goods is the community which is the most authoritative of all and embraces all others: this is the one called the polis or the political community (Politics, Book 1, p. 295).

The end of the polis is happiness which involves a conscious moral quest for the common good. However, to understand Aristotle's doctrine of the whole as it refers to voluntary human action, we must go to the Nicomachean Ethics. Simply, it is the concept that every human agent acts voluntarily within the community only as he intends something that, in so far as it is a motive for him to act, appears to him to be good. It is a desire for good. "All human action originates in desire for something which moves to action by its appearance of

desirability or goodness" (Strauss and Cropsey, 1973, p. 68). In the Ethics, for example, we note there are different kinds of ends or goods, the purely instrument, like money; those that acquire other goods; and those chosen for their own sake. Aristotle assumes that there is absolute and final cause of all human action, and therefore a common end of human desire. Every human choice then is a moral choice to overcome a deficiency or "defect of virtue" to use Madison's phrase, moving toward perfection, and nature, does nothing in vain.

Happiness, then, is synonymous with the common good and is the goal of both of self-sufficiency and community and is a consequence of virtue.

Happiness is the human good that embraces and includes within itself all other private goods, and is therefore not a divisive distributive principle like Bentham's doctrine of utility where "happiness" is only "the greatest good for the greatest number." Happiness encompasses all human action and will. Thus the polis is an expression of moral unity that governs the totality of human actions in all their diversity.

We have seen that prudence is that one cardinal virtue in Aristotle that serves as a practical guide in politics, the one supreme discipline by which happiness is obtained. Through the exercise of prudence and character "the ultimate end of human life, the good for man, and happiness, Aristotle maintains, is one and the same, whether we consider one man or a polis (Strauss and Cropsey, 1973, p. 72).

## Perversion of Virtue

### Social Contract

Rawls' theory of justice is based on the social contract discussed earlier.<sup>20</sup>

However, it is important to note that while a contractualist, Rawls is also a communitarian and a government interventionist who does not have a negative view of the state. This sets him apart from other modern social contract theorists.

According to the social contract, a just or virtuous society rests upon the general will or decision of the people to enter into a conscious, formal contract with each other to establish a sovereignty or government whose only business is to protect natural rights and property. It originates from a State of Nature, which, rather than being an ideal, is a state or condition with deficiencies that must be remedied.

Simon argues (1986) that a negative view of the state generally can be found in modern social contract theories. The social contract depicts government as a necessary evil and not necessarily democratic. Hobbes, for example justified a strong government, in accordance with this deficiency theory, because of his perception of a terrible and wretched condition in which:

there is no place for industry, because the fruit thereof is uncertain; and consequently...no Navigation...no commodious building...no account of time; no arts; no letters; no Society; and which is worst of all, continual feare, and danger of violent death; and the life of

man, solitary, poore, nasty, brutish and short (Hobbes, 1962/1651, Part I, Chapter. 8, p. 300).

Others, like Locke depicted the State of Nature as reasonably adequate but still containing deficiencies which only a state structure can remedy (Locke, 1967). The idea of a historical social contract has been practically discredited,<sup>21</sup> but it has not lost its moral potency in the eyes of modern theorists and historians. The social contract is "a way of conveying an essentially true conception of some moral relation of man" (cited in Levin, 1973, p. 263). It is an ideal "expressing the moral relationship between the rule and ruled." Since society could not be held together by force "it needed a tacit contract, or a feeling of moral obligation" (p. 263).

The social contract then is a convenient way of conveying a moral vision of society. Though only a vision, it has shaped our ideas of individual rights and government by consent--ideas which have formed the basis of contemporary liberal democratic thought that began with Thomas Paine's and Locke's conception of the minimalist state.

It was with Locke and the later postulates of natural individualism, which neither the Greeks nor the Romans held, that the contract referred to individuals within society, rather than with government. However, a libertarian defense of capitalism, which draws upon this interpretation of the Lockean contract, has had the effect of pitting the individual against the state. Since the basic unit of the social contract is the individual, results of individual striving for individual

goods are legitimate only if they respect each individual's dignity and autonomy. Hence our present fixation with individual rights: "In our constitutional law, a right is an individual privilege that is beyond the ability of government or one's fellow citizens to extinguish...." Such a vision of society is not a moral vision and so leads to a "politics of separation, exclusion, and alienation" (Schuman, 1992, p. B1). However, if we adopt the Madisonian view of government as servant of the people, the problem disappears. In this sense, the Aristotelian view of man and the state is naturally social and communal. Men are perceived as capable of virtue and civic responsibility as members of the polis.

Locke's conception of the social contract introduced a dominant social ethic of individualism which modern libertarians find difficult to reconcile with the republican or classical foundation of civic virtue and community. The Lockean dilemma, as discussed in Chapter Three, is that some now interpret the Lockean social contract as a basis for resistance to government, even after much groundwork had been laid in England for reciprocity between the subjects and sovereignty, and refutation of the "divine right" theory of kings.<sup>22</sup> The individual has certain inalienable rights which the contract must secure and which the state cannot infringe which makes a limited government desirable. Whether Locke argued strictly for limiting government and exalting the individual and his own personal resistance to government, is still debated.

The problem appears to be in part that the principle of sovereignty as a moral General Will is not contained within the social contract theory. Levin

observes that the social contract vision of society is not necessarily democratic unless it specifically refers to the consent of all concerned. Thomas Hobbes in Leviathan (1651), for example, projected a vision of a strong centralized government in which men had contracted "all their power and strength upon one man, or upon one assembly of men that may reduce all their wills, by a plurality of voices, unto one will" (1651, p. 302).

The problem for civic virtue in the state is intensified by the fact that Locke, Mill and others rarely suggest that the laboring masses of the population also possess full natural rights.<sup>23</sup>

The crux of the matter is that the social contract frequently assumes a collective will at the moment of contract. This highlights an important paradox in democratic theory, particularly if there is a divergence of individual wills or values which attempt to unite themselves into the General Will. Where liberty and freedom of choice have become important principles of democracy, there will be a conflict between individual autonomy and authority within the state as Levin demonstrates:

Choice is still choice, whether other people find it rational or not. Social Contract theory, being based on consent, may support all manner of values that the people might hold.... This wide range of conceivable contracts, however, does not mean that Social Contract theory has no specific values attached to it. The right to choose is a value, even though shared basic premises may lead to widely diverging conclusions (Levin, 1973, p. 257).

Alexander, however, draws this debate into the field of education finance by observing that:

if the relationship between the individual and the state is some sort of a social contract, then it may be reasoned that there is an obligation on the part of individuals to abide by law and a corresponding obligation or duty of the state to promulgate just laws, particularly since in the social contract vision of society both the state and the individual are seeking to secure moral ends emanating from the collective judgment of the majority (Alexander, 1991, p. 272).

Despite such modern communitarian defenses of the social contract that binds both individuals and the state alike, Schuman observes that the social contract theory, with its moral basis in the individual right to choose, has nevertheless prompted modern libertarians to have a "dysfunctional" and "deranged" "national fixation" on rights (Schuman, 1992, p. B1), and "to believe that the basic unit of society is the rational, self-interested person who, in order to gain benefits for survival gives up a certain amount of freedom and autonomy to join groups seeking similar ends" (p. B2). This we recognized, of course, as American pluralism, or the aggregate of predatory self-interests. The state, like the church is seen as something apart from the individual, whether these institutions provide for an ethical or state or not.

In this modern interpretation of the social contract, the sole function of the state is to "secure the rights to life, liberty, and the pursuit of happiness," to use Jefferson's phrase in the Declaration of Independence. According to political theorist Harry Jaffa, this concept of the state "When added to the end or function of the church--e.g., to direct men to their eternal welfare--constitute[s] an

aggregate of ends or functions different from that of either taken separately" (1972, p. 66). It provides for a free market type of process whereby individuals living within the state strive to obtain their individual preferences or "good" by bargaining, accommodation and manipulation. As Schuman notes, "Whatever emerges from the free and fair clash of competing proposals is Good" (Schuman, 1992, p. A24).

Schuman (1992) argues that this adversarial relationship between individuals and the state or government in recent times has encouraged a fixation on individual rights that reinforces a sense of isolation--a false sense of civic autonomy. In the utopian vision of a social contract, the ultimate good of society is the individual himself. Individuals see themselves not only set off from their community, but as opposed to it or needing protection from it. This libertarian interpretation of the social contract thus encourages a spirit of economic striving, competitiveness, isolation, and is non-communitarian (p. B1).

If, however, we must use the social contract as a vehicle for discussion, the key to virtue in the adversarial state is in the nature of the obligation itself, or the principles themselves that bind those to the obligation.<sup>24</sup> As Raphael notes, "the volition of the end contains the choice of the means" (Raphael, 1967, p. 25). "The problem is to see that the volition of the non-ultimate end is contained in the volition of the end which is ultimate" (Simon, 1986, p. 42), which is the General Will of Rousseau.



However, if as the Scottish Enlightenment philosophers have noted, it is possible to make good choices as well as bad ones based upon subjectively different passions, the common good may be remote indeed. Therefore, true volition is a moral will, and moral will arising from a virtuous character is the cornerstone of the ethical state.

### Moral Defense of Capitalism

If virtue and civic humanism is an important tradition in America, one wonders how Aristotle might rate modern, capitalist America. He might ask with Robert Reich: "Will civic virtue survive?" (Reich, 1991, p. 19). Sadly, Aristotle would discover that Americans are realistic, and give priority of means to ends; they cherish security and human comfort more than noble ends; they think of the state and society as separate; they regard rights as more important than duties; they see government as limited in its protection of individual life, liberty, property and the private pursuit of happiness. He might find political life, religion and ethical mores depoliticized and not germane; education, the arts, family mores, and success measured in terms of economics; and the greatest good for the greatest number neglecting the disparate few at the lower end of the social and economic spectrum.

Some argue that the modern natural law, freed from tradition and historical religious authority, has encouraged a particular political activism which has forced modern liberals to commit to thin, minimal, and purportedly neutral

descriptions of primary goods and basic values that no longer reflect a virtue-centered civic humanism<sup>25</sup> (Hittinger, 1990, p. 481).

These "basic goods" satisfy the pleasure pain principle that drives all human motivation without concern for others.<sup>26</sup> In short, the new natural law theory of individual rights provides scant account of the common good and a very strong account of rights. Nevertheless, moral defenses of capitalism and private self-interest are advanced.

F.A. Hayek is a modern libertarian whose moral and political defense of capitalism in The Constitution of Liberty (1960) and other works attempts to refute the communitarian and virtuous aspects of the moral General Will. Deliberate rationality, moral volition are not involved. Basic human institutions like schools evolved without a common will directing them. An extended order of human co-optation arose "...not from human design or intention but spontaneously...from unintentionally conforming to certain traditional and largely moral practices " (Hayek, 1988, p. 6).

There is no "partnership of virtue" in Hayek's defense of classic laissez-faire: no sense of civic virtue, justice or fairness, or sense of reciprocity or mutuality within a moral order that we find in Burke, Adam Smith. For Hayek we are part of "...an order in which everyone treated his neighbor as himself would be one where comparatively few could be fruitful and multiply" (p. 13). In the eternal contract "we fit ourselves by obeying certain rules of conduct that we never made" (p. 14). Compare this view of civic virtue with Adam Smith's

moral perception of Providence in his Theory of Moral Sentiments that ensured virtue or justice among men:

When Providence divided the earth among a few lordly masters, it neither forgot nor abandoned those who seemed to have been left out of the partition. These last, too, enjoy their share of all that it produces. In what constitutes the real happiness of human life, they are in no respect inferior to those who would seem so much above them. In ease of body and peace of mind, all the different ranks of life are nearly upon a level, and the beggar, who suns himself by the side of a highway, possesses that security which kings are fighting for (Smith, 1976, p. 10).

George Gilder in Wealth and Poverty (1981) also tries to overcome the stereotypical "robber baron" image of greed associated with modern capitalism by a defense based on the Christian golden rule. Unlike Hayek, Von Mises, and Friedman, whose moral defenses of laissez-faire capitalism tend to be technical and pragmatic, Gilder's argument glows with references to faith, hope and Christian virtues. Gilder justifies a public philosophy of economic disparity that "gives room for the heroic creativity of entrepreneurs" (p. 7) who have the common good at heart.

Instead of virtue in men and in institutions, capitalism is the golden rule in operation. Capitalism does not consume or take from or deplete the poor. It consists of "...giving, risking, and creating" on the part of capitalists who are the "virtuous producers" of the wealth of nations. His argument that capitalism is philanthropy is based on the notion that a "competition in giving" generates new wealth out of regard for others and that this involves a "sacrificial gift" or "investment."

Milton Friedman (1986) completely ignores the concept of fairness in public life and makes no such pompous pretenses to morality or the common good. The end of state is not virtue but to promote individual freedom, especially freedom from socialism or state control:

I find it difficult to justify either accepting or rejecting it, [capitalism] or to justify any alternative principle. I am led to the view that it cannot in and of itself be regarded as an ethical principle, that it must be regarded as instrumental or a corollary of some other principle such as freedom" (Friedman, 1962, p. 165).

Nor can we look to corporate responsibility or government to correct market imperfections, to remove special monopoly privilege, or to further the "extension and widening of educational opportunity" as important ways to reduce inequality and produce social justice (p. 176). Friedman explicitly states that the idea of any social responsibility of business is a "fundamentally subversive doctrine" and that the only responsibility is to maximize profits (p. 133).

This amoral laissez-faire philosophy provides a spiritual and moral zeitgeist that makes for state provided education, without having the state take any part in privately caused inequality, because "government would have to control the whole physical or human environment of all persons..." (Hayek, 1976, p. 85).

Americans have achieved unsurpassed commercial and material prosperity by adherence to this libertarian model of civic humanism. Its ethic of "what's good for General Motors is good for America," however, is now being challenged. Because Americans, Reich says, no longer share a common economic fate and are

less dependent on one another economically in a global economy, personal sacrifices and interdependencies may no longer be required. The national economic life boat sustained by laissez-faire is an "illusion" (Reich, 1991). There is a dark side of laissez-faire without a virtuous citizenry:

For without strong attachments and loyalties extending beyond family and friends, symbolic analysts may never develop the habits and attitudes of social responsibility. They will be word citizens, but without accepting or even acknowledging any of the obligations that citizenship in a polity normally implies (Reich, 1991, p. 151).

#### Virtue as Moral Authority

At the end of the Nicomachean Ethics, Aristotle notes that the conditions of happiness are seldom if ever within the ability of one man to control, so that civic virtue is man in political action. Throughout Politics, we find that only good men can be happy, and good laws make good men, and good government makes good laws. For all practical purposes, common as virtue is an aristocracy of character, or good men ruled by law exercising prudence for the common good (Politics, 1952, Book 1, p. 20).

However, when there are rival or competing claims, or individual goods in competition, the formula for distributive justice in Book 5 of the Nicomachean Ethics is instructive. Aristotle holds that justice is equality for equals and inequality of unequals. Justice is "proportional" to human need. The Benthamite doctrine of utility, however, is arithmetical and holds that justice is an equality

of ratios, so that all are counted for one regardless of human differences (Bentham, 1973).

In the virtuous polis neither rich nor poor should be advanced, but the middle class. Aristotle's "golden mean" applies to the distribution of power in a republic (Politics, Book 6, pp. 30-38) just as it does in the development of individual virtues. The greatest means of securing stability is education. In Aristotle the common good consists of both quality and quantity, for "only as there is a common good is there a partnership in the good life" (Strauss and Cropsey, 1973, p. 125).

For Aristotle, the harmonizing of competing claims of the rich and poor discussed in Book 3 depends upon a communal and legal conception of the common good. Virtue should be rewarded, but not at the expense of others. At the same time civic virtue as happiness does not rule out the exercise of virtue of exceptionally good or talented men who desire and can lead.

However, if there is a choice between rule of men and rule of law, Aristotle is clear. Rule of moral law is the best law, law that encourages moderation in all things. These glimpses of the ethical state draw attention to whether societies need authority to achieve civic virtue. If the common good is, as Raphael suggests, "the aim of moral volition," then we must have a normative basis of unanimity or authority as a catalyst for bringing about the public expression of the general will in all times and circumstances. Simon in The Definition of Moral Virtue agrees:

Even in the smallest and most closely united community, unity of action cannot be taken for granted. Unanimity must be caused, and if it is to be steady, it has to be assured by a steady cause...Now unity of action depends upon unity of judgment, and unity of judgment can be procured either by way of unanimity or by way of authority; no third possibility is conceivable (Simon, 1986, p. 73).

What is required for civic virtue in a real, modern ethical state then is a perception of virtue, some moral authority or "interiorization of the law," an operation involving much sacrifice or education:

So long as the tendencies of a person are at variance with the law that he is bound to obey, (and he does not respect the law so deeply as to let it get hold of his innermost self), the law remains, in varying degree external to him. The development of virtues is the gradual constitution of steady tendencies in strict coincidence with the law (p. 96).

In the words of St. Paul, another higher law is felt, which wars against the human or positive Law, so that autonomy must be qualified: "...part of the self remains foreign to the law and the law remains external to it" but

insofar as the rebellious law is actually kept under control, the just man no longer is placed under the law; rather he is one with the law by reason of victorious inclinations made of love for what the law demands and aversion to what it forbids (Simon, 1986, p. 97).

It can be argued, however, that an authority principle is needed for the ethical state only if unanimity is uncertain in the General Will. Consequently of all the visions of the virtuous society, Aristotelianism (which undergirds notions of classical republicanism), with its emphasis on individual character and moral law as practical truth or wisdom, provides a solution. The classical concepts of virtue, piety, duty and responsibility are applicable to modern democracy and

especially an impartial, natural law that persuades the collective will to justly weigh the advantages and disadvantages afforded to individuals within the political community.

### Virtuous State and Common School

Several principles of moral authority have been proposed in previous discussion to address the problem of inequality in a state educational system. The Aristotelian conception of the golden mean holds much promise. It recognizes that a just distribution is proportional to individual needs, and not an arithmetical equality, a principle that addresses the problem of malapportionment of financial resources. Aristotle's proportional distribution, based on merit and acknowledging human differences is supported by Rawls who would adjust disparity to the least advantaged. The "difference principle," we recall, ensures virtue as fairness when everyone morally binds themselves to the "maximin"--a minimal standard of adequacy.

Ultimately, we get back to Rousseau's notion of the common good expressed by the general will of the people. The common good must take precedence, even over a majority of rich school districts within a state that may struggle to preserve a hegemony of self-interest, because the common good is, by definition supported by moral underpinnings (Raphael, 1976). We now know that the moral underpinning of a modern democratic state, no less than an ancient republic, is virtue.



As to what moral authority can be used to encourage virtue or a sense of the common good and mitigate the negative effect of factions and incorporated pluralism, virtue as benevolence becomes prudence operating as rule of law. All of the attributes of virtue, defined as "order of the soul" contribute to "fairness" in actual policy as defined by Rawls. Because public schools are "common schools" that strive to develop the "whole intellect of the state" (Kentucky Constitution cited in Alexander, 1991, pp. 356), the principle of fairness requires a prudent policy of impartiality on the part of the state so that all students benefit proportionally, or in accordance with individual need.

State legislators must govern by the principle of virtue reflective of either prudence, benevolence or higher law. The libertarians' negative limitation on government does not guarantee that the state will be impartial in its allocation of resources, or even if the state will be encouraged to provide sufficient resources prior to an equitable distribution. However, as Alexander notes, even the libertarians must agree "that while the state should, by impartial action," it would not, if it governed prudently, benevolently, or fairly with a view of natural principles of justice based on rule of law, allocate resources "so as to create rich and poor school districts with widely variant programs that would not be tolerated by either an impartiality or an equality standard" (Alexander, 1991, p. 281). The virtuous state would not incorporate disadvantage.

## Virtue in Society and School

A republican, civic humanist tradition provides an alternative to the laissez-faire concept of state. It holds that the health and prosperity of the nation depends on a higher moral paradigm of civic virtue that supports social institutions like the common school.

In this view, the Constitutional Convention of 1787 and the subsequent state conventions stand as high points of civic humanism in America (Pocock, 1985; Pocock, 1975). Although Americans had great interest in the separation of power and checks and balances in the early decades of Independence, they did not take a thoroughly mechanistic view of government. While influenced enough by enlightenment cosmology to draft careful designs for their governments, they also recognized that the social and cultural environment in which a government operated ultimately determined whether that government would succeed or fail. Peter R. Livingston, for example, told the New York constitutional convention of 1821 that "...if virtue be not the rock, on which you build the house all your checks and balances will be unavailing." "If the great community at large are profligate in manners," he said, "and destitute of religion--without a sense of public virtue--the body politic corrupt and rotten--it is immaterial about your checks and balances--all must go down together" (Livingston, cited in Keating, 1981, p. 25).

The key word in Livingston's pronouncement was "virtue," a word that appeared frequently in the writings and speeches of constitutional activists in the

formative years. Few doubted that public virtue was essential to the survival of a republic. Consequently several state constitutions have the word "virtue" in their educational provisions (Schmidt, 1971). The educational provisions in some states affirm the value of education, extolling its "virtues" (Howard, 1970, p. 282), and calling upon government to "cherish"<sup>27</sup> education as a foundation of democracy. Some have expropriated the terminology of Jefferson in his 1779 "Bill for the More General Diffusion of Knowledge" where he argued that "Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people" was "...necessary for the preservation of their rights and liberties" (cited in Schmidt, 1971).

The founders believed that the ultimate fate of republican government depended upon the virtuous character of its citizenry which could be ensured through its public institutions (Schmidt, 1971). "The priority of civic obligation rooted in citizen virtue was central to the beliefs of the Founders for--regardless of their prudent checking and balancing---their ideal was a nation defined by the superior moral character of its citizens" (Hart, 1989, p. 102).

Other calls to virtue, patterned after Virginia's Declaration of Rights in 1776, "have been adopted in many other state constitutions" (Howard, 1970, p. 282). For example, constitutions in the following states celebrate adherence to "frugality": New Hampshire (Pt. I, Art. 38); South Dakota (Art. VI, sec. 27); Vermont, Ch. I, Art. 18); West Virginia (Art. III, sec. 20); and Wisconsin (Art. I, sec. 22). The virtue of "piety" (duty) is a cornerstone of the Massachusetts

constitution (Pt. I, Art. 18). "Adherence to moderation" can be found in the constitutions of New Hampshire (Pt. I, Art. 38); South Dakota (Art. VI, sec. 27); West Virginia (Art. III, sec. 20); and Wisconsin (Art. I, sec. 22). This illustrative list of virtues is by no means exhaustive (Howard, 1970, p. 282).

The quest for virtue also involved social institutions. Religion as a repository of virtue was an especially important "point of departure" of the American conception of a moral order in a commonwealth (De Tocqueville, 1963, p. 72). American public institutions in the early days of the republic, including churches, were seen as the embodiment of natural right and public morality that should be protected by rule of law, the basis of all public authority and will (Schmidt, 1971). This aspect of civic virtue or "right" as rule of law in support of institutions was perhaps first demonstrated in the works of John Wise whose fame was derived from his resistance to Cotton Mather in Puritan New England.

In A Vindication of the Government of New England Churches (1717), John Wise provided the earliest defense of the authority of natural law and custom in defense of the common good. He argued that individuals are not so wedded to their own interests that they must fail to apprehend rationally what is required by right reason in matters of the common good, especially through public institutions, which modern Americans have come to see as destructive of natural rights (Hittinger, 1990, p. 448). An appeal to higher principles or standards in defense of public or private institutions as well as other "natural" or

"unalienable" right through the natural light of reason and natural law was thus made long before Jefferson's drafting of the Declaration of Independence.<sup>28</sup>

The founders of public schools, Horace Mann, like Jefferson, believed in universal popular education, for no nation could remain ignorant and free. However, in his writings, Horace Mann elevated education to a higher moral plain than eighteenth century rationalism. Mann in The Twelfth Annual Report wrote: "Never will wisdom preside in the halls of legislation...until common schools...create a more far-seeing intelligence and a purer morality than has ever yet existed among communities of men" (Mann, cited in Alexander and Alexander, 1985, p. 28). Mann based his theory of public education upon the immutable truths of the natural law that has informed civic humanism for centuries. He attempted to establish fundamentality for education in natural law. He wrote again in 1846:

I believe in the existence of a great, immutable principle of natural law, or natural ethics, a principle antecedent to all human institutions and incapable of being abrogated by any ordinances of man, a principle of divine origin, clearly legible in the ways of Providence as those ways are manifested in the order of nature and in the history of the race, which proves the absolute right of every human being that comes into the world to an education; and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all (cited in Alexander and Alexander, 1985, p. 28).

The natural law for Americans originally focused around belief in a personal law giving God, the organic law as it was inherited and evolved through

social, legal and political institutions that Americans shared in common (Hittinger, 1990). It thus provides a basis of moral authority that recognized rights as well as duties and obligations binding upon all of citizens for the preservation of the commonweal. Wise, for example, referred to "sacred liberties" (cited in Hittinger, 1990, p. 438). He took the position that both reason and nature radiate through a historical tradition and institutions and was a blend of the authority of natural law and custom. The American Constitution does not explicitly mention either natural law or natural rights, but there is no doubt that Americans expected rule of law to reflect virtue and to uphold natural rights (p. 438).

Despite subsequent arguments for rights of conscience and sectarianism, the notion of the common good from the earliest days of the American republic, reflected public support of institutions whose primary objectives were civic virtue. The case for tax support of both the church and the schools was not to save men's souls or to advance science and learning, but because they lent security to the state (Schmidt, 1971).<sup>29</sup> With the extension of Jacksonian democracy and the Second Great Awakening in the nineteenth century, however, Americans came to rely upon education to instill in the populace the values and virtues that were the preconditions of republican government. It is no accident that public support of schools rose as sentiment in favor of governmental support of churches declined. This does not imply that American culture had necessarily embraced secularism, only perhaps that schools had taken on moral and social

responsibilities formerly assumed by churches. This signaled a transformation rather than a repudiation of the theory that the survival of republican government depended upon the maintenance of a virtuous population (Cremin, 1970).

Jefferson's concept of civic virtue through a "diffusion of knowledge" and especially his desire for a collective "Happiness" stated in the Declaration, formed the basis for his view of a natural aristocracy of men who would rule for the common good, and he relied upon a belief in a God-implanted "moral sense." Virtue was possible and achievable in democratic society because man had the capacity for moral judgment. According to Wagoner, the "moral sense" was not the only the basis of Jefferson's proclamation that all men are created equal in the Declaration, but it "lies at the heart of his belief that man has the capacity to govern and that man had rights as well as duties" (Wagoner, 1990, p. 19).

Jefferson believed that "The moral sense, or conscience, is as much a part of man as his leg or arm. It is given to all human beings in a stronger or weaker degree, as force of members is given them in a stronger or weaker degree" (cited in Wagoner, 1991. p. 20). These moral judgments, however, were susceptible to the guidance of reason. "Jefferson thus found in this natural moral sense the foundation of morality in man, the foundation for man's sense of social justice, and the foundation for the equality of all men" (p. 20).

Jefferson also recognized that the natural law, and particularly "the laws of Nature and of Nature's God" was the determining factor in political obligation

(D'Entreves, 1965, p. 55). The natural law is a "norm" that has an "injunctive" character behind any rhetorical appeal. The school founders, Jefferson, as well as Mann and Rush, all believed that the American Republic would survive only if moral rectitude was universally diffused. For this reason, the common school was an instrument for the preservation of the social and moral order and consequently was "...the greatest discovery ever made by man" (cited in Cremin, 1951, p. 137). Rush, like Jefferson, revered liberty, but, unlike Mann who eschewed sectarianism,<sup>30</sup> Rush tied civic virtue and Christianity to liberty in advocating a system of education where youngsters would be "nurtured in the doctrine of the New Testament: "Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life of all republican government" (Cremin, 1980, p. 118). Virtue, then, not liberty in the mind of the school founders was thought to be the basis of the republic (See discussion of the Jeffersonian ideal of a diffusion of knowledge in Chapter Seven).

The Aristotelian notion of "excellence" of character was a founding principle of the American common school, and especially the concept of education for citizenship in a democratic republic, for "the integrity of the polity must be founded on the [moral] integrity of the personality..." (Pocock, 1971, p. 90). An equally important concern was that of a duty or obligation on the part of the state to uphold principles intrinsic to dignity of the law. Such principles of mutuality and law reinforce the concept of the virtuous citizen and state.



Thus, the first concern of education and the state in a virtue-centered paradigm of civic humanism was for the pervasive and progressive development of civic character--for becoming "the right sort of person"<sup>31</sup> (Pincoffs, 1986, pp. 150-174).

Clear partisan and ideological differences existed among the founders with respect to the origin, function, and purposes of government. But, regardless of how they grounded the assumption of "sanctity"--whether in the natural law, a moral sense, or deity, the basic commitment that bound Madison, Jefferson, Rush, Mann together was their thoughtful and unremitting concern for the individual. For them, the founding values began with the "absolute sanctity of each individual's life,"<sup>32</sup> especially Jefferson who included Blacks among those with inalienable rights in his preface to the Declaration (Wilson, 1992). This belief instructed all of their prescriptions for government. Writes David Hart:

Most of them took a magnanimous view of the purpose and meaning of human life, in that the intrinsic work of each individual was actualized through the intentional embodiment of virtue in every endeavor. The result was to be individuals of exemplary moral character who would staff all institutions: political, economic, social, religious, and educational (Hart, 1984, p. 11).

### Virtue in the Constitution

De Tocqueville (1963) believed that in addition to education, law, government, institutions and judicial power, the strongest prop of American order was the body of moral habits.<sup>33</sup> The republican tradition:

presupposes that the citizens of a republic are motivated by civic virtue as well as self-interest. It views public participation as a form of moral education and sees its purposes as the attainment of justice and public good (Bellah et al., 1985, p. 335).

De Tocqueville's presumption of linking good government to virtue was commonplace in the early days of the republic (Lutz, 1988, p. 83). The constitutional debates revealed that the constitution should establish effective civic virtue as an end of government. Lutz argues that the founders generally believed that the end of government was virtue and assumed that the majority spoke for the community and would be both "able and willing to seek the common good" (Lutz, 1988, p. 85). According to Lutz, they reasoned that:

If the people are corrupt or lack the virtues necessary for popular control of government, it would be foolish to ever speak of popular control, no matter how strong one's belief in free will, the importance of consent, or the existence of natural rights. The people must be virtuous, or all is for naught (p. 83).

Scholars have scrutinized The Federalist to see if civic virtue is a goal of the constitution or if there is a constitutional expectation of citizenship. Pangle observes that the Founders were practical men who brought a new "instrumentalist" view about civic virtue to American government (Pangle, 1988, p. 72). Pangle argues that the authors of the Federalist Papers were influenced by a Machiavellian view of virtue in a commercial republic and this explains why Publius puts trust in an institutional system that pits factions against each other rather than trusting to a high moral quality of political leadership.

Hamilton in Federalist No. 72 confessed, that virtue has its limitations: "Men are not ruled by the love of those virtues, but by the love of a reward they may bring (Hamilton, 1961, p. 488). He said that "The most to be expected from the generality of men...is the negative merit of not doing harm instead of the positive merit of doing good" (p. 488). Lutz, however, argues that the Federalists grounded political thought in the European enlightenment's transmission of classical Greek and Roman ideas and adopted arete, civic virtue meaning "being able to do well at a job in the practical realm" (Lutz, 1988, p. 86).

Madison in Federalist No. 10 dealt realistically with human propensities. Libertarians see in this essay a view of human nature not unlike the Christian conception of sin, except that there is no redemption or possible improvement: Men in their natural state of being are not angels. The "defect of their virtues," no religions or utopian option can remedy. This moral defect causes "factions," or selfish interest groups to arise. The problem of factions cannot be solved because "the latent causes of faction are...sown in the nature of man." Since human nature does not provide enough "better motives" to go around government must "supply the defect" (absence of virtue) such as the mechanisms and structures of government that will produce a system of "various and interfering interests" to counteract natural predatory self-interest and vice. "Ambition must be made to counteract ambition."

This interpretation of Federalist No. 10 suggests that Madison thought private self-interest was a moral imperative instead of merely a reality. Two assumptions about civic virtue have been made: (a) men are not virtuous, or as Rousseau argued, by nature good, or even improvable; and (b) government is a necessary evil to restrain men.

Federalist No. 10 has been called the Madisonian Model because it outlines the character of self-government; it continues to be a source of debate. We know that Madison and the framers believed in virtue as the basis of republican government (Pangle, Note 4, p. 295).<sup>34</sup> However, libertarians argue that freedom, and not virtue, is the goal of government--a perception largely derived from a laissez- faire interpretation of Madison's Federalist No. 10.

Madison begins Federalist No. 10 telling us that the violence of factions (though not faction itself) should be restrained and controlled. We learn that factions are "sown in the nature of man," but they can be minimized by "controlling [their] effects" through such mechanical devices as bicameral legislatures, federalism, or separation of powers.

The laissez-faire interpretation is that "dominance of individualism" is a conscious design of the constitution itself. A Straussian interpretation of the Constitution suggests that self-interest is the legitimate basis for government. Scholars have argued that Madison intended the clash of competing private interests, and that governmental machinery was put in place to strengthen and

give sanction to individualism and economic self interest (Wood, 1969; Farrand, 1963; Beard, 1950). From this "Straussian" perspective, Kessler argues that Martin Diamond, George Will and others have not only incorrectly interpreted Madison, but concealed "the meaning of America as expressed in our original and highest principles" (Kessler, 1985, p. 30).

On the other hand, a communitarian or "commonwealth" view of Federalist No. 10 argues that the Constitution has a "dual expectation" for citizenship (Bellah et al., 1985; Hart, 1984; Koch, 1961, 1965; Mosher, 1976, Will, 1981; Bellah et al., 1991). Professor Larry Lane points out that it is important to see understand both interpretations of the Constitution before the struggle between individual and community interest is resolved (Lane, 1988, p. 36). He explains that the common good is defined in more ways than by the outcomes of political processes:

Clearly, the constitution establishes a system of political economy that fosters self-interest, the play of power, and economic striving, but it is also founded on principles of civic virtue, classical republicanism, community effort and the common good (p. 36).

According to this civic humanist interpretation of Madison's Federalist No. 10, factions are controlled through governmental processes, but civic virtue is promoted also through constitutional provisions for an enlightened civil service. Therefore, Becker argues that a goal of civic virtue is implicit in the design, structure, and language of the Constitution itself (Becker, 1932, pp. 33-34, 41, 49, 80, 104). Becker also argues that the Constitution stresses ideas of service,

classical virtue, the opinion of posterity, and the "union of morality and politics," while simultaneously liberating men to pursue private self-interest.<sup>35</sup>

Lane (1988) notes, however, that this Federalist ideal for public administration has deteriorated since the "celebration of individual self-interest and economic expansion" of Jacksonian democracy. America through a crass commercialism is now morally committed to private self-interest and has become a "victim of both individualism and politics" (1988, p. 41). Bellah et al. state:

We have committed what to the republican founders of our nation was the cardinal sin: we have put our own good, as individuals, as groups as a nation, ahead of the common good (1991, p. 285).

### Virtuous Leaders

#### Virtue as Conservatorship

How a regime makes a people virtuous is a matter of public policy and administration. Aristotle stated the need for virtue through virtuous leaders:

This truth is attested by the experience of states: lawgivers make the citizens good by training them in habits of right and action--this is the aim of all legislation, and if it fails to do this it is a failure; this distinguishes a good form of constitution from a bad one (Nichomachean Ethics, 1952, p. 1103).

A theory of "Administrative Conservatorship" has been proposed for a "society contemplating its leadership requirements" (Terry, 1990, pp. 439-412).<sup>36</sup> According to this theory, public administrators would be replaced by statesmen who have a special duty to ensure the essential values of the regime.

Government institutions such as schools are responsible democratic institutions that must preserve a way of life under the prescriptive authority of a state constitution that they take an oath of office to uphold. Individuals "conservators," whether policy makers, legislators, administrators, judges or individual citizens are responsible to perpetuate the values of the regime that were "brought into being by ratification of the Constitution (Rohr, 1989). Terry argues (1990) that "taking an oath to uphold the constitutions...is a natural and moral obligation," providing for "continuity and stability" (p. 407) of public institutions "essential to the perpetuation and preservation of society" (p. 406). The oath is in the covenant tradition, and is an important act of commonwealth (Rohr, 1989, p. 68).<sup>37</sup>

Judges are "Conservators" because they interpret the law, have a special duty or role in preserving values and justice. The Oxford Dictionary (1989) defines "jurisprudence" from the Latin jurisprudencia as "knowledge and skill in law." Jus means law or right, or rendered as right, or the right, whereas lex simply means positive law. From this Walter Berns argues that jurisprudence means "knowledge of or skill in the right" (Berns, 1957, p. 611) and that legislative statutes and legal proceedings are ultimately based on some conception of what is fundamentally right beyond particular situations or circumstances. According to Terry's "conservator" theory of "statesmanship" (Terry, 1990), legislators also are "conservators" of regime values. In the eighteenth century, Noah Webster feared that private individuals in local

assemblies motivated by localism and factionalism would "subvert the very principles of republican government" (cited in Wood, 1969, p. 305).

Thus, the character and qualifications for office and leadership in general have significance for American political theory and policy and indicate that government and public institutions are a public trust. Thomas Tudor Tucker of South Carolina in 1784 noted that legislatures "are representatives of the people for certain purposes only, not to all intents and purposes whatever," which would allow them to exercise intelligent discretion and prerogatives as a public trust [Italics added]" (cited in Wood, 1969, p. 381).<sup>38</sup>

#### Virtue in Representation

Another assumption related to virtue in the Constitution, according to Madison in Federalist No. 49, is that "the people are the only legitimate fountain of power" (Madison, 1961, p. 338). From the Constitution we learn that all authority is derived from The People. John Adams, however, wrote in a letter to James Sullivan in 1776: "It is certain, in theory, that the only moral foundation of government is, the consent of the people. But to what an extent shall we carry this principle?" (Adams, 1851, Volume 9, p. 375). He recognized that popular sovereignty could bestow upon legislatures the unlimited power to do right as well as wrong.



The constitutional premise of legislative supremacy and popular sovereignty is that government in a republic is not democratic, but representative and republican:

The premise of the system was that the virtue of the people would lead them to choose for their officials and representatives, men who would be great-spirited enough to place the public good above their own, or their local region's special advantage. Such men would constitute a genuine aristocracy of merit (Bellah et al., 1991, p. 255).

Webster and others in advocating "virtual representation" in the eighteenth century acknowledged that "the Legislature has all the power, of all the people" (cited in Wood, 1969, p. 381). Representation should never be partial because "the powers of Legislature should be co-extensive with those of the people" and because "the collective body of Representatives is the collective sense and authority of the people" (p. 381). Representation of the people must be full and virtual, however, because the community must never allow legislators, or the people's representatives, to "set themselves up against the general voice of the people" (p. 381).

Rousseau had warned that a government that did not reflect both the will for the community and of the community "...would be absurd, tyrannical and liable to the most frightful abuses." "...whoever refuses to obey the general will shall be compelled to do so by the whole body..." (1988, p. 195).

However, Webster reasoned that since all laws were designed for "the true interests of the whole state," and not merely for "a particular part," they "must be

founded on the best general information: the people themselves have no right to consent to a law, without this general information," or "on a view of a local interest," or "without hearing the objections and arguments suggested by every part of the community, which is to be affected by that law" (cited in Wood, 1969, p. 382). Therefore, he argued, "if the collective sense of a state is the basis of law, and that sense can be known officially nowhere but in an assembly of all the people or their Representatives..., where is the right of instructing Representatives?" (p. 380).

Webster noted the dangers of particularism: "The local sense of the people," he said, "taken in small meetings, without a general knowledge of the objections, and reasonings of the whole state," can never produce the general good; each district is but "part of the state, and not competent to judge fully of the interest of the whole." (cited in Wood, p. 380).

Philosophers have generally recognized that "The notion of the General Will embraces a demand not only for good government, but also for self-government--not only for rational conduct, but for goodwill" (Rousseau, 1988, p. 16). This is the Aristotelian concept of ethics in a polity welded to politics (Will, 1983, p. 79). Edmund Burke recognized that "The principles of true politics are those of morality enlarged" (Burke, 1844, Volume 1, p. 332).

Wood notes these moral principles attached to the concept of popular sovereignty and virtual representation have broken down as a result of the gradual process of transferring sovereignty from legislative bodies to "the people-

at large" outside of all governmental institutions. This trend, he argues, represents an intellectual and moral shift of political obligation away from legislatures to particularism and localism that has undermined the conception of the common good (Wood, 1969, p.397).

Once the mutuality of interests between representatives and people that made virtual representation what it was to most eighteenth-century Englishmen was broken down by the American atmosphere of individualism, suspicion and jealousy, the only criterion of representation left was "election" and particularly the notion of one man one vote (Wood, 1969, p. 397).

Distrust of government and politicians is now not only reflected in public opinion polls, but rational consumer choice and direct democracy of the initiative, referendum, and recall and public opinion polls are now seen as the most legitimate avenue of political expression (Buchanan and Tullock, 1965).

### Virtuous Citizens

#### Citizenship as a Public Trust

The administration of public schools, especially in a time of fiscal crisis and disparity, requires moral leadership. The preceding discussion demonstrates some of the characteristics and requirements of a virtuous citizenry that can best protect and maintain the integrity of the American common school. School finance decisions today are made by legislators, or "conservators," who represent a varied constituency. Many of these constituents reside in wealthy school

districts that may be reluctant to vote for an increase in property taxes to fund equitably a state system. The moral responsibility entrusted to both legislators and citizens requires virtue defined as the common good. The American public school is one of the sources of that virtue as it develops the skills, talents, and moral character of these individuals. The schools therefore play a vital role in shaping our citizenship requirements.

The principle of election and of delegating power lies at the heart of republican government and the exercise of the common will of the people. It implies a public trust. Leadership and representation within the political community and especially the trust and confidence people place in their representatives necessarily requires a moral standard and commitment to the common good and justice.

Aristotle in the third book of Politics first noted the relationship between character and citizenship in the context of regimes. He observed most importantly that in a commonwealth the "...[common] good is justice...the common interest" (Politics, 1952, Book 3, p. 480). Aristotle also introduced the concept of a citizen who has duties as well as rights: "A citizen is not a citizen because he lives in a certain place" (p. 471); "His freedom is limited only to civic duty and the common good: "His special characteristic is that he shares in the administration of justice, and in offices" (Book 3, p. 472).

Virtuous citizenship is thus relative to the regime in the sense that a good man is a good citizen in a good regime. We cannot say that Himmler, Hitler's

most loyal citizen in Nazi Germany, was a "good citizen." As Walter Berns observes: The "vital difference between a good and a bad regime is the moral character of the men who are trusted by each regime and who in turn freely pledge their allegiance to each regime" (Berns, 1969, p. 219). It follows then that the good or virtuous citizen is committed to the common good of the state which can be effected by adherence to virtue as "order of the soul," and "order in the state."

### Natural Aristocracy of Virtue and Talent

John Jay in Federalist No. 3 advocated a "wise," "systematic," "judicious" merit system (1961, p. 15). This system would "serve to link administration with concepts of virtue, which the Federalists viewed as a leading characteristic of republican government" (Lane, 1988, p. 39). Jay wrote: "When once an efficient national government is established, the best men in the country will not only consent to serve, but will also be appointed to manage it" (Jay, 1961, p. 16). The concept of natural aristocracy and meritocracy in the commonwealth sense is not elitist. It is civic responsibility and civic virtue.

Civic virtue or responsibility had traditionally been thought to be the province of the socially elite class, specifically the "gentleman", who had the freedom or "liberality" to study at leisure, although the commercial and industrial elite, rather than the landed gentry eventually predominated in America (Strauss, 1968).<sup>39</sup>

Elitism of class or privilege, however, is not characteristic of the "natural aristocracy" advanced by Jefferson or Hamilton in America--an aristocracy not based on wealth or privilege but on natural "ability and virtue." It follows the principle of noblesse oblige for a meritorious public or civil service, but only as the product of a equal opportunity, the equitable distribution of property, and an educational system dedicated to the fullest development of talents (p. 30).

Jefferson, like Hamilton, was "clearly no egalitarian in a communal sense" (Wagoner, 1991, p. 18), although he did believe in the integrity of all individual rights (See Wilson, 1992). Hamilton was more cautious. He believed that "The most to be expected from the generality of men...is the negative merit of not doing harm instead of the positive merit of doing good" (Hamilton, 1961, p. 488). Those "who possess most wisdom to discern, and most virtue to pursue the common good" (Hamilton, 1961, p. 32). However, both Jefferson and Hamilton, as well as a number of Anti-federalist envisioned an enlightened civic service:

May we not even say, that form of government is the best, which provides the most effectually for a pure selection of these natural aristoi into the officers of government? (Jefferson, 1898/1813).

Jefferson's plan for a general system of education was based on both meritocratic and democratic principles: A "natural aristocracy" of "virtue and talent" would develop if all people could compete freely for leadership in their individual pursuits of happiness. Jefferson therefore advocated a "general diffusion of knowledge" and a general diffusion of property.

Like Adams, a Federalist, Jefferson had a commonwealth conception of property: property ownership encouraged unity in diversity. He believed "that participation in government should be restricted to those with a commitment to and stake in society--that is, to property owners" (Wagoner, 1990, p. 18), however only if every person had equal opportunity to obtain property and pursue happiness in accord with his talents and industry (p. 18). Consequently, in his 1776 draft of a constitution for Virginia, Jefferson made provision for free allotments of public land so that "every person of full age" could possess at least 50 acres "in full absolute dominion" (Howe, 1986, p 68).

### Virtuous Meritocracy

In the twentieth century, Jefferson's concept of natural aristocracy is spoken of as "meritocracy" by John Rawls (1971, p. 177). Merit "follows the principle of careers open to talents and uses equality of opportunity as a way of releasing men's energies in the pursuit of economic prosperity and political dominion" (p. 177). With an economic gap between rich and poor, "equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position. For Rawls, noblesse oblige is a function of those who have an abundance of natural talents that should not be supported until the less fortunate are cared for to the extent that they can "enjoy the culture of the society," and "take part in its affairs," and have a "secure sense of his own worth" (p. 177).

For Leo Strauss, the Jeffersonian concept has broadened into "a universal aristocracy" (Strauss, 1968) reflecting the classical concept of virtue as arete, or excellence. For Strauss, democracy without civic virtue or a "public spirit" in a modern secular state is mass rule characterized by electoral apathy and the inability to rule. Like Robert Reich (1991), Strauss observes that modern democracy is ruled by elites who, for whatever reason, are on top or have a fair chance to arrive at the top. He agrees with Plato, however, that wisdom generally is inaccessible to man; virtue and happiness will always be imperfect, especially if a sense of "responsibility" which is inseparable from a "liberal education" is lacking in a republic (p. 75). A liberal education is arete, excellence as virtue:

Liberal education reminds those members of a mass democracy who have ears to hear, of human greatness, excellence, and all that is noble in human conduct, expression, and striving, which should be studied through the greatest minds of all cultures and ages (p. 75).

### Conclusion

The history of ideas reveals a perennial quest for virtue. This chapter defines virtue as benevolence, character, prudence, moral will, as law, and made application to the need for virtue in society to properly govern the nations schools. Throughout this definition of virtue as common good, references are made to disparity and to schools and how legislators should be "conservators" to ensure a virtuous state. Virtue is the end of state and for this reason several



concepts of the ethical state are discussed in relation to school finance. In this respect the laissez-faire conception of virtue is contrasted with a civic humanist perception of virtue which outlines the requirements for virtue in government, in the constitution and in governmental leaders. The entire chapter demonstrates the importance of educating for a virtuous and enlightened citizenry.

## NOTES

1. More's Utopia, in its own day and throughout the succeeding centuries, has remained one of the most celebrated visions and model of an ideal Christian and moral state and is a milestone in the history of political thought. The humanists in general suggested both the education of the prince and the use of humanistically trained advisors as a response to the general problem of good government in the sixteenth century, although Machiavelli's use of the word "virtu" has somewhat distorted and confused the meaning of the term virtue (Simon, 1986).
2. The constitution was conceived and set down in the language of republican thought whose history as theory can be traced in various forms to the writings of Rousseau, Montesquieu, Harrington, Machiavelli, and back to Cicero and Plato's Republic. See J.G. A. Pocock, The Machiavellian Moment (1975); Bernard Bailyn The Ideological Origins of the American Revolution (1967). The term "republican" does not refer to the contemporary republican party, but rather to a form of representative government in ancient Greece where public authority rests with voting citizens and their elected officials. According to Russell Kirk, the term "republic" means "public concerns--or the general welfare expressed in political forms. See R. Kirk, The Roots of the American Order (1974). The republican tradition in America "...presupposes that the citizens of a republic are motivated by civic virtue as well as self interest. It views public participation as a form of moral education and sees its purposes as the attainment of justice and public good (Bellah et al., 1985).
3. Amitai Etzioni of George Washington University has founded a journal, to serve as "a voice to counter those who see nothing amiss with a world in which "Me-ism" prevails in the body social, runaway greed that derails the economy, and interest groups that dominate the polity; a moral voice to respond to those who would have society run like a marketplace, and who see the vying of self-interests as the only foundation for civility and service, if they recognize these needs at all." See Etzioni (1990-1991) "Editorial Statement, The Responsive Community, Rights and Responsibilities", p. 2.
4. A recent interpretation of the term "polity" as it has been used from Aristotle to Burke is that it is more than the classic city state or even governmental institution: "It includes all the institutions, habits and mores on which government depends and on which, therefore, government should strive to have a shaping influence." See G. Will, Statecraft as Soulcraft (1983, p. 24).

5. The term "piety," usually associated with strong religious observance in our time meant more to the Romans. According to Kirk (1974, p. 103), "piety" was the foundation of all other virtues at the heart of Roman culture and meant submission to sacred duties such as loyalty to family, friends, or willingness to die for one's country.
6. By the eighteenth century the classical humanist prescriptions were challenged by the new economic and social conditions of the industrial revolution, a new capitalist ethic, rationalism, skepticism and modern secularization. Such conditions made the intimate republics of Greece and Rome and their brand of civic humanism appear increasingly anachronistic. Adam Smith, Francis Hutcheson, and David Hume of the Scottish Enlightenment tried to restructure these ancient prescriptions. (See Steward, 1990).
7. The term "moral sense" which explains man's innate sense of virtue, originated with Anthony Ashley Cooper, Third Earl of Shaftesbury, in An Inquiry Concerning Virtue in 1711. Shaftesbury influenced Hutcheson and others through the notion that reflection upon motives is a necessary condition of moral approbation. The most important contribution Shaftesbury made to moral philosophy, however, was linking ethical and aesthetic judgment which characterized the theory of virtue of both Hutcheson and Hume (Raphael, 1967, p. 230).
8. Hutcheson also found a relation of the moral sense to aesthetics, though not in the way that Plato had, for the moral sense reacting to benevolence is like love or admiration arising naturally towards beauty. Virtue is therefore a value representing the beautiful and the good and is in itself a kind of moral beauty (Raphael, 1973).
9. Yves Simon in studying translations of Aristotle's work has clarified the meaning of hexis as habit. He argues that Aristotle is not simply saying that virtue is simply the habit of doing good, for habits become subjective, unconscious acts which would rule out the possibility of free and voluntary action or "willing." This he said is a misreading of Aristotle and focusses instead upon Aristotle's conception of "use" or application of deeds. Aristotle, Simon noted, would have approved of St. Augustine's distinction 700 years later: "Virtue is a good quality of mind, by which we live righteously, and of which no one can make bad use" (cited in Simon, 1986, p. 75). See also Aquinas, Summa Theologica, 1948, pp. 562-65.

10. Despite Aristotle's categories of five intellectual virtues, it is still not clear from Aristotle precisely how we discern the common good in a secular society, or in a world without any conception of finality or teleology where values are seen as purely subjective. Simon, however, finds Aristotle applicable, for in a world of natures (recognizing character or volition as an individual nature), values reside in the nature of things, i.e. individual character. Simon reasons: "Thus if man has a nature he also has a destiny, and we can relate what is right and wrong for him to do to his nature and to his end objectively" (Simon, 1986, p. 32). For further discussion see Simon, The Tradition of Natural Law, 1965, pp. 50-51.
11. The positivism debate has emanated from the fact that since the Supreme Court was invested with the power of judicial review, natural law theory has taken statutory form which as Corwin argued "saved[d] the higher law as a [judicial] recourse for individuals and elevated it into one of the more juristically fruitful periods since the days of Justinian (See Corwin, note 39 at p. 89 in The "Higher Law" Background of American Constitutional Law, 1955, p. 152. As an antidote to legal positivism, natural law is any moral theory about law that is not positivist, ie. any theory of law that affirms that the command of the sovereign is not a sufficient ground for the validity of law. As Lon Fuller, in The Law in Quest of Itself, noted, natural law "is the method men naturally follow when they are not consciously or unconsciously inhibited by a positivistic philosophy" (cited in Hittinger, 1990, p. 103). The positivism-naturalism debate dates back to Bentham who criticized both the common law and the natural law as legal fictions because they fail to guarantee the measure of predictability needed in a modern society and because they posit inscrutable reasons or rhetorical axioms or an unreliable "mask of Mystery" by which authority must be tested and therefore insufficient for argument and reform. In the Theory of Legislation, Bentham insisted that the only real source of law is human legislation or what legislators do. However, he also insisted that the law should be anterior to expectation, publicly known, internally consistent, conformable to the principle of utility, methodologically simple, certain of execution and literally followed (Hittinger, 1990, p. 103).
12. Story draws upon the great classics of natural law philosophy. The first part of his essay is derivative of St. Thomas Aquinas' concept of natural law inseparable from natural theology "which teaches men their duty and reasons of it" and "...comprehends man's duties to god, to himself and to other men, and as a member of political society...with a presumed

coincidence with the will of his Creator" (See Story's essay on "Natural Law" in his Miscellaneous Writings, and discussion by McClellan, 1971).

13. Joseph Story sees natural rights as those that are "natura" (resulting from our very condition) and "inalienable" (though not absolute because they are subject to qualification when considering man as a member of the family and community). Other rights are "adventitious" arising from peculiar situations that presuppose some act of man. (See Story's essay on "Natural Law" in Miscellaneous Writings, 1852).
14. This break in the natural law tradition has only recently been perceived by scholars. According to John Courtney Murray "...the nineteenth century supposed that the 'law of nature' of the age of the Enlightenment was the ius naturale of an earlier and in many ways more enlightened age" (cited in McClellan, 1971, p. 299).
15. Robert Unger argues that modern law in the West is now in its "public natural law" phase which began with Thomas Hobbes and John Locke. Hobbes took a command model while Locke emphasized natural rights, but both addressed a pluralistic "public" that disagreed about religious and metaphysical conceptions of man's final end. They keyed their understanding of legal principles to security and no other finality. Hitinger observes that it is this means/ends "public" natural law concept that unites theorists as diverse as Hobbes, Locke, Bentham and Rawls (Hitinger, 1990, p. 443). Hitinger also notes that "The use of law to secure certainty of expectations in the midst of religious and societal dissension is more important than whether the goal is formulated in the vocabulary of positivism or natural rights." Gerald Posteman notes that the "security of expectations" serves as a "primary good" for Bentham and the utilitarians (cited in Hitinger, 1990, p. 44).
16. McClellan (1971) argues in Joseph Story and the American Constitution, that with this shift from natural law to natural rights, the ethical dimension of the natural law has been lost and the way was prepared for a relativistic law of nature, which rested on the shifting sands of a totally subjective model reflected in modern-day legal positivism based on individualism and reason. McClellan writes: "...that the modern concept of natural law, like its intellectual offspring legal positivism, could be manipulated to impugn or to serve any political system, whether it be state absolutism (Hobbes), enlightened despotism (Pufendorf), liberal democracy (Locke), or totalitarian democracy. Leo Strauss, in Natural Right and History (1950), observes that it was not until the French Revolution that the natural law tradition of Locke and Rousseau came to

be seen as basically a secular, rationalistic doctrine emancipated from the Church.

17. Rommen (1947) discerned three decisive differences between the newer natural law philosophy and that of the scholastic or classical view of natural law which made civic virtue a goal of the state and a duty of the sovereign. Modern natural law attempts to lay down a relativist and subjective view of morality which is more difficult to ascribe to the notion of the common good and the general will. The individualistic aspect emphasizes the state of nature as the repository of natural law, which is unscriptural or unbiblical. The nominalist attitude separates eternal from natural law; god's essence from existence, and morality from law. The autonomy of human reason in conjunction with modern day rationalism has encouraged a new syllogistic reasoning as well as deductively constructed systems that regulate all legal institutions to the minute detail (p. 94).
18. Thomas Aquinas in Summa Theologiae (1948, Volume II, p. 92) stated that the lex tyrannica seeks the common good of the citizens, but only according to a particular regime. This approach at least is a unified approach to the preservation of the common good. According to Aquinas, human individuals can be forced by law to develop a war-like temperament in states that perceive defense as the common good; or individuals can be formed by law to tolerate consumers in order to fit the specifications of the market. A tyrannical law or perversitas legis however would reduce the common good to something less than what humans are capable or need. We might also be encouraged not to end debate, but to extend it as J.S. Mill advocated, since abstract rights in general are a nuisance. See J. S. Mill's On Liberty, 1978, p. 12.
19. Raphael (1976, p. 54) argues that the social contract is justified when the common good is interpreted as "the aim of the moral volition" of the people. This condition exists when the general will is viewed collectively as the morality of the entire community reflecting each individual's views of the needs of society beyond personal self interest. The common good, as expressed by the general will of the people, possesses an element of morality that may be missing in the simple rule of the majority. The social contract theory of society works, according to Raphael, only if the common good takes precedence over the vote of the majority, if it is supported by "moral underpinnings."
20. The notion of contract was made familiar by Old Testament accounts of covenant. But the earliest account was Plato in the Republic when

Glaucon suggested that "men decided they would be better off if they made a compact neither to do wrong nor to suffer it. Hence they began to make laws and covenants with one another." In Plato's Crito, Socrates presents the notion of tacit consent in which all people dwelling within the state are assumed merely by their continued residence within its boundaries, to consent to the laws that have been made (cited in Levin, 1973).

21. Filmer, Aristotle, and others advocated a patriarchal, communitarian view of the formation of the state. The idea of an historical social contract, Levin (1973) explains became redundant when government throughout the world grew increasingly representative of large sections of the populations, and especially as scientific positivism combined with evolutionary theory depicted man no longer as the creator of his own environment, but rather as a being determined by wider forces operating according to inexorable historical laws. In such an intellectual climate the conscious role of human beings appears less significant. Other writers as diverse as Kant, Samuel Taylor Coleridge, and T.H. Huxley have defended the continued use of or reliance upon the vision of a society formed by a social contract.
22. See the eleventh-century writings of Manegod of Lautenbach, as a precursor for later theories criticizing tyranny. The main theme in the writings of Saint Thomas Aquinas was obedience to the accepted traditional order of church and king. Marsiglio of Padua and Bartolus of Sassaferrato of the north Italian city-states of the fourteenth century regarded authority as stemming from the people. The notion of reciprocal obligations in society involving the whole feudal system cemented by relationships of mutual rights and duties between lord and vassal in England can be found in Magna Carta (1215) which indicated that the king was to be an integral part of society, rather than an unlimited ruler controlling from the outside. Cromwell declared "the king is king by contract" and the poet John Milton noted that society is based on contract and that monarchy rests only on "trust." Milton wrote: "The power of kings and magistrates is nothing else, but what is only derivative, transferred and committed to them in trust from the people to the common good of them all, in whom the power yet remains fundamentally, and cannot be taken from them, without a violation of their natural birthright. See also Milton's, The Tenure of Kings and Magistrates, written in 1649 (Levin, 1973, pp. 253-255).
23. "The people" connected those who were habitually regarded as "entitled" to take part in the political process, and no others. Likewise, the New

- England Puritans distinguished between their own congregation and the unregenerate remainder of mankind. "The right to liberty was thought of in terms of rights for their own religious liberty, rather than as rights for all men irrespective of their religious beliefs" (Levin, 1973, p. 256).
24. Simon delineates in greater detail the fundamental types of social relations implied by a "social contract" and the nature of obligation to law. There are contractual relations unconnected with any lasting establishment such as a sale and a purchase; some have a lasting character as in a partnership; a contract may found a community which can be dissolved at will by cancellation of the contract--or only in definite circumstances; and a contract may found a community which cannot be dissolved at all (Simon, 1968, p. 102).
  25. D.A. J. Richards, for example, contends that his interpretation of freedom "identified aspects of freedom that are broadly neutral among diverse ends and ways of life" (cited in Hitinger, 1990, note 222, p. 133). These include "negative liberty, the normal capacities of rational choice associated with self-direction of one's life, and the capacity to originate claims and assess one's goals as an expression of one's moral powers independent of social convention and other people." Hitinger notes, for example, that "...modern American theories of natural law and natural rights have the function of stopping debates by appealing to an abstract set of basic or primary goods rather than to a higher moral standard. These goods explain what all moral agents have in common, regardless of different religious, aesthetic, and even moral conceptions of the good life" (Hitinger, 1990, pp. 133).
  26. This analytical model of "basic goods" has been adopted with some variations by theorists as diverse as Lon Fuller, Lawrence Tribe, Ronald Dworkin, D.A. J. Richards, and H.L.A. Hart. Hitinger explains: "The basic goods can serve as the tethers for rights claims. An individual right is accredited 'natural' if upon reflection we find that it is grounded in one of these goods." However "...Origins and ends are precisely what individuals disagree about. Dworkin links natural law to the principle of moral independence; Richards links it to the integrity of interpretive conscience; and Tribe links it to the capacity for self-defining actions. It belongs to the individual to specify the end served by any of these goods. Therefore, the articulation of basic goods must remain minimalistic not only in order to fend off debates, but also to secure the chief good in question--the unconditional good of the self" (Hitinger, 1990, p. 482) .



27. See Mize (1973-74, pp. 110-111). The cherish provision is one of three types of educational provisions found in state constitutions. It is known as a New England clause because it came from early considerations of public education in New England.
28. Hittinger (1990, pp. 446-448)) observes that such American use of natural law theory is "stereoscopical," meaning that law is historically and institutionally contextualized. There are recognizable institutions in which the principles of law are so embodied so that the substance of judgments is not so much about individuals, but about how individuals participate in institutions. Hittinger notes that from Wise to Madison, one will not find in the early American tradition a dichotomy between natural rights and the fame of institutions because properly constructed political institutions recognize rights. "To recognize one is to recognize the other....Conversely, contemporary natural rights of individuals tends to be pitted against inherited custom and institutions. Family, churches, institutions are now regarded as the very opposite of what natural rights are supposed to secure."
29. For a discussion of the seventeenth-and eighteenth-century background of the linkages of education and republicanism, see Lawrence A. Cremin (1970), American Education: The Colonial Experience, 1607-1783 pp. 415-443. Speaking of the thirty years preceding the Civil War, Richard Hofstadter (1973) observes that "the belief in mass education was not founded primarily upon a passion for the development of mind, or upon pride in learning and culture for their own sakes, but rather upon the supposed political and economic benefits of education."
30. Horace Mann in the Twelfth Annual Report addressed charges that the common system was "irreligious and anti-Christian, in the face of rival system of "Parochial" or Sectarian Schools" (cited in Cremin, 1957, p. 102). He argued that sectarianism should not prevail, but rather a common core of Christian truths or values because "no student of history...can be hostile to the precepts and the doctrine of the Christian religion, or opposed to any institutions which expound and exemplify them; and no man who thinks, ...respecting the enduring elements of character, whether public or private, can be willing to have his name mentioned while he is living, or remembered when he is dead, as opposed to religious instruction, and Bible instruction for the young."
31. The focus on the virtuous individual is an important aspect of civic humanism. Of classic origin, the concept reemerged in Renaissance Italy with new vigor with the discovery of the lost works of Cicero. The

Renaissance humanists reading of those original texts initiated the unorthodox notion that government was to facilitate individual aspirations for the happiness that Jefferson wrote about in the Declaration of Independence, but which came only from a life of virtue (Hart, 1989)

32. Note the discussion of "life" in Morton White, The Philosophy of the American Revolution (New York: Oxford, 1978).
33. "It is their mores, then that make the Americans of the United States, alone among Americans, capable of maintaining the rule of democracy; and it is mores (or habits of the heart) again that make the various Anglo-American democracies more or less orderly and prosperous" (Tocqueville, 1963, p. 125).
34. Madison argued to prevent paper money in Virginia on the grounds that such a legislative act would be "unjust, impolitic, destructive of public and private confidence, and of that virtue which is the basis of republican Government" (Pangle, 1988, Note 4, p. 295).
35. The "commonwealth" or "republican" model contains certain assumptions for a virtuous public administration that "foster integrity in office" even though the term "administration" is never mentioned in the Constitution. The "text of the Constitution may be narrowly construed as an administrative document." The Constitution makes ample provision for specific statutes and practices governing the development of American public administration. In this way, Mosher contends the Constitution is dedicated to the public good (Mosher, 1982, p. 60).
36. His theory is based upon the ancient concept of authority rooted in tradition beliefs, values and community interests. This particular theory is in the tradition of Edmund Burke for its "disposition to preserve and an ability to improve" (Burke, cited in Terry, 1990, p. 402), and is guided by institutional and cultural perspectives (Selznick, 1957, p. 295).
37. Rohr (1989) argues that taking an oath to uphold the constitution is an important act of commonwealth. The constitution "is the foundation of our society, and symbolizes its frame of mind" (Terry, 1990, p. 406). Rohr argues that "the oath of office provides for bureaucrats the basis of a moral community that our pluralism would otherwise prevent" (1989, p. 70). It assumes that ethical norms should be derived from the salient values. These values are normative for public officials because "they have taken an oath to uphold the regime" and the values they support can be "discovered in the public law of the regime" (Rohr, 1989, p. 68).

38. They must as the people's representatives suffer dire consequences if these decisions are not made in the best interest of the community. Public trust then is an element of the common good as commonality. Tucker argues: "If law made by a legislature was not really a reflection of the will of the people, not the command of a superior sovereign, but only the act of the people's suspected agents, then some sanction other than consent [italics added] would have to be emphasized in order to make law obligatory" and binding upon the community (cited in Wood, 1969, p. 385).
39. Prior to Locke, responsibility was sought in the religious education of the people based on the Bible in which everyone regarded himself as responsible for his actions and for his thoughts to a God who would judge him. That many eighteenth century writers were elitist is a fact. Locke's Some Thoughts Concerning Education, is addressed to the "gentleman," rather than to "those of the meaner sort." It reflects Locke's political philosophy of self-interest, specifically the elitists notion that if the gentlemen "are by their education once set right, they will quickly bring all the rest into order" (cited in Strauss, 1950, p. 35).

## CHAPTER FIVE: COMMON AS COMMONWEALTH

This consciousness that the human spirit is derived and responsible, that all its functions are heritages and trusts, involves a sentiment of gratitude and duty which we may call piety is the standard of a republican commonwealth.

George Santayana, "The Life of Reason,"  
The Works of George Santayana, 1933.

The American common school is linked to many ideas about commonwealth as a virtuous polity. This chapter defines the term commonwealth as an answer to how virtue is attained, since the end of a commonwealth-type of government is to foster a virtuous and enlightened citizenry. Specifically, the problem being investigated is the proper relation between virtue, as "order of the soul," presented in the last chapter, and law, or "order in the state." A close examination of America's republican traditions, founding documents, constitutionalism, and requirements for citizenship calls into question modern libertarian claims of the primacy of self-interest and natural civil rights that weaken the public commitment to education.

The ideas of philosophers and founding documents have provided a corpus of ideological assumptions about the nature and purpose of a commonwealth and the source of commonwealth rights, duties, and obligations frequently neglected in natural rights-libertarian theory. In this respect the purpose of the chapter is to "clear the decks" in the ideological struggle between the laissez-faire concept

of public interest and a republican model of civic humanism that includes public schools. Constitutional scholars in recent years have suggested that by separating ethics and prescriptive authority from constitution and polity, modern libertarians have elevated predatory self interest of the individual to the status of an absolute end unsupported by law, custom, tradition and philosophy.

The term commonwealth, whose root word is "common," is discussed in relation to the American common school and defined etymologically. The idea or conception of commonwealth is presented from the perspective of the philosophers and founders of the American republic.

Extensive treatment of the background of the American common school in terms of common law and constitution is necessary to demonstrate a proper civic humanism vital to the American common school, which is by definition, a commonwealth-type institution. Issues of commonwealth and citizenship are presented in a context of civic humanism and civic virtue or responsibility which is vital to the support of public institutions.

The discussion of the American covenant, legal, and political traditions demonstrates, particularly with regard to the republican notion of rights and duties or obligations, that civic virtue is an end of the state. An in-depth presentation of constitutionalism from a "republican" civic humanist perspective demonstrates the ideological core of the republican "duty" to educate. This commonwealth duty to educate contrasts the public's right to choose to support public education based on private self-interest or market-oriented preference,

with the "cherish" or "virtue" requirements of state constitutions, supported by commonwealth values of civic virtue, common law rights versus natural rights, the concept of parens patriae, and constitutional obligations of citizenship as defined by the American parchment regime and the philosophers.

## **Commonwealth and Common School**

### Education for the Common Good

Plato in the Republic first argued that there is a natural harmony between the individual and the community. A commonwealth or a republic, he wrote, is a body of citizens living in harmony, not at enmity with the state (Plato, 1966). When Aristotle proposed natural justice in the Nicomachean Ethics (1952), or the "common law according to nature" in the Rhetoric (1986), he perceived a universal and unwritten common law that obligated men to support the state and its institutions. Such "commonwealth" ideas about community and justice in a moral order do not belong only to the ancients. When the American Patriots appealed to "nature and nature's God" in the Declaration of Independence as their foundation for a modern republic or commonwealth, they committed themselves to a higher moral order of justice and humanity for all citizens and to an ideal of state or commonwealth that Aristotle had prescribed in Politics: one most likely to achieve the natural goal of "excellence" in social and political life (1952, Book 1).

This perception of a moral commonwealth was also shared by the founders of the American common school who possessed the highest ideals of republicanism. Freeman Butts observed that public education is the "foundation of freedom" (Butts, 1960, pp. 33-48). In the context of republicanism, this ideal also reflected "moral freedom"... "which alone makes man truly master of himself...while obedience to a law which we prescribe to ourselves is freedom..." (Rousseau, 1954/1762, Book I, p. 27).

Commonwealth ideas about education for the common good and preservation of the state date back to the great "commonwealth" era of seventeenth century England as well as to the Greek and Roman republics. John Amos Comenius advised the English Puritans of the importance of universal schools and systems of education (Lawson and Silver, 1973, p. 154). John Milton would reform education, for the lack of which "the nation would perish" (cited in Lawson and Silver, p. 155). Americans from the Puritan forefathers to the present day have eventually come to understand that education is vital to the survival of the republic. The American Puritans wanted public support for education to strengthen the Puritan commonwealth against "old deluder Satan" (Alexander and Alexander, 1992, p. 24). Benjamin Rush proposed a system of education in America for "uniform and peaceable government" (Rush, 1806, p. 4). George Washington tied education to responsive government "In proportion as the structure of a government gives force to public opinion" (cited in Cubberley, 1922, p. 288). Thomas Jefferson likewise called for a "diffusion of

knowledge," for the "preservation of freedom and happiness" (Jefferson, 1904/1779, p. 414).

Many Americans throughout the nation's history have thought civic virtue was essential to the moral life of the republic. In the first two decades of the American republic, attempts were made for state legislatures to establish school systems to ensure the general welfare and prosperity. The Governor of Kentucky told the legislature in 1820 that "Our government depends for its perpetuity upon the virtue and wisdom of the people" (cited in Alexander and Alexander, 1992, p. 22). Education eventually became a major governmental enterprise equal to government itself. The courts made it clear that "Public education is not merely a function of government; it is of government" and therefore "essential to the advancement of civil society" (Edwards, 1955, p. 23). In 1914 the Supreme Court of Illinois declared that public schools were "for the protection, safety, and welfare of the citizens of the state in the interest of good government" (Scown v. Czarnecki, 1914, p. 276).

Inherent in these "virtue" claims for education, is the notion of commonwealth itself--the ancient idea of a "body politic" questing for the common good or public good. The Supreme Court of New Hampshire notes that:

The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness



and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good [Italics added] (Fogg v. Board of Education, 1912, p. 174-75).

The notion of rights and duties associated with both the American republic and its schools also defines the moral nature of the American commonwealth. We would educate people to secure a high state of intelligence, moral order, and well-being in society. The word republic, Thomas Paine reminded "means the public good, or the good of the whole, in contradistinction to the despotic form, which makes the good of the sovereign, or of one man, the only object of government" (Paine, 1984, p. 53). Republican references to these ideals of virtue, the general good and order are legion in our colonial agreements and in many of our most revered public documents and utterances.

The classical ideas of common good, order, and virtue as a standard of justice and duty were transmitted to America through the common law and charter rights which are at least as old as the English constitution itself. Americans absorbed this heritage of common law and constitution into their commonwealth tradition. Horace Mann, for example, wanted schools in the American republic "to qualify each citizen for the civil and social duties he will be called to discharge" (Alexander and Alexander, 1985, p. 25) to "expand into the institutions and fortunes of the State" (p. 26).

### Cherish/Virtue Provisions in State Constitutions

Several states included "cherish" or "virtue" provisions for common schools in their constitutions. This is one of three groups or categories of constitutional provisions. (J.M. Mize, 1973-1974, pp. 105-11). The "virtue" or cherish category (the New England category) extols the virtues of education without explicit positive or specific requirements for the legislatures. This concept of cherish or virtue, however, is only faintly described in the "terminology of art" of state constitutions which have a "long historical and legal tradition as to usage and intent" (Alexander and Alexander, 1992, p. 28). This constitutional language reflects the symbols, principles, and values found in early state constitutions, covenants and colonial charters. The following states have these "virtue" requirements: New Hampshire, Massachusetts, Rhode Island, and Virginia, Vermont and Connecticut (See Appendix). The "virtue" requirement describes the moral and civic obligations of citizens in state "commonwealths" to support public schools. Public schools are understood to be "a state governmental enterprise" with tax resources to be allocated in accordance with these general "cherish" or virtue prescriptions for establishing public schools (Mize, 1973-74, p. 105).

Virtue in the last chapter was defined as an aspect of personality or character--a benevolence, volition of will, equity, habit or prudence, that obligates each individual citizen to care for others. Civic virtue, however, is

"public" virtue. It is the care of the state or commonwealth, the common good that implies a high moral standard related to constitutionalism. Aristotle in Politics said that "the state is a partnership, and is a partnership of citizens in a constitution" (1952, Book 3, Sec. 4. p. 473).

The constitutional "cherish" or "virtue" obligation to educate is as close to a "sacred" civic obligation to educate as one can find in the American republic. It establishes a proper relation between the attainment of virtue and law. Through the virtue provisions in state constitutions, common school, commonwealth, and constitution are one in a partnership of virtue. Education is a vehicle for the attainment of virtue in the state. Aristotle in Politics defined this relationship: "This community is the constitution; the virtue of the citizen must therefore be relative to the constitution of which he is a member" (1952, Book 2, p. 473). State constitutions and lawgivers have a special responsibility to provide for moral education and a virtuous citizenry. In Aristotle's words:

This truth is attested by the experience of states: lawgivers make the citizens good by training them in habits of right action--this is the aim of all legislation, and if it fails to do this it is a failure; this is what distinguishes a good form of constitution from a bad one (cited in Berns, 1957, p.241).

### Principles and Heresies

For these reasons the common good of the commonweal should not be associated with socialism or paternalism in government, or state education as authoritarian as some public school enemies have done (Glenn, 1988). The

preservation of the state is an essential requirement of a commonwealth. Thus, how the American "commonwealth" is perceived--whether as a harmony of interests, a plurality of interests, the sum of private interests, or as a moral whole-- determines public commitment to education.

A predominantly libertarian public philosophy has reopened debate about the purposes of the common school in a modern American commonwealth. Seeds of dissention over the nature of the polity and the role of its citizens were sown in the founding days of the republic in the battle between the Federalists and the American Whigs, or Anti-Federalists. Jefferson, "under the spell of the Enlightenment" (Wagoner, 1990, p. 15), was distrustful of government.

We note, for example, that Jefferson's main concern in his "Preamble to a Bill for the More General Diffusion of Knowledge" was education to free men from tyranny of the state. Education would allow men to "know ambition under all its shapes," so that people would be "wont to exert their natural powers to defeat its [the state's] purposes" (Jefferson, 1904, pp. 414-426). Further, Jefferson viewed education as citizen empowerment "to guard the sacred deposit of the rights and liberties" against encroachments by the state. According to Jefferson, awareness of the power of the state and its potential harm or restrictions on civil liberties would make citizens "useful instruments for the public" (p. 426). Herbert Croly argues, "The triumph of Jefferson and the defeat of Hamilton enabled the natural individualism of the American people free play" (Croly, 1964, p. 49).<sup>1</sup>

Civic autonomy in the commonwealth tradition is not "entrenched predatory self-interest" (Niebuhr, 1932, p. xiii); it requires an ethical relationship between individuals and the state. Republican appeals for civic virtue have grown dim amidst the twentieth century clamor of natural rights, individualism, and freedom of choice emanating from the Lockean tradition. In a modern climate of free-enterprise and private self-interest, it is important to re-examine, as Santayana notes above, "the standard of the republican commonwealth" especially since to educate for an enlightened and virtuous citizenry has been the lofty goal of the American commonwealth for over 200 years.

### Idea of Commonwealth

George Santayana suggests in the beginning quote that a commonwealth is a complex inheritance of values and traditions created by a "consciousness" of the "human spirit." It satisfies the moral imagination while hugging the contours of tradition and practical experience.

Commonwealth is a state of mind. It is John Winthrop's "city on a hill," Aristotle's polis, Harrington's Oceana, Burke's "eternal contract"--an ideal of what is equitable, good and noble in the execution of the "disciplines of liberty" (Will, 1983, p. 165). Edmund Burke, the eighteenth century English philosopher and statesman, noted that "Our country is not a thing of mere physical locality" (cited in Will, 1983, p. 24). Aristotle wrote: "A citizen is not a citizen because he lives in a certain place," (Politics, 1952, Book 3, Section 1, p. 471). For George Will,

this means that a modern commonwealth "...includes all institutions, dispositions, habits and mores of which government depends and strives to influence" (Will, 1983, p. 24).

Commonwealth is also a moral concept. Modern commonwealthmen perceive ethical potential in a pluralistic society: "a collaborative adventure of trying to measure up to the better angels of our nature" (p. 165). Cicero's original definition of commonwealth in The Republic, "a partnership in virtue" (Cicero, 1928, p. 65) is given new practical focus: the fitness of a people to govern. Walter Berns diagnoses the central problem of the American regime as not recognizing both freedom and virtue: "To get good government means to get consent to good governors, and this is the political problem" (Berns, 1957, p. 247).

Since the days of John Adams and Thomas Jefferson, American commonwealthmen as diverse as Alexis De Tocqueville, Henry Adams, Herbert Croly and George Will, Edmund Burke, Robert Reich, E.P. Cubberley, Russell Kirk, Eric Voegelin, and Walter Berns have been concerned about the amoral consequences of free enterprise and the lack of public commitment to the common good. They share a vision of the American commonwealth as a national trust between citizens and the state, a moral entity characterized by a reciprocal relationship between the governed and the governing. They derive their common vision from Burke who had warned: "Perhaps the only moral trust with

any certainty in our hands is the care of our own time" (Burke, 1808, Volume 6, p. 207).

Burke noted that the ability to fulfill the public trust may require "a revolution in sentiments, manners, and moral opinions" (Burke, 1808, Volume 5, p. 156). This is especially important in the legal profession. Justice Frankfurter's statement that "Law is concerned with external behavior and not with the inner life of man" in the school flag case West Virginia State Board of Education v. Barnett (1943) is disturbing to modern commonwealthmen. It reflects a modern positivist ideology distinctly at odds with a "moral" vision of a commonwealth which has come down to us through history from the ancient republics. Herbert Croly in The Promise of American Life called the American public trust "a higher type of associated life" (Croly, 1964, p. 280). A democratic faith in the common good, he believed, required a "morally authoritative Sovereign will" in which the American people "...are Sovereign in so far as they are loyal one to another, to their joint past, and to the promise of the future" (p. 280). This is what Horace Mann meant when he wrote: "It may be an easy thing to make a republic, but it is a very laborious thing to make republicans" (cited in Cremin, 1951, p. 137).

Leo Strauss (1968) and other modern intellectuals bemoan the loss of a prescriptive sense of moral obligation that unites people of very diverse ethnic and multicultural backgrounds in a moral state. The term "responsibility" is a neologism for the classical words of "duty", "conscience" or "virtue," and suggests

a weakening of commitment toward the moral ends of education and the state. "We frequently say of a man that he is a responsible man, where people of former generations would have said that he is a just man or a conscientious man or a virtuous man " (Strauss, 1968, p. 102).

The commonwealth philosophers must have been inspired by Edmund Burke, the eighteenth century philosopher who took the side of the Americans in Parliament. His sublime and burningly earnest expression of commonwealth as public trust and "partnership in virtue" between all men and generations is famous.

John Maitland pointed out that the Ciceronian/Burkean "partnership," "contract," or "compact" is not the "social contract" of Locke or Rousseau, "that greediest of legal categories" (cited in D'Entreves, 1965, p. 57) which would turn man in a state of nature into a lone wolf (Adams, 1851, Volume 6, p. 418). The Burkean "eternal contract" is more in the tradition of a "covenant" that pre-dates the Lockean, Enlightenment social contract, reaching back to Abraham in the Old Testament. Common as commonwealth rests on the practical and empirical assumption of Aristotle's Politics that "the state is a creation of nature, and that man is by nature a political animal" (1952, Book I, p. 446), and the manly notion of duty which Santayana resurrected from the Romans. It is this "piety" or duty that designates "to each an appointed place," within a moral order based not on birth, status, or wealth but on "civic virtue". Civic virtue, the practical



consequence of the free exercise of rights, duties and obligations that morally binds all generations, is the sustaining core of commonwealth ideology.

### Etymology of Commonwealth

The commonwealth or "republican" philosophers, such as Aristotle, Cicero, Edmund Burke, or John Adams, were practical statesmen who spoke the language of "commonwealth" in ways their contemporaries understood. Their writings and discourses provide an ethical alternative to empiricists and utilitarians. They framed their own "commonwealths" by a practical social realism as well as by idealizing what a "commonwealth" regime "ought" to be. They provided a normative challenge to its "inner life," and so the language of commonwealth is deontological.

The language of "commonwealth" has thus enlarge[d] our cultural memory" (Will, 1983, p. 25). Such abstractions as "civic virtue," "polity," "prescription," "duty," "presumption," "providence," "heritage," "trust," "oath," "loyalty," "moral whole," "piety" "polis," and "charter rights" that make up its lexicon describe the moral imagination as well as the legal authority for commonwealth government. Such abstractions are irritating to moderns. Jeffrey Stout (1988) for example, interprets "natural law," "moral law," and "the realm of values," as "fancy names for all the moral truths known and unknown that can be formulated in all the possible moral vocabularies and beliefs not currently in

question" (cited in Hittinger, 1990, p. 429). Bentham eschewed moral abstractions as "fictions or metaphors" (Bentham, cited in Hittinger, 1990, p. 23). Such is the positivist, behaviorist mentality of modern utilitarians and libertarians who are, in Russell Kirk's view, "metaphysically mad" (Kirk, 1974, p. 120) for assuming that laws, political or economic or systems are value free institutions that require only a calculus of consent without recourse to higher moral principles.

Black's Law Dictionary defines a commonwealth simply as "the public or common weal or welfare" (1990, p. 379). It is not a technical term of public law, but it is used often in political science to suggest a "republican frame of government," described as "one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch." A republican government designates the citizens as a corporate body of the state, that is "the body of citizens living under such a government."

According to the Oxford English Dictionary, (1989, Volume 3, p. 574) the term "commonwealth" means "the public welfare, "general good." But this definition also includes the "advantage" within a community. The term "commonwealth" refers to the "whole body of people constituting a nation or state; the body politic; a state, or an independent community" viewed "as a body in which the whole people has a voice or an interest." Thus, the term commonwealth applies "to a body or a number of persons united by some

common interest" or purpose such as a "commonwealth of learning" or the "whole body of learned men" as in a "republic of letters," or the end of state.

The term commonwealth therefore suggests a unity--a holistic or organic view of the state. Rousseau describes it "as a corporate body of citizens" with a common purpose to effect the General Will. The Latin term for commonwealth is civitas which is associated with a republic or democratic state, or a body of individuals involved in a common enterprise. Pocock notes that civitas has borne several further emphases associated with civic virtue. It is usually associated with a devotion to the public good and so has signified "the practice, or the preconditions of the practice, of relations of equality between citizens engaged in ruling and being ruled" (Pocock, 1985, p. 420). It denotes "that active ruling quality--practiced in republics by citizens equal with one another and devoted to the public good" (p. 421).

Such a definition of commonwealth expands the definition of virtue as individual benevolence or intentional will for the common good to the state as a whole to "civic virtue"-- "virtue as devotion to the public good" identified with a concept of justice in the state (Pocock, 1985, p. 42). A commonwealth then is a body of individuals devoted to the public good and requires both individual and collective acts of civic virtue to promote the "common weal" or "welfare" of all citizens in a state conceived as a polity.

The term "civics" as in "civic minded" expands the concept of commonwealth. We find in the Oxford English Dictionary that civics is "that

part of political science which is concerned with the "rights and duties of citizenship" (p. 574). A derivative term "civil" as in "civil society" from French and Latin also pertains to citizens, their private rights, hence relating to the body of citizens or commonwealth, political, public. The term "Civil" also is "pertaining to the whole body or community of citizens" (p. 574).

The concept of common as commonwealth therefore is "the whole body of people constituting a nation or state" and suggests a principle of unity in diversity. That a commonwealth is an "independent community," in which "the whole people have a voice or an interest" implies an essential bond of citizenship or purpose that unites all people, no matter how culturally or ethnically diverse, either through learning or by awareness of those things that are shared in common and acted upon in unison for the benefit of the common good over a period of time. It also suggests the necessity of a legitimate authority within this autonomous body to grant and enforce obligations to preserve the "common weal." This holistic view of the state suggests that the state or commonwealth itself serves the common good and thus constitutes a higher moral or social good (such as the good life) than any one of its individual members. This assumes that government or the "body politic" rests upon legitimate or ethical foundations, the values of the regime that should be cherished so that the common good can be achieved.

## **American Commonwealth Tradition**

### **American Novus Ordo Seclorum**

In the year of the Declaration of Independence, Edward Gibbon published the first volume of Decline and Fall of the Roman Empire. The grandeur that was Rome worked strongly upon the imagination of men who founded the United States and its schools. Americans constantly drew parallels between the Roman Republic and their own republican creation during the constitutional debates (Kirk, 1974 p. 430). The authors of the Federalist Papers, by taking the pen name Publius, seem to announce from the start their identification with the Greco-Roman republican tradition of civic virtue rather than the Venetian republics.<sup>2</sup>

However, what they saw in the Greek republic was "...a cautionary tale of class conflict, disunity, internecine violence, private and public arrogance and selfishness, imperial vainglory, and civic collapse (Kirk, 1974, p. 412). The polis eventually lost its freedom because the Greeks never learned how to live together in peace and justice. Yet Americans admired the Greek philosophical concept of moderation in all things, and especially Aristotle's notion of "The community of friendship". Aristotle's praise of the middle class was an endorsement of American society. "Thus the democratic ideal of political and social balance, as expressed by Aristotle, Polybius, and Plutarch was incorporated directly into the

American constitution (an enlarged form of Solon's "mixed government" (Kirk, 1974, p. 431).

Americans were especially impressed by the high old Roman virtue as well as the Roman concept of rule of law and obligation. The ideas of Polybius, Livy, Virgil, Cicero and the Stoics informed American political thought, jurisprudence, and experience. One concept, particularly seized the moral imagination of Americans, extending to the premises of the common school idea. By fatum, Virgil meant Roman imperial destiny--Rome's duty, imposed by unknowable powers, to bring peace to the world, to maintain the cause of order and justice and freedom, to withstand barbarism (p. 136). When Jefferson, "the patron saint of American popular education" (Cremin, 1980, p. 114) passed away, the mantle for public education passed to Benjamin Rush, a member of Congress from Pennsylvania. Like many Americans, Rush had a Virgilian sense that the events surrounding the creation of the Republic. For Rush and others, the founding of a common school system marked a turning point in human history. Rush believed he "...was acting for the benefit of the whole world, and of future ages, by assisting in the formation of new means of political order and general happiness" (Corner, 1948, p. 161). As one of Philadelphia's most promising young professionals, a signer of the Declaration and member of Congress, Rush was never a politician, though he carried on "a one-man crusade to remake America" (Cremin, 1980, p. 117).

The secret of the Roman Republic or commonwealth, according to the Roman moralists as well as the Greeks was "virtue" meaning energetic manliness. McDonald (1985) notes that the vital, or "life-giving" principle of republics was public virtue. Like the Greek counterparts of arete and polis, civic virtue did not suggest Christian meekness, passivity or charity,<sup>3</sup> it suggested manliness (McDonald, 1985, p. 70). The term "public," like "virtue" derives from Latin roots signifying "manhood" (although at the time the American voting "public" included only independent adult males). According to McDonald, public virtue meant:

firmness, courage, endurance, industry, frugal living, strength, and above all, unremitting devotion to the weal of the public's corporate self, the community of virtuous men. It was at once individualistic and communal: individualistic in that no member of the public could be dependent upon any other and still be reckoned a member of the public; communal in that every man gave himself totally to the good of the public as a whole. If public virtue declined, the republic declined, and if it declined too far, the republic died (McDonald, 1985, p. 70-71).

It was this perception that led to the American founding belief that the constitution and public institutions should encourage a virtuous citizenry to ensure the survival of the American republic into posterity. This dream of "a new secular order" remains a cornerstone of state policy.

### Republican Foundations

Richard Henry Lee of Virginia led off the commonwealth debate in America by asserting that "rights are built on a fourfold foundation" of natural

law, the British constitution, the charters of the several colonies, and "immemorial usage" (Burnett, Letters, cited in McDonald, 1985, p. 57).

Americans saw themselves as benefitting from experience as well as reinventing a form of government that had once existed but had fallen into decline (Pangle, 1988). They hoped their republic would not, however, end in the manner of Rome.

The empirical and practical aspects of the American experience, however, have been overshadowed by the overarching emphasis upon abstract or metaphysical natural rights believed to be the legitimate foundation of the American republic, particularly after the Declaration of Independence had appealed to "the Laws of Nature and of Nature's god." Americans claimed to be "in a state of nature, government having been dissolved" (McDonald, 1985, p. 58). In reality they were only seeking a practical justification for revolution in international law or the "law of war" of Western nations (p. 58).

It has been noted previously that the social contract theory<sup>4</sup> provided a convenient justification for revolution as well as the right of consent. The Declaration of Independence affirms that the Creator endowed every person with certain unalienable rights, mentions three of these specifically, and goes on to proclaim that "to secure these rights governments are instituted among men." This gives the impression that there is only one purpose of government--to secure individual rights, a principle now perceived to be "the taproot of the American political culture" (Rohr, 1989, p. 285).



This natural rights claim has "opened a can of worms" (MacDonald, 1985, p. 59) and obscured the American commonwealth tradition. When Americans subscribed to the Lockean hypothetical contract as a source for political authority, their new independence "threw them temporarily into a state of nature wherein all previously existing law (except the law of nature itself) was nullified" (p. 60). This abandonment of tradition, law, and all previous moral authority seemed folly to many Americans (Reid, 1988). Blackstone had written:

no human laws will...suppose a case, which at once must destroy all law, and compel men to build afresh upon a new foundation; nor will they make provision for so desperate an event, as must render all legal provisions ineffectual (1969, Volume 1, pp. 161-162).

Nevertheless, McDonald argues that the American Revolution proceeded on the artificial grounds of a theory of natural-rights (McDonald, 1985). The Patriots turned to Locke, and especially his Two Treatises of Government, "a major source of a large amount of polemical writing" at the time (p. 66). Their adoption of the theory of a state of nature in which man was anti-social, isolated, bereft of community and law, and needing the state only for the protection of private promoted a public philosophy of predatory self-interest very unlike the true spirit of commonwealth. Americans were a "hard-headed, practical band of men who disdained chimerical theory" (p. 60), but they still could not shake off the radical English influences that justified revolution (p. 60).<sup>5</sup> Patrick Henry bemoaned: "we were reduced to a State of Nature" (cited in MacDonald, p. 59).

Natural rights theory, however debatable as a source of commonwealth, is only one of the "fourfold foundations" expounded by Lee. By 1787 Americans were also avidly studying the republican theorists, both ancient and modern (McDonald, 1985, p. 67)<sup>6</sup> who expounded the Aristotelian concept of the organic state, polis, a commonwealth consisting of a "body" of corporate citizens. They were reading Burke and the English legal philosophers. Pocock pointed out that many of our ideas associated with "commonwealth" also date back to the beginnings of the Commonwealth tradition in England with its polemic against arbitrary parliamentary rule conducted by critics of the Old Whig regime (Pocock, 1985, p. 234). Americans were reading Locke, but they were also reading seventeenth century "commonwealthmen" like Algernon Sydney, John Milton, and particularly James Harrington who shaped the republican thinking of such "Yankee Patriots" as John and Samuel Adams (McDonald, 1985, p. 67).

Americans especially found inspiration for founding their own state "commonwealths" in classical antiquity. Anti-Federalists and Federalists alike adopted pseudonyms of "Cato", "Brutus", "Cassius," "Agrippa," "Cincinnatus", and used the term Voc Pupuli (voice of the people) to identify constitutionalism with the common man. Hamilton, Madison, and Jay signed The Federalist as Publius, the author of the Roman republic (McDonald, 1985, p. 68). American architecture as well as education reflected Greek and Roman classical ideals. Several essential classical themes or ideals reflect the meaning of commonwealth. They are: polis, "civic virtue," and "piety" or duty.

## Commonwealth as Polis

How to unite an intelligent administration with the power of the citizens was the problem that democracy has always had to contend with. Aristotle wrote about a state that would combine the best features of democracy and oligarchy; this he called a "polity" or constitutional government (Graubard, 1968, p. 654). Concerned about stability in a political order where democracy could easily degenerate into license, Aristotle in the Ethics (1952) emphasized the relation between the constitution of the state and the character of its citizens. He contended that what is right by "nature" is right not apart from political institutions, but according to the "institutions" of the best of ideal state. For example, it is natural, according to the uses of nature, that the family is "by nature" prior to the state (Ethics, 1952, Book, 8, p. 654), and that the state is "by nature" prior to the family and to the individual (Politics, 1952, Book I, p. 12). He also stated in the Ethics that the ideal of the state excluded the money-making life (1952, Book 8, sections 1 and 2).

What makes the Greek polis or city state "communitarian," having more substance or solidarity, is an awareness of justice, i.e. a concept of a higher good or "best life." Both Plato and Aristotle distinguished between "public" and "private" and urged that private ends be subsumed into a higher public good or consciousness. The concept of the end of state as the common good was expressed by Aristotle in the Politics:

Every State is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good (Politics, 1952, Book I, p. 445).

According to Richard Niebuhr (1960), what generates community among men in ancient Greece was the conscious quest of a higher good, or summum bonum. The logos, grasped by reason, is the rational element in the soul, a higher faculty in man which apprehends transcendent value which is the substance of public community and the reason why men live together in order and friendship. It is only grasped through the rational element in the soul, a higher aspect of valuing that all have in common. The appetites, however, are base cravings for self-preservation, material goods and the like, those "private" impulses or appetites oriented toward private utility rather than the common good or logos or nous.

The substance of order then in ancient Greece would be found in rational relationships and with the ascendancy of the logos or nous, that transcendent, communal value to which all private uses must be consciously directed. Private property is not eliminated from the community, but it is to be regulated by a higher order of values. Plato, for example, in The Republic assigns special guardians of public maintenance as the method by which the fruits of individual private appetites were ordered to the common good (1966, Book 2, sec. 372).

Thus, in the Greek polis, men were social or political animals motivated by private utility but with public interest oriented toward cultivating an awareness of a rational order of justice. This dikaio-noesis concept of order means awareness of justice. Man's destiny was to be found only within the framework of the political order and justice which the "polis" represented as an ideal (Niebuhr, 1962).

### Civic Virtue

The republic would be a virtuous republic because as Aristotle said: "the citizens at large [would] administer the state for the common interest." When this occurred, the government "is called by the generic name, a constitution" (Politics, 1952, Book 3, p. 476).

This republican concept implies that both the state as a whole and the individuals that comprise it have a moral obligation or duty to support the community or regime for the common good. Aristotle calls this good the "The Summum Bonum for Individual and States" (Book 4, p. 527). He writes that "Before constructing the ideal state, we must know what is the most desirable life for states and individuals....Let us assume then that the best life, both for individuals and states, is the life of virtue" (Book 4, p. 527).

## Piety

The concept of "piety" was basic to the Roman culture and was the counterpart to Anglicized "the common good." "Piety" suggests more than religious observances. To the Romans a pious man was one who fulfilled his duties, religious and social--one who subordinated his own desires to the claims of others. "Piety is the foundation of all the other virtues," Cicero wrote when the Republic was falling to its ruin (cited in Kirk, 1974, p. 435). This concept of pietas along with fatum, and labor were the essential classical virtues that made for civic virtue and therefore whatever had been good in imperial Rome.

Associated also with the concept of civic virtue is pietas which for the Roman poet Virgil was a sense of "duty" toward divine powers and toward one's ancestors, one's living community and one's posterity. Virgil's "contract of eternal society" based on natural law was quite distinct from Christianity and Enlightenment liberalism and the social contract theory. By pietas Virgil meant something larger than church going or correctness toward one's parents. He meant a humility before the gods, a love of one's country, and a sense of duty to self, county, and civilization that is not adequately expressed by any English word (Kirk, 1974, p. 230).

These Roman and republican virtues of fatum and pietas were embraced by Americans groping for renewed purpose. Rush expressed the higher Roman idea of "Republican duties" to the state or "common good" in Thoughts Upon the Mode of Education Proper in a Republic:

Let our pupil be taught that he does not belong to himself, but that he is public property. Let him be taught to loves his family, but let him be taught at the same time that he must forsake and even forget them when the welfare of his country requires it... (Rush cited in Rudolph, 1965, p. 14).

According to classical republicanism, individuals should participate in political and community life and join with other individuals in the community in the formulating or implementing values which will govern individual relations (Strauss and Cropsey, 1973, p. 88). Horace Mann, the chief proponent of common schools, absorbed these ideals, values or classical virtues, as well as Christian, evangelical conceptions of his time, and advocated an eclectic pedagogy with the end of education as civic virtue. According to Cremin his ideas on education reflected

a common *piety* [Italics added] rooted in Scripture, a common civility revolving around the history and the state documents of a Christian Republic, and a common intellectual culture. Mostly he emphasized moral education in the tradition of the high old Roman virtue and realized that "The great moral attribute of self-government cannot be born and matured in a day" (Cremin, 1957, p. 58).

"In a government like ours..." Mann wrote in the Ninth Annual Report:

each individual must think of the welfare of the state as well as of the welfare of his own family;...It becomes then, a momentous question, whether the children in our schools are educated in reference to themselves and their private interests only, or with a regard to the great social duties and prerogatives that await them in afterlife....for however loftily the intellect of man may have been gifted, however skillfully it may have been trained, if it be not guided by a sense of justice, a love of mankind and a devotion to duty, its possessor is only a more splendid, as he is a more dangerous barbarian (cited in Cremin, 1957, p. 48).

### **Commonwealth Duty to Educate**

The commonwealth notion of rights and corresponding obligation, the concept of reciprocity between government and the citizens to effect virtue or the common good is manifested throughout the American parchment regime. The basic commonwealth value of virtue as the end of state spells out the civic obligations of Americans and the obligation of states to educate the American people.

### **Cherish Obligation**

The republican duty of government to educate its citizens has been regarded by philosophers as the highest function of the state. The state has an obligation to promote virtue and character in its people through moral education. Montesquieu observes in The Spirit of the Laws: "Every thing therefore depends on establishing this love [of the public interest] in a republic, and to inspire it ought to be the principal business of education" (Book 4, p. 302). The link between commonwealth, citizenship, and education is a moral one. This is recognized by Walter Berns who argues that:

Since the difference between regimes is a moral difference, and citizenship is relative to the regime, and since we must be ever alert to maintain the identity of a good man and a good American, it follows necessarily that the education of a good American citizen is moral training (Berns, 1957, p. 220)

Horace Mann believed that "republican institutions," would "wake up unexampled energies in the whole mass of a people, and give them implements of



unexampled power wherewith to work out their will." These same "institutions ought also to confer upon that people unexampled wisdom and rectitude" (cited in Cremin, 1980, p. 45).

Today the constitutions of all fifty states recognize an affirmative obligation of government to educate its citizens. Forty-eight states continue to recognize a constitutional duty to educate which includes the coercive powers of taxation and compulsory attendance (Hubsch, 1989). The constitutions of all states but Minnesota and Vermont establish that the state "shall" maintain a state-wide system of public schools. The term "shall" expresses a mandatory duty. The synonym "ought" appears in the Constitution of Vermont, and in nine other states (Idaho, Indiana, Maine, Minnesota, Rhode Island, Texas, Washington, Idaho) (Hubsch, 1990).

Educational scholars confirm that the history of education at the time of the adoption of state constitutional provisions strongly indicates governmental responsibility for education (Cremin, 1980; Kaestle, 1983). State constitutions declare education essential to self government. In the Texas Constitution we find: A "general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people." In South Dakota: "religion, morality and knowledge being necessary to good government"; in Idaho: "The stability of a republican form of government depending mainly upon the intelligence of the people..." (cited in Hubsch, 1990).

The "cherish" or "virtue" states express the duty to educate as a moral responsibility of the state. For example in the Alaska constitution we find: "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government" (Article 7, Section 1). In Arkansas, another "cherish" or "virtue" state we find: "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government..." (Article 14, Section 1). Vermont's constitutional provision proclaims "Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force" (cited in Hubsch, 1990).

However, Alexander argues that in recent years the "time-honored concept" of local control has challenged this state duty to cherish and value education for the common good of society (Alexander, 1990, note 20, p. 307). The desire for local control of schools has been a powerful and pervasive force for resisting the establishment of state systems of education. Mort and Reusser argue that "the legislatures have no sovereign rights" and that state boards and departments are no more the legitimate agents of education than local school boards and communities. They differ only in their jurisdiction. Thus "local boards of education are as truly state legislatures as is the one that meets in the state capitol" (cited in Johns, Morphet, and Alexander, 1983, p. 301).

Local control has been maintained as a principle of government for a century and a half with a bias toward keeping government control close to the people. However the desire of "constitutional diversity," is not necessarily in the

commonwealth tradition of restricting "arbitrary" governmental power, but to resist centralization, bureaucracy and professional elites in education (Tyack, 1974), and, most recently, to achieve exclusivity. Today local governments and wealthy suburbanite communities are seen as a "sanctuary for people" (Arkes cited in Lu, 1991, p. 552), and political "enclaves of influence" (Alexander, 1991, p. 348) that preserve private self-interest in matters of educational funding and support.

The relationship between government and its members is an important aspect of commonwealth prescriptive liberty. At issue in the case of government support of schools is the question that pits the rights of individuals or parents against the rights of the state. Jefferson asked with respect to parents and infants: "How far does this right and duty extend?...Public sentiment does not seem to have traced it precisely" (cited in Wagoner, 1990, p. 28). Jefferson came down on the side of parental rights but argued the advantages of a free public education to strengthen the desire and opportunity for all to be educated (Wagoner, 1990).

### Doctrine of Parens Patriae

The fallacy of the presumption that local autonomy is preemptive of state plenary power for education has been demonstrated through the ancient doctrine of parens patriae. This important principle of government is reflected in the common law maxim salus populi supreme lex esto, which means "let the welfare

of the people be the supreme law," since "as guardian over everyone, the state has the authority to protect those who are not legally competent to act in their own behalf" (Alexander and Alexander, 1992, p. 200). Thus, whenever the state's interest collides with parental interest, we resort to English common law, which holds that "the state's or the King's prerogative is superior to that of the parent when the parent's natural right is improperly exercised" (p. 200). This concept of state authority adopted through English precedent and now practiced throughout the United States was "to the end that the health, patriotism, morality, efficiency, industry, and integrity of its citizenship may be preserved and protected, looking to the preservation and stability of the state" (Strangway v. Allen (1922)).

From the beginning of the republic, Americans have recognized that the government was responsible for the common good as its chief purpose of function. The principle of parens patriae is a principle that recognizes the authority of the state to effect the common good. Aristotle had recognized the power or authority of the state or community as the highest source of good, over and above private individuals:

Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aim at good in a greater degree than any other, and at the highest good (Aristotle, Politics, Book I, p. 445).

In more recent times the courts have reinforced the basic commonwealth principle of government that the general welfare is a primary concern of the state. With regard to schools, in Lemon v. Kurtzman (1971) "there is no doubt as to the power of a state, having a high responsibility for education of its citizens, to impose regulations for the control and duration of basic education." The authority or power of the state in matters of education has thus been established constitutionally. The state has superior authority over local government or parents, by its constituted authority which resides in the plenary power of the state legislature. This authority resides not with parents, or even local authorities. Legislative control, not parental or individual control over education, is limited only by those individual rights and freedoms described in state or federal constitutions (Alexander, 1991, p. 340-366). This plenary authority in state legislatures was upheld in Kuhn v. Board of Education (1871) which found that the establishment of schools is not merely permissive, but "obligatory on the legislature."

A second rationale for the power or authority of state as parens patriae resides in the philosophical concept of the state as a moral whole, i.e. the state as a moral entity is more important than any one of its individual members. Republican theory demonstrates that a commonwealth is a moral whole that is greater than the sum of all its parts. Kentucky's constitution states that, "The great object of the Common School law is to give to every child in the Commonwealth a good common school education; to develop the whole intellect

of the state [Italics added]" (cited in Alexander, 1991, p. 357). This idea of "the whole intellect of the State" reflects the ancient concept of polity. Aristotle said "a state is a composite, like any other whole made up of many parts, there are the citizens, who compose it" (p. 471). Further he notes: "[O]ne citizen differs from another, but the salvation of the community is the common business of them all" (p. 473).

A third demonstration of parens patriae is the concept of the citizen as the child of the state. This argument was advanced by Rousseau in A Discourse on Political Economy in 1758. According to Rousseau, the state has a supreme duty to encourage civic virtue through education, and is "...the most important business of the State" (1973, p. 149). The civic duty of all citizens above all else lies in equity, or a "rigid integrity in doing strict justice to all, and above all in protecting the poor against the tyranny of the rich" (p. 146). Responsibility begins "...from the first moment of life..." when "...men ought to begin learning to deserve to live; and, as at the instant of birth we partake of the rights of citizenship, that instant ought to be the beginning of the exercise of our duty" (p. 248).

The state itself has a duty or obligation to instruct children to learn to love things, preferring the good and the beautiful, to identify with the greater whole, to "feel themselves members of their country, and to love it with that exquisite feeling which no isolated person has save for himself" (p. 148).

Rousseau argues that education is more of a state obligation than a parental one since "Families dissolve, but the State remains" (p. 149). Furthermore, preservation of the republic requires a "careful and well-intentioned government, vigilant incessantly to maintain or restore patriotism and morality among the people..." (p. 150).

Just as in a family the father is responsible for the education of his children, so the state itself in loco parentis has a paternalistic duty to educate. Rousseau explained this concept of in loco parentis in A Discourse on Political Economy. He wrote:

Should the public authority, by taking the place of the father, and charging itself with that important function, acquire his rights by discharging his duties, he would have the less cause to complain, as he would only be changing his title, and would have in common, under the name of citizen the same authority over his children, as he was exercising separately under the name of father, and would not be less obeyed when speaking in the name of the law, than when he spoke in that of nature" (Rousseau, 1973, p. 149).

Furthermore, Rousseau noted that education by the state is the great leveler of all, the common "mother" of all citizens:

If children are brought up in common in the bosom of equality; if they are imbued with the laws of the state and the precepts of the general will; if they are taught to respect these above all things; if they are surrounded by examples and objects which constantly remind them of the tender mother who nourishes them, of the love she bears them, of the inestimable benefits they receive from her, and of the return they owe her, we cannot doubt that they will learn to cherish one another mutually as brothers, to will nothing contrary to the will of society, to substitute the actions of men and citizens for the futile and vain babbling of sophists, and to become in time defenders and fathers of the country of which they will have been so long the children (1973, p. 149).

### Duty to Posterity

E.P. Cubberley (1919) describes a strong temporal role for the state in education and a concern for posterity. He credits the New England Puritans, who did "more than any immigrant group for education in the United States" (p. 17) with important commonwealth notions such as civic responsibility, perpetuity, and posterity. That a commonwealth is founded upon principles of posterity and perpetuity is suggested in an early pamphlet called "New England's First Fruits" printed in London in 1643:

one of the things we longed for and looked after was to advance learning and perpetuate it to posterity. Dreading to leave an illiterate ministry to the Churches when our present motives shall lie in the dust (cited in Cubberley, 1919, p. 16).

Theocracy notwithstanding, the commonwealth vision was for the preservation of the state. The Puritans deemed education "profitable to the commonwealth" and to the survival of their culture. Though education was still left in the homes, a new world Puritan legislature representing the interests of the state compelled all children be taught to read in the Massachusetts Law of 1642. Even though there was no pattern or "system" of public schools in the New England, Cubberley argues that schools were established with a view "to preserve the commonwealth" and that these publically funded schools became the "cornerstone" of the Puritan state. Mr. Martin, the historian of the Massachusetts public school system, explained the expectations of duty and obligation in the Puritan commonwealth:



(1) A universal education of youth is essential to the well-being of the state. (2) The obligation to furnish this education rests primarily upon the parent. (3) The state has a right to enforce this obligation. (4) The state may fix a standard which shall determine the kind of education, and the minimum amount. (5) Public money, raised by a general tax, may be used to provide such education as the State requires. This tax may be general, though the school attendance is not. (6). Education higher than the rudiments may be supplied by the State. Opportunity must be provided, at public expense, for youths who wish to be fitted for the university (cited in Cubberley, 1919, p. 19).

The "obligation" for the "well-being of the state" rests with the parent, but the "state has a right to enforce this obligation." Cubberley argues that this republican concept of duty or obligation of citizens to the state is neither "paternalistic" nor "socialistic." The obligation is mutual between both private interests and the state to further the common weal:

The child is to be educated, not to advance his personal interest, but because the State will suffer if he is not educated. The state does not Provide schools to relieve the parent, nor because it can educate better than the parent can, but because it can thereby better enforce the obligation which it imposes (cited in Cubberley, p. 19).

The state does not establish and maintain schools because it can do it better, or more efficiently than private agencies, "...but rather that by so doing it may better exercise the State's inherent right to enforce a type of education looking specifically to the preservation and improvement of the state" (p. 20). In other words, educational provision is a covenant, a mutual obligation between the people, private agencies, and the commonwealth whereby the state itself benefits (p. 488) as the state represents the common good of all.

Further we note in Cubberley that education is a prescriptive right, "... a birthright of every American boy and girl" (p. 504). Common schools render a national service that is "not frequently" appreciated and "not likely to be overestimated" (p. 504). They furnish a "self-imposed democratic discipline" which consists of important commonwealth values for the national good:

In teaching to the young the principles which lie at the basis of our democratic life; in awakening in them the conception of liberty guided by law, and the difference between freedom and license; in training them for self-control; in developing in them the ability to shoulder responsibility; in awakening them to the greatness of that democratic mobility in which all can share, in instilling into them the importance of fidelity to duty, truth, honor and virtue; and in unifying diverse elements and fusing them into the national mould...(p. 504).

Horace Mann also recognized the commonwealth duty of the state to posterity by "unifying diverse elements and fusing them into the national mould." Mann's essay, "Means and Objects of Common School Education" in Lectures in Education (1885) conveys the ideal of a liberal education expressed by Leo Strauss (education for excellence or arete), and the duty of excellence through education for future generations:

It is education's 'duty' to take the accumulations in knowledge of almost six thousand years, and to transfer the vast treasure to posterity. Suspend its functions for but one generation, and the experience and the achievement of the past are lost. The race must commence its fortunes anew, and must again spend six thousand years, before it can group its way upward from barbarism to the present point of civilization (cited in Cremin, 1961, p. 109).

## Collective Responsibility

Today's commonwealth men and women argue that the nation's survival depends on a collective resolve. Edley, for example, believes that this consensus or resolve must come through lawyers and the legal process, through a substantial and increased process of "legalization" in an already overly litigious society. A "moral revival" is called for "[T]he Constitutional battle is only one front in a complex war, and doctrinal argument is only one of several weapons to be used by lawyers and others" (Edley, 1991, p. 295). The metaphor of war is used in the ideological battle for school support. Hanushek (1991, p. 424) perceives that school finance reform is an extension of the War on Poverty, "an instrument for improving the well-being of poor children" or as a way to redistribute the wealth.

In a less doctrinal age, Herbert Croly called for a new nationalism, "moral and political ideals" (1964, p. 273) and a revival of the public interest in the common good (p. 273). In The Promise of American Life, Croly made this case for a responsible public administration:

[W]hen a group of state or city officials effectively assert the public interest against the private interests, either of the machine or of the local corporations, they are acting just as palpably if not as comprehensively, for the national welfare, as if their work benefitted the whole American people (p. 274).

He called for "a new Declaration of Independence" is therefore needed to achieve a "lofty and far-reaching democratic purpose" (p. 278) and a "collective responsibility" (p. 408). The moral "uplifting" of the nation would come with an

investment in education to establish "the reign of the good, the beautiful, and the true" (p. 401).

Croly's moral vision in the first half of the twentieth century anticipated the present reign of localism and private self-interest. Ritchie reminds us that we stand at the cross roads of tradition: the libertarian, separatist and pluralist view of society, versus the commonwealth view which looks to the community as a whole for the common good. Ritchie argues that "...the good or welfare of a nation cannot be completely analyzed into private happiness of the individuals who make the sacrifices" (Ritchie, 1952, p. 97), since "the individual ego is only the imperfect realization of a universal reason," more accurately assessed through "the work of the human spirit...in social institutions" (p. 98).

The American common school has remained faithful to the commonwealth spirit and tradition, even though it has been assailed in recent years (see especially Kozol, 1990) for failing to meet its high expectations of equalitarianism. The following discussion describes in some detail the republican and commonwealth tradition in America that continues to inform the American common school tradition. In the process certain principles of government essential to a commonwealth form of government and its public institutions like schools are presented.

The "duty" to educate and the corresponding "right" to derive public benefit from an extensive, uniform, and universal system of education is a commonwealth ideal. The following political and legal discussion of the basic

characteristics of a commonwealth explain why the commonwealth, or republican ideals of virtue, duty, and commonwealth are essential to public education in the United States. Educational systems rely upon public funds and support for the good of the whole. Noah Webster and other founders of the republic set the tone for a commonwealth spirit in 1790 when he stated that "if government resides in the citizens, then the government must provide them with the capacity to perform their responsibilities" (cited in Hubsch, 1990, p. 96). In the twentieth century, educational philosophers such as John Dewey in The Public and Its Problems (1927) and Amy Gutmann in Democratic Education (1987) continue to hold to the commonwealth view that education is essential for democracy.

The commonwealth view toward education was powerfully stated by the modern Supreme Court in Brown v. Board of Education (1954). Education in a modern republic is a primary responsibility of the state; it is not deemed a function of private familial preference, utility, or selfish personal gain, but for the good of the whole, for civic virtue, and public service:

Education is perhaps the most important function of State and local governments...It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of citizenship.

The following principles of commonwealth government support the view that government has an affirmative duty to cultivate all the attributes of citizenship through education--for the preservation of the commonwealth.

## Commonwealth As Moral Whole

### Unity in Diversity

John Adams, who helped draft both the constitutions of Massachusetts and of the United States, attached special significance to the term "commonwealth." He defined a commonwealth as the "body politic or state, one moral whole" (Handlin and Handlin, 1969, p. 29). Adams' conception of the state as "commonwealth" with a moral purpose, revived the use of the old Puritan designation of "commonwealth. It also reflected republican notions at the time of what the ends or purposes of a commonwealth or republic should be. The Essex Result had already alluded to the then-common formula that "[W]hen men form themselves into society, and erect a body politic or State, they are to be considered as one moral whole" (Handlin and Handlin, 1969, p. 30). In this sense, "a community can be equivalent to an individual. It is a moral organism standing in a moral relationship to other communities of people" (Lutz, 1988, p. 80), or as Rousseau noted, in his Social Contract, a "corporate person."

John Adam's concept of commonwealth as "body politic or state, one moral whole" was therefore not a conception alien to Americans of his time in Massachusetts. This commonwealth notion of "moral whole" or a united community was not only reflected in the Essex Result, but in the petitions of western towns, and in the Massachusetts Constitution of 1780 (Handlin and Handlin, 1969). These civil arrangements reflected Harrington's notion of

"commonwealth" in The Commonwealth of Oceana (1656) that was well known at the time and circulated in the colonies. Harrington described government in a commonwealth as "...an art whereby a civil society of men is instituted and preserved upon the foundation of common right and interest." (Harrington, 1887, p. 250). The Handlins note that New England farmers, seamen, and frontiersmen all valued practical lessons of experience. They learned from associations of churches as embodying the wisdom of a people who had shared a wilderness experience, and valued common action from deprivation and social privilege. The American Revolution became a symbol of unity that rekindled their trust in community and identity as a people.

Thus the commonwealth experience itself demonstrated the concept of "unity behind diversity". Like the English commonwealthman, James Harrington, whom he admired, Adams saw changes in the balance of property as a cause for political instability and dissention, not from abstract ideas or reasoning, but from observing the clash of sheer selfish private interest (Handlin and Handlin, 1969, p. 30). Adams, like Jefferson, believed that people could only be free "in proportion to their property" (cited in Handlin and Handlin, p. 30). Adams reasoned that if government was to rest upon more than fear that property would be taken away, it must serve a larger purpose. That larger "commonwealth" purposes was "unity in diversity":

The unity behind diversity came from the fact that transcending the interests of all its constituents was the interest of the society,

'common to all its members" expressed in the "body politic or state, one moral whole (cited in Handlin and Handlin, p. 35).

John Adams attached special significance to the term "Commonwealth."<sup>7</sup> Adams noted in his correspondence in 1775 the "clashing of interests amongst the various classes of men" (cited in Handlin and Handlin, p. 29). He believed that property and mercantile interests could be resolved through a "a division of land into small quantities" which would enable all to hold property (p. 29). He envisioned an interdependent society based on duty and obligation as well as rights where "the multitude will take care of the liberty, virtue, and interests of the multitude, in all acts of government" (cited in Handlin and Handlin, p. 29).

Like other republicans, Adams had high expectations that republican government would operate on a high plain to "serve a larger purpose." He believed its purpose was:

to secure the existence of the body-politic.... [,] a voluntary association of individuals... [or] social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good (cited in Handlin and Handlin, p. 29).

He believed with Harrington that when government fulfilled that function of a covenant it acquired a de jure character that would then be "preserved upon the foundation of common rights or interest" (p. 30). The American Revolution was the "repository of hopes...the symbol of ...unity" and ...identity as a people" (p. 30). Citizens' identity that would not come from abstract principles, but from practical experiences and commonly shared traditions and relationships among



men. This bond of union would ensure that the new body politic, at least according to the Massachusetts Spy in 1774, would be "one connected system having but one common interest, and one public will" (cited in Handlin and Handlin, p. 32) born of experience and commonality as this petition on February 12, 1780 attests:

The commonwealth idea, sophisticated and abstract in the minds of Adams and his literate friends, had a meaning also for others in the state, a meaning no less real, for the fishermen, artisans, and new merchants, it spoke the aspirations of the founding fathers, it repeated the lessons they knew from the organization of churches and towns, and it embodied the wisdom of a people many decades in the wilderness. These men had learned on frontier after frontier the value of common action and knew what it meant to be "deprived of Social compact and Society Privileges" (p. 30).

### Unity in Nature

The one word that best explains the concept of unity in diversity is "nature" as in "natural rights," "natural law," the "laws of nature," and of nature's God" found in the Declaration of Independence. This complex concept of nature philosophically signifies a unifying, eternal and immutable standard of justice to which all rational men appeal (D'Entreves, 1965). According to Ernest Barker, rights are said to be "inalienable" or "immutable," because they are endorsed or sanctified by "nature:" "This justice is conceived as being the higher or ultimate law, proceeding from the nature of the universe--from the Being of God and the reason of man" (cited in D'Entreves, 1965, p. 8).

Thus "nature" provides a sense of objective truth and reality capable of uniting all rational men through reason, or by the observance of custom or experience. D'Entreves says that such Latin words as naturale,naturalis,natura were "invoked to provide a basis of rights and duties" (p. 29). The "law of nature" then is a higher, all encompassing law superior to any or sum of positive or man made laws imparting a sense of justice that is morally binding. It provides a sense of commonality as in the phrase "equal before law," or "equal in the eyes of God." Natural law, however "contains no vindication of the 'rights of man'" (p. 30).

Many philosophers accept the fact of diversity among species and men and moral ideas, but their perception of nature has given them also a sense of unity underlying all this diversity (Ritchie, 1952, p. 29) which implied an underlying morality. Aristotle believed that "Natural justice is an ideal towards which all human justice tends" though found only "among the gods" (Ethics, 1952, Book 10, p. 75). For Aristotle, what is right by nature is right, not apart from political institutions, but according to the best or ideal state.<sup>8</sup>

The idea that there is universal justice and commonality among men is explored in Chapter Three. It is also found in scripture (especially the concept that God is no respecter of persons (See Deuteronomy 1:17; Acts 10:34; Romans 2:11; Ephesians 3:6; Colossians 3:25; Second Samuel 14:14). Cicero further emphasized "unity in diversity" when he wrote that "Universal consent is the voice of nature." (Cicero, cited in Ritchie, 1952, p. 36). When it came to rights

such as equity, the "law of nature was regarded as something permanently existing beyond the particular law of this or that State" (p. 37). The law or "voice of nature," which communicated objective or "natural" truths to man served as an ideal of excellence that all civil law should approximate (p. 37). The idea of a unity of all men through reason, despite their diversity is especially found in Thomas Aquinas, the medieval theologian who wrote: "Natural law is nothing else than the participation in the eternal law of the mind of a rational creature" (cited in D'Entreves, 1965, p. 59).

Thus for most of the natural law philosophers since Aquinas, the term "nature" has come to mean that "the human will is bound by features of reality that are not posited by our practical agenda", whether in the form of rights or law. They recognize a higher, "natural law," so that juris prudentia is a form of practical reasoning mediating the particular and the universal (Hittinger, 1990, p. 123). Aquinas in whom the classical and Christian traditions merged, distinguished between the two: "There is in man an inclination to that natural good which he[man] shares along with all substances, inasmuch as every substance seeks the preservation of its own being, according to its nature" (Ritchie, 1952, p. 37).

Ritchie says that it follows from Aquinas that "Human law, the positive laws of particular states, is derived from the law of nature, and is only true so far as it partakes of the law of nature, or is not in conflict with it" (p. 40) Since Justinian this "law of nature" has become an ideal code that might be found to

conflict with positive human law (p. 41). The extent of actual usage of natural law as one source of authority for the state and civil rights will be further explored.

### Organic State

The idea of "unity of diversity" also relates to the concept of the organic state which has special meaning in the context of republican philosophy. The source for Rousseau's "corporate person" is the classical notion of politeia, or body politic. The organic state is a corporate body a moral whole. John Winthrop (1588-1649), governor of Massachusetts, was the first American founder to express what the ideal commonwealth in American should be in terms of a "moral whole" (1965). In a sermon entitled "A Model of Christian Charity" in Salem Harbor in 1630 he proclaimed:

We must delight in each other, make others conditions our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our community as members of the same body (cited in Bellah et al. 1985, p. 28).

The Roman Cicero saw the concept of "unity in diversity" as a principle of natural law in the sense of a certain "social "spirit" that "nature" had imparted to man. He defined a commonwealth as "the property of a people," recognizing the state as a body, a partnership, or a moral whole. He noted that

a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated with respect to justice and a partnership for the common good. The first cause of such an association is not so much the

weakness of the individual as a certain social spirit which nature has implanted in man (cited in Will, 1983, p. 20).

This concept of the corporate body united by common justice for the common good eventually came to be known by Americans through Rousseau's notion of the "corporate entity" of the General Will. We recall that for Rousseau, a citizen in a republic was a "corporate man" who in the act of political association was a member of "... a corporate and collective body, composed of as many members as the assembly contains voters, and receiving from this act its unity, its common identity, its life, and its will." Thus the individual is a "public person formed by the union of all other persons, formerly took the name of city, and now takes that of republic or body politic; ...and as citizens, share in the sovereign authority, and as subjects, conform to the laws of the State" (Rousseau, 1973, p. 292).

Marcus Aurelius in the Meditations was a Roman Stoic who earlier had addressed the moral requirements of a secular state by speaking of man's interdependence within a moral order. In Aurelius the secular state is perceived as a corporate body-- an organic and moral whole which described an interdependent community and the duty and responsibilities of its members with it. Using an anatomical metaphor, Aurelius argued that God designed a natural order for this world and it is the duty of every man to do his part in this order-- to live willingly in community, helping, obligated and benefiting from social

interaction and interdependency with others. His metaphor of the body politic is almost as famous as Rousseau's "corporate body" of the General Will:

If thou didst ever see a hand cut off, or a foot, or a head, lying any where apart from the rest of the body, such does a man make himself, as far as he can, who is not content with what happens, and separates himself from others, or does anything unsocial (cited in Kirk, 1974, p. 124).

### Patriarchal Theory

Aristotle's patriarchal theory of the formation of the state, emphasizes union out of other united entities. The individual is united in families; the "unity" of families comes in existence to meet daily needs, and then comprises villages "united in a single community." This unity is the result of natural, historical and evolutionary progression of society: "...so is the state [natural] for it is the end of them, and the [completed] nature is the end." The true nature of a thing is when it is "fully developed," (whether it is a "man, a horse, or a family") and "the final cause and end of a thing is the best" (Politics, 1952, Book I, p. 446). The state has the potential for excellence, because it is unified, that is, a moral whole. The state is not formed by an abstract Lockean contract of wills.

Adams was thus one of many "commonwealthmen" who believed in a moral republic. This ideal of a moral polity can be found in the early charters, in the first state constitutions, and the Constitution itself. These took the form of covenants and compacts which demonstrated certain principles, such as concern

for the common good and community as opposed to selfish private interests, and these principles were supported by custom and usage (Handlin and Handlin, 1969). These early documents, "the American parchment regime" (Horwitz, 1986, p. 25), reminded Americans, as Eric Voegelin notes, of "the truth of the soul and of society" and that

no free government, or the blessings of liberty, can be preserved by any people but by firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles (cited in Kirk, 1974, p. 11)

## Commonwealth as Covenant

### Nature of Covenant

A commonwealth, or Latin civitas is created when consenting members of the polity submit their wills to the whole or common good for sake of unity. The concept of a covenant is closely related to commonwealth. Thomas Hobbes defined a "secular" commonwealth in terms of a covenant to secure natural rights. This hypothetical "covenant" in a state of nature guarantees a person protection from the state. In Leviathan, a covenant or contract is a quid pro quo arrangement between the government and the governed, the protector and the protected:

[I]t is a real unity of them all, in one and the same person, made by covenant of every man, in such a manner, as if every man should say to every man, I authorize and live up my right of governing myself, to this condition, that thou give up the right to him, and authorize all his actions in like manner. This done, the

multitude united in one person, is called a commonwealth (Hobbes, 1962/1651, p. 132).

Many of the founding charters of the first commonwealths in America are covenants but have different basis than Hobbes' "covenant" or the Lockean social contract. The idea of a covenant or compact is not a hypothetical construct of citizens seeking protection from each other's "predatory self-interest" and the protection of the state. In the early colonial period, the "vital need for cooperative behavior among people on the edge of extinction, and the strong communitarian basis of their religion, made the commitment to the common good essential and real" (Lutz 1988, p. 29) and sovereignty resided in the people who formed the covenants themselves (Wood, 1969). This commitment to the common good, Lutz argues, had its effect on the design of political institutions.

The American covenants were a product of experience and traditions of civic virtue that predate the Enlightenment. Kendall and Carey (1970) observe, for example, that in the Mayflower Compact, the values of justice and common good are overriding values and that most of the regime values expressed are relative to humanity, civility and Christianity--not to individual rights. They demonstrate the value of community, a covenant relationship between government and citizens based on a reciprocity of rights and obligations frequently neglected in the American natural rights tradition. John Rohr (1989) notes that "...the emphasis on individual rights is an important American principle and tradition," but that such an emphasis



tells only part of the story and a rather one-sided part at that. The part of the story it tells is the Lockean aspect of the American tradition. The story is told at the expense of the republican tradition which emphasizes community and civic virtue rather than individualism and individual rights (1989, p. 285).

### Covenant and Common Good

The concept of virtue and common good were central to concept of covenant as expressed throughout the seventeenth and eighteenth centuries (Lutz, 1988, p. 29). In America "To follow self-interest or the interest of a minority was the essence of corruption" (p. 29). This awareness of corruption meant following God's law as found in the Bible, not rationalist, Enlightenment ideals.

A covenant tradition of civic virtue in America informs its charters and constitutions. Kendall and Carey (1970) note that several state constitutions reflect the dikaio noetic logic of a covenant where the common good is an instrumentality. Most state constitutions subscribe to the New Hampshire dictum to "use such means and pursue such measures" as to be deemed "best for the public good" (p. 93). The citizens of New York, for example, "covenanted" themselves "to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state" (cited in Poore, 1878, Volume 3, p. 1332).

### Elements of Covenant

The early covenants in America were both political and church covenants where God was called upon as a witness (Lutz, 1988). In one of the earliest church covenants in Boston most of the elements of a religious covenant are apparent. The signers

solemnly and mutually in the presence of God and one another, covenant and combine ourselves together into a civil body Politick, for our better Ordering and Preservation (Lutz, 1986, p. 65-66).

The elements of "God", a "solemn oath," "body politic," "better ordering" (or moral order), and "preservation" are key symbols of the American covenant tradition that can be found in early covenants or compacts. Lutz argues that Jefferson was so attuned to expressing the American Mind relative to America's intellectual and colonial experience that the Declaration of Independence "is in fact a covenant" (Lutz, 1986, p. 124). Taken together with the first national constitution, the Articles of Confederation, it is America's national compact. It contains the basic common commitments of a people and a regime. It has the following covenant elements: It creates a community of "good People of these Colonies;" it has unanimity among the signers; it has God as a witness: "[A]ppealing to the Supreme Judge of the world for the rectitude of our intentions" (p. 123). The grievances against the king define the national commitment or duty, especially "how the legislature was supposed to engage in a deliberative process to seek the common good" (p. 121). These elements are

missing from the Hobbesian covenant or the Lockean contract which regards government as a police or regulatory power.

### Covenants, Compacts, Contracts

A genuine, historical covenant, contract, or compact treats civil government as a "partnership" among mutual consenters or signers. There are subtle differences, however, between a "contract," "compact" and "covenant" and colonists were inconsistent in their use of these terms (Lutz, 1988, p. 16). Lutz notes that "contract" has a restricted commitment to a business relative to small groups of people without the status of law; that a compact had the effect of law but implied an agreement and knit "the component parts closely and firmly into a whole" community (p. 17). A covenant is a more serious agreement witnessed by a higher authority and is "essentially an oath" (p. 17). As an English legal term with legal validity under seal of the Crown (Black's Law Dictionary, 1990, p. 363), it is a morally binding commitment or obligation. It "establishes a political community," "with God as witness and securer" and with obligation resting upon consent "secured by the oath" (Lutz, 1988, p. 17).

Lutz further notes that a compact with both God and the Crown as securer is both a civil and a religious covenant. Both covenants and compacts are "consent-based oaths upon which obligation to the community rests" (p. 18). For this reason a covenant is also a "promise" in Blacks Dictionary of Law (1990).<sup>9</sup> Lutz observes that because of these precedents and "promises," in less

than two decades from the early Pilgrim settlements America had evolved an historically important idea--the written constitution. He notes that the early Pilgrim Code of Law put into practice and institutions, and with its covenant elements became "the first modern constitution--a constitution that is also a covenant" (Lutz, 1988, p. 27). "One hundred forty years later, Americans would use these same symbols as the basis not only for their first state constitutions but also for breaking with Great Britain" (p. 27).

Thus, the covenant tradition in America demonstrates that the emphasis on individual rights and social contract should "not be at the expense of a sense of political community" (Rohr, 1989, p. 285). This commonwealth concept became vital to the founding of the free, tax-supported American common school.

### Puritan Polity

The Puritans established the first society of record, the Plymouth Colony, on the basis of a covenant. The Mayflower Compact stated that "we do combine and covenant together to create a civil body politics...etc."(cited in Evans, 1984, p. 131). Puritan covenant theory was expressed with great clarity with ideas of covenant derived from the Bible and more than likely the Vindiciae Contra Tyrannos, published in London 69 years prior to Locke's Treatise on Civil Government (Evans, 1984).

The politics of the Puritans also reflected Christian constitutionalism and congregationalism.<sup>10</sup> Their ideas of covenant made them more democratic than we have believed.<sup>11</sup> The Puritan "compact" was a practical means to participate in government in the interest of all in the "security and happiness of the constituent individuals" (Worcestersiensis, Massachusetts Spy, August 14, 1776, cited in Handlin and Handlin, 1969, p. 31).

Lindsay (1962) emphasizes the practical and experiential aspects of the covenant doctrine. He notes that the Puritans were the first Americans who actually experienced working in a small and thoroughly democratic society, the Puritan congregation, which made for a "priesthood" or "fellowship of believers" (Lindsay, 1962, p. 105). In the Puritan commonwealth all men were expected to pursue private interests. They understood that those in power, the representatives of the people, "...would find their actions set within the framework of the commonwealth idea, of the broader concerns that comprehended the whole community" (Handlin and Handlin, 1969, p. 31).

Thus, the notion of the state as a public trust reflected both rights and a moral duty on the part of both leaders and citizens alike. This common bond of trust between the state that legally establishes public schools and the obligation of the people to support them with public tax funds, is the trust that sustains and supports the American common school. Other basic regime values, however, inform the underlying reciprocity of this covenant relationship.

### Covenant to Constitution: The Parchment Regime

The American covenant tradition demonstrates that the commonwealth and Constitution are founded on basic moral principles of the common good, trust, and loyalty--values which provide a "bounded" or "mean morality" (Goldwin, 1986, p. 34). Regime values such as duty, liberty, or virtue embedded in the early covenants, charters, and state constitutions are normative principles that define the present American regime. The early covenant agreements of the founding are part of the "parchment regime" of the American republic (Horwitz, 1986, p. 10). As Horwitz notes, the regime values within the "parchment regime" represent basically what we stand for, and are the expression of what our goals are. Because such principles govern and fix our way of life, they are "founding" principles that all Americans have inherited and share in common. Even the act of making constitutions itself is a "regime value" and "habit of mind" that expresses the notion of commitment, duty, and civic responsibility within the regime (Kendall and Carey, 1970, p. 22).

Each of the following documents express the commonwealth ideal of the common good through the language of a covenant, compact, or contract that obligates citizens to the polity. The early documents were written by practical men, practiced by men, and believed in by real men. They therefore form a significant part of our commonwealth tradition and ideology which the founders of public schools reclaimed as a common patrimony.

### Massachusetts Preamble: A Puritan Covenant

In the preamble to the "Constitution of the Commonwealth of Massachusetts" (Journal of Convention, 1780, pp. 43, 222, cited by Handlin and Handlin, p. 30) we recognize the classical notion of a polis or body politic. It contains the Puritan concept of "covenant," a concept which appears to be superimposed onto the Greek notion of "polis" and the idea of social compact. The Preamble to the constitution in the Commonwealth of Massachusetts reads that "the end of the institution, maintenance and administration of government" must

secure the existence of the body-politic...[,]a voluntary association of individuals... [or] social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good (cited in Handlin and Handlin, 1969, p. 222).

### Mayflower Compact

When we look to the Mayflower Compact (and several other documents that establish the nation as a "commonwealth," specifically, The Fundamental Orders of Connecticut, and the Virginia Declaration of Rights, one notes that the signers combine themselves into a body politic for the common good. The Mayflower Compact was written for "our better ordering," or for building of a good order. The signers solemnly, "as a deliberate act," and "in the Presence of God," "covenant [promise] and combine [themselves] into a civil body politic" for the purpose to "enact, constitute, and frame such just and equal laws, ordinances,

acts, constitutions, and offices, as from time to time shall be thought most meet and convenient for the general good of the colony" and promise "all due Submission and Obedience" to these laws" (cited in Kendall and Carey, 1970, p. 29).

In the Mayflower Compact, we note the regime values of equity and common good. "[T]he general good herein defined is that just laws apply equally to all," and that these require "due obedience." Further, "meetness" and "convenience" for the general good calling for continuous deliberation ("from time to time"), suggest that if in the future the laws are not thought to be "meet" and "convenient" for the common or general good, there would be no promise to obey. As Kendall and Carey interpret: "The signers owe not obedience but only due obedience, and not to all laws but only to such just and equal laws as are thought to contribute to the general good" (p. 38).

The supreme values of the compact then are individual rights, but only as they are of a highly general or derivative nature. Other more generic rights essential to a commonwealth are enumerated: a right to justice, a right to the performance by each signer, whose duties to be imposed by the laws are thought to be conducive to the "general good". By the "general good," one assumes that the Puritan signers thought that rights would result from future and ongoing deliberation of what specifically constituted justice and the general good embodied in laws, and that these provisions therefore represented a consensus



about those things that would constitute justice and the general good in the future.

### Fundamental Orders of Connecticut

The Fundamental Orders of Connecticut are also a covenant, or binding contract in the commonwealth tradition. It states: "We do associate and conjoin ourselves to be as one Public State or Commonwealth: and...do enter into Combination and Confederation together...." It is significant that nineteen years after the Mayflower Compact, the "civil body politic" (of the Mayflower Compact) had become a "public state or Commonwealth" in the state of Connecticut. The task of "better ordering" of the Mayflower Compact had become a more differentiated task of bringing into being "orderly and decent government" in accordance with "Laws, Rules, Orders, and decrees," which moved the American notion of polity further along toward a procedural democracy (cited in Kendall and Carey, 1970, p. 35).

Two years after the Connecticut Fundamental Orders, the Massachusetts Body of Liberties attempted to enumerate a bill of rights (Kendall and Carey, 1970, p. 36). The symbolic language in this document focused on the common good and the principles of commonality: "liberties, immunities and privileges...due to every man." The document also called on "humanity, civility [in the sense of "civil body politics of the Mayflower Compact] and Christianity"

for the "tranquility and stability of Churches and Commonwealth" (cited in Kendall and Carey, 1970, p. 49).

In the Fundamental Orders of Connecticut, principles of justice and equity circumscribe other freedoms set down which are "due to every man in his place and proportion." Even though it enumerates rights, this deliberative assembly in early Massachusetts reflected the concept of unanimous consent as though signing a loyalty oath: "The people, we might say, is what the people believes, knows itself to believe, and can be counted upon to act on" (cited in Kendall and Carey, 1970, p. 54). The Connecticut Orders also contain such generic values as "humanity" and civility" suggesting unanimous acceptance of a common humanity and civility as well as Christianity as a transcendent truth which has served as a standard for the common good throughout centuries.

Kendall and Carey (1970) argue that these early covenants serve as "the potential symbol of virtuous people who understand themselves to be virtuous because they had subordinated themselves as a body," or to their society as "one moral whole" as well as to higher laws that bind all in conscience and duty: "...to the transcendent truth of the soul and of society." Their signatures demonstrated that they had subordinated their rights and liberties to that truth (p. 55).

Thus, the American "commonwealth" has origins that suggests morally binding covenant relationships expressed as dues or obligations as well as rights. When our ancestors spoke of rights as "liberties, immunities, and privileges" they must have meant self-government, consensus, and the common good that would

allow for the fullest realization of the principles of humanity, civility and Christianity. The only "rights" that individuals can claim are those called for by the common good with deliberative assemblies making such determinations.

### Virginia Declaration of Rights

However, by the time Americans drafted the Virginia Bill of Rights (Virginia Declaration of Rights), the rhetoric delineating the common good suggests that this moral order had changed. It resurfaces in the Virginia Declaration of Rights which describes individual rights as "inherent." But we note that they pertain specifically to "the good people of Virginia" who serve as "the basis and foundation of government." This phraseology has replaced the "better ordering" phrases for self government in the Mayflower Compact, but advances the concept of civic virtue in the regime. The "general good" of the Mayflower Compact is restated as the government being instituted for the "common benefit, protection, and security, of the people," and for "producing the greatest happiness and safety." Similar language is found in the Preamble to the U.S. Constitution (Poore, 1898, Volume 3, p. 1140).

Kendall and Carey (1970) note that the right of suffrage in the Virginia Declaration of Rights is granted to men who have provided "sufficient evidence of permanent common interest with, and attachment to the community," and requires the legislature to decide, considering the common good, who may vote. The responsibility of the legislature to decide reinforces the plenary power

legislatures, but also requires citizens to demonstrate their own concern for the common good, faith or loyalty, and "attachment to the community" (p. 60).

Rights and responsibilities or duties go hand in hand.

### Preamble

The Preamble to the United States Constitution reflects in very general language the purpose, end, or logic of the founding of the American commonwealth. It assigns to government its essential meaning to be understood and exercised through the general will of all people who bind themselves to do the common good. "Equality" is subsumed by the larger term "justice," for equality can be defined in many conflicting ways and in many circumstances--as "one man one vote, as "all men, as "all men who count," or "all men before God." In this way the Preamble sets the tone of "constitutional morality" (Kendall and Carey, 1970, p. 98). Rather than spell out specific rights or propositions, it reflects a concept of order. It is the concept "one moral whole" expressed in the language of a covenant, trust, or promise, duty or obligation:

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

First, we are reminded of our commitments and obligations since we the people "ordains and establish[es] this Constitution." Secondly, it holds out only

a promise of "a more perfect union" suggesting that the present order is not a "perfect union" and that men have a moral and legal responsibility to improve, maintain, and cherish it. Thirdly, it is a union to be perfected by Justice, Tranquility, "common defense," and "blessings of liberty." The word "justice" is not qualified. It appears to be a comprehensive term that ensures the basic or "inalienable" or lesser rights of the Declaration. The "blessings of liberty" were not known well enough to be "secured" through the processes of government and deliberate choice. Equality is not mentioned, but the Preamble does not betray this ideal of the Declaration. The Preamble enjoys "constitutional status" and therefore provides for new commitments (Kendall and Carey, 1970).

### Declaration of Independence

Lutz (1988) shows the covenant aspects of Jefferson's Declaration, which is therefore more than a call to revolution or a mere assertion of rights. Like the other covenant documents, the Declaration also appears to balance rights and corresponding moral obligation between individuals and the state, even though it is derived practically word for word from Locke (Ritchie, 1952). One notes its primarily political in purpose: "to dissolve the political bands," that united us to England. Like the Virginia Bill of Rights, our Declaration of Independence is a statement of government obligation to its citizens that contains the right to revolution:

That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community;...and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community have an indubitable right to reform, alter, or abolish, in such manner as shall be judged most conducive to the public weal.

A closer examination reveals for a national purpose only a promise that the Declaration "will" provide for "Safety and Happiness," that only "shall seem" to Americans as "most likely to effect their Safety and Happiness." Kendall and Carey note that such vague language only slightly resembles the powerful commitment of the "better ordering" of the Mayflower Compact (1970, p. 82).

Ritchie (1952), like Rohr (1989), also notes a distinct break with the commonwealth tradition in its emphasis on natural rights. In comparing the Declaration of Rights of the Philadelphia Congress of 1774 with the Declaration of Independence in 1776, for example, Ritchie observes that the natural rights as a doctrine "appears full grown" as it does in the French Declarations of 1791 and 1793 (p. 13). Jefferson's Declaration, like the French, Ritchie argues, proclaims the "inalienable" rights simply by nature or birth, that is from "nature and nature's god," and not from inheritance or custom. Its natural right to liberties is "detached from history," as well as from all "Biblical or theological wrappings" (p. 11). In contrast, he notes, the Philadelphia document, just two years prior to the Declaration, appealed to "the principles of the English constitution and the

several charters or compacts" in addition to "the immutable laws of nature" (p. 11). The Declaration of Independence, Ritchie argues, thus asserts natural rights entirely independent of any historical, or quasi-historical setting:

The real significance of the appeal to nature is, in the first place the negative element in the appeal; it is an appeal against authorities that had lost their sacredness, against institutions that had outlived their usefulness....(p. 13).

The Declaration also provides a new emphasis on the notion of equality. Many intellectuals and policy makers have seen in the phrase "all men are created equal" a "'mandate' for action which involves, inter alia, a restructuring of American society so as to produce a condition of equality" (Kendall and Carey, 1970, footnote 10, p. 84). Elevating equality to the status of a "regime value" has also occurred in Lincoln's famous Gettysburg Address, so that together both documents have caused a "derailment in our [commonwealth] tradition" (Kendall and Carey, p. 84). Says Ritchie, "Our 'natural right' of pursuing or obtaining happiness is merely a generalization of the right of the individual to be left alone" (1952, p. 272). This clearly is not in the commonwealth spirit of a covenant or compact where a sense of the common good and community prevails.

When we examine the Gettysburg Address we are asked to consider only one "proposition" as the purpose of the founding: that all men are created equal.

Four score and seven years ago, our fathers brought forth on this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

This public utterance is important to American parchment regime, yet, like the Declaration, it gives no credence to older prescriptive charters and "fixes our beginning as a people," to the Declaration ("four score and seven years" from 1776), which gives the Declaration "constitutional status" over and above the United States Constitution (Kendall and Carey, 1970, p. 88).

In view of the prescriptive character of the covenant tradition in America, it is highly unlikely that we would embrace "equality" as a binding commitment or as our only "regime value," especially when most state constitutions subscribed to the New Hampshire dictum to "use such means and pursue such measures" as to be deemed "best for the public good" (Kendall and Carey, 1970, p. 94). In fact, emphasis in school finance litigation in recent years has been placed on equity, rather than equality, especially since Brown v. Board of Education (1954).

### Commonwealth Symbols and Principles

Kendall and Carey (1970) argue that the framers of the United States Constitution recognized that they were "faithful heirs of symbolization of the Mayflower compact," and therefore placed "justice," the "general welfare," or the "general good" highest among the goods of the emergent union. They argue that it is for this reason that Framers were reluctant to enumerate any specific list of individual rights in a Bill of Rights called for specifically by Jefferson and the Anti-Federalists at the time of the Constitutional Convention (p. 39).



They also note that the language of moderation in these early documents recognizes the "general good" as a constitutional ideal or end of state that was difficult to achieve. The drafters and signers of these early founding documents were practical men who did not see themselves as "breaking new ground," or even establishing a new world order as some Americans had declared. They were only intent upon building on foundations they had known from the past, i.e. the glorification of God, the advancement of the faith, justice, and the common good (p. 41).

Many American compacts were "secularized covenants" derived from the biblical and classical tradition (Lutz, 1988, p. 34). No one document in the American "parchment regime" defines our supreme ideological commitment. However, a glimpse into the early founding charters, documents, state constitutions, and public utterances provides abundant evidence of the commonwealth tradition in America that predates any Lockean, natural rights ideology. From this tradition we acquire our notion of rights and duties, our obligations as citizens to serve the common good, and our concept of the purpose of government.

### Commonwealth End of Government

The commonwealth and Aristotelian ideal of the ends of state was "a question most frequently posed by eighteenth-century constitutional theorists (Reid, 1988, p. 78). Americans developed an idea of the purpose of government

from covenant experience, classical theory, and the English constitution. Reid (1988) asserts that "The common good as the end of government seemed to override any conception of civil rights as an end to be sought" (p. 79). One of the few exceptions was Governor Thomas Hutchinson who argued that "the Rights and Liberties of the People...are the great Ends of Government" (p. 79).

This concern for the ends or purposes of state involved the founders at the time of the American Revolution in probing constitutional restraints to be placed on government. Jean Jacques Burlamaqui contended: "Let the safety of the people be the supreme law. This maxim ought to be the principal end of all his actions" (cited in Lutz, 1988, p. 175).

According to Reid, four ends of government were most frequently mentioned in the eighteenth century. First, "liberty" was seen to be the "direct End: of the British constitution." Government existed "for the preservation of civil liberty" or "the enjoyment of liberty" (Reid, 1988, p. 17). The second end of state was "security" or (in the words of the Massachusetts Provincial Congress), "the Protection and Security of the People" (p. 17). The third end of government was "good" and this was stated in many different ways: as "the good of the community," as "the good of society," as "the good of the whole Body," as "the good of the subject," as "the good of the people," as "the Good and Welfare" of the people, and as "the common good and safety of society" (p. 17).

A fourth end of government, related to "good" was just plain "happiness," not individual happiness as in pleasure or the absence of pain, but "Public

Happiness," "the Security and Happiness of society," the "Good and Happiness" and the "liberty and happiness of mankind." To argue for "good" or "happiness" as the end of government was "a familiar, taught way of arguing constitutional law in the seventeenth and eighteenth centuries" (Reid, 1988, p. 80). Thomas Rutherford in 1740 drew from "the end of civil society," "the common benefit of the whole,"--the right "in the collective body" to rebel when governors "make their continuance in power plainly and notoriously inconsistent with such common benefit" (cited in Reid, 1988, p. 80). John Dickinson argued that "The happiness of the people is the end...of the Constitution" in the Continental Congress (cited in Reid, p. 81).

### Commonwealth Equality

As to equality and the precise meaning of Jefferson's "[A]ll men are created equal" phrases in the Declaration, John Dickinson's constitutional jurisprudence reflects the commonwealth and common law notion of "equality in rights." He held that "the right to equality was more than a civil right, it was also a source of rights" (Reid, 1988, p. 83). Dickinson argued that Americans were entitled to the same rights as the British, specifically that "the inhabitants of the colonies are entitled to the same rights and liberties within these colonies, that the subjects born in England are entitled to within that realm" (Dickinson cited by Reid, 1988, p. 82).

The Declaration proclaims as self evident that "[A]ll men are created equal," a position central to Locke's writing (Lutz, 1988, p. 119). What is not realized by many contemporary Americans, from the standpoint of constitutional history, is that the Pennsylvania Convention had resolved prior to the Declaration that Americans "are entitled to the same rights and liberties within these colonies that the subjects born in England are entitled to within that realm" (Reid, 1988, p. 83).

Modern Americans interpret "equality," especially since the Gettysburg Address, as personal equality among men as in social leveling or property redistribution. Reid (1988) points out that equality as it was understood in the eighteenth century was "isonomic" (p. 84). This means that people were entitled to "the advantage of just and equal laws," as stated by Stephen Hopkins, Rhode Island's governor (p. 85), or as Edmund Burke phrased it: "to equal rights, and equal rights to unequal things" (Burke cited in Reid, p. 84).

The concept of "equality in rights" supports the proposition that what Jefferson meant, in attempting to express the true mind of all Americans at the time of the Revolution, by the phrase "all men are created equal" meant only that the American people were entitled to an equality of rights with the British, i.e. the "right to equality between peoples in different parts of the Empire" (Reid, 1988, p. 85). David Griffith in the pre-revolutionary debates concluded that Americans were "contending with their equals, only; [that is,] with those who

are ordained to have no greater share of power than themselves," i.e. the English (cited in Reid, p. 85). However, there is considerable evidence now from Jefferson's draft of a prelude to the Declaration, which was never approved by Congress, that he viewed equality to be for people of unequal status, i.e. slaves (Wilson, 1992).

### **Commonwealth as Constitution**

#### **Doctrine of Prescription**

When we read the Preamble to the United States Constitution which begins "We the people," we are reminded of the phrase: 'We whose names are undersigned' in the Mayflower Compact. This tells us that the American constitution did not suddenly spring into being. "The continuity was rooted not only in documents and institutions but also in a way of view and approaching politics" (Lutz, 1988, p. 49). American documents are "symbols of the American tradition" (Kendall and Carey, 1970) and speak to the "prescriptive" nature of a commonwealth.

The American constitutional legacy includes many inheritances. It consists of common commitments derived directly from early state constitutions, compacts, and covenants a tradition that also includes the English common law, commonwealth theory of the philosophers and the Old Testament. Together

these influences have created a people and established a government (Lutz, 1988, p. 112).

Common commitments and values have taken many years of colonial experience in the wilderness and towns to evolve. If the Constitution itself is a covenant, as Lutz argues, and The Declaration is not a Lockean social contract, then the American Constitution of which The Declaration is a part is a national compact that originated with the very first charter drawn up on American shores.

In this sense the American Constitution is "prescriptive." The term "prescriptive" in the The Macmillan Dictionary means a "process of acquiring right or title to property by virtue of having used or possessed it from time immemorial or for a long period of time (Halsey, 1973, p. 792).

A "prescriptive" constitution or "prescriptive" rights imply that whatever rights or privileges or responsibilities Americans may claim or enjoy in society are common inheritances that express our obligation to posterity and to each other, i.e. a partnership in virtue. A politics of prescription links us to the polity in ways that pure natural rights or predatory self-interest in society cannot do, and is thus a very essential foundational part of the American commonwealth and the American common school, its vehicle for full citizenship. "Prescription" is part of the moral "language" of commonwealth that addresses the full benefits of citizenship for everyone in society.

### Doctrine of the Ancient Constitution

A "prescriptive" constitution then expresses the notion of the "ancient constitution" and the idea of Original Contract dating at least to Magna Carta. The doctrine of the "ancient constitution" is the source of this concept of constitutional "prescription" as well as "prescriptive" or "charter rights." It is of classical origin revitalized in the year 1600. According to Pocock it was the work of common lawyers, developed by assumptions about the common laws of England that were "deeply implanted in the mind of everyone trained in that study" (Pocock, 1971, p. 209). Since the English common law is part of our own legal and cultural inheritance (Alexander and Alexander, 1992), it is possible to trace many conceptions of constitution and commonwealth to this doctrine.

In the eighteenth century Age of Reason when natural rights were toppling the French Regime, Burke felt the necessity of re-stating the premises of men who had faith in an enduring order of life (Kirk, 1953). Many were seeking the foundation of authority in morals and politics. The experience of the colonies--a collective wisdom, tradition, tempered by expedience is what made Burke elevate "to the dignity of social principles those conventions and customs...most men accepted with an unreflecting confidence" (p. 33).

The English, unlike Americans, have no one written constitution. Thus the "ancient constitution" was not formed by fiat or individual command. It is based on the collective wisdom of the race and has several assumptions: (a) that all the English laws may be termed common law; (b) that common law was

common custom, arising from common usage and applied in the courts; (c) that all custom was immemorial or used since time out of mind (Pocock, 1971, p. 209). Legal history thus became a series of declarations that the law was immemorial. Since the English constitution is an unwritten constitution, the "ancient constitution" is the means of distributing law by declaring precedents and applications which had existed from the beginning of English history and the earliest of records and evidences (p. 209).

A constitution of "prescription or the "ancient constitution" of an organized community is not composed of atomistical or self-regarding individuals. It exists

by the disposition of a stupendous wisdom, moulding together the great mysterious incorporation of the human race, the whole, at one time, is never old, or middle-aged, or young, but in a condition of unchangeable constancy, moves on through the varied tenor of perpetual decay, fall, renovation, and progression (Burke, 1808, Volume 5, p. 307).

Burke argued that the frame of polity is a common bond of community: the "image of a relation in blood" (Burke, p. 307). The commonwealth is a family by virtue of entailing our inheritance of liberties, based upon a mortmain which makes the family an immortal corporation. The commonwealth, like the English constitution itself, is not a biological unity, but a trust which secures our liberties "by vesting the possession of them in an immortal continuity," through the laws of landed property (Burke, p. 307).



## Prescriptive Constitution

Burke in addressing Parliament said: "Our constitution is a prescriptive constitution; it is a constitution whose sole authority is that it has existed time out of mind...." (cited in Pocock, 1971, p. 219). Sir Edward Coke had argued that law's origin does not lie in any philosophical assumption of individual natural right; the common law is made up of innumerable decisions and digests of decisions which it contains. Coke, Blackstone and other legal scholars or black letter philosophers argued that no one individual through pure thought could reproduce the infinitely complex train of experiences and decisions which had led the law to be what it was.<sup>12</sup>

Burke argues another ground of authority: "presumption."

It is a presumption in favour of any settled scheme of government against any untried project....Because a nation is not an idea only of local extent, and individual momentary aggregation; but it is an idea of continuity, which extends in time as well as in numbers and in space..... The Individual is foolish; the multitude, for the moment, is foolish, when they are without deliberation; but the species is wise, and, when time is given to it, as a species it always acts right (Burke, cited in Pocock, 1971, p. 226).

Burke reasons "that reason alone could never chain men to duty."

Without respect of custom "the whole chain and continuity of the commonwealth would be broken" (Kirk, 1953, p. 53). Prescription and presumption did not mean lack of progress or change. Burke writing to Sir Hercules Langrische on the Catholics writes: "We must all obey the great law of change" (Burke, 1808, volume 2, p. 340), but a moral order could not allow individuals to flaunt

natural rights as simple aspirations of pleasure or pain. In his speech on Fox's East India Bill he states: "The rights of men...the natural rights of mankind were sacred things," but they are "chartered rights of men" (Burke, 1808, Volume 2, p. 278).

### Original Contract and Charter Rights

By "chartered rights" of men Burke means the "original contract" between ruler and ruled (Reid, 1986, p. 132). The term "contract" was used freely on both sides of the Atlantic. But the concept of an "Original Contract" originated with a political commentator in eighteenth century England who defined the British constitution as contract:

[T]he constitution of England is nothing more than a solemn compact between king and people, for the mutual happiness and support of both (Reid, 1986, p. 132).

The idea of contract was thus never attributed to Locke alone; it was a basic legal doctrine of the English constitution in use long before John Locke was ever born (p. 134). Alexander Hamilton, for example, understood the term "contract" to mean a statement of constitutional principle: "the origin of all civil government, justly established, must be a voluntary compact between the rulers and the ruled" (Hamilton cited in Reid, 1986, p. 132). It had also been called "contract of government, "contract of submission," and "constitutional contract" (p. 134). John Tucker envisioned the "original contract" in his Massachusetts election sermon for 1771 as a covenant:

Its constitutional laws are comprised in Magna-Charta, or the great charter of the nation. This contains, in general, the liberties and privileges of the people, and is, virtually, a compact between the King and them; the reigning Prince, explicitly engaging, by solemn oath, to govern according to the law:--Beyond the extent of these then, or contrary to them, he can have no rightful authority at all (cited in Reid, 1986, p. 138).

The "ancient constitution", i.e. the "unwritten" English Constitution, included the Magna Carta, the Petition of Right, and "any other English constitutional document ...said to be the contract" (Reid, 1986, p. 138). Thus the terms of the "original contract" were not just statutes and rule of law. They were "found by the same method as the constitution of Great Britain and the common law of England were found: by custom" (p. 138).

Burke's prescriptive constitution is a skeptical empiricist's response to the new modern natural law conception of natural right. Believing in the "eternal contract," he believed that the English constitution was both immemorial and customary and therefore better than individual choice. Faced with the Lockean, rationalist doctrine of natural right, Burke, in his aragument on "Reform of Representation" before Parliament, relied upon traditional common-law doctrine which had its basis in the natural law:

A nation is not an idea only of local extent, and individual momentary aggregation; but it is an idea of continuity. ....And this is a choice not on one day...; it is a deliberate election of ages and of generations; it is a constitution made by what is ten thousand times better than choice, it is made by the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people (Burke, 1808, Volume 6, p. 145-147).

### Doctrine of Adoption

In 1775, John Adams proclaimed the common law of England to be the law of nature and the birthright of every American. In Novanglus we discover:

Our ancestors were entitled to the common law of England when they emigrated, that is, to just so much of it as they pleased to adopt...as to British liberties, we scarcely know what they are, as the liberties of England and Scotland are not precisely the same to this day. English liberties are but certain rights of nature reserved to the citizen by the English constitution, when they crossed the Atlantic (cited in McClellan, 1971, p. 160).

The theory of prescription and adoption has significance for American constitutional development and jurisprudence. It has special relevance to the American common school as it identifies the public interest and citizens' obligations in a commonwealth. Whether Americans believe the source of their civic autonomy comes from prescriptive authority or natural rights determines the sense of duty or obligation to support state-supported institutions like schools.

Story states in his Commentaries that the common law was reflected in the charters of settlements:

The whole structure of our present jurisprudence stands upon the original foundations of the common law....It was not introduced as of original and universal obligation in its utmost latitude; but the limitations contained in the bosom of the common law itself, and indeed constituting a part of the law of nations, were affirmatively settled and recognized in the respective charters of settlements (1833, Volume 1, Sec. 157, p. 140).

Story, like Adams, contended that the English common law was the "uniform doctrine in America ever since settlement of the colonies," and that it is our

"birthright" and "inheritance." However, he noted, Americans adopted only what was "applicable to their situation (cited in McClellan, 1971, p. 141).

Whether the common law was adopted--and to what extent--has been a subject of debate. Story argued that "the whole structure" of American jurisprudence was based on English common law. He said that it was recognized in the colonial charters, and was the basis for American legal principles which included natural law principles as well as those of the law of nations which served as the foundation of the American legal system in the several states. Our rights are the rights of men, but of "expatriated men" (cited in McClellan, 1971, p. 141).

The Jeffersonians "...opposed the adoption of the common law and aspired to create an entirely new code of rules patterned along the lines of abstract rights, which the common law denied to men" (McClellan, 1971, p. 161). Story contended that "the whole structure" of American jurisprudence was based on common law and general legal principles that included natural law principles, and that together they "constituted the foundation of the American legal system in the several states" (McClellan, 1971, p. 164).

The Jeffersonian Republicans rejected this argument because (a) the English system of law at the time was thought to be despotic, and (b) such an interpretation flatly contradicted the basic Jeffersonian creed that the American Revolution was fought to secure the natural rights of men. Jefferson argued in a letter to Judge Story: "The truth is, that we brought with us the rights of men,

of expatriated men" (cited in McClellan, 1971, p. 164). Judge Story rebutted Jefferson's argument, not by discussing the Declaration of Independence, but by quoting from the Journal of Congress, "Declaration of Rights of the Colonies," October 14, 1774. Story noted that members of Congress had unanimously resolved, "That the respective colonies are entitled to the common law of England." They therefore did not claim the rights of expatriated men, but the "rights, liberties and immunities of free and natural born subjects within the realm of England" (Story, 1833, Volume 1, Sec. 157, p. 140).

Nathan Dane in his General Abridgement and Digest of American Law sensed the urgency "to ascertain what were the political principles on which their system was founded [when it became an independent nation]; and their moral character," which he regarded as "essential to be attended to in the support and administration of this [legal] system..." (cited in Story, 1852, pp. 394-95). He knew that how rights were construed would determine the nature of the obligation that citizens have to society, and the binding force of that obligation, particularly with regard to the public support of public institutions and the public welfare.

### Natural Rights Versus Prescriptive Rights

The adoption issue focussed on the "source" of American rights: whether they are natural rights, common law rights, or charter rights. The sources of rights and constitution are a subject for continuing debate because the American

constitution is a synthesis of complex and frequently unrelated and incompatible ideas. For example, the founders observed that "John Locke on natural rights supported both God's will as revealed in the Bible and the traditional guarantees of Magna Carta and the common law" (Lutz, 1988. p. 68). They found classical notions of virtue congruent with Christian virtue (Wood, 1969). As to whether we adopted Lockean theories of natural right, Gordon Wood argues with regard to the revolutionary argument that:

the Lockean notion of a social contract was not generally drawn upon by Americans in their dispute with Great Britain, for it had little relevance in explaining either the nature of their colonial charters or their relationship to the empire (p. 283).

The origin of such rights was debated, but generally it was conceded that they originated from government or Parliament itself (Reid, 1986, p. 71). We have noted earlier that Richard Henry Lee identified four sources of rights: natural law, the British constitution, colonial charters and immemorial custom (p. 65). In the preface to the Virginia edition of John Dickinson's Farmer's Letters, Richard Henry Lee praised Dickinson for

contending for our just and legal possession of property and freedom. A possession that has its foundation on the clearest principle of the law of nature, the most evident declarations of the English constitution, the plainest contract made between [the] Crown and our forefathers, and all these sealed and sanctified by the usage of near two hundred years (cited in Reid, 1986, p. 65).

Lee is not claiming rights here. He is stating the authority for rights, or why Americans had rights. He argues, like Story, that the so called "inalienable rights" (meaning "those that cannot be given up, taken away, or transferred")

were inherited, not granted rights, i.e. "prescriptive [or charter] rights." After a thorough investigation of colonial charters and constitutional debates, Reid concludes that by far the strongest claim for rights was to "uninterrupted possession" of rights which "meant not just prescription but also ownership and even custom" (Reid, 1986, p. 72). Burke made this concept of the "entailed inheritance" of rights known to all Americans:

You will observe, that from Magna Charta to the Declaration of Right, it has been the uniform policy of our constitution to claim and assert our liberties, as an entailed inheritance derived to us from our forefathers, and to be transmitted to our posterity; as an estate specially belonging to the people of this kingdom without any reference whatever to an other more general or prior right. By this means our constitution preserves an unity in so great a diversity of its parts. We have an inheritable crown; an inheritable peerage; and an house of commons and a people inheriting privileges, franchises and liberties, from a long line of ancestors (Burke, 1808, Volume 5, p. 34).

A libertarian constitutional scholar A.V. Dicey has noted, however, that the "law of the constitution [is] not the source but the consequence of the rights of individuals, as defined and enforced by the Courts" (cited in Reid, 1986, p. 75). Reid argues that the American Revolutionary perception of rights was that they were "coequal with the Constitution" (p. 76). The concept of prescriptive right rules out any system of right derived from abstract principles such as the Rights of Man or natural right (p. 75). Reid thus confirms Story's doctrine of adoption when he argues "that the constitution was a source of rights, not merely an apparatus for protecting rights" (p. 74).



As to the persistent claims to "natural rights, decreed by Providence, God-given, or abstract nature as a source of right," (p. 87): "There was little support among eighteen-century legal theorists for the proposition that nature could be authority for converting natural rights into positive rights" (p. 90). Even the American whigs did not claim a natural right "that was not already extant in British constitutional theory or English common law" (p. 92). Abstract natural rights have been carelessly associated with any references to such words as "covenant," "compact," or "contract" (p. 93). They are frequently assumed to be the same as positive, prescriptive or inherited rights that Story and other Americans believed they possessed (p. 94). Reid argues that Americans in the main at the time of the American Revolution and as they drafted their state constitutions thought their rights were "positive" and "prescriptive" rather than "natural." The debate over "natural" and "positive rights" has been a continuous debate, particularly vociferous among Englishmen in the eighteenth century (p. 95).

The most logical conclusion of the American understanding of the origin and authority of civil rights based on a interpretation of the Virginia Petition of 1770 is that rights were derived from "a combination of nature, the constitution, contract, and equality" (p. 94).

### Common Law and Constitution

The common law is an aspect of American constitutionalism that speaks to the notion of prescription in a commonwealth of duty and rights. The common law has special application in all cases of modern law and especially American education. Carr notes that common law "as prescribed by extensive judicial precedent reflects a synthesis, characterized by the school, wherein the highest interest of the individual and the pre-eminent interest of the community coincide (Carr, 1964, p. 42). Whatever knowledge Americans have acquired of law and contracts was "part of the common law legacy to American constitutionalism" (Lutz, 1988, p. 60).

The degree of adoption of the common law however has also been a point of contest for the principle of community and citizenship that it implies. The Continental Congress recognized English common law when it declared that "Government was instituted to promote the Welfare of Mankind, and ought to be administered for the Attainment of that End" (Reid, 1986, p. 80). From the English common law tradition we generate the core of the bill of rights and most of our legal rights that can be found in bills of rights throughout the colonial era and in early state constitutions prior to the drafting of the constitution<sup>13</sup> that date back to Magna Carta (Lutz, 1988).

Apparently, the English common law was used in all colonies, and by 1776 it had been "selectively appropriated and blended with the colonists'

principles and practices" (Lutz, 1988, p. 63). It has embellished and deepened the American constitutional tradition, though it "was not its sole source" (p. 62). The common law in England was "the primary means of limiting governmental power" whereas the idea of limited government is unique to America (p. 63).

## **Moral Constitution**

### **Constitution as Frame of Mind**

Aristotle said that when "...the citizens at large administer the state for the common interest, the government is called by the generic name, a constitution" (Politics, Book 3, p. 476). Any formal or constitutional arrangements should meet the requirements of the commonwealth, the most essential being the common good above any private claims of self-interest. Burke envisioned a civic and moral order in which "no man should be judge in his own cause" (Kirk, 1953, p. 47). Thus the constitution, law, and political system of a nation reflecting its traditions and customs contribute to a bounded or mean morality (Goldwin, 1986). However such a polity cannot be devoid of an ethical common ground so as to be found to be "morally reprehensible" (Frederickson, 1971, p. 311).

We have noted that the end or purpose of the state is the common good or public welfare embodied in its institutions, i.e. constitutions. Cassinelli argues that any consistent and continuing protection of civil liberties and entitlements

depends upon a certain kind of government, and a parliamentary government requires a special environment. To praise or condemn a pattern of public policy is unavoidably to praise or condemn the institutions producing it and the society underlying these institutions (Cassinelli, 1962, p. 47).

Saint Thomas Aquinas noted that justice gave individuals their due "with constant and perpetual will," which is a "habit" (habitus) (Aquinas, 1948, Volume 2, Section 2, p. 58). This we recognize is the older Aristotelian notion of virtue as "habit," a certain disposition conducive to civic virtue that governments ought to encourage. Modern philosophers recognize that it is governmental institutions which serve to foster or encourage these virtuous habits conducive to the common good. Governmental institutions, courts, law, and bureaucracies serve as "a repository of values embodied in our Constitution" (Terry, 1980, p. 408). Terry notes further that the American Constitution itself is "the foundation of our society, and symbolizes its frame of mind" (p. 406).

George Will expressed the concept of a moral constitution thusly:

The Constitution does not just distribute power, it does so in a cultural context of principles and beliefs and expectations about appropriate social outcome of the exercise of those powers...A constitution not only presupposes a census of "views" on fundamentals; it also presupposes concern for its own continuance. Therefore, it presupposes efforts to predispose rising generations to the "views" and habits and dispositions that underlie institutional arrangement. In this sense, a constitution is not only an allocator of power; it is also the polity's frame of mind (Will, 1983, p. 79).

### Judicial Morality

The most troublesome aspect of educational reform in a pluralistic society is conflict of values. This is because no modern standard or values prevail, and least of all in our relativist system of jurisprudence. Judges in modern times construe justice as a simple matter of public utility or a function of peace keeping between rival groups (Berns, 1957; Hittinger, 1990) and individuals who attach the claims of "natural rights" to personal preferences.

Constitutional morality is required in a virtuous republic. Yet, justice, like "virtue" or "equity," is difficult to define. Justinian's ideal of natural justice that became codified law was "to render every man his due" (D'Entreves, 1965). This appears to have been the underlying assumption of constitutional theory found in early state constitutions that recognized the mutual obligation between citizens and the state according to the common law (Lutz, 1988).

However, justice in modern courts of law is interpreted in utilitarian terms or as a balance of interests (Berns, 1969). A standard of moral relativism prevails that allows the courts to serve a "debate-stopper" function (Hittinger, 1990, p. 55). Argues Berns: "Supreme Court justices decide cases based on their conception of a good society modified by particular political and legal circumstances without any attempt to clarify their ideas of a good society (1969, p. 130). In Saia v. New York (1948) Justice Douglas wrote: "Courts must balance the various community interests in passing on the constitutionality of

local regulations...." This is pluralistic theory, but it is not commonwealth justice. According to the group theory of politics,

The judge is seen as an arbiter whose function is not to render judgment in favor of him whose cause is just, but as an arbiter who keeps the peace by effecting a kind of out-of court settlement in which he persuades both interests to modify their claims (Berns, 1957, p. 34).

The development of a utilitarian jurisprudence has been attributed to the influence of Roscoe Pound, the Dean of American philosophers of law. Justice in Pound's constitutional theory is based on utilitarian principles of "efficiency" and "waste." Pound writes:

We do not mean justice as the ideal relation among men. We mean a regime. We mean such an adjusting of relations and ordering of conduct as will make the goods of existence, the means of satisfying human claims to have things and go round as far as possible with the least friction and waste (cited in Hittinger, 1990, p. 21).

From this utilitarian legal standard we learn nothing about transcendent principles or the notion of prescriptive right which is every man's due in relation to other men in a commonwealth. We only know that social "goods" will be distributed with the "least friction and waste." This is not legal philosophy; it is a Laswellian concern for who gets what, when, and how, without deciding who gets what or whether they deserve it and reflects political trends and pressure groups (Berns, 1957, p. 147).

Benthamite as well as Austin's theories of law, known as "legal positivism," insist only that the law serves the "social good of debatestopping"

(Hittinger, 1990, p. 430). This could be "a particularly important goal in modern society, where tradition can no longer be counted upon to resolve disputes" (p. 430). D.A.J. Richards accepts the positivist assumption that valid law does not have to satisfy strong, substantive moral criteria. Constitutional theorists like Tribe and Richards recognize that natural law and natural rights both have "an honorable ancestry" and "want to refurbish it" (Hittinger, 1990, p. 496). But, for the most part, "natural law theory in this legal culture is dependent upon the progressive wing of liberalism" (p. 496).

#### Moral Issue of New Natural Rights

Walter Berns notes that there is also a tendency in recent times, particularly in First Amendment cases such as Terminiello v. Chicago to defend persons against the oppression of government to protect private individual rights (Berns, 1957). This doctrine of liberty against government, he argues dates to John Locke and Thomas Paine and is central to the libertarian creed. According to Berns (1957), Chief Justice Douglas acknowledged his own debt to Paine in Murdock v. Pennsylvania (1943, p. 111) where Paine in Rights of Man articulated a natural rights concept of liberty against government. Paine argued that

Man is not the enemy of man, but through the medium of a false system of government. Instead, therefore of exclaiming against the ambition of Kings, the exclamation should be directed against the principle of such governments; and instead of seeking to reform the

individual, the wisdom of a nation should apply itself to reform the system (cited in Berns, 1957, p. 116).

Paine's view that natural "society in every state is a blessing, but government, even in its best state, is but a necessary evil..." (cited in Berns, 1957, p. 116) does not reflect a positive view of government. It is opposed to the idea of commonwealth which finds its basis in natural and common law, the concept of prescriptive and charter rights which emphasize the historical bonds of mutual obligation or trust, with government conceived as a "partnership in virtue" in a process of ensuring rights as well as obligations.

Modern libertarian justice in the tradition of Bentham eschew abstractions and norms that might in any way be coercive or subordinate individual persons to state authority (Carey, 1984, p. 88). Therefore, there is no interest in or conception of an objective moral order which requires a search for the good life and that which is morally or ethically correct. Hittinger argues that problem of justice and the lack of judicial morality stems from "tethering natural rights to the value of individual autonomy and self-constitution" (Hittinger, 1990, p. 431). A natural rights basis for jurisprudence "...fails to supply criteria that would permit us in a principled way to distinguish between those liberties which are essential and those which are peripheral" (p. 431):

The new natural law theory suggests a particular sort of content that resists any political or legal governance other than the end of creating more zones of individual liberty. Given the recent resurrection of the ninth amendment, which is joined via the fourteenth amendment to the doctrine of incorporation, the new



theory has no self-limiting principles. It neither stops debates about rights, nor gives us a coherent moral picture of lawmaking and adjudication (p. 431).

Hittinger observes that "...there can be no doubt that Americans expect the law to recognize and uphold natural rights" (p. 438). He notes that claims to natural rights were made by state ratification conventions (p. 438).

Constitutional theories Wolfe argues in The Rise of Modern Judicial Review that the prestige of the Constitution arises from the belief that it "embodied or represented or effected certain principles of natural justice" (cited in Hittinger, 1990, p. 437). Van Loan argues that James Madison, when he introduced the amendments, spoke of "pre-existent rights of nature" (cited in Hittinger, p. 438). However, the Constitution does not mention explicitly either natural law or natural rights. It has been shown in the previous discussion that the authority of rights emanates from other sources as well and that natural rights are not the only basis for law.

The difference between colonial/revolutionary jurisprudence and modern jurisprudence is that natural law reasoning in the early days of the republic was not pitted against inherited institutions (Hittinger, 1990, p. 446). Natural principles of justice were known through the "collective experience in institutions of self-government", churches, and common law (p. 497), but "natural law was rarely, if ever conceived of as guaranteeing rights by which individuals "trump" (to use Ronald Dworkin's term) inherited institutions" (p. 446). Hittinger argues that this judicial reasoning is the basis for the new natural rights or "lifestyle

rights" of the late twentieth century giving which have given vent to unrestrained individualism and undermined the concept of civic duty.

### New Natural Rights

Libertarian political theory holds that a government functions properly "when it upholds justice in human relations by the standard of natural human rights" (Machan, cited in Hittinger, 1990, p. 44). This theory has spawned a new species of rights deemed "fundamental" called "lifestyle rights" (p. 30). Justice Brennan's "lifestyle" definition of "liberty" is described in a letter to Justice William O. Douglas in 1971:

I would identify three groups of fundamental freedoms that "liberty" encompasses: first, freedom from bodily restraint or inspection, freedom to do with one's body as one likes, and freedom to care for one's health and person; second, freedom of choice in the basic decisions of life, such as marriage, divorce, procreation, contraception, and the educating and upbringing of children; and third, autonomous control over the development and expression of one's intellect and personality (cited in Hittinger, 1990, p. 444).

Hittinger notes that early natural law theory was devoted to "issues of political self-determination," polarized around the "issue of property" (Hittinger, 1990, p. 445). Rights and liberties were regarded as individual property inherited and possessed. "This concept was inherited from an idealization of the medieval constitutional system in which law was neither public nor private, but the sum of all the people's subjective rights" (Reid, 1988, p. 106). We also note that "By the British Constitution, our best inheritance," the continental Congress

resolved that "rights, as well as duties, descend upon us" (Reid, 1988, p. 107). Thus there is considerable difference between the commonwealth view and the modern natural rights approach that makes citizens "immune from tradition and political institutions" (Hittinger, 1990, p. 447). In short, the new rights argue freedom from government whereas commonwealth rights argue freedom to and from government as well as the "right to be restrained" for the common good of all.

Berns argues in Freedom, Virtue, and the First Amendment (1957, p. 32) that to know the difference between a just and an unjust act, requires inevitably, some notion of an "ideal relation among men." The common good as commonwealth assumes that man is a political and social animal; that he is not alienated from the state, but is an integral part of a moral whole. It was Burke, the greatest of all "commonwealthmen" who makes man's rights as well as his duties especially relevant to today's climate of choice, private rights, and elective lifestyles:

We have obligations to mankind at large, which are not in consequence of any special voluntary pact. They arise from the relation of man to man, and the relation of man to God, which relations are not a matter of choice....When we marry, the choice is voluntary, but the duties are not a matter of choice....The instincts which give rise to this mysterious process of nature are not of our making. But out of physical causes, unknown to us, perhaps unknowable, arise moral duties, which, as we are able perfectly to comprehend, we are bound indispensably to perform (Burke, 1808, Volume 6, p. 79).

## Commonwealth Rights and Liberties

The problem of virtue in a commonwealth involves the perception of rights and liberties, or just how far individuals may be presumed to go in the free exercise of their liberties in the pursuit of private gain. Support of public schools requires compulsory taxation and therefore involves our notions of freedom, voluntarism, and local civic autonomy.

There has been no greater ambiguity in courts of justice than in the words "liberty" and "free" to define man's relations or obligation to the state. In a context of education, for example, "free schools" has meant, among other things, the "institution of gratuitous teaching at the cost of the nation" (Ritchie, 1952, p. 137). The difficulty is compounded by the fact that there are "negative" and "positive" liberties (p. 140)<sup>14</sup> and also by the fact that modern concept of freedom is no longer attached to virtue (Berns, 1969).

The following discussion of rights and liberties demonstrates the basic differences between the modern natural rights and commonwealth approaches to liberty. A commonwealthman like John Winthrop (1965) in defining liberty for the citizens of the Massachusetts Bay Colony allowed virtue to be the organizing principle. He believed that men should be free to do good, to speak the truth, to believe in the Right, and not to be free to do evil or speak falsely. The true liberty, he said, is "a liberty to only which is good, just and honest" (cited in Berns, 1957, p. 228).

### One Simple Principle

The libertarian concept of liberty since Locke has explicitly asserted that each individual is free of the authority of others and is subject to legal government only by his own consent. Spencer and Hayek hoped for a system of natural rights as most in conformity with evolutionary progress (Hayek, 1976, 1988). Von Mises and Friedman (1962) said that no economic activity can take place unless in a free market with as little government regulation as possible. Robert Nozick assumed individual rights within a human community to ensure that the structure of that community itself would not vitiate our moral precepts and institutions (Nozick, 1968).

All of these definitions of liberty have one thing in common. Libertarians basically agree on the one very simple principle of John Stuart Mill (Carey, 1984, p.4). Mill essentially argued that no one should initiate force against another.

Mill wrote in On Liberty:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others (Mill, 1965, p. 263).

Mill's guiding "principle" translates into a basic claim of self-interest (Berns, 1957, p. 26). The central focus is limited government, namely that none should initiate force against another. The fallacy of Mill's guiding principle, of

course, is making liberty its sole concern devoid of any normative standard of the common good:

The place of freedom in the spiritual economy of men is a high one indeed, but it is specific and not absolute. By its very nature, it cannot be an end of men's existence. Its meaning is essentially freedom from coercion, but that, important as it is, cannot be an end. It is empty of goal or norm. Its function is to relieve men of external coercion so that they may freely seek their [own] good (Meyer, 1969, p. 29).

What is also missing from Mill's principle of liberty is civic virtue: "the weighing of political persons and measures, to include consideration of whether they accord with worthy ends for the polity" ends conducive to "the improvement of persons" or society (Will, 1983, p. 94-95). It is questionable whether unencumbered self-interest is the founding principle of government or that "private" rights were what Jefferson was talking about in the Declaration. Berns argues that the Americans who signed the constitution and the Declaration were not "private," but "public" men

united in families, in churches, in towns and a host of other institutions.. We were men whose habits had been acquired from a civilized past, whose character had been formed under the laws of an older and civilized politics (Berns, 1957, p. 32).

The "one very simple principle" for libertarians has become the "highest of all social values" for modern libertarians "irrespective of what forms and levels of moral, aesthetic, and spiritual debasement may prove to be the unintended consequences of such freedom" (Nisbet, 1987, p. 172). Such a concept of private

rights without corresponding duties or restraint promotes a society without social bonds, moral authority, or virtue (Simon, 1986).

### Prescriptive Liberty

From the inception of the republic liberty or freedom has been the most cherished regime value. The Pastor of Weatherfield Connecticut, preaching in the colonial Assembly, described liberty as "the source and spring of almost every Thing, that is excellent & valuable upon Earth" (cited in Reid, 1988, p. 18). Freeman Butts said that "freedom" was both the purpose and foundation for education in the United States (Butts, 1960).

Unique to commonwealth liberty is the notion of "prescriptive right," or liberty as a birthright or inheritance. The concept of a limited or restrained "prescriptive" liberty reflects the Ciceronian/Burkean eternal contract based on covenant arrangements, customs and constitutions. It is also based on the Aristotelian conception that man is a social and political animal linked socially and ethically to present, past, and future, and not just an isolated predatory creature.

The notion that liberty was a birthright especially suggests that the revolution was not fought for new rights, but only to restore those that had been lost due to arbitrary power of Parliament. This makes claims to any new rights not in accord with the doctrine of a prescriptive constitution specious.

For Edmund Burke, liberty was a "prescriptive" or charter right which is a form of covenant (Kirk, 1953, p. 50). The notion of "charter rights" reflects the view that civil liberty was "immediately derived from human compact" (not the ahistorical social compact by which people agreed to enter into a society)-- but the compact of government between the ruler and ruled (Reid, 1988, p. 24). Reid explains that this "rooted theory" of liberty shows that Americans claimed liberties--not "liberty" per se as an "abstract" right.

Americans at the time of the Revolution believed they were entitled to civil rights on legal grounds of custom, original contract between rulers and ruled, constitutional principle, ownership, inheritance, migration, and to a minor extent, natural law, but "only secondarily the abstraction of liberty" (Reid, 1988, p. 23). This is apparently a jurisprudential fact that few students of the American Revolution have explored.

This concept of a "rooted" or "prescriptive" liberty involves what our predecessors and progenitors believed to be the legitimate jurisprudential source of legal authority:

The preferred basis for claiming liberty was that people held it in fee. They had acquired it in various ways: it had been bequeathed to them as an inheritance; their ancestors or they had fought for and won it; their ancestors or they had obtained it by prescription; or--a claim favored by Americans--their ancestors had earned it by clearing a wilderness. The legal principle was ownership and the favorite words describing that ownership were "birthright" and "inherit" (Reid, 1988, p. 24).



There was widespread agreement and understanding on both sides of the Atlantic that liberty was derived experientially from a contract of government between the ruler and the ruled, and was not a contract of abstract natural rights theory. In the colonies prior to the revolution Americans regarded liberty as a "birth right", and were willing to fight for liberties that they had lost, not new abstract rights they never had: "Everyone seems to have used the expression [birthright]" (Reid, 1988, p. 4).<sup>15</sup>

The citizens of Connecticut in the drafting their state constitution, with the exception of listing a few common-law rights, reveal concepts and principles that can also be found in the Fundamental Orders of Connecticut (Kendall and Carey, 1970, p. 94). The writers used very general dikaio-noetic language to emphasize preservation of inherited liberties, not those that had been recently acquired by contract:

The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitution of government whereby the Legislature depends on the free and annual Election of the People, they have the best Security for the Preservation of their civil religious Rights and Liberties [Italics added] (cited in Kendall and Carey, 1970, p. 94).

Edmund Burke, like Harrington (1977), justified a freeholder's commonwealth in which every man owned the means of his independence and fought for his own liberty by virtue of prescriptive rights--that is all rights are a property in rights. In his Reflections on the Revolution in France, he noted

that all rights are a property in rights: "... an entailed inheritance derived to us from our forefathers, and to be transmitted by us to our posterity" (1808, Volume 5, pp. 304-5). In considering "their most sacred rights and franchises as an inheritance" (p. 304), Burke refers to the tradition of common law. Rights are not justified by abstract reasons, but as an inheritance under positive laws older than the rights which they themselves substantiate. Both Coke and Blackstone argued that this was in fact the case with English law (Pocock, 1971, p. 207). For Burke, Englishmen have always been concerned to establish their rights, not claiming artificial new ones, by appeal to their own past and not to abstract principles. Pocock argues that in reality this was "an accurate depiction of contemporary political practice"<sup>16</sup> and what had actually transpired in the Revolution of 1688.<sup>17</sup>

### Right to Be Restrained

Ever since Paine's Rights of Man there have been numerous declarations of inalienable natural rights : thirty articles are proposed by the United Nations Organization "Universal Declaration of Human Rights" with no attempt to define the true natural right as true natural law (Kirk, 1974).

For Burke, government "is a contrivance of human wisdom to provide for human wants" (Kirk, 1953, p. 122). However, the restraints on men, as well as their liberties, are to be reckoned among their rights. Among the more important of those human wants is:

a sufficient restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individual, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can be done only by a power out of themselves; and not, in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue (cited in Kirk, 1953, p. 122).

The "right to be restrained" also describes virtue and duty which occurs when individuals submit their private wills for unity of the whole or common good. Rousseau had defined the common interest by noting that each individual must "acquire his rights by discharging his duties" (Rousseau, 1758/1988, p. 149). In America, Adams translated this relationship into a golden rule: "I would define liberty as a power to do as we would be done by" (cited in Kirk, 1953, p. 377).

Bernard Bailyn (1973) notes that "political liberty," as opposed to theoretical liberty that existed in a state of nature, was traditionally known to be "natural power of doing or not doing whatever we have a mind" so long as that doing was "consistent with the rules of virtue and the established laws of the society to which we belong" (p. 77). Liberty as justice suggested a capacity to exercise "natural rights" within limits that were known. These are not individual limits set not by mere will or desire of private selfish men in power (arbitrary law), but law enacted by legislatures.

In other words, liberty is the right to be restrained from predatory self-interest judged by what rational men would understand goes against what has

traditionally been accepted as good for society as recognized by law. The Reverend Jonathan Boucher spoke for American loyalists as well as Whigs when he noted of the British constitution: "The primary aim therefore, of all well-framed Constitutions is to place man, as it were, out of the reach of his own power, and also out of the power of others as weak as himself, by placing him under the power of law" (cited in Bailyn, 1973, p. 347). Rule of law thus came to be one of America's most important commonwealth values associated with liberty.

#### Liberty From Arbitrary Government

Constitutional scholars (Reid, 1986; Bailyn, 1973; Lutz, 1988) observe that liberty for Americans originally meant freedom from arbitrary or unjust government--not government itself. At the time of the Revolution (despite the inflammatory rhetoric of Thomas Paine on the evils of government) there was no fear of government per se, only fear of arbitrary power which had been exercised by the British Parliament in violation of American trading rights. Both American Whigs and British radicals worried about the loss of constitutional liberty from the arbitrary actions of Parliament (Reid, 1988, p. 9), and Parliament had abrogated just rule of law. Thus "Liberty in the age of the American Revolution was not the sum of enumerated rights...but freedom from arbitrary power, from government by will and pleasure, from government by an ...unchecked monarch...or 'sovereign,' or 'unchecked Parliament' "(p. 10). Thus the American

Revolution took place in opposition to arbitrary policies of the British Parliament "not the principle of parliamentary authority itself" (p. 10). "What was trusted was neither the majority (which could represent any arbitrary ruling faction) nor the "rules," but the rule of law" (p. 10).

Thus claims of rights and liberties have traditionally appealed to a higher standard of justice. According to Herbert Spencer, liberty is a "formula of justice," in which "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man" (cited in Ritchie, 1952, p. 141). Similarly, Kant suggested as "The Universal Law of Right" which is to "Act externally in such a manner that the free exercise of thy will may be able to co-exist with the freedom of others, according to universal Law" (cited in Ritchie, 1952, p. 142).

Americans have neglected this standard of justice inherent in the eighteenth-century Anglo-American concept of liberty and rights rooted in common law and respect for the law (Bailyn, 1973). It is the perception of equal justice in the commonwealth tradition of "prescriptive" rather than "natural" liberties that require people to recognize their rights and duties within the state. Obligations to the state require that self-interest be restrained for the benefit of the common good or whole. Thus virtue or the common good of the state is preemptive of both private and societal justice.

Commonwealth liberty is not license, but it is justice that speaks to a moral order, and especially a balance of interests between the ruler and ruled.

Two seventeenth century Commonwealthmen, Sir Robert Phillips and Sir Dudley Digges, protesting Charles I's prerogative of imprisonment in violation of individual liberty, argued that "liberty" was synonymous with "justice" because "justice...is a claim more pertinent for both the subject to ask and the King to grant" (cited in Reid, 1988, p. 22). The concept of liberty as justice, or liberty under law supports the concept of mutuality and trust not found in natural right theories.

Ever since Edmund Burke<sup>18</sup> then the contrast between the assertion of the "rights of Englishmen" and the "rights of man" has defined the true nature of the Glorious as well as the American and French Revolutions. Americans, particularly the yeoman class, fought to preserve the rights of Englishmen that had been abrogated, such as the right of no taxation without representation, and not to claim new ones. The notion of prescriptive rights indicates that the American commonwealth is part of the English common law tradition which reflected the natural law as an immutable and eternal standard of justice.

Americans have also expected order and restraint on the part of government. At the time of the Revolution they were particularly concerned with order and legitimacy. According to Englishmen like Lord North, the pro-American in the House of Commons at the Time of the American Revolution, Sir William Blackstone, and other Americans, liberty was also order, because liberty was law (Reid, 1988).

Bailyn notes that the American Founders therefore had a more favorable view and understanding of the term "republic" than "democracy." They did not fear democracy as much as they feared arbitrary power from any quarter, out of a "pragmatic idealism to restrain power, particularly after the excess of the French Revolution" (Bailyn, 1973, p. 282).<sup>19</sup>

The belief in a just or legitimate legislative sovereignty was given its classic formulation by Blackstone in his Commentaries: "there is and must be in all forms of government a supreme, irresistible, absolute uncontrolled, authority, in which the jura summi imperii or the rights of sovereignty resides" (cited in Bailyn, 1973, p. 202). Blackstone argued that this "sovereignty of the British Constitution" was lodged in Parliament, the aggregate body of King, Lords, and Commons, whose actions "no power on earth can undo" (p. 202).

This combination of prescriptive liberty as justice or fairness, and a fear of arbitrary power was the source of underlying conflict between the "sovereignty of the people" and the "sovereignty of the organ" (legislature). It "would haunt the efforts of Americans who struggled to build a stable federal system of government" (p. 230), as well as systems of education in various states. For just as Americans had looked for constitutional grounds to limit Parliament's power in America, they would be sure to initiate a governmental system where no one centralized authority could ever claim to be total or complete, or to accumulate or exercise too much power or influence where its "degree of energy, in order to sustain itself [would become] dangerous to the liberties of the people" (p. 229).

However, "In its place emerged the mistaken assumption that the ultimate sovereignty rested with the people" (Bailyn, 1973, p. 229) not legislatures. In our age of pluralism, the concept of legislative sovereignty has been devalued. We want to exercise our liberties directly through public opinion polls, public choice, local autonomy, the initiative, referendum and recall have allowed for private local interests to dominate the moral convictions of legislators.

### Property as Citizenship

The views of Adams, Jefferson, and Madison on property for equal opportunity are derived from Burke and Harrington. Edmund Burke based claims to liberty and full citizenship, like James Harrington on the law of real property (Pocock, 1971, p. 212). He believed property allowed for civic virtue by creating a commonwealth of free and equal citizens. The commonwealth concept of property stands in opposition to the libertarian creed; it is communitarian and promotes civic virtue in a commonwealth as opposed to materialism, competition, and self interest.<sup>20</sup>

James Harrington, in his role as "the principal English civic humanist,"<sup>21</sup> demonstrated that a commonwealth was a community of freeholders. Property conferred independence and the capacity for citizenship because it involved its proprietor as little as possible in dependence upon others leaving him free for the full austerity of citizenship in the classical sense (Harrington, 1887).



Harrington, observing post-Civil War England, defined the political community as a polity rather than a hierarchy of classes. The England of his day was a primarily agrarian society where the relation between legal property and governing authority had become the central question of politics. He advocated the disappearance of tenurial subordination in English feudal society to restore civic virtue in a modern English republic (Pocock, 1971, p. 92).

In the tradition of civic humanism, property is a means to freedom in guaranteeing the citizen his independence. If property ownership was less than universal, civic virtue in a commonwealth would not be possible. The only form of government that could persist was that in which each group--classified as one, few and many (in the English system: King, Lords, and Commons) shared power with others in such a way that none ruled exclusively and no one was dependent on any other.

Thus the right to property, Burke defended as a common law right and not a natural right, because it defined democracy as a republic of freeholders owning their own lands--and weapons , i.e. "Englishmen with swords in their hands" (cited in Kirk, 1953, p. 119). Responsible and independent freeholders in possession of property enjoyed "prescriptive" liberty that implied a moral obligation to govern and a corresponding right to share in the prosperity of the regime.

Americans from Thomas Jefferson to De Tocqueville to Robert Reich question how Americans can be free if they are not in this classical sense

virtuous, i.e. responsible and independent freeholders in possession of property, i.e. if they do not have prescriptive rights of entitlement and moral obligation to govern and a corresponding right to share in the prosperity of the regime. Reich in The Work of Nations (1990) notes that Americans have surrendered their civic autonomy to an elite or advantaged few "symbolic analysts," the problem identifiers, problem solvers, and strategic brokers who have captured most of the nations wealth and opted to secede from public obligation. Recognizing that property is the essence of full membership or citizenship in a global economy, Reich asks: "Which is it to be? A virtuous relationship with world capital or a vicious one? (p. 265). Thus, Burke's "politics of prescription," a commonwealth philosophy of government which honors rights as well as duties based on a concept of societal obligation--a partnership in virtue--has become the "politics of Secession" in modern America (p. 282).

## **Conclusion**

### **Lessons of Commonwealth**

The duty to educate on the part of the state and its citizens for the benefit of the common good of the nation as a whole is supported by the American commonwealth tradition. In a modern pluralistic state, "We come to see clearly that an uneducated citizenship is a public peril, and to insist more strongly than

before on the exercise of this fundamental right of the state" (Cubberley, 1919, p. 488).

Eric Voegelin (1956) suggests that the great line of division in modern politics that prevents public spiritedness or civic virtue is between those who believe in a moral order and those who rely on an ephemeral private existence devoted to chiefly producing and consuming (p. 156). The following principles presented in this chapter distinguish a commonwealth from a modern libertarian regime. They have broad implications for the future support of public education in the United States:

1. The lesson of common good.

As Aristotle wrote: "...the good is justice...the common interest" (Politics, 1952, Book 3, Section 2, p. 175). This great lesson of republican or commonwealth government is found in the idea that the state is a moral community that seeks the common good.

2. The lesson of a disinterested civic virtue.

The American founders and philosophers from ancient to modern times have reaffirmed the goal of virtue as an end of government. A modern commonwealth is "...a regime in which all or most adults are [should be] men of virtue" (Strauss, 1968, p. 5). Virtue as benevolence for the individual is civic virtue or the quest for common good for the citizen--a goal of the public interest that the American founders recognized as vital to public institutions and the nation as a whole.

3. The lesson of prescriptive rights and duties.

The American traditions of covenant, common law, and constitutionalism exist apart from the libertarian premise of private natural rights derived from an artificial social contract which emphasizes individualism in opposition to government or at the expense of the common good. Educational systems are a part of the polity that affords rights as well as duties and obligations on the part of all citizens and encourages support of its public institutions.

4. The lesson of prescription and an ancient, balanced regime.

The genius of Burke was to reconcile Harrington's classically republican notion of a prosperous commercial commonwealth of proprietors and freeholders with the older English vision of the ancient constitution.<sup>22</sup> The politics of prescription is relevant today and has shaped a modern commonwealth notion of liberty and rights. Joyce Appleby notes (1984, p. 18) that "Liberty in the classical republican paradigm and liberty in the historic rights tradition are distinct and potentially contradictory concepts:

The classical liberty of freemen to participate in political decisions celebrates the public arena and the disinterestedness of civic virtue. The liberty of secure possession protects private, personal enjoyments--liberties that become vested interests. There is no suggestion of limiting the power of government in the classical tradition as long as that power serves the common good, whereas the particular liberties of citizens or subjects secured by law limits the scope of public authority. Classical republican

liberty is a lofty idea; the liberty of legal rights pertains to the mundane and everyday aspects of living (Appleby, 1984, p. 18).

5. The lesson of moral order without which no rights are secure.

Statesmen and philosophers have noted that what binds society together is not self-interest and the cash nexus, but the notion of "society as a community of souls..." (Kirk, 1974, p. 121), a sense of common culture, traditions, and values which are our proper inheritance. As John Adams observed, a commonwealth is a "moral whole".

6. The lesson of paternalism.

Horace Mann recognized that "Men had to be taught to be public-spirited, to care for others, to be at least somewhat altruistic" (cited in Berns, 1957, p. 33). This public necessity to preserve and advance the welfare of the state E.P. Cubberley realized was vital to public education. It is not best represented by a utilitarian philosophy where there is no sense of posterity beyond a present calculus of utility, or by a strictly natural rights philosophy that advances individual rights and preferences over the common good of society as a whole.

7. The lesson of posterity

A commonwealthman, Professor Sidgwick, observed in Elements of Politics that the moral society must "take into account not only

the human beings who are actually living, but those who are to live hereafter," and that this is the true meaning of "the good of the state" (cited in Ritchie, 1952, p. 97). Burke recognized this principle in the eternal contract. The ethical state or commonwealth (conceived as a moral whole) therefore includes "the widening of the educational pyramid..." which "...has not in any way reached the limits of its application..." (Cubberley, 1919, p. 491). A strongly egalitarian commonwealth or republican spirit has guided the founders of public educational systems to make schools common, comprehensive, and inclusive with a purpose of ensuring virtue and the survival of the nation.

#### 8. The Lesson of Civic Autonomy.

In the commonwealth or republican tradition, individuals do not act outside of the polis. They are the polis. Civic humanism in general contends "that the development of the individual towards self-fulfillment is possible only when the individual acts as a citizen, that is, as a conscious and autonomous participant in an autonomous decision-taking political community, the polis or republic" (Pocock, 1971, p. 85). The commonwealth philosophy mitigates against individualism functioning as a market entity.

Commonwealthmen like E. P. Cubberley and Herbert Croly, in asserting the notion of education as a fundamental right of the state, drew upon the American commonwealth tradition summarized above. Arguments for a morally

responsible state and morally responsible citizenry who support the common good of the whole can be found in commonwealth conceptions of natural law; the notion of prescriptive rights and duties; the idea of a moral constitution; the idea of community as one moral whole; the covenant tradition; the classical ideal of an organic state; and commonwealth as a polis or polity with its goal of virtue--which comprise the commonwealth tradition in America.

"Common as commonwealth" has presented a variety of themes that require Americans to interpret civic autonomy in a context of the republican, commonwealth tradition that accommodates self-interest to the good of the whole. This republican or commonwealth view of the public interest draws upon covenant relationships and prescriptive rights and obligations. As described by a number of philosophers, "commonwealthmen," and constitutional historians, the concept of commonwealth as common good contrasts with a liberal economic, positivist, and a strictly natural rights approach to the state where the common good is only a vague hope that private interests will balance out in the end. Commonwealth theory especially opposes legalism, and particularly modern legal positivism, that promotes self-interest by enhancing the power and advantage of one group at the expense of others through new natural rights claims. This chapter has therefore suggested a new ordo juris in the United States to unite the American people behind commonly shared regime values and public institutions that have been discussed and debated since the founding of the nation and its common schools.

This "Common Good as Commonwealth" chapter provides a positive, creative view of the state supported by rights and obligations. It proposes a creative and positive role for government to encourage a balance of interest between the state as an administrative agency, social institutions, and individuals. The function of government is stewardship and a public trust based on civic virtue, with a duty to educate that promotes a virtuous and enlightened citizenry. This chapter has demonstrated that a commonwealth is both an ancient and modern conception of a body politic or state. Conceived as a moral whole, the concept of commonwealth presents a standard of common good for public morality and political action binding upon a body of citizens.

This commonwealth foundation for public education contrasts with a classical liberal philosophy of natural rights that encourages individualism, privatization, and a limited role of government in education. Classical liberalism may be the dominant paradigm influencing current American government and policy, but a commonwealth view better explains the historical background of public education and the incorporation by each of the fifty states in their respective constitutions of the duty to educate citizens in "common" schools.

Subsequent chapters beginning with "System as a Term of Art" will build on this commonwealth, republican theory in defining the term "system" and its descriptors "efficient" and "uniform" relative to systems of education and a responsible civic humanism in the United States.



## NOTES

1. Herbert Croly (1964), twentieth century Progressive and nationalist, argues that Jefferson, unlike Hamilton, was an egalitarian who never understood the national ideal of common good. The Federal Constitution was framed, "not as the expression of a democratic creed, but partly as a legal fortress against the possible errors and failings of democracy" (p. 32). It was this great lesson that Hamilton, the most important "unionist" understood (p. 37). Hamilton, a Federalist, best represented those diversified interests and "well-rounded social and economic life" required for "national balance and security" (p. 39). Croly concedes, however, that Hamilton, unlike Jefferson, "failed to understand that the permanent support of the American national organization could not be found in anything less than the whole American democracy" (p. 41).
2. Pocock in Politics, Language, and Time (1971, pp. 132-133) notes that the American founders were aware of a Polybian-Machiavellian "science" of mixed government in the Venetian republics. Rather than power through a central authority, such as Machiavelli had used to redress the balance of government and corruption in the state, Americans preferred English common law traditionalism which argued for a stable constitution founded on certain principles distilled from the constitutional inheritance. In contrast with the neo-Harringtonian tradition of "a balanced commonwealth of proprietors with the older English vision of the ancient constitution" (p. 133), which Pocock says is the ancient constitution, the Venetian republics had an "uneasy marriage of Polybian and Machiavellian ideas" (p. 133). The Harringtonians argued "that corruption must be dealt with by a return to original principles," some kind of balance or separation of powers rather than resorting to a Machiavellian premise of power in the executive.
3. Reinhold Niebuhr (1932, pp. 4-5) notes that Christianity has contributed to the notion of limited government in the state. The Christian formula for the public interest is pax participians. Christians anticipate peace, order and justice in the framework of participation in a transcendent destiny which the government supports. But government is minimal and extraneous to the higher good or transcendent reality of God: "Functionally speaking, an entire realm of human life was staked off in which government must not intrude: the realm of the salvation of souls. Hierarchically speaking, government was limited by the higher authority of the overarching natural law to which human laws ought to defer" (p.

- 4). The term "private" in this context has special meaning apart from the Greek concept of private acquisitiveness. Individual salvation is the private interest or utility which is off limits to the government. The commonwealth shares the ecclesiastical sphere and the higher ecclesiastical good or pax participians, but it trusts to individual conscience for a procedural maintenance of the common good.
4. For a good survey of the European background of the idea of the social contract, see discussion of Johannes Althusius, Samuel Pufendorf, Emmerick de Vattel, Jean Jacques Burlamaqui, and of Englishmen, John Milton, James Harrington, Algernon Sidney, John Lock, and the popularizes of the theory in America, John Trenchard and Thomas Gordon, seventeenth century theorists who re-explored the ancient idea of the social contract, an ideal revived in the sixteenth century by Calvinist-Separatist theologians as a basis for church organization (Kelly and Harbison, 1955, pp. 38-41).
  5. American Patriots were especially familiar with the leaders of the English Opposition, most notably the Whigs John Trenchard and Thomas Gordon and by Bolinbroke and his radical Tory circle. In turning to Locke they neglected other great natural law theorists--Hugo Grotius, Samuel von Pufendorf, Thomas Rutherford, Burlamaqui, and Vattel, who were more in the ancient republican and humanist tradition, but who, unlike Locke, did not provide a rationale for revolution (McDonald, 1985, p. 60).
  6. Among the more widely read Romans were Cicero, Livy and Tacitus; among the Greeks, Demosthenes, Aristotle, and Polybius and Plutarch's Lives have a profound influence. They also got republican values through popular plays, newspapers, orations. that cited a learned history of republics and Marcus Arelisu, Ovid, Pope, Seneca, Newton, Blair, Juvenal, Addison's Cato, Blackstone, and the Bible, as well as the sixteenth century Italians like Machiavelli, and an assortment of English thinkers such as Montesquieu and Hume (McDonald, 1985, p. 67-70).
  7. See especially Adams' letters to Sergeant and Dana, July 21, August 16, 1776 in Adams, Works, Volume 9, pp. 424 and 429, for they contained a broad vision of the nature of the state that appealed to preconceptions in the minds of all Massachusetts men at the time of Massachusetts constitutional convention in 1780.
  8. There are only two uses of the term "Nature" in Aristotle's ethical and political writings: (1) "natura" for "original" as when he speaks of man having certain natural or innate impulses prior to training, and "nature" used as an ideal (Aristotle, Ethics 1952, Book 8, Sec. 7, p. 12).

9. A covenant is defined in The Macmillan Dictionary as an agreement between two or more persons or parties. As a verb it means to enter into a covenant, or "to promise by or in a covenant." Black's Law Dictionary, however, provides a legal definition of covenant that expresses the ideas of a binding commitment that obligates the parties to the future or "posterity," conducive to nation-building, which is an important commonwealth concept. A covenant is "an agreement, convention, or promise of two or more parties, by deed in writing, signed, and delivered, by which either of the parties pledges himself to the other that something is either done, or shall be done or shall not be done, or stipulates for the truth of certain facts" (Black, p. 363). A commonwealth as covenant derives its power from the consent of the governed, but requires in return a corresponding obligation of citizens to support the common good.
10. The Puritans revered such principles as separation of church and civil government (a minister could not hold political office), local government, bicameral legislatures, and checks and balances (Evans, 1984, p. 131).
11. For example, they established such principles as separation of powers, checks and balances, and bicameral legislatures. Suspicious of arbitrary power, they adopted the Body of Liberties under Governor Winthrop which was a precursor to the Bill of Rights (Evans, 1984, p. 131).
12. Nor could the human intellect reproduce the law as a process of reasoning. See Coke in Twelfth Reports, Prohibitions del Roy, 12 Co. Rep. 65 (cited in Pocock, 1971, p. 214).
13. Among these common law rights are the right to trial by a jury of one's peers, the right to a speedy trial; prohibition of bills of attainder, ex post facto laws, and cruel and unusual punishment; the guarantee of habeas corpus; the rights of widows and the poor; the right to compensation for the taking of private property; and equal protection under the laws. The ten amendments contain twenty-seven separate rights and about 20% were first stated in Magna Carta; about 75% were found in colonial documents written before the 1689 English Bill of Rights (Lutz, 1988, pp. 60, 62).
14. Ritchie (1952) argues that negative liberty means simply being let alone. But there is also praise and high regard for a positive liberty which is the positive power of doing something worthwhile or for the common good. Positive liberty, for example, might mean "...securing for members as far as possible the opportunity of developing their various natural inherited gifts and powers so far as they can without detriment to one another or the well-being of society as a whole" (p. 13). This act of positive liberty

Ritchie says is "the creation of law," or when human acts take place within a state conceived as an organic whole or commonwealth and are not viewed as "something that could exist apart from the action of the state" (p. 140).

15. John Wilkes, Reid notes, released from prison spoke of being "restored to my birth-right, to the noble liberties and privileges of an Englishman." The idea of liberty as a birthright means that "The preferred basis for claiming liberty was that people held it in fee as the 'birth-right of human kind, a unique assertion that liberty was irrevocable property, or a property right, or an inheritance" (Reid, 1988, p. 24).
16. Pocock (1971) notes that the English Revolution of 1688 was based on an interpretation of the doctrine of ancient constitution, "more than on the doctrines of contract, natural right and reason propounded by Sidney or Locke" (p. 208). Both houses of the convention parliament agreed essentially on the viability of public documents, Magna Carta, which "confirmed a charter of Henry I, which confirmed a charter of William I, which confirmed the laws of Edward the Confessor, which were themselves no more than a codification of law already ancient--had, as Burke remarks, been constantly put forward by lawyers from Coke to Blackstone" (p. 208).
17. This concept, however, did not rule out change or reform, merely that reform requires appeal to the past and not to abstract principles. The Revolution of 1688 was not conducted on the Lockean principle of natural rights or the social contract wherein power "reverts to the society" and the people have a right to "erect a new form...as they think good." See the closing sentence of Locke's Second Treatise (1967).
18. Pocock (1971) notes that Burke is one of the great transmitters of civic humanism in America because he championed the cause of the American Revolution. He transmitted ideas of the ancient constitution, the Aristotelian and Ciceronian partnership in virtue, and Montesquieu's notion of "the spirit of our laws," balanced government to the Parliament and to Americans. He was not opposed to change, only realized that if the law was truly immemorial it could not be arbitrarily or rationally reconstructed. However, Burke did absorb some the utilitarian doctrine of his age. For example, in his speech On a Motion Made in the House of Commons...for a Committee to Enquire into the State of the Representation of the commons in Parliament, Burke struck a compromise between natural rights and the law because the claim that representation was the natural right of the individual had to be addressed.

19. Bailyn notes the terms "republic" and "democracy" therefore had different connotations. The term "republic" suggested the positive features of a commonwealth marked by virtue and reason, whereas "democracy" conjured up images the French Revolution where the lowest order of society was subject to civic disorder and potential dictatorship as in Robespierre (Bailyn, 1988, p. 282).
20. In developing the thesis of an Aristotelian, humanist, or republican attitude toward property, it is important to contrast the Hobbesian and Lockean natural rights tradition which gave rise to the bourgeois political theory of a market society in which the acquisition and preservation of property is seen primarily as the sole purpose of government. See C.B. Macpherson, The Political Theory of Possessive Individualism (1962). This market concept of property is ontological in that it defines the nature of individual in an isolated state of nature in opposition to government whereas the classical view of property, or the Anglo-American brand of civic humanism reflects the Aristotelian notion of man defined by the polis who consciously strives for civic virtue within it.
21. See Pocock (1971) for his description of Harrington the "central figure among the "classical republicans" of "the Whig canon" as well as C.B. Macpherson (1962).
22. Pocock (1971, p. 132-135) suggests that it was through Burke and other neo-Harringtonians that Polybius and Machiavelli were imported to England and America and that this conveyed to Americans the conception of both an ancient and balanced regime. The connection for these ideas is also made to Bolinbroke where Montesquieu obtained his notion of the doctrine of separation of powers and also Bolinbroke's influence by Machiavelli.

## CHAPTER SIX: SYSTEM AS A TERM OF ART

It shall be the duty of the general assembly, as soon as circumstances will permit, to provide, by law for a general system of education, ascending in regular gradation from township schools to state university, wherein tuition shall be gratis, and equally open to all.

### Indiana Constitution of 1816

The above prescription for an educational system by the Indiana Constitution is a uniquely republican concept of a functional organization of schools and colleges in relation with one another and with the polity that has animated education in the United States for over 200 years (Cremin, 1951, p. 148). In recent years several state courts have held that fundamentality of education can be found in a state's positive education requirements on the basis of the term "system." The term "system," in combination with its modifiers "efficient" and "uniform," like "common," is a term of art that has special meaning in the context of education.

The purpose of this chapter is to show that in an educational context this combination of words specifies the provisions of an educational system in many state constitutions. This chapter focusses exclusively on the term system, leaving discussion of its descriptors "uniform" and "efficient" to subsequent chapters. It describes the general properties and characteristics based on etymology and a variety of systems perspectives.

This broad overview provides sufficient background for a system of "republican civility" proposed by the founders of common school systems in America which was intended to provide the cornerstone of a free republic and ensure equality of opportunity.

Defining the term "system" and its descriptors "efficiency" and "uniform" in the following chapters, demonstrates that a "system" should not be construed as a purely technical or a value free term of art, especially when the term is applied in the courts to equity disputes between rich and poor school districts and in other areas of public policy. In short, an educational system is not just one of those "purely inefficient or efficient mechanisms or 'malevolent bureaucracies' that may crush us under their impersonal wheels" (Bellah et al., 1991, p. 10). Like any human or social institution, an educational system operates through "a process that is never neutral, but always ethical and political, since institutions live or die by ideas of right and wrong and conceptions of the good" (Bellah et al., 1991, pp. 11-12).

The concept of an educational system is based in part on Newtonian, Enlightenment thought reflecting a mechanistic, static systems cosmology of seventeenth century science which has provided a basis for systems of scientific management during the industrial era. The concept of an ontological system, on the other hand, suggests a holistic, teleological "post-modern" world view derived from quantum physics, nonlinear mathematics, general systems and equilibrium

theory in the nineteenth century and a revival of Aristotelianism which suggests that an educational system is a purposeful, if not moral system.

Ever since Newton presented his famous "universal law of gravitation," entitled "The System of the World," in his Principia (The Natural Principles of Philosophy) to the Royal Society of London 300 years ago, system has become a paradigm. This systems paradigm has dominated western scientific and intellectual thought well into the present century and continues today as the foundational model for the social sciences, including education. The Newtonian system provides the theoretical foundation for a system comprised of discrete, quantifiable and linear units still used as a model of classroom instruction. A contrasting ontological system characterized by value, meaning and purposefulness has been revived in recent years via post-modern science and cosmology. According to this view, a system is purposeful and open (as opposed to a closed, simple, static Newtonian system characterized by physical, inert, mechanical structures) and can be perceived as a complex, interrelated and moral system in its relation to the state. Such a modern systems view draws upon general systems theory, open-systems theory, sociology, the social sciences, and humanism. It interprets systems as holistic, teleological, and valuing subsystems of the polity very like the first conceptions of a common school system proposed in America by Thomas Jefferson, Benjamin Rush and Horace Mann.

The thesis of the chapter, that an educational system is a moral polity subsystem, is advanced through a brief topical discussion of system as a term of



art and its constitutional requirements. The second section presents the etymology of system and provides a basic definition of system introducing its key principles and characteristics, including a brief discussion of educational system processes related to basic definition of system. Three systems perspectives are presented along with the contributions of early systematizers of education such as Comenius, Herbart, and Froebel. They are (a) the Newtonian, bureaucratic system, (b) the ontological or open system, and (c) the republican system which incorporates properties of both.

A final section argues that the forerunner of a modern system of "republican civility" advocated by Thomas Jefferson, Horace Mann, and Benjamin Rush, is John Amos Comenius whose humanistic educational system emphasized the public, holistic, and ontological nature of a republican educational system.

A definition of system is thus drawn from a variety of theoretical, scientific, and philosophical sources to suggest the characteristics and properties of an educational system that functions within a larger more comprehensive system of commonwealth purposes and goals.

Subsequent definitions of the terms "uniform" and "efficient" to describe "system" suggests the need for a transcendent ethical perspective for a modern educational system which is both bureaucratic and democratic.

### **System as a Term of Art**

The term "system" in a context of education draws upon substantive theory of the human good as a goal of state as well as philosophical and scientific definitions of "system" or "systems" to suggest that an educational system is a moral system, one that is rationally designed to produce a moral end. This is the underlying assumption and construct of the American Common School is discussed as part of a larger construct or system within the state or polity itself whose purposes, the common good, it strives to effect.

We have noted from previous chapters that the American Common School is an ideal, commonwealth conception. The term "system" applied to a "system of common schools" suggests a rational, functioning operational reality whose rationale is no less teleological or ontological than the purposes or ends of the state itself of which it is a component part.

Earl Hopper (1971) has noted that "educational systems can be studied either as institutions and organizations, or as processes of cultural transmission" (p. 11). For example, there are studies that emphasize the "institutional" character of an educational system and demonstrate how educational systems reflect and impact on class structure, social mobility and ethnic assimilation (Marshall, 1971). Others focus on systems as the sociology of knowledge transmission to maintain a culture and promote innovation (Davies, 1970), on formal and informal structures, or the social structure and language. However, Hopper argues that all educational systems in modern societies have essentially

two institutional functions: they communicate cultures that reinforce a social system or sub-systems and promote innovation; and secondly, they encourage motivation for mobility. Both functions create tensions and conflicts in society, especially if the marginal participants in a system also represent a marginal culture created by social or economic stratification based on wealth, race, or ethnic origin as they seek to join and experience the common characteristics of a culture. "Intra-generational mobility," or equality of opportunity, is impacted by an educational system (Hopper, 1971, p. 27).

The concept of "system," in the context of the common good, suggests that an educational system is a construct that ensures social balance, harmony and equity in society. It is a social, political and economic institution that "...requires a balanced supply of persons with different skills and aptitudes trained within the system so as to maximize the contribution they can make to the common welfare" (Marshall, 1971, p. 40).

A system of education has a bureaucratic function within the state of bringing into harmony individual rights and general social needs, ensuring a balance between the claims of individualism and collectivism (Marshall, 1971). This is because an educational system is a creation of the state, and shares with the state a similar function or purpose, and the State "has the responsibility of harmonizing the one with the other" (Marshall, 1971, p. 40).

The descriptors of system, "uniform" and "efficient," are functional terms that suggest a balancing of educational interests and needs in society. They

especially suggest a standard for a system of education in the welfare state where inequality of wealth and social status still prevails (Marshall, 1971).

This republican concept of a morally functioning distributive "system" explains why in recent years decisions on behalf of the plaintiffs in the states of Kentucky, New Jersey and Texas, where education was established as a fundamental right, hinges upon interpretations of efficiency as equity (See discussion of "efficient" in Chapter Eight). Cases litigated in the above states demonstrate that it is now possible for aggrieved plaintiffs from poor school districts to assert fundamentality under the educational provisions of their respective state constitutions on the basis of key terms of art such as "system" and its descriptors, "efficient" or "uniform". The states above relied upon such constitutional language exclusively which enabled the courts to by-pass strict scrutiny of legislation and secure equal educational opportunity through more equitable funding.

Several state constitutions have made positive provision for the legislature to provide for a "system" of public schools. The term "system" standing alone, however, does not always have sufficient force to require uniform expenditures among the school district as the case of Serrano v. Priest (1976) demonstrated. Nevertheless, the California court (citing an earlier 1893 case [Kennedy v. Miller]) found that the word "system" in Article IX, Section 5 of the California constitution meant "unity of purpose, as well as an entirety of operation," and

that "one system which shall be applicable to all the common schools within the state."

In other state constitutions where the term "system" appears, as in the Tennessee Constitution's Article IX, Section 12, we find that the "General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools" (see Appendix). Thus "systems" of education must be maintained and supported by the state. But generally, without its more powerful descriptors such as "general and uniform," "efficient," "thorough and efficient," "adequate," "thorough and uniform," no "substantive meaning to the constitutional mandate" (Alexander, 1991, p. 354) can be derived from the term system alone.

However, when applied to the equal protection clause as in Pauley v. Kelley (1979) the terms "thorough and efficient" suggested a harmony and complementary relation of an educational system to an important legal principle that was apparently sufficient to demonstrate that education in West Virginia was a fundamental right. The term "system" was found to express higher order values and purposes of education in a democratic state.

The term system in this chapter is viewed as normative rather than a mere administrative requirement--as a functional duty of a state to educate. In twelve school equity cases where plaintiffs have won "...the key to discovering whether education is 'fundamental' is whether [it is] explicitly or implicitly guaranteed by the Constitution" (San Antonio Independent School District v. Rodriguez(1973)).

This guarantee frequently hinges upon an understanding of what a "system" is or "ought" to be. For example, the California education article required explicitly that "The legislature shall provide for a system of common schools." In Arkansas, "The state shall ever maintain a general, suitable and efficient system of free public schools...." In Kentucky, "The General Assembly shall...provide for an efficient system of common schools." The Washington Education Article requires that the state "provide for a general and uniform system of public schools." The Wyoming Constitution requires "the establishment and maintenance of a complete and uniform system of public instruction." The New Jersey constitution requires "a thorough and efficient system of free public schools." The state of Arizona requires "the establishment and maintenance of a general and uniform public school system." Colorado provides for "a thorough and uniform system of free public schools;" Idaho requires a "general, uniform and thorough system of public, free common schools;" Louisiana requires "a thorough and efficient" system of free schools; the state of North Carolina makes provision for a "general uniform system of free public schools."

The terms "system" and its descriptors "efficient" and "uniform," like the term "common" itself, invoke the belief that education is a "natural right of obvious, intrinsic, and transcending value" (Alexander, 1991, p. 351 above). They are thus powerful resonators of equity suggesting that an educational system be defined in both ontological and deontological terms as a moral social system with a process function of achieving the common good in society where a

balance or harmony of interests is maintained between rich and poor school districts, where advantage and disadvantage is not determined by the wealth of a district, and where the state itself ensures just consideration of proportional equity.

The application of the term "common" to system expresses "an equality or proportionality of good" (Finnes, 1980, p. 164), not to any individual or group that disregards the well-being of others in the community, but as it "entails a reference to standards of fittingness or appropriateness relative to the basic aspects of human flourishing" (Finnes, p. 164). The standards for an equitable system consistent with both the requirements of a commonwealth and a modern welfare state are "uniform" and "efficient" defined within the context of the common good.

Republican as well as nineteenth century educational theorists and historians suggested that an educational system is a vehicle of a moral state striving to attain civic virtue, equality, and commonality as a means to nationhood. These historical arguments leading to the use of the word "system" in state constitutions suggest that the concept of a "system" is a product of post-revolutionary Enlightenment republicanism that promoted mass education and the formation of a new political order. However, the concept of a "system" as it relates to systematic and universal education can also be traced to seventeenth century science, philosophy, and educational theory. Nineteenth and twentieth century science, metaphysics, and thermodynamics also suggests a post-modern

systems' perspective. The term "system" thus reflects complex ideas about man and his relation to the universe and the polity which both philosophers and scientists show have special significance as to the nature and purpose of the common schools.

Alexander et al., (1989) provide a general, working definition of a "system" of education which suggests some of the functional properties of a system drawn from these sources. They view an educational system as a complex social or public institution that operates for the benefit of individuals and the state. They describes an educational system as:

an organization publicly supported through taxes, which has a coordinated curriculum and allows for a progression of educational achievement. Uniformity and harmony of function are implicit features which are essential to the efficient diffusion of knowledge throughout the population (Alexander et al., 1989, p. 149).

This concept of system as harmonious "organization" is a republican conception of education vital to a republic or polity essential to a whole people; it is a common or universal system that provides for an "efficient diffusion of knowledge," and assumes that a "coordinated" and progressive system of public schools and colleges will provide the best means to educate masses on the scale required in democratic republic" (Cremin, 1951, p. 148).

Because of the strong influence of industrial efficiency and "Taylorism" in the nineteenth century, "system" has come to be commonly associated with such concepts as "centralization," "bureaucracy" (Tyack, 1974), "machine," "harmony" and "uniformity" (Cremin, 1951, p. 125). "The educational system was to be



likened to a machine which would function smoothly and efficiently in the diffusion of knowledge" (Alexander et al., 1989, p. 149). The industrial era adopted the metaphor of efficient machine which led to a national preoccupation with industrial efficiency (Callahan, 1962) which confused the perception conceptions of what a system is, and prevented definition of a system in republican or ontological rather than in strictly mechanistic or bureaucratic terms.

In the nineteenth century it was believed that an efficient system characterized by a "balance" or "harmony" of its parts was an effective system (Tyack, 1974). During the industrial era many states revised their constitutional mandates for education and many educational systems became associated with bureaucracy, centralization, and administrative or bureaucratic elites which removed education from the power of the people and families. Tyack describes the development of an educational system in the nineteenth century in pejorative, if not nostalgic, terms as though a sense of community and civic autonomy had been lost:

The village school had now become urban and almost a system. A new type of expert, backed by a centralized board and an efficient staff--that might be the answer. Such a plan might weaken the influence of 'troublesome classes' which had so disrupted the search for system (Tyack, 1974, p. 97).

Alexander et al. (1989) note, however, that the Kentucky Constitution at this time suggested four insightful ways to describe a system as efficient that emphasized the essential "publicness" of a system. First, the term "system"

implied a logical progression of knowledge, a "vertical incremental pattern of institutions" allowing individuals to progress from one educational level to the next, i.e. primary, secondary, and college. Second, it suggested a standard core of subjects within an interrelated curriculum essential to providing a common knowledge base for all students. Third, a uniform system would assure that all citizens acquired the kind of education conducive to civic responsibility. Lastly, a system of education was "extrafamilial" as opposed to a "familial" institution within the polity. An educational system was not conceived to be "dependent on the private sector of the family, but instead was dependent on the public" (Alexander et al., 1989, p. 149).

What gives this basic definition of "system" special relevance in the context of education is its "public" character. It conveys a distinctively "republican" notion that a "system" is supported by the polity (Cremin, 1980). Prior to the late nineteenth century, "forms of education were not publicly supported and were not systems" (Alexander et al., 1989, p. 148). A system is public or democratic when its source of authority is the polity itself. This suggests that outcomes or public "benefits" of the system as well as the "legitimacy" of an educational system is important and relevant to any formal definition of system. The definition of an educational system provided by the Kentucky Constitution in the late nineteenth century especially emphasizes the "public" or "institutional" character or nature of an educational system which today's social scientists also now affirm.

## Etymology of System

### General Properties of System

To begin with a simple definition of system, Funk & Wagnall's Standard College Dictionary (1974, p. 136) provides most of the basic characteristics or properties of a system that we find in scientific thought and systems theory. A system is simply an "orderly combination or arrangement of parts, elements, etc. into a whole, such combination according to some rational principle."

Whether it is a social, biological or physical system, it is orderly, made up of parts, and functions according to a rational schema, principle or plan. The Macmillan Dictionary notes that "A system is more than a mere totality of discrete units. It is organized, complex, and characterized by interactions among related parts" (Halsey, 1973, p. 27).

It is important to note that in none of the etymological definitions of system do we find the term "centralization" used. Rather the most common unifying element of a system is a rationality, or a rational plan. In the Oxford English Dictionary (1989, Volume 18, pp. 496-498), a system is defined "a set of principles, a scheme, method, a department of knowledge or belief considered as an organized whole." Furthermore, it appears that any undergirding or "rational principle" or method may serve as a "manner of connection of parts as related to a whole," whether it is a scientific, political, economic or social system. The etymology of system suggests that a system consists of various parts that make

up a whole according to a rational schema of some kind and this need not be an authoritative principle of management. For example, The Macmillan Dictionary (1973) notes an underlying "rational principle" of a system could be "any group of facts, concepts, and phenomena regarded as constituting a natural whole for purposes of philosophical or scientific investigation" (Halsey, 1973, p. 1013).

We note further from this basic definition the organic nature of a system. The Oxford English Dictionary states that the parts of a system are "an assemblage of organic structures composed of similar elements and combined for the same general function" (1989, p. 496). The scientific application or requirement of, say, a nervous system "relates to the entire body taken as a functional whole." This definition suggests that what may constitute the "functional whole" of an educational system in relation to its parts could well be the state itself, since an educational system is only one small bureaucratic structure consisting of an "assemblage of organic structures" within the state. The state itself is a whole made up of complex interrelationships of interrelated parts ordained by the constitution, i.e. a system of checks and balances. A system is an "assemblage" of structures within a polity subsystem (not necessarily a "sum" of entities) that relate "functionally" to the whole state by means of some unifying rational principle or public philosophy which we take to be the same public purpose as that of the state of which it is a part.

We note also from this simple definition that a system in is a "state," "quality," or "condition" "of being orderly" (Funk & Wagnalls, 1974, p. 1361).

Hartley (1968) notes that "There is a proclivity for human beings to order their relationships".... This tendency toward order, called steady-state behavior, serves to distinguish the living from the nonliving world (p. 42).

Orderliness assumes a structure or rational arrangement of parts to the whole such that no parts are extraneous or fractionating to the whole or overall gestalt. From physics we learn, for example, that this underlying gestalt of a physical or scientific system can be a "mass," "energy," or "gravitation" that animates all matter.

#### Organic Nature of System

An organic conception of system, in contrast to the mechanical process, stresses openness and adaptation to change. In order to survive, organisms constantly fit themselves to their environment. Certain organic functions and processes serve as the energizing "mass" or "energy" to preserve or stabilize a system. The Macmillan Dictionary uses as an illustration of an organism, a digestive system, whereby the "parts of the body that have a similar structure"..."act together to perform a specific function" (1973, p. 101). The word "synergy" suggests an "action of separate agents or organs that produces a greater effect than the sum of their individual actions." From the Latin synergismus and from Greek synergos, synergy means "working together" (p. 1012) as toward a common end or goal. The word "synergism" applied to an educational system, suggests an energizing mass or force of a physical system

such as "gravitation" or "energy" that suggests "a functioning organism" in human, social, or political terms. Synergism is defined by Hartley as "cooperative action of discrete units or agencies which results in a total effect that is greater than the sum of those effects taken independently" (Hartley, 1968, p. 257). This energizing mass that stimulates cooperative action within an educational system could be its public rationale and support as well as its political authority. For this reason educational life has been described as a "system of behavioral interaction," a "system comprising interlocking human and nonhuman resources that are organized to accomplish desired outcomes" (Hartley, 1968, p. 45).

Given this organic conception of system, such bureaucratic methodologies as modern systems analysis or cost/benefit analysis may not be sufficient to evaluate an educational system that has certain organic characteristics or properties. An educational system is the creation of the state and has a dynamic, interactive "public" nature within a political system. Such organic concepts as dynamism, motion, growth, balance, or equilibrium relevant to biological systems are therefore relevant to social systems.

Another characteristic or property of system drawn from physical and biological science is that a system has a continuum or continuousness that strives toward equilibrium or balance. A system in chemistry is defined as "a group of substances in one or more phases exhibiting or tending to promote equilibrium" (Funk & Wagnalls, 1974, p. 1361). The concept of equilibrium, derived from the

second law of thermodynamics, provides "an important explanatory framework for systems at rest, in balance, or in a static state" (Gawthrop, 1984, p. 28) and is central to the definition of a system.

Many common terms and phrases suggest the scientific notions of equilibrium, stability, steady-state, homeostasis, or equifinality relevant to the concept of system as the common good. The notion of equilibrium is an ancient concept that has frequently been associated with such words and phrases as "beneficial," "well-being," "adaptation," "adjustment," "welfare," "security," "harmony," "balance," "the good life," "satisfaction," "prosperity," "enrichment," "self-fulfillment," "the full life," "self-sufficiency," "progress," "contentment" and "happiness." Emerson notes:

Dynamic homeostasis has an important advantage over nearly all of these terms. It can be observed and measured in living systems....It enables us to recognize the general temporal trend of all surviving life that until recently has been obscure (Emerson, 1956, p. 153).

The concept of equilibrium has been demonstrated through philosophy such as Aristotle's "Golden mean" or the "scales of justice." Modern philosophers, economists and political theorists, since Pareto, have viewed society as an equilibrium of forces and have brought "the usage of equilibrium in social science to a whole new level of awareness" (Russett, 1966, p. 101).

An "Archimedean principle" of balance, harmony or equity (Thurow, 1975, p. 41) operates in any social system. An educational system can be said to be in a state of equilibrium when all its various elements or parts are in balance, when

its goods are uniformly distributed, when disparate groups served by the system experience equal outcomes, when students achieve equivalence in terms of equal opportunity, or when resources or inputs are utilized in an equivalent manner throughout the system.

An educational system operating in a commonwealth seeks to establish a balance between individualism and collectivism. The modern perception of a commonwealth, is a distinctive setting for an educational system since many of its principles appear relevant to precepts of justice, fairness, and equality which educational systems strive to affect as avenues of social selection and economic justice. When such goals of system are achieved, the system is stable and an equilibrium of justice has been established.

#### Holistic Nature of System

What both physical and biological notions of equilibrium have in common is a mutual emphasis on stability, i.e. on the maintenance of the integrity of the whole. Biological organisms maintain themselves in the face of constant disturbances from their surroundings. "The system endures beyond the flux of its parts and beyond the variations of its environments," wrote Paul Weiss (in Russett, 1966, p. 80). "The very fact that these fluctuations do not disrupt the organized existence of the system connotes, for the system, that it is in tune with the world around it...in brief, adapted" (Weiss, 1949, p. 4).



The Oxford English Dictionary (1989, p. 496) notes that all scientific systems tend to be holistic in that they proclaim an essential principle of unity or oneness, i.e. a "whole scheme of created things" as in "the universe where a group of bodies move about one another in space under some particular dynamic law, as the law of gravitation." In astronomy, Galileo and Kepler identified "a group of heavenly bodies connected by their mutual attractive forces and moving in orbits about a center, as the solar system" (p. 496). Scientists have asked why life gets more and more complicated or complex organisms are better adapted than simple organisms. The implication, of course, from the conjectures of science, is not to get lost in the analysis of parts which are infinitely complex and perhaps unmeasurable, but to retain the aim of understanding the ultimate purposes of the "whole scheme of created things." This implies a search and discovery of underlying or teleological principles.

From this etymological analysis we learn that a "system" is defined in terms of organicism and wholes. This definition of system is applicable to the social sciences generally, to a system of government, a system of education, or any other social system which foundations rest upon an "organized and comprehensive set of facts, rules, laws, doctrines, or principles" (The Macmillan Dictionary, 1973, p. 1013) that enable them to function as an organic whole with a purpose.

## Unity and Method of System

What ultimately unites or enables the forming of a unity or whole is some "orderly arrangement" or method. The term "method" is derived from the Latin methods and the Greek methodas meaning "a process, pursuit, investigation, or system" (Macmillan Dictionary, 1973, p. 640). We find that the term "methodology" is closely related to "orderly," in that to be "methodical" is to be "characterized by systematic or orderly habits or behavior" (p. 640). Thus the term or meaning of "systematic" is very close to methodical in meaning, but adds to it "the idea of thoroughness and elaborateness" (p. 709), suggesting a comprehensiveness and extensiveness of a system that require planning, or specifically, a "schema" or some "rational principle" or philosophy being implemented over a period of time.

Alfred North Whitehead explains the importance of philosophy in establishing a method of a system in Process and Reality:

...the true method of philosophical construction is to frame a scheme of ideas, the best that one can, and unflinchingly to explore the interpretation of experience in terms of that scheme...all constructive thought, on the various topics of scientific interest, is dominated by some such scheme, unacknowledged, but no less influential in guiding the imagination. The importance of philosophy lies in its sustained effort to make such schemes explicit, and thereby capable of criticism and improvement (Whitehead, cited in Laszlo, 1972, p. 120).

The "synthetic method" led to the proofs of Euclid's geometry mathematically expressed as "rule," or "law," or "Axioms" which are simply the well-established laws of geometrical optics. The concept of method is thus

related to the concept of "order" from the Latin ordo, meaning a "methodical arrangement of things in a series" (Halsey, 1973, p. 700) which derives its validity from both science and philosophy. The etymological concept of order and method also suggests "any fixed, lawful, or logical system, scheme or condition," (p. 709) just as Euclid, Newton, Galileo and Kepler demonstrated order in a systemic universe.

Whitehead, however, demonstrates the relation between philosophy and method with regard to human institutions or social systems. The terms "order" and "method" have philosophical implications. An educational system has distinct units of a curriculum, a logical sequence, gradations, or levels of learning, a logical arrangement of administrative parts in its structure according to some orderly method, rational plan, or philosophy.

The Macmillan Dictionary describes "order" as any "set of established, usual, or normal practices, institutions, activities, or rules" (Halsey, 1973, p. 709). But "order" is also defined as a "condition of being right, expected or allowed according to prescribed or understood standards" (p. 709). It also states that conforming to a standard is "to act in accordance with a consistent rule or standard," which is "to be the same or very similar" (p. 211). A uniform standard then, related to the concept of order, would be applied equally, uniformly, and consistently to all components of a system, for to "standardize" means "to cause to conform to or regulate by a standard" (p. 972). A standard is defined as "anything recognized or accepted as correct or perfect and used as a

basis of comparison," as in "standards of taste, moral standards" (p. 972).

Applying a consistent standard such as "uniform" or "efficient" to an educational system, where the term "consistent" means "adherence to the same thought or courses of action; in agreement or conformity between things" (p. 214) suggests that an educational system be characterized by some such consistent and uniform standard.

The words "order" or "method" in a human or social system relative to "condition" is as insightful as the word "standard" in determining the characteristics of an educational system whose method is an underlying philosophy or rationale, as Whitehead has suggests. However, a standard of "uniform" or "efficient" for an educational system to date has not been described in philosophical terms. For example, the Rousseauistic concept of the common good as General Will has frequently been resisted as "a standard" on the grounds that there is no sure method or means by which complete unanimity of the common good can be achieved except by majority rule. This notion of common good along with the utilitarian assumption of "greatest good of the greatest number," also appears "unworkable" as well as "intrinsically incoherent" and "senseless" (Finnes, 1980, p. 154) so far as providing a goal or standard for an educational system.

Finnes argues, however, that the common good is not an empty rationale, schema or method to apply to an educational system, since it is designed to ensure an orderly or rational "condition" or an "ensemble of conditions which

would enable each to pursue his own objective" (Finnes, 1980, p. 154). If the goal of an educational system is to provide equal opportunity in the game of life, i.e. "a level playing field" (Kozol, 1991) for its clientele, then "a good play of the game" (Finnes, 1980, p. 154) is required that is not just a "substratum of material conditions but also a certain quality [standard]...in the co-ordination [of the game] itself" (p. 154).

Another concept relevant to the term "order" or "method" in the sense of a "standard" is the principle of commonality. The commonality principle is applicable to an orderly educational system consisting of a "body of persons living under the same regulations; a body of persons united by some special interest or purpose" (Halsey, 1973, p. 709) reminiscent of the moi commun of Rousseau. When the Macmillan Dictionary defines "order" as a verb, we note that it means to command or direct (someone) to do something, especially with force or authority (p. 709). Thus the term "order" suggests, in accordance with the principle of commonality, that an educational system has legitimacy and a source of authority binding upon a body of citizens of a commonwealth.

### **Bureaucratic System**

### **Newtonian Reductionist System**

Newtonian thought is one of the foundations on which the present day concept of an educational system and curriculum is based. Direct correlations

can be made between the Jeffersonian system of an orderly curriculum and progressive levels of learning with ends pre-set and Newton's idea of a stable universe with planets rotating around the sun in perfect harmony. Harmony, a characteristic of a smoothly operating system, however, is a modern Enlightenment, not a post-modern concept. It is derived from a Newtonian, "atomistic" conception of nature, which provided the framework of the scientific revolution of the Enlightenment based on Newton's discovery of three unifying laws of the system of the universe.

A system is a harmonizing unity of parts. This atomism derived from Newtonian science inspires our concept of a system of education with its divisions and units of instruction. The atomist notion was first advanced by French natural philosopher Rene Descartes and other mechanical philosophers of the seventeenth century who viewed physical reality as composed entirely of particles of matter in motion and held that all the phenomena of nature resulted from their mechanical interaction. The monism of Leibneitz, the atomism of Descartes and other mechanistic views of the universe that originated during the Enlightenment had encouraged a perception of the universe system through its divisible parts (Charon, 1973, pp. 634-646). This systems world view, particularly through the works of Francis Bacon, had discredited an older Aristotelian and ontological world view (Doll, 1987), that also has relevance to modern systems of education, particularly a republican system that admits a teleological purpose of virtue and the common good for individuals and the state.

The Newtonian, mechanistic conception of system is relatively static and non-philosophical. It does not provide a moral foundation for system although it suggests its methodology. Our present ideas of wholeness, order, method, and "system" and particularly the perception of system as an orderly machine with discrete, quantifiable and linear units are greatly influenced by the inductive scientific method.

Isaac Newton established the methods of analysis, or the doctrine of "a whole as sum of parts" which we now acknowledge as the basis of modern science.<sup>1</sup> Newton describe his method as "Experimental Philosophy" because it set bounds to human presumption, was systematic, and rejected unsupported hypothesis (expressed in the language of mathematics (Guerlack, 1973, pp. 378-391). Newton explains the inductive method in the Opticks:

By this way of Analysis we may proceed from Compounds to Ingredients, and from Motions to the Forces producing them; and in general, from Effects to their Causes, and from particular Causes to more general ones, till the Argument end in the most general. This is the Method of Analysis: And the Synthesis consists in assuming the Causes discover'd, and establish'd as Principles, and by them explaining the Phenomena proceeding from them, and proving thee Explanations (cited in Guerlack, 1973, p. 379)

Doll (1987) argues that these Newtonian conceptions are "reductionist," and "assume the whole to be no more than the sum of the parts" leading to a concept of a closed system and a "curriculum which is cumulative rather than transformative" (p. 4), a system which has an age-stage type correlation. A system, however, is "an assemblage of interrelated parts in accordance with a

rational scheme or plan." Newtonian reductionism does not allow for the interaction of related parts, only for causes proceeded logically from the proceeding ones. Thus a concept of scientism and inductive reasoning is the basis for an educational system perceived as a sequence of development from the elementary grades to college, a concept of system based on the assumption of a simple-ordered reality (Doll, 1987).

Toulmin points out in The Return to Cosmology (1982) that modern or Enlightenment Newtonian science had reacted strongly and in opposition to the all-embracing teleological views of the ancients, and substituted instead a separatist, atomistic and ultimately reductionist methodology of partitions (Doll, 1987). However, Newton was not alone in popularizing the inductive method.

Prior to Newton's discoveries, Francis Bacon wrote his Novum Organum, which was so to have greatly influenced Comenius and other educational systemizers in the sixteenth and seventeenth centuries (Monroe, 1971). The philosopher Descartes provided two important concepts that would structure educational systems along the lines of a hierarchical progression of ages and stages of knowledge. One is the concept of knowledge as power (Cognito ergo sum) from Book 4 of his Discourse on Method; the other is his famous separation of all being into Body (Res extensa) or Mind (Res cognitans) which provided proof of the divisibility of body and soul as two distinct units ensuring the power of human immortality (Charon, 1988). Toulmin argues that Newton followed these reductionist trends, as did the German curriculum makers of the nineteenth



century. Thus, today in schools and colleges, we study "separate and distinct disciplines" (Toulmin, cited in Doll, 1987, p. 14).

The dominant Newtonian assumption of a reductionist linear causality and ordered universe subtly influenced the formation of an orderly and sequential educational system proposed by Comenius, Jefferson and the founders of educational systems in America. Direct correlations can be seen between the first propounders of educational systems and Newton's idea of a stable universe with planets rotating around the sun in perfect harmony. A harmony or unity of parts assumes the whole to be no more than the sum of the parts that provide an orderly sequence, a system and curriculum that provides a kind of knowledge that is cumulative, orderly, and linear, i.e. stage-age related. Francis Bacon, the popularizer of Newton, was especially influential.

### Baconian Methodology of System

Bacon set out in Novum Organum in 1620 to reform knowledge in accordance with the new inductive, "systematic" thought, to provide a new organon of scientific induction (Bacon, 1960). Bacon's systematic approach to teaching and learning was based upon observation and experiment, and the belief that the immense variety of forms of nature can be ordered, classified, and described. Such a departmentalizing of knowledge would naturally appeal to educational reformers desiring to make knowledge more teachable, more

manageable, or more accessible to the masses of men outside of the monasteries and the private chambers of a privileged elite (Rossi, 1968).

In his Advancement of Learning in 1605, the Novum Organum and Parasceve in 1620, the Historia Naturalis et Experimentalis in 1622, and the De Augmentis in 1623, Bacon classified natural history and interpreted knowledge to be useful and beneficial in life (Rossi, 1968, p. 177). The method of transmitting knowledge involved natural history being collected according to the great scale of nature itself which served as the "basis" of a "scientific pyramid which has physics in the center and metaphysics at the apex" (Lomer, 1972, p. 14). Bacon's New Atlantis (1633) furnished a pattern for curricula and a concept of practical education that would "supplant university learning by technical training" (Lomer, 1972, p. 24).

His method to reform knowledge was expanded in Novum Organum (1620, Volume 7) which sets forth Bacon's famous sixfold scheme of the Instauration. In this work the notion of a hierarchy of learning or sequence is evident, especially what Bacon called "ladder of the intellect," a metaphor interpreted in Cogitata et Visa. According to Bacon's explanation [the fifth state of investigation] "the Learned Experience" must first "ascend to general and large comprehensions" of the sixth stage.

Thus, the correct learning procedure suggests a hierarchical system that moves from lower propositions to the middle and afterwards to the higher by a proper scale or ladder of ascent (Lomer, 1972, p. 35). Baconian empiricism thus

conveys a pattern for knowledge and a way to learn conducive to a system of education.

In the Baconian system, "Knowledge begins with particulars, moves by ways of notions to slightly general propositions, and from these in turn progresses by unbroken scale of ascent to higher and more general axioms" (Lomer, 1972, p. 88). This method represents a departure from Aristotelian deductive logic for whom "proof is the deduction within the framework of the syllogism of a less general proposition from a more general" proposition (Lomer, p. 89).

This breaking of an intellectual tradition was, of course, the goal of Bacon's Great Instauration: the refutation of past and prevailing orthodoxy that had stifled the diffusion of practical and useful knowledge in the modern world. An educational system as it was first conceived in modern times would thus be orderly, logical, and sequential in accordance with a rational plan based upon none other than the natural laws of nature discerned through the inductive, scientific method and the principle of rationality.

### Principle of Rationality

The classical bureaucratic conception of an educational system that developed in the nineteenth century was shaped by the forces of Newtonian science and industrialism. Applied to systems of education, the term bureaucracy refers to an authority structure based on rational behavior. "Bureaucratic

administration," Weber wrote, "means fundamentally the exercise of control on the basis of knowledge" (Weber, 1964, p. 339). Systematized knowledge endows authority with rationality, and industrial systems would be made efficient through rationality, or what Weber called "legal-rational" authority based on a belief in the supremacy of the law. It was this belief in universal law, and rationality emanating from Newtonian science that processes of the organization could be dispatched quickly and efficiently through standing operating procedures (Hartley, 1968, p. 18). This rationalist philosophy provided the characteristics and properties of a bureaucratic system.

The classical theories of bureaucracy have produced rational educational systems in accordance with the principles of scientific management, such as the formation of a hierarchy with graded levels of authority, the scientific or quantifiable measurement of tasks and levels of performance, the concept of unity of ends, the scientific order of work (where third-grade knowledge is differentiated and preparatory to fourth-grade knowledge, etc.) the division of labor and departmentalization; a chain of command and span of control mechanisms; rules of behavior and technical knowledge (Harmon, 1968, pp. 26-27; Zuboff, 1984). All of these functions were designed to bring about industrial efficiency or improved results and are considered to be characteristics of the "one best system" (Tyack, 1964) of public schools.

Frederick Taylor's Principles (1923) was no less revolutionary for the combined forces of machine production than was Newton's Principia for the

forces that drove the machine of physical nature. Just as in physical nature there was one most efficient, most economical way for things to move about, so too there was for Taylor "always one method and one implement which is quicker and better than any of the rest," and "this one best method...can only be discovered or developed through a scientific study and analysis of all of the methods and implements in use..." (Taylor, 1923, p. 25). From these assumptions, Taylor induced the one most efficient way to perform a given task.

Such a systems model of schooling has been likened to a factory processing raw materials for social consumption. The "hyperrationalization" of a factory-like system of education has been described by E. P. Cubberley as due to a rational methodology pursued in terms of price and product, a "continuous measurement of production to see if it is according to specifications, the elimination of waste in manufacture, and a large variety in the output" (Cubberley, 1961, p. 215). Arthur Wise (1983) notes that "The failure of schools to conform to the rational model may be seen in the failure thus far to create models which help explain the process of schooling empirically" (p. 104).

Doll (1987) argues that Newtonian thought is one of the foundations on which the present day educational system is based. Harmony of a smooth running machine-like system is the ideal goal, according to Doll, of a modern Tyler-Hunter curriculum (Doll, 1987, p. 4). Connections can also be made to the mechanistic, monistic system of Newton between B. F. Skinner's or James Popham's mechanistic view of expressing learning in discrete, quantifiable, and

linear units paralleling Newton's approach to the calculus: "Both are reductionist, assume the whole to be more than the sum of the parts, and lead to a curriculum which is cumulative rather than transformative" (Doll, 1986, pp. 50-75). Newtonian/bureaucratic assumptions are also reflected in an "elaborate system of gradation, programmed curriculum," a uniform course of study and a structured sequence for learning (Tyack, 1974, p. 55). Carl Kaestle (1983) notes that a rational educational system characterized by punctuality, order, and regularity has provided the essential features of a uniform urban system (p. 42).

This bureaucratic systems model reflecting scientific monism, empiricism, rationality and industrial efficiency established in the nineteenth century is "a closed 'nonpolitical' system in which directives flowed from the top down, reports emanated from the bottom, and each step of the educational process was carefully prescribed by professional educators" (Kaestle, 1983, p. 40). Just as eighteenth-century theologians conceptualized the Newtonian cosmology as God as a clock-maker without derogation, "so the social engineers searching for new organizational forms used the words 'machine' or 'factory' to evoke a bureaucratic systems ideal" (p. 40).

At base, the entire bureaucratic systems theory, defined in bureaucratic terms, refers to an authority structure based on rational behavior. A methodology of "Rational authority is projected throughout the organization in such a way as to directly control human activity to the points of high predictability and maximum efficiency" (Hartley, 1968, p. 17). The unifying

method or schema of a bureaucratic system is not philosophy; it is primarily empiricism, an epistemological concept. "Bureaucratic administration," Weber wrote, "means fundamentally the exercise of control on the basis of knowledge, and knowledge endows authority with rationality" (Weber, 1964, p. 339).

It now appears that the modern bureaucratic systems ideology diverted this epistemological basis of system not into a public philosophy of the common good, but into a "cult of efficiency" with an industrial or corporate view of the state. Bobbitt (1913) advised educators to do as industry in developing a system based on "detailed instructions as to the work to be done, the standards to be reached, the methods to be employed, and the appliances to be used" (Bobbitt, 1913, p. 89). Subsequently, the penchant for cost efficiency as a manifestation of "hyperrationality" in educational systems has been carried to its extreme (Callahan, 1960). This is an age of efficiency. In the eyes of the public no indictment of a school can be more severe than to say it is inefficient (Task Force on Education for Economic Growth, 1983).

Thus the Newtonian, Baconian, Weberian conception of system is reflected in an efficient, highly centralized and bureaucratized system. A vertical conception of system was generally discussed in the early days of the Republic with schools in the primary grades all the way through to a national university. Cremin notes that it was felt that some form of institutional organization, or system of education was needed to encourage progressive learning from primary, to secondary, to college or university (Cremin, 1980, p. 125).

### Age-Stage Methodology

A system suggests "a related curriculum of standard subjects which would provide a firm knowledge base for all persons" (Alexander et al. 1989, p. 149). The Baconian method provided the basis for the development of a system of education with an age-stage type methodology for learning based on a perception of the operation of natural law which has inspired educational theorists to this day. A vertical or hierarchical system of learning emerged from Newtonian/Baconian assumptions about knowledge and the natural laws of the universe. "...Bacon did more than formulate the laws of scientific induction for pedagogic purposes: he made possible the enrichment of the courses of study by the addition of a wide range of school studies" (Monroe, 1971, p. 26). Bacon recognized individual differences in the mental capacities of children, and "he urged that these differences and special tasks be taken into account by teachers" (p. 27).

To Bacon we can attribute method derived from two distinct modes of training the mind to a free and appropriate use of its faculties:

The one begins with the easiest, and so proceeds to the more difficult; the other, at the outset, presses the pupil with the more difficult tasks, and, after he has mastered these, turns him to pleasanter and easier ones (cited in Monroe, p. 27).

Bacon was joined in this endeavor by John Amos Comenius (1592-1670) whose goals for a system of education in Great Didactic parallel his own (Monroe, 1971, p. 28). Comenius was "the first to conceive a full-scale science



of education," with a core of a "pansophy" that constituted a general philosophic system by which he meant to "reform all human affairs by means of education" (Piaget, cited in Gawthrop, 1984, p. 26).

Both Bacon and Comenius attempted to reorganize the sciences into one great body of coordinated knowledge. For Comenius, the Baconian method of induction and the study of what was natural was "the true key to the human intellect" (Monroe, 1900, p. 28).

Comenius devised an educational system consisting of a four-fold division of schools based on the inductive, which led naturally to an unfolding of natural laws based on age and acquirements, i.e. progressive stages of learning to be found in Pestalozzi and Froebel. Comenius' system, was a comprehensive, interrelated system of primary grades with a common core of subjects, at age-stage intervals progressing through to the university at the apex.

It was because of this systems methodology and Comenius' desire to found education upon a scientific basis that Comenius is frequently regarded as the true founder of educational method. The successors to Comenius in developing a hierarchical and progressive learning system are Froebel, Herbart, and Pestalozzi (Cubberley, 1919).

### Centralized Authority Structure

There is apparently much confusion surrounding the concept of power, i.e. "centralization" and "decentralization" in bureaucratic systems theory. Critics of

educational systems have continuously associated a highly bureaucratic public system with monopoly, centralization of authority and the minimization of local or "familial" control (Chubb and Moe, 1991; Glenn, 1988).

The principles of Newtonian science and modern scientific management present the concepts of decentralization and centralization within a systems hierarchy. Hartley notes, however, that classical organization theory "in its promotion of hierarchical, goals, job descriptions, lines of authority, and the like" (1968, p. 26), "does not emphasize uniformity of procedure and routinization of progress to the exclusion of all diversity in the organization" (p. 27). Rather, flexibility within a rational system is provided for by the processes of centralization and decentralization (p. 27).

In the language of formal organizational theory, these two concepts relate to the "hierarchical level at which decision-making authority is concentrated" (p. 28). According to Harmon, decentralization in a bureaucratic system is "the delegation of authority over specific decisions to a subunit," or "deconcentration of functions" (p. 28). Deconcentration means the transfer of functions (activity and work) to subunits in the organization. "Decentralization expands the processes of participation in decision-making as well as draws in the observations of those who are closest to the problems at hand" (p. 29).

Morphet, Johns, and Reller (1967) explain why certain decisions should be decentralized or centralized in accordance with classical bureaucratic theory: First, things should be done centrally that do not require local initiative and

responsibility and can be done more efficiently and economically on a centralized basis; and second, decisions should be decentralized and executed at a local level as they pertain particularly to local needs and which, "if done centrally, would prevent or limit desirable initiative and handicap the development of effective local leadership and responsibility" (p. 27). It should be noted, however, that in a bureaucratic system, the decision making-authority still resides at the highest levels of authority in the system.

Concepts of decentralization/centralization are important to closed vertically structured bureaucratic systems, but appear less relevant to the functioning of non-linear, organic, complex, open systems characterized by holism, comprehensiveness, uniformity, and inclusiveness conducive to democratic participation.

What is essentially missing from the Newtonian/ Weberian/Taylorist bureaucratic systems model is the link "that ties an organization or system into a dependency relationship with its surrounding environment. Without that link, an organization is viewed as a closed system that somehow stands alone, isolated and unaffected by its own environment" (Hartley, 1968, p. 127). This concept of an "open system" linked to the external environment or polity was a product of post-modern science and has been addressed in post-modern social systems theory. In general, open systems, as distinguished from the bureaucratic, closed systems, emphasize the "publicness" of a system, an important characteristic of a republican educational systems envisioned by the public school founders.

## **Ontological System**

In contrast to the modern, Newtonian system, a post-modern view of system invites suspicion of rigid dichotomies, unrelated parts, and centralization. The post-modern ontological systems perspective provides three considerations for interpreting an educational system to be an "extra-familial" subsystem of the polity: (a) the system is open (as opposed to closed); (b) the system has a structure of complexity and interrelatedness (as opposed to simplicity and isolation); and (c) the system fosters transformative (as opposed to accumulative) change.

Today, post-modern systems philosophers and theorists emphasize that "human" or social systems are defined in terms of human valuing, i.e. ontological terms. Lewis Gawthrop, for example, discusses in depth the concept of an ontological system as one aspect of modern general systems theory. According to Gawthrop, the four basic characteristics of an ontological system are: a sense of purpose, a sense of consequence, a sense of history, and a sense of order (Gawthrop, 1984).

### **General Properties of an Ontological System**

Clearly an educational system is more than a purely scientific, mechanical or bureaucratic systems concept. The following components of an ontological system identified by modern general systems theorists are (a) holism, (b)

teleology, (c) temporality, and (d) hierarchy (Gawthrop, 1984). These concepts define an educational system as an ontological system.

They provide "...an orderly way of identifying and ordering the differentiated components, relationships, processes, and other properties of anything that may be conceived as an integrative whole" (Hartley, 1968, p. 23).

An ontological system reflects an Aristotelian rather than a mechanical Newtonian or mechanistic systems perspective. An ontological perception of "system," in contrast with a rational, mechanistic and non-teleological Newtonian system, causes us to ask such normative questions as: What does the system represent or exist for? What does it hope to achieve? An ontological system provides a sense of critical consciousness or being (Gawthrop, 1984) and a holistic progression that extends along horizontal rather than a vertical continuum. Most importantly, the "organismic revolution" reflects the notion of "wholeness," or a "general science of wholeness, organized complexity, and unity" (Gawthrop, 1984, p. 9). "It is the study of totalities in the sense that every integrated and unified organic entity is always viewed as but a part of a larger, more encompassing, higher-level whole" (p. 9). "[T]he basic value underlying the entirety of its theoretical framework...[is] reflected in the notion of holism, which is derived from the Greek word holos (whole)" (p. 9).

This post-modern systems perspective was initiated by Ludwig von Bertalanffy, who is generally considered the father of general systems theory (p. 9). His postulates of a "new science" of systems has now become a new

"paradigm" in scientific thinking (Kuhn, 1962). Post-modern philosophy and science now defines "system" in ways other than seventeenth century Enlightenment science which had "tried to isolate the elements of the observed universe--chemical compounds and enzymes, cells, elementary sensations, freely competing individuals...expecting that, by putting them together again, conceptually or experimentally, the whole or system--cell, mind, society--would result and be intelligible" (Bertalanffy, 1973, p. xix). Kuhn's The Structure of Scientific Revolutions (1962) is largely responsible for this reorientation of holistic systems thinking so relevant to a republican system of education.

Bertalanffy (1950, 1968, 1972, 1973, 1981) argues that the new paradigm of system represents a "new philosophy of nature" that affords an organismic outlook of the "world as a great organization," in contrast with Newtonian science and its atomistic and mechanistic perception of the "blind laws of nature" without purpose or meaning and the product of an indifferent creator standing outside and indifferent to his own creation. The development of the new biological or life sciences since Newton's day, ushered in a post-modern world view which "...may be called the Organismic Revolution. Its core is the notion of system..." (Bertalanffy, 1968, p. 187).

Post-modern philosophers have a scholarly concern about the lack of interest in ideals or normative values among social scientists due to the general belief that a science of ethics is not possible, that science and economics are

value free, and that "the necessary linkage between any ideal and an Ultimate Good is not a scientifically creditable endeavor" (Gawthrop, 1984, p. 16).

An educational system, however, according to ontological and open systems theory is an "ideal-seeking system" (Ackoff and Emory, 1972) because it represents a process or function of harmonizing the ideals of the individual with the collective or common welfare concerns of the state. As it expresses the goal of the polity, it is also the means of its attainment.

Thus modern systems theorists and philosophers have revived the Aristotelian, organismic notion of wholeness axiomatic to a purposeful system that allows for a conception of a social system compatible with a republican theory of state. "Holism and teleology, wholeness and purpose, represent two of the essential components of the science of a general systems universe" (Gawthrop, 1984, p. 17).

An ontological systems' perspective of effectiveness of an educational "system" evaluates a system in terms of what it is designed to produce. A system cannot be defined without a standard, a sense of wholeness, purpose, or social or economic benefits or advantage compatible with the collective valuing of its individual units in relation to the state (Waldo, 1984).

The need for an equitable standard in educational system will be felt where "...there is no clearly universal answer to the question of what benefits accrue to whom during the educational process" (Bertalanffy, 1981, p. 471).

Few production function studies in education, based on general systems theory to

date, have given adequate attention to how the transformation of resource inputs to school outputs is accomplished, whether resources are distributed fairly, what occurs at the level of instruction where resources are actually distributed and utilized, much less why the process is instigated. An educational systems process without an ontological perspective or standard of equity is a "Black Box" (Rossmiller, 1982, pp. 92-93).

Modern systems philosophy is concerned with the relations of the individual to the collective, man to world, and to "values" in philosophical parlance. "If reality is a hierarchy of organized wholes, the image of man will be different from what it is in a world of physical particles governed by chance events as ultimate and only 'true' reality" (Bertalanffy, 1968, p. xxii). These are ontological concerns. Bertalanffy, for example, asks of an educational system, what is the system's "ultimate measure of value?" It might be asked of a system, for example, if equality of opportunity is the goal: "Is it accessible to the same amount of resources? If so, does that mean the less able students should be given the same as more able students, even though more able students could reach the same levels of achievement with fewer resources?" (p. 471). Is equal treatment or the right to equal educational benefits the goal of the system? "If this is the case, then those with less aptitude or less ability to obtain educational benefits might require a different treatment and particularly treatment which might be more costly than that needed by other students to achieve the same end" (p. 472).



## Holism of System

### Concept of Related Parts

"The clarion call of Bertalanffy and his associates in modern systems theory is "unity through diversity" (Gawthrop, 1984, p. 112), a distinctly Aristotelian and commonwealth concept. "A system is evidenced wherever a set of components are joined to achieve some purposeful goal" (Gawthrop, 1984, p. 10) and where a unified whole is greater than the sum of its diverse working parts. The post-modern concept of a "metasystem," according to modern philosophers, is an extensive, organic system with a higher order of conception of a whole related to distinctive individual parts. The basic difference between a mechanistic, or reductionist view and a holistic view of human beings is that the individual is not merely particularized and concertized, but part of a larger, complex social order. A contemporary view of the individual in educational systems is that the student is a product of a system design to achieve the goals of the state (Schultz, 1971).

That a system is a holistic concept is derived from science and cosmology. In 1819 Paley observed in his Natural Theology that "The universe itself is a system; each part either depending upon other parts, or being connected with other parts by some common law of motion" (Paley, 1978/1819, p. 398). The concept of holism, however, does not mean that a whole is simply the sum of its parts. Rather, implicit in the concept of holism is the notion of "interrelatedness"

or "interaction" of parts whether of the atom, the organism, or the brain. Even in the area of human personality, leading psychologists such as Maslow, Buher, Goldstein note that a personality is not the mere sum of our feelings, volitions, instincts, and conceptions. A system from a holistic perspective viewed by modern psychology "... constitutes an integrated unity of all these in mutual relation" (Laszlo, 1972, p. 32):

A general hypothesis of science is that natural systems are wholes with irreducible properties. However, the fact that physical entities such as atoms provide communication between their parts in terms of the interaction of fields of force potentials, and that things such as organisms provide parts-communication by physicochemical means, and that multiperson organizations establish communications of quite another kind, does not invalidate their holistic character (Laszlo, 1972, p. 33)

That a whole consists of related and not merely a sum of parts is important in assessing human relations as mutually or reciprocal wants and needs. When applied to systems in social science, the concept of interrelatedness of parts to a whole suggests "social unity" engendered by interaction: the moi commun of Rousseau, the "unity in diversity" of John Adams essential to commonality, or funding formulas that establish equity among school divisions within an entire school system. The Oxford English Dictionary states that a system "generalizes certain commonalities underlying individual differentiations," i.e. parts of a system that contribute to a unified system. Recall that parts of a system are defined as an "assemblage of things connected, associated or interdependent" which "...form a complex unity"-- "in orderly arrangement

according to some scheme or plan" (Oxford English Dictionary, Volume 17, p. 496). They are the "invariances" of a system that contribute to a whole or unified system (Gawthrop, 1984, p. 20). Thus, any "organized or connected group" whether objects, natural phenomena, or people (as in an educational system) can be viewed as "assemblage of things connected, associated or interdependent" which "...form a complex unity." They comprise "a whole composed of parts in orderly according to some scheme or plan" (p. 496). "It is in virtue of such communication that social institutions and organizations can act as entities in their own right, and can have the characteristics which go with their unified mode of behavior" (Laszlo, 1972, p. 33). Clearly, an educational system conceived in ontological terms is a uniform or unified system.

Post modern systems analysts and organizational theorists have concerned themselves in recent years with constructing maps of the means-ends hierarchy of organizations (March and Simon, 1958). A system is perceived as a vehicle for understanding and analyzing common properties among diverse kinds of complex systems that are holistic and similar conceptually to those found in biological organisms.

### Concept of Organicism

Modern general systems theory "is the study of totalities in the sense that every integrated and unified organic entity is always viewed as but a part of a larger, more encompassing, higher-level whole" (Gawthrop, 1984, p. 9). In

education, for example, a "school system" is organic by virtue of its complex properties and subsystems, an environment, outputs, and feedback that are similar conceptually to properties and characteristics of other holistic systems, particularly in biological or living systems or organisms.

"Organicism," we recall from Chapter Four, is an older classical notion that the state (or a work of art or polis) can be compared to a living organization where the relation between the parts of a work is neither arbitrary nor factitious, but as close and intimate as that between the organs of a living body. The classic formula for the relation of parts to the whole comes from Plato's Phaedrus and Aristotle's Poetics. Post-modern philosophers such as Leibniz and Kant saw a unity of substance, or a system in mechanical speculations where the division into parts, posterior to the whole, have, also reaffirmed the Aristotelian a priori concept of unity (Orsini, 1973).

This ancient, classical, holistic or teleological view has replaced the monistic, atomistic, or mechanistic view of a Newtonian universe and phenomena which advanced the notion that the behavior of social systems can only be understood through the comprehensive analysis of component parts.<sup>2</sup> The Aristotelian concept of holism has been revived through an "Organismic Revolution" and now provides a values framework for all organic systems replacing a mechanistic, reductionist systems view of the world:

The mechanistic world view, taking the play of physical particles as ultimate reality, found its expression in a civilization which glorified physical technology that has led eventually to the

catastrophes of our time. Possibly the model of the world as a great organization can help to reinforce the sense of reverence for the living which we have almost lost in the last sanguinary decades of human history (Bertalanffy, 1968, p. 49).

### Teleology of System

A system of schools from the beginning was teleological, i.e. directed toward a definite end or purpose. Macmillan Dictionary says that teleology is the doctrine that natural systems processes are not entirely determined by mechanical forces, but are directed onward toward an ultimate goal (Halsey, 1973, p. 1025). The term teleology comes from the Greek teleos (end or purpose) and logos (word or inner thought) (Gawthrop, 1984, p. 17). It is used in both secular and Christian philosophy. E.P. Cubberley argues that the purpose of a "comprehensive" system of schools in the late nineteenth century was to:

assimilate and amalgamate these people as a part of our American race, and to implant in their children, so far as can be done, the Anglo-Saxon conception of righteousness, law and order, and popular government, and to awaken in them a reverence for our democratic institutions and for those things in our national life which we as a people hold to be of abiding worth as the highest mission of a comprehensive system of public schools (Cubberley, quoted in Lawrence A. Cremin, 1961, p. 68).

A teleology of inclusiveness (despite Cubberley's insistence on the Anglo-Saxon heritage), or "mission of a comprehensive system" was also articulated by Pestalozzi and Herbart in the nineteenth century for the development of character in accordance with the goal of a republican society and state (Glenn, 1980, p. 262). A comprehensive system would make available educational

facilities to the whole population, even to those students who would choose to attend private schools. "The common school had to be common to all citizens before it could fulfill its function in the American republic" (Cremin, 1951, p. 55). This ideal of inclusiveness blurs the public/private distinction of system, except when we consider the goal of a public system. John Amos Comenius incorporated both modernism and a Christian and moral teleology into his educational system. For Comenius, as for Horace Mann, education had a spiritual and moral purpose. Education for virtue was the goal of Comenius' system as it was for a republican system. He wrote in the "Dedicatory Letter" to The Great Didactic: "there is no more certain way under the sun for the raising of sunken humanity than the proper education of the young" (cited in Keatinge, 1967, p. 14) which required that minds be given over to the true knowledge of God, of man, and of nature, that they may grow accustomed to see in this light the light of God, and to love and to honour the Father of Light above all things" (cited in Keatinge, 1967, p. 15).

Gawthrop (1984, p. 122) notes that the "very notion of purpose is central to the ontological character of being" and that "the subordination of purpose to process creates vapidness in public sector organizations." The concept of teleology viewed in terms of an operating or function "system" suggests the "purposeful nature of the organizational design itself" (p. 119).

Thus when Jefferson proposed his educational plan to extend educational opportunity to the masses at public expense, he believed fervently that "This it is

the business of the state to effect and on a general plan" (cited in Wagoner, 1990, p. 98). Jefferson's scheme of education for a free and virtuous republic was based upon a teleological assumption that man is improvable and that education is the chief means of effecting that improvement (Cremin, 1951, p. 222).

Philosophers throughout the ages have been attentive to a teleological conception of system. Thomas Hobbes, who had absorbed the new systematic science of Newton, observed in Leviathan (1957/1651, Volume 2, xxii, p. 1651) that government and civic society was a system: "By Systems; I understand any numbers of men joined in one Interest, or one Business." He suggested that a social or political system is united by virtue of a purpose, common end or objective, i.e. that it is teleological.

Twentieth century philosophers like Rawls (1971) emphasize purposeful life or "life plans" and revived Aristotelian idealism. Josiah Royce argues: "Have a plan; give unity to your aims; intend something definite by your life; set before yourself one ideal" (Royce, 1967, pp. 289-290). In the context of teleology or purpose, Royce argues that loyalty for modern man fixed to an idea or cause is the essence of common purpose. Loyalty to a cause or purpose is an object of devotion as well as a source of meaning:

this deliberate centralization of all duties and of all virtues about the one conception of rational loyalty...is of great service as a means of clarifying and simplifying the tangle moral problems of our lives and our age (Royce, 1971, p. 279).

According to post-modern general systems theory, a teleological system is "The notion that value has meaning only in relation to an agency's commitment to a purposefulness that transcends its own self-relatedness" (Gawthrop, 1984, p. 124). For H. R. Niebuhr being, or ontology, and value are integral components. Purpose relates to "utility" or "usefulness" in the promotion of virtue or the common good. Purposefulness becomes an issue where a public agency or agent [such as a legislature] has the power or authority to limit the capabilities or potentialities of individuals or a specific clientele (Niebuhr, 1960).

Good is a term which...must be applied to that which meets the needs, which fits the capacity, which corresponds to the potentialities of an existent being. It is...that which is 'useful.' Evil...is that which thwarts, destroys, or starves a being in its activities (p. 103).

Niebuhr, like Royce, relates purposefulness to loyalty to a cause or moral standard: "To deny the reality of a supernatural being called God is one thing; to live without confidence in some center of value and without loyalty to a cause is another" (p. 25). Thus the challenge to modern society is to clarify a sense of purposefulness in the context of its public organizations (Gawthrop, 1984, p. 124).

Cremin's description of an educational system characterized by "republican civilities" (1951) is reflected in state constitutional mandates for a republican system in accordance with the aims of the polity. The Supreme Court required the General Assembly of the state of Kentucky to "re-create, and re-establish a



system of common schools within this state which will be in compliance with the constitution" (Rose v. Council for Better Education (1989)).

This statement above demonstrates why defining the word system is important. We have suggested all along that the ultimate purpose that lies behind the organization of an educational system is to effect the end of a republican form of government. A system of education was formulated upon the premise that

If the Republic was to survive, moral rectitude would have to be universally diffused among the people, and the quintessential instrument for achieving that end would be the school (Mann, cited in Cremin, 1951, p. 137).

The early school founders "believed that schooling would lay the foundation for the responsible exercise of citizenship in a free society, but only a particular kind of schooling, publicly supported, publicly controlled, and open to all" (Cremin, 1951, p. 237).

Other purposes of a teleological system of education have been proposed. R. Freeman Butts stated that "the really important reason for believing in the value of education is that it can be the foundation of freedom" and that freedom or liberty requiring "a truly democratic society must rest upon the knowledge, intelligence, and wisdom of all the people" (Butts, 1960, pp. 33-48).

Another important purpose or teleology for a system of education is equal liberty, an individual goal as well a reflection of national economic aspiration (Reich, 1991). A system of education would produce equality, but equal liberty,

essential to the well-being of individuals and the entire state, is only possible through a common system of education. Developing the "whole intellect of the state," was stated as the goal of system by the first Kentucky State Superintendent as early as 1839:

The great object of the Common School law is to give to every child in the Commonwealth a good common school education; to develop the whole intellect of the State. The great principle of the System is that of equality; the rich and poor are place on the same footing (cited in Alexander, Summer, 1991, p. 357).

Goals of economic liberty advanced today have made investment in poor children one of six urgent national priorities from the American Agenda submitted by former Presidents Gerald Ford and Jimmy Carter to President George Bush (Schorr, 1988, p. 107) with the prospect of deterring a growing and permanent American underclass and building an infrastructure (Reich, 1991). Schorr's teleology has been described as "breaking the cycle of the disadvantaged" through a comprehensive system of ever-expanding network of schools, health programs, and social services, where even "corporate giants [who] are providing national policy toward greater investment in children"<sup>3</sup> (Schorr, 1988, p. 292).

## Temporality of System

### Nature of Temporal

The Macmillan Dictionary says that "Temporality, [is] a conception of secular time" (Halsey, 1973, p. 1026). In ontological systems (in conjunction with holism and teleology) the notion of temporality "constitute[s] the philosophical essence" of an ontological system (Gawthrop, 1984, p. 27).

Theorists have questioned whether a system that is teleological or having values, culminates at some point or apex in time and if that apex represents the center of value (Gawthrop, 1984, p. 27), so temporality is also related to the ontological notion of hierarchy.

A republican educational system is temporal, if not millennialist, because a sense of time or belief in posterity informs its teleology. An educational system, like the republic itself, was founded to last for the benefit of our posterity. Temporality expresses the notion of evolution or progress, i.e. the progression of a people through enlightenment, to ensure the survival of the republic over a period of time. Horace Mann, for example, believed that "upon the people will rest the great and inspiring duty of prescribing to the next generation what their fortunes shall be, by determining in what manner they shall be educated" (cited in Cremin, 1980, p. 633). When Jefferson proposed his scheme for an educational system at Rockfish gap in 1818, he maintained that it was to be founded upon the view that human nature was not fixed, that man was

essentially improvable. His vision of an educational system to promote a virtuous and educated citizenry reflects the ideas of Locke and Rousseau on the perfectibility of man:

Education...engrafts a new man on the native stock and improves what in his nature was vicious and perverse into qualities of virtue and social worth. And it cannot be but that each generation succeeding to the knowledge acquired by all those who preceded it, adding to it their own acquisitions and discoveries, and handing the mass down for successive and constant accumulation, must advance the knowledge and well-being of mankind, not infinitely, as some have said, but indefinitely and to a term which no one can fix and foresee (Thomas Jefferson to M. de Barbe-Marais, June 14, 1817, cited in Cremin, 1980, p. 633).

Cremin notes that Jefferson's rationale for establishing his private university, library and system of primary schools was "optimistic," but not romantic (Cremin, p. 113). It may be more accurate to say that it was "temporal," because it reflected the temporal notion of Burke's "eternal contract" with moral linkages between generations to perpetuate the republic "indefinitely" and "to a term which no one can fix and foresee."

Temporal, holistic, and teleological concerns are inherent in a public system of education united to the polity through the Jeffersonian ideal that all should benefit equally from a diffusion of knowledge over a period of time. At the base of a republican system of education is a temporal view of human limits as well as possibilities, of duty on the part of both citizens and the state to promote the common good over time.

The American philosopher Josiah Royce speculated that "a doctrine of evolution may be...a purely empirical theory," but a "philosophy of evolution, if there is ever to be one must face just that ultimate question, has the world a meaning..." (cited in Gawthrop, 1984, p 27). Jefferson's ideal of liberty through virtue and knowledge and Mann's vision of social justice to be achieved through an educational system over time demonstrates both the temporal and teleological nature of an ontological system.

As we shall see in the next section, Mann's "balance wheel" metaphor symbolizes the notion of equilibrium as the ideal state to which a system aspires over time and reflects a post-modern scientific systems concept of homeostasis and equifinality.

### Temporality as Equilibrium

Equilibrium is treated as an aspect of temporality in the physical sciences and has often been applied to social systems by scholars trying to explain the interaction of social forces (Gawthrop, 1984) over time. The concept of equilibrium, in the physical world of closed, mechanistic systems is derived from the second law of thermodynamics. It can also be found in the biological explanations advanced by C. H. Waddington who described the self-stabilizing structures in "chreodic" systems which have a "center of attraction" that controls or stabilizes the system as it "exhibits a tendency to reach a defined goal or end

point" (Gawthrop, 1984, p. 97). In a system of education that "center of attraction" is its public rationale of equity and the common good.

### Horace Mann's "Balance Wheel".

Any definition of "system" using such descriptive terms as "machine," "harmony" (Cremin, 1980, p. 125) suggests that a system is an efficient machine consisting of a balance or harmony of parts. However, when Horace Mann described education as a "balance wheel of the social machinery," in his "Report to the Massachusetts State Board of Education" in 1848, he was not expressing merely the operational efficiency of a machine. His metaphor for a system of education expressed an ontology of social justice and equal liberty over time--teleological and temporal notions that provided a powerful paedeia for educational systems into the twentieth century:

Education then, beyond all other devices of human origin, is a great equalizer of the conditions of men--the balance wheel of the social machinery. I do not here mean that it so elevates the moral nature as to make men disdain and abhor the oppression of their fellow men. This idea pertains to another of its attributes. But I mean that it gives each man the independence and the means by which he can resist the selfishness of other it. It does better than to disarm the poor of their hostility towards the rich: it prevents being poor (cited in Cubberley, 1920, p. 599).

Mann's "balance wheel" metaphor suggests the need for equilibrium between the dissonant elements of rich and poor in an a republican system of education that functions as a balancing scale of social and economic justice, harmonizing and neutralizing conflicting interests, especially the disparities of

wealth in society that have no way of harmonizing themselves without the intervention of the state.

Thus Horace Mann's metaphor of the "balance wheel" expressing the notion of "balance," "harmony" or "equilibrium" in a system of education has special significance to the concept of system. The equilibrium metaphor is generally one of the oldest allusions to social justice in the history of ideas and science, even without theoretical ramification. The equilibrium metaphor had been used for centuries as a synonym for balance and justice:

the balance, the pair of scales which yields the concept of stable equilibrium, with its implication that the adverse reaction must be the greater, the more the true position of balance has been disturbed. The motion [notion?] of dike, of 'nothing too much,' of the golden mean, and the statue holding the scales of justice in front of many Western law courts, all testify to its suggestive power (Deutsch, 1951, pp. 232-33).

The concept of equilibrium is central to the physical sciences and makes possible "the establishment of determinate conditions for any given system" (Russett, 1966, p. 15). Only when the conditions of equilibrium are known can the scientist deduce all the various properties--whether thermal, mechanical, or chemical--of the system" (p. 15). According to this notion, the "conditions" of an educational system are equal justice. As in a physical system, when the conditions of equilibrium are evident it is possible to deduce all the various properties of the system (p. 15) to judge, for example, whether disparate groups served by the system have uniformity of outcomes, achieve equivalence in terms

of equal opportunity, or if resources or inputs are utilized in an equivalent manner throughout the system--over a period of time.

In a "condition" of disequilibrium an unfair distribution of educational advantages and resources may not be sufficient to meet the needs of individuals and society at a given moment in time (Marshall, 1964, pp. 236-255).

### Equilibrium in Social Systems

The notion of equilibrium as either a physical or social system is a "temporal" concept. The philosopher August Comte advanced the notion of a moving equilibrium, the idea of progress without end and a philosophical outlook in the nineteenth century of a "final term which human nature will be forever approaching and never attaining" (Comte, 1853, p. 431). The philosophy of evolution itself, as propounded by Darwin, and especially Herbert Spencer in his First Principles (1880) was that every living organism is in a state of moving equilibrium suggesting a balance in nature according to natural laws where the fittest survive.

### Social Consequence of Equilibrium

Modern theories of equilibrium are variations of nineteenth century harmony of interest doctrine that support capitalist theory of indifference and the "spectator-theory" of Adam Smith. The Hayek-Pareto equilibrium view of government and economics is one of ethical neutrality: let the ideals fall where



they may. F. A. Hayek observed, "In a free society in which the position of the different individuals and groups is not the result of anybody's design--or could within such a society not be altered in accordance with a principle of general applicability--the difference in rewards cannot meaningfully be described as just or unjust" (Hayek, 1976, p. 83). Pareto equilibrium suggests that equality and equity in society is best served by government restraint where market forces are allowed to readjust themselves to prevent "extra burden on the still relatively favored" (Hayek (1976, p. 205-206). Equilibrium occurs where government does not take responsibility for determining who wins or loses. According to the laissez-faire theory of equilibrium, no remedial government action is required to establish a balance between unequal individuals or classes unless government itself is responsible for the condition (Alexander, 1990, p. 197).

An opposing view of legal positivism holds that positive and affirmative relief is warranted to achieve social harmony since equity and justice have similar attributes of right and humanity of purpose whether government creates disparities or not (Alexander, 1990, p. 197). Justice as equilibrium exists when the government intercedes in the natural processes taking remedial action to address imbalances in the development of human faculties. John Rawls believes that "All social primary goods, liberty and opportunity, income and wealth, and the bases of self-respect--are distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored" (Rawls, 1971, p. 303).

C. A. Russett (1966) records how other philosophers have applied equilibrium theory to open social systems. John Dewey's educational philosophy is derived from equilibrium theory also and is in the tradition of Comte and of biological systems that maintain themselves in the face of constant disturbances or maladjustments in an open system. Dewey contends that "Adjustment is no timeless state; it is a continuing process." With a keen sense of social justice, Dewey's instrumentalism had an organic and reformist spirit and purpose (Russett, 1966). Dewey's conception of the educational system or environment was something to be mastered, progressively overtime, a concept of a moving equilibrium. The true end of a moral system of education consisted in "the active process of transforming the existent situation. Not perfection as a final goal, but the ever-enduring process of perfecting, maturing, refining is the aim in living" (cited in Russett, 1966, p. 41).

Popular notions of "balance," "the good life," "satisfaction," the "golden mean," or "scales of justice" or "equity" suggested by Horace Mann's "balance wheel" metaphor is an important concept of temporality relevant to an ontological system of education. The concept of "Dynamic homeostasis has an important advantage over nearly all of these terms. It can be observed and measured in living systems....It enables us to recognize the general temporal [emphasis supplied] trend of all surviving life that until recently has been obscure (Emerson, 1956, p. 153).

## Hierarchy of System

Another aspect of an ontological system is the notion of "hierarchy," or the concept of an "ordered relationship among objects in a given system" (Gawthrop, 1984, p. 22). The notion of hierarchy "defines the type of process that controls and integrates the inherent unity and purposefulness of any system" (p. 24). An educational system is a hierarchy because it progresses through an incremental pattern from one level of attainment to the next (Alexander et al. 1989, p. 149). A hierarchy can be found in organizations, in the nuclear family, and the nation-state alike (Gawthrop, 1984, p. 22) and therefore involves such related notions as support, control, authority or autonomy. Hierarchy is also "functional concept" of system, an organizing principle that may be applied to achieve a particular objective or to attain a specific goal (p. 23).

The idea of hierarchy is a concept of system found in ancient cultures long before the Greeks (Eisenstadt, 1963) and appears "to be as ubiquitous as all organic and inorganic matter" (p. 22). The term is derived from the Greek hieros (sacred) and archos (leader) and refers to "a superior-subordinate and/or higher-lower relationship between any given set of objects, which can be variously arranged, consisting of any set of phenomena in any given system" (p. 22). Bertalanffy (1968) notes that the concept of hierarchy is fundamental to a systemic view of the universe is "a tremendous hierarchy, from elementary particles to atomic nuclei, to atoms, molecules, high-molecular compounds, to the wealth of structures..."(pp. 27-28).

## Vertical Hierarchy

A current conception of an educational system is a pyramid, a highly centralized and bureaucratic hierarchy that functions as a system of "democratic control" or monopoly of power (Chubb and Moe, 1990). It extends from local school divisions to the U.S. Department of Education at the apex. This perception is "so thoroughly taken for granted that it virtually defines what Americans mean by democratic governance of the public schools" (Chubb and Moe, 1990, p. 5).

Plans for systemic reform of the educational system in the Third Wave of Reform have suggested a new "horizontal" or linear structure for greater efficiency and balance between local and central authority (Chubb and Moe, 1990; Glenn, 1988). Plans to decentralize what is regarded as a highly centralized, bureaucratic system include "school site management," "decentralized" authority, "shared decision making," "restructuring," "distributed management," "participatory decision making," and "empowerment." Critics of the present system argue for greater decentralization and see education as a "familial" or local affair. They desire to "reconcile pluralism" and "the liberty that we prize" with a state pedagogy designed to serve familial purposes (Glenn, 1988, p. 12).

De Tocqueville observes that Americans view "centralization" as a source of tyranny (De Tocqueville, 1963). Many modern sectarians and libertarians dredge up John Stuart Mills's statement of democratic despotism to support their

fears of a state-imposed uniformity (Glenn, 1988,p. 12) where "state-controlled 'Republican schools' are a product of Jacobin France." Mill objected to a state system on the grounds that:

all that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for molding people to be exactly like one another...in proportion as it is efficient and successful, it establishes a despotism over the mind (cited in Glenn, 1980, p. 12).

### Hierarchy for Efficiency

The notion of a vertical systems hierarchy, however, continues to reflect the dictum of order in a system with a goal of efficiency. The bureaucratic model is still regarded as "the most efficient ordering of an organization's spaces to achieve its objective" (Gawthrop, 1984, p. 60). Henry Fayol (1937) believed that "order" in a system meant to establish structure with reference to its objectives, to give form to the whole and to every detail its place. A hierarchical system, he believed with Weber, would produce maximum operating efficiency through a centralized and highly stable organizational pyramid with absolute power and authority at the apex to ensure maximum control. Efficiency and order were also the goal of Max Weber's political hierarchy, where a "sacred leader" stands at the apex of the biological order as the ultimate of human beingness with the state the ultimate culmination of the social order (Weber, 1964).

A vertical hierarchy in a system, however, is atomistic: it tends to undermine collective purpose in that "[A]ction is never based on the merits of a proposal [for change] but always on who may sit and who opposes it..." (Diesing, 1962, pp. 203). Accountability in such a system flows up; responsibility flows down (Zuboff, 1984).

### Horizontal Hierarchy

However, not all hierarchies are vertical or centralized conceptualizations, and not all philosophers or theorists support the view that a system's ultimate purpose resides only where the pyramid peaks. Arthur Koestler, for example, notes that hierarchy in a system is not a rigid ladder symbolizing centralization of power and control. A hierarchy metaphorically speaking, especially in open systems theory, is a living tree,

a multi-levelled, stratified, out-branching pattern of organization, a system branching into subsystems...; a structure encapsulating substructures...; a process activating subprocesses and so on (Koestler, 1971, pp. 205- 210).

Koestler's tree metaphor suggests an open system with an apex with individuals, families, tribes, organizations faces both upwards and downwards in an organismic hierarchy or social order with ultimate structural apexes found at points of convergence as in a network. "It is at this level," (within a horizontal/dispersed hierarchy), says Koestler, "that the subjective experience of free choice and moral responsibility arise" (cited in Gawthrop, 1984, p. 203).

Comenius also used the tree metaphor to convey the idea of a natural or organic, yet comprehensive and progressive universal system of education in the seventeenth century as opposed to a cloistered, private, elitist, and static scholasticism. In The Great Didactic (1667) his concept of an educational system is a natural, organic, holistic conception with a progressive methodology, but not a rigid or technical hierarchy. Comenius proposed a plan based on a natural ordering of human nature and skill development:

In the earlier schools everything is taught in a general and undefined manner, while in those that follow the information is particularized and exact; just as a tree puts forth more branches and shoots each successive year, and grows stronger and more fruitful (Comenius, 1667, p. 30).

Comenius compared his organic, four-fold system of schools to the four seasons of the year and the educational process itself to a tree and natural processes and laws. The final product of the system would culminate in the fruit of knowledge and experience conceived as a public utility for the public benefit.

Nineteenth century education reformers, Friedrich Froebel and Pestalozzi were greatly influenced by such organic concepts found in nineteenth century biological science. According to Froebel (1827): "The purpose of nature is development," and "everything in the kingdom of nature, however different the stages of progress may be, comes under one universal law, and development means the same as progress according to law,--systematic going on from the unformed to the formed, from chaos to cosmos....As does the physical so also

must the spiritual development proceed in systematic fashion, or education would be impossible" (cited in Cubberley, 1920, p. 645).

However, Froebel also argued that a system of education should provide for structured learning just as "There is a continuous connection in the spiritual life as a whole, as there is universal harmony in nature." A "method of education must follow the same systematic plan as nature does, and the outward practical means must correspond" (p. 464). Clearly, Cubberley notes, Froebel "was striving to hit on a regular course or method of education, corresponding to the method of instruction long ago established by pedagogic science" (p. 647).

An educational system could follow the laws of the development of the solar and planetary system of the universe, just as Bacon and Newton had prescribed. However, Froebel and Pestalozzi in the nineteenth century applied "the principle of the organic" from nineteenth century biological science to systematized and organize education and instruction (p. 647) and paved the way for open systems. This meant that educational systems should encourage the natural free development of the child "according to the systematic laws of nature." For Froebel, the child was a "human plant," that required a progressive system that would encourage the development process through "systematic regularity" (p. 646), applying "the logic of nature's dealings in her development process, in spite of the variety of individual endowment" (p. 646).



## Republican System

### Publicness of System

Comenius and other philosophers have illustrated that an educational system is a collection of parts relating to a whole, or even larger system, or network--whether it be a solar system or nature. What is unique about a "republican" system is its public character: an educational system conceived as a part of the polity which has a similar public purpose. Such a conception of a system invested with its own ontological objectives contiguous with the moral ends of the state is a republican system.

### Concept of Comprehensiveness

One characteristic of the "publicness of a system is "comprehensiveness." According to Cremin, the concept of "systematization inherent in a centralized, comprehensive scheme was present from the beginning" of the founding of educational systems in the United States (Cremin, 1951, p. 162). The concept of holism, like the "meta system" or "meta-ideal" suggests that a system is "extensive," "inclusive," or "comprehensive." The word comprehensive in Macmillan Dictionary means "large in scope or content" (Halsey, 1973, p. 206).

The "extent" to which an educational system can legitimately include interrelated parts of the whole within a comprehensive system has special significance for policy. For example, should private and parochial schools be

included in the system? Should the system become national in scope through national testing? These questions suggest physical, moral, and political boundaries to a system--the extent of its publicness.

Related to the notion of comprehensiveness or inclusiveness of an educational system is the "issue of the publicness" (Cremin, 1951, p. 165). The concern over the "boundary between public and private schooling" (p. 164) has precipitated the need to define what is meant by "public" and "private" in "a bold plan to make our schools competitive (Kearns and Doyle, 1988).

Cremin notes that in the early days of the republic the range of alternatives of what could be included within a comprehensive system of education was extensive as the systematization process advanced: "[T]here were not only school systems under government auspices, there were school systems under church auspices....a response to sharpening definitions of public schooling" (Cremin, 1951, p. 166).

Today the issue of publicness focusses on public funding for private schools within a comprehensive system, because the distinction between public and private schooling has traditionally not been clear. "Without the guidance of our constitutional history (bad or not), educators and the public are left awash in confusion over the privatization of education" (Lewis, 1992, p. 580). We are presently in the process of redefining the word "public" to include the welfare of all so that private schools can be considered public within a comprehensive system of schools (p. 580). Precisely how "inclusive," "comprehensive" or

"holistic," an educational system is or should be depends upon standards, such as uniform and efficiency, that further define a system of education as an ontological system within a universal, systems-holistic framework.

We note from Cremin's history of the development of educational systems in the nineteenth century that there have been many attempts to establish comprehensive state school systems. In addition to the systems proposed by Jefferson, Mann and Rush, Augustus B. Woodward's *Catholepistemiad* is an example. Woodward, appointed as Chief Justice of the Supreme Court of the Michigan Territory under Jefferson, developed a plan for a comprehensive system of education for that territory. Like Jefferson's system, it was comprehensive. A university (*Catholepistemiad*) stood at the apex consisting of thirteen departments that included all scholarly studies and disciplines. It had an elaborate support subsystem of feeder or associated institutions, "colleges, academies, school, libraries, museums, athenaeums and botanical gardens." This comprehensive system was legislated into existence in 1817 or 1818 and became a forerunner for other educational systems (Cremin, 1951, p. 161).

Although the *Catholepistemiad* never actually extended beyond the primary and secondary levels, nevertheless, Woodward "introduced a notion of comprehensiveness" about systems of education in Michigan and the United States (Cremin, 1951, p. 161). The Constitution of Michigan introduced "the most inclusive articles" on education of any other early state constitutions, and a

"commitment to comprehensiveness" was confirmed in Michigan's 1850 Constitution (p. 162).

"Comprehensiveness," not "centralization" was a goal of the early systems of education. Apparently what attracted Americans to the Prussian system initially was not so much the idea of "centralization" and "bureaucratic authority" structure which it embraced,<sup>4</sup> but certain "fundamental principles," especially the notion of "comprehensiveness" essential to the development of an educational system. John D. Pierce noted that the most fundamental concept of system to his generation was the notion of "a well-supported comprehensive system of public school" (cited in Cremin, 1951, pp. 37-45).

There were other attempts to establish comprehensive systems. Jefferson's plan for a three-tiered system consisting of several levels from primary to secondary and the University also provided a model. In Virginia Mercer introduced a bill "providing for the establishment of [state-supported] primary schools, academies, colleges, and a university in the Shenandoah Valley (Cremin, 1951, p. 158). Although there was a call for a national system of education, one never developed since education remained among the powers that the Tenth Amendment reserved "to the states respectively, or to the people." However, the various states, drawing upon these early attempts in Virginia to establish a statewide system of free primary schools under three-tiered arrangements of school districts, county superintendents, state boards and a state superintendent

of public instruction, evolved their own comprehensive systems, borrowing ideas from each other (Cremin, 1951).

Critics of the present system today wonder why the continental example of a comprehensive national school system proved so powerfully attractive to educational systematizers like Henry Barnard in America who relied upon European examples in advocating a national system of education with a particular emphasis on organizational and governmental characteristics of the various European national systems in the 1830s.<sup>5</sup>

The concept of a comprehensive national system was introduced much earlier in France, not just for the sake of unifying a people, but also to ensure democracy. Glenn (1988) asserts that the Jacobin program for a system of education in the interest of the state and a new political order influenced Barnard and was "a systematic effort by the state to intervene in and shape society" (Glenn, 1980, p. 16). The efforts of Francois Guizot and Victor Cousin in America demonstrated how an educational system could benefit from the pedagogical designs in Prussia and the Netherlands (p. 16).

The idea of a comprehensive system is related to the notion that the state has the ultimate responsibility for education, especially in providing a "basis of knowledge and morality, which is indispensable to its own security," which Horace Mann introduced in the Common School Journal (cited in Cremin, 1951, p. 220). Mann deemed a common and uniform instruction therefore especially essential at the elementary level.

Critics of centralization argue that the notion of a comprehensive system consists of political control of schools for greater efficiency and homogenizing the population; it included support for confessional schools through public funding for parochial schools (Cremin, 1951, p. 251) at a time when nation-building task was essential. But at base, the notion of "comprehensiveness" related to "publicness" or "commonness" of the educational systems where widespread commitment to universal education--not to systems of control was the ideal (Mann, 1957, pp. 29-33).

#### Public Structure of System

The purpose of a modern education system is both public and private, collective and individual. Thus the post-modern theme of recent "effective schools" research observed by historians of education David Tyack and Elisabeth Hansot reflects the concept of a "socially integrating sense of purpose" (Tyack and Hansot, 1982, pp. 511-15).

Cremin observed that "publicness" (1980, p. 152) was the heart of a system of schools. By this Horace Mann explained in the Ninth Annual Report that its teleology would be compatible with democratic government: "In a government like ours, each individual must think of the welfare of the state as well as of the welfare of his own family" (cited in Cremin, 1980, p. 141). This would allow for great diversity in the formulation of a school system with diversity and "variegation" and "improvisation" the rule (p. 149), so that when

the political process and shifting coalitions were finally created unitary comprehensive public schools systems, the system required "substantial rhetoric of justification" which "imposed a larger social meaning" to ensure a continuing bases of ideological support for the enterprise (p. 150).

Thus the original conception of a school system was rooted "variegation," "improvisation" and was "anything but uniform and linear" (Cremin, 1980, p. 151) in structure reflecting a "remarkable multiplicity of institutional ways and means by which states and localities moved to the creation of public school systems" (p. 148). A system of schools is structured in accordance with its public purpose. From the beginning a system would be comprehensive, purposeful and balanced system in harmony with public purpose and a proper civic autonomy.

The school system, as Schorr suggests, may extend beyond the traditional school house to a variety of community agencies and support services, a network that branches out beyond the school house itself as a result of the fundamental shift of the economy (Schorr, 1988). Cremin notes that

Every school system, consciously or otherwise, educates toward some future social structure. In terms of this, a school system which is common by availability might, according to the extent of its usage, maintain any number of relationships with the structure of the larger society in which it functions. The role of such a system certainly varies according to whether it lies dormant through lack of employment, whether it is used only by certain segments of society, or whether it is used by the whole of society. In the first role, such a system, though available, maintains a rather neutral position; in the latter two, it affects positively, in a given direction, the institutions about it (Cremin, 1951, pp. 55-56).

Cremin seems to suggest that a school system need not be structured as a vertical ordering as much as it is characterized by its comprehensiveness, its democratic inclusiveness, and by a systematic progression or order based on a rational plan or on certain democratic principles shared by the people. The goals of a modern secular republic, ideas such as equality and popular sovereignty, or civic virtue require that a system be democratically controlled, giving weight especially to a decentralized or diffused power structure. Thus the organization of a system is related to its public purpose.

Contrary to average perceptions of system, comprehensive school systems were created in the tradition of "variegation" and decentralization and were neither rigidly centralized or authoritative:

For all the power of the drive toward systematization, ...the result in New York was several systems and subsystems, each comprising institutions of varying degrees of publicness. Variegation was the rule, and it remained the rule even after the great legislative battles of the 1840's, 1850's, and 1860's had made the common school generally tax supported and free of tuition (Cremin, 1951, pp. 152-153).

In the political sense the modern school system is not a self-contained system or bureaucratic hierarchy; it is a meta-system, or a subsystem of the polity. This makes it an open-system, so the vertical industrial bureaucratic model of centralized authority and power need not apply. A republican system is united by a rational plan, not a centralized authority structure, modeled after Bentham's Panopticon (Foucault, 1977). Horace Mann believed that systematization meant rationality in accordance to democratic principles and put



this principle above bureaucratization. The republican founders did, however, press for uniform methods, curriculum, and discipline in a state system which highlights the paradox of systematization and the issue of democratic control. For the republican reformers, however, uniformity inhered more in a moral conception; a system would be organized, unified, or centralized around a core of values or moral principles rather than on any bureaucratic conception of organization. For Mann "...uniformities were minima required in the cause of equity" (Cremin, 1951, p. 156).

Consequently, systematization of education has advanced producing a measure of equity along with a perception of hierarchy, professional elites, democratic control through centralization, especially after the advent of compulsory attendance laws which caused "an increasingly politicized concern for education" (Cremin, 1951, p. 156).

### Political Economy Model

A public system achieves both its legitimacy, extensiveness, and control from the external political exchanges between individuals or groups seeking "control over legitimation, resources, base, goal definitions, and the channels for exertion of influence" (Wamsley and Zald, 1973, p. 21). The legitimacy of the system requires a structure of authority that relates to survival, institutional goals, and especially to its "dominate elite goals," or "major parameters of economy" (p. 21), which Parsons would call: "value-orientation." A system of

schools can thus be perceived as an extensive "political economy" that constantly strives for legitimacy. It consists of the "interrelation between a political system (a structure of rule) and an economy (a system for producing and exchanging goods and services)" (p. 18).

A system's method can also be viewed as the underlying principle of development which provides the system with its unity, so is in reality the method of the process (Lomer, 1972, p. 84). Control is also a function of method:

Control necessarily implies conformity to a standard, and therefore uniformity and ultimate unity...but the ideal of uniformity...involves, fundamentally and essentially, permanence as its principle. Without permanence there can be no control, and without control there can be no method, for in the largest sense method is the control of experience by principles (Lomer, 1972, p. 86).

When an educational system is viewed as a policy subsystem with internal and external publics, "The internal economy is thus an arrangement of authority and power, but on the level of instrumentality and efficiency rather than on the level of legitimacy and survival" (Wamsley and Zald, 1973, p. 70). Thus, Wamsley and Zald argue that effectiveness of the system, the support of the system as well as the legitimacy of the system depends upon a diffusion or decentralization of power. The economic aspects of authority, and the power structure of the community have traditionally defined an educational system's legitimacy in terms of decentralization, the time-honored concept of local control.

The founders of a republican system shared "a certain consensus of assumptions and aspirations marking a republican style of educational thought"

(Cremin, 1951, p. 124) conducive to the establishment of an ontological, open system that also has certain bureaucratic properties. System meant for the most part a regular method of progress through standard subjects or curriculum. A pattern of institutional organization would allow progress from one level to another (from primary to academy to college to university).

However, what made the system uniquely republican and "open" was its "dual emphasis on system and on relationship to the polity" (Cremin, 1951, p. 125). The entire state educational system would be linked to the polity through "Public spirited individuals" who would coordinate the system (p. 125) for the common good of all.

### System of Republican Civility

Thus a "republican" system of education appears to have some of the characteristics of an open system while retaining the functional properties of a Newtonian system. A republic system, however, is teleological--it has a moral purpose. Its "order," "rational plan," or "method" is based upon a republican philosophy that implies a standard. Lawrence Cremin has suggested a standard of "Republican Civility" for an educational system (Cremin, 1951, pp. 107-147). This standard was posited as a plan or system of education by Jefferson for "the More General Diffusion of Knowledge" that would enable citizens to "understand their rights, to maintain them, and to exercise with intelligence their part in self-government" (cited in Cremin, 1951, p. 107). Jefferson's proposal for a system

of education was comprehensive. It was one of four bills he had hoped would form a system "by which every fibre would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican" (Cremin, 1951, p. 107).

### Classical Prescription

While Jefferson, Horace Mann and Benjamin Rush utilized many concepts of a system from Enlightenment philosophy and science, their concept of a "system" of education draws upon a greater variety of origins and assumptions. A system of "republican civility" revived a classical heritage which made education the center of common life. The notion of a system of education for republican civility dates back to Plato and especially to Aristotle who concluded in his Ethics and his Politics with discussion about education as a central concern of the polis (Politics, 1952, Book 2). For Aristotle "education" had a broad meaning. Because the primary function of the polis was to provide laws to educate citizens to a life of virtue, and only citizens would make a good polis possible, not schools per se, but laws and mores of the whole community ensured the common good.

In Greek society provision was made to develop great lawgivers through public deliberation and rhetoric was given the honored place in the curriculum (Aristotle, Politics, Book 2, 1952). Thus a "system" of education would consist of the entire community that educated: the home, the church, the voluntary

association and local politics whose educative function would be at least as important as that of the common school (Bellah et al., 1991).

That a system is "comprehensive," "inclusive" and "common" is central to its definition. A unified and comprehensive system of schools the common school founders believed would give all citizens, rich and poor, basic cognitive skills and training in character and citizenship. Like the concept of Greek education, the American educational system would be a comprehensive, communitarian system for learning that was directly linked to purposes of state. In Greek society, "the educational curriculum for the millennia was closely associated with the search for the common good in republican and democratic societies" (Harmon, 1988, p. 145).

### Jeffersonian System

In America, the most complete system of education, first proposed by Thomas Jefferson, served as a practical model to other educational reformers. Jefferson strived for "certainty," the assurance that the republic would not perish for lack of virtuous, educated and responsible citizenry. Jefferson's concept of "system" is revealed through a series of bills proposed in the Virginia legislature between 1776 and 1779. Jefferson had a teleological conception of a system and a millennial vision: the purpose of a system of education was liberty through civic virtue. Dumas Malone writes that "His chief concern was for the attainment of liberty, and this provides the best single clue not only to his motives in the

Revolution but also to his entire career" (Malone, 1948, p. 175). Jefferson's goal was a natural aristocracy of virtue and talent developed through a system of accessible and universal education to ensure liberty for posterity in a republic.

Jefferson's system included two levels of primary education for young children and for young adults between the ages ten and eighteen. However, what was unique about Jefferson's system (like the conceptions of such men as William Douglass, John Adams, and later Benjamin Rush and Horace Mann) was a system that tied institutions to the polity.

According to Cremin, "system" was used by these founders in three ways which suggested a "republican style of educational thought": (1) to specify a regular and methodological progress of each individual student through standard subjects offered in the curriculum; (2) a "pattern of institutional organization" progressing from primary school to academy, to college or university; and (3) some means of "coordination of the whole via a board of well-qualified, public spirited citizens" (p. 125). Cremin notes that the language employed to suggest a system reflected the holistic principles of a unity or harmony of parts, to ensure a "more perfect union" within the polity itself, i.e. an ontological system.

Jefferson's "republican" system of education contained both democratic and meritocratic principles. Education was "the most certain, and the most legitimate engine of government" (Jefferson to Adams, Oct. 28, 1813/1898, Volume 9, pp. 424-430). He also stated to Madison:

Educate and inform the mass of the people. Enable them to see that it is their interest to preserve peace and order, and they will preserve them. And it requires no very high degree of education to convince them of this. They are the only sure reliance for the preservation of our liberty. (Jefferson to Madison, Dec. 20, 1787/1944, pp. 436-441).

For Jefferson education was so important to the polity that it could not be left to chance. Consequently, it was the duty of the state to establish an educational system which the citizens had an obligation to support. For example, Jefferson advocated a tax that would be "not more than the thousandth part" of the cost of ignorance (Jefferson to Wythe, August 13, 1786/1898, pp. 266-270). He emphasized in a letter to Washington on January 4, 1786: "This it is [a state supported system of education] the business of the state to effect, and on a general plan" (Jefferson, 1954, pp. 150-152). Citizens had rights, but they also had a special obligation to support education and to be educated: "no person unborn or under the age of twelve years at the passing of this act, and who is compos mentis, shall, after the age of fifteen years, be a citizen of this commonwealth until he or she can read readily in some tongue, native or acquired" (Jefferson, 1817, cited in Wagoner, 1990, p. 30).

Clearly a system of education was perceived in a republican context of rights and duties. It was to be a comprehensive system established as he says on a "triple basis," from the simplest or most general knowledge to the most specialized or complex. Elementary schools would provide "gratis" education in reading, writing, common arithmetic, and general geography; "collegiate" schools

would provide "ancient & modern languages," "higher instruction" in arithmetic, geography & history; a University would instruct in "all the branches of science deemed useful at this day...taught in their highest degree" thus adopting the Baconian ladder for the advancement of knowledge.

However, to this system was added the republican teleology: instruction beyond what was purely useful, at least in the elementary schools, in "their rights, interests and duties, as men and citizens" (Jefferson cited in Lee, 1961, p. 117). The curriculum of the collegiate schools was "to form the statesmen, legislators and judges, on whom public prosperity and individual happiness are so much to depend" (cited in Lee, p. 117).

Jefferson's system of education was comprehensive. It was "a complete system of laws and institutions designed to protect the rights being struggled for in the Revolution" (Wagoner, 1990, p. 27), but it was intended to be part of a larger system of justice. The public was urged to support a system uniformly for the prevention of tyranny, injustice and ignorance within a larger goal of liberty. Jefferson stated that "the form of the system" was not as important as the general support of a system of education "which shall reach every description of our citizens from the richest to the poorest" (Jefferson to Cabell, January 14, 1818/1899, vol.10, pp. 98-102) and that it be made uniformly available to the citizen. In a letter to George Ticknor, Jefferson advocated that a college be provided "within a day's ride of every inhabitant of the state" (Jefferson to George Ticknor, cited in Lee, 1961, p. 113). Jefferson's system, though it did



not include women, desired an educational system to be comprehensive and democratic, available to the people and commensurate with their needs, manners and opinions.

According to Cremin (1951), Jefferson wanted a "comprehensive" and open system that would provide a general education for the electorate at large as well as additional educational opportunity for potential leaders to ensure a natural aristocracy of talents and abilities<sup>6</sup> (Cremin, 1951, p. 109). This would entail a system of elementary schools, academies or "general schools," or district colleges, and "professional schools," including a university in Albemarle County, Virginia. The courses would be both ancient and modern languages, mathematics, science, history, law, though not divinity to avoid sectarianism (p. 111).

Jefferson also had a temporal view of a system; he believed that no system was permanent but should be constantly improved. He wrote: "Our descendants will be as wise as we are, and will know how to amend it, until it shall suit their circumstances" (Jefferson to Cabell, January 14, 1818/1899, Volume 10, pp. 98-102).

Jefferson's concept of a system of education was comprehensive and part of a larger political system. It was temporal and flexible, not rigidly hierarchical or centralized, subject to change or to reform by the people as they advanced in knowledge. The Jeffersonian system was a teleological, even millennialistic system established as a public trust:

Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions changed with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him as a boy, as civilized society to remain ever under the regimen of their barbarous ancestors (Jefferson to Kercheval, July 12, 1816/1944, pp. 673-636).

The republic, he felt was too precarious to leave in the hands of uneducated citizens. Nor should it be entrusted to well meaning citizen benefactors, or to the Church, or to parents alone. A system was the creation of the state. We recall that Jefferson's Reports of the Committee on the Government of the Western Territory in 1784 had provided essentials of the Ordinances of 1785 and 1786 which "further wedded the democratic state to the public school" (cited in Lee, 1961, p. 200). Even in his famous Bill for the More General Diffusion of Knowledge of 1779 and in his plans for the University of Virginia in 1818, Jefferson never relinquished his idea of a "natural aristocracy of virtue and talents". Jefferson's system encouraged meritocracy and acknowledged differences. He wanted a provision added to his Bill "for the full education at the public expense of select subjects from among the children of the poor, who shall have exhibited at the elementary schools the most prominent indications of aptness of judgment & correct disposition" (Letter to George Ticknor, Nov. 25, 1817 cited in Lee, 1961, p. 113).

Yet Jefferson was never out of touch with the needs of both the public and its leaders (Lee, 1961, p. 13). The state's responsibility to supply and

maintain a "system of general instruction, which shall reach every description of our citizens, from the richest to the poorest" (cited in Lee, 1961, p. 19) was a public trust. It would be "a system of public education dedicated to the cultivation of intelligent citizenship and to the identification and training of responsible leadership" (p. 19). Thus, as Lee observed, the Jeffersonian "curriculum" or system in its entirety was

essentially political in nature, hence basically philosophical, while it is civic and social in its aims, hence fundamentally utilitarian. Seldom have the two been so skillfully blended in the discussion of education (Lee, 1961, p. 21).

#### Horace Mann's Moral System

The common or public good of the "community" became the rationale for a system of public schools as well as the American political system. Its founders were also republican theorists who applied the principle of reciprocity from natural law and recognized the balance of social forces. They believed that common schools should benefit all classes of men, ethnic groups and nationalities generating intelligent and virtuous leaders who would be responsive to the American electorate. The electorate itself in delegating its power and authority to its most trustworthy and able representatives should, as the beneficiaries of a universal system of education, likewise be expected to exercise the franchise out of a mutual concern for the common good of the community.

The early school men and the framers shared a belief in a community morally bound by "civic virtue" and concern for the "common good" or welfare of all of its citizens as essential to the formation and maintenance of a truly democratic and American republic. Horace Mann had reformulated this Jeffersonian ideal of a teleological system of republican civility by promoting a system that would "illuminate, as far as practicable, the minds of the people at large," a system that would brighten "all rational hopes respecting the future" (Mann cited in Cremin, 1951, p. 138). Above all, he advocated a system of education to promote morality. However, encouraging civic virtue and responsibility would have to be done without sectarian control of the schools.

For Horace Mann a common school system embodied all the elements essential to virtue and commonality in a republic. It was not to be common in the sense of "common" or poor people, but rather as a school system common to and shared by all people, and supported by tax funds. Thus social "harmony" was a prime goal of popular education in addition to the elevated morality that Mann considered crucial to the future of the Republic.

To Jefferson's republican civility, Mann's design for a system of public education added a mechanism of public control. State legislatures and popularly elected local boards of education should exercise ultimate oversight. He reasoned in "Lectures on Education" that public supervision would follow public support--again the Jeffersonian notion of education as a public trust. Through the mechanism or method of lay control, the public would be entrusted with the

continuing definition of the public philosophy (an elevated morality) the children would be taught. "Upon the people will rest the great and inspiring duty of prescribing to the next generation what their fortunes shall be, by determining in what manner they shall be educated" (Mann, cited in Cremin, 1980, p. 140).

Mann, in keeping with his idea of education as a "great equalizer," believed that in a republic leaders should never surpass the general level of intelligence, for if all the people were made uniformly wise, the problem of leadership would take care of itself. In the Twelfth Annual Report his concern was with the greatest general proficiency of the great aggregate of people:

By a natural law like that which regulates the equilibrium of fluids, elector and elected, appointer and appointee, tend to the same level. It is not more certain that a wise and enlightened constituency will refuse to invest a reckless and profligate man with office, or discard him if accidentally chose, than it is that a foolish or immoral constituency will discard or eject a wise man (cited in Alexander and Alexander, 1992, p. 7).

To this end, a system of education would be democratic, not highly bureaucratic or centralized. It would be comprehensive and uniformly accessible since all men through a diffusion of knowledge have the same opportunity, potentiality, or capacity to govern and rule.

### Benjamin Rush's Uniform System

Benjamin Rush was one of the earliest proponents of a "system" of education characterized by "uniformity" of access and a methodology for pursuing a common curriculum. Like Jefferson, Rush advocated some organized

institutional arrangement whereby people could progress from primary, to secondary, to college or university and called for the state to be "tied together by one system of education" which would "render the mass of the people more homogeneous and thereby fit them more easily for uniform and peaceable government" (Cremin, 1980, p. 125). Specifically, Rush advocated a cohesive, interdependent and sequential system with a university at its apex that

will in time furnish masters for the colleges, and colleges will furnish masters for the free schools, while the free schools, in their turns, will supply the colleges and the universities with scholars, students and pupils. The same systems of grammar, oratory and philosophy, will be taught in every part of the state, and the literary features of Pennsylvania will thus designate one great, and equally enlightened family (Rush, cited in Cremin, 1980, p. 126).

It is important to note that a uniform "system" for Rush applied to a uniform curriculum, not the organization of the schools. Rush advocated a common core of values with the same systems of grammar, oratory and philosophy to create an equally enlightened family. Rush's idea of a common culture made him resist immigration as a "heterogeneous, incoherent, distracted mass": "It is for the happiness of those united in society to harmonize as much as possible in matters which they must of necessity transact together" (cited in Cremin, 1980, p. 119).

Rush's goal in a common curriculum was "To conform the principles, morals and manners of our citizens to our republican forms of government. He wrote in On the Defects of the Confederation in 1787 that "...it is absolutely necessary that knowledge of every kind, should be disseminated through every

part of the United states" (cited in Cremin, p. 119). It was this idea of a common culture and notions of civic responsibility that motivated his desire for a federal university and a civil service that would teach "everything connected with government." For Rush, an educational system for republican civility was also a public trust.

We have seen that Horace Mann also believed in a moral, political order in which citizens of a republic must "understand something of the true nature of government under which they live" (cited in Cremin, 1980, p. 110). But Mann did not want to alienate parents by indoctrinating children with political heresies. His solution, although naive, was similar to that which he proposed for religious controversies. The schools within a system would focus on agreeable elements and avoid any controversial issues: "Those articles in the creed of republicanism, which are accepted by all, believed in by all, and which form the common basis of our political faith shall be taught to all" (cited in Cremin, p. 204). Clearly, indoctrination either in the form of "political proselytism" or sectarianism was not to be condoned in the public schools.

Of these three republicans, Mann was the greatest proponent of systematization which he believed was based upon a principle of "rationality" (Cremin, 1951, p. 155). A system we recall is united by a method or rational plan. Mann consistently advocated "uniformity of textbooks, uniformity of curricula, uniformity of library collections, uniformity of methods, and uniformity of discipline" (p. 155).

However, uniformity did not necessarily suggest to Mann "conformity" or a form of bureaucratic "centralization" for purposes of bureaucratic control. Rather it seemed to imply a minimum standard of equity (Cremin, 1951, p. 156). Uniformity also suggested an ideological base, or at least a conception of a body of knowledge that must be transmitted.

Mann advocated uniformity as a rational plan for system, especially in instruction, because he believed that there was a unifying body of knowledge or values that would unify the system and unify the nation. Like Rush earlier, he believed it was essential to Americanize or unite the people who were a common family by a unifying idea of democracy and a common culture, which is not dissimilar to the call for a common core of shared knowledge in our time.<sup>7</sup> Mann observed in 1837 that throughout the commonwealth "there is no common, superintending power over them [about 3,000 public schools]" (cited in Cremin, 1951, p. 19). The "superintending power" was not centralized bureaucratic or administrative control, but a unifying body of knowledge, idea or public philosophy.

Mann, like Rush and Jefferson, applied the Baconian bromide that knowledge is power to the concept of systems of education. "Power" is not political authority as much as it is knowledge itself, for knowledge uniformly diffused would provide a unifying bond and cohesiveness to a system of education. He observed, for example, that without a cohesion or rational order to education, "there is no bond of brotherhood or family between them" (cited in



Cremin, p. 155). A loosely defined or diffuse educational system, he feared, would be unable to account for "any improvement in principles or modes of teaching...No means...for multiplying new truths, or even for preserving old ones" (p. 19). Clearly the term "uniformity" implied a uniform, logical and consistent pattern of instruction within a system united by common knowledge that would benefit all men. The popular nineteenth century belief in science and the unity of knowledge encouraged this desire to establish an orderly progression of learning through systems of education.

This concept of a uniform republican system comprehensively related to common life and the polity continued to prevail during the progressive era. Jane Addams of Hull House and others advocated a democratic system of education that would involve the whole community in the creation of responsible citizens in a good society (Addams, 1910).<sup>8</sup>

In the twentieth century, John Dewey found this view of a republican system a proper public philosophy to achieve equity and social harmony. Education would "transform each child of society into membership within such a little community, saturating him with the spirit of service, and providing him with the instruments of effective self-direction." It was this classical, communal system of republican civility through which "we shall have the deepest and best guaranty of a larger society which is worthy, lovely and harmonious" (Dewey, 1956, pp. 9-11).

## Republican System as Soul of the State

Today, a comprehensive system of education is envisioned as being well-supported, multidisciplinary and capable of large-scale replication for successful societal intervention (Schorr, 1988). A modern educational system today is conceived by policy-makers as a comprehensive, metasystem in which federal policies are still influential and decisive, employing Head Start and community health centers, researchers, policy analysts, private foundations, concerned corporations, professional organizations, and public-private partnerships in a complex web of the most feasible and effective interventions to link populations at risk to needed services.

A modern, comprehensive and open educational system linked to other public institutions and agencies and characterized by "large scale implementation within human service bureaucracies" now includes "pioneering" and "flexible new approaches towards achieving the common good" (Schorr, 1988, p. 282). This modern open systems concept of an educational system networked with external agencies is an ontological system that represents a revival of the Jeffersonian system of republican civility.

The republican notion of a comprehensive educational system linked to the polity and culminating progressively in a modern state university expressed a powerful paideia in the early twentieth century. The idea that an educational system is the "soul of the state" was expressed by Charles R. Van Hise in a Commencement Address at the University of Wisconsin as early as 1910. He

noted that the university, which is a system's crowning feature, is "a large segment of the soul of the State" (cited in Cubberley, 1920, p. 672). The modern university linked to schools operates in a reciprocal relation to the state: "The State demands of it service; the university feels a peculiar obligation to the State in which it is situated." Furthermore, Van Hise argued:

Every man of high ideals is a part of that soul. Every institution which works for the upbuilding of humanity, be it church or prison, is a part of the soul of the State. Every school and college is a part of that soul, and it should be the aim of each to be as large a part as possible (cited in Cubberley, 1920, p. 673).

### Social System

Modern system theory has especially contributed to an understanding of the structure and processes of social systems in relation to the polity (Parsons, 1951). The attempt to delineate the social system as a "system" was the most important contribution of Pareto's great work, General Sociology. Pareto's Trattato di Sociologia Generale of 1916 remains the standard reference point for social equilibrium theory and other more "structural-functional" approaches to social systems that have accumulated in the generation since Pareto wrote (Russett, 1966). Social systems theorists demonstrate that all modern social systems have certain characteristics in common.

One facet of social system theory relevant to educational systems is the institutionalization of patterns of value-orientation found in the work of Talcott Parsons. Parsons, indebted to the work of Pareto, Durkheim and Max Weber

(Parsons, 1951), demonstrated in his landmark work The Social System that a social system is an integration of units and individuals within a relatively stable integration of a cultural system.

Parsons, in the tradition of "republican civility," identified the interrelated elements and functional prerequisites of a social system which demonstrates that an educational system is a function of the polity. In The Social System (1951), Parsons defined a system as an "action frame" for both the individual and the collective.

He identified three different units or elements in any social systems as three modes of systematization of action: (a) the individual actor or Personality [the student], (b) the interactive system (the bureaucratic structural plan or process) of the internal system, and (c) the external "cultural system" of cultural patterning with special reference to the value-orientation of social systems.

"Each implies the others and therefore the variability of any one is limited by its compatibility with the minimum conditions of functioning of each of the other two" (p. 27). Parsons notes that any social system depends on mutual "support" from each of these interactive parts or elements. "These minimum needs of individual actors constitute a set of conditions to which the social system must be adapted" (p. 28); they are motivated in terms of "optimization of gratification" with relations to other parts of the system "defined and mediated in terms of a system of culturally structured and shared symbols" (p. 6) that interpret the value-orientation of the system. This "interdependence" and

"interpenetration" of elements, the student, the organization, and the political system or culture comprises an "action frame of reference" common to all three (p. 6). Each element of the system is independent and indispensable in the systems "action frame" without which no "transformations" or "optimization of gratification" within the polity is possible. According to this definition of system, all gratification and deprivation of opportunity within an educational system has organic significance within the dynamic processes or "mechanisms" which influence the "functioning" of the system (p. 6). "Action" is a process of the system which has motivational significance to the individual as well as the collectivity, or component individuals (p. 4).

Parsons, however, notes that in every social system there is imbalance or discrepancy between conditions of action, events, and institutionalized expectations (p. 164). This is the "dilemma of institutionalization" (p. 165) or the problem of disparity or imbalance between intent or input, and output--between social groups and classes in conflict with the occupational system. The cause: "regional differentiation": "[T]oo close ties of community solidarity...can be a serious threat to the main system" and affect the "ultimate balancing of the motivational and moral economy" (p. 164). Briffault and others note with regard to our present system of schools: "Formal local autonomy for all, at the price of effective self-determination for some and fiscal burdens and impoverished public services for others is hardly a stirring ideal" (cited in Lu, Summer, 1991, p. 551).

For Parsons, this "regional differential" of a system implies "a certain minimum of inequality, though its extent and exact content will vary with the specific achievement goals and reward symbols and the degree of differentiation of the occupational role system" (1951, p. 186). Therefore, the reward structure of a social system must be integrated with the occupational structure. The moral discrepancies of a system, or socio-economic imbalances in a social system reflect the belief systems of society and cannot be ignored. Thus, Parsons argues that "social systems must meet the functional prerequisites of their persistence as systems" (p. 166) i.e., all elements of the system must be in balance, to meet societal expectations and obligations, or the system cannot survive.

According to Parsons, an educational system can be defined as "an interaction of a plurality of individual actors oriented to a situation and where the system includes a commonly understood system of cultural symbols" (1951, p. 5) or values. For Parsons, the mutuality of expectations is oriented to the shared order of symbolic meanings, i.e. its "normative orientation" (p. 11). A mutuality of expectations is oriented to the shared order of symbolic meanings contained within the system. The "order" or method of the system is a "mutual interlocking of expectations and sanctions fundamental to any analysis of a social system" (p. 12) which is the systems "value-orientation" (p. 12), the logical device for formulating cultural traditions into an "action" system (p. 12).

This treatment of system from a sociological perspective illustrates how the various elements of a social system must be unified through a rational plan

or goal for the purpose of common valuing. The public purpose of an educational system depends on a society's "value-orientation." Such public purposes might be liberty or civic virtue as Jefferson proposed, public morality of Mann, social homogeneity and uniformity of Rush, the maximizing of human capital of Schultz (1982) or equality of opportunity. These are the societal expectations we have come to expect from a purposeful or teleological educational system.

It is doubtful that Lawrence Cremin had these economic or sociological systems theories in mind when he described an educational system as a function of the polity. However, a sociological conception of system with its emphasis on value orientation addresses the value assumptions of a republican system of education espoused by Cremin and the founders who believed that an educational system is essentially a moral, or ontological system.

The "republican" system described above is an open, ontological system, because it can be viewed "viewed within a universe of all political and governmental jurisdictions that are purposeful (Cremin, 1951, p. 418). An ethical perspective of "system" applies to school systems linked, as Parsons argues, in their "value orientation" to the polity, and sharing a common purpose with the polity of the common good.

The republican founders of schools in the nineteenth century advanced a concept of system distinct from previous commitments to education as an instrument of familial, or individual development only. Cremin notes that "What

was fresh in the republican style...was the emphasis on system, on a functional organization of individual schools and colleges that put them into regular relationship with one another and with the polity" (Cremin, 1951, p. 148).

### Roots of a Republican System

The roots of a republican or civic humanist system of education can be traced to John Amos Comenius, one of the first great systematizers of education. In Comenius' system, the influence of Baconian/Newtonian empiricism and inductive logic is clear. Comenius was a child of the Enlightenment. The new science of harmony is visible in his system of education: "The whole process... will be as free from friction as is the movement of a clock..." (Comenius, 1967, p. 97). However, the ontological aspects of Comenius' system also contribute to our understanding of a modern republican and democratic system of education.

Despite the influence of Newtonian science, Comenius system of education was basically ontological and purposeful. Working and studying in Europe during a period of transition from humanism to realism, his "pansophic" system attempted to elevate the whole nature of man, to educate body, character, mind and spirit (Monroe, 1900).

In Comenius, the systems legacy from the sixteenth century was wedded to a humanistic and holistic concept of education. Education was not merely the training of children at school; it was an ongoing process that affected a person's whole life and all social adjustments he must make within a social community.



Comenius' system is a "pansophy," a philosophical--not a scientific system.

Society as a whole is a part of Comenius' overall design for a universal system of education, which is why he advocated great principles of peace and international organization in an educational system (Keatinge, 1967). His ultimate purpose was virtue.

Comenius' metaphysics in The Great Didactic posed a parallel relationship between nature or the forms of natural laws which makes the ordering of the educative process automatic or systematic. Comenius' system of education embodies a process that is temporal and teleological; there is an upward motion of human activity that leads to the Millennium, a perfection of all human society beyond the nation state. A universal system of education is not limited only to classroom instruction, but includes the school of life. This "pansophic" yet realistic conception of an educational system designed "to teach all things to all men and from all points of view" reflects the comprehensive Baconian vision of universal knowledge and explains why Comenius became an apostle of international collaboration in education (Monroe, 1900, p. 7). The desire for encyclopedic learning dominated the writings of Comenius as well as Bacon and was to encourage the development of comprehensive or universal educational systems.

Comenius, like Bacon, expresses the idea of an organic as well as a spontaneous development of the individual in his "Principles of Facilitating Teaching and Study" which made him rely on sense experience, and to posit a

"realistic" theory of education that is very modern, allowing students to develop at their own pace and in stages. Comenius called this age-stage progression "Autopraxy" (p. 7).

The method or system that Comenius proposed was based on the hierarchical or ladder concept of learning suggested by Bacon and Newtonian cosmology. Monroe notes that "Comenius, Rousseau, and, in fact, all the realists from Bacon to Herbert Spencer, have emphasized the thought that education should follow the order and method of nature" (p. 148). This meant that children should be educated naturally, in accordance with the laws of nature. A uniform system of learning would advance from the simple to the complex as in nature, because nature assisted her operations; nature has practical and evident application; nature is uniform [consistent] in her operations; and nature produces nothing that is not useful.

Naturalism, as in accordance with the laws of nature was important for Comenius as for other educational reformers such as Rabelais and Montaigne in France who also advocated an educational system that would educate youth naturally. To be natural suggested that learning would be practical and consist of empirical investigation through the medium of the senses. Comenius like Bacon advocated the "utility" of instruction believing that every one should be taught in a systematic and uniform fashion by one and the same method (Monroe, 1900, p. 91). In short, a system of education would be harmonious

and uniform in accordance with a harmonious universe operating according to mechanical natural laws.

Consequently an orderly system was a priority of the educational system Comenius proposed. Learning in an educational system would be orderly and practical before the mind was corrupted and proceed by

nothing but the all-ruling force of order...the force derived from arranging all the parts concerned according to their number, size, and importance, and in such a manner that each one shall perform its own proper function as well as work harmoniously with and assist the other parts whose action is necessary to produce the desired result (1967, p. 96).

In The Great Didactic we note that learning will proceed in an orderly fashion from subject matter that is easy to the more complex subject matter. Instruction would be graded in accordance with stages of mental development of the learners and in accordance with natural intellectual capacity or abilities. This meant that knowledge would be universal, i.e. uniformly available. Comenius proposed to reconstruct a system of education so that all would be educated, with courses that provided training as a preparation of life, completed in life stages in a free and open atmosphere for learning.

Comenius' "Great Didactic" would be a structured hierarchy consisting of a fourfold division of education into kindergarten, elementary schools, secondary schools, colleges or universities, which provided a guide for educational reform. A school of infancy was a mother's school in every home; the school of the mother-tongue, from six to twelve taught in the native language things of

practical utility. A Latin school until the age of 18 would train to higher professional callings and industrial pursuits. Comenius' system also included a University with a curriculum universal in character so as to widen the domain of knowledge through original investigation and research (pp. 11-302). It was a system based on principles of order--order in the management of time, order in the arrangement of subjects taught and methods employed.

Comenius also advocated a system that was uniform in all its operations. The same method of instruction would be adapted to all subjects of study, textbooks should be in the same editions. The subjects studied would be for a useful purpose, based on what has gone before, a sequence with points of resemblance established between subjects.

How completely these schemes for a "pansophic" system of education have been realized is evidenced by educational systems in the United States and Germany today. Whether Jefferson and other advocates of a system of education in America ever heard of Comenius, or read his works, has not been established. Needless to say, the republican and ontological concept of system that developed in America resembles that of Comenius: both were teleological systems and had a goal of an enlightened and virtuous citizenry.

The opening chapters of Comenius' Great Didactic expresses a republican and democratic conception of man as the highest most rational and excellent of human beings. A system was to be common and universally accessible. A system would have a moral purpose commensurate with man's highest goals of

human dignity and piety. A system would be a common or "universal" system conducive to virtue and "piety"; it would be orderly and systematic, i.e. based on a priori assumptions of logic inherent in the operation of natural laws. A system would be "certain" just as natural law is consistently holistic, stable, and unvarying in its order and equifinality. That Jefferson and Mann wanted a "certain" system is clear from their desire to perpetuate a virtuous republic to posterity. Comenius also laid the foundation for concept of system larger than a republic, a universal foundation for a universal or common system of education with "piety" as its highest goal:

We venture to promise a Great Didactic, that is to say, the whole art of teaching all things to all men, and indeed of teaching them with certainty, so that the result cannot fail to follow; further, of teaching them pleasantly, that is to say, without annoyance or aversion on the part of teacher or pupil, but rather with the greatest enjoyment for both; further of teaching them thoroughly, not superficially and showily, but in such a manner as to lead to true knowledge, to gentle morals, and to the deepest piety. Lastly, we wish to prove all this a priori, that is to say, from the unalterable nature of the matter itself, drawing off, as from a living source, the constantly flowing runlets, and bringing them together again into one concentrated stream, that we may lay the foundations of the universal art of founding universal schools (Comenius, 1967, p. 5).

The system of Comenius embodied the Newtonian principles, but avoided the narrowness of a rational bureaucratic system by laying stress on the spiritual and holistic aspects of education drawn from an earlier Christian heritage. This may explain in part why Comenius' writings were thumbed for years to come by

successors involved in educational reform and why Comenius has only recently be rediscovered (Keatinge, 1967).

### **Conclusion**

The post-modern notion of an ontological system based on the "Organism Revolution" of Bertalanffy, Piaget, Prigogine, Waddington, and modern general systems theory with its characteristics of holism, teleology, temporality, and hierarchy has revived the concept Aristotelianism that has enabled us to define an educational system as an open system, if not a philosophical system. A republican system includes some of the properties of a Newtonian or classical bureaucratic systems model of Taylor, Fayol and Weber and appears to have some of the properties of each. An open system derives its capacity to change and adjust, or its transformative structure, from the laws of thermodynamics where heat-energy-matter exchanges. A closed system exchanges energy, but not matter, while an open system exchanges both energy and matter and rejuvenates itself through the process (Doll, 1987, p. 9).

A closed Newtonian system is a highly controlled system where external parameters shape interactions towards a pre-set end of efficiency. An open system (described in terms of Prigogine's thermodynamics) is a fluctuating or dynamic (living cell) system where external perturbations, incongruities, disharmonies or inequities provide the system with the "synergy" it needs for

internal transformation and adjustment. Ends are literally integrated with means.

Such a system is ontological and has a moral capacity precisely because means and ends are one. It is teleological because it has a purpose; it is holistic in its relatedness to the polity or external structures; it is temporal in its transformative nature; and horizontally hierarchical by virtue of its "publicness" and diffusion of democratic authority.

According to the meta concept of system of "ideal-seeking systems," once an educational system satisfies its ontological requirements, it ensures the attainment of all other ideals, including the ideals of individuals, or life plans--a meta-ideal. Such a system becomes the core concept of being and is ontological: "Its reference is to no one ideal among the many but to the one ideal beyond all the many from which all the many derive their being" (Gawthrop, 1984, p. 17).

In the context of education, the "meta ideal" is the common good itself in the polity which is achieved through an "extrafamilial" system of education, a common or publicly tax-supported system open to all. That uniformly and efficiently meets the needs of both the individual and the collective in a democratic state. An educational system has equilibrium and temporality when the meta ideal is achieved as an "action frame" within the polity. The structure of a system depends on whether it is a closed or open system accessible to the external community. An educational system that is co-extensive with the polity

may therefore be considered an open and republic system. Its parts relate to the whole and to the common good ideal.

Comenius, Jefferson and the common school founders, drawing upon Enlightenment, classical, and Christian inheritances, developed ontological systems reflective of larger democratic goals of the state. What makes a republican system of education, a system of "republican civility," unique in the history of the world is this eclectic combination of systems properties and methodologies derived from ancient, modern and post-modern conceptions of system.

This chapter has presented a broad overview of the characteristics of a common system of education from three "systems" perspectives: (a) the bureaucratic system characterized by a centralized hierarchy and age-stage educational development reflecting the Newtonian/Baconian concept of science, (b) the ontological, or open-system characterized by holism, purposefulness, and a horizontal hierarchy of external networks receptive to the goals of the polity, and (c) the "republican" or "extra-familial" proposed by the founders of the common school: Jefferson, Rush, and Mann. Thus the term "system" is tied philosophically to the state by a moral commitment of civic virtue and retains, in some measure, both Newtonian and Aristotelian properties and characteristics.

Chapters Seven and Eight provide standards for a republican system by defining the terms of "efficient" and "uniform" as terms of art. These chapters



will argue that without a standard for a republican system, which these terms provide, an open and ontological educational system in a modern pluralistic society has little hope of achieving equity.

## NOTES

1. It was Descartes, however, whose "Questiones Quaedam Philosophicae Certain Philosophicae Questiones," began Newton's scientific career and precipitated a new modern conception of nature. Isaac Newton's Mathematica Principia rested on three laws of motion as he sought for ways to see unity from the many interacting parts of the universe: (1) that a property remains in its state of rest unless compelled to change by a force impressed on it; (2) that the change of motion is proportional to the force expressed; (3) that to every action there is an equal and opposite reaction. Leibniz gave a mechanical definition of the universe as a "natural mechanism," i.e. a machine made up of small machines in Principles of Nature and Grace in 1714. Philosophy thus introduced the concept of a system as a whole consisting of a sum of its parts (See Charon, 1973, Volume 1, pp. 634-646).
2. This mathematical-positivistic or Galilean conception of system in the cosmology of the sixteenth and seventeenth centuries "...replaced the descriptive-metaphysical conception of the universe epitomized by Aristotle's doctrine. The classical vision of the world as a teleological cosmos was replaced by the description of events in causal, mathematical laws" (Bertalanffy, 1972).
3. President Lyndon Johnson proclaimed in 1965: "Poverty will no longer be a bar to learning, and learning shall offer an escape from poverty....we will liberate each young mind--in every part of this land--to reach the furthest limits of thought and imagination" (cited by L. B. Schorr, 1988, p. 216).
4. In 1870 Henry Barnard, as United States Commission of Education investigated the Prussian system and prepared a comprehensive Report on the National Education in Europe. The Prussian system was begun by Frederick William I, who reigned from 1713 to 1740. The administration of this highly centralized state bureaucratic system was "in the hands of trustees presided over by a minister of State" as well as by Superintendents and Inspectors in every district who strictly supervised teachers and curricula. The Prussian system was developed by "strict decrees of government" (Cubberley, 1920, p. 458) and was administered with strict government regulations with respect to compulsory school attendance, apprentices, regular school hours, Sunday instruction. It was characterized by rigid requirements for licenses to teach and duties, and included uniform textbooks. For a general description of the Prussian system, see E.

P. Cubberley, 1920, pp. 456-466.

5. Henry Barnard, while superintendent of common schools in Connecticut, published National Education in Europe: Being an Account of the Organization, Administration, Instruction, and Statistics of Public Schools of Different Grades in the principal States in 1854 followed by studies in various nationalist pedagogies.. His objective was a "national education" system for the United States and he agitated for a national bureau of education after the Civil War, possibly as a "prescription of education as the great unifier" (Glenn, 1988, p. 105).
6. Jefferson wrote to Peter Carr in 1814 to argue for an educated citizenry divided into two classes, the laboring and the learned. Elementary schools would be established for all white children with additional opportunity in "general schools" or academies, and "professional schools for those heading for leadership positions (Cremin, 1951, p. 109).
7. E. D. Hirsh has noted that "at the heart of modern nationhood is the teaching of literacy and a common culture through a national system of education" (Hirsch, 1988, p. 73) and has noted "the decline of shared knowledge" (p. 7).
8. Adams, writing in the tradition of republican civility wrote: "We have learned to say that the good must be extended to all of society before it can be held secure by any one person or any one class; but we have not yet learned to add to that statement, that unless all men and all classes contribute to a good, we cannot even be sure that it is worth having" (cited in Cremin, 1988, p. 14).

## CHAPTER SEVEN: UNIFORM AS A TERM OF ART

The basic problem at hand is to find a form of association which will defend and protect, with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone and remain as free as before.

Rousseau, The Social Contract

Current litigation in educational finance cases addresses educational systems marked by disparate and unequal fiscal resources among school divisions. The courts can provide no reasonable or rational interpretation of constitutional intent to justify allocation of state and local tax resources in a way that favors the affluent over the poor school divisions. The irrationality of such a system suggests that a uniform system is one of the most difficult challenges to American public education.

Of all the terms of art associated with a school system, the term "uniform," is the most controversial. While expressing the ideal of equality relative to the common good, it also raises the specter of conformity that brings to the surface the underlying tension between liberty and equality that has confused the American psyche since the early days of the republic.

Rousseau accurately assessed the problem of how the values of freedom and equality would polarize the American people. When it comes to our common association through the American public school system, i.e. whether it is

to be an "extra-familial" or a "familial" system, Americans tend to believe that true republicanism is an "either-or" proposition. Equality and uniformity can be attained in and from a school system, but only at a considerable price: Americans may never be as free as they were before.

The republican reformers believed that both liberty and equality of opportunity could be achieved through a uniform system of schools. Jefferson believed in inalienable rights even for slaves in his prologue to the Declaration (Wilson, 1992) and advocated equal liberty. Benjamin Rush in his Essays, Moral and Philosophical (1806) believed that a free and uniform system of schools would "render the mass of the people more homogeneous, and thereby fit them more easily for uniform and peaceable government" (cited in Alexander and Alexander, 1992, p. 46). Horace Mann in his Twelfth Annual Report (1849) desired that "education be equably diffused" because it "is the great equalizer of the conditions of men" (cited in Alexander and Alexander, 1992, p. 26). Thus the common school founders believed that a uniform system would provide freedom of access and opportunities for equal advantage in life for a majority of the American people without jeopardizing liberty.

Since their time of a limited democracy, the term "uniform," in the context of education has come to suggest other more vital criteria or standards for democracy than acculturation. Uniformity has become a standard for equality itself, especially since the ideal of the melting pot has faded.<sup>1</sup> In the beginning,

a uniform system would ensure only "some appropriate level of learning" (Alexander and Alexander, 1992, p. 22). It would remain for later generations to "deal with the pervasive issues of 'uniformity' and 'equality,' which have grown to be as vital to the public school movement as the word 'freedom' was originally" (p. 25).

Thus, any definition of "uniform" as in a uniform system of education must address the issue of freedom-- freedom or liberty viewed as the ultimate criterion against which the merits of a compulsory system of education are judged. Uniform properly defined within a context of a commonwealth system of education therefore has addressed the issue of the American bifurcated value system: the dichotomy of freedom versus equality. Specifically, a definition of uniform or uniformity in educational systems involves explaining the merits of an "extra-familial" versus a "familial" system of education since Americans still believe strongly in freedom of choice and parental and local control of schools in the Lockean individualist tradition.

Defining the term "uniform" in the context of common good addresses these polarities that serve as obstacles to the development of uniform systems. The main purpose of the chapter has been to show that "uniform" is a term of art that provides a standard of equality that people must rationally choose for a public system, a standard that does not compromise a commonwealth conception of liberty. A dichotomy of practice and principles has been presented to illustrate that a uniform system is related to the polity. Various principles of public order

that support this proposition have been explained, such as parens patriae, fiscal neutrality, commonality, subsidiarity, and equal liberty. These principles address the dichotomies of value that in practice serve as obstacles to the commonwealth ideal of uniformity in public schools: freedom versus equality, individual versus collective, state versus local prerogative.

The principles of uniformity draw upon a basic etymological definition of uniform as it is most commonly associated with concepts of "unity," "sameness," "generality," "universality," and "standard." Uniformity has first been defined in terms of universality of education and equal access by tracing the origin and meaning of the phrase "diffusion of knowledge" commonly used in the early days of the republic. This concept of uniformity as equal access provided a powerful paideia for a universal system of education in the United States. The concept of a "general diffusion of knowledge" has served as a background in this chapter for the discussion of practices and principles that follow.

The basic etymological definition of "uniform" has suggested only superficially how the term "uniform" is a standard of equality. While equity is important to a system, it is not included in a formal definition of uniform. Equity, which has been distinguished from equality as a regime value, is a property or characteristic of an "efficient" system discussed in the next chapter. The term uniform by definition therefore illustrates only the principle of equal shares for equals. However, it has also been shown that equality takes

precedence over unequal shares for unequals in a system and even over governmental neutrality that purports to make systems fiscally equal.

### **Uniform as a Modifier of System**

We noted in the previous chapter on system that the term "system" "... standing alone, does not have the strength of more specific working defining the type of system required" (Alexander, 1991, p. 352). The constitutional provisions for education in the states of California and Tennessee contain the term "system" without an adjective or modifier. Alexander noted that the educational provision of the Tennessee Constitution where the General Assembly was required to provide merely for the "maintenance, support and eligibility standards of a system of free public schools," without a specific modifier or clarification for "system" "tends to weaken the requirement" (p. 353).

### **Uniform as a Positive Requirement**

There is a third type of positive constitutional provision or requirement. It includes specific adjectives such as "uniform" that define the kind of system mandated. We find, for example, the terms "general and uniform," in the Constitution of the State of Washington, Article 9, Section 2 (Seattle School District No. 1 v. State (1978)). The Constitution of Arizona at Article XI, Section 3 states that the government "shall provide for the establishment and maintenance of a general and uniform [emphasis supplied] public school



system..." (Shofstall v. Hollins, 1973). The Colorado Constitution (Article IX, Section 2) calls for a "thorough and uniform" system (Lujan v. Colorado State Board of Education, 1982). The Constitution of the State of North Carolina states that as a minimal standard, "The General Assembly shall provide a general and uniform system of free public schools...wherein equal opportunity shall be provided for all students" (Britt v. State Board of Education, 1987).

When an adjective, such as "uniform," describes the term system in the educational provision of a state constitution, such a combination of words may "without support or complement from any other constitutional source require substantial uniformity in the allocation of school funds" (Alexander, 1991, p. 355). The term "uniform" affirms a positive rather than a negative constitutional requirement found in some states' bills of rights. The term uniform suggests the desirability of positively creating a uniform system. It is not a "thou shalt not" provision of state equal protection guarantees used to mandate an equal system. Thus the term "uniform" is a positive standard for a school system. It also describes an ongoing process of making or creating a system more equal or uniform than it presently is. In this regard, the term uniform may be associated with other criteria or descriptors of system. For example, a system can be found to be as uniform as it is "thorough" or "efficient" as adjudicated in Pauley v. Kelley (1979), Serrano v. Priest (1976), or Robinson v. Cahill (1973). All of these cases have suggested "substantial judicial flexibility in the application of

both negative and positive constitutional requirements in redressing unequal apportionment of school funds" (Alexander and Alexander, 1992, p. 356).

However, as a positive requirement of system, the term uniform, because the system is public or the schools are "common schools," says something about the nature of the "publicness" of the system. The term addresses the requirement of the public support of a system as well as the common benefits derived from the system. It is a term of art in relation to a "common" system that serves as a standard by which educational systems must allocate services to all children fairly, in common, or uniformly; it suggests that the system be supported on the basis of equal fiscal capacity of school districts since all tax-payers must support the system in common; it suggests that such a system is democratically controlled or supported.

Uniformity implies, therefore, a standard of equal liberty and justice. As a positive constitutional requirement, it ensures equality of inputs through standardization of fiscal capacity or effort, and at least fiscal neutrality on the part of the state. It posits a requirement of sameness, regularity, or consistency in a system's throughputs without which there can be no "level playing field," equal benefit, or equality of opportunity produced as an output of the system.

#### Uniform As An Aspect of Polity

The term uniform, of all the descriptors of system, speaks to the "publicness" of system whether that system is viewed as a bureaucratic or

ontological system. The term uniform defines an educational system as "an aspect of polity" (Alexander, 1989, p. 149) which Cremin argued was the distinctive characteristic of an American school system of "republican civility."

First, this principle demonstrates the true nature of a uniform system that must not, because of its compulsory attendance laws, be construed as a coercive "arm of the state." A uniform system as "an aspect of polity" reflects the Aristotelian concept of the polis which all citizens preserve and protect as well as move within and find their being. To be an "aspect of the polity" means that a uniform system of education is necessary for the preservation of the state:

Every government has as a goal its own continuation and preservation, and in a republic an educated electorate is fundamental. As such, the state must be conceived as parens patriae in enforcing minimum educational and welfare requirements (Alexander and Alexander, 1992, p. 139).

Second, to be an "aspect of the polity" means that a republican system of education shares the same function or purpose as the polity. Several doctrines related to schools, such as parens patriae, subsidiarity, or fiscal neutrality or the concept of public order generally are compatible with a republican vision of justice grounded in a sense of solidarity, mutual responsibility and joint benefit. Thus, individual rights and the common good should never be seen in opposition to each other in a uniform system, but only as mutually supporting basic principles vital to the preservation of the commonwealth.

Third, for a system to be an "aspect of the polity" is for public authority to behave as a public trust, which all of the above principles illustrate. The polity

or state is not coercive since it acts as a public trust and is democratically controlled: "the determination of the public good in practice occurs through the growth, establishment, and nurturing of political authority" (Meyer, 1975, p. 130). A proper civic autonomy requires a perception of the polity and its public institutions such as public schools as a public trust. The principle of administrative conservatorship was introduced earlier to demonstrate this concept of a responsible public authority acting in a capacity of public trust on behalf of democratic institutions.

Consequently, a uniform system that relies upon state authority or paternalism is not authoritarianism and political authority is not undemocratic. "Any cooperational system of democratic decision-making is itself an authority structure" (p. 115). Robert Nisbet (1947, p. xiii) notes that "authority, like power, is a form of constraint, but, unlike power, it is based ultimately upon the consent of those under it: that is, it is conditional." Fourth, a uniform system of education must be guided and controlled. Uniformity is itself conditional upon certain principles of public order that tend to elevate public responsibility and the granting of authority to achieve a more conscious institutional and ideological level compatible with the goals of the virtuous state. Through participation citizens can see authority at work, see their role in it, and their accountability for it. Thus certain principles of uniformity speak to the public good:

the public good consists of those authoritative values that satisfactorily direct a society in its response to the problems of the public in such a way as to relieve the largest amount of doubts about the rightness of the public purposes (Meyer, 1975, p. 117).

We have noted throughout this study, particularly in the chapters on virtue and commonwealth, that until the advent of liberalism in the seventeenth century, there was little concern in the colonies with the modern problem of freedom as expressed by Rousseau above. Walter Berns explains that this was primarily because "the purpose of government was not to preserve freedom but rather to establish justice" (Berns, 1957, p. 57). Commonwealth liberty was justice, the essence of mutual obligation of rights and duties. The end of the republican state was virtue preemptive of justice. Virtue embraces the concept of liberty to do good and therefore expresses a higher ideal of the common good of all. We have also noted that the term common is quite similar to uniform. Both words, "common" and "uniform," suggest a relative quality of sameness; the first enjoins through sharing, the latter implies a consent or conformity of wills to effect a relative sameness of condition.

Rousseau, however, was wise enough in his day to recognize that freedom is not enough. A uniform system of schools requires the tacit assumption of commonality, that civil society is based on mutual trust, and that if the community is made up of citizens that trust one another, there is a willing uniformity--a common desire for all to share the same fate, experiences, and benefits.

Rousseau realized also that virtue was preemptive of freedom, and justice, for "only if the community is made up predominantly of citizens of good character who trust one another is freedom not only possible but desirable" (1973, p. 256). Thus, the basis of a uniform system of education is an act of polity to bring all of the heterogeneous and disparate elements of a polity-sub-system into accord with a general standard for all; this can be possible only in a man's will. The general will, or some other "moral authority" (Simon, 1986) must demand or expect uniformity.

When Aristotle discussed the golden mean of the middle class, he was expressing a relative uniformity of condition tacitly understood in a democratic polity. As to why we should have a uniform system, we must recognize the concept of the virtuous general will--some moral authority behind the civilizing process that brings all men into a relatively uniform condition. Not that the goal of system is to produce only an average product. Jefferson and the founders had much larger vision for the American people as a result of a uniform system of education than mediocrity. Jefferson advocated a "natural aristocracy of virtue and talent," which was further elaborated in the statute for "A Bill for the More General Diffusion of Knowledge" which he proposed to the Virginia Legislature in 1779 (Jefferson, 1990/1779). The founders who advocated a uniform system of schools understood the simple fact that "the law does not assume that men will be civilized if left free" (Berns, 1957, p. 247).

A republican notion of conformity of wills (which is the General Will) is what ultimately effects or produces a uniform system. The concept of a uniform system of education tied to the polity suggests the Aristotelian notion that "Man is by nature not [only] an individual with inalienable rights, but also a political being, who can achieve his nature, his end, only in the polis, if at all" (Aristotle, Politics, 1952, Book 1, p. 247).

It is in this republican sense or understanding of the purposes of education in a commonwealth, that the term uniform may be considered a term of art, especially as the above concepts are elaborated upon by the philosophers. The following etymological treatment of the term uniform provides the essential characteristics of a uniform system. The remainder of the chapter in presenting practices and principles has further demonstrated that uniform is a standard of equality and "an aspect of polity."

### **Etymology of Uniform**

The etymology of the term "uniform" suggests that "uniform" is a complex concept relating to fiscal equalization, educational needs, and uniformity of effort. The etymological definition of uniform suggests that a uniform system is characterized by patterns, relationships and learning processes that speak conceptually to the common goals of a virtuous republic. It also suggests that uniformity is a moral standard for a universal system of education considered as "an aspect of polity" to which the public must conform.

### Uniform as General or Universal

The Macmillan Dictionary (1973) demonstrates that the terms "common" and "uniform" appear to have been used interchangeably by the Founders. Both terms suggest a standard of equality. Both terms, applied to an educational system, mean "general" in the sense of being widespread or applicable to all in common, or "shared by all alike," as in common property or the common good (p. 202). We recall that common (derived from the Latin communis) means "general" or "universal" (p. 202). When Jefferson and the common school founders spoke of a "general diffusion of knowledge," they meant that knowledge would be general, or universally accessible, shared by all alike, and common. Students would be exposed to a common core of knowledge or values that would enable all citizens in the republic to be virtuous and responsible citizens. It is this quality of generality that makes for a uniform system.

The term "uniform" has also been defined as meaning "general." Black's Law Dictionary (1990) defines uniform as "general" in a way that has special relevance to an equitable funding of schools. The terms "general" and "uniform" "have a meaning antithetical to special or discriminatory laws" (p. 1530). According to this legal definition of uniform, the word uniform is a standard of equality in public taxation where there is an expectation of a shared or equal burden (to support the educational system):

The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the



limits of the unit wherein it is lawful to levy taxes for a purpose, whether that unit be the state, country, or a municipality.

The term uniform, which means "general," is similar to the word "universal" which has often been applied to systems of education. The term "universal" (from the Latin universalis), means "relating to the whole." It means "whole or general" and denotes "all the members of a given class" (Halsey, p. 1089). The term universal, like "general" can be used to describe a system that is "operative or effective under all conditions or in all cases," or one that is "comprehensive" (Halsey, p. 1089). The concept of a universal system of public education as we shall see is a distinctly American paideia based upon the desire for "a general diffusion of knowledge."

#### Uniform as Unity or Harmony

What makes for the unity in a system is an "orderly combination or arrangement...of parts, or elements into a whole" (Black's Law Dictionary, 1990, p. 1450). The term "uniform" suggests a sameness of shape or design Halsey (1973, p. 211) and thus describes the holistic nature of an ontological system. The term "uniformity" as a noun is derived from the Latin uniformis meaning "having one form." As a noun it is derivative of the Latin unus "unity" and forma meaning "shape." A system has one form or shape with its diverse parts united or joined together into a whole. An educational system is integral to the polity and is united to the whole state.

The term uniform also reflects the ideal of unity associated with balance or harmony. "Harmony" is defined as "agreement of feeling, thoughts, or action; good relations; agreement or pleasing arrangements among the various elements of a whole" (Halsey, 1973, p. 470). An educational system can be "familial," privatized, fragmented by factionalism or pluralism, or it can be a harmonious "extra-familial" system united to the polity. Ideas of the common good and polity have always been associated with unity, proportion and harmony. The concept of unity or harmony animated the ideal commonwealth of Aristotle and can be traced to the Pythagoreans and Plato, music and mathematics (Finney, 1973, Volume 2, pp. 388-390).<sup>2</sup>

#### Uniform as Sameness or Equality

A uniform system consists of parts in a whole "such combination according to some rationale principle" (Blacks Law Dictionary, 1990, p. 1450). Uniformity is a rational principle. It is closely associated in meaning with equality and equity. The term "uniform," therefore addresses the system's teleology and provides a standard.

The term uniform, like equality, suggests "sameness" which in the dictionary simply means a quality of being "exactly alike" (p. 1450). Thus any standard, rule, pattern of a system applicable to either the inputs, throughputs or outputs of the system, i.e. "the things compared," must "resemble each other so closely as to be essentially indistinguishable" (Halsey, 1973, p. 880). Sameness

also means "identical." Any school system that has "identical" resources is a system that would be "equally acceptable" (p. 880).

This etymological definition of "sameness," however, has a connotation of a uniform system that individualistic Americans resist. They want the same or equal treatment, but they resent levelling tendencies or policies that tend to reduce men to a "quality" or condition of sameness. The term "same" however, according to The Macmillan Dictionary (1973, p. 880), "more often implies only that the things compared resemble each other so closely as to be essential indistinguishable."

Americans, however, sharing no reluctance or hesitation in claiming "inalienable" rights to be "essentially indistinguishable" before the law, or in a voting booth where one man's voice is considered to be "essentially indistinguishable" from another. Therefore sameness does not suggest a colorless or bland mediocrity; rather it expresses entitlement to an equal participation in the common life.

If a system does not treat people uniformly, or if the same standards and practices are not equally in force or available to all on an equal basis, sameness is not pejorative. For example, as Dworkin notes, individuals, in accordance with a "deep equality," reject the notion of any kind of trade-off (1986, p. 272). That is, as far as the distribution of shared resources are concerned, individuals expect at minimum the same treatment; they expect an equal or the same distribution of goods and services from an educational system. "Someone who holds the theory

of deep equality...does not mean that, when these demands of justice are correctly assessed and met, something valuable has been sacrificed" (p. 271). The question of uniformity thus is "...not whether any deviation is permitted, but what reasons for deviation are permitted" (p. 209).

### Uniform as a Standard

Black's Law Dictionary defines the term "uniform" as "conforming to one rule, mode, patterns, or unvarying standard" (p. 1530). That "unvarying standard" or "little variance" of uniform in an educational system is equality. In a uniform system, equality is imposed by law on all regions and school districts, alike, rural or urban, rich or poor, for a standard is "not different at different times or places," and is "applicable to all places or divisions of a country." The term uniform is also defined as "Equable; applying alike to all within a class."

Uniform then is a standard of system that suggests not only equality, but equity or justice. A uniform school system, however, is constitutionally established and operates from just laws. In defining the term uniform, Black's Law Dictionary offers an explanation for why all statutes or laws must be uniformly applied:

a statute is general and uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for; when all persons under the same conditions and in the same circumstances are treated alike, and classification is reasonable and naturally inherent in the subject-matter (p. 1530).

The principle of uniformity suggests that the burdens of taxation be uniform. A uniform system, created by law, imposes at minimum a standard of equality. In financing public schools, a uniform system requires that the fiscal capacity of units of government be equalized by law so that all students have equal access to educational fiscal resources. A system must be able to accommodate for any wide variations in social, economic and physical conditions of individuals within and among states or school districts that exacerbate the system's effort to treat all children equitably (Alexander, 1982, p. 194). Black's Law Dictionary says that:

The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the limits of the unit wherein it is lawful to levy taxes for a propose, whether that unit be the state, county, or a municipality. And requirement is meant when tax is equal on all persons belonging to the described class on which tax is imposed (p. 1530).

Black's Law Dictionary says that the term uniform implies no distinction or discrimination: "...a tax is 'uniform' when it operates with equal force and effect in every place where the subject of it is found, and with reference to classification, it is uniform when it operates without distinction or discrimination upon all persons composing the described class" (pp. 1531-1532).

Economists, policy-makers, scholars, and the courts have sought ways to measure or evaluate a distribution of income among jurisdictions to determine whether they are becoming increasingly equal (Atkinson, 1970) or if the distribution of per pupil revenues for public education demonstrates increasing

equality (Adams and Odden, 1981; Allison, 1978; Barro, 1987; Berne and Stiefel, 1984). The term uniform implies a standard of equal distribution and fiscal effort for school systems when applied to the amount of taxation and the manner of its assessment. Black's Dictionary states that all property taxes be rendered equal in accordance with the principle of uniformity as explained in Edye v.

Robertson:

Uniformity in taxation implies equality in the burden of taxation, which cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. Further, the uniformity must be coextensive with the territory to which it applies. And it must be extended to all property subject to taxation, so that all property may be taxed alike and equally (p. 1531).

However, to define uniform only in terms of an arithmetical equality oversimplifies its properties in the context of an educational system. The term uniform defined as mere "sameness" or as "identical treatment" suggests an arithmetical equality that does not pose a standard of equity:

A system of educational finance which merely fiscally equalizes, or neutralizes, or provides equal distribution to local school districts with low fiscal capacity is admittedly inferior, on this scale of social justice, to a system which attempts to fully fiscally equalize and, in addition, to provide resources to the "least-favored" children in the Rawlsian tradition (Alexander, 1982, p. 201).

A public educational system is by nature a uniform system. It is a compulsory, state-mandated system. It has a standard of uniformity which suggests that citizens "conform" to its methods of allocation and support. The word to "conform," like the term "uniform" shares the Latin root forma, meaning

"to bring into agreement; to make the same" (Halsey, 1973, p. 211). Thus a uniform school system is a democratic system dependent upon consensual government. The word "conform" means "to act [emphasis supplied]; in accordance with an established or consistent rule or standard" (p. 214). A unified system is "a condition of functioning or working properly," characterized as "a body of persons living under the same regulations," that are "united by some special interests or purposes" (Halsey, p. 709)--which we would like to assume is the common good. The word "standardize" means "to cause to conform to or regulate by a standard," which can be a "moral standard" (p. 709).

### **Uniform as Universal Diffusion of Knowledge**

The concept of a "learning society" where all citizens would be equally empowered by knowledge to advance the goals of a democratic state is a powerful American paideia that drew its inspiration in the main from the Enlightenment philosophers and Bacon, Locke, Condorcet in France and the early continental educational reformers such as Comenius and his followers.

However these philosophers had learned from the ancient world the value of a universal education and popularized such notions throughout the Renaissance along with ideas about equality and liberty within the modern state. The idea of the diffusion of knowledge had long been associated with equality and human potentiality linked to the notion of human worth fostered by Christianity.<sup>3</sup>

### American Paideia of Universal Education

The American paideia of universal education was first associated with the notion of a novus ordo seclorum (McDonald, 1985) and the idea of universal enlightenment tied to virtue which George Washington urged the American people in 1796 to embrace. He believed Americans should "[p]romote, then, as an object of primary importance, institutions for the general diffusion of knowledge." The republic depended upon "enlightened public opinion," and, he noted, "that virtue or morality is a necessary spring of popular government" (cited in Cubberley, 1922, p. 286).

### Greek Model of a Learning Society

The concept of universal education and a virtuous and enlightened citizenry through a diffusion of knowledge can be traced to the Enlightenment, but also to the Greek concept of paideia, which posited that the primary function of society and all its institutions was to promote learning. The Greeks gave learning or knowledge the broadest possible definition and associated it with achievement and human potential. Human worth or value, however, was not limited to formal education. It implied the task of making life itself an art form, with the person the work of art (Harmon, 1988, p. 147). The Greeks believed that every individual had worth and value and the potential to create as well as to participate in a democratic society (p. 147). This spirit of universal education



inspired the classical concept of novus ordo seclorum. Americans like the people of ancient Greece and Rome had a vision of a society to come:

The Athenians made their society one designed to bring all its members to the fullest development of their highest powers...Education was the aim of the society...The Athenian was educated by the culture... (Harmon, 1988, p. 129).

An American paideia of universal education evolved because American patriots had a glimpse of a new world order that depended upon an educated citizenry and the diffusion of knowledge. This Greek paideia of human worth and potential gave Jefferson and the common school founders a rationale to systematize education with a conscious goal of creating a more equal, uniform or homogenous society and provided an argument for common education in relation to the polity that would transcend private special interests. A republican paideia of the essential equality for all men provided the motivation for Jefferson submitting four bills to the Virginia legislature between 1776 and 1779 to create a system of education "by which every fibre would be eradicated of ancient of future aristocracy; and a foundation laid for a government truly republican" (Jefferson, 1891-1899, Volume I, p. 68). In the sense that "every system is an orderly arrangement according to some scheme or plan" that scheme or plan for a virtuous citizenry was to be achieved through the widest diffusion of knowledge possible via a systematic methodology or process of learning--schools arranged from the lowest grades through universities, uniting both public and private elements, bringing together all classes and groups, not through

centralized administration but through the ideal of equality. Thus "the one perfect system" (Tyack, 1974) was, as Cremin said, "compounded of evangelical pieties, democratic hopes, and utilitarian striving, and indicating the role of that paideia in the creation of a unified American society" (Cremin, 1951, p.ix).

The new American order would be achieved through a wide-spread "diffusion of knowledge" and this was to become the first order of priority of state. Americans were practically involved in the process of building a new world order upon the ashes of the old.

According to Cremin, the most universally articulated theme during the early decades of the Republic was the diffusion of knowledge. "Universal education" was required by a self-governing people (Cremin, 1980, p. 103). John Adams offered the same advice as president, as did Jefferson and Madison and countless governors and legislators who argued that an enlightened public opinion depended upon a free press, voluntary associations, and common schools to develop a common core of knowledge, morality and patriotism (Cremin, 1951, p. 104).

The Enlightenment philosophers had created a new intellectual atmosphere which affirmed that "human reason could, by using a controlled method of investigation, arrive at sound knowledge unaided by revelation, or accepted authorities" (Butts and Cremin, 1953, pp. 58-65). However, from the very beginning universal education was linked to the common good. Continental enlightenment philosophers had taught that "the whole power of education is

required if the virtue that makes men choose public over private interests is to be sustained..." (Cremin, 1970, p. 151).

Thus the survival of the republic depended upon a general diffusion of knowledge. Universal education was sought as a basis for civic virtue, to promote liberty and prevent tyranny. These values were expressed for both the individual and the collective most convincingly by Thomas Jefferson in his argument for free public or common schools in support of his "Bill for the More General Diffusion of Knowledge" in 1799:

I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness....Preach, my dear sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know...that the tax which will be paid for the purpose is not more than the thousandth part of what will be paid to kings, priests, and nobles who will rise up among us if we leave the people in ignorance (Jefferson, cited in Mayo, 1942, p. 89).

The "instrument" for a "general" or universal diffusion of knowledge would be a common system of schools. Noah Webster established the link between education and public order through a diffusion of knowledge. He said:

In our American republics, where government is in the hands of the people, knowledge should be universally diffused by means of public schools. Of such consequence is it to society that the people who make laws should be well-informed that I conceive no legislature can be justified in neglecting proper establishments for the purpose (cited in Rudolph, 1965, p. 49).

It was generally believed that a "diffusion of knowledge" would empower the American appeal to achieve and sustain democracy. Horace Mann in The

Necessity of Education in a Republican Government wrote in 1855 that "if republican institutions do wake up unexampled energies in the whole mass of a people, and give them implements of unexampled power [emphasis supplied] wherewith to work out their will; then these same institutions ought also to confer upon that people unexampled wisdom and rectitude" (cited in Hubsch, 1989, p. 84). Others argued for a state-encouraged general diffusion of knowledge because they embraced the Roman concept of pietas or duty of government to educate for citizenship.

Thus the concept of "diffusion of knowledge" became associated with duty, empowerment, and especially equality which grew out of the notion of equality and individual worth. Education would be "universal" because of the dignity of man. It would be common so that all men who had worth or value could benefit and empowered to rule. This synthesis of ideas created a powerful logic for a uniform system of tax supported schools.

#### Diffusion of Knowledge as Enlightenment

The roots of the idea of democratic education dispensed uniformly can be traced to Francis Bacon, who more than any other philosopher of the Enlightenment, encouraged the diffusion of knowledge for the general enlightenment of mankind. In seventeenth century England, prior to the coming of the Puritans who established the first state system of education, Francis

Bacon, convinced that culture had come to a dead end in 1607, wrote Novum Organum. In defiance of traditional learning characteristic of medieval institutions, he urged a scientific scholasticism upon the Catholic Church (Alexander and Alexander, 1992, p. 19) which opened up new prospects of learning. Capitalizing on the new mechanical discoveries of the Renaissance, Bacon set an example to the masses of taking all knowledge into one's province. While protesting the sterility of traditional culture in Novum Organum, he developed a new logic for the scientific use of the inductive method, which challenged the closed of education in England, limited to an elite few.

Bacon was known as an impious Promethean or Faustian with "a total instrumental mechanization of reality" (Rossi, p. 272), but John Dewey observed that he raised the whole concept of learning both for the search for knowledge and the goal of knowledge by insisting on "the public, democratic, and collaborative nature of scientific inquiry" (cited in Rossi, p. 174). "Every attitude which would substitute the wisdom of one man for the organized efforts of humanity..." was "to be rebuffed" (p. 174), but the new science and learning, or "total knowledge" would be placed in the service of the whole human race (pp. 174-179).

Later in England the Moravian philosopher and educational theorists Jan Amos Comenius, exiled from what is now Czechoslovakia, challenged the Puritans with speculations about a system of education consisting of a realistic

curriculum. He advanced the idea of universal books, universal schools, and a system of graded schools in all towns and villages of England (Alexander and Alexander, 1992, p. 19). John Milton also saw the need for a system of education "one of the greatest and noblest designs that can be thought on, and for want whereof this nation perishes" (Lawson and Silver, 1973, p. 154). European nations had already developed universal and compulsory systems of education for both sexes in the duchies of Wurtemberg in 1565, the Dutch Republic in 1618 and in Weimar in 1619 (Alexander and Alexander, 1992, p. 19).

#### Bacon: Knowledge as Power

Francis Bacon in Parasceve (1937) stated his sweeping claim of taking all knowledge as his province. His description for a comprehensive naturalist history provided a rationale for a general diffusion of knowledge for the general enlightenment of the world:

For the history that I require and design, special care is to be taken that it be of wide range and made to the measure of the universe. For the world is not to be narrowed till it will go into the understanding (which has been done hitherto), but the understanding is to be expanded and opened till it can take in the image of the world (cited in Jones, 1937, p. 39).

Bacon had also said, "A man is but what he knoweth" (cited in Anderson (1975, p. 69) foreshadowing the Cartesian dictum of epistemology and ontology that the

truth of being and the truth of knowing are one and the same. Knowledge was being, and therefore of great importance to everyone.

Francis Bacon was the first philosopher of modern times who grasped the "social function" of scientific knowledge and its power to transform the world, to enlighten men, and to make them happier" (Rossi, 1973, p. 178). Bacon, however has frequently been seen as "vulgarly utilitarian," because of his insistence on practical, technical knowledge (pp. 178-179).<sup>4</sup> Also few noted Bacon's association of civic virtue with knowledge. Above all, the power of knowledge would be directed toward Virtue: goodness or public good must be applied to useful ends.

For Bacon the power to help others or to be useful represented a form of "truth." Bacon argued that there was more to practical knowledge than mere utility. He stated throughout Advancement of Learning that practical works and progress through the "advancement" of knowledge" made for the improvement of the general condition of humanity (Jones, 1937). This can be seen in his discussion of the relationship between truth and works, truth producing both fruit and works (Opera ipsa pluris facienda sunt, quatenus sunt veritatis pignora, quam propter vitae commoda). Truth suggests a higher good or welfare beyond that of simply works. Thus, the Baconian concept of "knowledge as power," expressed as "regnum hominis" in various references to the dominion of man over nature throughout the Magna Instauratione as well as Novum Organum, "had meaning only if realized in a definite religious, political, moral and cultural

context" (Rossi, 1973, p. 178). Bacon was no democrat, but he insisted on the public, democratic, and collaborative nature of scientific inquiry and believed that "The conception of science as resulting from a series of individual contributions to a communal success, was the patrimony of all" (p. 174).

Science was to be placed in the service of the whole human race. Bacon presented a case for the diffusion of knowledge to King James arguing that "when kings themselves, or persons in authority under them, or other governors in commonwealths....are endued with learning," knowledge is disseminated to the masses (cited in Anderson, 1975, p. 97). For the dissemination of knowledge Bacon sought a new foundation for knowledge and its uses through widespread observation and experiment. He also hinted at a system of education when he argued for vesting universities with this function in his private diary Commentarius solutus, July 26, 1608, a plan "for a place to command wits and pens" at the colleges of Westminster, Eton, Winchester, Trinity College in Cambridge, Magdalene College in Oxford and when he provided a list of patrons or supports (cited in Anderson, 1975, p. 23). A foundation for the dissemination of practical knowledge would consist of "laboratories and engines, vaults and furnaces, terrace for insulation" in a college for Inventors (p. 24). Like Jefferson, Bacon also labored over a new type of college which would be "instituted for the interpreting of Nature and the producing of great and marvelous works for the benefit of men..." (p. 24). It would be called Solomon's House or the College of



the Six Days Works" (p. 24). Its plan included a "frame of laws of the best state or mould of a commonwealth as well as a model for establishments of learning" (p. 24).

Bacon's plan for education linked to the polity was published posthumously under the title, the New Atlantis. By the middle of the eighteenth century, the "Great Instauration," Bacon's great plan or scheme of knowledge and learning, would furnish a pattern for curricula that replaced the traditional classical learning of the ancients with realistic technical training. This foundation or system (the Great Instauration) was a scheme for the complete regeneration of human knowledge, "the noblest....that ever was upon the earth" (cited in Anderson, 1975, p. 24). Its practical and revolutionary curriculum would demolish the traditional arts and sciences of all the universities of Bacon's time to make way for useful dissemination of knowledge described in the Novum Organum for the practical uses of men.

### Knowledge as Virtue

As to the meaning of knowledge as power, Bacon notes that knowledge is conducive to public order, virtue, and freedom or autonomy. It produces civil merit, military prowess, the arts of peace, peaceable government, and public and private virtue. It rids the mind of "wildness and barbarism;" purges it of levity,

insolence, and fear; restores it to health and increases its growth. It makes a man a ruler of himself; and gives a law to his will (cited in Anderson, 1975, p. 146).

Thus a diffusion of knowledge would make for democratic institutions and virtuous government. Knowledge would become consistently and universally available to empower the masses, and not simply the privileged few. Equal access to a universal system of education in America thus became essential to proposals of an egalitarian, republican system. The common school founders wanted all the benefits and privileges of education made uniformly and consistently available to all members of society to ensure a virtuous society.

Cremin, however, notes that "knowledge diffused in a republic could always be used for good or evil purposes" (Cremin, 1957, p. 7). A republican system of education, therefore would emphasize civic virtue to ensure both intellectual growth and civic values. In a moral republic civil liberty had special relevance. "Never will wisdom preside in the halls of legislation," Mann wrote, "and its profound utterances be recorded on the pages of the statute book, until Common Schools...shall create a more far-seeing intelligence and a purer morality than has ever existed among communities of men (cited in Cremin, 1957, p. 7).

### Comenius: Pansophic Knowledge

A quarter of a century after Francis Bacon's encyclopedic attempts to disseminate knowledge and scientific investigation, John Amos Comenius (1592-1670) and other European humanists sought to do somewhat the same thing in education.<sup>5</sup> "Bacon tried to make science universal in its service to humanity; Comenius aimed at a no less universal service on the part of education." Comenius was not alone in this "pansophic" movement for a universal diffusion of knowledge. Wolfgang Ratke, John Valentine Andrae with his Reipublicae Christiano-Politicae, and John Alster with his Encyclopaedia Scientium Omnium were all exponents of the same pansophic idea of universal education in the seventeenth century (Lomer, 1972, p. 36).

Comenius, in Pansophiae Praeludium (1630), expressed his belief in the necessity of a systematisation of human learning, and for the organization of a Pansophic College, which would be an institution for universal knowledge. These seventeenth-century educational philosophers united two streams: medieval humanism and modern realism (Lomer, 1972, p. 36). They drew upon Bacon's "Instauratio Magna" which had unlocked nature's secrets and "left the rest to future observations to be extended through centuries" for ideas and method (Comenius cited in Lomer, 1972, p. 37). Because of Bacon's influence, Comenius would outline what he called a syncretic method for a system of schools with a goal of universal education based upon the natural laws of an ordered universe.

Comenius' ideal educational system, presented in The Great Didactic (1657/1670), echoed Bacon's Renaissance claims for learning and synthesizing all knowledge. He created a system that would utilize "the whole art of teaching all things to all men" (Comenius, 1967, p. 5). He promised a "system of education" wherein "all the young shall be educated (except those to whom God has denied understanding)" in a systematic process that would "lead it [the mind] naturally to wisdom, virtue, and piety" (p. 81), since "the seeds of knowledge, of virtue, and of piety exist in all men" (p. 85).

Unlike Bacon, however, man's goal of education had a spiritual dimension: to know oneself, to rule oneself, and to direct oneself (p. 36) toward an ultimate spiritual end which he desired, as a Christian for the entire world. Education would be public for all, and especially at times and in a manner when one can most naturally be disposed to learn. All schools, would be public not private for "...it is rare to find men who have either sufficient knowledge or sufficient leisure to instruct their children" (p. 61). All children would be educated in common, because children learn more easily together and because they must be instructed in a common civic virtue (p. 62).

In the Great Didactic, written in in Czech and completed in 1652 (Keatinge, 1967 "Introduction," p. 13), Comenius traced the origin of the common school to Biblical times, through the Jewish Synagogues, the Greeks, Romans, and Charlemagne.<sup>6</sup> He believed in respect of this tradition of common schooling that "it is to the interest of the whole Christian republic that this Godly

custom be not only retained but increased as well" (1967, p. 62). In addition, Comenius provided practical reasons to diffuse knowledge through common schools. He argued that a certain commonality was needed in "transacting business which is in common use and that "it is very seldom that parents have sufficient ability or sufficient leisure to teach their children," and because "it is nevertheless better that the young should be taught together and in large classes since better results and more pleasure are to be obtained..." (p. 63). Finally, Comenius argued for an institutional diffusion of knowledge through a system of common schools or institutions:

workshops supply manufactured goods, churches supply piety, and law courts justice, why should not schools purify, and multiply the light of wisdom, and distributed it to the whole body of the human community (p. 64).

A common and universal education through a common school system would be extended to the young of both sexes and of all classes: "not the children of the rich or of the powerful only, but of all alike, boys and girls, both noble and ignoble, rich and poor, in all cities and towns, villages and hamlets, should be sent to schools," because "all are imbued with wisdom, virtue, and piety" and "may usefully employ the present life" (p. 66).

As to those disadvantaged by ability or intellect, being "naturally dull and stupid...renders more imperative the universal culture of such intellects" (p. 67) for none should "lack the material for thinking, choosing, following, and doing good things" (p. 69). Comenius wrote: " Let none be excluded unless God has

denied him sense and intelligence" (p. 67). It should be noted that Comenius' "Pansophy" also included women who likewise "are formed in the image of God, and share in His Grace...endowed with equal sharpness of mind and capacity for knowledge" who are "able to attain the highest positions" (p. 68).

### Condorcet: Knowledge as Progress

The American paideia of universal education also grew out of a rash of democratic, educational perfectionism in the eighteenth century which suggested that all men, given the appropriate methods, could be educated to any desired level. Locke's famous An Essay Concerning Human Understanding (1690/1917) and Rousseau's Emile (1762) emancipated man from ignorance no less than Bacon's Novum Organum. Locke argued that man had an individual temperament and mind and that from a moral point of view he was a "white paper" or "tabula rasa" who could be moralized by education. Rousseau in Emile described a situation which few could resist where a solitary child was successfully educated by a carefully selected private tutor in a purified environment away from corrupting institutions.

The French philosopher, however, who appears to have coined the phrase "diffusion of knowledge," and who most accurately foresaw the great power of popular journalism for a diffusion of knowledge just beginning in his own day was Marie-Jean-Antoine-Nicolas, Marquis de Condorcet, one of the most enlightened and influential of the French philosophers.<sup>7</sup> In his Sketch for a

Historical Picture of the Progress of the Human Mind (1795), published in 1795, Condorcet popularized a noble view of human history that demonstrated the possible scope of human improvement through reason and personal liberty. In this history of the intellectual development of the world, Condorcet expounded on the importance of a universal diffusion of knowledge for extending the doctrine of progress to every department of human activity. He presented history in its stages of repression and learning as the story of intellectual, political, economic and social progress.

The idea of history as the story of man's progress from superstition and barbarism to an age of reason and enlightenment was not invented by Condorcet. The same notion can be found in Voltaire, in Condillac and even more explicitly in Turgot's Tableau philosophique successif de l'esprit humain (Aldridge, 1973). However, Condorcet's sketch was the first and most complete statement, prior to Rousseau.

Condorcet's "diffusion of knowledge" theme became the basis for a now questionable faith in a natural law of human progress that would profoundly influence Saint-Simon and August Comte in the nineteenth century (Aldridge, 1973); however, not before his picture of the progress of the human mind through several stages of human history had captured the imagination of the civilized world at the time and the phrase "diffusion of knowledge" became a standard rhetoric to promote a common system of schools in America.

Many of the themes of the American founders of the common school can be found in this work. In the Sketch, Condorcet's purpose was to show how the diffusion of knowledge throughout human history advanced liberty, virtue, and the natural rights of man:

We shall demonstrate how nature has joined together indissolubly the progress of knowledge and that of liberty, virtue and respect for the natural rights of man; and how these, the only real goods that we possess, though so separated that they have even been held to be incompatible, must on the contrary become inseparable from the moment when enlightenment has attained a certain level in a number of nations, and has penetrated through out the whole mass of a great people whose language is universally known and whose commercial relations embrace the whole area of the globe. Once such a close accord had been established between all enlightened men, from then onwards all will be the friends of humanity, all will work together for its perfection and its happiness (Condorcet, 1955/1795, p. 24).

He linked dissemination of knowledge to civic virtue, duty, to human happiness as well as freedom--all arguments used for the founding of a universal system of education in the United States. He demonstrates, however, that the growth of knowledge or the "progress of the mind" leading to virtue did not proceed smoothly; it has been checked by superstition, stupidity, idleness and corruption: "...it is not the growth of knowledge but its decadence that has engendered the vices of civilized peoples, and that knowledge, so far from corrupting man, has always improved him when it could not totally correct or reform him" (p.24).

Also, "the progress of virtue has always gone hand in hand with that of enlightenment, just as the progress of corruption has always followed, or



heralded, its decadence" (p. 54). Knowledge for Condorcet as for Comenius was "a foundation for the teaching of morality." The Greek "eternal ideal of the just, the beautiful and the virtuous, independent of the interests of men, of their conventions, even of their existence....becomes for us the principle of duty and the rule of conduct..." (p. 61).

Condorcet saw the Roman Empire as unique in history for an uninterrupted succession of five emperors uniting virtue, talent, enlightenment, love of glory and a zeal for the public good. This fact, along with "so many peoples under one domination, and common languages," "contributed to produce a more general diffusion of knowledge" [Italics added] (p. 65) the effect of which was to weaken the philosophical differences among men, i.e. to establish a commonality.

The diffusion of knowledge is the key to equal liberty as well as virtue:

All men [in Greece] had an equal right to know the truth. All could search for it and disseminate it to all in its entirety. This more than political liberty, gave Greece its independence and guaranteed its material and intellectual progress (pp. 42-43).

Condorcet attributed tyranny to Christianity, superstition and other religions (p. 87).<sup>8</sup> He attributed the diffusion of knowledge to the philosophers of the enlightenment whose ideas were "soon rapidly diffused, despite governmental and priestly inquisitions, by the almost universal medium of the French language" (p. 138). This dissemination of knowledge through philosophy (he names Bacon, Galileo and Descartes specifically), language and the art of

printing ensured a new era of enlightenment, virtue and liberty for all mankind (pp. 121-122).

It is clear that Condorcet had been inspired by Francis Bacon, just as Comenius.<sup>9</sup> Knowledge diffused meant a universal empowerment for liberty and self-government. All the intellectual activities of man combined to further the progress of human reason so that "the whole system of human labour is like a well-made machine, whose several parts have been systematically distinguished but none the less, being intimately bound together, form a single whole, and work towards a single end" (p. 168): virtue and liberty. Condorcet believed that his own philosophical sketch would be "rapidly diffused" throughout the known world (p. 128) as a "warning to the present age" of republicans to "maintain and increase the sum of human knowledge if it wishes to become or to remain free..." (p. 87).

A "general diffusion of knowledge" thus became a goal of a uniform system in America where all citizens would be equally educated. Jefferson was serving as ambassador to France, about the time Condorcet completed writing the Sketch in 1793, although it was not published until 1795 (Condorcet, 1955). Jefferson proposed his Bill for a General Diffusion of Knowledge just four years later in 1779. The American common school system would be universal leading to liberty, virtue, and the common good as a progressive, democratic ideal. Perfectibilists, such as Condorcet and Rousseau, argued that society itself should

reformed to become more democratic, and this set the tone for a universal system of education as a vehicle for change in America.

However, the real, underlying objective of that perfection, according to Enlightenment philosophers and the American education theorists, was equality. A "diffusion of knowledge" suggested equal access to a universal system of education and the equal distribution of its goods and services--a democratic ideal that has still not been achieved. But it was Jefferson himself who tied equality to virtue in the republican tradition which made clear that a uniform system had a moral, civic dimension.

#### Jeffersonian Ideal of Diffusion of Knowledge

To understand the subtle balance between liberty and equality inherent in the notion of a uniform educational system, we need to examine closely Jefferson's concept of a "learning society" as expressed in Section I of the Virginia statute, "A Bill for the More General Diffusion of Knowledge" drafted by Jefferson in 1779. Jefferson's "learning society" ideal contains a central focus of civic virtue as the end of state and purpose of a uniform system. Virtue is the common theme or thread that runs through the Greek as well as Enlightenment conceptions of diffusion of knowledge or universal education. Therefore virtue is central to the notion of uniformity.

How virtue is to be attained through a uniform system is the thrust of Jefferson's argument in Section I of the statute. Jefferson argued that a uniform

system was an instrument of public virtue. He had in effect responded to John Milton's revolutionary challenge of freedom of choice, for good or evil, without the influence of the state. Prior to Jefferson, most of the seventeenth century libertarian thinkers and educators believed "that virtue, or even ordinary decency is promoted most directly by agencies other than the government--for example, the family and the church" (Berns, 1957, p. 235). The problem that they envisioned in the polity was "the relation between these [familial] agencies and the law, or between customs and law" (p. 235). Milton like most libertarians believed in a virtuous polity. However he had presented a powerful argument in The Aereopagitica that only educated men were fit to govern and that they should not be confined or restricted in any way by government as to their moral choices. He argued that the truly virtuous or educated man knows the "seeming pleasures" of vice but chooses virtue. Milton's disdainful phrase about "cloister'd virtue," however, is controversial with regard to a system of education. He suggested that "virtue freely chosen over vice is superior to virtue learned in a cloister" (cited in Berns, 1957, p. 236) where it had been taught to him or impressed upon him in some way. In other words, the educated man was free from coercion or influences of state to exercise choice whether it was for good or for evil with no particular responsibility or public trust placed upon him. Berns notes: "Those who adhere to this extreme position believe that government has no concern with virtue, or the moral training, of its citizens" (p. 234). There is no need for the law or public institutions like schools to promote virtue. Law

and morality are distinct, or law is amoral. Such a rationale assumes "either that society will be civilized and habitable by decent men if government stands aside, or that governmental intervention is worse than the most degraded society..." (Berns, p. 234).

Jefferson was also a libertarian, but there is no evidence from this passage that he shares this minimalist view of the role of government in education. Rather school, the educational system, and the citizens are "instruments" of the polity. A uniform system is a government sponsored entity with a distinct role to play in effecting virtue in the state.

Jefferson proposed a universal and uniform system of education with only one real objective in mind: knowledge would be generally diffused for the furtherance of civic virtue:

*whence it becomes expedient for promoting the public happiness that those persons, whom nature hath endowed with genius and virtue, should be rendered by liberal education worthy to receive, and able to guard the sacred deposit of the rights and liberties of their fellow citizens, and that they should be called to that charge without regard to wealth, birth or other accidental condition or circumstance; but the indigence of the greater number disabling them from so educating, at their own expense, those of their children whom nature hath fitly formed and disposed to become useful instruments for the public, it is better that such should be sought for and educated at the common expense of all, than that the happiness of all should be confided to the weak or wicked..." [Italics added] (Jefferson, 1990, p. 39).*

First, we note his concern for both liberty and virtue, the word "happiness" being equated with the common good or general welfare. The goal

of education is "to promote the public happiness or common good of all citizens alike." Every one's good is advanced through a uniform system.

Second, we note that Jefferson desired to protect "sacred" liberties and rights from the perversion of tyranny. A universal or general system of education would "protect and preserve rights and liberties." As to which value, virtue or freedom is most important, we note that uniformity is the most important requirement. Education is binding upon all citizens alike because all citizens have the same and equal public duty or "charge" to ensure virtue in the state. All have a "potential," "regardless of wealth, status, or circumstances of birth" to "become useful instruments for the public."

Third, education is not just for personal gratification, it is a "charge," or a duty. Schools are an instrumentality of the common good, and students are "instruments" for the common good, i.e. they all have a potential for virtue and a capability of becoming civic exemplars. Not just a few students--all students are to become instruments of virtue and civic exemplars.

Fourth, we notice that the common good is too important to be left to chance, or to the morally "weak" or "wicked." Because of this constant threat to liberty through corruption, all must be educated uniformly and "at common expense," so that no one of merit falls through the cracks to wreck havoc in the state at large. A uniform system is a safety net that prevents corruption in the state. Virtue is indeed a "cloister'd virtue." It is the product and expectation of a uniform system. A uniform system itself, is a vehicle or "instrument" of virtue.

Fifth, no one is morally exempt from this "charge" or duty to promote virtue in the state. There is no "extra-familial," "extra-agency" alternative. All citizens must be taught equally to make moral choices, i.e. choices for the common good. In order for all citizens to have an equal chance at being "called to that charge" without restrictions as to "wealth," "birth" or "circumstance," learning must be diffused; it must be wide-spread and extensive, missing no one.

The alternative to a uniform system is government by the morally "weak" or "wicked." Thus, a uniform system safeguards liberty, which, like equality is only an aspect of the overall common good. The alternative is a "familial" system that would give citizens the freedom to encourage vice or to remain indifferent to these needs. In short, a uniform system is one of the most important obligations for full membership in society. Everyone is entitled to a "charge" and duty, and everyone has an equal expectation to execute this charge.

Political theorist Narveson observes that with full citizenship "we obviously cannot require someone to do what he isn't able to do" (Narveson, 1967, p. 235). It is logical and moral that all must become uniformly able. There is a corollary to this republican notion of equal liberty: "duty has to be someone's duty. It can't just be no one's in particular" (p. 235). Least of all, the Jefferson duty or "charge" of ensuring the common good in society cannot be left to the morally "weak" or the "wicked" who would then be free to divert the polity from its virtuous end. Consequently, the criterion of a uniform and

universal system of education makes it "everyone's duty to do something" (p. 236).

Note also, that what is absent from Jefferson's argument for a uniform system is the notion that a person, a private individual, must simply be able to compete. Inability to compete, due to lack of uniformity or fairness, unequal treatment, or minimum conditions for a group in modern times is equivalent to deprivation (Narveson, p. 237). We have extended the Jeffersonian notion of uniformity to expect conditions and treatment in schools that produce "conditions comprising a 'par,' so that no one gets left out and no one loses." These conditions comprising "par" have to do with the quality of education everyone receives and are now regarded as "basic" rights to an economic liberty (Narveson, 1967, p. 237).

Jefferson, however, argued for virtue, not private economic success or gain. He was concerned about liberty in the polity, a "republican civility." Uniformity through a diffusion of knowledge is important to liberty so that all "may be enabled to know ambition under all its shapes," and "avert their own natural powers [propensities for vice] to defeat its purposes" (p. 39). However, a uniform system will produce a breed of men, i.e. moral leadership that is both "wise and honest," i.e. virtuous. Knowledge diffused promotes virtue through a discernment of virtue from vice, tyranny and corruption. Hence it can be argued that uniformity of a system is not conformity. It is a liberating uniformity; i.e. it



expresses a capability to distinguish freedom from tyranny, virtue from vice. Uniformity is not so limited to only ensure selfish economic gain.

Jefferson's bill thus argued for a uniform system that is "an aspect of polity." He relegated all the functions or "duties of society" to a uniform system of government-operated schools supported by general taxation. Therefore, anyone who argues that such important functions of state should be left to chance, private choice or morality, private charity, or private schools or resources, cannot placing much emphasis upon the common good as a priority of government and its institutions.

Furthermore, the knowledge to be diffused is intended for "the people at large," not just an enlightened few or elite. For, as Narveson (1967) notes, if "a duty is genuinely a duty of society, then it is contradictory to say that it should be left up to individual consciences to be done, unless there is good reason to think that public servants just can't do the job" (p. 230). Jefferson believed that a natural aristocracy would be trained in a uniform system. His natural aristocracy of "virtue" and "talent" was open to all. Nature had endowed men with either "genius" or "virtue," or both, but only a uniform system could render all individuals capable to "receive" and to "guard" sacred liberties.

In the words "receive" and "guard" are contained the republican ideals of rights and obligation. A uniform system therefore defines the attributes of full citizenship. There is a duty to virtue in the state with the common school system as the prime "instrument." We might also infer from Jefferson's statement

that a system is uniform because of the demands or expectation of society for virtue that has been placed upon it, since it is supported by "the common expense of all."

Thus, a diffusion of knowledge creates a uniform system, one that is uniform in its requirements, uniform in its product, and uniform in its processes that serves everyone capable of benefitting. The educational benefit itself is uniform or common.

In sum, Jefferson made a deontological argument for a uniform system. R. M. Hare in Freedom and Reason states that "If we cannot universalize the prescription, it cannot become an ought" (cited in Narveson, p. 279). Jefferson's argument for a uniform system is thus a universal prescription for virtue in a republic where virtue preempts liberty. As an "instrument" of the state, education can "protect individuals" against the "weak" and the "wicked" who may achieve a false preeminence in society and thus derail the entire enterprise.

This principle of uniformity as an aspect of the polity, enunciated by Jefferson in 1779, can also be found in Section 14 of the Virginia Bill of Rights to the Virginia Constitution. Section 14 first appeared as a draft of the Virginia Declaration of Rights and "has survived virtually unchanged to the present day" (Howard, 1970, p. 278). It emphasizes that government itself must be uniform:

That the people have a right to uniform [Italics added] government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof (cited in Howard, 1970, p. 278).

Although written as a provision prohibiting the creation of any independent government within the boundaries of Virginia, its close proximity to Section 15 which spells out the "Qualities necessary to preservation of free government" makes the concept of uniform government especially relevant to an educational system which is the creation of that government. As Howard notes, it establishes an "intimate link between free government and an educated citizenry" (Howard, 1970, p. 282).

Section 15 implies that an "effective" system of education is also a "uniform" system, since an educated citizenry results from "the broadest possible diffusion of knowledge" in a uniform state, and knowledge promotes civic virtue "throughout the Commonwealth"--virtue being the highest calling of government preemptive of liberty:

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective [Italics added] system of education throughout [Italics added] the Commonwealth (cited in Howard, 1970, p. 281).

According to Kern Alexander, it is this concept of uniformity that appears to make education constitutionally binding upon all members equally in a commonwealth and therefore a fundamental right, especially in the state of Virginia (cited in Coalition for Equity in Education, 1990).

## Uniform in Practice

### Resistances to Uniformity

Amy Gutmann in Democratic Education (1987) acknowledges that in the American regime equality is not the only value. Thus, she argues, we "must be guided by the "principles," not the "practices" of a regime (p. 19). A dichotomy between principles and practice suggest a resistance to uniformity in an extra-familial system of education.

The debate over the extent of state control over education through fiscal uniformity was as great a barrier to establishing a universal system of education in the days of Horace Mann as it is today. Conformity to a state system continues to be an issue in the ongoing dialogue over public versus private education in the United states (Glenn, 1988). Ever since the Supreme Court ruled in Pierce v. Society of Sisters (1925), a clear affirmation of the rights of parents, not to comply with attendance in a state school, the power of the State to regulate all schools and to "standardize" instruction has been the subject of heated debate. In Pierce, the Supreme Court held that the Oregon law went much further than mere regulation of school systems:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize is children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for

additional obligations (Pierce v. Society of Sisters of Holy Names of Jesus and Mary (1925)).

Liberty is preemptive of both justice and equality in the libertarian view. Like Nozick (1968), libertarians and proponents of private or familial education argue that the minimal state and only the minimal state--is justifiable (Fishkin, 1983). Fishkin argues that three basic values require a tradeoff: merit, equality of life chances, and the autonomy of the family. Libertarians tend to protect the claims and entitlement created by private or individual activity and the "familial." Thus Fishkin argues, the laissez-faire paradigm is an "incoherent ideal" for public policy in a complex capitalist society (1983, p. 159).

However, Walzer in Spheres of Justice (1983) argues that governments arise and are sustained for collective provision or cultural endeavors as well for individual protection, i.e. they have an "extra-familial" function:

Individuals...will necessarily seek out other individuals for the sake of collective provision. They need too much from one another--not only material goods, which might be provided through a system of free exchange, but material goods that have, so to speak, a moral and cultural shape (p. 74).

For Benjamin Rush (1806), a uniform system was based upon the concept of polity. This principle formed the basis of a shared communal life. According to Rush, free, state-supported education would enjoin diverse races, creeds and ethnic populations into a homogenous nation. These principles and assumptions have preserved the "extra-familial" system to this day and may explain why even modern critics affirm that "the one best system" of public education has endured

(Chubb and Moe, 1991). Gutmann, argues that "democratic education" reflects all regime values and traditions that Americans may claim as their cultural inheritance. The American commonwealth has accommodated many cultural paradigms on a par with laissez-faire--classical republicanism, Renaissance humanism, constitutionalism, the covenant tradition, the natural and common law traditions, principles of commonality and community. All of these paradigms embrace the possibility of our being bound by ties of natural duty and justice beyond the mere claims of commutative justice based on specific actions and agreements.

There are certain principles that demonstrate a uniform system to be an "aspect of the polity" (Alexander et al., 1989, p. 149). Such principles address current practices and beliefs that resist uniformity and present an obstacle to a uniform system. The following practices demonstrate the choice between a life of civic virtue and private self interest. They appear to require some "moral authority" or resolution through principles that allow us to commit to a life of civic virtue yet "remain as free as before." Such principles of uniformity define a uniform system as "an aspect of polity." Without them, a uniform system could not exist in either theory or practice.

#### Problem of Individual Versus Collective

A uniform system requires a commitment to the values of equality and equity, i.e. a balance between the individual and the collective. However there

are various choices and dichotomies in American life that create disequilibrium in an educational system when the public cannot commit to these values that require fiscal equity. One modern philosopher, James S. Fishkin in Justice, equal opportunity, and the Family (1983), has noted that there are various dichotomies of choices that create disequilibrium in any educational system: individualism versus collectivism, liberty versus equality, familial values versus extra-familial values, economic liberty and the welfare state. He suggests that the laissez-faire assumption of individualism and mutual protection of property rights has startling implications for the universal tax support of educational systems.

As in any organic system, an educational system has a tendency to conserve its structure; there is continuity, and a degree of "pattern-maintenance" despite the system's "thruput" over a period of time (Laszlo, 1972, pp. 44-45). An educational system, like any other organic system, strives to accommodate the political and juridical structure and demands, especially for social needs over time (Laszlo, 45). An extra-familial, state-supported system coalesces and harmonizes the individual and collective interests into a pattern or cultural uniformity and unanimity.

However, an individualist ontology resists the principle of "extra-familiarity" on grounds that there is no social entity to commit to. It prefers the "familial" to the communal. In the libertarian view of a minimalist state, individual or family functions are held at a premium in a society which

individuals are not morally required to protect. For Nozick, there is no recognizable social entity to protect:

Individually, we each sometimes choose to undergo some pain or sacrifice for a rather benefit or to avoid a greater harm...Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good. But there is no social entity....There are only individual people....Using one of these people for the benefit of others, uses him and benefits the others. Nothing more (Nozick, 1968, p. 130).

The laissez-faire doctrine of individualism eschews an "extra-familial system" because it represents social obligation and planned government intervention: "This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others...leads to a libertarian side constraint that prohibits aggression against another" (Nozick, 1968, p. 33). According to Nozick the "invisible hand explanation" of Adam Smith merely showed that "something that appears to have been produced by intentional design was in fact brought about by a process that did not have that design in mind" (pp. 19-20). "No end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives" (p. 163). Thus according to the libertarian calculus, there is always an irreconcilable conflict, or imbalance between social utility and rights (Hart, 1979, p. 81).

The argument that the state has no role to play in providing a general diffusion of knowledge or in creating or maintaining a harmony or balance between the individual and the collective is derived from the libertarian notion of



"negative" rights of nonintervention rather than through any "positive" rights of citizens to support by the state (Labaco, 1986, p. 551). Nozick takes the Kantian position that "individuals are ends and not merely means" (Nozick, 1968, p. 31). He argues that "Individuals have rights and there are things no person or group may do to them" (p. ix). This makes for government constraints whereby no actions are permitted that violate fundamental human rights guaranteed by the Bill of Rights (pp. 28-29). Public taxation to support an "extra-familial" public school system goes against this "entitlement" and symbolizes more-than-the minimal state.

Libertarians oppose the "extra-familial" system also on the grounds of justice as well as rights. According to the libertarian view, the state is not to be conceived as a central distributive or allocative agency. It is not redistributive. Its actions are justified not by principles of redistribution of goods but only by the principle of compensation aided by the process of the "invisible hand" (Nozick, 1968, pp. 118-119). According to Nozick, whenever the state intervenes for the sake of the less fortunate, it uses people as means to an end, and means-ends reasoning should be avoided at all costs, a view that goes beyond Kant who held that people should not be treated solely as means. There is no distributive justice which considers only the recipients of goods and not the rights of the givers of goods (p. 168).

For these reasons only the "ultra-minimal" state is legitimate. The state is limited to the need for defense of property in the tradition of Hobbes and Locke

(Nozick, 1968, p. 52). The only justice is that of "justice in holdings" (p. 150) and freedom of choice, not some chosen "end-state" which tries to achieve equality of holdings to better the least advantaged which would ignore the means or manner of the distribution altogether (p. 153).

Nozick further illustrates the problem of the "individual versus the collective" with regard to a "uniform" system of education. The laissez-faire model illustrates a basic incompatibility of liberty with equality and resists collectivized solutions or compulsion which an "extra-familial" educational system represents. The libertarian approach to justice "puts individual liberty and choice in a primary position over any claims for equality of holdings" (Labaco, 1986, p. 57). Thus, any forced arrangements to redistribute goods or to equalize opportunity would violate the fundamental Kantian principle of respect for people's autonomy of choice (Nozick, 1968, p. 167). The principle of "extra-familial" in this view represents compulsion, especially through public taxation. Public taxes in support of schools are equivalent to forced labor (p. 169), and even if they benefit the least advantaged, such policies are "appropriation" or "seizing" people's labor (p. 172).

### Problem of Freedom Versus Control

The perennial conflict of power between the individual and the state has taken many forms: familial versus the extra-familial, centralization versus decentralization, state authority versus local control. For Rousseau, social and

political equilibrium meant being able "to reconcile justice and utility at every point" (Rousseau, 1950, p. 1). Rousseau distinguished between natural liberty "which is limited only by the individual's own powers," and "civil liberty, "which is limited by the general will" (Rousseau, 1950, p. 27). However American individualism has resisted this republican ideal and its inherent appeal for a uniform system of education.

The cry throughout the land today for vouchers and a privatized, or "familial" system reflects similar arguments used by those who violently opposed free schools nearly 150 years ago. It is still believed that a school system can be too "common." In the early days of the Republic "Many thought that tax-supported schools would be dangerous for the State, harmful to individual good...thoroughly undemocratic...and too common" (Cubberley, 1962/1934, p. 164).

Fear of tax supported schools reflected antipathy to state control as "harmful to individual good and undemocratic;" universal taxation "represented the deliberate confiscation of the property of one class in society for the benefit of another class;" government could not possibly "provide a general educational system;" a uniform publicly supported system would "religiously traditionalize the children" and "unite church and state." Education served only a limited local or familial function of learning only what one practically needed to know. As one New England farmer claimed: "the Bible and figgers is all I want my boys to know" (Cubberley, 1962/1934, pp. 164-66).

Uniformity suggests conformity and the strong arm of the state at the expense of individual liberty, control more than support. However the term "uniform" is linked etymologically to unity which suggests that educational systems require support of the state. Perceptions of support and control for education are so completely intertwined with notions of equality of opportunity that they are difficult to separate for purposes of analysis (Butts and Cremin, 1953).

Butts and Cremin noted that "so many arguments against the state's right to tax for education grew out of the notion that most people are uneducable" (Butts and Cremin, 1953, p. 370). Other arguments concerning "the state's right to control education" (p. 370) have stemmed from "conflicting conceptions of the ultimate aim of education, be it religious, secular, or otherwise" (p. 370). Its purposes have not always been totally agreed upon, especially after the Civil War when it was feared that the fourteenth Amendment would encroach on state sovereignty.<sup>10</sup> However, at no time has a system of education ever been thought to be non-teleological.

The federal government early on had demonstrated the concept of the virtuous state through its provisions for education in the territories. The Land Ordinance of 1785 made possible "the maintenance of public schools with the said township[s]," to encourage property ownership and national expansion the ultimate effect of which the expansion of education throughout the United States. Article III of this now-famous ordinance stated that "[r]eligion, morality,

and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged" (Alexander and Alexander, 1992, p. 50).

Along with these requirements for statehood and the advancement of public morality followed public provisions for education that ensured liberty to all individuals, not their repression, through habeas corpus, due process, and religious freedom. Alexander and Alexander (1992) note that like many of the symbols of the American tradition, the Northwest Ordinance was a "compact" in that the government "guaranteed these liberties as a condition for a territory to become a state" (p. 50). Thus reluctance to embrace uniformity has traditionally stemmed from resistance to authority, a stubborn defense of self-interested pluralism by forces which do not acknowledge the contractual nature of a virtuous republican state.

We recall that according to social contract and covenant theory, individuals are expected to trade off certain rights in exchange for government protection of the general welfare. The principle of reciprocity and mutuality is reflected in natural law and particularly common law. Thus covenant or republican theory holds that the state has a natural obligation to protect the citizen, just as the citizen has an obligation to uphold and support the state. In other words, according to commonwealth and covenant theory, state involvement in education is a mutually supportive agreement for the good of the polity.

Political theorist Lindsay notes that "the function of the state...is to serve the community and in that service to make it more of a community" (Lindsay, 1962, p. 245). He argues that the state should support more than control.

### Problem of State Versus Local Control

Nowhere is this dichotomy of power between the state and the individual's civil liberty more clearly manifested than in the desire to perpetuate the "time-honored concept" of local control of the school system (Alexander, 1990, p. 307). The principle of uniformity, however, says that the government has an important role to play in equalizing educational opportunity (Plyler v. Doe, 1982; Brown v. Board of Education, 1954).<sup>11</sup>

State governments have been constitutionally vested with state authority to provide for educational funds through their own property taxes with property wealth varying dramatically among rich and poor school districts. Fiscal incapacity in some districts has made a "mockery of local control" because it "assumes that fiscal conditions are the same, that local autonomy is not restricted by lack of fiscal resources, and that all things are fiscally equal" (Alexander, 1990, p. 303). Furthermore, local control has come to represent vested private interests, and as Briffault notes, to mean "protection of the right of wealthy municipalities, most often the suburbs" (cited in Lu, 1991, p. 551). Briffault notes that local control supports the notion that education is "familial" rather than "extrafamilial" (Alexander et al., 1989, p. 149) and that decentralization is

"endemic to the system" (p. 149) because for many years local control of education is has been equated with family control, or family interests in the suburbs.

Americans have always considered schools to be the extension of the local community. According to M. Danielson, the tradition of local control has reinforced the notion that "schools are the public service most bound up with the idea of family" (cited in Lu, 1991, p. 552). To add to the conflict, wealthy school districts fail to understand that education is a state as well as a national interest (Buse v. Smith, 1976). The result is a political impasse. Legislatures, dominated by wealthy constituencies can no longer be trusted to correct inequality without the threat of a court order.

This conflict is inevitable because of the quasi-public character of the school systems (Alexander, 1991, p. 302):

[T]he evolution of public schools does suggest in many cases that local control has led to a continuation of a quasi-public school in which small, local enclaves of persons fortify themselves into small, usually affluent, school districts and operate them as though they were private schools (Alexander, 1991, p. 302).

### Conflict of Values

The conflict between support and control goes far deeper than local financial vested interest. Nineteenth century reformers were concerned about the diversity of society and invested the common school with a cultural, civic, if not spiritual purpose in mind. Edward Shils interprets "uniformity" not as a

description of the system, but as an outcome of the system, as in a uniformity of beliefs. He notes for example that in all times, "the society without conflict, the highly integrated society, has not only been the reverently cultivated ideal; it has been the object of government policies" (Shils, 1982, p. 4).

Contemporary European observers of the current school struggle, Van Schoten and Wnasink, equate uniformity with mind control, but argue, that Mann, Jefferson and others advocated a "state pedagogy" that was a "constructive education policy." They argue that education is a collective provision that provides for the constantly changing needs of the community which is what society pays for: "The authorities commission education to make a contribution to the removal of social inequalities and cultural apartheid as the precondition for the full participation of everyone in the life of the society" (cited in Glenn, 1988, p. 275).

One of the strongest arguments for local control of schools and a familial system as an alternative to the public system has been advanced by contemporary fundamentalists and libertarians. They argue that public education is an arm of the state, is compulsory, coercive, and leads to mind control. These fears reflect a negative concept of liberty initiated by J. S. Mill whose own experience was one of private education by a tutor employed by his father:

A general State education is a mere contrivance for moulding people to be exactly like one another: and the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarchy, a priesthood, an aristocracy, or the majority of the existing generation; in proportion



as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body (cited in Glenn, p. 1988, p. 226).

Hayek concedes that "the utilization of knowledge can be greatly increased by deliberate efforts" but that values in education are "the source of real dangers in any system of public education" (1988, pp. 376-377). Consequently, along with Milton Friedman, Hayek argues that "it is no longer necessary that education be not only financed but also provided by government" (p. 381). The concept of centralization has been attributed to radical Jacobin ideas in republican France to demonstrate the tyranny of secular humanism in the schools. Other comparisons have been drawn to the Prussian model which inspired Horace Mann in developing state systems of education (Glenn, 1988).<sup>12</sup>

However, in defense of a uniform system, the founders and nineteenth century state school superintendents, such as Horace Bushnell, believed that the common school system was "an integral part of the civil order" (Cremin, 1951, p. 48). The conception of a uniform system came not from a totalitarian regime of Jacobin France as much as from classical ideas of the common good, the concept of a unified polis and the larger organic view of society on which it rested, and on a conception of the loyalty vital to sustain that society. Such notions speak to volunteerism, consensuality, and democratic virtue, not a tyranny of state control by elites and bureaucrats.

Horace Bushnell, like Mann, took a distinctly nonsectarian approach, relying on these earlier values, and urged Protestants and Roman Catholics alike to join in the common school venture instead of demanding their own schools. As to purpose, Cremin notes, many of the founders, and especially Bushnell after the Civil War, envisioned the nation dependent more upon loyalty. The establishment of a uniform system was seen "as a moral rather than a legal obligation, wholly voluntary and not subject to civil coercion" (Cremin, 1951, p. 48). The role of the state in the schools was dependent upon civic virtue, voluntary community association, God-given natural law, and the brotherhood of man:

If the centrifugal forces of selfishness (individualism) were to be countered, it would not be through governmental constraint but rather through voluntary acquiescence to the laws of God. The good citizen was the individual dedicated to God, and the good society was simply a society composed of such individuals. Only as a brotherhood of man under the fatherhood of God would the United States fulfill its God-given purpose in history. And the creation of that brotherhood was the task of education (Cremin, 1951, p. 49).

It would be safe to argue that the common school founders believed in public education on behalf of the state, not just because they wanted to see a highly centralized system dominated by the state. They believed a uniform system would be the one institution in America capable of providing national coherence--an idea embraced less in the South than in the Midwest and East where republican, Protestant, capitalist ideas were more conducive to the republican belief "that equity, progress, and cohesion depended upon state-

regulated common schooling..." (Kaestle, 1983, p. 192).<sup>13</sup> However, according to the natural law principle of reciprocity or mutuality described by Montesquieu, a uniform system would serve the entire state, as an aspect of a virtuous polity and the people would in turn be served by it. Regionalism would be a thing of the past.

### Uniform in Principle

This section advances several principles that encourage a uniform system of education and mitigate the practices and beliefs in opposition to uniformity. It redefines the issue of democratic control and the proper expectations of a uniform system. The principle of parens patriae essentially holds that minimum requirements for a universal system of education and the general welfare should be imposed for the sake of public order. The role of the state is minimal, however, only to the extent of disorder or public immorality, not as to promote negative liberties.

The principle of "subsidiary" maintains that the people may be best qualified and able to perform or make educational decisions at the local level, but not so as to preempt public morality, equality, or to thwart basic justice. Parental discretion or choice at the local level cannot deny any one equal benefits to be obtained through minimum educational requirements made universally and uniformly available. Other principles such as that of "commonality" fiscal neutrality," and "equal liberty," demonstrate that a system of

education can be uniform though not coercive, within the context of the modern welfare state.

### Principle of Extra-Familiarity

#### Uniform as Extra-Familial Education

A uniform system was thus vital to the functioning of American government and the preservation of public order. This ideal of the common school founders went beyond mere public order to a virtuous polity sustained by a system of common schools that both the state and citizens have a duty to maintain.

They had a vision of a system of education that would unite the American people and create a uniform, or homogenous nation. It would be one suited to the American commonwealth and constitution in a republic. They drew their inspiration from republican philosophers such as Montesquieu who argued in The Spirit of Laws that "The laws of education must be relative to the principles of government" (1952, Book 1, p. 42) and Aristotle, who argued that "The citizens of a state should always be educated to suit the constitution of their state" (Politics, 1952, Book 5, p. 332). A uniform system would perform the task of educating all citizens uniformly and consistently, not just so they could pursue their own private selfish ends of personal gain, but to encourage a virtuous and enlightened citizenry as "an aspect of polity" (Alexander et al., 1989, p. 149).

Thus, a uniform system is a "commonwealth" ideal and a system of education is contiguous and integral to the state. To say that the system is "an aspect of the polity," is to argue that it shares the collective and teleological purpose of the state. And the purpose of education is to serve as Mann had argued as a "great equalizer" and "balance wheel of the social machinery" in a democratic republic.

A common school system would promote a virtuous, enlightened citizenry. However, that citizenry would also be free. A uniform system must therefore reconcile the individual to the collective, or public order. Through the principles of commonality and extra-familiarity, a balance is struck between the individual and the collective. Philosophers have illustrated these principles with regard to a uniform system.

Rousseau believed that education was an aspect of the polity and "extra-familial." Education was a "gift" from the commonwealth to the people and formed national character. He noted "all that we lack at birth, that we need when we come to man's estate, is the gift of education ...which we acquire to shape the character of a people from nature, from men, and from things" (Rousseau, 1972, p. 6). The American founders assumed that an educational system would be built upon commonly shared values where the "gift" of education would consist of certain moral principles of right and obligation binding upon all. The system would mold the citizens and the citizens would mold the character of the nation. A virtuous or moral public character would

perpetuate the American republic as the most unique government on earth. This would require a uniform system of education to establish the common ground that would "make men republicans," and forge a national unity.

Aristotle argued "That education should be regulated by law and should be an affair of state" (Politics, 1952, Book 5, p. 542). Furthermore education was an aspect of the polity because education leads to the formation of a national character: "The citizen should be moulded to suit the form of government under which he lives. For each government has a peculiar character which originally formed and which continues to preserve it" (p. 542). The citizen does not belong to himself, "...for they all belong to the state, and are each of them a part of the state, and the care of each part is inseparable from the care of the whole." A uniform system is a holistic system united to the polity.

Madison spoke to the problem of the individual versus the collective in his warning against factions. But Aristotle argued that a people do not have to accept the moral interpretations of the ruling elite or class, or even individual parents. Aristotle believed that education was the function of the polis exclusively and not at all the responsibility of parents (Politics, 1952, Book 8, p. 542):

And since the whole city has one end, it is manifest that education should be one and the same for all, and that it should be public and not private,--not as at present, when every one looks after his own children separate, and gives them separate instruction of the

sort which he thinks best; training in things which are of common interest should be the same for all (p. 542).

Furthermore, according to Aristotle, the education of a citizen in the spirit of his constitution does not consist in doing the actions in which the partisans of oligarchy or adherents of democracy, delight. It consists in his doing the actions by which an oligarchy,<sup>14</sup> or a democracy will be enabled to survive (p. 233).

Uniformity in an educational system is commonality, but this commonality can only be achieved through some authority principle. This consists of citizens being "educated according to the political principles of their society." (Gutmann, 1987, p. 231). But they must also be aware of moral obligation that the individual's relationship to the state entails. We have noted from contemporary scholars such as Berns (1957), Rohr (1989), Kendall and Carey (1970) and others that the American Constitution is a reflection of regime values and principles, and that it should not be construed as an instrument of moral relativism to appease various interest groups. As Burke suggests, the liberty right is "prescriptive" and reflects the commonwealth notion of civic virtue, of rights and corresponding obligations. Civic virtue is the result of public order and pursuit of the common good in a republican commonwealth.

When Rawls states: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible under a similar system of liberty for all," (1971, pp. 302 -303), he argues for rationality. But also, he presents the notion that a "system" is indeed a holistic concept. A system of

education is only one of a "total system of equal basic liberties" within a polity. For an educational system to be uniform requires a "system of liberty" which requires the voluntary support and commitment of private citizens to a common system.

From the beginning, state supported education was a vast collective system that operated within the sphere of the state to ensure that the benefits of democracy can be shared by all in common. Such purposes were supported even by federal initiatives dating from Northwest Ordinance. Education was conceived as a covenant agreement between the state (federal government) and the people to establish state systems even prior to statehood and without which

Perhaps, some states would not have assumed the responsibility at all and would have allowed education to languish as an entirely local function or even, possibly, have allowed education to remain almost entirely in the hands of individuals or charitable and religious groups (Alexander and Alexander, 1985, p. 50).

### Family State Theory

Gutmann (1987) demonstrates several conflicting assumptions about the public purpose and distribution of education that have not been resolved. First, there is the Platonic or classical "family state," with its view of the polis where the state establishes a harmony between individual virtue and social justice. Since the state begets, and educates its citizens, it lays claim for citizens to obey it. This requires that a state's conception of the good life be the right one for every person. The state has the right to rule the citizen as the Laws and the



Constitution of Athens spoke to Socrates in The Crito: [S]ince you have been born and brought up and educated, can you deny, in the first place that you were our child and servant, both you and your ancestors?" (Plato, 1970, p. 95). However, Gutmann notes, "not even natural parents...may properly assert an absolute right to educate their children" (p. 24) and that parents have a claim to "try to perpetuate the way of life that seems good to them within their own families" (p. 24) which makes the family state theory appear somewhat oppressive.

### State of Families Theory

Another conception is the ontological individualism of John Locke. This is the "State of Families" theory. Lockean liberalism recognizes "the defects of a family state," but cedes adult citizens "the freedom to choose their own good, right or wrong" (Locke cited in Gutmann, 1987, p. 29). The State of Families theory will "assume that it must also cede parents the freedom to educate their children without state interferences" (Locke cited in Gutmann, p. 29). However, Gutmann argues that with the modern prevalence of parental child abuse, the state rejects the notion, for the sake of the common good that children are the property of their parents as advocated by Locke and "...makes choice possible by teaching its future citizens respect for opposing points of view and ways of life " (p. 30). Parental control, defended by Locke in the Essay on Education, Gutmann notes, fosters pluralism. She argues, however, that the general consensus today

is that "children are no more the property of their parents than they are the property of the State" (p. 33).

### State of Individuals Theory

John Stuart Mill exposed the flaw of parents and families and took the extreme liberal position in On Liberty (1965). Mill defended a State of Individuals conception, fearing "a despotism over the mind" and eschewed any type of State paternalism as a necessary evil of government. According to Gutmann, this theory advocates complete freedom of choice and neutrality. Ackerman rejects the notion that educational authority resides completely in the hands of parents; "cultural coherence" cannot abide "adult pretensions to moral superiority" (Ackerman, 1980).

We have noted throughout the study, however, that freedom is not the sole end or objective of an educational system--virtue is. Gutman agrees that "A democratic state of education constrains choice among good lives not only out of necessity, but out of a concern for civic virtue" (Gutmann, 1987, p. 42). Choice should only be used for the public purpose of "creating...communities..." compatible with our commitment to share the rights and obligations of citizenship with people [in a pluralistic society] who do not share our complete conception of the good life" (p. 47).

### Uniform as Public Order

An educational system is uniform in accordance with a general acceptance of "public order," an agreement that all will mutually support the preservation of civic order as a matter of civil law and public policy according to common law (Finnes, 1980, p. 216).

### Principle of "Parens Patriae"

A uniform system of education requires that certain "familial" or private rights or preferences expressed through the principle of subsidiarity must be subsumed under a broader conception of common human rights described generally as "public morality," "public health," or "public order" (Finnes, 1980, p. 218). A uniform system must be uniformly supported by the public on the basis of public order, which is very close in meaning to the common good or general welfare because it implies "various aspects of individual well-being in community" (p. 214).

Specifically, the principle of "public order" suggests that each and everyone's well-being, in each of its basic aspects, must be considered and favored at all times by those responsible for co-ordinating the common life" (Finnes, 1980, p. 214). It follows then that a system of education is "uniform" (in terms of availability and standards) to the degree that the state acting as parens patriae upholds the "general welfare," or "public order," and to the extent that the state encourages public support. For example, public tax support for

schools is required to ensure "a related curriculum of standard subjects which would provide a firm knowledge base for all persons" (Alexander et al., 1989, p. 149). Secondly, a uniform system would have "a uniformity offering which would assure that all persons received the education necessary to carry out civic responsibilities" (p. 149). And thirdly, because a system is "an aspect of the polity," that is, it is an "extrafamilial" system, it cannot be dependent upon the private sector or the family which might prefer through selfish choice to neglect the public order or to convert it into a "familial" system (p. 149).

The logic of common good theory holds that a system of education which is an "aspect of polity" shares its teleological assumptions of the common good or public order with the polity. Such a system, in keeping with commonwealth theory, and particularly the Aristotelian principle of "unity in diversity" would ideally be publicly supported and dependent upon the General Will that would embrace certain "juridical norms" that are "consistent with the objective moral order" (Finnes, 1980, p. 218). It is this "objective moral order" according to Finnes that provides a frame or milieu for human rights such as liberty or equality:

Public order, in its restricted, common law sense, concerns the maintenance, not so much of the psychological substratum for mutual respect, but of the physical environment and structure of expectations and reliances essential to the well-being of all members of a community, especially the weak (Finnes, 1980, p. 217).

In this regard the state has a special interest in protecting children. For example, it cannot arbitrarily withhold services from a particular class (or race) of persons (Griffin v. County School Board of Prince Edward County (1964)), or of undocumented alien parentage (Plyler, v. Doe (1982)). In Due v. Florida A & M University (1963), students' civil liberties are protected by due process: receiving adequate notice of charges, a hearing, and the presentation of substantial evidence. The states' doctrine of in loco parentis protects students from unreasonable search and seizure, and from strip searches in accordance with the reasonableness standard of the Fourth Amendment of the U.S. Constitution Rone v. Davies County Board of Education (1983). Students are protected against the encroachments of public school officials (West Virginia State. Bd. of Ed. v. Barnette (1943)). Thus, both students and parents surrendering to an "extrafamilial" educational system reap the benefits of uniform treatment and standards and enjoy safeguards and protections unique in the world.

The principle of parens patriae operating in a state-wide system of schools does not reflect a repressive or authoritative state. Rather it upholds the concept of equal liberty and justice subsumed under the principle of public order which makes a uniform system of education possible.

### Principle of Commonality

We recall that Benjamin Rush's purpose for an educational system was to make the state or republic itself more uniform (1806). A free and uniform system of education would ensure a greater degree of commonality among the American people themselves. Uniformity as commonality would be assured if the state itself was "tied together by one system of education." Benjamin Rush and other republicans perceived that cultural homogeneity was vital to the republic and could be achieved if all people could be uniformly educated and in common schools. Jefferson saw a common school system as the agency best suited to producing a new race of man within a common culture by amalgamating and assimilating older immigrant stock.

Thus the notion of cultural homogenization or "Americanization" has been the goal of the common school since its inception. Later in the nineteenth century J. Hector St. John de Crevecoer and other Americans pondered the essential American character and asked "What then is the American, this new man?" (cited in Schlesinger, 1991, p. 97). The common school ideal of Americanization, or assimilating a heterogenous mass into new Americans, however, is still seen as essential to the political union and the polity (p. 99). Some Americans have consistently believed that commonality could be created through the common school, that the common school was the chief instrument of the melting pot. Rush's conception of uniformity as commonality is reiterated throughout the national literature by many writers, philosophers and statesmen.

Emerson noted, for example, that we would through a process of Americanization "...construct a new race...as vigorous as the new Europe which came out of the smelting pot of the Dark ages" (p. 100). George Washington desired that Americans become an "intermixture with our people,"... "assimilated to our customs, measures and laws...[to] become one people." John Adams wanted Americans to look to posterity rather than to their ancestry, in order to "...cast off the European skin, never to assume it." James Bryce in The American Commonwealth refers to "the amazing solvent power which American institutions, habits, and ideas exercise upon newcomers of all races...." Henry James referred to "the caldron of the American character" forged from the ideals of equality, inalienable rights, justice and opportunity. He argued that the common school, along with other American institutions, was part of the "colossal machinery" that produced "the ethnic synthesis essential to national unity" (cited in Schlesinger, 1991, p. 101).

This same conception of "uniform" as commonality or "ethnic synthesis" lay behind Rush's plan for a uniform system of schools to create an extra-familial system, or in his own words, "one great, and equally enlightened family" (Rush, 1806). Jefferson envisioned a local system of schools progressing from primary, to secondary, to college or university. The entire system would consist of an elaborate interdependent network of schools at all levels. The university at the apex was included in his system and he believed that it would. To educate uniformly then suggested that all would be subject to the same, equal or

consistent treatment, uniform subject matter, materials, books and facilities as Mann had proposed. Uniform treatment of students in the system had the potential of producing economic equality and was therefore conducive to equal opportunity, an important goal of Horace Mann's that has carried forward as an educational goal into the twentieth century.

Edward Shils (1982) notes that an educational system based upon the principle of "commonality" encourages a common culture essential to national survival:

uniformity of beliefs requires that every society [acquire] alongside the central system of authority...a central cultural system. The central cultural system consists of those beliefs and expressive symbols which are concerned with the central institutional system and with 'things' which transcend the central institutional system and which reflect on it. The central cultural system has its own institutional system....The educational system is that part of the central power-institutional and cultural-institutional complex which inculcates considerable parts of the central cultural system into other sectors of the society. It contributes thereby to the formation, diffusion, and maintenance of the common culture (Shils, 1982, pp. 58-59).

The term uniform in the context of "commonality" suggests a standard of system that will ensure the culture as well as social justice based on equal treatment and a sharing of common values. This broad, modern teleological conception of an inclusive "system" has the potential for making the system even more extensive or comprehensive, as it branches out or draws upon other resources in the state to ensure uniformity and consistent treatment across or within the system.



### Uniform as Impartial Government

F. A. Hayek and other libertarians view the state's role in education, especially with regard to equal treatment of equals, from a perspective of the natural rights tradition. This limited view of the state consonant with negative liberty argues that the state must treat all persons as "equals before the law" (Hayek, 1976, pp. 84-85) but with minimum obligation or interference by the state because people they have a right to be left alone. This principle of equality before law, Hayek argues is a natural right, because the state has only a minimal role of protection to play, not welfare, within the content of a social contract.

According to this principle, the "natural right" of the individual is merely exchanged against a counterpart of equal or greater value--the benefit of society and the security of political organizations. Government can intervene on the basis of equality before the law, but to no greater extent than to compensatory acts.

According to this principle of governmental neutrality, the government does not guarantee equal outcomes, nor attempt to give advantage, nor impose disadvantage according to the principle of "real equality of opportunity." Because it is impartial, it cannot decide upon the basis of merit, it can only ensure equality before the law. It has no responsibility to correct for unevenness of opportunity, to address disparity caused by family income, inherent mental or physical incapacity, or state created fiscal disparities (Alexander, 1990, p. 280).

The government is not obligated to compensate for unevenness in opportunities caused by private agencies either, because it would establish a precedent for government intervention that would undermine the principles of laissez faire and discourage merit:

The more government succeeded...the stronger would become the legitimate demand that, on the same principle [government intervention], any still remaining handicaps must be removed--or compensated for by putting extra burden on the still relatively favored (Hayek, 1976, pp. 205-206).

This notion of equal liberty before law based on natural rights theory in the Lockean tradition is a modern manifestation of Adam Smith's "indifferent spectator theory." It was utilized by Bentham which holds that everybody is to count for one, and nobody for more than one, and is the basis of laissez-faire economics. According to this theory, government does not take a more positive role to ensure equality because to do so would jeopardize the harmony of interests that prevails--"an order in which the individual is merely one element in a whole which he never made" (Hayek, 1988, p. 18).

This notion that there are morally justifiable grounds for treating persons unequally is not a modern idea. It can be traced to the classical conception of human differences, or a "proportionate" equality that first originated with Aristotle who equated benefits with responsibilities and merit. Modern philosophers like Hayek have expanded on this notion and developed a neutrality principle of the state in defiance of classical common good theory.

Dworkin (1986) takes another view of an impartial state. He advocates that the government has a responsibility to act for the common good even if it means not being neutral. Dworkin offers an alternative to Hayek's assumptions of indifference that government must not take sides on moral issues. Instead, a government's stand on equality "rests on a positive commitment to an equalitarian morality and provides...a firm contrast to the economics of privilege" (Dworkin, 1986, pp. 205-206). According to this logic, the government is obligated to enforce egalitarianism.

Raphael, on the other hand, chose to bring equity into the neutrality/equality debate which adds to the issue of meritoriousness a powerful natural law principle of justice. The natural law of equity, according to Raphael, is "to treat like cases alike and unlike cases different" (Raphael, 1976, p. 173). This implies that the state cannot remain neutral; it must provide for the needy but may not aid the meritorious.

In contrast to Hayek is the Rawlsian interpretation of the institutional role of the state as parens patriae: social and economic inequalities are to be arranged so that they are both...to the greatest benefit of the least advantaged" (Rawls, 1971, p. 302). Accused of a socialist ethic, Rawls argues that an assumption of power belongs to the wise legislator. The general principle which all institutions and the state should oblige is:

All social primary goods--liberty and opportunity, income and wealth, and the bases of self-respect--are to be distributed equally

unless an unequal distribution of any or all of these goods is to the advantage of the least favored (Rawls, 1971, p. 302).

Uniformity at times thus requires the government to be neutral, to intervene to ensure a common standard, or at least a minimum standard for a well-ordered school and society. However, as Rawls notes, a government may depart from this principle to serve the common good or public order. According to Rawls' theory of justice for a well-ordered society, the government must intervene if uniformity cannot be maintained as a standard and those with greater advantage have greater benefit. Justice includes principles of fairness and natural duty. Consequently, the "public awareness of men's willingness to act" in accordance with justice, "is a great collective asset" (Rawls, 1971, p. 347).

Thus, the philosophers have advanced a variety of theories on why governments should be impartial and why systems of education must be able to guarantee at least an equal share of resources to all. Uniformity in a school system requires that the state must aim toward equality of treatment, and remain wealth neutral. It cannot act arbitrarily because of its finance schemes create conditions through taxing policies that will produce differences in fiscal resources. The state has an obligation to correct inequalities of resources, especially that result from an "inappropriate exercise of local volition or prerogative." Lastly, the state must provide corrective means to achieve equity beyond arithmetical equality.

A state will be fiscally neutral where there are no unequal resources that create advantage, say to students in a wealthier, property-based locality; it would also not provide unequal resources to ameliorate disadvantage (Alexander, 1991, p. 290). A uniform system requires the government to be fiscally neutral, however, as Alexander notes, this means that the right to equality has "peremptory force" over governmental neutrality. Simply explained, this means that "arithmetical equality" [the sum of equals doctrine of utilitarian philosophy]-equal shares for equals--takes priority over unequal shares for unequals and over governmental neutrality" (p. 292). This does not mean unequal treatment of unequals should be denied; it merely means that equal treatment of equals is a baseline priority.

Uniformity implies a baseline or standard of equality. The principle of fiscal neutrality is not to be exercised where equity as well as equality is a standard, although as a base equality must always be met. According to Rawls' conception of justice, unequal recipients are educationally or morally justifiable. Compensation to students of great ability, however, must "raise the level of the least advantaged and ensure a minimally adequate education without being in any way biased toward self-interest or faction." Furthermore, the state must be neutral in guaranteeing equality before the law. In this sense: "both arithmetical equality and equity are morally superior to neutrality" (Alexander, 1990, p. 292).

This concept of "fiscal neutrality" is not the rationale for a uniform system upon which Serrano (1971) was decided. The presumption in this case was that "the educational system is an obligation of the state and that in implementation the state treats all local school districts in a fiscally neutral manner; all have access to the same amount of money per pupil" (Alexander, 1982, p. 210). According to this standard, equal distribution is a matter of local prerogative to decide, no matter where the schools are located (p. 211).

### Fiscally Neutral System

It is clear that the founders associated equality with a "common" or "uniform" system of "republican civility" (Cremin, 1951, pp. 107-147). Their conception of an equitable system of schools based on rewards and merits, however, is not so evident. The founders were concerned only that a system be uniform, i.e., that it be universal and that it provide equality of opportunity to ensure a harmonious and unified democratic society. The concept of equity has only been brought to bear on school finance only since the Serrano case in 1971. The standard of fiscal equality for systems of education established by this case still has prevented many educational systems from being uniform, much less equitable.

The simplest, practical application of the principle of fiscal neutrality to state funding is district power equalization to ensure full fiscal equalization. This could produce a uniform system demonstrated by Easton's bureaucratic systems

production model whereby the processes provide for equal inputs (funding resources), equal throughputs (learning processes), and equal outputs (equal liberty or opportunities). A fiscally equal system will ensure that all students are supported and treated equally by the state and have an equal opportunity to succeed in life. The principle of fiscal neutrality as a requirement of uniformity is especially important if "the state has used its authority to create unequal allocations of resources among school districts, i.e, unequal treatment of equals" (Alexander, 1991, p. 291).

As we shall see in the next chapter, the term "efficient," addresses equity and speaks to proportional equality, which is "to treat like cases alike and unlike cases differently." Equity is a guideline for an efficient system that seeks to maximize or distribute its awards justly or fairly. However, a uniform system, by definition, speaks only to the principle of arithmetical equality, and, it can be argued, need only satisfy a basic requirement of "sameness" or equality of condition or revenues or uniform effort from school districts.

This is not to argue that a uniform system is not an equitable one. Rather uniformity is a principle of equality and the right to equality has preemptory force. That is, arithmetical equality--equal shares for equals--takes priority over unequal shares for unequals and over governmental neutrality (Alexander, 1991, p. 292).

Thus, the allocation of unequal shares based on merit or other principles of equity which make for a fair maximization of goods and services in an efficient system, is not a basic characteristic of a uniform system.

As Alexander notes, a system at base must be a fiscally equal system, because equality of opportunity demands equal treatment whether the government is neutral or not. In this regard fiscal neutrality is only a minimal requirement. It satisfies a strict adherence to mathematical equality whereby it is still possible that the "grossest discrimination can lie in treating things that are different exactly alike" (Jenness v. Fortson (1976)). Neutrality on the part of government ensures equal treatment because "all those seeking a declaration of liberty by a tribunal or desiring a validation of their rights in relation to the authority of the state will be treated the same way" (Alexander, 1991, p. 279).

Impartiality by government has been construed in a variety of ways, but most of the philosophers would agree that an educational system requires governmental commitment to equality. Consequently, an unequal allocation to school districts so as to create rich and poor districts "would not be tolerated by either an impartiality or an equality standard" (Alexander, 1991, p. 281). This is because, Alexander argues, in the final analysis, of the two principles vital to uniformity, equality or governmental neutrality, "the right to equality has preemptory force" (p. 292).



Equality, one discovers, is also preemptive of subsidiarity, a concept which some believe has served as a moral basis for local autonomy and private preferences leading to fiscal inequalities between and among school districts.

### Principle of Subsidiarity

There may be a lack of uniformity in fiscal effort among school districts that produces inequality. The failure at the local level to meet appropriate costs or to recognize educational needs has been justified by the principle of "subsidiarity" (Coons, Clune, and Sugarman, 1970) in recent years.

"Subsidiarity" is a political, social, and psychological more familiar to Europeans today than to Americans who have come to associated the term mainly with local control or decentralization, which is a limited, primarily political interpretation not necessarily associated with social justice. Pope John XXIII and Pius XI in the Catholic Church clarified and popularized the doctrine in several Encyclical letters over the past century (Finnes, 1980, p. 159). Pius XI wrote in an encyclical letter in 1931 that

just as it is wrong to withdraw from the individual and commit to a group what private initiative and effort can accomplish, so too it is an injustice...for a larger and higher association to arrogate to itself functions which can be performed efficiently by small and lower associations (cited in Finnes, 1980, p. 259).

According to Finnes the principle of subsidiarity is now regarded as "fundamental principle of social philosophy which emphasizes local control or autonomy" (p. 259). However, Pius XI seems to indicate that the principle of

subsidiarity expresses a principle of balance between central and localized entities whereby the central authority supports the lesser authority for the common good of the whole state. Subsidiarity does not allow for local control to be completely autonomous, nor seek to destroy or subsume: "... of its very nature the true aim of all social activity should be to help [subsidium afferre] members of a social body, and never to destroy or absorb them" (cited in Finnes, p. 258), which is to say that the central authority remains a central and active functioning part to help the lesser entities within the same communal association in order that together they can meet mutual moral obligations and commitments.

Finnes (1980) notes that other Roman Catholic authorities have applied the principle of subsidiarity to the economy, to world political order, to the world economic order, as well as to relationships between families, schools and the state, and to the ecclesiastical community (p. 159). However, in America the principle of subsidiarity has been used to justify or support fiscal equalization through a variety of methods on the grounds of a simple commutative justice, laissez-faire self interest, and local control of schools. According to this interpretation, Alexander argues that the principle of subsidiarity can allow proceeds from public taxation to flow to the private sector and to maintain the elitism and advantage of a wealthy few (Alexander, 1982, p. 210). Such methods generally include basic developmental educational programs, basic formula adjustments to fiscally equalize among school districts, or establishing a

level of fiscal effort uniformity to prevent a child's education being a function of the wealth of the community (Alexander, 1982, p. 205).

A system might also finance corrective or remedial educational programs to meet individual needs, or create diseconomies of scale based on geographic and demographic conditions. A uniform system might finance government overburdens which "tend to drain local tax resources on which the local school district must rely" (Alexander, 1982, p. 205). To this end "Local tax leeway, unlimited local choice, or subsidiarity are all earmarks of an inequitable system" (p. 205) and can be considered manifestations of the subsidiary principle.

### Subsidiary as Decentralization

It has been noted in the previous chapter that decentralization of an open system, as March and Olsen (1986) and other systems theorists have described, characterizes an ontological, republican system of education that represents republican ideals of freedom, and a responsible civic autonomy. Horace Mann and the founders were never opposed to decentralization of local representation. Believing education to be a "great equalizer," Mann never advocated a centralized system of bureaucratic system of bureaucratic elites. Rather, in the Twelfth Annual Report, he argued for a democratically controlled system drawing upon the general proficiency of aggregate of the people who could be wise, fair and judicious in its administration:

By a natural law like that which regulates the equilibrium of fluids, elector and elected, appointer and appointee, tend to the same level. It is not more certain that a wise and enlightened constituency will refuse to invest a reckless and profligate man with office, or discard him if accidentally chose, than it is that a foolish or immoral constituency will discard or eject a wise man (cited in Alexander and Alexander, 1992, p. 7).

However, some have searched for a moral or legal principle to justify a decentralized system. "Subsidiarity" is that principle. Although Coons, Clune, and Sugarman (1970) did not originate the term, they did apply the principle to educational finance and maintained that equality and subsidiarity were compatible principles and that local choice could be permitted even if individual choice should encourage unequal educational opportunity. Coons, Clune, and Sugarman (1970) argue from the perspective of a "familial system" and cherish the principle of local control of schools. They take the position that the "subsidiarity" principle encourages local autonomy, the responsible life, the rational life.

### Subsidiarity as a Political Principle

Subsidiarity, however, was first expressed by recent Popes under the name of "subsidiarity function," i.e. it is a function of government and so it can be interpreted as a political principle. According to this principle, power should devolve on the lowest, most local level at which decisions can reasonably be made, with the function of the larger unit being to support and assist the local body in carrying out its task. It is, however, a principle that expresses a

"relationship" of mutual effort between the lower and higher governmental establishments, so that the higher authority is never absolved of its ultimate responsibility. (See Pope John XXIII, 1931).

Others have found that subsidiarity favors social cooperation and decentralized power in ways that encourage "a new experiment in participatory democracy" (Bellah et al., 1991, p. 171). Philosophers from Aristotle to the present have added to the concept notions of friendship, commonality, and civic autonomy that makes for efficient local administration (Finnes, 1980, p. 146). Finnes notes: "As a principle of justice 'subsidiarity' affirms the proper function of association is to help the participants in the association to help themselves...to constitute themselves through the individual initiatives of choosing commitments..." (p. 146).

### Subsidiarity as Common Good

Subsidiarity, according to the original meaning of the word dating to classical times, is not a justification for -laissez-faire or a selfish-local or civic autonomy. The term "subsidiarity" is derived from the Latin subsidium meaning help or assistance and therefore does not suggest subordination (Finnes, 1980, p. 146) as much as consensuality. It reinforces Aristotle's notion of the polity and gives special meaning to the concept of community association (Politics, 1952, Book 3, p. 5). The adjective "subsidiary" means serving, to help, assist, or

supplement from the Latin subsidiarius relating to a reserve as in subsidium, reserve troops or aid (Finnes, 1980, p. 146).

The principle has come to be associated with the common good or welfare that can be realized if conditions exist that are conducive to autonomy and satisficing. Finnes notes that the political or social condition that would enable autonomous individuals "to realize reasonably for themselves the value(s) for the sake of which they have reason to collaborate with each other ...in a community" is what most likely creates the desire for the general welfare (Finnes, 1980, pp. 255-156).

However, in order for the principle of solidarity (conceived as the fullest expression of civic autonomy at the local level) to take effect, the state, whose goal is the common good, must encourage a real sense of social cohesion and union, i.e. commonality, resulting from a desire to participate fully in human goods (Finnes, 1980). In fact local autonomy depends upon a perception of commonality, a perception of being one with the community itself, or as Aristotle posed, a sense of unity in diversity for the good of the community itself. This sense of "social union" or commonality, according to Finnes, comes first from a variety of genetic and cultural inheritances (Finnes, 1980, pp. 137-138).<sup>15</sup> However, "no degree of unity ...can substitute for such co-operation and common commitment" (p. 138).

The concept of subsidiarity, or the idea of the self-governing in service to the community or the common good is derived from a perception that things are

really better in society if they are shared in common, i.e. "an economy that is more than domestic" (Finnes, 1980, p. 144) or extra-familial. It is derived from associations between the family and the political community. This is essentially what Aristotle meant by man being a political and social animal in his Politics. Friendship or "philia" is a bond between persons based on utility, just as states can be friends as an international expedience, and there are varying degrees and depths of friendship (Nichomachean Ethics, 1952, Book 8, p. 11) or intimacy between friends.

According to Aristotle, friendship is that deeper relationship, known as koinonia which provides the basis for commitment which allows others "to grow in self-possession," or autonomy which is essential for responsible political action. Thus the source of the subsidiarity principle is rooted in psychology. Human good requires not only that we receive and experience benefits, but that we participate, or do certain things, i.e. act with integrity and authenticity (Finnes, 1980, p. 247).

### Subsidiarity as Commonality

As a principle of commonality, "subsidiarity"

affirms that the proper function of association is to help the participants in the association to help themselves...to constitute themselves through the individual initiatives of choosing commitments...and of realizing these commitments through personal inventiveness and effort in projects....that are cooperative in executive and even communal in purpose (cited in Finnes, 1980, p. 146).

As Alexander demonstrates, a uniform system of schools, operating in the context of the community is "an aspect of polity" (Alexander et al., 1989, p. 142). Thus, the principle of "subsidiarity" can be used to good measure in educational policy, if the principle of individual liberty or private self interest did not prevent its fullest expression. It is clear that the principle of subsidiary reinforces Aristotle's organic conception of the polis "formed not for the sake of life only but for the good life" (Politics, 1952, Book 3, p. 5), and not merely for self-defense or protection in the natural rights tradition. The principle of subsidiarity, according to the Papal Encyclicals, has the potential for true community association and civic responsibility. It expresses a proper civic autonomy within a republican state.

### Subsidiarity as a Liberty Right

Finnes (1980) notes that the concept is related to the concept of liberty. Subsidiarity improperly construed as a "liberty right" does not bode well for ensuring a uniform system of education. The principle of "subsidiarity" construed as a liberty right by Coons, Clune, and Sugarman (1970) has helped to solidify private or familial claims under the banner of local control of schools.

According to a critical view of suburban life and school districts, local governments are sanctuaries for the wealthy individuals (Lu, 1991, p. 552) who advance private self interest. Kern Alexander argues that the concept of subsidiarity or local control has actually prevented school districts from



cooperating with the state in providing for a uniform state-supported system of schools (cited in Lu, 1991, p. 553).

Unless there are conditions at the local level conducive to the common good, i.e. state governments are wealth neutral and encourage local investment in education through equitable tax policies, the principle of "subsidiarity" may continue to be used to justify exclusionary self interest. It is for this reason that the courts have emphasized the "illusory" character of local control (San Antonio Independent School District v. Rodriguez (1973)) and educational finance experts have proclaimed it a "farce" in recent years (Lu, 1991). Alexander argues that local control is now "merely an elaborate justification for inequality" and "an effective rapier with which the more affluent can defend their preferred financial status" (cited in Lu, 1991, p. 553).

The principle of subsidiary and local control is "illusionary," because, as Alexander notes, it is preempted by the principle of equality, meaning that local choice should not be given much weight in determining school policy if individuals consciously create an unequal distribution of goods and services for an educational system. Just as in the principle of fiscal neutrality: "the right to equality has preemptory force," equality is preemptive of government neutrality. Equal shares for equals takes precedence over unequal shares for unequals and over governmental neutrality and subsidiarity (Alexander, 1991, p. 292).

### Subsidiarity as a Public Trust

There is yet one more way to view subsidiarity. The most obvious example is federalism. Recently, the individual states have "resisted the pull toward centralization by the federal government," and "have not always understood the meaning of subsidiarity with respect to the units beneath them" (Bellah et al, 1991, p. 136). Consequently, state governments have been accused of carrying out more functions than could usefully be handled by county, city and town governments.

What is missing from the equation is a republican conception of government that argues that government does not exist simply to "maximize the satisfaction of individual interests," which is a strictly laissez-faire notion straight out of Locke and Hayek. A republican view of the state is that government and its institutions is a public trust, and that what people value "is itself shaped by their institutional experiences. For example, "there is a value attached, by the American public, to having lands held by the government" (Bellah et al., 1991, p. 136). Public lands, like public schools, are a trust. There is a sense that the government will take better care of the land than if it is left strictly to the market, a private market force consisting of selfishly motivated individuals who, left to their own preferences, would not be there to protect them. People simply "trust the government to take the appropriate care of these resources (Bellah et. al., 1991, pp. 136-137), the public lands as well as their public institutions.

Subsidiarity construed as autonomous, individual preference therefore is a misplaced trust. Power may devolve on the lowest, most local level of decision-making that can reasonably be made, however, in the final analysis the larger unit never ceases to function as a "public trust." It continues to assist the local body in carrying out its task in order to ensure that the values and public institutions people support are not merely arbitrary preferences (Bellah et al., 1991, pp. 136-137).

Educational systems have evolved from public engagement with those institutions at the district level, institutions that embody public purposes and engender public trust. State and local entities depend on public discussion and argument about their importance. Therefore, subsidiarity cannot simply mean "enlarging the number of potential groups that have a veto over decisions" at the local level (Bellah et al., 1991, p. 135).

A uniform system of education requires participation with responsibility, just as the Papal Encyclicals have stated. As Aristotle noted about education, it is the primary function of the polis to provide laws, and the laws and the mores of the whole community are what educate a people, both as children and as adults. In this sense the true educators are the lawgivers. According to both Plato and Aristotle: "It was the responsibility of citizens...those who ruled and were ruled in turn, to deliberate about the laws and to concern themselves with the common good" (cited in Bellah et al., 1991, p. 144).

## Principle of Equal Liberty

### Economic Freedom in the Welfare State

A uniform system of education is a compulsory, extra-familial system for the benefit of the people of the state. Lindsay argues that "compulsion is to be used in the service of liberty" (1962, p. 247). We have seen in the chapter on commonwealth, that rights are guaranteed liberties:

The state enforces upon all its members a minimum standard of external conduct in order to guarantee for all its members a minimum standard acknowledged and defended rights--rights against other members of the community and rights against the state (Lindsay, 1962, p. 247).

But the modern welfare state has gone much further than maintaining for its members equal legal rights. People may have legal rights, or be equal before the law and yet be ineffectual members of the community because of poverty, lack of economic advantages, or lack of equal opportunity.

Several philosophers have noted that legal rights may be of no avail without economic rights or equal liberty. Sidney and Beatrice Webb in England first admitted this in principle in their analysis of trade union theory. They pointed out a new industrial policy

to extend the conception of the common Rule from the trade to the whole community and, by prescribing a National minimum, absolutely to prevent any industry being carried on under conditions detrimental to the public welfare (cited in Tawney, 1964, p. 105).

They insisted upon an industrial policy of prescribing "minimum conditions, below which no employer is allowed to drive even his most necessitous operations" (p. 105). Similarly, educational opportunity must be recognized as a goal of the state. It is a way of establishing a national minimum of economic conditions and economic liberty for all. The modern state, for example, has accepted responsibility for the evils of unemployment through the minimum wage. We now recognize in principle that "if men are to be regarded as members of the community, there are certain indispensable conditions to a true fellowship in the community which must be secured to them" (Lindsay, 1962, p. 248).

R. H. Tawney, leader and historian of the British Labour movement (whom Gatskill called "the Democratic Socialist philosopher par excellence" (Tawney, 1964, p. 8), also made a case for equal liberty after World War Two and endorsed the benefits of common or uniform systems of education and nationalization. Like Herbert Croly in America, Tawney in Great Britain argues that nationalism is a means to the common good--not an end. In his essay "The Conditions of Economic Liberty," Tawney defines tyranny as the exercise of selfish privilege where "the utilization of both capital and land are autocratic" (p. 102).

Equal liberty in the modern welfare state does not mean the right of each individual to pursue whatever occupation he pleases since there are needs in society that must be met. This negative conception of liberty does not imply a

positive "opportunity of self-organization." Freedom "must confer the right to associate with others in building up a social organization with a consciousness and corporate life of its own" (p. 103). Modern industrial and corporate life must therefore recognize that every person or grade of worker constitutes a real community, and equality of opportunity must function in the work place to provide the greatest option for advancement. When a worker, who is a citizen, is regarded as only a hand who can be dismissed without appeal or blacklisted or lives at the will of a lord, there is no equal liberty (p. 105).

#### Concept of Career Open to Talents

A uniform system of schools cannot discriminate on the bases of class, wealth or privilege; it must provide equal facilities, opportunities for the same classes and the same advantages in order to ensure equal liberty. R. H. Tawney (1964) in addressing the dual system of schooling in Britain, observed two principles important to equal liberty: the "idea of status" and the idea of "a career open to talents" as important to equal liberty. Educational freedom dictates that all people regardless of social status can aspire to knowledge and that no one on the basis of class "should be excluded from the common heritage of civilization (p. 72). Tawney noted that "the nation pays a great price for allowing the preservation of selfish interest of a particular privileged group." Lack of educational opportunity is "injurious to the nation," because it "limits the national resources (p. 108).

Tawney's principle of equal liberty, or "career open to talents," has been adopted by human capital investment theorists, and most recently by Robert Reich who argues that the way to prevent the widening gap between rich and poor is "to guard against class rigidities by ensuring that any reasonably talented American child can become a symbolic analyst--regardless of family income or race" (Reich, 1991, p. 246).

### Conclusion

According to Cremin, a uniform system is characterized by "universality in its operation" and "administered in the spirit of justice" (Cremin, 1957 p. 80). A uniform system has a harmony or unity, because it is "an aspect of the polity." This aspect of an educational system has not been appreciated in recent years. Horace Mann understood the importance of a universal system of education linked from localities to state government and to other social, economic, and political entities. A uniform system has a Paideia based on the concept of a universal learning society where knowledge is diffused equally among all the people of the state. Horace Mann in the Eleventh Annual Report described this American paideia when he wrote: "...Universal Education is center and circumference" (of a larger political, or social metasystem). It is when "these segments (or parts of the whole system) are "fitly joined together, that the wheel of Progress can move harmoniously and resistlessly onward" (cited in Cremin, 1951, p. 135).

The term "uniform" is also a standard of equality because a uniform system is universal and general, serving all "as an aspect of polity." What creates or maintains this standard of equality in an educational system are such commonwealth principles as "extra-familiarity," "public order," parens patriae, "commonality," "subsidiarity," "equal liberty," "fiscal neutrality." Viewed as forms of commutative justice these principles are an antidote to practice that ensure equal treatment--equal shares for equals--at all stages of a system's production process. A uniform system is the result of a democratic process which recognizes a proper civic autonomy and that the right to equality has preemptory force. "Uniform" as a descriptor of system is a term of art that speaks to equality, whereas, as we shall see in the next chapter, "efficient" is a term of art that speaks to equity.



## NOTES

1. The American melting pot ideal has been discredited by Horace Kallen, the Jewish American philosopher in Culture and Democracy (1924) who argued that Americans are one people only in a political and administrative sense (Schlesinger, 1991). Diane Ravitch, a contemporary leading spokesman for education in the United States, argues that the United States is paradoxically more than a nation of immigrants, because it has "a common culture that is multicultural" (cited in Schlesinger, 1991, p. 81).
2. Philosophers since the days of the Pythagoreans have tried to express the essential universal order and did so prior to the new mathematical science through music. On the authority of Pythagoras and of Plato, who envisaged a mathematically and musically ordered universe, they concluded that the basis of all harmony in macrocosm and microcosm alike is mathematical; that whatever exists is based on proportion or number, the concordant relationships of which are revealed in music. This explains why music was included in the medieval quadrivium of the liberal arts along with arithmetic, geometry, and astronomy. According to the Timaeus of Plato, the good and rational brought the conflicting elements of Chaos into a harmony, proportion and unity modeled on His own Idea of perfection, an ever existent Idea intelligible only to reasons, of which the sensible world is an imperfect copy (Finney, 1973).
3. There are countless references in the Bible to the worth of man in relation to God. From the Book of Genesis, Chapter 7:2 we find man "made in the Image of God. In Psalm 8:4-6 we read about man being "little lower than the angels," and in Psalm 82:6 we read that God had proclaimed man as "gods" (Thompson, 1983).
4. Rossi (1973, pp. 178-179) argues that Baconianism has been oversimplified by utilitarian assumptions. Comte and the positivists as well as Mill and the utilitarians, rejecting moral law or principle, looked to Bacon's Novum Organum. Marx also applauded the celebration of work and technical skill in Francis Bacon's New Atlantis. Bacon's practical, vocational emphasis also influenced John Dewey who insisted upon the aims of productive labor. Thus moderns see in Bacon's works a strictly utilitarian moral view.
5. The concept of universality of knowledge was the basis of Comenius' Pansophy, inspired by Bacon. It was a product of natural philosophy, and rested upon the Baconian conception of an ordered universe. As a

philosopher, Comenius echoed Plato, Aristotle, and departed from Bacon's induction because of his Christian conception of the universe. Keatinge notes especially Comenius indebtedness to Bacon for a system or method of education which rests "upon the conception of the universe as ordered, and of the relations that exist between phenomena as rational" (Keatinge, 1967, pp. 35-36). Universal knowledge, however, is obtained from the laws of nature. The basis of wisdom itself is seen in several aphorisms described in the Delineation, Section 40, which demonstrates that the common source of wisdom or knowledge are the senses, the intellect, and divine revelation, three channels that unite all knowledge and commit it to the same symmetry. Keatinge, argues that it is this belief in Baconian natural law that encouraged Comenius to establish a methodology based upon natural law for a system of education.

6. Comenius (1967) traces the origin of the common school to Biblical times. He notes that there were common schools established upon the authority of Josephus and that the patriarch Shem opened the first school; the Chaldaeans had schools; "schools were set up in all the towns of the children of Israel; they were called synagogues, and in them the Levites used to teach the law." He further notes "the custom of erecting schools was borrowed by the Romans from the Egyptians, the Greeks, and the Jews, and from the Romans it spread throughout their whole empire...History relates that Charlemagne, in subjected heathen peoples, erected churches and schools as did other Christian emperors, kings, and nobles" (1967, p. 62).
7. Condorcet was one of the most respected figures in the Commune of Paris. Although his great educational schemes were rejected, he devised a constitution for the Republic. He was not a Jacobin and voted against the execution of the King. L'Esquisse was written under the threat of death. Visionary and idealistic, he was the type of the philosopher-reformer of his time. Condorcet outlined the requirements of liberal democracy more than a century in advance of his time: universal education; universal suffrage, equality before the law; freedom of thought and expression; the right to freedom and self-determination of colonial peoples; the redistribution of wealth; a system of national insurance and pensions; equal rights of women (p. x). Condorcet's plans for popular education greatly influenced the French educational system itself (Condorcet, 1955, p. xii).
8. Condorcet wrote that tyranny of the mind resulting from Christianity, and other superstitions of fanatical religion "serve as a warning to the present age to do its utmost to maintain and increase the sum of human knowledge if it wishes to become or to remain free, and to defend that

freedom with all its might if it does not wish to lose the advantages that enlightenment has brought it" (Condorcet, 1955, p. 87).

9. Condorcet was inspired by Bacon. As Secretary of the Academie of Sciences he was surrounded by philosophers and reformers grouped round Voltaire and the great Encyclopaedia. His long series of eulogies of famous scientists and writers of his century amounted to a survey of the modern knowledge of his time and included Francis Bacon as one of the greatest (Condorcet, 1955, pp. vii and viii).
10. Butts and Cremin (1953) observe that particularly after the Civil War the role of the federal government in education, as an agency of support, became increasingly under fire. Local districts with varying abilities after the War could not equalize educational opportunity throughout the state and the state took over this function, backed by the fourteenth amendment which was to ensure uniformity as equality of opportunity. Some feared that the federal government would do the same, encroaching through the doctrine of incorporation on state sovereignty. Butts and Cremin describe the controversy about the role of the states in education in this way: "There were those who claimed that the state was all-powerful in this realm. Others saw a limited role for the state; while still others saw any state activity whatever as an encroachment on church and parental rights" (p. 155).
11. See Title VI of the Civil Rights Act of 1964, 42 U.S.C. sections 2000d to 2000d-7 (1988); Elementary and Secondary Education Act of 1965; see also Plyer v. Doe (1982) which forbids a state from refusing to educate illegal alien children; Brown v. Board of Education (1954) which mandates public school desegregation.
12. However, Cremin notes that while the goals of education were not purely secular, they were not sectarian, but the result of a cultural or religious paideia which "pointed to an expansive and noble concept of education." A predominately liberal Christian paideia associated with Unitarianism "provided the moral epicenter of a far more popular paideia which had great influence on the ideals and aspirations of nineteenth century Americans (p. 34). It was a cultural or religious paideia that reflected the disestablishments of churches, a new opportunity that reflected "an inextricable link between God and man" that "pointed to an expansive and noble concept of education and its purpose" (p. 32).
13. Kaestle (1983, p. 192) notes that, unlike the Midwest and East, "there "was less enthusiasm for local common schooling and more successful resistance to the creation of state systems" in the South.

He explains that "The cosmopolitan formulation of republican, protestant, capitalist ideas found a congenial environment in the Midwest."

14. By "oligarchy" Aristotle means only an alternative form of government, not a ruling elite within a democracy.
15. Among these he includes biological or natural unity of the human community, i.e. genetic or racial interrelationships; from intelligence, shared knowledge and information; a sense of cultural unity is derived from shared language, common technology, common technique, a common capital stock; it is derived from common choosing or the act of deliberation; and finally, it comes from acting in unison participation in nurturing the common life of the community which occurs when the other bonds of commonality are perceived as conditions of the common good (Finnes, 1980, pp. 137-138).

## CHAPTER EIGHT: EFFICIENT AS A TERM OF ART

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Texas Constitution, Article VII, Section 1 (1876).

Despite the strides in recent years to make educational systems more efficient in terms of both the inputs (tax effort and resources) and the outputs (maximum school effectiveness per dollar spent in cost benefit terms), economic disparities between school districts still exist in many states. Some school districts have as much as three to five times the fiscal resources of others. Beyond district fiscal disparity, wide variations in social or economic conditions within and among states have exacerbated the problem of efficient resource distribution and allocation in educational systems where equitable distributions are expected to occur without undue cost of expense to the public. Demonstrating that efficiency is an important aspect of equity is the goal or purpose of this chapter.

Consequently, to determine whether or not an educational system is efficient requires more than cost-benefit analysis, or a strictly quantitative "measurement" of efficiency. It requires as Waldo suggests in The Administrative State (1984), that one inquire: "Efficient for what purpose or to what end?"

This chapter demonstrates that the term "efficient" must be defined in normative terms to accommodate the requirements of an educational system that is ontological and republican--one whose purpose is the common good. Such an investigation suggests that the inputs and outputs of an educational system are equitable and that efficiency, therefore, is the "good" of an educational system.

The term "efficient" is therefore defined in terms of equity, justice and equality, as well as by means of a calculus of cost-benefit. Efficient as a term of art in the context of education is shown to be more than a purely technical, economic, or value free term.

The time is right to redefine the term "efficient," since its meaning and interpretation has evolved over time. During the industrial revolution, operational efficiency provided the desideratum for maximizing profit in industry. However, since the Progressive Era's "social efficiency movement" and the Keynesian revolution, efficiency is no longer understood in simply economic, cost-benefit terms. This chapter shows how the concept of efficiency has developed from a standard of operational efficiency to social efficiency to economic equity. The latter definition, which implies equitable distribution, serves as a standard for a republican educational system. As a term of art, efficient has a moral component that requires civic virtue on the part of legislators and administrators. The chapter shows that many modern philosophers, since the advent of the welfare state, have come to reexamine the

utilitarian calculus that has led to laissez-faire policies that must now be re-evaluated from a standpoint of justice and fairness.

The focus on efficiency as economic equity reveals the underlying problem of just distribution or how to achieve the common good qua any educational system and within the system. This chapter demonstrates that efficiency as economic equity addresses the philosophical problem of ends versus means. In fact, efficiency defined as equity asserts that means are ends. Lester Thurow (1975) provides a framework for discussing economic equity that has helped to define efficiency in a school system as (a) processes and procedures, i.e. utility maximization; (b) the problem of individual preferences and the aggregation of preferences; (c) the problem of merit, i.e. capitalist merit versus the concept of diminishing marginal utility and the concept of "fairness" and the least advantaged; and (d) the problem of common good maximizing.

Since there are many theories of social welfare function and the utility function is suspect without innate preferences, the issue of what trade-offs are acceptable and what weights are used to add one person's utility to another is discussed by reference to the theories of Pigou, Rawls, and other utilitarian philosophers. It is argued that Pareto optimality, or the philosophy of more is better than less, is not the essential "Archimedean point" in utility theory, because it does not take into consideration individual worth and individual differences and preferences.

The chapter proceeds from a basic etymological discussion of "efficient" or "efficiency" and provides its general characteristics or a working definition. However, "efficient" as a term of art in the context of education and in accordance with constitutional requirements is presented as a "standard" of system. Three standards of "efficient" are examined: (a) The standard of operational efficiency as Taylorist productivity and an aspect of laissez-faire or Pareto-optimality which provides a basis in theory for the cost-benefit concept of efficiency; (b) The standard of social efficiency; and (c) The standard of efficiency as economic equity based upon a philosophical, legal, and historical treatment of equity.

A theory of efficiency as economic equity is advanced after exposing the fallacies or weaknesses of the first two standards. This theory utilizes Rawlsian principles of justice as a framework, particularly the "difference principle" introduced in Chapter Two of this study, as well as concepts of economic liberty that argue for the most efficient, i.e. equitable maximization and utilization of educational resources. Theories of marginal utility are presented to further support the argument that a morally efficient system benefits the least advantaged and is a "fair" system.

In this way, the chapter demonstrates that an efficient system, like a uniform system, functions to the benefit of the common good in terms of economic opportunity maximization. This is a normative expectation of a



"ontological" and "republican" educational system whose ends are teleologically compatible with those of a virtuous republic.

The salient normative values in public school finance have been identified as adequacy, equity, efficiency, legitimacy, and liberty that exist together in a dynamic tension. Lastly, the chapter shows in an analysis of several court cases that "efficient" may well be the most important normative value in establishing education as a fundamental right where disparities exist between and among school districts.

### **Efficient as a Modifier of System**

One important criterion of the common schools in America is that a program of instruction available to one child cannot be truly deemed adequate or efficient if other children are afforded a better educational program and are thereby consistently advantaged in the lifelong competition for money, status, and political influence. Consequently, to the classic definition of a common school system has been added various descriptive terms such as "adequate," "uniform," and "efficient." These terms are descriptors of "system" and terms of art. They function definitionally as a constitutional mandate and as a standard when describing a system of schools.

In a constitutional context, "efficient" is a powerful descriptive term used in conjunction with "adequate" and "uniform" to describe a common school system. The "common" schools are free, without burden on the poor, open and

accessible to rich and poor alike; supported by public taxation, and governed as a secular and public entity. They are also part of a "system" which requires a high degree of uniformity throughout the state (Cremin, 1980).

As our capitalistic economic system became permeated with values of economic individualism and political economy in the late nineteenth century, it was only natural that the word "efficient" would appear in revised state constitutions toward the turn of the century. Callahan argues that this concept of efficiency prevails in the educational establishment (Callahan, 1962). It is reflected in many current studies of educational production functions known as "input-output" and "cost-quality" analyses. Hanushek describes efficiency in an educational system as a simple production function:

Knowledge of the production function and the prices for each of the inputs allows for straightforward solution of the least cost per set of inputs--that is, the combination of inputs that would produce any given output at minimum cost. The concept of a production is a powerful pedagogical tool, and, in its basic form, appears applicable to a wide range of industries--from petrochemicals to education (Hanushek, 1986, pp. 1148-1149).

Yet the term "efficiency" used in this context of school systems today exhibits a naive and inadequate assessment of the complexities of the educational process wherein one classroom alone may have as many production functions as there are children and petrochemicals. The concept of a production function derived from the industrial era suggests a machine-like, operational efficiency based on principles of scientific management, the legacy of a rationalist, reductionist Newtonian system. The term "efficiency" in the context of education has far

greater significance and suggests an ontological system. It is viewed as "a goal to which education should aspire--a standard" [Italics added] to be achieved that would be complete, universal, adequate, uniform, and comprehensive (Alexander, 1990), and has a complexity of definition not sufficiently defined by a simple industrial model.

Previous chapters have alluded to a grouping or categorizing of states by their unique constitutional requirements for education. States have been found to be "cherish" states, for example. We find that an "efficient" school system is required<sup>7</sup> in many state constitutions. The term "efficient" requires, like "uniform," an obligation or standard for the legislature to effect equality of opportunity, possibly to a greater or lesser extent depending on the wording of constitutions (McUsic, 1991). The Kentucky Court in Rose v. The Council for Better Education (1989) determined that an "efficient system" mandated equality whereas the phrase "thorough and efficient" did not require a system of equal educational opportunity in the state of Ohio (Board of Education v. Walter (1979)). In Pauley v. Kelly (1979) the West Virginia court found that "equality of funding has not been required in the majority of states with mandated thorough and efficient school systems."

The term "efficient," as a descriptor of "system" has served as an affirmative constitutional obligation of state legislatures in several states. The inability of legislatures to fulfill the state constitutional mandates of an "efficient system of common schools," prompted the court in the state of Kentucky to

acknowledge the fundamentality of education (Rose v. Council for Better Education (1989)). It did so, not on the basis of constitutional intent by which most legislatures have operated without guidance or sure knowledge, and not in terms of the legal machinations that have characterized the question of fundamentality under the federal equal protection clause as in San Antonio Independent School District v. Rodriguez (1973), but in terms of the simple and unadulterated fact of inefficiency.

The term "efficiency" appears in several state constitutional provisions cited in several cases. In the case of Hornbeck v. Somerset County Board of Education (1983) we learn that: "The (Maryland) General Assembly...shall by Law establish throughout the state a thorough and efficient system of free public schools...." In Danson v. Casey (1979, 1987), Pennsylvania's provision was cited: "The General Assembly shall provide for the maintenance of a thorough and efficient system of public education to serve the needs of the Commonwealth." In Ohio's school finance case, Board of Education v. Walter (1979): "The General Assembly shall make such provisions, by taxation,...will secure a thorough and efficient system of common schools throughout the state..." The Arkansas education clause was cited in Dupree v. Alma School District No. 30 (1983): "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the state shall maintain a general, suitable and efficient system of free schools..." (Thompson, 1990).

Efficiency has been traditionally viewed as an economic concept providing the concept of measurable units for cost benefit and for relating input and output. However as these cases and others have demonstrated, the term "efficient" also provides standards of cost effectiveness which have a civic and moral dimension which state legislatures from 1973 to 1989 have relied upon to obtain relief from inequities in educational opportunity caused by the disparate allocation of state tax resources to local school districts.

Efficiency is a very potent and powerful qualifier of "system" in an state's educational provision. It suggests a system which provides equal prospects for the development of all the human capital of the state--a system of social justice. It also suggests a "level of quality" which eliminates the loss of productive capacity through inappropriate educational practices, ineffective utilization of fiscal resources, inadequate supply of fiscal resources resulting in poorly trained personnel, antiquated equipment, or obsolete capital facilities (Alexander et al., 1989).

The tenets of capitalism and laissez-faire economics were ingrained at the time of the industrial movement which influenced the states in their reconsideration of the desirable attributes of a common school system. Even before 1819 reference to efficiency was common. State leadership in Kentucky, for example, sought to introduce measures and laws to create an "educational regime on a scale of excellence and efficiency equal to the best in the United States," "a grand and efficient school system" that could only be achieved through

a "wise, efficient and liberal school law" (Barksdale and Hamlett, 1914, pp. 114-115). "The efficient system remained the standard, through which if achieved, could fulfill the expectations of the people for wealth, enlightenment, and cultural development" (Alexander et al., 1989, p. 151).

However, the traditional concept of operational efficiency required that educational services be purchased with scarce tax resources, that they be managed with parsimony and great accuracy for greater cost-effectiveness. In trying to determine, for example whether the Texas public school finance system was unconstitutional, the Texas Supreme Court tried to interpret the specific language and "the intent of the people who adopted it" (Watts and Rockwell, 1990, p. 771) as a matter of political "legitimacy." Determining the meaning of the term "efficient" through the historical context of voters or the intent of the framers over 100 years ago would be a difficult task. So the State argued that the word "efficient," as understood by delegates to the Texas Constitutional Convention in 1875, must have meant simply "inexpensive," or "cheap." This interpretation of efficiency in connection with the state's funding system was quite different from modern usage (Watts and Rockwell, 1990).

However, without any standard for "efficiency," no specific legislation could be devised, even though the legislature must decide how to achieve an "efficient system." The trial court eventually found the system unconstitutional because the system was not able to ensure that each district would have the same ability as any other district to obtain funds, facilities and equipment. The

court rejected the alternative of the more limited perceived "intent of the framers" and instead gave to the term "efficiency" a moralistic interpretation which implied a conceptual link between efficiency and equality. The Court required that the Texas funding system be changed on the grounds that:

There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort (Texas v. Edgewood I, 1989).

The words "similar," and "equal access" in the opinion suggests uniformity and consistency of tax effort, or an "equality" of both effort and revenue which must be obtained in order for the system to be just and uniform. The issue before the court then and now is what standards or norms will guide the legislators and judges in considering what is morally just with regard to a system of education. This is why the term "efficient" must be defined in the following discussion as a term of art.

### **Etymology of Efficient**

#### **Problem of Definition**

One of the most comprehensive definitions of an "efficient" system was provided by Richard Salmon in testimony before the Kentucky court (Rose v. Council for Better Education, 1989). The court accepted his definition of efficiency to mean that "resources provided by the system must be adequate and

uniform throughout the state" (cited in Alexander, Summer, 1991, p. 363).

Professor Salmon argues that "an efficient system is unitary, uniform, adequate and properly managed" (cited in Alexander, 1991, p. 363). Implicit in this brief definition are two standards of efficiency: one that is value free and reflective of cost benefit theory and the management of the production function, and one that is normative suggesting equity or justice.

The problem with defining "efficient" as a descriptor of "system" is that the term is not value free. Since the 1950's economic analysis has focused almost entirely on efficiency and ignored equity. Salmon has attempted to bridge the gap. Economists believed it was best to think economically, and efficiency was believed to be a value free concept. One could discuss the efficiency of any distributional mechanism objectively which was not possible to do about a mechanism's equity (Thurow, 1975) because "...efficiency is universally desirable, it is value free and noncontroversial" (p. 21).

There is a another problem of definition. When the term "efficient" is defined in reference to production, i.e, as affecting a purpose, "means and ends are hopelessly scrambled" (Thurow, 1975, p. 21). Thurow argues that efficiency is normative and associated with causality. Value judgements are attached to the means of distribution that are in fact ends in themselves, as the economic systems contained within socialism, capitalism or communism demonstrate ideological purposes. Because an educational system is ontological and has a



distinctive purpose, any discussion about the fair distribution of prizes or value judgements are unavoidable. One way or another, a system's teleology will reveal its collective preferences with respect to the "justice" of its outcomes, or the fairness of its distribution of goods and benefits.

Thurow (1975) argues that efficiency is not a value free concept when a greater aggregate is produced at the expense of even one of the less fortunate. Like the term "economic equity, efficiency is a standard that relies upon an underlying set of value judgments. Thurow argues that "Efficiency and equity are both essential ingredients in judging whether any distributional mechanism is good or bad and in determining how the mechanism ought to be modified" (p. x). Efficiency in the final analysis cannot avoid including either the concept of equality or equity in any analysis of a distribution system. Professor Salmon's definition of efficient associates such value-laden concepts as unitariness, i.e. commonality, uniformity, and adequacy with cost-benefit or cost-effective management: both the normative and the value free-expositions are included. Two standards of efficiency are presented in one definition: the standard of economic equity, and the standard of operational efficiency derived from cost-benefit theory of industrial efficiency.

#### Efficient as Effective

Efficiency conveys the notion of power or effectiveness. The Oxford English Dictionary (1989, Volume 5, pp. 83-84) defines the term efficient as

"fitness or power to accomplish" a goal. It also implies "success in accomplishing" as well as "the purpose intended" suggesting that efficiency or efficient can mean both an "end" and a "means." It also conveys such notions as "adequate power," or "effectiveness." John Stuart Mill in his essay On Liberty in 1865 referred to liberty as "The greatest dissemination of power consistent with efficiency" (cited in Oxford English Dictionary, 1989, p. 84). Efficiency from the French efficient and Latin efficientia is related to cause and causality and is also a source or concept of power. It means "making, causing to be." Efficiency is "something that makes (a thing) to be what it is." It has also been associated with cause in theology as in "the efficient will of the First Cause" and is defined as a "cause which makes effects to be what they are." Consequently, for system to be efficient it is "productive of effects" or "adequately operative." Efficiency is "the fact of being an operative agent or efficient cause," "the action of an operative agent."

These basic definitions suggest that efficiency is an instrumentality or "means" to a greater "cause" or "effect." The American common school has a cause and effect that an efficient system should produce. The goal of a republican system of schools is the common good. Therefore a common-good approach to a definition of "efficient" will "specify economic equity by isolating those distributions of economic prizes that contribute most to other social goals" (Thurow, 1975, p. 47). Efficiency defined as "productive of effects" or the "power to accomplish" suggests that it be further defined on the basis of how the

common good is achieved, i.e. if it has an "end" or output function as well as "means" or input function.

Such a definition, applicable to a social system of schools, ultimately requires a philosophical perspective. Efficiency has been viewed by libertarians, for example, as the maximization of economic output and a higher Gross National Product; or it can be viewed within a social welfare context as collective preferences with respect to the "justice" of its distribution of economic prizes. Thus efficiency "effects" the goal or teleology of the systems economy (the ultimate distribution of income, resources or wealth) and the "means" by which that output is distributed: "The means are in fact ends in themselves" (Thurow, 1975, p. 25, 21). One way or another, an educational system will be obliged to reveal its collective preferences with respect to the "justice" of its distribution of prizes or benefits and this will be evaluated in terms of "efficient."

#### Efficient as Adequate

It is interesting to note that efficiency has been defined as being "adequately operative." The term "adequacy" has been linked to the concept of operational efficiency with federal, state legislative and regulatory activity devoted to defining "adequacy" and to establishing adequacy standards (McCarthy and Deignan, 1982) in education. "The quest for adequacy has become a central theme in school finance reform" (p. 10) with the thrust being

the substance of educational offerings that must be produced in such a way as to be both adequate and equitable.

The Macmillan Dictionary (1973) defines "adequacy" as "the state of being sufficient for a specific requirement; lawfully and reasonably sufficient." The Oxford English Dictionary (1989) defines adequate from the Latin adequare, meaning to make or become equal, "to equalize, to make equal or sufficient." In court rulings, adequacy has been similarly defined as sufficient, suitable to an occasion, proportionate and satisfactory (McCarthy and Deignan, 1982). Hence "to give substance to the notion of adequacy, there must be a specified threshold level, above which an entity is considered sufficient for the particular purpose in mind" (p. 3). McCarthy and Deignan (1982) note also that it is possible to define the threshold standard of adequacy as embracing the notion of equity: "an adequate education might be considered one that is provided equitably to all students. However, equity is not necessarily a prerequisite to adequacy" (p. 4).

Adequacy can mean also a minimum level of education; or it can be appropriate to meet the needs of individual learners suggesting that more than a minimum level is required, or it can be merely an "appropriate" education for students with identified deficiencies. It might also embrace "the notion of equity up to a certain quantum of education, but allow inequities beyond that amount" (p. 4).

Thus the term efficiency may be defined as a function or "means" or "power" to effect the adequacy of standards that are currently being imposed on

schools. Efficiency in education is a cost-effective means of producing or effecting an adequate system. The fact that there are complex interrelated concepts associated with adequacy, such as "appropriateness" or "equality," or "equity," and that adequacy is associated with the product of efficiency suggests that a purely economic, scientific, or value-free definition of efficiency, in the final analysis, is incomplete and too narrowly circumscribed.

The Business Round Table has provided several, non-controversial "essential components" for efficiency in educational systems emphasizing higher level outcomes, accountability and incentive systems.<sup>2</sup> This attempt at an operational definition from the corporate community expresses the notion of efficiency for the most part in purely economic terms as economic criteria of accountability and cost-effectiveness, i.e. bigger outcomes, more bang for the buck. These overly delimit the term. However, the Business Round Table also associated efficiency with a plethora of moral goals and standards (Business Round Table, 1990).

#### Efficient as Maximum Utility

In the Dictionary of Economic Terms, efficiency is defined as "the maximum average output per employee" (Gilpin, 1970, p. 57). It also is defined as "The efficiency with which scarce resources are used and organized to achieve stipulated economic ends." "In competitive conditions, the lower the cost per unit of output, without sacrificing of quality, in relation to the value or price of

the finished article, the greater the economic efficiency of the productive organization" (p. 57). This definition expresses a concept of operational efficiency which has come to be associated with cost-benefit dating back to the days of industrialization, and suggests a cost-effective or economical production.

The term "efficient":

conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time (Alexander et al., 1989, p. 195).

In the context of an educational system to "produce results with little waste," means that the goal of system is the most efficient utilization of human capital investment whenever a fair distribution of resources and opportunities within the system is determined by equitable inputs and outputs and a balance is achieved between ends and means, i.e. an efficient system has equilibrium. The denial of equal opportunity by virtue of inequitably funded school districts, however is a denial of equal liberty, or economic liberty, or the right to be able to succeed in life because of equal advantages (Abbott v. Burke (1990)), but this cannot be explained in cost-benefit terms.

An American Dictionary of the English Language in 1864 defined efficiency as "Causing effect; producing results; actively operative, not inactive, slack or incapable, characterized by energetic and useful activity" (cited in Alexander et al., 1989, p. 195). The modern MacMillan Dictionary defines efficient simply as "producing or capable of producing a desired effect with a

minimum of effort or waste" (Halsey, 1973, p. 325). This productive and distributive aspect of efficiency addresses "a desired effect," or the teleology of an educational system. This teleology has been variously described by philosophers and the founders of a republican system. The "desired effect" of a modern republican system, it will be argued is equity or fairness which is more inclusive than equality.

### **Standard of Operational Efficiency**

#### **Efficient Production Function**

It has been well documented that public education in the Western democracies is managed according to the dictates of a Taylorist system of scientific management, expert systems analysis, and technocratic rationality (Callahan, 1962; House, 1978; Wise, 1979). During the 1980s the debate on education was dominated by educational reform initiatives linking the production model of efficient outputs of corporate America to the American public schools. What has followed has been called by Doyle and Hartle as the "Greatest and most concentrated surge of educational reform in the nation's history" (cited in Chubb and Moe, 1990, p. 5). The overriding emphasis during this period has been to create schools systems that will make the nation more productive.<sup>3</sup> Greater efficiency is supposed to restore public confidence in the schools. What

is missing, however, are any clear images of what a system of education based on a technocratic efficiency model emerging from the third wave might look like.

Efficiency in an educational system is thought to be a value free function requiring scientific analysis and quantifiable output measures. And even though there are some precautions noted, the educational research community has reinforced and conveyed technocratic modernism to policy-decision-makers. Hanushek, for example, has identified a problem of specification era leading to biases in the estimated effects of educational inputs<sup>4</sup> (Hanushek, 1991). However, Taylorism, as well as behaviorism, are displaced concepts from business and industry--Taylorism from the factory, and behavioralism from the laboratory (Schon, 1963). They linger on, largely owing to relentless quest for the "one best way" as a goal of educational reform.

### Cult of Efficiency

Raymond Callahan (1962) in his Education and the Cult of Efficiency shows how a cult of efficiency based on the principles of scientific management dominated our concept of an efficient system throughout the decades of the 1920s, 1930s, and 1940s. In the 1950's technocratic expert systems analysis models of management and accountability emerged. Ernest House (1978) in his Evaluation as Scientific Management in U. S. School Reform provided an historical critique of the introduction of cost/benefit accounting techniques into federal educational legislation in the 1960's, while Arthur E. Wise in his



Legislated Learning: The Bureaucratization of the American Classroom (1979)

elaborated the "hyperrationalization of American schooling by legislative and judicial procedures." An efficient system would maximize the "production function" by minimizing input costs and maximizing output benefits. Thus, the concept of operational efficiency from scientific management came to shape the conception of economic efficiency in schools.

Robert McNamara brought expert system analysis from Ford Motor Company to the Department of Defense where it was used to run the war in Vietnam. Robert McNamara had demanded the "biggest bang for the buck" and this demand for greater operational efficiency echoed at countless school board meetings throughout America. Alice Rivlin in turn brought it from the Department of Defense to Health, Education and Welfare where it was used by the Office of Education to administer and evaluate the impact of Title I (House, 1978). This management model emphasized the operational efficiency as a production function by measuring the relation between educational "outputs" in mathematical cost-to "inputs." It led quickly to such systems of documentation and accountability as competency based education (CBE), performance based education (PBE), competency based teacher education (CBTE), behavioral objectives, mastery learning, learner verification, federal, state, and local assessment and criterion norm-referenced testing (Callahan, 1962).

Efficiency defined as a scientific and quantitative function of measurable output led to "output" oriented educational legislation in the states for

educational reform. The following is an example of legislation passed in 1972 to make the Virginia educational system more efficient:

The percentage of the student population achieving at or above grade level norms or the equivalent as measured by approved standardized achievement test should equal or exceed the mean ability level of the student population as measured by appropriate scholastic aptitude tests (Wise, 1979, p. 16).

Thus, the state legislatures themselves devised technocratic accountability measures to maximize "efficiency" by constraining the individual production function. Operational efficiency has become a standard that has prevailed over rule of law, constitutional checks and balances, and ethical principles of the common good, thought by the philosophers for centuries to have imposed the notions of rights, duty, restraint and mutual obligation upon citizens.

### Fallacy of Economic Efficiency

Pareto, who viewed social systems from a perspective of equilibrium, presented the concept of social optimality in the 1920's which is now known as Pareto optimality. This social and economic theory supports the concept of private utility, and is an offshoot of the Benthamite utilitarianism which has defined the public interest in terms of economic efficiency maximization since the early nineteenth century. In fact, "It might be argued that every application of utilitarianism in practice, as to law, has in fact used only the concept of Pareto-optimality" (Arrow, 1973, p. 279).

A social decision is Pareto-optimal if there is no alternative decision which could have made everybody at least as well-off and at least one person better. Classical economists from Bentham to Edgeworth, including Alexis De Tocqueville, have assumed that the problem of "tyranny of the majority" or of irrational or unfair majorities, could somehow be mitigated if a rule that actions or policies which will maximize the total utility of the whole community should always be put into effect (Barry, 1973). Lester Thurow (1975) notes that "The basic thrust of the economics profession has been to seek specification of economic equity in the aggregation of individual preferences rather than in universal values" (p. 33). Thus, economic efficiency has become a standard of social justice.

According to the utility theory of the common good, each individual is expressing a preference for one social alternative against another, but no measurement of preference intensity is required. This means that "A manifestly unjust allocation, with vast wealth for a few and poverty for many, will always be Pareto-optimal if there is no way of improving the lot of the many without injuring the few in some measure" (Arrow, 1973, p. 279). Pareto-optimality supposedly leads to efficient solutions "... making it possible to isolate the debate on distributive problems which it cannot solve" (p. 279). Consequently any defence of economic efficiency in Paretian terms tends to justify the doctrine of utility of Mill and Bentham and tends to justify the status quo of unequal distribution.

J. R. Hicks, writing in the 1940's saw that the concept of economic efficiency is a modern function of the "Invisible Hand" operating without ethical restraints to maximize the social welfare automatically over a period of time:

If the economic activities of a community were organized on the principle of making no alterations in the organization of production which were not improvement in this sense [that is changes where the gainer could compensate the losers and still be better off] and making all alterations which were improvements that it could possibly find, then, although we could not say that all the inhabitants of that community would be necessarily better off than they would have been if the community had been organized on some different principle, nevertheless there would be a strong probability that almost all of them would be better off after the lapse of a sufficient length of time (Hicks, 1941, p. 112).

Thus the legacy of classical utilitarianism of Jeremy Bentham, James Mill, John Stuart Mill, Henry Sedgick and G. E. Moore is evident in "cost-benefit analyses" and defenses of market economies (Labaco, 1986, p. 15).

The theory of utilitarianism on the surface had much appeal. The utilitarians argued that the right thing to do, i.e. the most efficient and expedient thing to do, is simply what produces the most good for the greatest number of people, conceived as an aggregate sum. A moral equation is introduced by Mill: "'Utility,' or the 'greatest happiness principle' holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain..." (Mill, 1965, p. 10). Secondly, the "rightness" of acts is determined by the contributions to happiness which makes utilitarianism a form of teleology only the end (telos) determines what is right, not the conscious intent to do

right, or the intentional virtue of Simon or the deontology of Rawls in which the right is prior to the good. Laboco (1986) notes that "right" (i.e. efficiency) is determined by calculating the amount of good to be produced. Thus, the "good" is prior to the "right" and the right is dependent upon it (Laboco, 1986).

Bentham had judged the utility of every act:

Proceed as follows. Begin with say one person of those whose interests seem most immediately to be affected by it; and take an account. 1. Of the value of each distinguishable pleasure... 2. Of the value of pain.... 5. Sum up all the values of all the pleasures on the one side, and those of all the pains on the other.... 6. Take an account of the number of persons whose interests appear to be concerned; and repeat the above process with respect to each....Take the balance...(Bentham, 1973, p. 21).

In sum, this basic idea of utilitarians, i.e. that actions are determined to be right or wrong depending on whether they promote "happiness" or good, pleasure or pain, flies in the face of fairness which requires that individual rights or claims not be overridden by consideration of the "happiness" just so long as the majority would be better off in the end, or that all private interests would balance out in the end. Mill, however, argued that justice was a part of utility (1957, p. 20). "I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility" (Mill, 1957, p. 73) and this notion was defended by Hume who argued that public utility is the sole origin of justice (Hume, 1986, p. 75).

From this standpoint, efficiency that promotes Paretian Optimality is not value free. It promotes an equal distribution of goods and services regardless of

different talents or abilities or resources (inputs) in a system where all students are treated equally or counted as one. F. A. Hayek has noted that according to this distribution, governmental affirmative action is not needed, because all are treated equally or unless a "condition" of disparity or inequality was created by government itself (Alexander, 1982).

However, equity, according to Rawls' "difference principle," does not require that government alone is to blame for basic human selfishness or injustice in the desire to share goods and services. The opposing view that efficiency is economic equity holds, in accordance with Rawls' difference principle that "All social primary goods, liberty and opportunity, income and wealth, ... are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored" (Rawls, 1971, p. 303).

#### Efficiency as Preference Aggregation

Economic or operational efficiency is frequently seen as a function of cost-benefit. Efficiency defined in this way is a systems function without waste and is thus seen as a maximization problem. In general public policy, efficiency is not seen as a social-welfare function that commands unanimous assent, but as a utility function (Thurow, 1975, p. 35). Economists use an aggregation approach where an efficient system would maximize utility by aggregating or summing up individual utilities so that no one imposes his preferences on anyone else (Thurow, 1975). As to what weights or measures are used to add one person's

utility to another's, "The simplest is to add individual utilities and to use total utility as a measure of social welfare" (Thurow, 1975, p. 34). What is left is Paretian efficiency--more is better than less, with efficiency being based upon arbitrary distribution of income or services. The problem here is that there is no way to know according to utility theory the Archimedean point where there is some observable or measurable point in the system's ontology when we know that individuals are equally satisfied. Thus, the utility function and the production function are value free requirements of efficiency. At most efficiency signifies equality, because the utility production function postulates that only when everyone has the same utility function, i.e. is counted as one, then a completely equal distribution is required to maximize social welfare (Thurow, 1975).

#### Naturalist Fallacy of Cost Benefit Theory

The common good or public benefit as a goal of efficiency still takes a back seat to cost-benefit theory. This is evidenced in the courts by the debates over the Price-Anderson Act on nuclear waste where the threat to public safety from nuclear technology focussed on "...how much of a danger it poses, and how acceptable this danger is when the risks are weighted against the benefits" (Sharder-Frechette, 1979, pp. 90-95).

Philosophers have resisted any attempt to make efficiency a normative principle expressing universal values. Paretian distribution or redistributions are

seen as value neutral in addressing the efficiency problem: "...given some income, how do I allocate it across goods and services, private charities, and public taxes for transfer payments in such a manner as to maximize my utility" (Thurow, 1975, p. 38).

The utilitarian philosopher G. E. Moore (1951) argued against attempts to deduce ethical conclusions from purely nonethical, empirical premises and the tendency to replace ethics with the natural sciences. In general, justice is subordinate to utility in modern utilitarianism of J. J. C. Smart (1968). Yet clearly the efficiency argument against utilitarian distributions of nuclear costs and benefits, like the distribution of educational costs and benefits, could deny, for reasons of financial expediency, the rights of a minority to collect damages or benefits to which they are entitled. Sharder-Frechette (1979) argues that "if it were possible to produce ethical directives solely on the basis of scientific facts, then it would be moral to do whatever it was scientifically possible to do" (p. 95) either in the name of efficiency, productivity, or utility.

Questions of public morality and authority inevitably arise from a cost-benefit approach to economic efficiency. Americans might ask, for example, why individuals who do not attend public schools should pay for them. In other words, if something benefits a given set of people, why it is equitable for only a subset of that group to bear the costs of the public school system?

"Considerations of equity demand that the rights of the minority cannot be ignored in order to benefit the majority. If they are forgotten, then the very



concept of right becomes meaningless. What is operative instead is a concept of utility" (Sharder-Frechette, 1979, p. 95).

It is only logical that school systems, like government agencies, should want to guarantee an efficient return on any investment and to provide the most inexpensive yet abundant nuclear energy or educational services for tax-paying consumers. However, ethically and morally economic efficiency defined in terms of Paretian optimality does not justify the utilitarian solution that a statistically inconsequential increase in technology-induced human fatalities from nuclear energy is any more morally insignificant than that children from poor school districts should not benefit equitably from public investment in education.

The cost-benefit-efficiency/utility argument has been called a "naturalist fallacy" by numerous philosophers in an intense normative "is/ought" deontological debate. According to Alastair MacIntyre, the "naturalistic fallacy" informs and guides the hardheaded, pragmatic public policy initiatives characterized by the cost-benefit efficiency approach (MacIntyre, 1977, p. 217). Philosophers argue that a "naturalistic fallacy" is a logical error that is committed whenever one attempts to derive an "ought" from an "is" (Bruening, 1971) and should be avoided.

The "naturalistic fallacy" was first discussed by G. E. Moore in Principia Ethica who demonstrated that anyone who drew ethical conclusions solely from

empirical observation and induction was guilty of the naturalistic fallacy (Moore, 1951, pp. viii-ix). It occurs when one fails to realize that ethical propositions are different in kind from nonethical ones: "Those that commit the fallacy do so because they assume that ethics is no more than an empirical or positive science" (p. 39). He argues (p. 40) that the fallacy "consists in substituting for 'good' some one property of a natural object or of a collection of natural objects; and in thus replacing ethics by some one of the natural sciences" (p. 39). Frankena (1976) observes that the "naturalistic fallacy" is a form of "moral blindness" in which one does not see the unique normative character of ethical statements (p. 16). Searle argues that the naturalistic fallacy is committed whenever one attempts to derive an "ought" from an "is" (Searle, 1964, pp. 43-58). Following Kohlberg, Giarelli (1976) maintains: "To fail to consider the open question is to commit the naturalistic fallacy."

All of these philosophers agree that efficiency is not value free. As long as the doctrine of economic efficiency remains the dominant public philosophy, it must be understood and discussed on moral and ethical grounds, and especially since trade-offs may be required in determining social values. By committing the "naturalistic fallacy," policy makers fail to include considerations, both of nonscientific parameters and of the rights of the public. The result of such economic efficiency analysis and evaluation, assumed to be value free, is to view policy as narrowly technical or to consider individual rights and equal protection under the law in strictly economic and utilitarian terms. This would stifle

democratic decision making because decisions will ultimately be left up to, not the majority of citizens, but to "experts" of technical efficiency (Sharder-Frechette, 1979).

### Fallacy of Laissez-faire

The doctrine of utility and economic efficiency has informed the doctrine of laissez-faire which has been questioned on grounds of the most efficient use of resources. Philosophers and economists such as Keynes (1926) and Galbraith (1952) have consistently challenged the libertarian doctrine of the Invisible Hand which has led to the principle of laissez-faire and consumer sovereignty--the rule that individuals should be free to use their income as they see fit in pursuit of their own private interests. They question whether the play of free competition will result in the most efficient or equitable use of resources.

Alfred Keynes (1926) questioned the efficiency of Paretian maximization of resources that puts "the most successful profit-makers to the top by a ruthless struggle for survival, which selects the most efficient by the bankruptcy of the less efficient" (p. 40). Laissez-faire economic efficiency tends to disregard the final ends or teleology of a system. "It does not count the cost of the struggle, but looks only to the benefits of the final result which we assumed to be lasting and permanent, once a Paretian equilibrium, balance or harmony of interest is maintained. Any system governed by this standard of operational efficiency projects a particular view of the common good where:

The object of life being to crop the leaves off the branches up to the greatest possible height, the likeliest way of achieving this end is to leave the giraffes with the longest necks to starve out those whose necks are shorter (Keynes, 1926, p. 40).

For libertarians the common good is often taken to be a higher Gross National Product. Inequalities of any distribution system "are justified as necessary to promote incentives and growth--more income for everyone (Thurow, 1975, p. 48). This "common good of growth" theory is closely connected with the laissez-faire notion of producers' merit (marginal products) and paying everyone only as to maximize economic output. R. A. Musgrave (1962) describes the dilemma of social policy conducted on the basis of operational efficiency which Bentham had made into the rule of laissez-faire by adapting the concept of economic efficiency into the utilitarian philosophy (1962). In his A Manual of Political Economy in 1793, Bentham writes: "The general rule is that nothing ought to be done or attempted by government; the motto or watchword of government, on these occasions, ought to be--Be quiet...." (cited in Keynes, 1926, p. 29). However, as Musgrave and Keynes argue, certain situations exist in which the market on its own does not satisfy the conditions of efficiency, that is the market itself is "imperfect." This requires public policies to initiate controls or "natural monopolies" such as antitrust legislation, financial regulation and the like. When marginal cost equals price or average revenue and average cost is above marginal cost, subsidies are needed. The issue that is apparent is how to publicly finance such a system (Musgrave, 1962). Modern day economists also

address the related problem of "externalities" whereby external benefits or costs are not accounted for in the market calculations. The problem then becomes "...what costs or benefits to assess, and on whom, and who is to be paid or charged, and how much" (Musgrave, 1962, p. 109).

### Efficient as Public Interest

When we consider a system in a context of Pareto- optimality, over time, i.e. as a temporal system, the accumulations of property and power add another disturbing dimension to the efficiency equation. According to Talcott Parsons in The Structure of Social Action (1937), wealth and power is maximized as "interest:"

Other things being equal, it would always be irrational not to maximize wealth and power [because they] are potential means to any ultimate ends...It is primarily these generalized means to any ultimate ends, or generalized immediate ends of rational action, to which Pareto gives the name "interests" (cited in Barry, 1966, p. 192).

Where such a perception of the public interest operates in and around a subsystem of the polity, such as an educational system, equality of opportunity might not be feasible. Such a concept of self-interest held by the wealthy or powerful, is not likely to address the disparity, unless the state created the disparity itself. According to F. A. Hayek, a conservative economist who supports impartial and equal funding in education, maximum utility is an

illusion. He sees limits to the state's guaranteeing equal educational outcomes for all children. Maximization is an illusion beyond the scope of both utility and public commitment. With regard to maximizing educational resources, Hayek writes:

To achieve this [maximum utility to meet all educational needs, government would have to control the whole physical or human environment of all persons, and have to endeavor to provide at least equivalent chances for each;...Attractive as the phrase of equality of opportunity first sounds, once the idea is extended beyond the facilities, which for other reasons have to be provided by government, it becomes a wholly illusory ideal, and any attempt concretely to realize it apt to produce a nightmare (Hayek, 1976, p. 75).

### Pluralist Efficiency

Thus the ideas of Pareto, adhered to by a number of marginal utility theorists like F. A. Hayek, have made economic efficiency a justification for pluralism and choice.<sup>5</sup> A case for choice can be argued for not meaning a greater investment in public education. Utilitarian efficiency assumes a sum-of-utilities form relevant to a pluralistic society where not the interest of everyone qua member of "the public," but the net interest of any large and nonassignable group is the only criticism. Pluralism, which has been defined by Lowi as "interest group liberalism," relies heavily on the Pareto-efficiency legacy.

Thurow explains that the Pareto aggregation approach begins with individual utility function expressing a selfish satisfaction. The second ingredient, however, is the "individualistic social-welfare function" of efficiency

which expresses "the relationship between social welfare and the utility of each individual in society" (Thurow, 1975, p. 33). This concept arises from the reason that "social welfare depends upon individual utilities." However, according to Paretian efficiency, each person alone determines the amount of utility flowing from his income:

No one gets to impose his preferences on anyone else. Social welfare is found by aggregating individual utilities. Since no one is given a zero or negative weight in the social-welfare function, every time an individual is better off (i.e. has more utility) and no one else is worse off, social welfare must increase (Thurow, 1975, p. 33).

Pluralism also relies on bargaining, game theory, and the testimony of experts for its legitimacy. Pluralism (the offspring of harmony of interest doctrine) questions the common good because it relies upon principles of operational efficiency. Efficiency tends to depend on "experts" who decide policy based upon theories of marginal productivity that may not produce social equity.

### Efficient as Equity

The problem, of course with operational efficiency is that equity remains unspecified. "Moral discourse is reduced to the language of the market" (Strike, 1991, p. 203). No particular distribution is advanced as an equitable distribution, and no rules are established for a "just" economic game (Thurow, 1975, p. 50). Economic efficiency according to Pareto optimality has limitations especially when considering private versus public or net interests. Utilitarian

justice "is nothing more or less than choosing those acts that maximize the average welfare." Efficiency is value-free where "the average utility is unconcerned about features of a distribution of benefits other than maximizing their average" (Strike, 1991) with no attention paid to those in greatest need.

A principle of efficiency which fosters everyone being counted as one does not resolve the problem of the common good. Economic efficiency considered as aggregating preferences also does not necessarily make for a fair distribution of goods where justice is as Aristotle defined, as "a species of the proportionate" (Nichomachean Ethics, 1952, Book 5, p. 378), and where "proportion being not a property only of the kind of number which consists of abstract units, but of number in general" (p. 378), or where injustice is "what violates the proportion" (p. 379). A mere aggregation or sum of preferences that is arithmetically proportionate by each person's utility being counted as one, according to the Benthamite formula, does not constitute efficiency as equity or that maximizes the welfare function. Efficiency as a function of laissez-faire addresses only marginal productivity: "Economic efficiency exists only when there are no changes that could be made that would make some people better off without making others worse off" (Thurow, 1975, p. 43).

A system then is efficient, or Pareto optimal, only "if every factor is paid in accordance with its marginal contribution to the total supply of economic goods and services...and if marginal products are determined by competitive supply and demand conditions" (Thurow, 1975, p. 43). Paretian or utilitarian



efficiency is inadequate as a standard because it depends on individual choice, which encourages an arbitrary distribution of income because individuals "have preferences about maximizing their own position in the current economic game...." For all these reasons, Paretian or economic efficiency is "too limited to serve as a general specification of economic equity" (p. 41) unless some "weighing schemes," (p. 34) are provided as a standard (p. 34) "...preference aggregation requires rules to eliminate perverse preferences" (Thurow, 1975, p. 35).

The question must now be asked what principles or rules are applicable to a moral concept of efficiency? "What do equity and justice require of the state in providing for a [efficient] system of education?" (Alexander, 1982, p. 194). In this regard Paretian efficiency is a value-free distribution where the pattern of rewards or benefits is morally neutral and where means and ends need not be equivalent:

In a free society in which the position of the different individuals and groups is not the result of anybody's design could within such a society not be altered in accordance with a principle of general applicability--the difference in rewards cannot meaningfully be described as just or unjust (Hayek, 1976, p. 83)

Problems of efficient allocation are exacerbated in educational systems for example, because goods and services must be satisfied through the public budget. But where an educational system is not the "result of anybody's design," but is "the traditional definition of efficiency vis-a-vis the pattern of demand resulting

from a given distribution of money income breaks down" (Musgrave, 1962, p. 107). An efficient educational system requires adjustment through government intervention. As balance is created, for example in educational systems through finance formulas to determine the relative real incomes and require linking allocation to efficient distribution.

Since the new "welfare economics" of the thirties and Keynes' rejection of the interpersonal utility comparison, a new standard of efficiency has emerged. Musgrave (1962) argues that, with regard to government policy, progressive taxation is deduced from the assumption that marginal income utility curves are declining and that greater tax yields from the more wealthy are justified because their effects equal lower yields on poorer people. Any arrangement or system is "efficient," i.e., in the public interest, if someone gains while no one loses. Such a definition of efficiency would satisfy the moral and ethical requirements of distribution and address the fallacies of Paretian optimality.

Thus, it can be argued that the "strict supply and demand definition of classical economics does not apply to a social function such as education" (Alexander et al., 1989, p. 152). Two reasons are apparent for the misapplication of the laissez-faire definitions to public institutions: (a) The benefits of education are not easily quantified (Alexander et. al., 1989, p. 151), and (b) because the costs and benefits of education which is a nonmaterial good have complex externalities beyond those who actually receive education make it extremely difficult "to determine the full value received for the dollar invested"

(Alexander et. al., 1989, p. 152). Clearly, efficiency means more than cost effectiveness. It means just management and control when applied to universal education. Social justice and welfare and an interventionist state are especially important to an "efficient" system of education.

### **Standard of Social Efficiency**

#### History

The concept of "social efficiency" is as powerful a definition as that of "economic efficiency" associated with classical economics. It suggests a sense of social justice within the polity that has been overshadowed by the premises of classical economics and the notion of a "well-oiled, value-free machine" (Alexander et al., 1989, p. 153) and paved the way for the modern concept of economic equity. The concept of "social efficiency" emerged from the Progressive era in reaction to Taylorist efficiency. Various theorists from Herbert Croly to Thorstein Veblen saw efficiency as a standard for leadership and public administration which subordinated the profit motive to the social welfare or public good.

The concept of social efficiency stipulated that the state and its administrators have a moral duty and democratic obligation to ensure political and social goals in a democratic society (Haber, 1964). Its champions gave new

meaning to civic virtue by applying to efficiency in human relations and leadership in industry, the work place, and in public agencies.

The concept of "social efficiency" recognizes social harmony leading to a more direct and responsive democracy as an instrument of social justice. Progressives such as Croly, Lippmann, and Brandeis, rejected the doctrine of commercial efficiency which championed profit and the output-input ratio of dollars of laissez-faire. They were more concerned with "the delicate adjustment of material means to ends" (Haber, 1964, p. x).

Thus the doctrine of "social efficiency" as it was understood during the Progressive Era, addressed the means ends problem described by Thurow.

Efficiency:

not only signified a personal quality, a relationship between materials, and a relationship between investment and revenue, but, most important, it signified a relationship between men. Efficiency meant social harmony and the leadership of the "competent" (Haber, 1964, p. 32).

Such a definition of efficiency is attuned to the requirements of a harmonious system characterized by Horace Mann's "balance wheel" and provides the source for Terry's theory of "administrative conservatorship" (1990). Social efficiency reflects the concept of responsible leadership of public institutions as a public trust leading to the common good.

The progressive "social efficiency" movement readjusted Taylorist doctrines of scientific management to modes of progressive thought "in the hope of discovering laws of management which, like laws of nature, would be impartial

and above class prejudice" (Haber, 1964, p. x). The early "social efficiency" movement, or the "efficiency craze" (Haber, p. 30) thus represented a general loosening of the canons of Taylorist efficiency and alerted many egalitarians to excessively authoritarian public administration.

The philosophers of social efficiency advocated social reform in society in general as well as industrial and governmental reform. Especially after World War One, industrial relations theorists like Morris L. Cooke and Henry S. Dennison subordinated the economic profit motive to the service motive for the good of society and the state. These early theorists "to whom moral law seemed as much a matter of fact as the law of gravity" believed that ethics in economics and industry should "be disregarded only at one's peril" (Haber, 1964, p. 162). These social efficiency experts in America envisioned the "fusion of fact and value" (p. 162) and proffered "social efficiency" as an antidote to the amoral profit motive of laissez-faire through a more humane and responsible public and private administration.<sup>6</sup>

The concept of social efficiency also embraced the notion of an "interventionist state" and looked to social control, national guidance, acting upon the Keynesian vision of the demise of laissez-faire and toward the welfare state. Theorists rejected the disorder and inequity of an uncontrolled market. Rather they advocated an expanding "professionalism," epitomized by Woodrow Wilson's appeal to the revitalization of the civil service based on regime values.

In short, operational efficiency as practiced in industry and the economy was deemed immoral. Modern theorists, heirs of this legacy such as Zuboff in The Age of the Smart Machine (1984), have come to reject the separation of administration from management. They draw upon this legacy of social efficiency and such early theorists as Ordway Team who believed that "regard for the personality and for the richness and fullness of life for the rank and file of the workers of society is a necessary concern...." (Ordway Team, cited in Haber, 1964, p. 239).

This moral aspect of "efficiency" (which could function in any modern uniform "system" whether public or private) reflects the concept of civic virtue. It is efficiency conceived as social justice in the Aristotelian sense of commutative justice "which is a part of virtue," (Aristotle, Ethics, 1952, Book 3, p. 377). Social efficiency then is a form of justice perceived by the Progressives to be a kind of "complete virtue...in relation to our neighbor... (Aristotle, Ethics, Book 3, p. 376). Thus, "social efficiency" provides a more useful and practical barometer for equity in systems of education than cost-benefit determined by units of economic utility or production, especially since not all educational outcomes can be quantifiably measured.

#### Social Efficiency as Civic Virtue

Since the turn of the nineteenth century, efficiency has been associated with public morality. Social efficiency did not reject Taylorist commercial or

productionist notion of efficiency outright. Theorists simply attempted to make Taylorist efficiency more democratically responsible and applicable to civic virtue. One of first attempts to apply the concept of social efficiency to the common good was the Bureau of Municipal Research in New York. The Bureau wanted to make the government more efficient and responsive to the people, as a welfare agency (Haber, 1964, p. 111). Its spokesmen argued that:

The efficiency of government was to be measured not only with reference to its established framework and goals, but also by taking into account those community needs that were not yet satisfied (Bureau of Municipal Research, cited in Haber, 1964, p. 111).

Haber notes that many members of the Bureau served in philanthropic organizations and had special empathy with the lower middle class.<sup>7</sup>

The social efficiency movement gave Taylorist efficiency a moral emphasis. This trend is noted in famous Eastern Rate Case which linked the efficiency of scientific management to the common good or public benefit<sup>8</sup> (Haber, 1964, p. 54). Harrington Emerson established a link between scientific management and personal efficiency in the tradition of Benjamin Franklin, "The father of Efficiency" known for his famous list of virtues. Emerson's moralistic "efficiency engineering" was a blend of management mechanisms and moral exhortation that defined efficiency as "the right thing...done in the right manner..." (cited in Haber, 1964, p. 55). William James in Energies of Man, a frequently quoted essay on efficiency, wrote: "Compared with what we ought to be we are only half awake...We are making use of only a small part of our possible mental and

physical resources" (cited by Haber, 1964, p. 56). According to Haber, moralistic social efficiency became so attractive during the progressive era that many believed "that the spread of efficiency systems throughout society would be inevitable" (p. 59).

Social efficiency as virtue also had implications for management. Writers like M. L. Cook in his essay "Spirit and Social Significance of Scientific Management," addressed social efficiency in terms of social control, planning. Efficient systems, it was believed, had an underlying harmony and were inevitable "because they were in line with economic self-interest of all groups and in accord with moral law" (p. 60). Haber shows that scientific management as moral efficiency even became a moral standard in the churches.

In the early 1900's many efficiency societies sprang up as manifestations of the "efficiency craze." The slogan of the Progressive party in 1912 was "Efficiency." The conservation, scientific management, and Americanization movements all were based on ideas of efficiency that involved a rejection of laissez-faire and the acceptance of social guidance and constraint in keeping with the traditional conception of republican government. Efficiency and co-operation also became by-words of business in the progressive era, as both concepts were interlaced with considerations of morality and profit (Haber, 1964, p. 72).



### Efficiency and Moral Leadership

Many prominent intellectual leaders of the progressive movement associated efficiency and scientific management with enlightened leadership of the competent. Louis D. Brandeis, a New Englander was a proponent of social legislation. He joined the progressive admonitions of social workers, muckrakers concerned with public health, safety, morals which were not adequately protected by a market economy and advocated government control and social responsibility. Brandeis felt the need to civilize the market place through universities, professionalism, and a leadership of the "greatest ability and intelligence," though based on consent and a fruitful interaction of expert and public opinion.<sup>9</sup>

Herbert D. Croly's views on efficiency in progressive thought was no less influential. He taught that the underlying unity of nationhood should be replaced "by a conscious national ideal which would harness the special interests and purposes of the country to the general welfare (cited in Haber, 1964, pp. 138-40). Specifically, Croly advocated a plebiscitarian administocracy consisting of "exceptional men" who would make possible an efficient democratic organization "for the joint benefit of individual distinction and social improvement" (cited in Haber, 1964, p. 86).

Because of this association of "efficient" administration and social control through scientific management, Taylor's scientific efficiency became associated with harmony of the classes through a common commitment to production

applied to national ideals which would stand above class and avert social dissolution (Haber, pp. 395-99, 409, 403-05).

Walter Lippmann, like Herbert Croly was lionized by The New Republic for his interest in scientific management. Lippmann also saw leadership as the key to social efficiency and public morality in the face of both rational and irrational forces. He championed statesmanship as a means to harmonize these forces through the scientific method, a discipline for intellectual order and social co-operation. The state was to be the supreme instrument of civilization. Lippmann's Good Society (1937) would have a strong, active state. Like Croly's ideal state, it "...would use its powers to minimize social conflict and promote the development of social harmony..." against class interests and sectional prejudices (Haber, 1964, p. 93). Trusts, labor--all must be disciplined and joined to the other broader interests of civilization (Lippmann, 1937).

Intellectuals like Lippman, Brandeis, and Croly and other Progressives linked the ideals of the common good to efficiency, paving the way for a modern concept of economic equity. Since all efficient organizations produced natural pyramids of power, Lippmann argued, a strong active state must have efficient, and moral leadership. Efficient leadership would nevertheless be restrained by forms of direct democracy. Leaders must be responsive to the needs of the people and organize for popular support. They would therefore rise above the profit motive (Lippmann, 1937). While the Eastern Rate Case was still in progress, Lippmann advocated that the profiteer give way to the "industrial

statesman," and praised the scientific management efficiency experts who were "setting the world in order" and "humanizing" work, as well as the new business leaders who would forsake the "cesspool of commercialism" for the independence and dignity of professionalism (1937, pp. 827-28, pp. 10-11).

The progressive philosophers, Brandeis, Croly, and Lippmann, redefined the concept of efficiency:

Stepping outside the dominant modes of progressivism, they tried to construct reform programs which could be fulfilled without a direct appeal to conscience. They attacked commercialism and acquisitiveness and wished to substitute the non-pecuniary posture of the professional (Haber, 1964, p. 97).

Like the American founders, the Progressives believed in a reliable and dedicated civil service. However, behind the spirit of non-partisanship and municipal government of the progressive era, was the concept of the executive linked to efficiency. The executive (or public administrator) was a natural aristocrat who championed social efficiency for the common good and strived to bring about order and uniformity in institutions. The executive would be a natural aristocrat who had the "...strongest claim to the right to voice the general will of the people of the whole state" (Holcombe, 1917, p. 270).

Thus the Jeffersonian ideal of a model of a civil servant evolved into the scientific efficiency expert, a new prototype of administrators in the twentieth century who would create an administrative state where conflicting purposes would disappear (Haber, 1964). The call for government efficiency was a plea for public unity, harmony, and leadership of the competent.<sup>10</sup>

### Social Efficiency as a Regime Value

Haber notes that efficiency was a moral standard for an elite cadre of public administrators. The concept of "industrial statesmen" however provided no reference to the "due sense of national character" proposed by Publius in Federalist No. 63 (1961). There would be no loyalty oaths to uphold the values of the regime. That is because, he argues, "efficiency" itself had become a regime value.

For the progressives, efficiency represented a standard of governance, an instrument of social harmony, and a method of mechanical operation. In this way that the concept of "effectiveness" became associated with efficiency. Beginning with the Tilden Commission report in 1919, comparisons of government to the business corporation pointed out the corporation's singleness of purpose, discipline and effectiveness.

Progressives also associated efficiency with the polity and democracy. They shared a vision of a citizenship based upon a fusion of fact and value. Haber notes that they believed in a shared partnership between "efficient" citizens and "efficient" officials armed with "the facts" of Taylorist techniques to serve the common good. The "literature of efficiency" became required reading (Haber, 1964, p. 113) and scientific management was seen as enlightened leadership for the effective cooperation of government. Henry Bruere argued in "Efficiency in City Government" in 1912 that all citizens were had a moral responsibility to participate in government:

Citizens of larger cities must frankly recognize the need for professional service in behalf of citizen interests....Even efficient private citizens cannot deal helpfully with expert governmental questions. Efficient citizens will evidence their efficiency by supporting constructive efforts for governmental betterment (cited in Haber, 1964, footnote 30, p. 112).

Administrative executives would be trained in public service to serve a profession of equal standing with medicine and law (Haber, 1964, p. 112).

Governmental efficiency, like industrial efficiency, meant planning or the execution of planned programs that would be coordinated and controlled under continuous expert direction in many states<sup>11</sup> (p. 115).

#### Efficiency: A Moral Goal of Government

Considering the progressives and the founders for a civil service, and Jefferson's concept of a natural aristocracy, a definition of efficiency as "uplift" has emerged that has special relevance to a system of public schools or any administrative agency or system today. Efficiency, Haber argues, has become a moral goal of government: "Alongside the well-known campaign for direct democracy was a less familiar but equally important campaign to carve out an inviolable realm of altruistic expertise in American government" (p. 116).

We have noted that the theory of administrative conservatorship demonstrates that public schools like other government agencies are a public trust dependent upon moral leadership. The Progressives called attention to the

ethical, class conscious implications of the term efficiency which a simple, commercial notion of efficiency ignores.

The motto of the progressive era was "uplift" (Haber, 1964, p. 134) which means that efficiency is associated with democratization. Haber says this meant lifting up the lower classes into the middle class. Thus the progressive's concept of efficiency relates to the goals of social equity in our own era. Thorstein Veblen, for example, a Taylorist, based his critique on an overly wasteful America characterized by conspicuous consumption on the decline moral standards of the rich. Like Taylor, Veblen pictured the industrial system as a machine process with a goal of efficiency (Veblen, 1958), but he also drew attention to the growing class consciousness and elitist of engineers within the Taylorist system.

It has been argued that the entire efficiency craze was elitist, but along with progressive reforms and class consciousness in America, the "efficiency craze" also provided ethics of professionalism and emphasized systems planning and control to achieve uniform and equitable representation and administration. Efficiency ultimately came to mean for the progressives and reformers alike, an "altruistic expertise" that required a campaign for governmental leadership characterized by efficiency (Haber, 1964, p. 116).

Haber argues that this campaign for governmental efficiency also revealed the humanist side to Taylorism, which a close reading of Taylor's Principles of Scientific Management (1923) demonstrates. Even though Taylor offered a brutish, degrading, and exploitive example of efficiency in his time and motion

studies of Schmidt, the production worker, Haber (1964) observes that Taylor advocated class harmony through a kind of social efficiency that continually increased production for the good of the company and nation; a greater efficiency would instigate a social bond among all classes and a growing prosperity (Taylor, 1923).

### **Efficiency as Equity**

Each of the preceding standards of efficient have merit. The utilitarian theory is impressive, and social efficiency changed the conception of industrial efficiency from purely scientific or economic cost-benefit and profit and gave the term a moral resonance suggesting civic responsibility on the part of the government and its leaders. But neither of the preceding definitions deal with the claims, merit, and distribution in accord with what is "due" to persons in a system. They focus almost exclusively on the allocation aspect of efficiency: who is to receive what or in what manner.

### **Efficiency as Justice**

Efficiency as equity assumes another standard, the standard of equity or the common good. "Most would contend that the issue of equity is simply one of justice" (Alexander, 1982, p. 195). The requirements of justice depend upon a moral standard. Alexander distinguishes between these terms which are relevant to the definition of efficient:

equity is more than equality. Like justice, it is abstract and less susceptible to definition. Equality, on the other hand, as a general standard conveys an element of prescription and measurability. While justice may be commonly defined as giving everyone his due, the term "equality" more specifically refers to division, partition, and redistribution (Alexander, 1982, p. 195).

Equity is more than equality. But according to classical utilitarianism, equality is the standard for allocation based entirely on utility. For Mill there was no theory of justice separate from the demands of utility, although utilitarianism does not deny the goal of the common good, i.e. happiness for the greatest number. Individual claims on the basis of such notions as merit "equal treatment" or "desert," however, can simply be overridden when the "greater good" demands it, because conflicts in the common rules of justice can be adjudicated only by their reference to utility.

Furthermore, traditional notions of justice appear to be flouted by a theory that claims the "right" act is whatever maximizes the good or where individual rights or claims are overridden by consideration of the greater "happiness" of others. Justice according to the doctrine of utility would mean that if lynching an innocent person promoted the common good or the "greater good" required it, all individual rights and claims would be ignored.

Mill (1957) acknowledged this problem and concluded that justice was indeed predicated upon utility: "I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility" (Mill, 1957, p. 53). As to a principle of justice itself, Mill argued that there were six common



circumstances of injustice (pp. 54-57) that can be claimed as a "moral right" (p. 62) and that behind justice lies our interest in security, "the most vital of all interests" (p. 67) which is also grounded in utility.

The utilitarian justice of Bentham and Mill depends on utility because conflicts in the common rules of justice can be adjudicated only by reference to utility. Justice<sup>72</sup> implies a binding obligation, but all individual claims are subject to a utilitarian calculus and can be overridden when the "greater good" demands it. "...each person maintains that equality is the dictate of justice, except where he thinks that expediency requires inequality" (Mill, 1957, p. 57). Whatever does the greatest overall good will be "just".

Modern critics of utilitarian justice have raised questions about "... precisely what is required by the greatest good for the greatest number." For example, Rescher in Distributive Justice wonders whether we are to honor the greater number or the overall maximum utility (Rescher, 1966, p. 25). Rescher and others object to "utility," taken alone, as a standard for justice, because the notion of "ought" or "desert" is fundamental to justice and has been completely ignored. However, few modern utilitarians can agree as to what constitutes a legitimate claim. Since the time of Aristotle, philosophers have generally acceded that justice requires, at least to some extent, distribution in accord with virtue or moral excellence, or some merit principle. Maximization of happiness does not always seem good in itself (Rescher, 1966) especially, as Ross notes in The Right and the Good (1930), if five bad people are happy and three go unhappy.

When efficiency focuses exclusively on the allocation of goods and neglects the link between the production and allocation, any system may be found inefficient in terms of equity where justice in its broadest sense of "fairness" is unsatisfied. That the utilitarian approach focuses exclusively on the results of distribution and appears to neglect the means or procedures of distribution has been noted (Barry, 1973). Rawls argues that distributive justice is not the same as "allocative" justice (1971, p. 88). That is, justice is not determined by looking at some pattern or end-state of goods, but by looking at the procedures involved in the basic structures of society.

As to equal opportunity, or equality of access, according to Mill's utility principle: "All persons are deemed to have a right to equality of treatment, except when some recognized social expediency requires the reverse" (Mill, 1957, pp. 77-79). Although utilitarian justice provided by classical utilitarianism does not recognize proportional equity, that is, individual differences that must be acknowledged through proportional, not arithmetical allocation, it has recognized the importance of happiness or the general good as part of a theory of justice. Efficiency as equity, however, requires a higher standard in the distribution and allocation of resources that takes people seriously and does not risk their well being or rights for the sake of others' good. In short, an efficient system, where efficient is defined as the "power to accomplish" will produce the effect of "justice as fairness" (Rawls, 1971, p. 15). In an efficient system, no one in the system is allowed an unfair advantage owing to wealth or circumstance.

### Efficiency, Equity, and Equality

In defining efficient as equity, equity should not be confused with equality. Equity has been defined as distinct from equality. It has to do with the just distribution of resources and justice may or may not require equality. Equal opportunity frequently specifies equity, but this too is a questionable and unspecified concept. In his discussions of equality, Alexander distinguishes between equality and equity which lays the foundation for eight principles for state financing of the public schools. In brief, equity differs from equality in that it depends on additional factors such as merit, need, and capacity. Those with greater need should be given more than those with lesser need. In its broadest sense, equity is a synonym for natural right or justice encompassing the spirit and habit of fairness, justness, and right dealing (Alexander, 1991).

John Rawl's "difference principle" theory, which is based on Rawl's conception of justice and fairness, serves as a guide to the efficient allocation and distribution of educational resources. This principle will ensure a morally efficient "productive effect" of justice in a school system. The utility calculus of arithmetical equality would argue that a system is efficient where the efficient use of resources provided equality of treatment, or ensured fiscal neutrality, or if the state ensured equality of result. However, equality of outputs in education is not always possible to attain. The goal of efficiency in an equitable system is a "just" or "fair" utility maximization which requires that equity be achieved--

beyond a standard of arithmetical equality of the utility calculus where everyone is counted as one accounting for individual differences and needs of students.

### Efficiency Through Principles of Justice

Thurow notes that "utility theory has been searching for...an Archimedean point for a long time without success" (1975, p. 42). He is referring to the essential tension or conflict in society between "individual-societal" and "private-personal preferences." The mere aggregation of preferences does not provide a useful yardstick or principle by which to measure actual systems of aggregation considered as just or equitable systems (Thurow, 1975, pp. 42-43).

Application of the "difference principle" to the production function of efficiency ensures that the system is managed efficiently and that all claims of reasonable and relevant differences are satisfied by the system where unequals are proved with greater resources under a standard of fairness or justice (Alexander, 1991).

Rawls argues that in the "original position" (see chapter on commonality), which is an "ideal" situation of justice because the "nature and aims of a perfectly just society is the fundamental part of the theory of justice" (1971, p. 9), the equal parties would choose two principles of justice: (a) they would secure their equal liberty, and (b) they would establish a principle to that effect:

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all (Rawls, 1971, p. 302).

R. H. Tawney (1964) notes how important the principle of equal liberty is to economic success in life: it included equal access within a dual system of schools in England where a person's economic success in life would be determined by a choice of schools that afford equal advantages. Equal liberty is equality of opportunity where an individual student in a school system has an entitlement to the fullest development of his faculties which affords him the equal freedom to pursue a career of his choice. As Madison noted, this entitlement to basic liberty or equal liberty is expressed as a fundamental or property right:

He [any person] has equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights (cited in Cooke, 1961, p. 59).

Rawls maintains that economic inequalities can affect one's ability to exercise a liberty, and he calls this ability "the worth of liberty" (1971, p. 56), but which he also argues can be equally distributed. This concept has been refuted by Daniels who says, like Tawney that "Equal liberty without equal worth of liberty is a worthless abstraction," since "our historical experience...is that inequalities of wealth and accompanying inequalities in powers tend to produce inequalities of liberty" (Daniels, 1975, p. 263). Rawls observes, however, that except under stringent circumstances (which is for the same or a more extensive system of liberties), parties would never want to permit any uncompromising of basic liberties for the sake of other social or economic benefits.

Equal liberty therefore is a substantive theory of justice which, like the allocation of resources depends on people choosing principles that will ensure that goods are always provided equally--if society was a "zero sum game," which it is not. However, in contrast with the utilitarian theory, no person in the original position would choose to be worse off than they were before, so some other principle is needed:

Social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society (Rawls, 1971, p. 15).

An efficient system can operate on the utilitarian principle of maximizing average utility or the difference principle which rests on one of the more controversial aspects of Rawls' theory: the strategy of "maximum." Rawls asserts that all parties in the original position would choose to "maximize the minimum" (p. 26). Rawls argues that there is only one structure of prizes in a system that everyone would be willing to accept: the one that maximizes the minimum prize (maximin). Efficiency as equity would acknowledge that "there are morally justifiable grounds for treating persons unequally." Equity differs from equality by depending on such factors as "merit, need, and capacity."

### Efficiency as Fairness

The concept of maximum is based on Rawls' conception of justice and fairness where, as Rousseau argued in The Social Contract, the common good is

achieved when people willingly bind themselves to observe the same conditions they would impose upon others through a "reciprocity...of mutual benefit (Rawls, 1971, p. 102). It would not be morally efficient for a system, for example, to allocate additional costs to gifted programs before the basic or minimal needs of the less advantaged have been served. Their individual differences have been recognized through proportional equity that does not require equality of treatment. Efficiency as justice in this case requires the unequal treatment of unequals. An efficient system would be managed in such a way so as to place the burden of proof on the state "where the state chooses to provide unequal resources to create advantage rather than providing unequal resources in an effort to ameliorate disadvantage" [Italics added] (Alexander, 1991, p. 290).

By allocating resources to the meritorious that gives them even greater advantage than before over less fortunate others in the system would violate the principle of proportionate equality propounded by Aristotle which required treating unequals as unequals, though Aristotle had no such standard as the "difference principle" to rely on. That standard of efficiency in allocation is simply that "All social primary goods--liberty and opportunity, income and wealth, and the bases of self-respect--are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored" [Italics added] (Rawls, 1971, p. 303).

### Efficiency as Marginal Productivity

The concern that economic theorists might have with the difference principle is that it expresses normative aspects of marginal productivity which of equity which may prove inadequate. Traditional economists have been concerned about the just distribution of income according to some principle. At least since Marx, it has been generally believed that there was no need to specify a just distribution of rewards due to the doctrine of "superabundance" and the doctrine of "satiated needs" (Thurow, 1975, p. 44). Under this theory, everyone will eventually have what they want although wants cannot be satisfied but needs can be. Thus "economic equity is achieved when the minimum economic prize is large enough to satiate the poorest man's needs" (Thurow, 1975, pp. 44-45).

According to Thurow, all distribution is a matter of economic equity viewed as a refinement of the concept of economic justice. Thurow uses the term economic equity and has adopted a common good approach to efficiency where a major concern is with marginal productivity. The approach he takes to defining efficient requires: First, we can rely on "process and procedures of the economic game assuming that it is just or fair; second, we can use individual preferences as the key criterion with a balance of equity achieved "when society reaches the distribution of economic resources that generates the most agreement" (Thurow, 1975, p. 23). Unfortunately, complete unanimity is not possible; so third, merit can specify equity, "although merit may mean more



than simply rewarding the person who contributes the most or rewarding everyone on the basis of their marginal product determined in a free marketplace" (p. 24). Lastly, efficiency as equity can be related to the common good. This approach means that "equity corresponds to that distribution of economic resources that maximizes the common good" (p. 23).

The problem is to understand the preference states of a "rational" man. What preference states can be ruled out? Unfortunately, no satisfactory answer has been found to this question" (Thurow, 1975, p. 29). If we are to argue, as Rawls does, that there is only one structure of prizes, and rule out the possibility of other preference in a giant lottery, the theory of "maximin" is consistent with the difference principle, assuming that everyone is absolutely "risk averse."

### Efficiency and Law of Diminishing Returns

Granted that everyone in the original position agrees to "maximin," and to have their shares, even as they are based on merits, transferred to poorer persons. Or in a realistic frame of school finance where a state's educational system is marked by disparate and unequal fiscal resources among school divisions, would the principle of "maximin" be sufficient to require richer poor districts to give up their funds or local tax leeway for a reallocation of funds. According to the principle of diminishing marginal returns, "the distribution of the dividend has changed in favor of the poor is that, the general productive power of the community being given, poor people are getting more of the things

they want at the expense of rich people getting less of the things they want" (Pigou, 1924, p. 77). In this situation, reasons Pigou argues in utilitarian terms of maximizing happiness or satisfaction.

According to Pigou in The Economics of Welfare (1924), such a transference of distribution from rich to poor "since it enables more intense wants to be satisfied at the expense of less intense wants, must increase the aggregate sum of satisfaction" of the poor (p. 78). Not only would the poor, or say a poorer school district derive greater satisfaction, i.e. utility from the transfer, the old "law of diminish utility" leads securely to another proposition: Any cause which increases the absolute share of real income in the hands of the poor, provided that it does not lead to a contraction in the size of the national dividend from any point of view, will, in general, increase economic welfare.

Two important principles of equity emerge from the Pigou's "law of diminishing utility." First, is the notion that as a result of the transfer, the entire system will benefit. In a case of reallocation of school funding through an equitable funding formula, for example, the richer school districts would not be prohibited from continuing to levy tax rates and improve their educational circumstances of their own volition. "To unduly limit local tax authority in the name of equality, efficiency, or uniformity of education is to grossly misinterpret the intent of the Constitution" (Alexander, 1991, p. 3), nor should low aspiration in school districts at the local level be permitted to inhibit equal educational opportunity. The result from a transference of funds, according to the "law of

diminishing utility" and the principle of "maximin," is that the entire state benefits by having a better educated citizenry as education develops (as the first Kentucky State Superintendent maintained in 1838) "the whole intellect of the State (cited in Alexander, 1991, p. 357).

This conclusion is fortified by a second consideration of relative merit.

Mill, in his posthumous Essay on Social Freedom, wrote:

Men do not desire to be rich, but to be richer than other men. The avaricious or covetous man would find little or no satisfaction in the possession of any amount of wealth, if he were the poorest amongst all his neighbors or fellow-countrymen (cited in Pigou, 1924, p. 79).

The vanities of rich men can be satisfied equally well by a small as well as by a large expenditure or sum of resources. Pigou (1924) supports Mill in arguing that "It is only the existence of great riches, which makes necessary the satisfaction of a very large, instead of a very small expenditure" (p. 79). Richer school districts having an abundance of course offerings, facilities, and educational advantages is only secondary to the desire to appear wealthy or well off in comparison with other school districts. The satisfaction is only relative, argues Pigou, because "a larger proportion of the satisfaction yielded by the incomes of rich people comes from their relative, rather than from their absolute, amount" (p. 79). Finally, Pigou notes that:

the loss of economic welfare suffered by the rich when command over resources is transferred from them to the poor will, therefore, be substantially smaller relatively to the gain of economic welfare to the poor than a consideration of the law of diminishing utility taken by itself suggests (p. 79.)

Efficiency defined as utility maximization by Pigou accepts the theory then that Rawls' "maximin" is not harmful or detrimental to the rich, whose merit is only relative. Efficiency also assumes that "a diminution in the inequality of distribution probably, though not necessarily, increases the aggregate sum of satisfaction" (p. 79). Thus at base Rawls is a utilitarian who has interjected the moral principle of justice as fairness into the efficiency calculus.

Through Rawls (1971) we learn that efficiency is the outcome of rational choice and that it is related to the concept of equal liberty. We have noted that Rawls idea of the initial situation is central to his whole theory. Rawls argues that here "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" (p.302). Rawls theory of "maximin" is therefore compatible with Pigou's "law of diminishing marginal utility."

The concept of efficiency as equitable distribution then must also be attentive to the constitutional guarantees of state constitutions that stipulate the importance of educational opportunity, or the principle of "equal liberty" to ensure all students a successful and productive economic and civil life. This principle of efficiency as equal liberty was stated by the New Jersey Supreme Court which relied upon the states' "thorough and efficient" clause to invalidate the state school aid formula Robinson v. Cahill (1973). Such constitutional guarantees utilizing the standard of efficiency as equity ensure educational opportunity, especially for the least advantaged.

The Rawlsian principles presented above also conform to the Rousseau's idea of the General Will and challenge an educational system to effect the common good on higher moral principles than merely the utilitarian summation or aggregation of particular individual interests. Preferential treatment of special interests, in the interest of the common good, requires that all citizens, as Rousseau said in his A Discourse on the Origin of Inequality "bind themselves to observe the same restraints and enjoy the same conditions" as those in the poorer school districts (Rousseau, 1973/1755, p. 207). An efficient system, defined in terms of economic equity would thereby "ensure rights that otherwise may be subverted by factions" (Alexander, 1990, p. 275).

An efficient system would effect the principles of equity for a public school system. Efficient management would encourage the principle of reciprocity; equity would be a standard, not only of arithmetical equality, but including "equal shares for equals" as a first priority; unequal shares would be allocated where discriminating in favor of the disadvantages is necessary or in favor of the meritorious, and in all cases where "the right to equality has preemptory force" (Alexander, 1991, p. 293).

## Efficiency As Legal Positivism

### Efficiency Hierarchy

An efficient finance system of schools may be ensured by the application of a hierarchy of attributes which together ensure an efficiently operating system of schools as we have defined efficiency. This model of philosophical equity, cited by Alexander (1982) contains many of the principles used to define an "efficient" system of schools. It contains four basic steps of ascending moral and legal significance. The entire model demonstrates that a system of schools is a progressive subsystem of a polity constantly seeking a more equitable distribution of inputs and outputs as an obligation to the citizens and the state (Alexander, 1982, pp. 210-213).

Alexander's hierarchy of philosophical equity progresses from the lowest level of "commutative equity," which suggests a system of laissez-faire efficiency, to the highest level of legal positivism where disparity case might be tried in a court of law. At the lowest level of the hierarchy, resources tend to benefit the advantaged as we might find in a dual system of public and private schools or where resources benefit the wealthy few. Commutative equity is encouraged through such concepts as local leeway, subsidiarity and local control or autonomy. The next step in the hierarchy is "equal distribution" which demonstrates the principle of fiscal neutrality. At this level an equal fiscal base

is provided and fiscal equalization for equality is the only standard as in Serrano (1971). As we advance to the third rung in the model of "Restitution," we find that principles of equity introduced in the earlier stages require the state to recompense local school districts for disparity and to mitigate inequities caused by diseconomies of scale, etc. The concept of "restitution" demonstrates that "education is a state function, with an obligation to "rectify" and "indemnify" shortfalls.

At the highest level of educational equity is legal positivism which is justice as fairness which justifies intervention by the state to assist the least advantaged. It incorporates all of the other attempts to fiscally neutralize on the equity chain, such as fiscal neutrality, uniformity of effort, cost of delivering education, economies of scale, governmental overburden, corrective and remedial programs (Alexander, 1982).

The following cases demonstrate the principle of positivism in Alexander's Equity Hierarchy. These cases have established a new kind of judicial review through the Courts' interpretation of the term "efficient" as an equity standard for an educational system.

#### Standard of Efficiency for Fiscal Disparity

Efficiency has not always been used exclusively as a standard for education in the state constitutions. In Pauley v. Kelley (1979), for example, the Supreme Court of West Virginia, after an extensive review of constitutional

history and case law, relied upon the education article in declaring that "both our equal protection and thorough and efficient constitutional principles can be applied harmoniously to the state school financing systems."

Since the first Serrano decision in 1971, twenty-six states have experienced legal challenges to their school finance systems at the appellate court level. In only three cases, however, can this question be answered in the affirmative. In Kentucky, Texas, and New Jersey the term "efficient" became a constitutional mandate to establish education as a fundamental right. In 1989, in two states, Kentucky and Texas, the minimal standard versus the strict scrutiny test of equal protection was bypassed by each state's supreme court which found that the language of the respective education clauses, and the intent of the framers of the constitutions containing these clauses established education as a fundamental right. As such, the inadequate funding system in Kentucky was found to violate a fundamental right, and the inefficient funding system in Texas was found to violate a fundamental right. In 1990, the Supreme Court of New Jersey, also found education to be a fundamental right under its "thorough and efficient" clause. All three of these decisions incorporated the "efficiency" principle of school finance.

#### Kentucky Case

In the Kentucky constitution, "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the



state." In 1989, the Kentucky Supreme Court in Rose v. The Council for Better Education Inc., found the inadequate funding system in Kentucky to violate a fundamental right to education by relying upon the constitutional language and history of the education article. The court demonstrated fundamentality by defining precisely what an "efficient" system of common schools was, and by demonstrating that the state system of funding measured against the "efficiency" standard violated the state constitution as well as the Fourteenth Amendment and that therefore the students in poor districts were denied equal protection.

The court reasoned that the school finance system violated equal protection guarantees because an "inefficient" system is not a uniform system and allowed "invidious" discrimination based on place of residence to occur. Establishing fundamentality required that the term "efficient" be defined constitutionally as a system requiring "substantial uniformity, substantial equality of financial resources, and substantial equal educational opportunity for all students."

"Efficiency" consisted in part of seven basic academic skills which had been denied to poorer students because of funding disparity. These skills<sup>13</sup> were identified to demonstrate an "efficient" system of schools in Kentucky and demonstrate the elusive interplay between a given level of funding and the return on investment--in terms of resources, programs and educational benefit. The last of these, sufficient academic and vocational skills to compete favorably

with counterparts in surrounding states, showed that the principle of "equal liberty" was germane to the Court's understanding of efficiency (p. 212).

The seven "essential" characteristics of an efficient system of common schools were used to guide the Kentucky General Assembly in its attempt to design a constitutional system. Three of these were school finance related and indicated that (a) equal educational opportunities must be provided to all children regardless of their place of residence or economic circumstances; (b) that all children have a constitutional right to an adequate education; and (c) that the General Assembly is responsible for providing school funding sufficient to provide each children with an "adequate" education.

In this way an "inadequate" funding system was linked to "inefficiency" and was found to violate a fundamental right. Addressing the issue of "adequacy," the majority opinion in the Kentucky Supreme Court decision bluntly stated: "...it is crystal clear that the General Assembly has fallen short of its duty to enact legislation to provide for an efficient system of common schools throughout the state. In a word, the present system of common schools in Kentucky is not an 'efficient' one...."

The court thus found that all children have a constitutional right to an adequate education and that the General Assembly of Kentucky was responsible for providing school funding sufficient to provide each child with an adequate education. Thus an "efficient" system was defined as one where the delivery of "resources provided by the system must be adequate and uniform through the

state" (p. 210-11). The court also stipulated that the children who live in property-poor and in property-rich school districts, must be given the same opportunity and access to an adequate education. Thus the "efficiency clause" in the Kentucky constitution in association with such terms as "adequacy" rendered the equivalent of ruling for fundamentality, equal opportunity, and equal protection.

In addition to "adequacy, the term "efficient" was indirectly associated with other normative concepts such as equity, justice and fairness. An efficient system of schools must provide an "adequate" education for the "equal" benefit of each child. An efficient delivery system was also one that was "unitary," "uniform," and "properly managed" (p. 213).

#### Texas Case

Although Edgewood Independent School District v. Kirby (1987) did not condemn the entire system of education as did the Kentucky case, an inefficient funding system in Texas was found to violate a fundamental right. The court opined: "This education is not a duty committed unconditionally to the legislature's discretion, but is instead accompanied by standards. By express constitutional mandate, the legislature must make 'suitable' provision for an 'efficient' system for the 'essential' purpose of a 'general diffusion of knowledge.'"

Edgewood, like Rose, viewed "efficiency" as imposing a mandate on the state to substantially equalize educational opportunity and to extend equal

protection. The term "efficiency" required equal revenues from equal tax effort so that children in all districts have substantially equal access to funds. Plaintiffs argued that the Texas funding system violated the state equal rights guarantee, its due course of law guarantee, and its efficiency mandate. In a unanimous decision, the Supreme Court recognized that the legislature was "duty-bound" to provide for an efficient system of education. It specified that school districts, regardless of the taxable property wealth located in a district, must have "substantially equal access to similar revenue per pupil at similar levels of tax effort." Furthermore, the state may not delegate its burden of constitutionality because "the end product must still be what the constitution commands...an efficient system of public free schools throughout the state."

#### New Jersey Case

In the 1990 case of Abbott v. Burke, a sequel to Robinson v. Cahill, the Supreme Court of New Jersey found that funding alone would not achieve the constitutional mandate of an equal education in the poorer urban districts; that without education reform as well, money may accomplish nothing; and that in poorer urban districts, substantial, far-reaching change in education was absolutely essential. Specifically, eight plaintiff urban school districts claimed that the Public School Education Act of 1975 was unconstitutional because its funding formula created disparity between rich and urban poor districts and did not meet the needs of disadvantaged students in urban areas. This is the most

recent attempt to overturn the system of public school finance of ten previous legal actions which challenged all or part of New Jersey's school finance system between 1971 and 1985. As viewed by this court, such students were "constitutionally entitled" to such a change because they were denied a "thorough and efficient" education:

From this record we find that certain poorer urban districts do not provide a thorough and efficient education to their students. The Constitution is being violated. These students in poorer urban districts have not been able to participate fully as citizens and workers in our society. They have not been able to achieve any level of equality in that society with their peers from the affluent suburban districts. We find the constitutional failure clear, severe, extensive, and of long duration. We cannot find on this record, however, that there is any constitutional violation in the other districts.

Note that the New Jersey Supreme Court extended entitlement under the "thorough and efficient" clause which required the State to assure that educational expenditures per pupil be substantially equivalent to those of the more affluent suburban districts and that "...this clause made education a fundamental, constitutionally mandated right in New Jersey, and therefore the educational funding system must be strictly scrutinized to see there was a compelling state interest served by an statutorily created inequities."

#### Conclusions of Legal Positivism

In response to the call in Rodriguez (1973) for the states to take responsibility for what is essentially a state function, the state courts have

created a solid core of state case law that exists wholly independent of federal law. In establishing education as a fundamental right, only Kentucky, Texas, and New Jersey exercised a jurisprudence that is distinct from previous equal protection litigation in that the holdings are based entirely upon law created from the "efficiency" clause, a strategy which appears to offer great promise for reforming inequitable state finance systems. In each of these finance cases, the specific language of "efficiency" serves as a surrogate for broader issues of equal protection or due process and focusses on the quality rather than equality. These states thus developed a viable and distinctive doctrine of educational entitlement through a new kind of judicial review.

### **Conclusion**

Since efficiency is a production function in an educational system, it automatically becomes a standard for any kind of redistribution of the resources of society that will level or create greater uniformity in the fiscal condition of students. The term "efficient" suggests a standard of distribution that requires that the fiscal capacity of units of government be equalized in a school system in order that all students have equal access to educational fiscal resources.

In this chapter, "efficient" is a standard of equity whereby the state must fiscally supplement the educational program of students to compensate for individual cultural, social, or economic conditions that place students at an educational disadvantage in the educational process (Alexander, 1982).

While the creation of state systems of common schools did much to smooth social division and provide equal opportunity and create social harmony and homogeneity through uniformity, new systems still reflect inequality and inequity in society which an "efficient" system must now address. In addition to systems becoming more rationalistic and bureaucratic, schools systems have also become more parochial reflecting private selfish interests. Under the influence of local communities, politicians, and parents, even greater local control of school systems has been advocated as well as "choice" in opposition to more general statewide taxation to correct an ever widening gap of educational disparity in quality between school districts. By treating efficiency as a "normative" concept defined in terms of the common good, this chapter argues that school systems to be efficient must address the problem of fiscal imbalance reflected in modern American life. This is especially important where the majority is sovereign, but where many individuals, because of self-interest manifested through economic, class, or religious concerns, may not be sufficiently motivated to further the public interest. Under such circumstances an educational system will be found to be inefficient whenever its allocation of services is unequitable. "The solution must lie in the reasoned and philosophical determination of fairness in the sense of the common good and its achievement through government action" (Alexander, 1990, p. 272).

In conclusion, any comprehensive definition of "system" as a bureaucratic means by which education can ensure an enlightened citizenry in a republic rests

on a set of assumptions, paradigms, contradictions, and critiques associated with concepts of justice and fairness. This is because a system of common schools was intended for the benefit of all and the benefit of society as a whole. Any definition of an "efficient system" of education therefore must include underlying moral and normative assumptions of equality, equity, as well as liberty--regime values which have frequently been seen in opposition to each other.

In defining efficiency, Waldo (1984) argues that efficiency cannot itself be a "value." Rather, he argues,

it operates in the interstices of a value system; it prescribes relationships (ratios or proportions) among parts of the value system; it receives its "moral content" by syntax, by absorption" (p. 193).

Waldo explains that "Things are not simply 'efficient' or 'inefficient. They are efficient or inefficient for given purposes, and efficiency for one purpose may mean inefficiency for another" (p. 193).

This chapter has demonstrated that many principles are in force in the concept of efficient, but they all relate to the concept of "common" as in common good. It has been demonstrated that "efficient" as a term of art relative to a common school system is a concept rooted in the basic principle of justice, equality, and equity. That is because, as a term of art, efficient relates to the public and republican purpose of a common school system. It provides a standard for public schools to serve the common good of the people and to effective civic virtue in the state.



Efficient has been defined in this chapter as a concept having come of age in the welfare state. It has been discussed as standards of operational efficiency, social efficiency, and equity. It is doubtful that, given the social welfare climate of our time, the term "efficient" can any longer be regarded solely as a value free economic term, understood only in terms of profit maximization. State legislatures responsible for the maintenance of public school systems cannot be so indifferent to the republican purpose of the common school and the duty of government to educate for the common good as to not insist upon efficient educational systems.

## NOTES

1. The following state constitutions have provisions for an "efficient " system of schools: the Arkansas Constitution, Article XIV, Section 1; the Illinois Constitution, Article X, Section 1; The Kentucky Constitution, Section 183. The Maryland Constitution, Article, VIII, Section, 1. The Ohio Constitution, Article VI, & 23; the Pennsylvania Constitution, Article III, Section 14; the Texas Constitution, Article VII, Section 1; The West-Virginia Constitution, Article XII, Section 1; The Delaware Constitution, Article X, Section 1; and the New Jersey Constitution, Article VIII, Section IV (cited in McUsic, 1990, pp. note 75, p. 324).
2. For example, in a reformed system of education, students would learn at higher levels and with higher expectations; it is outcome based with strong assessment strategies; success is rewarded and failure penalized; it is democratic (staff have a role in decision-making and staff development); high quality pre-kindergarten programs are established for the disadvantaged as well as health and social services and technology expands access to learning (Business Round Table, 1990).
3. Three interrelated and continuous waves or periods of educational reform initiatives can be identified. The first wave of education reform, relying on reports like A Nation at Risk (1983) and Action for Excellence (1983) stressed accountability in a setting that reaffirmed the familiar structuralist strategies of technocratic rationality, e.g. standardization, hierarchy, testing, centralization, and formalized procedures, aimed at administrative management for maximum efficiency and productivity. The second wave of reform, centering on the Carnegie (1986) and Holmes (1986) reports, sought to restructure education through programs emphasizing teacher empowerment, decentralized site-based management, and professionalism. One important result of the second wave has been a tendency to subordinate administration to faculty-initiated leadership activity to facilitate teacher empowerment. Recently emerging third wave reforms have begun to address matters of administration leadership. The Danforth Foundation and the University Council for Educational Administration (UCEA) have called for the reform of administrator training that would be more rigorous and less committed to narrow technocratic models of administration.
4. Hanushek (1986, p. 156) acknowledges that the problem of an imprecise characterization of educational inputs occurs in individual versus aggregate school estimations where schools are heterogeneous institutions offering a diversity of inputs to specific students and the exact provision

for individuals is often not recorded or available. This leads to problems when an outcome or "achievement measure is simply regressed on a series of available inputs" (See also note 15).

5. Arrow (1973, pp. 282-283) argues that the ideas of Pareto have become an economic as well as political justification for pluralism in our time. A number of marginal utility theorists such as Arrow, Marshall, and Wicksteed have, since the classical economists, extended the notion of public utility to non-economic fields such as voting. They argue that voters, who are also taxpayers, can usefully be thought of as making a choice between public and private goods. Joseph Schumpeter in his 1942 book Socialism, Capitalism, and Democracy suggests, for example, models of the political process analogous to that of the economic system, with voters taking the place of consumers and politicians that of entrepreneurs. Marginal utility theorists Edgeworth, Carl Menger, and Eugene von Böhm-Bawerk deal with problems of bargaining. Neumann de Morgenstern utilizes game theory based on the foundation of individual behavior governed by utility functions.
6. Morris L. Cooke in "Discussion" in Bulletin of the Taylor Society, V (June, 1920), pp. 128-129 and Henry S. Dennison, "Who Can Hire Management," ibid, IX (June, 1924, p. 106. See also Morris L. Cooke, "The Influence of Scientific Management upon government--Federal, State and Municipal" in Bulletin of the Taylor Society, (February, 1924, p. 106) (cited in Haber, 1964, p. 302).
7. Edward Levine, The Normal Life (New York: Survey Associates, 1915). The Bureau's conception of the welfare state was reinforced by ardent philanthropic activists such as John D. Rockefeller, Andrew Carnegie, Mrs. E. H. Harriman, Kuhn, Loeb and Co., J. P. Morgan and Co., Henry Morgenthau, George W. Perkins, and Felix Warburg and other wealth progressives (cited in Haber, 1964, p. 111, footnote 29).
8. In this case the railroads and unions demanded increases on rates with the public required to bear the cost in higher prices. The solution lay in the public interest. Scientific management perceived as social efficiency guided and restrained both railroads and workers for their own good and also for the public good (Haber, 1964, p. 54-54).
9. Haber notes that Brandeis did not favor any one group, but in his later years echoed Jefferson's belief in a natural aristocracy: "The crucial difference was that Jefferson held his view when many believed in an aristocracy of property, and Brandeis held his amid cries of direct democracy" (Haber, 1964, p. 79, footnote 10).

10. This switch is evident in the writings of Croly, Lippmann and Brandeis in all their broad discussions of governmental efficiency. See also Woodrow Wilson, "Democracy and Efficiency" in Atlantic Monthly, LXXXVII (March, 1901), 289-99; Albert H. Wright, "Scientific Criteria for Efficient Democratic Institutions," Scientific Monthly, VI (March, 1918, pp. 237-41; Bernice Earle Danner, "Making Government Efficient," Forum (March, 1914, pp. 354-64). These references are made in Haber, 1964, p. 305.
11. It was advocated by President Taft's Commission on Economy and Efficiency, which was later replaced by Wilson's Bureau of Efficiency. The states were quick to follow the lead of the federal government in setting up their own efficiency commissions. Generally, the achievements of the state commissions of efficiency and economy resulted in consolidation of state agencies, improvement of cost accounting techniques, and the grant of more power to the governor. Efficiency thus became the hallmark of the New York State constitutional convention of 1915, one of the most widely discussed efforts at rewriting a state constitution in the progressive era (Haber, 1964, p. 115).
12. Justice is a name for certain classes of moral rules which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice--that of a right residing in an individual--implies and testifies to this more binding obligation (Mill, 1957, p. 73).
13. Seven basic capacities were cited by the Supreme Court as the goal of the efficient development of schools: (1) oral and written communication skills, (2) knowledge of social, economic, and political systems, (3) understanding of governmental process, (4) knowledge of mental and physical wellness, (5) grounding in the arts, (6) training or preparation for academic or vocation sufficient to choose and pursue life work intelligently, and (7) vocational skills to compete favorably with counterparts in surrounding states (Rose v. Council for Better Education, Inc. (1989)).

## CHAPTER NINE: CONCLUSION AND IMPLICATIONS FOR CURRENT GOVERNMENTAL POLICY

At the birth of Societies, the rulers of republics establish institutions; and afterwards the institutions mould the rulers.  
Baron de Montesquieu

The degree and extent of competition in public schools has been debated and discussed for the past century, yet proponents of private "school choice" have failed to address the unanswered logic of how the outmoded and inefficient institution of the American common school has managed to produce a highly successful capitalist society. This movement for private school choice along with President Bush's attempt to "break the mold" of the American public school system, recalls a sense of rugged individualism and robber barons. It suggests the same frontier mentality which has led us to believe that the institutions we create, like the companies and public agencies we operate, are expendable and serve only our own private selfish ends. The voucher is the chosen instrument for dismantling one of America's oldest and most venerable institutions: the American common school, now itself an institution at risk.

The contemporary view of public institutions as either efficient or inefficient mechanisms that we may manipulate or take for granted as instruments of the "market," is the antipole of civic humanism that inspired the founders of the American common school. The notion that public institutions

produce only commodities that can be bought and sold in the marketplace can exact a high moral and political price. Turning to a policy of individual choice in education could lead to an irresponsible civic autonomy that can only drive Americans further into isolated "enclaves of influence." Kern Alexander explains this concept of self-interest relative to tax support of public schools:

Persons in these enclaves of wealth have been adept in convincing legislatures that their advantageous position is in some way justified and, indeed, necessary for the maintenance of a quality educational system. Such justifications, mostly defensive after thoughts, have been successful enough to perpetuate wide revenue disparities between rich and poor school districts in most states (Alexander, 1991, p. 348-49).

At risk from this laissez faire conception of publicly financed education is a collective loss of common purpose and fundamental values (Scott and Hart, 1989) leading to "moral thoughtlessness" (Arendt, 1971) which would render the public educational system even more unjust or unfair.

Thus, the issue of school choice, especially if it involves private schools, has profound implications for the civic obligations of all Americans, and battle lines have formed. This is because the common school is still the most politicized public institution in America. The American common school bonds individuals to a common purpose for the nation, requiring toleration, reciprocity, and social cooperation for mutual benefit. The principle of commonality in the public schools has long been valued as one of its main strengths.

At this time voices are questioning the moral, political, and ideological premises upon which the common school was founded. A laissez-faire economic

model has been proposed to solve the deficiencies of public education.

Americans believe strongly in the benefits of competition and free enterprise, but many doubt whether schools are businesses or that students are products and consumers.

This chapter examines the roots of the school choice controversy while summarizing basic principles that define the American common school. It also contrasts two models of public interest theory that have special relevance to vouchers and choice: the laissez-faire model, which is libertarian, individualistic, and entrepreneurial, and an older, classical, "republican," and egalitarian model which enables the common school to achieve a high moral ground, "a partnership in virtue" among all citizens.

Montesquieu and other philosophers from ancient to modern times understood that people form institutions, but that institutions also create and form peoples. Institutions like public schools can provide common ground, constraining as well as enabling social progress as we work toward a cooperative society. On the other hand, institutions that form society, and especially state supported institutions, can also arbitrarily incorporate disadvantage (Rawls, 1971, pp. 101-104). The republican philosophers knew that the measure of success of any government and its institutions is the extent to which those institutions promote the civic character and unanimity of its citizens in service of a higher public good. There has been considerable evidence throughout this

study to indicate that the founders of public schools, as well as the Founding Fathers of the Constitution, revered this virtue-centered paradigm of the common good for public institutions as much, if not more, than the individualist tradition of natural rights and the minimalist state.

### **Two Public Interest Models**

The two models discussed in this conclusion are based on different assumptions about the role of individuals and institutions in society; different conceptions of the public interest and how equity is achieved. Because these differences have yet to be reconciled through educational policy, they have given rise to two competing views of the goals of publicly financed education in the United States.

#### **Laissez-faire Model**

This model focusses on the American tradition of individualism, cultural pluralism, and free-enterprise, which is not entirely compatible with the disinterested, moral, or cultural purposes of the common school as envisioned by its founders. Proponents of this model aim to supplant America's present system of public education, with free-market competition for students on the grounds that the nation's schools are a "failed public monopoly" (Kearns and Doyle, 1988) incapable of reform. President Bush's America 2000 initiative has attempted to create a more productive citizenry by using public tax dollars to foster and fuel



competitiveness in education. This radical proposal has revived the educational models familiar in England and the United States of the nineteenth century and has gone far beyond any education reform previously attempted (Chubb and Moe, 1988).

Proponents of choice have proposed that schools compete in a deregulated market free from public stewardship. Efficiency in the laissez-faire model has been exalted as a standard and public schools have assumed a quasi-public, quasi-private role and function (Alexander, 1991). In fact, the very concept of the word "public" in the present educational context has changed. According to the Bush Administration: "The definition of 'public school' should be broadened to include any school that serves the public and is held accountable by a public authority"<sup>1</sup> (U.S. Department of Education, 1991), i.e. any institution, public or private--parochial, home school or for-profit schools. In such a model both public and private institutions are in competition with one another in an "all-public 'market' where pressures of supply and demand could be made to work as surely as they do in the private sector" (Kearns and Doyle, 1988).

This blurring of the public/private distinction has profound political and economic implications for the way we view institutions. Organizational theorists have expressed concern about the "displacement" and "misplacement" of concepts from business and industry and the private sector to public agencies which operate as a public trust<sup>2</sup> (Ramos, 1985; Schon, 1963; Perry and Rainey, 1988;

Rainey, Backoff and Levine, 1976; Wamsley and Zald, 1973; Kearns and Doyle, 1988). Accountability in public agencies, they argue, is a matter of public trust and responsibility. An entrepreneurial model of education dependent solely on consumers and the market for regulation may no longer serve as a repository of basic regime values. Furthermore, this new definition of the public school would encourage individuals, in accordance with their own personal, ethnic, or religious preferences, to isolate themselves through the school of their choice. Vouchers as a fiscal incentive enhance the innate desires of those individuals who wish to separate themselves from the group and to seek personal advantage.

The choice, laissez-faire, or private self-interest model is based on a number of assumptions. First, it assumes that a plurality or harmony of interests will obtain for all students or parents viewed as consumers within a market place of educational services. Second, it harbors the expectation that all educational needs are only economic ends. Third, a voucher system for private or individual investment assumes that all parents and students are capable of making rational positive choices. Fourth, it holds that the greatest good of the greatest number should be served by the educational system--even if those who may not be in the greatest number are disadvantaged by wealth or circumstances to fully participate. Last, it assumes that public institutions have no special duty, obligation or dispensation distinct from private institutions.

Most of these principles can be found in eighteenth and nineteenth-century utopian "harmony of interests" doctrine of the John Locke, Adam Smith,

and the utilitarian philosophers<sup>3</sup> (Keynes, 1926). Such ideas are found also in modern capitalist theory of Hayek, Von Mises, Friedman, and most recently Tullock and Buchanan of the public choice school<sup>4</sup> (Buchanan and Tullock, 1965). These theorists find public benefit in the "harmony of interest" that ensues from the pursuit of private self interest. According to Smith, the individual "intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention" (Smith, cited in Carr, 1964, p. 205).

This vision of the common good popularized the libertarian idea of a minimalist state for the protection of individual rights and promoted removing state control so that free, unrestrained individuals could be relied upon, even if unconscious of public need, to pursue the community's interests simply because they were identical with their own<sup>5</sup> (Bellah et al., 1985). One serves society best, as Bentham suggested, simply by putting oneself first, secure in the belief that all selfishness will balance out and achieve the greatest good for the greatest number.<sup>6</sup>

This philosophy, vital to the growth of capitalism, has recently come under fire, particularly by those such as Phillips (1980) and Reich (Reich, 1991) who document the widening gap between rich and poor, and by John Rawls (1971) whose "difference principle" demonstrates the fallacy of Pareto optimality, which does not take into account the greater need of the less fortunate.

Carr (1964) illustrates along with Reinhold Niebuhr (1960) and others, that "Theories of social morality are always the product of a dominant group which identifies itself with the community as a whole, and which possess facilities denied to subordinate groups or individuals for imposing its view of life on the community" (p. 210). Niebuhr in Moral Man and Immoral Society (1932) states that "Inequalities of privilege are due chiefly to disproportions of power, and that the power which creates privilege need not be economic but usually is" (p. 114). In the case of school choice, Lu argues that the facilities include greater resources for investment in private education by the wealth of the church or on the part of the upper and middle class located mainly in the suburbs<sup>7</sup> (Lu, 1991, p. 541).

Carr (1964) would argue that the voucher or market system of education assumes a theory of morality as power. According to Carr's description of laissez-faire, the prosperous and privileged suburban class which already has preeminence in the community, identifies the community interest as its own. Carr summarizes: "The doctrine of the harmony of interests thus serves as an ingenious moral device invoked, in perfect sincerity, by privileged groups in order to justify and maintain their dominant position" Carr, 1964, p. 35).

This individualist model tends to encourage those:

who assert the absolute right of parents and individual choice to control the education of their children, or to delegate that responsibility to the church or association in which they repose their confidence and by whose distinctive localities and beliefs they wish to see their children shaped (Glenn, 1988, p. 98).

Voucher advocates believe that the particulars of national identity will somehow converge through institutions established voluntarily by choice<sup>8</sup> (Mishan, 1976; Schelling, 1968; Buchanan and Tullock, 1965). According to the "rational choice theory" of Milton Friedman and the Chicago School, a minimum of government control is in the public interest of economic efficiency, liberty, and education. Self-interest, determined by the tools of cost-benefit analysis, provides the only moral code all modern people can now understand (Wolfe, 1989).

Thus, the private interest model promulgates the view that the modern public education represents a homogeneous bureaucratic tyranny imposed by the state<sup>9</sup> (Chubb and Moe, 1991), which runs counter to every private individual's sense of liberty and justice. The individualist model rests upon a minimalist notion of the state and institutions derived from natural rights theory (as opposed to traditional natural law) (D'Entreves, 1965; Berns, 1991), and is reflected in the Paine-Madison-Calhoun principle that a government is a necessary evil (Meyer, 1975), or in Thoreau's terms: "the government is best which governs least" (Thoreau, 1966, p. 105). The effect of such a libertarian concept of governance and a negative view of institutions is liberal voluntarism, which may or may not promote the common school as an institution of common good. The adaption of the philosophy of private self-interest as the lodestone of education could result in either "a tragic resignation from the reality of the human condition or else a grand delusion" (Meyer, 1975) with the greater needs of the educationally at risk or disadvantaged not being adequately met.

## Republican Model

This study has provided a republican model of universal education as a virtue-centered paradigm of civic humanism and an attendant "ethics of character" which is less fragmentary of the public interest than the novel concept of market-based schools based on laissez-faire individualism. It provides an alternative to the laissez-faire, capitalist vision of America and is most compatible with the original conception of the American common school.

The republican tradition of civic humanism assumes that a nation is only as good, moral, or responsible as the citizens that comprise it. The purpose of a moral and well-ordered commonwealth is best reflected in the classical tradition or notion of polity<sup>10</sup> (Will, 1983), espoused by Aristotle and later Edmund Burke, who argued against the "natural rights" excesses of the French Revolution. This important tradition provides a moral underpinning of our modern state--a theory of collective responsibility that is rooted in natural law. It is not based on private whims, abstract individual rights, or reason, but on communal experiences with civic virtue at its center. It also assumes that government and public agencies within the polis have a civic responsibility or trust. As George Will notes, "Democratic government must be a tutor as well as a servant to its citizens, because citizenship is a state of mind" (Will, 1983, p. 25). Basically, the republican ideal is the conscious commonwealth of Cicero and Burke, associated with justice and a partnership for the common good.

This communitarian model, reflecting the classical intellectual interests of a civic social order, has been most recently revived as a communitarian ethic by Amitai Etzioni<sup>11</sup> (1990/91), Robert Reich (1991) and others who depict a more positive role for the state and institutions. The republican society and its basis of civic humanism rests on a variety of assumptions about the common good ranging from the social contract of Rousseau (1973), the Puritan concept of commonwealth (Handlin and Handlin, 1969), the Greek ideal of "polity," pietas or duty of a republic and its citizens, and the republican notion of "civic virtue." From a contemporary viewpoint, this republican or communitarian model tends to encourage the right of the state to control education so as to minimize the differences distinguishing citizens one from another in the interest of national unity.

Such governance in the republican view, however, is not tyranny, but "stewardship" and operates out of moral principle of public trust or conservatorship (Terry, 1991). Civic virtue is the "mainspring" of public institutions and governance by the state--"the spirit of the laws" (Montesquieu, cited in Hubsche, 1989). A partnership in virtue implies that the politics of democracy is deliberative and consensual within the polity--not the raw agglomeration of rational choices or consumer preferences that characterizes American pluralism.

Furthermore, republican government sanctions and supports public education because of the need to maintain an informed, enlightened, and virtuous citizenry. Bellah et al. write:

our form of government was dependent on the existence of virtue among the people. It was such virtue that they (the Founders) expected to resolve the tension between private interest and the public good. Without civic virtue, they believed the republic would decline into factional chaos and probably end in authoritarian rule (Bellah et al., 1991, p. 85).

Trying assiduously to avoid sectarianism, Horace Mann, the chief proponent of public education made these ideas the central ethos of the common school. Mann acknowledged how hard it was to "make men republicans" (cited in Cremin, 1957), for he realized that "the great moral attribute of self-government cannot be born and matured in a day" (Mann, cited in Cremin, 1957). In a republic viewed as a moral whole, the republican founders, John Adams, Thomas Jefferson, and Benjamin Rush, and most particularly Horace Mann, believed that individuals should think of the welfare of the state as the welfare of his own family as a matter of public duty (Mann, cited in Cremin, 1957).

The American founders believed that devotion to duty lay at the heart of civic virtue in Roman and Greek republics. According to the classical moralists themselves, this devotion was called "piety." Horace Mann regarded a pious man as one who subordinated his own desires to the claims of others--to the common good. A republican vision of "moral education" for creating a shared



national identity and molding a virtuous and enlightened citizenry inspired the Jeffersonians and others to argue for a general diffusion of knowledge that would ensure equality of opportunity and the perpetuation of the republic (Cremin, 1980).

Instead of freeing its members through "a policy of supplying by opposite and rival interests, the defect of better motives..." (Madison, 1961, p. 32), the republican model posits high, all-encompassing ideals and expectations binding upon the polity as a whole, because "high mindedness, magnanimity, courtesy, justice, and generosity are much more in accordance with nature than pleasure, riches, or even life itself" (Cicero, cited in Will, 1983, p. 25). To achieve the Ciceronian ideal, Edmund Burke, in the eighteenth century, proposed an "eternal contract" binding all men to the past and to posterity. This "partnership in virtue" strives for a well-ordered polity with excellence in intellectual life beyond the reach of commercial striving or rivalries.

The republican tradition, with its responsibility to posterity and appreciation of heritage, was revered by the early founders of the American common school, who sought equality of opportunity as an ideal. Our founding philosophy is thus an ideal of public spiritedness which no conception of government should deny, since "the basic political right is to good government, not self government" by isolated individuals who choose only to associate for self-interested reasons" (Will, 1983, p. 29). For Herbert Croly, American life required a "morally authoritative sovereign will" (Croly, 1964). The American

people are sovereign in their choice, not as disinterested consumers, but "in so far as they are loyal one to another, to their joint past, and to the Promise of the future" (Croly, 1964).

Anyone attempting to reconceptualize the public school should first reexamine the "republican" vision which influenced its formation. It is especially important in our own turbulent times to restore this vision when the very fabric of society is being torn asunder by ethnic, racial and class division in the name of individualism, multiculturalism, and pluralism.

### **Common School Ideal**

The American public school has always been seen as an instrument for unity and solidarity vital to a positive commitment to democracy. According to an older, gentler "republican" concept,<sup>12</sup> the American public or "common" school, along with other public institutions, is a partnership in virtue among all citizens, a public service based on civic humanism. No new concept of the public school, therefore, should abandon the belief that education is a matter of public concern or that the state should provide clear expectations for the education of every child.

Horace Mann, Benjamin Rush, Lawrence Cremin, E. P. Cubberley and others spoke of "the ideal of the common school," a goal and symbol of the national common good (Butts, 1978). The public school envisioned by policy makers during the formative years of the American republic was based on four

essential "republican" beliefs: that education was vital to the republic; that a proper education consisted of the general diffusion of knowledge; that virtue and civic responsibility were essential; and that a system of public schools were the best means of providing education on a mass scale.

The public school as envisioned by Jefferson, Benjamin Franklin, Benjamin Rush and Horace Mann would be free, accessible, supported by public taxation, operated and governed as a public, secular entity, free from special interest or sectarian controversy, and a part of an "extrafamilial" system that existed uniformly throughout the state (Cremin, 1951). According to this republican concept of education as an aspect of the polity, derived from the Aristotelian "polis," a public school existed to train for intelligent and responsible citizenship.

The public school system is an institution, as differentiated from an organization,<sup>13</sup> that reflects a commitment to democracy, universality, and equality. An educated and enlightened citizenry is deemed essential to the survival of the republic. The public school is therefore a positive commitment of the American people that requires the total support of the whole community through its selected representatives rather than by sectarian groups. This commitment ensures that the common good of all in society will be served.

The republican concept of public school is political, economic, and social, as well as moral. It reflects a republican view of the state as a virtuous polity as opposed to the more modern pluralistic concept of the state as based on private

self interest or interest group liberalism with its concomitant perils of misrepresentation and corruption.<sup>14</sup>

### Common as a Term of Art

The educational provisions of many state constitutions set forth definitive requirements for the establishment of public schools. In these mandates, the term "common" is often used to incorporate the views of Mann and others set out previously. The term "common" is therefore a term of art that has greater significance than the word "public" in the context of education.

In this context, the term "common," connotes community, commonwealth, and shared purpose in the perpetuation of the republic as well as a civic duty or responsibility on the part of both citizens and the state. In 1820, Governor Slaughter of Kentucky, seeking support for a system of public schools stated:

Each child was equally important to the republic, that education benefitted all not just the person being educated, and all should pay in common, and that they should receive the educational benefits in common (Alexander, Brock, Forgy, Melton and Watson, 1989, p. 151).

Thus, the word "common" suggests the establishment of "uniform" systems of education that would advance a democratic society. Common schools were seen as necessary for the expansion of democratic ideas here and abroad and for the common good of all. In the early nineteenth century, a number of the private academies had not been free and were financed by land sales, private

tuition, and fees so that "many poor children could not attend" (Alexander et al., 1989, p. 146). In 1820 when Governor Slaughter pressed the Kentucky legislature for funds to establish an educational system, he appealed to essential republican principles:

Education is more vitally important in a republic than in any other form of government; for there the right to administer the government is common to all, and when they have the opportunity of administering the government, the means of obtaining the wisdom requisite for its administration should be accessible to all" (Alexander et al, 1989, p. 146).

The idea of a common school reflects the idea of social contract which finds education to be one of the natural rights of man (Alexander, 1991). The common school "is common, not as inferior...but as the light and air are common" (Doane Address, cited in Butts and Cremin, 1953, p. 194).

We know the term "common schools" best, however, from Horace Mann and other founders who envisioned an educational system in contrast to that provided by private schools, churches, or pauper schools that catered to factions and special interest groups--a system of schools which all the children of a community attended. The "common school agenda" was a conscious desire to create a homogeneous society--a nation with common attitudes, loyalties, and values under central direction by the state in order "to develop the whole intellect of the State" (Kentucky State Superintendent Slaughter cited in Alexander, 1991, p. 357).

## Common as Commonality

Understanding the idea of a common school requires an understanding of the principle of commonality which involves such complex notions as community, civic virtue, commonwealth, and uniformity, essential to republican government. The principle of commonality can be found in many state constitutions today, whether any particular constitution has adopted the term "common," "free," or "public."

Commonality suggests a shared and articulated sense of purpose that holds publics together. This can be history, culture, language, or a sense of nationhood. Commonality can also express regime values. The principle of commonality of the public interest is the recognition of essential fairness in society and public institutions where "men agree to share one another's fate" (Rawls, 1971, p. 102), or where, as Rousseau wrote, people "have a common interest to unite."

Of course, the commonality of the public interest tells us nothing about what the public interest is. Other processes must determine those goals authoritatively and rightly for a particular society. To learn what the common or public interest is, we must look to revered public documents and court decisions which Jefferson called "the element books of public right" (cited in Berns, 1991, p. E4) and Horwitz (1986) refers to as "the parchment regime."

Before the creation of a common school system, there was no state system and no uniformity in public education sufficient to engender any conception of

the public interest. Governor Slaughter of Kentucky in 1816, however, summed up the republican rationale for common schools and based his argument on the common patrimony of inherited traditions, values, and common experiences: "Every child born in the state should be considered a child of the republic, and educated at public expense" (cited in Alexander et al., 1989, p. 146).

### Commonality as Equity: The Problem of the One and Many

The founders of the republic and the common schools confronted the Herculean task of reconciling individual liberty with the responsibilities of group membership. Throughout the history of American education, the public school has confronted reflected the perennial problem of "the one and the many," a conflict between rich and poor.<sup>15</sup> Alexander Hamilton critiqued the argument that all should support the common school because even the most well-off have a "stake in society" as an elitist notion which tended to perpetuate vested interests. However, with a continual broadening of the educational pyramid since Hamilton's day, the public school has evolved to represent more democratic values and assumptions. Principles of justice and fairness, for example, grew increasingly important to the public school enterprise especially as equality after Brown vs. Board of Education (1954) came to be seen as an ideal. The term equality, however, is an ambiguous and illusive value. The common school ideal incorporates both these senses of commonality. The common school is the place for teaching the commonality of the public interest as well as being a place

where all are welcome to share in the wealth of knowledge and learning according to their intellect and diligence. The term "equity" is more readily applicable to the common school ideal. Unfortunately equity only approximates equality and "imperfection falls in almost every case to the advantage of the privileged" (Meyer, 1975).

Commonality of public interest also suggests justice and the fair (though not equal) distribution of the benefits of those things, such as public education, that the people share in common. Unlike the principle of equality, the principle of commonality as equity "expresses a conception of reciprocity" (Rawls, 1971, p. 102). Rawls argues through his "difference principle" that "The social order can be justified to everyone, and in particular to those who are least favored; and in this sense it is egalitarian" (p. 103). A school system then, which is a reflection of this order, according to this interpretation of the commonality principle, is truly "common" when "the condition of mutual benefit is satisfied" (p. 103). Commonality as equity, for example, does not recognize that the state incorporate arbitrarily wealth differentials in its school finance formulas, or that persons in rich school districts are favored simply because they enjoy greater wealth, privilege or economic status.

Economic freedom is now recognized as essential to political freedom by both liberals and conservatives alike (Kendall and Carey, 1970; Hayek, 1960). Economic justice in particular has become a vital principle of democracy and a mainstay of public school support through human capital investment theory



(Schultz, 1971; Psacharopoulos and Woodhall, 1985). Thus, the public school mission has come to include equality of opportunity as a reflection of American regime values associated with economic liberty and justice. Metaphorically expressed as "the level playing field," this image of equity implies that all children should have an equal chance for economic success at the starting gate of life and schools should provide equitable educational opportunities to ensure that all have a more or less equal chance in society (Robinson v. Cahill, 1973).

The basic problem of the "inequalities of privilege" has been addressed throughout utopian literature from ancient to modern times. Fiscal disparity between rich and poor school districts which gives rise to school finance litigation is a recent manifestation of this problem. So is the general opposition of traditional anti-tax forces that reinforce political and geographic balkinization and insulate areas of wealth and privilege from carrying their fair share of the full burden. School financing schemes that are not wealth neutral simply do foster the commonality of the public interest. Economic liberty cannot be achieved when educational facilities or revenues are unequal and "uneven playing fields reflect a dark unspoken sense that other people's children are of less inherent value than our own" (Kozol, 1991).

Kozol's "level playing field" metaphor not only suggests the contemporary answer to the problem of the "one and many," but expresses the ideal of equality of opportunity with the common school as a social leveling device. According to F.A. Packard in Thoughts on the Condition and prospect of popular Education in

the United States, the common school in the nineteenth century originally "was a conception which held that the common school, through the experience of common participation, could teach equality and fraternity better than any other institution" (cited in Cremin, 1951, p. 62). This concept of the common school has been challenged by ethnic and class rivalries. Ironically, proponents of choice today have adopted Kozol's metaphor of "the level playing field" to ask that public and private schools be treated equally (Doyle, 1992, p. 514).

### Commonality as Uniformity

Commonality as uniformity suggests notions of a universal system of education, access and availability, as well as the goal of a uniform or united society. Achieving commonality, having one homogeneous people, has always been a basic goal of the public school. From the time of the War of Independence, Americans have sought to create institutions that would be uniquely and universally American. Acculturation has been a goal of cultural conservatives who have sought to apply the ancient concept of a liberal education to a modern mass democracy (Strauss, 1968).

Theorists of public education, from the early nineteenth century onward, have imbibed the wisdom of their intellectual ancestors as well as wrestled with their legacy of a politics of ambiguity. The Declaration of Independence, the Constitution, our government institutions, and our dominant political practice are all repositories of mutually contradictory theories of human nature, of human

potentialities, and of human destiny. Yet the common school founders were confident that these differences could be reconciled through the common school. The public school was seen as the one institution that could transform people into "republicans" and unite them in the new nation. Today, the common school ideal of uniformity as "availability" or consistent access means that it "could teach equality and fraternity better than any other institution" (Cremin, 1951, p. 62).

Orville Taylor was one of the first to address the principle of uniformity through the idea of a system of universal education. In 1837 he noted that a republican spirit was embodied in

the spirit of common schools--schools where the rich and the poor meet together on equal terms, where high and low are taught in the same house, the same class, and out of the same book, and by the same teacher--is a republican spirit. And this is a republican education (cited in Cremin, 1951, p. 305).

Without this principle which disallows distinctions between the rich and poor, a public school would be neither common nor republican. Clearly the ideal of a common school "receiving all classes and groups in the community in the role of "common mother" was "incompatible with the existence of private schools" (Cremin, 1951, p. 89). Uniformity, thus suggests "availability," and equal access (p. 62).

The cry of "Free, Equal and Republican" education began with early labor movement activity to counteract class divisions created by industrialism and was aimed to destroy the "monopoly of talent" held by the higher classes (Reich, 1991). Robert Owen proposed a system that would be "open and equal to all"

arguing that "the tax of ignorance" is "a much heavier tax than any tax for education" (cited in Cremin, 1951, p. 306).

Engendering a commitment to good government, the common good, republican principles of duty and responsibility, and economic justice and fairness have always been an important part of the common school agenda. All of these concepts are intertwined in the modern notion of social equity, an idea whose time has come.

Social equity can be a criterion for measuring effectiveness in public school administration in the same way that efficiency, economy, productivity and other criteria are now used. Social equity, however, offers an ethical dimension missing in other techniques. In order to achieve social equity, the level playing field of the common school must not only be freely open to all, but of sufficiently high quality so that it is utilized by all. By encompassing all classes, the common school "would tend to neutralize the undemocratic qualities" and would operate to extreme differences in economic status from becoming a rigid class structure in American society. The only nobility should be of "intellectual and moral worth" (Mercer, 1826, cited in Cremin, 1951, p. 307).

The ideal of equality of opportunity and "availability" through a uniform system was emphasized through the Enlightenment concept of "diffusion of knowledge" which provides the general conception of universal education. Early champions of common schools, such as Edward A. Lawrence in 1841, however, believed that availability or universality of education in a uniform system had a

specifically public purpose and requirement: "The common weal is the end, of which education, as promoted by State patronage, is the measure" (cited in Cremin, 1951, p. 63). Moderns educational theorists, such as Kozol (1991) however, treat uniformity as "availability" also as an aspect of fraternity and equality of opportunity, and, as Cremin argues, to "neutralize the anti-republican tendencies of economic individualism" (Cremin 1951, p. 62). Cremin contends that "It is only when the ideal of an 'available' common school is viewed in the light of this conception that its full import as a positive commitment [to a democratic social structure] is adequately realized" (p 62).

#### Commonality Versus Pluralism

Ever since J. Hector St. John de Crevecoeur first asked "What then is the American, this new man?" (cited in Schlesinger, 1971, p. 23), Americans have pondered their identity. This quest led Gunnar Myrdal to observe in 1944 that America was struggling for its soul. He called the emergent cluster of ideas, institutions and habits, "the American creed," and recognized that the common school since its inception was the one agency best suited to produce a new common culture by amalgamating and assimilating older immigrant ideals. The common school, along with other American institutions, media, and social habits, he believed, was part of the "colossal machinery" that produced "the ethnic synthesis" essential to national unity (cited in Schlesinger, 1991, p. 23).

Today, the melting pot metaphor is seen to be in error. Rather than Crevoceour's conception of an homogeneous culture, Americans have, as Diane Ravich describes, "a common culture that is multicultural" (cited in Schlesinger, 1991, p. 81), and this concept appears to make striving for commonality a futile endeavor. In accordance with the expectations of pluralism, laissez-faire, and multiculturalism, some Americans now urge a new ideology, and a new philosophy of publicly financed education to service the new ideology. What will be lost, Schlesinger argues, is the one institution which holds out any hope of instilling a sense of community among the American people: the American common school.

Schlesinger notes that "The contemporary ideal is shifting from assimilation to ethnicity, from integration to separatism" (1991, p. 44), and warns that the struggle to maintain a national identity "is now being engaged on a variety of fronts--in politics, in voluntary associations, in our churches, our language--but in no arena more crucial than our system of education." The bonds of cohesion have grown so tenuous that it makes little sense to "exalt cultural and linguistic apartheid" any longer:

The question America confronts as a pluralistic society is how to vindicate cherished cultures and traditions without breaking the bonds of cohesion--common ideals, common political institutions, common language, common culture, common fate--that hold the republic together (p. 59).

Schlesinger also observes that educational goals have degenerated from the lofty ideal of the welfare and perpetuation of the republic to "pure therapy,"

and are a consequence of individualism and ethnic and religious pluralism. The corresponding pedagogy focusses on self-actualization, ethno-centricism, and feminism, he argues, is "therapeutic," not republican, and attempts only to generate self-worth among minorities: "Race consciousness and group pride are supposed to strengthen a sense of identity and self-respect among nonwhite students" (p. 60). Catering to these individual or group preferences is the political agenda behind the choice movement, which, if followed, could impede cultural amalgamation. If the funds for vouchers going to minorities are insufficient to meet the high tuition of many private schools, the promise of equality would be hollow.

Lawrence Fuchs, a political scientist and immigration expert, noted that no nation has "proved as successful as the United States in managing ethnic diversity" (cited in Schlesinger, 1991, p. 25). This can be attributed largely to the homogenizing effect of the common school. However, a "cult of ethnicity," has redefined the American republic, not as a polity of individuals, "but as a congeries of distinct and inviolable cultures" without a unifying set of principles that comprise our essential "regime values" (cited in Schlesinger, 1991, p. 43).

Schlesinger argues that the key to American identity in a culture growing increasingly pluralistic is to resuscitate vital republican principles upon which the nation was founded. He notes that these principles constitute the unifying bond that has made all Americans "new people." These political axioms (or what

might also be called regime values) "define the American nationality," as well as "empower people of all continents, races and creeds" (Schlesinger, 1991, p. 45).

Emile Durkheim in Moral Education (1973) considers the religious preferences and sectarianism that has undermined support for public schools, and asserts that the purely secular moral education offered by most state-supported schools teaches only "an impoverished and colorless morality." The task of educational leaders then, is to "discover [and teach] those moral forces that men, down to the present time, have conceived of only under the form of religious allegories" (Durkheim, 1973, p. 105).

Herein lies the crux of criticism of the common school. Because of ethnic pluralism and religious diversity, the secular common school is perceived to have outworn its utility. The public school, it is argued, cannot possibly assimilate all the competing loyalties, values, languages, possibilities of diversity, choice, and accommodation of parental concerns without falling into banality. Because the common school has failed instantaneously to transform immigrant children into "homo Americanus," "the state school seeks to express a universalism that no longer exists" (Glenn, 1988, p. 240).

Choice proponents argue that "by legitimizing a new attitude toward education, that of the preeminence of the consumer" (Ballion, cited in Glenn, 1988, p. 269), the educational system should improve. Such speculation on the benefit of private self-interest have put public education on the defensive and attracted popular sentiment.



Glenn (1988) frames the perennial question: Does the state have a right (or a duty) "to insist upon compulsory socialization of children in values that conflict with those of at least some parents, in the name of some higher social good?" (cited in Glenn, 1988, p. 269). Under the best of circumstances this point is debated. But where there is no consensus on what principles are to be valued, the benefits of uniformity in any system of education become impossible to require. All that can be agreed upon is literacy and numeracy, and these can be in a variety of settings. But, according to a republican ideology, the common good is an ideal we can all agree on, and one with more moral force, than achieving maximum individual consumerism. John Dewey simply put it: "What the best and wisest parent wants for his own child, that must the community want for all its children" (cited in Gutmann, 1987, p. 115).

### **Common as Commonwealth**

A commonwealth aspect of "democratic control" is rarely discussed by the conceptualizers of public choice schools. It detracts from the obsession with individualism and theories of individual right which have been elevated to a point of avariciously staking new claims to additional individual rights such as privacy in more recent times. The commonwealth idea reinforces the necessity of state action to ensure uniformity and equal condition. At the same time it implies both rights and responsibilities, a mutuality and consensuality that works both ways to ensure national as well as individual well being. According to the

republican philosophers, such as Aristotle, Montesquieu, or Burke, the natural law of reciprocity and mutuality suggest that citizens have a moral and political obligation to uphold the laws and to aspire to the common good, just as the state has a political and moral obligation to protect and to edify its citizens by virtue of a mutual contract.

Furthermore, we learned from Aristotle that virtue for individuals can be habit. It follows then that virtue on a national scale, which is civic virtue, is reverence for tradition, continuity and commonality. Burke's doctrine of prescription (meaning choice or guideline for decision-making) is not opposed to consent of the governed, but is based upon a presumption in the human mind.

#### Prescription

Is a presumption in favor of any settled scheme of government against any untried project, that a nation has long existed and flourished under it. It is a better presumption, even of the choice [Italics added] of a nation, far better than any sudden and temporary arrangement by actual election. Because a nation is not an idea only of local extent, an individual momentary aggregation, but it is an idea of continuity, which extends in time as well as in numbers, and in space. And this is a choice, not of one day, or one set of people, not a tumultuary and giddy choice; it is a deliberate election of ages and of generations; it is a constitution made by what is ten thousand times better than choice; it is made by the peculiar circumstances, occasions, tempers, dispositions, and moral, civil, and social habitudes of the people, which disclose themselves only in a long space of time (Burke, 1808, Volume 5, p. 78).

### Legitimacy of the Public School

Unlike private self interest, the public interest derives its identity, as Dewey and others have shown, from the sharing of objectively identifiable conditions (Meyer, 1975; Dewey, 1961). Some have denied the concept of public interest (Schubert, 1960). Others hold that while the public interest may have no specific goal which has even a hope of gaining completely unanimous assent, common good may and must at least be consciously sought as an ideal (Schubert, 1960). Fostering civic virtue and duty becomes the aim of the state which seeks the common good. Such a state depends upon civic virtue or the ethics of character to transcend the temptations of corruption which inure in any government.

Because education can promote the welfare of society as well as enhancing the liberty of individuals (Butts, 1960), the goal of maintaining and supporting the common good through the common school requires a conscious and common human deliberation as an object of public interest. As such the American common school is essentially a civic responsibility that obligates both citizens and the state.

It is possible, of course, that the public is too dimly aware of the need to deal with the common condition. The public may be too morally desensitized to make Aristotle's distinction between "mere life" and the "good life" (Meyer, 1975). Recent finance disparity litigation shows that equitable support for the common school may require compulsion. But states have been successful in

providing for the common good through an adequate and equitable system of common schools when judges and legislators are effectively reminded of the republican ideal of public education and able to resist political pressure from private "enclaves of influence" in the richer districts.

This litigation has clarified the political legitimacy of common school in accordance with the republican concept of the duty of the states (as opposed to local communities) to educate people. The Kentucky case, Rose v. The Council for Better Education (1989), is an especially relevant paradigm. The court turned to the intent of the framers of the Kentucky Constitution, who had held that common schools were "essential to the prosperity of a free people," the development of "patriotism," and for the understanding of "our government." These roots establish the republican duty and moral obligation of states to sustain education as one of the most important buttresses of American regime values (Mize, 1973/74).

Recent reluctance on the part of legislators and the American public to equitably support the public schools only shows that there have been few gains in the spirit of civic humanism since the early days of the nineteenth century when publicly financed schools would be supported only "at the point of a bayonet" (Cubberley 1962/1934, p. 164-66). According to the laissez-faire model, public support should be largely localized and voluntary, an idea pressed despite inequitable funding burdens that have created the differences between local school district tax bases.

However, serving the common good at some fundamental level is not an activity which one chooses to do, and it may not be abandoned by those who simply prefer private life to civic altruism. "Political conduct is intrinsic to being a human being at a certain state of civilization, and what it demands is intrinsic to living a successful human life (Berlin, 1971). Thus, the ideal of republican duty is inherently antithetical to decentralized local control over the quality and funding of educational opportunities.

The truth of the matter is that while the United States Supreme Court has denied that education is a fundamental constitutional right (San Antonio Independent School District v. Rodriguez (1973)), the power of the idea remains strong. On the basis of republican theory, it is implicit in the language and provisions of both state constitutions and the United States Constitution. In addition, traditional resistance to the federal government providing resources for equalizing educational opportunity under the General Welfare Clause is breaking down.

The United States Constitution permits the federal government to assume the role of trustee of any public trust through a duality of political authority. The "harmony of interest" theory found its way into the Constitution through the political machinery of the separation of powers, Madison's artful attempt to counteract factionalism. These mechanical devices of government control powerful interest groups and assume that people are motivated exclusively by private selfish interest and are therefore incapable of the common good on a

voluntary basis.<sup>16</sup> On the other hand, the Constitution also allows for public administration by a virtuous and enlightened civil service to ensure a focus on the common good "that is difficult to reconcile with a dominant social ethic of individualism" (Lane, 1988, p. 31). A theory of administrative stewardship by public officials is built into the Constitution by their oath to uphold the Constitution and by implementation of its essential regime values (Terry, 1990). Both these features of the Constitution mitigate against factionalism and demonstrate, as even Madison himself believed, that the quintessential value of the regime is providing for a national common good. If this is so, the federal government has a natural role to play in the regeneration of the common school ideal.

### Covenant Tradition

In advocating a uniform system of public schools, Cubberley saw the need to awaken in students "reverence for our democratic institutions and for those things in our national life which we as a people hold to be of abiding worth" (Cubberley, 1919, p. 430). This was the highest mission of public education. Cubberley, like Schlesinger and others, saw that education was vital to the republic and insisted on the commonality of key republican ideas. These, at least, have not lost fashion: civic responsibility which caters to the common good; a belief in civility, posterity, and a republican commonwealth founded upon right principles acquired through education in perpetuity.

According to Cubberley, this republican notion of the duty of the state to educate has become deeply embedded in the "American educational consciousness." It has taken nearly three centuries to transform the school from an instrument of the church to a civil institution in each of fifty different states to accommodate the needs of a great democratic society (Cubberley, 1919).

Where did Cubberley get this notion of the right of the state to tax to educate? According to commonwealth theory, the idea flows from a covenant, a mutual obligation whereby both the people and the commonwealth benefit.

The Puritan Commonwealth provided a source for the idea of the state as an instrument of the common good (Handlin and Handlin, 1969). Some states today, Kentucky, Massachusetts, Pennsylvania and Virginia, are "commonwealths." As the Massachusetts Constitution of 1780 says, they exist "to secure a body-politic...a voluntary association of individuals...[or,] social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good" (cited in Alexander, 1991, p. 357).

The concept of commonwealth also promulgates the notion that "a Government or a Body Politics ought to be one connected system having but one common interest, and one public will" (Ludlow, cited in Handlin and Handlin, 1969, p. 33). John Adams, noted for example, that the essential unity of a commonwealth rested on a commonalty of purpose which would constitute the

state as "one moral whole" which reinforces the idea of "ethical duty" in a republican commonwealth (cited in Handlin and Handlin, 1969, p. 29).

The notion of a covenant agreement, a binding mutuality to ensure equality of condition on the part of a public authority and citizens was also expressed in 1758 by Jean Jacques Rousseau. Rousseau argued that the state would bring up the children "in common in the bosom of equality" where citizens would learn to value each other as brothers (1973, p. 149). Thus the state has a moral obligation to its citizens to provide for and ensure the common good. When our modern state legislatures fail to provide for a "through or efficient" system of common schools, one that is substantially uniform, they fail in a moral and civic obligation to promote the common good of all. The common school is thus a constructive tool of nation-building, a highly significant national service without which "an uneducated citizenship is a public peril" (Cubberley, 1919, p. 430).

The commonwealth idea of a covenant expresses the spirit of republicanism, continuity, and national unity or solidarity in perpetuity. The society makes "choices" which create obligations members of society are not simply free to throw off at will. Unlike the advocates of consumer choice in education, Cubberley and the early nineteenth century common school founders believed in the Republic and brought the dimension of time into their common school vision. In essence "the proponents of the common school were seeking the nurture of a common core of sentiment, of value, and of practice within



which pluralism would not become anarchy" (Cubberley, 1919, p. 340). The common good as commonwealth posits a regime that consists of "one moral whole" emanating through its public institutions and constitutions through a series of mutually exclusive rights and obligations perpetuated to posterity. This vision projected by Cicero and through the Burkean "eternal" contract has reinforced and sustained the public purposes of American education and nationhood as a "partnership in virtue" over time. An educational system predicated upon commonwealth principles makes every citizen, elected official, or civil servant responsible as an "Administrative Conservator" (Terry, 1990) to work toward the common good of all united in a commonwealth.

### **Common as Virtue**

The American common school and common school system was forged out of a multiplicity of interests and intellectual traditions. Most of the arguments advanced in support of a system of free and common public schools, either before or after the American Revolution, however, contained some notion that the purpose of the common school is to advance republican government and civic virtue to ensure a moral order sensitive to the common good of society.

Freeman Butts observed:

There was little doubt that a republican form of government required the individual to sacrifice personal interest for the greater good of the community. Indeed, the ideal of a commonwealth in a democratic corporate society in which the common good was the chief end of government could be solidly built only upon the public

commitments of the sense of community achieved by the citizens of the commonwealth, the people...Just as the church and the gospel could be the instruments of salvation, so the republican state could be an instrument of political reform and an agency for promoting public virtue (Butts, 1978, p. 197).

Forrest McDonald has scrutinized the public interest conflict between the individual and the collective, between private and public interest from the early days of the republic. He observes a synthesis of individualism and communality that lies at the heart of the republican tradition. The Founders believed that both the individual and the collective were needed to promote the common good, as Horace Mann had argued, and that both were essential to the life of a republic or commonwealth (McDonald, 1985, p. 70).

Modern commonwealthmen, no less than Jefferson who advocated a "natural aristocracy of virtue and talent," have noted the need for civic exemplars (Terry, 1990). The concept of "administrative conservatorship" for leadership of governmental institutions was meant for civil servants, but is applicable to school administrators, educational policy makers, elected officials, and citizens alike. The principle of conservatorship, especially known to the champions of social efficiency during the Progressive Era, is not opposed to change, but emphasizes vigorous statesmanship guided by a moral commitment to protect the Republic, institutions, and democratic way of life by faithfully fulfilling an oath to uphold the Constitution (or state constitutions in the case of education). This concept of virtuous leadership with its basis in public education was the kind of leadership

prescribed by Aristotle and Plato to maintain stability of the polis with civic virtue as the end or goal of the state.

The American common school system was founded during a period of "high American statesmanship" when, as Herbert Storing notes, "devotion to public duty and an understanding of the principles of governmental structure and operation was the broadest and deepest kind" (cited in Ward, 1987, p. 476). This basic commitment to civic virtue and the "common good" encouraged a new public sector administration in the nineteenth century and established a system of free public schools (Ward, 1987, p. 468).

It was generally believed at that time that public virtues could be developed by molding and carefully shaping democratic institutions like the public schools. The founders of the common school systems knew that it would be increasingly difficult to appeal to republican values in a new age of industrialism, individualism, immigration and commercialism and "were not expecting the common good to result mechanically, as though by the automatic workings of interest, or at least they did not expect it to happen unaided" (Bellah et al., 1985, p. 255). In this new climate, Americans "turned to private advancement and local economic growth, leaving the weak and distant national government in the hands of a new breed of professional politicians who specialized in the accommodation of interests rather than civic virtue (p. 255). We are reminded of Horace Mann who wrote: "It may be an easy thing to make

a republic, but it is a very laborious thing to make republicans" (cited in Cremin, 1951, p. 137).

It was in a heterogeneous and diverse climate that a free and common system of schools would strive to keep the commonwealth notion of the common good alive. Its founders envisioned a strong role for the state in implementing education for all and provided a legacy whereby

education is perhaps the most important function of state and local governments.... It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship (Brown v. Board of Education (1954)).

### **Common as System**

#### System or Institution?

As Montesquieu suggested in this chapter's opening quotation, while we are in a community, we are constantly creating institutions and are in turn created by them. Common schools are public institutions, and like other institutions in America are not perfect. Yet they form and create us "especially through the metaphors they give" (Bellah et al., 1991, p. 12). Two such morally descriptive metaphors of the American common school system presented in this study are "the balance wheel of the social machinery" of Horace Mann and "the soul of state" by Van Hise. Like organic systems that are constantly evolving, a public education system, or institution, is dynamic. "This process [of

engagement] is never neutral, but is always ethical and political, since institutions...live or die by ideas of right and wrong and concepts of the good" (Bellah et al., 1991, pp. 11-12).

With a rationale and teleology of a virtuous commonwealth, a state-supported system of schools is created by the state. A system of education is therefore more than a purely inefficient or efficient mechanism or malevolent organization that we should fear or from which we should desire to flee (Bellah et al., 1991). Like other public institutions created by the state, a school system exhibits normative patterns enforced by laws, mores, customs, and practices. We may speak of a dynamic and autonomous market system that produces progress, but an educational system that produces literate, virtuous and rational men, is a creature of the state and therefore a public institution. Institutions exist only because of certain institutional arrangements that bring them into being, such as local government, rule of law, laws of public taxation that have been developed over the past three hundred years (Bellah et al., 1991).

Bellah et al., (1991) argue that Americans live through institutions that are both constraining and enabling (p. 12). We are not self-created atoms manipulating or being manipulated by objective organizations that threaten our autonomy (p. 12). The laissez-faire model has focused relentlessly upon individuals viewed as self-interest maximizers with private accumulation and pleasures as the only measurable public goods. However, institutions, defined sociologically, are "a pattern of expected action of individuals or group forced by

social sanctions, both positive and negative," that exist "for the purpose of attaining agreed upon common aims" (p. 10).

Institutions, like systems are ontological. The Macmillan Dictionary says they are "devoted to a particular purpose, especially one of a social, or religious nature" (Halsey, 1973, p. 533). Common school systems have a purposeful, institutional, or public character. According to Bellah et al., (1991), they have "a pattern of social activity giving meaning to collective and individual experience;" they are "a complex whole that guides and sustains individual identity;" they have a role of "forming individuals by making possible or impossible certain ways of behaving and relating to others;" they have a function of "shaping character, and providing standards in terms of which each person recognizes the excellence of his or her achievement;" and they are "bearers of ideals and meanings" (p. 40).

Furthermore, this study has demonstrated that educational systems are republican, egalitarian institutions. It has been shown that for an educational system to be considered "efficient" requires both economic as well as equity considerations to ensure justice and fairness. An educational system must be operated or regulated uniformly to ensure equitable distribution of services that is fair to all taxpayers and especially its "marginal" participants. Inputs and outputs of an educational system require broader interpretation than either economic cost-benefit or classical utilitarianism has heretofore provided. The term "system" with its descriptors "uniform" and "efficient" suggest that the right

functioning of an educational system is reflective of social harmony, or what Thurow (1975) calls an "Archimedean principle"-- a balance between individualism and collectivism which the both state and its educational institutions strive to effect.

### Requirements of a Moral System

The task of defining an equitable system is complicated by the fact that modern scientific and economic thought no longer holds the teleological view of man tenable. It has been shown that Benthamism and utility functionalism has not only undermined the concept of natural rights as natural justice, but broken the connection with natural law itself which provides the moral substrata for all systems, economic, political, and moral.

The republican and Aristotelian conception of the ideal state throughout this study has served as a point of departure for any discussion of an educational system as a distributive institution by emphasizing the need for theoretical commitments beyond human consent or reason alone to achieve the common good. Aristotle's view of the state as an ideal quest for the common good, however, has been rejected by utilitarianism as an antiquated "intuitionism," or an arithmetical economic determination. Addressing the common good as the goal of "system," the entire concept of justice as fairness which finds its basis in classical republican theory, rule of law, principles of virtue, commonality, and the

ideals of a republican commonwealth is difficult to reconcile with modern theories of utilitarianism or laissez-faire economics.

The "Archimedean principle," which reflects the concept of systems equilibrium, operating in a fair, open, balanced, harmonious and inclusive system is also the principle of equity. The terms "efficiency" and "uniformity" are a standard of an educational system because they reflect principles of fairness and equity with regard to access, the benefit of outputs, and the financial support of education. Other principles have been considered in the context of an equitable or moral system: (a) the "difference principle" which relates to such economic and political considerations of a system as uniform access, distribution of services, and (b) the principle of "equal liberty" which speaks to entitlement and common or uniform benefit of education to ensure equality of opportunity.

The term "uniform," more than any other descriptor of system suggests state control and centralization of authority, concepts which have been greatly feared and resisted by libertarians and pluralists alike in modern times. However, it has been shown that the term "system" does not automatically imply bureaucratic centralization, although the main responsibility of education is a state and not a local, or parental concern. Implicit therein is the principle of "subsidiarity," encompassed by the principles of "equity," "equality," and "justice as fairness." It has been argued that a "uniform" system is not destructive to civic autonomy since the state, particularly in its role as parens patriae has granted liberty rights of students as individuals and ensured equal entitlement to



education. Uniformity, however, has become the focus of a debates between public versus private systems of education, state versus parental and local control, or the "extra-familial" versus the "familial" aspects of a system and provides a standard of an "extra-familial" system of education.

It has also been demonstrated that in a republican system, civic virtue in the polity is related to economic as well as political justice, i.e. the utility function is a just distribution. In this respect a system of education which seeks to further the republican goals of the state is a moral system. The definitions of "uniform" and "efficiency," therefore, demonstrate that the "inputs" or "outputs" of an educational system are not value free. In the context of a commonwealth they reflect normative principles of equal liberty and justice, principles of neutrality rooted in common law, principles of prescriptive rights and constitution that emphasize rights, obligations, promises or duties on the part of citizens to support their public institutions and government.

What is needed, however, is a precise model of educational distribution that will ensure those social and economic conditions of a system most conducive to the fullest expression of individual liberty, talents and abilities that Jefferson and the founders of the American common school system envisioned would enable a pluralistic society to function as a virtuous republic. The definitions of "system," "uniform," and "efficient" as terms of art suggest such the republican model.

### Relation of Common to System

Since the Greeks, justice has been linked to the common good. In this study, various aspects of the common good as a generally advantageous mode of cooperative, collective existence have been advanced through the principles of virtue, commonwealth, and commonality, i.e. the willingness to share a common fate with others on the basis of common traditions, values, interdependency in community, rationality and a morally responsible civic autonomy. It has used the term "common" and "common good" as a paradigm for the common school and a civic humanism in the United States. It has demonstrated that the Aristotelian conception of the good life through a virtuous and enlightened citizenry has been sought as an end of state, and that the state in a republic or commonwealth is an organic, as well as teleological entity. That the state is a "moral whole" equal to the sum of its interrelated parts suggests that all of its members must aspire to civic virtue and be allowed to do so for the good of the state--within the framework of its public institutions which are an aspect of polity.

Civic virtue in the state is thus more than benevolence; it subsumes justice. For the individual virtue is moral volition, or a conscious desire for the common good or benevolence. In a modern republic, however, civic virtue can be encouraged through pursuit of excellence, knowledge, prudence, and law with a civic humanist perception of rights and obligation, public order, and civic autonomy. Civic virtue, however, since it is a goal or end of a republican state, transcends both individual benevolence and justice. The state itself, defined as a

commonwealth, is a symbol of the common good. The end of the state is the general welfare of the whole or all of its citizens, i.e. a virtuous state. One cannot understand what an educational system is teleologically speaking, or without appreciating the fact that it is a creation of the state.

A republic or commonwealth is the proper setting for a democratic educational system. A commonwealth emphasizes civic responsibility. It has a goal of a virtuous and educated citizenry. It seeks to establish a balance between individualism and collectivism. The modern welfare state, on the other hand, is a more difficult proposition, because it is difficult to find any definition acceptable both to its friends and to its enemies. Today the perception of the welfare state is greater than that of a commonwealth and so it must also be seen as a distinctive setting for a republican educational system, since many of its principles appear relevant to precepts of justice, fairness and equality of opportunity which the system strives to affect as avenues of social selection and social and economic justice.

At the same time, however, the laissez-faire notion of the modern state presents a competing view of social justice and a different context for education. It sees equal opportunity as intense individualism, parochialism, as the exercise of merit, and social status defended as a property right. Its defense of privilege rests upon the capitalist vision of an uncontrolled, deregulated distribution of goods and services. It opposes centralization and collectivism of any kind as

restraints upon individual freedom. This perception of the state or modern commonwealth resists the notion of an equitable system.

It is shown herein, however, that a traditional American conception of the state is a commonwealth that is a responsible promoter and guardian of the welfare of the whole community. The role of the state, from a collectivist as well as individualist point of view, is to harmonize individual rights with the common good. In doing so its, those in public authority, i.e, its "administrative conservators" must choose appropriate means to achieve justice and equity in the expectation that the educational system, which serves all of the people equally and uniformly, must operate in harmony with commonwealth principles. The educational system, like the state or commonwealth, must operationally effect the common good.

An educational system also has a dichotomy of goals that can be viewed as either collectivist or individualist. On the one hand, an educational system is expected to produce a balanced supply of persons with different skills and aptitudes trained to maximize the contribution they can make to the common welfare. On the other, the side of individualism, is the right of each child to receive an education suited to his or her individual character, needs and abilities.

At the present time, the conflicting "familial" claim of parental rights to choose education and the "extrafamilial" expectation that all citizens support the educational system equitably call into question a system that does not appear to be serving either of these purposes very well. In times of social or economic

disequilibrium, an educational system may not be a uniform or balanced system that does not encourage a harmony of interests and serve the general common good.

There is no reason to assume that the independent operation of the two principles, of individual rights and general social needs, would lead to the same results. Thus the state has the responsibility of harmonizing the one with the other. This argument is essential to understanding that a republican system of education operates within the political setting or framework of a commonwealth from a perspective of the republican principle of "unity in diversity." The early conceptualizers of an educational "system," Thomas Jefferson, Horace Mann, Benjamin Rush understood well this relationship between a "system" of education and the "polity," and saw a common school system as "the balance wheel of the social machinery."

According to this view, the common good or public interest in education is achieved not through abstract or individual claims to natural right or reason, or a purely libertarian liberty of self interest, which is simply the right to be left alone; rather, the common good is recognized and advanced through appeals to natural law or natural justice reflected in social institutions perceived as moral systems that are part of a larger political or social systems framework which the Greeks understood as a polity. A positive and equitable jurisprudence encourages both the state and individuals to achieve civic virtue since both the state and individual aspire to moral ends. We have noted that various

hypothetical or practical contracts, such as the social contract, covenants, or constitutional agreements have morally bound or obligated people to government and the community and have served as vehicles, either hypothetical or actual, for social justice. Thus the goal of the common good or welfare of all citizens, achieved through a state supported educational system, is compatible with the public purposes of government.

However, the problem in educational policy today is whether these ends are justified or measured by an educational system sufficient to satisfy the moral requirements of a state conceived within a tradition of laissez-faire--through a modern anti-institutional lens.

This study deepens the understanding of "common" as a term of art compatible both with the "collective" goals of the state and equal liberty among individuals to achieve the common good. It has been shown that a republican system of education, which is an integral part of the polity, recognizes that liberty and opportunity, income and wealth, and above all self-respect of individuals with different and varying needs are primary goods.

From an economic perspective, these individual goods and needs, addressed through an education system, have a central position in the moral psychology, legal, and financial requirements of the system. Therefore, the term "system" must connote or convey a sense of justice as fairness in both the access to and distribution of educational goods and services to its clientele.

There is, however, a cost to moral ends that must be determined and obtained. In a democratic system of which goals are to further the public purpose of the state, the moral costs hinge on the extent to which all citizens enjoy equal liberty, have equal opportunity and benefits in proportion to what ideally constitutes or defines the common good as a utility function of distribution. Therefore, how to perpetuate an ideal of mutual responsibility for the common good or public benefit through the utility function is the supreme challenge of an educational system whose goal is intertwined and interrelated with that of the state.

The terms "uniform" and "efficient" have been defined to demonstrate that an educational system is a moral system that requires a degree of legal positivism. This argument assumes that a certain amount of "paternalistic intervention must be justified by the evident failure or absence of reason and will..." guided by principles of justice (Rawls, 1971, p. 250) to ensure that individual needs, preferences and requirements for education as a primary good are met. A system of education requires "A level of fiscal effort uniformity at such a high level as to prevent a child's education from being a function of low educational aspiration of the community, or to prevent external local political influences, unresponsive to or unconcerned with education, from denying appropriate educational opportunity" (Alexander, 1982, p. 205).

Given the tradition of laissez-faire, the challenge to the polity is that these moral ends of an educational system are achieved without undermining

individual autonomy in the state, i.e. that there is a balance between control and support, between the individual and the collective. For as Finnes notes, the "objective of justice is not equality but the common good, the flourishing of all members of the community..." (Finnes, 1980, p. 174). A system of education that is a distributor of goods, i.e. knowledge and economic opportunity, contributes to the shared end of a social union. Rawls has noted that this is "clearly not merely a common desire for the same thing" (1971, p. 526), but is the "a shared final end of all members of [a well-ordered] society] and "the successful carrying out of just institutions" (p. 527).

To demonstrate that an educational system is just is to define "system" within an ontological frame. The basic requirements of justice sought in connection with an educational "system" hinge not only upon ideal conditions of society where everyone complies fully with principles and institutions of justice that Rawls proposes, but a combination of factors presented earlier in this study that ensure adherence to long established principles of the commonwealth, commonality, and civic virtue inherent in the institutional fabric as well as the values of the American parchment regime. A "practical reasonableness" (Finnes, 1980, p. 164) is also called for in the administration of a system of education. For Aristotle, Burke, and even Bentham, this requirement of "reasonableness" could be met by "prudence," or for Rawls, reason in the "original position."

The application of the term "common" to system then is the common good of the community relevant to "system." In this context of common good, an



educational system expresses "an equality or proportionality of good" (Finnes, 1980, p. 164), not, as Finnes says, to any individual or group that disregards the well-being of others in the community, but as it "entails a reference to standards of fittingness or appropriateness relative to the basic aspects of human flourishing" (p. 164). The standards for an equitable system consistent with both the concept of a commonwealth and the welfare state are "uniform" and efficient" defined within the context of the common good.

The philosophers have demonstrated the importance of underlying principles relevant to a democratic state that underlie and unite the actions and conscience of men and women for the common good. Montesquieu defined civic virtue as mutual responsibility rooted in natural law and justice or love of the state. Rousseau hoped this goal would be manifested through the General Will, but recognized the challenge of being left "as free as before" and the need for moral obligation where there was no "common interest to unite." We learn from the natural law tradition and now John Rawls that the essence of commonality is rationality. According to Rawls, man's reasonableness in an original position is to do what is morally right or binding for the common good--even if the common good is conceived as an individual's life plan.

We learn from republican theory that the end of the state is moral, that it should reflect the collective judgment of the majority guided by principles of mutual rights and obligation, a sense of commonality and reciprocity inherent in its constitutions and traditions. It is debatable, however, whether civic virtue

can be achieved in society without justice or that the law can always determine what is equitable in all circumstances, even though these standards are implicit in the various symbols of the American tradition heretofore described.

As far as a standard of justice is concerned, Aristotle noted that the just or good society is an ideal requiring virtue as character; Yves Simon and David Hume would see a conscious will toward "benevolence"; Immanuel Kant would have us act as though right was a "universal principle" or law: and Edmund Burke envisioned "prudence." What is needed, however, is a standard of equity acceptable to both economic and political theorists to make for an equitable system of public schools. That standard has been illustrated by the definitions of "uniform" and "efficient" terms frequently used to describe a system of schools.

### Challenge to Systems

To fully comprehend the meaning of the term "system" in an educational context today requires an understanding of such catch-all phrases as "equality of opportunity" or the "level playing field" as the teleological goals of system contiguous with the goals of the state. It should be noted, however, that these goals, in addition to those of the Founding Fathers for a virtuous and enlightened citizenry, express an economic dimension to education. The present method of justifying the inputs of education through production function models and cost/benefit analyses has perpetuated a fallacious concept of financial and resource distribution that has deemphasized the moral dimension of an

educational "system" characterized by both "commutative" and "distributive" equity (Alexander, 1982, p. 196-198).

It can be argued therefore, that in attempting to provide a value free distribution, educational finance in many states has failed to meet the moral requirement of the state to educate a virtuous and enlightened citizenry and also failed to meet the full moral requirements of a "system." In the place of a value free distribution, a new conception of efficiency is needed which expresses the ethics of distribution in terms of a dynamic, or organic, system of education which is ontological rather than purely bureaucratic based on Newtonian scientific principles incorporated into Taylorism. Without this perception of "system," the public schools will not be able to realize their ideal goal of the common good envisaged by our forefathers or to satisfy the present conditions for learning in America's public schools which are still widely variant and inequitable.

Chapter One, "Common as Common Good," demonstrated that the ideal of common good and the public interest throughout modern history is controversial. It has not been viewed as a legitimate goal by private interest theorists or pluralists as a feasible object or end for either individuals or the state. This dichotomy between public and private interests has resulted largely because, means and ends are hopelessly scrambled in the political and economic theories of utilitarianism (Thurow, 1975). For example, only the maximization of individual private goods as a means are recognized in utility theory which

presently forms the basis for economic distribution. According to private interest theory, there is no common provision or thought for a common good only haphazardly achieved through an indifferent market mechanism of choice, the "invisible hand," or, in the modern economic vernacular, Pareto optimality.

The moral justification for private interest theory, that the selfish acquisition of private goods will balance out in the end, has been questioned in this study's attempt to define an "efficient" system of education. It has been demonstrated that in the laissez-faire model, neither virtue, nor the common good is a legitimate goal either for individuals or the state, i.e. neither the state nor its institutions are seen as teleological constituting a point of departure for common good theory.

Yet this is the classic assumption of Bentham and Mill and other modern libertarians whose utilitarian assumptions have determined modern economic theories of distribution. The principle of utility combined with Mill's view on liberty demonstrates that private happiness is the goal with virtue only incidental to its maximization. This utilitarian assumption of private good undergirds modern cost-benefit theory and Pareto optimality which posits that more is better and that the market adjusts to an inequitable distribution of purchasing power so individual liberty is protected from coercion. It is has been argued, therefore, that utilitarianism is not a viable theory of the common good in the classical or republican sense of equal liberty and opportunity.

A good definition of "system" assumes that a system of education, like the state itself, is teleological and purposeful and that the goal of "system" is commensurate with the republican goal of the common good in the state. In defining "system" in the context of common good or benevolence theory, capitalist assumptions of private utility have been found wanting, specifically the theory of private utility optimization derived from the Bentham/Mill calculus and the libertarian philosophy of freedom from coercion by the state supported by the principle of subsidiarity and local autonomy. If the central value system of Lockean individualism is flawed, then it is more than likely that many of its institutional specifications will be problematic as well (Bellah et al., 1991). A flawed value system makes the goal of a common system practically impossible to achieve or to sustain.

A secondary purpose in defining an educational system as a republican system was to demonstrate that a system, described as "uniform" and "efficient" suggests a moral standard of democratic control and that this standard is "equity." Justice and "fairness" is important to understanding the meaning of "efficiency" or the phrase "efficient systems" mandated in state constitutions, and thus, the terms "uniform" and "efficient" impose an ethical requirement of duty and obligation in the distribution of educational goods and services.

### Science of System

The term "system" has been defined etymologically as well as ontologically, especially in relation to the modern scientific and philosophical concept of organicism. Rawls argues that the "difference principle" "transforms the aims" of social structures so that "the total scheme of institutions no longer emphasizes social efficiency and technocratic values" (Rawls, 1971, p. 101). The "Organismic Revolution," noted by philosophers and scientists from Aristotle to Bertalanffy, has demonstrated that modern social systems are ideal-seeking systems with holistic, teleological, hierarchical and temporal properties. Unlike a bureaucratic, or Newtonian system, an ontological system has unity and purpose. What unifies an educational system is not so much the industrial principles of bureaucratic centralization posited by Max Weber or Taylorist scientific management, but an underlying moral purpose that implies value. Value and ethics, not bureaucratic control or a reductionist scientific model, provide a rational principle underlying an ethical system. Waldo (1984) notes that to define "efficient" as a property of system in strictly economic terms is a fruitless endeavor since "Efficiency...can be measured only in terms of purpose" (Waldo, 1984, p. 196).

The post-modern conception of an "open-system" provides an ontological definition for an educational system. This framework allows for a transcendent ethical perspective. An educational system is thus defined as a moral subsystem and part of a larger, more encompassing system of state purposes and goals. As

an "aspect of the polity" it is a function of a larger commonwealth. The concept of common schools that operate within a morally and purposeful "system" shaped by the goals of the state challenges satisfies the ethical validity of modern educational systems and their political requirements over and above the claims of privatism and sectarianism.

Forces in contemporary society that have sought to decentralize, localize, privatize have undermined the concept of a republican, extra-familial system. This historical fact is verified by Cremin's history, in conjunction with the various perceptions of system by Jefferson, Rush, Mann and other founders of public schools. Their definitions or conception of a system of education conforms to the republican ideal of a moral state which requires that a system be "uniform" and "efficient, i.e. egalitarian, inclusive, and equitable. An educational system viewed as an aspect of polity reflects a distinct commonwealth, or "republican style." This "republican style," Cremin argues, envisioned "a functional organization of individual schools and colleges that put them in regular relationship with one another and with the polity" (Cremin, 1980, p. 148).

The positive constitutional requirements that legislatures provide a "system" of education is frequently qualified by one or more adjectives such as "uniform" and "efficient." That a system is uniform suggests that it is standard and experienced equally by all and supported by all. The term "uniform" or "uniformity" like "efficiency" suggests not only the moral requirements of system, but the manner in which these systems are delivered, i.e. that the inputs and

outputs of a system must be substantially the same. Attempts to restructure educational systems through vouchers, privatization, and the formation of a quasi-public system of education to overcome a dual system suggests resistance to standardization. Thus the words "system," "uniform," and "efficient" in the context of educational reform underscore the problem of authority and political support. The terms "uniform" and "efficiency" imply a "critical system," a force for change, operation, or distribution vital to political acceptance of a common school system as we have now come to understand the term "common."

Efficiency is a complex concept that has been defined in several ways to show that the concept has evolved from a relatively value-free economic term to one with deontological implications. It has been described first, as operational efficiency (scientific management, Benthamite utility, cost-benefit, Pareto optimality with the concept of the zero sum game and marginal utility)); second, as social efficiency, which recognizes efficiency as a social value; and lastly, as economic equity, or the just distribution of educational services that creates the ethical conditions of a society and a climate for economic freedom vital to equality of opportunity.

The focus on efficiency as economic equity reveals the underlying problem of just distribution or how to achieve the common good qua a system and within the polity. Efficiency as economic equity addresses the philosophical problem of ends versus. means; efficiency defined as equity asserts that means are ends. A framework for discussing a standard of efficiency as equity includes (a) processes



and procedures, i.e. utility maximization; (b) the problem of individual preferences and the aggregation of preferences; (c) the problem of merit, i.e. capitalist merit versus the concept of diminishing marginal utility and the concept of "fairness" and the least advantaged; (d) the problem of common good maximizing.

Because there are many theories of social welfare function and the utility function is suspect without innate preferences, the issue of what trade-offs are acceptable and what weights are used to add one person's utility to another was discussed by reference to the theories of Barry, Pigou, Rawls, Dworkin, and other philosophers. A Paretian concept of "efficient," reflecting the philosophy of more is better than less, is not the essential "Archimedean point" in utility theory, because it does not take into consideration individual worth and individual differences and preferences. The fallacy of Pareto optimality is reflected in choice theory which makes no attempt to quantify utility or to address the issue of common good as justice, conceived as fairness. An economic and operational conception of efficiency has led to the present legal education finance turmoil and spurred the formation of a new definition of "public" to describe an educational system without careful consideration of the distinctions between "public" and "private," or the ethical requirements of an ontological educational system which purpose is contiguous with that of a virtuous state.

The definition of "efficient" in this study has also provided a theoretical examination of the relation between the individual and the community. The

philosophers show that there are conflicting claims about what is good among individuals. However, since an educational system serves individual units, and is also a part of the collective state--as a whole is made up of its parts, it makes no sense to talk of the well-being of a community apart from the well-being of its individual members. We recognize this, of course, as the principle of commonality that Rawls attempted to demonstrate through the "original position" and the "difference principle" which acknowledge inherent differences and needs of individuals tempered by equity. However, it is the principle of commonwealth, or the concept of "moral whole," or "unity in diversity" articulated by John Adams that defines a moral "system" in the Aristotelian tradition of the ideal state.

A viable definition of efficiency as equity concedes that every political community is a welfare state and that welfare is an aggregate function sensitive to the level of well-being enjoyed by the members of the community. As to which theory is best (for there are fallacies in each), it is assumed that the best theories of distribution within systems and institutions square with republican theory of the common good. That is why no one theory will suffice and it may be necessary to draw upon several.

Part of the case for projecting a theory of efficiency as equity in defining "system" is to show the ancient lineage of equity, a concept which has only recently been revived by modern philosophers as a theory of legal relief. From ancient to modern times, philosophers have recognized that law is not always

right and is contingent upon interpretation. As to whether we can deduce economic equity (as efficiency) entirely from philosophical maxims is debatable. Justice in society is contingent upon many factors previously discussed in this study, in addition to economic theories of distribution or utility that the modern utilitarians and the philosophers address.

Any definition of system requires then that all theories be categorized and evaluated in terms of how well they advance the common good. This is the yardstick by which to measure the theories of Bentham, Mill, Dworkin, Rawls, compared also with "intuitionism," or the rights of the individual balanced against the welfare of the community as found in common law jurisprudence and Aristotelian thought. A case has been made for an "extrafamiliar" educational system supported by the strong role of the state to ensure the rights of students to an equal education opportunity through the common law tradition.

As to what "needs," "deserts," and "rights" can be justified by political philosophy, we may have to rule out contractarian methodologies. In fact, in view of the common good theory that has been advanced thus far, it is almost certain that moral efficiency cannot rest on the claims of choice exclusively in the natural rights tradition, since individual choice is only what rational men would make in a hypothetical situation of equal liberty as determining principles of justice. An efficient system where efficiency is defined as equity, however, addresses the notion of "desert" according to Rawls "difference principle." Applied to an efficient educational system, this principle holds that better education for

children in rich school districts cannot be justified as a "just" desert, unless those possessing greater advantage also "is to the benefit of others who are less well off" (Rawls, 1971, p. 105).

In sum, how an educational system attains its own teleological goals involves a variety of assumptions about the nature of justice and how it is achieved in a commonwealth. Theories of virtue or common good have been brought into the context of economics and theories of proportional justice to determine fair and neutral allocation of educational goods and services by the state.

The public good or utility that an educational system delivers, however, also represents intangibles such as opportunities for human development, political goods (such as citizenship and positions of leadership or authority), as well as recognition goods: honor, status, and prestige-- which may or may not be dependent on scarcity and abundance. These goods, however, do not rest on philosophical theories of "primary goods" maximization or "minimum" without keeping in constant view an interpretation of the common good as an ensemble of end-states rather than means. Thus a "uniform" and "efficient" educational system will effect virtue and ensure "the good society," because virtue is preemptive of both liberty and justice--claims that have not been made by the laissez-faire public interest model for education in the United States.

This study has shown that an educational system is bureaucratic, ontological, and republican. Its efficacy and legitimacy, i.e. whether it is found

to be "efficient," or "uniform," ultimately rests upon the definition of "common" as "common good" which conveys the basic teleological assumption of the American common school. Whether a system is fair, or whether economic justice prevails in America as a result of that system's production process, ultimately rests upon an assumption of purpose of any public educational system. If civic virtue is preemptive of liberty as well as justice, then the Republican model for schools is preferable to the laissez-faire public interest model.

Virtue is not an old time expression, but a timeless and relevant concept essential to a proper civic humanism in a democratic state that provides publically supported schools. A democratic republic, as Aristotle and other philosophers demonstrate, is only as good or virtuous as the people who comprise it. Throughout American history Americans have argued the veracity of the public interest and still believe that civic virtue is necessary for a "good society." Walter Lippmann in The Good Society, for example writes that "human virtues

though they are high, they are within the attainable limits of human nature as we know it. They actually exist. Men do have these virtues, all but the most hopelessly degenerate, in some degree. We know that they can be increased. When we talk about them we are talking about virtues that have affected the course of actual history, about virtues that some men have practiced more than other men, and no man sufficiently, but enough men in great enough degree to have given mankind here and there and for varying periods of time the intimations of a Good Society (Lippmann, 1937, p. 348).

## Conclusions and Recommendations

The refounding of a system of "public" schools must always be thought of as hypothesis so long as Americans politically and socially organize to perform tasks relevant to their common condition and continue to seek a high moral ground in their public institutions. The laissez-faire, individualist, choice model for the reconstruction of schools advocates a new social order based on self-actualization, individual differences, group differences, freedom from government interference and moral restraint. It purports to free the public school from statism, centralization, and "democratic control;" yet, its only standard for exercising "choice,"--consumer sovereignty--is flawed. The proper basis for choice in a republic is civic autonomy rightly understood in the republican or civic humanist tradition. According to Pocock: "the development of the individual toward self-fulfillment is possible only when the individual acts as citizen," not out of private self interest, "but as a conscious and autonomous participant in an autonomous decision-making political community, the polis or republic" (Pocock, 1971, p. 35). A standard of civic responsibility provides the moral underpinning of the American common school.

The use of the words "common," "system," "efficient," and "uniform," invoke special meaning in both an historical and constitutional context. The early framers of state constitutions intended for these terms to serve as guiding principles or standards for establishing and maintaining public educational

systems. In the context of education, each of these terms is "a term of art" in so far as they reflect these standards.

The following guidelines for a republican system of public schools can be found in Section 183 of the Constitution of Kentucky restated by Alexander et al., 1989, p. 142). They reflect many of the philosophical principles that have defined the terms of art investigated in this study. They are as follows:

1. The General Assembly shall bear full responsibility for the enactment of laws to govern the common schools.
2. The Schools shall be established as a system, an organic whole, ranged with interdependent parts.
3. The schools shall be public, of the body politic, and shall be governed and controlled by the people.
4. The schools shall be free and common to all with no charges to limit access.
5. The schools shall be financed by tax resources which are distributed in such a manner as to ensure that the quality of a child's education will not be dependent on the fiscal ability of the local school district.
6. The schools shall be funded at a level adequate to provide quality educational programs and services in all school districts.

7. The schools shall be financed in a manner which will prevent the quality of a child's education from being dependent on the vagaries of local tax effort.

8. The schools shall provide equitable educational treatment to all children in the accommodation of their educational needs.

9. The schools will be properly managed to assure the most effective and productive use of tax funds.

The "mores of competition" within our commitment to private enterprise in America still hold out the promise that if our common schools are not good enough, they could be abandoned for private institutions. But it is only when the common school is available and adequate to meet the needs of all, thorough and efficient in providing a uniformity of services and benefits that its full potential as a republican institution dedicated to commonwealth building and the common good can be fully realized.

Today we stand at the crossroads in terms of support of the American common school system. Further diversity, separatism, and division may not be the politically or morally sensitive choice Americans really want to make. A morally responsible public does what is right out of choice, but this choice is guided by prudence, discernment, and a wise and compassionate concern for the commonwealth--a sense of equity. If moral choice is exercised in reforming our schools and other public institutions, Americans as a people may be able to escape the fate of a divisive pluralism that plagues other nations.



One may rightly assume that the American people want to get on with accountability, deregulation and competition among schools, but not by foregoing commonality in favor of diversity and dissention. Public school administration should therefore seek stewardship and continuity rather than transformational leadership that is subject to the whim of the market place. Legislators debating school vouchers on the floor of Congress might exercise their civic duty best by espousing "a partnership in virtue" among all citizens to improve the present system rather to encourage the divisive forces of competitive pluralism and private self-interest that, for the sake of a more "rational consumerism," continue to fragment and disunite the American people.

Any refounding of the public school system requires a reconceptualization of the American polity itself. This study has invited readers to explore the commonwealth and republican traditions that have shaped the American common school. If in the process, they discover that the American republic is still a viable commonwealth, they should seek to restore with haste a balance between the "unum" and the "pluribus." This process could begin by simply restoring the word "common" to any theory of publicly financed education.

## NOTES

1. U.S. Department of Education, America 2000: An Education Strategy (1991, p. 41). The Administration's official position is that "It will apply to all schools where the courts find a constitutional bar. The power of choice is in the parents' leverage both to change schools and to make change in the schools."
2. These researchers argue that public institutions are not by nature private entrepreneurial entities because they serve the public or common good and market initiatives would destroy public trust in their stewardship. They argue that what distinguishes public from private institutions is the bottom line which is not for profit. Public institutions, such as schools, function from governmental appropriation and therefore have a stewardship role to play in the preservation of the basic values of society that they represent. Proposals for restructuring the nation's schools, however, in opposite to public administration theory, advocate school site budgeting, "not as a district accounting device, but as a true cost or profit center" (Kearns and Doyle, 1988, p. 34).
3. The economic doctrine of laissez-faire is not a formal economic doctrine, but what political philosophers, rather than economists have generally accepted as a harmony of social and individual interests. The phrase laissez-faire was first used by the Marquis d'Argenson about 1751 in advocating that to govern better one must govern less, but it cannot be found in the works of Adam Smith, Ricardo, or of Malthus. Adam Smith's famous passage of "the invisible" hand reflects the moral philosophy of Paley rather than any economic dogma associated with free trade and demonstrates a theistic and optimistic view of a world order found in his Theory of Moral Sentiments, rather than from any formal economic theory (Keynes, 1926, pp. 23-28).
4. Public-choice economists assume that political representatives are ruled by narrow self-interests and have little regard for broader public benefits, or deliberation in representative assemblies. They also favor different forms of "direct-democracy" devices such as the initiative, referenda and recall. See G. Tullock Private Wants, Public Means (1970, pp. 112-113). Like benefit-cost economists, they advocate policies based on a consumer "willingness to pay." Consumers are sovereign on the basis of consumer preferences, right or wrong, garnered from the market place. See also Buchanan and Tullock (1965, p. 20).

5. The laissez-faire philosophy rests upon assumptions of individualism, a closely related concept which is a belief in the individual as a primary reality. Individualism in the biblical, utilitarian and republican traditions expresses the idea of the inherent dignity and sacredness of the human person, however, an ontological individualism associated with John Locke tends to view society as a second-order, by-product, derivative or artificial construct. It therefore opposes social realism of both biblical and republican traditions which hold that society is as real, good, or virtuous as its individuals (Bellah et al., 1985, p. 334).
6. The basis of this assumption is Bentham's Principle of Utility: "...that principle which approves of disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question." See J. Bentham, *An Introduction to the Principles of Morals and Legislation*, i. 2 (1948), cited in H. M. Magid, Jeremy Bentham and James Mill, History of Political Philosophy, 1972, p. 680). See also James Mill's "Essay on Government" (1937) for a brief statement on the theory of representative government that accepts Bentham's psychology of happiness as the maximum of pleasures and the minimum of pain. The aim of government is to secure "to every man the greatest possible quantity of the produce of his labor" (Mill, 1937, p. 682).
7. See C. P. Lu (1991, pp. 541-654) Lu argues that local control is a farce because of fiscal incapacity and because "all districts cannot participate equally in the ideal of local control" at 551. See also Briffault's comments in note 46, p. 551: "Local control of education is more likely to be seen as a means of protecting the family interest in public schools if suburbs, rather than cities, are the norm in thinking about local governments. The tendency to conceptualize local government after the model of suburbs as centers of families and homes facilities the equation of local control with family control, encourages deference to state decisions devolving educational, administrative and financial responsibilities to the local level and makes it more difficult for concerns about interlocal inequality and the external effects of local actions to overcome the decentralization endemic to the system."
8. Public choice political economists differ little from cost-benefit theorists in assuming that consumers not only know what they want, but they should get what they want. E. A. Mishan writes: "All...the economic data used in a cost-benefit analysis, or any other allocative study,...is based on this principle of accepting as final only the individual's estimate of what a thing is worth to him at the time the decision is to be made. See E.

Mishan, 1976, p. 318. Furthermore, the concept of consumer "willingness to pay" in welfare and cost-benefit theory assumes passive representation on the part of legislators who simply give people what they want without thoughtful deliberation. Since it is believed that representatives as well as individuals are ruled by narrow self-interest and seek personal political and economic benefits rather than broader public concerns, more "direct-democracy" devices and processes are required to achieve a true harmony of interests. See Buchanan and Tullock, 1965, p. 20.

9. According to Chubb and Moe (1991, pp. 287, 288), schools have the appearance of autonomy but are really controlled by "extensive reliance on civil service, tenure (nominal) professionalism, and other structural means." See also their explanation of the political foundation of democratic control which "...concerns the imposition of certain laws of legislative or administrative origin, designed and imposed on the people by politicians, bureaucrats, interest groups and constituents."
10. George Will's interpretation of the term "polity" from Aristotle to Burke is that it is more than the classic city state or even governmental institutions: "It includes all the institutions, habits and mores on which government depends and on which, therefore, government should strive to have a shaping influence" (Will, 1983, p. 24).
11. Amitai Etzioni of George Washington University has founded a journal The Responsive Community, Rights and Responsibilities, to serve as "a voice to counter those who see nothing amiss with a world in which 'Me-ism' prevails in the body social, runaway greed derails the economy, and interest groups dominate the polity; a moral voice to respond to those who would have society run like a marketplace, and who see the vying of self-interests as the only foundation for civility and service, if they recognize these needs at all" (Etzioni, 1990/91, p. 2).
12. The term "republican" does not refer to the contemporary Republican Party, but rather to a form of representative government that originated in ancient Greece where public authority rests with voting citizens and their elected officials. It is derived from the Latin respublica meaning a state that is a public thing (Halsey, 1973, p. 347). According to Russell Kirk, the term "republic" means "public concerns--or the general welfare expressed in political forms (Kirk, 1974, p. 415). The republican tradition in America "...presupposes that the citizens of a republic are motivated by civic virtue as well as self interest. It views public participation as a form of moral education and sees its purposes as the

attainment of justice and public good" (Bellah et al., 1985, p. 335, note 5).

13. Theorists of the institutional school in sociology have distinguished "institutions" from "organizations" and their findings are pertinent to the advocates of market-oriented schools who would convert educational institutions into a rational, means-oriented instruments like corporations guided by the "cult of efficiency." Selznick defines an institution as a creation of social needs and aspirations, a responsive and cooperative system that embodies cultural values (Selznick, Leadership in Administration, 1957).
14. T. Lowi (1979, pp. 57-58) observes that interest group pluralism, like laissez-faire theory, propagates the "faith that a system built primarily upon groups and bargaining is self-corrective." Interest group liberalism is unable to come to terms with the problem of imperfect competition because private interests may not be always be represented by the aggregate. In such a system of representation there "tends to be a self-conscious conspiracy to shut out the public," that undermines civic responsibility, because "programs based upon such a principle cut out all of that part of the mass of people who are not specifically organized around the values salient to the goals of that program..." and because "...in theory there is enough accountability to the immediate surrounding interests."
15. Alexander Hamilton wrote in 1787: "All communities divide themselves into the few and the many. The first are the rich and well born the other the mass of the people....The people are turbulent and changing; they seldom judge or determine right. Give, therefore, to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second; and as they cannot receive any advantage by a change, they therefore will maintain good government (A. Hamilton cited in Cremin, 1951, pp. 421-422). Hamilton's statement is taken from The Debates in the Several State Conventions (J. Elliot, ed., 1808).
16. Modern historians emphasize this interpretation of the Constitution whereby the public good emerges from the American political system out of a clash of competing private interests within the context of a commercial empire that maximizes economic self interest. See G. S. Wood (1969) and Farrand (1963).

## REFERENCES

### Cases

Abbott v. Burke, 119 N. J. 287, 575 A.2d 359 (1990).

Abingdon School District v. Schempp, 374 U.S. 203 (1963).

Board of Education v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979).

Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972).

Britt v. North Carolina State Board of Education, 357 S.E. 2d 432 (1987).

Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686 (1954).

Buse v. Smith, 74 Wis. 2d 550, 247 N.W. 2d 141 (1976).

Charles River Bridge v. Warren Bridge, 6 U.S. 448 (1821).

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

Danson v. Casey, 484 Pa. 415, 58 Ohio St. 2d 368, 399 A. 2d 360 (1979).

Dixon v. Alabama State Board of Education, 294 F.2d 150 cert. denied, 368 U.S. 930, 82 S.Ct. 368 (1961).

Due v. Florida Agricultural and Mechanical University, 293 F. Supp. 396 (1963).

Dupree v. Alma School District No. 30 of Crawford County, 279 Ark. 340, 651 S.W. 2d (1983).

Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (1987).

Fogg v. Board of Education, 76 N.H. 296, 82 A. 173, 174-75 (1912).

Gibbons v. Ogen, 36 U.S. 420 (1937).

Goldberg v. Kelley, 397 U.S. 254, 90 S.Ct. 1011 (1970).

Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975).

Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226 (1964).

Hartzell v. Connell, 35 Cal. 3d 899, 201 Cal. Rptr. 601, 679 P. 2d 35.

Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 A.2d 758, 786 (Md. 1983).

Jenness v. Fortson, 403 U.S. 431, 91 S. Ct. 1970 (1976).

Kuhn v. Board of Education, 4 W.VA. 499, 508 (1871).

Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971).

Lujan v. Colorado State Board of Education, 649 P. 2d 1005 (1982).

McClain v. Lafayette County Board of Education, 687 F.2d 121 (1982).

Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

Murdock v. Pennsylvania, 319 U.S. 105 (1943).

Pauley v. Kelley, 162 W.Va. 672, 255 S.E.2d 859 (1979).

Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 45 S.Ct. 571 (1925).

Pennsylvania Association for Retarded Children v. Commonwealth, 334 F. Supp. 1257 (E.D. Pa. 1971).

Perdue v. Zoning Board of Appeals of City of Norwalk, 118 Ct. 174, 171 A. 26, 28 (19).

Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694 (1972).

Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138 (1896).

Plyer v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982).

Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973).

Rone v. Davies County Board of Education, 1 655 S.W. 2d 28 (1983).

Rose v. The Council for Better Education, Inc., 790 S.W.2d 186 (1989).

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.ED. 2d 16 (1973).

Saia v. New York, 334 U.S. 558 (1948).

Scown v. Czarneck, 264 Ill. 305, 106 N.E. 276 (1914).

Seattle School District No. 1 v. State, 90 Wn. 2d 476 511-513, 514 (1978).

Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).

Serrano v. Priest, 557 P.2d 929 (1976).

Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973).

Sniadach v. Family Finance Corporation, 395 U.S. 377 (1969).

State Ex Rel. Clark v. Haworth, 122 Ind. 462, 23 N.E. 946 (1890).

Strangway v. Allen, 194 Ky. 681, 240 S.W. 384 (1922).

West Virginia State Board of Education v. Barnett, 319 U.S. 624, 63 S.Ct. 117 (1943).

Young v. Commonwealth, 101 Va. 853, 45 S.E. 327 (1903).

### Books and Articles

Ackerman, B. (1980). Social justice in the liberal state. New York and London: Yale University Press.

Ackoff, R., & Emery, F. E. (1972). On purposeful systems. Chicago: Aldine-Atherton.

Adams, E.K., & Odden, A. (1981). Alternative wealth measures. In K. Forbis Jordan and Nelda H. Cambron-McCabe (Eds.). Perspectives in state school support programs (pp. 143-166). Cambridge, MA: Balinger.

Adams, J. (1851). Works. C. F. Abrams (Ed.), 10 vols. Boston.



Addams, J. (1910). Twenty years at hull House. New York: Macmillan.

Aldridge, O. A. (1973). Ancients and moderns in the eighteenth century. In P. P. Wiener (Ed.). Dictionary of the history of ideas: studies of selected pivotal ideas. Vol. 1 (pp. 76-87). New York: Charles Scribner's Sons..

Alexander, K. (1978). Administrative Prerogative. Restraints of Natural Justice in Student Discipline. Journal of Law and Education. 7, 331-358.

Alexander, K. (1980). School law. St. Paul, MN: St. Paul, MN: West Publishing.

Alexander, K. (1982). Concepts of Equity. In W. W. McMahon & T. G. Geske (Eds.), Financing education: Overcoming inefficiency and inequity. Chicago: University of Illinois Press.

Alexander, K. (1990, Spring). Statement of Principles. Unpublished manuscript. Coalition for Equity in Education, Inc.

Alexander, K. (1991). Equity, equality, and the common good in educational financing. In D. A. Verstegen, J. G. Ward (Eds.), The 1990 American education finance association yearbook: spheres of justice in education (pp. 239-297). Harper Business.

Alexander, K. (1991, Summer). The common school ideal and the limits of legislative authority: The Kentucky case. Harvard Journal on Legislation, 28 (2), 341-367.

Alexander, K. (1991, Winter). Financing the public's schools: A perspective on effort, need, and equity. Journal of Education Finance, 27, (3), 122-144.

Alexander, K. (1992, Winter). Financing the public schools of the United States: a perspective on effort, need, and equity Journal of Education Finance. 17, (3), 122-144.

Alexander, K. & Alexander, M. D. (1985). American public school law (2nd ed.). St. Paul, MN: West Publishing.

Alexander, K., & Alexander, M. D. (1992). American public school law (3rd ed.). St. Paul, MN: West Publishing.

Alexander, K., Brock, J., Forgy, L., Melton, J., & Watson, S. (1989, Fall). Constitutional intent: "System," "common," and "efficient" as terms of art. Journal of Education Finance, 15 (2), 141-162.

Alexander, K., & Jordan, K. F. (Eds.). (1976). Educational need in the public economy. Gainesville, FL: University Presses of Florida.

Allison, Paul D. (1978, December). Measures of inequality. American Sociological Review, 43, 865-880.

Anderson, F. H. (1975). The philosophy of Francis Bacon. New York: Octagon Books.

Appleby, J. O. (1984). Capitalism and a new social order: The republican vision of the 1970s. New York: New York University Press.

Arendt, H. (1971). Thinking and moral considerations. Social Research, 38, 417-446.

Aristotle. (1952). Nichomachean ethics. In R. M. Hutchins (Ed.), W. D. Ross (Trans.). Great books of the western world. Vol. 2 (pp. 339-445). Chicago: Encyclopedia Britannica.

Aristotle. (1952). Politics. In R. M. Hutchins (Ed.), B. Jowett (Trans.). Great books of the western world (pp. 445-553). Chicago: Encyclopedia Britannica, Inc.

Aristotle. (1986). Rhetoric. In J. J. Harwood (Ed.) Carbondale, IL: Southern Illinois University Press.

Aquinas, T. (1944). Summa theologica. A.C. Pegis (Ed.) New York: Modern Library.

Aquinas, T. (1948). The basic writings of Saint Thomas Aquinas. In A.C. Pegis (Ed. and Intro.) 2 vols. New York: Random House.

Arrow, K. (1973). Formal theories of social welfare. In P. P. Wiener (Ed.). Dictionary of the history of ideas: studies of selected pivotal ideas, Vol. 4 (pp. 282-283). New York: Charles Scribner's Sons.

Atkinson, A.B. (1970). On the measurement of inequality. Journal of Economic Theory, 2, (3), 244-263.

- Bacon, F. (1854). The works of Francis Bacon: Lord Chancellor of England. B. Montague (Ed.). Philadelphia: Parry and McMillan.
- Bacon, F. (1937). Essays, advancement of learning, new atlantis, and other pieces. R. F. Jones (Ed.). New York: The Odyssey Press.
- Bacon, F. (1937). Paraceve. In R.F. Jones (Ed.). Francis Bacon: Essays, Advancement of Learning, New Atlantis, and Other Pieces. New York: The Odyssey Press.
- Bacon, F. (1960). The new organon. F. H. Anderson (Ed.). Indianapolis, IN: Bobbs-Merrill.
- Bailyn, B. (1973). The ideological origins of the American revolution. Cambridge, MA: The Belknap Press of Harvard University Press.
- Barber, B.R. (1986). The compromised republic. In R.H. Horwitz (Ed.). The moral foundations of the american republic. Third Ed. (pp. 42-62). Charlottesville, VA: University of Virginia Press.
- Barker, E. (1984). Aristotle: The politics. E. Barker, Trans. Oxford: Oxford University Press.
- Barksdale, H. (1914). History of education in Kentucky. Frankfort, KY: Kentucky Department of Education.
- Barnard, C. (1948). Organization and management. Cambridge: Harvard University Press.
- Barro, S.M. (1987, October). School finance equity: Research in the 1980s and the current state of the art. Washington, DC: Decision Resources Corporation.
- Barry, B. (1973). The liberal theory of justice: A critical examination of the principal doctrines. In J. Rawls, A theory of justice. Oxford: Oxford University Press.
- Barry, B. M. (1966). The use and abuse of the public interest. In C. J. Friedrich, Nomus V: The Public Interest (pp. 202-215). New York: Atherton Press.
- Becker, C. A. (1932). The heavenly city of the eighteenth-century philosophers. New Haven, CT: Yale University Press.

- Bell, D. (1973). The coming of post industrial society. New York: Basic Books.
- Bellah, R. N., Madsen, R., Sullivan, W. M., Swidler, A., & Tipton, S. M. (1985). Habits of the heart: Individualism and commitment in American life. New York: Harper and Row.
- Bellah, R. N., Madsen, R., Sullivan, W. M., Swidler, A., & Tipton, S. M. (1991). The good society. New York: Alfred A. Knopf.
- Bentham, J. (1948). An introduction to the principles of morals and legislation. New York: Macmillan.
- Bentham, J. (1973). Bentham's political thought. B. Parekh (Ed.). London: Croom Helm.
- Benn, S. I. (1988). A theory of freedom. Cambridge: Cambridge University Press.
- Berle, M. (1959). Power without property. New York: Harcourt and Brace and World.
- Berlin, I. (1961). Equality. In F. Olafson (Ed.), Justice and Social Policy. New York: Spectrum Books.
- Berne, R., & Stiefel, L. (1984). The measure of equity in school finance: Conceptual, methodological, and empirical dimensions. Baltimore, MD: The Johns Hopkins University Press.
- Berns, W. (1957). Freedom, virtue and the first amendment. Westport, CT: Greenwood Press.
- Berns, W. (1986). Religion and the founding principle. In R. H. Horwitz (Ed.), The moral foundations of the American republic (pp.204-230). Charlottesville, VA: University of Virginia Press.
- Berns, W. (1991, September). Natural law, natural rights. Washington Times, p. E2-E-4.
- Bertalanffy, L. V. (1950). The theory of open systems in physics and biology. Science III, 25.
- Bertalanffy, L. V. (1968). General system theory. New York: George Brazillier.

Bertalanffy, L. V. (1972). The history and status of general systems theory. In G. J. Klir (Ed.), Trends in general systems theory (p. 22-31). New York: Wiley-Interscience.

Bertalanffy, L. V. (1973). General system theory: Foundations, development, applications (rev. ed.). New York: George Braziller.

Bertalanffy, L. V. (1981, Fall). Two views on education. Journal of Policy Analysis and Management, 1, 472-480.

Berthoff, R. (1971). An unsettled people: Social order and disorder in American history. New York: Harper and Row.

Bickel, A. M. (1975). The morality of consent. New Haven, CT: Yale University Press.

Black, H. C. (1957). Black's law dictionary (6th ed.). (pp. 288, 275, 286). St. Paul, MN: West Publishing Co.

Blackstone, W. (1969). Commentaries on the Laws of England. (Reprint of 1803 ed.) South Hackensack, NJ: Colhman Reprints. Original publication 1765-1769.

Bloom, S. (1984). The closing of the American mind. New York: Simon and Schuster.

Bobbit, J. F. (1913). The supervision of city schools. Chicago: University of Chicago Press.

Brown, L. R. (1990). State of the world. London: Paperbacks.

Bruening, W. H. (1971, January). Moore and "Is-Ought." Ethics, 82, (2), 143-49.

Buchanan, J. (1975). The limits of liberty: Between anarchy and leviathan. Chicago: University of Chicago Press.

Buchanan, J., & Tullock, G. (1965). The calculus of consent. Ann Arbor: University of Michigan Press, 20.

Burke, E. (1808). Doctrines of the Old Whigs: An appeal from the new to the old Whigs. In The works of the Right Honorable Edmond Burke, Vol. 6. London: F. C. & J. Riverton, Ltd.

Burke, E. (1826). Letters on a regicide peace. The works of the right Honorable Edmund Burke, Vol. 8. London: F. C. & J. Riverton, Ltd.

Burke, E. (1844). Correspondence. In C. William, E. Fitzwilliam & Sir R. Bourke, K. C. B. (Eds.). Vol. 1. London.

Burke, E. (1968). Reflections on the revolution in France. London: The Walter Scott Publishing Co., Ltd. Vol. 2. New York: Penguin Books.

Business Roundtable. (1989, September). The role of business and education: blueprint for action. Washington, D. C.: Business Roundtable.

Business Roundtable. (1990). Essential components of a successful education system: The business roundtable education public policy agenda. New York: Business Roundtable.

Butts, R. F. (1960, March). Search for freedom: The story of American education. NEA Journal, 33-48.

Butts, R. F. (1978). Public education in the United States: From revolution to reform. New York: Holt, Rinehart and Winston.

Butts, R. F., & Cremin, L. A. (1953). A history of education in American culture. New York: Holt, Rinehart and Winston.

Ceasar, J. W. (1981). The theory of governance of the Reagan administration. In L. M. Salamon, & M. S. Lund (Eds.), The Reagan presidency and the governing of America (pp. 57-91). Washington, DC: The Urban Institute Press.

Callahan, R. E. (1962). Education and the cult of efficiency: A study of the social forces that have shaped the administration of the public schools. Chicago: The University of Chicago Press.

Carey, G. W. (Ed.). (1984). Freedom and virtue: The conservative libertarian debate. Boston: The Intercollegiate Studies Institute, Inc.

Carnoy, M. (Ed) (1972). Schooling in a corporate society: The political economy of education in America. New York: McKay.

Carr, E. (1964). The twenty years' crisis, 1919-1939. New York: Harper and Row. Original publication 1939.

- Cassinelli, C. W. (1962). The public interest in political ethics. In C. J. Friedrich (Ed.), Nomus v: The Public interest (pp. 44-54). New York: Atherton Press.
- Chapman J. W., & Pennock, J. R. (Eds.). (1989). Nomus 31: Markets and justice. New York and London: New York University Press.
- Charon, J. (1988). Death and immortality. In P. P. Wiener (Ed.), Dictionary of the history of ideas: Studies of selected pivotal Ideas, Vol. 1 (pp. 634-646). New York: Charles Scribner's Sons.
- Chubb, J. E., & Moe, T. M. (1990). Politics markets and America's schools. Washington, DC: The Brookings Institution.
- Cicero. M.T. (1928). De republica. Translated by C. W. Keyes. New York: Loeb Classic Library.
- Cicero, M.T. (1940). Cicero to Atticus. In E. O. Winstedt, ed. and trans. Cicero: Letters to Atticus, 23, Books VII-VII-XI. Loeb Classics, Cambridge: Harvard University Press.
- Clark, D. L. & Amiot A. (1991, December). The import of the Reagan administration on federal education policy. Phi Delta Kappan. 63, (4), 258-263.
- Coalition for Equity in Educational Funding, Inc. (1990, Spring). Statement of Principles. Unpublished manuscript prepared by Kern Alexander. Blacksburg, VA.
- Cohn, E. (1979). The economics of education. Cambridge: Ballinger.
- Cole, G.D. H. (trans.). (1973). The social contract and discourses. (Revised by J. Brumfitt & J. Hall). London: J. M. Dent & Sons Ltd.
- Comenius, J. A. (1967). The great didactic. M. W. Keatinge (Ed.). New York: Russell & Russell. Original publication ca. 1657.
- Comenius, J. A. (1967). John Amos Comenius on education. (Introduction by Jean Piaget). Classics in Education Series. New York: Teachers College Press.
- Commager, H. S. (1950). The American mind. New Haven, CT: Yale University Press.

Comte, A. (1853). The positive philosophy. (H. Martineau, trans.). Vol. 4. London.

Condorcet, M. J. A. A. (1955). Sketch for a historical picture of the progress of the human mind. (Trans. by June Barraclough with Introduction by Stuart Hampshire). Westport, CT: Greenwood Press. Original Publication 1795.

Connolly, W. E. (Ed.). (1969). The bias of pluralism. New York: Atherton Press.

Cooke, J. E. (Ed.). (1961). The federalist. Cleveland, OH: The World Publishing Company.

Coons, J. E., Clune, W. E., & Sugarman, S. C. D. (1970). Private wealth and public education. Cambridge, MA: Harvard University Press, Belknap Press.

Coons, J. E., & Sugarman, S. (1978). Education by choice: The case for family control. Berkeley: University of California Press.

Corner, G. W. (1948). The autobiography of Benjamin Rush. Princeton, NJ: Princeton University Press.

Corwin, E. (1955). The higher law background of American constitutional law. Ithaca, New York.

Cranston, M. (1986, Winter). Locke and liberty. The Wilson Quarterly, 10, 82-90.

Cremin, L. A. (1951). The American common school: An historic conception. New York: Bureau of Publicans, Teachers College, Columbia University.

Cremin, L. A. (1957). The republic and the school: Horace Mann on the education of free men. New York: Bureau of Publication, Teachers College University.

Cremin, L.A. (1961). The transformation of the school: progressivism in American education, 1876-1957. New York: Random House, Vintage Books.

Cremin, L. A. (1970). American education: The colonial experience, 1607-1783. New York: Harper and Row Publishers.

Cremin, L. A. (1980). American education: The national experience, 1783-1876. New York: Harper and Row.



Cremin, L. A. (1988). American education: The metropolitan experience: 1876-1980. New York: Harper and Row.

Croly, H. (1964). The promise of American life. New York: Capricorn Books (1909).

Cubberley, E. P. (1919). Public education in the United States: A study and interpretation of American educational history. Boston: Houghton Mifflin Company.

Cubberley, E. P. (1920). Readings in the history of education. Boston: Houghton Mifflin Company.

Cubberley, E. P. (1922). A brief history of education: A history of the practice and progress and organization of education. Boston: Houghton Mifflin Company.

Cubberley, E. P. (1961). Public school administration. Boston: Houghton Mifflin.

Cubberley, E. P. (1962). Public education in the United States: A study and interpretation of American educational history. (Rev. 1934 Ed. Renewed by Ira S. Lillick). Boston: Houghton Mifflin Company.

D'Entreves, A. P. (1965). Natural law: An historical survey. New York: Harper & Row, Harper Torchbooks.

Daniels, N. (1975). Equal liberty and unequal work of liberty. In Reading Rawls: Critical studies on Rawls' a theory of justice. N. Daniels,(Ed.) (pp. 253-283). New York: Basic Books.

Dahl, R. A. (1985). A preface to economic democracy. Berkeley: University of California Press.

Dahl, R. A. (1986). On removing certain impediments to democracy in the United States. In R. H. Horwitz (Ed.). The moral foundations of the American republic (pp. 230-253). Charlottesville: University Press of Virginia.

Davies, I. (1970). The management of knowledge: A critique of the use of typologies in educational sociology. Sociology, 4, 1-22.

De Tocqueville, A. (1963). Democracy in America: The social influence of democracy. P. Bradley (Ed.). New York: Alfred A Knopf.

- Deutsch, I. (1951). Mechanism, organism, and society. Philosophy of Science, 18, pp. 232-33.
- Dewey, J. (1927). The public and its problems. New York: Henry Holt.
- Dewey, J. (1956). The child and the curriculum and the school and society (Rev. ed.). Chicago: University of Chicago Press.
- Dewey, J. (1961). Democracy and Education. New York: Free Press.
- Deyoung, A. (1989). Economics and American education. New York: Longman.
- Diamond, M. (1986). Ethics and politics: The American way. In R. H. Horwitz (Ed.). The moral foundations of the American republic (pp. 75-109). Charlottesville: University Press of Virginia.
- Diesing, P. (1962). Reason in society. Urbana: The University of Illinois Press.
- Dietze, G. (1963). In defense of property. Chicago: University of Chicago Press.
- Doll, W. E., Jr. (1987, April). Foundations for a post-modern curriculum. Paper presented at the Annual Meeting of the American Educational Research Association. Washington, DC.
- Doyle, D. P. (1992, March). The challenge, the opportunity. Phi Delta Kappan, 73, (7), 512-521.
- Draper, T. (1982, February). Hume and Madison: The secrets of federalist No. 10. Encounter, 58, 47-55.
- Drucker, P. F. (1966). A key to American politics: Calhoun's pluralism. In W. Kendall & G. Carey (Eds.). Liberalism vs. conservatism: the continuing debate in American government (pp. 436-446). New York: Van Nostrand Reinhold Company.
- Dunn, J. (1969). The political thought of John Locke: an historical account of the argument of the "two treatises of government". Cambridge: Cambridge University Press.
- Durkheim, E. (1973). Moral education: A study in the theory and application of the sociology of education. E. Wilson & H. Schurer (Trans.). New York: Free Press.

Durning, A. B. (1990). Ending poverty. In L. R. Brown (Ed.). State of the world. New York: W. W. Norton and Co.

Dworkin, R. (1986). A matter of principle. Oxford: Clarendon.

Edel, A. (1973). Happiness and pleasure. In P. P. Wiener, Dictionary of the history of ideas: studies of selected pivotal ideas. Vol. 2. New York, Charles Scribner's Sons.

Edley, C.F., Jr. (1991, Summer). Introduction: lawyers and education reform. Harvard Journal on Legislation, 28, 2, 293-305.

Edwards, N. (1955). The courts and the public schools. Chicago: University of Chicago Press.

Elam, S. M., Rose, L.C. Gallup, A.M. (1992, September). The 24th annual gallop phi delta kappa poll of the public's attitudes toward public schools. Phi Delta Kappan, 74, (1), 41-54.

Eisenstadt, S. N. (1963). The political system of empires. New York: The Free Press.

Emerson, A. E. (1956). Homeostasis and comparison of systems. In R. R. Grinker (Ed.), Toward a unified theory of human behavior. New York.

Etzioni, A. (1988). Capital Corruption: the new attack on american democracy. Washington, D.C.: Transaction Books.

Etzioni, A. (Ed.). (1990/91, Winter). The responsive community, rights and responsibilities. The Responsive Community, 1, 1, 2-5.

Ferrand, M. (Ed.). (1937). The records of the federal convention of 1787, Vol. I (rev. ed.). New Haven: Yale University Press.

Ferrand, M. (1963). The framing of the constitution of the united states. New Haven, Ct.: Yale University Press.

Fayol, H. (1937). The administrative theory of the state. In L. Gulick and L. Urwick (Eds.). Papers on the science of administration. New York: Institute of Public Administration.

Finney, G.L. (1973). Harmony or rapture in music. In B. P. Wiener (Ed.). Dictionary of the history of ideas: studies of selected pivotal ideas. Vol.2 (pp. 388-395). New York: Charles Scribner's Sons.

Fishkin, J.S. (1983). Justice, equal opportunity and the family. New Haven: Yale University Press.

Finnes, J. (1980). Natural law and natural rights. Oxford: Oxford University Press.

Flathman, R. E. (1966). The public interest: An essay concerning the normative discourse of politics. New York: John Wiley & Sons, Inc.

Foucault, M. (1977). Discipline and punish: the birth of the prison. New York: Pantheon.

Frankena, W. K. (1976). Obligations and value in the ethics of G. E. Moore. In K. E. Goodpaster (Ed.), Perspectives on morality: Essays on William K. Frankena. Notre Dame: University Press.

Frederickson, H. G. (1971). Toward a new public administration. In F. Marini (Ed.). Toward a new public administration. Scranton, PA: Chandler.

Friedman, M. (1962). Capitalism and freedom. Chicago: The University of Chicago Press.

Friedman, M., & Friedman, R. (1980). Free to choose. New York: Harcourt Brace Jovanovich.

Friedrich, C. J. (Ed.). (1962). Nomus V: Public interest. New York: Atherton Press.

Froebel, F. (1977). The education of man. In D. N. Robinson (Ed). Significant Contributions to the history of psychology, 1750-1920. (W. N. Hailmann, Trans. and Annotated, pp. 3-332). New York: D. Appleton and Company). Washington, D.C.: University Publications of America, Inc.

Funk & Wagnall's Standard College Dictionary. (1974). New York: Funk & Wagnall's Publishing Co., Inc.

Galbraith, J. K. (1952). American capitalism: The concept of countervailing power. Boston: Houghton Mifflin Company.

- Garms, W. I., Guthrie, J. W., & Pierce, L. C. (1978). School finance: The economics and politics of public education. Englewood Cliffs, NJ: Prentice Hall.
- Gaus, G. F. (1989). A contractual justification of redistributive capitalism. In J. W. Chapman & J. R. Pennock (Eds.). Nomus 31: markets and justice (pp. 89-122). New York and London: New York University Press.
- Gawthrop, L. C. (1984). Public sector management, systems, and ethics. Bloomington, IN: Indiana University Press.
- Giarelli, J. M. (1976, Fall). Lawrence Kohlberg and G. E. Moore. Educational Theory, 26(4), 350.
- Gilder, G. (1981). Wealth and poverty. Toronto: Bantam Books.
- Gilpin, A. (Ed.). (1990). Dictionary of economic terms. London: Butterworth.
- Glenn, C. L., Jr. (1988). The myth of the common school. Amherst, MA: The University of Massachusetts Press.
- Goldwin, R. A. (1986). Of men and angels: A search for morality in the constitution. In R. A. Goldwin, Moral foundations of the American republic (pp. 24-42). Charlottesville: University Press of Virginia.
- Golembiewski, R. (1965). Man, management and morality: Toward a new organizational ethic. New York: McGraw-Hill.
- Goodlad, J. T. (1984). A place called school: prospects for the future. New York: McGraw Hill.
- Goodsell, C.T. (1990). Public administration and the public interests. In G. L. Walmsley, R. N. Bacher, C.T. Goodsell, P.S. Kronenberger, J.A. Rohr, C..M. Stivers, O.F. White, & J.F. Wolf (Eds.) Refounding public administration (pp. 96-113). California: Sage Publications.
- Graubard, S. R. (1968). Democracy. In P. P. Wiener (Ed.). Dictionary of the history of ideas: studies of selected pivotal ideas. Vol. 1 (pp. 652-667). New York: Charles Scribner's Sons.
- Gray, J. (1982). Contractarian method, private property, and market economy. In J. W. Chapman & J. R. Pennock (Eds.). Markets and justice (pp. 13-59). New York and London: New York University Press.

Green, T. (1990). Distributive justice in education. In D. A. Verstegen & J.G. Ward (Eds.). The 1990 American Education Finance Association Yearbook: Spheres of justice in education (pp. 221-239). New York: Harper Business.

Green, T. H. (1885). The works of T. H. Green. R. L. Nettleship (Ed.). Vol. 3. London.

Greene, M. (1990). Justice and fairness in education: Paradigms, contradictions, and critiques. In D. A. Verstegen & J. G. Ward (Eds.), The 1990 American education finance association yearbook: spheres of justice in education (pp. 173-195). Harper Business.

Griffith, E. S. (1962). The ethical foundations of the public interest. In C. J. Friedrich, Nomos V: The public interest (pp. 14-26). New York: Atherton Press.

Guerlack, H. (1973). Newton on method. In P. P. Wiener (Ed). Dictionary of the history of ideas: studies of selected pivotal ideas Vol. 3 (pp. 378-391). New York: Charles Scribner's Sons.

Gunn, J. A. W. (1969). Politics and the public interest in the seventeenth century. London: Routledge & Kegan Paul.

Gutmann, A. (1987). Democratic education. Princeton, NJ: Princeton University Press.

Haber, S. (1964). Efficiency and uplift: Scientific management in the progressive era, 1880-1928. Chicago: University of Chicago Press.

Habermas. (1979). Communication and the evolution of society. Boston: Beacon Press.

Halsey, E. (Ed.). (1973). The macmillan dictionary. New York: Macmillan.

Hamilton, A. (1904). Speeches in the federal convention. In H. C. Lodge (Ed.), Works of Alexander Hamilton. New York and London: Putnam & Sons.

Hamilton, A. (1961). Federalist No. 72. In J. E. Cooke (Ed.), The Federalist (pp. 486-492). Cleveland and New York: Meridian Books: the World Publishing Company.

Handlin, O., & Handlin, M. F. (1969). Commonwealth: A study of the role of government in the American economy: Massachusetts, 1774-1861 (rev. ed.). Cambridge, MA: Belknap Press.

- Hanushek, E. A. (1986, September). The economics of schooling: production and efficiency in public schools. Journal of Economic Literature, 24, 1141-1177.
- Hanushek, E. A. (1991, Summer). When school finance "reform" may not be good policy. Harvard Journal on Legislation, 28, (2), 423-457.
- Harmon, W. (1988). Global mind change: The promise of the last years of the twentieth century. Indianapolis, IN: Institute of Noetic Sciences.
- Harrington, J. (1977). The political works of James Harrington. J. G. A. Pocock (Ed.). Cambridge: Cambridge University Press.
- Harrington. (1887). The Commonwealth of Oceana. Intro. by H. Morley. London: G. Rutledge and Sons.
- Hart, D. K. (1974, January/February). Social equity, justice, and the equitable administrator. Public Administration Review, 34 (1), 3-11.
- Hart, D. K. (1984, March). The virtuous citizen, the honorable bureaucrat, and public administration. Public Administration Review, 44, 111-120.
- Hart, D. K. (1989, March/April). A partnership in virtue among all citizens: The public service and civic humanism. Public Administration Review, 101-105.
- Hart, H.L. A. (1979). Between utility and rights. In Alan Ryan (Ed. The idea of freedom: essays in honour of Isaiah Berlin (Oxford: Oxford University Press).
- Hartley, H. J. (1968). Educational planning, programming, budgeting: A systems approach. Englewood Cliffs, NJ: Prentice-Hall.
- Hauerwas, S. (1981). Vision and virtue. Notre Dame, IN: University of Notre Dame Press.
- Haveman, R., & Wolfe, B. (1984). Schooling and economic well-being: The role of nonmarket effects. Journal of Human Resources, 19 (3), 377-407.
- Hayek, F. A. (1960). The constitution of liberty. Chicago: University of Chicago Press.
- Hayek, F. A. (1976). Law, legislation, and liberty: The mirage of social justice, Vol. 2. Chicago: University of Chicago Press.

- Hayek, F. A. (1988). The collected works of F. A. Hayek. In W. W. Bartley, III (Ed.). The fatal conceit: The errors of socialism.(Vol. 1). Chicago: The University of Chicago Press.
- Herbart, J. F. (1977). Science of education. In D. N. Robinson (Ed.) Significant Contributions to the history of psychology, 1750-1920. (H. M. Felkin & E. Felkin (Trans.) pp. 57-268. Washington, DC: University Publications of America, Inc.
- Herring, E. P. (1936). Public administration and the public interest. New York: McGraw-Hill.
- Hicks, J. R. (1941, February). The rehabilitation of consumers' surplus. Review of Economic Studies, 8, 2, 111-115.
- Hirsch, E. D., Jr. (1988). Cultural literacy. New York: Vintage Books.
- Hittinger, R. (1990). Liberalism and the American natural law tradition. Wake Forest Law Review, 25, 429-499.
- Hobbes, T. (1962). Leviathan: or the matter, forme and power of a commonwealth, ecclesiastical and civil. Hew York: Collier Books.
- Hofstadter, R. (1973). The American political tradition: the men who made it. New York: Alfred A. Knopf.
- Holcombe, A. N. (1917, July 7). Organizing democracy. New Republic, XI, 270.
- Honeyman, D. S., Thompson, D. C., & Wood, R. C. (1989, June). Financing rural and small schools: Issues of adequacy and equity. Charleston, WV: ERIC Clearinghouse on Rural Education and Small Schools.
- Hopper, E. (1971). Readings in the theory of educational systems. Earl Hopper (Ed.). London: Hutchinson University Library.
- Horwitz, R. H. (1986). John Locke and the preservation of liberty: a perennial problem of civic education. In R. H. Horwitz (Ed.). The moral foundations of the american republic (3rd ed.). Charlottesville, VA: University of Virginia Press.
- Horwitz, R. H. (Ed.). (1986). The moral foundations of the American republic (3rd ed.). Charlottesville, VA: University Press of Virginia.



House, E. R. (1978, October). Evaluation as scientific management in U.S. school reform. Comparative Education Review, 22, (3), 388-401.

Howard, A. E. (1970). Commentaries on the Virginia Constitution, Vol. I. Charlottesville: University Press of Virginia.

Howe, J. (1986). Republicanism. In M. D. Peterson (Ed.). Thomas Jefferson: a reference biography (pp. 55-79). New York: Scribner's.

Hubsch, A. W. (1989, Winter). Education and self-government: The right to education under state constitutional law. Journal of Law and Education, 18 (1), 93-140.

Hume, D. (1896). Treatise of human nature. L. H. Selby-Bigge (Ed.). Oxford: Clarendon. Original publication 1740.

Jaffa, H. (1972). Aristotle. In L. Strauss & J. Cropsey (Eds.). History of political philosophy (pp. 64-130). Chicago: Rand McNally & Company.

Jaffa, H. V. (1952). Thomas and aristotelianism: A study of the commentary by Thomas Aquinas on the Nicomachean Ethics. Chicago: The University of Chicago Press.

Jay, J. (1961). Federalist No. 2. In J. E. Cooke (Ed.). The federalist (pp. 8-13). New York: The World Publishing Company.

Jay, J. (1961). Federalist No. 3. In J. E. Cooke (Ed.). Federalist Papers (pp. 13-18). Cleveland, Oh: World Publishing Company.

Jefferson, T. (1891-1899). Autograph. In P. L. Ford (Ed.), The writings of Thomas Jefferson, Vol. 1. New York: G.P. Putnam's Sons.

Jefferson, T. (1982). Notes on the State of Virginia. W. Pelen (Ed). New York: Norton. Original publication 1785.

Jefferson, T. (1894). Thomas Jefferson to George Wythe. In P. L. Ford (Ed.), The writings of Thomas Jefferson (pp. 266-270). New York: C. P. Putnam's Sons.

Jefferson, T. (1898). Thomas Jefferson to John Adams. In P. L. Ford (Ed.). The writings of Thomas Jefferson. Vol. 9, (pp. 424-430). New York: Putnam (1812, October 28).

Jefferson, T. (1899). Thomas Jefferson to Joseph C. Cabell. In P. L. Ford (Ed.), The writings of Thomas Jefferson, Vol. 10 (pp. 98-102). New York: Putnam (1818, January 14).

Jefferson, T. (1904). Preamble to a bill for the more general diffusion of knowledge. In P.L. Ford (Ed.). The writings of Thomas Jefferson. (Federal Ed.) Vol. 2 (pp. 414-426). New York: C.P. Putnam's Sons.

Jefferson, T. (1944). Thomas Jefferson to Madison. In A. Koch and W. Peden (Eds.). The life and selected writings of Thomas Jefferson (pp. 436-441). New York: Modern Library (1787, December 20).

Jefferson, T. (1944). Thomas Jefferson to Samuel Kercheval. In A. Koch and W. Peden (Eds.), The life and selected Writings of Thomas Jefferson (pp. 673-676). New York: Modern Library (1816, July 12).

Jefferson, T. (1954). Thomas Jefferson to George Washington. In J. P. Boyd (Ed.). The papers of Thomas Jefferson (pp. 150-152). Princeton: Princeton University Press (1786, January 4).

Jefferson, T. (1982). Notes on the state of Virginia. W. Peden (Ed.). New York: Norton.

Jefferson, T. (1990). A bill for the more general diffusion of knowledge. In Jefferson: public and private papers. (Introduction by Tom Wicker) (pp. 39-47). New York: Vintage Books. Originally published as Writings 1984.

Johns, R. L., Morphet, E. L., Alexander, K. (Eds.). (1983) (4th Ed.). The economics and financing of education. Englewood Cliffs, NJ: Prentice-Hall, Inc.

Jones, R. F. (Ed.). (1937). Francis Bacon: Essays: advancement of learning, new atlantis, and other pieces. New York: The Odyssey Press.

Kaestle, C. F. (1983). Pillars of the republic: common schools and American society, 1780-1860. New York: Hill and Wang.

Kant, I. (1938). The fundamental principles of the metaphysics of ethics. O. Manthey-Zorn (Trans.). New York: Appleton-Century.

Kearns, D., & Doyle, D. (1988). Winning the brain race: A bold plan to make our schools competitive.

- Keating, P. J. (1981). An investigation of a constitutionally protected right of education. Washington: University of Washington.
- Keatinge, M. W. (1967). The great didactic of John Amos Comenius. M. W. Keatinge (Trans.). New York: Russell & Russell.
- Kelly, A.H. & Harbison, W. A. (1955). The American constitution: its origin and development. New York.
- Kendall, W., & Carey, G. (Eds.). (1966). Liberalism versus conservatism: The continuing debate in American government. New York: Van Nostrand Reinhold Company.
- Kendall, W., & Carey, G. W. (1970). The basic symbols of the American political tradition. Baton Rouge, LA: Louisiana State University Press.
- Keynes, J. M. (1926). Laissez-faire and communism. New York: New Republic, Inc.
- Kirk, R. A. (1953). The conservative mind. Chicago: Henry Regnery Company.
- Kirk, R. (1974). The roots of the American order. La Salle, IL: Open court.
- Konvitz, M. R. (1973). Equity in law and ethics. In P.P. Wiener (Ed.), Dictionary of the history of ideas: studies of selected pivotal ideas. vol. 3 (pp. 148-153). New York: Charles Scribners and Sons.
- Koch, A. (1961). Power, morals, and the founding fathers: Essays in the interpretation of the American enlightenment. Ithaca, NY: Cornell University Press.
- Koch, A. (1965). The American enlightenment: The shaping of the American experiment and a free society. New York: George Braziller.
- Koestler, A. (1971). Beyond holism and atomism--The concept of the holon. In A. Koestler & J. R. Smythies (Eds.), Beyond reductionism (pp. 196-210). Boston: Beacon Press.
- Kolderie T. (1990). The states will have to withdraw the exclusive. Public Services Redesign Project. Washington, DC: Center for Policy Studies.
- Kozol, J. (1991). Savage inequalities. New York: Crown Publishing.

- Kuhn, T. S. (1962). The structure of scientific revolutions. Chicago: University of Chicago Press.
- Laboco, K. (1986). Six Theories of Justice: Perspectives from Philosophical and Theological Ethics. Minneapolis, Mn: Augsburg Publishing House.
- Lane, L. (1988, May). Individualism, civic virtue, and public administration: The implications of American habits of the heart. Administration and Society, 20 (1) 30-43.
- Laslett, P. (1967). John Locke: Two treatises of government. A critical edition with introduction and apparatus criticus by Peter Laslett. Second Ed. London: The Syndics of the Cambridge University Press.
- Lasswell, H. (1936). Politics: who gets what, when and how? New York: McGraw Hill.
- Laszlo, E. (Ed.). (1972). The relevance of general systems theory: Papers presented to Ludwig von Bertalanffy on his seventieth birthday. New York: George Braziller.
- Laszlo, E. (1972). The systems view of the world: The natural philosophy of the new developments in the sciences. New York: George Braziller.
- Lawson, J., & Silver, H. (1973). A social history of education in England. London: Methicn & Co., Ltd.
- Lawton, M. (1992, September). Gallop poll finds education with support for tuition vouchers. Education Week, 12, 3-6.
- Lee, G. C. (1961). Learning and liberty: The Jeffersonian tradition in education. In Crusade against ignorance: Thomas Jefferson on education. New York: Teachers College Press.
- Levin, M. (1973). Social contract. In P.P. Weiner (Ed.). The Dictionary of the History of Ideas: studies of selected pivotal ideas. Vol. 4 (pp. 251-263). New York: Charles Scribner's Sons.
- Levy, L. (1963). Freedom of speech and press in early American history: Legacy of suppression. New York: Macmillan.
- Levy, L. W. (1988). Original intent and the Framers Constitution. New York: Macmillan.

Lindsay, A. D. (1962). The modern democratic state. New York: Oxford University Press.

Lippmann, W. (1937). The good society. Boston: Little, Brown.

Locke, J. (1947). An essay concerning human understanding. R. Wilburn (Ed.). New York: Dutton. Original published 1690.

Locke, J. (1967). Two treatises of government. P. Laslett (Ed.). Cambridge: Cambridge University Press.

Lomer, G. R. (1972). The concept of method. New York: Teachers College, Columbia University. Reprinted by Special Arrangement with Teachers College Press from 1910 edition.

Lowi, T. J. (1969). The public philosophy: interest group liberalism. In W.E. Connolly (Ed.). The bias of pluralism. (pp. 81-123). New York: Atherton Press.

Lowi, T. J. (1979). The end of liberalism (2nd ed.). New York: W. W. Norton & Company, Inc.

Lowi, T. J. (1981). Ronald Reagan--revolutionary? In L. M. Salamon & M. S. Lund (Eds.), The Reagan presidency and the governing of America. Washington, DC: Urban Institute Press.

Lu, C. P. (1991, Summer). Liberator of captor: Defining the role of the federal government in school finance reform. Harvard Journal on Legislation, 28 (2), 543-565.

Lutz, D. (1988). The origins of American constitutionalism. Baton Rouge: Louisiana State University Press.

Machiavelli, N. (1950). The prince. The prince and the discourses. Introduction by Max Lerner. New York: Random House.

MacIntyre, A. (1977). Utilitarianism and cost-benefit analysis. In K. Sayre (Ed.), Values in the electric power industry. Notre Dame: University Press

Macpherson, C. B. (1972). The political theory of possessive individualism. Oxford: Oxford University Press.

Madison, J. (1961). Federalist No. 10. In J.E. Cooke (Ed.). The Federalist (pp. 56-65). Cleveland, Oh: World Publishing Company.

Madison, J. (1961). Federalist No. 45. In J. E. Cooke (Ed.). The Federalist (pp. 308-314). Cleveland, Oh: World Publishing Company.

Madison, J. (1961). Federalist No. 49. In J.E. Cooke (Ed.). The Federalist (pp. 338-343). Cleveland, Oh: World Publishing Company.

Madison, J. (1961). Federalist No. 51. In J. E. Cooke (Ed.). The Federalist Papers (pp.343-353). Cleveland, Oh: World Publishing Company.

Madison, J. (1961). Federalist No. 63. In J. E. Cooke (Ed.). The Federalist (pp.422-431). Cleveland, Oh: World Publishing Company.

Madison, J. (1961). Federalist No. 71. In J. E. Cooke (Ed.). The Federalist (pp.481-486). Cleveland, Oh: World Publishing Company.

Madison, J. (1973). Property. In M. Meyers (Ed.). The mind of the founder: sources of the political thought of James Madison (Rev. ed) (pp. 186-183). Hanover and London: University Press of New England.

Malone, D. (1948). Jefferson the virginian. Boston: Little Brown.

Malthus, T.R. (1973). An essay on the principle of population. In L. D. Abbot, (Ed.). Masterworks of Economics, Vol. 1. New York: McGraw-Hill. Original publication 1798.

Mann, H. (1957). First annual report. In L. A. Cremin (Ed.). The republic and the school: Horace Mann on the education of free men. New York: Bureau of Publications.

Mann, H. (1847). Twelfth annual report. In Horace Mann (Ed.). Common School Journal, 19, (9). Boston: William B. Fowle.

Mann, H. (1920). Twelfth annual report. In C. P. Cubberley (Ed.). Readings in history of education (pp. 597-600). Boston: Houghton Mifflin Company.

March, J. G., & Simon, H. A. (1958). Organizations. New York: Wiley.

Marshall, T. H. (1971). Social selection and the welfare state. In E. Hopper (Ed.). Readings in the theory of educational systems (pp. 38-55). London: Hutchinson University Library.

Maslow, A. (1968). Toward a psychology of being (2nd ed.). New York: D. Van Nostrand Company.

Mayo, B. (1942). Jefferson himself. Charlottesville: University Press of Virginia.

McCarthy, M. M., & Diegman, P. T. (1982). What legally constitutes an adequate education? A review of constitutional, legislative, and judicial mandates. Bloomington, IN: Phi Delta Kappa Educational Foundation.

McClellan, J. (1971). Joseph Story and the American constitution: A study in political and legal thought. Norman: University of Oklahoma Press.

McDonald, F. (1985). Novus ordo seclorum: The intellectual origins of the constitution. Kansas: University Press of Kansas.

McMahon W. W., & Geske, T. G. (1982). Financing education: Overcoming inefficiency and inequity. Urbana: University of Illinois Press.

McUsic, M. (1991, Summer). The use of education clauses in school finance reform litigation. Harvard Journal on Legislation, 28(2), 307-340.

Meyer, F. (1969). The conservative mainstream. New Rochelle: Arlington House.

Meyer, W. J. (1975). Public good and political authority: A pragmatic proposal. Port Washington, NY: Kennikat Press.

Meyers, M. (Ed.). (1973). The mind of the founder: Sources of the political thought of James Madison. Revised Edition. Hanover and London: University Press of New England.

Mill, J. S. (1937). An essay on government. Introduction by C. V. Shields. Indianapolis, IN: Bobbs-Merrill.

Mill, J. S. (1957). Utilitarianism. New York: Bobbs-Merrill.

Mill, J.S. (1965). On liberty. In M. Lerner (Ed.), Essential works of John Stuart Mill (pp. 248-366). New York: Bantam Books.

Miller, E. (1976). Social justice. Oxford: Clarendon Press.

Mishan, E. J. (1976). Cost-benefit analysis. New York: Praeger.

Mize, J. M. (1973-74). San Antonio Independent School District v. Rodriguez: A study of alternatives open to state courts. University of San Francisco Law Review, 90(8), 110-11.

Monroe, W. S. (1900). Comenius and the beginnings of educational reform. New York: Charles Scribner's Sons.

Monroe, W. S. (1971). Comenius and the beginnings of educational reform. Arno Press & the New York Times.

Montesquieu, C. D. (1952). The spirit of laws. T. Nugent (Trans.), revised by J. V. Prichard, R. M. Hutchins (Ed.) (pp. 1-328). Great books of the western world. Chicago: Encyclopedia Britannica, Inc. Original publication 1748.

Moore, G. E. (1951). Principia ethica. Cambridge: University Press.

More, T. (1964). Utopia. Yale University Press.

Morphet, E., Johns, R., & Reller, T. (1967). Educational Organization and Administration: Concepts, Practices and Issues. Englewood Cliffs, NJ: Prentice-Hall.

Mort, P. (1924). The measurement of educational need. New York: Teachers College, Columbia University.

Mosher, F.C. (1982). Democracy and the public service (2nd Ed.). New York: Oxford University Press.

Musgrave, R. A. (1962). The public interest: Efficiency in the creation and maintenance of material welfare. In C. J. Friedrich (Ed.). Nomos V: The public interest (pp.107-115). New York: Atherton Press.

Nagel, T. (1986). The view from nowhere. New York: Oxford University Press.

Narveson, J. (1967). Morality and utility. Baltimore, Md: The Johns Hopkins Press.

National Commission on Excellence in Education. (1983). A nation at risk: The imperative for educational reform. Washington, DC: U.S. Department of Education.

Nelson, H. F. (1991, February). International comparisons of public spending on education. Washington D.C.: National Governor's Association.



Neumann, J. & Morgenstern, O. (1944). Theory of games and economic behavior. New York: John Wiley.

Niebuhr, H. R. (1960). Radical monotheism and western culture. New York: Harper and Brothers.

Niebuhr, R. (1932). Moral man and immoral society: A study in ethics and politics. New York: Charles Scribners' Sons.

Niemeyer, G. (1962). Public interest and private utility. In C. J. Friedrich (Ed.). Nomus V: The public interest (pp. 1-14) New York: Atherton Press.

Nisbet, R. A. (1947). The quest for community. London: Oxford University Press.

Nozick, R. (1968). Anarchy, state, and utopia. New York: Basic Books.

Oakshott, M. (1962). Rationalism in politics. New York.

Olafson, F. (Ed.). (1961). Justice and social policy. New York: Spectrum Books.

Orsini, G.N. G. (1973). Organicism. In Wiener, P. (ed.), Dictionary of the history of ideas: studies of selected Pivotal Ideas, Vol. 3 (pp. 421-427). New York: Charles Scribner's Sons, 427.

The Oxford English Dictionary. (1989). Prepared by J. A. Simpson & E. Weiner. Vols. 3, 17, 19, 7. Oxford: Clarendon Press.

Paine, T. (1984). Common Sense in The Writings of Thomas Paine. New York: G. P. Putnam's Sons.

Paley, W. (1978). The principles of moral and political philosophy (4th ed.). (Reprint of 1795 ed.) London: R. Faulder. New York: Garland Publishers.

Pangle, T. (1988). The spirit of modern republicanism: The moral visions of the American founders and the philosophy of locie. Chicago: The University of Chicago Press.

Parekh, B. (Ed.). (1973). Bentham's political thought. London: Croom Helm Ltd.

- Pennock, J. R. (1962). The one and the many: a note on the concept. In C. J. Friedrich (Ed.). Nomus 5: the public interest. (pp. 177-180). New York: Atherton Press.
- Pareto, V. (1935). The mind and society. In Trattato di sociologia generale, 4 vols. A. Bongionrno & A. Livingston (Trans.). New York.
- Parsons, T. (1951). The social system. New York: The Free Press.
- Perry, J. L., & Rainey, H. G. (1988). The public-private distinction in organization theory: A critique and research strategy. Academy of Management Review, 13(2), 182-201.
- Peterson, M. D. (1975). Thomas Jefferson and the dimensions of liberty, 1776-1976. Bloomington, IN: The Paynter Center, Indiana University.
- Phillips, K. (1990). The politics of rich and poor: Wealth and the American electorate in the Reagan aftermath. New York: Random House.
- Pigou, A. C. (1924). The economics of welfare. London: Macmillan and Co. Limited.
- Pincoffs, E. L. (1986). Quandaries and virtues. Lawrence: University Press of Kansas.
- Plato. (1966). Plato's republic. I. A. Ricards (Ed. and Trans.). Cambridge: Cambridge University Press.
- Plato. (1970). Crito. In H. Tredennick (Trans), The last days of Socrates. Harmondsworth: Penguin Books.
- Pocock, J. G. A. (1971). Politics, language and time: Essays on political thought and history. New York: Atheneum.
- Pocock, J. G. A. (1975). The Machiavellian moment. Princeton, NJ: Princeton University Press.
- Pocock, J. G. A. (1985). Virtue, commerce, and history: Essays on political thought and history, chiefly in the eighteenth century. Cambridge: Cambridge University Press.

Poore, B. (Ed.). (1878). The federal and state constitutions, colonial charters and other organic laws of the United States. Vols 1 and 2. Washington, DC: Government Printing Office.

Pope John XXIII. (1931). Mater et Magistra: Encyclical Letter of His Holiness Pope John XXIII. (Trans. by William J. Gibbons, S. J. from official Latin Text of the Acta Apostolicae Sedis (pp. 24-25). Glen Rock, N.J: Paulist Press.

Pound, R. (1950). The formative era of American law. New Haven.

Psacharopoulos, G., & Woodhall, M. (1985). Education for development: An analysis of investment choices. New York: Oxford University Press.

Rainey, H. (1983). Public agencies and private firms: Incentive structures, goals and individual roles. Administration and Society, 15, 207-242.

Rainey, H. G., Backoff, R. W., & Levine, C. H. (1976). Comparing public and private organizations. Public Administration Review. Washington, DC: Public Administration Review.

Ram, R. (1991, March). Public educational expenditures in industrialized countries: An analytical comparison. Normal, IL: Center for the Study of Educational Finance.

Raphael, D. D. (Ed.). (1967). Political theory and the rights of man. London: Macmillan.

Raphael, D. D. (1973). Moral sense. In P. P. Weiner (Ed.), Dictionary of the history of ideas: studies of selected pivotal ideas Vol. 3 (pp. 230-235). New York: Charles Scribner's.

Raphael, D. D. (1976). Problems of Political Philosophy. London: Macmillan.

Rasell, E. M. & Mishel, L. (1990, January). Shortchanging education. Economic Briefing Paper. Washington, D.C.

Rawls, J. (1971). A theory of justice. Cambridge, MA: The Belknap Press of Harvard University Press.

Raz, J. (1986). The morality of freedom. Oxford: Clarendon Press.

Reich, R. B. (1964, April). The new property. Yale Law Journal, 73, 733-787.

- Reich, R. B. (1965, June). Individual rights and social welfare: The emerging legal issues. Yale Law Journal, 74, 1245-1257.
- Reich, R. B. (1991, February). The real economy. The Atlantic Monthly, 35-52.
- Reich, R. B. (1991). The work of nations: Preparing ourselves for 21st century capitalism. New York: Alfred A. Knopf.
- Reid, J. P. (1986). Constitutional history of the american revolution: the authority of rights. Madison, Wis.: The University of Wisconsin Press.
- Reid, J. P. (1988). The concept of liberty in the age of the American revolution. Chicago: The University of Chicago Press.
- Rescher, N. (1966). Distributive justice: A constructive critique of the utilitarian theory of distribution. Indianapolis: Bobbs-Merrill.
- Rhoads, S. E. (1985). The economist's view of the world: government, markets, & public policy. Cambridge: Cambridge University Press.
- Ricardo, D. (1973). The principles of political economy and taxation (3rd ed.). London: Dent, Everyman's Library. Original publication 1821.
- Ritchie, D. G. (1952). Natural rights: A criticism of some political and ethical conceptions. London: George Allen & Unwin, Ltd.
- Roberts, T. A. (1973). The concept of benevolence. London: Macmillan.
- Rohr, J. A. (1989). Ethics for bureaucrats: An essay on law and values (2nd ed.). New York: Marcel Dekker, Inc.
- Rommen, H. (1947). The natural law. St. Louis.
- Rosenfeld, S., Bergman, E., & Rubin, S. (1989). Making connections: "after the factories" revisited. Research Triangle Park, NC: Southern Growth Policies Board.
- Ross, W. D. (1930). The right and the good. Oxford: Clarendon.
- Rossi, P. (1968). Baconianism. In P. P. Wiener (Ed.), Dictionary of the history of ideas: studies of selected pivotal ideas. Vol. 1 (pp. 173-179). New York: Charles Scribner's Sons.

Rossmiller, R. A. (1982). Productivity and cost effectiveness as financing criteria. In W. W. McMahon & T. G. Geske (Eds.). Financing education: Overcoming inefficiency and inequity. Urbana: University of Illinois Press.

Rousseau, J. J. (1950). A discourse on political economy. In C. D. H. Cole (Trans.). The social contract and discourses. New York:

Rousseau, J. J. (1972). Emile, or on education. B. Foxley (Trans.). New York: Everyman.

Rousseau, J. J. (1973). A discourse on the origin of inequality. In G.D. H. Cole (trans). Revised by J. Brumfitt & J. Hall. The Social Contract and Discourses (pp. 31-127). London: J. M. Dent & Sons Ltd. Original published 1755.

Rousseau, J. J. (1973). A discourse on political economy. In G.D. H. Cole (trans). Revised by J. Brumfitt & J. Hall. The Social Contract and Discourses (pp. 127-169). London: J. M. Dent & Sons Ltd. Original published 1758.

Rousseau, J. J. (1973). The Social Contract. In G.D. H. Cole (trans). Revised by J. Brumfitt & J. Hall. The Social Contract and Discourses (pp. 180-309). London: J. M. Dent & Sons Ltd. Original published 1762.

Rousseau, J. J. (1974). The social contract. W. Kendall (Ed. and Trans.). Chicago: Henry Regnery Company. Original published 1762.

Rousseau, J. J. (1988). The social contract or principles of political right. In G. D. H. Cole (Trans. and Intro.). The social contract and discourses. London: J. M. Dent & Sons Ltd.

Royce, J. (1967). The spirit of modern philosophy. New York: Norton.

Royce, J. (1971). The philosophy of Josiah Royce. J. Roth (Ed.). New York: Thomas Y. Crowell.

Rubenstein, C. (1990, March 17). The deadbeat of America. The New York Times, p. A22.

Rudolph, F. (Ed). (1965). Essays on education in the early republic. Cambridge, MA: The Belknap Press of Harvard University Press.

Rush, B. (1806). Essays, moral and philosophical (2nd ed.). T. Bradford & W. Bradford (Eds.). Philadelphia.

Russett, C. E. (1966). The concept of equilibrium in American social thought. New Haven: Yale University Press.

Salamon, L. M., Musselwhite, J.C., & DeVita, C.J. (Eds.). (1986). Working Papers. (pp. 3-38). Washington, D.C.: Independent Sector the United Way.

Schaeffer, F. (1981). The Christian manifesto. Winchester, IL: Crossway Books.

Schaar, J.U. H. (1980). Equality of opportunity and the just society. In J. Rawls, H.C. Blocker, and E.H. Smith (Eds.). Theory of justice. Athens, Ohio: Ohio State University Press.

Schelling, T. (1968). The life you save may be your own. In S. Chase (ed.), Problems in public expenditures analysis. Washington, DC: Brookings Institution.

Schlesinger, A. M. (1991). Disunity in America. Knoxville, TN.: Whittle Communications.

Schmidt, G. G. (1971). Republican visions: Constitutional thought and constitutional revision in the eastern United States, 1815-1830. Urbana, IL: University of Illinois.

Schon, D. A. (1963). Displacement of concepts. London: Tavistock.

Schorr, L B. & Schorr, D. (1988). Within our reach: breaking the cycle of disadvantage. New York: Doubleday.

Schubert, G. (1960). The public interest: A critique of the theory of a political concept. Glencoe, IL: The Free Press.

Schubert, G. (1966). Is there a public interest theory. In C. J. Friedrich (Ed.). Nomus V: the public interest (pp. 162-177). New York: Atherton Press.

Schultz, T. W. (1971). Investing in people: The economics of population quality. Berkeley: University of California Press.

Schultz, T. W. (1971). Investment in human capital. New York: Free Press.

Schultz, T. W. (Ed.). (1972). Investment in education: The equity-efficiency quandary. Chicago: University of Chicago Press.

Schultz, T. W. (1982). Human capital approaches in organizing and paying for education. In W. W. McMahon & T. G. Geske (Eds.). Financing education: Overcoming inefficiency and inequity (pp. 36-52). Urbana: University of Illinois Press.

Schuman, D. (1992, April). Our fixation on rights is dysfunctional and deranged. The Chronicle of Higher Education. 38, 30, B1-B2.

Schumpeter, J. (1942). Capitalism, socialism and democracy. New York.

Scott, W. G. & Hart, D.K. (1989). Organizational values in America. New Brunswick, NJ: Transaction Books.

Searle, J. R. (1964, January). How to Derive "Ought" from "Is." Philosophical Review, 73(1), 43-58.

Selznick, P. (1957). Leadership in administration. New York: Harper and Row.

Sepinwall, H. (1986, May). The history of the 1875 "thorough and efficient" amendment to the New Jersey Constitution in the context of nineteenth century social thought on education: The Civil War to the Centennial. New Brunswick, NJ: Rutgers University.

Shanker, A. (1992, May). "A Question of Fairness." The New Republic. 6.

Shapiro, W. (1991, February). A whole greater than its parts? Time, 71, 70-98.

Sharder-Frechette, K. S. (1979). Nuclear power and public policy: The social and ethical problems of fission technology. London, England: D. Reidel Publishing Company.

Shils, E. (1982). The constitution of society. Chicago: University of Chicago Press.

Shon, D. A. (1963). The displacement of concepts. London: Tavistock.

Sidgwick, H. (1902). Lectures on the ethics of T. H. Green, Mr. Herbert Spencer, and J. Martineau. London: Macmillan and Col., Limited.

Sigmund, P. E. (1971). Natural law in political thought. Cambridge, MA: Winthrop Publishers.

- Simon, Y. (1961). Philosophy of democratic government. Chicago: The University of Chicago Press.
- Simon, Y. (1965). The tradition of natural law. V. Kuick (Ed.). New York: Fordham University Press.
- Simon, Y. (1968). Freedom and community. Clinton, MA: Colonial Press.
- Simon, Y. R. (1986). The definition of moral virtue. V. Kuic (Ed.). New York: Fordham University Press.
- Smart, J. J. C. (1968). Extreme and restricted utilitarianism. In M. D. Bayles (Ed.) Contemporary utilitarianism. New York: Doubleday.
- Smart, J. J. C., & Williams, B. (1973). Utilitarianism for and against. Cambridge: Cambridge University Press.
- Smith, A. (1937). An inquiry into the nature and causes of the wealth of nations. E. Cannan (Ed.). New York: Random House. Original publication 1759.
- Smith, A. (1976). The theory of moral sentiments. In D. D. Raphael & A. L. Macfie (Eds.). Oxford: Clarendon Press.
- Sobol, T. L. (1985-86). Strategies for school finance reform litigation in the post-Rodriguez era. New England Law Review, 21, 817-846.
- Sowell, T. (1987). A conflict of visions: Ideological origins of political struggles. New York: William Morrow and Company, Inc.
- Spencer, H. (1880). First Principles 5th Ed. New York.
- Stanlis, P. J. (1958). Edmund Burke and the natural law. Ann Arbor.
- Steward, M. A. (1990). Studies in the philosophy of the scottish enlightenment. Oxford: Clarendon Press.
- Storing, H. J. (1987). What the anti-federalists were for. Chicago: University of Chicago Press.
- Story, J. (1829-33). Natural law. Encyclopedia Americana (2nd ed.). Vol. 9 (pp. 150-158). Philadelphia.



Story, J. (1833). Commentaries on the Constitution of the United States, 3 vols. Boston.

Story, J. (1852). Value and importance of legal studies. In W. W. Story (Ed.) Miscellaneous writings of Joseph Story (pp. 508-519). Boston.

Story, W. W. (Ed.). (1852). The Miscellaneous Writings of Joseph Story. Boston.

Strauss, L. (1950). Natural right and history. Chicago: The University of Chicago Press.

Strauss, L. (1968). Liberalism ancient and modern. New York: Basic Books.

Strauss, L., & Cropsey, J. (Eds.). (1973). History of political philosophy. Chicago: Rand McNally.

Strayer, G. D., & Haig, R. M. (1923). The financing of education in the state of New York. Report of the Educational Finance Inquiry Commission. New York: Macmillan.

Strike, K. (1991). Liberal justice: Aspirations and limitations. In D. A. Versteegen, J. G. Ward (Eds.). The 1990 American education finance association yearbook: spheres of justice in education (pp. 195-221). Harper Business.

Summers, G., Bloomquist, L., Hirsch, T., & Shaffer, R. (1988). Community economic vitality: major trends and selected issues. Ames, IA: North Central Region Center for Rural Development.

Task Force on Education for Economic Growth. (1983). Action for excellence. Washington, DC: Education Commission of the States.

Tawney, R. H. (1926). Religion and the Rise of Capitalism. New York: Harcourt, Brace and Co.

Tawney, R. H. (1964). The conditions of economic liberty. In Rita Hinen (Ed.). Radical Traditions: Twelve Essays on Politics. New York: Pantheon Books.

Taylor, F. W. (1923). The principles of scientific management. New York: Harper and Bros. Reprinted by W. W. Norton (1967).

Terry, L. (1990). Leadership in the administrative state: The concept of administrative conservatorship, Administration and Society, 12, 395-412.

Thompson, D. C. (1990, June). School finance and the courts: A reanalysis of progress. Education Law Reporter, 59, 945-961.

Thompson, F. C. (Ed.). (1983). The Thompson-Chain-Reference Bible, New International Version. Indianapolis, IN: B. B. Kirkbride Bible Co.

Thoreau, H.D. (1966). Walden and Civil Disobedience. In Owen Thomas (Ed.). Reviews and Essays in Criticism. New York: W. W. Norton & Co.

Thurow, L. (1975). Generating inequity. New York: Basic Books.

Tully, J. (1980). A discourse on property: John Locke and his adversaries. Cambridge: Cambridge University Press.

Tyack, D. & Hansot, E. (1982). Managers of Virtue: public school leadership in America, 1820 - 1980. New York, Bassic Books, Inc.

Tyack, D. B. (1974). The one best system: A history of American urban education. Cambridge, MA: Harvard University Press.

Tye, K. A. (1992, September). Beyond the rhetoric of restructuring. 74, (1), 8-15.

U.S. Department of Education. (1991, April 18). America 2000: An education strategy: Sourcebook. Washington, DC: U.S. Government Printing Office.

National Commission on Excellence in Education. (1983). A nation at risk: The imperative for education reform. Washington, D.C.: U.S. Department of Education.

Underwood, J., & Verstegen, D. A. (1990). School finance challenges in federal courts: Changing equal protection analysis. The impacts of litigation and legislation on public school finance: Adequacy, equity, and excellence, Tenth Annual Yearbook of the American Education Finance Association. New York: Harper and Row.

Utley, R. L., Jr. (Ed.). (1988). Principles of the constitutional order: The ratification debates. New York: University Press of America.

Van Hise, C. R. (1920). The University and the state: Commencement address, University of Wisconsin. In E. P. Cubberley (Ed.), Readings in history of education. A collection of sources and readings to illustrate the development of educational practice, theory, and organization (pp. 672-673). Boston: Houghton Mifflin. Original publication as Commencement Address, University of Wisconsin 1910).

Veblen, T. (1958). The theory of business enterprise. New York: Mentor Books.

Verstegen, D.A. (1990). Introduction: Justice and Education. In A. Verstegen & D. Ward (Eds.). The 1990 American education finance yearbook: Spheres of justice in education. Harper Business.

Verstegen, D. A. (1992). International comparisons of education spending: a review and analysis of reports. Washington, D.C.: National Governors' Association.

Voegelin, E. (1952). The new science of politics. Chicago: University of Chicago Press.

Voegelin, E. (1956). Order and history. Baton Rouge: Louisiana State University.

Wagoner, J. (1990). Jefferson, justice, and the enlightened society. In D. A. Verstegen, J. G. Ward (Eds.). The 1990 American education finance association yearbook: spheres of justice in education (pp. 11-35). Harper Business.

Waldo, D. (1984). The administrative state (2nd ed.). New York: Holmes & Meier.

Walzer, M. (1983). Spheres of justice: A defense of pluralism and equality. New York: Basic Books.

Walzer, M. (1990). Education. In D. A. Verstegen & J. G. Ward (Eds.). The 1990 American education finance association yearbook: spheres of justice in education. Harper Business.

Walzer, M. (1991). On distributive justice. In D. A. Verstegen, J. G. Ward (Eds.). The 1990 American education finance association yearbook: spheres of justice in education (pp. v-ix). Harper Business.

Wamsley, G., & Zald, M. (1973, January/February). The political economy of public organizations. Public Administration Review, 1, 62-73.

Wamsley, G. L. (1990). The agency perspective: Public administrators as agential leaders. In G. L. Wamsley, R. N. Bacher, C. T. Goodsell, P. S. Kronenberg, J. A. Rohr, C. M. Stivers, O. F. White, & J. F. Wolf (Eds.), Refounding public administration (pp. 114-163). California: Sage Publications.

Wamsley, G. L., Bacher, R. N., Goodsell, C. T., Kronenberg, P. S., Rohr, J. A., Stivers, C. M., White, O. F., & Wolf, J. F. (Eds.). (1990). Refounding public administration. California: Sage Publications.

Ward, J. G. (1987). An inquiry into the normative foundations of American public school finance. Journal of Education Finance, 12, 463-477.

Watts, M., Rockwell, B. (1990). The Original Intent of the Education Article of the Texas Constitution. St. Mary's Law Review, 21, 771-775.

Webb, L., McCarthy, M., & Thomas, S. (1988). Financing elementary and secondary education. New York: Merrill.

Weber, M. (1964). The theory of social and economic organization. T. Parsons (Ed.). A. M. Henderson & T. Parsons (Trans.). New York: The Free Press.

Webster, N. (1965). On the education of youth In America. In F. Rudolph (Ed.). Essays on education in the early republic. Cambridge, MA: Harvard University Press.

Weil, S. (1952). The need for roots: prelude to a declaration of duties toward mankind. A. Wells (Trans). Boston: Beacon Press.

Weiss, P. (1949). The biological basis of adaptation. In John Romano, M.D., (ed.). Adaption. Ithaca, NY.

White, M. (1978). The philosophy of the american revolution. New York: Oxford University Press.

White, O. F. (1990). A centennial history of the American administrative state. Blacksburg, VA: Virginia Polytechnic Institute and State University.

Will, G. (1983). Statecraft as soulcraft. New York: Simon and Schuster.

- Wills, G. (1981). Explaining America: The federalist. Garden City, NY: Doubleday.
- Wilson, D. L. (1990, November). Thomas Jefferson and the character issue. The Atlantic. 278, 5, 57-59, 62-66, 69, 72-74.
- Winch, D. (1978). Adam Smith's politics: An essay in historiographic revision. Cambridge: Cambridge University Press.
- Winthrop, J. (1965). A model of Christian charity. In E. S. Morgan (Ed.). Puritan Political Ideas, 1558-1794. Indianapolis: Bobbs-Merrill.
- Wise, A. E. (1968). Rich schools, poor schools. Chicago: University of Chicago Press.
- Wise, A. E. (1979). Legislated learning: The bureaucratization of the American classroom. Berkeley: University of California Press.
- Wise, A. E. (1983). Educational adequacy: A concept in search of meaning. Journal of Education Finance, 8, 300-15.
- Wolfe, A. (1989). Whose keeper? Social Science and Moral Obligations, 32, 36, 37-38.
- Wolff, R. P. (1968). The poverty of liberalism. Boston: Beacon Press.
- Wood, G. S. (1969). The creation of the American republic: 1776-1787. Chapel Hill, NC: The University of North Carolina Press.
- Wood, G. S. (1979). The democratization of mind in the American revolution. In R. H. Horwitz (Ed.), The moral foundations of the American republic (pp. 109-136). Charlottesville: University of Virginia Press.
- Wood, J. G. (1987, Spring). An inquiry into the normative foundations of American public school finance. Journal of education finance. 12, 463-411.
- Zuboff, S. (1984). In the age of the smart machine: The future of work and power. New York: Basic Books.

APPENDIX A

STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause
Arizona	<u>Shofstall v. Hollins</u> (1973)	"The Legislature shall provide for a <u>system</u> * of <u>common</u> schools by which a free school shall be established and maintained in every school district for at least six months each year..."
Michigan	<u>Milliken v. Green</u> (1973)	"The Legislature shall maintain and support a <u>system</u> of free public elementary and secondary schools as defined by law..."
Idaho	<u>Thompson v. Egleking</u> (1975)	"It shall be the duty of the legislature of Idaho to establish and maintain a general, <u>uniform</u> and thorough <u>system</u> of public free <u>common</u> schools."
Oregon	<u>Olsen v. Oregon</u> (1979)	"The Legislature Assembly shall provide by law for the establishment of a <u>uniform</u> and <u>system</u> of <u>common</u> schools."
Pennsylvania	<u>Danson v. Casey</u> (1979)&(1987)	"The General Assembly shall provide for the maintenance of a thorough and <u>efficient system</u> of public education to serve the needs of the Commonwealth."
Ohio	<u>Board of Education v. Walter</u> (1979)	"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and <u>efficient system</u> of <u>common</u> schools throughout the state..."
Georgia	<u>Thomas v. McDaniels</u> (1981)	"The provision of an adequate education for the citizens shall be a primary obligation of the state of Georgia, the expense of which shall be provided by taxation."

## APPENDIX A

### STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause
Colorado	<u>Lulan v. State Board of Education</u> (1982)	"The General Assembly shall as soon as practicable, provide for the establishment and maintenance of a thorough and <u>uniform system</u> of free public schools throughout the state."
New York	<u>Board of Education v. Nyquist</u> (1982)&(1987)	"The Legislature shall provide for the maintenance and support of a <u>system</u> of free <u>common</u> schools wherein all the children of the state may be educated."
Maryland	<u>Hornbeck v. Somerset County Board of Education</u> (1983)	"The General Assembly...shall by Law establish throughout the state a thorough and <u>efficient system</u> of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."
Oklahoma	<u>Fair School v. State</u> (1987)	"Provisions shall be made for the establishment and maintenance of a <u>system</u> of public schools, which shall be open to all children of the state..."
North Carolina	<u>Britt v. State Board</u> (1987)	"The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right. The General Assembly shall provide a general and <u>uniform system</u> of free public schools...wherein equal opportunity shall be provided for all students."
Louisiana	<u>School Board v. Louisiana State Board</u> (1987)&(1988)	"The Legislature shall appropriate funds sufficient to insure a minimum foundation program of education...The funds appropriated shall be equitably allocated...by the legislature prior to making the appropriation."

## APPENDIX A

### STATE SCHOOL FINANCE SYSTEMS UPHeld IN JUDICIAL ACTIONS

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State	Original Case Name	State Education Clause
South Carolina	<u>Richland v. Campbell</u> (1988)	"The General Assembly shall provide for the maintenance and support of a <u>system</u> of free public school..."

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Plus Repeat Litigation Upholding Systems in California (1986) and Wisconsin (1989).

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\*Emphasis added to highlight language contained in the Constitution of Illinois.



## APPENDIX B

### STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause
New Jersey	<u>Robinson v. Cahill</u> (1973)	"The legislature shall provide for the maintenance and support of a thorough and <u>efficient system</u> of free public schools..."
Kansas	<u>Knowles v. State Board of Education</u> (1976)	"The legislature shall provide for intellectual, educational, vocational, and scientific improvement, by establishing and maintaining public schools..."
Wisconsin	<u>Buse v. Smith</u> (1976)	"The legislature shall provide by law for the establishment of district schools, which shall be as nearly <u>uniform</u> as practicable; and such schools shall be free and without charge for tuition for all children between the ages of four and twenty years..."
	Note: Upheld in <u>Kukor v. Grover</u> (1989).	
California	<u>Serrano v. Priest</u> (1971)&(1977)	"The legislature shall provide for a <u>system</u> of <u>common</u> schools by which a free school shall be kept up and supported in each district at least six months in every year..."
	Note: Upheld in <u>Serrano v. Priest</u> (1986).	
Connecticut	<u>Horton v. Meskill</u> (1977)	"There shall always be free public elementary and secondary schools in the state."
Washington	<u>Seattle School District No. 2 of King County v. State</u> (1978)	"The legislature shall provide for a general and <u>uniform system</u> of public schools."

APPENDIX B

STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause
West Virginia	<u>Pauley v. Kelly</u> (1979)&(1988)	"The legislature shall provide by general law, for a thorough and <u>efficient system</u> of free schools."
Wyoming	<u>Washakie County School District No. 1 v. Herschler</u> (1980)	"The legislature shall provide for the establishment and maintenance of a complete and <u>uniform system</u> of public instruction, embracing free elementary schools of every needed kindergarten and grade..."
Arkansas	<u>Dupree v. Alma School District No. 30</u> (1983)	"Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and <u>efficient system</u> of free schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law and no other interpretation shall be given to it."
Montana	<u>Helena School District v. State</u> (1989)	"...goal...a <u>system</u> of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person in the state...The Legislature shall provide a basic system of free <u>quality</u> public elementary and secondary schools...It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system."

## APPENDIX B

### STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause
Kentucky	<u>Rose v. The Council</u> (1989)	"The General Assembly shall, by appropriate legislation, provide for an <u>efficient system</u> of <u>common</u> schools throughout the state."
Texas	<u>Edgewood v. Kirby</u> (1989)	"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an <u>efficient system</u> of public free schools."

\*Emphasis added to highlight language contained in the Constitution of Illinois.

## VITA

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##### Doctor of Philosophy

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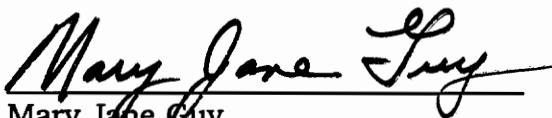
- 1983-1989 Director of development and public relations for schools, colleges, non-profit organizations: Wakefield School, Randolph Macon Academy, Shenandoah University, Loudoun Hospital Center, Mary Washington Hospital Foundation.
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### PUBLICATIONS

"The American Common School: An Institution at Risk" Journal of Law and Education Volume 21, No. 4. Fall, 1992 (In press).

### AWARDS

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First Place Award - American Scholastic Press Association, 1984.  
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