

**EDUCATION IN THE 50 STATES:**

**A DESKBOOK OF THE HISTORY OF STATE CONSTITUTIONS  
AND LAWS ABOUT EDUCATION**

**EXCERPT**



**The Institute for Educational Equity and Opportunity**  
*July 2008*



## **ABOUT THE INSTITUTE FOR EDUCATIONAL EQUITY AND OPPORTUNITY**

The Institute for Educational Equity and Opportunity (IFEEEO) is a non-profit organization that is dedicated to the pursuit of educational equity and opportunity, particularly for disadvantaged United States' public school children, through legal means. The IFEEEO is especially interested in fair and equitable public school finance laws. Toward these ends, IFEEEO engages in various research, education and training programs.

### **STAFF**

Sheilah D. Vance, Esq., Executive Director  
Cheryl D. Hardy, Esq., Assistant Executive Director

### **BOARD OF DIRECTORS**

Leslie Thornton, Esq., Chair  
Partner, Dickstein, Shapiro & Morin; Washington, DC  
Charles R. Lawrence  
Professor, Georgetown University Law Center, Washington, DC  
Reginald B. McKnight, Esq.  
Associate, Dickstein, Shapiro & Morin; Washington, DC

### **WASHINGTON OFFICE**

1200 G Street, NW  
Suite 800  
Washington, DC 20005  
Phone 202-434-8792  
Fax 202-434-8707

### **PHILADELPHIA OFFICE**

The Land Title Bldg.  
100 5. Broad Street  
Suite 1530  
Philadelphia, PA 19110  
Phone 215-557-6224  
Fax 215-557-9552

Website: [www.ifeeo.org](http://www.ifeeo.org) • Email: [info@ifeeo.org](mailto:info@ifeeo.org)  
For additional copies of this report, please contact IFEEEO.

---

# **EDUCATION IN THE 50 STATES:**

---

**A DESKBOOK OF THE HISTORY OF STATE CONSTITUTIONS AND LAWS ABOUT EDUCATION**

**The Institute for Educational Equity and Opportunity**  
*July 2008*

## ACKNOWLEDGMENTS

*Education in the 50 States: A Deskbook of the History of State Constitutions and Laws About Education* was prepared under a research grant from the Institute for Educational Equity and Opportunity (IFEEO) to the Public Interest Law Center of Philadelphia.

The Institute for Educational Equity and Opportunity gratefully acknowledges the following individuals who contributed to this Deskbook:

Jennifer R. Clarke, Executive Director and staff attorney Bela August Walker, both of the Public Interest Law Center of Philadelphia; Patrick Spero, PhD candidate at the University of Pennsylvania specializing in early American history and Rene Luis Alvarez, also a PhD candidate at the University of Pennsylvania; and intern Jainy Jose, who was a senior history major at Temple University, Sara Goodman, a rising junior at Brown University and Yanni Guo, a 2006 graduate of Barnard College.

# TABLE OF CONTENTS

ACKNOWLEDGMENTS .....	i
TABLE OF CONTENTS .....	ii
INTRODUCTION.....	1
Education in the Early Years.....	1
The Early Federal Role .....	2
The Demographics.....	2
Early, Vivid Education Clause Language .....	3
What This Deskbook is About and Why .....	3
THE HISTORIES.....	9
The Colonial Period.....	9
Colonial Massachusetts .....	11
Colonial Pennsylvania .....	15
The Southern Colonies .....	17
State Participation in Education .....	21
Maryland .....	22
The Colonial Period in Conclusion .....	22
The Post Revolutionary Period (1776-1820s).....	23
Republicanism .....	23
Creating a National Identity.....	24
Two Paths to Homogenization .....	25
Increased Governmental Involvement .....	26
Federal Involvement in State Education .....	28
The Northwest Ordinance .....	28
The Federal Surplus of 1836 .....	29
The Antebellum Period and the Common School Movement (1830s-1860s) .....	32
The Common School Movement.....	32
Education in the Territories .....	33
Minority Groups: Decoding Citizenship .....	34
The Civil War, Beginning Reconstruction (1860s-1870s).....	36
The New Freedmen .....	36
The Formalizing of Educational Systems .....	37
Developing the Western Territories.....	39
Challenges From the Vast Territories .....	39
New England Practices Meet Systems of Other Nations.....	39
1. Texas .....	39
2. New Mexico.....	40
3. Utah.....	41
4. Hawaii .....	42
Native Americans .....	42
Conclusion.....	45

<b>STATE EDUCATIONAL HISTORY SUMMARIES .....</b>	<b>46</b>
ALABAMA .....	46
Alabama Timeline	
Alabama Summary	
ALASKA .....	48
Alaska Timeline	
Alaska Summary	
Bibliography	
ARIZONA.....	51
Arizona Timeline	
Arizona Summary	
Bibliography	
ARKANSAS.....	52
Arkansas Timeline	
Arkansas Summary	
Bibliography	
CALIFORNIA.....	53
California Timeline	
California Summary	
Bibliography	
COLORADO .....	55
Colorado Timeline	
Colorado Summary	
Bibliography	
CONNECTICUT.....	56
Connecticut Timeline	
Connecticut Summary	
Bibliography	
DELAWARE .....	59
Delaware Timeline	
Delaware Summary	
Bibliography	
FLORIDA .....	61
Florida Timeline	
Florida Summary	
Bibliography	
GEORGIA.....	64
Georgia Timeline	
Georgia Summary	
Georgia Legal Codes	
Bibliography	
HAWAII .....	68
Hawaii Timeline	
Hawaii Summary	
Bibliography	
IDAHO .....	70
Idaho Timeline	
Idaho Summary	
Bibliography	

ILLINOIS .....	71
Illinois Timeline	
Illinois Summary	
Bibliography	
INDIANA .....	73
Indiana Timeline	
Indiana Summary	
Bibliography	
IOWA .....	75
Iowa Timeline	
Iowa Summary	
Bibliography	
KANSAS .....	77
Kansas Timeline	
Kansas Summary	
Bibliography	
KENTUCKY .....	78
Kentucky Timeline	
Kentucky Summary	
Bibliography	
LOUISIANA .....	81
Louisiana Timeline	
Louisiana Summar	
Bibliography	
MAINE .....	84
Maine Timeline	
Maine Summary	
Bibliography	
MARYLAND.....	86
Maryland Timeline	
Maryland Summary	
Bibliography	
MASSACHUSETTS .....	90
Massachusetts Timeline	
Massachusetts Summary	
Bibliography	
MICHIGAN .....	93
Michigan Timeline	
Michigan Summar	
Bibliography	
MINNESOTA.....	96
Minnesota Timeline	
Minnesota Summary	
Bibliography	
MISSISSIPPI .....	99
Mississippi Timeline	
Mississippi Summary	
Bibliography	

MISSOURI .....	102
Missouri Timeline	
Missouri Summary	
Bibliography	
MONTANA .....	104
Montana Timeline	
Montana Summary	
NEBRASKA .....	106
Nebraska Timeline	
Nebraska Summary	
Bibliography	
NEVADA .....	107
Nevada Timeline	
Nevada Summary	
Bibliography	
NEW HAMPSHIRE .....	108
New Hampshire Timeline	
New Hampshire Summary	
Bibliography	
NEW JERSEY .....	110
New Jersey Timeline	
New Jersey Summary	
Bibliography	
NEW MEXICO .....	112
New Mexico Timeline	
New Mexico Summary	
Bibliography	
NEW YORK .....	116
New York Timeline	
New York Summary	
New York Speeches	
Bibliography	
NORTH CAROLINA.....	120
North Carolina Timeline	
North Carolina Summary	
North Carolina Speeches	
Bibliography	
NORTH DAKOTA.....	125
North Dakota Timeline	
North Dakota Summary	
Bibliography	
OHIO .....	127
Ohio Timeline	
Ohio Summary	
Bibliography	
OKLAHOMA .....	130
Oklahoma Timeline	
Oklahoma Summary	
Bibliography	

OREGON .....	132
Oregon Timeline	
Oregon Summary	
Bibliography	
PENNSYLVANIA .....	133
Pennsylvania Timeline	
Pennsylvania Summary	
Bibliography	
RHODE ISLAND .....	135
Rhode Island Timeline	
Rhode Island Summary	
Bibliography	
SOUTH CAROLINA .....	137
South Carolina Timeline	
South Carolina Summary	
Bibliography	
SOUTH DAKOTA .....	139
South Dakota Timeline	
South Dakota Summary	
Bibliography	
TENNESSEE .....	143
Tennessee Timeline	
Tennessee Summary	
Bibliography	
TEXAS.....	145
Texas Timeline	
Texas Summary	
Bibliography	
UTAH .....	147
Utah Timeline	
Utah Summary	
Bibliography	
VERMONT .....	149
Vermont Timeline	
Vermont Summary	
Bibliography	
VIRGINIA.....	152
Virginia Timeline	
Virginia Summary	
Bibliography	
WASHINGTON.....	155
Washington Timeline	
Washington Summary	
Bibliography	
WEST VIRGINIA.....	156
West Virginia Timeline	
West Virginia Summary	

WISCONSIN .....	158
Wisconsin Timeline	
Wisconsin Summary	
Bibliography	
WYOMING .....	160
Wyoming Timeline	
Wyoming Summary	
Bibliography	
 APPENDIX I—THE EDUCATION CLAUSES IN STATE CONSTITUTIONS.....	 161
 ENDNOTES.....	 202

# Introduction

*“The foundation of every state is the education of its youth.”  
— Greek cynic, Diogenes Laertius (412-323 BC)*

*“[I]n a republican government ... the whole power of education is required. . . . [A] government is like everything else: to preserve it we must love it. . . . Everything therefore depends on establishing this love in a republic; and to inspire it ought to be the principal business of education...”  
— Montesquieu, *The Spirit Of Laws* (1748)*

*“[T]he very foundation of every state is the education of its youth and that state’s schoolhouses are the republican line of its fortifications.”  
— Horace Mann (1841)*

THIRTY-FOUR YEARS AGO, the United States Supreme Court made a factual finding which would irrevocably alter the strategies for advocates who sought to improve the quality and equality of public education.

In *San Antonio Independent School District v. Rodriguez*,<sup>1</sup> the Court declined to read any implicit right to a free public education in the United States Constitution. While it conceded that the right to travel — not explicitly in the Constitution — “had long been recognized as a right of constitutional significance,” the Court declined to find a similar “long recognized” right to education, saying it could draw no distinction between education and the also-important human needs of food and shelter. Relying on this interpretation of the historical record, the Court concluded that education was not a fundamental right such that Americans could demand that they receive one that was both equal and of high quality.

As advocates regrouped and turned to their respective state courts and legislatures, a powerful perspective coalesced in law offices, courtrooms and legislative halls: although the framers of the United States Constitution may not have explicitly mentioned education, the ideal and reality of education is, in fact, deeply embedded in the formation of each of the fifty states.

Although widely disparate in their cultural influences, peoples and geographic circumstances, each of the 50 states created schools, and the laws, administrations and financing mechanisms to sustain them as among their first functions of each government. Many states adopted constitutions from the beginning which mandated an education, while others reflected their sustained purposive commitment to education through these laws and bureaucratic structures. Table I, beginning at page 282, shows the relevant constitutional clauses for each of the states.

## EDUCATION IN THE EARLY YEARS

Indeed, years before the states were established — and, in the case of the colonies, a century before — colonial or territorial governments established schools and the laws and financing mechanisms to sustain them. These governments, in turn, built upon the earliest traditions arising from religious groups or other local communities.

From nearly the beginning, the citizens in each state acquiesced in having some authority outside the family take responsibility for education. Colonial, and then territorial, administrations used their

governmental spending power and the coercive force of taxes to fund education. The role of the state in commandeering resources first focused on ensuring everyone able to contribute financially did so, as enforced through compulsory taxation. Once such funding was assured, compulsory attendance laws were passed to guarantee that everyone eligible participated in the system provided. This governmental funding and involvement continually increased over time as fiscal resources increased; as the economy grew, so did the economic resources and expenditures of the state.

## THE EARLY FEDERAL ROLE

It was not just the colonial and territorial governments that focused early on public education. Even prior to the U.S. Constitution, the federal government took, and has continued to take, consistent, strong and concrete actions to ensure that American citizens receive a public education. The Continental Congress provided land grants to support public schools in the western territories. Under the new ordinance, “the territory ceded by individual States to the United States, which has been purchased of the Indian inhabitants, . . . [t]here shall be reserved the lot N 16, of every township, for the maintenance of public schools.”<sup>2</sup> Congress continued this practice for every territorial government later created. Indeed, the Continental Convention adjourned to ensure that the Congress meeting in New York had a quorum to adopt the Northwest Ordinance.

Throughout the history of the United States, from colonial times onward, this pressing need for providing a public education has been articulated in remarkably consistent terms: an educated citizenry is essential to a vital democratic community.

Education ensures that citizens can perform useful work to sustain themselves. An educated citizen is essential in a democracy not only to ensure an informed electorate, but also to create the succeeding generation of leaders. Education offers a means for people with widely dissimilar cultures to form a national identity and cohesiveness.

*In this sense, education was early perceived both as an individual right and as an imperative that served economic and political communal needs.* It was an individual right in the sense that it was the individual whose education would lead to his full development as a citizen. Such an individual was crucial for the community as the political and economic continuation of the state required educated, productive citizens. As one scholar of Massachusetts educational history described this communal imperative, the colony founders “called illiteracy barbarism, and therefore, not for the Church’s sake nor for the child’s sake, but for the sake of the commonwealth, they insisted on universal education.”<sup>3</sup> The community could not exist without an educated populace, and correspondingly a developing state could not stand without an educated citizenry.

## THE DEMOGRAPHICS

*Who in fact participated in the educational process varied* according to changing notions of body politic and citizenry: who was viewed as needing to be assimilated into society, to what extent, and for what purpose. As the nation’s people grew more diverse and the concept of citizenship expanded, education was perceived as a means of assimilating and unifying a population. Access to education incorporated newcomers into the growing nation without overwhelming it. Thus, as the country opened its definition of citizenship to include new groups — African Americans, Native Americans, women, immigrants — each state accordingly expanded the scope of its responsibility for educating these citizens.

An important corollary to this communal, democratic imperative is the pervasive and consistent undertaking to educate poor children. Through the earliest laws, modeled on England’s “poor laws,” the colonies, territorial governments, and then the states, undertook to educate not just the upper classes, but orphans and, later, those children whose parents could not afford to pay for them. Schooling these children was perceived to be so important that citizens accepted the principle of taxing those who did not

need the schooling to pay for those who did.

## EARLY, VIVID EDUCATION CLAUSE LANGUAGE

The language used by the early state leaders to articulate these goals is, when viewed through today's eyes, moving, vivid and, to a remarkable degree, remains fresh in its aspirations. In North Dakota, for example, the constitution provides:

“A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control .”<sup>4</sup>

In Massachusetts, the Constitution of 1780 evoked a similar ideal:

“Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them.”<sup>5</sup>

## WHAT THIS DESKBOOK IS ABOUT AND WHY

### ORGANIZATION

---

*In this Deskbook*, we present the early histories of each of the 50 states in the United States. First, the histories are analyzed across historical thematic eras. Then, this chronological, thematic discussion is followed by histories of each state organized in alphabetical order.

### RATIONALE

---

The impetus behind this Deskbook are four related factors.

1) *First, the Supreme Court was unwilling to conclude that a right to education is “implicit,” or “capable of being understood from something else though unexpressed.”*<sup>6</sup> However, the tapestry of these histories, when taken together, speak a powerful, consistent truth: education was not merely important, but an implicit right, derived from the meaning of citizenship. The Constitutional framers did not need to mention education because by 1789, national and state laws, taxing authorities and financing mechanisms were firmly in place and, in some case, had been for over 100 years. The body politic insisted upon them because a crucial attribute of a “citizen” were the intellectual skills necessary for meaningful participation in the community’s political and economic life. *As with other attributes of “Citizen,” the framers of the Constitution did not have to expressly articulate every attribute because they were a well-recognized part of the landscape.* This is a truth for use by advocates, litigators and policymakers in making real the aspirations of our forefathers.

2) *Second, the impetus for this Deskbook is to assemble the powerful body of factual evidence to refute a strand of argument that declines to acknowledge the rich, powerful language in state constitutions or other founding documents.* That argument, most succinctly made by John C. Eastman, is that the language in these early documents — the constitutions, the debates, the speeches, the laws — are merely hortatory; those early leaders did not mean what they said.<sup>7</sup> This argument, however, disregards the continued emphasis placed on education, not just in words, but in practice and in legislation. Throughout the history of the United States, leaders and the people themselves singled out education for special recognition not afforded to any other government service, expressing universal agreement on its importance of education.

For the state governments, education was a responsibility that they not only assumed from the beginning but that they took measures to assure would be sustainable. From the creation of the first colony, governments used their powers of taxation, one of the more coercive functions of government, to support education. They penalized colonists who did not provide schooling to their children.<sup>8</sup>

Although some early states did not have sufficient resources to create robust schools, once they acquired such resources, they used them for education. Between 1790 and 1860, the federal government appropriated \$135 million. The states spent an additional \$148 million. Overall, the federal and state governments of the United States “appropriated more money than all the other Governments of the world combined during the same period.”<sup>9</sup> The states’ eagerness to use their shares of the federal surplus of 1836 to finance their schools is the most vivid example of this drive.

The fact that the American people and their elected governments were serious about their ideals also is reflected in educational laws that are administrative and fastidious, constantly readjusting bureaucracies, penalties and enforcement mechanisms. The states were relentlessly revamping the laws, fine-tuning the state bureaucratic function, and creating resources for educational infrastructure.

Thus, as these histories show, the early speakers and writers on education did not merely utter moving rhetoric (although they did that as well). They also intended to create the educations and the citizens that they spoke about in that rhetoric. As the New Hampshire Supreme Court held, in finding that its constitution requires the state to provide an adequate education to all children:

“[w]e do not construe the terms ‘shall be the duty. . . to cherish[the interests of literature]’ in our constitution as merely a statement of aspiration. The language commands, in no uncertain terms, that the State provide an education to all its citizens and that it support all public schools.”<sup>10</sup>

3) *Third, at its most basic level, this Deskbook also is intended to provide a resource for the inquiry of advocates, litigators, researchers, and students into the historical promise and visions of meaningful, quality public education.* State courts rely heavily upon histories to determine the intent of state constitutional framers, using such histories to justify opinions both for and against the plaintiffs.

#### STATE CONSTITUTION HISTORY SUPPORTS PLAINTIFFS

In thirteen states, the courts relied upon the historical context of that state’s constitutional provision to hold that education constituted a fundamental right or that the state had otherwise violated plaintiffs’ constitutional rights: Alabama, Connecticut, Kentucky, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Texas, Vermont, Washington, West Virginia, Wisconsin.<sup>11</sup>

As the Texas Supreme Court said in 1989: “[T]he history of the times out of which [the constitution] grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry.” (citations omitted).<sup>12</sup> Across the continent, the Massachusetts Supreme Court articulated the inquiry in similar terms: “We have reviewed at great length the history of public education in Massachusetts so that we might glean an understanding of the meaning of [the constitutional provision].”<sup>13</sup> In New Jersey, the Supreme Court observed that “[a] brief sketch of public education in our State is a necessary backdrop for the issue.”<sup>14</sup> In Kansas, a justice writing the concurring opinion in the Supreme Court found the history significant: (“[O]ur state’s constitutional history reinforces the importance of education even before statehood. . . . [I]ndications are that the framers of our constitution intended education to be a fundamental right.”)<sup>15</sup> In Vermont, the Supreme Court emphasized education’s “long and settled history as a fundamental obligation of state government.”<sup>16</sup>

After reviewing the role of education in the foundation of their states, these courts found that the state's forefathers saw education as a necessary tool that enabled children to participate fully in society politically and economically. Although the states' historical antecedents differ from one another and although they are disparate geographically, the findings of the courts are remarkably similar, speaking to the common thread that binds the nation. According to the North Carolina Supreme Court: "[A]t the time this original provision was originally written . . . the intent of the framers was that every child have a fundamental right to a sound basic education which would prepare the child to participate fully in society as it existed in his or her lifetime."<sup>17</sup> In Minnesota, the Supreme Court reached a similar conclusion in similar language. Its constitution's provisions were "to insure a regular method throughout the state whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic."<sup>18</sup> In Kentucky, Massachusetts and Vermont, the courts emphasized that education was considered crucial to a democratic society that relied on self-governance.<sup>19</sup> These insights led the New Jersey court to define the constitutional requirement as "that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."<sup>20</sup>

#### STATE CONSTITUTION HISTORY SUPPORTS DEFENDANTS

History played an equally important role in opinions in fourteen other states in which the courts ruled against plaintiffs: Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Maryland, Missouri, Nebraska, New York, Ohio, Oregon, Pennsylvania, and Rhode Island.

The Idaho Supreme Court's conclusion is typical: "Our position is supported by an analysis of the circumstances surrounding the adoption of our constitution, its language, [and] subsequent legislative and judicial history in connection with the education article."<sup>21</sup> In Maryland, the court similarly describes its task: "to ascertain and effectuate the intent of the framers of the organic law and the people adopting it, it is essential that we consider the history underlying the enactment of [the constitutional provision] and its contemporaneous construction."<sup>22</sup>

#### STATE CONSTITUTION HISTORY UNCLEAR

In some cases, courts were unable to find any relevant history and cited this lack of any historical record at all as dispositive. According to the Colorado Supreme Court: "[W]e are unable to find any historical background to glean guidance regarding the intention of the framers."<sup>23</sup> Many other courts found a historical record, but were unwilling to find in it a mandate for the relief sought by the plaintiffs. Where plaintiffs sought a quality, or "adequate" education, these courts relied upon the lack of specificity in the historical record to rule for the state defendants. In Nebraska, for example, the court concluded that the "framers of the 1875 constitution intentionally omitted any language from the free instruction clause that would have placed restrictions or qualitative standards on the Legislature's duties regarding education." Based on this decision and the "paucity of standards in the free instruction clause," the court held that the history demonstrated "the framers' intent to commit the determination of adequate school funding solely to the Legislature's discretion." The court concluded that "[The Coalition has not] pointed to any history showing that the framers intended the State to make up for funding shortages in individual school districts."<sup>24</sup> It is this failure of specificity in the constitutions or other legislative actions that led other courts to the same conclusion.<sup>25</sup>

Similarly, other courts cited the historical lack of uniformity in school expenditures across the state as evidence that the state's founders never intended equality in school funding. In Rhode Island, for example, the Supreme Court reasoned: "If we view these constitutional and statutory provisions relating to education in the context of the times in which they were adopted, it is clear that disparities in funding per pupil were simply not a concern to those who drafted the provisions."<sup>26</sup>

The fact that the historical record is open to interpretation, and provides no clear beacon is illustrated by a dissenting opinion in Maryland. While the Maryland Supreme Court concluded that the history

underlying the adoption of the state's constitutional clause does not mandate uniformity in educational spending,"<sup>27</sup> the dissent drew the opposite conclusion: "the clear message of the history surrounding the adoption of the Education Article" shows that its "overriding purpose... [was to] assur[e] an effective and universal system of free public schools."<sup>28</sup>

#### VARIOUS HISTORICAL MATERIALS EXAMINED

Where courts made use of a state's history, they looked at a wide variety of considerations, tracing history as far back as the seventeenth century.<sup>29</sup>

As the Massachusetts Supreme Court explained, "[w]e have examined the intention of the framers, the language and the structure of the Constitution, the ratification process by the towns and also the words, acts, and deeds of contemporaries of that time, and, especially the views, addresses, and statutes of early Governors (magistrates) and the Legislatures."<sup>30</sup> The courts consider the contemporaneous meaning of the words of constitution, how the public would have understood the terms and what the parties would have expected as a practical result. Consequently, courts drew from the constitutional conventions, and/or records of the statements made during the debates.<sup>31</sup> To interpret the constitutional provisions through "plain meaning," the justices "attempt[ed] to find definitions, explanations of intentions; to find whether the words were hyperbole or were meant to have legal significance."<sup>32</sup> Similarly, some courts scrutinized early case law for contemporaneous interpretation by the state courts.<sup>33</sup>

The courts also attempted to construct the greater social context in which these legislative acts were occurring, by considering "the general spirit of the times and the prevailing sentiments of the people"<sup>34</sup> or undertaking "[a]n examination of the 'surrounding circumstances' at the time the constitution was adopted."<sup>35</sup> They looked to public statements, examining publications and public addresses as given by early Governors and the legislatures,<sup>36</sup> as well as reports by the state superintendents of education.<sup>37</sup> They cited to legislative and administrative actions by the state: the earliest legislation requiring schools,<sup>38</sup> the continual changing regulations regarding schools;<sup>39</sup> systems of taxation;<sup>40</sup> construction of state budgets;<sup>41</sup> compulsory attendance statutes;<sup>42</sup> and the creation of literacy funds.<sup>43</sup>

4) *Fourth, to the extent litigators are contemplating new litigation or advocates seek to persuade their legislators to resurrect the concrete ambitions of their forefathers, this Deskbook offers a point of departure.* More important, it will allow practitioners to trace the profound intellectual cross-currents influencing the states and federal government. As Thomas B. Miller observed, "[no] state's plan of organization, constitution, and common law were developed in a vacuum. Quite to the contrary, new states drew heavily upon the law of the national government and their sister states, often by simply adopting what had been done or said before."<sup>44</sup>

#### MASSACHUSETT'S INFLUENCE

Massachusetts' constitutions and legislation were particularly influential in the development of other state histories. Connecticut, which was joined by royal charter with Massachusetts in 1665, adopted in 1659 the Ludlow Code of Laws, taken almost verbatim from the Massachusetts code.<sup>45</sup> Similarly, New Hampshire and Massachusetts were united as a single province between 1641 and 1679, strongly influencing New Hampshire's own laws when it became a separate province in 1680. In a challenge to New Hampshire's state public education,<sup>46</sup> the New Hampshire Supreme Court noted this shared history as well as the fact that the state constitution's education clause is similar to the Massachusetts education clause. Because of these similarities, it "g[ave] weight to the interpretation given [the Massachusetts education provision] by the Supreme Judicial Court."<sup>47</sup> The court concluded that this shared history indicates that the New Hampshire constitution "impose[s] a duty on the State to educate its citizens and support the public schools."

Similarly, Michigan derived its 1827 legislation creating statewide common schools from the Massachusetts laws of 1647 and 1789. Minnesota crafted a Constitution as a condition of statehood, modeled on the

1780 Massachusetts Constitution, which has frequently been held up as the basis for the modern public school movement. Massachusetts also provided the model “for several states that joined the Union in the early part of the 19th century, including Indiana (1816), Tennessee (1834), and Arkansas (1836).”<sup>48</sup> In writing the Northwest Ordinance, Congress also adopted and modified the language of the Massachusetts constitution.

#### OTHER STATES’ INFLUENCE

Other states, once a part of a larger territory, adopted the educational provisions of their predecessors. Pennsylvania’s school system was adopted by Delaware, which had been covered by William Penn’s Frame of Government as one of the “Territories thereof.”<sup>49</sup>

Many states reviewed the provisions then in existence and drew upon those that they believed best suited their needs. Vermont, which created itself in 1777 from the Hampshire Grants and was torn by the competing claims of New Hampshire and New York, incorporated an education provision in its constitution virtually identical to that of Pennsylvania’s 1776 constitution, except it empowered towns rather than counties to be the focal point for schools.<sup>50</sup> According to a 1911 treatise on the history of education, the educational provisions in Missouri’s constitution were based on Thomas Jefferson’s, “A Bill for the More General Diffusion of Knowledge,” and John Adams’ constitution for the Commonwealth of Massachusetts.<sup>51</sup> In Montana, the school law of 1872 was taken verbatim from California law, after excising the sections “too cumbersome for smaller and more scattered communities” of Montana. Wisconsin expressly credited the laws of New England and New York for its school law of 1841.<sup>52</sup>

The rich strands of intellectual influences is best illustrated by the 1858 Wyandotte Constitutional convention which met in 1858 to draft a constitution to submit to the residents of the Kansas territory. The constitution used as a model the Ohio constitution, which itself was modeled after the New York constitution. The Ohio constitution, however, contained only two short sections on education. The Kansas founders thus premised their proposed education article on a combination of provisions from Iowa, Oregon, Michigan, Wisconsin and California. In explaining the scope and effect intended for the proposed constitution, one framer stated, “It has been the aim of the majority of this body to make this Constitution the draft, the outline of great civil truths and rights.”<sup>53</sup>

#### COMMON LANGUAGE

##### 1. THOROUGH AND EFFICIENT

In most state constitutions, this cross-fertilization is reflected in the common language of the educational mandate of state constitutions. Maryland, Minnesota, New Jersey, Ohio, Pennsylvania, West Virginia all adopted constitutional clauses which require a “thorough and efficient” education. Colorado, Idaho, and Montana require a “thorough” education and Arkansas, Texas, Kentucky, Delaware, Virginia (until 1971), and Illinois (since 1971) require an “efficient” education. Where the language is similar, courts deciding cases have relied upon histories of other states where the constitutional conventions produced similar provisions. In West Virginia, for example, the Supreme Court observed that “[i]t has been instructive to us to examine all debates in the constitutional conventions that produced thorough and efficient education clauses.” After reviewing the discussion at the Ohio convention, for example, the court concluded that the tenor indicated that “excellence was the goal, rather than mediocrity; and that education of the public was intended to be a fundamental function of the state government and a fundamental right of Ohioans.”<sup>54</sup>

---

## 2. GENERAL AND UNIFORM

Another cluster of states require a “general and uniform” education: Arizona, Colorado, Idaho, Minnesota, Oregon, and Washington. Wisconsin and Wyoming require a “uniform” education while Nevada and Florida require a “complete and uniform” education. Again, noting the identity of language, courts in those states looked to the histories of other states in deciding challenges to the adequacy or equity of the state educational system. For example, in a 1994 concurring opinion, an Arizona Supreme Court justice focused on the similarities between Arizona’s history and that of Washington, noting, in particular, that both were required to provide for the establishment and maintenance of public school systems as a requirement for admission to the Union and that Arizona borrowed language from Washington’s constitution when it created its education clause. Thus, the Justice found two Washington cases “exceptionally persuasive,” one of which held that a “general and uniform” school system was “one in which every school child has ‘free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade.’”<sup>55</sup>

---

## 3. FREE AND OPEN

Other clusters are those states which require a “free” education (Connecticut, Idaho, Michigan, New Jersey, New York, South Carolina, Wisconsin, West Virginia); and still others require an education that is “open” or “open to all” (Alaska, Arizona, Indiana, Montana, North Dakota, South Dakota, Utah).<sup>56</sup>

Thus, this Deskbook is intended to provide a roadmap not just for particular states, but also to allow advocates and litigants to trace the influences on those states’ policies.

# The Histories

In virtually every state, the development of education followed, in the broadest strokes, a similar, intentional path. Prior to statehood, education was most often a function of religious organizations, or small groups, starting up ‘morally’ based communities. As communities matured and created governments, the function of education evolved to serve the needs of democracy and the formation of the republic. Education would create citizens able to participate in democracy and it would serve as a normalizing and socializing force to create a national identity. After each state became established, through the active participation of the federal government and land grants, state governments further embedded education in their structures, providing that education never would be undercut, always carried forward. During the Antebellum period, states continued to make constant legislative changes to their educational laws, refining and updating them to reflect increasing sophistication and increasing revenues.

There were, of course, exceptions, based on states’ lack of resources or the difficulties based on sparse populations and huge distances between homes and settlements. The actions of those states, however, follow the pattern in their expressed desire for education and the fact that, when they secured revenues or population density, they immediately improved their education systems. In Montana, for example, the state was so thinly populated and lacked resources for most of its early history. But by the 20th Century, Montana, having become more settled and organized, its leaders enacted one of the most direct and explicit constitutional commands in the nation: “It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.”<sup>57</sup>

## THE COLONIAL PERIOD

### RELIGIOUS DISSENSION

The communities that were most vocal and cohesive in their approaches to education were those formed by religious dissenters in the 1600s. As these colonists struggled to create and maintain the societies they envisioned, these efforts focused on religion above all as the basis for their incipient societies. Living in tightly controlled town structures, governed according to their religious tenets, education to the colonists was a fundamental tool to ensure religious conformity. Thus, during the early development of these colonies, education was perceived as a civilizing force, ensuring the continuation of communities and their religions. Education also ensured that, as the older religious leaders, educated in Europe, died, new religious leaders, educated in the new communities, would be prepared to assume their place.

In a typical statement, Increase Mather urged his congregation, “[w]as it not with respect unto Posterity that our Fathers came into this Wilderness, that they might train up a Generation for Christ?”<sup>58</sup> New England’s First Fruits, an anonymous tract chronicling the creation of Harvard College, stressed that “every student [should] be plainly instructed and earnestly pressed to consider well [that] the main end of his life and studies is to know God and Jesus Christ. . . the only foundation of all sound knowledge and learning.”<sup>59</sup> The New England Primer, first published around 1690 and used until the end of the eighteenth century, directed that “the Child being entered in his Letters and Spelling, let him learn these and such like Sentences by Heart, whereby he will be both instructed in his Duty, and encouraged in his Learning.” These duties included fearing god, honoring the king and obeying his superiors.<sup>60</sup>

### EDUCATION AS A BULWARK AGAINST THE WILDERNESS

Colonialist narratives recounted the establishment of schools as a bulwark against the wilderness, an essential step to creating society/civilization/community. First Fruits described institutions of learning as second only to the church and government, while essential to both:

After God had carried us safe to New England, and we had builded our houses, provided necessaries for our livelihood, reared convenient places for God's worship, and settled the civil government, one of the next 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 ministers shall lie in the dust.<sup>61</sup>

As expounded by Massachusetts colonist Jonathan Mitchell in 1663, “[w]e in this country, being far removed from the more cultivated parts of the world, had need to use utmost care and diligence to keep up learning and all helps of education among us, lest degeneracy, barbarism, ignorance, and irreligion do by degrees break in upon us.”<sup>62</sup>

## UNIVERSAL OR NOT

Because of these unifying beliefs, at their founding, these religious colonies were more prone to express a belief in universal education and to use the state to pursue this goal. The New England colonies passed laws mandating the establishment of schools in towns of a certain size and the subsidization of tuition. The culturally homogenous nature of these colonies helped enable such policies and beliefs. These colonies adopted laws, based on the English Poor Laws, that provided education for orphans.

In other, more diverse communities, the early leaders did not evoke the language of universal education nor did they adopt early universal legal codes. For example, the relatively more heterogeneous population in New York led to less focused development of education systems during the Dutch colonial period, although the Dutch Reformed Church in New York did receive funds from Holland to support education.<sup>63</sup> Particularly in the southern colonies, the colonists maintained close ties to the Anglican Church and England, which did not have traditions of state-mandated education but did enact laws patterned after the English Poor Laws, that provided education for orphans.

## THREE THEMES

As the colonies became more established, three themes emerged.

*First, education, which had been an instrument of maintaining a religious community and as a civilizing force, evolved into the foundation for creating citizens able to participate in democracy.* Increasingly, society came to view the ability to read and write as essential to participating in a democracy. Education also served as a normalizing and socializing force, one crucial to creating national identity.

Education also reflected, as it would until today, the contemporary view of citizenship. While “citizens”—white males—would receive education to allow them to participate in a democratic society, education would be provided to non-citizens, if at all, only to the extent necessary to prepare them for their role in the community. As early twentieth century historian Carter Godwin Woodson describes, “[f]eeling that the body politic, as conceived by Locke and Montesquieu, did not include the slaves, many citizens opposed their education on the ground that their mental improvement was inconsistent with their position as persons held to service.”<sup>64</sup>

Colonists perceived that Indian children, on the other hand, needed education to ensure that they became Christians and had “knowledge of the necessary trades.” An early Virginia law provided:

If the Indians shall bring in any children as gauges of their good and quiet intentions to us and amity with us, then the parents of such children shall choose the persons to whom the care of such children shall be entrusted; and the country by us their representatives do engage that we will not use them as slaves, but do their best to bring them up in Christianity, civility, and the knowledge of necessary trades. And on the report of the commissioners of each respective county that those under whose tuition they are do really intend the bettering of the children in these particulars, then a salary shall be allowed to such men as shall deserve and require it.<sup>65</sup>

Similarly, women were often educated because they were mothers, in order to teach the next set of citizens, and not because of an intent to promote their own civic participation. The education of woman varied depending on the era and community values. In the 1700s, recognized schools for women were rare, though, in many cases, they received informal education, learning how to read and write, as well to “knit their stockings and gloves, to mark, sew and make and mend their clothes.”<sup>66</sup> Nonetheless, Benjamin Rush urged early on that women “should not only be instructed in the usual branches of female education, but they should be taught the principles of liberty and government; and the obligations of patriotism. . . . The opinions and conduct of men are often regulated by the women in the most arduous enterprizes of life. . . . Besides, the first impressions upon the minds of children are generally derived from the women.”<sup>67</sup>

*Second, as the colonies developed, education evolved from being primarily a local affair, organized by private individuals or the community to one of increasing responsibility of the colonial and then state governments.* These administrations empowered municipalities to raise funds for schools and created administrative structures for the maintenance of the schools. As they matured politically and established distinct cultures, they adopted different strategies for funding and fostering schools and education.

*Third, the colonies continued to amend and refine their education regulation and the bureaucracies to enforce them as they sought to make a reality the universal free education their laws and constitutions described.*

## COLONIAL MASSACHUSETTS

*Massachusetts's influence extended across the colonies, and thus is a logical site to begin any discussion of educational history in the United States.* As one historian characterized Massachusetts' influence:

“In the number, character, distribution, and quality of her educational institutions, [the Massachusetts Bay colony] was pre-eminent, and established precedents which greatly influenced other colonies.”<sup>68</sup>

This sentiment was echoed by the antebellum historian James W. Taylor, “[t]he high distinction belongs to New England, and prominently to Massachusetts, of first proclaiming and establishing the principle, that it is the right and duty of government to provide, by means of fair and just taxation, for the instruction of all the youth of the community.”<sup>69</sup> Their actions demonstrate how “[a]n educated citizenry has been an objective of the Nation since the earliest thinkers began planning a government for what then were the colonies.”<sup>70</sup>

### EDUCATION WAS CRUCIAL AT INCEPTION

Education was viewed as crucial to the community from the inception of the Massachusetts Bay colony. In 1635, a mere five years after its creation, the colony had already secured a schoolmaster<sup>71</sup> and created a grammar school; the Boston Public Latin school, still in operation.<sup>72</sup> While some fees were charged, the school was “public” in the sense that it was under public control and supported by public funds.

The subsequent year, the colony created Harvard, the first university in the colonies, an action dramatically different from any taken in Britain and the continent they left behind. John Adams spoke with wonder of how, in earliest colonial times, “the education of all ranks of people was made the care and expense of the public, in a manner that I believe has been unknown to any other people ancient or modern.”<sup>73</sup> As historian George H. Martin later articulated, “[i]n view of the fact that England has never made provision for education equally generous, we are led to ask for the source of principles so wise and so statesmanlike, incorporated into their life so early by people just from England.”<sup>74</sup>

The extent to which the community was willing to support Harvard is an illustration of the extent to which they were committed to expending a substantial portion of the community's wealth into educating its populace. The assembly made an initial grant of four hundred pounds, which was equivalent to “more than half the entire colony tax levy for 1635, and almost one-quarter the tax levy for 1636.”<sup>75</sup> While “payment [was] made by installments stretching over several years, it is clear subsequent General

Courts regarded the promise of October 28, 1636, as the 'country's gift,' and a sacred obligation."<sup>76</sup> The community's commitment, however, went even further than that: "[I]ndividual towns in Massachusetts (and in the other colonies) voted to support the college by agreeing that each family in the town would contribute one peck of corn to the college."<sup>77</sup> Most notably, they demonstrated a communal approach to education in a way that differed markedly from the creation of institutions of higher learning in Europe. As Bernard Bailyn noted, "[n]o English college had been created by a legislature, and none was sustained by the community as Harvard was. . . . Harvard was originally created as a public institution, and was governed as such for almost two hundred years."<sup>78</sup>

#### THE IMPACT OF RELIGION

In many cases, the source for this fervor was religion.<sup>79</sup> Like other nearby colonies, Plymouth Plantation was originally created as a religious community. As expressed by the colonists from Massachusetts, New Plymouth, Connecticut, and New Haven, in their joint creation narrative: "We all came into these parts of America, with one and the same end and aim, namely, to advance the Kingdom of our Lord Jesus Christ."<sup>80</sup> The charter of Massachusetts Bay directed that "our said people . . . may be so religiously, peaceably, and civilly governed . . . [as to] incite the natives of country, to the knowledge and obedience of the only true God and Savior of mankind, and the Christian faith, which in our royal intention . . . is the principal end of this plantation."<sup>81</sup>

As opposed to previous religious movements, the Protestant Revolution created a specific call for its adherents to be able to read and write. As Martin describes, "[o]f the Protestant revolution[,] learning was first the sword and then the shield."<sup>82</sup> Martin Luther drafted his ranks from the educated populace and stressed the continuing need for education as a way to preserve virtue.<sup>83</sup> A righteous Protestant must have the ability to connect directly with the teachings of the Bible without need for an intermediary to translate from the written page.<sup>84</sup> Moreover, the community required learning to protect itself from moral decay. As Luther counseled in 1524, "[t]he prince of darkness is shrewd enough to know that where the languages flourish, there his power will be so rent and torn that he cannot readily repair it."<sup>85</sup> Over a hundred years later, the Massachusetts Bay colonialists put forth the colonial educational mandate as fortification against "that old deluder, Satan."<sup>86</sup> Moreover, the colonists "realized that the group of clergymen educated at Cambridge and Oxford would for the most part pass away in a generation" which spurred anxiety "that an illiterate or uneducated ministry would take their places."<sup>87</sup>

#### LEGISLATION IS INTRODUCED

Two legislative acts, the first enacted in 1642 and then reinforced in 1647, provided the foundation of education in early Massachusetts. The measures demonstrate the manner in which the colonists framed education both as a natural complement to religion and as central to the success of the expanding colonies. The first legislation enacted by the colony's General Court in 1642 addressed "the general educational condition of the Colony." In the Act, the colonists ceded to their government the power and responsibility for educating children; with the power to fine parents who did not do so:

Taking into consideration the great neglect in many parents and masters in training up their children in labor and learning and other employments which may be profitable to the Commonwealth, . . . the chosen men appointed for managing the prudential affairs of the [town] shall henceforth stand charged with the care of the redress of this evil, so they shall be liable to be punished or fined for the neglect thereof. . . [and] have power to take account. . . of their parents and masters of their children concerning their calling and employment of their children, especially of their ability to read and understand the principles of religion and the capital laws of the country, and to impose fines upon all those who refuse to render such accounts. . .

Thus, from the beginning, the colonists acknowledged that education was a function of the larger community, not merely a question of individual preferences: "as the good Education of Children is of Sin-

gular behoofe and benefit to any Commonwealth, and ... many Parents and Masters are too indulgent and negligent of their duty in that kind.,"<sup>88</sup> The General Court ordered that the local selectman:

shall have a vigilant eye over their brethren and neighbours, to see, first that none of them shall suffer so much Barbarism in any of their families, as not to endeavour to teach by themselves or others, their Children and Apprentices, so much learning, as may enable them perfectly to read the English tongue, and knowledge of the Capital Lawes. Also that all masters of families do once a week (at the least) catechize their children and servants in the grounds & principles of Religion.

For those families that did not provide this schooling, the selectmen were empowered to levy the appropriate fines for each act of neglect or remove the child from his parents.<sup>89</sup>

The Act of 1647 addressed the administrative aspects of public education and went beyond the law of 1642 by making schools compulsory. Significantly, in spite of its basis in religion, the Act of 1647 made schools civil — not religious — institutions. Under the new law, every town with fifty households was required to appoint a schoolteacher "to teach all [children] ... to write and read"; those with over a hundred households "shall set up a grammar school ... to instruct youth so far as they may be fitted for the university."

The Act also emphasized the increasing responsibility of the town in assuring that its populace was educated. The cost of the schoolmaster was to be paid either by the parents, "or by the inhabitants in general by way of supply, as the major part of those who order the prudentials of the town shall appoint," but in all cases, "providing, those that send their children be not oppressed by paying much more than they can have them taught for in other towns." If the required schoolmaster or school were found lacking, the town would be fined five pounds, to be collected by the next school once created. While the statute did not require towns to support schools by general taxation, in practice that was the result.

The Act of 1647 also expanded the role of the selectmen to include oversight of families to ensure that children can "read and understand the principles of religion and the capital laws of the country, and that they are put to some useful work."<sup>90</sup> As the needs of the community required the participation of all children, the education to be provided was to be free; under the new code, "the town was held responsible through the selectmen for the free education of the child and that the town met its responsibility through apprenticing children, through warning neglectful parents, and through remitting or abating tuition charges."<sup>91</sup>

#### INSTRUCTIONAL CONTENT

*The content of the instruction of the schools reflected that they were both civil and religious institutions.* The local selectmen had responsibility to supervise the local children to ensure they received the appropriate religious instruction. In turn, the town had an obligation to hire no persons as schoolmasters "that have manifested themselves unsound in the Faith, or scandalous in their Lives, and have not given satisfaction according to the Rules of Christ." Nonetheless, they were to teach not only the principles of religion, but also "the capital laws of the country."<sup>92</sup> Under the colonialists' vision, schooling was required to preserve the religious teachings for the next generation, preserving the vision of a moral and righteous commonwealth; but using the authority of the colonial administration to set up schools.

Both the religious and civil focus continued to be the learning of the colony's potential citizens to benefit the colony as a whole. As one Massachusetts educational historian explained, "[t]he 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."<sup>93</sup> The General Court attempted to explain in 1652, that "granted that learning, namely, skill in the tongues and liberal arts is not absolutely necessary for the being of a commonwealth and churches, [nonetheless] we conceive that the judgment of the godly wise it is beyond all question, not only laudable, but necessary for the being of the same."<sup>94</sup>

## ADMINISTRATIVE STRUCTURE

In the years following the enactment of Massachusetts' school laws, the General Court and local municipalities continued to create administrative structures to refine and enforce the education laws. In Dorchester, for example, soon after its creation, the town ordered the establishment of a school and engagement of "an able and sufficient schoolmaster . . . [who] shall equally and impartially receive and instruct such as shall be sent and committed to him for that end, whether their parents be poor or rich, not refusing any who have right and interest in the school."<sup>95</sup> Their regulations clearly acknowledge a right of all within the town to attend the school regardless of their ability to pay for their schooling.

The colonial administration placed continuous efforts into assuring education funds even when collection proved difficult. In 1701, in reference to the 1642 school law, the General Court observed that the "wholesome and necessary law is shamefully neglected by divers towns, and the penalty therefore not required" and that this neglect "tended greatly to the nourishing of ignorance and irreligion."<sup>96</sup> Consequently, the penalty amount was doubled and the statute directed the local justices of peace to "take effectual care that the laws respecting schools and school-masters be duly observed and put in execution," and 'all grand jurors' to 'diligently inquire' into breaches of the school law."<sup>97</sup>

The colonial administration also continued to create stricter and more complex laws. The assembly no longer focused solely on legislating the mere existence of schools, but on honing the requirements of the existing institutions. In 1701, for example, the General Court amended the school law to prohibit any minister of a town from also being the schoolmaster of the town. In 1711, the General Court prohibited all but those who are "of sober and good conversation, and have the allowance and approbation of the selectmen" from being schoolmasters in either writing schools or grammar schools, and providing a penalty for violation of this provision.

By the end of the 17th century, therefore, Massachusetts had established new, radical principles: education was the responsibility of the community, not solely the individual. And, because the community both benefited from educated citizens, and would be harmed by those who were neither productive nor able to participate, the education to be provided would be free. In the words of one historian on the significance of this radical new system, "[i]t can safely be asserted that these two Massachusetts laws of 1642 and 1647 represent not only new educational ideas in the English-speaking world, but that they also represent the very foundation stones upon which our American public school systems have been constructed."<sup>98</sup>

## COLONIAL PENNSYLVANIA

Colonial Pennsylvania exerted another powerful early intellectual influence on subsequent generations of Americans. From the beginnings of the colony in the 17th century through the mid-18th century, colonial leaders conceived of education as one of the few primary functions of the community.

Here, in a religious and culturally heterogeneous population,<sup>99</sup> education was seen less as a means to perpetuate religion — although this remained a motivation — and instead, as a means for its citizens to earn a livelihood, ward off licentiousness and, as the 17th century turned into the 18th century, as a means to educate a new generation of colonial leaders, not educated in Europe but native-born. As in Massachusetts, because education of its citizenry benefited the entire community, Pennsylvania's leaders assumed that education was a public, not private, responsibility and one that should be extended to poor students and Native Americans.

## WILLIAM PENN'S VISION

As with other important aspects of his new colony, it was William Penn who first described his con-

cept for a public school system in Pennsylvania. In 1682, Penn's Charter of Liberties proposed the creation of "a Committee of manners Education and Arts that all Wicked and scandalous Living may be prevented and that Youth may be successively trained up in Virtue and useful Knowledge and Arts." In that aim, he directed that "[t]he Governour and Provincial Council shall Erect and order all publick Schools and incourage and Reward the Authors of usefull Science and Laudable Inventons in the said province."<sup>100</sup> This requirement was incorporated into William Penn's Frame of Government of Pennsylvania, enacted on February 2, 1683. In it, Penn treated education, along with peace, justice, treasury and the improvement of the province, as one of the very few functions of government entrusted to the provincial Council, at that time an upper house of the legislature:

That one-third part of the provincial Council, residing with the Governor, from time to time, shall with the Governor have the care of the management of public affairs, relating to the peace, justice, treasury and improvement of the province and territories, and to the good education of youth, and sobriety of the manners of the inhabitants therein, as aforesaid.<sup>101</sup>

The primary purpose for educating Pennsylvania's youth, according to Penn were the gains to the community derived from gains to the individual; government depended on the morality/virtue of the participating citizenry:

governments rather depend upon men than men upon governments. Let men be good, and the government cannot be bad; if it be ill, they will cure it. But, if men be bad, let the government be ever so good, they will endeavor to warp and spoil it to their turn.<sup>102</sup>

During the second session of Pennsylvania's General Assembly, convened by Penn to grant them the Charter, the Assembly addressed the need for education of both "the poor as well as the rich." The General Assembly stressed that all should "be instructed in good and commendable learning, which is to be preferred to wealth." In terms of social benefit, the assembly was concerned that all members of its community be trained to be able to support themselves, such that they would not be dependent on the state for sustenance and could provide additional benefit to the Commonwealth. As the Assembly bluntly explained, the county must provide sufficient schooling such that "all persons in this Province and the Territories thereof, having children ... may be taught some trade or skill, that the poor may work to live, and the rich, if they become poor, may not want."<sup>103</sup>

#### PENN'S VISION CARRIED FORWARD

The ideal of free, universal education was taken up two years later by Thomas Budd, a prominent Quaker, who laid out a detailed plan for how schools should function in the colony. Budd advised that "[i]t might be well if a Law were made by the Governours and general Assemblies of Pennsylvania and New-Jersey, that all Persons inhabiting in the said Provinces, do put their Children seven years to the publick School." Budd stressed that public schools should be available to all members of the community equally, so that "the Children of poor People, and the Children of Indians may have the like good Learning with the Children of Rich People, let them be maintained free of charge to their Parents, out of the Profits of the school," which included school fees collected from those students able to pay. Budd recommended that a thousand acres of land be set aside for each public school to provide a constant income. While Budd's proposal was not implemented at the time, the Pennsylvania Magazine observed two hundred years later, in 1886, it is "interesting to see how clearly our present public school system was foreshadowed by Thomas Budd."<sup>104</sup>

These 17th century ideals translated to the concrete: very early establishment of schools. By 1683, there was at least one primary school established in Philadelphia, where the costs ranged from four shilling per quarter to learn how to read, to ten pounds to board a scholar for an entire year. As a historian noted two centuries later, the pricing showed "that although learning might be highly prized, its cost in hard cash was not exorbitant."<sup>105</sup> In 1689, the Friends Public School in Philadelphia became the first "public school" incorporated in Pennsylvania. The documents of incorporation stress the importance of education

in assuring the success of the fledging colony. Schooling was essential to the students and to their ability to serve their community. As the preamble to the school's 1711 charter stated:

the prosperity and welfare of any people depend, in great measure, upon the good education of youth, and their early introduction in the principles of true religion and virtue, and qualifying them to serve their country and themselves, by breeding them in reading, writing, and learning of languages and useful arts and sciences suitable to their sex, age, and degree, which cannot be effected in any manner so well as by erecting public schools.<sup>106</sup>

Although Penn focused on education's role in creating an educated, useful citizenry, he and others retained the belief that children needed to obtain basic religious knowledge. While education profited the community, it also conferred an individual good by enabling one to connect to the scriptures on a personal level as required under Protestantism and to have means to support oneself later in life. Under the laws enacted by the General Assembly, all parents, including "all guardians and trustees of orphans, shall cause them to be instructed in reading and writing, so that they may be able to read the Scriptures and to write by the time they attain to twelve years of age."<sup>107</sup>

#### BENJAMIN FRANKLIN CHAMPIONS PUBLIC, UNIVERSAL EDUCATION

In the early 18th century, Benjamin Franklin continued to champion a universal education and proposed an ideological framework for a state run system of education:

The good Education of Youth has been esteemed by wise Men in all Ages, as the surest Foundation of the Happiness both of private Families and of Commonwealths. Almost all Governments have therefore made it a principal Object of their Attention, to establish and endow with proper Revenues, such Seminaries of Learning, as might supply the succeeding Age with Men qualified to serve the Publick with Honour to themselves, and to their Country.<sup>108</sup>

Franklin highlighted the link between benefit to private individuals and to the community as a whole. In this case, his focus turned more sharply to the creation of a new country: the Pennsylvania colonists were no longer fighting merely to survive in the wilderness or to maintain a righteous community, but to develop a full and independent colonial administration. In the later 1700s, the religious motivation had become less of a single-minded focus. In response, members of the community spoke out on how religious faith should still be the keystone of education. One prominent Philadelphia Quaker warned "against the encroachment of worldly motives on the ultimate spiritual purpose of education":

[T]he education of the youth should be as much bettered and amended by Christianity, as the faith and doctrines of religion are. But, alas, our modern education is not of this kind, whatever way of life we intend the youth for, we apply to the fire of their minds, and exhort them to improvement from corrupt motives.<sup>109</sup>

Franklin noted that the initial settlers came to North America having already been educated in their home countries. Now, however, the increasing number of native-born, while found "not to want Capacity," faced a lack of necessary "Cultivation." As Franklin explained:

Many of the first Settlers of these Provinces, were Men who had received a good Education in Europe, and to their Wisdom and good Management we owe much of our present Prosperity. But their Hands were full, and they could not do all Things. The present Race are not thought to be generally of equal Ability: For though the American Youth are allow'd not to want Capacity; yet the best Capacities require Cultivation, it being truly with them, as with the best Ground, which unless well tilled and sowed with profitable Seed, produces only ranker Weeds.<sup>110</sup>

He believed that, in face of the *changing demographics* of the colony, it had become increasingly important to have positions filled by the native born, as opposed to the "vast Numbers of Foreigners [that] are yearly imported among us, totally ignorant of our Laws, Customs, and Language." Franklin's

worries over the “present great Want of Persons so qualified in the several Counties of this Province” stirred him into action.

Franklin acted upon his belief in education when, in the mid-1700s, Franklin first *proposed the creation of an academy in Philadelphia*, which later became the University of Pennsylvania.<sup>111</sup> For Franklin, a local academy would strengthen the nascent political system, as “a Number of our Natives will hereby be qualified to bear Magistracies, and execute other public Offices of Trust, with Reputation to themselves and Country.” Schooling would also increase economic efficiency by providing necessary skills to support the community. Penn’s woods could no longer rely on imports from Europe to provide essential skills and needed expertise.

Franklin recognized that *education was a public responsibility* and called for the force of the community to be placed behind the native educated population, that they “zealously unite, and make all the Interest that can be made to establish them, whether in Business, Offices, Marriages, or any other Thing for their Advantage preferably to all other Persons whatsoever even of equal Merit.”<sup>112</sup> In particular, he thought status in the top echelons of the community created a corresponding obligation to assist in the betterment of the society. Thus, Franklin exhorted “THAT some Persons of Leisure and publick Spirit, apply for a CHARTER, by which they may be incorporated, with Power to erect an ACADEMY for the Education of Youth.” He called for support first from those least likely to profit directly, as those most “of leisure” were also those most likely to provide private tutors for their children. Nonetheless, their contribution was an essential expression of communitarian values, one’s “public spirit.” Similarly, he believed that the corporation involved in the colony had both an obligation and a personal incentive “to be invested in the school, nurture the students as their children, and use their position to advance the public schools and the graduated students as best as possible.” Franklin emphasized that the bulk of the financial support was to be provided “by the Trustees themselves, . . . many of whom have no Children of their own to educate, but act from a View to the Public Good, without Regard to Sect or Party.”<sup>113</sup>

Thus, in Pennsylvania, as in Massachusetts, the concept of public responsibility for education was firmly embedded in the colony by the time of the Revolutionary War. The powerful ideals underlying this responsibility — educated leaders and productive citizens — gave rise early on to the establishment of schools to be supported not just by those attending but by the community at large. While universal schooling had not yet become a reality, the intellectual seeds had been planted for its adoption, a century later.

## THE SOUTHERN COLONIES

Profound cultural and geographic barriers to education pushed the southern colonies toward different models of education with different administrative structures than those in the north. These communities lacked an ideological focus and a unified religious base to propel the community effort, as did the Puritans.<sup>114</sup> The plantation economy with its scattered, low-density populations created conditions adverse to creating central community schools.

More intensely loyal to England, they retained the English antipathy for common education which, in this period, had no legislation that dealt explicitly with education.<sup>115</sup> In 1671, when William Berkeley, governor of Virginia for thirty-eight years, was asked about how Christianity was maintained amongst his people, he replied:

The same that is taken in England out of towns; every man according to his own ability instructing his children. . . . I thank God there are no free schools and printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into this world, and printing has divulged them, and libels against the best government. God keep us from both!”<sup>116</sup>

What is striking, therefore, is that the cultural influences upon the colonies of the south nonetheless

led them to provide education for the poorest of children. Based on the British poor laws and the Anglican tradition of missionary work, including education, the colonists adopted laws that provided education to those least likely to receive it, primarily orphans. Moreover, while less cohesive than the religious influences in Massachusetts, both the Anglican Church and other, smaller groups created schools and, as in other colonies, assumed responsibility for administrative aspects of the education. Thus, while the south did not develop the formal, government-organized schools of the north, the educational systems of the south were adapted to the conditions of the regions with a mixture of grammar school, free schools, community schools and private tutors, with government regulation of schooling for the poor and church oversight of the establishment of schools and licensing of teachers.

## DEMOGRAPHIC CONSIDERATIONS

---

Throughout the South, demographic issues affected the development of schools.

### 1. POPULATION DENSITY AND COMMUNITY COHERENCE

Population density and community coherence were small in comparison to New England. As dictated by the plantation economy, farms and population were widely dispersed. According to an “Advisive Narrative” presented to the Bishop of London in 1662,<sup>117</sup> “[t]heir almost general want of schools for the education of their children is another consequence of their scattered planting, of most sad consideration, most of all bewailed of parents there.”<sup>118</sup> As one historian explained, if Maryland were to follow “the Massachusetts law . . . that every township of 50 households should appoint” a teacher, then Maryland would have had no schools until the eighteenth century.<sup>119</sup> Likewise, in Georgia, “the widely scattered settlements . . . prevented them from aiding to any great extent in the promotion of education.”<sup>120</sup> Additionally, “[t]he early settlement of Virginia was not by families, neighborhood groups, or congregations, so characteristic of Massachusetts. On the contrary, for a considerable period the settlers were adult males originally, for the most part, unknown to each other . . . [and] servants of the Company.” In contrast with most New England communities, “[t]he plantation with a single family became the unit of the social and economic life rather than the town — a community group made up of twenty, fifty, a hundred or more families.”<sup>121</sup>

As a result of these demographic conditions, the southern colonies found it more difficult to create what would now be considered formal schools. In Virginia, for example, the colonists first raised funds in 1617 for both a college and a free school, to be “named the East India School, in honor of its first benefactors.” Land was set aside for the college and the school; staff was selected. An attack by local Native-American communities in 1662, however, “by destroying at one blow three hundred and fifty persons in the settlement, effectually crushed both the college and the school.”<sup>122</sup> In lieu of the formal, established schools of the north, informal types of schooling proliferated, such as private tutors or ad hoc “field schools.”<sup>123</sup> Southerners established “here and there small private schools to teach children to read and write.”<sup>124</sup>

### 2. TIES TO ENGLAND AND THE ANGLICAN CHURCH

A second demographic influence on the southern colonies and the evolution of their governments were their close ties to England and the Anglican Church. Virginia, for example, closely followed the English system from the beginning. After having been founded as a joint-stock company in 1607 in Jamestown, Virginia was transferred to the Crown in 1614. From its inception, Virginia prided itself on loyalty to the English monarch and its cultural affinity for Anglicanism, the official religion of England. Likewise, the royal colony of North Carolina also had a close and profound relationship with the Anglican Church. These ties were manifested in the charters of Virginia and the Carolinas which mandated the English church as the state religion and continued to do so until the revolution.<sup>125</sup>

### 3. THE POOR LAWS: EDUCATION FOR ORPHANS AND INDIGENTS

England’s ties to the Anglican Church contributed a forceful influence on the development of education in these colonies: the “poor laws” which initially required the apprenticing of those determined to be

idle indigents. The legal codes of Virginia mimicked the English model in which education of orphans was within the purview of the state. Initially, the primary concern was ensuring orphans, and eventually poor children, received some education or training that would allow them to become productive members of society. The law of 1646 prescribed that all poor orphans, neglected children of indigent parents, and apprentices should be taught the elements of an education, given religious instruction, and trained in a good calling. Under the law, “all overseers and guardians of such orphans are enjoined by authority aforesaid to educate and instruct them according to their best endeavours in Christian religion and in the rudiments of learning and to provide for their necessaries according to the competents of their estate.”<sup>126</sup> The orphan law of 1705 provided that “the master of each . . . orphan shall be obliged to teach him to read and write.”<sup>127</sup>

While Virginia passed the earliest such law, these practices spread to Maryland, Georgia, South Carolina and North Carolina.<sup>128</sup> In North Carolina, orphans being bound out as indentured servants were similarly required to be educated. There, its first law explicitly dealing with education allowed courts to give certain families and individuals “letters of tuition and guardianship” to educate “all orphans and for taking care of their estates.”<sup>129</sup> Court records as early as 1695 show such stipulations: an orphan bound out as an indenture on the condition that the families “teach him to read.” Similar stipulations were placed on other orphans, leading one historian to conclude, “the system [like that of England and Virginia] was in operation . . . at an early date.” The tradition was not limited to boys: stipulations for orphaned girls also required that they “be taught to read.”<sup>130</sup> The custom of binding orphaned children out with provisions that they be taught to read or learn a trade became formalized in the legal codes in 1715, requiring that “[a]ll orphans shall be educated and provided for.”<sup>131</sup>

By the 18th century, the children subject to the poor laws were expanded beyond orphans to those whose parents were unable to educate them. In 1748, Virginia law added families judged “incapable of supporting and bringing up their children in honest courses or to take due care of the education of their children and their instruction in the principles of Christianity.” The county courts were empowered to bind out the children as “apprentice[s] in the same manner as the law directs for poor orphan children.”<sup>132</sup> In the analysis of one educational historian of Virginia, the action demonstrated the first “sort of compulsory education law, thereby insuring elementary training for all the poor children.”<sup>133</sup>

#### 4. NO EDUCATION FOR SLAVES

While poor children were to be educated, slaves, who had no prospect of ever becoming citizens, were not. The denial of education served to enforce a status of permanent subjugation. Alexis de Tocqueville described how this denial was crucial to maintaining slavery:

The only means by which the ancients maintained slavery were fetters and death; the Americans of the South of the Union have discovered more intellectual securities for the duration of their power. . . . The ancients kept the bodies of their slaves in bondage, but placed no restraint upon the mind and no check upon education; and they acted consistently with their established principle, since a natural termination of slavery then existed, and one day or other the slave might be set free and become the equal of his master. But the Americans of the South, who do not admit that the Negroes can ever be commingled with themselves, have forbidden them, under severe penalties, to be taught to read or write; and as they will not raise them to their own level, they sink them as nearly as possible to that of the brutes.<sup>134</sup>

Thus, until the abolition of slavery, laws against educating slaves and even “free negroes or mulattoes” proliferated in the United States.<sup>135</sup> South Carolina passed the first such legislation in 1740, prohibiting the instruction of slaves.<sup>136</sup> The law noted that, for the colony, “the having of slaves taught to write, or . . .

employed in writing, may be attended with great inconveniences.”<sup>137</sup> Consequently, anyone involved in teaching a slave to write, or using “any slave as a scribe in any manner of writing whatsoever” would be fined one hundred pounds, a considerable amount for the period.<sup>138</sup>

## 5. RELIGION IN THE DEVELOPMENT OF SCHOOLS

As in the north, religion also played a role in the development of education in the south but that role varied depending upon the religion and was fundamentally different in outcome. The relationship between the Anglican Church, the official Church of England, and the royal colonies was close and profound. The Church controlled the licensing of teachers and the education of the youth, a crucial defense against the encroachment of other religions.<sup>139</sup> Indeed, the Crown explicitly required governors to observe the Schism Act, an act that ensured teachers were only of Anglican stock. Such instructions in increasingly heterogeneous colonies created a situation ripe for conflict. When Scots-Irish Presbyterians settled in North Carolina, for instance, they established their own schools. As the population of the colony and of Scots-Irish grew together, their schools became larger and more formalized. One such school, to be called the Queen’s Museum, was officially chartered by the Assembly in 1767; subsequently, however, the King revoked its charter as a violation of the Schism Act.<sup>140</sup>

In other areas, particular religious sects moved to these colonies to carve out niches where they could practice their religion in peace. These small cohesive populations functioned much as the Quakers or Puritans had and proved influential in creating schools. In Georgia, a group of German dissenters who fled Salzburg, Germany, were among the first settlers, establishing themselves twenty-five miles northwest of the British settlement in Savannah. They brought their own schoolmaster with them to the colony, who received a yearly salary from the Trustees; the community was “able to obtain a fair degree of satisfaction from their schoolmasters.” In Maryland, the first attempt to pass a law for “the founding and erecting of a school” was initiated in 1671 by the upper house of their legislature, which was appointed by the proprietor and composed mainly of Catholics. In response, the lower house, elected by the mostly Protestant populace, insisted that the law explicitly ensure that the “schoolmasters may be qualified according to the Reformed Church of England,” a stipulation the Catholic body would not support. A number of schools functioned throughout the colony but some complained that the teachers were frequently not Anglican and had not received proper training to assume the profession. Nevertheless, in 1681, the Jesuits established the first school reported in Maryland.

North Carolina settlement patterns also contained a series of homogenous, self-contained ethnic groups who shared the same religion. Aside from the Scots-Irish, Quakers from Pennsylvania migrated to North Carolina as did Germans from both Pennsylvania and abroad. These groups tended to settle together and “like the Scotch-Irish, they established churches and schools as soon as they” settled.<sup>141</sup>

## 6. LOCAL COMMUNITIES ESTABLISH SCHOOLS

In addition to religious organizations, it was local communities — and not colonial governments — that took the lead in providing an education in the colonies in the south. Such local developments formed the foundation of the ad hoc and irregular educational system that developed in the south in the colonial period. The state regulated the care of orphans through local commissioners, while most formal schooling was achieved through other institutions with occasional state support. In Virginia, for instance, the first schools were often a private affair, largely due to the demographics of the tobacco colony. Nonetheless, these initiatives were constant and widespread. In 1734, an English traveler visiting Georgia, at that point a little more than a year old, remarked that the settlers already had a place “where the Children are educated” during the week.<sup>142</sup>

There were four primary forms of schooling: 1) the grammar school, 2) the free school, 3) the community school and 4) private tutors.

What historians have called *the grammar school* was a private institution that functioned largely as a secondary school preparing children, often the wealthiest who could afford its tuition, for college or other professional training. *The "free school,"* often founded through private endowment, offered free services to children and focused on elementary training. *A community school* was common in many colonies, especially in more rural areas. These "old field schools," set up "in some neglected or abandoned field,"<sup>143</sup> were founded by a group of neighbors who collectively built a schoolhouse, hired a teacher and paid tuition to attend. The very wealthiest obtained *private tutors*,<sup>144</sup> who were hired or bought as servants, to educate a family or families' children. Others were educated outside of schools, either at home or through an apprenticeship.<sup>145</sup>

#### FIELD SCHOOLS PREDOMINATE

Amongst the different types of schooling that evolved, the field school educated the vast majority of children in colonial and antebellum times. Many teachers negotiated their salaries with their customers and often received their pay in tobacco. At least one tutor who opened a field school found that for the parents, "[n]o price was too great for the services I was to render their children; and they all expressed an eagerness to exchange perishable coin for lasting knowledge."<sup>146</sup>

#### TUTORS CREATE EARLY PUBLIC SCHOOLS

In many cases, tutors created schools, which functioned as early "public schools", rather than providing the individualized teaching we associate with the term "tutor" today. In other words, these schools were open to all and taught a standard curriculum, but required tuition for admission. From 1733 to 1774, the South Carolina Gazette published "more than four hundred advertisements relating to schools and schoolmasters."<sup>147</sup> In this period, "several hundred persons, in addition to the ministers, were engaged in the colony [served] as tutors, schoolmasters, and schoolmistresses."<sup>148</sup> Similar advertisements were also common in Virginia, North Carolina and Georgia.<sup>149</sup> The growing number of new teachers, classes, schedules and other offerings indicate an industry that was successful, competitive and able to attract new talent to meet new demand.<sup>150</sup>

#### FUNDING VARIED

To the extent that the private schooling system was based on tuition rates, those with insufficient means had to rely on charity or other organizations, like churches, to provide a very rudimentary education. Various individuals, organizations and charities tried to fill the void and open up the doors to these private schools to more people.<sup>151</sup> The first formal school in Georgia, founded in 1736, was designed specifically to supply free education for the poor and would ultimately become the Bethesda Home for Orphans. The founder, Charles Delamotte, a Methodist missionary, raised in excess of a thousand pounds from English benefactors and built a two-story brick building with twenty rooms a few miles northeast of Savannah in 1740. The school housed sixty-eight orphans in 1741, provided free schooling to poor children and charged "a reasonable rate" for those who could afford to pay. James Oglethorpe, governor and trustee, welcomed the institution as an incentive for settlers: the school offered as a quasi-life insurance policy that would assure parents of "some hope of security for the children" should they die in the marshland colony.

#### STATE PARTICIPATION IN EDUCATION

While the southern colonial administrations did not themselves establish schools, they did assume a regulatory role and provided other support for these initiatives.

#### EARLY REGULATORY ROLE

In 1635, for example, the will of Benjamin Syms, a private citizen, left two hundred acres of land and the produce from eight cows to create a public school free to all children in the county.<sup>152</sup> In 1643, the

Virginia assembly passed legislation governing the creation and management of the school, noting “the high appreciation of education prevailing in Virginia in these early times, and the gratitude felt for every benefaction looking to its advancement.”<sup>153</sup> The resulting Syms Free School created “the earliest foundation for free education made in English America by a citizen of an English colony.”<sup>154</sup> In 1710, the General Assembly of South Carolina passed an “An Act for the Founding and Erecting of a Free School for the Use of the Inhabitants of South Carolina,” called into action by wills of “several charitable and well disposed Christians . . . [who] have given several sums of money for the founding of a free school, but no person as yet is authorized to take the charge and care of erecting a free school.”<sup>155</sup>

## TAXES

---

In the eighteenth century, the colonial administrations began to allow the use of taxes with greater frequency. In North Carolina, while state authorities oversaw orphans, the maintenance and supervision of poor white children was left wholly to the church. In 1762, the General Assembly empowered the local churches to raise local taxes to build schools.<sup>156</sup> In 1766, the first public school was incorporated in Newbern. Governor Tyron secured funds from the Society for the Propagation of the Gospel to cover the teacher’s salary. Additionally, however, the assembly imposed a one-penny tax on liquors imported via the Neuse River to cover the tuition for ten children otherwise unable to pay.<sup>157</sup>

## MARYLAND

Maryland was originally granted to Lord Baltimore, who intended to create a refuge for English Catholics. Few Catholics, however, fled there and Maryland became a predominantly Anglican colony instead. In 1694, at the urging of the governor, the assembly passed an act “for the encouragement of learning and the advancement of natives in this province.” Such a system would provide order “in the uncultivated part of the world,” while its failure would show that those in political power “hardly deserve the name of good Protestants or good subjects.” The King William’s School was originally established in Annapolis in 1696.<sup>158</sup>

## SWEEPING SERIES OF TAXES FOR SCHOOLS

---

Subsequently, in a move unmatched in breadth by any other colony, Maryland instituted a series of excise taxes to provide funds for a number of schools throughout the colony. In 1704, the colony taxed foreign exporters of furs and pork. Later, additional taxes were placed on imported slaves in 1717 and tobacco in 1720. In 1723, the state enacted legislation requiring a school in each county. An oversight board of “visitors” was authorized to buy land for the school and oversee the teacher and curriculum. In an attempt to lure teachers, each master was allotted fifty acres of land. A 1728 revision mandated that all teachers accept poor children without payment.

Thus Maryland, like the surrounding colonies, took measures to ensure the poor had some access to education, through either apprenticeships or poor schools. Maryland’s law, however, was perhaps the most stringent, threatening removal against a teacher who refused to accept poor students.

## THE COLONIAL PERIOD IN CONCLUSION

Thus, by the time of the Revolution, both the ideal and the reality of education were irrevocably established within the colonies. In a 1782 letter to the French historian Abbé de Mably, John Adams cited these colonial schools as “decisive” in developing the necessary conditions for the revolution’s success: “Permit me, sir, before I finish this letter, to point at a key to all this history. . . it was not until the debates and the war began in Massachusetts Bay. . . that their primitive institutions produced their first effect. [These institutions, including education] have produced a decisive effect. . .” *Works of John Adams, Second President of the United States: With a Life of the Author, Notes and Illustrations*, Vol. V 491, 494-95 (ed. Charles Francis Adams 1851).

## THE POST REVOLUTIONARY PERIOD (1776-1820s)

BY THE TIME OF THE AMERICAN REVOLUTION, the imperative propelling citizens toward educating their children had changed: with the creation of the United States, the need to ensure the survival of the new republic had become concrete. The government and its people recognized education as vital to the survival of the developing political system.

Thus, creating and maintaining a system of education was one of the first functions of the new state:

“No theme was so universally articulated during the early decades of the Republic as the need of a self-governing people for universal education.”<sup>159</sup>

Through education, the state could “secure popular loyalty and release the energy needed to maintain such untried, experimental forms of government. The promises of rights and opportunities had to be given institutional form if the sacrifices of war and the disruption of old loyalties were to be justified.”<sup>160</sup>

Education was considered a fundamental requirement to be a political citizen, a role essential to the survival of the community. The state had a responsibility to foster education for as wide a populace as possible. In an open republic that relied on democratic elections, the wealthiest and most well-educated voter was not the only one who held the reigns of power. All must be active in the civic society. Additionally, education created economic benefits and helped social integration.

Throughout the new Republic, many political and intellectual leaders believed that a republic, while the greatest form of government, could only survive if it had a virtuous citizenry to protect it from internal decay. Despite many political differences, all shared concern over how to raise an informed citizenry who could uphold the republican bargain and continue to, through their educated voting, guide the republic into the future. For these men, cultivating virtue in the populace, expressed through “discipline, sacrifice, simplicity and intelligence,” was the best way to guarantee the success of the republic.

Moreover, “education could play an important role in reconciling freedom and order” because “education would prepare men to vote intelligently and prepare women to train their sons properly.”<sup>161</sup> In a country that rested on popular sovereignty, the education of only those who could afford to pay would imperil the fledgling state. In contrast, universal education would provide the state with protection against the licentiousness that had debilitated other republics. Without appropriately educating its citizens, the democratic republic embodied in the creation of the United States of America would perish.

### REPUBLICANISM

The fledgling republic shifted its concerns to building an educated populace that would support and protect the evolving political system.

### EDUCATION AS PATRIOTISM

In 1787, Thomas Jefferson wrote to Madison, “[a]bove all things I hope the education of the common people will be attended to: . . . on their good sense we may rely with the most security for the preservation of a due degree of liberty.”<sup>162</sup> For Jefferson, general education enabled citizens “to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government.”<sup>163</sup> Creation of a republic and a new form of governance accordingly “has created a new class of duties to every American,” in turn requiring the state “to adapt our modes of teaching to the peculiar form of our government.”<sup>164</sup>

Amidst many pressing concerns, the development of an educational system was vital: “[E]xcepting the formation of a federal government that shall be efficient and permanent,” a general system of education

“demands the first attention of American patriots.”<sup>165</sup> As George Washington exhorted, “[i]n a republic, what species of knowledge can be equally important, and what duty more pressing on its legislature, than to patronize a plan for communicating it to those, who are to be the future guardians of the liberties of the country” by educating the nation’s “youth in the science of government.”<sup>166</sup>

---

#### LEGISLATIVE AND CONSTITUTIONAL PROVISIONS

---

Legislative initiatives and constitutional amendments passed in this founding period demonstrate how educating the state’s citizens was seen as both a primary function of the government and a responsibility owed to its citizens. The states began to fund education through land grants, the creation of literary funds, and taxation. The Land Ordinance of 1785 allotted the sixteenth from every township in the newly surveyed territories “for the maintenance of public schools.”<sup>167</sup> In 1787, the First Congress ratified the Northwest Ordinance, affirming that “[r]eligion, morality, and knowledge . . . being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” Through the enabling acts of all subsequent states, Congress ensured that any new lands joining the union would continue to promote education.

---

#### EDUCATION AS PROTECTION

---

Education provided a bulwark against the advance of despotism and other forms of oligarchy. Education would also protect the state and republic from the “party rage” and “private prejudice” that, in the Revolutionaries’ minds, so dangerously affected the British Empire. The cost of creating an educational system, Jefferson expounded, “was 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.”<sup>168</sup> As North Carolina Governor Turner argued in 1803, “education is the mortal enemy of arbitrary governments, and the surest basis of liberty and equal right.” Almost every governor made similar arguments throughout the early Republican era and advocated raising public funds to build schools and expand access to education.<sup>169</sup>

Education also served to render the citizenry both governable as well as able to govern. The proper school could “convert men into republican machines,” an essential task if they were to “perform their parts properly, in the great machine of the government of the state.”<sup>170</sup>

---

#### CREATING A NATIONAL IDENTITY

---

Forming a national identity was a crucial part of creating the appropriate citizenry.<sup>171</sup>

---

#### DEVELOPING ALLEGIANCE TO THE UNITED STATES

---

In this moment of change, the leaders of the nation relied on the ability to create allegiance to the United States, not to the foreign lands from whence its people had come. During the Revolutionary War, for example, all Pennsylvania schoolmasters were required to swear allegiance to the United States and the Commonwealth of Pennsylvania.<sup>172</sup>

The Rhode Island legislature was explicit about its concerns over lurking false patriots and potential conspirators. The preamble to first school law of the state of Rhode Island declared:

Whereas, the unexampled prosperity, unanimity and liberty, for the enjoyment of which, this nation is eminently distinguished among the nations of the earth, are to be ascribed, next to the blessing of God, to the general diffusion of knowledge and information among the people, whereby they have been enabled to discern their true interest, to distinguish truth from error, to place their confidence in the true friends of the country, and to detect the falsehoods and misrepresentations of factious and craft pretenders to patriotism; and this Gen-

eral Assembly being desirous to secure the continuance of the blessings aforesaid, and moreover to contribute to the greater equality of the people, by the common join instruction and education of the whole.<sup>173</sup>

#### PROTECTION AGAINST FOREIGN GOVERNMENTS

---

Previously, some colonists dispatched their children to Europe to further their education. Noah Webster expressed trepidation that an “attachment to a foreign government, or rather a want of attachment to our own, is the natural effect of a residence abroad, during the period of youth.”<sup>174</sup> Domestic education, on the other hand, in the words of North Carolina Governor Stone, would “prevent the impression upon the minds of our youth, of unreasonable predilections in favor of alien institutions and manners, as well as prejudices against those of our own State, and against the condition of society, of which interest and duty require them to be members.”<sup>175</sup> Accordingly, Webster advised, “a foreign education is directly opposite to our political interests, and ought to be discountenanced, if not prohibited.”<sup>176</sup>

Georgia did attempt to discourage foreign education, although not forbidding it outright. Under a 1785 law, the Georgia legislature stressed that sending children abroad “will always be the cause of so great foreign attachments that upon principles of policy it is not advisable.”<sup>177</sup> Consequently, anyone under sixteen who goes abroad and spends at least three years “for the purpose of receiving an education under a foreign power . . . shall for three Years be considered and treated as Aliens in so far as not to be eligible” for a government position, be it legislature or executive, civil or military.<sup>178</sup>

#### TWO PATHS TO HOMOGENIZATION

*The process of homogenization took two forms: (a) creating a common identity amongst the native-born members of the state and (b) working to assimilate immigrants into this developing nation.* To exist as a nation, the formerly divergent colonies needed to coalesce into a national identity. For George Washington, the issue was clear: “The more homogeneous our citizens can be made in these particulars, the greater will be our prospect of permanent union.”<sup>179</sup> The answer was clear as well: public schools would bring about “the assimilation of the principles, opinions, and manners of our countrymen.”<sup>180</sup>

James G. Carter, a teacher and politician from Massachusetts, further explained that in such schools, boys:

from different towns, states, and sections of the country, . . . come together with feelings and prejudices, and oftentimes with a dialect peculiar to the different places, from which they come, and each staring and wondering at the excessive strangeness of the other. But a very short time loosens their local prejudices, and teaches them, that all excellence is not peculiar to any one place.

By bringing together American youth from all walks of life, schools were “the most direct and effectual means . . . of reconciling the prejudices of different parts of the country, and different classes of the community.”<sup>181</sup>

Many of these youth came from across the ocean as well. Independence brought increasing fears that the emerging state could be overwhelmed by new immigrants, particularly those carrying notions from the old world that might undermine national identity and the fledgling democratic state.<sup>182</sup>

The fear of the time is articulated by Benjamin Labaree, president of Middlebury College, who warned that the “multitude of emigrants from the old world, interfused among our population, is rapidly changing the identity of American character. These strangers come among us, ignorant of our institutions, and unacquainted with the modes of thought and habits of life peculiar to a free people.”<sup>183</sup> Under this xenophobia, these “[l]arge masses of foreign population . . . among us, weak in the midst of our strength” presented a threat to the nation.<sup>184</sup> If they were not to “prove to our republic what the Goths and Huns were to the Roman Empire” depended “upon the wisdom and fidelity of our teachers and associated influences.”<sup>185</sup>

Education was one way of unifying this diverse population.<sup>186</sup> In 1854, The Maine Supreme Court

cautioned that the immigrants must “become citizens in fact as well as in name.”<sup>187</sup> Furthermore, “[i]n no other way can the process of assimilation be so readily and thoroughly accomplished as through the medium of the public schools, which are alike open to the children of the rich and the poor, of the stranger and the citizen.”<sup>188</sup>

As an additional benefit, a general system would help open the native born to be accepting of the immigration population and to assist in their assimilation. Consequently, “instructors must prepare our native population for the suitable reception and treatment of these strangers, must teach them to lay aside prejudices and animosities, to meet the newcomers in the spirit of kindness and benevolence, and to enlist their sympathies and good-will on the side of liberty, humanity and truth.”<sup>189</sup>

---

#### EDUCATING FREED SLAVES

In the north, where states abolished slavery, states also began to provide for educating freed slaves. In 1804, for example, when New Jersey passed legislation calling for a gradual manumission, the law simultaneously required that all slaves born after the act were required “to be taught and instructed to read” before their twenty-first birthday.<sup>190</sup> When recommending forms of emancipation, abolitionists often paired gradual manumission with increased education such that would enable those freed to take up the mantle of citizenship.<sup>191</sup>

#### INCREASED GOVERNMENTAL INVOLVEMENT

With the increased stability and prosperity of the country, the state was able to invest greater resources in the educational system. Additionally, the enlarged administrative apparatus allowed the state to take on responsibilities previously fulfilled by private bodies.

In 1777, the *Georgia* legislature revised its 1764 law that gave churches the power to tax their localities for purposes of maintenance of schools and the poor, transferring that power to the newly created civil position of “overseers of the poor,” in accordance with the state constitution. One historian of education in *North Carolina* credited this new law with “gradually develop[ing] the idea that caring for and ‘educating’ the poor of the community is the state function.”<sup>192</sup> Similarly, in *Virginia*, responsibilities were “beginning to be transferred from ... church officers to state or country authorities.”<sup>193</sup> The transition took longer in other states. In 1817, *Tennessee* established that “institutions of learning, both academies and colleges should ever be under the fostering care of the Legislature, and in their connection form a complete system of education.”<sup>194</sup>

---

#### LITERARY FUNDS

During this period, many states established literary funds; publicly-financed funds to endow education. The first literary fund was founded in Connecticut in 1795. By the time North Carolina created its fund in 1825, eleven other states had similar endowments. In New York, a fund was first established in 1805, Virginia in 1810 and Georgia in 1817.

Delaware began creation of its fund in 1796. Proceeds from marriage and tavern licenses were invested into bank shares, with the income used to establish schools “for the purpose of instructing the children of inhabitants thereof in the English language, arithmetic, and such other branches of knowledge as are most useful and necessary in completing a good English education.”<sup>195</sup> The legislation was “the first appropriation, in the history of the State, of its public revenues for the encouragement and support of popular education.”<sup>196</sup>

Eighty years after the initial school fund was established, Delaware Governor Cochran addressed the Delaware General Assembly:

That was, as it may seem to us now, a day of small things; yet with a steadiness of purpose under great discouragement, ... the investments of these small sums were faithfully made from year to year, until at length a fund was accumulated yielding an income adequate to commence the work of a more general education.<sup>197</sup>

The fund “marked a new era in the progress of education in Delaware, and proved to be the permanent foundation of her present efficient Free School System.”<sup>198</sup>

Under the Georgia literary fund, created in 1825, the state invested in a number of banks and other stocks and bonds, expecting the dividends to provide a reliable and steady income for education. This approach avoided raising taxes, while providing a persistent revenue stream to local schools. The fund was structurally similar to other literary funds in neighboring states. Vermont began also investing in bank stock to create a school fund in 1825, using the license fees for peddlers. Additionally, like other states, they required local towns to raise their own revenue in addition to state funds. For state funds, the legislature passed a tax of one per cent per dollar. In both 1824 and 1826, the state raised the general taxes from one penny to two cents and then three. To this day, four states — Arizona, New Mexico, Texas and Wyoming — continue to have trust funds in excess of one billion dollars.

# FEDERAL INVOLVEMENT IN STATE EDUCATION

## THE NORTHWEST ORDINANCE

### CONGRESS REQUIRES LAND TO BE PRESERVED FOR PUBLIC SCHOOLS

---

The original States ceded all territories between the Allegheny Mountains and the Mississippi River to the national government. On May 20, 1785, the Congress passed the Land Ordinance of 1785, governing “the territory ceded by individual States to the United States, which has been purchased of the Indian inhabitants.”<sup>199</sup> Surveyors appointed by Congress divided the territory into townships each six miles square. For every state formed out of United States territorial possessions thereafter, the sixteenth plot out of the thirty-six one-mile square plots from every township was reserved “for the maintenance of public schools.”<sup>200</sup> In 1787, the First Congress ratified the Northwest Ordinance, avowing that: “[r]eligion, morality, and knowledge ... being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

To carry out this mandate, Congress required every new state created from these territories to commit to creating its own system of public schools. Thus, while the federal government did not itself fund the local school systems, it used the greatest asset at its disposal — its newly acquired territories — to promote a national system of education, by refusing to cede the land without provision for educational funds: “These western lands were regarded as a great resource for revenue; the right of Congress to dispose of them was unclogged by conditions; and yet the Congress of the Confederation determined to recognise, in the earliest legislation for their survey and sale, the paramount interest of public education.”<sup>201</sup>

This transfer of land constituted a “solemn bilateral compact between each State and the Federal Government.”<sup>202</sup> The United States ceded its land “in exchange for a commitment by the State to use the revenues derived from the land to educate the citizenry.”<sup>203</sup> Significantly, these parcels did “not pass to the State upon its admission into the Union, but remain[ed] in the Federal Government until the land [was] surveyed[,] ... part of the public lands of the United States [to be] ... disposed of by the Government in any manner and for any purpose consistent with applicable federal statutes.”<sup>204</sup>

### AN IRREVOCABLE COMPACT: A TRUST FOR THE USE OF SCHOOLS

---

Acceptance by the states constituted “an irrevocable compact, vesting title to the described lands in the state and creating a trust for the use of schools.”<sup>205</sup> As a trust, the grant created continuing obligations on the part of the states, as later manifested in the state constitutional provisions. Each of the states that subsequently entered the union accepted these terms. The Ohio Constitutional Convention of 1802 required that “no law shall be passed to prevent the poor ... from an equal participation in the schools, academies, colleges and universities within this state [endowed] ... from the revenue arising from donations made by the United States.”<sup>206</sup> Following the intent of the Northwest Ordinance, “the doors of the said schools, academies and universities, shall be open for the reception of scholars, students and teachers, of every grade, without any distinction or preference whatever, contrary to the intent for which said donations were made.”<sup>207</sup> The Michigan Constitution of 1835 provided that any proceeds gained from the land “shall be and remain a perpetual fund; ... inviolably appropriated to the support of schools throughout the state.”<sup>208</sup>

As the territories in the Northwest and Southwest regions of the country sought admission to the union, enabling legislation passed by Congress required the new states to enact constitutional provisions that both established common schools and prohibited aid to sectarian schools, resulting in the education

provisions that are in effect today. The 1889 enabling act allowing North Dakota, South Dakota, Montana and Washington to seek statehood included such mandates.

---

#### INCREASED LAND, INCREASED FUNDS FOR PUBLIC EDUCATION

---

The federal government continued to keep track of these funds and revamp legislation as needed. Over time, the federal government recognized a need to increase the plots to provide greater available funds. In 1826, a change in the Organic Acts reserved the thirty-sixth section along with the sixteenth. Washington and Oregon were the first to benefit from this new provision. In later years, for the states of Utah, Arizona and New Mexico, where the arid climate and scattered population made the land less valuable, four sections were granted.

New Mexico's petition for statehood was initially rejected due to the lack of a constitutional provision providing for schools, the only state so required to revise its constitution. New Mexico also lacked a governmental education infrastructure. By 1911, however, the number of students reached 100,000, with over a thousand schools functioning in the state. In 1912, New Mexico was granted statehood with the proviso that its constitution incorporate a revised educational provision.<sup>209</sup> New Mexico's Enabling Act ultimately granted roughly thirteen million acres in trust to the state for the purpose of establishing and maintaining essential institutions such as schools, hospitals and prisons.

Through these laws, the federal government itself plunged deeply into the work of preparing new citizens and stabilizing the new frontier.<sup>210</sup> An American statesman, Mr. Cushing, characterized the provisions as "a noble and beautiful idea of providing wise institutions for the unborn millions of the west; of anticipating their good by a sort of parental providence; and of associating together the social and the territorial development of the people."<sup>211</sup> In less poetic and perhaps more accurate language, "[p]ublicly supported education ... would create literate, free farmers who would staff the governments sketched in the 1787 law. Because settlers derived their titles to land and attendant property from the nation, these unservile land-busters and their children, whose right to education was also a statutory duty of government, would be linked in grateful loyalty to the nation and to the new state they had conceived."<sup>212</sup>

In this act, the founding fathers, "by a uniformity of local association, [planted] in the heart of every community the same sentiments of grateful reverence for the wisdom, forecast, and magnanimous statesmanship of those who framed the institutions for these new States, before the constitution for the old had yet been modelled."<sup>213</sup> "With this act, land grants for the support of schools may be said to have become firmly established as a national policy."<sup>214</sup> These actions, supported by subsequent legislation, demonstrated the significance that both the state and federal governments placed on education. Moreover, they established the fundamental federal role in ensuring adequate education in the states. By 1930, Congress had allocated 145 million acres of public land, or 226,562 square miles of land intended to provide sufficient funds to cover the operating costs of public school systems throughout the nation.<sup>215</sup>

#### THE FEDERAL SURPLUS OF 1836

In 1836, as a result of the "Tariff of Abominations," the collection of war debts and large federal land sales, the federal treasury enjoyed an unprecedented surplus. This money constituted the largest asset of the country at this point, the "inheritance of the people, originally gained by the toil, and suffering, and blood of their revolutionary fathers."<sup>216</sup>

---

#### AT LAST, FUNDS FOR EDUCATION

---

The federal government decided to return this bounty to the states and disbursed over twenty-eight million dollars to the states.<sup>217</sup> In turn, the states took these enormous riches, and invested them into the most reliable asset of the community, the greatest need of the state with the best-guaranteed return, an investment in the future, in its citizens and the state's survival; they used it for education.

Until that point, while individual states had always expressed the importance of schools, they did not

always have sufficient funds to enforce even their own legislation. As their use of the federal surplus demonstrates, however, the leaders of these communities were not merely talking and writing about education; they were spending on it. In his retirement speech of 1836, Ohio Governor Lucas stressed that:

This money is emphatically the property of the people, in which the poor and the rich have an equal right, and [should derive] an equal distribution of the benefits. ... [I] can devise no plan for the application of this money, that would be likely to diffuse its benefits to every class of community, more than its application to the support of common schools.<sup>218</sup>

Soon after, incoming governor Joseph Vance reiterated the opportunity and obligation created by the distribution:

It is a sacred gift to us ... and belongs alike to the whole body of our people. ... [I]t is our duty to invest and preserve for ourselves and for our posterity... . [A] heavy responsibility rests upon you to make such application of their means as will enable them to become worthy members of society, and enlightened and useful citizens of the State. This can only be done by building up our common schools; ... the very foundations of our political system rest upon the virtue and intelligence of our people, and that the interest at stake is no less than the perpetuation of our free institutions ...<sup>219</sup>

Of the twenty-six states then in the union, twenty-two of them used portions of the money towards their educational system.<sup>220</sup> Eight states — Alabama, Delaware, Kentucky, Missouri, New York, Ohio, Rhode Island and Vermont — used the entire amount to fund their schools.<sup>221</sup>

## FREE COMMON SCHOOLS

For many, the federal surplus provided the means to create a statewide system of free Common Schools. In *Kentucky*, for example, an ad hoc system of private and neighborhood schools dominated the landscape until 1837, when Kentucky received over a million dollars as its share of the surplus distribution. At this point, the legislature enacted what most Kentucky historians of education consider the basis for their public education system. Part of the plan was to create a system of superintendents ensuring the proper functioning of each school under the state umbrella. To fund the program in perpetuity, the legislature allocated the preponderance of the federal surplus to the Literary Fund, to “be set apart and forever dedicated to founding and sustaining a general system of public instruction.” The remainder was used to pay the interest on internal improvement loans. The federal surplus provided the needed and otherwise hard-to-raise funds for a system of free common schools.

*North Carolina* legislation had promoted its public school system, but the state had been without means to put its own laws into action.<sup>222</sup> North Carolina received over \$1,400,000, of which \$300,000 was designated for the literary fund.<sup>223</sup> This figure dwarfed the total government budget in 1835 of \$87,000, of which \$40,000 was spent solely to maintain the state legislature.<sup>224</sup> By combining funds from the literary fund and a variety of sales and investments, the education fund increased to over \$2 million.<sup>225</sup> The availability of a legitimate source for funds provided one of the greatest incentives for the creation of local schools, most of which could now be made free, beginning “a new era in North Carolina educational history.”<sup>226</sup>

Similarly, in *Maine*,<sup>227</sup> the funds fulfilled the legislature’s desire to create a system of schools. In 1828, the Legislature directed that “the income of any funds arising from ... the sale of land ... be applied for the benefit of primary schools, in the town in which the land is situated.”<sup>228</sup> The public school fund began with the sale of twenty townships and Maine’s share of money from the federal surplus.<sup>229</sup>

In *Illinois*, the legislature ordered that all of the money received “except that which has been appropriated to purposes of internal improvement, shall be added to ... the common school fund of the State.”<sup>230</sup> *Louisiana*, *Pennsylvania* and *Tennessee* used the fund in similar ways. In *Connecticut*, the fund was initially

to be distributed to the towns, to be preserved on deposit, “with least half thereof for the promotion of education in common schools,” with the rest to be used only for the “ordinary expenses of such town and for no other purpose.”<sup>231</sup> Ultimately, about three-quarters of the income was used towards school, until the law of 1855 ordered that the entire income remaining be used to support education.<sup>232</sup>

*Maryland* received close to a million dollars.<sup>233</sup> While a portion of the disbursement went to supply educational funds, the surplus did not create the huge systematic reforms seen in other states, as *Maryland* already had an extensive system of public schools, supported by taxes provided from all counties.

*Arkansas's* legislature, through what was later deemed “general bad management,” allowed for the fund to be used to discharge warrants drawn under state appropriations.<sup>234</sup> Nonetheless, the same day, the legislature ordered, “that so much of the surplus revenue of the United States ... as shall remain unappropriated after the final adjournment of the present general assembly, shall form a capital for the use, benefit, and support of common schools in this State.”<sup>235</sup>

In *Georgia*, the legislature protested the distribution, “affirming that they would have refused the deposit had it not been” that any refused share merely would be distributed amongst the remaining states.<sup>236</sup> Consequently, the money was to be deposited in the Central Bank of Georgia and used for loans. Nonetheless, from this money, one-third of the income was designated for a common school fund.<sup>237</sup>

In *Indiana*, half of the fund was initially loaned to the counties, with the interest to be paid to the school commissioner.<sup>238</sup> The other half was to be invested in bank stock. Subsequently, the amounts that were not “grossly squandered by the agents of the state ... [or] thrown away by mismanagement,” were made part of the school fund in 1851.<sup>239</sup>

Likewise, *Louisiana* used the money it received to pay debts and create a sinking fund for state bonds.<sup>240</sup> In the Constitution of 1851, the remaining interest was designated for educational funds.<sup>241</sup> *Maine* and *Massachusetts* used the money in a similar manner.<sup>242</sup> In *New Hampshire*, the fund was distributed to the towns, the majority of it then used towards school funds.<sup>243</sup> *New Jersey* used the money towards townships and loans, with a substantial part of the interest put into school funds.<sup>244</sup>

Only four states — *Michigan*, *South Carolina*, *Virginia*, *Mississippi* — did not designate any portion of the fund towards schooling.<sup>245</sup> The states that did not put the funds towards education primarily used the money to reduce taxes or for loans and debts, much of which was lost in the depression of 1837. Overall, historians estimate that half of the surplus was used for educational purposes.<sup>246</sup>

## THE ANTEBELLUM PERIOD AND THE COMMON SCHOOL MOVEMENT(1830s-1860s)

IN THIS PERIOD OF RELATIVE PROSPERITY, the principle and reality of education was firmly rooted in the states already admitted to the Union. According to Horace Mann, in Massachusetts, the majority of children were already enrolled in public schools: “[M]ore than five-sixths of the children in the state are dependant upon the common schools for instruction ... while less than one-sixth are educated in the private schools and academies, and these would be educated, even if the common schools were abolished.”<sup>247</sup> By 1838, Ohio Governor Wilson Shannon avowed, “[s]o universal and wide-spread is the opinion that education is indispensable to the perpetuity of our institutions, and the well-being and happiness of the people, that we find similar declarations in the Constitution of every State, perhaps, in the Union.”<sup>248</sup>

Having adopted their laws in earlier generations, these states now had greater resources to place behind these interests. The standards for education continued to be raised.<sup>249</sup> The common school movement illustrates this focus, as participants created a comprehensive system of free public schools: “common, not as inferior ... but as the light and air are common.”<sup>250</sup> At the same time, settlers moving into the territories also established, well before they entered the union and in the very first years of their existence, schools, laws and administrative structures. While these schools were “universal,” the idea of who was included varied over time and with the evolving idea as to who was a “citizen.”

### THE COMMON SCHOOL MOVEMENT

The common school ideal was a “universal, free, non-sectarian education for self-government, enlightenment, and economic advancement,” a place “where children of all classes and backgrounds would be educated together.”<sup>251</sup> Horace Mann, the “the father of the common school,”<sup>252</sup> believed that the “property of [the] commonwealth [was] pledged for the education of all its youth, up to such a point as will ... prepare them for the adequate performance of their social and civil duties.”<sup>253</sup> The current property holders were merely “trustees, bound to the faithful execution of their trust by the most sacred obligations.”<sup>254</sup> As part of this modern educational doctrine, or described “golden maxim,” “the property of the State ought to educate the youth of the State.”<sup>255</sup>

During this era, the content of education evolved from the simple ability to read and write sufficiently to understand the Bible, as regulated by local officials. Now, states sought a uniformity of experience and learning. The movement was also seen as countering sectarianism, promoting “the school as a classless, non-sectarian community that would build citizens who could live in harmony and govern themselves without religious conflict and violence.”<sup>256</sup> In the face of continuing waves of immigration, unified educational systems provided a way to assimilate newcomers and establish a shared ideology.

The notion of community and nation were expanding more than ever before. Advocates addressed a national scale in a way not possible before, looking for uniformity across a greater area and population number, but correspondingly, a greater ability to do so with the developing technology and infrastructure. The common school movement now worked for unified curriculums across the state and the country, in an “effort to create in the entire youth of [the] nation common attitudes, loyalties, values, and to do so under central direction by the state.”<sup>257</sup>

The common school movement fostered a national discussion on educational practices.<sup>258</sup> The Ohio legislature commissioned a report from Calvin Stowe, which compared the Ohio school system to that of Prussia and discussed the best way to structure a thorough and efficient system of schools.<sup>259</sup> The Ohio legislature ordered ten thousand copies, distributed to every school district in the state.<sup>260</sup> The legislatures of Massachusetts, Michigan, North Carolina, Pennsylvania and Virginia also received copies.<sup>261</sup>

*The common school movement emphasized the universality of schooling.* Previously, completely free public

schooling was often provided only for paupers, some of whom were required to testify that they were indigent. The resulting stigma discouraged parents from receiving the perceived charity of the state.<sup>262</sup> Realizing that the creation of “poor schools” made families reluctant to attend, the state worked to erase that stigma and moved towards “common schools.” Common school reform consisted of replacing pauper schooling at public expense with schools free and open to all, thus enabling a standardized education throughout the state.

The Delaware legislature, for example, initially provided for educational funding in 1817. “The act was enforced for several years, but never won popularity because it drew a hard and fast line between the poor and the rich” evidenced by popular reference to the school fund as “a poor children’s fund.” “It is not surprising,” Governor Cochran observed, “that a provision which invited an independent people to have their children schooled as paupers proved a failure.”<sup>263</sup> The states moved to change their systems in response.

In proposing a system of common schools for Pennsylvania, the legislature recognized:

A radical defect in our laws upon the subject of education, is that the public aid now given, and imperfectly given, is confined to the poor. Aware of this, your committee have taken care to exclude the word poor, from the bill which will accompany this report, meaning to make the system general; that is to say to form an educational association between the rich, the comparatively rich, and the destitute. Let them all fare alike in the primary schools receive the same elementary instruction; imbibe the same republican spirit, and be animated by a feeling of perfect equality.<sup>264</sup>

In Ohio, for example, the cost of education was “defrayed by rate bills assessed upon those whose children attended school,” which “virtually excluded the children of the poor.”<sup>265</sup> The indigent were left “dependent on charity” or subject to “the power of school officers to exempt the indigent from the payment of tuition fees.”<sup>266</sup> In the 1850s, however, the state began to stress schooling not as a private expense, but a public obligation.<sup>267</sup> In 1857, the Ohio legislature created a school tax placed “upon all the taxable property of the State”; while local taxation for education had previously been authorized by the legislature, it was now required.<sup>268</sup>

*Most state adequacy clauses emerged directly from the common school movement.* The movement’s emphasis on common education for children of the rich and the poor carried over into the intent of the framers of the Constitutional clauses. After convincing state legislatures to adopt major reforms, the common school advocates pushed to codify their gains through the constitutional adequacy clauses, thus rendering them permanent.<sup>269</sup>

## EDUCATION IN THE TERRITORIES

*As settlers traveled to newly-opened territories, they turned first to creating schools and, by the time the territories entered the Union, they had already created schools and carefully articulated structures to ensure the continuation of those schools.* Michigan, for example, entered the Union in January 1837 with education laws and administrative structures already deeply rooted. Ten years earlier, in 1827, the Territorial legislature had adopted a school law modeled on the Massachusetts laws of 1647 and 1789. The instructions were elaborate and concrete: townships with 50 or more households were to provide a school for at least six months in the year for the teaching of reading, writing, arithmetic, spelling and “decent behavior.” Townships of 100 were to provide year-round schooling for the same purposes. Townships of 150 were to provide schools with the same subject matters for six months and an advanced “English school” for the year. Townships of 200 or more householders were to provide the same and employ a grammar schools master. The law deferred to the voters to decide if the township were to be divided into districts; if two-thirds of the voters disapproved, the township was free to organize its own schools, a provision which left open the opportunity for private schools or schools operated by the church. The territory followed these particularized instructions with the financial means of implementing them: an 1829 law made non-residents’ property subject to taxation for schools.

*Iowa* followed a similar path. The first schools were private ventures, with the first schoolhouse thought to have been built in Dubuque about 1833. By 1838, the number of schools in Iowa numbered between forty and fifty. In an 1838 address to the territorial legislature, territorial governor Robert Lucas explained that education motivated the need for organization within the townships: “without proper township regulations it will be extremely difficult, if not impractical, to establish a regular school system.” “In most of the States where a common school system has been established by law,” Lucas continued, “the trustees of the township are important agents in executing the provisions of the law.” Lucas declared his belief that nothing was more important “than the subject of establishing, at the commencement of our political existence, a well designed system of common schools.” The legislature adopted its first bill in November 1838, which became Iowa’s First School law. It adopted another law on January 1, 1839 calling for a “common school, or schools, in each of the county of this Territory, which shall be open and free for every class of white citizens between the ages of four and twenty-one years.” Thus, by the time Iowa entered the Union as a state in 1846, its administrative structure was in place, and schools established.

In *Kansas*, again, settlers established schools before the territory was even established in 1854. The first known school was established in 1844 by J.M. Armstrong, and named the Wyandotte School, for the Indian nation of the same name. Consistent with the territory’s view of citizenship, Wyandotte School was only open to white children in the settlement, who attended free. A second free school for white children was established in May 1851 in an area known as Council Grove, a reservation that had been home of the Kew Indians beginning in 1847. The school was founded by T.S. Huffaker, a Methodist missionary who provided instruction to both white and Indian children.<sup>270</sup>

The Kansas Territorial legislature met in July 1855, one year after Congress organized the territory, and enacted the first school law, requiring that the schools shall be open and free for every class of white Citizens between the ages of 5 and 21 years, and shall be established in every county. Thus, by the time of statehood, Kansas already had “nine thousand schools,” such that “[e]very child had a school within walking distance of his or her home.”<sup>271</sup>

## MINORITY GROUPS: DECODING CITIZENSHIP

*Significantly excluded from these momentous reforms were the non-citizens, the slaves, education of whom continued to be perceived as both dangerous and unnecessary.* Chancellor William Harper of South Carolina, speaking in 1837, amply illustrated this rationalization:

If there were any chance of their elevating their rank and condition in society, it might be matter of hardship, that [slaves] should be debarred those rudiments of knowledge which open the way to further attainments. ... A knowledge of reading, writing, and the elements of arithmetic, is convenient and important to the free laborer, who is the transactor of his own affairs, and the guardian of his own interests — but of what use would they be to the slave?<sup>272</sup>

Within a republic, education served as an equalizer, enabling all individuals to take on their full role in a democratic society. For those reasons, education in the hands of the slave population was viewed as so pernicious. As this fear increased, so did the strictness of the legal and social prohibitions.<sup>273</sup> These fears served to hinder the development of a public school system. The illiteracy rates in the slave south were almost four times that of free states.<sup>274</sup> Limiting education amongst free citizens was seen as safer than risking the acquisition of education by slaves.

*While slaves were excluded, states extended education to minorities already recognized as citizens.* In 1834, after prohibiting education to African-Americans, Alabama revised its legislation to protect the rights of

those “free colored Creoles ..., whose ancestors were residing there in the time of the change of the flag, and to whom, by the treaty entered into between the French republic and the United States of America, in 1803, were secured the enjoyments of all the rights, advantages and immunities of citizens of the United States.”<sup>275</sup> With their community acknowledged as citizens, those “free colored Creole children [descended from] ... persons who were residents ... at the time the treaty made between the French republic and the United States of America, in April, 1803, was ratified” had the corresponding right to be educated.<sup>276</sup>

*Similarly, immigrants with expectation of citizenry were properly deserving of educational benefits from the state.* In 1851, when requesting state funding for education of those children detained on Ward’s Island, the Commissioners of Emigration reasoned, “[a]s all these children are part of the population of the State, and destined to become its citizens, there seems no reason why they should not partake of the general benefits of the liberal provision made by the State for public education.”<sup>277</sup> By 1858, the political climate in Kansas had turned against slavery. When the fourth Territorial Legislature convened, it established a system molded after northern free states, it removed the limitation to white children in its previous law and prohibited “sectarian instruction” in the schools.

# THE CIVIL WAR, BEGINNING RECONSTRUCTION (1860s-1870s)

IN THE WAKE OF THE WAR and with the continued western expansion, reestablishing society and a national identity was crucial for the nation. Education was essential to bringing together the disparate parts of the nation — north, south, east, west, white, black, native born and immigrants. *With the reestablishment of the union, the importance of education in the survival of the republic returns to the forefront with added urgency.*

In his address to Congress on March 30, 1870, Ulysses S. Grant quoted President Washington's Farewell Address: "Promote, then, as a matter of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened."<sup>278</sup> The country remembered that, "a republican government could not endure without intelligence and education generally diffused among the people."<sup>279</sup>

Consequently, Grant called "upon Congress to take all the means within their constitutional powers to promote and encourage popular education throughout the country."<sup>280</sup> As a delegate emphasized at Missouri Constitutional Convention of 1875, "[i]t is now admitted by every intelligent and patriotic American citizen that the nature of our government requires for its consistent support and perpetuation an universal education of citizens."<sup>281</sup>

During Reconstruction, the role of the state also developed in response to changing circumstances and resources. With its additional resources and an enhanced bureaucratic apparatus, state oversight of education expanded, enabling greater government participation in the minutiae of schooling. Administration of public schools burgeoned. Mandatory attendance laws became commonplace. Where previously the state addressed making education available and assuring a certain level of instruction, governments were now able to use their resources to enforce attendance in official schools.

## THE NEW FREEDMEN

With expansion of citizenry to the newly freed African-American populations, the country correspondingly expanded the right to education to assure the ability of these new citizens to participate in a democratic society. Across the south, reformers expressed the fear that the previous policies of denying an education to slaves would harm efforts to include them as citizens. At the 1865 Missouri Constitutional Convention, the chairman of the Education Committee urged for universal public education, as "[t]he old system common in slave states had a tendency to discourage the education of the mass of the people, and if provision was made without requiring a school to be kept, it would tend to perpetuate the old system."<sup>282</sup>

As shown in Maryland, slavery greatly inhibited educational progress:

The antireformers, principally wealthy property and slave owners, who dominated the state legislature viewed education as a threat to the social order. Only after the Civil War severely damaged the political and economic power of the slave owners were reformers able to pass a constitutional amendment that established an educational entitlement for every child in Maryland. The 1864 education clause called for a "uniform system of free public schools" and specifically required the hiring of a state superintendent of schools who would have wide authority to improve the quality of education in the State.<sup>283</sup>

Now that African-Americans "were given full rights as citizens, the problem of their education was immediately taken up."<sup>284</sup> With freedom, there was a new focus on education as a means to be able to integrate them into society. In one effort to address this tremendous need, Congress created the Freedmen's Bureau in 1866 to enable "all loyal refugees and freedmen ... to become self-supporting citizens of

the United States.”<sup>285</sup> While the Bureau-operated schools were nominally open to all races, white children constituted less than one percent of the enrollment.<sup>286</sup> At the 1865 Missouri Constitution Convention, the Education Committee stressed such concerns when proposing its new education amendment:

In our own State, just emerging from the desolations and dangers of a terrible civil war, and throwing off the shackles of a system of domestic slavery, which paralyzed energy, discouraged enterprise, and proscribed the general diffusion of knowledge, it seems a most appropriate time to establish a system of public schools, which, in the munificence of its provisions, the comprehensiveness of its objects, shall make free Missouri a worthy pattern for all States that would carry the means of a good education to the door of every inhabitant, without distinction of race, of color, or condition.<sup>287</sup>

In another federal congressional effort, Representative George Hoar of Massachusetts attempted to establish a national system of education, under which every state would be required to “provide for all the children within its borders, between the ages of six and eighteen years, suitable instruction in reading, writing, orthography, arithmetic, geography, and the history of the United States.”<sup>288</sup> As Hoar explained, if all men “secured by national authority his equal share in the Government[,] surely there is implied the corresponding power and duty of securing the capacity for the exercise of that share in the Government.”<sup>289</sup>

Without education, citizenship was meaningless. This concern was not limited to the ex-slaves; Hoar voiced concerns over “a terrible amount of illiteracy among the whites, especially in the southern States, whereby [they] are rendered unfit for the proper discharge of their political duties and are ignorant of their political rights.”<sup>290</sup> Nonetheless, fears of central control and the potential of racially integrated schools on the part of the reincorporated southern states ultimately killed the bill.

## THE FORMALIZING OF EDUCATIONAL SYSTEMS

Now that the states had the financial resources and the administrative framework, they were able to invest more in public education. Having become increasingly settled and mechanized, the state concurrently began institutionalizing the process of education. High schools became both standard and standardized. As before, there were concerns about the assimilation of the new immigrants and a need to socialize them into United States society. The formalization of the school system was intended to assist in the process of assimilation.

*The states used their increasing power and educational focus to begin enforcing school attendance, as part of a national trend towards compulsory education in a formalized public system.*<sup>291</sup> The increasing use of child labor in manufacturing propelled the first compulsory school attendance laws. While the states were now able to provide a public education, they were faced nonetheless with the potential systemic deprivation of one part of the population. The proliferation of manufacturing mills was “operating silently perhaps, but steadily and powerfully to deprive ... a large and increasing class in the community, of those means and opportunities of mental and moral development and cultivation, which are essential to their becoming the intelligent mothers and educators of the next generation, and good citizens of the republic.”<sup>292</sup>

In response, the Massachusetts legislature called upon the “solemn and indispensable duty of the representatives of the people” to assure that the schools which “have given to New England her peculiar character for general intelligence and virtue, be not changed with the changing employments of her people.”<sup>293</sup> The first such legislation in the country “to provide for the better instruction of youth employed in manufacturing establishment” was the Act of 1836. The legislation required that in order for children under fifteen years to “be employed to labor in any manufacturing establishment,” they must attend “some public or private day school, where instruction is given by a teacher qualified” for at least three months every year.<sup>294</sup> Violators risked substantial penalty: employers would be fined “fifty dollars for each offence,” used to fund the state’s common schools.<sup>295</sup> In 1853, the law was extended to “[e]very person who shall have any child under his control, between the ages of eight and fourteen years.”

*In this period, the states also capitalized on their increasing resources to centralize and develop administrative controls for the school systems.* In Arkansas, for example, while the four constitutions from 1836 to 1868 all required provision for public education, the 1874 constitution expressly shifted the duty to the state government to administer the system of schools.<sup>296</sup> Many states began to set up state superintendents and boards of education, whose authority increased with time. After 1879, Mississippi would provide public funding only to “such schools only as come within the uniform system devised, and under the general supervision of the State superintendent and the local supervision of the county superintendent, are free from all sectarian religious control, and ever open to all children.”<sup>297</sup>

Public high schools also became increasingly common. While before the ability to read and write was sufficient for civic participation, the states were now responding to greater demands of education and to the greater ability of the state to provide this education. In Minnesota, formalized public high schools began to take shape in the 1870s, although grammar schools and other preparatory schools existed long before then. In 1865, the superintendents created a formal process to qualify teachers, which they continued to revise. In 1878, the legislature allotted a one-time payment of four hundred dollars to each high school to spur their development. In 1881, the legislature further enacted a law creating formal boards of oversight for high schools. The 1893 high school act created a state level inspector of high schools.

## DEVELOPING THE WESTERN TERRITORIES

AS WESTERN EXPANSION CONTINUED, settlers continued the now-familiar patterns in ensuring the supply of new citizens capable of participating in their new communities: they established schools, then created the laws and the bureaucracy to sustain those schools. These new lands posed new issues dealing with culture and diversity: the familiar patterns collided with established communities and their own cultural educational traditions, in states such as Texas, Utah, New Mexico, Hawaii and Alaska. As in other regions and other eras, the new states expanded the embrace of their education to include new groups absorbed by the nation.

### CHALLENGES FROM THE VAST TERRITORIES

*From the very beginning, low population density impeded the advancement of schools.* The demographics of the rural and frontier landscape were such that centralized schooling was usually impractical, if not impossible. In 1857 Ohio, H.B. Barney bemoaned the fact that, as in the colonial south two hundred years earlier, “the unavoidable privation or postponement of school advantages which the more Western States must sustain” as a result of their sparse populations.<sup>298</sup>

*These demographic conditions slowed the development of schools in the new western territories but, notably, did not stop it, driven by the inexorable economic and civic need for productive, educated citizens.* For example, the rural nature of Montana hindered its education system from the inception. Unlike other territories in the Midwest, Montana’s relatively arid climate discouraged most permanent settlements. The federal government enacted the first organic act for Montana in 1864, reserving the sixteenth and thirty-sixth sections to fund education in the territory. The first legislature of Montana created a system of common schools, but unlike many other territories, Montana was not able to rely on the land allotments to provide the basic funds for the establishment of schools. The dispersed nature of settlement and slow migration into the territory reduced the possibilities of developing the land. Moreover, the state had not yet surveyed most of the land; even if someone could make these sections profitable no one yet knew where they were.

Notwithstanding these barriers, the power of the drive toward education is illustrated by the fact that the legislature persevered, primarily concerning itself with creating a system of regulation and administration for the schools. Legislators created county commissioners, who were to divide up school districts, levy and collect a property tax to support schools, and oversee the operation of schools. In 1867, the legislature created the office of superintendent for counties, charged with oversight of all the schools in their respective county. At the time of this act’s passage, the territory had only eleven schools; many counties had none. The school law of 1872 was taken verbatim from California law, after excising the sections “too cumbersome for smaller and more scattered communities” of Montana.

In 1907, Montana experienced a demographic boom, with the population more than doubling in ten years. As with other territories, this permanent settlement and demographic growth helped establish a strong educational system, with Montana adopting in 1972 the powerful and simple constitutional provision mandate for an equal and quality education: “It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.”<sup>299</sup>

### NEW ENGLAND PRACTICES MEET SYSTEMS OF OTHER NATIONS

#### 1. TEXAS

---

Texas is the only state in the union that was an independent republic before becoming a state.<sup>300</sup> It

entered the union having already placed education at the forefront. The Texas Declaration of Independence in 1836 indicted the government of Mexico for its “neglect” of education, which had “failed to establish any public system of education although possessed of almost boundless resources and although it is an axiom in political science, that, unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.”<sup>301</sup>

Texas’s first constitution adopted upon its independence, required that “Congress, as soon as circumstances will permit, to provide by law a general system of education.”<sup>302</sup> The first president of the republic, Mirabeau B. Lamar, stressed to the Texas Congress, “if we desire to establish a Republican Government upon a broad and permanent basis, it will become our duty to adopt a comprehensive and well-regulated system of mental and moral culture.” The legislature quickly put these expressed aspirations into action. An 1839 law required three leagues of land to be set aside in each county “for the purpose of establishing a primary school or academy.” A year later, the Congress amended the law to include a fourth league, making the area close to seventeen thousand acres per county. The chief justice and his associates in each county were to be appointed as a board of school commissioners, who were empowered to divide the counties into school districts, to examine teacher certificate candidates, and to inspect and supervise schools.

Texas entered the union in 1845. While it already had established the structure for a school system, some of the delegates expressed significant reservations about public education: “of all the states whose constitutions’ education article require thorough, efficient (or either) public school systems, Texas alone had serious anti-public school sentiment expressed by delegates” during its constitution convention of 1875.”<sup>303</sup>

At the convention, four viewpoints on education arose.

- One group, worried about ceding control to the new government, held that education was wholly a private concern, to be left to the decisions of parents who were free to train their children in any way they deemed appropriate. As schooling was no business of the state, taxation for the education of other people’s children was an act of confiscation and robbery under the law.
- A second group focused on the religious issues, considering training in Christian doctrine paramount for the promotion of an educated ministry. Having established seminaries and academies as a means of evangelizing — and thus benefiting — Texans, they believed they deserved state support for their efforts.
- A third group favored free public school supported by the state for all children. Many among this group were transplanted Northerners and Northeasterners, themselves products of such education.
- Finally, there were those who believed education of the indigent and orphaned was a necessary act of state charity and an assurance of public safety.<sup>304</sup> The opposition to public schools was hardly treated lightly: The anti-schools activists were insulted as “a band of old fogies” by their opposition, “more fitted for an asylum than for a constitutional convention.”<sup>305</sup>

Moreover, as one speaker reminded the convention, the “sacred compact entered into by and between the people of Texas and the Congress of the United States” which allowed Texas to enter the union, required that their constitution “never be so amended as to deprive any citizen or class of citizens of the United States of the school rights and privileges [previously] secured by the Constitution.”<sup>306</sup> Ultimately, the dispute caused the legislature to convene a special committee, which agreed upon the federal condition and concluded, “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.”<sup>307</sup>

## 2. NEW MEXICO

---

In New Mexico, the formation of the public system of education was shaped by its Spanish heritage, Catholic religious influences, cultural expansion from the west and political traditions brought from the

United States. For the most part, religion defined the educational institutions until statehood. In that sense, *New Mexico stands in stark contrast with many other states where the territorial legislatures took an active role in constructing a system in preparation for statehood, often patterned on eastern models.* In New Mexico, only with statehood did the legislature begin to create strong institutions and ways of funding a broad system that could in large measure supplant or mitigate cultural tensions and church influences.

The United States first annexed the territory from Mexico in 1846 and began to spread its institutions and cultural practices to the territory, creating a blend of Anglicized, Protestant culture mixed with Spanish and native cultures influenced by Catholicism. A number of territorial laws attempted to create a public school system, but these measures proved to be ineffectual. The primary modes of education remained religious. Protestant missionaries coming from the east, as well as established Catholic churches and emerging missions established schools, which blended proselytizing with schooling.

Reflecting the transition from Mexican to United States control, the Catholic Church changed the controlling diocese from Durango to Cincinnati. Bishop John Baptiste Lamy of Cincinnati assumed vigorous control of the region and is today regarded by many as “the father of education in New Mexico.” Under Lamy, several Catholic schools for boys and girls were established. Indeed, Lamy was so successful that the United States legislature began giving funds to the church to establish schools, a sharp break from its prior practice, but nonetheless similar to policies taken towards Hawaii and Alaska during the same period. Congress continued to provide funds to religious groups through the 1890s. The territorial legislature, under the lobbying efforts of Father Gasparri, incorporated the Jesuits and gave them the authority to found schools and own large swaths of property.

Tension between native residents, Spanish settlers and eastern immigration hindered development of a unified school system. This culture clash centered primarily on religion. As one chronicler of New Mexico’s education observed, “the greatest difference in the perception of education between Hispanos and Anglos had to do with the acceptance of the church in school affairs. Hispanos overwhelmingly welcomed Catholic clerics as participants in public education.”<sup>308</sup> Others rejected this mingling of church and state. A secularist movement began to agitate for reform, creating the New Mexico Education Association. All of this led one historian to conclude that public education “was almost nonexistent during territorial times.”

### 3. UTAH

---

*Of all the western states, the Mormon community in Utah most closely resembled the development of the religiously-based colonies in the East.* Likening the community to the Puritan colonists, Joseph Smith, the founder of the Mormon church, urged his disciples to “[t]each ye diligently ... that you may be instructed ... in all things ... that are expedient for you to understand,” and the command to “establish ... a house of prayer [and] ... a house of learning.”

The Mormon community began its westward migration in 1846, under the direction and supervision of the church council. When the Mormons arrived in the Salt Lake Valley in 1847, schools were among the first institutions they established. Community schools were housed in public buildings constructed by all in the community. While the schools did not receive direct public funding and constituted non-legal entities, they were free for all children living within the confines of the settlement. The distinction between public and private remained blurry. On January 19, 1855, for instance, the Legislative assembly passed an “Act appropriating money for educational purposes,” that appropriated \$2,500 for building “an academy in Salt Lake City.” Brigham Young, the president of the church council, was authorized to select the site, “appoint an agent to erect said building” and to do other needed items for building and payment of the academy. In 1868, the territorial superintendent of schools noted, “nearly all the school houses in this Territory have been built by the voluntary liberal donation of the citizens.”<sup>309</sup> These community schools combined religious instruction with academic subjects. Such practices came under scrutiny as increasing numbers of eastern migrants settled in the Great Basin valleys.

This intermingling of church and state, as well as apprehension over the influence of Mormon practices, concerned the federal government when Utah was considered for statehood. Consequently, upon

gaining statehood, Utah's constitution clearly separated religious and public education, prohibiting the use of "religious...test or qualification" for either a teacher or a student for "any public educational institutions of the State." The constitution also prohibited any tax revenue-receiving agency from making "any appropriation to aid in the support of any school...controlled in whole, or in part, by any church, sect, or denomination whatever."<sup>310</sup> After admission into the Union, Mormon leaders operated existing schools as private academies for a time, but eventually church leaders relinquished control of the Utah schools.

#### 4. HAWAII

The first schools in Hawaii were started in the 1820s by newly arriving missionaries. In the 1840s the monarchy created a general system of common schools operating under the auspices of the king. In advance of almost all of the continental states, the Hawaiian government made attendance mandatory. The influence of New English practices, carried over by missionaries and others, greatly influenced Hawaii's development. The first educational laws closely resembled the New England laws of 1642 and 1647, though adapted to the local conditions. Towns containing fifteen families or more were required to maintain a school. The curriculum emphasized learning reading, writing and arithmetic; all increasingly taught only in English.

In 1845, Hawaii passed a series of laws known as the Organic laws, which established the legislature and roles of each political body. The Organic Act created a Department of Education, headed by the Minister of Education, a member of the King's cabinet. In 1854, the education minister Reverend Richard Armstrong, despite his obvious church affiliations, turned all publicly funded schools into secular institutions. By the 1870s, English-only classes were mandated.

As the kingdom began to resemble a westernized constitutional monarchy, it also began passing taxes to raise revenue. One of the first was to support an education system in 1850. In 1851, the legislature disbursed \$22,000 for schools. In 1855, a two-dollar tax was levied on all free men.

In 1893, the monarchy was overthrown. After briefly establishing a republic, the United States acquired the territory in 1898. During its brief period as a republic, the legislature enacted Act 57, which reorganized the education system. The new system was modeled on the ideas of Progressives, with personal advice from John Dewey, who made a visit to the islands.

#### NATIVE AMERICANS

The manner in which the federal, territorial and state governments treated education of the indigenous cultures underscores education's role in creating citizens, a theme which recurs throughout American history. It was a role assumed first by missionaries. Individuals early on ceded individual control over education to the government. With respect to native peoples, this role was often assumed by the federal government because the need arose before state, or even territorial governments, were even formed. As with other newly absorbed populations, education served as a normalizing and socializing force for the indigenous populations, again a role crucial to creating national identity. Education also was used as a forceful tool against the Native American populations to induce cultural conformity.

In 1819, Congress created a civilization fund,

for the purpose of providing against the further decline and final extinction of the Indian tribes, adjoining to the frontier settlements of the United States, and for introducing among them the habits and arts of civilization ... [The president is authorized] to employ capable persons, of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic.<sup>311</sup>

This money was used "to pay the expenses of missionaries and teachers chosen by denominational associations or ecumenical bodies in schools scattered among the Indian tribes." Under the civilization policy, Native-Americans were "taught the first rudiments of education, the duties which appertain a man as a member of civil society, and his accountability as a moral agent."<sup>312</sup> Instructors had a duty "to impress

on the minds of the Indians, the friendly and benevolent views of the government towards them, and the advantage to them in yielding to the policy of the government, and co-operating with it, in such measures as it may deem necessary for their civilization and happiness.”<sup>313</sup>

*The history of education in Alaska is a microcosm of these trends.* While Alaska did not become a territory until 1912 and a state until 1959, schools and the laws that governed them had been in place since the mid-19th century. While most of Alaska’s vast territory remains uncharted to the present time, small portions of the territory were settled by Russian fur traders in the 18th century, with missionaries following to educate the local Aleuts and Eskimos. The Aleuts formed their own schools to teach their children Russian, and continued to do so alongside the missionaries until the 1870s. In 1887, the Russian government sent \$20,000 for education.

In 1867, the United States purchased Alaska but did not take further action with respect to any development of the state until 1884, when Chester A. Arthur and the U.S. Congress enacted the Organic Act for Alaska and with it began the process of incorporating the territory into the United States. Showing just how different the Alaskan territory was, Congress allotted only \$25,000 for education and gave the money to a series of missionaries. The allotment of funds stands in stark contrast to the typical Congressional requirement of one or two plots of land per township to be reserved for education.

*In 1887, Congress began to take a more active oversight of the education system in the Alaska territory and with it, began the process of creating separate, race-based systems.* Schools for the Inuit population were to teach vocations to those considered the best and brightest with the express purpose of preparing the Inuit population to become American citizens. The intent of the government is perhaps best summarized by the Governor of the territory in a report written in 1892:

it is conceded that the perpetuity of our American institutions depends in great measure upon the intelligence of its citizens, and that this intelligence is due in no small degree to our system of common schools and public education. If it be true that the intelligence of the American citizen is so necessary to the security and enjoyment of his liberties, how much more important is it that the native races, who are now being endowed with all the rights of citizenship, shall be prepared by education to appreciate and enjoy their new privileges, and to understand their new obligations and political relations. Especially this is true of the people of Alaska, whom the government has undertaken by its treaty stipulations to place upon an equal footing with its own citizens.

The content of the Inuit education reflects another recurring theme: while education had an important role in preparing individuals to participate in a democracy, it also played an important economic role in preparing individuals to become productive citizens. Thus, Inuit children were to be taught English as well as making them “industrious.”<sup>314</sup> For the latter purpose, the U.S. government began introducing reindeer to Alaska with the hopes of teaching native Alaskans herding and ranching techniques. Again the idea was to find the best and brightest natives, give them control and responsibility over the herds, with the hope that they will learn and teach similar techniques to the tribes. The practice, begun in the 1890s, continued to 1908.

*The federal government continued to play a primary role throughout the end of the 19th century, a role which has diminished, but continues until today.* In 1895, the federal government stopped funding the missionary schools and the Federal Bureau of Education took control of the schools. The federal control continued what had been a de facto regime of segregation. Most whites went to private schools or schools that were recently open and run by the territorial government, while the schools in and around natives were first run by missions and then the federal government. The two separate systems became explicit in 1905 when Congress passed the Nelson Act which specifically placed native education under the auspices of the federal government and left the other schooling for those who “lead a civilized life” to the territorial authorities.

The federal schools continued what one historian has dubbed “creaming off” the best students. At first, the federal government took the best and brightest and sent them to better schools in the United States.

After this did not prove effective, the government created boarding schools in Alaska for these talented youths. The government also began teaching vocational trades to all natives, not just the appointed leaders.

Throughout the 1930s, 40s, and 50s, the question of separate schooling was particularly debated. In 1939, the Bureau of Education assumed control of territorial schools that were attended primarily by natives. A shift occurred in the 1940s and especially 50s that emphasized integration and decentralization. Although the change did not occur until the 1950s, the language of schooling excluded race-based policies. Also perhaps reflecting a larger trend in education, the policies now emphasized individual achievement rather than group improvement. Although the federal government does not run schools as it once did, it continues to provide funds to help offset the cost incurred by the Alaskan government and also provides funds for native education continuing onto college.

## CONCLUSION

AMERICAN CITIZENS DID NOT CREATE SCHOOLS, or the laws and administrative structures to support them, in precisely the same manner, or at the same pace. Geography or limited financial resources slowed the pace in some regions, while education flourished early in cohesive, closely settled areas. *Across these vast differences of circumstance, however, it is the unity of vision and the purposive, unrelenting drive that are most arresting.*

Education has uniformly been a government function, one of a handful over which individuals ceded their authority. Education has been among the first functions assumed by governments, first local, then colonial or territorial, and then state. Governments have used their resources and the power of taxation to create and administer schools.

And, in each instance, across vast spaces in time and place, the motivation for education has been the same: to create the political and economic “Citizens” who were essential to the formation of the nation and remain so for its survival today.

# State Educational History Summaries

## ALABAMA

---

### ALABAMA TIMELINE

- 1702: French colony founded as trading post.
- 1763: British seize the land as a result of the Seven Years War. Parliament salaries a teacher for Indians.
- 1781: Spain controls the territory as West Florida.
- 1799: John Pierce opens the first school.
- 1811: First academy opens.
- 1812: Second academy opens.
- 1814: Andrew Jackson wins the territory from Spain and the new legislature grants \$1,000 to the two academies in the territory.
- 1819: Congress adopts Enabling Act of 1819 and promises to grant the 16th section of each township for schools. Alabama adopts first constitution which encourages education and directs care of lands granted for educational purposes.
- 1823: Counties given control of school districts.
- 1826: Mobile given board of commissioners for education.
- 1833: Commissioners extended to whole county.
- 1839: Legislature allocates some of the federal surplus for education.
- 1852: Public education system adopted in Mobile.
- 1854: Public School Act passed, extending and refining many of Mobile's reforms. Also prohibited funds to be used on sectarian schools.
- 1861 and 1865: Two new constitutions again encourage education and directs care of public lands for that purpose.
- 1868: New Constitution creates a "board of education" which is directed to establish free public schools.
- 1875: New Constitution passed. Legislature directed to organize and maintain free public schools. Returned to system of county control by elected commissioners and the legislature.

### ALABAMA SUMMARY

While Alabama's early educational history mirrored that of other territories and its antebellum reforms seem similar to other states, the actual system itself had unique characteristics, largely owing to the prominence and importance of Mobile as a population center in an otherwise dispersed population.

Alabama functioned as a French trading post during the early eighteenth century. Although no evidence remains, some historians suspect that a small parish school likely existed in the Mobile area under French rule. The British gained control of the territory after the Seven Years War in 1763 and Parliament designated funds to support a teacher. Although part of Spanish territory after the Revolutionary War, many Anglo-American settlers traveled to the territory and in 1799 John Pierce opened a school. Subsequently other private schools opened and as communities developed they began forming local schools through subscription and other means. Although population for the would-be state remained small, with only 3,400 settlers, population would increase, especially around Mobile, for it remained a largely agricultural and rural state.

When the United States, under the command of Andrew Jackson, seized the territory from Spain in 1814, Alabama fell under U.S. territorial law. As a result, in 1818, Congress ordered that each township be granted a parcel of land, referred to as the sixteenth section, for school purposes. Most towns used the land as an endowment, leasing it out and either investing or distributing the income. One of the first acts

of the territorial legislature was to grant \$1000 to two academies in the territory.

One historian has dubbed this early era of Alabama schools an era of “ad hococracy,” as the local community initiative spurred the development of schools. Many schools opened next to the first courthouse. In others, subscriptions from the townspeople raised funds to build a school. Private tutors and old field schools flourished throughout the state.

In 1819, Congress enacted the enabling act for Alabama, promising to grant the 16th section in each township for the use of schools. Alabama adopted its first constitution that year, declaring the need for education and providing for the preservation of the land. In 1823, now a state, Alabama began to create a larger educational apparatus. Its first move was to make county government play a larger role in the regulation and management of schools as well as create larger school districts aside from the town. The law also provided for full tuition to those parents who would testify they could not afford tuition. In 1826, a county board of commissioners was appointed for Mobile that could raise revenue and oversee the state school operation. The board was supposed to be elected by popular vote but eventually became a “closed corporation.”

Funding from the state always posed a problem, although many community schools succeeded through the continuing ad hoc system. In 1828, towns invested their sixteenth section fund in bank stocks with hopes of the money appreciating and the dividends providing an endless stream of income. In 1836, the legislature allowed commissioners to hold a lottery to raise \$50,000 for schools. In 1839, Mobile, at the behest of the commissioners, opened a school for poor students. Finally, in 1839, Mississippi used funds from the federal surplus to allocate to the schools, but a declining economy in 1843 dried up this source as well.

In 1851, the legislature attempted to sell off Barton Academy, and created a board to handle the sale and the funds raised, which were to be used for a public school. The sale had to be approved by a popular vote but it failed miserably. Within a short time, in 1854, the first public school act was passed and the once-private Barton Academy became a full-fledged public school with over 800 students attending in all grades. Prior to this act, in 1850, only 36.5 percent of all eligible Alabamians attended school; the national average was 56 percent; by 1860 Alabama had raised its average to 46 percent. Additionally, in an attempt to rectify the problem of poor quality teachers, the Mobile board had the power to test and certify all teachers.

The first constitution after the Civil War created a state system run by administrators, many of whom were appointed. The constitution, like many other ones passed during Reconstruction, was unpopular. In 1875, Alabama adopted another Constitution, which made education a responsibility of the state, but also returned control to local townships and county administrations.

Alabama’s educational history was informed by its rural nature as well as its history as a territory. The land grants from the beginning made education a prominent and important function for government. The lack of compulsory laws or an organized system, as well as a dispersed population, left Alabama’s general educational system somewhat wanting, especially when compared to other territories-turned-states. It did not seem to have as active of a literary fund as other states and left many decisions to local communities. Compared to other systems, Alabama’s system as a whole does not appear to be as well-formed as neighboring states, although Mobile’s schools certainly tried to model themselves on New England and other successful models. Nonetheless, Alabama did have a state university practically from its inception as a state and schooling always seemed a concern for towns and communities.

## BIBLIOGRAPHY

Edgar W. Knight, *Public Education in the South* (1922).

Willis Clark, *History of Education in Alabama, 1702-1889* (Washington, 1889).

Robert Sherer, *Subordination or Liberation? Black Education in Nineteenth Century Alabama* (University, 1977).

David Mathews, *Why Public Schools? Whose Public Schools? What Early Communities Have to Tell Us* (Montgomery, 2003).

## PENNSYLVANIA

---

### PENNSYLVANIA TIMELINE

- 1682: William Penn sets forth the first concept of a public school system in Pennsylvania with his Charter of Liberties.
- 1683: At least one primary school established in Philadelphia.
- 1685: Thomas Budd lays out a detailed vision of how schools should function in the colony.
- 1689: Friends Public School in Philadelphia established.
- 1740: Trust formed to establish the Charity School of Philadelphia.
- 1749: Benjamin Franklin proposes a program of study based in liberal arts.
- 1751: The Charity School and University of Pennsylvania both open, under the control of Benjamin Franklin and the first Trustees.
- 1776: Pennsylvania constitution directs legislature to establish schools.
- 1790: New constitution explicitly requires a free education to poor children.
- 1838: Money from the Federal Surplus of 1838 placed into the common school fund.
- 1838, 1874 and 1968: Pennsylvania adopts new constitutions, each of which require the legislature to establish free public schools.

### PENNSYLVANIA SUMMARY

In 1682, William Penn set forth the first concept of a public school system in Pennsylvania. Penn's Charter of Liberties directed that "[t]he Governour and Provincial Council shall Erect and order all publick Schools and encourage and Reward the Authors of usefull Science and Laudable Inventons in the said province." This requirement was incorporated into William Penn's Frame of Government of Pennsylvania, enacted on February 2, 1683. Under the Frame of Government, Penn entrusted education in the same body as the courts and treasury:

That one-third part of the provincial Council, residing with the Governor, from time to time, shall with the Governor have the care of the management of public affairs, relating to the peace, justice, treasury and improvement of the province and territories, and to the good education of youth, and sobriety of the manners of the inhabitants therein, as aforesaid.

In accordance with the direction of the new colony and its religious and culturally heterogeneous population, the educational movement had less of a singular focus on religion than did Massachusetts, even in its early years. The rhetoric of Penn and others stressed religious and economic benefits, individual gains as well as communitarian. Penn's notion of government depended on the morality and virtue of the participating citizenry. Nonetheless, the youth needed to obtain basic religious knowledge. Under further laws enacted by the general assembly, all parents, including "all guardians and trustees of orphans, shall cause them to be instructed in reading and writing, so that they may be able to read the Scriptures and to write by the time they attain to twelve years of age."

By 1683, there was at least one primary school established in Philadelphia, where the costs ranged from four shilling per quarter to learn how to read, to ten pounds to board a scholar for an entire year. As an historian noted two centuries later, the pricing showed "that although learning might be highly prized, its cost in hard cash was not exorbitant."

Pennsylvania's history demonstrates a continued push for universal education and a concern that education be provided to all members of the community. The discussions of the local schools all mentioned the need for education of both "the poor as well as the rich." The Assembly stressed that all should "be instructed in good and commendable learning, which is to be preferred to wealth." As the Assembly bluntly explained, the county must provide sufficient schooling such that "all persons in this Province and the Territories thereof, having children ... may be taught some trade or skill, that the poor may work to

live, and the rich, if they become poor, may not want.”

In 1689, the Friends Public School in Philadelphia became the first “public school” incorporated in Pennsylvania. The documents of incorporation stress the importance of education in assuring the success of the fledging colony. As the preamble to the school’s 1711 charter stated:

the prosperity and welfare of any people depend, in great measure, upon the good education of youth, and their early introduction in the principles of true religion and virtue, and qualifying them to serve their country and themselves, by breeding them in reading, writing, and learning of languages and useful arts and sciences suitable to their sex, age, and degree, which cannot be effected in any manner so well as by erecting public schools.

In the mid-1700’s, Benjamin Franklin proposed the creation of an academy in Philadelphia, which later became the University of Pennsylvania. In Franklin’s words:

The good Education of Youth has been esteemed by wise Men in all Ages, as the surest Foundation of the Happiness both of private Families and of Commonwealths. Almost all Governments have therefore made it a principal Object of their Attention, to establish and endow with proper Revenues, such Seminaries of Learning, as might supply the succeeding Age with Men qualified to serve the Publick with Honour to themselves, and to their Country.

In face of the changing demographics of the colony, Franklin considered it increasingly important to have positions filled by the native born, as opposed to the “vast Numbers of Foreigners [that] are yearly imported among us, totally ignorant of our Laws, Customs, and Language.” A local academy would strengthen the nascent political system, as “a Number of our Natives will hereby be qualified to bear Magistracies, and execute other public Offices of Trust, with Reputation to themselves and Country.” Schooling would also increase economic efficiency by providing necessary skills to support the community. Franklin recognized education as a public responsibility and called for the force of the community behind the native educated population, that they “zealously unite, and make all the Interest that can be made to establish them, whether in Business, Offices, Marriages, or any other Thing for their Advantage preferably to all other Persons whatsoever even of equal Merit.” Similarly, he believed that the corporation involved in the colony had both an obligation and a personal incentive “to be invested in the school, nurture the students as their children, and use their position to advance the public schools and the graduated students as best as possible.” Franklin emphasized that the bulk of the financial support was to be provided by “by the Trustees themselves, ... many of whom have no Children of their own to educate, but act from a View to the Public Good, without Regard to Sect or Party.”

Pennsylvania’s first constitution, in 1776, required the legislature to establish schools. Each of its four subsequent constitutions — 1790, 1838, 1874 and 1968 — has contained the same direction.

#### BIBLIOGRAPHY

- 1 Children and Youth in America: A Documentary History (Robert H. Bremner ed., 1970).  
William Penn, A Further Account of the Province of Pennsylvania (1685).  
History of Franklin County Pennsylvania (Chicago, John Morris Co. 1887).

# APPENDIX I— THE EDUCATION CLAUSES IN STATE CONSTITUTIONS

## ALABAMA

---

### CONSTITUTION OF 1819:

Article IV, Education. Schools and the means of education shall forever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this State, and apply the funds, which may be raised from such lands; in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this State, for the support of a Seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose, aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature, and the sciences: and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

### CONSTITUTION OF 1861:

Article IV, Education. Schools, and the means of education, shall forever be encouraged in this State; and the General Assembly shall take measures to preserve, from unnecessary waste or damage, such lands as have been granted by the United States for the use of schools, within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The General Assembly shall take like measures for the improvement of such lands as have been granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature and the sciences; and it shall be the duty of the General Assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

### CONSTITUTION OF 1865:

Article I, Section 33. The General Assembly shall, from time to time, enact necessary and proper laws for the encouragement of schools and the means of education; shall take proper measures to preserve from waste or damage such lands as have been or may be granted by the United States for the use of schools in each township in this State, and apply the funds which may be raised from such lands in strict conformity with the object of such grant; shall take like measures for the improvement of such lands as have been or may hereafter be granted by the United States to this State for the support of a seminary of learning; and the money which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and forever remain a fund for the exclusive support of a State university for the promotion of the arts, literature, and the sciences; and it shall be the duty of the General Assembly to provide by law effectual means for the improvement and permanent security of the funds of such institution.

#### CONSTITUTION OF 1868:

Article IX, Section 6. It shall be the duty of the Board to establish, throughout the State, in each township, or other school district which it may create, one or more schools at which all the children of the State, between the ages of five and twenty-one years, may attend free of charge.

Article IX, Section 10. The proceeds of all lands that have been or may be granted by the United States to the State for educational purposes; of the swamp lands; and of all lands or other property given by individuals or appropriated by the state for like purposes; and of all estates of deceased persons who have died without leaving a will or heir; and all moneys which may be paid as an equivalent for exemption from military duty, shall be and remain a perpetual fund, which may be increased but not diminished, and the interest and income of which, together with the rents of all such lands as may remain unsold, and such other means, as the General Assembly may provide, shall be inviolably appropriated to educational purposes, and to no other purpose whatever.

#### CONSTITUTION OF 1875:

Article XIII, Section 1. The general assembly shall establish, organize, and maintain a system of public schools throughout the state, for the equal benefit of the children thereof between the ages of seven and twenty-one years; but separate schools shall be provided for the children of citizens of African descent.

Article XIII, Section 2. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or intrusted to this state, or given by the United States, for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

Article XIII, Section 5. The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections three and four of this article, with such other moneys, to be not less than one hundred thousand dollars per annum, as the general assembly shall provide by taxation or otherwise, shall be applied to the support and maintenance of the public schools; and it shall be the duty of the general assembly to increase, from time to time, the public school fund, as the condition of the treasury and the resources of the state will admit.

#### CONSTITUTION OF 1901:

Article XIV, Section 256. Duty of legislature to establish and maintain public school system; apportionment of public school fund; separate schools for white and colored children. The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

Article XIV, Section 257. Principal from sale, etc., of school property to be preserved; disposition of income therefrom. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted

to this state or given by the United States for educational purposes shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations.

Article XIV, Section 260. Certain income to be applied to support and maintenance of public schools; special annual tax for schools; maximum annual levy on taxable property; priority for payment of bonded indebtedness of state. The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this state, which the legislature shall levy, shall be applied to the support and maintenance of the public schools, and it shall be the duty of the legislature to increase the public school fund from time to time as the necessity therefor and the condition of the treasury and the resources of the state may justify; provided, that nothing herein contained shall be so construed as to authorize the legislature to levy in any one year a greater rate of state taxation for all purposes, including schools, than sixty-five cents on each one hundred dollars' worth of taxable property; and provided further, that nothing herein contained shall prevent the legislature from first providing for the payment of the bonded indebtedness of the state and interest thereon out of all the revenue of the state.

AMENDMENT OF SECTIONS 256 AND 260:

Sec. 256. Educational policy of the state; authority of legislature to provide for or authorize establishment and operation of schools by persons, municipalities, etc.; grant, donation, sale or lease of funds and property for educational purposes; election of certain schools for attendance by parents of minors. It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order. The legislature may by law provide for or authorize the establishment and operation of schools by such persons, agencies or municipalities, at such places, and upon such conditions as it may prescribe, and for the grant or loan of public funds and the lease, sale or donation of real or personal property to or for the benefit of citizens of the state for educational purposes under such circumstances and upon such conditions as it shall prescribe. Real property owned by the state or any municipality shall not be donated for educational purposes except to nonprofit charitable or eleemosynary corporations or associations organized under the laws of the state. To avoid confusion and disorder and to promote effective and economical planning for education, the legislature may authorize the parents or guardians of minors, who desire that such minors shall attend schools provided for their own race, to make election to that end, such election to be effective for such period and to such extent as the legislature may provide.

Sec. 260. Certain income to be applied to support and furtherance of education; special annual tax for education; maximum annual levy on taxable property; priority for payment of bonded indebtedness of state; proceeds of certain taxes to be used for support and furtherance of education. The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this state, which the legislature shall levy, shall be applied to the support and furtherance of education, and it shall be the duty of the legislature to increase the educational fund from time to time as the necessity therefor and the condition of the treasury and the resources of the state may justify; provided, that

nothing herein contained shall be so construed as to authorize the legislature to levy in any one year a greater rate of state taxation for all purposes, including schools, than sixty-five cents on each one hundred dollars' worth of taxable property; and provided further, that nothing herein contained shall prevent the legislature from first providing for the payment of the bonded indebtedness of the state and interest thereon out of all the revenue of the state.

Except as they may be specifically set aside in trust funds or otherwise applied to the payment of indebtedness, all proceeds of income or other taxes levied by the state, and of all special ad valorem or other taxes levied by counties and other municipalities, or school districts, pursuant to the Constitution as heretofore amended, for public school purposes, shall be applied to the support and furtherance of education pursuant to section 256 of the Constitution, as amended.

---

## ALASKA

---

### CONSTITUTION OF 1956 (EFFECTIVE 1959):

Section 7.1. Public Education. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

---

## ARIZONA

---

### CONSTITUTION OF 1912:

Article 11, Section 1A. Public school system. The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include: 1. Kindergarten schools. 2. Common schools. 3. High schools. 4. Normal schools. 5. Industrial schools. 6. Universities, which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character.

Article 11, Section 6. Admission of students of both sexes to state educational institutions; tuition; common school system. The university and all other state educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible. The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

Article 11, Section 8. Permanent state school fund; source; apportionment of state funds. A permanent state school fund for the use of the common schools shall be derived from the sale of public school lands or other public lands specified in the enabling act approved June 20, 1910; from all estates or distributive shares of estates that may escheat to the state; from all unclaimed shares and dividends of any corporation incorporated under the laws of Arizona; and from all gifts, devises, or bequests made to the state for general educational purposes.

---

## PENNSYLVANIA

---

### CONSTITUTION OF 1776:

Section 44. That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged, and promoted, in one or more universities.

### CONSTITUTION OF 1790:

Article VII. Section 1. The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the State, in such manner that the poor may be taught gratis.

Article VII, Section 2. The arts and sciences shall be promoted in one or more seminaries of learning.

### CONSTITUTION OF 1838:

Article VII, Section I. Public schools. The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis.

### CONSTITUTION OF 1874:

Article X, Education. Section 1. Public schools to be maintained. Amount appropriated. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose.

Article X, Section 2. No appropriation to sectarian schools. No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

### CONSTITUTION OF 1968:

Article III. Legislation; B. Education; Section 14. Public School System. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

---

## RHODE ISLAND

---

### CONSTITUTION OF 1843:

Article XII Section 1. Duty of general assembly to promote schools and libraries. The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

# Endnotes

- <sup>1</sup> 411 U.S. 1 (1973).
- <sup>2</sup> United States Congress, Land Ordinance of 1785 (May 20, 1785).
- <sup>3</sup> George Leroy Jackson, *The Development of School Support in Colonial Massachusetts* 16 (1909); George H. Martin, *The Evolution of the Massachusetts Public School System: A Historical Sketch* 8-9, 11-12 (New York, Appleton 1894) [hereinafter Martin, *Massachusetts Public School System*].
- <sup>4</sup> N.D. Const. art. VIII, § 1: Public education.
- <sup>5</sup> Mass. Const. Chap. V, Sec. II.
- <sup>6</sup> Webster's New Collegiate Dictionary (1977).
- <sup>7</sup> John C. Eastman, *When Did Education Become A Civil Right? An Assessment of State Constitutional Provisions for Education 1776-1900*, 42 AM. J. LEGAL HIST. 1, 2 (1998).
- <sup>8</sup> *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 572 (Mass. 1993) details changing statutes regard taxes and other fines imposed to support schools.
- <sup>9</sup> Hon. Robert J. Walker, *American Finances And Resources: Letter No. V* (William Ridgeway, London 1864). Walker emphasized, "knowledge is power," for "the power and wealth and progress of nations increase in proportion to the education and enlightenment of the masses."
- <sup>10</sup> *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375 (N.H. 1993); The same court in 1902 held to the same effect: "the injunction 'to cherish the interest of literature'" intended as more than a mere sentimental interest." *State v. Jackson*, 71 N.H. 552, 553, 53 A. 1021, 1022 (1902).
- <sup>11</sup> See *Opinion of Justices No. 338*, 624 So. 2d 107 (Ala. 1993); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977); *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 547 (Mass. 1993) ("We have reviewed at great length the history of public education in Massachusetts so that we might glean an understanding of the meaning of [the constitutional provision]."); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993) (en banc); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997); *Robinson v. Cahill*, 351 A.2d 713 (N.J. 1975); *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tx. 1989); *Brigham v. State*, 692 A.2d 384 (Vt. 1997); *Seattle Sch. Dist. v. State*, 585 P.2d 71 (Wash. 1978) (en banc); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989); see also *Montoy v. State*, 120 P.3d 306, 312 (Kan. 2005) (Beier, J., concurring) (detailing states and providing relevant quotations).
- <sup>12</sup> *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tx. 1989).
- <sup>13</sup> *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 547 (Mass. 1993).
- <sup>14</sup> *Robinson v. Cahill*, 303 A.2d 273, 290 (N.J. 1975).
- <sup>15</sup> *Montoy v. State*, 120 P.3d 306, 315-16 (Kan. 2005) (Beier, J., concurring).
- <sup>16</sup> *Brigham v. State*, 692 A.2d 384, 395 (Vt. 1997).
- <sup>17</sup> *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997).
- <sup>18</sup> *Skeen v. State*, 505 N.W.2d 299, 310 (Minn. 1993) (en banc) (*citing* *Bd. of Educ. v. Moore*, 17 Minn. 412, 416 (1871)).
- <sup>19</sup> *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 206 (Ky. 1989); *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 536-37 (Mass. 1993); *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1380-81 (N.H. 1993); *Brigham v. State*, 692 A.2d 384, 392-93 (Vt. 1997).
- <sup>20</sup> *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1975).
- <sup>21</sup> *Thompson v. Engelking*, 537 P.2d 635, 647 (Idaho 1975).
- <sup>22</sup> *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758, 770 (Md. 1983).
- <sup>23</sup> *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1024-25 (Colo. 1982) (en banc). In Missouri, a concurring opinion in the Supreme Court relied upon a lack of history to uphold the constitutionality of the state's public school finance system.

Comm. for Educ. Equality v. State, 967 S.W.2d 62, 66 (Mo. 1998) (en banc). The plaintiffs had argued that Missouri's public school finance system is unconstitutional because it does not allocate twenty-five percent of "state revenue" for the support of public schools as required by the state constitution. Agreeing with the majority that the revenues provided by the federal government were not "state revenue", the concurring justice observed: "If one is interested in original meaning, one need only recall that in 1875 no one imagined that the government of the federal republic would extend its tentacles so deeply into the affairs of the states. Nor could those drafting the state constitution in the 1870's dream that those tentacles would offer the states so much money or control it with so much regulatory ink. We can conclude that the drafters of the 1945 constitution had no different view of things when they copied the 1875 provisions into the constitution and, on this basis alone, decide that 'state revenue' does not include federal funds."

- <sup>24</sup> Neb. Coal. for Educ. Equity & Adequacy v. Heineman, 731 N.W.2d 164, 180 (Neb. 2007).
- <sup>25</sup> Coal. for Adequacy & Fairness in Sch. Funding v. Chiles, 680 So. 2d 400, 405, 408 (Fla. 1996) (analyzing "the plain meaning of the term 'adequacy' by reviewing the historical evolution of Florida's education article," but unable to develop "an appropriate standard for determining 'adequacy' that would not present a substantial risk of judicial intrusion" into the legislative sphere."); Bd. of Educ. v. Nyquist, 439 N.E.2d 359, 368 (N.Y. 1982) ("Nothing in the contemporaneous documentary evidence compels the conclusion that what was intended was a system assuring [educational equality]."); Olsen v. State, 554 P.2d 139, 149 (Or. 1976) (finding no constitutional or legislative history indicating constitution provision requires funding equity); City of Pawtucket v. Sundlun, 662 A.2d 40, 48-49 (R.I. 1995) ("[G]iven the context of the times in which it was adopted, [the constitutional provision] does not appear to have imposed on the General Assembly any new, measurable, or judicially enforceable duties to support education beyond those then extant.")
- <sup>26</sup> City of Pawtucket v. Sundlun, 662 A.2d 40, 48-49 (R.I. 1995). The courts used substantially similar reasoning in Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793, 803 (Alaska 1975) (holding circumstances surrounding constitutional ratification show constitution "does not require uniformity in the school system."); McDaniel v. Thomas, 285 S.E.2d 156, 163 (Ga. 1981) ("[H]istory reveals as to the circumstances existing when the education provision of the 1945 Constitution was formulated ... [that] significant inequalities between local school districts persisted."); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 776 (Md. 1983) ("It is manifest from the history underlying the adoption of [the educational article], and from the consistent interpretation and application of its provisions ... for more than one hundred years, that the [constitutional provision] does not mandate uniformity in per pupil funding and expenditures."); Bd. of Educ. v. Walter, 390 N.E.2d 813, 821 (Ohio 1979) ("[L]ocal control provides a rational basis supporting the disparity in per pupil expenditures... This conclusion is valid from an historical point of view."); Danson v. Casey, 399 A.2d 360, 367 (Pa. 1979) ("In originally adopting the 'thorough and efficient' amendment to the Pennsylvania Constitution of 1873, the framers considered and rejected the possibility of specifically requiring the Commonwealth's system of education be uniform.").
- <sup>27</sup> Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 776 (Md. 1983).
- <sup>28</sup> Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 792, 797 (Md. 1983) (Cole, J., dissenting).
- <sup>29</sup> Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977); McDuffy v. Sec'y of Executive Office of Educ., 615 N.E.2d 516, 529 (Mass. 1993); Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1379 (N.H. 1993); *see also* Montoy v. State, 120 P.3d 306, 315-16 (Kan. 2005) (Beier, J., concurring) (writing separately to hold that education is a fundamental right); Robinson v. Cahill, 303 A.2d 273, 290 (N.J. 1975).
- <sup>30</sup> McDuffy v. Sec'y of Executive Office of Educ., 615 N.E.2d 516, 548 (Mass. 1993).
- <sup>31</sup> Examples of this type of analysis are in Leandro v. State, 488 S.E.2d 249, 264 (N.C. 1997) (Orr, J., dissenting in part, concurring in part); Rose v. Council for Better Educ., 790 S.W.2d 186, 205-06 (Ky. 1989); Skeen v. State, 505 N.W.2d 299, 309 (Minn. 1993) (en banc); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tx. 1989); Seattle Sch. Dist. v. State, 585 P.2d 71, 85 (Wash. 1978) (en banc); Pauley v. Kelly, 255 S.E.2d 859, 866 (W. Va. 1979); Kukor v. Grover, 436 N.W.2d 568, 576 (Wis. 1989). In California, the court did not consider a specific state history but "beg[an] by examining the indispensable role which education plays in the modern industrial state" before holding that the "distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'" Serrano v. Priest, 487 P.2d at 1255, 1258 (Cal. 1971).
- <sup>32</sup> Pauley v. Kelly, 255 S.E.2d 859, 866 (W. Va. 1979); *see also* Opinion of Justices No. 338, 624 So. 2d 107, 146-48 (Ala. 1993); Skeen v. State, 505 N.W.2d 299, 303 (Minn. 1993) (en banc); Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1377-79 (N.H. 1993); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tx. 1989).
- <sup>33</sup> *See, e.g.*, Leandro v. State, 488 S.E.2d 249, 264 (N.C. 1997) (Orr, J., dissenting in part, concurring in part); Skeen v. State, 505 N.W.2d 299, 309, 310 (Minn. 1993) (en banc); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395

- (Tx. 1989); Brigham v. State, 692 A.2d 384, 394 (Vt. 1997).
- <sup>34</sup> Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tx. 1989); *see also* Opinion of Justices No. 338, 624 So. 2d 107, 145 & n.37 (Ala. 1993) (examining “the prevailing view at the turn of the century”); McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 534-35 (Mass. 1993).
- <sup>35</sup> Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1379 (N.H. 1993); *see also* Kukor v. Grover, 436 N.W.2d 568, 576 (Wis. 1989); Brigham v. State, 692 A.2d 384, 393 (Vt. 1997).
- <sup>36</sup> *See, e.g.*, Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977); McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 538-41 (Mass. 1993); Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1380 (N.H. 1993); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 396-97 (Tx. 1989); Brigham v. State, 692 A.2d 384, 394 (Vt. 1997).
- <sup>37</sup> *See, e.g.*, Opinion of Justices No. 338, 624 So. 2d 107, 149, 152-53, 158 (Ala. 1993); Robinson v. Cahill, 303 A.2d 273, 290, 292-93 (N.J. 1975); *see also* Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 796 (Md. 1983) (Cole, J., dissenting).
- <sup>38</sup> *See, e.g.*, Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977); McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 529-30, 537-38 (Mass. 1993); Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1379 (N.H. 1993).
- <sup>39</sup> McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 529-32 (Mass. 1993) (detailing changing statutes regard taxes and other fines imposed to support schools); *see also* Montoy v. State, 102 P.3d 306, 316 (Kan. 2005) (Beier, J., concurring); Robinson v. Cahill, 303 A.2d 273, 288, 290-91 (N.J. 1975).
- <sup>40</sup> *See, e.g.*, McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 529-32 (Mass. 1993); Robinson v. Cahill, 303 A.2d 273, 288 (N.J. 1975); Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1379 (N.H. 1993); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 396 (Tx. 1989).
- <sup>41</sup> *See, e.g.*, Opinion of Justices No. 338, 624 So. 2d 107, 157-58 & n.53 (Ala. 1993).
- <sup>42</sup> *See, e.g.*, Opinion of Justices No. 338, 624 So. 2d 107, 158, 161 (Ala. 1993); Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977).
- <sup>43</sup> *See, e.g.*, McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 544 (Mass. 1993); Robinson v. Cahill, 303 A.2d 273, 290 (N.J. 1975).
- <sup>44</sup> Thomas B. Miller, The New Federalism in West Virginia, 90 W. VA. L. REV. 51, 53 (1987-88).
- <sup>45</sup> “Forasmuch as the good education of children is of singular behoof and benefit to any commonwealth, and whereas many parents and masters are too indulgent and negligent of their duty in that kind: It is therefore ordered ... that the selectmen of every town ... shall have a vigilant eye over their brethren and neighbors, to see first: that none of them shall suffer so much barbarism in any of their families, as not to endeavor to teach, by themselves or others, their children and apprentices, so much learning, as may enable them perfectly to read the English tongue, and knowledge of the capital laws, ... also that all masters of families do once a week at least, catechise their children and servants in the grounds and principles of religion.” Orwin Bradford Griffin, The Evolution of the Connecticut State School System, with Special Reference to the Emergence of The High School, 3 (1928).
- <sup>46</sup> Claremont School Dist. V. Governor, 635 A.2d 1375, 1378-79 (N.H. 1993).
- <sup>47</sup> The Massachusetts opinion relied upon was McDuffy v. Secretary of the Executive Office of Education, 615 N.E.2d 516 (1993).
- <sup>48</sup> Joseph P. Viteritti, Inadequacy of Adequacy Guarantees: A Historical Perspective, 11-12 (2005), <http://finance.tc-library.org/ContentTypes.asp?cgi=2&page1=6>.
- <sup>49</sup> *See* Husbands v. Talley, 19 Del. 88, 90 (1901) (discussing Delaware’s relationship with Pennsylvania). After having been owned or controlled by the Dutch, Swedes or English through most of the 17<sup>th</sup> Century, the inhabitants of the land that is now Delaware accepted the Penn charter of 1701 after provisions were added giving the Three Lower Counties the right to a separate assembly, which first met in 1704. Delaware maintained quasi-autonomy until the American Revolution.
- <sup>50</sup> John Huden, Development of State School Administration in Vermont (Burlington, 1944).
- <sup>51</sup> Professor C. A. Phillips in Phillips, A History of Education in Missouri (1911).
- <sup>52</sup> Wisconsin’s 1841 legislation adopted “Practices hallowed by long usage in New England and New York. And the similarity extended further than that. Almost the entire Wisconsin school law of 1841 was taken, much of it verbatim, from the New

York law then in effect. With a few significant changes this measure remained the basic Wisconsin school law throughout the territorial period.” Lloyd P. Jorgensen, *The Founding of Public Education in Wisconsin* 24 (1956).

- <sup>53</sup> Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed Constitution of Kansas at Wyandotte in July, 1859. (Kansas State Printing Plant, Topeka, Ks. 1920). See also Montoy v. State, No. 99-c-1738 (Kan. D.C. Sept. 8, 2003) (mem. decision & order), *available at* <http://www.shawneecourt.org/decisions/99c1738.htm>.
- <sup>54</sup> Pauley v. Kelly, 255 S.E.2d 859, 866-67 (W. Va. 1979). Similarly, the Maryland Supreme Court examined decisions in other states (Pennsylvania, Ohio and Colorado) with “thorough and efficient” or similar education clauses. Hornbeck v. Somerset Bd. of Edu., 458 A.2d 758, 777-780 (Md. 1983). Other courts that have drawn upon histories or court opinions from other states with similar language include Lake View Sch. Dist. No. 25 v. Philips County v. Huckabee, 91 S.W.3d 472 (Ark. 2002)(court adopted the definition of “efficient” used by the Kentucky Supreme Court in Rose v. Council for Better Education, Inc., 790 S.W.2d 186, 212 (Ky. 1989)); Rose v. Council for Better Education, Inc., 790 S.W.2d 186, 210 & n. 20 (Ky. 1989) (in considering the definition of “efficient,” court looks to several sources, including the West Virginia Supreme Court’s decision in Pauley v. Kelly, 255 S.E. 2d 859 (1979) and other “helpful” cases from Arkansas, Connecticut, New Jersey and Wyoming); Skeen v. State, 505 N.W.2d 299, 310-11 (Minn. 1993) (in defining “thorough and efficient” the court cites the West Virginia Supreme opinion in Pauley v. Kelly which “focus[es] on the broad purposes of an education system and emphasize[s] that such a standardized system be established throughout the state”); DeRolph v. State, 677 N.E.2d 733, 741 (Ohio 1997) (“[o]ther states, in declaring their state funding systems unconstitutional, have also addressed the issue of what constitutes a ‘thorough and efficient’ or a ‘general or uniform’ system of public schools” and citing cases from Arizona, Arkansas, California, Connecticut, Kentucky, Massachusetts, Montana, New Jersey, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming).
- <sup>55</sup> Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806, 820-21 (Ariz. 1994) (Feldman, J., specially concurring). The Washington cases referred to were Northshore School District No. 17 v. Kinnear, 530 P.2d 178 (Wash. 1975) and Seattle Sch. Dist. No. 1 v. Washington, 585 P.2d 71 (Wash. 1978). Other courts that looked to other states to find meaning in these terms were: Lujan v. Colo. State Bd. Of Educ., 649 P.2d 1005,1027-28 (Colo. 1982)( concurring justice relied on the Washington Supreme Court’s definition of a “general and uniform” education system); Skeen v. State, 505 N.W.2d 299, 310, 311 (Minn. 1993)(in interpreting “uniform,” the court cites cases from Oregon, Wisconsin, and West Virginia); Bismarck Public Sch. Dist. #1 v. State, 511 N.W.2d 247, 267-68 (N.D. 1994) (dissenting justice cites other state courts —Minnesota, Arizona, Idaho, Oregon, Colorado, Wisconsin, North Carolina, Florida — to support conclusion that a “uniform” system does not require equal funding); Vincent v. Voight, 614 N.W.2d 388, 410-11 (Wis. 2000).
- <sup>56</sup> In Rhode Island, the trial judge concluded that the use of the word “promote” in Rhode Island’s constitution “was similar to ‘the Jeffersonian use of the language that schools should be provided and that they be available on an equitable basis and that those schools, when established have a meaningful purpose.’” The Rhode Island Supreme Court rejected the trial justice’s reasoning, relying instead on the plain language and history of the Rhode Island constitution to find that “promote” did not mean “found” or “establish.” City of Pawtucket v. Sundlun, 662 A.2d 40, 55-56 (R.I. 1995).
- <sup>57</sup> Montana Constitution, Article X Section 1.1 (1972).
- <sup>58</sup> Increase Mather, *A Call from Heaven to the Present and Succeeding Generations* 42 (John Foster, Boston 1685).
- <sup>59</sup> Thomas Weld & Hugh Peter, *New England’s First Fruits* X (Overton, London 1643)[hereinafter Weld & Peter].
- <sup>60</sup> *The New England Primer* 65-72 (Paul L. Ford ed., 1897).
- <sup>61</sup> Weld & Peter, *supra* note 59.
- <sup>62</sup> Jonathan Mitchell, *A Model for the Maintaining of Students and Fellows of Choice Abilities at the College in Cambridge* (1663) *in* CSM Publications XXXI, at 311 (1935).
- <sup>63</sup> George H. Martin, Early School Legislation of Massachusetts, NEW ENGLAND MAGAZINE, Volume 14, Issue 4, 538 (June 1893) [hereinafter Martin, Early School Legislation].
- <sup>64</sup> Carter Godwin Woodson, *The Education of the Negro Prior to 1861: A History of the Education of the Colored People of the United States from the Beginning of Slavery to the Civil War* (1919), *available at* [http://www.gutenberg.org/catalog/world/readfile?fk\\_files=47917](http://www.gutenberg.org/catalog/world/readfile?fk_files=47917).
- <sup>65</sup> *Virginia Statutes at Large* 396 (1656).
- <sup>66</sup> Katherine F.C. MacNaughton, *The Development of the Theory and Practice of Education in New Brunswick, 1784-1900:*

- A Study in Historical Background 6 (1947), *available at* <http://www.lib.unb.ca/Texts/NBHistory/Education/>.
- 67 Benjamin Rush, *Of the Mode of Education Proper in a Republic* X (1798) at 19.
- 68 Marcus W. Jernegan, *The Beginnings of Public Education in New England* (pt. 1), 23 SCH. REV. 319, 325 (1915).
- 69 James W. Taylor, *A Manual of the Ohio School System: Consisting of an Historical View of its Progress, and a Republication of the School Laws in Force* 32 (H.W. Derby & Co., Cincinnati 1857) (emphasis omitted).
- 70 House Rep. No. 805, 93rd Cong., 2nd Sess., *reprinted in* U.S. Code Cong. & Admin. News 4093, 4151 (1974) (House Rep. 93-805).
- 71 At a mass meeting in Boston, they agreed “our brother Philemon Purmont shall be intreated to become scholemaster for the teaching and nourtering of children with us.” *Tenth Annual Report of the Massachusetts Board of Education* 7 (1849).
- 72 S. Alexander Rippa, *Education in a Free Society: An American History* 40 (1967).
- 73 John Adams, “A Dissertation on the Canon and Feudal law” (1765).
- 74 Martin, *Early School Legislation*, *supra* note 63 at 530; *see also, e.g.*, BERNARD BAILYN ET AL., *GLIMPSES OF THE HARVARD PAST* 11-12 (1986) (“No English college had been created by a legislature, and none was sustained by the community as Harvard was.”).
- 75 S.E. Morison, *The Founding of Harvard College 169-170* (1935).
- 76 Martin, *Early School Legislation*, *supra* note 63.
- 77 *McDuffy v. Sec’y of Executive Office of Educ.*, 615 N.E.2d 516, 532 n. 32 (Mass. 1993).
- 78 Bernard Bailyn et al., *Glimpses of the Harvard Past* 11-12 (1986).
- 79 *See* Jernegan, *Public Education* (pt. 1), *supra* note 68, at 325 (“[A]lmost without exception it is stated or implied in the early educational acts of New England that the principal reason for their passage was the desire to promote religion.”)
- 80 The Articles of Confederation of the United Colonies of New England pmbl. (May 19, 1643).
- 81 *The Charter of Massachusetts Bay* (March 4, 1629) (modernized). As Samuel Willard, vice-president of Harvard College, explained to later generations, “[t]he main errand which brought your fathers into this Wilderness was not only that they might themselves enjoy, but that they might settle for their children, and leave them in full possession of the free, pure, and uncorrupted liberties of the Covenant of Grace.” SAMUEL WILLARD, *COVENANT-KEEPING THE WAY TO BLESSEDNESS* 117-118 (1682).
- 82 Martin, *Early School Legislation*, *supra* note 63, at 530.
- 83 In his 1524 address to the councilmen of Germany, Luther stressed that it “is the best and the richest increase, prosperity and strength of a city, that it shall contain a great number of polished, learned, intelligent, honorable and well-bred citizens; who, when they have become all this, may then get wealth and put it to good use.” Martin Luther, *To the Mayors and Councilmen of All the Towns of Germany* (1524).
- 84 The ability to read the bible allowed a “personal relationship with and understanding of God.” Molly O’Brien & Amanda Woodrum, *The Constitutional Common School*, 51 CLEV. ST. L. REV. 581, 589 (2004). Under Luther’s concept of two kingdoms, “the heavenly kingdom require[d] the individual to be educated to allow for spiritual flourishing and responsible decision-making; the earthly kingdom requires education to deal effectively with earthly affairs.” *Id.* at 589 n.41.
- 85 Martin, *Early School Legislation*, *supra* note 63, at 531. Luther also commended a state-mandated education system: I maintain that the civil authorities are under obligation to compel the people to send their children to school... . If the government can compel such citizens as are fit for military service to bear the spear and rifle, to mount ramparts, and perform other material duties in time of war, how much more has it a right to compel the people to send their children to school, because in this case we are warring with the devil, whose object it is secretly to exhaust our cities and principalities of their strong men.  
Martin Luther, *Letter to the German Authorities* (1524); *see also* O’Brien & Woodrum, *supra* note 84, at 589.
- 86 Old Deluder Act, *Massachusetts General Court* (1647): It being one chief point of that old deluder, Satan, to keep men from the knowledge of the Scriptures, as in former times, by keeping them in an unknown tongue so in these latter times, by persuading from the use of tongues, that so at last the true sense and meaning of the original might be clouded by false glosses of saint-seeming deceivers, that learning might not be buried in the grave of our fathers in church and common-

wealth, the Lord assisting endeavors.

The Connecticut General Code also incorporated the “old deluder Satan” language in its colonial school law:

It being on chief project of that old deluder Satan, to keep men from the knowledge of scriptures, as in former times, keeping them in an unknown tongue, so in these latter times, by persuading them from the use of tongues, so that at least, the true sense and meaning of the original might be clouded with false glosses of saint seeming deceivers; and that learning may not be buried in the grave of our forefathers, in church and commonwealth, the Lord assisting our endeavors ... It is therefore ordered by this courts and authority thereof, That every township ... of fifty householders, shall then forthwith appoint one within their town, to teach all such children, as shall resort to him, to write and read, whose wages shall be paid, either by the parents or masters of such children, or by the inhabitants in general, by way of supply, as the major part of those who order the prudentials of the town, shall appoint; provided, that those who send their children be not oppressed by paying more than they can have them taught for, in other towns... [I]f any of the selectmen, after admonition by them given to such masters of families shall find them still negligent of their duty, ... shall take such children or apprentices from them, and place them with some masters.

- <sup>87</sup> Jernegan, Public Education (pt. 1), *supra* note 68, at 330. Jernegan further notes: A failure to found a college within a generation or two would thus have been a great calamity from the Puritan standpoint. Not only would educated leaders soon be lacking, but a great stimulus toward the founding of public elementary and secondary schools would have been wanting. ... [T]he Massachusetts act of 1647 was greatly influenced by the desire to provide a school system which would supply the college with students who could be fitted to carry on the work of the group of clergymen educated in England. *Id.* at 331.
- <sup>88</sup> The General Laws and Liberties of the Massachusetts Colony 26 (1672) *in* The Colonial Laws of Massachusetts (1890).
- <sup>89</sup> *Id.* : And if any of the Select men after admonition by them given to such masters of families shal finde them still negligent of their dutie ... the said Select men ... shall take such children or apprentices from them & place them with some masters for years (boyes till they come to twenty one, and girls eighteen years of age compleat) which will more strictly look unto, and force them to submit unto government according to the rules of this order, if by fair means and former instructions they will not be drawn into it. Massachusetts Bay School Law (1642).
- <sup>90</sup> General Laws and Liberties, *supra* note 88, at 136.
- <sup>91</sup> Jackson, *supra* note 3, at 32-33.
- <sup>92</sup> Jared Sparks, The North American Review, University of Northern Iowa 279 (1838).
- <sup>93</sup> Martin, Early School Legislation, *supra* note 63, at 14-15.
- <sup>94</sup> Jackson, *supra* note 3, at 16.
- <sup>95</sup> Regulations adopted by Dorchester, Mass. (1645), *in* Fourth Report of the Boston Record Commissioners 54-57 (Boston 1880).
- <sup>96</sup> McDuffy v. Sec’y of Executive Office of Educ., 615 N.E.2d 516, 530-31 (Mass.1993) *citing* “An Act in addition to an act for the settlement and support of schools and school-masters,” Province Laws 1701-1702, c. 10, pmbl. *reprinted in* 1 ACTS AND RESOLVES OF THE PROVINCE OF THE MASSACHUSETTS BAY 470.
- <sup>97</sup> In 1719, New Hampshire, which derived its state education laws from Massachusetts, created similar incentives for the town’s selectmen to enforce the education provisions: in any town that did not maintain the required schools, the selectman must establish a school with funds from their own estate. This practice continued until 1789. The selectmen were required to assess and collect the tax, with any amount lacking “paid out of the goods and estate of such Select men.” Douglas E. Hall, Lessons from New Hampshire: What We Can Learn from the History of the State’s Role in School Finance 1642-1998 (1998), *available at* [www.nhpolicy.org/education/history1.html](http://www.nhpolicy.org/education/history1.html).
- <sup>98</sup> Ellwood P. Cubberley, The History of Education 18 (1948). Fifty years after Massachusetts enacted its laws, Connecticut followed suit. In 1690, the Connecticut General Assembly, after “considering the necessary and great advantage of good literature, d[id] order and appoint that there shall be two good free schools kept and maintained in this colony for the schooling of all such children as shall come there after they can distinctly read the psalter, to be taught reading, writing, arithmetic, the Latin and English languages.” The county treasury paid half of the schoolmaster’s salary, with the remainder coming from “the school revenue given by particular persons or to be given for this use so far as it will extend, and the rest to be paid by the respective towns of Hartford and New Haven.” A town that lacked the required school could be fined, but the state also used the selectmen to patrol the education of individual children. Parents were not required to send their children to school, but they were obliged to provide learning in one form or another. If they did not do this

willingly, the state would create its own incentives, though fines or worse. Orwin Bradford Griffin, *The Evolution of the Connecticut State School System, with Special Reference to the Emergence of The High School 5* (1928).

- <sup>99</sup> As Penn noted proudly of his new community: The people are a collection of divers nations in Europe: as, French, Dutch, Germans, Swedes, Danes, Finns, Scotch, Irish, and English; and of the last equal to all the rest: And, which is admirable, not a reflection on that account: but as they are of one kind, and in one place and under one Allegiance, so they live like people of one country, which civil union has had a considerable influence towards the prosperity of that place. William Penn, *A Further Account of the Province of Pennsylvania* 260 (1685).
- <sup>100</sup> William Penn, *Charter of Liberties* (April 25, 1682).
- <sup>101</sup> William Penn, *Frame of Government of Pennsylvania* (1683).
- <sup>102</sup> William Penn, *Frame of Government of Pennsylvania* pmbl. (1683). These provisions were later vetoed by the British Privy Council “on the grounds that it was contrary to English educational traditions.” 1 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 632 n.2 (Robert H. Bremner ed., 1970), *available at* <http://www.h-net.org/~child/Bremner/TOC.htm>. [hereinafter Bremner]. The provision was later reenacted by the Pennsylvania legislature.
- <sup>103</sup> Pennsylvania General Assembly (1683).
- <sup>104</sup> Thomas Budd, *Good Order Established in Pennsylvania and New Jersey* 43-49 (Frederick I. Shepard ed. 1902) (1685).
- <sup>105</sup> *History of Franklin County Pennsylvania* (John Morris Co., Chicago 1887), *available at* <http://www.rootsweb.com/~usgenweb/pa/franklin/wbeerstoc.htm>.
- <sup>106</sup> *Id.*
- <sup>107</sup> The full provision reads as follows: And to the end that the poor as well as the rich may be instructed in good and commendable learning, which is to be preferred to wealth, . . . all persons in this Province and the Territories thereof, having children, and all guardians and trustees of orphans, shall cause them to be instructed in reading and writing, so that they may be able to read the Scriptures and to write by the time they attain to twelve years of age, and that they may be taught some trade or skill, that the poor may work to live, and the rich, if they become poor, may not want; of which every County Court shall take care. Pennsylvania General Assembly (1683).
- <sup>108</sup> Benjamin Franklin, *Proposals Relating to the Education of Youth in Pensilvania* (1749), *in* III *The Papers of Benjamin Franklin* 388 (Leonard W. Labaree et al. eds., 1961) [hereinafter Franklin, *Education of Youth*].
- <sup>109</sup> Anthony Benezet, *Some Serious and Awful Considerations, recommended to All, particularly the Youth* 2-3 (Philadelphia 1769).
- <sup>110</sup> Franklin, *Education of Youth*, *supra* note 108.
- <sup>111</sup> *Id.* at 399-419 (quoting from Franklin’s appeal to the Philadelphia Common Council for support of the Academy, July 31, 1750).
- <sup>112</sup> In this vein, he advised: That the Members of the Corporation make it their Pleasure, and in some Degree their Business, to visit the Academy often, encourage and countenance the Youth, countenance and assist the Masters, and by all Means in their Power advance the Usefulness and Reputation of the Design; that they look on the Students as in some Sort their Children, treat them with Familiarity and Affection . . .
- <sup>113</sup> Franklin, *Education of Youth*, *supra* note 108, at 34-37 (quoting from Franklin’s appeal to the Philadelphia Common Council for support of the Academy, on July 31, 1750).
- <sup>114</sup> *See, e.g.*, Marcus W. Jernegan, *The Educational Development of the Southern Colonies*, 27 SCH. REV. 360, 371 (1919) (Though people migrated to this section from different motives, that most predominant was economic rather than religious.) [hereinafter Jernegan, *Educational Development*].
- <sup>115</sup> Katherine F.C. MacNaughton, *The Development of the Theory and Practice of Education in New Brunswick, 1784-1900: A Study in Historical Background* 6 (1947), *available at* <http://www.lib.unb.ca/Texts/NBHistory/Education/> (“During the whole of the eighteenth century the British parliament did not pass a single law relating to education, aside from enactments concerning workhouse schools. . . . The only government regulation was to see that grammar school teachers were orthodox Anglicans and under oath of loyalty to the reigning sovereign.” (citations omitted)).

- <sup>116</sup> Lyon Gardiner Tyler, Education in Colonial Virginia. Part III: Free Schools, 6 WM. & MARY COLL. Q. HIST. MAG. 70, 74, n.1 (Oct. 1897). While in Massachusetts a printing press was permanently in operation in 1638, 18 years after the Pilgrims landed, there was no permanent press in Virginia until 1733, 123 years after the first settlers arrived. Edgar W. Knight, Public Education in the South (1922) [hereinafter Knight, Education in the South] at 39-40. After one attempt in 1682, the governor of Virginia brought orders from England “to allow no person to use a printing press on any occasion whatever.” III Cyclopædia of Political Science, Political Economy, and the Political History of the United States by the Best American and European Writers 83.14 (John J. Lalor ed., Maynard, Merrill & Co., New York 1899) (1881).
- <sup>117</sup> R.G., VIRGINIA’S CURE, OR AN ADVISIVE NARRATIVE CONCERNING VIRGINIA 5 (National Humanities Center 2006) (1662), *available at* <http://www.nhc.rtp.nc.us/pds/amerbegin/permanence/text2/VirginiaCure.pdf>.
- <sup>118</sup> Furthermore, the lack of schools “render[ed] a very numerous generation of Christians’ children born in Virginia ...unserviceable for any great employments either in Church or State.” R.G., *supra* note 117.
- <sup>119</sup> *See also* Jernegan, Educational Development, *supra* note 114, at 372 (“[A]n act like that of Massachusetts in 1647 was impossible in Virginia, because ... there were relatively few areas where a sufficient number of children lived within a reasonable distance of any place that might be chosen for the location of a school corresponding to a town school.”).
- <sup>120</sup> Dorothy Orr, A History of Education in Georgia (1950).
- <sup>121</sup> Jernegan, Educational Development, *supra* note 114, at 368, 372.
- <sup>122</sup> Tyler, Free Schools, *supra* note 116 at 70.
- <sup>123</sup> Knight, Education in the South, *supra* note 116, at 41.
- <sup>124</sup> Tyler, Free Schools, *supra* note 116, at 78-79.
- <sup>125</sup> Knight, Education in the South, *supra* note 116, at 23.
- <sup>126</sup> Hening’s Statutes I, p. 336, quoted in Lyon Gardiner Tyler, Education in Colonial Virginia Part I: Poor Children and Orphans, 4 William and Mary College Quarterly Historical Magazine (1897): 219-223.
- <sup>127</sup> Id.
- <sup>128</sup> Knight, Education in the South, *supra* note 116, at 58-63. Similar laws were later enacted throughout the South, in states such as Tennessee, Louisiana, Mississippi, Alabama, Arkansas, Florida and Texas. Id. at 63-66.
- <sup>129</sup> Edgar W. Knight, Public School Education in North Carolina 22 (1916) [hereinafter Knight, Education in North Carolina] at 22.
- <sup>130</sup> Knight, Education in North Carolina, *supra* note 129 at 19-21. For the text of the court ruling, see 2 Colonial Record of North Carolina 266.
- <sup>131</sup> Knight, Education in North Carolina, *supra* note 129, at 22.
- <sup>132</sup> Cornelius Jacob Heatwole, A History of Education in Virginia 33 (1916).
- <sup>133</sup> Id. at 34.
- <sup>134</sup> Alexis de Tocqueville, I Democracy in America 379-80 (1945) (1835).
- <sup>135</sup> *See, e.g.*, Bremner, *supra* note 102.
- <sup>136</sup> S.C. Statutes at Large, VII, 413 *in* Bremner, *supra* note 102.
- <sup>137</sup> Id.
- <sup>138</sup> Id.
- <sup>139</sup> Writers’ Program of the Work Projects Administration in the State of Virginia, Virginia: A Guide to the Old Dominion (1992) (1940), *available at* <http://xroads.virginia.edu/~hyper/VAGuide/frame.html>.
- <sup>140</sup> Knight, Education in North Carolina, *supra* note 128, at 41.
- <sup>141</sup> Id. at 38.
- <sup>142</sup> Elbert W.G. Boogher, Secondary Education in Georgia, 1732-1858 (Philadelphia, 1933).
- <sup>143</sup> Knight, Education in the South, *supra* note 116, at 42. For the most affluent, “[e]ducation in England or on the Conti-

ment was ... a popular educational practice ... in spite of its inconvenience and obstacles.” Id.

<sup>144</sup> Id. at 41.

<sup>145</sup> *See, e.g.*, Marcus W. Jernegan, Compulsory Education in the Southern Colonies, 27 SCH. REV. 405, 422 (1919) [hereinafter Jernegan, Compulsory Education] at 407 (“[A] great many persons who learned how to read and write must have taken advantage of other agencies than schools. Two were of the greatest importance — namely, home instruction given by the parents, and the apprenticeship system, instruction given by the master or his agent.”).

<sup>146</sup> Knight, Education in the South, *supra* note 116, at 78.

<sup>147</sup> Id. at 41.

<sup>148</sup> Id.

<sup>149</sup> Id.

<sup>150</sup> Id.

<sup>151</sup> John Franklin, for example, advertised that a “gentleman” had provided the tuition for two students of lesser means for one year’s schooling in 1767. Local Georgians created the Union Society in 1750 with the sole mission of “supporting and educating orphan boys” and had Peter Gandy, the successful schoolmaster, as an active member. The organization advertised its sponsorship of ten children in 1768, the same year Gandy opened up a larger school in a separate house. Indeed, it is likely that Gandy’s schoolhouse operated in part as a school for the poor heavily subsidized by the Union Society. In a similar manner, the recently organized Savannah chapter of the St. Andrews Society, a fraternal organization founded to help recent immigrants from Scotland, sponsored ten students in 1769. In Maryland, Winyaw Indigo Society, for example, dedicated to “the establishment of an independent charity school for the poor,” educated twenty-five or more children in South Carolina each year. Edward McCrady, The History of South Carolina Under the Royal Government 1719-1776, at 488 (1899).

<sup>152</sup> Knight, Education in the South, *supra* note 116, at 29; *See* Leslie Lenkowsky & Emily Spencer, The History of Philanthropy for Education Reform (Dec. 1, 2001), <http://www.edexcellence.net/institute/publication/#870>. Syms intended for the cattle to create continuing profits to provide free tuition for poor students. Tyler, Free Schools, *supra* note 116, at 73.

<sup>153</sup> Knight, Education in the South, *supra* note 116, at 29.

<sup>154</sup> Id. Thomas Eaton quickly followed suit, donating five hundred acres of land to create a free school. Id. The two schools were later combined to form the Hampton Academy. Id.

<sup>155</sup> Frederick Dalcho, An Historical Account of the Protestant Episcopal Church in South Carolina 95 (E. Thayer 1820).

<sup>156</sup> Under the act, vestrymen were “to lay a poll tax on the taxable persons in their parish, not exceeding ten shillings, for building churches and chapels, paying ministers’ salary, purchasing a glebe ... encouraging schools, maintaining the poor, paying clerks and readers, etc.” 1762 North Carolina Vestry Act.

<sup>157</sup> Edwin Grant Dexter, A History of Education in the United States 68 (1906).

<sup>158</sup> Due to various delays, however, the school did not actually open until 1701.

<sup>159</sup> Lawrence A. Cremin, American Education, The National Experience, 1783-1876, at 103 (1980).

<sup>160</sup> Bremner, *supra* note 102.

<sup>161</sup> Carl Kaestle, Pillars of the Republic: Common Schools and American Society, 1780-1860, at 5 (1983).

<sup>162</sup> Letter from Thomas Jefferson to James Madison, 20 Dec. 1787, Papers 12, at 442.

<sup>163</sup> Thomas Jefferson, Autobiography (1821) in The Works of Thomas Jefferson (Paul Leicester Ford ed., 1905); *see also* Benjamin Rush, Of the Mode of Education Proper in a Republic X (1798) (“[T]o conform the principles, morals, and manners of our citizens to our republican form of government, it is absolutely necessary that knowledge of every kind should be disseminated through every part of the Unites States.”).

<sup>164</sup> Rush, *supra* note 163 at 8.

<sup>165</sup> Noah Webster, A Collection of Essays and Fugitive Writing, on Moral, Historical, Political and Literary Subjects 3-4, 14-19, 22-26 (Boston 1790) [hereinafter Webster, Essays].

<sup>166</sup> George Washington, XII The Writings of George Washington 70-71 (Jared Sparks ed., Boston 1837).

- <sup>167</sup> United States Congress, Land Ordinance of 1785 (May 20, 1785).
- <sup>168</sup> Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), *available at* <http://odur.let.rug.nl/~usa/P/tj3/writings/brf/jefflx.htm>.
- <sup>169</sup> In 1811, North Carolina Governor Benjamin Smith offered a similar opinion when he concluded:  
 In despotic governments, where the supreme power is in possession of a tyrant or ... an hereditary aristocracy (generally corrupt and wicked), the ignorance of the people is a security to their rulers; but in a free government where the offices and honors of the State are open to all, the superiority of their political privileges should be infused into every citizen from their earliest infancy, so as to produce an enthusiastic attachment to their own country, and insure a jealous support of their own constitution, laws, and government.  
 Charles Lee Coon, *The Beginnings of Public Education in North Carolina: A Documentary History, 1790-1840*, at 80 (1906). The price would be “trifling beyond expectation, when compared with the incalculable benefits from such a philanthropic and politic system.” *Id.*  
 For Noah Webster, the “*sine qua non*,” essential to the continuance of republican governments were the “distribution of lands” and “[s]uch a system of education as gives every citizen an opportunity of acquiring knowledge and fitting himself for places of trust.” WEBSTER, *ESSAYS*, *supra* note 165 at 24.
- <sup>170</sup> Rush, *supra* note 163 at 14; *accord* Benjamin Labaree, *The Education Demanded by the Peculiar Character of Our Civil Institutions*, in *The Lectures Delivered Before the American Institute of Instruction 1849*, at 33-35 (Boston 1850) (“[R]esolute and persevering exertions must be made to engraft them upon the republican stock, and to qualify them for the duties of free and enlightened citizens.”).
- <sup>171</sup> *See* O’Brien & Woodrum, *supra* note 84, at 601 & n.128 (“Developing a national affinity that would prevent the new republic from devolving into warring groups of anarchy was a central concern of early school advocates like Benjamin Rush and Thomas Jefferson.”).
- <sup>172</sup> IX *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 111-112, 239-240 (James T. Mitchell & Henry Flanders eds., 1903). Under the oath, schoolmasters were required to: swear (or affirm) that I renounce and refuse all allegiance to George the Third, King of Great Britain, his heirs and successors, and that I will be faithful and bear true allegiance to the commonwealth of Pennsylvania as a free and independent state, and that I will not at any time do or cause to be done any matter or thing that will be prejudicial or injurious to the freedom and independence thereof ...
- <sup>173</sup> Rhode Island “An Act to Establish Free Schools” (1800) (emphasis added).
- <sup>174</sup> Noah Webster, I *The American Magazine* 370-374 (May 1788) [hereinafter Webster, *American Magazine*].
- <sup>175</sup> Writers’ Program, *supra* note 139 (quoting Governor Stone’s 1810 message to the North Carolina legislature).
- <sup>176</sup> Webster, *American Magazine*, *supra* note 174 at 370-374.
- <sup>177</sup> *Page v. Regents of Univ. Sys.*, 93 F.2d 887, 890-891 (5th Cir. 1937).
- <sup>178</sup> XIX *The Colonial Records of the State of Georgia* 378 (Allen D. Candler ed., 1911).
- <sup>179</sup> Washington, *supra* note 166, at 70-71; *see also* Rush, *supra* note 163 (“Our schools of learning, by producing one general, and uniform system of education, will render the mass of the people more homogeneous, and thereby fit them more easily for uniform and peaceable government.”).
- <sup>180</sup> Washington, *supra* note 166, at 70-71.
- <sup>181</sup> James G. Carter, *Letters to the Honorable William Prescott . . . on the Free Schools of New England* 44-46 (Boston 1824) in BREMNER, *supra* note 102.
- <sup>182</sup> Immigration posed additional problems simply because the new population arrived having received less schooling in general. As the 1850 census showed, as a result “of the large influx of foreigners, the whites over twenty, who can not read and write, have increased, in every section, and in the United States, from 3.77 to 5.03 per cent. The proportion of foreign illiterate is twice that of the native.” TAYLOR, *supra* note 69, at 49.
- <sup>183</sup> Labaree, *supra* note 170, at 33-35.
- <sup>184</sup> *Donahoe v. Richards*, 38 Me. 379, 413 (1854).
- <sup>185</sup> Labaree, *supra* note 170, at 33-35.

- <sup>186</sup> *See, e.g.*, Rush, *supra* note 163, at 8 (“I conceive the education of our youth in this country to be peculiarly necessary in Pennsylvania, where our citizens are composed of the natives of so many different kingdoms in Europe.”)
- <sup>187</sup> Donahoe v. Richards, 38 Me. 379 at 413.
- <sup>188</sup> Id.
- <sup>189</sup> Labaree, *supra* note 170, at 33-35.
- <sup>190</sup> Acts of the Thirteenth General Assembly of the State of New Jersey 488 (Trenton 1788) *in* Bremner, *supra* note 102
- <sup>191</sup> Woodson, *supra* note 64 (“These leaders recommended gradual emancipation for States having a large slave population, that those designated for freedom might first be instructed in the value and meaning of liberty to render them comfortable in the use of it.”). The address at the American Convention of Delegates from the Abolition Societies in 1795, stress that the “new born citizen must receive [educational] instruction, and those powerful impressions of moral and religious truths, which will render him capable and desirous of fulfilling the various duties he owes to himself and to his country. Id. Likewise, many “antislavery societies had in their constitutions a provision for a committee of education to influence Negroes to attend school, superintend their instruction, and emphasize the cultivation of the mind as the necessary preparation for ‘that state in society upon which depends our political happiness.’” Id.
- <sup>192</sup> Knight, Education in North Carolina, *supra* note 128, at 28.
- <sup>193</sup> Knight, Education in the South, *supra* note 116, at 56.
- <sup>194</sup> Id. at 91.
- <sup>195</sup> Lyman P. Powell, The History of Education in Delaware 139 (Govt. Printing Office, Washington 1893).
- <sup>196</sup> Husbands v. Talley, 47 A. 1009, 1010 (Del. 1901).
- <sup>197</sup> Powell, *supra* note 195, at 140.
- <sup>198</sup> Husbands v. Talley, 47 A. 1009 at 1010.
- <sup>199</sup> United States Congress, Land Ordinance of 1785 (May 20, 1785).
- <sup>200</sup> Andrus v. Utah, 446 U.S. 500, 506 (1980). Exceptions to this arrangement were Texas, which was its own republic prior to its admittance, and West Virginia and Maine, both of which were formed from existing states.
- <sup>201</sup> TAYLOR, *supra* note 69 at 62.
- <sup>202</sup> Andrus v. Utah, 446 U.S. 500 at 523 (Powell, J., dissenting).
- <sup>203</sup> Id. at 506 (majority opinion).
- <sup>204</sup> Id. at 507 n.8.
- <sup>205</sup> Governor v. State Treasurer, 203 N.W.2d 457 (Mich. 1972) (Brennan, J. dissenting) (*citing* Minn. Mining Co v Nat’l Mining Co, 11 Mich. 186 (1863)).
- <sup>206</sup> Derolph v. State, 677 N.E.2d 733, 769 (Ohio 1997).
- <sup>207</sup> Id.
- <sup>208</sup> Mich. Constitution of 1835, art. 10.2.
- <sup>209</sup> *See* 37 Stat. 39 (August 21, 1911).
- <sup>210</sup> Derolph v. State, 677 N.E.2d 733, 769 (Ohio 1997).
- <sup>211</sup> Taylor, *supra* note 69, at 64.
- <sup>212</sup> Derolph v. State, 677 N.E.2d 733 at 769 (*quoting* Harold M. Hyman, *American Singularity* 23-24 (1986)).
- <sup>213</sup> Cooper v Roberts, 59 U.S. (18 How) 173, 178 (1855).
- <sup>214</sup> Matthias Nordberg Orfield, *Federal Land Grants to the States with Special Reference to Minnesota* 41 (1915).
- <sup>215</sup> Cubberley, *supra* note 98, at 92-93, 99.
- <sup>216</sup> Taylor, *supra* note 69, at 166-67.

217 The precise amount Congress disbursed is unclear. Edward G. Bourne, *The History of the Surplus Revenue of 1837: An Account of its Origin, its Distribution Among the States, and the Uses to Which It Was Applied* 122 (Putnam's Sons, New York 1885).

218 Id. at 163-64.

219 Id. at 166-67.

220 Id. at 122-23. Those states were Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, and Vermont. Id.

221 Id.

222 *See* Coon, *supra* note 169, at ix-xlvi (detailing educational history in North Carolina from 1790-1840)

223 *See* Coon, *supra* note 169, at xlii.

224 Id. at xiii.

225 Knight, Education in North Carolina, *supra* note 129 at 136

226 Coon, *supra* note 169, at xlii.

227 Bourne, *supra* note 217, at 70-71.

228 M.S. v. Martin, 1994 Me. Super. LEXIS 201, at \*23 (Me. Super. Ct. 1994).

229 Id.

230 Bourne, *supra* note 217, at 60.

231 Id. at 50.

232 Id. at 51.

233 Id. at 72.

234 Id. at 48.

235 Id. at 49.

236 Id. at 56.

237 Id. at 57.

238 Id. at 62.

239 Id. at 64.

240 Id. at 68-69.

241 Id.

242 Id. at 70-71, 74-75.

243 Id. at 82-84.

244 Id. at 84-85.

245 Michigan, which only become a state in January 1837, received \$267,000. As the state was already over five million dollars in debt, however, the money was quickly dissipated in internal improvements. Id. at 75-77. Nonetheless, Michigan still pushed forward on its educational system. The school law of April 1, 1837 set forth the establishment, administration, and support of primary schools; called for the founding and financing of libraries in each school district; detailed the construction of schoolhouses; established academies as branches of the university; and detailed superintendent's duties and responsibilities along with the disposal of school lands and establishment of a permanent school fund and a university fund. Floyd R. Dain, *Education in the Wilderness: A History of Education in Michigan* 238-239 (1968); *see also* Andrew C. McLaughin, *History of Higher Education in Michigan* 14-27 (Govt. Printing Office, Washington 1891) (detailing development of schools in this period, including use of the land grants). South Carolina used the fund to invest in railroads. BOURNE, *supra* note 217, at 107-10. Virginia invested it as bank capi-

tal. *Id.* at 118-19. In Mississippi, the funds were to have been used for state expenses, but were “squandered during those times of reckless financiering,” such that one historian noted, “[i]t does not appear unjust ... to say baldly that in Mississippi the surplus revenue was utterly wasted.” *Id.* at 79-80.

<sup>246</sup> Walker, *supra* note 9, at 10

<sup>247</sup> Horace Mann, Massachusetts Board of Education, First Annual Report 53-57 (Boston 1838).

<sup>248</sup> Taylor, *supra* note 69, at 166.

<sup>249</sup> See, e.g., *Sheridan Rd. Baptist Church v. Dept. of Educ.*, 396 N.W. 2d 373, 381 (Mich. 1986) (citations omitted). *O. C. Comstock*, Maine Superintendent of Public Instruction 1843: “Eligible teachers are all-important. This fact is now more deeply and generally impressed on the public mind than formerly ... It was once imagined that almost every man of a competent education could teach a school.”

<sup>250</sup> O’Brien & Woodrum, *supra* note 84, at 610-11 (citations omitted) (alterations in original).

<sup>251</sup> O’Brien & Woodrum, *supra* note 84, at 588, 616.

<sup>252</sup> *Id.* at 610.

<sup>253</sup> Mann, *Tenth Annual Report*, *supra* note 247.

<sup>254</sup> *Id.*

<sup>255</sup> Taylor, *supra* note 699, at vi (quoting H.B. Barney in 1857). Like others, Barney stressed the continued importance of education in maintaining a republic:

[I]n this country, as long as the *governed* are their own *governors*, and free Common Schools are maintained by State authority, and rendered accessible to the children of the poor as well as of the rich, there can be no danger of a concentration of power in the hands of irresponsible persons, nor will corrupt influences creep into the Republic and control its destinies. Let our Common Schools be free, and the people will be free.

*Id.* at viii-ix.

<sup>256</sup> O’Brien & Woodrum, *supra* note 84, at 618-19.

<sup>257</sup> *Id.* at 610 n.188 (citations omitted).

<sup>258</sup> See *id.* at 597.

<sup>259</sup> *Id.* at 600.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> Robert S. Peck, *The Constitution and American Values*, in *The Blessings of Liberty: Bicentennial Lectures at the National Archives* 133 (Robert S. Peck & Ralph S. Pollock eds., 1989) (“The pauper law required parents to publicly declare themselves as paupers before tuition for their children could be paid to the nearest private school... Most parents refused to stigmatize themselves as sufficiently indigent to warrant a charity education for their children.”).

<sup>263</sup> Powell, *supra* note 195, at 140. In response to the unpopular legislation, the General Assembly provided that teachers at “any incorporated school or any other regular English school within this State, ... [for white children] whose tuition the teacher could not in any other way receive compensation by reason of the indigence of such child, ... should receive \$1 per quarter, or \$4 annually, to be paid out of the unappropriated money in the school fund.” *Id.* at 141.

<sup>264</sup> “Report of the Joint Committee of the two Houses of the Pennsylvania Legislature, on the subject of a System of General Education” in *XIII Hazard’s Register of Pennsylvania* 97 (1834).

<sup>265</sup> Taylor, *supra* note 69, at v-vi.

<sup>266</sup> *Id.* at v-vi.

<sup>267</sup> *Id.* at vi-vii (“[T]he property of the State should be charged with the responsibility of educating the youth of the State.”)

<sup>268</sup> *Id.* at vi-vii.

<sup>269</sup> In the Ohio constitution, this was solidified through the obligation to “secure a thorough and efficient system of Common Schools throughout the State.” *Id.* at vi.

- <sup>270</sup> Montoy v. State, No. 99-c-1738 (Kan. Dist. Ct. Sept. 8, 2003) (mem. decision & order), *available at* <http://www.shawneecourt.org/decisions/99c1738.htm>.
- <sup>271</sup> Roosevelt Elementary Sch. Dist. v. Bishop, *supra* note 55, 877 P.2d 806 at 820-21.
- <sup>272</sup> The Pro-Slavery Argument, as Maintained by the Most Distinguished Writers of the Southern States 36-38 (Charleston 1852) *in* BREMNER, *supra* note 102.
- <sup>273</sup> *See, e.g.*, WRITERS' PROGRAM, *supra* note 139 (“[S]teadily mounting unrest among the slaves, the increase of abolitionist propaganda, and fear of another Nat Turner insurrection produced a reaction against educating the Negro. Stringent laws were passed in 1849 penalizing Negro instruction or assemblages.”); WOODSON, *supra* note 64 (describing how, faced with rising fears of insurrection, “State after State enacted more stringent [anti-education] laws to control the situation”).
- <sup>274</sup> According to the Superintendent of the 1850 census:  
In New England so admirable is the school system, and so deserving of all imitation, that only one person in every four hundred of the native whites over twenty years, is incapable of reading and writing. In the south and south-west, the number is one in about twelve; in the territories, one in about six ; in the slaveholding States, one in twelve; in the non-slaveholding, one in forty; and in the whole Union, one in about twenty-two.  
Taylor, *supra* note 69, at 48.
- <sup>275</sup> “An Act to authorize the instruction of certain free persons of color” Alabama law of 1834. Acts Passed at the Annual Session of the General Assembly of the State of Alabama 68 (Tuscaloosa 1834) *in* BREMNER, *supra* note 102.
- <sup>276</sup> Id.
- <sup>277</sup> Commissioners of Emigration, Fifth Annual Report for the Year 1851.
- <sup>278</sup> Ulysses S. Grant, Message to the Senate and House of Representatives (Mar. 30, 1870), *in* 9 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 4009, 4010 (New York, Bureau of Nat'l Literature 1897) [hereinafter PAPERS OF THE PRESIDENTS] (*quoting* George Washington, Farewell Address (Sept. 17, 1796)).
- <sup>279</sup> Grant, *supra* note 278, at 4010.
- <sup>280</sup> Id.
- <sup>281</sup> Journal of the Missouri Constitutional Convention of 1875, at 190 (1920).
- <sup>282</sup> Statement by Education Committee Chairmen, Missouri Constitution Convention (1865). The Missouri Republican 1 (St. Louis, April 4, 1865).
- <sup>283</sup> Matthew H. Joseph & Susan P. Leviton, An Adequate Education for All Maryland's Children: Morally Right, Economically Necessary, and Constitutionally Required, 52 MD. L. REV. 1137, 1155 (1993).
- <sup>284</sup> DEXTER, *supra* note 157, at 454.
- <sup>285</sup> Goodwin Liu, Education, Equality, and National Citizenship, 116 YALE L.J. 330 (2006) (*quoting* Congressional Act of July 16, 1866).
- <sup>286</sup> Id.
- <sup>287</sup> The amendment provided: “the general assembly shall establish and maintain free schools for the gratuitous instruction of all persons in this State between the ages of five and twenty-one years.” MO. CONST. of 1865. The clause added, “[s]chools may be established for children of African descent. All funds provided for the support of public schools shall be appropriated in proportion to the number of children, without regard to color.” Id. Subsequently, the “Parker Laws,” which governed school administration, required “public schools of all grades to be absolutely instituted for the education of colored children of the State.” In 1875, Missouri amended its constitution, requiring that “[s]eparate free public schools shall be established for the education of children of African descent.” MO. CONST. of 1875.
- <sup>288</sup> Liu, 116 YALE L.J. (*quoting* H.R. 1326, 41st Cong. § 19 (3d Sess. 1871) (amended bill) (emphasis omitted)).
- <sup>289</sup> CONG. GLOBE, 41st Cong., 2d Sess. app. at 479 (1870) (statement of Rep. Hoar).
- <sup>290</sup> Id.
- <sup>291</sup> Before the Civil War, only the New England states and Pennsylvania had compulsory attendance legislation. U.S. Bureau of Labor, VI Report on Condition of Woman and Child Wage-Earners in the United States 208-209 (U.S. Commission of Labor, Washington, 1910-1914). The following states enacted the first laws: Massachusetts (1836), Rhode Island (1840),

- Connecticut (1842), New Hampshire (1846), Maine (1847), Pennsylvania (1849).
- <sup>292</sup> Massachusetts, House, "Committee Report on the Education of Working Children, 1836," Doc. 49, May 17, 1836, at 5-14 (Boston, 1836).
- <sup>293</sup> Id.
- <sup>294</sup> "An act to provide for the better instruction of youth employed in manufacturing establishment," Laws of Massachusetts, Jan. 1834-Apr. 1836, ch. 245, 950-951 (Boston 1836).
- <sup>295</sup> Id.
- <sup>296</sup> Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 484 (Ark. 2002) ("In 1874, [the duty of providing education] was expressly shifted to the State, which signaled . . . a deliberate change. The people . . . unquestionably wanted all departments of state government to be responsible for providing a general, suitable, and efficient system of public education to the children of this state."). In 1872, the Ohio school commissioner, Thomas W. Harvey, calling for increased centralization and worked towards consolidation of the state's schools. O'Brien & Woodrum, *supra* note 84, at 634.
- <sup>297</sup> Otken v. Lamkin, 56 Miss. 758, 764 (1879).
- <sup>298</sup> TAYLOR, *supra* note 69, at iii.
- <sup>299</sup> Montana Constitution, Article X Section 1.1 (1972).
- <sup>300</sup> The exceptions are Vermont, which declared itself a republic on January 18, 1777, the California Republic, over which the Bear Flag flew for one week, from June 15 until June 23, 1846 and Hawaii, which was a republic briefly after the citizens overthrew the monarchy.
- <sup>301</sup> Frederick Eby, *The Development of Education in Texas* 79 (1925).
- <sup>302</sup> Eby, *supra* note 301, at 83.
- <sup>303</sup> Pauley v. Kelly, 255 S.E.2d 859, 867 n.15 (W. Va. 1979).
- <sup>304</sup> Eby, *supra* note 301, at 105-07.
- <sup>305</sup> Pauley, 255 S.E.2d at 867 n.15.
- <sup>306</sup> Id.
- <sup>307</sup> Id.
- <sup>308</sup> Lynne Marie Getz, *Schools of Their Own: the Education of Hispanos in New Mexico, 1850-1940* (1997).
- <sup>309</sup> John Clifton Moffitt, *The History of Public Education in Utah* 21-22 (1946).
- <sup>310</sup> Moffitt, *supra* note 309, at 17.
- <sup>311</sup> "An Act making provision for the civilization of the Indian tribes adjoining the frontier settlements," *Annals of Congress*, 15 Cong., 2 Sess., XXXIV, 2527 (1819).
- <sup>312</sup> Committee on Indian Affairs of the House of Representatives 1824. II *American State Papers*, Indian Affairs 459 (Washington 1834) in Bremner, *supra* note 102
- <sup>313</sup> John C. Calhoun, "Regulations for the Civilization of the Indians," in *Indian Treaties, and Laws and Regulations Relating to Indian Affairs* 487-488 (Washington 1826) in BREMNER, *supra* note 102.
- <sup>314</sup> Charles Ray, *A Program of Education for Alaskan Natives* (1958).



**THE INSTITUTE FOR EDUCATIONAL EQUITY AND OPPORTUNITY**

Website: [www.ifeeo.org](http://www.ifeeo.org) • Email: [info@ifeeo.org](mailto:info@ifeeo.org)

---