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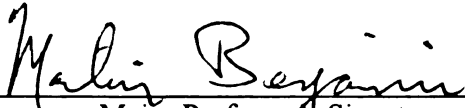
**A TENSION IN THE MIND: MEDITATIONS ON
ASCRIPTIVE CITIZENSHIP, THE GENERAL
WELFARE, AND RAWLSIAN JUSTICE IN THE
EDUCATION OF CITIZENS**

presented by

Jewel E. Smith

has been accepted towards fulfillment
of the requirements for the

Ph.D. degree in Curriculum Teaching and
Education Policy


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ASCRPTIVE CITIZENSHIP, THE GENERAL WELFARE, AND RAWLSIAN
JUSTICE IN THE EDUCATION OF CITIZENS***

By

Jewel E. Smith

A DISSERTATION

**Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of**

DOCTOR OF PHILOSOPHY

Department of Curriculum Teaching and Education Policy

2004

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ABSTRACT

A TENSION IN THE MIND: MEDITATIONS ON ASCRIPTIVE CITIZENSHIP, THE GENERAL WELFARE, AND RAWLSIAN JUSTICE IN THE EDUCATION OF CITIZENS

By

Jewel E. Smith

A socially stratified state fails to meet the standard for liberal legitimacy due to the irrationality and social injustice of its basic structure. America is a socially stratified state with a history of pursuing ascriptive social policies. Its compulsory schooling system often buttresses and rationalizes its structure, but such a system is detrimental to the development of critical rationality and autonomy, particularly with respect to those least-advantaged under existing stratification schemes. Such a system cannot be structured to champion equal dignity and equal citizenship, cannot sincerely commit itself to preparing its young for self-government consistent with democratic ideals, and cannot substantively promote these ideals within the culture of its own political enterprise. Alternatively, John Rawls' political philosophy provides the basis for a morally defensible—though incomplete—model for conceptualizing the ideal, liberal democratic state. It makes social justice the first virtue of social institutions and rejects stratification. A philosophy of education consistent with this political theory—but constructed for the real world—is offered as part of the reconstruction of America's socially stratified society. The philosophy serves as a moral guide for practical reasoning to correct unfair privilege and unfair deprivation in education. Citizens are urged to support the reconstruction of society by embracing its inclusively defined, democratic ideals in the interest of equal dignity, equal citizenship, and the general welfare.

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JEWEL E. SMITH
2004

For My Parents,
H.D.H. Smith and J. Smith
&
To All Who Struggle
In the Greatest Struggle of All . . .
And To Their Heirs

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ACKNOWLEDGMENTS

I extend my appreciation to Martin Benjamin, my dissertation director, for his critical reviews and editorial advice on the drafts of my dissertation, for the quality of our exchanges, and for the intellectual space within which to create something that I value. Thanks to Mary Kennedy, the chair of my committee, for her thought-provoking questions on every chapter, and for her support in the stages leading up to my proposal defense. Thanks also to the remaining members of my committee for their diverse and candid perspectives and for their openness to my views: Chris Dunbar, Steve Esquith, Bob Floden, Ernest Morrell, and Rand Spiro. I would be remiss if I did not also express my gratitude to Bill Lawson for formally introducing me to the disciplines of social and political philosophy during my two independent study courses with him, and I especially thank him for assigning John Rawls' *A Theory of Justice*—the contents of which I had only the faintest impressions prior to that time.

Special thanks to my family, and extended family, for their support and encouragement throughout this process. In particular, thanks to Erni and Mano Orso for the space to retreat, for the humor and good music, and for the occasional chess game. Special thanks also to Isabel Jasper for the countless conversations that helped to clarify my thoughts on many issues, for the research support, and for just being a great human being. Finally, thanks to all whose understanding and sacrifices made it possible for me to undertake and complete this phase of my journey and to enjoy it as much as I did.

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PREFACE

When you're in a brick cell, locked up, and you haven't done anything to anybody but still you're locked up there and sometimes words just begin to come to you and you begin to sing. Like one of my favorite songs, 'This Little Light of Mine, I'm Going to Let It Shine.'

---Fannie Lou Hamer

To be human, at the most profound level, is to encounter honestly the inescapable circumstances that constrain us, yet muster the courage to struggle compassionately for our own unique individualities and for more democratic and free societies.

---Cornel West

Abstract political theories tend to advance universal ideals about the good life and the good society. However, actual membership status is often contingent upon the differential value ascribed by those in authority to variations in members' race, gender, class, religion or other social categories. This is referred to as *ascriptive citizenship*. This form of citizenship has characterized American citizenship since its inception, particularly with respect to its centuries of slavery.

Chattel slavery and ascriptive citizenship can be understood as part of a tradition of social stratification buttressed by the inappropriate use of the state's coercive powers and by the acceptance of its abuses among the vast majority of its citizens. Social stratification coexists with principles of liberty and equality in America's political evolution, but such principles have a tendency to be formal rather than substantive. For those who are disfavored within the norms of the ascriptive divide, liberal ideals of democratic citizenship continue to lack the radical significance and value in shaping social life that official declarations portend. On the contrary, citizenship becomes an instrument for systematically exploiting and stratifying members of society in the interest of privilege, and the ascriptive pattern transcends many generations. The result is a

socially fragmented and conflicted society that seems bent on dividing against itself. This is the critical historical context that animates my thesis.

Pervasive social injustice in society negates liberal legitimacy. Deprivation prompts many to reconsider the proper role and functioning of government and to repudiate its illiberal and undemocratic agenda. When government's priorities sustain patterns of neglect in the protection of rights and liberties, the quality of life is undermined in all areas of human activity. Of particular concern are the forms of neglect of children that we see under government-sponsored compulsory education. Abuses and potential abuses of power in this area epitomize the failings of government and the precariousness of the general welfare.

One is compelled to inquire about the nature of the "common good" for which government requires its young citizens to attend its schools. Unfair privilege underlies educational policies and practices that bestow more benefits on some young citizens and more burdens on others. In the zero-sum game of liberties, unfair privilege for some means unfair deprivation for others, but there are alternatives to the irrationality of this brand of liberalism. The pursuit of alternatives is, for many, a worthwhile and necessary undertaking. Ultimately, the success of such alternatives depends on the strength of the citizenry's commitment to creating a socially just state. An engaging example of an ideal, flexible model of such a state is reflected in the political philosophy of the late John Rawls. His philosophy focuses on realizing social justice and equal citizenship within society's basic structure.

A philosophy of education based on Rawls' theory of justice is reconstructive. I characterize the application of distinctive features of Rawls' political liberalism to the

real world (the nonideal) as “Rawlsian.” My interpretation of the Rawlsian reconstructive project promotes political autonomy and empowerment among diverse segments of the population in the interest of eradicating social stratification and ascriptive citizenship. Egalitarian aims, cognitive and moral reasoning skills, and non-authoritarian school processes characterize the Rawlsian education project (also referred to as the *prescriptive project* in education). In this context, public schooling makes a vital contribution to the healthy development of *all* young citizens. This “thick” democracy in education is realizable when the people summon the moral courage and the political will to create it—*a tension in the mind* that seeks to translate ideals into socially just material conditions.

The quest for a social order that is far less tolerant of needless suffering and misery underlies the modest contribution that this thesis makes to the generations of struggle for equality and freedom. It is an extraordinary quest that many *ordinary people* share, a quest for which they have devoted their energies and given their lives, a quest around which we can strengthen the fabric of our divided society, transgressing the limits that the past repeatedly imposes on the present—carrying forward the legacy of resistance to suffering and injustice.

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There is a basin in the mind where words float around on thought and thought on sound and sight. Then there is a depth of thought untouched by words, and deeper still a gulf of formless feelings untouched by thought.

—*Zora Neale Hurston*

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INTRODUCTION

Eternal vigilance is the price of liberty, and it does seem to me that notwithstanding all these social agencies and activities there is not that vigilance which should be exercised in the preservation of our rights.

---*Ida B. Wells*

Injustice anywhere is a threat to justice everywhere. We are caught in the inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

---*Martin Luther King, Jr.*

Chapter 1 provides a historicized critique of American citizenship that highlights patterns of ascriptive partitioning in four significant and innovative periods of America's history. These patterns are often suppressed in our collective memory and in the discourse of mainstream liberalism. I stress the collective moral failings reflected in these patterns—particularly the many missed opportunities to rectify the inequalities and injustices within the basic structures—as the principal factors undermining and circumscribing the democratic project. In this context, I argue that citizenship status often serves as a means of exploitation and social fragmentation within America's stratified society. I maintain that “group exploitation” is neither an anomaly in American liberalism nor a misinformed interpretation of its tenets but, rather, it is a dominant manifestation of this paradigm as understood and reflected with the basic institutions of our society. Coming to grips—as a nation—with the suppressed memory of collective injustice is a prerequisite to establishing the moral accountability of our social institutions and making liberalism a viable political theory in the quest for equal dignity and equal citizenship within a just society.

In Chapter 2 I discuss four possible conflicts between government's interests and the public interest that arise when state power is used to advance illiberal and

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undemocratic ends. I consider what these conflicts imply for how we ought to theorize the state and for how we ought to interpret its role in the compulsory schooling process, particularly given its purported objective to prepare children for democratic citizenship. I explore the serious obligations confronting government in this process, the heightened accountability and transparency requirements that exist, given the *compulsory* nature of schooling and the constitutional guarantees purportedly afforded to all citizens. I conclude that the state must be substantively committed to social and racial justice in order to bring a measure of legitimacy to its sponsorship of compulsory education.

In Chapter 3 I pursue three objectives. First, I provide a detailed and critical explication outlining Rawls' theory of justice, interspersed with references to preceding chapters—particularly Chapter 1. The references provide historically specific contexts for the moral judgments contained in Rawls' prescriptions. I explain the fundamental intent of his political philosophy in a manner that familiarizes the reader with his theory of “domestic justice,” with its inward-looking conceptual framework. In so doing, I highlight Rawls' explicit normative focus, particularly his aim to establish a just and stable democracy pursuant to public principles in support of a fair social system. I use the following major works of Rawls to explore his ideas on the just society: *A Theory of Justice* (1971/1999b), *Political Liberalism* (1993), *Law of Peoples* (1999a), and *Justice as Fairness: A Restatement* (2001).

Second, I entertain and respond to two lines of critique of Rawls' theory: challenges to its usefulness in the real world (the nonideal) given its abstractness, and claims regarding the ostensibly negative impact of his deliberative process (public reason) on the viability of divergent religious, philosophical, and moral world views. In

response to the first critique, I discuss distinctive and complementary aspects of Rawls' ideal theory vis-à-vis the nonideal. In response to the second critique, I clarify and defend Rawls' deliberative process by pointing to its underappreciated libratory possibilities and to the increasing flexibility of its discursive constraints.

Finally, I suggest two ways in which Rawls' theory can assist us in linking moral judgments to social change under nonideal conditions: complementing the protections of "individual" basic rights and liberties with "group" protections, and taking into account *racial minority status* and *female status* together with the focus on material wealth when considering institutional factors that undermine liberty and justice for all. I characterize this framework as "Rawlsian" to link it to the issues raised in Chapter 1 and to distinguish it from Rawls' ideal theory. The Rawlsian framework rejects all permutations of social stratification and ascriptive citizenship as irrational and immoral forms of social organization. In my estimation, the general character of a just society under nonideal conditions (Rawlsian) reflects moral and political commitments that substantively champion equal dignity and equal citizenship for all.

Chapter 4 maps the four concerns that were raised in Chapter 2 (government abuses of power under ascriptive citizenship) onto a different political landscape. For this purpose, I reintroduce and expand the descriptive and explanatory "Rawlsian" framework discussed in Chapter 3. Its critical geography historicizes and conceptualizes the purposes of the reconstruction. With respect to each of the four concerns raised, I argue that the moral judgments stemming from Rawls' two principles of justice constrain government's coercive powers and explicitly impose a standard of public justification on public policy that—if met—increases the transparency and moral integrity of government. The

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resulting level of public accountability reduces the potential for ascriptive government agendas within the basic structure of society, but it does not devitalize the state. That is, the state retains sufficient power to meet its obligation to its citizens to be an instrument for justice in protecting their rights and liberties. It effectuates these purposes by *actively* regulating the basic institutions of society to insure that they provide the background justice needed for a fair system of social organization; among other things, this amounts to an on-going, substantive commitment to securing equal dignity and equal citizenship pursuant to Rawlsian moral principles.

In Chapter 5 the same set of contextualized moral judgments that were employed in Chapters 3 and 4 to guide ambitions in the Rawlsian reconstruction are revisited in order to anchor one aspect of its prescriptive project: its philosophy of education. That is, the critiques of social stratification and ascriptive citizenship that animate my thesis provide the inspiration, in Chapter 5, for a normative education philosophy grounded in a commitment to equal dignity and equal citizenship. The prescriptive project urges government to be, among other things, an instrument for the realization of positive rights. The aims of the schooling project—the moral content of education—and the political implications of those aims are integral to the realization of positive rights within the Rawlsian framework. A contextualized philosophy of education provides the moral vision that guides reconstructive thinking about schooling within a circumscribed democratic project, and beyond.

In the final section, the Conclusion, I propose an alternative policy ethic. It establishes certain moral antecedents for government within the Rawlsian reconstruction project. The state must respect these antecedents within its basic structure in order to

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have a chance of meeting Rawls' moral standard of liberal legitimacy in its sponsorship of compulsory schooling; absent these antecedents, the state cannot provide a morally defensible response to those who contend that government-controlled schooling is inherently repressive and intellectually enervating. I note that the implementation of the Rawlsian ethic requires the political will and moral agency of the *public*, particularly to the extent that the public has an interest in promoting substantive equality in the distribution of social benefits—educational opportunity, for example.

With the citizenry's moral vigilance, the state can be reconstructed; it can become an instrument for justice—its sanctioning and “normalizing” powers used pursuant to moral principles consistent with Rawls' political theory, as interpreted within the Rawlsian framework. The reconstruction project establishes background justice by removing obstructions to equal dignity and equal citizenship within the basic structure—specifically, social stratification and ascriptive citizenship—and doing so in the interest of all people irrespective of race, class, gender, and other invidious distinctions. Citizens are encouraged to collectively embrace and advance the reconstruction of society pursuant to a democratic project that functions in the interest of social and racial justice.

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CHAPTER 1

CITIZENSHIP: A MATTER OF DENIAL AND DEGREE

Whatever the ideological gratifications that the mnemonic evocation of an original and pure citizenry may have, it is unconvincing and ultimately an uninteresting flight from politics if it disregards the history and present actualities of our institutions.

—*Judith N. Shklar*

In other words, one would be taking the historical reality of a partitioned social ontology as the starting point rather than the ideal abstraction of universal equality, qualified with an embarrassed, marginal asterisk or an endnote to say that there were some exceptions.

---*Charles W. Mills*

The ideal conception of American citizenship evokes a powerful sense of *belonging*. It suggests full membership in a polity pledged to uphold equal rights and to permit its members the freedom to pursue their ends on fair terms. It repudiates hereditary privilege and the social castes of Europe that severely limited the amount of freedom that could be realized among participating members in society and even predetermined the life chances of the unborn. The social stratification of European society marginalized the interests of the masses and imposed a system of differential human value.

Nineteenth-century historian George Bancroft sharply distinguishes stratified societies from the ideal that is often associated with American's constitutional republic:

The Constitution establishes nothing that interferes with equality and individuality. It knows nothing of differences by descent, or opinions, of favored classes, or legalized religion, or the political power of property. It leaves the individual alongside of the individual. . . . As the sea is made up of drops, American society is composed of separate, free, and constantly moving atoms, ever in reciprocal action . . . so that the institutions and laws of the country rise out of the masses of individual thought which, like the waters of the ocean, are rolling evermore.¹

In order to insure liberty, the special obligations of American citizenship are understood to exist alongside specific limits on government's coercive power. For example, it is

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limited in its ability to restrict freedom pursuant to oppressive laws. Oppressive laws are those that are unjustly harsh or are unjustly applied in a differential manner. The liberal ideal of American citizenship secures the equal dignity of the person against the tyranny of the majority in government and in civil society. Citizenship as 'political status' protects its members from individual and private abuses that interfere with their fundamental interests in life, liberty, and the pursuit of happiness.

According to Bancroft, the Constitution provides the foundation for uniting citizens in a shared sense of democratic ideals that shape the basic institutions of American society. He notes that America's unique character results from the contributions made to its laws and institutions by free and equal members. Citizenship status within this project incorporates its constituents as individuals and as members of pluralistic communities. This suggests that our basic institutions reflect our public status as free and equal citizens who pursue collective and particularistic interests.

Social institutions contribute to citizens' self-understanding and to their relations as social beings. Bancroft's citizens are less likely to doubt their equal membership status in the polity in light of the inclusive interpretations that are routinely attributed to the ideals contained in the Declaration of Independence, the Preamble to the Constitution and its Bill of Rights, the *Federalist Papers*, and other public rhetoric widely understood to express an egalitarian ideology. These institutional proclamations are conspicuous representations that are presumed to establish the purpose and legitimacy of the political system. Within this liberal ideal, government functions pursuant to these proclamations and responsibly undertakes its obligations to all of its citizens, and citizens responsibly

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Perhaps the relationship between the ideal of American citizenship and the compulsory project in education is not apparent. Perhaps it is not known that a fundamental rationale for mass education in America is the formation a democratic citizenry. That is, the education project is theoretically guided by liberalism's Enlightenment rationalist and romantic notions of citizenship (Guttek, 1987). One aspect of this project receives increasing amounts of attention in the school curriculum during times of national crisis; it is known under various titles including "citizenship education" and "civics" (Butts, 1980). The purpose of this subject area is to impart specific political knowledge and to cultivate political virtues that help shape the *ideal* of civic identity (Branson, 1998). Affective aims that are integral to this learning process include patriotism, social cohesion, and loyalty to democratic institutions (Banks, 1997).

It is clear that educating citizens for democratic citizenship involves more than a course or a series of courses. The citizenship project in education can be better understood as part of an evolving and protracted process of mass socialization that is designed to influence citizens' interpretation of the social world and to assign them a place within its structures. It is at least implicitly informed by dominant historical and contemporary conceptions of American citizenship, by how "citizenship status" shapes (and is shaped by) our public institutions and social mores. Further, the nation's moral and political commitments in structuring education for citizens can be understood through the lens of citizenship. The citizenship socialization project embeds schooling within a larger social and political order that has its theoretical roots in the Constitution.

Power relations provide an illuminating referent that balances the more narrowly focused consumer models of schooling that are increasingly identified with contemporary conceptions of liberalism's education project.

For Bancroft and others, it is the idealized characterization of democratic strivings in America that exists within our collective historical memory. This characterization appears to reflect a continuity of commitment to egalitarian ideals and social policies, but this interpretation of history necessitates minimizing the enduring presence of social conflict and exploitation. A careful examination of the history and civics texts that dominate the curriculum in public schools bears this out (Evans, 2004; Patrick and Hoge, 1991), as do the bitter feuds among curriculum developers who are responsible for identifying the type of knowledge to include (and exclude) in standardizing the history curriculum.

There is a pervasive tendency for textbook publishers and curriculum developers to avoid disturbing the ideal of citizenship. They tend to filter "controversial" subjects that demonstrate serious institutional transgressions of rights and liberties. If transgressions of citizenship rights are acknowledged at all, they are often presented as "anomalies" or "hiccups" in an otherwise unblemished historical record of inclusion (Hurst and Ross, 2002) However, this characterization of citizenship obscures the grave contradictions between the idealization of membership and the material conditions of students' lives, where citizenship (as social and political equality) is expected to have substantive meaning. In order to critically explore these contradictions, we must move beyond the reverence that the concept of democratic citizenship evokes in the ideal, and privilege the experiences that occur in the *actual lives* of people.

This thesis explores citizenship *experience* as a profoundly fragmenting social and political odyssey within the framework of conflicting expressions of basic liberal democratic ideals. It reflects a departure from much of mainstream discourse on the subject. It does not defend simple overtures to what Judith Shklar, political theorist, refers to as “the mnemonic evocation of an original and pure citizenry.”² Its focus on power relations suggests its critical orientation. This political landscape is often neglected in academia (Mills, 1998) but is important to those who are interested in grasping the profound impact of citizenship status, or the lack thereof, on the life chances of human beings.

The material conditions for equality in America appear to be more accurately reflected—and potentially understood—when the long-established ideal of citizenship is complemented by discourses on the nonideal of citizenship—a *matter of denial and degree*. This characterization is amply reflected in the juridico-political, social, economic and cultural dimensions of American citizenship that manifest in the basic structure’s differential impact on citizens’ lives. This difference appears to result from the moral and cognitive reasoning that flourishes within a system of social hierarchy that *ascribes* value to the human properties of race, class, and gender distinctions (among others). The consequence of these ascriptions of value is that some citizens in a given society receive more rights and liberties than other citizens in the same society. Membership has its privileges, but not all members have the *same* privileges.

Citizenship that ascribes differential intrinsic value to human beings is *experienced* as part of a system of unequal distributions of benefits and burdens. These experiences persist as a result of government’s ongoing ascriptive social policies and

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practices and as a result of the deep social cleavages among voting members of the polity. Ascriptive patterns of social organization not only reveal degrees of belonging but also degrees of social alienation. Citizenship in such a society is referred to as *ascriptive citizenship* (Smith, 1997). America has a long history of ascriptive citizenship, which appears to explain its many missed opportunities and failures to advance freedom and equality for all. Indeed, its continuing ascriptive reasoning is easily detected in its contemporary social initiatives (Parenti, 2002; Klinkner and Smith, 1999; Oliver and Shapiro, 1995). It is important to explore how this reasoning impacts the citizenship *experience* in America.

It is possible for a fundamentally immoral social code to be intertwined with moral principles. The tensions inherent in this contradiction often negatively manifest as mistrust and animosity among citizens (Moody-Adams, 1997; Smith, 1997). The cleavages that form from ascriptive relations reflect the frustrations of partial inclusion on the one hand, and the tenuousness of full membership on the other. In a society conscious of its stratified historical origins but, perhaps, no longer willing to openly acknowledge them, the meaning of membership is hollow on both sides. That is, differentiated political standing within a socially stratified society undermines the formation of an inclusive community and contributes to the development of a problematic and fragmented civic identity. In *American Citizenship*, Shklar points to the duplicitous origins of membership in American society and to the persistence of ascriptive practices:

From the first[,] the most radical claims for freedom and political equality were played out in counterpoint to chattel slavery, the most extreme form of servitude, the consequences of which still haunt us. . . . [Since that time] what has been continuous is a series of conflicts arising from enduring antiliberal dispositions that have regularly asserted themselves, often very successfully, against the promise of equal political rights contained in the Declaration of Independence and

its successors, the three Civil War amendments. It is because slavery, racism, nativism, and sexism, often institutionalized in exclusionary and discriminatory laws and practices, have been and still are arrayed against the officially accepted claims of equal citizenship that there is a real pattern to be discerned in the tortuous development of American ideas of citizenship.³

Shklar's claim that "antiliberal dispositions have regularly asserted themselves" is intriguing to me despite the intuitive resonance of her position. Perhaps it is because she uses the word 'tortuous' in describing the development of citizenship. The "twists and turns" and deceptions that the term suggests immediately brought to my mind another word: 'torturous.' I linked the "twists and turns" and deceptions that Shklar implies, to the human suffering—the torture—that befalls the unfortunate members of the society in which the "twists and turns" systemically occur.

I have registered the impossibility of discerning all of the patterns that are imaginable in the development of American citizenship (even upon close examination), so no such attempt is made in this thesis. The pattern of ascriptive citizenship that I will examine—and to which Shklar's comments refer—is more focused; it reflects an exploratory lens of *my* choosing. Specifically, I am interested in the complexities of race, class, and gender stratification as perceived through the lens of ascriptive citizenship. I can discern a significant and historicized pattern of exclusion and privilege that overshadows the myth of abstract belonging. My interest in the nature of membership and the resulting differential access to society's resources necessitates a more reflective and critical probing of history than can reasonably be expected from a more patronizing citizenship discourse. Ironically, what appears to make the pattern of American citizenship coherent is what it is revealed to glaringly and consistently lack: substantive *equality* for the masses of citizens who occupy subordinate positions within the social

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hierarchy. Surely a conceptual framework that—without fail—enables such “particularity” despite its passionate declarations in favor of universal freedom warrants further examination.

The Constitution, the Supreme Court’s interpretations of it, and certain legislative and executive measures combine to define the aims and limits of justice within the political institutions of a constitutional democracy. These public testaments provide the historical and moral contexts for American thought on equality, race, gender, and other social constructs that are operative within our basic institutions. While it is admittedly a “view from above,” it is one that is not wholly detached from—and inattentive to—the nonideal, the ordinary lived experiences of people. Indeed, it is the majority among these *ordinary people* that determines who will be privy to the “view from above”—and for how long.

The character of the official leadership and the nature of the leadership that they provide are matters of basic justice that people can, and do, directly influence with their ballot and through their organized opposition (or support) with respect to the status quo. If the resulting government safeguards some citizens’ freedoms at the expense of *other* citizens, it is the government *and* the citizenry that must be called into question. Together they perpetuate the patterns of social stratification and ascriptive citizenship that give rise to a caste-like system of constraints on freedom. These constraints are perhaps more evident to those persons who are part of (or who identify with) the growing numbers of excluded and subordinated citizens. Their predicament is aptly captured in Martin Luther King Jr.’s reference to the millions of people “languishing in the corners of American society.”⁴

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We can explore significant examples of institutionalized stratification in America's pattern(s) of ascriptive citizenship. Indeed, our branches of government house the collective memory from which to readily retrieve them (Wolin, 1989). *I draw from these examples in supporting my contention that citizenship status has fundamentally served as an instrument for promoting social and racial exploitation.* Differential political status has been a means by which some citizens have been used to advance the immoral ends of others, and, indeed, it is ascriptive citizenship that is suggested in the "pattern of antiliberal dispositions that have regularly asserted themselves" in American history (Shklar, 1991). These dispositions continue to inform our public understanding of *equality of opportunity*, and do so in ways that adversely impact the construction of moral and just institutions. Creating a democratic project that transcends traditions of privilege, myth, and ascriptive exclusions requires that we reject the continuing misrepresentations of *systemic* exploitation as isolated examples of "improper conduct" within discrete social practices.

Systemic exploitation is indicative of a much larger problem that goes to the very foundation of social organization. It reflects an unjust moral code that guides practical reasoning in the structuring of basic social institutions. This code effectively and persistently counters efforts to forge a collective citizenship identity based on equal dignity and social justice that can ground our—otherwise—superficial territorial union. Many continue to be victimized by the dysfunction within our government and by the suppressed memory of generational exploitation and denial. Consider the following four remarkable periods of innovation in America's constitutional project: the founding era, the Reconstruction, the New Deal, and the Civil Rights era. The examples that I will

provide of denials and degrees of denial of basic rights—pursuant to social stratification and ascriptive citizenship mandates—are drawn from them.

The four periods have a number of noteworthy similarities: each captures a defining moment in America’s judicial, political, economic, and cultural history; each is socially reconstructive to some degree and is animated by populist support, sustained by the “common peoples” demands for change; each reveals high expectations for just reforms in government and for equal citizenship rights; each provides a “window of opportunity”—now sealed in time—when a critical mass of society seemed galvanized and poised to alter its course in the interest of a thick democracy; and each represents an expansion of federal power that could have been harnessed for democratic purposes in response to a troubled citizenry’s demands for a new direction in a time of great social angst.

In each of the four periods we can ascertain something about the fundamental character of the nation. What are its moral assumptions and principles? What are its “problems,” and how are they framed? What are the choices for action in response to the problems? How are they determined, and what are their political implications? It is the ascriptive responses to these questions that will vest some citizens with a renewed sense of American exceptionalism and will vest others with a daunting project within a project—a vital quest for *democratic freedom* within a dominant quest for ascriptive freedom; the former will be measured in lifetimes and centuries of struggle.

The first period is the *founding* era, which needs little introduction. Clearly it is the point of origin for the constitutional project in America. That is, the object of the founding is the Constitution; it captures the hopes of many for liberty and equality in the

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new nation. It also codifies the dominant ideology of American society (Shklar, 1991), the ideology that is to guide the country in the proper functioning of government. It provides a collective moral lens through which practical reasoning executes its mission and through which its outcomes are evaluated. This moral lens is significant because it creates “the given” frame of reference, the controlling set of moral and cultural assumptions about persons and personhood that inform politics within the basic institutions of society.

The second period is the *Reconstruction*; it follows on the heels of the Civil War (1861-65)—the most costly war, in terms of lives lost, in American history. Its aftermath promises to be a time of public reflection on the evils of slavery and on the need for atonement. It appears that the collective moral conscience of the nation might seize this opportunity to redefine and reorganize its priorities. It is an inflection point in the nation’s history, one that could mark its rejection of all future efforts to sacrifice human freedom in pursuit of unjust and immoral ends. Specifically, the Civil War Amendments make the Reconstruction possible by (theoretically) extending equal citizenship to the formerly enslaved black population. A “second” Constitution is within the nation’s reach—that is, if its citizens *choose* a new direction. Of course, this new direction ought to be nothing short of a democracy anchored in equal dignity and equal citizenship. If pursued, such a project brings the nation closer to an antiracist, antisexist, and anti-elitist set of organizing principles that incorporate the best of what the “first” Constitution offered the few—filters the rest—and distributes the benefits (and burdens) of freedom to everyone on an equal basis.

The *New Deal* marks the third period from which I will provide examples of ascriptive citizenship. It begins approximately fifty years after the Civil War and signals an economic rebirth on a never-before-seen scale. It fuels the public's optimism, giving them hope with its promises to secure the social welfare of the working people following the ravages of the Depression. Again, it is a time of great anticipation because so many believe that their suffering and poverty will be ameliorated, that their degraded condition will dramatically improve. The prospect of a redistribution of wealth is, perhaps, greater than ever before in the nation's history. One can imagine their exuberance at the thought of finally sharing more equitably in the promise and prosperity of an emerging industrial power.

Some twenty years later, however, the *Civil Rights era*—the fourth and final period under consideration—forces the nation to take a collective “look in the mirror” and come to grips with its repeated failings. A large segment of its population has been long overlooked in the nation's promises and cycles of goodwill and is publicly outraged and defiant. It is their struggle that is “the project within a project.” Their movement is a truly populist one, and its members openly repudiate the forces of stratification and ascription. Their organizational clarity and persistence is striking. The excluded—those whose ancestors gave their lives for the cause of freedom in America's revolution, for the cause of human dignity and social justice in America's Civil War, and for “the cause,” however defined, in all of America's other wars—again demand liberty and mount a struggle unlike anything seen before or since in America.

Ordinary people with courage and moral purpose provide the catalyst for extraordinary social and political reforms in the Civil Rights era. It is a movement

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powerful enough to convince many that an inflection point in America's history is imminent and unavoidable, a point that marks, for example, the demise of Jim Crow and Black Codes. In this period of social unrest and national reflection there is yet another opportunity for the majority of the citizens to *choose* to substantively alter their nation's course. If they choose to commit themselves to eradicating social stratification and ascriptive citizenship, America's "new" priorities—social and racial justice—can create a renaissance of sorts within the state, one that captures the authentic spirit of freedom that all prior commitments reduced to mere rhetoric or exercises in partitioned privilege.

I write this thesis because each period failed, egregiously, to fulfill its promise. To the extent that each failed to do so, they are "parallels of arrested development," examples of squandered political capital that could have been spent to further equal dignity and equal citizenship. They provide a wealth of examples of obligations neglected, dreams deferred, and lives cast aside. The obvious historical gaps that the four periods evidence suggest that my comments are not offered as a seamless account of every major event, as some historians might labor to provide; such a treatment is far beyond the scope of this project and the argument that it advances. My objective is to provide significant examples that reflect the *social* history of stratification and ascriptive citizenship in America, that demonstrate the pattern of exploitation reflected in the denials (and degrees of denial) of personhood and citizenship rights as *experienced* by many citizens in the "project within a project."

The pattern of denial suggests some of the challenges that confront efforts to promote critical discourse on citizenship. The citizenship project in education, for example, dates back to Thomas Jefferson (Gutek, 1987, 153-159, 360-365) and reminds

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us that, theoretically, the *ideal* is often blinding and very difficult to set aside (Evans, 2004). This reluctance to change traditional thinking and practices in education is well documented (Cuban, 1984; Tyack, 1974; Jackson, 1990). However, the tendency to prefer simplistic and unreflective continuity to substantive transformation does not diminish the educative value of critical, interdisciplinary analyses of citizenship; this is particularly the case in the current climate of confusion, conflict, and impasse in curriculum development. In my estimation, a critical focus on a concept so fundamental to our collective identity, potentially increases the moral value of the contribution that the field of education can make to reconstructive societal aims. Critical discourses on citizenship can and should serve as referents for the theoretical reasoning that directly informs the citizenship project in education and, of course, the democratic project generally.

I. The Founding Era and Ascriptive Citizenship

The seeds of division and denial are sown into the very document that is to define the moral framework of the new nation. At the Constitutional Convention of 1787 the founders voted to deny equal political status and equal dignity to specific persons based on ascription. The most egregious manifestations of this denial are embodied in the provisions of the Constitution that are specifically constructed to perpetuate or accommodate the institution of black chattel slavery in America. These provisions nationalize the denial of black personhood and freedom while conveniently overlooking the contributions blacks made to the liberation of the colonies from British rule. The successful liberation struggle is not followed by democratic freedom; it is followed, instead, by a national codification of black subjugation. Donald E. Lively, Professor of

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Law, provides the following list of such codifying provisions in *The Constitution and Race*:⁵

- Article I, section 2, which apportioned representation in the House on the basis of population count, and considered slaves as three-fifths of a person.
- Article I, sections 2 & 9, which required apportionment of direct taxes among the states pursuant to the same fractional formula [listed above].
- Article I, section 8, which vested Congress with power to suppress insurrections including those by slaves.
- Article I, section 9, which immunized the slave trade from congressional restriction until 1808 [twenty-one years after the date of the Convention]
- Article I, sections 9 & 10, which exempted exports, including the output of slave labor, from federal and state taxation.
- Article IV, section 2, which precluded states from liberating fugitive slaves and required their return upon demand [the fugitive slave clause].
- Article IV, section 4, which obligated the federal government to *protect states* from *domestic violence*, including slave insurrections [my emphasis].
- Article V, which insulated constitutional provisions concerning the slave trade and direct taxes.

The charter provisions required the approval of at least the majority of the convention delegates and required ratification by a majority of the states. George Washington and Thomas Jefferson (later to become the first and third United States Presidents, respectively) were among the supporters of these provisions; they provide but one example of two men who may have been on opposite sides of the political aisle—Washington, a Federalist, and Jefferson a Republican—but were, as slave owners, on the same side of the moral reasoning underpinning the “peculiar institution.” Neither seems to have possessed sufficient moral qualms about the trafficking of human beings to repudiate the practice, even in a society purportedly founded on liberty. These men joined

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others in continuing an institution that had already exploited and degraded black labor for more than one hundred and fifty years at the time of the Convention. The founders *chose* to identify slavery more closely with the expressed aims of the “liberated” nation. They sanctioned slavery and many increased their personal fortunes by heavily investing in it. By accepting this Constitution, the majority of Americans chose to build the “new” nation on old ideas—on slave labor—and chose to make presidents of men who were in the business of trafficking in human beings.

George Washington, Thomas Jefferson, and other founding members used their power and positions of leadership to deprive other people of life, liberty, and the pursuit of happiness. For Washington and Jefferson, in particular, slavery was both a public and a private matter. Even among those who may not have been slave owners, the “peculiar institution” was often no less sanctioned. The *Federalist Papers* suggest that some believed that abolishing slavery would divide the nation (Hamilton, Madison, and Jay, 1961; Smith, 1997). This implies that the charter provisions that severed blacks’ humanity from the status of full personhood actually helped to keep the society that the founders envisioned, “united.” Consider Winthrop Jordan remarks: “The Convention could not consider even the eventual termination of domestic slavery; propositions on this head would have sent half the delegates packing” (Lively, 1992, p. 4). From the outset, political expediency appears to have provided sufficient utilitarian rationale for dismissing the human rights of an entire class of persons. While some citizens were condemned to involuntary servitude others joined forces to form “a more perfect union.” The dye was cast for the moral framework that would guide the tortuous development of the new nation:

Accommodation of slavery, in greater or lesser terms, resulted from what were perceived as overarching *societal interests*. Concessions were made to a focused and fixed southern faction in the cause of establishing a *union*; what was considered as less significant was traded off for what was perceived as more important [my emphasis].⁶

As we will see, the historical *pattern* of social stratification provides us with many occasions to revisit the calculated “bargaining away” of the rights and liberties of blacks in the dominant pursuit of a “greater good” that never seems to include their freedom as equals.

The 1787 Constitution also did little to positively alter the plight of the Indian population (Smith, 1997). Before the ratification of that document the Indians’ fate lay in the hands of settlers who ruled the territories and eked out their existence by usurping greater and greater amounts of Indian land. Although many treaties were signed that contained promises to recognize Indian rights and sovereignty, the promises repeatedly proved false. Coercion increasingly replaced overtures to agreement and consent. The initial usurpation of Indian land was followed by the settlers’ mounting pressure on Indians to move farther and farther west in order to make way for even more settlers. The methods of “persuasion” involved a combination of force, more treaties, and domestic policies. Referring to the treatment that Indians received during the period prior to the Constitution, historian Howard Zinn sums it up this way:

They had been ignored by the fine words of the Declaration, had not been considered equal, certainly not in choosing those who would govern the American territories in which they lived, nor in being able to pursue happiness as they had pursued it for centuries before the white Europeans arrived.⁷

After the Constitution was ratified, Indian land and Indian self-determination continued to erode. Other than Article I, section 10, which prohibited the states from signing treaties

with Indians—reserving this power for the federal government—the Constitution did little to obstruct state confiscation of Indian land.⁸

The Constitution recognized the Indian population as a separate society for purposes of regulating commerce with them, but the document seems to have otherwise regarded them as dependents. As such, they were excluded from political participation within the emerging social order; they continued to be viewed as less human than the white settlers. For its part, the federal government retained the right to control the fate of the Indian people without recognizing them as full members of society. Even where representation was apportioned by virtue of their numbers and even when taxes were levied against them, they did not have equal political rights. The Constitution did nothing to protect the Indians' rapidly disintegrating way of life.

The status of white women did not improve after the ratification of the Constitution. In fact, the document contained no direct references to them.⁹ Many continued to work in various capacities such as spinners, shopkeepers, morticians and a variety of other occupations, but they were generally not permitted to participate in government, not permitted to own property as some had done during colonial times, and not permitted to enter into contracts. In these endeavors, they were considered to be duly represented by their fathers, husbands, and other male members of the family and were forced to resign themselves to the anonymity of the home (Okin, 1994). Roger M. Smith, Professor of Government, sums up the plight of women—post-Constitution—this way:

The salient fact, however, was that the Constitution left intact the state constitutions that denied women the franchise and other legal and political privileges. Hence their status was unaltered. Neither the convention delegates nor Publius [the *Federalist Papers*] commented on that circumstance.¹⁰

Despite the gendered liberalism of the ruling male elite that codified the lowly political status of women relative to men, upper-class white women enjoyed more freedom than did women of color and working-class white women. In *A People's History of the United States: 1492-Present*, Zinn includes a chapter entitled “The Intimately Oppressed,” in which he writes: “When feminist impulses are recorded, they are, almost always, the writings of privileged women who had some status from which to speak, more opportunity to write and have their writings recorded.”¹¹ As an example, he notes that on the eve of the Declaration—seemingly in anticipation of the Constitutional Convention—Abigail Adams wrote a letter to her husband, John Adams, in which she reminded him of the need for greater empowerment of “the ladies”:

In the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies, and be more generous to them than your ancestors. Do not put such unlimited power in the hands of husbands. Remember, all men would be tyrants if they could. If particular care and attention are not paid to the ladies, we are determined to foment a rebellion and will not hold ourselves bound to obey the laws in which we have no voice of representation.¹²

Adams’ sentiments were not taken seriously by the majority of the men in positions to alter the status of women, including her husband (Smith, 1997, 76). Thomas Jefferson, for example—already noted as a slave holder—commented that women would be “too wise to wrinkle their foreheads with politics.”¹³

Despite Abigail Adams’ threats of insurrection, women were routinely disfranchised in every state constitution drawn up after the Revolution. Sometimes their previously recognized rights within the states were rescinded as in the case of New Jersey.¹⁴ Historically, the English common law subordinated women to men, and the Articles of Confederation built on this foundation, so there was little widespread support for women’s empowerment in the newly *liberated* state republics. Perhaps it should be no

surprise that the delegates to the Convention did nothing to hinder this form of state violence against women given their general tolerance for the dehumanizing conditions of slavery. In the entrenchment of the gendered status quo, it would take more than one hundred years (until 1920) and ten additional amendments to the Constitution before women finally obtained the most basic right of modern democratic citizenship: the right to vote. In the meantime, Abigail Adams and her associates were largely expected to remain at home—out of sight, and under control. These expectations were rationalized as measures designed to “protect” women’s virtue and for reasons of “biology” that men concocted and understood.¹⁵

Women were bound by corsets and petticoats and the rhetoric of purity—at least some of them. As a subordinate class, they were socialized to passively submit to their designated inferior status. Their place was largely in the home, and government was of little help to them because laws generally did not interfere in “private” matters. Women were trapped in a culture of exploitative differentiation at the hands of the political (white male) majority. Again we can discern a pattern of exclusion, a pattern that would be repeated over and over as a defining characteristic of America’s sociopolitical history. It is the pattern of ascriptive citizenship. Shklar writes:

In truth, from the nation’s beginnings as an independent republic, Americans were torn by glaring inconsistencies between their professed principles of citizenship and their deep-seated desire to exclude certain groups permanently from the privileges of membership. These tensions constitute the real history of its citizens.¹⁶

As previously indicated, the founders were primarily comprised of an elite class of white males who shared particular interests. Slavery was not the sole interest that this group sought to protect within the provisions of the Constitution. Charles Beard, a

twentieth-century historian, goes to great lengths to connect the founders' federal priorities to a wide variety of personal economic interests, which Zinn sums up this way:

The manufacturers needed protective tariffs; the moneylenders wanted to stop the use of paper money to pay off debts; the land speculators wanted protection as they invaded Indian lands; slave owners needed federal security against slave revolts and runaways; bondholders wanted a government able to raise money by nationwide taxation, to pay off those bonds.¹⁷

Note that these priorities contradict Bancroft's claim that the Constitution "knows nothing of differences by descent, or opinions, of favored classes, or legalized religion, or the political power of property" ¹⁸ However, Beard is convinced that the founders' wealth and power necessarily predisposed them to be anxious about social conflicts and uncertainties that might endanger their social group's economic interests. It is foreseeable, he argues, that they would attempt to secure their property interests within the fundamental law of the land—the Constitution. Consider the following comments by James Madison, one of the founding members and a co-author of *The Federalist Papers*:

But the most common and durable source of factions has been the various and unequal distribution of property. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.¹⁹

Alexander Hamilton, another founding member and co-author of *The Federalist Papers*—and later Secretary of the Treasury in the Washington Administration—is a bit more direct:

All communities divide themselves into the few and the many. The first are the rich and well-born, the other the mass of the people. . . . The people are turbulent and changing; they seldom judge or determine right. Give therefore the first class

a distinct permanent share in the government. . . . Nothing but a permanent body can check the imprudence of democracy.²⁰

As Zinn suggests, it is reasonable to conclude that some (if not all) of the founding members were as concerned about private wealth preservation in the drafting of the Constitution as they were about anything else. Perhaps they had cause to be even more concerned about safeguarding their privilege in light of the potential for chaos as a result of the interests that were clearly undermined by the document. Under the circumstances, according to Beard, the founders' reasoning was quite rational. In *An Economic Interpretation of the Constitution*, he seems to echo the political sentiments of Madison and Hamilton:

Inasmuch as the primary object of government, beyond the mere repression of physical violence, is the making of the rules which determine the property relations of members of society, the dominant classes whose rights are thus to be determined must perforce obtain from the government such rules as are consonant with the larger interests necessary to the continuance of their economic processes, or they must themselves control the organs of government.²¹

"In the nature of things," the Constitutional Convention of 1787 provided a small elite group of white Anglo-Saxon males with a forum within which to further their interests and maintain their political power. There were no public principles to which these individuals subscribed that precluded their misuse of government; they formed their own private society of "insiders" whose increased liberties generally came at the expense of the basic rights of "outsiders," as already noted.

The forgoing examples demonstrate how the founding period nationalized the material conditions of membership based on systemic race, class, and gender exploitation. These tragic beginnings combined with overtures to principles of equality and liberty. This obvious contradiction is at the root of what Shklar refers to as the

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“tortuous development of American ideas of citizenship.”²² Despite the fact that some Indians, some blacks, and all whites (wealthy and poor) may have been recognized as “citizens” in the states in which they resided, any inclusive notions of state and national citizenship were virtually nonexistent at the time of the signing of the Constitution.²³ Even in those states where subordinate group members were permitted to vote, were afforded certain economic rights, and were taxpayers who were counted for purposes of representation, they continued to be second-class citizens.

Long after the Constitution was ratified, even “free” blacks continued to be denied freedom of movement and the right to enter certain Northern states. They could not obtain a passport to travel outside of the country, either. “Free” blacks did not enjoy national citizenship—where ‘national’ is understood to mean *equal citizenship* rights to those afforded other native born inhabitants and that are protected at the federal level from state infringements. According to Kenneth Karst, the restrictions on “free” blacks’ freedom of movement served a particular purpose beyond the individual abridgements:

If free blacks were citizens of the nation, they could travel freely to slave states, where their very presence as free persons would not only undermine the theory of racial caste but remind slaves that their own status was not ordained in nature but imposed on them.²⁴

The denials and degrees of denial of rights that were legitimated in the founding documents of the American polity continue to haunt and cripple the modern democratic project (Shklar, 1991). Ascriptive citizenship continues to undermine the symbols and the rhetoric of nationhood in America (Smith, 1997); for many, both are hollow reminders of the political expediency that lies at the heart of the “more perfect union” and that rationalizes continued social partitioning (Mills, 1997). Perhaps nowhere is this continuing pattern of partitioning and systemic inequality more evident than in the

structure of our socially stratified public school system despite the fifty years that have passed since the Supreme Court (“the Court”) rendered its decision in *Brown v. Board of Education* in 1954 (Balkin, 2001). My comments, here, only hint at the unfortunate aftermath of the Court’s intervention, but I will take up this issue in some detail later in this chapter.

As a review of the discussion thus far, consider the following synopsis of the founding era:

The original possessors of the land—the Indians—are subdued through conquest and their land is taken; the occupation coincides with the forced “importation” and dehumanization of a race of people from the shores of Africa—enslaved and forced to labor for more than three centuries, without reparations; the antecedent conditions of conquest, occupation, and enslavement remain in place as the colonists fight to become an independent “liberated” civil society (with the help of those enslaved). Eventually, the colonists are free from the control of the oppressive foreign government that failed to recognize the self-evident truth of the colonists’ equal status, or their God-given inalienable right to live free and pursue happiness; out of this liberated collectivity—now unto itself—a privileged group (some of them slaveholders) forms a federal constitution purportedly founded on principles of universal liberty and equality in the new nation.

Aristocrats dominate the new leadership and the slaveholders among them continue to profit from trafficking in human beings (having drafted a constitution sanctioning slavery). The liberty to enslave is just one of the liberties that free men secured through the laws that they choose to enact. The poor and working classes are largely excluded from political power but are paternalistically advised by the wealthy, “more enlightened” members of society; likewise, the mothers, wives, daughters, sisters, and other female members of the new nation of settlers form a pseudo-citizenry. They are excluded from public decision making because of “biological reasons” and are deemed unworthy of the equal social and political status enjoyed by some of their male counterparts. They are recognized as partners in intimacy, not power, and otherwise reduced to spectators and ornaments.

From this perspective, the social order is irrational and socially unjust. It is structured by a *qualified* social contract that—incredibly—even the most oppressed in the society are expected to accept. The qualified contract manifests in the patterns of

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ascriptive citizenship practices. Both partition society on the basis of race, gender, and class categories—dehumanizing and humanizing simultaneously. Liberal principles sanction freedom and slavery with equal fervor. The moral framework subordinates equal dignity to the dictates of power. It alienates “inalienable” rights in order to pursue political bargains and ascriptive utility (Allen and Pope, 2003). This is the historical, critical frame of reference that situates my thesis. The persistent pattern of social stratification and ascriptive citizenship within a purportedly free republic underscores the fundamental irrationality of the political system. Examples of this pattern will be revisited in each of the periods that I examine. The next set of examples is drawn from what some describe as the most turbulent and revolutionary period in American history.

II. The Reconstruction Era and Ascriptive Citizenship

The Supreme Court’s groundbreaking decision in *Dred Scott v. Sanford* (1857) created an explosive context for the Civil War and the Reconstruction. The Court’s “states’ rights” position on slavery called into question the power of Congress to make laws limiting the spread of this institution, so its judicial opinion in this case fueled the growing tensions that increasingly divided the North and South. The divisions became more and more intense, prompting Lively (1992) to conclude that the “failure of the political (legislative and executive) and judicial branches to resolve the issues of societal division led inevitably to civil war.”²⁵ My discussion of the *Dred Scott* case will focus on the nature of Scott’s claim to citizenship and on Chief Justice Taney’s majority opinion in response to this claim. Most importantly, this case provides a compelling example of the extent to which the forces of institutional racism permeated the highest levels of government and reinforced the pattern of official dehumanization of blacks on a national scale, a scale that

can be traced back to the charter provisions of the Constitution. I will begin with a brief account of the plaintiff's (Dred Scott's) claim to freedom and citizenship, including an outline of how the case made its way to the Supreme Court.

Dred Scott was a slave in Missouri who brought a claim before the state court of Missouri (in the early 1840's) alleging that after having been transported from Missouri (a slave state) to live on a fort in Louisiana (a free state), he became emancipated. Louisiana was located in the Northwest Territory on federal land that prohibited slavery as part of the Missouri Compromise of 1820. When Scott returned to Missouri, he asserted his claim to freedom and, specifically, to Missouri citizenship. He argued that his free status could not be reverted to slave status because this would violate comity agreements between the states and would violate other Missouri precedents. The state court of Missouri (the Circuit Court of Missouri County) agreed with Scott's claim, but the Missouri State Supreme Court reversed this decision on appeal.

In rendering its reversal, the Supreme Court of Missouri deferred to state law. Missouri law denied slaves' claims to free status when such claims were based on having resided in a free state. The case was remanded to the lower court. Prior to the lower court taking any further action on the case, however, Scott brought a new claim before the United States Circuit Court (federal) alleging that he (along with his wife and their children) had been physically assaulted by John Sanford, his new "owner," who was a resident of New York. In this suit, Scott argued that he and his family were subjected to physical assault and imprisonment in violation of his rights as a citizen under the diversity of citizenship clause of the Constitution. Sanford responded to all charges by arguing that slaves were the lawful property of their masters and that, therefore, he

(Sanford) had a right to “restrain” Scott and his family and conceded that he had “gently laid his hands upon [them].”²⁶ The federal court took jurisdiction of the case. It rejected Scott’s diversity claim to citizenship and denied his assault and imprisonment allegations, as well. Scott appealed this decision to the Supreme Court (“the Court”).

The Court dismissed Scott’s assault charges against Sanford. It ruled that the lower courts had no jurisdiction to hear Scott’s original claim or to pass judgment on it since Scott was not a citizen of the state of Missouri pursuant to the State Supreme Court’s decision. Accordingly, Scott had no standing to bring the claim into the Missouri courts in the first instance and, similarly, had no standing to bring cases before the United States Supreme Court. From this determination one might infer that the Court’s ruling was fully rendered—completed—that there was no further basis for comment on the Scott case, but such a conclusion—though quite reasonable—was contradicted by Chief Justice Taney’s explosive, and now infamous, protracted and bitter denunciation of black personhood, presumably underscoring the rationale for the denial of Scotts’ claim. For many, the judicial opinion in *Dred Scott* is unforgettable because of the overt racism and white supremacy ideology that its majority opinion contained, but for others it is a forgettable chapter in the collective memory of injustice—and for the very same reason. Taney appears to have concluded that it was the Court’s (his?) duty to posterity to set the record straight on the true nature of “belonging” in America. He restated and rationalized the white ascriptive privileges that the founders had already seen fit to nationalize seventy years earlier. I quote Taney at length:

The words “people of the United States” and “citizens” are synonymous terms, and mean the same thing. . . . The question before us is, whether the classes of persons described in the plea in abatement [Scott’s citizenship claim] compose a portion of this people, and are constituent members of this sovereignty? We think

they are not, and that they are not included, and were not intended to be included, under the word “citizens” in the Constitution, and can therefore claim none of the rights and privileges, which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them. . . . It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. . . . They [blacks] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no right which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. . . . This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing or supposed to be open to dispute.²⁷

Derrick Bell, Professor of Law, contends that Taney’s opinion was “excessive even for its time.”²⁸ Bell’s use of the word ‘excessive’ is directed at the effusive white supremacist ideology that the opinion exudes and that was offered as legitimate jurisprudence, but it is Taney’s judicial imprudence overshadows any competence that might otherwise be attributed his legal reasoning. Bell’s “even for its time” reference refers to the historical context within which Taney’s opinion is to be examined. Presumably Taney violated established conventions, which, according to Bell, meant that Taney went beyond the bounds of “permissible utterances” by a public official.

Bell’s contention that Taney’s remarks exceeded the implied boundaries of decency—even under the depraved moral and social conditions of chattel slavery—is intriguing. My interpretation of the social mores and moral tendencies of Taney’s time leads me to conclude otherwise. For example, there appears to have been no moral outcry among the majority of American citizens about having a chattel slave system underpinning the very foundation of their “freedom-loving” society so long as they were

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not also enslaved by it (Shklar, 1991). Absent this infamous and tragic fact of human history more than two centuries prior, Bell and I would not have a *Dred Scott* decision to ponder. Furthermore, one is hard pressed to discern any public outrage about the fact that Taney's racist declarations were offered not as personal opinion but, rather, as *national* jurisprudence. There was no indication of a collective and public repudiation of his contention that white America—indeed, the whole of white Western civilization—openly embraced white supremacy ideology and believed it to be a foregone conclusion that blacks were inherently inferior to whites (Lively, 1992). Why the silence?

For many, Taney's decision is part of a bygone era of institutionalized racism that is best forgotten, but for others, Taney's position as the chief justice of the highest court in the land, coupled with the malicious and damning nature of his comments, provide sufficient rationale for remembering. They further note that his views are embedded in a long *tradition* of racial stratification and domination, an ideology that may explain the motivation for approximately one hundred and fifty years of *de jure* and *de facto* racial segregation and continuing violations of blacks' civil rights. These denials are glaringly evident, today, in the areas of housing and public schooling (Powell et al, 2001). Taney's views were neither extremist nor excessive for his time. Are they now?

Indeed, the ideology that Taney espoused in *Scott* was well within the purview of the racist ideas that unified the states' rights agenda of the Jeffersonian and Jacksonian parties of the early to mid-nineteenth century, with the decision to designate blacks as three-fifths of a person (two-fifths property) at the Constitutional Convention of 1787. Jefferson was a "founding father" *and* a wealthy slave owner, and Taney—also a slave owner (Lively, 1992)—was a Jackson appointee to the Supreme Court. Indeed, Smith

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describes Taney's decision as "the masterwork of Jacksonian racist constitutionalism" (1997, 245). Taney's declarations in *Scott* echo Jefferson's many racist assertions about blacks in his *Notes on the State of Virginia* published in 1787. Some of Jefferson's statements became part of the public record of the first Congress when a South Carolina representative offered them in support of slavery during a debate on this issue (Smith, 1997).

The *Scott* majority opinion evidences the organic nature of racism within the basic institutions of American society. Taney audaciously exposed this unflattering characteristic for generations to analyze. Dred Scott's quest for freedom was derailed by an institutional pattern of degradation buttressed by the public's acceptance of a racist exclusionary norm existing within the "collective" psyche of the political majority (Lively, 1992). Where do we look for evidence that might support a claim that this context has substantially changed? Such evidence seems all the more difficult to come by since race, institutional racism, and slavery are not topics of serious public discussion inside or outside of government, especially across racial lines.

Perhaps the *citizenry* could provide evidence of a liberated collective psyche by choosing to *elect* egalitarian-minded public officials who are willing to emphatically repudiate American slavery and Taney's racist ideology (including the "neoTaneyan" varieties). Perhaps new leadership could speak on behalf of the people, just as Taney purported to do in his judicial capacity—only in support of just ends. If government were then able to combine this rhetoric with specific policies and practices, its *actions* could provide proof of its intention to serve as an instrument for freedom rather than for oppression; this could give rise to a revolutionary pattern of another kind: government

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protection of the substantive rights and liberties of black citizens and all other citizens through the enforcement of egalitarian public policies (Walzer, 1995). In my estimation, these actions would suggest of level of moral development sufficient to constitute the beginnings of a social transformation.

The overtly racist moral and political framework that the majority of American citizens endorsed or condoned made it possible for the majority of the justices in *Scott* to declare that even if Dred Scott had been “entitled” to his freedom as a result of being transported to a free state, he would still lack standing to bring a case before the *federal* courts because he was black. The Court concluded that people of African descent—slave or free—could never be considered “national” citizens and, therefore, could not seek federal redress. That is, the descendants of Africans could forever be excluded from citizenship within the provisions of the Constitution (60 U.S. 393 at 406). Taney’s rationale for advocating racial *exclusions* from national citizenship status simply underscored what appears to have been accepted premises within the ideology of the white majority: that “black chattel slavery stood at the opposite social pole from full citizenship and so defined it,”²⁹ that “the existence of a racially identified slave caste served to heighten the sense of social equality among whites,”³⁰ and that “People of the United States” and “citizenship” were not only synonymous with each other, as Taney contended, but were synonymous with whiteness.³¹

Probing the cogency of the doctrine of racism and appreciating its force in the patterns of ascriptive denials of black personhood in America requires that we not only reclaim our collective memory but that we also “give injustice its due” (Shklar, 1990).

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Michelle Moody-Adams, Professor of Philosophy, suggests that racism and racial stratification have an underlying logic that must be demystified:

We must acknowledge the existence of a complex internal perspective on the legally supported exclusion of Black people from the social mechanisms for affirming self-respect. A complex set of beliefs and attitudes, transmitted from one generation to another for at least three hundred years, helped shore up the institution of American slavery, and the legally protected discrimination of subsequent periods.³²

Despite the centuries of devastation that may be attributed to what Adams refers to as a “complex internal perspective” that sanctions the ascriptive denials of citizenship and the repudiations of black human dignity, Taney still managed to conjure up an “appropriate” basis on which a one-way relationship could exist between native-born “beings of an inferior order” and the country which so designated them. Referring to blacks and their African ancestors, Taney remarked that “the African race, however, born in the country, did owe allegiance to the Government, whether they were slave or free”³³—an internal perspective that Moody-Adams rejects: “But no social order can command the respect of people whom it continually fails to respect and for whom (as a consequence) both self-mistrust and widespread mistrust of social institutions come to seem a rational adaptation to circumstances.”³⁴

For many, the fundamental irrationality of the “relationship” that Taney advocates is transparent. Moody-Adams’ comments simply underscore the absurdity of such a notion being openly expressed as public policy. The political “understanding” that Taney implies would necessitate yet another sacrifice of a subordinate group’s self-interest in the interest of a political expediency favoring the dominant group—a familiar pattern in America’s sociopolitical history. A Taneyan political understanding would negate the moral force and legitimacy of a host of acts of resistance: slave revolts, abolitionist

movements, “underground railroads,” Harriet Tubman’s heroism, assault and imprisonment claims against slave owners, the Civil Rights Movement, and any other deliberate efforts to further black self-determination and freedom. As evidenced by these (and other) continuing acts of defiance in American society, one can only conclude that many blacks (and others) find Taney’s racial reasoning absurd.

Within five years after the *Scott* decision was rendered, the nation found itself in a civil war. Months into Abraham Lincoln’s presidency a number of Southern states seceded from the Union fearing that Lincoln—whose party was sometimes referred to as a “Black Republican” party, by white Southerners—would undermine their system of chattel slavery.³⁵ The South’s secession was clearly unacceptable to Lincoln. As a political expediency, however, he was willing to recognize states’ rights on the issue of slavery if slavery were confined to designated areas, and—like the founding fathers before him—he was willing to offer federal protection from “interference.”³⁶ Apparently the seceding Southern states had little faith in Lincoln and little interest in negotiating with his Republican administration. They continued to recognize themselves as a Confederacy, a separate nation under the Confederate flag. Lincoln was determined to keep the Union together.

Shortly before the North’s victory over the South in 1865 Lincoln (and the government) began another chapter in the tortuous (and torturous) development of citizenship by implementing policies that simultaneously acknowledged and undermined the rights of blacks. The Emancipation Proclamation (1863), for example, was a harbinger of the irrationality that this new chapter in American social policy held for blacks. First, the effect of the Proclamation was to free only those slaves residing in the

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Southern states that seceded from the Union and to allow slavery to continue in the “loyal” Southern states. (Lincoln recruited large numbers of black soldiers from the group of freed slaves—more than 180,000.³⁷) This raises the question: Why did Lincoln recognize the right to freedom for blacks in some states and continue to sanction their enslavement in neighboring states, particularly when the central issue motivating the seceding states to rebel was their desire to perpetuate slavery? It is an irrational policy from the standpoint of liberal principles even if, as some argue, the immorality of the institution of slavery did not figure into the Proclamation policy.

Second, following the conclusion of the war, the Thirteenth Amendment to the Constitution was ratified. It officially ended involuntary servitude. During the deliberations on the Amendment, however, Congress chose to deny reparations of any kind to the newly freed slaves. Even a permanent land redistribution scheme along the lines of the promised “forty acres and a mule” was denied, despite Congress possessing the power—and the land—to offer reparations under the Confiscation Acts of 1861 and 1862.³⁸ These Acts authorized government to take land from rebel fighters, from their supporters, and from others found guilty of treason.

Instead of redistributing some of the confiscated land to former slaves—particularly given that they were the principal improvers of it (a Lockean concept)—Congress decided that the heirs of the *rebels* should have it. Perhaps Congress reasoned that since the rebels were already losing some of their “property” due to the abolition of slavery, they should be allowed to retain the land (Smith, 1997), but this raises another question: Of the untold acres of land that blacks had improved through centuries of coerced free labor, on what land were they to build homes and start a new life for

ves as “free” people? Part of the answer may be inferred from the fact that the Confiscation Act endorsed the *colonization* of newly freed blacks, a policy that advocated according to Smith (1997): “But in 1862, the President still thought it late to work on colonization schemes, chiefly to Central America and Haiti. . . , bringing loyal states aid for abolition and colonization.”³⁹

Why did Congress oppose land redistribution to newly freed blacks? It cited the economic and human devastation that the *country* had already suffered in the bitterly fought war, as a negating factor. This prompts some to ask: Where is the consideration of the economic and human devastation that blacks suffered during two hundred fifty years of chattel slavery—improving land all over the South, under the most brutal conditions, and possessing virtually none of it? It is uncertain whether (or if) Congress considered this question, but instead of distributive justice it decided to establish the Freedman’s Bureau in 1865. Its purpose was to provide rations of food and clothing to uneducated and impoverished former slaves, to assist them in the procurement of land and employment—often working on plantations performing the same tasks that they had performed during slavery.

It is difficult to see how the poorly-funded Freedman’s Bureau could assist blacks in acquiring the means to *purchase* land of their own and live independent lives. The high cost of labor in the South was prohibitive. The lack of background justice virtually guaranteed the persistence of white domination irrespective of the presence of the Bureau. In the face of this entrenched asymmetry of power, Southern states swiftly responded to what they perceived to be lavish “federal handouts” to blacks, by instituting Black Codes.

The codes reinstated a system of violence and violations of constitutional rights based on the racial partitioning of Southern society. The codes dictated the time, place, and manner of blacks' movements—predating, yet paralleling in many respects, South Africa's apartheid system (Marx, 1998). The South instituted curfews for blacks, required them to carry identification, denied them the right to assemble, the right to bear arms, the right to participate on juries, and the right to seek gainful employment without first passing special tests in order for them to procure certain licenses. The procurement process had the effect of preserving “for whites only” the occupations that paid better wages.

Blacks were forced by law and custom to revert to their old occupations within the South's racial order. They were confronted with pervasive abuses of power and with government's refusals to protect them from the violence that was constantly being perpetuated against them, often at the hands of public officials. They were routinely subjected to what is now characterized as domestic terrorism and hate crimes that included the spectacle of public lynchings and burnings often attended by large crowds of exuberant white adults, children, public officials, and photographers (Litwack, 2000). The resulting precariousness of black life was everywhere apparent. Their prospects for survival were uncertain given the reinstatement of their pre-Civil War slave status.⁴⁰ Congress finally responded to the crisis by passing legislation to protect the civil rights of blacks.

The Civil Rights Act of 1866 was intended to complement the Thirteenth Amendment and to abolish Black Codes. Its language appeared to renounce the white supremacy rhetoric in *Dred Scott*. The Act stated, in part:

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[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States: and such citizens, of every race and color [including former slaves], shall have the same right, in every State and territory of the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens. . . .⁴¹

Congress also passed the Reconstruction Acts in 1867 that, among other things, placed the South under martial law and required Southern states to draft new constitutions that recognized the rights of black citizens. Additional political rights came in the form of the Fourteenth and Fifteenth Amendments to the Constitution. The Fourteenth Amendment (again) made all native-born inhabitants citizens, and the Fifteenth Amendment guaranteed the suffrage to the *male segment* of the black population. The Thirteenth, Fourteenth, and Fifteenth Amendments are sometimes referred to as the Civil War Amendments.

The Fourteenth Amendment constitutionally guaranteed the mandate contained in the Civil Rights Act of 1866. Like the Act, the Fourteenth Amendment specifically identified the class of persons designated “citizens” of the United States. The language, “All persons born and naturalized in the United States,” formally contradicted the Court’s earlier citizenship ruling in *Dred Scott* by equating blacks’ state citizenship with national citizenship: “All persons . . . are citizens of the United States and of the State wherein they reside.” Finally, the Amendment (Article 14, Section 1) invalidated Black Codes and other such policies by declaring, in part, the following:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.⁴²

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The Civil War Amendments along with the Acts of 1866 and 1867, among others, created protections for blacks' exercise of their newly acquired political liberties. The voting rights afforded to black males increased blacks' political influence and representation in the halls of power. Not surprisingly, black political support usually went to white Republican candidates—the party of Lincoln—but in many areas blacks had the voting power to elect each other to public office for the first time in America's history. Once there, the newly elected representatives attempted to make their political power visible in the legislative measures that they championed, which included the establishment of charitable organizations, free and integrated public schools, and the rebuilding of bridges and ferries.⁴³

The period of political liberalism that was ushered in by the Civil War Amendments was short lived, however, lasting for approximately nine years from 1869-1877 (Cowan & Maguire, 1994, 105). Black equality (black citizenship) was a difficult pill for white Southerners *and* white Northerners to swallow (Du Bois, 1935). It is an underappreciated fact that the revolutionary changes facilitated by black citizenship status sparked violent race riots *in the North*; indeed, the black franchise that the North was forcing the South to accept was *enforced* in only a handful of states in the North.⁴⁴ As W. E. B. Du Bois noted in *Black Reconstruction in America*, the political will of the white majority—irrespective of geography—was not in support of blacks *exercising* their newly acquired civil rights.

The nation's experiment with inclusive liberalism was finally derailed by political expediencies and abuses of government power. For example, in 1872 the Freedman's Bureau was abolished because it lacked support in the Congress.⁴⁵ Recall that this agency

was charged with helping blacks begin to make the transition from slaves to citizens—apparently in lieu of reparations. Its services included support for their basic needs such as assistance in obtaining shelter of their own and advocacy for the protections that secured their emerging independence and newly acquired civil rights. Surely the Bureau’s mission could not have been accomplished in seven years (after nearly three centuries of chattel slavery) even if it had actually been funded to realize its charge.

Indeed, some scholars maintain that the success of the Freedman’s Bureau was never part of the post-Reconstruction agenda because government lacked of requisite intent to act in support of black empowerment. They point to the expansion of legislation affecting the acquisition of confiscated lands in the South which permitted white Confederate supporters to “compete” with former slaves to gain land grants simply by taking an oath stating that they had not fought for the Confederacy or aided its fight. However, as economists Melvin Oliver and Thomas Shapiro point out in *Black Wealth/White Wealth: A New Perspective on Inequality*, “This opened the door to massive white applications for land. One estimate suggests that over three-quarters (77.1 percent) of the land applicants under the act were white.”⁴⁶ Other scholars, such as law professor Kenneth Karst note that the Freedman’s Bureau even assisted in the efforts to confine black labor to the South (in low paying jobs) in order to allay the fears of Northern whites that free black migration (resulting from greater citizenship privileges) would create unwanted competition for *their* jobs.⁴⁷ Such schemes, according to one scholar,

not only displayed a lack of genuine commitment to free labor precepts; it expressed more virulently racist white beliefs about black inferiority. Only such racial hostility explains why so many whites, even many bureau officials,

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believed that economic stability required subjecting blacks to labor systems resembling the slavery they otherwise condemned as immoral or inefficient.⁴⁸

In another policy decision that seems irrational to many and that further undermined the political equality of blacks, the federal troops that had been placed in the South following the Civil War were removed in 1877 (Cowan & Maguire, 1994). Ten years of federal intervention were apparently sufficient to counter centuries of hate, violence, and notions of privilege that persistently doomed blacks' chances to live and prosper as free citizens, but there are signs that such moral reasoning never entered the political equation. That is, federal troops were not withdrawn as a result of deliberations about the well-being of blacks or as a the result of research findings (employing ethical guidelines) that tended to show that background justice had been established in the South such that military force was no longer warranted.

The federal troops were withdrawn from the South in a political compromise between white Republicans and white Southern Democrats (the Hayes-Tilden Compromise) to secure Rutherford B. Hayes' presidency in 1877.⁴⁹ In exchange for Hayes' election, the Republicans agreed to end martial law in the South and to allow the states to return to business as usual. Of course, the resistance that blacks mounted could not equal the level that the federal troops provided prior to "the Compromise." The political expediency of 1877 facilitated the foreseeable unleashing of white rage that many Southerners harbored. Racial persecution and violence reigned once again on a massive scale in the South. Although Taney died before the Civil War ended, his racism seemed to gain new currency after the war, and its effect was to deepen the social cleavages formed by previous centuries of racial exploitation.

In yet another blow to equal citizenship rights that signaled the demise of the Reconstruction project, the Civil Rights Act of 1875 outlawing discrimination against black citizens' use of public venues was nullified by the Supreme Court's ruling in the *Civil Rights Cases* of 1883. The Court stated that the violations in question resulted from the "wrongful acts of *individual[s]* . . . *private* wrong[s]. . . . not sanctioned in some way by the State, or not done under state authority [my emphasis]."50 Pursuant to this line of thinking, "state action" had to be involved in order for the Fourteenth Amendment to apply. The Court's public justification for this reading of the Amendment appears to entail the following reasoning: When "some" citizens obstruct "other" citizens' use of *public* facilities on the basis of race, such actions do not rise to the level of a violation of rights protected by the Fourteenth Amendment if the state is not the source of the denial, if it does not *make* laws limiting (black) citizens' use of public facilities.

This "state action" limitation on the Fourteenth Amendment's effect was later applied to the interpretation of the Fifteenth Amendment as well (Karst, 1989). With respect to both Amendments, the Court determined that constitutional protections do not apply where *individual citizens* interfere with the *public's* use of *public* facilities. This is how the Court chose to frame a pervasive injustice that blacks repeatedly faced within a system of racial stratification and ascriptive citizenship. The "private" nature of the violation made the resulting harm fall outside of "state action" and, therefore, outside of federal constitutional protections. Of course, it remains unclear what the Court understood the role of the state's to be in such instances. How did the so-called "private" nature of the violations relieve states of their responsibility for protecting the rights of citizens living within their borders?

We are left to conclude that the state is “neutral” when citizens violate other citizens’ constitutional rights in the use of public spaces. Perhaps this line of reasoning relieved Southern states (in the opinion of the Court) of any responsibility for the pattern of lynchings in the South that, according to one estimate, amounted to over three thousand unlawful killings of black men, women, and children within a thirty-five year period.⁵¹ Perhaps the “state action” requirement also exonerated Congress of any wrongdoing when the majority of its elected officials failed to intervene on behalf of black citizens to protect their right to life, despite being aware of the lynching frenzy occurring in many of their districts; federal antilynching legislation was repeatedly blocked or filibustered (Cowan & Maguire, 1994). This official neglect prompted Ida B. Wells Barnett, a black woman born into slavery in 1862, to risk her own life and safety to do what elected officials would not: undertake a serious antilynching campaign repudiating the murders of blacks. Soon others joined her in a movement to end what appears to have been a popular spectacle of death.

In the late-nineteenth century, the outspoken Ida B. Wells Barnett published a pamphlet, *The Red Record*, and became co-owner of the *Memphis Free Speech* newspaper. In each of her publications and in many public speeches, she made lynchings a *public* matter and spoke out against its atrocities: “Nowhere in the civilized world, save the United States,” she noted, “do men [private individuals] go out in bands, to hunt down, shoot, hang to death a single individual.”⁵² (Wells later became one of the founding members of the National Association for the Advancement of Colored People (NAACP)—a civil rights organization founded in 1909 that continues to combat racially ascriptive citizenship and to promote the cause of racial and social justice in America.)

The history of blacks' citizenship status in America is a history of persistent *denial* and *degrees of denial*. Their political membership excluded protections against restrictions on movement, on the use of public venues, on political rights—even the right to life, itself—if abridgments occurred at the hands of *private* citizens and could not be shown to involve "state action." The Court's record on protecting rights and liberties has frequently left much to be desired. John Rawls, a political philosopher whose theory of justice (to be discussed in Chapter 3) gives the Court a prominent role in guiding moral reasoning on matters of basic justice and constitutional issues, concedes that it has often been on the wrong side of fairness:

It must be said that historically the [C]ourt has often failed badly in this role. It upheld the Alien and Sedition Acts of 1798 and one need only mention *Dred Scott* (1857). It emasculated the Reconstruction amendments by interpreting them as a charter for capitalist liberty rather than the liberty of the freed slaves. . . .⁵³

Approximately forty years after *Dred Scott* and thirteen years after the nullification of the Civil Rights Act of 1875, the Court handed down its decision in the case of *Plessy v. Ferguson* (1896). This decision further narrowed and qualified the Court's (and the public's) conception of "equal" citizenship. Its ruling upheld a Louisiana statute forbidding blacks (i.e. Homer Plessy) and whites from occupying seats in the same section of passenger trains. The state statute required that "separate but equal" accommodations be provided for blacks and whites and assessed penalties on both for violations of the seating arrangements. In upholding the statute the Court problematized the clear intent of the Fourteenth Amendment and its social implications. Writing for the majority, Justice Brown's opinion included the following:

The object of the amendment [the Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but *in the nature of things* it could not have been intended to abolish distinctions based upon color, or

to enforce social, as distinguished from political equality, or a *commingling* of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of [s]tates where the political rights of the colored race have been longest and most earnestly enforced [my emphasis].⁵⁴

shrugging its judicial shoulders, the Court concluded:

If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.⁵⁵

, the Court's ascriptive reasoning results in irrational jurisprudence. Unlike the

g of the Court five years early in the nullification of the Civil Rights Act of 1875, in

stance the state of Louisiana was, in fact, the "source" of the laws that abridged the

and liberties of black citizens. This time, it was a coercive "state action" that

ated blacks exclusion from certain seats on the train. Despite this added fact, "in the

of things" the Court defied its own logic and conjured up a rationale for the state's

e to enforce constitutional protections. Justice Harlan's dissenting opinion

ropriately pointed out that the railroad made use of *public* highways and that the

ation owning the railroad engaged in a *public* function. He then proceeded to

s his disapproval of government involvement in making racial distinctions among

is:

In respect to civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. . . . I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved. Indeed, such legislation, as that here in question, is inconsistent not only with that of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one

within the United States. The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom.⁵⁶

Harlan's dissenting opinion champions the formal rights of black citizens. It the arguments put forth to exclude blacks from equal treatment on the basis of violation of their constitutional rights. However, even his argument takes an unflattering turn as he forcefully drives home his point about racial injustice and citizenship, by employing a striking comparison:

There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question, a Chinaman can ride in the same passenger coach with the white citizens of the United States, while citizens of the black race in Louisiana, many of whom, perhaps, risked their lives for the preservation of the Union, who are entitled, by law, to participate in the political control of the State and nation, who are not excluded, by law or by reason of their race, from public stations of any kind, and who have all the legal rights that belong to white citizens, are yet declared to be criminals, liable to imprisonment, if they ride in a public coach occupied by citizens of the white race.⁵⁷

Harlan's comments echo Taney's racist dogma espoused more than ninety years earlier in *Dred Scott*. Harlan, like Taney, condemns all Chinese people, even native-born Chinese, to their eternal exclusion from American citizenship on the basis of race. The Chinese—like the people of African descent in *Dred*—are deemed to be forever outside of the meaning of "persons" in the Constitution. According to Harlan, they are just too "different" from the majority white population in the United States to enjoy equal citizenship. With Harlan's comments duly noted, the *Plessy* majority nationalized state-sanctioned racial segregation, and the decision remained the law of the land for almost sixty years until *Brown v. Board of Education* (1954) reversed it—or, more accurately, reversed it to a different standard. *Brown* will be discussed in the section following the New Deal.

III. The New Deal and Ascriptive Citizenship

The New Deal marks the period in American history when President Roosevelt put forth a series of legislative initiatives that attempted to stabilize the economy following the depression. The initiatives were also intended to stem the tide of wildcat strikes and social unrest among growing numbers of angry, poverty-stricken Americans who were beyond the point of frustration. Indeed, many workers were taking matters into their own hands—taking over work sites and “liberating” raw materials that could be exchanged for much-needed services or food. Such insurgency was already underway by the time Roosevelt came into office in 1933 after overwhelmingly defeating Herbert Hoover in the presidential election of 1932.

Roosevelt immediately initiated reforms targeting widespread poverty, joblessness, low wages and the spontaneous rebellions by working class citizens.⁵⁸ Among Roosevelt’s reforms were the National Recovery Act, The Wagner Act, the Fair Labor Standards Act, the Social Security Act, and the federal housing programs. His promises raised expectations and, according to political scientist Michael Parenti, prompted many to look to his administration to “solve the problem of the depression, raise the impoverished, redistribute income, extend equality and countenance racial discrimination and segregation, make business more responsible to social welfare, and reduce businesses’ preeminent political power.”⁵⁹

The New Deal gave the federal government a more prominent role in securing economic prosperity for citizens. In this respect, it was not unlike the role of government frequently identified with social liberalism (Voet, 1998). That is, government intervenes in the economy in order to reduce the hardship of long-term unemployment and

ity, and to otherwise provide a safety net to protect citizens from abject poverty. Any, Roosevelt's equal opportunity agenda seemed to reflect this conscious intention. Equally important, his policies seemed to affirm the dignity of all human and to embrace a wider community of citizens—particular ordinary citizens—in pursuit of the common good on an equal basis. In this climate, workers' rights to wages and safe working conditions officially became important matters of national concern that connected Roosevelt's agenda to fundamental notions about democratic citizenship. Among these notions Shklar explains the following:

The dignity of work and of personal achievement, and the contempt for aristocratic idleness, have since Colonial times been an important part of American civic self-identification. The opportunity to work and be paid an earned reward for one's labor was a social right, because it was a primary source of public respect. It was seen as such, however, not only because it was a defiant cultural and moral departure from the corrupt European past, but also because paid labor separated the free [person] from the slave.⁶⁰

Shklar's comments only suggest how significant the devastation might have been for millions who had long been denied the opportunity to earn a decent living. One can get an impression of how optimistic citizens might have been about Roosevelt's policies. Unfortunately the optimism soon turned to despair as the hopes of many were dashed by the pattern of greed, social division, discrimination, and racial violence in the 1930s. Despite the New Deal's revolutionary pronouncements, its actual impact was overwhelmingly skewed in favor of the status quo in ways that greatly disadvantage the least advantaged—most prominent among them were those persons just sixty years removed from chattel slavery: the black population (Bernstein, 1969; Klinkner & Smith, 1999; Folsom, 1995; Powell, 2003; Williams, 1998).

Roosevelt's policies may have done little to change the nature of things in the distribution of benefits and burdens. The pattern of discrimination that perverted the founding era and the Reconstruction appears to have plagued the New Deal as well (Lively, 1992; Powell, 2003; Weir, 1995). Howard Zinn's comments on the effects of Roosevelt's "progressive" social policies on black advancement suggests a persistent pattern of racially ascriptive citizenship:

Some blacks got posts in the administration, but most blacks were ignored by the New Deal programs. As tenant farmers, as farm laborers, as migrants, as domestic workers, they didn't qualify for unemployment insurance, minimum wages, social security, or farm subsidies. Roosevelt, careful not to offend southern white politicians whose political support he needed, did not push a bill against lynching. Blacks and whites were segregated in the armed forces. And black workers were discriminated against in getting jobs. They were the last hired and the first fired.⁶¹

Michael Parenti (2002) agrees,

In regard to school desegregation, open housing, fair employment practices, voting rights for blacks and anti-lynch laws, the New Deal did nothing. Blacks were excluded from jobs in the Civilian Conservation Corps, received less than their proportional share of public assistance, and under the NRA (National Recovery Act) were frequently paid wages below the legal minimum [The NRA permitted the exclusion of blacks from unions, so they were not represented in labor relations negotiations].⁶²

It appears that the *primary* beneficiaries of the "New Deal" were the members of the "old guard": white wealthy individuals, the business class—"the moneyed few"—not the poor or working classes. Businesses were subsidized with billions of dollars from the public treasury, and regulatory schemes were devised to protect their class interests. To a large extent, the logic underlying economic policies from previous generations remained in effect and power differentials were unaltered. Indeed, a great disparity between New Deal rhetoric and fundamental economic justice is suggested in Zinn's summary of the New Deal's impact:

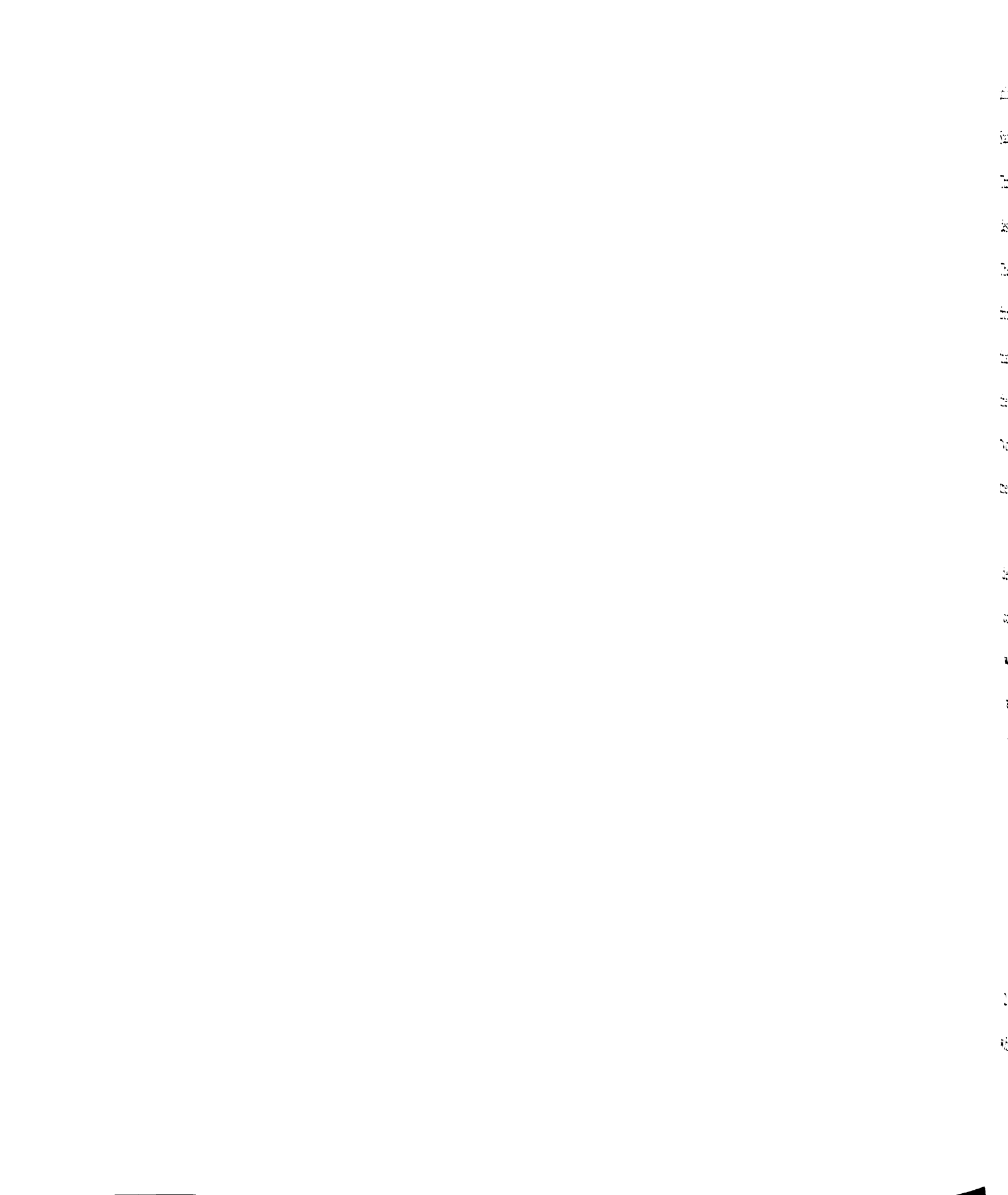
When the New Deal was over, capitalism remained intact. The rich still controlled the nation's wealth, as well as its laws, courts, police, newspapers, churches, colleges. Enough help had been given to enough people to make Roosevelt a hero to millions, but the same system that had brought depression and crisis—the system of waste, of inequality, of concern for profit over human need—remained.⁶³

The Supreme Court's role in the New Deal appeared to be consistent with the conservative brand of activism that characterized its judicial decisions during the Reconstruction. Rawls' disappointment with the Court's rulings during these periods reflects this view; according to him, the Court "emasculated the Reconstruction amendments by interpreting them as a charter of capitalist liberty rather than the liberty of the freed slaves; and from *Lochner* (1905) through the early New Deal years it did much the same."⁶⁴

One final example from the New Deal furthers my argument that citizenship status has fundamentally served as an instrument for social and racial exploitation and fragmentation. The "antiliberal dispositions that have regularly asserted themselves"⁶⁵ manifest in ascriptive policies that unjustly reduce the fair value of political liberties that particular groups of citizens receive. Equality among citizens has been repeatedly sacrificed due to interpretations of citizenship that unjustly link the concept to ascriptive constructs such as race. In February of 1942 during the Second World War, President Roosevelt issued Executive Order 9066, which authorized the military to

prescribe military areas and define their extent, from which *any or all persons* may be excluded, and with respect to which the right of *any person* to enter, remain in, or leave shall be subject to whatever restrictions the Military Commander may impose in his discretion [my emphasis].⁶⁶

The purpose of the order was to provide "protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense



utilities.”⁶⁷ This order was strengthened by the passage of the Act of March 21, 1942 (56 Stat. 173), which made violating the order punishable by fines and/or imprisonment.⁶⁸

Three days later, Commander DeWitt issued exclusion orders that included an area designated as “Military Area No. 1.” People were prohibited from “entering” this area. Then on March 27 DeWitt issued another order prohibiting persons of Japanese ancestry from “leaving” the same area (Military Area No. 1); the effect of this second order was that some people received conflicting directives regarding the designated area, and when the prohibition was lifted, it was the Japanese who were told that their eventual “voluntary migration” from the area would be *facilitated* by the military in order to insure their safe and orderly evacuation.

The Japanese were singled out for special “military escort” based on Dewitt’s determination that they posed a threat to national security. Such differential procedures continued to be in effect on May 3, 1942 when Dewitt finally issued Exclusion Order 34 which stated that “after 12 o’clock May 8, 1942, all persons of Japanese ancestry, both alien and nonalien, were to be excluded [required to leave] from a designated portion of Military Area No. 1.”⁶⁹ The General’s orders required that all persons of Japanese ancestry report to “a Civil Control Station for instructions to go to an Assembly Center, and added that any person failing to comply with the provisions of the order who was found in the described area after the date set would be liable to prosecution under the Act of March 21, 1942.”⁷⁰

On May 30, 1942, Fred Korematsu was charged with violating the Act of March 21, 1942 because he remained in a restricted portion of Military Area No. 1—a portion in which he lived. He refused to leave the area because Dewitt’s second proclamation

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required evacuees to report directly to an Assembly Center and to remain there under military control. Korematsu believed that the relocation and detention orders violated his constitutional rights to equal protection, but he was found guilty in District Court in California for violating the Act of March 21, 1942. Although sentenced to five years *probation*, he was “at once taken into military custody and lodged in an Assembly Center.”⁷¹ Korematsu appealed.

In *Korematsu v. United States*, the Court rejected Korematsu’s claim that his constitutional rights had been violated. It found that the military was authorized to carry out its exclusion orders because the orders had a “definite and close relationship to the prevention of espionage and sabotage.”⁷² Being at war with Japan convinced the Court that, “the properly constituted military authorities feared an invasion of our West Coast and . . . there was evidence of disloyalty on the part of some . . .”⁷³ Korematsu, the Court concluded, was given adequate notice to evacuate the area.

It is unclear why the Court refused to combine the two orders that regulated Korematsu’s movements at the time in question. The facts show that the military issued an exclusion order *and* a relocation/detention order. Complying with the first order meant submitting to confinement in a detention center pursuant to the second order. Korematsu opposed the confinement order, so he ignored the relocation order and remained in the restricted area. The Court’s finding was that the two orders were separate and distinct; it ruled that the relocation/detention order was unrelated to the evacuation order and that Korematsu’s lower court conviction was beyond the purview of the Court.

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Justice Murphy wrote one of the three dissenting opinions. I find Murphy's
the most instructive with respect to government power, civil rights, and racially
discriminatory citizenship, so I include his opinion and quote him at length:

This exclusion of "all persons of Japanese ancestry, both alien and non-alien,"
from the Pacific Coast area on the plea of military necessity in the absence of
martial law ought not to be approved. Such exclusion goes over "the very brink of
constitutional power" and falls into the ugly abyss of racism. . . . That this forced
exclusion was the result in good measure of this erroneous assumption of racial
guilt rather than bona fide military necessity is evidenced by the Commanding
General's Final Report on the evacuation from the Pacific Coast area. In it he
refers to all individuals of Japanese descent as 'subversive,' as belonging to 'an
enemy race' whose 'racial strains are undiluted,' and as constituting 'over
112,000 potential enemies . . . at large today' along the Pacific Coast. In support
of this blanket condemnation of all persons of Japanese descent, however, no
reliable evidence is cited to show that such individuals were generally
disloyal Individuals of Japanese ancestry are condemned because they are
said to be 'a large, unassimilated, tightly knit racial group, bound to an enemy
nation by strong ties of race, culture, custom and religion.'⁷⁴

Justice Murphy points out that the disloyalty that existed among *some* people of Japanese
descent was also to be found among "many persons of German, Italian and even more
European stock in our country."⁷⁵ However, exclusion, relocation, and detention orders
were not issued to Germans or Italians living in the United States even though war was
being waged against Germany and Italy as well. Murphy concluded his opinion forcefully: "I
am convinced, therefore, from this legalization of racism. Racial discrimination in any form and
of any degree has no justifiable part whatever in our democratic way of life."⁷⁶ Of the
112,000 Japanese removed from their west coast homes and detained in military
evacuation centers for three years, over sixty percent (about 70,000) were American-born
Japanese citizens.⁷⁷

The Korematsu case is another illustration of how the three branches of the
government can unite to achieve a desired end. The question is whether this type of

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government coordination desirable. We can think of circumstances under which such coordination would have been advisable—for example, during the Reconstruction or the New Deal eras in support of the expansion of civil and social rights—but under the circumstances in *Korematsu*, government coordination is cause for grave concern.

Imagine the following military order after the attacks of September 11, 2001: “All persons of Saudi Arabian or Afghani ancestry, alien and nonalien, living on the east coast report to. . . .” Would the public have accepted such an executive order? Would the military have been able to execute it on the basis of an assertion that this class of individuals constituted “a large, unassimilated, tightly knit racial group, bound to an enemy nation [or group] by strong ties of race, culture, custom and religion”? Would Congress have provided the supplemental legislation, and would the courts have upheld its penalties?

Pursuant to Murphy’s reasoning, many contend that the post-911 executive branch has already gone “over the very brink of constitutional power” and is dangerously close to painting all Arab Americans and persons of the Muslim faith, as terrorists. Others worry that *all* Americans are now subject to greater and more intrusive surveillance than before (from neighbors and even public library employees) as a result of sweeping executive orders and complementary legislation such as the Patriot Acts. They fear that citizens’ civil rights are being eroded in the name of national security in what appears to be an indeterminate and ever-expanding war on terrorism.

Executive Order 9066, the Act of March 21, 1942, and *Korematsu v. United States* make for an unsettling trilogy of state action that lacks the checks and balances that the Constitution included to restrain government power. When coordinated state

power unnecessarily abridges freedom under the guise of the advancing the common good, the public is not well served. Nevertheless, the examples that I have given thus far demonstrate that such coordination often occurs.

In 1988, the surviving Japanese internees received a formal apology from the United States government and, among other things, reparations in the amount of \$20, 000 for each survivor, and an education fund in excess of one billion dollars.⁷⁸ Fred Korematsu's conviction was overturned forty years later on a finding of government misconduct (Karst, 1989, 255 n26). The reparations are hardly just compensation for more than three years' false imprisonment coupled with the substantial loss of assets during the war. "The relocation" according to Parenti (1980), "left many of them destitute, and almost all their land was grabbed by agribusiness firms."⁷⁹ However, their reparations amount to a windfall when compared to the \$300 that Congress gave freed slaves *in the District of Columbia* in 1862, at the end of slavery in that territory.⁸⁰ It amounted to less than one dollar for each year of bondage and unpaid slave labor, excluding the extent to which that institution—buttressed by federal law—deprived them and their ancestors of the right to accumulate wealth. It is easy to see how *torturous* racial ascription can be and how its patterns contribute to the "*tortuous* development of American ideas about citizenship [my emphasis]."⁸¹ We revisit both concepts in our next, and last, historical period: the Civil Rights era.

IV. The Civil Rights Era and Ascriptive Citizenship

One scholar describes the Civil Rights era this way:

[I]t was a matter of utmost irony that the United States Constitution, virtually meaningless with regard to black rights, was rediscovered in a powerful surge of creative energies that melded Ghandian teachings (the "satyagraha," or the "truth-love force"), civil disobedience, American style, as defined by Henry David

Thoreau, Protestant Christianity and its focus on the Gospels, with the affecting rhetorical arts of black preaching and witness; in short, the entire period . . . was one of the century's most vital lessons in a living democracy.⁸²

scholars and activists debate the exact origins of the Civil Rights Movement.

Among the differing perspectives, some date its beginnings from the Potsdam Conference

1945 (Spillers, 2003); some put the correct date at 1953, the year that blacks lead a

roots movement to boycott segregated buses in Baton Rouge, Louisiana (Morris,

; Balkin, 2001); others identify its origin with the *Brown v. Board of Education*

decision in 1954 (also referred to as "*Brown*" or "*Brown I*") or with the lynching murder

of fourteen year old Emmett Till in Mississippi in 1955; and still others link the

beginnings of the Civil Rights Movement to the Montgomery Bus Boycott in 1956.

Perhaps similar divergences may be found with respect to the "closing" of the era. Did it

end with the conclusion of the Vietnam War (or some other identifiable marker) or is it

an ongoing movement that ebbs and flows, as was suggested by many speakers at the

50th anniversary commemorating the August 1963 *March on Washington*?

Inquiries into the time span of the Civil Rights Movement are relevant on multiple

levels, but they are not the focus of my discussion. For my purposes, this unique period

of social protest provides the final historical context for examples in support of my claim

that citizenship status (or lack thereof) has served as an instrument for social and racial

exclusion and domination reflected in the deeply engrained ascriptive hierarchies that continue to alter

the national moral framework (Powell et al, 2001; Weir, 1998). *Brown v. Board of*

Education (hereafter referred to as *Brown* or *Brown I*) is a reminder of the continuing

existence of racially ascriptive citizenship in the provision of government services,

particularly in the provision of publicly state-sponsored educational opportunities.

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Contemporary debates about education policy and practice can be understood through the lens of *Brown*, a lens that extends my discussion of the phenomenon of ascriptive citizenship from its origins in the founding of the republic into its *contemporary contexts*. *Brown* is instructive for at least three reasons: 1) It acknowledges the group phenomenon of systemic racial subordination within American social policy and its adverse effect on the citizenship rights of the discriminated; 2) it establishes a groundbreaking constitutional precedent that asserts citizens' civil rights against states' rights initiatives such as those discussed in *Plessy*; and 3) it is a landmark decision in education that declares the unconstitutionality of state-sponsored racial segregation in public schooling as a violation of the Fourteenth Amendment.

Under the direction of Thurgood Marshall the NAACP initiated *Brown* on behalf of black school children. (Thirteen years later Marshall would become the first black Supreme Court justice in United States history). *Brown* consolidated complaints contained in four separate appeals from four separate federal district court decisions in four states—Kansas, South Carolina, Virginia, and Delaware.⁸³ Each case raised the same legal issues: the constitutionality of state-sponsored, inferior, segregated schools. The complaint alleged that segregated public schools violated the children's equal protection rights guaranteed under the Fourteenth Amendment, and deprived them the opportunity to attend schools in their neighborhoods.⁸⁴ The NAACP's claim in *Brown* was part of the long tradition of NAACP advocacy for racial justice and equal educational opportunity between the races, dating back to its beginnings in 1909 under the leadership of W. E. B. Du Bois, and others.

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All four lower court decisions upheld the segregationist state education policies. In three of the four decisions, the lower court relied on the legal precedent established by *Plessy* in 1896. Therefore, the Court could not decide *Brown* without directly confronting *Plessy* (known in some circles as “Brown’s evil twin” because of its regressive position on virtually identical legal issues).⁸⁵ The country was riveted to this case because the mounting pressure for civil rights set the stage for a history-making decision on public education. Not only did the Court have to consider the constitutionality of a legal precedent that had served as a canon of jurisprudence for more than sixty years, but it also had to acknowledge the link between national policy, national citizenship, and states’ rights, and do so in the context of overt racial stratification. Justice Warren wrote the majority opinion. It stated, in part, the following:

In approaching this problem [the effect of segregation on public education], we cannot turn the clock back to 1868 when the Amendment [Fourteenth] was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. . . . Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. . . . *Such an opportunity [education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms* [my emphasis].⁸⁶

Before rendering its ruling, the Court referenced the lower courts’ consideration of the social science research brought before it concerning the damaging effects of segregation on black children’s motivation to learn (a controversial finding that the lower courts did not dispute but that, nevertheless, resulted in four lower court decisions in favor of the defendants), then proceeded with its finding:

We conclude that *in the field of public education the doctrine of “separate but equal” has no place*. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. . . . We have now announced that such segregation is a denial of the equal protection of the laws [my emphasis].⁸⁷

In the wake of the Court’s decision in *Brown*, it appeared that the ideal of democratic equality in education had triumphed at last. It appeared that the rhetoric of national unity was affirmed—for the sake of the children, at least. In the language of Martin Luther King Jr., it appeared that the “check” containing the promise of justice in America would finally to be “cashed” in the sphere of education, but appearance and reality proved to be tragically at odds. As in previous generations, under previous administrations, the promise of democratic equality did not materialize. The hope and renewed faith that had hung in the balance were shattered in the familiar *pattern* of racial reasoning and ascriptive citizenship.

According to Zinn, ten years after the *Brown* decision, “75% of the school districts in the South remained segregated.”⁸⁸ *Brown II’s* mandate (the remedial phase of *Brown I*) that “all deliberate speed” be taken in ameliorating the constitutional violations found in *Brown I*, opened the door to a process that proceeded at a (geriatric) snail’s pace. Apparently it did not occur to the Court in *Brown II*—or perhaps, in *Brown I* either—that recognizing the importance of education in our democratic society, recognizing segregation’s violation of equal protection, and recognizing the long term psychological harm that black children may suffer under forced racial partitioning, constituted sufficient grounds for “treat[ing] the cases as class actions and offer[ing] class-wide relief.”⁸⁹ The failure to do so, according to one constitutional scholar, “meant that only the named

plaintiffs were entitled to a remedy and that each individual school district would have to be sued separately.”⁹⁰

The Court in *Brown II* did not set clear guidelines for compliance with the ruling in *Brown I*, nor did it require *immediate* relief. As a result, there was a great deal of confusion (often disingenuous) about how school districts were to meet the requirements of the ruling, and the Court’s ambiguity provided ample room for noncompliance and delay. To the dismay of many, “the Court allowed these questions to simmer in the lower courts for over a decade. It did nothing to significantly intervene in remedial issues until its 1968 decision [thirteen years later] in *Green v. New Kent County School Board*.”⁹¹ According to historian, Milton Viorst, *Brown I* “was the first time . . . that the Court had vindicated a constitutional right and then deferred its exercise for a more convenient time.”⁹² The overwhelming disparities—the “savage inequalities”—in the education afforded to black and white children did not sufficiently shock the moral conscience or the judicial sensibilities of the Court to prevent the debacle of *Brown II*.

To add insult to injury, approximately twenty years after rendering its groundbreaking decision in *Brown*, the Courts began to limit the scope of its desegregation ruling. For example, in the case of *Pasadena City v. Spangler* (1976) it held that “resegregation of a school district, following implementation of a desegregation decree, was not constitutionally offensive absent proof [on the part of the complainants] of *discriminatory motive* [my emphasis].”⁹³ A similar burden of proof was imposed on complainants in the case of *Board of Education of Oklahoma City v. Dowell* (1991). In addition, there was a major shift in the Court’s focus in reviewing such cases, a shift away from the substantive equal protection issues that were at the heart of *Brown*

(Balkin, 2001). Consequently, assuming that “motive,” or some other burden of intent, could be found and proven to the Court’s satisfaction, there was no guarantee that the constitutional issues raised by such a finding would be given the consideration afforded to them in *Brown*. A pattern was established such that “the Court’s subsequent decisions on school segregation were phrased almost entirely in terms of the forms of remedy available to courts rather than in terms of the rights of black schoolchildren.”⁹⁴

The post-*Brown* remedies provide us with ineffective and insufficient responses to the equal protection problems identified in *Brown* and that continue to haunt us today. Perhaps there is some utility function that is served by the diminishing scope of the Court’s interests in desegregation cases; perhaps its narrowing judicial focus makes its work less demanding—politically and morally—and makes its oversight role as protector of citizenship rights and liberties less consuming. However, in the actual lives of people this departure from *Brown* is an anemic response to the inferior education afforded to black children in America’s compulsory government school system.

While many ponder the motivations behind the Court’s actions in the post-*Brown* era, the fair value of citizenship further erodes. The obvious departure from what appeared to be a clear mandate in *Brown* is a sad commentary on American liberalism and a reminder of the continuing presence of racial ascription in government’s distribution of benefits and burdens among its citizens (Weir, 1998; Skocpol, 1995). While the Court rejected *Plessy*’s “separate but equal” standard, it replaced it with something more obstructive: a “separate but *unequal*” standard (Bell, 2001). Where does this leave the millions of young citizens who are required by the state to attend school despite the state’s obvious neglect of their interests? Do educators have a moral

obligation to provide them with an explanation as part of the education process? Should educators be required to study (and incorporate) education-related civil rights laws?

This year (2004), the seventeenth of May marked the *fiftieth* anniversary of the *Brown* decision. Imagine the children of *Brown I* who have long since reached adulthood and who are, perhaps, now confronting the educational opportunities available to *their* grandchildren and, certainly, the grandchildren of their generation. What has transpired in the interim? Are the rights and opportunities that fueled their parents' struggle for justice in the courts more secure? By all accounts, they are not. Indeed, the succeeding generations would appear to have much to deplore (Kozol, 1991; Ogbu, 1994; Orfield, 2002).

Admittedly, the racial character of today's educational landscape is somewhat different. There are no "whites only" signs; no governors blocking entrances to school buildings; no federal troops escorting children to school through angry crowds that hurl ripe tomatoes and insults, but segregated housing patterns and the property tax schemes based on them continue to exist and are indicative of the same central problem: the problem of the "color line."⁹⁵ It would seem to be foreseeable that if funding and districting policies are structured on what is, arguably, the most segregated aspect of American life—housing—then the outcome of such policies is more likely to produce segregated schools (Denton, 2001; Orfield, 2001) and grossly inequitable education resources. Whether or not this policy outcome is intentional is not nearly as important as the outcome, itself; it is the *consequences* of policies that impact the *actual lives* of citizens, particularly when racial justice is at issue.

Absent social justice, segregated education works for some but not for others.

“*De facto*” racial segregation is indistinguishable, in distributive justice effect, from the unconstitutional *de jure* racial segregation that was rejected in *Brown*. Should not social justice be the focus of our concern? The current state of education suggests not only a lack of appreciation for the moral content contained in this question but also suggests the overall lack of political currency remaining in the *Brown* decision. Balkin writes:

Brown was a case about public school desegregation, but by the end of the twentieth century many public schools in the United States remained largely segregated by race. Indeed, the United States has been in a period of resegregation for some time now.⁹⁶

Balkin also cites a 1997 report by the Harvard Project on School Desegregation entitled, “Deepening Segregation in American Public Schools,” to draw attention to the increase in another form of social partitioning: “The present tendency toward segregation of Latinos is, if anything, even more pronounced than that with respect to blacks.”⁹⁷

According to Balkin, the Harvard study indicates that during the 1994-995 school year, “67.1 percent of blacks and 74.0 percent of Latinos attend[ed] predominantly minority schools.”⁹⁸ There appear to be no limits to the permutations of exclusion under ascriptive citizenship.

It is not surprising that today many scholars are ambivalent about the significance of *Brown*'s contribution to furthering social and racial justice. It is clear that court action was needed in light of the constitutional issues involved, but ambivalence was fueled by the Court's handling of the issues. Its lack of specific guidelines for school districts to follow, for example, facilitated anti-desegregation initiatives in the aftermath of *Brown*. Some continue to argue, however, that *Brown* forever changed the context of the debate about segregated education (and led to the demise of segregated public facilities,

generally) by extending constitutional protections to public schooling, and that it provides a weapon in the fight for greater democracy, but others disagree. They contend that the Court's position in *Brown* was a feeble response to systemic exploitation and neglect and that the Court failed to act responsibly when ordering relief. Both interpretations are plausible in the "giveth and taketh away" entrenchment of American social policy (Klinkner & Smith, 1999; Weir et al, 1988). I can discern truth on both sides of the issue, but "how much" truth to attribute to "which side" depends on each individual's moral compass.

Brown remains an historic judicial decision no matter how its outcome is viewed. It is part of our collective memory of the liberatory potential of government in education, law, political science, and social policy, among other areas. It is certainly relevant to our critical understanding of equality, justice, citizenship, and the rights that ought to extend from these concepts. It is a judicial decision that must be a moral and legal referent in our current deliberations on educational equity.

The moral impact of *Brown* does not appear to have radically altered the foundational social and political ideology of ascriptive citizenship to which *Dred Scott* and *Plessy* gave forceful expression. Should such a transformative impact be expected from *Brown* given that the moral framework on which it relies (not completely overruling *Plessy*) dates back to the founding era and, in the case of *Dred Scott*, to the beginnings of Western civilization—at least, according to Taney? It seems unlikely that we will realize a consistent and substantive equality in America without confronting the very illiberal and undemocratic underpinnings of our government and exploring why ascriptive patterns persist. The current levels of racial inequality in education in the aftermath of

Brown have so multiplied the injustices that initially confronted the Court, as to, perhaps, reduce the value that can be derived from a *singular* focus on this case—or on integrationist idealism, generally (Bell, 2001).

Looking at *Brown* through the critical lens of stratification in America, it is equal educational opportunity that is desperately needed in order to begin to improve the life chances of children from subordinate groups—distributive justice—not black forced integration. The pursuit of democratic equality as a right of citizenship requires that many more citizens direct their efforts to the task of building America’s *political will* and moral agency in the interest of a pluralistic, anti-subordinating collectivity. If moral principles based on justice guide our public judgments, we are more likely to establish a “representative” government that pursues the substantive and transparent implementation of constitutional guarantees by championing (fair) equality of opportunity. Rawls implies that additional requirements, beyond careers open to talents, are needed to ensure this outcome:

The thought here is that positions are to be not only open in a formal sense, but that all have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the society system. . . . The expectation of those with the same abilities and aspirations should not be affected by their social class.⁹⁹

If *Brown* stands for nothing else, it stands for the proposition that having a “fair chance” to access careers open to talents implies a fair system for *developing talents* and a fair stage on which to display them. State-sponsored education—particularly *compulsory* schooling—must give all young citizens the equal chance to discover their abilities and to pursue their goals free from social stratification. This means that

government should not restrict the benefits of quality education to only those children whose parents can afford it—irrespective of this (favored) group’s academic potential or intellectual ability—and not do the same for the children of low-income parents or racial minorities; otherwise, the school system promotes injustice by reproducing a caste-like social structure through educational deprivation. In an ascriptive policy climate, equality of opportunity is viewed as a *radical* position (to say nothing of “fair” equality of opportunity), but history reveals that fairness is typically viewed as an extreme demand by those who are privileged within the status quo; history also reveals that the major advances in social and racial justice that have occurred, occurred when such conflicting moral visions were aired and resulted in the conscious repudiation of “the given.”

Conclusion

I have presented many examples that demonstrate how American citizenship has served as an instrument for social and racial exploitation and fragmentation. Its meaning has been understood—from the beginning—within a system of social stratification, within a culture of subordination where denials and degrees of denial of basic rights are the norm. Consequently, a pattern of ascriptive citizenship has evolved that has enabled the enjoyment of rights and privileges by some citizens at the expense of others, with little or no outrage among the majority of the population or its “representative” leadership. With great regularity, valid claims to extend the substantive rights of citizenship to include an excluded group have been begrudgingly recognized by one branch of government, only later to be reinterpreted, minimally, by that same branch or constricted or nullified by another. Substantive citizenship rights—the rights that are actually *experienced* in the lives of people, not simply read in books or heard in speeches—should be a function of

one's national origin, or of a naturalization policy pursuant to ethical guidelines. Such rights should not be determined by the xenophobic reactions of power to the kind and degree of *difference* that is ascribed to a person or group. If substantive rights and liberties are arbitrarily manipulated by those individuals and groups in positions to do so, we will never have social and racial justice in America.

As this discussion has shown, during four of the most significant and politically innovative periods of American history, many native-born inhabitants (citizens) have been exploited and relegated to second-class citizenship status. Great "innovation" did not result in an inclusive democracy, which does not bode well for social justice initiatives. Whether the issue is personhood, voting rights, office holding, representation, education, employment, wealth accumulation, or the protection of life and limb from unspeakable violence (state and civil), those who are labeled "permanent outsiders" within a stratified social order have had to struggle for what the Constitution guarantees to "insiders." The social hierarchy reflected in white supremacy ideologies often provides the rationale for social policies and practices that are simply dehumanizing and that could never win the consent of all of the people who are affected by them.

State and civil opposition to egalitarianism undermines fundamental changes designed to create a genuine democracy in America, but it is this perpetual quest that links contemporary reconstructive efforts to the generations of struggle for freedom. Perhaps the enormous political challenges that underlie Shklar's reference to the "tortuous development" of citizenship are just so many "complex internal perspectives" that the ideological "twists and turns" of ascriptive reasoning serve. The struggle for change brings to mind the words of Fredrick Douglas:

The whole history of progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle. This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be struggle. Power concedes nothing without demand. It never did and it never will.¹⁰⁰

My critique of ascriptive patterns of citizenship in no way suggests that America lacks counterexamples, examples of how formal citizenship status has been expanded from its exclusive origins, or how it has furthered equal political rights. My argument is not based on absolutes—but patterns—so I see no cause to suggest that we lack instances of citizenship reflecting hints of democratic equality in America. Indeed, my discussion refers to a number of such instances, and they are central to my argument. The Civil War Amendments, the Civil Rights Act of 1866, and the executive orders that sent federal troops into the South to protect black schoolchildren and enforce desegregation laws during the Jim Crow era, are but a few examples. My focus, however, is on a *pattern*, a decipherable pattern of citizenship status serving as an instrument for social and racial exploitation (and fragmentation) throughout American history—in particular, during four groundbreaking periods of constitutionalism. This pattern is significant because it reflects the tortuous and tortuous development of citizenship in America and its impact on the realization of substantive rights and liberties in the lives of many oppressed and marginalized citizens.

In this section (the Civil Rights era) I have directed my attention to the racially ascriptive citizenship pattern that is decipherable in our *current* social policies in education. I have registered the destructive impact of this pattern of denial on the realization of equality of educational opportunity. I have suggested that, here again, supremacy doctrines underlie the systemic patterns of ascriptive inequality, and I have

further suggested that such patterns have deep roots in America's social mores.

Subordination is pervasive enough in (un)civil society to sustain ascriptive patterns in the basic social institutions despite centuries of "democratic" processes. I have illustrated how advances in political equality have consistently had to contend with America's entrenched, socially stratifying moral and political framework.

Some may argue that racism is not as pronounced today as it once was, and that overtly racist statements and views are outside of the *mainstream* of public discourse. I would agree to an extent, but it is clear that racial stratification and exploitation are far from obsolete, particularly in the field of education where "separate and unequal" continues to be the standard (Bell, 2001; Kozol, 1991; Ogbu, 1994). Racially ascriptive citizenship has a long and deep history in America and manifests in the patterns of denial and degrees of denial of citizenship rights (Christopher, 2000; Losen & Orfield, 2002; Klinkner & Smith, 1999). It is clear that the patterns will not simply disappear with time, so rather than waiting for unforgettable memories to fade away, why not reject the ascriptive *traditions* and myths that hinder political maturity? This appears to be the only way to reasonably maintain that the racial contract is beginning to resemble an inclusive social contract (Mills, 1997).

It is interesting that law professor, Derrick Bell, identified Taney's white supremacist dogma as "excessive even for its time," presumably outside of mainstream public discourse in mid-nineteenth century America, but was it really? Consider the following: The "excessiveness" of Taney's ideology did not prevent him from obtaining judicial confirmation and holding a seat on the Supreme Court—actually becoming the Chief Justice until his death just prior to the end of the Civil War (Smith, 1997); also, his

“excessiveness” did not sufficiently shock the moral conscience of enough Americans to warrant a public reprimand from other government officials seeking to distance themselves—and government service generally—from Taney’s racist judicial harangue in *Dred*. Lastly, we must not overlook the fact that Taney’s “excessive” remarks represented the majority opinion and remained the law of the land in America for almost twenty years until the Civil War Amendments. The point is this: The relevance of racist dogma uttered by disgruntled *individuals* is one thing (unless such individuals comprise a tyrannical majority), but such ideas, when advocated by people in positions of authority—by public figures who are empowered to make, interpret, and execute the laws of the land—is quite another, ‘excessive’ or not.

Some contend that the Reconstruction Amendments redirected our society towards more-inclusive social policies and marked a significant departure from racially ascriptive ideologies. The Reconstruction certainly had the *potential* to do these things, and to do so in a substantive way, as I have argued. Clearly the end of chattel slavery after the passage of the Thirteenth Amendment was one of the most important events in America’s social and political history. It was a positive inflection point in the *pattern* of black exploitation that characterized the social conditions leading up to its passage. As previously stated, *Dred* ceased to be a controlling legal precedent after the passage of the Fourteenth Amendment, and the Fifteenth Amendment set the stage for reconstruction and greater opportunities—though brief—for exercising a most basic right of citizenship in a democracy: the right to vote.

However, the Reconstruction Amendments did not alter dominant social mores or eliminate the deeply rooted racial doctrines that structure our social institutions (McGary,

1999); it by no means erased America's color line. The Thirteenth Amendment did not end ascriptive citizenship—i.e. white, male, and elite privilege. To a large extent, “democracy for the few” remained, and remains (Parenti, 2002). Recall that the impact of the amendments were vehemently resisted by white Southerners *and* Northerners (Du Bois, 1935; Karst, 1989), and in the South, Black Codes and Jim Crow laws restored the pre-Civil War levels of racial subordination, with little public objection or opposition.

The Fourteenth Amendment's Equal Protection clause was not enough to protect civil rights, particularly given the Court's narrow interpretation of its scope. Federal congressional actions were also needed to noticeably impact entrenched, segregationist policies and legal castes structures (Smith, 1997). More often than not, states' rights and political bargains ruled, and the federal government did little to alter the social dynamics. The short-lived period of political liberalism of the Reconstruction came to a screeching halt when federal troops were removed from the South pursuant to the Hayes-Tilden Compromise of 1877. Just nine years after the ratification of the Fourteenth Amendment, suffering and hardship intensified for America's black citizens.

Finally, the “separate-but-equal” doctrine of *Plessy* was handed down within a generation after the ratification of the last Civil War Amendment. Are we to understand *Plessy* as a “milder” version of the dogma in *Dred*—its predecessor by approximately forty years? Recall that the *Plessy* decision upheld state-sanctioned social inequality and restrictions on freedom of movement that clearly violated constitutionally protected rights and liberties. Nevertheless, *Plessy* remained the law of the land for more than sixty years. *Brown*—the much touted civil rights decision—reversed *Plessy*'s separate-but-equal

doctrine only with respect to one area of human activity: public education, and I have argued that its success (even in this limited sphere) is ambiguous, at best.

Today, public schools are becoming increasingly resegregated (Balkin, 2001). They remain glaring examples of ascriptive citizenship and the continuing retreat from *Brown's* Fourteenth Amendment guarantees (Hochschild & Scovronick, 2003; Losen & Orfield, 2001). Advances in political equality continue to compete with ascriptive moral judgments and the racial reasoning that spawns the doctrines guiding practice within the basic structure of American society—what Moody-Adams (1997) refers to as “a complex internal perspective . . . transmitted from one generation to another for at least three hundred years.”¹⁰¹ This “internal perspective” is antithetical to minority-group freedoms and to democracy; it amounts to an unspoken, but ever present, undermining force in the centuries-old quest for social and racial justice in America.

The internal logic of social stratification—its ascriptive irrationality and spurious moral foundation—must be demystified in order for the faintheartedness and timidity that it masks to be rejected in favor of achieving something greater. This requires no less than an overhaul of our social institutions and necessitates individual and collective overhauls as well. Perhaps studying the psychology of social stratification may further reveal the contributions that individuals collectively make to what is “deeply entrenched in the institutional and ideological structures of the United States,”¹⁰² but this much seems clear: The anti-political—“bury our heads in the sand”—Tocquevillian celebrations of traditions in civil society lack relevance and appeal under circumstances of pervasive inhumanity and social injustice (Walzer, 1995; Smith, 1997).

Fundamental change is unlikely to be soon realized, and progress may fall prey to the patterns of retreat, as history has shown, even when a sufficient number of like-minded individuals and groups take up the cause of freedom. These projections do not diminish the significance or the urgency of the work to be done if America's democratic experiment is to survive. Indeed, the changes that demystification and political integrity afford may be the best hope for the billions of people around the world seeking freedom—the fate of their dreams hinging on ours, and imaginatively captured in a familiar poet's queries . . . here at home:

What Happens to a Dream Deferred?

Does it dry up
Like a raisin in the sun?
Or fester like a sore—
And then run?
Does it stink like rotten meat?
Or crust and sugar over—
Like a syrupy sweet?
Maybe it just sags
Like a heavy load
Or does it explode?

—Langston Hughes' "Harlem," *Selected Poems of Langston Hughes*

CHAPTER 2

THE STATE AND COMPULSORY EDUCATION: SOME MORAL CONSIDERATIONS

I, for one, am unsatisfied with the hope of an ultimate “political” solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that ‘may affect their hearts and minds in a way unlikely ever to be undone.’

----*Justice Thurgood Marshall, United States Supreme Court*

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.

----*Justice Jackson, United States Supreme Court*

The preceding discussion considered several historical issues pertaining to ascriptive citizenship in America. Specifically, it outlined the moral framework underpinning America’s democratic project and its impact on social organization. The principal considerations were the degree to which some groups in America *experience* systematic denials of equal dignity and equal freedom in attempting to determine their own ends and the impact of ascribed status on the protections citizens are afforded from government abuses and from illiberal majorities. I argued that citizenship status in America has served as an instrument for exploitation and fragmentation and has fundamentally been understood within an ascriptive paradigm that supports a social hierarchy structured to maintain privilege.

Differential citizenship status perpetuates inequality in America rather than champion freedom. Ascriptive distinctions reproduce unjust privilege and manifest as raced, classed, and gendered exclusions (among others)—the antithesis of democratic equality. These categories of exclusion support a very “thin” democracy such as existed in classical Athenian societies. There, full citizenship was reserved for a small segment of

the male population—the excluded majority being comprised of slaves, women, children, and the poor. I suggested that social stratification underlies both the social injustice that is furthered by ascriptive citizenship and the thin democracy that is reflective of it. It is ascriptive reasoning that produces anemic responses to the repeated calls for social justice.

The dualism that appears to exist between politics and morality in the dominant interpretation of democracy (Dewey, 1922) gives American citizenship what is, perhaps, its most disturbing feature: exploitation. The quest for substantive equality—equality of rights and privileges in the real world—and the inclinations of government with respect to the pursuit of these, are issues that have serious implications for a just democracy and for democratic projects in compulsory schooling. Thus, the public’s interest in substantive equality and the government’s interest in political power are central to the discussion in this chapter. I conclude that if the state is to exercise coercive and persuasive power in the administration of schooling, certain moral imperatives ought to be adhered to—namely, social and racial justice—in education policy. (I use the phrase “the state” broadly to encompass state and federal government as well as certain publicly financed institutions. This meaning is suggested, for example, in the Court’s ruling in *West Virginia State Board of Education v. Barnett* (1943).)

Constitutional democracies are theoretically predicated on self-governance through elected representation. Citizens elect representatives to protect and preserve their rights and liberties and to secure the general welfare. In order for citizens to be self-governing, it is assumed that they should possess certain kinds of knowledge. First and foremost, they should know that they have unique interests and be able to identify them. They

should also know or be able to determine the types of policies and protections that further their interests and the individuals (and groups) that may best articulate and pursue them.

To the extent that citizens' interests can be affected by the state's distribution of benefits and burdens, citizens should know or be able to determine how their individual/group interests can be enabled or disabled by existing (and antecedent) state and federal policies. This implies that citizens should be able to critically assess their government's past and present actions concerning these interests, which further implies that they should establish a "critical distance" between themselves and their government. Assuming these factors are present, citizens (individuals and groups) are in a better position to make use of their knowledge to determine their political objectives and to determine the initiatives that it would be prudent for them to pursue.

The effective pursuit of specific initiatives in the public realm requires some consideration for broader public interests. This means that individuals need to be able to entertain wider purposes, deliberate broadly, and organize an effective public presence because the marketplace of ideas contains complementary and *competing* interests. It is also helpful for citizens to be aware of the "public mood" and how they might impact it to positively alter social conditions. A healthy dynamic relationship is desirable between individual and collective interests, and between state and civil society. Thus, we can locate citizens within the polity by reference to their individual interests and to their basic judgments about what is in the public interest. A lack of self-regard and ambiguous (or tenuous) connections to public life are public deficits that tend to undermine citizens' powers to influence government and contribute to the expansion of the democratic project.

The Constitution makes no mention of a federal function in education. When government functions are not explicitly delegated to the federal government and are not explicitly precluded from state control, they become the domain of the states pursuant to the Tenth Amendment. Thus, it is widely understood that the administration of schooling is the prerogative of the states, subject only to limits that protect the constitutional rights and liberties guaranteed by the Constitution. *Brown v. Board of Education* (1954) is an example of the federal judiciary intervening into state education policy in response to citizens' claims that their fundamental rights and liberties were being violated. Virtually every state has exercised its Tenth-Amendment prerogative and has established some manner of mass schooling.

From the beginnings of America's republic there has been considerable speculation about the government's proper role in schooling. It is not surprising that many in the newly-formed nation were anxious to link education to the security of the general welfare, as Gerald Gutek, education historian, suggests:

American intellectuals sought to devise an educational system that would serve the cause of nation-building by inducting young republicans into a new political and social experience. Old loyalties had to be transformed into new values and commitments based on the republican concepts of self-government.¹

Consequently, the focus of schooling shifted from the religious sectarianism that was prominent in the seventeenth and eighteenth centuries, to the nationalism of the nineteenth century. The former was reflected in the educational objectives of the Calvinists, for example, and the latter in the education philosophy of Thomas Jefferson.

When Horace Mann, Henry Barnard, and other state education administrators managed to obtain sufficient consensus to create a compulsory school system (the "common" school) in the mid-nineteenth century, the link between the aims of schooling

and the desire to develop an educated citizenry was systematically forged (Guttek, 1987). Defining what 'educated citizenry' means, however, and determining what its needs are, is a political decision. It is a decision that is heavily influenced by power, such as the business community's interest in worker productivity and maximum profits; it is also influenced by "majority values" proponents seeking to integrate "outsiders" into a preexisting American ideal as part of a larger nation-building project (Spring, 1988). The power asymmetries that these and other interests reflect make education, particularly education for democratic citizenship, an inherently political enterprise.

Western governments have recognized, from at least the time of Plato, that political interests can be furthered through compulsory schooling. In America, states have increasingly wielded their power to regulate the schooling process through their respective legislatures and growing bureaucracies (Tyack, 1976). States exert their control in many ways: by establishing attendance and curricular guidelines, by overseeing textbook selection processes (adoption committees), by scrutinizing teaching materials, by establishing standards for the certification of teachers, by accrediting post-secondary education programs, and by authorizing particular k-12 schools to operate based on the degree to which they meet the various standards that it sets.

In effect, the states make decisions that affect how much educational opportunity will be available to whom and what it will consist of (Apple, 1979; Hurst & Ross, 2000). These decisions are impacted by how the states collectively view themselves and their role in structuring *national interests*. Interstate policy coordination efforts suggest that national interests are perceived to exist. In education, these interests are furthered by such organizations as the National Governors' Association, the Council of Chief State School

Officers, and the Education Commission of the States (Spring, 1994). Their decisions impact how much support will be given to the many divergent and competing interests in education. That is, the *states* make national policies that affect how—and to what extent—competing interests are managed and how these interests are reflected in the overall character of education. This centralizing characteristic is identified with the “state-centered” vision of schooling that has dominated American education policy for most of its history, in addition to dominating policy in other Western democracies (Meyer, 2001).

Lately the states’ discretion in regulating compulsory schooling (including nationalizing it) has been eroded by the federal government. The traditionally decentralized education system that was selectively linked by mutual (individual) state interests is becoming centralized pursuant to federal interests. This departure appears to result from the federal government’s determination that there are “strong connections between education and national defense, welfare, civil rights, and social justice.”²

One early indication of federal influence in education policy is reflective of its varied national interests. The Smith-Hughes Act of 1917, for example, established vocational education and training and set federal standards for state implementation (Ross, 2000). The National Defense Education Act of 1958 allocated substantial federal funds to the states to encourage them to increase the numbers of students pursuing math and science in response to Russia’s launching of *Sputnik* in 1957. Of course, Lyndon Johnson’s *Great Society* programs of the mid-1960s resulted in never-before-seen levels of federal intervention in the area of education for purposes of increasing equity and access,³ but during the Reagan Administration the policy focus shifted from equity to

“excellence.” This shift was, in part, a response to growing international competition, particularly with Japan—the “Toyota problem,” as it was sometimes referred to, but it was also prompted by scathing indictments about failing schools and poor-quality teachers; perhaps the most noteworthy indictment appeared in a federal report in 1983 entitled “A Nation at Risk: The Imperative for Education Reform.” (I will say more about this document later.)

Subsequent federal initiatives exerted considerable pressure on the states to implement higher standards, increase accountability, and establish school-choice plans. Each of these measures had the effect of directing resources away “from social and welfare concerns to economic and productivity concerns.”⁴ This expanding federal interest in productivity is also evident in the Clinton administration’s *Goals 2000: The Educate America Act* of 1994. It established eight national goals for education that included standards for virtually all k-12 subject areas, and the current Bush administration’s *No Child Left Behind Act* of 2001 accelerates this push for national standards, although critics complain that it is an expensive and unfunded mandate.

States are not required to implement federal education policies but are likely to do so in order to obtain federal subsidies and maintain an “amicable” relationship with the federal government. The growing connection between education and federal policy and the far-reaching implications of government’s coercive powers on the life prospects of citizens, requires that we think seriously about both the compulsory nature of schooling and the possible undesirable implications of government’s regulatory role with respect to it. I argue that there are at least four such undesirable implications that raise concerns for

citizens who have an interest in substantive democracy and equality of educational opportunity.

First, the state's interests and the public interest may be seriously at odds. These interests are not inherently compatible although such coordination is often assumed. Within the democratic ideal, for example, government is characterized as being, of the people, by the people, and for the people. However, in *Disobedience and Democracy: Nine Fallacies on Law and Order*, in a chapter entitled "The Ninth Fallacy on Law and Order,"⁵ Howard Zinn rejects the presumptive compatibility between the state's interests and the public interest. In making his argument, he points to the explicit reservations about government that are contained in the Declaration of Independence and in the second of John Locke's *Two Treatises of Government*.

Lockean theory draws on natural law to assert that human beings have intrinsic rights in the state of nature (pre-civil society). Locke then combines these rights (natural rights theory) with contract theory to argue that the role of government is to protect the natural rights of the governed and that the governed ought to remain loyal to their government if it meets its obligations. That is, government must protect citizens' rights and liberties in order to fulfill its fundamental purpose for existence and retain their support. It is noteworthy that this long-established *quid pro quo* for the allegiance that citizens are asked (and expected) to extend to government was denied in Taney's remarks in *Dred Scott*.

The Declaration and Locke's second treatise both acknowledge—and attempt to guard against—the distinct possibility that government may antagonize the peoples' interest in liberty, with fatal implications for government. The dissolution of government

can occur when conflicts over the protection of rights and liberties “so jeopardizes” the life, liberty, and pursuit of happiness of the people that the hypothetical social contract is voided. Determining if, and when, this threshold has been met necessitates that a critical distance exist between citizens and government. Zinn writes:

The government is not synonymous with the people of the nation; it is an artificial device, set up by the citizens for certain purposes. It is endowed with no sacred aura: rather, it needs to be watched, scrutinized, criticized, opposed, changed, and even overthrown and replaced when necessary.⁶

Any government is capable of acting contrary to its mandate in the pursuit of its own elitist or authoritarian ends. If history is any indication, the potential for such abuses of authority will repeatedly materialize as evidenced by the various patterns of unlawful state abridgements that were discussed in Chapter 1. The state’s coercive powers are more likely to be used to pursue illiberal and undemocratic ends if the state is not consciously guided by the public’s interest in equal dignity and equal citizenship.

The three remaining undesirable (possible) implications of government power are actually a variation on the first, but provide a more direct link between antagonistic government agendas and the compulsory schooling process. The second conflict arises when government (state policy) becomes unduly influenced by wealthy, powerful individuals and groups. Government policy decisions may tend to favor the wealthy and compromise the substantive value of the rights and liberties of the masses. Those who have less political power or who are disempowered would then have much less impact on public policy and much less representation in government (Walzer, 1995).

Freedom is precarious if government can sacrifice citizens’ interests in order to establish lucrative partnerships with powerful elites who demand more representation than their “one person, one vote” would otherwise afford them. Their class interests then

become detrimental to the public interest. Public officials who engage in such political bargains undermine substantive equality and contribute to the further erosion of public confidence in government. The lack of equality and public confidence combine to weaken the sense of political community and problematize the consent and legitimacy criteria long-associated with liberal ideology. Does anyone reasonably believe that individuals who seek a just democracy would consciously and freely *consent* to government practices that erode their rights and liberties through political bargains or would *agree* that government ought to be permitted to function in this manner, unchallenged? If such consent were given, it would suggest levels of oppression, ignorance, disregard, and exploitation that would signal the demise of democracy and the rise of some other political system.

Third, a conflict of interest occurs when government's pursuit of illiberal and undemocratic agendas implicates compulsory schooling in a process that thwarts the development of dissident views and critical rationality. If cultivating independent, rational thinking is not a priority in schooling, then "desirable" citizenship qualities may be identified with passivity and compliance, but citizens exhibiting these dispositions are too trusting (or too fearful) of government and therefore too submissive to its authority. Trusting and submissive citizens tend to conform to existing conditions and not question government's use of power. They are unlikely to scrutinize, criticize, or oppose their government, irrespective of its many abuses. This type of citizenship is inconsistent with self-government.

The Enlightenment project in education is predicated on the idea that schools can, and should, alter the way that people think and behave (Guttek, 1987). America's mass

education movement of the mid-nineteenth century is a manifestation of this idea. That is, government schooling is designed to produce behavioral and cognitive changes in individuals, and the changes tend to enable or disable citizens' capacities for self-governance. Thus, we need not ask *whether* government schooling's intervention will systematically affect how students function. Rather, we ought to ask the following: What effect is being sought by the intervention? Why is it being sought? Is it working and who benefits? Where government has the authority to regulate education and make its regulations compulsory, citizens must be very concerned about how these questions are answered. In particular, they must be concerned about the extent to which government schooling jeopardizes the political integrity and autonomy of school-aged citizens. Specifically, the schooling process should not develop compliant, obedient citizens who lack an appreciation for their own interests and for the political liberties that are presumed to protect them.

To the extent that government is ascriptive, government-controlled institutions are likely to pursue an ascriptive agenda. As noted in Chapter 1, ascriptive agendas are often hostile to democratic ideals and diverse interpretations of the good. Government schools structured on the basis of ascriptive citizenship adopt undemocratic institutional practices that encourage conformity and suppress "differences" that transgress the official norm. By suppressing difference, government schools do not encourage or explore diverse perspectives about the social world. Such schools may implicitly (or explicitly) endorse textbooks, teaching practices, curricula, and even methods of teacher feedback and encouragement that serve a prevailing view that is ascriptive and rarely open to critique.

The *Common School Movement* of the mid-nineteenth century was a government schooling initiative that embraced an ascriptive agenda. The resulting policies and practices were oppressive to racial, ethnic, and religious minorities, among others. Blacks were, perhaps, the most disfavored in the ascriptive hierarchy because of the stigma of slavery; they were not considered full citizens, and their children were excluded from participation in the “common” schools in both the South and North.

Later when blacks were permitted to attend government schools, they did so on an ascriptive basis—a segregated, poorly funded basis (that continues to exist today). Under these conditions of social partitioning, Booker T. Washington, educator and social activist, sought to fill the “education void” by creating schools especially for blacks. His education agenda focused on the acquisition of work-related practical skills—not political and social equality. He was largely successful in soliciting funds from wealthy philanthropists and small donors (Washington, 1932), but many opposed Washington’s education agenda, and W. E. B. Du Bois, his contemporary, accused him of making damaging political concessions to whites in exchange for their support.

The common school project openly pursued other forms of ascriptive exclusion that suppressed “difference.” For example, Mexican, Chinese, and Japanese children were also segregated from whites because children of color were not considered part of white America’s norm, and it was this norm that determined who could attend public schools. European immigrants, such as Italians, were initially segregated as well; they, too, were viewed as a threat to the dominant Anglo-Saxon culture. Religious persecution in Protestant-controlled government schools contributed to the establishment of the private Catholic school system that continues to exist today. Educational opportunity

structured on the basis of exclusion, and degrees of exclusion, made the schools complicit in society's larger project of racial and social stratification, a project that had long preceded the advent of the "common schools." Historian, Lawrence Cremin writes:

The assumption was that white ethnic immigrants were assimilable and indeed needed to be assimilated as rapidly as possible. Clearly, however, the assumption of the dominant white community with respect to blacks and Indians, and indeed with respect to all peoples of color, was that they were essentially inassimilable . . . The prevailing assumption was clear: people could be educated to transcend the barriers of ethnicity and religion in order to become full-fledged members of the American community, but they could not be educated to transcend the barriers of race.⁷

A fourth, and final, conflict of interest occurs when the state is so intimately structured around corporate interests that a "corporate culture" emerges and government adopts a business ethic. Business principles tend to encourage individual competitive advantage among citizens and downplay the government's role as an instrument for promoting equality and eliminating gross power differentials (Apple, 2001; Walzer, 1995). Too great a focus on individual or private ends tends to reduce citizens' concerns about important *public* ends. It is these ends, however, that encourage citizens to collectively deliberate about public matters and to develop a sense of mutuality.

If government schools adopt a business ethic, or become consumed in a corporate-culture orientation, what is to become of perspective taking and other inclusive processes? Instead of these cooperative skills, students may learn to value forms of self-promotion that jeopardize the rights and liberties of others (Hursh, Goldstein, & Griffiths, 2000; Kincheloe, 2000). To the extent that schooling has this effect, it undermines the development of democratic sensibilities that are needed to champion equality, create democratic institutions, and oppose special interests when these jeopardize citizens' freedoms.

If liberal democratic institutions are needed to insure that civil rights are equally recognized and protected, then neglecting the development of such institutions puts civil rights at risk. When citizens (including elected officials) lose sight of their common interest in democratic institutions, they are more likely to overlook the fact that government schools provide poor quality education to *some* citizens. They may support equal opportunity, in theory, but fail to support initiatives that actually promote equity and distributive justice. They are likely to fail to insist that their elected officials protect all citizens' rights to receive high quality education on an equal basis (Hochschild & Scovronick, 2003).

It is common knowledge that many children regularly attend schools that are inferior, poorly funded, and generally lacking sufficient staff, texts books, computers and other educational resources that have been shown to improve learning opportunities for many students (*New York Times*, 27 July, 2000). Frequently, these same children suffer from chronic health conditions, lack medical care, and have other health-related problems. All of these factors seriously undermine their opportunity to learn; yet there appears to be no collective concern about their plight, no public outrage expressed by the majority of voters in response to these circumstances. Citizens possessing sufficient financial resources simply leave the cities and send their children to suburban public schools, or to private schools, where the opportunity to learn is far better (Hochschild & Scovronick, 2003; Spring, 1994). Of course, parents have a right to take evasive actions, but they should also support efforts to improve the schooling conditions of those families left behind. Rhetoric unaccompanied by action is of little value to those who are trapped in a failing school system.

The disparities in funding between inner-city schools and suburban schools are frequently staggering (Christopher, 2000). The often-cited research findings in Jonathan Kozol's *Savage Inequalities: Children in America's Schools* detail many of these disparities and the obstacles they present to realizing equal education for the children of the poor. He, like many others, brought national attention to the gross inequalities in school expenditures and identified this as a major factor contributing to race and class inequality in education. Robert Reich also documented inequalities in public schooling in *The Work of Nations: Preparing Ourselves for 21st Century Capitalism*. He attributes educational inequality to corporations' need for cheap labor and to the socially reproductive aspirations of "well-off" parents who have an interest in passing on their socioeconomic status to their children.

According to Reich's research, many middle-class and upper-class parents support educational stratification—not democratic education—because poorly educated children create a future "worker pool" from which their children (educated in elite schools) will likely obtain cheap labor. This climate of competitiveness individualism and social reproduction deepens social division and compounds the difficulties facing millions of parents whose children have little hope of receiving an equal opportunity to discover and develop their potentials (Mitchell & Salsbury, 2002; Spring, 1994; Walters, 2000). Government, for its part, is often restrained and does little to favorably alter the social context of schooling. It does not, for example, create mechanisms to insure that all schools are equally funded and that the funds are properly managed in the interest of the equal educational opportunity. When it *chooses* to act, the impact of its policies often exacerbates inequalities rather than reduce them (Weir, 1995).

Low-income parents lack the means to simply *choose* good schools for their children when government does not make such schools widely available (Apple, 2001). Choice plans and vouchers may help some citizen-outsiders find refuge on the “inside” but are insufficient and ineffective responses to the massive educational disparities that are widely acknowledged. These simple measures cannot begin to accommodate the millions of children receiving inferior education on a daily basis; students cannot wait for their inferior schools to “take a lesson from the private” sector and shape up (Hochschild & Scovronick, 2003). It is as if these children are expendables in a game in which their government compels their participation until they are old enough to *choose* to quit.

If our focus on competitiveness in the market economy encourages us to neglect the public welfare, government schools will continue to deteriorate. If we neglect public schools by failing to demand justice from government, democratic principles are reduced to platitudes in the *actual lives* of citizens. By continuing to ignore the plight of the masses, we may one day find ourselves living in a society where the only remnants of democratic memory are found in the Andy Warhol-like symbolism of American flags (Thirty-two Flags?) displayed on the hoods, bumpers, dashboards, belt buckles, and lapels of a tattered citizenry—the last vestige of agency. Indeed, the flag may become a substitute for freedom, and “sports” a substitute for participation. We may be left with stirring renditions of patriotic songs that we unite in singing (lip syncing?) just prior to enjoying “permissible” displays of genius that do not require a public commitment to educational equity—fixing our gaze upon the flag, of course, and not on each other.

What does it mean when certain government policy measures such as ethical funding schemes and management procedures improve learning conditions or reduce the

wealth gap between rich and poor in America (*New York Times*, September 5, 1999), but government is focused on other priorities? What are the lasting implications of *Brown* if government continually *chooses* not to pursue egalitarian measures in its schools and increasingly abdicates its responsibilities by shifting its role to the private sector? What type of civic community will emerge if citizens are not taught to appreciate or understand that there are alternatives to unresponsive governance and that citizens can, and ought to, influence state power in the public interest (Parenti, 2002; Walzer, 1995)? What message does it send about our society's well being when privileged parents do not take the plight of "other peoples' children" seriously (Delpit, 1995; Hochschild & Scovronick, 2003)?

As I alluded to earlier, the release, in 1983, of the *National Commission on Excellence in Education* report, "A Nation at Risk: The Imperative for Educational Reform," was part of the reframing of the education agenda that signaled the virtual abandonment of government's earlier focus on equal educational opportunity. The new agenda reinstated the 1950s preoccupation with competition and individual achievement based, in part, on the report's official announcement that America was losing its global competitive edge: "Our nation is at risk. Our once unchallenged preeminence in commerce, industry, science and technological innovations is being overtaken by competitors throughout the world."⁸ It advised policymakers to focus educational resources on excellence, standards, and assessment. The report did not chronicle, however, the government's active and infamous role in perpetuating inequalities and systemic discrimination in the distribution of educational opportunities, the opportunities that would—presumably—be needed to pursue excellence.

A Nation at Risk did not spark (and has not sparked) a robust public discussion about the relationship between the general welfare and public education—something that this thesis seeks to generate. It did not raise questions about what citizens should expect from their government in support of quality schools or challenge the efficacy of funding schemes based on local property taxes. It did not lead to a change in state policies in response to societal deprivation and forms of discrimination that directly impact schooling, despite the fact that discrimination is strongly linked to segregated housing-patterns, for example, and these reproduce segregated schools. What the report appears to have done is to contribute to the “winners and losers” binary of the education *market*. The “winners” keep competing, and the “losers” have the liberty to exist on the margins or exit the market altogether. Referring to the report’s framing of the issues Michael Apple, curriculum and policy scholar, writes:

We see the crisis as reconstructed around particular themes: international competition, capital accumulation, a reassertion of “toughness” and standards. The crisis is not one of the immense inequalities that are so visible in American society. Instead, it is redefined by dominant groups to fit their own interests.⁹

The Commission’s report influenced policy decisions by altering the debate on the problems facing government schooling and by establishing recommendations for solving them. It is unclear why “excellence initiatives” rarely include the resource allocations and administrative procedures sufficient to give equal educational opportunity a fighting chance. It is only when we provide all students with an equal opportunity to learn that we can finally glimpse what ‘excellence’ really means. In Wittgensteinian fashion, our *use* of the word ‘excellence’ in reference to the aims of compulsory government schooling in America’s separate and unequal socio-historical context has given the word an ascriptive meaning; if we alter the context, perhaps we will find that

our current ascriptive standards of “excellence” are quite inadequate, and that the word ‘excellence’ takes on a whole new meaning under conditions of justice.

As yet, however, our society remains close to the surface of a lesser standard for human achievement, afraid to undertake measures that fly in the face of privilege—afraid to fly. Meanwhile our civil society spirals and fragments, and the remains of our democratic project are increasing difficult to identify. We dwell in a policy space that appears content to nibble around the edges of a lesser standard, pursuing lesser collective possibilities. Joseph Kahne, a policy analyst, notes this disturbing trend:

Currently, policy analysts emphasize a different agenda. Assessments of educational quality focus on individual rather than group achievement and on standardized and meritocratic notions of equality. [I argue that the individual focus on quality is equally suspect.] Indeed, policy analysts lack the vocabulary, the *conceptual frameworks*, and the technical procedures needed to consider systematically and articulate concern for these alternative ideals. Important questions regarding the relation between schooling and the promotion of democratic communities are not the subject of systematic analysis. . . . Despite the respect Dewey commands among educators, those assessing educational policy generally ignore the social concerns of democratic communities [my emphasis].¹⁰

William Boyd, another outspoken policy analyst, echoes Kahne’s concern about the shift to private interests in policymaking. He, too, laments the increasing commodification of education but distinguishes his position from the mainstream by taking a critical stance on the present climate of markets and bottom lines:

School reform is usually framed in narrowly economic and technocratic terms (developing human capital and economic competitiveness); humanistic values, democracy and community are neglected or pushed to the periphery. The overwhelming concern of business leaders and policy makers is with improving the workforce and economic competitiveness. Moreover . . . mainstream policy analysis adds to the problem: It is so technocratic that it lacks both the vocabulary and the inclination to examine important questions of democracy, community and social justice.¹¹

I have now presented four concerns about possible conflicts of interest between the government and “the people” that stem from the adverse implications of government actions on substantive equality: authoritarian government agendas, tolerance for undue influence on policy by powerful elites, arrested development of rationality as a government (or interest group) expedient, and a corporate culture climate in government that encourages competition and atomism. Each concern raises issues that go to the heart of government’s integrity and to how it should function if it is to regulate schooling, particularly compulsory schooling. These are moral questions that problematize government’s use of its coercive power.

I have argued that citizens have a role to play in conceptualizing and effectuating the fundamental educational aims (and broader aims) that are appropriate for government to pursue (the inputs)—whether it be the development of loyal citizens, critical thinkers, philosopher kings, or rugged individuals, for example—but have noted that their ability to do so is significantly impaired to the extent that they do not first define the type of society that they want to create. I have reasoned that a political theory that champions democratic principles is capable of linking inclusive ideals to institutional practices and, consequently, can more accurately project a vision of our society that inclusively expands individual and collective possibilities. Our ideas about government’s role in a modern democracy directly affect our expectations of its functioning, our perceptions about its inadequacies, and our level of tolerance when confronted with its failings. The extent and nature of the divergences—if any—between our perceptions about *ideal* government and our understanding of how it functions in our *lived experiences* are significant public concerns that have implications for social change.

The Need for Social & Racial Justice

If a state does not view all citizens (or groups of citizens) within its boundaries as intrinsically valuable (equally worthwhile in themselves), then it does not view them as intrinsically equal (Wall, 2001). This implies that citizenship status does confer *equal* moral and legal rights. For example, recall that in *Dred Scott* Taney's majority opinion reflected the dominant institutional ideology that blacks were "beings of an inferior order" such that the descendents of Africans and the descendents of Europeans were not viewed as intrinsically equal beings. Consequently, the moral and legal rights that the state conferred on blacks (possibly, individual state citizenship) could never be equal to the moral and legal rights conferred on whites (state and national citizenship).

This implies that even if Dred Scott somehow managed to gain citizenship status within a particular state, or group of states, national citizenship (citizenship in "the" state) would be forever denied to him. The denial would result from the majority's interpretation of the original intent of the Constitution regarding the status of blacks. As a result of this conception of nationhood and personhood, Dred Scott was among a class of individuals who lacked the requisite relationship to "the state" to guarantee that his liberties would be protected. Thus, if his liberties were recognized in one state, they could be denied in another. So the fact that the nation did not view all citizens (or groups of citizens) as intrinsically valuable resulted in citizenship status that did not confer upon all citizens, equal moral and legal rights.

Absent substantively equal moral and legal rights, however, citizens are denied equal standing within the state. Continuing with *Dred Scott*: According to the majority opinion, the type of citizenship that could be conferred on persons of African descent in

the state of Illinois—a state that forbade slavery—did not include the moral and legal rights that Illinois conferred on white citizens. The differential moral and legal rights meant that certain remedies that were not available to Dred Scott would have been available to his white counterparts, according to the Court’s majority opinion. An opportunity to receive a hearing in the federal courts was one such remedy. This meant that Dred Scott’s alleged owner—but not Dred Scott—could receive a hearing in federal court. The “owner” could assert his claim to human property, but Scott could not counter with a claim to human liberty. Thus, the absence of substantively equal moral and legal rights between the class of citizens to which Dred Scott was assigned and the class of citizens to which his alleged “owner” was assigned translated into differential standing before the Supreme Court and the lower courts.

The denial of equal standing among all citizens (and groups of citizens) within the state precludes the possibility that they will receive equal treatment within the state’s basic social institutions. Citizens who lack full standing within the state do not have the same relationship to the state that is enjoyed by those who do have full standing. Where the *nature* of the relationship to the state is expressed in terms of substantive rights and liberties, *differential* relationships will mean differential substantive rights and liberties within the state. This implies that the rules guiding the state’s choice of action in response to equal circumstances—involving citizens (or groups of citizens) who possess differential substantive rights and liberties—will not require that the state provide an equal response. This means that citizens (or groups of citizens) who bring the same claims before the state may receive different (unequal) treatment. The denial of equal

standing among citizens within the state implies that they will not be treated equally within its basic social institutions.

In addition to racial distinctions, wealth has long been perceived as one of the rubrics in American society for distinguishing the social standing of citizens. Material wealth is a source of social division that suggests that poor citizens are more equal to each other than to their wealthy counterparts. For example, we can capture a glimpse of this sentiment by revisiting the political philosophy of (founding member) Alexander Hamilton: “All communities divide themselves into the few and the many. The first are the rich and well-born, the other the mass of the people Give therefore to the first class a distinct permanent share in the government. . . .”¹² Indeed, under American capitalism’s enormous disparities of wealth between the rich and the masses, there is growing concern among many that the “campaign chest” that is required to effectively compete for public office virtually secures for the wealthy the “distinct and permanent share in the government” that Hamilton advocated.

A New York Times article entitled, “Gap Between Rich and Poor Substantially Wider,” cites several interesting, yet disturbing, findings by the Center on Budget and Policy Priorities, which is “a nonprofit organization in Washington that advocates Federal tax and spending policies.”¹³ In reading the article, one is struck by passages such as, “. . . this year the richest 2.7 million Americans, the top 1 percent, will have as many after-tax dollars to spend as the bottom 100 million,” and “The poorest one-fifth of households will average \$8000 of income this year, down from \$10,000 in 1977,” or the distributive imbalances reflected in statements such as “more than 90 percent of the increase [in national income] is going to the richest 1 percent of households, which this year will

average \$515,600 in after-tax income, up from \$234,700 in 1977.”¹⁴ Is it safe to say that the poor are even more disadvantaged, now, than they were five years ago? How do such inequalities in wealth impact the quest for democracy in America?

Private wealth affords the wealthy better treatment within the basic institutions of society relative to the working classes. As previously indicated, where the nature of the relationship between the state and its citizens (or groups of citizens) is expressed in terms of the substantive rights and liberties that are afforded to them, wealthy individuals are likely to experience a differential relationship to the capitalist state, one that affords them more (rather than fewer) substantive rights and liberties. As one scholar expresses it, “Since choice requires money, the more money we have, the more free we are. In a market economy the rich not only have more money, they have more freedom.”¹⁵

In particular, wealth often brings more freedom as a result of the substantial influence on public policy that money and power seem to command from elected officials. The differential citizenship status that the “more substantive” rights and liberties reflect, translates into favorable policy consideration within the state. Frank Levy, an economist at the Massachusetts Institute of Technology, suggests that so-called “competitive markets” are not the sole reason why the economy works as it does in distributing wealth. He notes that the government—Congress, specifically—plays a major role in determining where wealth gets concentrated by structuring rules that regulate free trade and union activity, for example, and such rules, according to Levy, “are determined by the political process . . . shaped by money donated to political candidates.”¹⁶

Pervasive deprivations of citizens' substantive rights and liberties within a democratic project indicate that the state is socially unjust. I find John Rawls' definition of social justice helpful. His focus is on *state power* and its implications for justice in

the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. . . The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.¹⁷

The presence of social injustice implies that the division of advantages is more likely to be based on discrimination and ascriptive privilege rather than equality of opportunity or merit. The basic institutions of society may even undermine each other in promoting social injustice. What the Supreme Court "giveth," through its interpretation of the Constitution, the Congress may "taketh away" through its laws, or lack thereof. For example, the Reconstruction Amendments recognized the *formal* rights of black citizens to equal protection from the state, but Congress took away this right by failing to properly empower and maintain the Freedmen's Bureau, among other things. The Bureau was the primary government agency charged with championing the constitutional rights of blacks in the South after the Civil War, so it can be argued that the initial injustice of receiving merely formal rights from the "second" Constitution was compounded by Congress' failure to follow through on the limited protections afforded by such rights.

Social injustice erodes the moral and political legitimacy of the state. Opposition to the wide divergences between social justice and social practice fueled the mid-twentieth century Civil Rights Movement. This movement galvanized hundreds of thousands of American citizens from various communities and associations across the country. Their fundamental demand was that the state live up to the rhetoric of social and

political equality and that it extend the rights of citizenship equally to all of its citizens. The pervasive conditions of social injustice deprived the state of its moral legitimacy and, therefore, of its moral authority to compel compliance. The civil disobedience demonstrated by the civil rights activists in the South was a manifestation of this repudiation of state authority. Some argue that by retaliating against civil rights activists, the state's authority was further exposed as a sham maintained by a brute force comprised of vicious dogs, sadistic peace officers, and corrupt elected officials, all conspiring (the dogs included) to protect a racist, segregationist culture.

When social struggles reflect efforts to overturn state sanctioned social injustice, pragmatic-sounding phrases such as “keeping the peace” or “restoring order” find their *true* meaning in the suppression of legitimate claims for equal rights and liberties. The citizens who are “disturbing the peace” are, in fact, demanding that the government uphold constitutionally guaranteed rights. “Restoring order,” then, is an immoral act if it has the effect of simply reinstating an illegitimate status quo. The violence that the South unleashed on the peaceful demonstrations by civil rights activists—under the guise of keeping the peace—was just another manifestation of the illegitimacy and immorality of the state's use of its coercive power, as Rawls incisively points out:

If justified civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that [people] in due course have the right to resist.¹⁸

State policies should be promulgated to effectuate antisubordination practices (antiracist, antisexist, et cetera)—not merely be *principled*—in order for the state to be worthy of its citizens' respect and worthy of the power to regulate certain aspects of their

lives. As Moody-Adams reminds us, “No social order can command the respect of people whom it continually fails to respect.”¹⁹ The Civil Rights Movement in the South is a recent reminder that when a state is devoid of its moral authority due to its perpetuation of violence in response to its citizens’ quests for justice, it cannot morally (or always, physically) compel participation in its ascriptive social order. Its coercive sanctions and punishments, or threats of such, are often not enough to change the *minds* and *inclinations* of those rightly opposed to social stratification.

We arrive at the conclusion that in a democratic project, the *rational* state ought to operate within a framework of moral principles that champion social and racial justice. It ought to pursue both causes in good faith if its jurisdiction over compulsory schooling is to have any claim to legitimacy. We cannot thoughtfully discuss any facet of the schooling enterprise (curriculum, teaching, learning, policy, or administration, for example)—particularly, with respect to developing a *democratic* citizenry—if we do not first confront the underlying irrationality of the socially stratified state within which this enterprise is structured. Social justice is a fundamental obligation of a functioning democratic state and a fundamental expectation that binds citizens to it, and to each other (Walzer, 1995).

Government cannot morally relinquish its obligation to provide quality education to all citizens on an equal basis by simply “setting other priorities” and choosing to experiment with one of the many varieties of choice plans that are now in vogue—in lieu of distributive justice. It cannot morally endorse privatization schemes within a market climate if this feeds into, or is parasitic on, violations of social justice. Quality education should not be predicated on the luck of a lottery draw, or on one’s level of risk aversion,

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or sense of desperation, within a competitive market. Social justice requires the *fair* distribution of benefits and burdens in society irrespective of race, class, gender, sexual orientation, or other invidious distinctions.

One implication of having a just moral framework that structures the compulsory schooling process is that it creates obligations for state agents. Those who are instruments of the state's power to compel compliance, and who are otherwise part of the education enterprise are morally obligated to renounce *bad faith* in education policies (unfair privilege and unfair deprivation) wherever they find it within the enterprise. They are also morally obligated to adjust their professional commitments, accordingly, in the interest of fairness. Government, *and its agents*, cannot morally relinquish their obligation to provide quality education for all on an equal basis; they must be accountable for their contribution to the functioning of the existing ascriptive system.

In the next chapter, I will provide an overview of John Rawls' theory of justice. As part of my explication, I will respond to several criticisms concerning his theory. The political principles underlying Rawls' just state are reflected in his conception of the "well-ordered" society. His interpretation is instructive as a flexible model for examining the continued irrationality of our government's social policies under social stratification and ascriptive citizenship. We will see in Chapters 4 and 5 that the moral foundation of Rawls' political philosophy contributes constructively to our understanding of the role of social institutions in a just (and unjust) constitutional project. In Chapter 5, I will discuss the theory's reconstructive implications for realizing a democratic project in education, particularly for the philosophy of education that can guide it.

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CHAPTER 3

RAWLS' *WELL-ORDERED* SOCIETY: A FLEXIBLE METHOD OF INQUIRY

Political philosophy may contribute to how a people think of their political and social institutions as a whole, and their basic aims and purposes as a society with a history—a nation—as opposed to their aims and purposes as individuals, or as members of families and associations.

----*John Rawls*

The level of culture that can be achieved in the United States is a life-and-death matter for the large masses of suffering humanity. This too is a fact that must color any discussion of contemporary institutions.

----*Noam Chomsky*

John Rawls (1921-2003)

John Rawls is widely regarded as one of the most distinguished philosophers of the twentieth century. Some consider him to be the greatest political philosopher of his time (Nagel, 1999). Philosopher, Jonathan Wolff goes so far as to say that “contemporary English-language political philosophy began in 1971, with the publication of Rawls’ *A Theory of Justice*. . .”¹, and Robert Nozick, one of Rawls’ chief critics and also a philosopher, writes:

A Theory of Justice is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then. It is a fountain of illuminating ideas, integrated together into a lovely whole. Political philosophers now must either work within Rawls’ theory or explain why not.²

Clearly, not all philosophers share the above sentiments, but many do, and there are many others outside of the discipline who also applaud Rawls’ achievements. In 1999, for example, he was awarded the National Humanities Medal by, then President, Bill Clinton. In awarding this honor, Clinton expressed his admiration for Rawls and for his contribution to political philosophy:

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by a remarkable book he wrote, "*A Theory of Justice*," that placed our rights to liberty and justice upon a strong and brilliant new foundation of reason. Almost singlehandedly, John Rawls revived the disciplines of political and ethical philosophy. . . . He has helped a whole generation of learned Americans revive their faith in democracy itself.³

As evidenced by Clinton's remarks, Rawls' works have had an interdisciplinary impact. In addition to philosophy, they are studied in such varied fields as economics, sociology, and psychology. *A Theory of Justice* (1971) has been translated into more than twenty languages and was revised in 1999.

I became familiar with Rawls' political philosophy in 2002 when I read *A Theory of Justice*. At the time, I did not anticipate that his theory would have anything to do with my thesis, to say nothing of its being at the center of it. I immediately found the book absorbing and elegant. Even its glossy paperback cover and the texture of its pages were intriguing. Reflecting on these experiences in my encounters with Rawls' texts and in thinking through my thesis, I can say that it has been a very captivating intellectual journey, indeed, and it is easy for me to understand why his readership has become so broad and diverse. Simply stated: Rawls decided that it was time to think about something more than the *analysis* of concepts, experiences, and ideals in "mainstream" philosophy, that it was time to explore—and actually take positions with respect to—the feasibility of *normative* political commitments, so he altered the landscape of political philosophy and rehabilitated a forgotten, but vital, discourse.

Rawls' normative, political theory emphasizes a different set of issues and raises a different set of questions. Perhaps this change in the direction of inquiry, alone, explains some of the attention that he has garnered from diverse populations around the world that might not otherwise read his books. He engages their intellects whether or not they agree

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with his position—and they often do not. Decades after the publication of his groundbreaking theory of justice, there remains much to uncover, discover, and enjoy about this new direction in “mainstream” philosophy. The thousands of scholarly journal articles and other publications generated in response to his contributions underscore this fact, but do not alter it. It seems appropriate that an interdisciplinary, normative political philosophy like Rawls’ ought to be at the center of an interdisciplinary, normative education thesis like mine. I, too, am eager to rehabilitate a forgotten, but vital, discourse in “mainstream” education theory, to consider the feasibility of *normative* political commitments—to take a position—and do so in the interest of justice as fairness.

Introduction

Rawls’ ideal theory of justice prescribes certain fundamental conditions for social organization within a constitutional democracy. I maintain that these conditions lay the foundation for a morally defensible, rational, and relational mode of collective existence in sharp contrast to America’s ascriptive democratic project. Exploring these contrasts are among the three principal objectives that I undertake in this chapter. First, I provide an introductory and critical explication of Rawls’ theory of justice interspersed with references to preceding chapters, particularly Chapter 1. The references provide historically specific contexts for the moral judgments contained in Rawls’ prescriptions. I explain the fundamental intent of his political philosophy in a manner that familiarizes the reader with his theory of “domestic justice,” with its inward-looking conceptual framework. In so doing, I highlight Rawls’ explicit normative focus, particularly his aim to establish a just and stable democracy pursuant to public principles in support of a fair system of cooperation. I use the following major works of Rawls to explore his ideas on

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justice: *A Theory of Justice* (1971/1999b), *Political Liberalism* (1993), *Law of Peoples* (1999a), and *Justice as Fairness: A Restatement* (2001).

Second, I entertain and respond to two lines of critique of Rawls' theory: challenges to its usefulness in the real world (the nonideal) given its abstractness, and claims regarding the ostensibly negative impact of his deliberative process (public reason) on the viability of divergent religious, philosophical, and moral world views. In response to the first critique, I discuss distinctive and complementary aspects of Rawls' ideal theory vis-à-vis the nonideal (the actual world). In response to the second critique, I clarify and defend Rawls' deliberative process by pointing to its underappreciated libratory possibilities and to the increasing flexibility of its discursive constraints.

Finally, I suggest two ways in which Rawls' theory can assist us in linking moral judgments to social change under nonideal conditions: complementing the protections of "individual" basic rights and liberties with "group" protections, and taking into account *racial minority status* and *female status* together with material wealth when considering institutional factors that undermine liberty and justice for all. I characterize this framework as "Rawlsian" to link it to the issues raised in Chapter 1 and to distinguish it from Rawls' ideal theory. Admittedly, these additions, alone, do not respond to all forms of social injustice; they deliberately reflect my continuing focus on the distinct issues that structured Chapter 1, but as I clearly indicated there, and in Chapter 2, I reject all permutations of social stratification and ascriptive citizenship as irrational and immoral forms of social organization. My interpretation of the general character of a just, nonideal framework (Rawlsian) is that its moral and political commitment is to equal dignity and equal citizenship for all.

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The “Well-Ordered” Society

It is clear that we cannot contemplate a viable society of any kind absent identifiable groups of people who are somehow related to one another. Within Rawls’ ideal theory of *justice as fairness*, society is defined as a group of persons related to one another by geography, conditions of material scarcity (limited resources) within this geography, and “fundamental political ideas viewed as implicit in the public culture of a democra[cy].”⁴

The society is *well-ordered* to the extent that the relationship between persons living within it is “effectively regulated by a public conception of [social] justice” such that the public conception “specif[ies] the central organizing idea of a society as *a fair system of cooperation* [my emphasis].”⁵ Recall from the last chapter that by the phrase ‘social justice’ Rawls refers to the “division of advantages” pertaining to rights, duties, economic opportunities and social conditions, generally.

An amazingly intricate and comprehensive network of meanings is couched within Rawls’ definition of a well-ordered society. One way to explore the network is through the intertwined and complex relationship among the following three concepts that are key elements of this conception: ‘effectively regulated,’ ‘public conception of justice,’ and ‘fair system of cooperation.’ The meanings of these concepts are particular to the conditions within which we find them; they evolve as part of the unfolding network of the theory that they explain. I will not attempt to fully elaborate this network within the scope of my thesis. The extent to which I undertake to do so is, in some respects, introductory, but I trust that my treatment of the subject will be sufficiently engaging and thorough to make the provocative and distinctively moral force of Rawls’ political vision of justice transparent to the reader.

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A society is *effectively regulated* if its basic structure is publicly known to satisfy, or with good reason is believed to satisfy, public (political) principles of justice as defined in a particular society. The *basic structure* refers to a society's basic political, social and economic institutions. The term 'public' in this context conveys that everyone accepts, and knows everyone else accepts, the same (political) principles of justice. It also reflects Rawls' intent that these principles be part of the same public (political) conception of justice that is *operative* within the basic structure of society. This brings a certain amount of order and coherency to the social system. Whatever terms or conditions are *operative* within the system are understood, or are capable of being understood, by the people whose lives are affected and organized by them.

Further, the public conception of justice is 'political.' This means that it forms the basis for *public justification* of citizens' public judgments—as distinct from their purely private beliefs—when these judgments express claims about constitutional essentials and matters of basic justice.⁶ The rationale for public justification stems from the desire to infuse “common ground” principles into deliberations about important public policy decisions. It also reflects the recognition that such deliberations usually involve conflicting claims that might otherwise result in deliberative impasse and policy inaction. That is, left to their private beliefs or, as Rawls refers to them, *comprehensive doctrines*, citizens may rely solely on their individual religious, philosophical, or moral convictions to guide their judgments about public justice and, consequently, impose on other citizens their private notions about the overall purpose of life and the best way to realize it.

Comprehensive doctrines are clearly important and necessary for their “grounding effect” in our lives, despite restrictions in their scope for addressing public issues that

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affect pluralistic societies. According to Rawls, ‘pluralistic’ societies are characterized by irreconcilable—but reasonable—moral, religious, and philosophical doctrines. Thus, the goal of public deliberation within a political conception of justice is not to arrive at the “truth,” as understood within any particular comprehensive doctrine, but, rather, to arrive at *reasonableness* by employing reflective equilibrium. *Reflective equilibrium* occurs when we bring our most deeply held *private* views about justice (within our comprehensive doctrines) in line with a *public* conception of political justice that is most consistent with them.

Even more desirable, however, is what Rawls refers to as *wide reflective equilibrium*. This occurs on due reflection when our capacity to reason is least obstructed or distorted. It includes reflection on diverse, alternative political conceptions that may vary widely from our own, as well as reflection on the force of the arguments in *favor* of those alternatives. Specifically, Rawls identifies wide reflective equilibrium with reasoning that results when our political judgments are in harmony with both our comprehensive doctrines and with the “fundamental political ideas viewed as implicit in the public culture of a democra[cy].”⁷ When trying to achieve wide reflective equilibrium there is a greater likelihood that our ideological “comfort zones” will be challenged and revisions to them entertained. The more successful the process of reflective equilibrium, the closer we come to Rawls’ ideal of public reason.

Public reason is a vital element in Rawls’ political conception of justice. It is, perhaps, the most vital element—despite his acknowledgement that its scope is limited and cannot be relied upon to resolve all public political disputes. Nevertheless, without it we may be left with no recourse to the deliberative chaos that might ensue when radically

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divergent perspectives create obstacles to agreement on public policy. These disagreements may easily arise given the fact that people interpret social phenomena differently and can have reasonable interests that often conflict with the interests of others—what Rawls refers to as *reasonable pluralism*.

Despite our best efforts and intentions, we remain fallible beings. No individual or group can claim to possess the insight needed to capture the whole “truth” of a situation because of the various ways in which our judgments are burdened or compromised due to human fallibility—the *burdens of judgment*. Absent public reason’s recognition of the burdens of judgment and the fact of reasonable pluralism, the political conception of justice would fail to embody core principles capable of securing the respect and cooperation of persons holding irreconcilable, reasonable comprehensive doctrines; it would also be less successful in creating an *overlapping consensus* (or interlocking agreement) strong enough to ensure the stability of the social system. Absent public reason, the political conception of justice would be unable to effectively minimize the *strains of commitment*—the various reasons why people fail to honor their promises.

Rawls’ well-ordered society focuses attention on the institutions within its basic structure. These institutions form a system of political coherency because they fit together to form a web of social organization. The social, political, and economic institutions are understood to provide the basis for *background justice* in civil society sufficient to mitigate “contingencies” (adverse social conditions) that would otherwise create unacceptable levels of inequality. Further, the basic structure is assumed to have a profound influence on the dispositions of persons living therein.

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If the system is socially and racially unjust, for example, then “differences” can become “reasons” that are constructed and introduced into the system in order to rationalize inequalities. Consequently, genuine inequalities that result from natural, social, or fortuitous contingencies are exacerbated. Suppose this occurs within a democratic project. The status of the disfavored members may be undermined by a dominant, ascriptive ideology and by the existing contradictions between principled rhetoric and oppressive material conditions within the state. The dispositions of many of these members vis-à-vis the social whole may manifest high levels of apathy and social unrest. The social bonds that manifest in the absence of liberty mask a tenuous and unstable union.

The scenario discussed above reveals why justice within a democratic project requires more than “stability,” more than “effective regulation,” more than the public’s knowledge that the system operates in a “certain” way. This is because stability within the system can also result from coercion and manipulation such that consent is not freely given, or, at least, is problematized; thus, we need to further elaborate the meaning of social interaction within this system. As the theory goes, the system of social organization must be *fair* in order to warrant the cooperation of its potential members and reduce the occurrences and the pervasiveness of civil disobedience or conscientious refusal. If the system is fair, and is perceived as fair, there is less chance of citizens losing faith in their prospects for realizing their interests within the system, and this diminishes the likelihood of societal instability. Rawls is seeking justice *and* long-term stability, so he incorporates fairness at the base of his well-ordered society; understanding this

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incorporation requires that we delve into its theoretical justifications and principles—otherwise known as the *original position*.

In Rawls' ideal system of social organization, the representatives that he envisions coming together to select basic principles for social union—the “parties” to the original agreement—do so within a hypothetical context of *choice* and within an equally hypothetical *original position* of equality, freedom, and rationality. Within this arrangement, the parties forming the union are perceived to be—and perceive each other to be—free and equal beings. Such persons are presumed to be capable of thinking for themselves and directing their own lives. They are not stratified beings within a system of race, class, and gender hierarchy, and they are not subordinate beings subject to the dictates and whims of other beings of a, purportedly, “superior” order. Beyond their inclusively free, equal, and rational status, they possess no knowledge of their individual physical, mental, or psychological characteristics, or their possible social standing within the society to be formed. Rawls refers to this circumstance as the *veil of ignorance*; it is intended to procure a level playing field and an equal bargaining position for all parties in the original position. If individuals are prohibited from knowing their personal particularities behind a veil of ignorance, they cannot seek to skew the system in their favor.

Within this framework of fairness, the representatives start by selecting the first principles for the system's functioning from a list of options in order to arrive at the political principles of justice. During this process, each representative—although an autonomous agent—may be understood to put forth, or to propose, their choice of principles from a given list of options.⁸ In this limited context, they may also be

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understood to offer each other reasons for the adoption of one set of principles over another in arriving at their eventual agreement. In order to avoid the strains of commitment that would undermine such an agreement, each offers only those reasons for his/her choice of principles that he/she believes other representatives—as free and equal persons—would deem reasonable,⁹ this precludes irrational or wholly self-serving proposals. A perceived lack of respect for each other’s equal status and rationality at this formative stage would certainly jeopardize deliberations with other representatives (strains of commitment) on whom each must rely in hopes of forming the foundation (first principles) for a lasting system of social organization.

If the representatives are to ultimately come to an agreement (contract) on the particular principles that are to guide their union and its institutions, they need to begin by acknowledging each other’s basic humanity and common sense. This prerequisite is referred to as *reciprocity*.¹⁰ Assuming that this is present, all members regard the procedures under which the terms of agreement are reached as “fair,” and, further, regard the resulting agreement as “fair.” This is called *procedural justice*, assuming the basic structure of society is formed pursuant to the selected principles and functions in accord with them. For the sake of discussion, let us assume that both conditions are met—that the ideally just society is formed pursuant to the agreed upon principles and that it functions according to them.

Before going into a discussion of the principles that are selected in the original position, I will first explain their general implications for citizens within the newly formed well-ordered society, including the implications for elected officials. As indicated, the principles guiding the system are publicly known. Citizens accept the

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principles and expect them to govern their institutions and their dealings with each other as an indication of fair cooperation. When citizens apply the political principles of justice to each other, they are implicitly observing the same criterion of reciprocity that the representatives in the original position observed. Recall that when the representatives were deciding which first principles to select, they offered reasons for their choices, reasons that each could reasonably expect other representatives to (reasonably) accept as free and equal persons. The reciprocity built into the original position not only minimizes the strains of commitment but also culminates in an agreement on principles of justice that will structure society. Later, these principles serve as the organizing principles for social relations among *citizens* in a well-ordered society. Rawls explains:

As understood in justice as fairness, reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality defined with respect to that world.¹¹

The idea of fairness that is contained in reciprocity (and in the veil of ignorance) is also present in another concept: a *sense of justice*. A sense of justice is a moral capacity that citizens in a well-ordered society are presumed to possess. This sensibility, according to Rawls, “involves an intellectual power, since its exercise in making judgments calls upon the powers of reason, imagination and judgment.”¹² A sense of justice applies to all manner of relations requiring cooperation and reasonableness between citizens, and between citizens and the state, within the basic structure of a just society. However, this sensibility is deficient if it is not complemented by a capacity that reflects the notion that each person has a *rational advantage* to pursue in life, a rational plan—sometimes referred to as a person’s “good.”

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By definition, a rational plan of life is not fixed, nor is it externally generated or dictated by others. It reflects each individual's pursuit of happiness within a system of reasonable choice. The fundamental restriction is that a rational plan of life must be pursued within the political framework organized by the public principles of justice. Thus, citizens are perceived to be both reasonable and rational persons who engage in social cooperation within a fair and stable system. They are expected to exhibit a sense of justice vis-à-vis other citizens (reasonableness) while simultaneously seeking to advance their own goals from the standpoint of their own advantage and their own private values (rationality).

We see from the foregoing assumptions that citizens in a well-ordered society are not cooperating simply to avoid forms of persecution; they are not cooperating in order to conform to a pretentious public cohesion designed to expediently effectuate *state* collectivists ends; and they are certainly not cooperating to further the privilege that the status quo provides to a majority or to a few elite members of society. Perhaps this clarification is obvious given the preceding discussion, but it is quite possible, under nonideal conditions, for public principles of justice to be propagated within a partitioned social world.¹³ In such instances the public principles fully apply to only one segment of the (cooperating), population from which certain groups of minorities (racial, ethnic, religious, political, for example) are excluded or—worse yet—included as inherently unequal.

Some scholars suggest that social partitioning based on personhood and “subpersonhood”¹⁴ designations explains how American society became enamored with chattel slavery while at the same time professing obeisance to lofty principles of freedom

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and inalienable rights (Mills, 1997; Patterson, 1991). Much degradation results from the social cleavages formed by these contradictions; history provides its own critical commentary. Consider Frederick Douglass' sobering remarks about the existential plight of a slave in the partitioning phenomenon of American liberalism. It is taken from a portion of his Independence Day speech entitled, "The Meaning of July Fourth for the Negro," delivered on July 5, 1852:

What to the American slave is your Fourth of July? I answer, a day that reveals to [them] more than all other days of the year, the gross injustice and cruelty to which [they] are the constant victim[s]. To [them] your celebration is a sham; your boasted liberty an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass-fronted impudence; your shouts of liberty and equality, hollow mockery; your religious parade and solemnity, are to [them] mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation [on] the earth guilty of practices more shocking and bloody than are the people of these United States at this very hour.¹⁵

Perhaps Rawls entertained partitioning themes such as these when he decided to focus on the basic structure from the standpoint of a decontextualized original position featuring individual choosers. The concrete conditions of human existence under injustice pose great challenges for ideal theory, as Rawls concedes. I will discuss some of Rawls' ideas pertaining to the nonideal later in this chapter. Let us now resume the process by which the political principles of justice are chosen, and from which Rawls' "well-ordered" constitutional democracy emerges.

Rawls' Principles of Justice

Recall that in the original position the representatives engage in a process whereby they consider several options for first principles. In explaining this process, Rawls points out that, "the leading idea is that the original position connects the conception of the person

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and its companion conception of social cooperation with certain specific principles of justice” (Rawls, 1996, 304). Rawls introduces the idea of *primary goods* as a motivating factor for the representatives to consider in making their choices. Primary goods assist them in coming to an agreement on one set of principles over another in the absence of personal preferences (the veil of ignorance). ‘Primary goods’ are the goods that are assumed to be necessary for free and equal rational persons to be fully cooperating members of society who seek to advance their interests under fair conditions. Rawls identifies five categories of primary goods:¹⁶

- (i) The basic rights and liberties: freedom of thought and liberty of conscience among others.**
- (ii). Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.**
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.**
- (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.**
- (v) The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.**

Rawls contends that representatives in the original position believe that more, rather than fewer, primary goods are desirable in pursuing one’s rational advantage, so in choosing principles, they seek to maximize the primary goods that are available. Rawls then argues that utilitarian-based principles are rejected because their support for social utility theoretically permits gross violations of liberty. Specifically, utilitarian-based principles may tolerate obstructions to the enjoyment of some members’ primary goods (particularly members of a political minority), if such obstructions are perceived to

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benefit the political majority. Rawls concludes that even chattel slavery may be rationalized as a “good” under utilitarian principles if it is determined that involuntary servitude maximizes the happiness of the greatest number of people. This suggests that individual (and group) rights are of negligible import in the scheme of things, under utilitarianism. In countering utilitarian principles, Rawls writes:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom [basic freedom, in my example] for some is made right by a greater good shared by others.¹⁷

The very real possibility of a society permitting denials of rights and liberties for some persons in order benefit others makes utilitarian principles untenable to free and equal representatives. They are interested in *fair terms* of cooperation under the assumption that people in the pursuit of “just” ends want the playing field to be level. They want to advance the interests of the people that they represent, and, presumably, the representatives in “this” framework make up a genuinely inclusive collectivity so that all persons are actually recognized as persons, and are represented equally—unlike the socially stratified structure of the Constitutional Convention of 1787. Under inclusive circumstances, the representatives’ choice of principles to guide the formation of society’s institutions provides protection for the rights of all members from the abuses of government and tyrannical majorities in civil society.

Collective injustices are not acceptable to the representatives in the original position despite how advantageous injustice may prove to be for some. To the representatives, the rights of citizens should be morally prior to social expediencies and inbuilt forms of ascriptive privilege. Taking into account all of the above considerations, Rawls’ representatives come to agreement on the following two principles of justice:¹⁸

1. Each person has the same basic liberties.

2. Social and economic advantages are distributed so that the least advantaged members of society have the greatest benefit.

It is important to note that these principles are not meant to be applied in a rigid manner. They are meant to be applied in a way that is consistent with the overall goal of justice.

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1. Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is comparative with the same scheme of liberties for all; and
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).

It is important to note that the principles are lexically ordered. The first principle—the basic liberties—is to be secured before the social and economic arrangements are determined. In the second principle, *fair equality of opportunity* is prior to the *difference principle*. As far as possible, then, the idea is to first promote equality of life chances, and where inequalities occur—where there are differences in social rewards—such disparities are to satisfy certain conditions favorable to the least-advantaged. The difference principle is designed to secure distributive justice within the basic social institutions after basic liberties and fair equality of opportunity have been satisfied. The two-tiered, lexical ordering of the principles is deliberate.

In Rawls' system, the least-advantaged are “those belonging to the income class with the lowest expectations.”¹⁹ For added clarity, I provide the following hypothetical as a simplistic example of the application of the difference principle: Suppose the Vegetarians, the Carnivores, and the Omnivores represent three socio-economic classes of citizens in society X. The units reflected in Table 1 are economic resources allotted to each group under various distribution schemes. These distribution schemes are denoted by the letters A-F. Given: The difference principle is operative in all discussions pertaining to the distributions in Table 1. Distribution “A” obtains when all resources are distributed equally. We assume two additional conditions: 1) the least-advantaged must be made better off if there are inequalities in the distribution, and 2) the least-advantaged

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are *not* better off with equal distributions, assuming the first condition is met. Using the information provided in Table 1, we will consider which scheme is most desirable under the difference principle.

	A	B	C	D	E	F
Vegetarians	10	20	20	15	15	50
Carnivores	10	5	10	12	14	75
Omnivores	10	5	10	20	18	3,000,000

Table 1 – Application of Rawls’ Difference Principle

If A and B are the only distributions that are available to us, then, as between these two, the difference principle requires that we reject distribution B in favor of A. Under B the Vegetarians increase their advantage to the detriment of the other two groups. That is, the Vegetarians’ advantage is not to “the greatest benefit” of the least-advantaged—the Carnivores and the Omnivores, in this instance—because the least advantaged lose out. If we add Distribution C to our available choices, the difference principle requires that we select Distribution A over Distribution C for the same reason. Again, the resulting inequalities do not benefit the least advantaged—in this case, the Carnivores and Omnivores—so the equal distribution (Distribution A) is considered most desirable and just.

Assume next that Distributions A-E are available to us. Distributions D and E provide greater amounts of primary goods for all three groups than do Distributions A-C. However, we must reject Distribution D in favor of E because the least-advantaged in

both distributions—the Vegetarians and the Carnivores—jointly fair better under Distribution E. We can see this by noting how the benefits of the increase in units are more generous and more evenly distributed in E, than in D. This makes Distribution E the distribution offering the least-advantaged the greatest benefit. Finally, if we have the entire chart available to us, and we must choose the distribution that is the greatest benefit to the least-advantaged, the difference principle requires that we reject all others in favor of Distribution F as the most just among the options. According to the difference principle, Distribution F clearly yields the greatest amount of benefit for the least-advantaged than under any other scheme.

Note that the increase in the benefit that the Omnivores realize is exponential. Clearly Rawls does not intend for this result to occur and perhaps it is less likely to occur because of the principles of justice that govern permissible actions within the basic economic structure. However, the fact that such a distribution “could” be selected as the best alternative because it is not categorically *ruled out* by the application of the difference principle²⁰—as long as the least-advantaged “benefit”—is cause for many critics to doubt the economic justice that it purports to establish.²¹ After all, why would the least-advantaged not be better off with an equal distribution even if it means that they receive fewer units of primary goods under equality—if such gross differentials are possible? Arguably, however, such extreme inequalities are lessened by virtue of the two choices for economic arrangements that are permissible within Rawls’ theory of justice: the property owning democracy, and liberal socialism.

The property-owning democracy and the liberal socialist model both prohibit unrestrained market capitalization and gross disparities of wealth. Both prohibit the

means of production from being in the hands of private individuals—as they now are under capitalism—and both prohibit unrestrained intergenerational transfers of wealth. Such transfers allow for the accumulation of resources in the hands of the few, from one generation to the next, in perpetuity.

Other ameliorative policies may include offsetting income tax schemes devised to greatly reduce the disparities that Distribution F permits, wealth accumulation policies that target the least advantaged (level the playing field), and other affirmative actions deemed necessary to realize a more significant benefit for this group. Despite these interventions, however, the question remains: How much inequality ought to be “acceptable” within a system that purports to promote social justice? This is not a simple question, nor is it simply a political question; it is, fundamentally, a moral *and* political question. Perhaps this is why the difference principle remains open to debate on multiple fronts: some concerned about what it appears to prohibit (Nozick 1974), and others concerned about what it appears to permit (Cohen, 1999). I am concerned about social injustice in the nonideal, so I am concerned about both.

Returning to the first part of the second principle, notice that the “fair equality of opportunity” condition is a stronger standard than “equality of opportunity”—which remains elusive under ascriptive citizenship. The latter standard is typically associated with neo-liberal theory. Its weakness lies in its failure to take into account the fact that social conditions contribute to inequalities of opportunity (Broadbent, 2001). Fair equality of opportunity acknowledges—and attempts to offset—social conditions in society (as well as personal contingencies) that impede equal opportunity. It does this by requiring not only that positions be “open to talents” but that all have an equal chance to

secure the positions, including an equal opportunity to *develop* talents, and nonascriptive consideration for desirable positions. The first requirement (“open to talents”) precludes the social stratification and ascriptive citizenship practices discussed in Chapter 1 that have, from the beginning, undermined democratic initiatives in America; the second requirement (“equal chance to secure”) precludes disparities in educational resources in government schools, for example, unless these can be shown to benefit the least-advantaged.

Obviously, a “fair equality of opportunity” standard invalidates much of America’s education policy. Policy in this area reflects the persistent presence of ascriptive social agendas. In fact, education policy fails miserably in meeting even the lesser standard of *equal opportunity* for all (*Brown v. Board*; Kozol, 1991), to say nothing of *fair* equality of opportunity. This suggests that the “equity versus excellence” dichotomy that is often the focus of mainstream education discourse is simply false and misleading. On the other hand, Rawls’ standard promotes democratic ideals that would seem to appeal to common sense. That is, people ought to be permitted to compete for any and all “open” positions for which they are qualified (including entrepreneurial)—assuming that ethical guidelines structure the competition; more importantly, people ought to be free from government’s social stratification (requires redistributive justice) and ascriptive citizenship obstructions—including their identifiable *lingering effects*—as they attempt to *make themselves qualified* (through education, for example). Simply stated: Government ought to be an instrument for social justice (including economic justice) in the quest for equal dignity and equal citizenship—not a persistent undermining

force in opposition to them. These basic prerequisites are necessary to make the opportunity 'equal' and the competition, 'fair.'

The "Well-Ordered" Society and Antecedent Justice

Rawls' theory of justice is an ideal theory. This means that his formulation of political liberalism is intended to express an "aspired to," possible world. It represents his view of a desirable and feasible sociopolitical order within which the state legitimately exercises its public power. It does this through its basic social institutions by making justice their first virtue. Consistent with social contract theory, individual and collective security provides the sole rationale for government.

In Rawls' framework, people are free and equal rational citizens who possess a capacity for a sense of justice. Their decisions on constitutional essentials and matters of basic justice are guided by strict compliance with political principles selected under fair conditions (the original position). These conditions regulate society and are publicly perceived to do so. The real terms of government are made transparent through public justification. The state does not condone conditions that interfere with its being genuinely well-ordered. Thus, citizens expect to be equally protected within the basic institutions of society as they pursue their reasonable, individual and collective interests

Rawls' citizens are reasonable and rational members of a well-ordered society. They are able to assess their interests, distinguish them from the interests of others, and *act* from principles of justice. This means that they are willing to petition their representatives and engage each other in "civil" public dialogue in the interest of justice as fairness. It also suggests that they are capable and willing to organize and express public disapproval when government is perceived to be delinquent or unresponsive in its

actions, or when it is hostile to citizens' needs—although government neglect is a rare event in Rawls' ideal society.

In the well-ordered society, the government-run school system would not only function, administratively, as a *public* system, but it would also be prohibited from functioning pursuant to ascriptive "government" purposes. Public systems are democratic and earnest in promoting the just public interests of citizens, particularly their rights and liberties. Within such systems, government is prohibited from operating schools that promote (or condone) ascriptive citizenship, anti-intellectualism, political illiteracy, or insensitivity to pluralism because such value commitments fall outside of the realm of publicly justifiable educational interests in a just pluralistic democracy.

Similarly, a Platonic, "philosopher kings," education philosophy is unacceptable because in the well-ordered society it encourages social stratification and undermines political autonomy. This implies that the state is prohibited from *substituting* its notions concerning appropriate rational plans of life for those that students (citizens) might conceivably *develop*—or that might simply *emerge*—under proper guidance. The power to reason well, sense experience, relational ties, value commitments, and deliberate reflection on outcomes assist citizens in determining their own ends. In a well-ordered society, government functions beyond publicly acceptable limits when it unreasonably abridges rights and freedoms by using its authority to impose a singular vision of the good or comprehensive doctrine.

The well-ordered society is structured pursuant to a public standard of justice that attempts to balance the rights and liberties of all citizens. Citizens agree to abide by the standard as a matter of moral correctness and fairness irrespective of what they might

otherwise prefer to do. In the ideal of *justice as fairness*, all citizens are moral agents bound to uphold the moral principles that are implicit in the public political culture (of the democratic project). In the pursuit of justice, ideal social arrangements (ideal theory) can provide a model for examining possible impediments to better approximating the well-ordered society. In contemplating these impediments, our attention is repeatedly drawn to our actual world—the *nonideal*—and to its many divergences from justice. Naturally, we inquire about them and critically assess the interests that they privilege. The way in which the problems are defined and the questions raised pursuant to the problems of lived experience, can unmask false universalisms to reveal patterns of ascriptive social pathology. Left unchallenged, pathologies “fester like sores” and multiply within the duplicitous moral standards that sustain the nonideal.

Justice “Mid-stream”: Rawls’ Moral Judgments and the Nonideal

The nonideal presents us with unjust antecedent social conditions. These must be taken into account in forming moral judgments and applying prescriptive theories. One of the persistent criticisms of Rawls’ theory is that it lacks the historical specificity to provide a critical landscape on which to map the social and political inequalities that plague democratic projects in the nonideal. Some maintain that Rawls’ “possible world” is, in fact, impossible, because it is too abstract and disconnected from lived experience. They contend that it does not reflect an adequate appreciation for the inevitable influence of power and conflict in social relations and is, therefore, ineffective in transforming the oppressive structures of the status quo.

One example of this line of criticism is expressed in the following query contained in, political scientist, Sheldon Wolin’s book review of Rawls’ *Political*

Liberalism: “What are the implications [of] constituting political society by a contract abstracted from any revolutionary referent and unpersuaded of the urgent need for a deep-running critique? The answer is, [a]n idealization of the status quo.”²² Another persistent critique challenges Rawls’ deliberative procedure (public reason) by questioning whether it can facilitate the type of political dialogue that is presumed necessary for ventilating dissent and empowering political minorities in the nonideal. For example, philosopher, Onora O’Neill argues that shared political values and a common political identity—premises that are at the heart of Rawls’ public reason standard—may represent problematic trade-offs that reveal more about what is *left out* of the “reasonable polity” than what is embraced within it: “Yet there is a price to be paid for using these premises: public reasoning as Rawls construes it is citizens’, hence insiders’, reasoning, so may not convince foreigners or outsiders—or citizens who stand back from the way things are, and ask whether they should be that way.”²³

Similarly, Chantal Mouffe contends that Rawls’ conception of public reason denigrates oppositional comprehensive doctrines. The resulting consensus, she argues, is conservative and marginalizing: “This is a consensus that it would be illegitimate to put into question once it has been reached, and the only possibility of destabilization would be an attack from the outside by the ‘unreasonable’ forces.”²⁴ Critiques such as these are among many that reflect reasonable concerns about Rawls’ theory and present interesting challenges to it. Of course, there are no shortages of critiques for a conception of justice as expansive and complex as Rawls’ theory. The limits of my project make discussion of all but a few of them prohibitive, but the three that I entertain have multiple features and are, in my estimation, very instructive. I provide detailed responses to these critiques

while remaining historically grounded in the fundamental issues, from Chapter 1, that animate my thesis. I will begin by commenting on concerns about the abstractness of Rawls' theory, followed by a consideration of two additional concerns pertaining to the scope of public reason.

First Critique: Abstracted Ideals

Some scholars charge that Rawls' theory is too abstract and idealized to be useful in the nonideal. They argue that since it does not take into account power relations, group domination, and conflict, it cannot adequately address political minorities' concerns about exploitation and subordination within nonideal society. To a certain extent I agree with this characterization because, clearly, Rawls' theory presupposes equitable and liberal social conditions that have never existed, and his theory tends to develop along these lines of limited focus. Necessarily, the problems he attempts to address are simplified by his assumptions, so his critics can conclude that the theory is not useful in *ameliorating* injustice in the real world—that it is reduced, instead, to *identifying* the conditions needed for an ideally just society.

What many critics of Rawls' abstraction overlook, however, is his acknowledgment of certain limitations within ideal theory. For Rawls, ideal theory is not structured to combat the extreme social pathologies of the real world; it is “ideal” because it is, to a large extent, free from these. Critics often overlook the dissimilarities that he concedes exist between a just ideal and the nonideal, or note how these acknowledgements indicate that he is not oblivious to real world conditions.²⁵ Indeed, it is his recognition of *real* distinctions between “the desirable” and “the actual” that fundamentally structures his perceptions about the nature of his ideal arrangements. He is

influenced by what he understands about the real world, and he acknowledges this—and it is evident—in *Political Liberalism*.

Perhaps more importantly, critics infrequently give serious consideration to the *complementary* relationship that Rawls suggests exists, between ideal and nonideal theory. It is clearly his contention that the two types of prescriptions (ideal and nonideal) not be mutually exclusive because both are needed for a complete political philosophy.²⁶ Perhaps Rawls' ideal framework—sometimes referred to as “utopian”—makes many critics of his abstractness apprehensive about acknowledging or “fleshing out” the interdependent relationship that is couched in his theory. They appear to be less inclined to interpret these overtures to the nonideal as points of entry for entertaining how Rawls might actually be *helpful* in the nonideal, or how the conditions that critics contend Rawls abandons might actually be useful in modifying the type of ideal that is desirable from the stand point of lived experience.

I will begin with a discussion that intersperses Rawls' awareness of the complexities posed by nonideal conditions, with general references to the contrast he notes between a just ideal and the nonideal. I will also highlight points of *harmony* between what Rawls' offers and what some critics contend the nonideal requires for social justice—with a view to extending his ideal moral judgments in ways that contribute to eradicating *injustice* in the nonideal and that (theoretically) bring us closer to approximating a just constitutional democracy.

First, recall that Rawls' ideal conceptual framework correctly presumes strict compliance. This means that citizens are moral persons who act justly as a result of internalizing the public principles of justice. Such citizens routinely cooperate with one

another on fair terms. Nonideal theory, on the other hand, presumes that citizens' actions reflect degrees of departure from strict compliance—degrees sufficient to make societal descriptors such as “just” or “nearly just” (as in Rawls' ideal) unfounded.

Thus, the nonideal framework presumes levels of *injustice* in society that extend far beyond the occasional “embarrassed marginal asterisk” in an, otherwise, ideal social order²⁷ and concentrates theoretical and practical reasoning on how to eradicate them.

Rawls notes the distinct orientation of nonideal theory:

When we ask whether and under what circumstances *unjust arrangements* are to be tolerated, we are faced with a different sort of question. We must ascertain how the ideal conception of justice applies, if indeed it applies at all, to cases where rather than having to make adjustments to natural limitations, we are confronted with *injustice*. The discussion of these problems belongs to the partial compliance part of nonideal theory [my emphasis].²⁸

Assuming that we begin with a nonideal premise of antecedent, pervasive injustice, we are precluded from asserting the existence of an *original position* of freedom and equality. No such circumstance obtains for all persons, so we cannot claim to have a well-ordered society *founded* on justice. Rather, we have to *create* such a society. The nonideal begins under antithetical social conditions that must be overcome: namely, social stratification and ascriptive citizenship. We are, as Rawls recognizes, reflecting on a society in which “injustice already exists, either in the social arrangements or in the conduct of individuals.”²⁹ Examples of unjust social arrangements and unjust individual conduct are plentiful and were the focus of Chapter 1.

Rawls suggests that unjust social arrangements can be traced to degrees of corruption of an existing ideal or to the fruition of an ideal that was already corrupt at its foundations:

Current arrangements may depart in varying degrees from publicly accepted standards that are more or less just; or these arrangements may conform to a society's conception of justice, or to the view of the dominant class, but this conception itself may be unreasonable, and in many cases clearly unjust.³⁰

Rawls not only recognizes that there are degrees of discontinuity between ideal and nonideal conditions, but he also acknowledges that such discontinuities may signal pervasive injustice, thereby problematizing the duty to comply. This is true even in the case of unjust laws in a "nearly just" or reasonably just society, such as Rawls' well-ordered society, when it departs from moral standards.³¹ Rawls writes: "When a society is regulated by principles favoring narrow class interests, one may have no recourse but to oppose the prevailing conception [of justice] and the institutions it justifies in such ways as promise some success."³²

As the above statements reveal, Rawls appreciates the fact that nonideal conditions can be duplicitously endorsed under purportedly justice conditions when it is actually power relations that dictate the social order; he also understands that people who are adversely affected by unjust social arrangement are not simply resigned to accept their fate. As moral agents—not passive objects—they can choose to reject their assigned roles within this mode of existence. They can also attempt to alter the unjust conditions by reconstructing its political order and repudiating those aspects of it that enable injustice. Rawls does not appear to overlook or condone oppressive governments or advocate passivity with respect to them.

There are libratory possibilities in Rawls' well-ordered (ideal) society that have implications for nonideal theory. This is particularly evident in light of his references to civil disobedience and conscientious refusal in *A Theory of Justice*. These are forms of resistance that have proven to be helpful in the real world in responding to injustice

within the basic structure. His presentation seems most forceful when his sphere of moral judgments highlights real world suffering and despair. Consider the following moral judgments about the status of “particular” minorities seeking fair terms of cooperation, as understood in the (ideal) original position:

Roughly speaking, in the long run the burden of injustice should be more or less evenly distributed over different groups in society, and the hardship of unjust policies should not weigh too heavily in any particular case. Therefore the duty to comply is problematic for *permanent minorities* that have suffered from injustice for many years. And certainly we are not required to acquiesce in the denial of our own and others’ basic liberties, since this requirement could not have been within the meaning of the duty of justice in the original position, nor consistent with the understanding of the right of the majority in the constitutional convention [my emphasis].³³

The rejection of Jim Crow laws by civil rights activists in the South provides one example of noncompliance that captures Rawls’ focus on the oppositional political stances of permanent minorities—racial minorities, in this instance—in refusing to acquiesce to unjust denials of their rights and liberties. Clearly, the civil rights activists had the right to resist the status quo given the injustice they faced in trying to exercise their constitutional rights within the majority’s partitioned racial order. So we have two examples of Rawls’ ideal moral judgments having direct implications for the nonideal: the acknowledgment and the rejection of the presence of injustice. We also have two examples of nonideal conditions informing his understanding of what a just ideal theory ought to reject: long-term injustice of a permanent minority and the duty to comply under oppressive conditions.

The rationale that Rawls gives for his departure from traditional liberalism’s preoccupation with a singular conception of the good provides another historically-situated example of the nonideal informing the ideal. Rawls identifies widespread

religious intolerance (nonideal condition) as a classical problem in political theory. The impossibility of solving religious conflicts in favor of a single conception of the good motivated the religious wars in Europe in the sixteenth and seventeenth centuries. Rawls' political liberalism provides a political theory that attempts to address the problem of irreconcilable differences (Rawls, 1999). This is the distinguishing factor in the evolution of his political philosophy from the positions taken in his original text—*A Theory of Justice*—to those taken in his subsequent texts, *Political Liberalism*, and *Justice as Fairness: A Restatement*.

In *A Theory of Justice*, Rawls suggests that a well-ordered society is comprised of a morally *homogeneous* group of individuals who widely endorse a singular conception of the good life. These individuals more or less structure their lives (public and private) in accordance with this conception. The comprehensive liberalism advanced by Immanuel Kant or John Stuart Mill,³⁴ philosophers from the eighteenth and nineteenth centuries, respectively, provide two examples. In light of many critics' objections to the deficiencies of this homogeneous premise—and after reflecting on the injustice of religious persecution—Rawls revises his notions about the composition of a well-ordered society and about how best to reflect justice within it.

In *Political Liberalism*, Rawls explicitly acknowledges the existence of a *plurality* of conceptions of the good. He maintains that although these conceptions may conflict, it does not imply that they are unreasonable, referring to this condition as the *fact of reasonable pluralism*. Rawls constructs a revised political theory that promotes tolerance for diverse worldviews, by making ideological room for irreconcilable, but reasonable,

moral, religious, and philosophical doctrines (comprehensive doctrines). This constitutes a major alteration in the composition of the well-ordered society.

In relinquishing the notion that a singular conception of the good life can form the basis for social cooperation and stability in a pluralistic constitutional democracy, Rawls reconstructs his well-ordered society using *political* principles that embody the “fundamental political ideas viewed as implicit in the public culture of a democratic society,”³⁵ as basis for just social organization. Political principles are identified with the *public* sphere and, therefore, circumvent the classical and intractable problems of religious intolerance in the private sphere. Further, Rawls places limits on the coercive power of religious beliefs—and other disputed private doctrines—on the public decision-making process by emphasizing doctrinal pluralism in the ideal functioning of the basic structure. He writes:

Yet despite the significance of other controversies and of principles addressed to settling them, the fact of religious division remains. For this reason, political liberalism assumes the fact of reasonable pluralism as a pluralism of comprehensive doctrines, including both religious and nonreligious doctrines. This pluralism is not seen as disaster but rather as the natural outcome of the activities of human reason under enduring free institutions. To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster.³⁶

To conclude: In the preceding discussion I have presented Rawls’ theory by referring to three of his texts: *A Theory of Justice* (1971/1999b), *Political Liberalism* (1996), and *Justice as Fairness: A Restatement* (2001). I have demonstrated that Rawls recognizes the injustices that animate nonideal theory, and recognizes that a *complete* political philosophy combines the ideal and nonideal. I have also shown that while Rawls’ ideal theory is quite limited in scope and complexity, it can be interpreted as a complement to the objectives in the nonideal. That is, ideal and nonideal theory can be

understood to fruitfully coexist in Rawls' moral judgments; they can support, enrich, and challenge each other and facilitate the maturation of increasingly complex and just political theories. They can do this within a dynamic relationship that permits cross-fertilization—that is, if we seriously entertain the possibility. It follows that moral judgments are tentative and subject to continued revision based on how problems are identified and defined in historical contexts, and the extent to which these problems become the focus of sustained moral inquiry (Mills, 2001).

In the nonideal, the suppression of collective memories of injustice leaves us historically deficient in our analyses of real world conditions. An interpretation of social reality that excludes pervasive violations of rights and liberties limits justice (Wolin, 1985), but it is also the case that nonideal theories need a desirable alternative to social injustice (a reconstructed ideal) if they are to champion freedom. It remains an open question (one that I will not address), whether or not a particular ideal—Rawls', for example—is the most suitable alternative given the complexities of the nonideal. In making this determination, we need to examine “real world” injustices that evidence a significant departure from the assumptions underlying a given ideal theory and contemplate extensions of its moral principles and judgments in order to address them—or pose a new ideal, altogether—based on historicized assessments of desirable ends. The remainder of the discussion is devoted to this task.

For my purposes, the ways in which I have demonstrated the relevance of Rawls' ideal theory to the nonideal provide a basis for my use of its moral judgments not only as a model of ideal justice but also as a flexible method of inquiry concerning the lack of justice in the nonideal. I have elected to examine real world injustices by analyzing the

extent to which these conditions depart from the assumptions underlying Rawls' ideal theory. Thus, I will analyze the nature of these dissimilarities and entertain extensions of Rawls' moral principles and judgments to the nonideal in the pursuit of desirable, *reconstructive* ends. This process adds another dimension to my response to the first line of critique concerning Rawls' usefulness in the nonideal

I begin with three contrasts between the nonideal social conditions of ascriptive citizenship presented in Chapter 1 and the social conditions in Rawls' ideal theory. This is followed by an extension of Rawls' moral judgments to address the specifics noted. With the inclusion of these nonideal conditions to the sphere of Rawls' moral judgments, the resulting framework is characterized as "Rawlsian." That is, the term 'Rawlsian' implies the "rearticulation" of Rawls' moral principles and judgments for application to the injustices in the nonideal (the real world of ascriptive citizenship and social stratification).

The "Rawlsian" framework has three distinct features. First, it contains descriptions of the dichotomy existing between the ascriptive nonideal and Rawls' just society. Second, it includes critical analyses of the contradictions between the two, in light of Rawls' principles of justice, and, third, it provides the basis for the *reconstructive* project in the nonideal. This project has an antisubordination foundation that highlights certain invidious distinctions—race, gender, and class—but identifies ascriptive constructs and social stratification, generally, as intolerable violations of equal dignity and equal citizenship. The reconstructive project aims to eliminate social stratification and ascriptive citizenship. I refer to these objectives as *prescriptions* for reconstructing

the nonideal. A democratic project in education is one aspect of the prescriptive project, and it is the focus of my discussion in Chapter 5.

Revisiting Chapter 1

In the first chapter, I critiqued the liberal concept of citizenship and highlighted some of its often-overlooked moral deficiencies. The historical contexts of social stratification and ascriptive citizenship in America ground my discussions about moral principles and lay the foundation for considering reconstructive possibilities. The antecedent sociopolitical conditions discussed in Chapter 1 are antithetical to Rawls' carefully constructed "well-ordered society" of free and equal choosers. Instituting *just* moral principles means that our intuitive deference to "tradition" must be problematized, and if this deference is irrational—as I contend it is—our intellectual and moral task is decidedly different.

Charles Mills writes:

Whereas the ideal contract explains how a just society would be formed, ruled by a moral government, and regulated by a defensible moral code, this nonideal/naturalized contract explains how an unjust, exploitative society, ruled by an oppressive government and regulated by an immoral code, comes into existence. If the ideal contract is to be endorsed and emulated, this nonideal/naturalized contract is to be demystified and condemned.³⁷

The United States has never been a "well-ordered" society by Rawls' standards, nor has it ever been a "nearly" well-ordered society. It is difficult to see how one would plausibly make the case that, say, justice—in a substantive way, at least—has proven to be the first virtue of social institutions that structure our society. There are many reasons for taking this position, as have been presented in the two preceding chapters. At this juncture, I will discuss a several contrasts, including the one just given, that reveal significant departures from Rawls' 'well-ordered' context of ideal theory.

First, our modern institutions are tied to a historically specific ideological framework that is built on an exploitative moral code. The “tradition” of American democracy and liberty should be demystified in order to confront this suppressed feature of our collective memory. In textbooks and curricula across the country, the institution of slavery, for example, and its immediate aftermath—more than three hundred years of indispensable history—receive little serious consideration. This results from what appears to be a “politically correct” orientation to textbook adoption by influential educationists and publishers who want to avoid “controversial” subjects in the classroom. Michael Apple provides an example:

For instance, under conservative pressure a number of publishers of high school literature anthologies have chosen to include Martin Luther King’s ‘I Have a Dream’ speech, but *only* after all references to the intense racism of the United States have been removed.³⁸

There are more than a few recent studies indicating that students learn more about how their government functions when controversial issues and diverse perspectives are embraced in the curriculum and when students are encouraged to think critically about them during their discussions (Hahn, 1999; Torney-Purta et al, 2001; Stromquist, 2001). Despite these apparent benefits, the nonideal seldom receives critical attention. Some argue that this same tendency to avoid “controversial” subjects can be observed in higher education classrooms as well, and that a similar critique of what counts as “relevant” content is warranted (hooks, 1994, Smith, 2003). This includes the content typically found in many mainstream scholarly publications in the social sciences and the humanities (Mills, 1998).

Second, in light of the exploitative moral code in the nonideal, justice is clearly not the first virtue of the social institutions that control the lives of citizens within our

democratic project. Over the centuries that chart America's evolution, its institutions clearly evidence a pattern of pervasive social injustice such as the pattern of ascriptive citizenship discussed in detail in Chapter 1. We noted, for example, the presence of political and social inequality, inequality of opportunity, race and gender inequality, class privilege, et cetera. As a collectivity, we have yet to make it a priority to openly and critically assess the moral content of our socially stratified history and its ascriptive political implications. We have yet to effectuate justice in our *current choices* so that continuing violations of basic rights and liberties can be eliminated. While there are no guarantees that liberalism is the political theory that will provide the theoretical framework to overcome injustice in America—particularly given that slavery and more than a century of *de jure* segregation were condoned and enabled within our liberal constitutional system (Shklar, 1990)—this does not detract from the urgent need to depart from the irrational brand of liberalism that dominates our social institutions.

Third, it is not possible to realize Rawls' "fair" system of cooperation when some citizens are given a disproportionate share of benefits while others receive a disproportionate share of burdens—amounting to unfair privilege and unfair deprivation. The prospects for changing this arrangement are diminished to the extent that those benefiting from it do not reject its gross distributive asymmetries in the interest of justice (Rawls, 1999). Moody-Adams writes:

The possibility of social cooperation thus imposes an *obligation* on those not in the disfavored group to relinquish the discriminatory attitudes that persist. . . . This requires far more self-scrutiny—and, ultimately, a more serious revision of self-conceptions—than is acknowledged in most discussions of social reform.³⁹

As previously discussed, if citizens do not have equal rights and liberties, they will systematically receive unequal treatment within the basic institutions of society. This is

why social justice in society's basic institutional arrangements is so fundamental to Rawls' theory. If gross inequalities of power—not fairness, or constitutional guarantees—dictate the social and political relations in society, then the conformity that exists in the social order can hardly be characterized as “cooperation” consistent with the terms of Rawls' well-ordered society.

Fourth, citizens in our society are not collective moral agents for justice as they are in Rawls' theory. The majority of citizens in our society exhibit the capacity to permit gross violations of some citizens' publicly recognized rights and liberties while taking great pride in having these same protections and freedoms for themselves. The “sense of justice” that seeks and gives reciprocity appears dormant, deflected, degraded, deficient, or depleted—possibility, some combination of these—with respect to the political majority. Whichever the case may be at present, the political implications for minority-group rights and for the creation of democracy in America have been disastrous (Kymlicka & Norman, 2001; Walzer, 1995).

John Stuart Mill discusses the problem posed by democracy in the opening chapter of his famous text, *On Liberty*. In this chapter he coins the phrase *tyranny of the majority*. What he means is that the majority in a democracy may tyrannize minority groups because these groups are perceived to be “different,” or because they express dissenting views, or simply because majorities have the power to be tyrannical. Mill's thesis is that majority power in a democracy must be constrained in civil society and in the state so that it does not oppress minority groups and violate their liberties. Minorities' interest in liberty must be protected from these abuses because democratic majority rule does not guarantee freedom. As we noted in Chapter 1, even when majority rule is

combined with a constitutional democracy, it is not a guarantee against gross violations of basic human rights. The people must consciously reject exploitation and demand social justice.

Finally, it is intuitively obvious—or at least fairly clear from the forgoing discussion—that citizens are not free and equal if they live under pervasive circumstances of systemic discrimination on the basis of race, class, gender and other invidious distinctions. Ascriptive citizenship and social stratification are based on such distinctions, but, as some scholars note, the presence of *evil* in society is not always acknowledged in democratic theories (West, 1993). For example, in Rawls’ framework it is possible for isolated ascriptive practices to exist (not social stratification or “pervasive” ascriptive practices) and for these to merely suggest that a negligible number of citizens are not adept in the use of public reason on matters of basic justice, not that the social order is fundamentally, morally flawed. To see this, we must revisit the notion of reciprocity. Reciprocity requires that our claims to rights and to government’s protection of rights must be couched in a particular political grammar. This grammar is used in the public forum to provide public reasons that other citizens—who may not agree with us—can be reasonably expected to reasonably accept. Surely, this level of public justification for government’s actions and for citizens’ requests is wholly lacking in a system that enslaves or that does not permit millions of its citizens to effectively participate: to vote, to seek public office on equal terms, and to obtain the level and quality of education necessary to effectively pursue their ends.

Extending Prescriptions: A “Rawlsian” Framework

A different conception of “the right” and “the good” may emerge when previously untheorized or under-theorized nonideal facts provide additional considerations with which our existing values and moral judgments must contend (Mills, 2001) and these are added to the descriptive mix of problems on which we deliberate. We can then analyze these facts in connection with the liberal values of freedom and equality that Rawls espouses (and that are contained in the Constitution and in the Declaration of Independence), to arrive at a more thoughtful and complex characterization of oppression and inequality to which we extend Rawls’ moral judgments for corrective purposes. For example, given the nonideal historical context of social stratification in America, the logical extension of the moral ideal contained in the notion that “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override”⁴⁰ would necessitate a change in the unit of analysis to encompass additional harms. It would result in moral judgments directed at alleviating—or, at least, substantively ameliorating—the systemic violations of basic rights and liberties pertaining to individuals *as members of particular groups*, and, therefore, to groups generally. In nonideal theory, it would entail extending Rawls’ moral judgments about justice—and extending liberal protective measures—to the problem of group oppression.

In order to create a moral framework that protects the rights of specific political and numerical minorities from majority abuses, Americans have to first claim their *memory of collective injustice* and critically analyze its moral content and foundation. This implies the need to transcend descriptions of individual discrimination and abstract universal rights because these often mask the specificity of the discrimination and the

formality of the constitutional protections. That is, the discrimination that individuals suffer as a result of their membership in a particular *group* (group harm)—as part of the tortuous and torturous development of citizenship—does not typically receive adequate consideration in mainstream theories, and, consequently, our moral judgments pertaining to them are obstructed or ineffectual.

We need more complexity in our moral theories, and this can be realized if serious consideration is given to the social context of discrimination. As philosopher Kathryn Morgan notes, “The most excruciating forms of moral, psychological, and emotional torture may have large, culturally constructed, and culturally mediated dimensions to them.”⁴¹ If the particularity that is clearly evident in social stratification schemes and ascriptive citizenship practices is not duly incorporated into our descriptive analyses of injustice, the epistemic force of universal moral theories is seriously undermined; this is especially true in the nonideal where the moral deficiencies are evidenced in the stark contrasts between formal and substantive rights.

A responsive moral framework for the nonideal alters and extends our conventional descriptions, explanations, and prescriptions. The result is that these processes register the memories of collective injustice and the legacy of historic inequality. Universal ideals that apply only to a partitioned segment of society are degraded and unfit for moral theories that purport to speak to the human condition. Such false universalisms are not only polarizing but also hollow and pretentious; they lack moral substance but profess obeisance to lofty principles; their ascriptive applications only deepen the social cleavages in society—incapable as they are of embracing the complex social whole that defines pluralistic societies (Mills, 1997, 1998). These lived

experiences (including *group* sufferings and strivings) cannot be fully grasped in the context of an existentially homogenous ideal—a simplistic and uninteresting blur of sameness.

Another responsive move that is predicated on recognizing the social context of oppression is a national public debate about what American citizenship means for groups. We need to make a public determination of whether—and to what extent—a raced, gendered, and classed liberalism is consistent with a desirable democratic project, with the ideals that we often unreflectively reproduce in succeeding generations (Apple, 2003). A form of collective introspection is needed in the *public* realm to explore the patterns of ascriptive citizenship as part of the “complex internal perspective”⁴² that Moody-Adams suggests. We ought to problematize myths of exceptionalism that appear to rationalize ascriptive notions of personhood (Smith, 1997). For purposes of my discussion, we need to specifically ask if such a polarizing liberalism is consistent with what Rawls espouses in his normative theory. If it is not, then the moral judgments that extend his prescriptions into the nonideal must reject the exclusionary liberalism that is traditionally championed or condoned in American society and in its basic institutions. Obviously, ascriptive liberalism is inconsistent with Rawls’ normative theory; indeed, his principles are intended to provide a morally defensible *alternative* to it. I offer an interpretation of this alternative in the discussion that follows.

Recall from my earlier comments that primary goods are institutional supports that Rawls contends all citizens need to effectively pursue and realize their rational plans of life in a manner consistent with a political conception of justice. Primary goods are related to what Rawls refers to as *contingencies*. Contingencies are conditions that

significantly impact peoples' life chances in society. Some contingencies are social as in social class; some are natural, as in certain physical disabilities, and still others are fortuitous or happenstance (Rawls, 2001). The extent to which these contingencies can be sufficiently offset by primary goods within the basic structure of our society explains why Rawls chooses to focus on the basic structure as the subject of his theory of justice. He is convinced of its "profound and pervasive influence on the persons who live under its institutions."⁴³

For purposes of review, I will list Rawls' categories of primary goods. I will then briefly discuss why I interpret *group status* to be among them in the nonideal. Following this, I will advance a similar argument with respect to *racial minority status* and *female status*. The following are the categories of primary goods that, according to Rawls, all citizens need in order to effectively pursue and realize their rational plans of life in a manner consistent with a political conception of justice within a well-ordered society. There are five categories of primary goods:⁴⁴

- (i) The basic rights and liberties: freedom of thought and liberty of conscience among others.
- (ii) Freedom of movement and free choice of occupation against a background of diverse opportunities, which opportunities allow the pursuit of a variety of ends and give effect to decisions to revise and alter them.
- (iii) Powers and prerogatives of offices and positions of authority and responsibility.
- (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be.
- (v) The social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.

Before making a case for the inclusion of (equal) group status among the primary goods needed in the nonideal, I will briefly discuss the obvious consideration that he has already given to material prosperity. First, by identifying income and wealth on the list of institutional supports that all citizens need, Rawls demonstrates his awareness of the harmful effects of gross, material inequalities. Such inequalities are registered as obstructions to the effective pursuit of rational plans consistent with a political conception of justice. The quest to realize rational plans is integral to the structure of the *original position*. Recall that despite the constraints on the information available to the representatives, they are permitted to know about the nature and content of primary goods. This information is taken into account when they select the public principles that will guide their deliberations on all matters pertaining to the establishment of just social institutions.

Second, Rawls' difference principle provides a form of distributive justice that attempts to protect individuals from the gross inequalities of wealth that tend to exist under certain economic arrangements. In fact, Rawls actually subordinates the liberty associated with property rights—the Enlightenment economics of classical liberalism—to the democratic principle of equality and social welfare for the least-advantaged. Unlike Locke's concept of "expropriation" as the guiding consideration in ascertaining rightful possession, Rawls asserts that we are not fully entitled to the fruits of our labor, in part because of the *social nature* of our political enterprise within the well-ordered society. The difference principle further evidences the significance of *material inequality* in Rawls' understanding of the prerequisites for social justice.

Third, Rawls unambiguously rejects the economic arrangement that is purported to offer citizens in a constitutional democracy the best option: welfare-state capitalism. He maintains that this system violates his two principles of justice so fundamentally, that it must be excluded from his theory; he then identifies two alternative economic arrangements that are consistent with justice as fairness: liberal socialism and property-owning democracy.⁴⁵ Both alternatives are considered to be more empowering for ordinary citizens; both disallow gross disparities in wealth and place the means of production in the hands of the public—not under the control of private individuals; both favor limits on the *accumulation and transfer* of private wealth because—left unrestrained—these are believed to unjustly deprive future generations of resources and reproduce gross inequalities.

Rawls' selections for alternative economic arrangements reflect his loss of faith in the efficacy and morality of welfare-state capitalism in the context of the type of democracy that he seeks to advance. In effect, welfare-state capitalism makes his “possible world” impossible, so in rejecting it he makes clear his contention that political rights are morally prior to economic rights—a move that seems compulsory given his normative theoretical framework. As economists Barry Clark and Herbert Gintis contend, “Quintessentially, capitalism vests rights in property, however it is distributed among persons; while democracy vests rights in persons, however they are situated with respect to property.”⁴⁶

Group Status and Primary Goods

First, suppose gender equality is explicitly included on the list of primary goods in the nonideal. It could be assumed to exist under the first (basic rights and liberties), and/or

fifth categories (social bases of self respect) on Rawls' list. Suppose further that these supports for gender equality pertain to "individuals." For the sake of discussion, let us assume that we are referring to individual *females*. This implies that the institutional supports that all citizens need in order to effectively pursue their rational plans of life do not take into account the supports that individual females may need as a result of their collective membership in a subordinate *group*, i.e. women. If such supports are needed, they are beyond the scope of the specific protections provided by primary goods.

Consider the following scenario: If females are systematically paid less for their labor despite performing tasks that are comparable to the tasks performed by their male counterparts—or are relegated to performing functions for which a lesser compensation is awarded—the resulting harm is not limited to females as "individuals." (Note that, for *individuals*, the practice of restricting employment options would likely fall under the second primary good on Rawls' list, the category of "choice of occupation"). If the discriminatory practice is not discrete, then it is sufficiently linked to others such that a more inclusive discriminatory pattern exists that may reflect economic harm to dependents, to the family (and the basic structure), and to "group" civic identity.

A group-identified discriminatory practice is unlikely to be mitigated or eradicated by theories aimed at protecting individual rights. Such theories often fail to sufficiently acknowledge the pervasiveness and the social context of rights violations, so the remedies are frequently superficial. This means that certain abridgments of rights and liberties may be permitted (or overlooked) if they pertain to *group* differentiated status—for example, being a member of the "female" group in a society that privileges the intrinsic value of males and, consequently, does not equally value the work that females

do. This violation of rights is such that an identifiable group—again, in this case, females—can be singled out for disfavored treatment within the basic structure of a male dominated society. (This was the Court’s logic concerning race in its ruling in *Brown I*. Individual rights violations occurred in the *social context* of racial stratification, so equal “educational opportunity” was denied to a group (blacks) on the basis of their racial group membership).

If an identifiable group can be singled out for disfavored treatment, the basic structure fails to establish and maintain background justice. Background justice is integral to setting the proper course (the moral and political framework) for society as a collective enterprise. In the nonideal, we are confronted with a society that cannot secure justice for its female citizens, making them second-class citizens. This is an unacceptable institutional posture given Rawls’ contention that the basic structure has “deep and long-term social effects and in fundamental ways shape citizens’ character and aims, the kinds of persons they are and aspire to be.”⁴⁷ Therefore, if gender equality is included on the list of primary goods but only as it pertains to the protection of rights and liberties of “individual” females, then the nonideal society cannot secure “group” justice for its female citizens; it cannot effectively address the group victimization and domination of women in a male-dominated society.

Where women’s liberties are violated by unjust employment practices that are allowed to persist, one “deep and long-term social effect” on female members of society may be that they begin to see themselves—and begin to be seen by others—as lesser citizens within an under-compensating patriarchal division of labor. Unjust employment practices unreasonably limit citizens’ economic liberties and choices of occupation.

Specifically, they undermine female citizens' effective use of their other primary goods.

Consider Shklar's connection between earning and citizenship:

This vision of economic independence, of self-directed 'earning,' as the ethical basis of democratic citizenship took the place of the outmoded notion of public virtue and it has retained its powerful appeal. We are citizens only if we 'earn.'⁴⁸

She closes her discussion on earning by associating it with the *social bases* of self-

respect—the fifth category in Rawls' list of primary goods:

The right to earn should not be based on personal responses, such as loss of self-respect among the unemployed, but the loss of public respect, the reduction of standing and demotion to second-class citizenship, to which the public ethos, overtly and traditionally condemns them. It is not a right of self-respect, but a right not to be deprived of one's standing as a citizen that is at stake here.⁴⁹

According to Shklar, improving one's social position through labor is part of the American ideal work ethic that defines full citizenship rights. If people are denied the opportunity to work, then they are also denied the opportunity to improve their social standing and denied the opportunity to be recognized as full citizens.⁵⁰ The right to earn is abridged not only by the diminished opportunity to pursue an occupation but also by the inadequate or unfair compensation that follows a day's work—whatever the occupation. As Shklar reminds us, "an earner [is] a free remunerated worker, one who is rewarded for the actual work [she] has done, neither more nor less. [She] cannot be a slave or an aristocrat."⁵¹

In Rawls' framework there is no *public* reason supporting asymmetrical earning capacities for comparable (or identical) work. There are no *public* justifications for the obstructions to women's opportunities to pursue desired employment and to be fairly compensated. The extent to which such inequalities are rationalized (for example, the frequently referred to "biological reasons" offered to explain why women were excluded

from politics and denied equal citizenship, noted in Chapter 1) Rawls' reciprocity criterion and deliberative processes are violated; to the extent that this is the case, the second principle in Rawls' well-ordered society (the difference principle) is also violated because occupations are not open to all on a fair and equal basis, where "fair and equal" includes just compensation.

Further, the "chilling effect" of permitting unequal wages for equal work reduces the types of occupations that women can pursue in attempting to improve their standing (the glass ceiling). In the nonideal, the absence of a specific and forceful institutional response to the obstructions of basic rights of "group-identified" individuals to pursue their ends, suggests the limits of the ameliorative reach of Rawls' moral judgments in the nonideal. Thus, if women are systematically paid less for their labor despite performing tasks that are comparable (or identical) to the tasks performed by their male counterparts—or are relegated (as a group) to performing functions for which a lesser compensation is awarded—Rawls' moral judgments lack substantive effect in responding to the basic structure of the nonideal, and the protections of rights that such judgments champion are merely formal. In the absence of protections for exploited *groups* under conditions of group domination, primary goods fail to provide what *all* citizens need in the nonideal in order to effectively pursue and realize their rational plans of life in a manner consistent with a political conception of justice. What citizens in the nonideal need is unambiguous institutional support for a fair system of social organization that includes protections for the pursuit and realization of the good of *groups in a stratified society*, not only the good of individuals.⁵²

Attempting to solve a pervasive problem on a case-by-case basis is impractical and ineffectual. The debacle in *Brown II* provides a noted example. The Court's decision to deny class actions during the remediation phase of *Brown*, in favor of pursuing a case-by-case review of claims against school boards for violations of Brown's desegregation mandate, proved disastrous for children discriminated within the existing segregated educational system. The judicial strategy of singularly reviewing plaintiffs' claims against individual school districts meant that many children similarly situated were denied basic justice and were subjected to continuing violations of their Fourteenth Amendment rights.

A similar fate of denial of basic justice would befall women if their only recourse to employment discrimination amount to a protracted, case-by-case, judicial or legislative "remedy." Disparities in employment compensation and restrictions on occupational choice are just two examples of a pervasive discrimination that can disproportionately affect women—as a group—in a society stratified by gender. In such a social order we cannot fully appreciate the nature and extent of the discrimination that women suffer—as a group—if our framing of the problem is narrowly focused on inequalities manifesting as individual discrimination. The resulting remedies tend to overlook the impact of subordinate *group* status and patriarchal power relations as an underlying factor in the occurrence of pervasive violations of rights and liberties.

The words 'racism,' 'slavery,' and 'sexism,' for example, were not specifically mentioned by the framers of America's original Constitution, but these omissions did not preclude the deliberate establishment of a system of social stratification and group domination. Universal principles turned out to be very *particular* in their applications.

Failure to acknowledge and challenge this tragic fact of history is one reason why mainstream liberalism seems shortsighted, inhumane, and inconsequential to many. Word omissions do not imply the absence of social consequence or specific intent in connection with the omitted words. In addition, the meaning of included words such as ‘persons,’ ‘liberty,’ and ‘citizens,’ for example, is often ascertained from their *use* in social contexts—not from their literal translations. Of course, the true meaning of “neutral” language can be deciphered from what neutrality *accomplishes* in social practices despite its purported impartiality—or, perhaps, as a result of it. As Mills writes:

Gender-neutrality is really (and necessarily) maleness; colorlessness is really (and necessarily) whiteness; universality is really (and necessarily) particularity. The view from nowhere is really always a view from a particular where. Why not just admit this and label it as such?⁵³

Racial Minority Status/Female Status and Primary Goods

Let us next assume that Rawls’ list of primary goods includes individual rights and liberties but only as these pertain to *decontextualized* individuals. This implies that the institutional supports that all citizens need in order to effectively pursue their rational plans of life do not take into account the supports that individual racial minorities and females need in light of their subordinate membership in a universal class of persons known as “citizens.” If such supports are needed, they are beyond the scope of the specific protections provided by primary goods. Under these circumstances, we are not directed to consider the pervasive historical pattern of (particularized) white and male privilege under a system of social stratification and ascriptive citizenship as described in Chapter 1.

The forms of dominance and power asymmetry that ascriptive practices reflect will remain intact when they are not subjected to critical review under contextualized

methodologies. Absent such analyses, the antecedent political, economic, and social advantages that are built into the foundation of the nonideal, and that are afforded to certain “types” of citizens, are not subject to our moral judgments for purposes of substantive, corrective justice (Mills, 1997). As a result, the benefits and burdens of society are more likely to remain unequally and unfairly distributed, particularly for those that Rawls’ characterizes as “permanent” minorities.⁵⁴ This means that unjust inequalities among (universal) citizens based on race and gender distinctions (ascriptive citizenship) are virtually unrestrained in spite of Rawls’ attempts, under ideal conditions, to bring a measure of balance to the social arrangements. Indeed, the basic liberties would no longer form a special category that receives special institutional support for their role in the effective pursuit of reasonable ends. Primary goods cannot provide systemic protections in the nonideal, where the substantive realization of basic liberties is routinely frustrated by social stratification and ascriptive citizenship practices.

Violations of Rawls’ ideals may be ignored or dismissed in the nonideal if the moral principles and judgments that are applicable under ideal conditions to sustain justice are not extended and “rearticulated” under nonideal conditions to create justice (Mills, 1997). Again, extensions and applications of moral judgments must confront the specific problems lived experience—social stratification and ascriptive citizenship; otherwise, the complex ways in which race, class, and gender exploitation are inextricably linked within stratifications systems will be ignored or dismissed; demystification cannot occur despite the fact that intersecting categories of subordination are even more detrimental to citizens’ rights and liberties, because of the impact of multiple abridgments on the effective pursuit of rational plans of life consistent with

public principles of justice. This implies that Rawls' prescriptions for securing basic rights and liberties within existing categories of primary goods (under presumptively ideal conditions) are materially deficient in identifying and protecting citizens' interests under stratified and ascriptive social conditions. Therefore, if Rawls' list of primary goods includes individual rights and liberties, but only as these pertain to *decontextualized* individuals, then his list of primary goods (under presumptively ideal conditions) are materially deficient in identifying and protecting citizens rights and liberties under stratified and ascriptive social conditions.

The inadequacies of ideal prescriptions for achieving justice in the nonideal are lessened to the extent that much-needed institutional protections are provided to racial minorities and women (contextualized citizens) to protect their substantive enjoyment of rights and liberties. These protections ought to reflect specific state interests in race and gender equality in the exercise of citizens' primary goods. Most importantly, *race and gender stratification and ascriptive practices become a specific concern of ameliorative social policy initiatives and enforcement efforts within the basic institutions of society*. A hint of this focus is suggested in the social policies undertaken during the Reconstruction and Civil Rights eras with respect to the protection of positive rights. Eliminating race and gender privilege is a legitimate exercise of government power that is implied in Rawls' theory but is *institutionally mandated* in the Rawlsian prescriptive project. Rawls concedes the following about ideal theories in response to group injustices:

Justice as fairness, and other liberal conceptions like it, would certainly be seriously defective should they lack the resources to articulate the political values essential to justify the legal and social institutions needed to secure the equality of women and minorities.⁵⁵

The unit of analysis shifts from nondescript individuals (well-ordered society) to the “socially constructed” raced and gendered individuals (nonideal theory) for purposes of eradicating social stratification and ascriptive citizenship and creating a just society.

Restitution for the historical and contemporary hardships that have resulted from institutionalized discrimination on the basis of racial minority status and female status in America, present us with complex issues of basic, corrective justice. Given my interpretation of Rawls’ moral judgments applied to the nonideal, one could arguably make a case for reparations. Providing such reparations would involve comprehensive economic and policy questions that are well beyond the scope of my discussion, which goes to the moral foundations that may pertain to such considerations. There are a number of scholars, however, who have devoted considerable time reflecting on these issues and who have offered their informed judgments about them, so I refer the reader to a sampling of this growing body of literature.⁵⁶

For my purposes, the inclusion of racial minority status and female status on the list of primary goods receiving explicit institutional protections in the nonideal provides additional support for the exercise of positive rights and liberties (and for the pursuit of rational plans) for these two groups, in addition to promoting the social basis of self respect. *Reconstructing* the basic institutions in the nonideal pursuant to social and racial justice requires the good faith implementation of specific policy measures targeting these systems. Again, the most significant point to be grasped for purposes of practical reasoning pursuant to just moral principles in the nonideal is that the *institutional policies and practices (faithfully pursued) are designed to eliminate the historical privilege afforded to racial “majority” status and to “male” status under social stratification and*

ascriptive citizenship. The goal is to ensure that these forms of social hierarchy no longer have the effect of reducing substantive rights and liberties to a “zero sum game” that permits unfair privileges and unfair deprivations such as were noted in Chapter 1. The purpose of the reconstruction project in the nonideal is to effectively prevent the undermining of the fair value of rights and liberties, particularly as this pertains to political minorities.

Rationalizing the perpetuation of the status quo within the *reconstruction* project means providing public justification for social practices that sustain, or enable, race and gender stratification (and ascriptive citizenship) while retaining Rawls’ reciprocity criterion. This justification must necessarily meet the requirement of the difference principle in “Rawlsian” contexts—be proven to benefit racial minorities and females, (the least-advantaged in the system of race and gender stratification)—and proven to the satisfaction of these groups.⁵⁷ These burdens seem impossible to sustain in the nonideal given “Rawlsian” moral principles and the reconstruction’s stated objective of removing social injustice. That is, as part of the reconstruction project, *the basic institutions of society must be reconceptualized as antiracist and antisexist*. In the nonideal this means that groups, racial minorities, and women are to be regarded as “ends in themselves within the basic design of society” and, therefore, society “agrees[s] to forego those gains which do not contribute to everyone’s expectation [specifically the disfavored].”⁵⁸

By implication, the state and its citizenry would have to be actively committed to eradicating social stratification and other systemic power asymmetries, as well as their disastrous social repercussions. They would undertake this project with the same sense of obligation and purpose required for the protection of other rights and liberties (and

primary goods) in Rawls' *ideal* framework. Indeed, there is no reason to suspect that the moral judgments and protections that Rawls provides under ideal conditions in response to the fact that "our prospects [of] life are deeply affected by . . . contingencies, and by the way that the basic structure, by setting up inequalities, uses those contingencies to meet certain social purposes,"⁵⁹ are not equally necessary in response to reduced life prospects in the nonideal—in support of anti-stratification policies:

If we ignore the inequalities in people's prospects in life arising from these contingencies and let those inequalities work themselves out while failing to institute the regulations necessary to preserve background justice, we would not be taking seriously the idea of society as a fair system of cooperation between the citizens as free and equal. This reminds us that what we are asking is precisely: what principles of background justice are presupposed in taking seriously that idea of society?⁶⁰

In the foregoing discussion I have explained why group status, racial minority status, and female status have a powerfully adverse impact on citizens' life prospects under nonideal conditions of social stratification and ascriptive citizenship. I have demonstrated how membership in a political minority group can present significant obstructions to citizens' efforts to effectively pursue and realize their rational plans of life in a manner consistent with a political conception of justice. (Education is one vital and obvious area in which such obstructions persist.) If some citizens receive less protection from government for their basic rights and liberties by virtue of their membership in a particular group, or because of their race or gender, we lack a morally defensible constitutional system.

The void left by the absence of substantive justice leaves us with something considerably at odds with a legitimate, responsive government. Rectifying this situation requires that like-minded citizens articulate and construct a group-inclusive, anti-

subordinating liberalism. Such a formulation is committed to safeguarding all citizens from the historically abusive tendencies of majorities, power elites, and degenerate governments. The notion of a ‘separateness of groups’ is championed that is analogous to Rawls’ notion of a ‘separateness of persons,’—meaning, in this instance, that groups along with contextualized individuals (raced and gendered), should be treated as ends and not as means only.⁶¹

My extensions of Rawls’ moral judgments to the nonideal involved a change in the *unit* of analysis, from ‘individual’ to ‘group’; and a change in the *type* of analysis, from abstract to contextual. It also involved a change in the nature and kind of social conditions that primary goods are responsive to within the basic structure of society: from natural and fortuitous contingencies, to deliberate stratification, and from stability-seeking cooperation to fundamental reconstruction. These changes are necessitated by the conclusions drawn from a critical assessment of social conditions in the nonideal (such as detailed in Chapter 1), not from hypothetical abstractions. Transformative prescriptions are necessary in the nonideal, and a theory that appears too abstract and idealized can be rearticulated—with additional facts and generous extensions of its liberal moral judgments—to challenge the obvious contradictions at the base of ascriptive commitments that incense so many critics of liberalism.

I have demonstrated that Rawls’ ideal theory—already shown to be contemplative of nonideal conditions—has liberatory possibilities in response to real world injustices. Although it clearly remains a limited theory for the nonideal, Rawls’ moral judgments and prescriptions can contribute constructively to the way that we conceptualize the range of possibilities for a just democracy within the reconstruction project. In this way, his

moral judgments can be understood as part of a comprehensive effort to rid society of divisive and destabilizing uses of government power that have long-enabled social stratification and ascriptive citizenship under liberalism. This concludes my response to the first line of critique of Rawls' theory—issues pertaining to its usefulness in the nonideal given its abstractness. The second and third critiques that I will consider are directed at Rawls' conception of public reason.

Public Reason

Public reason is an indispensable element in Rawls' political conception of justice, but he acknowledges that its scope is limited and cannot be relied upon to solve all public political disputes. Nevertheless, absent the concept of public reason we are left with little recourse to the chaos that might ensue when people with divergent perspectives are faced with obstacles to public policy, particularly given the fact of reasonable pluralism that is assumed in Rawls' framework. As he notes, people are fallible despite their best intentions and efforts. No individual or group can claim to possess the requisite insight needed to capture the whole "truth" of a situation because there are various ways in which our judgments are burdened or compromised.⁶²

Without public reason's accommodation for the burdens of judgment and the fact of reasonable pluralism, the political conception of justice would fail to embody principles capable of securing the respect and cooperation of persons holding irreconcilable, but reasonable, comprehensive doctrines. That is, the political conception of justice would be less likely to foster an overlapping consensus of reasonableness strong enough to promote the stability of Rawls' principles of justice and minimize the strains of commitment. Public reason establishes deliberative practices that allow people

with diverse and conflicting perspectives to discuss important public matters—civilly—
using the same political grammar.

Consider Rawls' description of the ideal of public reason:

This ideal is that citizens are to conduct their public political discussions of constitutional essentials and matters of basic justice within the framework of what each sincerely regards as a reasonable political conception of justice, a conception that expresses political values that others as free and equal also might reasonably be expected reasonably to endorse.⁶³

Lest we believe that Rawls' use of the phrase "sincerely regards" in the above quote provides the speaker with undefined deliberative flexibility, notice that the last phrase in Rawls' statement adds a moral imperative that explicitly restricts the permissible interpretation of public reason to *reasonable political conceptions of justice*, and to *reasonable political values*, that satisfy the *criterion of reciprocity*. If a citizen's reasons are such that his/her free and equal counterparts cannot reasonably endorse them, then the reasons fail to provide an adequate public justification in support of the speaker's claims.

Public reason is also part of the publicity condition in Rawls' theory of ideal democratic citizenship. That is, citizens know, or should be able to determine, the public conception of justice that provides the broad framework within which the basic institutions of society function. Citizens demonstrate both their grasp of this knowledge and their acceptance of its imperatives when they use public reason in their public deliberations on matters of basic justice and constitutional essentials. In so doing, they uphold the duty of civility that public reason reflects, as well as demonstrate their respect for one another as free and equal members of society.

The deliberative and moral imperatives that public reason establishes are particularly relevant in a society in which there are irreconcilable doctrinal differences

stemming from burdens of judgment and reasonable pluralism. Rather than countless policy impasses, ambiguities, and deliberative breakdowns, public reason provides guidelines for reasonable inquiry and argument that apply whenever citizens attempt to use the state's coercive powers to enforce their claims. In the event that citizens cannot reach agreement regarding how public reason applies to a constitutional essential or a matter of basic justice, Rawls designates the Supreme Court to be the final arbiter of public reason. Presumably, it possesses the greatest capacity for accurately determining when claims are reasonable within a political conception of justice.⁶⁴ Thus, the burden of public reason is greater for the judicial branch than it is for any other branch of government, and, consequently, judges are held to a higher standard of public reason than any other elected or appointed official.⁶⁵ With this introduction, I will now turn to the second and third lines of critique of Rawls' theory and critically consider two specific objections.

Second Critique: Public Reason Hegemonic/Too Restrictive

Among the critics of Rawls' theory are those who charge that the ideal of public reason is hegemonic. They assert that public reason has a chilling effect on nonpublic reason and on the freedom of individuals to discuss a variety of political ideas and opinions in the public forum. They argue, for example, that the public/private dichotomy that public reason recognizes is artificial and relegates "unwanted speech" to the domain of the private sphere. They suggest that the class of unwanted speech includes unwelcome dissenting opinions or comprehensive doctrines that are perceived to be too controversial.

Further, critics charge that Rawls is so focused on social and doctrinal cooperation in the public sphere, that he sacrifices the unpredictability and raucousness

that is characteristic of participatory democracy and critical discourse—particularly in association with social movements (Benhabib, 1992)—in order to achieve greater uniformity. Sheldon Wolin provides a particularly scathing critique of Rawls’ interpretation of public reason:

Public reason, we may say, is the general will in the age of academic liberalism. And like the general will, it is haunted by the specter of difference. Unlike Rousseau, Rawls will not banish certain groups (although he will come perilously close to doing so) but will seek their incorporation, a solution rendered easier because of the politically trivial character of the differences with which Rawls is concerned.⁶⁶

The objection to the public/private dichotomy in Rawls’ public reason seems natural given his steadfast rejection—particularly in *Political Liberalism*—of *comprehensive liberalism* as the basis for a viable political theory in a pluralistic democracy. Recall that a comprehensive liberalism is a religious, philosophical, or moral doctrine that structures private *and* public life. Rawls reasons that comprehensive liberalism is a futile quest for a singular conception of the good. It is futile because of the inescapable presence of irreconcilable, yet reasonable, comprehensive doctrines that Rawls maintains result from the fact of reasonable pluralism—differing judgments and human interests. Rawls responds to irreconcilable differences by distinguishing between the grammar of political society (political liberalism) and the grammar that is identified with the free flowing discourses found in voluntary associations in civil society (comprehensive liberalism). Further, he restricts the subject of public reason to constitutional essentials and matters of basic justice; in the event of an impasse, these issues are ultimately resolved by the branch of government that even Rawls suggests has a long and established history of conservatism: the Supreme Court.

In light of these features of public reason, one can be sympathetic to critics' contention that something very elitist and authoritarian is taking shape. For Wolin and others, public reason is a kind of civil religion that is imposed on the polity as a means of controlling ideas from the top down—coercing conformity to the dictates of a homogeneous, status quo consensus. To the extent that social movements are born of dissent, conflict, and clearly defined, but unmet, competing interests of oppressed groups—and not atomic individuals with rights, seeking to cooperate—it seems that the language of public reason is inadequate and, perhaps, even obstructive to pluralistic libratory discourses that champion popular sovereignty.

I share critics' concerns because libratory discourses are indispensable in the reconstruction of the nonideal, the focus of applications of ideal theories. This is why my interpretation of Rawls' public reason acknowledges not only doctrinal pluralism but also the pluralism that seeks to structurally alter the relations of power in a democratic project in the interest of political autonomy. I find Parenti's definition instructive:

Specifically, pluralism means that 1) Power is shared among representative sectors of the population. 2) The shaping of public policy involves inputs from a wide range of competing social groups. 3) No one group enjoys permanent dominance or suffers permanent defeat and 4) The distribution of benefits is roughly equitable or certainly not consistently exploitative.⁶⁷

I interpret Rawls' standard for public reason very differently from Wolin and many other critics. In my estimation, it is increasingly responsive to the libratory interests that are the focus of the reconstruction project that I discussed earlier. What many seem to overlook is that Rawls' thinking on public reason is not fixed; it has evolved just as his theory has evolved. In order to consider this process we must direct our attention to Rawls' three distinct constructions of public reason: the exclusive view, the inclusive view, and the

wide view. In the latter two cases it seems to me that Rawls opens the door to the radicalization of public reason, or, at least, to its considerable expansion for such purposes. First we consider the exclusive view.

The *exclusive view* of public reason is the most restrictive. It is, therefore, most vulnerable to charges of exclusivity, hegemony, and neglect for the concerns of the private sphere under the guise of deliberative democracy and neutral guidelines of inquiry. Perhaps Rawls' construction invites such criticisms because of the exclusive view's limitations on permissible claims within in a well-ordered society: "On fundamental political matters, reasons given explicitly in terms of comprehensive doctrines are *never to be introduced* into public reason. The public reasons that such a doctrine supports may, of course, be given but not the supporting doctrine itself [my emphasis]." ⁶⁸ Rawls' comments can reasonably be understood to explicitly ban all comprehensive doctrines. He clearly advocates the complete severance of private values from the public sphere despite the fact that these values assist people in defining their public interests and serve as powerful motivations for their public participation.

Rawls' exclusive view can arguably be characterized as oppressive. It is analogous to Rousseau's advocacy of banishment from society for certain nonconforming groups that rejected the civil religion, as Wolin suggests. Initially, Rawls evidences a lack of appreciation for how people form political opinions and sentiments, but as he continues his discussion of public reason in *Political Liberalism*, he appears to abandon the exclusive view or at least to withdraw from it. He then introduces the *inclusive view* of public reason. This second construction allows "citizens, in certain situations [specifically, in the nonideal], to present what they regard as the basis of political values

rooted in their comprehensive doctrine, provided they do this in ways that strengthen the ideal of public reason itself.”⁶⁹ This statement provides us with the first hint of Rawls’ deliberative flexibility and openness.

In choosing which version of public reason is more desirable—the exclusive or the inclusive view—Rawls considers their respective restrictions on reasonableness and stability to be decisive: “The answer turns on which view best encourages citizens to honor the ideal of public reason and secures its social conditions in the long run in a well-ordered society. Accepting this, the inclusive view seems the correct one.”⁷⁰ It appears, then, that Rawls rejects the exclusive view in favor of the inclusive view. He credits political theorists Amy Gutmann and Lawrence Solum for providing the inspiration that altered his perspective. Their feedback drew his attention to the negative implications of the exclusive view on the expression of comprehensive doctrines such as those espoused by abolitionists or civil rights activists (such as Martin Luther King, Jr.). Upon reflection, Rawls correctly concludes that such comprehensive doctrines contribute to the best expression of public reason in a society committed to justice and should therefore be encouraged, not constrained.

The *inclusive view* opens the door to a more tolerant and, perhaps, radical reading of public reason, a reading that is more responsive to some critics’ concerns. Those wishing to provide a comprehensive critique of group oppression, social hierarchies, or unjust wars find more space in which to do so than under the exclusive view. Clearly, Martin Luther King, Jr., effectively expresses Christian social thought in ways that allow him to link his message of deliverance to his quest for earthly freedom. He elevates and invigorates public discourse on justice while remaining anchored in religious doctrine,

often making skillful use of biblical verses. The power of his message continues to inspire even those who may not share his religious faith but who embrace his civil rights cause and his form of activism. Similarly, other passionate advocates and groups of advocates expressing other comprehensive doctrines are free to participate in the public debate under the inclusive view of public reason. They, too, can attempt to persuade the public to support their social cause, as long as they respect the basic liberties of others and incorporate the criterion of reciprocity.

In my estimation, the inclusive guidelines of public reason can provide structure for liberating discourses without stifling them because the rules are not too restrictive for free discussion. They are not inevitably hostile to dissidents and advocates of progressive social reforms. They are not wholly divisive with respect to public and private commitments, nor are they oppressively conservative. The inclusive view is less susceptible to charges that public reason is “haunted by the specter of difference”⁷¹ or is, otherwise, whitewashed of contexts and particularities as some of Rawls’ critics allege. Indeed, the thesis of *Political Liberalism* asserts, in part, that attempts to “homogenize” wills usually fail to produce stability because of reasonable pluralism—unless consensus is enforced by the oppressive use of state power. Rawls rejects such uses of state power and the singular conceptions of the good that motivates them.

The third and final construction in Rawls’ evolution of public reason is the *wide view*. It goes beyond the inclusive view by expanding the presence and potential influence of (reasonable) comprehensive doctrines in the public sphere. It does this in at least two ways that provide citizens with greater temporal and contextual flexibility for public justifications. Rawls writes:

Reasonable comprehensive doctrines, religious or nonreligious, may be introduced in the public political discussion at any time, provided that *in due course* proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons I refer to as the *proviso* [my emphasis].⁷²

There are a couple of noteworthy advantages to the wide view. First, it extends the inclusive view's application beyond the sphere of the nonideal⁷³—to apply to any circumstances, including those present in the well-ordered society. Second, considerable latitude is afforded the speaker because the *proviso* does not specify the time frame within which the connection must be made between comprehensive doctrine-based claims and reasonable political principles and values.⁷⁴ (Examples of political principles are found in the Bill of Rights and the Preamble of the Constitution.⁷⁵) Ultimately, Rawls endorses the wide view of public reason as the best expression among the three constructions, even going so far as to refer to the inclusive view as “the narrower view” in *Justice as Fairness: A Restatement*.⁷⁶ This transition makes Rawls' stance on public reason considerably more flexible and receptive to comprehensive doctrines in the public sphere than his initial positions evidenced. The wide view appears to reflect the final evolutionary step in Rawls' thinking on public reason—at least, as far as his public writings are concerned.

There are many who remain unpersuaded by the end result of this “evolution of revisions” to public reason. Many are likely to maintain that the deliberative practices continue to limit unpopular discourses or obstruct libratory interests. Admittedly, Rawls remains steadfast in rejecting the claims of those who seek to establish an identity between public and nonpublic reason. He continues to distinguish between permissible discourse in the public domain and that which is found in the background culture of

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voluntary associations. This position may be unacceptable to many, but, nevertheless, the wide view of public reason reflects an obvious expansion of the public deliberative process in Rawls' theory of justice, and this should be duly noted.

Every political theory has boundaries that include certain social worlds and exclude (or limit) others based on the particular aims and judgments of the theorist. A useful question for debate in connection with public reason may be whether or not Rawls' boundaries are *reasonable*—not definitive—in light of the complexities of a modern democratic society and its broad framework of protected rights and liberties. For the various reasons that I have described, I interpret the wide view as providing reasonable boundaries under the conditions of reciprocity that attempt to balance the rights and liberties of all. In this context, there are clear indications that Rawls' boundaries expand permissible speech and reflect a greater tolerance for difference. Thus, the wide view of public reason is “reasonable,” but this assessment does not negate the fact that the boundaries it sets can be legitimately contested; they are neither perfect nor fixed.

A remaining concern related to critics' claims that public reason is hegemonic is my observation that Rawls appears to lack an effective response to those who object to the extensive role that he assigns to the Supreme Court. As exemplar of public reason, it is the ultimate interpreter of constitutional rights and liberties; it is charged with protecting these guarantees from the potential abuses of government, providing a last line of defense from tyrannical majorities and from the undemocratic exploits of the some wealthy and powerful segments of society. Even under ideal conditions, however, critics contend that “the people” should have more influence over how public disputes are resolved, suggesting that their sovereign power should be controlling or, at least, emphasized.

Contrary to facilitating greater public input in the resolution of disputes, critics maintain that conflicts over constitutional essentials and matters of basic justice are simply delegated to an institution of government that is shielded from citizens' principled deliberations. They argue that if the Court is free to interpret the constitution as it sees fit, the political process is turned on its head, and the citizenry become the "project" of the Constitution (i.e. the courts), a product of its power to radically alter the nature and degree of their sovereignty. Such objections are difficult to counter in the nonideal, particularly given Rawls' own (justifiable) reservations about the Court's suitability for the role of "arbiter of public reason"—even under ideally just conditions. It is his reading of history that gives him ample cause to be tentative rather than confident: "If the court assumes this role and effectively carries it out, it is incorrect to say that it is straightforwardly antidemocratic."⁷⁷ More reservations can be detected in a related footnote: "It must be said that historically the court has often failed badly in this role."⁷⁸

If an illiberal and undemocratic judiciary is, indeed, the branch of government that is chosen to function as the exemplar of public reason, its prominence and finality raise serious and legitimate concerns about how the deliberative process is likely to impact public discourse and the extent to which oppositional doctrines will be given serious consideration in the courts. Rawls' theory appears to be silent on the question of *how* the Court will be kept honest given its historical failings and *how* citizens can be assured that its rulings will accurately reflect the ideal of public reason. If such problems cannot be ruled out even under ideal conditions, what are citizens to do to protect their interests in the nonideal? Perhaps a different orientation to the Constitution and to the Court must be built into the theory to account for the pattern of ascriptive conservatism

and status quo politics that too frequently privilege interpretations of the document and that are too often antithetical to the type of society that justice as fairness seeks to establish.

What appears to be an obvious—although not exclusive—safeguard against the actions of an ascriptive Court (or government) is an informed, vigilant, and *engaged* citizenry. Of course, this citizenry must not, itself, endorse ascriptive citizenship as did the informed, vigilant, and engaged Jeffersonian citizenry of the nineteenth-century (Smith, 1997). Further, it must maintain a critical distance from government sufficient to support a more objective and fair assessment of public policies. Specifically, such citizens must be able to determine the Court's impact on social justice. They need to possess the political will and inclinations to *act* in ways that shape government pursuant to the values of liberty and equality rather than clinging to an unreflective, obedient nationalism as a form of patriotism.

It is intriguing that Rawls' theory does not explicitly advocate an active citizenry as a check on government, despite the fact that modern democracies are predicated on citizens' vigilance, and this orientation continues to be pragmatic even under ideal conditions. In the nonideal, organized social movements have been indispensable in securing government's attention and in making it more responsive to peoples' needs. They have also played a critical role in sustaining public engagement and agency on matters of basic justice. Surprisingly, social movements are not featured—not even encouraged—in Rawls' theory; although he does point out that justice as fairness (and political liberalism, generally) does not *oppose* classical republicanism's portrayal of

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citizens as active and engaged. Nevertheless, his comments on this matter are very sketchy and seem more like afterthoughts than moral imperatives (Rawls, 1996).

Third Critique: Public Reason Too Permissive

The third, and final, critique of Rawls' theory that I consider also pertains to public reason. It is the claim that public reason is too permissive, too inclusive. These critics maintain that Rawls' public reason allows comprehensive doctrines *too much* influence on public discourse and even permits the inclusion of illiberal comprehensive doctrines within its "reasonableness" standard. One aspect of the late Susan Moller Okin's critique of Rawls' political liberalism focuses on his distinction between public and private spaces and the impact on public reason. Okin argues that this division in the structure of political liberalism results in the inclusion of certain comprehensive doctrines within its overlapping consensus—and, necessarily, their accompanying versions of public reason—that espouse explicitly illiberal views within the background culture, a sphere that she argues unreasonably falls outside of the reach of political liberalism.

Okin is particularly concerned about certain religious or aristocratic doctrines. The inclusion of these forms of public reason prompts her to ask: "How can a belief in natural hierarchy among persons be consistent with the requirements of the political conception of justice which views them as free and equal citizens?"⁷⁹ She contends that hierarchical comprehensive doctrines should be excluded from the family of political conceptions of justice. According to Okin, not only are such doctrines illiberal with respect to women, but their beliefs—if legitimated in the public forum—are likely to adversely influence public discourse on matters of basic justice and constitutional

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essentials. The consequences of this influence may undermine women's rights and liberties as free and equal citizens in a well-ordered society.⁸⁰

What is missing from Okin's sketch of Rawls' position on comprehensive doctrines appears to be a sufficient acknowledgment of his requirement that all doctrines comprising the overlapping consensus must embrace *reasonable political conceptions* of justice. Such conceptions of justice must include a standard of public reason that respects the criterion of reciprocity. These requirements provide protections for citizens' basic liberties even within the background culture of voluntary associations. Rawls acknowledges the potential for abuses of the rights of women and children in private associations, and he explicitly states that his formulation of political liberalism does not endorse a complete severance of the public and private domains, contradicting what many critics suggest:

Thus, when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and the nonpolitical domains as two separate, disconnected spaces, as it were, each governed solely by its own distinct principles. Even if the basic structure alone is the primary subject of justice, principles of justice still put essential restriction on the family and all other associations. . . . No institution or association in which they [citizens] are involved can violate their rights as citizens.⁸¹

These statements demonstrate Rawls' recognition that the state has a positive duty to protect citizens from discrimination in the *private* realm as well, if the discriminatory practices violate public rights. An example of this use of state power occurred when the Court intervened to protect the rights of blacks to purchase homes in white neighborhoods by overturning the state court's enforcement of Michigan's (and Missouri's) racially discriminatory (private) restrictive covenants in *Shelley v. Kraemer* (1948). However, Rawls notes that the reach of political principles of justice is not

unlimited. Absent violations of principles of justice, it is clear that he wants to preserve a space in society for discourse that is protected from government intrusion so that citizens can feel free to express themselves openly. Rawls' liberalism characterizes the background culture as a sphere of *voluntary* associations. These are the spaces that we *choose* to share with others who share our views—quite different from the *basic structure* of society that automatically incorporates us as members, whether or not we wish to be included.

The *free and equal* status that Okin believes is jeopardized in illiberal private spheres translates—for Rawls—into a right to *choose* to divorce oneself from unreasonable persons or associations and to seek legal protection when constitutional rights are violated. Admittedly, there are often obstacles to citizens' willingness to sever oppressive relations, particularly in the case of women with children in the home. Despite this added complexity, however, a measure of choice remains, and we cannot avoid making choices (even if the choice is to do nothing to try to alter our circumstances). The responsibility that goes along with the freedom to make choices is essential to Rawls' understanding of moral powers in political liberalism. He fully expects that people will be aware of the public principles that regulate society, will have a capacity for a sense of the good as free and equal citizens, and will seek to protect themselves—and their children—from harm.

Effective institutional support through free public education programs—including public schooling—could raise awareness about citizens' rights and protections and could assist people in strengthening their capacity to construct and revise rational plans. There could be an emphasis placed on the problems of domestic violence and gender

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discrimination, for example, and additional public resources provided to social service agencies that could offer the long-term confidential and personal support that is needed in response to hidden forms of oppression. Rawls' explication of political liberalism does not delve into institutional safeguards that the state could conceivably provide in responding the concerns that Okin raises—beyond, I suppose, involving the courts or other enforcement authorities, but I think that this problem clearly requires more.

Although Rawls does not offer a critical analysis of the family that many critics such as Okin seek from his theory, I am convinced from my reading of Rawls that the particular measures that I suggest—and other corrective measures—are quite consistent with his emphasis on the importance of the family as part of the basic structure of society. They are also consistent with his expressed concerns about the rights of women and children, as citizens, irrespective of their associations (Rawls, 2001), but there remains considerable room for healthy critique and debate on this issue.

Suppose we set aside the “ability to choose” issue that I suggest, and impose additional public restraints on nonpublic reason, as Okin suggests. If we remove comprehensive doctrines from the family of reasonable political conceptions because they do not completely conform to a combined standard for public *and* nonpublic reason, this suggests the presence of a meta-comprehensive doctrine, an all-encompassing norm that leads us to the very aspects of Rawls' earlier position in *Theory* that he has long since abandoned. It seems to require the repudiation of the fundamental premise of *Political Liberalism* that asserts that there is no singular comprehensive view that can win the allegiance of all members of a pluralistic society absent the oppressive use of state power. According to Rawls, pluralism is more likely to flourish when human reason is

permitted free reign (within limits, of course) and is not subjected to arbitrary constraints at the hands of the state or tyrannical majorities.

Political liberalism is a departure from comprehensive liberalism precisely because, as Rawls notes, it “applies the principle of toleration to philosophy itself.”⁸² Returning to the comprehensive liberalism that he championed in *A Theory of Justice* (that conflates public and nonpublic spaces) and that he abandoned in *Political Liberalism* requires justification. Why, for example, should we regard Rawls’ rejection of comprehensive liberalism unreasonable as the basis for a just constitutional democracy? Why are “reasonable pluralism” and “irreconcilable differences”—ideas leading to the abandonment of Rawls’ reliance on the comprehensive liberalism advocated in *Theory*—invalid premises on which to base an argument for social organization in a pluralistic modern democracy? Absent an effective response on these points, it is unclear to me why these ideas should not continue to serve as important limitations for the ideal of a well-ordered society. Reasonable boundaries become even more important in the nonideal where it is evident that we need to be more mindful of the principle of toleration and its implications for *difference*.

My final consideration of public reason’s alleged permissiveness comes from, philosopher, Charles Larmore’s critique of the wide view of public reason that he presents in the *Cambridge Companion to Rawls*. Larmore prefers the exclusive view and advocates removing comprehensive doctrines from public deliberations on constitutional essentials and matters of basic justice. According to Larmore, “the mutual reassurance which comes from citizens disclosing to one another the comprehensive roots of their

commitment to justice really has no place in the deliberations by which they decide what shall have the force of law.”⁸³

His position appears to be based on the belief that the overlapping consensus on political principles of justice already evidences mutual acknowledgment of public principles. This mutual acknowledgement, according to Larmore, should be sufficient to resolve public disagreements. In the event of a deliberative standoff, citizens are to prioritize their interests and use their best judgment regarding what public reason requires. He opens the door to the possibility of employing the inclusive view (although he is not enthusiastic about it), but he insists that Rawls’ further expansion of public reason to include the *wide view* is excessively permissive and inappropriate. I find Larmore’s argument unpersuasive and his position too restrictive for public discourse.

I have three objections to Larmore’s narrower reading of public reason. First, although certain baseline political principles of justice are acknowledged by all of the comprehensive doctrines that comprise the family of political conceptions within the ideal of a well-ordered society, each reasonable comprehensive doctrine has its own interpretation of how public reason applies. Each interpretation is, in some respects, uniquely influenced by its corresponding doctrine. Within this uniqueness there is considerable room for intersubjective disagreement and uncertainty between political conceptions, so simply being among the reasonable comprehensive doctrines is not enough to guarantee agreement on matters of basic justice.

The disagreements between political conceptions are not limited to the extreme circumstances that Larmore suggests—when even the basic tenets of public reason are widely disputed, circumstances under which the inclusive view becomes more tolerable

to him. Rawls, on the other hand, recognizes the broader significance of comprehensive doctrines for strengthening the public sphere so that the ideal of *public* reason is more than an idea. He seems to respond directly to Larmore's objections to his expansion of public reason:

Citizen's mutual knowledge of one another's religious and nonreligious doctrines expressed in the wide view of public political culture recognizes that the roots of democratic citizens' allegiance to their political conceptions lie in their respective comprehensive doctrines, both religious and nonreligious. In this way citizens' allegiance to the democratic ideal of public reason is strengthened for the right reason.⁸⁴

Second, I object to Larmore's virtual exclusion of comprehensive doctrines from public debate. This exclusion suggests that the conception of public reason is fixed and perfected. Larmore seems to overlook the fact that what is considered "public" reason can be enriched and elevated in the interest of the type of justice that Rawls advocates. Perhaps he overlooks the evolutionary step that Rawls takes in recognizing that even well-ordered states can benefit from comprehensive doctrine-inspired public reason. If we acknowledge the presence of comprehensive doctrines only when public reason is widely disputed, as Larmore does, we fail to appreciate their usefulness in those circumstances in which we may be committed to the basic ideals of public reason but lack the insight to take bolder steps toward achieving greater justice. Finding ways to sustain the public discussion may be helpful for all concerned.

For example, we may find that there is widespread agreement that gender discrimination is morally wrong—in theory—based on the basic criterion of reciprocity that all comprehensive doctrines must endorse in Rawls' political conception of justice. However, when citizens attempt to *apply* their consensus to deliberations on the merits of comparable pay legislation for men and women, for example, or to deliberations on the

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necessity of the Equal Rights Amendment, an intractable impasse on policy consistent with the two principles of justice may result. In such instances, critical feminist interpretations of public reason (drawn from feminist comprehensive doctrines) that demystify institutional gender bias and stratification, and that suggest how these structures relegate women to second class citizenship, may provide sufficient clarity and historical context to enrich the meaning (in use) of public reason for all participants in the public debate, assuming that feminist perspectives are given serious consideration. A critical and particularistic view of social reality may bring a level of depth and urgency to policy deliberations of this type that may be otherwise lacking. This possibility for expanded discourse would be precluded or greatly diminished if we followed Larmore's suggestion to restrict public reason to the exclusive view and limit its expansion solely to instances in which the basic intent of public reason is widely disputed.

My third objection to Larmore's argument for restricting public reason to the exclusive view relates directly to his reference to the "wideness" of the dispute for determining when the inclusive view can be introduced in the public sphere to decide matters of basic justice. It is unclear exactly how *wide* the dispute must be, but I interpret "widely disputed" to include a substantial number of citizens in the dispute—if not the majority, or near majority. What if a small minority of people disputes the basic meaning of public reason? What if only one person does? Are we to assume that the value of dissident speech in the public forum is somehow measured by the number of persons advancing such speech? I find it instructive to refer to John Mill's text, *On Liberty*, his second chapter entitled, "Of the Liberty of Thought and Discussions," to countenance this notion. Mill suggests that there are at least three reasons why dissident opinions

(including what appear to be unreasonable ones) may benefit society and should be heard irrespective of how pervasive or how marginal the dissenting opinion may be—including the possibility of a lone dissenter. I will modify my use of Mill’s argument by replacing his references to the “truth” or correctness of a contention, with the standard of “reasonableness” in public reason in order to be consistent with Rawls’ concept of reasonable pluralism.

First, as Mill points out, the lone dissenter’s position may be more reasonable or more closely aligned with the ideal of public reason than the majority position. The inclusion of dissenting speech under these circumstances gives society access to an alternative view that is more reasonable, as well as an opportunity for individuals to change their opinions on the basis of wide “reflective equilibrium.” Second, suppose the dissenting opinion is inconsistent with the ideal of public reason, and the majority view is more reasonable. Some would argue that if the majority position is more reasonable then there is no point in entertaining dissent. However, the dissenting opinion provides the impetus for reconsidering reasons that may otherwise crystallize into “common sense” and reduce our actions to unreflective habits for which we have lost our rationale (Dewey, 1922).

The majority’s unchallenged convictions may fuel notions of infallibility that may lead to oppressive intolerance for difference. Under these circumstances, alternative or oppositional speech may be labeled “subversive,” and the speaker may be labeled “dangerous” or “unpatriotic,” as was the case during the McCarthy era, or as is currently alleged with respect to anti-war speech. Mill expressed little confidence in the correctness (or reasonableness) of an unchallenged majority view, noting that “if it is not fully,

frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth [or “living standard” of reasonableness].”⁸⁵

Finally, it may be the case that—on reflection—neither the dissenter’s nor the majority’s opinion is particularly reasonable. In this case Mill argues that the dissenter’s opinion should be permitted in the public forum because of the potentially constructive effect of combining it with the highest level of reasonableness embodied in the majority view. This may result in achieving the greatest approximation of reasonableness consistent with the ideal of public reason. Thus, we have three reasons why Larmore’s contention should be rejected when he asserts that speakers in the public forum should be restricted to using the exclusive view of public reason unless the meaning of public reason is “widely disputed.” His deliberative standard creates too demanding a threshold for employing the inclusive view in a pluralistic society. Even in the face of overwhelming agreement about social policy, divergent perspectives remain useful given that what is popular today may be rejected tomorrow for reasons that are—today—unpopular.

In the nonideal, dissidence is extremely important because the forms of resistance that are reflected in such views often shed light on society’s transgressions of human and civil rights. The “unreasonable,” the “irrational,” the “subversive,” the “unpopular,” and the “unpatriotic” may—in fact—reflect an underappreciated level of moral courage and agency on social justice issues that is generally lacking in the population. So even if it were a straightforward proposition for the majority to characterize certain minority opinions as unreasonable or as less consequential in ideal contexts, the rationale for doing so becomes more problematic and disconcerting in the nonideal.

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In nonideal theory it is even more important to be as inclusive as possible of multiple interpretations of the social world. For the most part, I interpret the critiques that I have presented of Rawls' theory of justice—including my own reservations—to reflect the desire to make his prescriptions more responsive and relevant to a wider and more complex set of interests; many critics are genuinely concerned about eradicating particular forms of injustice and moral underachievement within our society, not simply bent on disagreement. For his part, Rawls' scholarly efforts seem to reflect a constructive evolution of political thought that increasingly acknowledges—even if it does not pursue, or specifically defend—worthy expansions to his fundamental commitment to justice as fairness; he seems to have gained valuable insights from his critics and other readers during the many years that he has spent developing and revising his theory. I contend that the evolution in his thinking opens the door to new considerations and extensions of his moral judgments. This can be done in ways that make the theory more responsive to the pressing social and political inequalities that define the nonideal and that animate this thesis.

To conclude: There are three principal purposes that I advanced in this chapter. First, I provided an introductory and critical explication of Rawls' theory of justice interspersed with references to preceding chapters, particularly Chapter 1. I explained the fundamental intent of his theory of “domestic justice,” of its inward-looking conceptual framework. In so doing, I highlighted its explicit normative focus, particularly its aim to establish a just and stable democracy pursuant to public principles in support of a fair system of social organization. I used the following major works of Rawls' to explore his

ideas on justice: *A Theory of Justice* (1971/1999b), *Political Liberalism* (1993), *Law of Peoples* (1999a), and *Justice as Fairness: A Restatement* (2001).

Second, I entertained and responded to two major lines of critique of Rawls' theory: challenges to its usefulness in the real world (the nonideal) given its abstractness, and claims regarding the ostensibly negative impact of his deliberative process (public reason) on citizens' rights and on the viability of divergent religions, philosophical, and moral worldviews. In response to the first critique, I discussed the distinctive and complementary aspects of Rawls' ideal theory vis-à-vis the nonideal (the actual world). In response to the second critique I clarified and defended Rawls' deliberative process by pointing to its libratory possibilities and to the evolving flexibility of its discursive constraints.

Third, I suggested two ways in which Rawls' ideal theory assists us in linking moral judgments to social change under nonideal conditions: complementing the protections of "individual" basic rights and liberties with "group" protections, and taking into account *racial minority status* and *female status* together with material wealth when considering institutional factors that undermine liberty and justice for all. I supported these inclusions to Rawls' (flexible) list of primary goods by arguing that they are the logical extensions—into the real world (nonideal theory)—of the basic values and moral judgments of fairness underlying Rawls' political liberalism.

I also reasoned that Rawls understood his ideal conception of justice as a contribution to nonideal theory and wanted it to be responsive to forms of human suffering and misery that he may not have directly addressed or opposed in his texts. I characterized my nonideal reconstructive framework—specifically targeting the

eradication of social injustice—as “Rawlsian” to link it to the social conditions in Chapter 1 and to distinguish it from Rawls’ ideal theory. The “Rawlsian” framework captured important descriptive contradictions between Rawls’ just society and the nonideal, and these contradictions were critically analyzed using Rawls’ underlying principles of justice. I acknowledged that my categories for ascriptive harms are not exhaustive, that they maintain the focus on the distinct issues that structured Chapter 1, but I reiterated my opposition to all permutations of social stratification and ascriptive citizenship as irrational and immoral forms of social organization, and I emphasized that the Rawlsian framework is an antisubordination theory in the broadest sense.

I raised concerns about the role Rawls gives to the Supreme Court as exemplar of public reason. I expressed my disappointment concerning the fact that Rawls says very little about how to confront the historical problem of the Court’s conservatism and its tendency to pander to the interests of power. I advocated greater citizenship participation and activism in response to these circumstances, including organized political efforts to encourage the development of a “thick” democratic standard in America. I suggested that this approach requires changes in our educational system, changes in the way that we view government, and changes in the way that we view ourselves as persons and as citizens.

The state has an important purpose for existence in the reconstruction. It is an instrument for justice within the basic structure of society, with potentially diffuse and lasting consequences for the creation of a “social union of social unions” that links the mosaic of groups (and associations) in civil society. If the state fails to reflect a consistency of moral purpose and principle pursuant to democratic imperatives the likely

result is the formation of an irrational, socially stratified, ascriptive state. Such a state's distribution of benefits and burdens leads to an increasingly divisive and immoral social order that cannot support Rawls' ideal of political community, or a democratic project generally. This means that the state fails to use the collective power in ways that—according to Walzer—only it can, to secure the vitality and prosperity of civil society. He writes:

Across the entire range of associations, individual men and women need to be protected against the power of officials, employers, experts, party bosses, factory supervisors, directors, priests, parents, patrons; and small and weak groups need to be protected against large and powerful ones. For civil society, left to itself, generates radically unequal power relationships, which only state power can challenge.⁸⁶

Rawls' ideal moral judgments possess libratory possibilities for social policy—a topic that I will discuss in more detail in Chapter 5 on educating citizens. Among other things, Rawls' model challenges excessive wealth accumulation policies, unjustifiable distributions of resources, aristocratic political cultures, violations of basic rights and liberties, and immoral institutions that abuse power and are unresponsive to the public welfare. I see no reason why his ideas will not remain among the *living* possibilities that we consider in the quest to form a moral and just society. This is particularly so if, as Mill might suggest, the ideas at issue continue to be “fully, frequently, and fearlessly discussed.” I would like to think that my treatment of Rawls in this thesis is a fair and modest contribution to this standard.

Finally, I want to reiterate that there are many other dimensions and critiques of Rawls' theory that I have not explored—for example, his arguments for the difference principle or the maximin rule in choice theory (explaining the rationality of the representative's selection process in the original position). I have found—as have many

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others—that Rawls’ theory and its secondary critiques can become very unwieldy very quickly and that one has to be selective in order to increase the chances of engaging the theory more deeply. It is likely that I will entertain additional aspects of his theory in my future work, but in this discussion I have chosen to remain close to the developmental boundaries that Rawls has set for his theory and to demystify their domestic implications for social justice in the nonideal.

I suspect that a scan of most any edited volume that discusses Rawls’ work in detail makes it obvious that attempting to engage his theory on a substantive level requires that the editor and the contributors weigh many factors and make many difficult decisions. Among these decisions are the following: what to emphasize, what to mention, what to simply reference, and what to avoid altogether. Oddly, I was aided in making these decisions—to some extent—by the limits of my current engagement with Rawls’ theory (I would describe it as introductory, but penetrating); aided further by the scope of my project, as indicated; and, perhaps, most importantly, aided by my desire to reach a wide and diverse audience of readers with whom I would like to share my interest in the vital subject of *injustice*. Despite these boundaries, however, I trust that—to the extent that I have entertained and rearticulated Rawls’ ideas—I have brought forward a hint of the scholarship, the relevance, and the controversy that defines his enduring acclaim.

CHAPTER 4

PROJECTIONS ONTO A CRITICAL GEOGRAPHY AND THE “RAWLSIAN” TOPOLOGY

I want to draw a map, so to speak, of a critical geography and use that map to open as much space for discovery, intellectual adventure, and close exploration as did the original charting of the New World—without the mandate for conquest.

----*Toni Morrison*

In Chapter 2 I raised concerns about the use of state power to advance illiberal and undemocratic agendas in government schooling. In this context, I entertained four specific conflicts between government interests and the general welfare. These conflicts are indicative of the adverse implications for democracy resulting from government's actions and inactions, such as ascriptive citizenship and weak institutional commitments to (fair) equality of opportunity in society. I maintained that the significance of these issues necessitated that critical consideration be given to how the state is theorized—the nature of responsive government consistent with democratic ideals in social life—particularly within a compulsory education process that purports to prepare young citizens for adult citizenship within a democratic project. We must think seriously about both the nature of compulsory schooling and the undesirable implications that are possible in government's regulatory role with respect to it.

I emphasized that a socially stratified, ascriptive state is irrational under any reasonable standards of consent. In the context of a democratic project, we must have a socially and racially just state—or, at least, one that substantively demonstrates its commitment to eradicating social and racial injustice. This moral imperative is not only a necessary prerequisite for establishing and buttressing the legitimacy of government, it is also necessary if we are to conceptualize, execute, and sustain a serious initiative for

fundamentally democratic education within the compulsory education process, a process that must be democratically controlled.

As evidenced by the examples provided in the historical outline given in Chapter 1, the practice of ascriptive citizenship rooted in social stratification has repeatedly undermined the development of a socially and racially just state in America. In this chapter, I will map the concerns regarding government abuses of power that were raised in Chapter 2, onto a different political landscape. For this purpose, I will reintroduce and expand the descriptive and analytic *Rawlsian* framework just discussed in Chapter 3, in the service of the prescriptive education project—but first, I will say a bit more about the critical geography of the Rawlsian framework.

The Rawlsian framework provides descriptive, historical information to contextualize our moral judgments on matters of basic justice in the *nonideal*. Recall that it contains the expanded list of primary goods (and responses to critiques) that I presented in Chapter 3, and that the inclusions reflect fact-based moral judgments about the social order that are salient in the historical contexts of slavery and ascriptive citizenship discussed in Chapter 1. The “Rawlsian” framework captures important descriptive contradictions between Rawls’ just society and the nonideal. These contradictions were critically analyzed in the preceding chapter using Rawls’ underlying principles of justice. For purposes of my discussion, the Rawlsian framework targets race, class, and gender stratification, but it is fundamentally an antistatification theory and, therefore, rejects all ascriptive categories that deny equal dignity and equal citizenship. The growing list of ascriptive exclusions makes referencing each of them prohibitive.

The primary subject of the Rawlsian framework remains the *public* sphere because this is the principal sphere of Rawls' political liberalism. It also retains Rawls' focus on *state power* (coercive) and the role of government's *domestic* policies in framing and securing democratic processes within the basic structure of society. From the descriptive analysis provided by the Rawlsian framework, new societal goals can be set for *reconstructing* society. I refer to these "new societal goals" as, *prescriptions* for reconstructing the nonideal. In Chapter 5 I will entertain a specific aspect of the prescriptive agenda: the prescriptive project in education—in particular, a philosophy of education for the nonideal.

The prescriptive agenda has several specific features that are derived from the moral content of the Rawlsian framework. First, the ideal society—however understood—is embedded in the nonideal historical context of social stratification and ascriptive citizenship. Second, the prescriptions are contingent and, therefore, remain open to new descriptive accounts of exploitation as these are identified under changing social conditions and research methodologies. Third, the prescriptive project is a continuous organizing principle targeting the reconstruction of the basic structure of society rather than a temporary or superficial effort. Fourth, the goal of the prescriptive project is to secure equal dignity for all members of society and equal citizenship for all citizens through the active involvement of society's members in the elimination of ascriptive citizenship and social stratification. The prescriptive project in education is the component of the Rawlsian framework that structures and orients educational aims in the service of these just ends. This project will be discussed in detail in the next chapter.

Having mapped out a critical geography (Rawlsian description) and conceptualized the purpose underlying the new “societal goals” for the basic structure (Rawlsian reconstruction) based on an analysis of this critical geography (Rawlsian topology), my aim in this chapter is to map the four concerns about conflicts stemming from government abuses of power that were introduced in Chapter 2 onto this Rawlsian framework. For purposes of review, I will restate the four concerns and discuss each of them within the context of the Rawlsian framework.

- *State interests “antagonize” the substantive liberties of political minorities*
- *Powerful individuals/groups unduly influence public policy decisions*
- *State compulsory education undermines the development of rationality*
- *Corporate culture erodes public sensibilities by emphasizing markets and atomism*

1. State interests “antagonize” the substantive rights and liberties of political minorities

In mainstream liberal theory this particular concern is historically identified with John Stuart Mill’s critique of majority rule. In *On Liberty*, he expresses his concerns about the infringements on liberties that occur under “democratic” governments. It is fundamentally a concern about the ‘tyranny of the majority’—a phrase that Mill made famous—that occurs when government operates *with* the consent of the majority to obstruct the civil liberties of political minorities, or when public opinion in civil society is such that minority liberties (free speech, for example) are suppressed, as if by law. We saw examples of both of these circumstances in Chapter 1 where state actions (public) combined with private actions to terrorize black citizens and deny them their civil and human rights. Majority public opinion often served as a barometer by which government officials gauged public sentiment regarding particular social policies such as Jim Crow

laws and Black Codes. Government's correct assessment of public opinion allowed it to accurately anticipate the level of public support—or tolerance—for ascriptive practices. Dissenter's joined forces to oppose these practices by establishing movements to end slavery, lynchings, and civil rights violations.

My discussion focuses on the state's role in the denials of rights and liberties, but I also call into question the lack of egalitarianism in civil society. This added critique is necessary because majority rule creates an important and dynamic relationship between the state and civil society. If the state embodies the collective power of the people, it is the actions (or inactions) of the political majority that typically have the greatest influence on the evolving character of government. As Walzer suggests, "Only a democratic state can create a democratic civil society; only a democratic civil society can sustain a democratic state."¹ Under social stratification "both" are lacking because the state and civil society frequently join forces in violating some citizens' basic rights.

The "dynamic tyranny" in this relationship greatly undermines social justice, and the absence of just objectives "translates into domination and radical deprivation."² This likelihood gives Mill considerable cause for alarm since he is convinced that majority rule provides inadequate protections against "despotism from within." He, therefore, doubts that majority rule necessarily maximizes the public good—in direct opposition to Locke's contention that it does. (Locke was an eighteenth-century political theorist noted for his ideological contributions to the American and French Revolutions). Mill's response to the problem of democratic rule is to strongly urge greater protections for minority group liberties against the tyranny of the majority in the state *and* in civil society.

Rawls is also concerned that individual liberties may be inadequately protected from majority abuses. Unlike Mill's utilitarian motivation for securing minority liberties, Rawls relies on a Kantian-inspired version of social contract theory to stress the moral priority of the person (and his/her individual liberties), extended to *all* persons. This priority becomes instrumental in framing his theory of justice; it is an essential ingredient in obtaining and securing agreement on the fair terms of cooperation within Rawls' well-ordered society. From the opening paragraphs of the first chapter in *A Theory of Justice*, Rawls makes his position on liberty transparent. After noting that the moral excellence of social institutions is founded on justice, Rawls goes to great pains to clarify what justice must protect and, in the process, implies that a particular form of justice (utilitarian) is, indeed, a source of injustice that his theory specifically rejects:

Laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. *Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.* For this reason justice denies that the loss of freedom for some is made right by the greater good shared by others. It does not allow that the sacrifices imposed on the few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests [emphasis added].³

The "Rawlsian" framework also acknowledges the moral priority of the person but extends its scope to include persons *as members of groups*. This change in the unit of analysis means that group liberties are to be equally protected from the forms of political bargaining, in the nonideal, as occurred in the Hayes-Tilden Compromise of 1877. Recall that this political bargain resulted in the withdrawal of federal troops from the South during the Reconstruction (a foreseeable disaster for the equal citizenship rights of black citizens), in exchange for Southerners' support for Hayes' Republican presidency—on

the heels of a disputed election. In the Rawlsian framework, the Kantian imperative that Rawls invokes for giving moral priority to the individual over the state necessitates that groups—no less than individuals—be viewed as “ends in themselves and never as a means only.” The interests pursued in the Hayes-Tilden Compromise of 1877 are, therefore, prohibited because “the rights secured by justice [the justice of the Civil War Amendments, for example] are not subject to political bargaining or to the calculus of social interests.”⁴

In social contract theory, political societies are human constructions that result from free agreements between equal, rational persons. The agreements are designed to meet certain ends (public welfare and political liberties) that governments exist to protect and advance. In well-ordered societies the coercive powers of government belong not to the state but, rather, to the public; government appropriately exercises this power when it operates on behalf of the *legitimate* interests of its members pursuant to a just Constitution (Rawls, 2001). Consequently, government interests that are antagonistic to the general welfare reflect abuses of government power and constitute a violation of the public principles under which citizens consent to be governed—the principles of justice in Rawls’ political liberalism.

In well-ordered societies, government abuses of power are unlikely to withstand the scrutiny of public justification. Citizens are aware of the principles guiding their association and want these principles to be operative within their basic institutions. Justifying illiberal and undemocratic practices is further complicated because of the higher standard of public reason that the well-ordered society imposes on elected officials. Citizens in the Rawlsian prescriptive project also expect this standard to be met,

so they, too, reject the use of their collective powers for purposes antithetical to the public welfare. Where value conflicts arise on matters of basic justice, the standard for deliberation is public reason. Government's failure to live up to its legitimate purpose would likely result in a Lockean—or Rawlsian—response: civil disobedience, conscientious refusal, and possibly more militant actions that manifest a pervasive sentiment among the people that laws and institutions ought to be “reformed or abolished if they are unjust.”

More specifically, suppose a government's social agenda makes it expedient to impose Jim Crow segregation on the population. This policy is a clear indication of the demise of democracy and the repudiation of Rawls' “moral excellence” standard for social institutions (a standard that is also part of the Rawlsian framework.) Again, Rawlsian citizens would likely express their disdain for such laws and would seek to rid their society of them. If government proved unresponsive to the will of the Rawlsian polity or refused to make its policies conform to the masses' interests in equal citizenship rights for all, citizens would attempt to transform or abolish the system. It would be evident to them that such laws and policies jeopardize the public welfare—whatever their reasonable comprehensive doctrines—due to the resulting climate of reckless government and unrestrained violations of political liberty.

The prescriptive project promotes politically autonomous and critically engaged citizens. Such citizens are less likely to accede to the will of elected officials and other authority figures who promote pervasive injustice, or who enable gross abuses of the powers that are held in their trust. They are less likely to allow government to establish a precedent that could come back to haunt other members of society not targeted by the

initial abuses. Once the trust is breached and the breach is condoned, it gives a “green light” to corruption; power can then be used to force other “singled out segments of the population” to suffer dehumanizing treatment. Public disengagement creates a context for government’s breach of the (theoretical) social contract and for its repudiation of the civil rights that are inherent in “equal” citizenship. It is the citizenry’s responsibility to hold government’s feet to the fire.

In order to protect the public interest, Rawls’ ideal theory imposes certain moral and political imperatives on the basic structure, and the Rawlsian framework extends and “rearticulates” these in the nonideal. Ideal society is structured as a fair system of cooperation that promotes social justice, and the citizens are understood to be free and equal rational persons. These imperatives define the relationship between citizens and government, and between citizens; they are designed to decrease the likelihood of government enacting immoral social policies such as Jim Crow laws. Rawls’ imperatives also underlie the Rawlsian reconstruction of the nonideal, but the Rawlsian framework goes further. Its *prescriptive project* seeks to raise the collective social and moral consciousness of its members in order to reduce the tendency for citizens to actively support, or passively condone (or tolerate), immoral policies should government overstep its authority and try to implement them.

Ascriptive citizenship is less likely to gain substantial support and undermine the reciprocity criterion in a well-ordered society. The sense of justice those who derive benefit from abuses of collective power facilitates their recognition and acknowledgment that such gains are ill gotten, acquired through a discriminatory process that violates the

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rights of other citizens. Consequently, they reject the “zero- sum game” of liberties, and the additional privileges are viewed as unacceptable.

Within the Rawlsian prescriptive project, citizens are encouraged to develop and apply the standards of public reason to thwart distributive injustice rather than enabling it through complicity and ignorance. The systemic social hierarchies and moral codes that permit the intrinsic value of some citizens to be placed above that of others are rejected as an immoral and degrading form of social organization, reminiscent of classical Athenian societies. In the prescriptive project, the mechanisms of state control are complemented by public mandates for the eradication of *injustice*. When politics and political integrity are conflated in this way, the ends (a Republican presidency during Reconstruction) no longer *justify* the means (returning the South to a state of domestic terrorism) but, rather, the ends *and* means are reconciled and revised pursuant to public principles and morally informed policies that protect freedoms—particularly minority group freedoms—from tyrannical majorities in the state and in civil society.

When equal liberties are protected, social policies are more likely to represent the broader constituency and, therefore, the general welfare. It is in the interest of the general welfare for social institutions to operate under conditions of fair equality of opportunity. It is in the interest of the general welfare for citizens to have access to government (hold public office) and to make legitimate claims upon it. It is in the interest of the general welfare that citizens learn to effectively participate in the democratic process and that they are supported in doing so. “Effective participation” in a system that seeks to afford all of its members equal dignity and equal citizenship seems to require—at the very least—that all citizens be equally aided in developing their intellectual capacities and

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skills in order to take advantage of the opportunities that their equal citizenship theoretically makes possible. Obviously, public education—as opposed to government schooling—has a significant role to play in the Rawlsian prescriptive project.

2. Powerful private individuals/groups unduly influence public policy decisions

If wealth and power are not subordinate to an overall system of democratic justice that protects the basic liberties that a constitutional democracy presupposes, then the interests of elites may become unduly influential in government decision-making. For example, the interests that business elites impose on education policy have frequently been privileged (Wraga, 1995) and, sometimes, controlling. Advancing these interests often serves to reproduce their class dominance within increasing spheres of influence (Spring, 1988). As noted in a *New York Times* article, “When it comes to reforming the nations schools, these days the leading radicals are likely to be wearing pin-striped suits and come from oak-paneled boardrooms rather than the ivy-covered walls of academia.”⁵ This potentiality raises serious concerns because the business community’s reform interests are driven, primarily, by profits. Their goals change with changing economic climates, and it is to be expected that their interests in schools are going to be filtered through their assessment of economic imperatives—not educational ones.

The shift in the early twentieth century from a broader liberal education (on an exclusive basis) to a narrower vocational focus targeting the poor and working classes (also on an exclusive basis) was, in large part, a response to business leaders’ demands for workers to fill their growing industries (Kincheloe, 2000). Congress’ passage of the Smith-Hughes Vocational Education Act of 1917 added to an already stratified and differentiated (racially segregated) system of government schooling. Following the model

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of the German education system, the Act severed academic from vocational studies (Hursh & Ross, 2000; Kincheloe, 2000)—reincarnating the mind/body dualism that educators such as John Dewey and W. E. B. Du bois openly renounced. The Act passed with the support of such figures as David Snedden and Charles Prosser, both strong government advocates of a social efficiency education philosophy and strong allies of the business community (Hursh & Ross, 2000).

When the business community's interest in vocational education waned in the 1950's and 1980's, for example, the change was registered in the education policy decisions of the day. It is not suggested, however, that such processes were simplistically linear such that they flowed smoothly from top to bottom without major contestation. Nevertheless, the business community was very persuasive, and one could argue that the extent of its influence over "public" school policy suggests that its sentiments about reform were not totally at odds with changing public perceptions about education. During each of the periods in question (1950s and 1980s) it is clear that business and government joined forces and dramatically altered the education agenda, largely in response to perceived international threats (Burliner & Biddle, 1995).

The power to resist these policy changes was far weaker than the power to advance them. The business community's demand for higher standards in education influenced policymakers' decisions to pressure schools to alter their practices in order to produce more engineers and scientists to fill positions in the business community's changing workforce. Absent higher standards, proponents argued, the United States would not be able to compete with the Soviets' space program (following the launch of *Sputnik* in the late 1950s) or win trade wars against West Germany and Japan in the

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1980s.⁶ However, what was really “lost” in the competitive fervor were the ambitions of many high school students who—in the 1970s—were channeled into vocational education programs and encouraged to pursue a trade that would make them “marketable,” based on market predictions that failed to materialize. The affected students became “less marketable” in the business climate of the 1980s and 1990s. The students’ interest in successfully pursuing a rational plan was subordinated to the dictates of policy elites who altered education policy without adequately reflecting on the long-term social consequences.

Many scholars argue that the expanding business interests in schools signals the demise of the Jeffersonian education philosophy, which places schools at the heart of a democratic project designed to foster reflective, active citizens capable of governing themselves. The focus now, critics argue, has shifted to a social efficiency education philosophy such that schools are “suppliers for adjusted labor to the corporate machine.”⁷ The “preparation” for citizenship, they contend, is little more than a precarious job training exercise (Spring, 1988) that too often goes beyond “how to” learning, to include ideological conditioning as well. Critics cite corporate ventures such as the Edison project and Channel One, and accuse them of promoting consumerist values and a business friendly “worker mentality” in young citizens. In the case of Channel One, for example, corporations are accused of conditioning students to identify with the particular consumer goods that it features in its commercials, and otherwise focusing their attention on “news” favorable to business interests (Kincheloe, 1995).

To the extent that schools are pawns in a chess match among competitive businesses eager to capture the hearts and minds of young students (highly

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impressionable consumers), critics suggest that it is a competition in which businesses are united in at least one important respect: promoting an allegiance to market principles and economic theories that have little in common with democratic ideals. Schools appear to facilitate the expanding influence of the business class by allowing public educational institutions (and students) to play a role in risky market ventures—providing them continuous access to a protracted (compulsory) schooling process and its steady stream of captive, impressionable audiences. Joe Kincheloe, a critical education theorist, expands on the idea that lucrative long-term benefits extend from schools to businesses:

If workers and other citizens can be manipulated to accept a neoclassical free market view of economics, management will be far freer to pursue larger profit margins, anti-union activities, lower minimum wages, reduced environmental regulations, and lower corporate taxes. Such managerial efforts to co-opt the schools are not new [;] the social efficiency educators of the early twentieth century provide an excellent example for our examination.⁸

Social efficiency education often links schools to businesses in ways that place schools (and students) “at risk” because of their weaker bargaining power. For example, in order to acquire the desirable commercial benefits (and needed resources) that are associated with school/business relations—such as, in the case of Channel One, satellite dishes for each participating school, and enough TVs and VCRs to furnish each classroom with its own equipment—Kincheloe points out that, in exchange, business such as Channel One demand “almost complete veto power on programs and information that might be remotely antagonistic.”⁹ In addition he contends that, “the schools guarantee that ninety percent of their students will watch [television] ninety percent of the time Channel One is on.” As if that were not enough, he leaves his readers to ponder the future implications of one final disturbing prospect: “Channel One symbolizes the role of businesses in American education in the last decade of the twentieth century.”¹⁰

The undue influence of business elites and corporations in education policy and practice is undesirable in a well-ordered society. First, recall that Rawls' *ideal* of equal citizenship is predicated on the presence of a *veil of ignorance*. The purpose of the veil is to balance out unequal bargaining positions among representatives in the original position; this concern for procedural fairness carries over to the relations among citizens within the state. The idea is to promote fairness in social relations so that citizens can freely pursue their ends (Rawls, 2001). Fairness is important because citizens, as *reasonable and rational persons*, expect their equal rights and freedoms to be protected by the proper use of state power.

It is undesirable for the state to permit its power to be usurped by powerful groups and individuals, or for the state to increasingly delegate its power to others. Public schools are not intended to be at the disposal of business or any other interest group—including labor. In fact, the very idea that vocational education and other narrowly focused work-related programs are somehow legitimate functions of public schooling—and not the responsibility of the business community—is highly problematic (Spring, 1994). In Rawls' well-ordered society it is clear that schools are constituents in the larger web of morally excellent social institutions founded on justice. In the Rawlsian framework, schools are constituents in the larger struggle *for* justice; they seek to establish moral excellence by eradicating social stratification and furthering the equal rights and liberties of all citizens (where the legal fiction that corporations are citizens or persons, for purposes of Fourteenth Amendment protections, does not undermine these objectives.)

Second, if business elites are permitted undue influence and access to the school curriculum, this population garners more political and social power from government than is afforded to other groups in society. This implies that government becomes more responsive to a small group of interests than to the needs of the larger public (Burliner and Biddle; Wraga, 1999). This is but one example of democracy for the few—democratic elitism—in which case the social contract (hypothetical or otherwise) fails to be representative of the social whole. Instead, it degenerates into another exclusive contract in which government only selectively protects citizens’ interests (Mills, 1997; Pateman, 1989). The pattern of privilege is, thereby, reproduced to continue the tortuous development of the concept of citizenship (introduced in Chapter 1).

Ascriptive citizenship allows the political and social power of particular groups to be solidified and advanced under the guise of government schools’ expanding autonomy to contract with business, but the public’s concerns extend beyond the purported autonomy of schools. As Michael Parenti points out: “In a society in which private wealth is gathered into the hands of the few, the diffusion of power among the various segments of government does not necessarily mean the democratization of power but more likely the opposite.”¹¹ When government nurtures relationships based on an elitist social contract, the social order it constructs must, by necessity, undermine the realization of a *fair* system of cooperation—amounting, instead, to a contract of domination that could not garner the consent of an inclusive polity, particularly in the Rawlsian framework where the voices of the oppressed are very influential.

Third, in a well-ordered society the *least advantaged*—the groups of poor citizens in inner-city and rural areas, for example—would have greater assurances that the

educational options afforded to their children would not be limited or predetermined by disaffected government experts who appear to willingly capitulate to power. The interest of the least-advantaged in equality of opportunity for all would not be subordinated to the interests of elites in consolidating power. The sphere of misery widens when yet another democratic process succumbs to the expedience of legislative contacts and lobbyists.

What happens to moral reasoning if the logic and the values suggested by this form of governance are successfully, and uncritically, transmitted to students as part of their (political) socialization within government-run schools, and is further sanctioned through replication within the school's elaborate sorting mechanisms (Spring, 1976)? Perhaps the most "successful" and favored students are selected as the future's most successful and favored *citizens* as well—securing the next generation of elites and continuing government schooling's uncritical indulgence in a system of social stratification and control. This implies that schools are complicit in an ascriptive, compulsory system that undermines cognitive and moral reasoning.

Sociologically, functionalist schooling agendas send an obvious message to the student: Find no fault in the status quo, only fault in those who fail to thrive within it or to adjust themselves to it. This leaves virtually no room for social critique or dissent. It is a disastrous linkage of schooling, government, private power, and the status quo—made explicit in the speculations of education scholar, Joel Spring:

If all members of society were taught to believe that the school selected fairly and only those selected by the education system could lead society, then [if completely successful] all members of society would accept the social hierarchy perpetuated by the education system. Acceptance of this situation might obscure other inequalities in society. For instance, if the education system favored those with wealth, then all members of society might come to accept differences in wealth as differences in talent as determined by education institutions.¹²

If the status quo within the basic structure of society supports social stratification, and government schools are organized as *conservative* institutions within this status quo, then schools will tend to support social stratification. If social stratification is a sign of social injustice, then government schools will tend to be socially unjust. The resulting gap between an ascriptive school culture and democratic functioning is clearly a significant matter for public deliberation. In the Rawlsian framework, the notion that government may be *widening* or legitimizing this gap creates a sense of urgency and outrage, for reasons that will be explored, further, in the discussion that follows.

(3) State compulsory education undermines the development of rationality

Despite all of its shortcomings, schooling remains a powerful force for directing and influencing the development of the young. Its power lies, in part, in its systematic nature. State law requires attendance, so schooling is a compulsory process. It is also a process capable of structuring thought and behavior. In this system, the state exerts strong regulatory and curricular influences through its many officials, agencies, experts, and budgetary considerations (Kozol, 1991; Spring, 1994). The current federal mandate for standardized testing has been largely embraced by states in order to secure federal subsidies, despite the fact that states are not, generally, required by law to comply with federal education policies. The standards movement is not a value neutral agenda because it diverts scarce time and resources from other academic objectives. Opponents maintain that it also unreasonably imposes on teachers' schedules and erodes their professional autonomy to pursue coherent, imaginative teaching and learning strategies. Many teachers conform (or pretend to conform) to these requirements because they believe that if they do not conform they may jeopardize their jobs and careers.

The pressures to perform under the testing mandate often encourage authoritarian and unethical practices that include the following: epistemological approaches that promote the unquestioned acceptance of received knowledge (on the part of students, and teachers), the use of drilling as a means of “encoding” information, and—in some instances—school personnel altering testing procedures and exams to raise test scores. In this climate, political autonomy erodes even further because students’ minds become blank slates for purposes of absorbing the particular knowledge contained on standardized tests, and teachers are further reduced to technicians and reluctant caretakers of official knowledge (Apple, 2003; Freire, 2000). The term ‘education’ is redefined as a process for imparting an uncontested interpretation of what is worth knowing—often a particular view of the social world that provides a favorable assessment of the status quo.

The Common School Movement of the mid-nineteenth century provides a foundational historical reference for the school’s role in presenting a particular interpretation of the nature of “belonging” and the nature of alienation. Unfortunately (but not surprisingly) schools reflected the prevailing view in society and created a list of exclusions of difference that mirrored the preferences of other government institutions. Schools dictated acceptable ideals for citizenship (and school attendance) based on the same ascriptive criteria that served as the standard for human rights, employment, and public services of various kinds. True to the established historical pattern, the exclusion of some persons combined with an ideology of homogeneity and conformity that was paramount to the inclusion others.

In many instances, entire histories had to be virtually forgotten in order to *belong*—collective memories about folkways and meanings, abandoned. According to

Bertrand Russell, “Children of immigrants in the United States become patriotic Americans, and usually despise their parents’ country of origin; this is mainly the effect of the schools” (1967, 128). It is widely conceded that education is a program of selective socialization—for better or worse. The belief that the latter possibility too often prevails under government control is evident in John Stuart Mill’s unflattering remarks about the value of government schooling:

A general State education is a mere contrivance for molding people to be exactly like one another; and as the mold in which it casts them is that which pleases the predominant power in the government—whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation—in proportion as it is efficient and successful it establishes a despotism over the mind, leading by natural tendency to one over the body.¹³

Dewey appears to share this sentiment when he criticizes public schools for being “largely utilized as a convenient tool of the existing nationalistic and economic regimes” (1922, 127), but he distinguishes this characterization of public schooling from the version that he staunchly advocates in *Democracy and Education*.

Suppose the dominant orientation to schooling in the nonideal serves as “a convenient tool of the existing nationalistic and economic regimes”¹⁴ as Dewey suggests. The task of developing rationality and diverse perspectives in school would be subordinated to a more nostalgic, intellectually disarming, state-centered agenda. If successful, this agenda would seriously undermine the democratic orientations to education that are implied in Rawls’ well-ordered society. In comments that are largely directed at government but that are equally—and logically—applicable to much of compulsory government schooling, and consistent with Dewey’s assessment, Parenti’s impressions, more than twenty years ago, continue to capture the frustrations of many:

Under the present system we are taught passivity, consumerism, spectatorism, isolation and incompetence. Our energies often are directed into overly specialized and mindless tasks for the production of a glut of gadgets and gimmicks that no one really asked for. We are taught that the controlling decision over our lives must remain in the hands of those “above” us, those who claim to know better—or else ‘there will be chaos.’¹⁵

The long tradition of schools promoting social efficiency, conformity, homogeneity, and passive consumptions of authoritative fragments of information—often the prevailing points of view (Tyack, 1974)—is rejected in a well-ordered society in at least three respects.

First, rationality is a foundational intellectual capacity in Rawls’ well-ordered society and arises from the context within which the parties in the original position select desirable principles of justice.¹⁶ The ability to reason is necessary for exercising the moral powers that are essential in a well-order society—for example, the capacity for a conception of the good. Citizens in a well-ordered society must be intellectually capable of determining their own ends and devising a plan to reach them. This plan must take into account their available (and accessible) resources, their time frame, and their skills.

The basic intellectual capacities that are needed under ideal conditions are even more urgently needed in the Rawlsian reconstruction project. Citizens who seek to transform their lives need to be able to deliberate on all factors pertaining to their rational advantage (including the public good), throughout their lives. They also need to be able to flexibly adjust their public and private plans when faced with unexpected contingencies (favorable or unfavorable) and be able to deliberate about obstacles such as systemic discrimination. The ability to reason well and learn from experience in the nonideal facilitates democratic citizens’ in their efforts to govern themselves and to

choose responsible courses of action on matters of basic justice, as well as on matters pertaining to their personal pursuits.

Second, the capacity to identify and pursue one's interests within a political system that unfairly distributes benefits and burdens requires an added degree of political autonomy. Citizens gain little from passivity and obedience to external authority where unequal and unjust distributions of resources are the norm. Opportunities to develop the requisite rationality to pursue a politically autonomous conception of the good may be obstructed by government policies or institutional arrangements that support the status quo. Citizens need political autonomy to be able to resist forms of imposition that undermine their development of independent assessments of the social order and that obstruct their clarity in determining their quality of life prospects within it. This reasoning follows from Rawls' ideal framework that includes the expectation that each citizen will determine the good for herself.

The compulsory education enterprise is one of the social institutions within the web of the basic structure targeted by Rawls' pluralistic vision of political liberalism. It is characterized as such because compulsory schooling creates a relationship between citizens and government that is binding. This relationship creates an obligation on the part of government to assist in preparing and guiding young citizens so that they learn to function effectively, as adult citizens, within the ideal of the well-ordered society.¹⁷ In the Rawlsian framework citizens take special interest in government's initiatives and aims in education because schooling is seen as a vital part of the reconstructive project. This means that there is an even greater expectation for schools to perform a public service by promoting equal dignity and equal citizenship. Therefore, as Rawls maintains, to the

extent that government has a formal interest in education—and uses its collective powers to pursue it—the compulsory process must play a role in *facilitating* the emergence of reasonable, self-regarding rational plans and the capacities to pursue them (Rawls, 2001).

Third, many young citizens discover that the schooling process creates obstacles to developing self-regarding rational plans. This experience appears more likely to occur when education policies encourage (or condone) the *channeling* of a particular segment of the school-age population into vocational education or “school to work” programs—whether or not such programs garner students’ genuine interests or talents (Ballantine, 1983; Hollingshead, 1949). These curricular policies virtually dictate the range of rational plans that are—and are not—available to students, with little input from them. The controversial practice of stratifying the curriculum is a central feature of compulsory schooling and is backed by the coercive regulatory power of government. Although these important decisions are often routine and unquestioned, not all educators agree with the practice of educational stratification, as Michael Apple’s comments make clear:

Curriculum differentiation should be put off as long as possible. It is not the place of the school to sort and channel students through different systems of content and instruction . . . All students should be uniformly given the opportunity for an education for life.¹⁸

In a well-ordered society such differentiation practices would be prohibited because they raise equal protection issues. Violations of liberty are likely to occur because the limited range for intellectual development that such practices afford tends to undermine pluralism. When schools categorize students in ways that reduce the quality and quantity of intellectually stimulating educational opportunities available to them this, too, is an artificial obstruction to the development of rationality; further, it constitutes a paternalistic intervention that may violate students’ interest in the development of

political autonomy—a specifically protected liberty in Rawls’ well-ordered society. Clearly, citizens living under nonideal conditions have a more pressing interest in securing political autonomy than do citizens in Rawls’ just society. Recall that political autonomy is defined as “the legal independence and assured political integrity of citizens and their sharing with other citizens equally in the exercise of political power.”¹⁹ If young citizens are not afforded the same opportunity to fully develop their rationality due to questionable education policies that institute differential learning objectives on an ascriptive basis, then they are obstructed in their development of political autonomy.

Curricular stratification often lowers academic expectations for those children who are already on the margins of societal opportunity. Students from disempowered communities desperately need an education that promotes self-direction. Arguably, they are less able (and less likely to be able) to share equally in political power if their higher order thinking skills are not fully developed—or are underdeveloped—during their formative years. As Apple suggests, “By limiting the school curriculum to only the practical problems of daily life, such schools left access to the skills of critical reasoning only to those who were already in dominance.”²⁰

It is possible, however, to focus on the practical problems of daily life and not impede the development of critical reasoning skills. A preoccupation with such problems is the fundamental difference between “Rawlsian” and “Rawls.” In the nonideal, the problems of everyday life are the very problems that undermine dignity and citizenship. If the tragic fact of social and racial injustice in the real world is not to be the focus of attention in a reconstruction project, what is?

The notion that society can improve and that people ought to work to improve it is elementary in the Rawlsian framework. However, an important factor in being able to improve social conditions is the extent to which one develops a combination of skills, capacities, and inclinations that are often sacrificed under curricular differentiation schemes. Given this context, I can agree with Apple's position on the limiting effect of a "practical problems focus" in education, but the Rawlsian reconstructive project combines this focus with a rejection of schemes that undermine critical rationality. Indeed, its central organizing principle is freedom from "unfair privilege and unfair deprivation"²¹—dismantling dominance in favor of political autonomy and democratic equality. Education becomes a key resource for truly *expanding* the choices available to young citizens—not through "choice plans" and lotteries, but through social justice and equal citizenship.

I would be remiss if I did not include in this part of the discussion the enormous controversy surrounding special education policy that stems from allegations of abuse and mismanagement in its disability classifications.²² Many contend that these classifications disproportionately and unnecessarily identify poor students and inner-city students of color—particularly males—as cognitively disabled, which is a poorly disguised euphemism for mentally retarded.²³ There are a growing number of disabilities for which children receive special treatments, including the use of powerful drugs. It is not difficult, then, to see why so many parents, community activists, scholars, and educators are incensed by the structure of special education.

Surely the history of unconscionable disparities in educational opportunity resulting from race and class stratification, for example, has implications for disability

classifications in government schools. Could it be that many students labeled “cognitively disabled” are, in fact, “cognitively disinterested” instead? Could it be that “learning problems” that are historically attributed to the biology or culture of children are more accurately—and fairly—attributed to the politics and morals of adults? Might a socially reconstructive orientation to education uncover “other” deficiencies? In Rawls’ well-ordered society justice is the first virtue of social institutions, and the basic structure of society is shaped by the moral excellence of its institutions. However, in the “Rawlsian” framework the moral excellence of social institutions is a *quest*—not a presumption—so the issue of social *injustice* is the first to be explored in response to each of the above queries. In a land where equality of educational opportunity has never been made available to oppressed groups, this approach to inquiry appears to be the only rational and reasonable way to proceed in the interest of fairness.

What enables and legitimates these classification schemes for many who advocate them is the related and highly controversial practice of using “intelligence tests” (IQ tests) in schools. These tests are used to determine intellectual capacity—or, more accurately, to determine the capacity to perform certain tasks that an influential community of psychologists have determined to be linked to intelligence levels. One critic contends that IQ tests do little more than facilitate claims about achievement levels “based on exposure to certain beliefs and information to which the children of educated [white] middle-class families are more likely to have had access (Harry et al, 2002, 83). School officials often use the data taken from IQ tests to make judgments about intellectual capacity despite the many reservations concerning their use (Harry et al, 2002; Mitchell and Salsbury, 2002).

The controversy escalates when the results of these controversial and problematic assessments are subsequently used to actually gauge the appropriate level of educational achievement to expect—Plato’s bronze, silver, and gold categories—the type of instruction the school system *ought* to provide, and the nature of the interaction that the student will experience in his/her relations with the teacher (Oakes, 1985, 1992; Ogbu, 1994; Powell et al, 1985). Joel Spring, education scholar, accurately captures the frustrations of many when he asserts that “since the 1920s, the separation of students by academic ability has been criticized because the result is often separation by socioeconomic class and race.”²⁴ Indeed, recent research conducted by the Civil Rights Project at Harvard University highlights racial discrimination as the reason for the “overidentification” of students of color that is evident in special education (Losen and Orfield, 2002).

Dewey was one of the early and outspoken critics of IQ tests in schools. He objected to their use by educational psychologists for purposes of gauging students’ general intellectual capacity and drawing conclusions from them in support of racial differentiation in educational opportunities. He made his views on the subject known in the early twentieth century when such tests began to be used in schools. As one group of education historians point out:

John Dewey argued that the tests were crude measures at best, that whatever they measured was very uncertain, and that the doctrine of racial traits was no less problematic for scientific reasons than for political ones. . . . But [such] voices seem to have been lost in a rush of anxiety about changes in America’s people and in her schools.²⁵

As with disability classifications, the intrusive and fixed nature of the judgments stemming from IQ tests often severely restricts young citizens’ opportunity to develop a

sense of their abilities and life possibilities. The use of intelligence tests and other measuring devices to track students within rigid educational categories can occur as early as elementary school and can extend through high school, and beyond—creating a kind of (compulsory) intellectual straitjacket (Fine, 2002).

Fourth, the pursuit of a rational plan requires that citizens have the ability to “make claims on their institutions so as to advance their conceptions of the good, provided these conceptions fall within the range permitted by the public conception of justice.”²⁶

Students are disabled in developing their capacity to make such claims when they are deprived of an education that furthers their ability to assess their needs and interests and advance their concerns in public forums. They are particularly disabled in this undertaking if they are encouraged to have a passive affect and shy away from pressing forward with claims on institutions that are supposed to protect their interests—exhibiting, by some accounts, an unhealthy sense of loyalty and compliance with respect to their government and its institutions. Citizens are less likely to see themselves as “self-authenticating” adults if, during their formative years, they are unduly focused on conforming to externally imposed adult—and institutional—standards, particularly those affective standards that are associated with the hidden curriculum (Apple, 1971; Jackson, 1990).

Rejecting the traditionally favored affective dispositions is necessary in the nonideal. The reconstructive project encourages students to be self-directing and critically reflective. It rejects school cultures that equate confidence with arrogance, inquisitiveness with rudeness, or social critique with disloyalty and bitterness. Absent this perspective, students in the nonideal lack a healthy and stimulating environment in which

to develop rationality, particularly the type of rationality that is informed by a passion for understanding one's surroundings. Fostering passivity, unquestioning loyalty, and submission to preexisting circumstances is unhelpful and undermines efforts to prepare students to "make effective use of their liberties and opportunities."²⁷ In pluralistic democracies, irreconcilable differences (conflicting views) are acknowledged and reasonable pluralism (diversity/multiculturalism) is presumed to be a fact of life that reflects the exercise of reason under conditions of freedom of thought (Rawls, 1996). The well-ordered society is assumed to provide such democratic conditions, and the Rawlsian reconstructive project endeavors to create them.

Finally, the implications of institutional differentiation schemes such as academic sorting and segregation would seem to undermine the *social bases of self-respect* which is, arguably, the most important category among the five mentioned in Rawls' list of primary goods.²⁸ The purpose of this category is to provide *institutional support* for citizens' self-esteem. According to Rawls, the 'social bases' refer to "the *institutional fact* that citizens have equal basic rights, and the public recognition of that fact . . . [my emphasis]."²⁹ Even under ideal conditions, Rawls presumes that people generally want *more*—rather than fewer—primary goods. Should we presume otherwise under nonideal conditions?

The reason why the social bases of self-respect is, arguably, the most important of the five categories of primary goods is because it is so fundamental to our effective use of the four others. As we have already noted, social institutions such as schools—and the treatment that citizens receive in them—impact the development of rationality and political autonomy. Social justice within the basic institutions of society is an important

criterion in *developing* a positive impression about our worth and about the worth of our rational plans of life vis-à-vis the social structure. To the extent that social institutions provide basic support (promote social justice) for citizens' rational plans, they also strengthen citizens' confidence and self-respect. Within Rawls' framework, these social benefits are necessary features of the well-ordered society (and of the reconstruction project) that take us back to Rawls' basic notions about democratic citizenship because, as he notes, "Self-respect presupposes the *development* and exercise of both moral powers . . ."³⁰ This suggests that *public* education ought to constructively contribute to *developing* the capacity for reasonable conceptions of the good, *developing* positive impressions about our *prospects* for achieving worthwhile ends, and *developing* the confidence to actively pursue such ends.

Socially stratified institutions send the wrong message to young citizens about their worth and the worth of their rational plans. Rather than institutional support to reinforce self-respect, stratified educational institutions have a history of obstructing equal dignity and equal citizenship through systemic denials of full personhood. Consequently, the social bases of self-respect are conferred on citizens pursuant to the same terms as other social benefits in the nonideal: on the basis of ascriptive citizenship. This is why equal dignity and equal citizenship provide the foundation for reconstruction in the Rawlsian framework. The prescriptive project contributes significantly to students' social bases of self-respect simply by promoting social justice and rejecting unfair privilege. Indeed, a democratic project committed to antisubordination provides the ultimate *social bases of self-respect*.

If self-respect presupposes rational plans, as Rawls indicates, and rational plans presuppose rationality, then undermining rationality undermines self-respect. The absence of the social bases of self-respect further denies citizens a significant source of support for developing individual self-respect, and this works against their efforts to construct rational plans. Recall that the “social bases” of self-respect is “social” because it is to be recognized and reinforced within the basic social institutions (public) as part of the publicity condition that informs and educates citizens about their equal status under public principles of justice. According to Rawls, the parties in the original position are so concerned about the debilitating effects of inadequate self-respect on the rational plans of citizens, they “avoid at almost any cost the social conditions that undermine self-respect.”³¹

Indeed, the representatives select the two principles of justice over other moral frameworks because of the added protections the principles are believed to provide for self-respect.³² In the nonideal, however, the social structure is, itself, fundamentally irrational, and this further problematizes the prospects of its serving as a source of support for young citizens’ developing rationality—and, therefore, support for their developing self-respect. Thus, one of the aims of the reconstruction is a prescriptive project in education that brings schools into a web of morally rational social institutions committed to equal dignity and equal citizenship based on the eradication of social stratification. The social bases of self-respect cannot support the interests of the “social whole” on a partitioned, ascriptive basis.

In a well-ordered society, policymakers must provide public justification for their differentiation and stratification policies. The standard for justification is *public reason*,

reasons that free and equal citizens can reasonably be expected to accept. In the case of young citizens, those who have not reached the “age of reason” (or adults suffering from mental disabilities), Rawls places special obligations on adult guardians. When guardians exercise their authority to make decisions on children’s behalf (or on behalf of other dependents), they are making decisions that affect children’s (or other dependents’) future prospects for rational plans. Therefore, guardians must meet Rawls’ moral standard for paternalism.

We must be able to argue that with the *development* or the recovery of [their] rational powers the individual[s] in question will accept our decision on [their] behalf and agree with us that we did the best thing for [them] [my emphasis].³³

Other demands on paternalism include providing adequate justification for the intervention, *ab initio*, and adhering to the principles of justice—Rawls continues:

These restrictions on the initiation and direction of paternalistic measures follow from the assumptions of the original position. The parties want to guarantee the integrity of their person and their final ends and beliefs whatever these are. Paternalistic principles are a protection against our own irrationality, and must not be interpreted to license assaults on one’s convictions and character . . . More generally, *methods of education must likewise honor these constraints* [my emphasis].³⁴

Clearly, this level of justification and constraint on education policy decisions is not—and has never been—forthcoming under ascriptive citizenship. How are members of poor and oppressed communities interpreting the justification for the type of paternalism that is reflected in the “methods of education” afforded to their children in the neighborhood schools that are available to them? From a Rawlsian framework, such obvious inequalities and paternalistic failures of education policy are unconscionable. Is there any rational basis for educators and policymakers to believe that when today’s inner-city public school children grow up they will “accept our decision on [their] behalf

and agree with us that we did the best thing for [them]”?³⁵ It is safe to say that the majority of them will not.

Achieving fair equality of opportunity in education is a constitutional essential and a matter of basic justice in the Rawlsian framework (not so, in Rawls' ideal society). The *Brown* decision suggested as much when it declared equal educational opportunity a right whenever the state takes it upon itself to provide this service, but the Court was remiss in following this line of reasoning through to its logical conclusion: distributive justice. Its failure to do so contributes to the current unfortunate state of education and to policymakers' inattentiveness to social justice concerns within the policy debate (Balkin, 2001). The present circumstances warrant the Court's direct (re)intervention and reexamination of *Brown* along the lines discussed in Chapter 1, but this means that Americans must unearth buried collective memories of injustice and acknowledge repeated public failures. It means reentering the “closed areas” of race and stratification.

Underlying the inadequacy of the Court's desegregation remedy fifty years ago is the entrenched, ascriptive history, culture, and laws that are but three of the tragic facts with which contemporary reconstructive efforts must contend. The Court is not a reliable ally in the cause of social and racial justice, so citizens must be agents who can transcend the preoccupation with self-interests to pursue collective action. By taking a determined, public stand, they leave the Court no alternative but to become the “overseer” of government schooling for the protection of constitutional rights, at least until such time as elected officials become morally responsible policymakers who are inclined to act from a sense of justice. Recall that it was a climate of social outrage followed by political mobilization that provided the context for the Court, and the nation, to take the tentative

steps that were taken in *Brown*, and it is unlikely that further progressive movement will occur on this front unless the public, again, demands it. As before, a critical mass of “unfairly disadvantaged and unfairly privileged” citizens can provide the catalyst for change. The prescriptive project in education unites these citizens in the interest of furthering social justice.

In the meantime, we must note that the level of social injustice that plagues the government’s school system is staggering. There are routine practices taking place within this system that fall far short of Rawls’ standard for paternalism, but moral issues continue to exist on the margins of what is considered scholarly education discourse. Indeed, there is a growing and underappreciated debate among some educators, school psychologists, and others (discussed in Chapter 2), regarding the appropriateness of special education processes despite the fact that they remain widely in use (Hochschild and Scovronick, 2003; Losen and Orfield, 2002).

Consider this: Some states have declared a moratorium on capital punishment (execution) out of concern that it is being applied disproportionately—and, perhaps, pursuant to insufficient evidence—on the basis of race and class (and gender?). Under conditions of social stratification and ascriptive citizenship, is it reasonable to conclude that it would be a good idea to have a similar moratorium on the use of IQ tests, special education classifications, tracking, and other sorting procedures in compulsory schooling—for the same reasons? Is there a strong enough link between the least-advantaged school-age population and the overrepresented prison population, to sustain this discussion? At the very least, the continuing controversy and growing confusion

surrounding special education suggests that *transparency* and a vigorous public debate about its purpose and procedures are long overdue.

(4) Corporate culture erodes public sensibilities by emphasizing markets and atomism

Consider a government whose basic institutions and social policies are guided by a public philosophy that privileges market processes and corporate interests in determining the public good. Such a political economy can easily arise when “government and business elites are linked by organizational, financial and social ties, and move easily between public and private leadership posts.”³⁶ A market emphasis guiding public policy adversely affects the general welfare by encouraging rationality in the wrong way, in a way that undermines democratic values and processes (Wolin, 1989). The prospect raises several concerns relative to social justice.

First, it may be viewed as expedient to structure competition into the acquisition of social goods that are often thought to be the *right* of every citizen and the responsibility of government to protect—education and health, for example. In the nonideal, the pattern of unequal access to society’s resources makes any form of “competition” skewed in favor of preexisting privilege. Further, such policies may foster an exceedingly self-interested, consumption-driven citizenry—increasing the likelihood that political society will be fragmented and stratified. Such societies lack sufficient bonds to form a political *community*; instead, they have what Rawls calls a “political understanding” that amounts to a mutual recognition of constitutional principles (in principle) as part of doing business in political society. The principles that are recognized under these conditions (a *modus vivendi*) are likely to be abandoned if changing circumstances—power relations, for example—make it possible for individuals or groups

to dismiss them with impunity. This prompts Rawls to conclude that in such a society “social unity is only apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests.”³⁷ There are several additional potentialities that are adverse to the interests of social justice and that may be more prevalent in this economically-driven social climate.

Second, a “political economy focus” reduces the importance of collective deliberation—too time-consuming—and threatens to reduce society to atomic individuals who tire of public dialogue and public spaces. A significant part of public life in the nonideal is made obsolete when the very issues and places that bring citizens together are trivialized or ignored. According to Robert McChesney:

To be effective, democracy requires that people feel a connection to their fellow citizens, and that this connection manifests itself through a variety of nonmarket organizations and institutions. . . . Neoliberal democracy, with its notion of the market *uber alles*, takes dead aim at this sector. Instead of communities, it produces shopping malls. The net result is an atomized society of disengaged individuals who feel demoralized and socially powerless.³⁸

In the political economy, government’s role in social policy is not “diminished” as much as it is “altered” to facilitate corporate interests. This occurs when public resources are diverted to support corporate ventures and when areas of public policy become a “private affair” outside of the reach of democratic control (Parenti, 2002). The recent surge of corporate investments in school ventures and prison construction are but two disturbing examples of this. Important deliberations that ought to be debated in public by elected officials and engaged citizens, and guided by public principles of justice in the nonideal, are increasingly undertaken in boardrooms by private citizens (corporate agents) who are more often guided by principles of markets that maximize profits.

In order to rationalize this shift to greater private sector input in social policy decisions, the government is often portrayed as hopelessly wasteful, inefficient and paternalistic—except in the case of corporate welfare (Apple, 2001; Parenti, 2002). The outcome of conflating the general welfare and corporate welfare is the near identity between political and economic power, and the decline in social life as government nurtures wealth (Wolin, 1989). While the liberty and freedom of the corporate class is made more secure there is little to empower the majority of citizens or to protect them from exploitation. This is the reason why the Rawlsian reconstruction project advocates the development of active, informed, organized citizens who want to transform the entrenched system of privilege that is increasingly stratifying and marginalizing the population.

Third, if government is structured pursuant to a political economy, the tendency for corporations to focus on profits at the expense of social needs could have grave implication for compulsory education in the nonideal. For example, dwindling public resources may be diverted from a system that ought to provide quality public education for the masses (although it never has) to a system of corporate welfare for the few. Every year tax breaks save corporations hundreds of millions (if not billions) of dollars in profits that rarely get reinvested in improving schools (Parenti, 2002). Meanwhile, the shortage of teachers, the overcrowded (and empty) classrooms, and the general need for a massive infusion of properly managed resources to meet basic standards are *public* concerns that are likely to be ignored. The tax revenue needed to support public schools gets shifted to an unwilling public (Apple 1993, 96; Kozol 1991, 221).

When the official response to the inevitable calls for education reform amounts to substituting (or augmenting) a *government managed* school system, that privileges wealth and abandons and increasing majority of children from low-income families, for a *market-managed* enterprise that thrives on capital and—by definition—puts profits ahead of balancing social and economic inequalities (Parenti, 2002), many see a tragic duplication of answers to the question of how to “improve” compulsory schooling. For the poor and dispossessed, the traditional responses have little to do with the real questions facing the citizenry: How do we end the grossly unjust distribution of benefits and burdens in society, and what are the implications of doing so for justice in education? In the Rawlsian framework, a critical mass of vigilant citizens is far less tolerant of government neglect and pandering to corporate wealth than are the voting majority of their counterparts under ascriptive citizenship. Rawlsian citizens are interested in a protracted, organized effort to insure that government requires corporations to pay their share of the tax burden in whichever state(s) they do business, and to prohibit corporations from coercing states to submit to their demands by threatening to take jobs to another state, or country. Tax consequences *follow* the corporations—reducing the opportunities for political bargains that defraud the public of revenue and basic services.

Fourth, businesses are strong advocates of the current push for standardization and competition in education. This policy initiative often comes at the expense of equality of opportunity in education—to say nothing of “fair” equality of opportunity (Wraga, 1999). The “standards minus opportunity” mindset increases the likelihood of academic failure among the very class of individuals who are already disadvantaged and disempowered within a system of social stratification. Perhaps democratic practices and

fair competition in education threaten to destabilize long-held privileged positions within the social order of the nonideal, and potentially empower a new class of politically sophisticated citizens (Reich, 1991).

Perhaps there is apprehension that educated young citizens may develop a sufficient understanding of their interests to want to govern themselves by actually controlling their government. Such citizens may want to shape public education policy to reflect substantive democratic aims that protect citizens, not facilitate the interests of wealth and power that reduce the value of political liberties and the efficacy of democratic processes. In the Rawlsian framework, (fair) equality of opportunity in education requires a shift in the educational system's focus—from the social efficiency, market-centered preparation of workers (for fleeting jobs), to the pluralistic, student/community-centered, democratic preparation of citizens for a just society. Such a transition, Dewey maintains, is most strongly opposed by “those who are entrenched in the command of the industrial machinery [the business community], and who realize that such an educational system if made general would threaten their ability to use others for their own ends.”³⁹ If he is correct, current education policy suggests that little has changed.

Rather than devoting increasing amounts of *intelligent* direction to understanding and meeting the complex educational needs of school-age children, we are devoting increasing amounts of *time* and *energy* trying to keep pace with standardized, “high stakes” testing cycles: discussing preparation, preparing, testing for weeks, anticipating the findings, evaluating the findings, publicizing the findings, registering “winners and losers” based on the findings, and starting over. Given that some schools struggle just to

remain in operation on a daily basis, the resources that are annually consumed in this controversial and exhaustive process are, perhaps, the clearest indication that “our nation is at risk.” It suggests systematic and systemic failures that seem impossible to defend using Rawls’ standard of public justification. How does this expensive exercise in drills and memorization benefit the least advantaged—from the perspective of the least-advantaged? While these tests purport to measure and improve student achievement and, somehow, impact workplace productivity, such findings are widely disputed (Berliner and Biddle, 1995; Wraga, 1999). What seems clear is that the preoccupation with testing makes *learning* for socially consciousness self-direction a very difficult proposition, and, for this reason, such measures would not be a priority in Rawls’ well-ordered society. In the reconstruction project, the government’s testing obsession would come to a screeching halt as the focus of policy dramatically shifts to distributive justice.

What happens after the tests are scored and the data are analyzed? There are, of course, renewed calls for standards, and schools must to compete to reach the new targets. In addition to creating a climate of that fosters unprofessional and unethical behaviors—such as altering students’ answers on standardized tests—the “high-stakes” climate dictates that some “scores” be discounted. The following scores are not monitored, not publicly justified, and not (usually) the basis for “funding spikes”: the scores of neglected schools, the scores of uninspired and ineffectual teachers who begrudgingly take jobs in inner-city and rural communities as a last resort—building their nests and refusing to move on—and the scores of “parochialists” armed with worn-out cultural deficiency theories that are embedded in racially ascriptive “scientific” studies dating back more than a century (Smith, 1997).

Parochialists often discover that they are inadequately prepared and quickly overwhelmed when confronted with cultural diversity and the alarming levels of unfair deprivation that are routinely found in the communities that they are to serve. Often they are working in schools comprised of students who exist on the margins of public life and—with the help of their authoritarian, inexperienced teachers—on the margins of their own development. The whole notion of competitive, high-stakes testing for “high standards”—against the continuing blight of inequitably funded, dilapidated, (virtually) pre-*Brown v. Board*-segregated urban schools—is absurd and easily dismissed in serious policy discussions but for the disastrous consequences of ignoring government’s coercive power. The ascriptive policy orientations that perpetuate these inequalities are *public*—not corporate—matters that continue to present tremendous obstacles to realizing social justice in education (Christopher, 2000).

Finally, in a corporate culture students may perceive public schooling as little more than a ticket into consumer society or as added leverage in ascending the hierarchy of a stratified social order. They may be less inclined to have an interest in complex social issues (and receive little encouragement to reconsider) when schools are perceived as yet another venue where competitive self-interests flourish in a contest of wills to secure the resources of power. Indeed, parents may view themselves as part of an aggregate of purchasers or choosers in an education shopping mall (Powell et al, 1985), rather than viewing themselves as members—on some level, anyway—of a larger public within which education makes a positive contribution to individual development and to the general welfare.

Given all of the overlooked social ills and the societal signals that the powerless are virtually inconsequential, students may become *less* motivated to ponder the desirable social ends of government or to embark on a quest to achieve them (Braungart and Braungart, 1998). They may become less interested in decision-making on public issues when there is widespread disagreement, lacking confidence in the fairness of government processes (Braungart and Braungart, 1998). If government fails to appreciate the value of political communities that share certain mutual interests in the public welfare, then government schools are likely to neglect collective values and find little time in the school curriculum for discussing the social problems of our society—focusing, instead, on those subject areas that are part of “what works” in the political economy (Burliner and Biddle, 1995).

A “what works” policy orientation mystifies serious compromises to citizens’ political autonomy (and to the general welfare) that may be engendered by policy decisions on matters of basic justice. In a political economy, the state is an instrument for protecting and advancing *economic interests*—is defined by them—and these interests are determined by the powerful few, with minimal reflection on the moral implications of these determinations for the larger public (Parenti, 2002). Many contend that the government’s lax enforcement of (lax) securities and exchange regulations made the recent Enron debacle a scandal waiting to happen—one capable of completely draining the pensions of many thousands of working citizens. This is just one example of governmental failure enabling corporate greed at the expense of distributive justice for the masses (Parenti, 2002). Many corporate violators are never even prosecuted (not to mention convicted), but what message does this send about the nature of citizens’ rights?

In a political economy the status of “citizen” becomes more precarious for an even larger number of people as the *value* of their relationship to the state becomes predicated on the extent of their usefulness in a familiar, but, unstable, socio-economic arrangement: the buyer’s assessment of the worker’s contribution to the political economy.⁴⁰

Socialization for assimilation into an ascriptive economic system that minimizes the rights of some citizens while protecting the rights of others, would seem to require a severance—or at least, a trivialization—of the connection that Rawls makes between injustice, liberty, and citizenship. In the real world, the ideal of *equal citizenship* for all in a just society that protects liberties is virtually obsolete. Consequently, the “good citizen” is adaptable to, and useful in, the political economy (Wolin, 1985). Government’s active complicity in the maintenance of such as society further diminishes the likelihood that its school agenda will stress public interests, public reason, and moral powers. Therefore, the prescriptive project for education faces great challenges.

There is little room in the political economy for a public philosophy that contemplates the moral dilemmas and conflicts of interest that are linked to our public choices. We seldom ask, for example: What are the social and moral costs (or benefits) associated with the means that we employ in education to advance personal and societal ends? Twenty years ago—and prior to the more recent advances in corporate global dominance—scholar Henry Giroux registered enormous costs:

It is my contention that the new public philosophy abdicates its responsibility to insure that public schools can function to enable students to experience a meaningful sense of personal and political liberty and to live a moral life, that is, a life lived in accordance with moral rules and principles. Moreover, this abdication reinforces the developing crisis in moral and civic courage that our nation currently faces.⁴¹

The “crisis” that is the focus of Giroux’s continuing frustration is the crisis of destabilization, alienation, and moral ambiguity. This crisis is engendered by the narrow pursuits that are associated with the ends-means orientation of the political economy that appears to shun morally informed education policy.

If education policy fails to provide (fair) equality of educational opportunity for all then, under ascriptive citizenship, many students are actually disabled by a process that compels their participation, a legally enforceable program of misdirection—which begs the question: What is the *quid pro quo* for compulsory education from the standpoint of low-income urban and rural citizens in inferior schools, who have even a remote interest in “sharing with other citizens equally in the exercise of political power”?⁴² The public justification for unequal opportunity must be shown to benefit the least advantaged—low-income groups—from their point of view. Short of this, educational resources would have to be equalized. The outcome of the difference principle for education policy in America is clear.

Rawls’ conception of a well-ordered society provides a holistic alternative for social organization (under ideal conditions) that is the antithesis of a political economy, market-based public philosophy. Rawls attempts to set socially responsive boundaries on private and economic pursuits so that individuals—and corporations—determine their self-interests in accordance with the collective interest in justice and the public welfare.

Rawls elaborates:

The principles of justice and their realization in social forms define the bounds within which our deliberations take place. The essential unity of the self is already provided by the conception of right. Moreover, in a well-ordered society this unity is the same for all; everyone’s conception of the good as given by [his/her] rational plan is a subplan of a larger comprehensive plan that regulates the community as a social union of social unions.⁴³

Rawls problematizes the “hands off” economic theory of democracy (the system regulates itself theory) by noting that political decision-making requires something more:

The view that extends the basic ideas and methods of price theory to the political process must for all its merits be regarded with caution [because] a theory of constitutional regime cannot take rules as given or simply assume that they will be followed. Clearly the political process is importantly one of enacting and revising rules and trying to control the legislative and executive branches of government . . . and since no system of constitutional checks and balances succeeds in setting up an invisible hand that can be relied upon to guide the process to a just outcome, a public sense of justice is to some degree necessary.⁴⁴

Different moral capacities and standards are needed to evaluate political processes than are needed to evaluate market processes. Citizens in a democracy are not expected to passively accept “as just” the outcomes of political processes (as economic agents are often expected to passively accept the outcomes of markets processes). Citizens operating within political processes can object to the process itself—can revise it; they need to be able to assess its outcomes in order to determine whether or not revisions are needed.

If the outcomes are determined to be unjust, citizens have to *decide* what actions to take in response to them. This implies that they need to be politically vigilant, inquisitive, and willing to take control of the democratic instruments that organize their lives. They also need to be inclined *to act* in pursuit of justice. In the Rawlsian framework, *citizens* are the central agents for insuring that government is committed to eliminating injustice within the basic structure of society—making sure also that the public’s resources are not diverted into corporate coffers. The rationale for the reconstruction project is that the vital functions of government must be continually reassessed, reinterpreted, and revised to insure that the benefits of collective endeavors

extend to all, particularly those at the greatest disadvantage within the stratified social system.

Political decisions in a well-ordered society require dialogue and *moral* judgments based on just moral principles. The outcomes of public dialogue are not presumed to be inevitable; human fallibility implies that decision-making and outcomes can be improved. It helps that Rawls' citizens define their autonomy intersubjectively—not atomistically. They, therefore, demonstrate sensibilities that sustain deliberative processes. Such processes are open to public participation, sometimes requiring protracted periods of debate before a decision is made or an outcome is known.

Corporate actors (economic agents), on the other hand, may find protracted, public deliberations exhaustive and inefficient for their purposes, but absent the requisite capacities and processes for political decision-making it is very difficult to set humane priorities. Thus, political systems that subordinate the public interest to markets are not suitable to guide democratic ends. Perhaps this is why Rawls renounces the capitalist welfare state—some version of which exists in American society. Regarding this arrangement, he writes:

Welfare-state capitalism also rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands.⁴⁵

The well-ordered society rejects welfare-state capitalism because Rawls' principles of justice reject the exploitation that it encourages—particularly, private ownership in the means of production.⁴⁶ In place of this system Rawls substitutes either of two possibilities that he finds more agreeable given the aims of his normative political

theory: property-owning democracy and liberal socialism. He discusses the former in more detail and contrasts it with welfare-state capitalism:

One major difference is this: the background institutions of property owning democracy work to disperse the ownership of wealth and capital and thus to prevent a small part of society from controlling the economy, and indirectly, political life as well. By contrast, welfare-state capitalism permits a small class to have a near monopoly of the means of production.⁴⁷

In order to seriously pursue democratic ends, government within Rawls' conception of justice must play an active role in the "right way." It does this by using its collective powers to promote the public good, guided by public principles of justice. This form of social organization is what is meant by 'well-ordered,' In such a society, government schools become "public schools," and public schools cannot be neutral sites that lack political purpose—set apart from the broader political aims of society; rather, they are part of a web of social institutions that promote a certain interpretation of justice, protect citizens' civil liberties, and advance the public welfare pursuant to certain ends.

Furthermore, school-age children are not mere objects of social efficiency agendas or passive consumers of goods. They do not exist wholly within an atomistic conception of 'persons,' or within the finitude of their own lives. They are perceived to be (junior) members of the political community, inheriting the political and social institutions that are now primarily the domain of adults. Increasingly, however, they are expected to contribute their talents to the changing character of these institutions—for better or worse—as have their adult counterparts. In the Rawlsian framework, they are expected to contribute to a reconstruction project that is aimed at removing injustice by dismantling social stratification and ascriptive citizenship. Public schools serve as one of the venues in which students learn about the strengths *and weaknesses* of their society

with respect to the promotion of social justice—the possibilities and obstacles that it may present—and about themselves as “history makers” in a political project.

In this chapter I utilized the Rawlsian framework introduced in Chapter 3 to provide a critical geography on which to map four undesirable implications that are possible given government’s role in regulating schooling in the nonideal (I initially introduced in Chapter 2). I carried forward the understanding that this framework combines factual and normative discourses that aid in the identification of the degree and type of divergence that exist between Rawls’ ideal model and the fact of injustice in the nonideal. The existing conditions were evaluated from the standpoint of Rawls’ flexible model of justice. I, again, explained that the term ‘Rawlsian’ reflects the demystifying descriptive and explanatory processes (using social contract theory) that are needed in probing the issues raised in Chapter 1 and that this context informs prescriptive judgments for realizing reconstruction in the nonideal, with specific focus on compulsory education.

The ideal constructions of citizens as free and equal, rational persons and of society as a fair system guided by principles of justice were characterized as integral to the Rawlsian framework. In this chapter and the previous one, I highlighted the essential role (in the nonideal) of critically informed, engaged, and *active* citizens (and groups of citizens) in making the prescriptive project possible—the most fundamental part of which involves their possession and use of the following two moral powers to a requisite degree: a capacity for a sense of justice and a capacity for a conception of the good. Sufficiently developing these two moral powers allows citizens to pursue their ends within a pluralistic context that includes the reciprocity criterion. This is not to suggest

that social conflicts are eliminated or that dissent is suppressed. Clearly, this is not the case. Interests continue to clash (particularly in the nonideal), and when people speak openly on public issues, opinions are bound to diverge; yet the two moral powers enable citizens to effectively and reasonably participate in the exercise of political decision-making, if they choose to do so.

Finally, being *informed* in Rawls' context involves possessing an understanding of the public principles of justice, the political grammar of society, and using this knowledge to participate in a fair system of social organization. In the Rawlsian framework, public principles and political grammar continue to be important, but the focus is on the use of this knowledge to fundamentally *transform* one's surroundings. Cooperation remains indispensable to a democratic Rawlsian project, and the process of identifying public aims and organizing within pluralistic communities continues (where opportunities for leadership are often much greater.) Indeed, fundamental change requires even broader cooperation through coalitions that transcend comprehensive boundaries but that are linked on the basis of a shared interest in dismantling social stratification and ascriptive citizenship. So we see that public principles and political grammar can be understood as forms of collective political expression on matters of basic justice that can empower ordinary people in the nonideal who seek to govern themselves in the interest of equal dignity and equal citizenship.

Within a political framework that rejects injustice—and around which there is extensive social agreement—substantive rights and liberties are more secure. Membership in such a society can form the basis for a collective identity that is genuinely healthy and constructive: 'healthy' because it is based on reciprocity and

antissubordination, 'constructive' because it helps citizens to develop their political autonomy and to gain greater control over the decisions that affect their lives. Humanizing citizenship can sustain a society's unity far better than ascriptive citizenship, and it needs neither myth nor suppressed memory to ensure it. Ideally, such a nation eventually becomes culturally sophisticated enough to no longer find its diversity a threat, politically mature enough to encourage pluralism and reap the increased benefits that seem sure to come under conditions of freedom. This level of civilization provides further motivation for the reconstruction.

These are the moral judgments that will guide the prescriptions contained in my philosophy of education. I discuss them in detail in the next chapter. A philosophy of education is a *general theory* that has implications for all aspects of the educational enterprise. I have already noted a number of these implications in my discussions in the preceding chapters, and additional inferences were drawn in this chapter. Suffice it to say that in the prescriptive project education—in all of its facets, particularly political education—is embedded in a transparent, historicized, political philosophy that has a Rawlsian reconstructive purpose (Smith, 2002a). It connects the mechanisms of schooling to the vital project of eradicating systemic injustice in the real world, promoting equal dignity for all and equal citizenship for all citizens. Such a philosophy must therefore be bold, critically intellectual, creative, and pluralistic, while finding its substance in *ordinary experience*—hopefully not too much to ask of a political philosophy. We turn to this task in the next chapter.

CHAPTER 5

“THE UNEXAMINED LIFE IS NOT WORTH LIVING:” PHILOSOPHY OF EDUCATION, CITIZENS, AND THE “RAWLSIAN” SOCIETY

The most important political goals of public schooling are *educating citizens, selecting future political leaders, creating a political consensus, maintaining political power, and socializing individuals for political systems*. These political goals can be both a source of political freedom and a means of exerting political oppression.

----*Joel Spring*

Out of a fear that their class and professional privileges might be challenged, some people resist all equalizing changes and commit themselves to living unexamined lives.

----*Michael Parenti*

The preceding chapters explored specific conflicts underlying the contradictions between the ideals and the lived *experiences* that characterize American citizenship within the basic institutions of society. It is apparent that two divisive social practices are embedded in America’s Enlightenment project: social stratification and ascriptive citizenship. These social practices have the simultaneous effect of incorporating and excluding citizens, reflecting forms of social partitioning and selective privilege (Mills, 1997) in a society that purports to be one nation . . . indivisible. The patterns of denial—and degrees of denial—that the social practices establish are obscured within Rawls’ normative paradigm because it presupposes the moral excellence of social institutions, the free and equal status of citizens, and the fairness of the resulting social system. Thus, we need a different theoretical framework in the nonideal in order to capture the historical specificity of the phenomena of social stratification and ascriptive citizenship—the “night side” of America’s Enlightenment project. In the latter part of Chapter 3 I introduced the *Rawlsian* framework for this purpose.

The Rawlsian framework largely retains Rawls' fundamental principles of justice but disarticulates them from their exclusive association with ideal political systems and rearticulates them within a contextualized, historicized political project where the impetus is on eradicating social stratification and ascriptive citizenship. The Rawlsian framework employs Rawls' ideal model as a flexible method of inquiry for illuminating the departures from justice in the nonideal, that directly and fundamentally hinder the construction of a morally just society. By appropriating Rawls in this way, the Rawlsian framework dismisses the moral boundaries that often separate ideal from nonideal theory. The expanded moral compass that results generates descriptive analyses and critiques that inform the social reconstruction of society (also referred to as the "prescriptive project"). From within this larger quest, we are also able to prescribe educational aims for the nonideal that are historically specific.

The Rawlsian framework contributes to the critical discourses that expose the patterns that continue to circumscribe the democratic project in America. It demystifies traditions that exclude and stratify society's members and impede the realization of liberty and justice for all. The role that citizenship plays in furthering injustice can then be understood in a more fundamental and revealing way. We can ascertain, for example, how *ascriptive* citizenship constrains the reach of the reciprocity criterion resulting in a morally inconsistent application of its precepts in deciding matters of basic justice—a differential moral effect based on race, class, and gender particularities. We can readily deduce that promoting social stratification and ascriptive citizenship is the antithesis of demonstrating a capacity for a sense of justice in the nonideal. Recall that a capacity for a

sense of justice is one of two moral powers required of citizens in Rawls' well-ordered society, the other being a capacity for a conception of the good.

The historical pattern of America's inability to seize the many opportunities to alter its course in the interests of a just and highly functioning democratic mode of living (noted in Chapter 1) is, in part, indicative of the absence or inadequate development of the two moral powers among the official leadership. In addition, this inability suggests the pervasive disinclination to consistently *apply* moral principles to social policies and practices that affect the basic structure of society. The disinclination to moral consistency degrades the democratic project and reflects badly on the quality of social relations among the voting members of the population—the majority of whom appear to be attracted to (and tolerant of) leaders whose political ambitions predominately lie elsewhere. Perhaps this pattern is to be expected in a society where the social relations make liberty a zero-sum game. Dewey writes:

The Good is that which attracts; the Right is that which asserts that we ought to be drawn by some object whether we are naturally attracted to it or not. . . . Right, law, duty, arise from the relations which human beings intimately sustain to one another, and . . . their authoritative force springs from the very nature of the relation that binds people together.¹

This begs the question: If not liberty and justice for all, what, then, is the nature of the *relations* that bind American citizens together?

Views on a Contextualized Philosophy of Education

I. The Aim: Reconstructive Education for the Masses

The prescriptions that guide ambitions in the social reconstruction of society arise from the Rawlsian descriptive analyses and critiques of the nonideal that were presented in Chapters 3 and 4. This same set of contextualized moral judgments and principles are

employed in this chapter to anchor one aspect of the prescriptive project: its philosophy of education. That is, the critiques of social stratification and ascriptive citizenship that animate my thesis provide the inspiration, in this chapter, for a normative education philosophy grounded in equal dignity and equal citizenship.

The fundamental question to be answered in this chapter is this: What does it mean to educate socially stratified, ascriptive citizens seeking political autonomy in a pluralistic society, within a nonideal liberal democratic project whose definition is not fixed and is therefore open to reinterpretation and reconstruction under different historical contexts? Given the power asymmetries in the nonideal, citizens' rights are understood to be *positive rights*. They require that government not only refrain from engaging in unnecessary coercive and intrusive activities (such as arbitrary incarcerations) but also require that it actively institute measures to ensure that rights are realized (providing due process and "competent" council for indigents, for example.)

The prescriptive project urges government to be, among other things, an instrument for the realization of positive rights. To the extent that government provides for and compels the education of its citizens, they have the right to equal educational opportunity beyond mere *access* to a school building (*Brown I*). What occurs inside the school and, particularly, the conditions under which events occur are more pressing matters in the nonideal. The aims of the schooling project—the moral content of education—and the political implications of those aims are integral to the realization of positive rights within the Rawlsian framework. It provides the moral vision that guides reconstructive thinking about schooling within a circumscribed democratic project.

In my estimation, the tentative limits and possibilities of a contextualized, historicized education philosophy are understood within an interdisciplinary framework that is rooted in critical interpretations of citizenship and political philosophy. The nature of the relations that extend from membership in a particular polity has implications for how citizens *experience* education. In the distribution of resources—educational resources, for example—the state sends important signals about the nature of this relationship, and the signals can differ dramatically. Differentiation within the category “citizen” under nonideal conditions translates into differential educational opportunities, to disastrous effect. As is the case with conceptions of the state in political philosophies, the conceptions of students in education philosophies necessarily evidence moral and political commitments. Although these commitments tend to be outside of the realm of inquiry in mainstream education discourse, the Rawlsian philosophy of education makes them transparent because it does not purport to be neutral to outcomes.

From the outset, the Rawlsian framework imposes a certain order on the processes that give definition to compulsory government schooling. In all of its facets, the prescriptive project in education is understood as a practice of freedom (hooks, 1994) that links politics, power, knowledge constructs, ideals, and moral judgments pertaining to our actual world, to a Rawlsian conception of society and person. This conception, in turn, becomes the theoretical *content* of schooling that informs practical reasoning. By definition, an education philosophy has implications for the varied components of the educational enterprise—establishing a coherent and vital association among them, that is admittedly structured to cultivate certain attitudes, dispositions, and tendencies.

Educational aims tend to be expressed in politically neutral terms while their execution may have the effect of preserving ascriptive constraints on political autonomy. The potential for such policy repercussions is apparent in a variety of social and institutional practices: unreflective habits, capitulations to gross inequalities (through silence or indifference), suppression of pluralism, uncritical patriotism (native sentimentalism), teacher authoritarianism, and student objectification.² The framework for prescriptive aims is not neutral—nor does it profess to be neutral. In fact, its orientation opposes much that is “customary” in American education.³

The organic nature of social stratification and ascriptive citizenship dictates the political orientation to schooling that makes the prescriptive project logical. Its themes are critically aligned with the nonideal circumstances of ordinary experience, so its education agenda is (Rawlsian) fundamentally reconstructive, not integrative (Smith, 2002a). In this respect, it shares an important normative connection with the ameliorative aims that Dewey stresses in *Democracy and Education* when he says, “It is the aim of progressive education to take part in correcting unfair privilege and unfair deprivation, not to perpetuate them.”⁴

And further:

The problem is not whether the schools *should* participate in the production of the future society (since they do so anyway) but whether they should do it blindly and irresponsibly or with the maximum possible of courageous intelligence and responsibility.⁵

My prescriptions for an education philosophy logically extend from the morally informed political principles of the Rawlsian framework. Consequently, education has a significant role to play in establishing a fair system of cooperation by eradicating the unfair privilege and unfair deprivation that continues to hinder the formation of a

democratic project in education and a “just” society consistent with Rawls’ ideal. My education philosophy captures the main features of my current assessment of desirable and feasible ends based on a politically contextualized, historically specific conception of society and person. It is an outline that is intended to provoke thought and to guide actions—not a “teacher proof,” how-to manual. Absent are the details about specific curricular elements—topics and texts, for example, such as one might find in a traditional syllabus—but, meaningfully present is the framework within which these and other important decisions are made in the day-to-day operations of schools. This framework guides reason in support of affirming and enabling visions of collective existence of which schooling is a deliberate and vital contributor. Devoid of such a vision within an education philosophy, the resulting curricular aims and reforms are often unimaginative and superficial, even when much thought is otherwise given to the objectives. As Dewey notes:

The business of schooling tends to become a routine empirical affair unless its aims and methods are animated by such a broad and sympathetic survey of its place in contemporary life as it is the business of philosophy to provide.⁶

Suffice it to say, my contribution to this “broad and sympathetic survey” is aided by my use of the “quasi empirical” moral principles that Rawls espouses in his ideal model of justice. (I say ‘quasi-empirical’ because Rawls’ principles of justice are—to some degree—*implicit* in the public culture and have been passed from one generation to the next for centuries in documents and public pronouncements. Thus, they have some basis in *experience*.) These principles provide the moral *guidelines* for a normative, Rawlsian philosophy of education and reflect a use of principles that even Dewey might

approve—with one stipulation: that the principles are understood to find their truest expression in the *actions* of those who subscribe to them.

The most important point to bear in mind about the aims of the moral principles in the prescriptive project is that they are intended to *guide actions directed at dismantling systems of social stratification and ascriptive citizenship* in the interest of equal dignity and equal citizenship. An “educative experience”—in this context—is one that develops young citizens’ skills, capacities, and sensibilities, for agency; it prepares them to be “self-authenticating sources of valid claims” (Rawls, 1996) against the continuing circumscription of the democratic project (Smith, 2002a). It encourages students to exercise citizenship rights by, primarily, learning to protect and advance them; learning to *influence* decisions on constitutional essentials and matters of basic justice means learning to impact the decisions that structure their (nonideal) lives.

II. Dispositions as “Liberating Powers” in the Project of Reconstruction

[A] Preliminaries

Before discussing the dispositions that are advocated in the prescriptive project, there are six noteworthy features of Rawls’ political liberalism that apply, generally, to my assessment of desirable and feasible ends in education. Principally, the features reflect varying degrees of departure (and continuity) with respect to traditional education philosophies. I make reference to several of these features starting with Dewey’s reconstructive aims, although my purpose is not to recount existing theories but, rather, to articulate my own philosophy of education pursuant to the Rawlsian framework that I have developed.

First, the dispositions encouraged in the prescriptive project are tentative, just as the aims of the reconstruction are tentative. Our ideas about which desirable dispositions should be encouraged often change as a result of increased knowledge and understanding or as a result of changing social conditions. Indeed, the dominant *interpretation* of what is desirable may change as well. For example, *tolerance* is a disposition that is commonly considered a desirable human quality, but it can be interpreted differently under different social circumstances and in different historical periods. The political majority's interpretation of tolerance during Jim Crow segregation clearly did not (does not) suffice in the aftermath of the black civil rights struggles of the mid-twentieth century.

It is pragmatic to take a provisional approach to our notions of desirable dispositions, but we will not be prepared to do so if our ideals are fixed or are presumed to be absolute. The flexible and contingent approach employed within the prescriptive project is to be contrasted with the philosophies of Plato, Aristotle and Kant, for example, each of whom advocated the cultivation of fixed dispositions based on a fixed view of social reality. Rawls' political philosophy recognizes that societies not only change but that they *ought* to change in ways that evidence a greater respect for reasonable pluralism and that promote a broader conception of justice, thus the philosophical shift in his thinking from *A Theory of Justice* (1999b/1971) to *Political Liberalism* (1996). Second, the effort to cultivate dispositions is, perhaps, the most affirmative action directed at the development of character in schools. For reconstructive purposes, selecting dispositions to nurture necessarily means rejecting or filtering other dispositions that are believed to undermine the goals of reconstruction (equal dignity and equal citizenship) as these are understood within the Rawlsian political paradigm. The values and moral judgments that

pertain to this paradigm are contestable—and are likely to be contested—because they reflect choices that further some modes of social organization more than others.

As we design a plan to cultivate “this” rather than “that” disposition, we are using our intellects to make moral decisions. Likewise, education is a program of intellectual and moral development. Therefore, I—like Dewey—reject the separation of dispositions into intellectual and moral categories, contrary to the views expressed by Plato, Aristotle, and Kant, among others. All dispositions have moral implications if *acted* upon. They influence our understanding of the world and, therefore, they inform the perceptions that guide our behavior.

Third, dispositions that require a commitment to metaphysical foundations, such as a belief in God, are not part of the outline of dispositions that I associate with the “public” purposes of the prescriptive project; those that I discuss do not presuppose a comprehensive doctrine that structures the whole of one’s life;⁷ rather, they are derived from within Rawls’ freestanding political liberalism as interpreted and grounded in the Rawlsian framework. The dispositions are understood to be implicit—although, perhaps, dormant—in the *political culture* of our democratic project, but it is also understood that they are interpreted from within comprehensive doctrines (public/private-focus).

Consistent with Rawls’ ideal, the Rawlsian framework distinguishes between reasonable and unreasonable comprehensive doctrines. Simply stated: Reasonable doctrines respect the reciprocity criterion and its implications for political autonomy—unreasonable doctrines do not.

Fourth, the nature of the reconstruction necessitates that education within the prescriptive project not be a function of the existing state. As we saw in Chapter 1, the

existing state may be socially unjust, so *reproducing* it would defeat the purpose of the reconstruction. More importantly, the focus is on democratic *ideals* and *principles* that are critically reflected upon, not simply acknowledged as a matter of habit or culture. The ideals capture nobler social aims that are not tied to the perpetuation of a particular (or fixed) government structure. All governments—including *democratic* ones—are capable of pursuing immoral ends that entail reckless violations of citizens' basic human rights. Joel Spring reminds us of the dangers—however remote—of cultivating dispositions “for purposes of state”:

In Nazi Germany during the 1930s, schools were enlisted in a general campaign to produce citizens who would believe in the racial superiority of the German people, support fascism, and be willing to die at the command of Hitler. Racial biology and fascist political doctrines were taught in the classroom; patriotic parades and singing took place in the school yard. . . . Citizenship training is not necessarily good, nor can it exist apart from a general political philosophy.⁸

The Constitution that anchors our republic is not perfected. It, too, is a project that must be continually revisited, reinterpreted, and revised, as nobler aims require. The idea is to ensure government's legitimacy for the protection and development of its people, not to secure its survival for the conservation and expansion of its authority. Authority itself is subject to critique, in contrast to the aims of some education theories that suggest a reverential relationship to the state, or, at least, a deferential one (Galston, 1991, 2002)—not so in my account, even when the state is *just* or *nearly just* (i.e. well-ordered).

Young citizens are not educated for patriotism such as we find in Aristotle's, Plato's, and Rousseau's public education philosophies. Similarly, the schooling process is not a means for primarily advancing the ends of adults, particularly business elites. This rules out the social efficiency agendas that have become increasingly dominant in American education policy—often intertwined with national economic policy.

Alternatively, children are educated to discover and pursue their *own* ends within an enabling sociopolitical structure that supports reciprocity (a sense of justice) and political autonomy.

Fifth, the desirable powers that education ought to enable within the prescriptive project are those that increase citizens' capacities to recognize the social injustices that undermine their sharing equally in political power within the democratic project. (Social stratification is one such injustice.) The reconstruction project enables citizens' agency, their capacity to elevate the moral aims of their society, by rejecting stratification and embracing a national identity that promotes equal dignity and equal citizenship (Smith, 2002a). Citizens—in effect—choose their public ends (and their means) within a broader context of fairness consistent with Rawls' conception of justice. Protecting the equal liberties of individuals *and groups* increases the scope of substantive justice for all, while antithetical interests are inconsistent with the ideal of public reason.

Finally, in the prescriptive project the opportunities for intellectually stimulating and meaningful education are available to all, without exception. The best that modern schools can offer its citizens is not reserved for philosopher kings, for people embodying the “spirit of the Greeks,” for middle-class and wealthy peoples' children, for “whites only,” or for male members of society. This orientation is a significant and underappreciated departure from the education philosophies of such figures as Socrates, Plato, Aristotle, Kant, Locke, Rousseau, and Jefferson. It is also a departure from *contemporary* versions of these philosophies—and many others—to the extent that their advocates choose not to distance themselves from the hierarchical and ascriptive mandates of these influential thinkers. This means that the prescriptive project is at

variance with the priorities that continue to dominate the schooling agenda in America. Indeed, the continued circumscription of educational opportunity in this country is at odds with Rawls' political philosophy, which does not obstruct access to society's basic resources on the basis of stratification systems or ascriptive moral codes.

[B] The Dispositions

There are two broad categories of dispositions that will guide my discussion in this section: a *capacity for a sense of justice* and a *capacity for a conception of the good*.

Recall that these capacities reflect the two moral powers that citizens need in Rawls' well-ordered society (and in the Rawlsian framework) in order to effectively participate in the democratic project (Rawls, 2001). These capacities are tools of practical reasoning in Rawls' conception of society and person. Other dispositions that I will mention are components of these two—companion powers, of sorts. *Desirable* dispositions are both individually empowering and socially reconstructive. They are directed at securing the general welfare through equal dignity and equal citizenship while repudiating social stratification and ascriptive citizenship as oppressive social conditions that unreasonably abridge liberties and degrade democratic ideals.

1. A Sense of Justice

Rawls defines 'a sense of justice' as follows:

A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation. . . . Given the nature of the political conception as specifying a public basis of justification, a sense of justice also expresses a willingness, if not a desire, to act in relation to others on terms that they also can publicly endorse.⁹

Note that this capacity is expressed as a "sense" of justice. The word 'sense' refers to the judgments that pervade our actions, the intellectual reflections (due reflections) that are to

precede a specific act. The focus is less on the fixation of ideas and behaviorist responses, and more on the social intelligence and the values that guide our moral judgments about the social world. These judgments mediate our social and institutional relations on terms that encourage fairness as suggested in the two principles of justice. The sense of justice underscores the intersubjective perceptions that support broad political and social alliances for justice. The values that sustain such alliances, according to Rawls, include the following: “equal political and civil liberties, fair equality of opportunity, values of economic reciprocity, and the social bases of mutual respect between citizens.”¹⁰ The capacity for a sense of justice enables the formation of the requisite moral judgments that create and sustain just institutions.

Citizens’ sense of justice is reflected, in part, in their *acceptance* of the processes that guide public reason. That is, *public reason* is a necessary companion power for democratic citizenship within Rawls’ framework. It structures the articulation of claims and is a means by which citizens *demonstrate* their civility in the public sphere in ways that reflect reciprocity. Recall that public reason is the reasoning that citizens employ when deciding constitutional essentials and matters of basic justice (influenced, of course, by their comprehensive doctrines). They use its standard to support claims that legally require the state’s coercive powers for enforcement. Public reason is a normative deliberative standard for public inquiry and evidence assessment—the purpose of which is to “make such inquiry free and public, as well as informed and reasonable.”¹¹

There are several skills and dispositions that Rawls includes under the category “sense of justice”: judgment (including burdens of judgment), inference, civility, tolerance, the analysis and use of evidence, and fair-mindedness, for example. Citizens

demonstrate fair-mindedness in public discussions when they are “abiding by the criteria and procedures of commonsense knowledge and accepting the methods and conclusions of science when not controversial.”¹² Admittedly, in the real world it is unclear whether dispute is actually settled by the additional requirement that we employ only “non-controversial” scientific findings. Many people (critical theorists, for example) find little in the “methods and conclusions of science” that is not controversial, so while the value of fair-mindedness is clear, there remains considerable room for debate regarding whether or not it actually manifests in our public deliberations.

A capacity for a sense of justice and the social and political virtues associated with public reason characterize the general competency expectation for democratic participation in the prescriptive project. These features are desirable for reconstructive purposes irrespective of what a citizen’s comprehensive doctrine may be, assuming that it respects Rawls’ reciprocity criterion. In the Rawlsian framework, if citizens lack the ability to work collaboratively and cooperate to a significant degree—forming strong alliances on important public issues—they cannot effectively organize to pursue their interests in *abolishing* social stratification; they are also limited in their ability to *reconstruct* society in the interest of equal dignity and equal citizenship. Absent compromise, citizens cannot hope to build mutually beneficial coalitions across intersecting issues or strengthen their cause among diverse peoples and interests.

Further, public standards for inquiry and evidence suggest that citizens need to develop the power to analyze public information. Specifically, they need to be able to critically engage ideas in written and spoken form (books, articles, and presentations) as well as decipher the messages (and images) transmitted by way of television and

computer mediums such as advertisements, popular culture and “news.” It is also helpful if citizens are able to write and speak sufficiently well so that their ideas are lucid and reasonably accessible to others—including those who may not share their views.

Within the dialectic of public discussion in the nonideal, citizens will also need to be good listeners in the Aristotelian sense. This means that listening becomes an active process, not the passive state that is often associated with traditional (and contemporary) teaching and learning environments (Cuban, 1993; Evans, 2004; Jackson, 1990), or with citizenship education in particular (Giroux, 1980; Tourney-Purta et al, 2001). Active listening involves *thinking* and is as important as organizing our ideas in preparation for public speaking or writing. Thus, our sense of justice in the prescriptive project includes the capacity for “public listening,” the ability to process what a given speaker says—and does not say—regarding matters of basic justice.

Citizens need to practice public listening in order to increase their understanding of the political concerns that others express. By understanding others’ public concerns citizens are better able to link their own circumstances to broader social conditions and to generally increase their “knowledge of the complexities and interconnections of major political issues [of the present] to each other and to issues of the past.”¹³ Public listening is neither defensive nor prejudicial. To the extent that the capacity for a sense of justice is effectively developed, young people are more likely to be intellectually open, critically informed, and prepared to contribute to the task of shaping and directing their government, whether or not they choose this path. My philosophy of education anticipates a maximal role for every citizen wishing to participate as an informed actor in the political processes that shape their lives.

2. *A Sense of the Good*

Citizens' collective interests and their willingness to cooperate form the essence of a capacity for a sense of justice, but this capacity reflects only part of the purpose for which desirable dispositions are nurtured. It must be recognized that a citizen's liberty implies another capacity that is more individualistic and private. A capacity for a conception of *the good* is the other moral capacity that is required of citizens in Rawls' well-ordered society. Rawls defines it as "the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good."¹⁵

A capacity for a conception of the good enables citizens to "express a scheme of final ends and attachments together with a comprehensive doctrine in light of which those elements [final ends and attachments] are interpreted."¹⁶ Private interests—not public—are preeminent in citizens' choices for rational plans, but the social contexts within which they choose is also a factor. Likewise, while it is expected that citizens' comprehensive doctrines will be very influential, it is also expected that their rational plans will acknowledge public values and respect the rights of others. When we assume an overlapping consensus of *reasonable* comprehensive doctrines, this implies that each citizen's rational advantage is tied to others' cooperation.¹⁴

Recall that a person's conception of the good is a flexible perception of desirable ends. It is not predetermined by stratification schemes (or ascriptive codes) that either purport to *reveal* the ends for which people are born or that simply identify societal interests pursuant to which people are "directed" to find their ends, as in Plato's *Republic*. Consistent with Rawls' model, the prescriptive project does not endorse a singular good that is intended to guide peoples' life decisions or for which the state—or business elites,

or anyone else—attempts to steer people. There is no public hierarchy of comprehensive ends for which schools subordinate students' interests in (developing) political autonomy or for which schools serve as virtual gatekeepers.

Further, a conception of the good is understood within a political framework that tempers egoist individualism with the expectation that citizens exhibit sensitivity for the good of others and for the general welfare as a whole. Absent such balancing in the nonideal, egoism may lead some citizens to violate the liberties of others in pursuit of their own self-interests. In addition, educational aims that emphasize individual gratification have a tendency to de-emphasize the social relations needed to sustain reciprocity or to build political communities that are socially reconstructive. Indeed, too much attention given to private interests contributes to social fragmentation and alienation (Dewey, 1964). The capacity for a conception of the good cannot be fully developed absent its companion capacity—a sense of justice.

Rawls employs Kant's imperative principles to clarify the relationship between the two capacities. In so doing, he establishes a clear hierarchy that responds to the confusion of purpose that pits reasonableness (sense of justice) against rationality (conception of the good). Rawls writes:

Kant's categorical imperative procedure subjects an agent's rational and sincere maxim (drawn up in the light of the agent's empirical practical reason) to the reasonable constraints contained in that procedure, and this constrains the agent's conduct by the requirements of pure practical reason. . . . In each case the reasonable has priority over the rational and subordinates it completely. This priority expresses the priority of right; and justice as fairness resembles Kant's view in having this feature.¹⁷

We can understand, then, how the inwardly focused dispositions that are associated with a conception of the good—self-regard, self-mastery, self-confidence (persistence in the

face of opposition), agency (moral courage) and economic independence, for example—can be part of a “thick” conception of democracy that, ideally, protects the substantive rights of all citizens and, in the nonideal, works effectively to eradicate injustice.

Being ‘rational’ within Rawls’ framework implies that citizens understand the values implicit in the political culture. These values reflect the moral judgments that are embodied in the two principles of justice—the public principles that regulate the well-ordered society. In the nonideal, it is especially important to understand and appreciate the extent to which public principles concerning rights and liberties translate into limits on, and possibilities for, personal action. Demonstrating this appreciation necessarily involves using the intellectual powers of judgment and inference—already noted in the discussion of a sense of justice—to critically assess the level of institutional support for rational plans and self-regard. This entails a continuing “will to know” about the changing nature of one’s society and the desire to keep learning in order to make informed decisions over a lifetime about matters affecting one’s good.

Appreciating rationality in schooling means subjecting curricular policy to critical review. Specifically, it means that efforts to “vocalized” education such that it simply fixes ends (rational plans) by channeling young citizens into narrowly conceived career “choices” that limit the flexible readjustment of aims or the transferability of skills have to be rejected (Dewey, 1916). In Rawls’ theory (and in the Rawlsian framework), executing such policies constitutes a violation of the standards for paternal intervention because such actions frustrate the development of political autonomy—a liberty that citizens generally want to expand, not limit, particularly under oppressive conditions.¹⁸

The problems that are of interest to students are important even if teachers or others do not share these interests. Developing a curriculum that is receptive to student input entails, in part, asking them to identify problems of interest and then encouraging them to discover more about the underlying causes than appears at face value. Students can develop their capacity for a conception of the good by becoming comfortable questioning the value of objects and aims, reflecting on social mores, exploring points of intrigue and contradiction in problems, and employing imaginative and divergent thinking in place of unreflective habits. In order for students to execute a project of this type, however, they need to have confidence in their intellectual abilities and confidence in the importance of the problems that they identify. If they believe that their concerns have value, this— alone—may be sufficient to sustain critical inquiry.

Schools can do much more to help students increase their confidence and develop the capacity for *independent* thought and action simply by giving them more support (and space) within the curriculum to think and act. Within the prescriptive project, schools work to inspire young citizens to develop an independent outlook that is distinct from the impositions of authority figures, that is beyond the confines of school knowledge. In this way, schools can offer support, early on, that facilitates the “assured political integrity of *citizens* and their sharing with other citizens equally in the exercise of political power [my emphasis]”¹⁹—i.e. political autonomy.

Both the *sense of justice* and the *conception of the good* are elements of moral character within the political framework of an ideal well-ordered society, but they are *realized* in the nonideal to the extent that our *actions* evidence a reasonable balance between self-regard and “other regard.” Practical reasoning aimed at creating systems

that promote equal dignity and equal citizenship reflect both forms of regard. Such actions are informed by the union of reflective intelligent thought on the problem of social stratification and the execution of plans pursuant to abolishing illiberal and unjust social practices. The linkage of thought and action is famously expressed in Dewey's advocacy of democratic education (Dewey, 1916; 1922).

Fundamentally, both moral capacities presuppose a level of intelligence (individual and social) beyond what appears to be the "zone of proximal development" traditionally encouraged in schools.²⁰ Higher-order thinking can be motivated and sustained by the pursuit of desirable ends, such as improving the social conditions of ordinary experience. The reconstruction project is—itsself—an example of such higher-order processes. It thrives on *action* guided by intelligent thought (based on moral principles) directed at solving problems—which seems to capture the principal point of schooling for Dewey:

The prime need of every person is capacity to think; the power to see problems, to relate facts to them, to use and enjoy ideas. If young [men and women] come from school with this power, all other things may be in time added to [them].²¹

I have thus far outlined the aims and fundamental dispositions that are the focus of the prescriptive project. It remains to consider further the question of methods, the procedures that are designed to achieve the desired educational objectives. In contrast to the more rigid, rule-like methods advocated by scholars such as Kant, my approach provides a *framework* and is more open to contingency, creativity, and improvisation. It is admittedly more risky in some respects, but so too is the entire reconstruction project when compared to the predictability of ascriptive reasoning. I find aspects of Dewey's experiential methodology and Freire's *critical consciousness* focus, instructive.

III. *Methods*

In the Rawlsian framework, action best develops moral dispositions, intelligent inquiry and action directed at solving a relevant problem. Like Dewey and Freire, I focus on the rich subject matter derived from ordinary experience. I combine this focus with a critical reading of contextualized history and an interdisciplinary approach to *knowing* that includes alternative epistemologies (Mills, 1998; Smith, 2002b). This combination appears to provide greater access to the complex lived experiences of people in the nonideal and reveals the multiple dimensions of conflict and social struggle.

Historical readings provide information about public political culture, inter-group conflict, dominant cultural values, and institutional and moral critiques (and celebrations) of government's use of collective power. This approach is quite different from the idea of developing virtue by primarily reading sanitized accounts of "key" (white male) figures' lives—often suppressing memory to serve myth as suggested by political theorist

William Galston's prescriptions:

The method must be a pedagogy that is far more rhetorical than rational. For example, rigorous historical research will almost certainly vindicate complex "revisionist" accounts of key figures in American history. Civic education, however, requires a nobler, moralizing history: a pantheon of heroes who confer legitimacy on central institutions and are worthy of emulation.²²

An essential feature of schooling in the prescriptive project is the extent to which it makes use of ordinary experience in the lives of students. To the extent that book-centered methods trivialize learning through experience or appear to privilege a particular set of cultural experiences (Hirsch, 1987), their use is minimized. William Bennett, former Secretary of Education, suggests what appears to be a predominately book-centered approach to moral education. Regarding virtues, he writes:

But because children are not born with this knowledge, they need to learn what these virtues are. We can help them to gain a grasp and appreciation for these traits by giving them material to read. . . . There are many wonderful stories about virtue and vice with which children should be familiar.²³

My reservations about both Galston's and Bennett's methodologies for building moral character should not be interpreted as a rejection of biographies and narratives in the development of desirable dispositions. Rather, my point is that the cultivation of desirable dispositions in the reconstructive project ought to be strongly linked to *action*, such as participation in citizens' groups, volunteer programs, and community organizing efforts. These actions ought to further reconstructive aims that are intended to improve the lives and communities of young citizens—many of whom live under conditions of generational injustice, even with respect to the meager educational opportunities afforded to them. It is imperative that *their lived experiences* and aspirations become the central content of schooling.

Methods that are predominately focused on second-hand stories of virtue that are found in books often further myths, distorted history (exclusionary), and political correctness agendas that require the filtering of "controversial" issues. They tend to detail experiences that are—to many students—uninteresting or remote. Perhaps biographies, narratives, and dramas that address the conflicts and struggles that pertain to the tortuous and torturous development of citizenship could be instructive for moral development in the nonideal. This is something that open-minded teachers could decide in conjunction with their students—giving ample consideration to the particularities of lived experience.

The relative absence of a *practice* component in many of the methodologies employed for moral development suggests that morality (in the political context) can be separated from intelligent action and, therefore, from socially responsive engagement.

Second-hand knowledge has its place, but, without much more, it may send young citizens the message that their own lives are not worthy of sustained inquiry. It may condition them to believe that a passive, *vicarious* approach to developing moral capacities is desirable and sufficiently instructive—a dangerously erroneous conclusion in the nonideal. For critics such as Dewey, and others, the implications of traditional methods for developing moral dispositions are inconsistent with intelligent self-direction:

Moral education is inevitably reduced to some kind of catechetical instruction, or lessons about morals. Lessons ‘about morals’ signify as [a] matter of course lessons in what other people think about virtues and duties. . . . As a matter of fact direct instruction in morals has been effective only in social groups where it was a part of the authoritative control of the many by the few. Not the teaching as such but the reinforcement of it by the whole regime of which it was an incident made it effective. To attempt to get similar results from lessons about morals in a democratic society is to rely upon sentimental magic.²⁴

In my estimation, student passivity enhances the power of unreflective and sentimental forms of persuasion that are resisted and discouraged in the reconstructive project. Both types of persuasion tend to work against students’ use of critical thinking and their pursuit of intelligent self-direction, but these capacities are desirable for people seeking to govern themselves in the nonideal.

In addition to the subject matter focus on ordinary experience, the prescriptive project’s methodology combines verbal instruction with active listening and dialectical discussions. These dialogues target “values dilemmas” on matters of basic justice and are guided by public reason. The Freirean impulse encourages collective participation for political empowerment and anchors Dewey’s emphasis on individual *practice* and evolutionary change. Further, Freire’s appreciation for the pervasive presence of *evil* in the world gives *practice* a morally reconstructive and explicitly *political* problem-solving

character more so than I would associate with Dewey's approach, although Dewey certainly recognizes the need for distributive justice.

Freire also provides the kind of balance for Dewey that is suggested in the concerns Michael Apple raises about student-centered education: "Indeed, we need to be extremely careful that such educational strategies are not pedagogies of individual adaptation rather than pedagogies of social transformation."²⁵ The methods that I have indicated combine theoretical and practical reasoning guided by principles of justice. The curriculum highlights the following: intellectual and moral skills (no dualisms), historical and contemporary subject matter linked to experience (particularly, the problems of injustice), student-centered and public-centered interests in political autonomy, and deliberative processes guided by a public reason dialectic, all within a Rawlsian context that reflects inclusive, interdisciplinary reflections on the continuing obstructions to freedom. This learning environment is *educative* in at least three additional respects: it is nurturing; it is intellectually disciplined; and it is pedagogically liberating.

First, the environment is *nurturing* because it validates the lived experiences of students individually and as members of pluralistic communities. This validation furthers the social bases of self-respect within the basic structure. It also facilitates reciprocity between teacher and student, and between students. It does this by making students' experiences and their diverse communities the "stuff of education," by making these realities legitimate areas for exploration and knowledge acquisition, rather than relying solely on textbooks and other forms of received knowledge.

I should reiterate, however, that some obvious forms of received knowledge can be quite educative for purposes of the reconstruction; for example, the Constitution, case

law, legislative decisions and non-governmental public materials are reflective of the social mores and tendencies within the culture. However, this information is not simply transmitted to students as authoritative; rather, it is critically considered (and balanced) in relation to alternative epistemologies, specifically lived experiences. As Dewey perceptively points out, “Ordinary experience does not receive the enrichment which it should; it is not fertilized by school learning. And the attitudes which spring from getting used to and accepting half understood and ill-digested material weaken vigor and efficiency of thought.”²⁶

The focus on ordinary experience supports students’ access to contextualized knowledge within the school curriculum. To the extent that political and social inequalities create obstructions to experiencing full citizenship within a given community, students are nurtured and guided in developing the confidence needed to confront the contradictions. That is, the circumstances under which students learn are more favorable for comparing and contrasting the democratic ideals that are implicit in the public culture with their lived experiences and future aspirations.

Within the reconstructive project, students are also guided in considering alternatives approaches to problem solving. The problem-solving approach for the conditions of ordinary experience requires a genuine belief in the possibility that students can impact the conditions of their lives and can do so in ways that are personally satisfying and socially reconstructive. The reconstructive project is—itsself—an exercise in possibility, one that structures “the familiar” so that it is connected to similar causes that span generations of (unfamiliar) lived experience. Helping students to see themselves as actors in the drama of their own lives, and focusing on societal issues that are integral

to this drama, are methods that both Dewey and Freire advocate, albeit for different reasons.

Freire adds certain elements to Dewey's assessment of the value of experience, particularly the elements of historical specificity and flux that are the foundation for what Freire refers to as problem-posing education: "Problem-posing education affirms men and women as beings in the process of becoming—as unfinished, uncompleted beings in and with a likewise unfinished reality."²⁷ And further,

In problem-posing education, people develop their power to perceive critically the way they exist in the world with which and in which they find themselves; they come to see the world not as a static reality, but as a reality in process, in transformation.²⁸

As students benefit from learning more about themselves and others within a process that nurtures respect for difference and that welcomes possibility, they develop a sense of their own worth and a sense of the value of their interpretations of the social world through ordinary experience. These experiences encourage students' self-direction in the nonideal and, therefore, assist in the development of the two moral powers.

Second, the learning environment is *intellectually disciplined* because it consistently incorporates dialectically reflective practices. It employs these practices to encourage critical thinking about value conflicts and moral judgments concerning matters of basic justice—social conditions that often limit the life chances of citizens collectively and individually. The deliberative process of public reason is at the center of reflective practice and is an indispensable part of the political grammar of Rawls' (and Rawlsian) society. Dialogue structured in a form that is dialectical presents students with a flexible standard for critically reflecting on (and demystifying) government's use of coercive power. Clearly, public reason does not impose the type of discipline that is associated

with autocratic school cultures that require strict obedience to external directives and that emphasize passivity for social control (Butts, 1980). This is because the moral principles that structure school culture within the prescriptive project support political autonomy through intelligent self-direction.

Further, the discipline that is required for sustained critical inquiry, deliberation, and informed action is self-regarding discipline, not obedience. It is the kind of discipline that assists students in reasoning through “real world” applications of the reciprocity criterion in multiple contexts. Students develop and practice intellectual discipline by reflecting at length on the social problems that exist in their society and by structuring (or contributing to) projects that address them; they become more adept at recognizing the dehumanizing patterns that sustain social injustice and undermine freedom. The ‘discipline’ that I refer to draws, primarily, on students’ interests in improving their society—and improving their prospects within it—along with their willingness to exert their energies to realize democratic change. Success requires their openness and commitment in the vital tradition of social reconstruction. The discipline stems from their desire to live as free beings.

The third and final educative aspect of the learning environment within the Rawlsian framework is its *liberating pedagogy* (Giroux, 1988; hooks, 1994; Jackson, 1986). Its orientation creates a climate in which controversial issues and social circumstances that crush human aspirations are openly explored. It consciously seeks to empower students by strengthening their reasoning power and their skills of demystification within the realm of their own lives. It reconstructs the curriculum to make meaningful connections between school knowledge and “real world” issues

(interdependency) so not to be wholly reliant on external dictates about relevant knowledge (curriculum compressed into standardized tests).

The anguish that may arise from the contradictions between what students want to understand (Torney-Purta et al, 2001) and what the school system requires them to know can be fleshed out through a pedagogical approach that invites the teacher to be human (Dewey, 1922; Giroux, 1988)—to appreciate, for example, how the very act of teaching and learning is heavy with meaning about citizenship status. It means exploring with students how citizenship is degraded in the nonideal when the interests of power prevail and marginalize democratic processes that benefit the masses, and how some citizens are deprived more than others of the fair value of their political liberties when their education system denies them a level playing field.²⁹ Few would deny that moral judgments are always involved in instruction, but—even when confronted with obvious social pathologies such as American slavery—mainstream professionalism, or traditional teaching and learning theories, encourage teachers to be distant and authoritative conveyers of content, to be personally and morally unaffected by the tragedies of human history (Freire, 2000). This orientation is reproductive, not reconstructive.

Neutral pedagogy is anything but ‘neutral’ because its uncritical consumption of information is consistent with the objectification of knowledge products and the submission to their purported sanctity (Giroux, 1988). A neutral curriculum translates into a “business as usual” philosophy within a power asymmetry that accommodates the epistemic privilege and the exclusionary assumptions that often underlie officially-sanctioned knowledge (Apple, 1999). It ignores, for example, how a *universal* claim tends to belie its particularistic frame of reference (homogeneity at the inquiry stage), and

how insular communities of scholars produce knowledge that tends to silence the voices and experiences of marginalized and oppressed groups (homogeneity at the production stage) (Mills, 1998; West, 1993). *Neutrality* objectifies human beings, ignores pervasive assaults on their dignity, and gives a subtle nod to the processes that legitimize domination. In the nonideal, objectivity (lack of personal involvement) is not presumed to govern the *inquiry* and production stages of knowledge formation because reasoning is understood to be a reflective process that is based on our choice of moral principles and is effectuated by the engagement of our two moral powers, one of which embodies our self-interest. Self-interest and complete ‘objectivity’ are mutually exclusive.

We cannot wholly separate the situated nature of our existence from our deliberations about matters of basic justice, particularly distributive justice. In fact, this kind of compartmentalization of interests is undesirable because the reconstructive project seeks the removal of privilege and caste-like modes of organization (Ogbu, 1994). Neutrality in instruction often sacrifices the critical lens that humanistic teachers would otherwise bring to the problem-solving process, and unwisely downplays the notion that everyone has a stake in public matters because none are presumed to be indifferent to their own good (Rawls, 1996). In a dialectically engaging discussion of interests in the real world using public reason, there is little that is compelling or convincing about the transmission of second-hand knowledge that purports to be “unadulterated by interpretation or bias.”³⁰ What does it mean to create or consume knowledge without interpretation? Where do the *burdens of judgment* come into play?

Forms of inquiry and knowledge production that presuppose a neutral stance are simply unhelpful in the nonideal. The Rawlsian framework employs normative and

descriptive analyses to explicitly further moral purposes favorable to the expanding political autonomy of persons and groups. Social critique and the discussion of “controversial” subjects are central to making sense of our experiences in the nonideal and to seeking alternative modes of living that support democratic principles. *Liberating* instruction makes its purposes open to review and critique, as they should be. None are required to *internalize* the aims of the reconstruction but all are entitled to receive an education that enables them to adequately assess its merits.

Until such time as the conditions under which we produce school knowledge no longer constitute an impediment to (some) citizens’ realization of a just society (Mills, 1998), the formation of a democratic project in education is subverted. This impediment to democratic progress creates an unavoidable area for critical classroom discussion and reflection in the nonideal; yet the politicization of knowledge does not imply that teachers are to indoctrinate students. Such objectives would be self-defeating because reflective intelligence and agency are highly desirable in the prescriptive project. What it means is that teachers must develop their capacity—along with that of their students—to entertain social agendas and moral ambiguities in the relationship between citizenship and fair equality of opportunity. It means that they should pursue this critical line of thinking to the many controversial spaces where neutrality cannot venture. Similarly, ‘objectivity’—by definition, an indifference to one’s good (absence of self-interested reasoning)—is a political posture that clearly undermines the critical development of contextualized analyses (the view from nowhere?) while mystifying “the given,” leaving it undisturbed.

Henry Giroux elaborates:

To separate values from facts or social inquiry from ethical considerations is pointless. . . . The notion that theory, facts, and inquiry can be objectively

determined [lack of self-interest] and used falls prey to a set of values that are both conservative and mystifying in their political orientation.³¹

Joe Kincheloe shares Giroux's skepticism—registering his reservations by challenging and expanding traditional notions of epistemic legitimacy, and advocating ways of knowing that acknowledge particularity, contextuality, discontinuity, and conflict:

Critical postmodern teachers understand that knowledge is not just created in the researcher's office or in the professor's study but in the consciousness produced in thinking, discussion, writing, argument, or conversation. It is created when teachers and students confront a contradiction, when students encounter a dangerous memory, when teacher-presented information collides with student experience, or when student-presented information collides with teacher experience.³²

Where there is neutrality there is little room for exploring conflict, difference, moral ambiguity and problem solving about matters of basic justice, and each of these is a necessary undertaking in the reconstructive project. Further, schooling in the context of nurture, discipline, and Freirean humanizing instruction is a project that *expands* democratic value commitments, expands the democratic project, and makes compulsory schools a rational undertaking within the aims of reconstruction. For reasons already discussed, the logical *quid pro quo* for schooling in the nonideal—developing collective human potential and strengthening *political* autonomy—is forfeited in our system of sorting, tracking and arbitrary differentiation, often under conditions that are more autocratic than democratic.³³ It is apparent that the potential for humanizing education in its most basic form, as reflected in the affirming insight provided in, educator, P. David Pearson's remarks, is lacking and is too easily overlooked in the routine of government schooling objectives:

Children are who they are. They know what they know. They bring what they bring [to the learning environment]. Our job is not to wish that students knew more or knew differently. Our job is to turn students' knowledge and the diversity

of knowledge we encounter into a curricular strength rather than an instructional inconvenience. We can do that only if we hold high expectations for all students, convey great respect for the knowledge and culture they bring to the classroom, and offer lots of support in helping them achieve those expectations.³⁴

To conclude: the nature of the reconstructive aims and dispositions necessitated by the critical geography outlined in Chapters 3 and 4, and the critical methods outlined in this chapter, reflect a genuine respect for students and families within the workings of government institutions in the reconstruction. Institutional support is a collective expression of sensitivity and commitment to students' (future) interests in realizing political autonomy under nonideal conditions of injustice, conditions that include the very process of being "educated" in government schools in America. The social critique that runs throughout this chapter and thesis reflects my respect and appreciation for the power of education in shaping citizens' lives . . . for better or worse. Such a far-reaching enterprise warrants the interdisciplinary and critical inquiry that this thesis seeks to provide.

The difference in the orientation of my thesis is that the existential problem has been redefined to place the focus on the moral role of government (and government schooling) within a system of social stratification. The continuing contribution that schools make to the reproduction of the ascriptive status quo has been demystified and rejected. Education's enterprise is challenged to respond to the legitimate and earnest demands for a public clarification of ends (and means). In the Rawlsian framework, effectively responding to this demand is a *moral obligation* that professionals must not ignore despite the fact that it necessitates a continuous and critical encounter with "the given."

A philosophy of education guided by Rawls' principles of justice within a Rawlsian framework can nurture, structure, and liberate the ideal of public reason. It can inspire the development of the two moral powers and do so in the interest of justice-seeking public initiatives within the meaningful contexts of ordinary experience. It is in this context that virtues become vital and transforming. In the sphere of the nonideal, moral judgments have a critical geography within which to work, and the moral capacities that Rawls advocates—the capacity for a sense of justice and the capacity for a conception of the good—can find urgent and critical expression. This is why our educational endeavors ought to reflect the continuous application of cognitive and moral reasoning to the unjust conditions that pervade ordinary experience. It is practical reasoning guided by humanizing moral principles that emanate from a political philosophy that critically describes and analyzes social phenomena so as to give *injustice* its due (Shklar, 1990).

Injustice is the central impediment to developing a morally defensible mode of social life in America. Thus, eradicating injustice is “the first virtue of social institutions” in the nonideal. In the Rawlsian prescriptive project, education takes its place alongside other human endeavors reaffirming the commitment to “take part in correcting unfair privilege and unfair deprivation, not to perpetuate them.”³⁵ In so doing, it is linked to like-minded reconstructive pursuits of the past, present, and future to form a morally rectified and demystifying complement to the collective memories of injustice, marginalized within the basic social institutions of our present society.

In the Rawlsian framework education's “broad and sympathetic survey of its place in contemporary life”³⁶ makes it imperative that its character be socially

reconstructive. It cannot acquiesce in the daily images of unfairness, hiding behind the cloak of neutrality and objectivity. It cannot turn a “blind eye” to the many generations in which schooling has supported the irrationality of government, has served its purposes by exclusion and by the selective development of human potential. It is not ‘education’ if it is not part of the improvement of the *human condition*. When it ascribes, and denies, and looks the other way, it is “something else.” The injustice of gross inequalities cannot be glossed over in the babble of achievement mandates and professionalism—unreflective loyalty to established practices and familiar ways of doing business. On this point Judith Shklar writes:

Most injustices occur continuously within the framework of an established polity with an operative system of law, in normal times. Often it is the very people who are supposed to prevent injustice who, in their official capacity, commit the gravest acts of injustice, without much protest from the citizenry.³⁷

A philosophy of education within a Rawlsian framework presents us with a transparent, reasonable, and rational basis for schooling in America. It connects the pride in being *who we are* as members of pluralistic communities with particular interests, to *what we ought to be* as a just polity. Such a philosophy is education’s vital contribution to fairness. It challenges the generational irrationality of ascriptive governance and the immoral translation of ignoble aims to the initiation of the young. It informs practical reasoning through principled theoretical reasoning. It contributes to an alternative project for moral clarity and intellectual development that champions equal dignity and equal citizenship. Where we succeed in this humanizing project, there we will find that “government schooling” is, indeed, synonymous with “public education,” and that learning is *finally* its own reward.

CONCLUSION

A TENSION IN THE MIND

And here we are, at the center of the arc, trapped in the gaudiest, most valuable, and most improbable water wheel the world has ever seen. Everything now, we must assume, is in our hands; we have no right to assume otherwise.

----*James Baldwin*

We need to pledge ourselves to engage anew and with renewed faith in the greatest of all battles and in the cause of human liberation, to the end that all human beings may lead the life that is alone worthy of being entitled wholly human.

----*John Dewey*

A socially stratified state fails to meet the standard for liberal legitimacy due to the irrationality and social injustice of its basic structure. America is a socially stratified state with a history of pursuing ascriptive social policies. Its compulsory schooling system often buttresses and rationalizes its structure, but such a system is detrimental to the development of critical rationality and autonomy, particularly with respect to those least-advantaged under existing stratification schemes. Such a system cannot be structured to champion equal dignity and equal citizenship, cannot sincerely commit itself to preparing its young for self-government consistent with democratic ideals, and cannot substantively promote these ideals within the culture of its own political enterprise. Its socialization objectives vis-à-vis the larger society tend to be integrative and cohesive, but such purposes are wholly irrational in the context of pervasive, gross inequality and unequal access to the basic resources of society—specifically, to education itself. Such purposes are more likely to be met with contempt and forms of opposition when citizens critically reflect on their good and seek a *fair* system of social organization.

In order to promote an ascriptive agenda, the schooling process within America's stratified state is authoritarian. It cannot be logically consistent with the ideology

structuring the stratified state unless its educational aims largely dismiss or disregard the interests that many students have in realizing the liberties protected by equal citizenship—namely, political autonomy and pluralism. It furthers the maintenance of the ascriptive status quo by contributing to the reproduction of an increasingly passive citizenry and by its emotive appeals to unreflective forms of patriotism and utilitarian sacrifice. It contributes to the preparation of citizens for their predetermined, ascriptive, adult roles. Thus, “government schooling” more often perpetuates the interests of government, not the interest of the public. It is not ‘public education.’ Consequently, the Rawlsian framework identifies certain moral antecedents that the state must respect within its basic structure if it is to have a chance of meeting Rawls’ moral standard of liberal legitimacy in its sponsorship of compulsory schooling; absent these antecedents, it cannot provide a morally defensible response to those who contend—as did John Stuart Mill—that government controlled schooling is inherently oppressive and intellectually enervating.

First, the state must substantively commit itself to *eradicating social stratification*. If the state enables, condones, or tolerates social group hierarchies in its distribution of social benefits and burdens in society—as a matter of course—then the state is socially unjust (Rawls, 1996). A compulsory government school system that operates within a socially unjust state is more likely to ignore the moral content of the political order. It is more likely to leave unchallenged the unequal distribution of benefits and burdens—group-ascriptive privilege and denial—that is built into its conception of citizenship. The compulsory integration of the young into such unjust social arrangements is a clear indication that the state’s use of its coercive powers violates Rawls’ idea of fundamental

fairness. Therefore, if the state enables, condones, or tolerates social group hierarchies in its distribution of benefits and burdens in society—as a matter of course, in educational opportunities, for example—then the state’s coercive powers are used (or withheld) in a manner that violates Rawls’ basic principles of justice. Such use of coercive power is rejected in the Rawlsian reconstruction, particularly in its prescriptive project in education.

Second, the state’s policies must evidence *substantive beneficence*. If the state’s education policies fail to evidence substantive beneficence, then the state is more likely to routinely and callously disregard the interests of many of its citizens. Unprotected interests—in civil rights, for example—may fall prey to dominant power interests within the state (Walzer, 1971). These dominant interests may take advantage of this lack of government protection and structure school knowledge in ways that rationalize, transmit, and reproduce a view of social reality that favors the perpetuation of elite privilege (Apple, 2003; 2001). Such “packaging” of information may adversely affect how subordinated young citizens perceive themselves vis-à-vis the larger society and how they interpret their lesser prospects for advancement within it (Moody-Adams, 1997). The compulsory schooling process may then degenerate into little more than “a convenient tool of the existing nationalistic and economic regimes,”¹ as Dewey suggests, and, necessarily, become a narrowly conceived ideological tool (Kickbusch, 1987). In order to be successful, this process must convince significant numbers of its impressionable young citizens to accept—without critical examination—their subordinate (or dominant) position in a society ruled by the few (Parenti, 1980).

Notwithstanding *government's* interests, its implicit requests that some of its members accept subordination is irrational and is repugnant to young citizens' fundamental interests—and the interests of their pluralistic communities—in equality and liberty. “For surely,” as Rawls maintains, “a rational person is not indifferent to things that significantly affect [her] good; and supposing that [s]he develops some attitude toward them, [s]he acquires either a new attachment or a new aversion.”² An ascriptive, compulsory process violates the fundamental moral commitment to liberty and fair equality of opportunity, and it abdicates the state's responsibility for securing these social benefits for all on an equal basis. Its neglect of some citizens' interests within its compulsory schooling process evidences an illegitimate use of coercive powers and a failure to provide *equal protection* for its citizens—the finding in *Brown I*. Thus, if the state's education policies fail to evidence substantive *beneficence*, then the state's coercive power is used (or withheld) in a manner that violates Rawls' basic principles of justice. Such use of coercive power is rejected in the Rawlsian reconstruction, particularly in its prescriptive project in education.

Finally, the state must respect students' interest in *political autonomy and pluralism*. If the state emphasizes conformity and social cohesion in the context of social stratification (and ascriptive citizenship) then its schooling process is likely to undermine the development of political autonomy and pluralistic conceptions of the good. If the schooling process undermines political autonomy, it discourages serious consideration of subject matter pertaining to students' material conditions and discourages critically independent thought. If it undermines pluralism, it enables the suppression of dissent and

alternative views of sociopolitical organization. In both instances, this means that the state schooling process imposes its own conception of the good on its students.

Under conditions of social stratification, the state's schooling process is likely to reflect a dominant ideology that is consistent with a functionalist sociological model. Pursuant to this model, society is theorized as a collection of smoothly operating, interdependent parts that are free from conflict and deep division. Under conditions of stratification, however, it is more likely that prolonged *conflict* within the state (and within civil society) more accurately reflects its social dynamics, and the injustice underlying these conflicts may appeal more forcefully to the minds of students as their developing rationality becomes embedded in their diverse lived experiences (Apple, 1971; hooks, 1994). The more aggressively the state imposes its will, the more disrespectful it is of political autonomy and reasonable pluralism as defined in Rawls' theory and the less committed it is to developing the critical rationality of young citizens for democratic citizenship during their formative years.

If the schooling process obstructs the development of rationality, then the state limits the life choices available to students and, thus, denies them equality of opportunity to foster and pursue their conceptions of the good on their own terms. This violates Rawls' two principles of justice, undermines primary goods, and dismisses two additional features of his *political* liberalism: its restriction of the state's powers to *public* matters and its moral standards for the state's paternalism. Recall that Rawls' conception of paternalism creates an obligation on the part of government to make decisions pursuant to the two principles of justice and to protect students' future interests in political autonomy (including distributive justice). It does not provide government a license to pursue its

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conformist ideals or its ascriptive judgments about desirable ends. Such paternalism can only be effectuated by coercive means in violation of the fundamental idea of reasonable pluralism.³ Rawls writes:

Individuals find their good in different ways, and many things may be good for one person that would not be good for another. . . . In a well-ordered society, the plans of life of individuals are different in the sense that these plans give prominence to different aims, and persons are left free to determine their good, the view of others being counted as merely advisory.⁴

Therefore, if the state emphasizes conformity and social cohesion in the context of social stratification and ascriptive citizenship, it again violates Rawls's political conception of justice at its very foundations of liberty, equality, and tolerance. It suppresses reasonable pluralism, which is, according to Rawls, a natural outgrowth of the use of reason over time, assuming the absence of oppressive state power.⁵ It also undermines the development of political autonomy and is, therefore, incapable of insuring the "political integrity of citizens and their sharing with other citizens equally in the exercise of political power."⁶ These breeches of Rawls' social contract are significant, and they further indicate that the government's schooling system fails miserably in upholding what is widely perceived to be its primary obligation: nurturing students' capacities for self-governing citizenship pursuant to constitutional principles.

Consider Justice Jackson's majority opinion in the 1943 case of *West Virginia State Board of Education v. Barnett*, which struck down a resolution requiring students and teachers to salute the flag in all school activities, as a form of patriotism:

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. . . . That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.⁷

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We conclude that if the state emphasizes conformity and social cohesion in the context of social stratification and ascriptive citizenship, then its coercive power is used (or withheld) in a manner that violates Rawls' basic principles of justice in multiple ways. Such use of coercive power is rejected in the Rawlsian reconstruction, particularly in its prescriptive project in education.

Thus we see that the Rawlsian framework has three basic moral antecedents that structure its prescriptive project in education. The state must respect these antecedents within its basic structure if it is to have a chance of meeting Rawls' moral standard for liberal legitimacy, in the nonideal, in sponsoring compulsory schooling. It must eradicate social stratification and ascriptive citizenship (or, at least, substantively commit itself to doing so); it must demonstrate beneficence, and it must provide substantive support for reasonable pluralism and political autonomy. These obligations have specific implications for theoretical and practical reasoning in education and must be among schooling's central organizing principles—as they are in the prescriptive project. Otherwise, the state cannot provide a morally defensible response to those—such as Mill—who contend that government schooling is inherently oppressive and intellectually enervating.

In the Interest of Fairness

The obvious harm to life chances that results from unequal distributions of basic educational opportunities has only increased in the decades since *Brown* and has been ventilated by many scholars and activist since that landmark decision was rendered. It is obvious to many that *Brown*'s constitutional mandate did more than repudiate state-sponsored segregated schooling; it also implied that any hope of achieving equality of

educational opportunity in America is inconceivable absent a program that mingles discriminated children with those enjoying full citizenship status. (Black schools and *substantive equality of opportunity* in education are, apparently, mutually exclusive.) In this context, affirmative action and other add-on compensatory measures are only a first step in making historically unjust social institutions—government schools, specifically—accountable for the immense and long-standing rights violations that they once openly championed. History suggests that even these limited measures require a far-reaching commitment to morally competent judicial monitoring, in stark contrast what was made available to the plaintiffs in *Brown II* (the remedial phase of *Brown I*), and to many plaintiffs thereafter (Bell, 2001).

Contemporary, mainstream, education policy appears to be seriously out of touch with the ideals and democratic commitments that underlie *Brown I* and that animate theories of social justice (Boyd, 2001). The education establishment and the public at large ought to reject the deintellectualization of education policy because it facilitates the “disconnect” between education and any serious notion of democratic ideals, be they social or political (Boyd & Meyer, 2001). Bridging this disconnect means transcending the limits of insular communities, where possibility is confined within the walls of technocratic jargon. It means resisting efforts to reduce education discourse to unquestioned, unchallenged, insider practices that shun theory and interdisciplinary approaches as “ideological,” “political,” “utopian,” and “irrelevant.” It means problematizing the moral content of political expediencies—forced segregation and integration, for example—that tolerate myths and prejudices that confuse systemic oppression with cognitive deficiency or cultural deprivation.

The fragmentation of educational theory from social justice and citizenship depoliticizes the education debate. How do we develop an educated citizenry for self-government given a policy orientation that fails to articulate precisely how its vision of government is consistent with such aspirations as political autonomy, or that fails to clarify what its current policies are designed to advance relative to, say, *Brown*? The current administration's *Leave No Child Behind* legislation appears to leave much room for interpretation regarding where *we* are going and how *we* are going to get there. Absent clearly defined public purposes that meet the standards of public reason, virtually any direction has merit—including repetitive, mindless policy cycles that point the finger at poor children and their families, suggesting that “they” present “government” with social problems that strain the capacity of the system. How can the capacity of America's constitutional project be *strained* when reform efforts champion equal citizenship and expand dignity? If this is probable, what are the aims of the project?

Fundamentally, policy is political because it involves the management of conflicting interests. Education policy is highly political—not neutral or objective—particularly to those whose interests are not being served. Indeed, as Parenti notes, “The decisions made by government are called ‘policy decisions.’ One characteristic of policy decisions is that they are seldom, if ever, neutral. They almost always benefit some interests more than others, entailing social costs that are rarely equally distributed.”⁸ From the perspective of the disfavored citizens whose educational opportunities continue to reflect a pre-*Brown* policy orientation, neutrality simply disguises *business as usual* in schooling. It was unacceptable then, and it continues to be unacceptable today.

John Ogbu, the late anthropologist and education scholar who for more than thirty years conducted research to study the so-called “minority achievement gap” in schooling in America (and internationally), listed racial stratification as “the” fundamental factor undermining the academic progress of black students and noted several significant manifestations of it. His findings are particularly relevant for my discussion because they link the sociopolitical conditions of schooling in American society to the historically ascriptive citizenship patterns that I introduced in Chapter 1. These patterns continue to manifest themselves within our basic institutions—in budgetary decisions, social programs, and laws, for example. Ogbu identifies an empirical nexus between race and academic achievement that is similar, in some respects, to the research findings social scientists provided the Court in *Brown*.

The research presented in *Brown* documented the harmful effects of racial segregation on black—not white—academic achievement. The Court concurred with the findings. Ogbu’s research provides a more complex link to these findings, and to the *Brown* decision, that highlights the notion of a *social bases of self respect* (mentioned in connection with Moody-Adams’ discussion of black personhood and Rawls’ characterization of the most important primary good among the five contained in his list). Ogbu’s findings place race and respect at the center of the perennial and controversial debate about minority academic achievement, or the lack thereof, in mainstream education discourse He writes:

There are three ways in which racial stratification enters into and adversely affects black education. One is through societal educational policies and practices. The societal channel includes denying blacks equal access to education through unequal resources, segregation, and the like—common phenomena in the past [and present, under *de facto* segregation]. This ensures that blacks do not receive equal education in terms of quantity and quality. . . . The second way that racial

stratification enters into black education lies in the way black students are perceived and treated in the specific schools they attend. These treatments include tracking, testing and misclassification, representation or nonrepresentation in textbooks and curriculum. Cultural, linguistic, and intellectual denigration is also part of the problem. . . . [Third], racial stratification also enters into and adversely affects black education through black people[s'] own perceptions and responses to their schooling in the context of their overall experience of racial subordination. The factors involved in this, third, process [are] what I call *community forces*.⁹

If the state is incapable of operating pursuant to democratic values and principles then its direct *control* over the schooling process—over curriculum standards, teacher certification, textbooks, expenditures, and other areas directly affecting the service provided in schools—ought to be significantly circumscribed, if not eliminated. Perhaps its regulatory role would continue to be needed for the procurement of public funds—but even this role would be scrutinized through the Court's (and the public's) continuous oversight to insure civil rights compliance. These measures would be necessary because in Rawls' framework, the state's legitimate purpose is to protect the political liberties of citizens, their interest in equal citizenship, and the public's interest in justice as fairness. Some argue that even if the state "is" capable of promoting a morally defensible education policy under a reconstructed vision of society, the argument for greater experimentation in school governance remains viable (Spring, 1994; Strike, 1991). I cannot reject this position. The dangers of excessive power and the many opportunities for abuse are replete in the annals of political organization, and they repeatedly manifest when government involves itself in the schooling of the young. The concerns of John Stuart Mill on this issue are well known and are—for many—no less compelling a century later. He writes:

That the whole or any part of the education of the people should be in State hands, I go as far as anyone in deprecating. All that has been said of the importance of individuality of character [political autonomy, in my discussion] and diversity in

opinions and modes of conduct [can include reasonable pluralism here] involves, as of the same unspeakable importance, diversity of education.¹⁰

Experimentation in the structuring of education should not, however, be interpreted to mean wasteful bureaucratic expenditures, fiscal mismanagement, and market gimmicks for political advantage. The overriding concern of policymakers within the Rawlsian framework is the promotion of fair equality of opportunity for all within the basic institutions of society, not the establishment of “education lotteries” for the lucky few and not the logistics of busing students “here and there” in search of decent schools. Those advocating experimentation in education should also support those who urge that policymakers concentrate their efforts on making high quality education a reality for all, on an equal basis—wherever people live, whatever their race or economic position. The social hierarchy in American society is politically irrational and obstructive to democratic strivings. “Experimentation” that does not address this fundamental problem is, indeed, part of the problem, not part of the solution. Building a just political community requires *meaningful* bonds of goodwill, not novelty or simplistic calls for cohesion.

Removing injustice sometimes requires government coercion such as the use of federal troops to insure that children can safely enter a, previously, segregated school, but the psychology that actually binds citizens in Rawls’ theory cannot be forced. This moral psychology, according to Rawls, has its basis in a shared sense of justice among citizens, in their support for each other’s right to self-determination, and in their mutual recognition that their society is fair and works to protect the substantive freedoms of all of its members. Absent these basic democratic perceptions and sensibilities, simply sharing a physical space—or being forced to share a physical space in order to receive

adequate government services—is not going to reduce social tensions or increase national unity:

The justice or injustice of society's arrangements and [peoples'] beliefs about these questions profoundly influence the social feelings; to a large extent they determine how we regard another's accepting or rejecting an institution; or his/her attempt to reform or defend it.¹¹

To conclude: education policy ought to have a moral basis consistent with the Rawls' ideal model within a Rawlsian framework. It must not be irrational, unreasonable, or coercive from the point of view of those whose rational plans of life require the realization of equal liberty and justice for all. Citizens ought to hold policymakers and educationists to a high standard of accountability within the public forum. In the nonideal, their policies and practices ought to meet Rawls' basic standard for public justification: public reason. This is because education policy is public policy and public policy measures have a particular function within the reconstructive project: to redefine and reconstruct the basic institutions in society in ways that make social stratification intolerable and ascriptive privileges obsolete.

Schooling in the prescriptive project is, in part, a process by which citizens become aware of the Rawlsian objectives and critically assess them within institutional structures and lived experiences. The democratization of education—whether or not the state is in control—requires that school governance be altered in several ways to promote political autonomy and to reflect public reason: increasing local communities' influence on decision-making, supporting the reorganization of school boards for racial and cultural diversity, and emphasizing pluralism and equal opportunity in the appointment of superintendents, principals, teachers, education faculty, and other service providers.

As a matter of policy, the state's role in regulating education ought to reflect democratic ideals and, therefore, ought to champion the latter of the two alternatives that have guided considerations about appropriate educational aims from, at least, the time of Plato:

Should the educated [person] adjust to society, should [s/he] accept the social order as it is, or should [s/he] attempt to improve the society in which [s/he] lives? Another way of stating this question is in this form[:] should the school develop young people to fit into the present society as it is or does the school have a revolutionary mission to develop young people who will seek to improve the society?¹²

The decision to select the latter of the two choices (to improve society) can be implied from the social justice agenda advocated in Rawls' political philosophy. This stance is *historicized* and *contextualized* in the Rawlsian framework such that it aims to eliminate social stratification and ascriptive citizenship as *prerequisites* to realizing a morally defensible political society consistent with Rawls' ideal model.

The social intelligence that is evidenced in the capacity for a sense of justice can combine with moral agency to seize the *present* opportunities for reconstructing the ascriptive state. Schools that are structured pursuant to the reconstruction are guided by a philosophy of education that is committed to social justice, that demystifies institutional practices, and that supports the social bases of self-respect—approximating Rawls' standard of social excellence for the basic structure. Clearly, the *social union of social unions* that reflects overarching bonds of nonascriptive unity is nonexistent in our history. My thesis supports the notion that a morally defensible basic structure is possible through collective, democratic struggle—through the dismantling of social stratification and ascriptive citizenship systems and through the reconstruction of the basic structure pursuant to the Rawlsian framework. While the success of this project is certainly not

guaranteed, stagnation and further decline are—particularly if apathy and passivity prevail. The fundamental idea is that we take moral responsibility for the political structure of our society.

People make choices even when they do nothing at all. Their choices create material conditions that largely degrade or largely uplift humanity. These choices can be reassessed and revised for purposes of changing material conditions, for better or worse. While the vast majority of Americans shun politics and its processes—appearing generally uninspired and disengaged—another window of opportunity for justice closes on another unremarkable generation. Michael Parenti appears sympathetic to those who have grown weary of government but does not find their estrangement prudent. He writes:

Political life is replete with deceit, corruption, and plunder. Small wonder that many people seek to remove themselves from it. But whether we like it or not, politics and government play a crucial role in determining the conditions of our lives. People can leave political life alone, but it will not leave them alone. They can escape its noise and nonsense but not its effects. One ignores the doings of the state only at one's own risk.¹³

It is prudent for a critical mass of American citizens (and non-citizens) to work to transform our society. It is prudent for them to sufficiently bridge their historic, ascriptive divisions in order to accomplish the extraordinary. Principles that are understood through the lens of social stratification and ascriptive citizenship create *a tension in the mind* powerful enough to translate ideals into material conditions—starting small, leading by example, and forging alliances. A genuine consolidation of wills can meet the challenges facing the reconstruction project. One conspicuous example of the power of ordinary people to positively alter their lives, and alter the priorities of a nation, is reflected in the international impact of the Civil Rights Movement.

We know that it is possible for diverse communities to unite around principles of justice wherever a sufficient number of individuals possess the moral courage and political conviction to renounce immoral systems that enable unfair privilege and unfair deprivation. History offers other examples of ordinary people advancing the cause of freedom and social justice: slave insurrectionists, Underground Railroad participants, abolitionists, dissenters in *Dred Scott*, supporters of the short-lived Reconstruction, proponents of civil rights legislation, Antilynching Movement supporters, dissenters in *Korematsu*, and the majority in *Brown*. Each of these examples reflects a unity of interests: individual and collective, political and moral, state and civil—that furthered equal dignity and equal citizenship to some degree. The highest expression of self-regard and regard for the general welfare is embodied in the struggle for a *just* state. Walzer writes:

There can be no community and no common good without social justice. Political societies cannot survive on evocations of citizenly virtue, responsibility, and fellow feeling. There must also be a commitment in practice to the weaker members. This is a commitment that only the state can make in a universalizing way. . . . A democratic state, rooted in the associational life of civil society, will also be continually active in fostering, subsidizing, and regulating the associations—so as to maintain a fair distribution of welfare and opportunity.¹⁴

If we seek a thick democracy that evidences a level of civilization never before seen in America—one in which freedom is not at odds with government, citizenship is not defined by ascription, and social cooperation is not code language for subordination and submission—we will need to develop greater self-respect and a greater capacity for a sense of justice, sooner rather than later. A healthy conception of *American citizenship* supports publicly accountable institutions and leaders and is committed to bringing forth the best that its citizens' moral and intellectual capacities can achieve in the interest of

freedom (hooks, 1994). My critical analysis of social stratification and ascriptive citizenship is a modest contribution to a long and valued tradition of struggle to dismantle and reconstruct America's institutions pursuant to just moral principles. The level of progress that is evident in our society, today, was made possible by the moral and political *choices*—the personal and collective sacrifices—of preceding generations. Continuing this progress means continuing to make humanizing choices. Like many others, I embrace the vital tradition that endeavors to move an irrational, ascriptive society that degrades liberal democratic ideals, closer to a just pluralistic political community that elevates and advances them.

A true and worthy ideal frees and uplifts a people; a false ideal imprisons and lowers.

----*W. E. B. Du Bois*

NOTES

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1. Bancroft, *History of the Formation of the Constitution*, 324.
2. Shklar, *American Citizenship*, 9 (hereafter cited, *American*)
3. *Ibid.*, 1, 13-14.
4. Martin Luther King's "I Have A Dream."
5. Lively, *The Constitution and Race*, 4-5.
6. *Ibid.*, 5.
7. Zinn, *A People's History*, 85 (hereafter cited, *People's*)
8. Smith, *Civic Ideals*, 132 (hereafter cited, *Civic*)
9. *Ibid.*, 130
10. *Ibid.*, 131.
11. Zinn., *People's*, 109.
12. *Ibid.*
13. *Ibid.*
14. Smith, *Civics*, 110, 31.
15. *Ibid.*, 146-47.
16. Shklar, *American*, 14-15.
17. Zinn, *People's*, 90; Beard, *An Economic Interpretation*, 26-51, 61-63.
18. Bancroft, 324.
19. Hamilton, Madison, and Jay, *Federalist Papers*, 79.
20. Zinn, *People's*, 95.
21. Beard, 13.
22. Shklar, *American*, 13-14.
23. Smith, *Civic*, 101-14.
24. Karst. *Belonging to America*, 48.

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25. Lively, 33.
26. *Dred Scott v. Sanford*, 60 U.S. 393, 397 (1857) (hereafter cited, *Dred*).
27. *Id.* at 404-405, 407.
28. Bell, "Dissenting," 185.
29. Shklar, *American*, 16.
30. Karst, 47.
31. Lively, 33.
32. Moody-Adams, "Race, Class, and the Social Construction of Self-Respect," 258.
33. *Dred*, 60 U. S. at 420.
34. Moody-Adams, 264-65.
35. Smith, *Civic*, 272.
36. *Ibid.*, 573-74.
37. *Ibid.*, 279; Cowan and Maguire, *Timelines of African-American History*, 92.
38. Smith, *Civic*, 279.
39. *Ibid.*, 279-80.
40. Cowan and Maguire, 91; Karst, 50.
41. Karst, 50.
42. Hamilton, Madison, and Jay, 545
43. Du Bois, *Black Reconstruction*, 413-484, 713.
44. Karst, 63.
45. Cowan and Maguire, 92.
46. Oliver and Shapiro, *Black Wealth/White Wealth*, 14.
47. Karst, 63, 67-8, 251n43.
48. Smith, *Civic*, 303.
49. Cowan and Maguire, 105; Smith, *Civic*, 290.
50. *Civil Rights Cases*, 109 U.S. 3, 17 (1883).
51. Cowan and Maguire, 100.

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52. *Ibid.*, 120.

53. Rawls, *Political Liberalism*, 233n18 (hereafter cited, *Political*)

54. *Plessy v. Ferguson*, 163 U. S. 537, 544 (1896) (hereafter cited, *Plessy*).

55. *Id.* at 552.

56. *Id.* at 554-55.

57. *Id.* at 561.

58. Zinn, *People's*, 383.

59. Parenti, *Democracy for the Few*, 3rd ed., 75. (hereafter cited, *Democracy* 3rd. ed.).

60. Shklar, *American*, 1-2.

61. Zinn, *People's*, 394-95.

62. Parenti, *Democracy for the Few*, 7th ed, 74 (hereafter cited, *Democracy* 7th. ed.).

63. Zinn, *People's*, 394.

64. Rawls, *Political*, 233n18.

65. Shklar, *American*, 13.

66. *Korematsu v. United States*, 323 U. S. 214, 227 (1944).

67. *Id.* at, 227.

68. *Id.* at 216.

69. *Id.* at 214.

70. *Id.* at 229.

71. *Id.* at 230.

72. *Id.* at 218.

73. *Id.* at 223.

74. *Id.* at 233, 235-37.

75. *Id.* at 240.

76. *Id.* at 242.

77. *Id.*; Karst, 90.

78. See, *Japanese American National Museum Quarterly* 9 no. 3 (Oct-Dec. 1994): 11-16.

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79. Parenti, *Democracy* 3rd ed., 294n28.
80. Smith, *Civics*, 279.
81. Shklar, *American*, 13-14.
82. Spillers, "The Crisis of the Black Intellectual," 98.
83. *Brown v. Board of Education*, 347 U. S. 483, 486-88 (1954) (hereafter cited as *Brown I*).
84. *Id.*, at 487-88.
85. Balkin, 12.
86. *Brown I*, 492-93.
87. *Id.*, at 495.
88. Zinn, *People's*, 441.
89. Balkin, 64.
90. *Ibid.*
91. *Ibid.*, 65.
92. Viorst, *Fire in the Streets*, 26.
93. Lively, 120.
94. Balkin, 65.
95. Du Bois, *The Souls of Black Folk*, 75.
96. Balkin, 6.
97. *Ibid.*
98. *Ibid.*, 26n20.
99. Rawls, *A Theory of Justice*, 63 (hereafter cited, *Theory*).
100. Gordon, "African-American Existential Philosophy," 35.
101. Moody-Adams, 258.
102. Shklar, *American*, 8.

Chapter 2

1. Gutek, *A History of the Western Educational Experience*, 154.

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2. Boyd, "How to Reform Schools Without Half-Trying," 43.
3. *Ibid.*, 43-44.
4. *Ibid.*, 45.
5. Zinn, *Disobedience and Democracy*, 117-24.
6. *Ibid.*, 118-19.
7. Cremin, *American Education*, 245.
8. National Commission, *A Nation at Risk*, 5.
9. Apple, "What Reform Talk Does," 157.
10. Kahne, *Reframing Education Policy*, 246.
11. Boyd, "Balancing the State, Markets and Civil Society," 198.
12. Zinn, *People's*, 95.
13. Johnston, "Gap Between Rich and Poor," *New York Times*, September 15, 1999, section. 1, p. 16.
14. *Ibid.*
15. Broadbent, introduction to *Democratic Equality*, xvii.
16. Johnston, "Gap Between Rich and Poor," Section 1, p. 16.
17. Rawls, *Theory*, 6-7.
18. *Ibid.*, 342.
19. Moody-Adams, 264-65.

Chapter 3

1. Rawls, *Theory*, 118.
2. Nozick, *Anarchy, State, and Utopia*, 183.
3. U. S. President, "Remarks," 1852.
4. Rawls, *Political*, 223.
5. Rawls, *Justice as Fairness: A Restatement*, 8 (hereafter cited, *Restatement*).
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7. *Ibid.*, 223.

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8. Rawls, *Theory*, 129.
9. *Ibid.*, 134, 153.
10. *Ibid.*, 475.
11. Rawls, *Political*, 17; *Restatement*, 49 n14.
12. Rawls, *Restatement*, 29.
13. Mills, *Blackness Visible*, 13.
14. Mills, *The Racial Contract*.
15. Zinn, *People's*, 178.
16. Rawls, *Restatement*, 58-59.
17. Rawls, *Theory*, 3.
18. Rawls, *Restatement*, 42-43.
19. *Ibid.*, 59.
20. Rawls, *Theory*, 137.
21. Cohen, "Where the Action Is," 16.
22. Wolin, "Review of Political Liberalism," 100.
23. O'Neill, "Political Liberalism and Public Reason," 422.
24. Mouffe, *The Democratic Paradox*, 28.
25. Rawls, *Theory*, 215-18.
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27. Mills, *Blackness Visible*, 7.
28. Rawls, *Theory*, 309.
29. *Ibid.*, 215.
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31. *Ibid.*, 319-43.
32. *Ibid.*, 310.
33. *Ibid.*, 312.
34. Rawls, *Political*, xxix.

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35. Rawls, *Theory*, 223.

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37. Mills, *The Racial Contract*, 5.

38. Apple, *Educating the Right Way*, 55.

39. Moody-Adams, 265.

40. Rawls, *Theory*, 3.

41. Morgan, "We've Come to See the Wizard," 4.

42. See, Moody-Adams.

43. Rawls, *Restatement*, 55.

44. *Ibid.*, 58-9.

45. *Ibid.*, 138-39.

46. Clark and Gintis, "Rawlsian Justice and Economic Systems, 395.

47. Rawls, *Political*, 68.

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50. *Ibid.*, 98.

51. *Ibid.*, 64.

52. Rawls, *Theory*, 157.

53. Mills, "Carnal Knowledge," 158.

54. Rawls, *Theory*, 312.

55. Rawls, *Restatement*, 66.

56. See, for example, America, *The Wealth of Races*; Bittker, *The Case for Black Reparations*; Lipsitz, *The Possessive Investment in Whiteness*; Oliver and Shapiro, *Black Wealth/White Wealth*; Robinson, *The Debt; Throw, Poverty and Discrimination*.

57. Rawls, *Restatement*, 65.

58. Rawls, *Theory*, 157.

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60. *Ibid.*, 56.

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61. Rawls, *Theory*, 156-57.
62. Rawls, *Political*, 56-7.
63. *Ibid.*, introduction to the Paperback Edition, 1.
64. *Ibid.*, 231-32.
65. Rawls, *The Law of Peoples*, 134 (hereafter cited, *Law*).
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69. *Ibid.*
70. *Ibid.*, 248.
71. Wolin, "Review of Political Liberalism," 103.
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73. *Ibid.*, 90n12.
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75. *Ibid.*, 144.
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78. *Ibid.*, 234n18.
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80. *Ibid.*, 28-32.
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83. Freeman, *The Cambridge Companion to Rawls*, 387.
84. Rawls, *Law*, 153.
85. Mill, *On Liberty*, 34.
86. Walzer, "The Concept of Civil Society," 23.

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1. Walzer, "The Concept of Civil Society," 24.
2. Ibid., 19.
3. Rawls, *Theory*, 3-4.
4. Ibid., 4.
5. Holmes, "School Reform: Business Moves In," *New York Times*, February 1, 1990, Section D1, D9.
6. Spring, *Conflicts of Interest*, 171, 176.
7. Kincheloe, *Toil and Trouble*, 17.
8. Ibid., 19.
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11. Parenti, *Democracy* 3rd ed., 224.
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13. Mill, *On Liberty*, 104-05.
14. Dewey, *Human Nature and Conduct*, 127.
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16. Rawls, *Political*, 178.
17. Rawls, *Theory*, 249; *Political*, 218.
18. Apple, *Power, Meaning, and Identity*, 78.
19. Rawls, *Political*, xlv.
20. Apple, *Cultural Politics & Education*, 103.
21. Dewey, *Democracy and Education*, 119-20 (hereafter cited, *Democracy*).
22. See, Hochschild and Scovronick; Losen and Orfield; Losen and Welner.
23. See, Losen and Orfield; Office of Special Education Programs; Tatum.
24. Spring, *American Education*, 89.
25. Powell, Kearney, and Kay, *In Pursuit of a Dream Deferred*, 244.

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27. *Ibid.*, 6.
28. Rawls, *Theory*, 386; *Restatement*, 59.
29. Rawls, *Restatement*, 60.
30. Rawls, *Political*, 318.
31. Rawls, *Theory*, 386.
32. *Ibid.*
33. *Ibid.*, 219.
34. *Ibid.*, 220.
35. *Ibid.*, 219.
36. Parenti, *Democracy* 3rd. ed., 207.
37. Rawls, *Political*, 47.
38. McChesney, introduction to *Profit Over People*, 11.
39. Dewey, *Democracy*, 319.
40. Wolin, *In the Presence of the Past*, 41-46.
41. Giroux, "Public Philosophy and the Crisis of Education," 190.
42. Rawls, *Political*, xliv.
43. Rawls, *Theory*, 493.
44. *Ibid.*, 431-32.
45. Rawls, *Restatement*, 137-38.
46. *Ibid.*, 138-39.
47. *Ibid.*, 139.

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1. Dewey, *Theory of the Moral Life*, 66f, 69f.
2. See, Banks, *Educating Citizens in a Multicultural Society*; Dewey, *Democracy*; Giroux, *Teachers as Transformative Intellectuals*; hooks, *Teaching to Transgress*; Ichilov, *Citizenship and Citizenship Education*; and Ogbu, "Racial Stratification;" Losen and Orfield, *Racial Inequality*; and Spring, *American Education*.

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3. See, for example, Apple, *Ideology and Curriculum*; Cuban, *How Teachers Taught*; Gutek, *A History of the Western Educational Experience*; Tyack, *The One Best System*.

4. Dewey, *Democracy*, 119-20.

5. Dewey, *Intelligence in the Modern World*, 692.

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16. *Ibid.*, 108.

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19. *Ibid.*, xlv.

20. See, Vygotsky, *Mind in Society*.

21. Dewey, *The Problems of Men*, 91.

22. Galston, *Liberal Purposes*, 244. See also, Galston, *Liberal Pluralism*.

23. Bennett, *The Book of Virtues*, 12.

24. Dewey, *Democracy*, 354.

25. Apple, *Cultural Politics*, 103.

26. Dewey, *Democracy*, 161.

27. Freire, *Pedagogy of the Oppressed*, 84.

28. *Ibid.*, 83.

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30. Barth and Shermis, "Defining the Social Studies," 744-45.
31. Giroux, *Teachers as Intellectuals*, 14-5.
32. Kincheloe, *Toward a Critical Politics of Teacher Thinking*, 205-6.
33. See, Hochschild and Scovronick, *The American Dream*; Spring, *American Education*; Tatum, *Why Are All the Black Kids Sitting Together in the Cafeteria?*
34. Pearson, "Reclaiming the Center," 272.
35. Dewey, *Democracy*, 119-20.
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37. Shklar, *Faces of Injustice*, 19.

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1. Dewey, *Human Nature*, 127.
2. Rawls, *Theory*, 433.
3. Rawls, *Political*, 37.
4. Rawls, *Theory*, 393.
5. Rawls, *Political*, xxxvi, 36-7.
6. *Ibid.*, xlv.
7. *West Virginia State Board*, 319 U. S. at 624.
8. Parenti, *Democracy* 3rd. ed., 3.
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