THE DEVELOPMENT OF THE CONCEPTS OF THE PUBLIC SCHOOL AND THE PRIVATE SCHOOL IN THE UNITED STATES

DISSERTATION

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This dissertation is a conceptual study of the development of the concepts of the ‘public school’ and the ‘private school’ in the United States from colonial times to the present day. In creating an analytical framework for examining these concepts and the institutions they represent, this treatment includes both a historical and a legal examination of the development of this distinction.

Four distinct facets, or sets of facets regarding the institutional identity of public and private schools are analyzed: sectarianism versus nonsectarianism, control and support, openness, and benefit. The discussion is pivoted around a particular facet, or set of facets, for each chapter, examining the extent to which both public and private schools have come to exhibit a public or private nature regarding that characteristic. This will generally be done by looking at ‘public schools’ as public in a particular sense, and contrasting this with ‘private schools’ as private in that sense. In some senses, these two concepts will appear antithetical, while in others they will be described as part of a continuum. Conceptual conflicts or contradictions, both between and within these classes of institutions are also examined.

Furthermore, for each of the facets of the public school – private school relationship discussed, the historical examination to the present day will be followed
by some analysis of how recent school reform efforts, especially those referred to as ‘privatization’, are challenging or changing, our conventional concepts of these institutions. Building upon the examination of the four sets of facets for each of these concepts, applicable reform efforts or proposals will be analyzed with regard to how they may be changing that aspect of the public or private school identity. Applications toward educational policy-making and reform are also discussed.
Dedicated to my wife, Patti,

for her love and support
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CHAPTER 1

INTRODUCTION

The Problem

I am certainly not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require men to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

These words, penned by Thomas Jefferson, now adorn one of the walls of the Jefferson Memorial, along the banks of the Potomac River in Washington, D.C. Mounted in bronze letters just over the right shoulder of the bronze statue of Jefferson that stands at the center of the memorial, these thoughts were taken from a letter written by Jefferson to Samuel Kercheval in 1816. Jefferson’s beliefs about the periodic need to change laws and the institutions of government, expressed in the excerpt above, reflect the letter’s emphasis on both the importance of public participation in government, and the government’s political accountability to the people as means of maintaining a free society (DeHaven-Smith, 1999, p. 340).

Although not directly addressed in this letter, Jefferson’s thoughts relate to a very specific role of government that has developed since the founding of the United...
States: the role of the government in providing public education. As Martin (1962) has observed, “Public education [is] one of the oldest and most pervasive of all government functions” (p. 1). Today, almost 90 percent of children enrolled in K-12 institutions attend public schools. Our elected representatives, as well as candidates hoping to unseat them, proclaim their support of and commitment to public education and public schools. In public opinion polls and ‘man/woman-on-the-street’ interviews, the American citizenry proclaims the importance of education as a political and social issue. And the American news media seems quite busy reporting on problems with America’s public schools, though occasionally pointing out their successes.

Moreover, public schools are often compared with and contrasted to their counterparts, private schools, which are referred to by some as non-public schools. Regarding the former, it should be noted that, while this dissertation will largely focus on the differences between these types of institutions, contemporary public schools and private schools share a great many similarities, particularly within a given metropolitan area or state. The students in both types of institutions are taught similar knowledge in skills in similar grades, engage in similar learning tasks, read similarly literary works and textbooks, and participate in similar extracurricular activities. This is true regardless of whether or not the private schools are religiously affiliated or not. Liebermann (1993) notes the similar curricula in public and private schools, typically with only one class in religious schools constituting much of the difference (p. 154).

However, while private schools are not entirely seen as the antithesis of public schools, these two types of entities are seen as separate, or at least distinguishable. The
particular labels that distinguish *private* schools from *public* schools may vary
colloquially, as the term ‘*private* school’ in some locales designates nonsectarian
institutions, while sectarian, or religious, schools are labeled as ‘*parochial* schools’.
Some use the term *parochial* to designate Roman Catholic schools, while
etymological purists would only use the label to refer to religious schools affiliated
with a particular parish. Reardon and Yun (2002) describe the different types of
contemporary private schools:

Private schools are still a small sector of the nation’s schools, enrolling
roughly one-tenth of the K-12 students in the United States. Private sector enrollments have been relatively stable since the early 1970s, though they
appear to have increased slowly during the 1990s. Within the relatively
constant share of private school students, Catholic schools have been in long
decline but are still dominant, enrolling roughly half of all private school students in the late 1990s. Other religious private schools, often evangelical
Christian schools, have been increasing their share of private schools the most
rapidly and now enroll roughly one-third of all private school students. Secular
private schools enroll the remaining one-sixth of private school students. (p. 5)

In keeping with the predominant labels used in the research literature on these topics,
in this dissertation I will use the term ‘private schools’ to refer to both religious and
non-religious institutions.

Nevertheless, as evidenced from the discussion above, many Americans use
the terms ‘*public* education’ or ‘*public* schools’, and ‘*private* education’ or ‘*private*
schools’ on a regular basis, with seeming clarity about the distinction between the
*public* and *private* spheres in education. However, actually pinpointing the distinction
between these two spheres is not easily done, especially as of late. As Abowitz and
Boyles (2001) point out:
The division between, and (more recently) the fluidity of, the public and private spheres has been a principal topic for post-Enlightenment philosophers. Researchers of educational change are currently in a time of increasing confusion over the meanings of these categories, as movements like charter schooling seem to occupy both categories at once. (p. 131)

While the growth of charter schools, for which there are a variety of administrative and organizational models, has certainly brought about a classification dilemma, this is not the only source of the confusion. As Hill, Pierce, and Guthrie (1997) observe, there seems to be a good deal of overlap between the ‘public education’ sphere and the ‘private education’ sphere:

The term “public education” is widely used but seldom carefully defined. It certainly includes all forms of instruction in schools operated and funded from tax revenues by local public school boards. But there are many instances in which activities people call public education lack one or more features of the foregoing definition. Public education students frequently receive instruction outside of publicly owned school buildings, at museums, concert halls, theaters, zoos, and public and private colleges and universities. Some public education services are also delivered by independent organizations, including private providers of special education and remedial services, language, science, and mathematics courses and enrichment, and public and private colleges. Some public education services are also funded entirely or in part through private donations, fundraising, and parental payments for extracurricular activities and instruction. Public school boards also place some handicapped students in privately managed facilities and pay tuition, and some privately run alternative schools are funded entirely through contracts with public school boards. (p. 30)

The scenarios described above may be seen as part of a more widespread phenomenon, the recent ‘privatization’ movement, which may underlie a good deal of the confusion regarding schooling. As Murphy (1996) explains, ‘privatization’ itself is a complex phenomenon and one that is difficult to define. However, he notes two common elements: “a movement away from reliance on government agencies to provide goods and services” and “a movement toward the private sector and market
forces” (p. 16). The objectives of privatization include: reducing the size and scope of
government; reducing the cost of and improving the quality and efficiency of
government services; enhancing the overall health of the economy; depoliticizing the
provision of government services; and promoting choice in public services, enabling
individuals to pursue different options for receiving those services (pp. 17-19).
Educational privatization efforts can include educational vouchers, school
deregulation, home schooling, and volunteerism, any or all of which blur the lines
between traditional public schooling and its private counterpart (Murphy, Gilmer,

Moreover, the growth of privatization has coincided with proposals for various
types of schooling reform, and the controversy over what constitutes a public or a
private school has likely been influenced by arguments about what public schools
should become. Some, including Jencks (1966), Chubb and Moe (1990) and
Lieberman (1993), have suggested that public schools as we know them, and indeed
the American system of public education, are inarguably ineffective, arguably
unnecessary, and perhaps even on an inevitable road toward extinction. These
individuals advocate a more market-based system of education, which may or may not
bear the moniker ‘public’.

In a 1966 article published in *The Public Interest*, Christopher Jencks asked the
question, “Is the public school obsolete?” He expressed concern over the complex
problem of providing better schools for poor children, schools which would enable
those children to escape the poverty in which their families were presently trapped. He
argued that, due to inequalities in funding and opportunity, as well as ineffective bureaucracies that promote “organizational sclerosis”, America’s public school system was incapable of solving this problem, and in fact merely exacerbated it (p. 23). In answering the question he posed in the article’s title, Jencks argued that private schools were better suited for serving poor children than public schools, and that poor children and their families should be allowed more educational choice. This could take place via tuition grants, or vouchers, or by contracting out the administration of a school to a university, a local business group, a group of teachers, or even a group of parents. Jencks described such decentralized alternatives as “a new kind of public control” to replace the present system of “socialized education” (p. 27)

Just three years after the publication of this article, Jencks and his colleagues at the Center for the Study of Public Policy (CSPP) in Cambridge were chosen by the Nixon administration’s Office of Educational Opportunity to test an educational voucher system for elementary education (Areen & Jencks, 1972). The CSPP plan was in part based on a re-conceptualization of the terms public and private with regard to education. For the purposes of their program, the Jencks’ team defined a ‘public’ school as one which is open on a nondiscriminatory basis to everyone, charges no tuition, and provides full information about its structure and functioning to anyone interested (p. 52). A ‘private’ school was defined as any institution that operated in ways contrary to ‘public’ schools. The two underlying principles of the team’s plan was that no public money would be used to support a private school, and that any group operating a public school would be eligible for public subsidies (p. 52).
Interestingly, Jencks and his colleagues noted that including religious schools was not a necessary ingredient of the proposed voucher program, but that “there seems no compelling reason to deny [religious schools] the same financial support given other schools” (p. 56). For a variety of reasons, the Alum Rock experiment did not succeed in garnering widespread support for or use of school vouchers, but neither did it end attempts at their implementation, nor attempts to modify the concept of ‘public schools’ in the United States.

More recently, Myron Lieberman, in Public Education: An Autopsy (1993) proposes a market approach to education to replace the recently ‘expired’ American public school system. Seeking to verify the obsolescence suggested by Jencks’ Public Interest article a quarter of a century earlier, he states:

To be sure, an autopsy implies that the subject is dead, and I intend this implication. What has died is the rationale for public education. According to this rationale, public education effectively fosters basic skills, scientific and cultural literacy, civic virtues, and desirable habits and attitudes toward our society and its institutions. When public education does not produce these outcomes, the rationale assumes that “education reform” will remedy the situation. This rationale is beyond life-sustaining measures. The practical consequences of its demise are not always evident, but they are accumulating and cannot be evaded for very long. (p. 1)

Likening reform attempts to resuscitate public education to perestroika, Lieberman claims that despite the survival of institutional manifestations, “public education as we know it is a lost cause” (p. 2).

Proposals such as those of Jencks and Lieberman promote a revised, or at least evolving notion of the ‘public school’ as part of a trend toward privatization. However, these attempts to shift terminology have not gone unnoticed, or
unchallenged, by privatization critics. For example, Jeffrey Henig (1994) asserts that the meaning of ‘public school’ has been altered by market proponents, from a school owned and run by the government (as opposed to a private school owned and run by religious orders or private entrepreneurs), to one that serves the broad public interest and is ultimately accountable to public authorities” (p. 94). Thus, he argues, the term public has been “devalued” by the trend toward privatization (p. 95). Henig predicts that market-based plans will fail, and urges “collective deliberation and collective response” to move public education in the right direction (p. 222).

Similarly, Kenneth Saltman (2000) objects to educational privatization, not only because it seeks to move control of ‘public’ schools to the ‘private’ sector, but because such a move promotes the ‘ideology of corporate culture’, “a coordinated set of antipublic values that function pedagogically to form the condition of intensified privatization initiatives” (p. xxii). Thus he sees the privatization of schooling, not merely as ‘nonpublic’, but as ‘antipublic’, and seemingly destructive of the public itself. Instead, he advocates a renewed commitment in the public schools to teach “nonmarket public values”, as embodied in “the best elements of the democratic, socialist, feminist, postmodern, and humanist traditions” (p. 119).

In the context of this debate, various types of school privatization have become increasingly prominent in recent years. One example of this is the growth of charter schools, the first of which was founded in Minnesota in 1992 (Nelson et al., 2000, p. 1). The following is a description of charter schools as published in a national study of these institutions by the U.S. Department of Education:
Charter schools are public schools that come into existence through a contract with either a state agency or a local school board. The charter—or contract—establishes the framework within which the school operates and provides public support for the school for a specified period of time. The school’s charter gives the school autonomy over its operation and frees the school from regulations that other public schools must follow. In exchange for the flexibility afforded by the charter, the schools are held accountable for achieving the goals set out in the charter including improving student performance. (Nelson et al., 2000, p. 1)

Salomone (2000) also briefly describes the charter school concept:

Charter schools are technically public schools that are exempt from many of the burdensome state regulations and local rules that tend to inhibit flexible management within conventional public education. They are funded exclusively through public funds, receiving for each student enrolled an amount somewhat equivalent to the average per pupil expenditure in the school district or state. They exclude sectarian schools from participation. If oversubscribed, they generally select students by lottery, although some states permit admission on a first-come, first-served basis. Depending on the state legislation, existing private schools may or may not be permitted to convert to charter status. (p. 245)

She further reports that in fiscal year 1999, the United States Department of Education awarded more than one hundred million dollars to support charter school planning, design, and start-up costs” (p. 245). According to the Center for Education Reform, 38 states currently have charter school laws (Innerst, 2002), with approximately 1,700 such schools in operation nationwide, and enrolling over 350,000 students (Manno, Finn, and Vanourek, 2000, p. 65).

However, it bears noting that state charter school laws differ considerably regarding the methods by which, and therefore the ease with which, charters are granted. For example, Kansas has one of the nation’s most restrictive charter school laws, one which caps the total number of voucher schools permitted in the state and limits the charters for three years. In addition, charter schools in that state can only be
authorized by local school boards, private schools are not permitted to convert to charter schools, and no for-profit companies are permitted to manage charter schools (Gill et al., 2001, pp. 54-55). Georgia’s charter legislation is quite restrictive as well, requiring that charter schools be approved by both the local school board and the state board of education, and requiring charter schools to be organized by existing public school staff and faculty, two-thirds of which must agree on the conversion to a charter school (Salomone, 2000, p. 246).

On the other hand, The New York charter school law is more permissive, exempting charter schools from state and local mandates that apply to conventional public schools, except for laws relating to health and safety requirements, civil rights protections, and student assessment (Salomone, 2000, p. 246). Moreover, Arizona has one of the least restrictive charter laws in the nation. It permits charter schools to be authorized by local boards of education, the state board of education, or the state board of charter schools. In addition, both public and private schools are permitted to convert to charter schools which can be operated for profit. Finally, charters in Arizona are initially issued for fifteen years, and charter schools are excluded from most state and district requirements, including those for teacher certification (Gill et al., 2001, p. 55).

Another prominent, and probably the most controversial, form of school privatization that has been gaining ground recently is tax-funded vouchers which are used to send students to private schools. The Milwaukee Parental Choice Program (MPCP) was initiated in the fall of 1990, and expanded to include private religious schools in 1995. The program’s constitutionality of the MPCP was upheld by the
Wisconsin State Supreme Court in 1998, and the United States Supreme Court declined an appeal of that ruling. The program currently offers scholarships of approximately 5,300 dollars to low-income students in Milwaukee. In the 2000-2001 school year, 103 school participated in the program which served over 9,500 students (Gill et al., 2001, p. 52).

Similarly, the Cleveland Scholarship and Tutoring Grant Program was initiated during the 1996-1997 school year. The program allowed low-income students in kindergarten through the third grade (with one grade added each up to the eighth grade), to attend any participating private school in the city, including religious schools. Under the voucher legislation, public schools in suburban districts outside of Cleveland were also eligible to participate in the program, but none of them elected to do so (Zelman v. Simmons-Harris, 2002). The scholarships cover a maximum of 90 percent of the schools’ tuition up to 2,250 dollars. As of the 1998-1999 school year, the [update figures]. The constitutionality of this program, discussed in Chapter Two, was recently upheld by the United States Supreme Court in Zelman v. Simmons-Harris (2002).

In the first attempt at a state-wide system that employed vouchers, Florida’s A-Plus plan was passed by the Florida legislature in 1999 and initiated in the autumn of that year. The plan provides ‘Opportunity Scholarships’ for students who are enrolled in schools that are judged by the state to be performing unsatisfactorily for two consecutive years. The scholarships are worth approximately 4,000 dollars and can be used to pay expenses at either public schools (for instance in a neighboring district) or
private schools. Despite the fact that the plan applies to all the state’s public schools and their students, only two schools have been judged to be ‘failing’ by the state, resulting in scholarships for 170 students, only 52 of which have chosen to attend a private school (Hallifax, 2001b).

Most recently, the McKay Scholarship Program began as a pilot program in 1999 in Sarasota County, but was expanded to other Florida counties the following year (Valle-Greene, 2001, p. A4). The scholarships permit students with disabilities, whose parents are dissatisfied with the public schools that they attend, the option of attending private schools, including religious schools, at taxpayer expense (Hegarty, 2001, p. 1A). In the year 2000, the program was expanded to nearly 4,000 students, and currently 342 private schools accept the scholarships, which average 6,800 dollars per student (p. 1A).

Given these new schooling scenarios, it seems prudent to examine the ways in which they may be changing the traditional concepts of public and private schools in the United States. Gill et al. (2001) discuss the extent to which charter schools and schools that participate in current voucher programs fit into one of these two categories. Their discussion revolves around which characteristic of the public school concept one chooses as a basis for classification. They explain:

If operation by an agency of government is the critical characteristic of a public school, then neither charter schools nor voucher schools qualify as public . . . [However], if open access is the critical characteristic, some charter schools and some voucher schools qualify as public, whereas others (and, indeed, some district-operated public schools) fail to qualify because they impose admissions standards. (p. 23)

Gill and his colleagues conclude:
In sum, vouchers and charters blur traditional distinctions between public and private schools because they are hybrids including both public and private elements. Indeed, they help to point out that conventional public schools also have both public and private elements, in terms of purposes, funding, and access (p. 23).

The conceptual lines between the public and private spheres in education would likely be ‘blurred’ even further if broader school choice proposals were adopted. In *Capitalism and Freedom* (1962/1982), Milton Friedman argued that allowing parents to pay for their children’s schooling directly “would eliminate the governmental machinery now required to collect tax funds during the whole of their lives and then pay it back mostly to the same people when their children are in school” (p. 87). Friedman was concerned that, within the conventional system of educational governance, parents who were dissatisfied with their children’s schools could do little to change them if they were unable to persuade a majority of those in their community to do so (pp. 95-96). Regarding the new role of government in education, Friedman proposed:

Government could require a minimum level of schooling financed by giving parents vouchers redeemable for a specified maximum sum per child per year on ‘approved’ educational services. Parents would then be free to spend this sum and any additional sum they themselves provided on purchasing educational services from an ‘approved’ institution of their own choice. The educational services could be rendered by private enterprises operated for profit, or by non-profit institutions. The role of the government would be limited to insuring that the schools met certain minimum standards, such as the inclusion of a minimum common content in their programs . . . (p. 89)

Salomone (2000) has described this proposal and the market mechanisms that it would utilize in the following way:
Friedman’s idea of a pure voucher scheme would have granted a government subsidy to every elementary and secondary school student equal to average per pupil expenditures. His system would have been unregulated; the school could have charged whatever the market could bear. Inefficiently run schools would have lost out in the competition generated by educational options.” (p. 243)

More recently, in Politics, Markets, and America’s Schools (1990), Chubb and Moe have criticized the conventional system of public schooling as financially and educationally inefficient and ineffective, largely due to the political workings of direct democratic control of schools and the corresponding administrative structures and practices that accompany it. They propose a market-based brand of school reform in which the American people and their representatives use the processes of democratic governance to construct a new system of ‘public’ education characterized by greater choice and flexibility (pp. 225-226). They imply that this will be a public system of education because it will be democratically determined and because government, especially state governments, will play a substantial role in its operation. Nevertheless, once established, Chubb and Moe’s proposed system would essentially eliminate direct democratic control of public schools.

In the midst of this debate, public schools continue to be referred to by many, as explained above, in stark contrast to, and at times even in direct opposition to, private schools. In fact, conventional wisdom and language usage still virtually necessitate that any school in the United States be classified into one of these two categories: public, or private. As an illustration, it would certainly seem odd if one overheard the following conversation:

“Are your children in school yet?”
“Yes”

“Is the school that they attend a public school or a private school?”

“Neither.”

Thus, despite the recent difficulty in distinguishing between public and private schools, it is nevertheless a common perception and common practice to categorize virtually all schools in the United States as either public or private. A possible exception to this would be the term ‘home school’, which is sometimes used to refer to a home in which children are ‘home-schooled’, receiving instruction from parents or guardians rather than from professional teachers in school buildings. (While ‘home schooling’ of children is a growing phenomenon, it is commonly understood that such ‘schooling’ occurs in homes, rather than school buildings. Because of this, ‘home schools’ are generally excluded from categorization as a public or private schools, seemingly forming a separate category that is seldom confused with the other two. Therefore, while ‘home schools’ are certainly worthy of study and examination, they will not be terribly relevant to the central question addressed in this dissertation.)

**Purpose, Method, and Organization of Study**

Given the current state of flux, and even confusion, described in the discussion above, an interesting question that arises is: “What is the difference between the concepts of the ‘public school’ and the ‘private school’ in the United States in 2002?” And this is one of the central questions that this dissertation will address. Essentially, this question involves two separate questions: “What does ‘public school’ mean today?” and “What does ‘private school’ mean today?” Wilson (1966) identifies
such questions as ‘questions of concept’ (p. 3). As he explains, we can express these
types of questions in different ways, and thus the question I am asking can be
rephrased as the following:

“How does the concept of the ‘public school’ differ from the concept of
‘private school’?”

“What does the term ‘public school’ mean today, and how does it differ from
the meaning of the term ‘private school’?”

“How does what we normally mean by ‘public school’ differ from what we
normally mean by ‘private school’?”

“How can we verify whether or not a particular institution is public or
private?” and

“What counts as a ‘public school’ as opposed to a ‘private school’?”

Thus, as I am referring to them here, the terms ‘public school’ and ‘private
school’ do not merely refer to specific schools or categories of schools that students
attend. Rather, the terms public and private represent distinctive ideas, or concepts, of
what ‘public schools’ and ‘private schools’ are, what these words designate in the
American dialect of the English language (Wilson, 1966, p. 3). In this sense, I am not
merely asking a question of fact, or purported fact, regarding the differences between
public schools and private schools, though a discussion of certain facts about these
types of institutions will be relevant to certain aspects of my analysis. To the contrary,
in addressing the question of concept concerning the distinction between ‘public
schools’ and ‘private schools’, I will be addressing, as suggested by the wording of the questions above, a question about meaning (Wilson, 1966, p. 4).

As such, this dissertation will not be an attempt to find the one ‘true’ definition for each of the terms ‘public school’ and ‘private school’, nor will I merely be looking for the lowest common denominator between these two terms. Rather, I will be more concerned with the “actual and possible uses” of these words (italics in original), as I attempt to gain an accurate picture of the meaning of the concepts ‘public school’ and ‘private school’ in the United States, and the significance of the current distinction between these two concepts (Wilson, 1966, p. 10). Thus, instead of looking for a single characteristic or facet around which to base my analysis, I will be attempting to come to a richer, more complex understanding of these concepts and the distinction between them. As such, this dissertation will not primarily be an effort to categorize, or label, nor to advocate, but to understand.

To accomplish this, I will examine four distinct facets of public and private schools (detailed below) that have developed historically to the present day and given these institutions their identity. In doing so, I will pivot my discussion around a particular facet, or set of facets, for each chapter, examining the extent to which both public and private schools have exhibited a public or private nature regarding that characteristic. The historical examination of each facet will not be pursued in a mythological manner, to search for the true meaning of the public school as intended by its early proponents or ‘founders’. I will not be attempting to apply a de-contextualized, anachronistic kind of litmus test to indicate the true demarcation line
between *public* and *private* schools today. Rather, I wish to examine how the historical distinction between public schools and private schools in the United States developed in order to come to a better understanding of how the distinction between these two concepts developed, thereby informing my analysis of present conditions.

Thus, I will proceed by examining various facets of what it means to be a ‘*public* school’ and how this compares and contrasts with what it means to be a ‘*private* school’. Essentially, I will be examining the ways in which the types of institutions we call ‘*public* schools’ are *public*, and how this contrasts with the ways in which ‘*private* schools’ are *private*. This will generally be done by looking at ‘*public* schools’ as *public* in a particular sense, and contrasting this with ‘*private* schools’ as *private* in that sense. It should be noted that in some senses, these two concepts will appear antithetical, while in others they will more accurately as part of a continuum. Especially in searching for the limits of the distinction between these two concepts, there are times when it will be appropriate to look at the extent to which the institutions we refer to as ‘*public* schools’ seem to be *private* in some sense, and the extent to which the institutions we refer to as ‘*private* schools’ seem to be *public* in that sense. A brief explanation of each of the facets of the public/private distinction, or relationship, and their treatment follows below. My examination of subsequent facets will build on my discussion of previous facets, and in this way will demonstrate some of the relationships between these facets in forming the concepts of ‘*public* school’ and ‘*private* school’.
Inevitably, this historical and conceptual examination will incorporate a legal examination as well. Therefore, my analysis of these concepts will include a considerable discussion of educational statutes and court decisions, especially United States Supreme Court decisions. Again, my purpose here will not be merely to define public and private schools in strictly legal terms, as if laws or court rulings constitute the ‘last word’ concerning their meaning. Rather, I am concerned with the extent to which legislative and court decisions shape various facets of our conceptualization of public and private schools and the distinction between them.

In documenting this relationship, my treatment will also show how both laws and judicial interpretation has evolved with regard to each facet of the public and private school concepts. Justice Quotes Oliver Wendall Holmes Jr. once opined, “[Law is] nothing more [than] the prophesies of what the courts will do in fact” (Kurland, 1968, p. 47). He also observed, “The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious . . . have had a good deal more to do than the syllogism in determining the rules by which men should be governed” (p. 53). Here Holmes conveys his conviction that re-interpretations and re-application of the law is necessary to address a new or changing set of facts. Therefore, while the wording of statutory law and court rulings must reflect common understandings of concepts among the citizenry in order to be meaningful, it also has some power to shape them, as the courts continually reinterpret the meaning of laws in light of social change. It is in this light that the legal analysis and evolution I present in this dissertation should be viewed.
Furthermore, for each of the facets of the public school – private school relationship that I will explore, the historical examination to the present day will be followed by some analysis of the extent to which recent school reform efforts, especially those referred to as ‘privatization’, are challenging or changing, our traditional concepts. In doing so I will build upon the examination of that particular facet of these concepts, and attempt to discuss the reform efforts or proposals that seem most applicable to that facet, and how they may be changing that aspect of the public or private school identity. While some of my treatment of these issues will be speculative, I will not be attempting to predict what will happen regarding educational law or policy, but rather how certain developments could change what the terms ‘public school’ and ‘private school’ mean in the United States. To quote John Dewey (1927/1954): “[W]e are not concerned with prophesy but with analysis” (p. 185).

There are four brief but important stipulations or observations to be made regarding how my analysis of these concepts will proceed. First, though I will predominantly be using the term ‘private school’ to refer to the counterpart to the ‘public school’, due to terminology used in some of the sources I employ in making my argument, the term ‘nonpublic school’ may be used to denote the same concept. Secondly, I will be primarily focussing on the concepts ‘public school’ and ‘private school’ as they relate to elementary and secondary education. Though I may refer to preschooling, such as that provided through Head Start programs, or to institutions of higher education, the large majority of my remarks concerning these concepts will refer to K-12 schools and schooling. Thirdly, while I will discuss the common school
movement and its importance to both the development of public schools and thus to various aspects of our concept of the ‘public school’, I will not primarily be exploring the concept of the ‘common school’ throughout the development of American education. Finally, the description above indicates, I will be confining my examination of the terms ‘public school’ and ‘private school’ to the United States and as they are used in American English. Despite the similarities of language, the concept of ‘public school’ in the United States is very different than, and many ways contrary to, the concept of ‘public school’ in Great Britain. An international or comparative analysis of these different concepts, while it could certainly enlighten the present state of educational reform, both in the U. S. and elsewhere, is not my purpose here.

Thus, my examination of the concepts of the ‘public school’ and the ‘private school’ will proceed as follows. In Chapter 2, I will examine the development of the concept of the ‘public school’ as a nonsectarian institution. This will begin with a brief review of schooling during the colonial era and the early years of the United States, during which there was virtually no distinction between the concepts of ‘public school’ and ‘private school’ with regard to religious mission or identity. I will then discuss how these concepts developed during the common school movement, as denominational schools came to be classified as private institutions, while common schools came to be identified as public. Especially helpful in these regards will be the scholarship of Lawrence A. Cremin in *The American Common School* (1951) and Lloyd P. Jorgenson in *The State and the Non-Public School: 1825-1925* (1987). From this point, I will explain how the secular nature of public schools evolved, particularly
through U.S. Supreme Court decisions, and how this nature relates to the meaning of both ‘public schools’ and ‘private schools’ today. I will then extend my analysis to consider the extent to which charter schools, voucher programs, and an expanded system of school choice might affect the nature of public or private schools with regard to the issue of sectarianism.

In Chapter 3, I will move to an examination of public schools as publicly controlled, supported, and accountable institutions, and how they differ from private school regarding these characteristics. In exploring this facet of the meaning of public, John Dewey’s *The Public and Its Problem* (1927/1954), will be helpful. Dewey explains how the public developed in the modern democratic state and how it relates to, and contrasts with, the private sphere. *The Public and Its Problem* is particularly useful in its description of the role of government officials as representatives of the public, shedding light on both the administrative and regulatory aspect of ‘public schools’ and ‘private schools’. Dewey’s work will serve as a catalyst to discuss the extent to which public officials at different levels, local, state, and federal, administer and regulate today’s public schools, and how this differs from their control of private schools.

In conjunction with the control facet, I will examine the concept of the public school as a publicly supported institution, and how this differs from the support of private schools. Here I will examine two aspects of public support for schools, political support from the voting public and public funding. I will concentrate on the former predominantly as a means to the latter, and focus most of my discussion on the
sources of funding, or financing, for public and private schools. While briefly exploring the sources of public and private school funding, I wish to address the extent to which public schools can be ‘privately’ funded, and the extent to which ‘private’ schools can be ‘publicly’ funded, and yet still retain their traditional classification. Moreover, this examination will entail some discussion of accountability, both public and private, and its relationship to the control and support of each type of institution.

As the administrative and funding aspects of schools are closely related, the work of Joseph Murphy in *The Privatization of Schooling: Problems and Possibilities* (1996), and Murphy, Gilmer, Weise, and Page in *Pathways to Privatization in Education* (1998) will be helpful, especially in examining some of the recent, more privatized types of schooling. Since privatization is most commonly described as a phenomenon in terms of control, support, and accountability, of particular interest will be Murphy’s typology of privatization initiatives by extent and degree. In using it I will examine a rather wide variety of reform measures, which will help to explain the extent to which certain schooling paradigms qualify as public or private schooling, and may be altering our conventional concepts of these institutions.

In Chapter 4, I will examine the concept of the ‘public school’ as part of an ‘open’ system of schooling; that is, a system open to all students regardless of race or socioeconomic status. Discussion of this facet of the public school concept will revisit the development of the *common* school in this regard, as schools that would provide a common education to all of the children in a community. Moreover, I will explain how this facet of public as ‘open to the public’ has manifested itself in the struggles for
racial desegregation in schools, as well as socioeconomic integration. This will include a discussion of how efforts to make public schools more ‘open’ institutions have been complicated by two features of American life: local control of public schools and geographic mobility. In reference to these features, I will note that our concept of public schools both as ‘publicly administered and accountable institutions’, and as ‘publicly supported institutions’, especially at the local level, seems, in some senses, to conflict with our concept of public schools as open institutions. This discussion will attempt to demonstrate the limits of our concept of public schools as ‘open’ institutions, and the extent to which our concept of ‘private schools’ today differs from that of ‘public schools’ regarding the aspect of ‘openness’. Moreover, I will also explore the extent to which various schooling reforms affect, or could potentially affect, the facet of ‘openness’ with regard to public and private schools.

In Chapter 5, I will examine the concept of ‘public school’ as an institution that provides a public benefit. In this sense, it seems that public is a word with both a factual definition/meaning and an implication of value as well (Wilson, 1966, p. 41). I will argue that the term ‘public school’ includes, and has historically included since the time of the common school movement, an underlying assumption that such schools should provide some good, and even certain goods, that would be of public benefit. This will necessarily involve some discussion of the difference between public and private benefits, and the extent to which public schools are expected to provide either or both type of benefit. The facet of public as ‘for public benefit’ will also be contrasted with our concept of ‘private schools’ and the extent to which this embodies
the provision of both public and private benefits. In addition, I will discuss the various interests that different parties possess with regard to both public and private schooling, as well as the extent to which these interests can be categorized as public or private. This will necessarily involve some discussion of the conflict generated when these interests conflict, both between and within the public and private spheres. I will conclude by discussing the extent to which the privatization of public schools has altered, or may, if expanded, further alter, this facet of public and private school identity.

As Wilson (1966) points out, clarifying the concepts that we use is of practical importance (p. 6) and it is my firm intention, and my firm contention, that my analysis of ‘public schools’ and ‘private schools’ will be practically beneficial. First, from the perspective of educational foundations, I intend this dissertation to be both informative and instructive to readers concerning the development of public and private schools as institutions, and more importantly as distinct types of institutions, throughout United States’ history and to the present day. Indeed I will use this historical examination and the criterion that evolve from it with regard to the institutional identity of public and private schools as an anchor for interpreting present and future reforms. I would think that this historical and legal analysis would be particularly beneficial to students of education who may lack this fundamental knowledge about the development of American schooling.

Secondly, and in conjunction with this first purpose, as the previously cited confusion and debate illustrates, the meaning of ‘public schools’ and ‘private schools’
today is not altogether apparent, or at least not readily apparent, since there would be no point in asking a question of concept if the answer were obvious (Wilson, 1966, p. 8). Therefore I hope that this examination will shed some light on the current confusion between these two concepts, in part to clarify the differences between them, and in part to get a better idea of how the lines between them are being blurred. Perhaps we too often use the terms ‘public school’ and ‘private school’ without a full understanding of what they entail, and therefore we may need to clarify these concepts to improve our understanding of today’s educational institutions and facilitate our discussion of them. This seems particularly important in light of the possible changes in the meanings of the terms ‘public school’ and ‘private school’ that various schooling reform initiatives and proposals may promote.

Another way in which I hope that this dissertation will be useful is to better inform school reform proposals and school policy formation. As John Dewey observed nearly three-quarters of a century ago in *The Public and Its Problems* (1927/1954), the political theories held by judges and legislators are interpretations of certain facts, but also alter or influence subsequent facts (p. 8). Dewey believed that the consequence of such political habit, in thought and in action, is the formation of a barrier to changing social circumstances and improving society. He stated: “The belief in political fixity, of the sanctity of some form of state consecrated by the efforts of our fathers and hallowed by tradition, is one of the stumbling-blocks in the way of orderly and directed change” (p. 34). These sentiments echo those of Jefferson in his letter to Samuel Kercheval, above, that political institutions and mechanisms should
keep pace with the times, not merely for the sake of novelty, but in order to further societal progress and welfare.

In light of these thoughts, and especially with regard to my chapter on benefits and interests in schooling, my examination of the concepts ‘public school’ and ‘private school’ may reveal that the continued transformation of these concepts in certain ways is warranted in order to facilitate educational and societal improvement. In other words, antiquated concepts of ‘public school’ and ‘private school’ may not only be unhelpful in providing an accurate picture of schooling in the United States, but may also hinder policymakers and voters from changing schools in beneficial ways. On the other hand, my examination may also show that, given certain facts about the development and identity of these institutions, attempts to change certain aspects of public or private schooling might not be warranted. While I will not offer specific policy recommendations, I would hope that my analysis, preliminary though it is, might be useful for ascertaining some of the potential ramifications of educational reform in the United States, and evaluating the options that will shape American schooling in the coming years.
CHAPTER 2

SECTARIANISM, NON-SECTARIANISM, AND SECULARITY

The Development of Public Schools in the United States

To begin to understand the problem of concept or meaning regarding public and private schools in relation to the issue of sectarianism, some historical examination of how these concepts have developed is in order, and this will necessarily reach beyond the date of the nation’s birth. Understandably, colonial education reflected the social organization of colonial communities, and religion was often woven into this social fabric. For example, as Butts (1973) notes: “The Puritans went to New England in groups—family groups and church congregation groups. Colonists that prayed together tended to stay together, to work together, to rule together, and to educate together” (p. 277). Furthermore, Butts explains:

The actual political institutions set up in New England in the early seventeenth century were a mixture of Calvin’s theocratic conception of the state and the constitutional liberties being won by Englishmen in Parliament at home. The result was a covenant or compact theory of polity: the state was viewed as a gift from God by which men obeyed his command to establish a government on earth. Thus the state must be protector and supporter of the church, to do its bidding and enforce its pronouncements. (p. 279)

Due to this ‘compact theory of polity’, established churches were the rule in New England and the southern colonies. Conversely, a good deal more religious tolerance
was practiced in Rhode Island, Pennsylvania, and Delaware, while more tenuous church-state relations existed in New York, New Jersey, and Maryland (p. 282).

However connected the civil and religious authority may have been in various colonies, from the time of the Massachusetts Bay Colony and throughout the colonial period in America, schooling was primarily viewed as a responsibility of the family and the church, while the role of the state or civic authority was merely to assist them. During this era, schools were largely voluntary, and only occasionally aided by government funding (Jorgenson, 1987, p. 1). For example, a law passed by the Massachusetts Bay Colony in 1642 informed town officials that they had the power to require parents to educate their children and mandated such compulsory instruction of children by their parents or guardians. It also set up a minimum curriculum to be taught, and parents who disobeyed the law could be fined. However, the law did not establish schools, nor did it require towns or town officials to establish schools (p. 284).

Even when schools were supported by the civic authority, the purpose of colonial education was most often to foster the attainment of religious or spiritual ends. For instance, in 1647, the General Court of the Colony of Massachusetts, where civil powers were largely in the hands of the clergy, passed the ‘Old Deluder Satan Law’. The law was founded on the Calvinist belief that a more literate, better-educated populace would be less likely to be tricked into doing evil by the devil. It required towns of fifty households to appoint a teacher to instruct children how to read and write, and towns of one hundred or more families to set up a grammar school to

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prepare young men to attend Harvard College. Established in 1636, Harvard was founded on the Puritan belief that ministers and other community leaders required a classical and theological education. Other early colleges were also joint state and denominational institutions with similar academic and social missions. As another example, the early Dutch schools in colonial New York were also a joint concern of both church and state.

The religious nature and purposes of colonial schooling were evidenced in the curricular materials and texts used in colonial schools. The most notable example of this is the *New England Primer*, which was the primary text used by most American schools, both inside and outside of colonial New England (Cremin, 1951, pp. 183-184). Largely through rote memorization and imitation, children were drilled on the *Primer’s* contents, which included moral lessons, the Lord’s Prayer, the Ten Commandments, the Apostle’s Creed, and the Westminster Catechism. In the Latin grammar schools reserved for the sons of the upper class, students studied Latin and Greek authors to prepare them for entry into Harvard College. As part of the classical and theological education provided by Harvard, students were also offered Hebrew and ancient history to aid in studying the Bible and other religious texts.

The denominational control of schools increased during the eighteenth century in colonial America. Especially influential during this time period were the Congregational Church in New England, and the Anglican Church in New York and the southern colonies. The religious fervor that spread through the colonies during the Great Awakening both broadened and strengthened the influence of denominational
churches, including their efforts at religious education. This included increasing funding for denominational schools and universities and accelerating the philanthropic charity education that these denominations had provided for poor children for many years (Butts, 1955, p. 311).

The close relationship between church and state that existed in many of the colonies persisted as new American nation took shape. At the beginning of the American Revolution in 1776, nine of the thirteen colonies had established churches: the Congregationalists in Connecticut, Massachusetts, and New Hampshire; and Episcopalians in Georgia, Maryland, New York, North Carolina, South Carolina, and Virginia (Cremin, 1951, p. 13). However, during the course of the eighteenth century, the trend toward separation of church and state spread throughout the colonies, and this distinction between the sacred and the secular would inevitably impact schooling. As Butts (1955) explains, democratic and republican forces, influenced by Enlightenment thinking, eventually won the intellectual and political struggle with the colonial old guard who clung to antiquated Reformation principles (p. 310). Thus, the First Amendment, championed by the Bill of Rights’ primary author, James Madison, prohibited the federal government from establishing a state religion, and guaranteed religious freedom for the American citizenry. Neither education nor schooling was specifically mentioned in the Constitution or Bill of Rights, and thus, via the Tenth Amendment, they were established as powers and duties that were reserved for the states. Though the states would gradually assert more control over education through provision of their state constitutions and statutory law, a good deal of the operational
power over schooling was transferred to local school districts, thus continuing the
tradition of local control over education. While establishments of religion persisted in
some states, the trend toward separation of church and state continued. By the time the
Bill of Rights was passed in 1791, only four of the original thirteen colonies
(Connecticut, Maryland, Massachusetts, and New Hampshire) still maintained
established churches (Cremin, 1951, p. 14).

Nevertheless, largely because of the previously described social arrangements
in the American colonies, and in particular because of the church-state union that
existed in many of the colonies which would later become states, “the terminology of
colonial and early national education made no provision for differentiating between
the schools that much later came to be classified separately as ‘public’ or ‘private’”
(Jorgenson, 1987, p. 5). At the federal level, the fuzziness about the parameters of
‘public’ schooling that existed in the American colonies was evident in the wording of
the earliest educational laws passed by the infant national government, even before the
United States Constitution and the Bill of Rights were ratified. In passing the Land
Ordinance of 1785, Congress set the expectation that the government would provide
financial support for education. It decided that one-sixteenth of township lands should
be set aside for “the maintenance of public schools” within the township. Peterson
(1995) notes that ‘public’ in this instance was not intended to mean ‘state controlled’,
but rather “implied communal as distinct from parental or tutorial instruction” (p.
218). Two years later, the Northwest Ordinance reinforced the government’s
dedication to education, but not to secular instruction, decreeing that “religion,
morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged” (p. 218).

Since much of the schooling in the colonies had been joint endeavors between civil and religious authorities, which were often one and the same, the lack of distinction between public and private schools continued into the first several decades of the United States. For example, the charter for the William Penn Charter School, founded in 1701, referred to the school as ‘public’, despite the fact that it was actually a private foundation that was administered and funded by the Quakers (Jorgenson, 1987, p. 5). On the other hand, the New England town schools were referred to by some Congregational clergymen as “parochial schools”. As another example, the Sunday schools that operated in the United States during the late eighteenth and nineteenth centuries were another hybrid institution, having both a religious function and a secular one: battling the social ills brought about by the Industrial Revolution. In New York, the Sunday schools were philanthropic enterprises run by charitable corporations, but they sought and received state aid for building and operating expenses, and essentially served as the public school system for New York City in the first half of the nineteenth century. Instances of this type of casual wording persisted into the nineteenth century, as a church-sponsored school in 1826 New York titled itself ‘The New York Protestant Episcopal Public School’. Moreover, as late as 1871, a Congregationalist secondary school bore the moniker ‘The Hartford (Connecticut) Public High School’ (p. 5).
The use of similar terminology and continued co-mingling of church and state in the educational realm were not limited to the New England states which had previously established colonial churches, extending into the territories and states west of the Appalachians. For example, in 1836, the village of Kenosha, Wisconsin erected a building that was to be used as both a schoolhouse and a church. The following year, Samuel Lewis, Ohio’s first state superintendent of schools, advised the General Assembly of Ohio that many schools throughout that state claiming to be public schools were actually private. Moreover, in 1856, the Texas legislature passed a law designating any and all schools to which parents chose to send their children as “free public schools” (Jorgenson, 1987, p. 6).

However, beginning in the 1820s, via a series of state movements, the ‘common’ school movement sought to establish ‘public’ schools funded by taxes, free of charge and open to students of all economic means, and administered by civil authorities. As Martin (1987) explains, making education ‘public’ implied a “commitment to secularize education”, to avoid the church-state interaction that typified the colonial period (p. 3). While common school proponents did believe that religious instruction was part of the ‘public’ school’s mission of moral and social redemption, they sought to prohibit government aid to private, or ‘non-public’ schools, most of which were religiously affiliated, as well as to eliminate religious observances in the ‘public’ schools (Jorgenson, 1987, pp. 20, 23). Of course, deciding how religion would be taught in the common schools was a contentious matter, and the process was marred by divisiveness, intolerance, bitterness, and sometimes violence. Nevertheless,
through this political, legal, and social struggle, the modern concept of the public school was shaped as one that was increasingly and overwhelmingly secular in its administration, oversight, funding, and mission.

A clear example of how this began comes from New York, not long after the common school movement(s) began. In 1831, Catholics petitioned the Common Council of New York City for access to tax funds for their orphanages, while at the same time Methodists sought funds from the council for their charity schools. Those petitioning for the Catholic and Methodist institutions were essentially arguing that these were in fact common schools, despite their sectarian nature. The Public School Society, which filed a position in opposition to these groups, responded thus:

What are Common Schools? – This phrase cannot possibly mean any thing else than those schools, which are commonly know by that name, and have been so called, because they are Common, that is, open to all. Those cannot be Common Schools which are the property of a particular Corporation, and from which all persons may be lawfully excluded, who do not belong to a particular sect. (Cremin, 1951, p. 161)

Later that year, the Law Committee of the New York City Board of Assistants issued a report that, according to Cremin (1951), would be “monumental in its definition of the role of common education” (p. 161). The committee argued:

If religion be taught in a school it strips it of one of the characteristics of a Common School . . . No school can be common unless parents of all religious sects, Mohammedans and Jews, as well as Christians, can send their children to it, to receive the benefits of an education without doing violence to their religious belief. (161)

The committee went on to define a common school as “a school in which nothing but the rudiments of an English education are taught to all who are admitted into it, which is open to every child that applies for admission, and into which all can be admitted
without doing violence to their religious opinions, or their parents or guardians” (pp. 161-162). The members concluded that apportioning money from the Common School Fund to sectarian schools essentially supported the spread of religious doctrine and violated the state’s constitution, and they recommended that neither the Methodist nor Roman Catholic institution should receive a portion of the money from the common school fund. In the end, the city’s Board of Assistants chose to award money to the Catholic orphanage but deny it to the Methodist charity school, very likely because of a difference in institutional missions (pp. 163-164).

While the movement away from church control of schooling continued, there arose a related struggle over the role of religion in the fledgling common, or public, schools. For several decades after the common school movement, many ‘public schools’ retained a considerable degree of their traditional religious nature. The religious nature of schooling was witnessed to and defended in the annual reports of Massachusetts’ first Secretary of Education, and a figure regarded by many as the father of the common school movement, Horace Mann. Mann’s Tenth Annual Report, issued in 1846, reveals his belief that the right to an education was bestowed by God, and that it was this principle on which government establishment of common schools should be supported:

I believe in the existence of a great, immutable principle of natural law, or natural ethics, -- a principle antecedent to all human institutions and incapable of being abrogated by any ordinances of man, -- a principle of divine origin, clearly legible in the ways of Providence as those ways are manifested in order of nature and in the history of the race, -- which proves the absolute right of every human being that comes into the world to an education; and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all . . .
The will of God, as conspicuously manifested in the order of nature, and in the relations which he has established among men, places the right of every child that is born into the world to such a degree of education as will enable him, and, as far as possible, will predispose him, to perform all domestic, social, civil, and moral duties, upon the same clear ground of natural law and equity, as it places a child’s right, upon his first coming into the world, to distend his lungs with a portion of the common air, or to open his eyes to the common light, or the receive that shelter, protection and nourishment which are necessary to the continuance of his bodily existence. And so far is it from being a wrong or a hardship, to demand of the possessors of property their respective shares for the prosecution of this divinely-ordained work, that they themselves are guilty of the most far-reaching injustice, who seek to resist or to evade the contribution. (pp. 63-64)

Thus, according to Mann, those who failed to support the institution of free public schools were not merely making a poor policy decision, they were committing a moral transgression against the will of God.

Moreover, Mann urged public support for the common schools, in part, as obedience to divine dictates which, if ignored, could be enforced or punished by divine retribution. Again in his Tenth Report (1846), Mann stated:

As the right of sustenance is of equal date with birth, so the right of intellectual and moral training begins, at least as early as when children are ordinarily sent to school. At that time, by the irrepealable law of nature, every child succeeds to so much more of the property of the community as is necessary for his education . . .

. . . any community, whether national or state, that ventures to organize a government, or to administer a government already organized, without making provision for the free education of all its children, dares the certain vengeance of Heaven . . .

In obedience to the laws of God and to the laws of all civilized communities, society is bound to protect the natural life; and the natural life cannot be protected without the appropriation and use of a portion of the property which society possesses. (pp. 76-77)

Furthermore, in his Twelfth Annual Report, issued in 1848, Mann refutes, at some length, charges that those who favor common schools mean to exclude religion,
religious education, and Bible instruction from those schools, and who therefore brand a system of such schools as “irreligious”, “anti-Christian”, or “un-Christian” (pp. 101-102). In a type of testimonial, he states his predisposition toward, and devotion to, the Christian religion: “In this age of the world, it seems to me that no student of history, or observer of mankind, can be hostile to the precepts and doctrines of the Christian religion, or opposed to any institutions which expound and exemplify them” (p. 102). He continues his declaration of faith, going so far as to justify the use of the Bible in schools as an expression of popular will: “The Bible is the acknowledged expositor of Christianity. In strictness, Christianity has no other authoritative expounder. This Bible is in our Common Schools, by common consent” (p. 105).

Thus, in some ways the purposes of the new common, public schools seemed similar to those of the previously described denominational schools, especially since the schooling provided in both types of institutions would, in effect, reap both secular and religious benefits. For example, the reading lessons taught in denominational schools would make some strides toward increasing literacy, while the religious lessons, prayers, and catechism read by the students would spread the faith and teachings of particular religious denominations. Similarly, though Mann expounded on the importance of Christianity and the Bible to schooling, in his Twelfth Annual Report (1848/1957), he also noted that the citizenry would be taxed to support public schools that will benefit society in a variety of ways, including, but not limited to, reducing human ignorance, assuaging the effects of poverty, and combating vice (p. 103).
The overlap of religious and civic purposes in the new common schools is manifested in the expectation that they would provide, as did their denominational predecessors, moral and religious instruction for their student body. In fact, Glenn (1988) contends, “As the religious content of schooling declined, in the first half of the nineteenth century, the religious mission of schooling actually became more important in the minds of the education reformers” (p. 146). For instance, in his Twelfth Annual Report (1848/1957), Mann also discusses the potential for moral education, which he essentially describes as restraining passion and avoiding vice, to shape children into more moral human beings and in turn to fashion a more moral society (pp. 98-101). This he seems to differentiate from religious education, which he describes as Bible reading and instruction in the principles of Christianity. He notes that teachers are required by law to promote Christian virtues and graces, such as piety, justice, truth, love of country, benevolence, sobriety, industry, frugality, chastity, moderation, and temperance (p. 106). Expressing similar sentiments, in 1852 the Boston School Committee urged that “‘in our schools they [the foreign-born children] must receive moral and religious teaching, powerful enough if possible to keep them in the right path amid the moral darkness which is their daily and domestic walk’” (Peterson, 2001, p. 261). Other common school proponents who emphasized the importance of moral an/or religious education included Jacob Abbot, J.H. Belcher, Joshua Bates, and George B. Emerson (Glenn, 1988, p. 150).

However, despite the religious nature of common schools that has been described above, and in agreement with the continuing trend toward church-state
separation, most common school proponents attempted to shape the concept of the
‘public school’ as an institution that did not have a primarily religious or
denominational identity. Again in his Twelfth Annual Report (1848/1957), Mann
advocates common, public schools as opposed to “a rival system of ‘Parochial’ or
‘Sectarian Schools’” favored by some (p. 102). Moreover, he notes the virtues of the
American system of government, in which “religious belief is a matter of individual
and parental concern; and, while the government furnishes all practicable facilities for
the independent formation of that belief, it exercises no authority to prescribe, or
coercion to enforce it” (p. 103). He also notes that, while the public schools are
supported through taxation, these taxes are not to support the schools as religious
institutions, as this would constitute an unconstitutional religious establishment.

Rather, Mann argues that

. . . the religious education which a child receives at school, is not imparted to
him, for the purpose of making him join this or that denomination, when he
arrives at years of discretion, but for the purpose of enabling him to judge for
himself, according to the dictates of his own reason and conscience, what his
religious obligations are, and whither they lead. (p. 104)

In addition, Mann would reason:

If a man is taxed to support a school, where religious doctrines are inculcated
which he believes to be false, and which he believes that God condemns; then
he is excluded from the school by the Divine law, at the same time that he is
compelled to support it by the human law. This is a double wrong. It is
politically wrong, because, if such a man educates his children at all, he must
educate them elsewhere, and thus pay two taxes, while some of his neighbors
pay less than their due proportion of one; and it is religiously wrong, because
he is constrained, by human power, to promote what he believes the Divine
Power forbids. The principle involved in such a course is pregnant with all
tyrranical consequences. (104)

He further states:
For any human government, then, to attempt to coerce and predetermine the religious opinions of children, by law, and contrary to the will of their parents, is unspeakably more criminal than the usurpation of such control over the opinions of men. (p. 108)

Nevertheless, despite the stated intentions of Mann and other common school reformers that the early public schools would be nondenominational, or at least less denominational than previous schools, and that religious instruction in common schools would be limited to teaching the great ‘common truths’ of Christianity, the ‘non-sectarianism’ espoused by common school proponents was, in practice, a type of ‘pan-Protestantism’ (Jorgenson, 1987, pp. 20, 23). Even Mann himself, notwithstanding his forceful declarations about the blessings of American religious freedom, endorsed the participation of the Protestant clergy in school affairs. As Salomone (2000) explains:

In Massachusetts, five of the eight members of the state board of education under Horace Mann’s leadership were ministers. Mann’s successor as secretary of the board was the Reverend Barnas Sears, president of the Newton Theological Institution. Protestant ministers served as a school superintendents throughout the country. (p. 18)

However, Mann, a devout Unitarian, who, as explained above, was in favor of using the state-controlled common school for moral purposes and social benefit, wanted to restrict Catholic participation, believing that the Catholic religion was an "ignoble dispensation" that had a "baneful influence" on the human mind (Jorgenson, p. 38). Thus, he believed that the common schools should also serve to rid the new immigrant children of their "papist superstitions" (Peterson, 1995, p. 219). Salomone (2000) explains how this belief was tied to the social mission of the common school:
For Mann and his fellow reformers, universal education was in part a mechanism for social control. The communal isolation of newly arrived immigrants, their low economic status, and their high rates of illiteracy posed a threat to the vitality of the Republic. The school would teach the newcomers the proper attitudes and values of American democracy and foster an understanding and appreciation of American social institutions. (p. 14)

Thus it is important to note that the common school movement was not one that expounded secularity, but merely a very narrow brand of non-sectarianism that was nevertheless tied to a definite moral purpose. As Salomone (2000) explains:

Mann was not a secularist; he merely opposed what he considered to be sectarian religion in the schools. For Mann and his fellow school reformers in Massachusetts, the apparent enemy was traditional revealed religion, which they considered to be dangerous and socially divisive. And so they struck what they believed to be a nonsectarian compromise grounded in a core of what they considered widely accepted religious truths. In this way they felt confident that they could protect the institution of the common school from sectarian controversy while at the same time teaching some form of political/religious values. (p. 15)

Following this reasoning, the common school would be common, as long as it promoted common values and principles, and thus avoided controversy. This general avoidance of controversy served to garner popular and then political support for common schools and thus contributed to their growth. Salomone (2000) further explains:

The common school continued to avoid controversy or present alternatives to its neatly defined moral world through the mid-twentieth century. Even at that point in time, most tax-supported schools still presented a standard uncontroversial moral education. As the historian Carl Kaestle notes, “The strategy was to be inclusive by being uncontroversial . . . Yet [this strategy] contained the seeds of major discontent.” It alienated those who believed that school morality should be more securely grounded in a distinctive religious view while never escaping its roots in white, middle-class Anglo-American Protestant tradition. (p. 16)
Furthermore, the state-by-state movement to establish common, ‘public’ schools took place during a time when nativist sentiment was rising throughout the United States. As Salomone observes:

Common schooling soon developed a dark side, at least from the perspective of some of its beneficiaries. It offered the poor more than mere cultural transformation and assimilation: it created communal and intergenerational alienation. For children of the disadvantaged and the foreign-born in particular, mass public schooling was designed to wipe out differences and assure conformity to rules defined by the majority culture. (p. 17)

Fear and dislike for the increasing numbers of Catholic immigrants arriving in the U.S. in the 1830s and 1840s, embodied in the popularity of the Know-Nothing party in the 1850s, was certainly not divorced from the growth of ‘non-sectarian’ common schools that promoted common Protestant principles and attitudes. According to Jorgenson (1987), “Not only was the public school regarded as a Protestant institution; it was also the first line of defense against the growth of Catholicism” (p. 107). To ensure this identity and aim, clergymen often maintained the traditional administrative positions in the common schools that they held since colonial times, and many local school committees or boards were composed entirely of Protestant ministers (pp. 31, 37).

With the spread of common schooling, the disinheritance of religious schools was gradually, and sometimes very gradually, undertaken. Through the mid-1800s, many charity schools run by religious groups continued to receive government support. Although a much more detailed discussion about school funding and its impacts on the American concepts of public and private schools will be undertaken in Chapter 3, the issue of public funding for religious schools was inextricably tied to the
historic bifurcation between, and modern conceptualizations of, public and private schools. As Jorgenson (1987) details, the heated and sometimes violent struggle over this issue, which was entwined with the religious tension between Catholics and Protestants described above, would dramatically end the long tradition of voluntary/public cooperation in the United States.

The New York controversy that occurred between 1840 and 1842 provides a useful example of how the fissure between public and private schools widened during the common school era. Religious tensions in New York were rekindled when, in Governor Seward’s 1840 inaugural address, he recommended, for the betterment of the public welfare, the establishment of schools for immigrant children “in which they may be instructed by teachers speaking the same language with themselves and professing the same faith” (Cremin, 1951, p. 165). Prompted by the governor’s statement, a number of Catholic churches that operated free schools in New York City applied for a portion of the common school fund. Their application was opposed by the Public School Society, formerly the Free School Society, which had originally been organized to extend education to the poor children of the city who were not receiving an education from any religious society. Gradually this group had gained the primary responsibility for public education in New York City (p. 98). The Catholics in turn, led by Bishop John Hughes, raised objections to the city’s funding of the Public School Society, which they claimed was sectarian and biased itself, particularly because of its emphasis on reading the Protestant (King James) version of the Bible
and the anti-Catholic remarks found in the textbooks used in the Society’s schools (p. 166).

After the case was carried to New York Legislature, and a good deal of anti-Catholic rhetoric was voiced both in the halls of the legislature and in the press, the Maclay Law was enacted. The Maclay Law established, as an arm of city government, the New York City Board of Education, which would take the place of the quasi-public but essentially voluntary Public School Society. The law further prescribed that “‘no school . . . in which any religious sectarian doctrine or tenet shall be taught, inculcated or practiced, shall receive any portion of the school moneys to be distributed as hereinafter provided . . .’” (Jorgenson, 1987, p. 75). While the Maclay Law prohibited money from the city’s school fund to be distributed to the Catholic free schools, it also resulted in the removal of many overly zealous Protestant teachers from the city schools. Thus, although it failed to define the meaning of the very ‘sectarian instruction’ that it forbade, the Maclay Law had the effect of promoting some secularization of public schools (p. 75).

Amidst increased wrangling between Protestants and Catholics regarding the nature of religious instruction in the ‘public’ schools, including controversies over which Bibles would be permitted and textbooks that were offensive to Catholics, Catholic bishops in the 1840s began to advocate parochial schools that would be connected to the parish churches of the diocese. As many Catholics began opting to educate their children in Catholic schools, they also began to seek increased government funding for these schools. Due to the Catholics’ burgeoning political
power, they succeeded occasionally, and in varying degrees, in securing state subsidies for their own, separate schools. However, this only heightened Protestant fears, and, in 1875, anti-Catholic forces became so strong that they nearly succeeded in passing a constitutional amendment that explicitly prohibited state aid to sectarian institutions. Moreover, the chief sponsor of the proposed amendment, James Blaine, was almost elected President in 1884. The Blaine Amendment fell one vote short in the Senate, and resulted in Protestants, via state constitutions and school codes, banning state subsidies to religious schools in many municipalities across the United States (Peterson, 1995, p. 220).

In light of the changes brought about from the struggles over religious instruction and funding, Jorgenson (1987) asserts:

The immediate cause of the bifurcation of education into public and private (very largely church-related) sectors, which developed so dramatically during the 1850s, was the inability to reach any agreement concerning the issues commonly referred to by Catholics as the “School Question” – primarily the nature of religious instruction in the common schools and the demands for public funds for non-public schools. (p. 69)

Although not all church-related schools were Catholic, and although many orthodox Protestants did not favor the move toward common public schooling, Protestant denominations generally supported public schools to a much greater degree than Catholics. While government support for church-related schools varied from state to state and town to town, public funding for private, or nonpublic, schools generally declined in the antebellum years, often rooted in Know-Nothing ideology and political force. The 1850s was the decade of disinheritance for private, or nonpublic schools, such that, by the beginning of the Civil War, the principal of denying government aid
to church-related schools was firmly established throughout much of the United States (p. 69). Despite the delayed establishment of common schools in most of the South until after the Civil War, by its close the “School Question” in the United States had largely been decided. Public funds were generally prohibited from aiding sectarian schools, while the King James version of the Bible was frequently encouraged, and sometimes required, in public schools (p. 110). While religious affiliation was not required for designation as a private school, it nonetheless excluded an institution from being considered a public one. In 1866, the definition for ‘public’ or ‘common’ schools provided by a Massachusetts court as those “supported by general taxation”, “open to all free of expense”, and “under the immediate control of agents appointed by the voters of each town and city”, demonstrated the new prevailing conceptualization of the ‘public school’ throughout much of the United States (p. 6).

Church-State Separation and Religious Freedom in the Twentieth Century

Concerning the legal restriction of public funds from sectarian schools, Jorgenson (1987) asserts, “Much later the disinheritance of the church-related schools, a doctrine largely born of bigotry at the state level, was transmuted by the U.S. Supreme Court into high constitutional principle” (p. 69). Here he refers to the church-state court struggles that inevitably followed the newly established principle that the civil authority would administer and fund public schools, but not church-related ones. Despite Jorgenson’s assertion, in transmuting the doctrine of disinheritance into constitutional principle, twentieth century Supreme Court decisions would also ensure
the right of religious denominations to operate schools with limited interference from the state.

This aspect of religious freedom was not a foregone conclusion, and at one point there was some question over whether or not private schools, including religious institutions, could be, in effect, outlawed by a state statute, forcing all children to attend only public schools. Coupled with nativist fears, the prevalence of anti-Catholic sentiments among some factions, especially the Ku Klux Klan and the Masons, culminated in the passage of just such a law by the state of Oregon in 1922. Legal challenges to the Oregon law culminated in two cases that were brought before the United States Supreme Court: *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, which involved a sectarian school, and *Pierce v. Hill Military Academy*, which did not. In both cases, the Court ruled the Oregon statute unconstitutional. In stating the Court’s opinion, Associate Justice James Clark McReynolds, speaking for the Court, declared:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. (*Pierce v. Society of Sisters*, 1925, p. 535)

However, the Court also upheld the power of the state to regulate and oversee both public and private schools. McReynolds also emphasized:

> No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which
is manifestly inimical to the public welfare. \((Pierce\ v.\ Society\ of\ Sisters,\ 1925,\ p.\ 534)\)

Thus, the \textit{Pierce} rulings further illustrate the differences between the concepts of ‘public schools’ and ‘private schools’ in the United States with regard to religious identity. Just as the state could not compel children to attend schools that promoted a religion other than their own, nor force parents to send their children to a school that did not reflect their religious beliefs, neither could the state compel students to attend only public schools. However, just as the state could compel citizens to support public schools that were administered by the civil authority, it could also regulate both public and private schools, including religious ones, especially in ways that were essential for promoting the general welfare, or secular goods that would benefit society.

In 1947, the Court heard another case that involved both religious freedom and government funding of church-related schools. \textit{Everson v. Board of Education} challenged a New Jersey law providing funds to parents for their children’s transportation, via school bus, to and from parochial schools. In a narrow five to four decision, the court upheld the New Jersey statute. Justice Hugo Black, writing for the majority, stated that individuals of various religious faiths could not be excluded “\textit{because of their faith, or lack of it}, from receiving the benefits of public welfare legislation” \((\textit{Everson v. Board of Education},\ 1947,\ p.\ 16)\). Justice Black went on to explain that the purpose of the First Amendment was not to exclude religious institutions from general government services. The New Jersey statute was judged lawful because the court saw the children, and not the schools, as the primary
beneficiaries of the law. This ‘child benefit argument’ continued to be applied by the Court in future rulings.

However, the *Everson* case produced another development that was at least as important as the ruling itself. In deciding the case, the Justices defined the separation of Church and State in the following statement:

The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against the establishment of religion by law was intended to erect ‘a wall of separation between Church and State’ . . . (*Everson v. Board of Education*, 1947, pp. 15-16)

Thus, though it seemed to contradict the majority decision, the Court concluded that the wall between Church and state should be both “high and impregnable” (*Everson v. Board of Education*, 1947, p. 18). This decision was important in shaping the modern concept of the ‘public school’, not only for its broader conclusions about church-state separation which would influence court decisions concerning education during the next half century, but also for laying out the relationship between the government and religious schools. The following year, in deciding *McCollum v. Board of Education* (1948), the Court forbade even voluntary religious instruction during school time in public school classrooms, as such activities
violated the First Amendment’s establishment clause. Furthermore, the Everson ruling laid out a guideline for the limited distribution of public funds to sectarian schools, specifying that the government could not establish or provide substantial support for sectarian schools, even if it did so on an impartial basis that would aid a variety of religious schools. Government aid to religious schools could be used only to achieve secular ends that primarily benefited students, and not to support the religious mission of such schools. Not only would public schooling be secular, but any aid for private church-related schools, would be for limited secular purposes.

While further discussion of the continued struggles over public funding for sectarian schools will be undertaken in Chapter 4, questions about the role of religious instruction and worship in the public schools would continue throughout the twentieth century. In the early 1960s, two important Supreme Court cases were decided that involved the place of school prayer and Bible reading, which had been customary in schools throughout the United States since colonial times. The first case, Engel v. Vitale (1962), examined the constitutionality of a New York law directing a program of daily classroom prayers in public schools, with the requirements that the prayer be both brief and denominationally neutral, and that student participation in the prayer was voluntary. The law had been adopted on the recommendation of the New York State Board of Regents, who actually composed and recommended this prayer as part of their “Statement on Moral and Spiritual Training in the Schools” (pp. 422-423).

The parents of ten students brought suit on the grounds that it violated their religious beliefs and violated the First Amendment. As a testament to the political
popularity and acceptance of such the type of practice outlined in the New York statute at the time of the *Engel* ruling, twenty-two other states’ attorneys general filed *amicus curiae* briefs in support of the State of New York and its program of prayer. Nevertheless, the High Court found that program violated the First Amendment’s establishment clause. Justice Hugo Black, writing for the Court, noted the history of religious intolerance and state persecution that prompted many American colonists to leave England, and how a desire to avoid that type of church-state union was manifested in the religious freedom guaranteed by the U.S. Constitution (pp. 425-427). He then explained,

> There can be no doubt that New York’s state prayer program officially establishes the religious beliefs embodied in the Regent’s prayer. The respondents’ argument to the contrary, which is largely based upon the contention that the Regents’ prayer is “non-denominational” and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program’s constitutional defects . . . When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. (pp. 430-431)

However, Justice Black then expressed, in sentiments that bore some resemblance to those of Horace Mann (1848/1957), above, concerning the societal importance and value of religion and prayer:

> It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that “More things are wrought by prayer than this world dreams of” . . . [However] it is neither sacrilegious nor antireligious to say that each separate government in this country should stay
out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look for religious guidance. (pp. 433-435)

A year after the Engel ruling, Abington School District v. Schempp (1963) would similarly question a Pennsylvania statute requiring the reading of Bible verses and the recitation of the Lord’s prayer by public school students in unison, at the beginning of each school day. Each day, a student would select the verses for the reading from any version of the Bible or the Jewish Holy Scriptures. Though school officials and teachers were not to comment on the readings or prayer, they did supervise and participate in them. However, children could be excused from these exercises with the written request of their parent or guardian (p. 205). The Schemp family, who were Unitarians, argued that practice was coercive, since choosing to opt out of these practices would open the Schemp children up to ridicule and scorn by their peers. As in the Engel case, eighteen other states’ attorneys general filed amicus curiae briefs in support of the statutes and the practices they prescribed.

Despite their seeming popularity, the Pennsylvania statute, and a similar one from Maryland, were struck down. Writing for the Court, Justice Tom Clark, as had Justice Black in crafting the Engel opinion, noted the importance of religion and belief in God to the development of the nation, its laws, and its traditions. However, he also quoted an unpublished, nearly century-old opinion by Ohio Supreme Court Justice Alphonso Taft in Minor v. Board of Education of Cincinnati (1872), in reflecting on the nature of religious liberty in the United States, “The government is neutral, and, while protecting all, it prefers none, and it disparages none” (p. 215). Justice Clark
also quoted Justice Robert H. Jackson’s dissent in the *Everson* case, which noted that public schools were organized “‘on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion’” (p. 218). The Court found that the statutes violated both the free exercise clause and the establishment clause of the First Amendment, concluding:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment. (p. 226)

It is important to note that neither the *Engel* nor the *Schemp* rulings threatened the rights of public school students, either individually or in groups, to pray or discuss religion at appropriate times and in appropriate contexts. Two decades later, such rights were reaffirmed by the Equal Access Act (1984), which stated that secondary school students are permitted to conduct voluntary religious meetings during ‘noninstructional time’. Similarly, students in public schools were, and still are, allowed to study the Bible or other religious texts as works of literature, or for a better understanding of their historical or social importance. Nevertheless, both the *Engel* and the *Schemp* rulings further defined the public school as a secular state institution, and public school employees as state employees who were to focus on secular, not religious, aims.
School Reform and Religious Identity

The ‘commitment to secularization’ of the public schools continued into the twenty-first century, and not without a good deal of the tension that typified past episodes. Cultural and legal battles over the limitation of religious expression that can be mandated, modeled, or encouraged by public school employees persists. Similarly, there have been, and will surely continue to be, recurrent attempts by certain public school districts to post the Ten Commandments in schools, demands that ‘creation science’ be taught alongside evolutionary theory in Biology classes, disputes over prayers at public school graduation ceremonies, and questions about the permissibility of mandated ‘moments of silence’ in public schools. And practices that have been restricted by district policy, and often clearly identified by the courts as unconstitutional, continue in many public schools. Many coaches still lead their teams in prayer before or after games, and school choirs often perform devotional music at ‘Christmas concerts’.

Nevertheless, while hundreds of other laws and court rulings could be cited as additional evidence, the general point has been made. The religious practices and purposes that were permitted, and even encouraged, in public schools when they were first established, came to be increasingly limited, and eventually outlawed. This evolution gradually changed the concept of the ‘public school’ and the ‘private school’ that exist today in the United States. ‘Public schools’ cannot be sectarian institutions, nor can they have a primarily religious identity or mission, however ‘nondenominational’ they might claim to be. Rather, such schools are categorized as
private schools. Of course, not all private schools are sectarian, and an increasing percentage of private schools today are not (Carper, 2001). These are nonsectarian institutions, rather than religious ones, just as public schools are, and in this sense seem closer to public schools than they do to sectarian private schools. Even many sectarian schools today have become more secular in nature, increasingly focusing on student academic achievement and preparation for societal challenges in conjunction with their religious mission.

Nevertheless, as the history detailed above illustrates, the concept of the ‘public school’ has become an exclusionary one regarding the sectarian/nonsectarian issue. No public school district or state can establish a religious school, nor can any school with a religious affiliation or established primarily for a religious purpose be considered as a ‘public school’. As somewhat superficial, though not inconsequential, evidence of this evolution, we might recall the rather ambiguous titles of eighteenth and nineteenth century schools cited above. Today it would be impossible to for students to attend ‘The New York Protestant Episcopal Public School’, just as a Congregationalist secondary school could not presently title itself ‘The Hartford Public High School’. Nor do we see public schools bearing monikers like ‘Immaculate Conception Public School’, nor ‘Smithville Public Torah Academy’, nor ‘West-side High School for the Propagation of the Faith’.

Furthermore, as currently constituted, major school reform efforts have not substantially altered this facet of the concept of the ‘public school’. Charter schools, though sometimes referred to as “independent public schools” (Manno, Finn, &
Vanourek, 2000; Walsh, 2001), are not independent from the secular identity of the public school. Salomone (2000) notes that charter schools cannot be sectarian schools (p. 244). It would strain credulity if we heard of a state granting a charter to ‘Salvation Charter School’, or a charter school run by a religious denomination, and even more so if such an action were not quickly struck down by the courts. As unforeseeable as such developments are, they would, if they became a trend, fundamentally change the present concepts of the ‘public school’ and the ‘private school’.

Similarly, the four current publicly funded voucher programs permitting students to attend religious schools do not seem to pose a serious threat to our modern concepts of public and private schools with regard to the sectarian issue. The four programs in operation at this writing are largely targeted toward children in public schools that do not seem to serving them well. These voucher programs are frequently referred to, especially by opponents, as utilizing public funds to send children to private, including sectarian, schools. Yet the participating private schools do not, by virtue of accepting money that comes out of government coffers, become public schools. As noted above, and as will be discussed in greater detail in Chapter 3 of this dissertation, limited amounts of public funding have been transferred to private schools for years since the modern concepts of public and private schools emerged.

Certainly the United State Supreme Court’s very recent validation of Cleveland’s voucher program in Zelman v. Simmons-Harris (2002), also detailed in the next chapter, seems to open the door for the expansion of current programs and the initiation of similar ones. Yet, while increasing the amount of public funding that
would be available to public schools, these programs would not foreseeably permit
centralized, government-funded voucher programs, the ‘A+’ and
McKay programs, do not seem to put in jeopardy our fundamental ideas about the
nonsectarian nature of public schools. Like the Milwaukee and Cleveland plans, and
regardless of the merits or popularity of voucher plans, the Florida program does not
fundamentally change the way Americans think of public and private schools with
regard to the issue of religious identity.

Even if several statewide voucher programs were implemented, and if, as
economist Milton Friedman (1962/1982) advocates, vouchers became the primary
means of funding schools in the United States, this would not seem to fundamentally
alter our current notions of public and private schools with regard to the issue of
religious identity. If such a scenario developed, government funds would be
apportioned to students and their families to choose which schools to attend, including
church-related schools. The new administrative and funding arrangements brought
about by such a system would seemingly permit any student to attend any school,
sectarian or nonsectarian. While this would reverse the process of disinheritance of
religious schools, it would certainly not erode the non-sectarian identity of public
schools. In fact, such a system may erode the prominence of private religious schools,
as Friedman (1982/1962) hypothesizes (p. 91).

As the history of development of today’s public school illustrates, the religious
identity of private or public schools is not divorced from the other facets of their
identity, including: control and support, access or openness, and social benefit. This brings us next to the issue of administration and oversight of schools as a facet of the public and private concepts of schooling.
CHAPTER 3
CONTROL, SUPPORT, AND ACCOUNTABILITY

Preliminary Clarifications and Stipulations

Beyond Government Involvement

Even the casual observer of schooling in the United States would note that a key variable in the distinction between the concepts of public and private schools is government involvement, particularly government control. Government entities have a great deal of control over the public institutions, and a much lesser degree of control over private institutions. Indeed this is one of the primary distinctions commonly cited or understood when discussing the differences, and debating the merits of, public and private schools.

With that having been established, it might seem that our examination of this facet of the public and private concepts of schooling is finished, and that we can proceed to our examination of the next facet of the public and private school concepts. However, while the terms ‘public school’ and ‘private school’ assume a certain level of government involvement that is particularly relevant to the aspects of control and support that I will examine in this chapter, these terms assume more than mere government control, particularly as they refer to American institutions. While it is certainly true that, in the United States, the terms government or government-
controlled, or government-run can roughly be synonymous with public, such an observation requires little analysis and tells us little about the relationship between government institutions and the people, or the citizenry, that it serves. Though critics of public schools often refer to them as ‘government schools’, this type of reference seems, not only pejorative, but also overly simplistic, particularly regarding the relationship between the government and the people in a democratic republic such as the United States. In short, merely equating these terms does little to illuminate a fuller meaning of the concepts public and private with regard to schooling, which is my primary goal here.

The Indirect Nature of Public Control, Support, and Accountability

In The Public and Its Problems, Dewey (1927/1954) attempted to clarify the distinction between the concept of public from that of government within the state, and some of his findings will be useful for this discussion. He stressed, “Government is not the state, for that includes the public as well as rulers charged with special duties and powers. The public, however, is organized in and through those offices who act in behalf of its interests” (pp. 27-28). On the other hand, the concept of the state includes both the government and the public, and is defined by Dewey as “the organization of the public effected through officials for the protection of the interests shared by its members” (p. 33). Thus, the public is not merely the government, and, though public schools are certainly government-run institutions, correspondingly, public schools are not merely government schools, as some use the term.
More precisely, according to Dewey, the government, embodied in the collection of public officials, is the intended vehicle through which the interests of the public are looked after. Thus the public’s control over public institutions in the United States, including schools, is indirect, and effected through its representative government officials. Public officials, both elected and appointed, have developed at different levels, local, state, and federal, in order to oversee the public’s interests, including its educational interests. Of course, in the United States, the types of formal authority that public officials wield within the political process is determined by the separation of powers set forth in the federal and state constitutions. Moreover, the powers and responsibilities of the executive, legislative, and judicial branches vary both ‘laterally’, from state to state or municipality to municipality, and ‘vertically’, at the municipal, state, and federal levels. Nevertheless, the intended purpose of these officials in looking out for the public interest, regardless of governmental level or branch, is, as Dewey described, to oversee various activities that are perceived to have indirect consequences on the public that they are intended to serve.

While Dewey does not explicitly title this phenomenon within his discussion of the public above, he also seems to describe what is commonly called public support. Public support would be generated when public awareness about the consequences of certain private associations reaches the point that the public decides to attempt to monitor and control those consequences via public officials. Essentially, this involves gaining the political support needed to exert political will, approving
governmental policies or empowering government officials to pursue certain courses of action in channeling those consequences.

For practical purposes, this public support must also involve providing the financial means to oversee and promote the public interest, since the public control required to do so incurs financial costs. In this way public control and public support are linked in a democratic republic such as the United States, since there can be no public control without some amount of public support, both politically and financially, to do so. Thus, the concept of public support involves both the political support of a significant portion of the citizenry, and the financial support that they are willing to allocate through government agencies and mechanisms to implement policies in the public interest.

Of course, the collection of public funds is most commonly accomplished through taxation, which is approved either by the public itself, or by its representatives, both by majority vote. While not all of the parties taxed to support a public policy or government action will agree with its implementation, the will and approval of the voting or political majority is enough to gain public funding. Thus, just as public control of public acts, such as schooling, is indirect, effected through governmental entities, so public support for public acts is indirect, financed through tax moneys which are allocated by the government.

However, the price of control and support is accountability, and this applies to both public and private institutions. Regarding the former, just as the public indirectly controls and supports public institutions and services, those institutions and service
organizations can be held responsible or answerable by the public. In the opposite direction of control and support, this accountability flows through public channels of control back to the public, through public officials. To accomplish this, accountability instruments, such as audits or reviews, are designed and conducted to ensure that the public’s interests are being cared for. As another example, standardized testing is increasingly being used as an accountability instrument to evaluate schools. Furthermore, if public officials fail to hold accountable the public institutions that they are charged to oversee to the liking of the public, they may be disempowered and/or removed by the public through political processes.

All of this bears noting for two reasons. First, it introduces some of the relationships that I will be analyzing in this chapter. Secondly, throughout this chapter various aspects of public control, support, and accountability, as contrasted with private control, support, and accountability, will be discussed, without frequent reference to the public processes that these aspects entail. Thus, at times my treatment of these topics may seem to be merely structural, focusing on formalistic concerns regarding the level of government involvement that differentiates public and private institutions. Nevertheless, I would not want to create the impression that my analysis lacked an understanding of the relationships that I have noted above, and indeed I discuss other aspects of them in greater detail in the following two chapters.

Differentiating Between Operation and Regulation

Control over schooling, whether public or private, can generally be viewed as having two related aspects, operation and regulation. For the purposes of this
discussion, I will consider operation to include the processes of establishing, administering, staffing, and managing schools, as well as carrying out various typical school functions, such as instruction, supervision, and care of children. Thus, due to the roles they occupy, the control exerted over schooling by those who operate the schools can be characterized as quite direct.

Though related in a number of ways, I will distinguish the process of operation from that of regulation, which I will take to mean the establishment, implementation, and enforcement of laws, rules, and guidelines governing various aspects of schooling at the operational level, including instruction, curriculum, equity concerns, and health and safety issues. Regarding the dynamics of public control detailed above, regulation can be imposed by public officials in any branch and at any level of government. Unless otherwise noted, my use of the term regulation will assume that public or private entities have the power to impose and enforce regulations, not necessarily that such regulations are particularly strict or lax, nor that they are necessarily enforced to any great degree.

Development of Public and Private Control and Support

Colonial and Early American Schools

As described in Chapter Two, colonial schooling was often a joint endeavor of both church and state, and that power over schooling was not specifically delegated by the Constitution, and thus, via the Tenth Amendment, was established as a powers reserved for the states. Furthermore, the colloquial practices and habits of school governance that predated the common school era did not immediately vanish with the
passage of new legislation for establishing common schools, and just as Protestant clergymen were often common school administrators and local school board members, denominational schools in many places continued to receive support from the former colonies, now states, and municipalities. Nevertheless, while church-sponsored schools were gradually disinherited, the concept of the public school as an increasingly secular institution, administered and regulated by the state, took shape, while schools administered by churches were categorized as private schools.

However, while the nonsectarian requirement excluded church-related schools from being categorized as public, other schools engaged in practical or worldly pursuits would be categorized as private as well. Another type of private school emerged during the mid-eighteenth century, schools which Butts (1955) describes as “a new type of private-venture school which provided a secular education in subjects that would be useful and practical for the expanding occupations of a commercial society” (p. 312). Kaestle (1983) explains that the proliferation of private-venture schools in the cities, particularly during the 1780s and 1790s, was a response to popular demand (pp. 4, 30). This new brand of private school was run by a private schoolmaster, who was responsible to neither churches nor towns, but only to the school’s clientele, which consisted of prospective merchants, clerks, bookkeepers, accountants, mechanics, engineers, and seamen. Thus, the private-venture schoolmaster was essentially a small-time entrepreneur, adapting the schooling he provided to fit the needs and interest of various groups of people as he attempted to attract a clientele.
This emphasis on a practically useful education was adopted by the academy, an incorporated type of private school that would influence American education for the next century. A board of trustees would be formed to run the academy, similar to the model used by English commercial corporations. These academies were chartered by individual states and, sometimes states granted the school’s corporate board the power to be self-perpetuating. Unlike the private-venture school which had practically disappeared by the time of the American Revolution, many academies were able to maintain operations and build distinctive traditions. Examples of this include the William Penn Charter School and Benjamin Franklin’s Academy in Pennsylvania, Phillips Academy in Massachusetts, and the Union School in New London, Connecticut (Butts, 1955, p. 312).

Thus, as the new nation took shape, both the denominational and nondenominational schools continued to operate, being granted, expressly or tacitly, some control over schooling by various states. As Butts (1955) explains:

Approximately half of the first state constitutions mentioned education, stating that schools were needed and should be established or in some cases simply that schools should be cheap. Likewise, the early laws of some of the states made provisions for establishing schools, in a range from secular schools to pauper and parochial schools; but some states had taken no action whatever by 1800. (p. 315)

Regardless of the wording of their state constitutions, many of the states decentralized power over schooling, which merely perpetuated the tradition of local control that had existed prior to the establishment of the new nation. Throughout the mid-eighteenth century, local districts that were established as communities stretched further into the frontier, had gained greater control over education from larger nearby towns. For
example, Massachusetts passed a law in 1789 giving local school districts the power to build their own schoolhouses, appoint teachers, set the length of school terms, and control the curriculum. By 1800, the local districts in New England were also given the power to levy taxes to support their schools (Butts, 1955, pp. 313-314).

In conjunction with this, Martin (1962) observes that as towns and municipalities became more engaged in education, often through the prompting of state statutes, and as the separation of church and civil authorities progressed, schooling came to be viewed as a government responsibility, especially at the local level. Education came to be seen as “a separate and special function of government”, as school districts were established and structures and officials put in place for the local administration of schools (p. 2). Again fostered by the passage of state statutes, towns established school committees or boards for this purpose. Thus, through this process, state action created the local school district as a unit of government (p. 40).

From the established New England towns, the district system spread to the frontier, especially as residents in outlying locales became increasingly resistant to supporting schools that were distant from their homes (Kaestle, 1983, p. 26). Furthermore, as Kaestle (1983) explains: “The district school met the educational needs of rural people, broadly literate but not highly educated, whose communities still depended to a considerable extent upon family and church for the inculcation of moral values and upon work for occupational training” (p. 22). In fact, school participation of rural children often exceeded that of children in larger towns and cities.
(p. 24). However, the district system was adopted quite slowly in the South, where most states did not establish viable systems of education until after the Civil War.

In applying Dewey’s model regarding the concepts of public and private to schooling outlined above, it appears that, in the early days of the republic, a public regarding education had most substantively developed at the local level. While there may have been enough of a public at the state level to pass laws requiring schooling and the establishment of local districts, there was generally not public support for a great deal of state enforcement or oversight of schooling. Thus the responsibility for schooling was passed on to local school districts, an arrangement that continued the political habits of the colonial era. Extending Dewey’s distinction between public and private, we could say that the consequences of schooling were perceived by the citizenry as principally affecting the locality or municipality in which it took place. Thus, school officials, the outward sign of an organized public, had developed only at the local or district level. Their duties were largely to ensure that community norms and values were promoted and perpetuated, as the contrary would constitute a harmful consequence in the eyes of community members. Moreover, teachers were certified at the local level, thus ensuring that, as a public employee, their activities could be closely monitored by, and accountable to, the community that they served. In that nascent stage in the nation’s development, support for substantial oversight of schooling by public officials at the state and federal levels had not yet formed.
The Common School Movement

However, determining the extent to which public or private entities would control schooling, especially as schooling increasingly came under civil control during the common school movements, was often a very contentious process. For example, in the early to mid-nineteenth century, the Free School Society, a quasi-public but essentially voluntary group, was generally seen as having oversight over education in New York City. The Public School Society, formerly the Free School Society, which had originally been organized to extend schooling to the poor children of the city who were not receiving an education from any religious society. As it carried out its activities, the Free School Society developed more control over education in the city, gradually gaining the primary responsibility for public education in New York City, acting in many ways as a local board of education. As Cremin (1951) explains, the Free School Society “was considered to be a controlling body above narrow, private, or sectarian interests; and of the contending elements it was, perhaps, the closest approximation to representative community control” (p. 157). Later, the Free School Society would be re-titled, the Public School Society, though it was still not fully public, in the sense of being fully under community control.

However, in Governor Seward’s 1840 inaugural address, he recommended, for the betterment of the public welfare, the establishment of schools for immigrant children “in which they may be instructed by teachers speaking the same language with themselves and professing the same faith” (Cremin, 1951, p. 165). Prompted by the governor’s statement, a number of Catholic churches that operated free schools in
New York City applied for a portion of the common school fund, which was opposed by the Public School Society. The Catholics in turn raised objections to the city’s funding of the Public School Society, which they claimed was sectarian and biased itself, particularly because of its emphasis on reading the Protestant (King James) version of the Bible and the anti-Catholic remarks found in the textbooks used in the Society’s schools (p. 166).

In the end, neither side really won. The Catholic schools failed to obtain funding from the city for their schools, while the Public Schools Society would begin to lose control of the public schools in New York City. In April, 1841, John Spencer, New York’s Secretary of State, and ex-officio superintendent of common schools, submitted a plan that called for the election of a Board of Commissioners that would represent the people of each ward in the city. Spencer stated that, despite the benefit to the city as a result of the Public School Society’s efforts, that the current arrangement operated on “a principle . . . hostile to the whole spirit of our institutions”, and that “the necessity which called it into existence, has ceased” (Cremin, 1951, p. 169).

Similar sentiments were soon echoed by Governor Seward, who proposed vesting control of common schools to a public agency responsible to the entire citizenry. The proposals made by Spencer and Seward were included in a report by the New York state legislature’s Committee on Colleges, Academies, and Common Schools. The report stated:

In the first place, there is something exceedingly incongruous with our republican habits of thinking, in the idea of taking the children of a population . . . taxing them at the same time for the support and maintenance of the schools, and when both taxes and children are furnished, withdrawing both out
of the hands of guardians and tax payers, and handing them over to the
management of an irresponsible private company. Such a concentration of
power into mammoth machinery of any description, is odious to the feelings,
and sometimes dangerous to the rights of free men. (Cremin, 1951, p. 172)

As detailed in the previous chapter, the controversy in New York City led to the
passage of the Maclay Law in 1842, which established, as an arm of city government,
the New York City Board of Education, to take the place of the Public School Society
(Jorgenson, 1987, p. 75).

Interestingly, the distinction between public and private, or rather the transition
from private to public, described by Dewey can be witnessed in the episode just
described. In its report, the Committee on Colleges, Academies, and Common
Schools’ referred to the Public School Society as an “irresponsible private company”,
and that, as a remedy, Governor Seward and the report emphasized placing schools
under the control of a public agency that was accountable to the citizenry. Also
instructive is Secretary Spencer’s assessment that, due to current necessities, the utility
of the Public School Society had run its course. This seemed to reflect a perception by
the public officials involved in this matter that the usefulness of a private, or even
quasi-public, association’s control over schooling was limited. The problems created
by the Public School Society had clarified for these public officials that social
conditions had changed, and that a new control paradigm was needed for the city’s
schools, indeed, the public’s schools. The consequences of schooling had come to be
seen as having potential indirect consequences, thus prompting the development of a
public regarding education. This in turn prompted the creation of more fully public
officials and official bodies to oversee schooling, and the development of more fully public schools, which those public officials would operate and regulate.

As Cremin (1951) explains, by 1850 the principle of public control of common schools was fairly well established throughout the United States (p. 175). Similar to the evolution of more fully public schooling in New York City, the belief in the public responsibility for and control over education at the local level became coupled with the belief that representatives of the public should be held accountable for the use of public or taxpayer funds. These concerns were addressed at the state level as well, as states began to exert more control over public education, especially through the establishment of state superintendents of education. As Cremin (1951) explains, the primary sources of this control were:

1) the legal precedents of educational legislation permitting or compelling certain practices throughout the state, and
2) the doctrine that the authority and supervision of the state should follow the support of the state. (p. 176)

This doctrine of state support included withholding or withdrawing money from schools managed by private entities, including both church-related schools, as described in the preceding chapter, and corporate or proprietary schools, such as the academies described previously in this chapter. Cremin (1951) holds that this withdrawal of public funds from privately controlled institutions occurred as a result of a “gradual crystallization in the minds of the people of the meaning of the common school” (p. 177). As increasing numbers of state constitutions came to refer to use of public funds for “‘the support and encouragement of common schools’”, the question as to what qualified as a common school became vitally important (p. 177).
Eventually, the common conception of a ‘common school’ was one “fully controlled by the community”, and thus a public school (p. 177).

As Cremin (1951) concludes, by the middle of the nineteenth century, the principle of the public common school “controlled by the community which supports it,” generally followed three basic propositions:

(1) that public education was a responsibility and function of the community, with the state as the final level of authority (subject, of course to the general limitations of the Federal Constitution as in all realms of state authority);
(2) that the state exercised its authority largely through the delegation of powers wherever desirable and possible; and
(3) that control by the community followed the support by the community. (p. 178)

These propositions would lay the foundation for the continued development of the modern system of public schooling in the twentieth century.

Conventional Public and Private Schools

Public Schools

Local/district control and support.

With these observations in mind, we turn to look at the characteristics of control and support between public schools and private schools, and how this shapes our conventional concepts of the ‘public school’ and the ‘private school’. First of all, because of the Tenth Amendment’s provision that the power over education is reserved for the states, and provisions in current state constitutions concerning the responsibility for providing education, much of the ultimate power over public schooling lies with state governments. However, as described in the historical record above, due to the delegation of state responsibility, which perpetuated many of the
traditions of colonial schooling, the immediate responsibility for public schools has been placed under the purview of the local school district, which is ultimately controlled by a local school board. While local school boards themselves are empowered by the state government, they are also typically elected by local communities and thus, as public officials, are meant to represent the interests of the community regarding schooling. (A small percentage of local school board members are selected by appointment rather than election, but are considered public officials nonetheless.) However, the actual operation of schooling, as I have defined it above, is carried out by educational professionals, as the school board employs principals and teachers to carry out the functions of schooling. (A unique case that does not entirely conform to this model would be the state of Hawaii, where all of the schools in the state belong to one district which is administered by the state, making the entire state a type of hybrid local-state school district.)

In addition to the administration of the public schools, public control over public schools at the local level also takes the form of regulation, both indirectly, through public officials, and more directly, through community participation and oversight. Public school board members and superintendents, as public officials charged with the responsibility of overseeing the community’s interests, regulate the district’s schools via the formation of school district policy. Principals and teachers are hired to implement and enforce these policies, though they are given certain levels of professional discretion and academic freedom to accomplish these goals. Of course, the control granted to the local public school district by the state is also contingent on
the support of the public at the local or district level. This public support is manifested politically, for instance, in the election of school board members and their appointment of superintendents. Thus, indirectly, the public at the district level can regulate public schools via the public officials they elect. Board members who advocate unpopular policies will likely find themselves ousted after the next election. Similarly, superintendents whose decisions spark public ire are often dismissed, are forced to resign, or do not have their contracts renewed. Financially, public support of public schools manifests itself when the local community agrees, through voting on a levy or bond issue, to build and maintain public schools via taxes and fees, most typically and substantially via local property taxes.

While public control of public schools through public officials is the indirect means by which the public exercises control over the schools, there are more direct ways that the public at the local level can control the public schools. This is accomplished through certain participatory mechanisms, including the traditional parent-teacher associations, as well as the more recent school-based, or site-based, management. In these ways members of the public can contribute to the regulation of schools in an advisory way, or via decision-making power that they share with local school officials. As Peterson and Skiba (2001) point out, this type of parental and community involvement in decision-making is sometimes solicited and fostered by public schools, with the goal that it will improve school climate, community-school relations, and ultimately, student development and achievement.
State control and support.

While the states actually delegate a good deal of their authority for education and schooling to local school boards, state officials also have the responsibility to regulate public schools. State legislatures, which often have specific education committees, and pass statutes regarding, for instance, the length of the school day and year, curriculum and graduation guidelines, teacher and principal certification, appointment, or election of state and local school board members, and proficiency or competency testing. State governors can nominate or promote certain education officials, including members of the state board of education, the chief state school officer (often called a ‘state superintendent of education), and members of the state department of education. He or she can also promote various laws or guidelines regarding education and can use discretionary funds for various educational projects. State boards of education have a great deal of power and oversight in adopting and enforcing state education policies necessary to implement educational legislation. Finally, state departments of education, which are headed by the chief state school officer, are responsible for the immediate oversight of school districts, ensuring compliance with state laws and regulations.

While public officials at the state level are substantially more detached from the day-to-day operation of public schools than those at the local level, public support is still important for public control of schooling at the state level. While practices vary from state to state, there are public elections of governors, legislators, and judges who hold, and may run for office on, particular political positions regarding schooling or
education. Similarly, members of a state’s board of education may also be elected by
the public, or appointed by an elected official or body of representatives. Financially, a
good portion of the funding for public schools comes from state coffers, which must
be approved for educational purposes either through direct vote by the public itself, in
approving, for instance, an increase in the state’s sales tax, or through the
representatives of the public. Even the institution of a state lottery, from which a
portion of the receipts, however small, would go to fund public schooling, requires
either direct approval by the public or its representatives.

*Federal control and support.*

Given constitutional stipulations that limit the federal government’s control
over schooling, most federal legislative initiatives use a carrot and stick approach,
coaxing states and local school district to adopt certain policies in return for federal
funding. Occasionally these efforts focus on influencing public school curricula, such
as the Smith-Hughes Act (1917), which promoted vocational education, and the
National Defense Education Act (1958), which promoted science, math, and foreign
language education. A number of Congressional acts have also been focussed on
promoting educational equity for minorities (e.g., Title VI of the Civil Rights Act of
1964), girls (Title IX of the Education Amendments of 1972), the handicapped (The
Individuals with Disabilities Education Act), and students from low-income families
(The Elementary and Secondary Education Act). Presently, Presidential policy and
Congressional legislation are implemented by the Secretary of Education and other
Department of Education officials, as well as other cabinet-level departments (e.g., the
Department of Health and Human Services), who develop and implement programs
and guidelines intended to affect public schooling by influencing policies or practices
at the state or local levels. Recent federal legislation (e.g., The No Child Left Behind
Act) seeks to bolster state and local efforts to promote accountability for educational
spending, as well as to provide quality schooling to the nation’s children, especially
those from disadvantaged groups.

Of course interpretation of constitutional and federal law, as well as
determining the constitutionality of state and local statutes, is the task of the federal
court system. Since all federal justices are appointed by the President and approved by
the Senate, there can be some public pressure or influence put on the former or the
latter to see that judicial candidates with certain characteristics ascend to the federal
bench. However, since federal justices receive lifetime appointments, public influence
or control of federal court decisions is greatly limited, except in the public’s ability to
use the system of checks and balances, including constitutional amendments, to
influence elected federal officials to attempt to circumvent or surmount decisions of
the federal judiciary.

The conflicted nature of public control.

While this review of the various characteristics and levels of public control and
support of may seem academic and tedious, it does yield some interesting information
regarding the traditional concept of the public school. As a publicly controlled entity,
the public school has a conflicted personality. By this I do not mean that there is
merely disagreement among public officials at various levels of governance, and that
this often seems at odds with the will of the public that they are supposed to represent. Infighting and bickering among school board members is not uncommon, nor are disputes between local school boards and local parent teacher associations. In expressing sentiments that seem inspired by this process, Mark Twain once wrote, “In the first place God made idiots. This was for practice. Then He made school boards” (Carruth & Ehrlich, 1992, p. 210). Similarly, state officials frequently disagree over public policy, and sometimes this disagreement is sharpened and publicized to gain political advantage or power, as well as to promote individual officials’ or their parties’ ideas about what policies would best promote the public interest.

Thus, my point here is not merely that the control over public schooling is a political process, that is, frequently characterized by debate and disagreement between various stakeholders, as this point seems academic. Rather, this conflicted notion of the public school arises, not merely from the question of what public school policies would best serve the public, but from the question of which public the public school is to serve, or first serve, or most serve. That is to say that, while the public, or a public, selects officials to represent their interests at various levels of governance, these publics do not share the same concerns. While the public at each level of governance does select officials to look out for its interests and to regulate the consequences of certain social activities, these officials, and the publics that they represent, often disagree about what schooling policies should be implemented. For instance, as explained above, while the direct power over the administration of public schools is undertaken by local school boards, that authority is subject to a considerable amount
of regulation by state officials and governmental bodies. While public officials at the state level can and do work with local school boards and superintendents, and may even solicit input from teachers, in formulating policy, they are not required to seek approval from local officials and teachers before implementing state school policy. A specific example of a state-imposed policy which many local officials and teachers seem to despise is state-mandated testing of students for proficiency or achievement in various subjects.

However, while the states do delegate a portion of control over schooling to local districts, the state can step in and take more direct control over the administration of local public schools. This occasionally happens in cases where a local school district is deemed to be doing such a shoddy job at providing schooling that the state has the responsibility to intervene to protect the welfare of the district’s children, as well as to prevent the negative impacts of such inadequate schooling from damaging the public welfare. Such a scenario has recently developed in Philadelphia, with the state of Pennsylvania choosing to turn over the operation of some very low performing schools to private companies or organizations (Reid, 2002).

Similarly, the federal government has at times, and still does, seen fit to directly administer schools for various reasons. Historical examples include the Freedman’s Bureau, which established and operated schools for freed African American slaves throughout the south from 1865-1872. As another example, beginning in 1890, the Bureau of Indian Affairs (BIA) began operating schools for Native Americans, and still operates schools today. As a final example, the United
States Department of Defense has established schools at military installations in various countries to educate the children of American service personnel. While none of the above examples follows the model of the local public school, because of the administration and support of the federal government, these schools would certainly be classified as public schools.

Furthermore, each state’s control over its public schools, which is protected by the Tenth Amendment, as well as the local control afforded by both tradition and state law, are subject to federal oversight, especially when state school policy conflicts with other Constitutional requirements as interpreted by the federal courts. Occasionally, these decisions, especially Supreme Court decisions, can influence longstanding rituals, practices, and policies that, while politically popular at both the local and state levels of governance, are superceded by the perceived responsibilities of the federal government and by the dictates of federal law. These decisions typically exert federal control when state and/or local authority breaches or threatens constitutional principles, such as the establishment of religion (e.g., *Engel v. Vitale* (1962), *Abington School District v. Schempp* (1963)), or equal protection of the laws (e.g., *Brown v. The Board of Education* (1954) and *Swann v. Board of Education* (1971)).

Nevertheless, as Devins (1989) explains, federal courts exert control over local public schools only in very limited circumstances to ensure compliance with the Constitution and federal law. In issuing rulings that regulate public schools, the Supreme Court has displayed a great deal of deference for local and state control over education. For instance, while the *Brown II* (1955) decision directed district courts to
oversee school desegregation, the Supreme Court’s ruling was cognizant of the importance of local control in helping to fashioning specific remedies to eliminate unconstitutional practices:

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. (p. 299)

In another case, *Milliken v. Bradley* (1974), in which the Supreme Court ruled that multi-district remedies for a single district’s segregation policies were impermissible, the Court recognized the authority of local school district officials:

While boundary lines may be bridged in circumstances where there has been a constitutional violation calling for inter-district relief, school district lines may not be casually ignored or treated as a mere administrative convenience; substantial local control of public education in this country is a deeply rooted tradition. (p. 719)

As yet another example of the limits to federal control over public education, in *New Jersey v. T.L.O.* (1985), the Supreme Court ruled that, when applied to public schools, the Fourth Amendment offers only limited protection against illegal search and seizure. In essence, the Court asserted that public schools’ interest in maintaining security and order can permit them to search student belongings and confiscate their property without a search warrant or probable cause. Moreover, the Court’s decisions in *Bethel School District v. Fraser* (1986) and *Hazelwood School District v. Kuhlmeier* (1988) upheld the ability of local school districts to regulate student speech in the interest of transmitting and enforcing standards of civility and accepted civic values (Devins, 1989, p. 10).
Private control and support of public schooling.

Before we address the control and support of private schools, a couple of further points must be made regarding the control and support of public schools. First, while the great majority of public school funding comes from public sources, largely through taxation, it has certainly been the case that public schools have received support from various private sources and yet retained their identity as public schools. Philanthropic graduates of public elementary and secondary schools do occasionally, though unfortunately not with great frequency, donate money to renovate their alma mater’s library or buy new instruments for the school’s marching band. Similarly, many public schools have charged students user fees for lab courses or participation in certain extracurricular activities, and this money, as it is supplied directly by individual students and their families, would constitute a type of private financing. Despite the fact that, in both of the situations described above, the money did not come from local property taxes or state coffers in no way jeopardizes the school’s public identity. Furthermore, either local businesses or global, multi-billion-dollar soft-drink giants who sponsor team uniforms or shoes are often permitted to place an advertising placard on the baseball field’s left field fence or below the scoreboard in the school gymnasium. Nevertheless, this reciprocal type of agreement with private entities has taken place for years in many of public school districts in many states and not severely shrouded the distinction between public and private schools from the perspective of control.
Secondly, while it seems clear from the analysis above that we think of traditional public schools as those which are not controlled, that is operated or regulated, by private entities, but rather by public officials and employees, public schools occasionally relinquish some control over certain functions and permit private entities to provide some services in the public schools. As Ascher, Fruchter, and Berne (1996) point out:

For several decades [public school] districts have contracted out arts instruction by bringing specialists in dance, theatre, film and video, and a variety of other art forms into the classroom . . .

Public school authorities have also provided funding through contracts or competitive grants to community-based organizations that offer recreation, counseling, homework help, and adult education after school, as well as dropout prevention, mentoring, and counseling programs during school hours.

(p. 90)

While both of these types of arrangements are discussed in detail below as a type of privatization, it bears noting that many public schools today contract with private entities, both for-profit and not-for-profit, and yet still seem readily identifiable as public schools.

Private Schools

Private control and support

In contrast to public schools, private schools are not operated by a local school district, but by some private, non-governmental, entity. While public schools are overseen by a local public school board which may be responsible for hundreds of district schools, most private schools, whether religious or non-religious, are immediately overseen by a school board that is either responsible for only a small number of schools, or, more frequently, solely responsible for a particular school.
Religious schools are often operated by a school council or board which is affiliated with a particular faith community, such as a church, temple, or mosque. Such boards are often made up of the alumni of that particular school, or those that have otherwise ‘adopted’ that private school and become its benefactor. Members can be selected to these boards through a vote from the school community, a vote of the board itself, or appointment by clergy. As in the case of public schools, the day-to-day operation of private schools is delegated from the board or corporation to a principal or headmaster, and then teachers, with varying levels of academic freedom are employed to implement the school’s curriculum.

In the case of Catholic schools, which have historically constituted the largest category of private schools, elementary schools are often affiliated with a parish, and therefore may be overseen by a parish school board or council. Catholic high schools, which are usually not affiliated with a specific parish but rather serve students from a number of parishes, are frequently also controlled by their own school boards. Bryk, Lee, and Holland (1993) describe Catholic high schools as having a very decentralized governance structure. As they observe, “The ‘Catholic school system’ is in reality a very loose federation. Virtually all important decisions are made at individual school sites” (p. 299). However, most parochial elementary schools and Catholic high schools today are part of a diocesan school system, which is under the control of diocesan superintendent, or minister, or vicar of education, and ultimately under the control of a bishop. In addition, there are a small number of independent Catholic schools that are
not affiliated with any specific parish or diocese, but are otherwise governed by boards and administrators in the same ways as other Catholic schools.

Due to differences in scale between a single private school and even a modest-sized public school district, it only stands to reason that private school boards tend to exhibit more intimate relationships between themselves and their respective schools than is possible for local public school boards. However, not unlike the workings of local public boards of education, private schools boards frequently exhibit many of the features of community politics: wrangling, vociferous debate, factional alliances, power jostling, etc., though again on a smaller scale. Neither are these features are not divorced from mechanisms of private school accountability. Private school board members who fall into disfavor within the school community may be defeated in the next school board election. For some religious private schools, especially those who are subsidized or support by a church or diocese, unpopular school board members may be removed by an empowered member of the clergy, or by a church council. For non-religious schools, private school administrators can be dismissed by board of trustees, who could even, if merited by the circumstances, impeach one of their own members.

Nevertheless, the aforementioned non-governmental nature of private schools, and the corresponding absence of oversight by public officials, are distinctive elements of the American notion of private schools. Liebermann (1993) has observed that, “Public schools are inherently more bureaucratic than private schools” (p. 166). Of course, this only stands to reason, since the mere size and scale of public school
districts require more personnel to oversee, but also because the ‘bureaucracy’ created is largely that of public officials whose job it is, as described much earlier in this chapter, to oversee various consequences of schooling and their effects on the public. As private institutions, private schools do not have, as a primary consideration, responsibility to the public. Instead, private schools and their governing boards are predominantly accountable to the school community, not the community at large. Furthermore, since to a greater extent than public schools, private schools operate in a market context, they are, for good reason, additionally, and in many cases ultimately, accountable to their clientele, the school’s students and their parents. A public school’s failure to satisfy the desires of these families, which often means distinguishing itself in some substantive way from local public schools, will result in diminished support from these parents.

Moreover, due the more voluntary mechanisms for funding private schools, as well as the nature of private enterprise, lack of support for a private school means lack of financial support, primarily through tuition, but also through philanthropic donations for not-for-profit schools. For-profit institutions must, due to their institutional mission, be even more sensitive and responsive to the desires of its clientele and, if run by a publicly traded company, to the satisfaction of its stockholders, in attempting to garner and maintain financial support. This differs substantially from public financial support which, though initially voluntary based on majority vote, either by individual voters or by representatives, becomes compulsory once approved, until altered by future public action. As Galbraith (1976) noted, public
enterprises “must be paid for by taxation and with an inevitable component of compulsion” (p. 203). Despite the influence of advertising and cultural pressure to purchase certain goods and services, or even to send one’s children to a private school, private support is, to a much greater extent than public support, voluntary with regard to a private party or entity.

However, while it is apparent that private schools are, largely due to the voluntary nature of their financial support, more subject to market forces than public schools, most private schools today are not primarily controlled by market forces (see also Lieberman, 1993, pp. 7-10). There are at least two significant reasons for this. First of all, in most places, the ‘market’ in which private schools operate is a fairly limited one. Due to economic circumstances, including job availability and transportation expenses, many parents do not have much of a choice as to the school district that their children will attend. While parents with the economic means can, to some degree, choose the public school system in which their children will be educated, those dissatisfied with all of the public school districts in an area will generally find private schools to be a rather limited option to public education. Most private schools are religious and may promote doctrines to which the parents do not subscribe, while some of the non-religious schools cater to elite students and charge relatively high tuition.

Secondly, the grounds on which most conventional private schools have been founded are primarily ideological, not financial. The controlling boards and administration of private schools are typically motivated by deeply held convictions
about the type of education that a particular private school or group of schools should provide. As a result, most private schools currently operating in the United States are not for-profit institutions. While today’s private schools certainly want to continue to operate and perhaps even to expand their facilities and services, as not-for-profit institutions, they are not primarily concerned with appealing to ever increasing numbers of consumers. Moreover, the educational philosophy and mission statements of private schools, even today’s for-profit schools, are not extremely similar to those of most for-profit enterprises. They do not first attempt to ascertain what type of product or service, in this case schooling, is desired within a particular market and then provide that for their ‘customers’. Rather, private schools, especially religious ones, seem to function more like communities than businesses (Coleman, Hoffer, & Kilgore, 1982; Bryk, Lee, & Holland, 1993), and thus categorizing them as ‘controlled by market forces’ requires a great deal of qualification.

Public control and support.

While much of the control over private school governance lies with private school entities themselves, state governments and public officials can and do regulate private schools. The power of states to regulate private schooling may be laid out in state constitutions or statutory law, and this power has been affirmed by state and federal courts, and ultimately the United States’ Supreme Court in interpreting the constitutionality of state constitutions and statutes. While the Pierce cases (1925) recognized the right of private schools to exist, and the right of parents to choose private education for their children, a liberty protected by the Fourteenth Amendment,
it also affirmed the right of the state to reasonably regulate private schools. In stating
the opinion of the Court, Justice James Clark McReynolds wrote:

No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare. (p. 534)

While government regulation of private schools varies considerably from state to state, most states have provisions for overseeing such issues as school standards, teacher certification, curriculum, and health and safety standards. Along these lines, state laws often require private schools to meet the following requirements: keeping and submitting accurate enrollment and attendance records; being in session for a minimum number of hours each day and for a minimum number of days each year; providing instruction in history; government, and citizenship; administering state-mandated standardized tests; pass inspection by the state fire marshall; ensuring that students and teachers are immunized or tested for certain diseases, and providing satisfactory evidence of quality of instruction, personnel, and health and safety standards to the state (Office of Private Education, 2000). Some states also require the certification of certain school personnel, such as nurses or special education teachers, most do not require the same type of state certification required of public school teachers. In addition, while some state codes distinguish between accredited schools, those that may issue valid diplomas, and non-accredited schools, and while schools may choose to qualify for accredited status, these states exert some type of regulation over both types of private schools.
Of course, there are limits to state regulation of private schools, and, as stated above, the extent of the state’s regulatory power over private schools illustrates an important conceptual distinction from public schools. Understandably, the state’s attempts to regulate private schooling are not always welcomed by private schools. Religious schools, especially Christian schools, often seek protection against public regulation from the judiciary, and lengthy court battles often ensue. In deciding these issues, the courts typically weigh the rights granted to private schools to operate as they see fit, especially First Amendment freedoms, against the rights of the state to ensure the rights of individuals, especially equal protection rights, as well as the state’s responsibility to promote the public good. This sentiment was articulated in the U.S. Supreme Court’s *Farrington v. T. Tokusige* (1927) decision, which ruled unconstitutional a Hawaiian law that regulated the teachers, curriculum, and textbooks of private language schools, and placed control of those schools in the hands of public officials. As Justice McReynolds stated in the Court’s opinion:

> . . . The School Act and the measures adopted thereunder go far beyond mere regulation of privately supported schools, where children obtain instruction deemed valuable by their parents and which is not obviously in conflict with any public interest. They give affirmative direction concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum, and text-books. Enforcement of the act . . . would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. (p. 298)

While the benefits of both public and private schooling will be discussed to a much greater extent in Chapter 5, it is important to note that the promotion of the public
interest, or the public good, is a central factor, perhaps the central factor, in
determining the extent to which public officials can and do regulate private schools.

Interestingly, this principle also seems to hold true regarding public support of
private schools. Just as public schools often receive private financial support for
various purposes, so do private schools receive public financial support, though
typically for certain limited purposes. The extent to which private schools can benefit
from public financial assistance is prescribed by state law, and has been upheld by the
United States Supreme Court. In *Everson v. Board of Education* (1947), the Court
upheld a New Jersey statute that provided funds to parents for their children’s
transportation, via school bus, to and from parochial schools. Justice Hugo Black,
writing for the majority, stated that individuals of various religious faiths could not be
excluded “because of their faith, or lack of it, from receiving the benefits of public
on to explain that the purpose of the First Amendment was not to exclude religious
institutions from general government services. As in the *Cochran* case, the statute was
judged lawful because the children, and not the schools, were the beneficiaries of the
law. This ‘child benefit argument’ was applied by the Court in future rulings, such as
*Board of Education v. Allen* (1968), in which the court upheld a New York State law
that required local public school boards to loan secular textbooks to parochial schools.

Nevertheless, the Supreme Court has placed limits on the types of aid that
could go to private, especially religious schools, and most of these cases has involved
the issue of separation of Church and State. In *Lemon v. Kurtzman* (1971) the Court
established three criteria to determine the constitutionality of a questionable statute regarding church-state separation: “a statute must (1) have a secular legislative purpose; (2) have a principal effect which neither advances nor inhibits religion; and (3) not foster ‘an excessive government entanglement with religion’ (Lemon v. Kurtzman, 1971, pp. 612-613). The application of these three criteria came to be referred to as ‘the Lemon test’, and was used by the Court in a number of subsequent cases. In Committee for Public Education and Religious Liberty v. Nyquist (1973), the Court struck down a New York State law that provided funds for maintaining equipment and facilities in nonpublic schools, as well as tuition assistance for low-income parents whose children attended nonpublic schools. Also, in Meek v. Pittenger (1975), the Supreme Court ruled that the State of Pennsylvania could only provide textbooks for students in nonpublic schools, but that supplying other instructional materials and equipment, as well as support staff and services, was unconstitutional. Furthermore, in debating an Ohio law in Wolman v. Walter (1977), the Court decided that, with regard to nonpublic schools, a state may: purchase secular texts; supply standardized tests and scoring services for secular subjects; provide diagnostic speech, hearing, and psychological services conducted in nonpublic schools by public school employees; and provide therapeutic guidance and remedial services performed by public school personnel in religiously neutral settings, i.e., not on sectarian school grounds. However, the Court also found that a state may not provide nonpublic schools with secular instructional equipment and materials, or with field trip transportation and services (p. 255).
Then, in 1983, a divided Court would render a precedent-setting ruling that had foreseeable implications for future school funding issues. In *Mueller v. Allen*, the Court upheld a Minnesota law which permitted a tax deduction for expenses including school tuition, secular textbooks, and transportation for primary and secondary schoolchildren. The law was upheld even though the plaintiffs in this case argued that 95 percent of the children in private schools attended sectarian institutions, and therefore that the bulk of the deductions were taken by parents of children in sectarian schools (p. 391). However, a key consideration in the Court’s ruling was that the tax exemption applied to tuition for nonpublic and public schools, the latter being incurred when parents chose to send their children to schools outside of their local district (p. 398). Thus the law applied to all of the state’s schoolchildren, making it religiously neutral, and passed the provisions of the *Lemon* test. Moreover, the majority cited the *Walz v. Tax Commission* (1970) ruling, which permitted tax exemptions for charitable institutions such as churches in the name of promoting society’s general welfare, as supporting justification of its decision (pp. 398-399). Justice Powell also quoted the *Wolman* ruling to comment on concerns about church control over government institutions:

> At this point in the 20th century we are quite far removed from the dangers that prompted the Framers to include the Establishment Clause in the Bill of Rights. The risk of significant religious or denominational control over our democratic processes – or even of deep political division along religious lines – is remote, and when viewed against the positive contributions of sectarian schools, any such risk seems entirely tolerable in light of the continuing oversight of this court” *Wolman*, 433 U. S. at 263. (*Mueller v. Allen*, 1983, p. 400)
As Viteritti (1999) explains, “Mueller would prove to be a landmark ruling for several reasons. Not only did it validate tuition relief for parochial school parents, but in drawing the distinction between direct aid and indirect aid, it reinforced the notion of parental choice and revitalized the child benefit concept” (p. 139). Indeed, the Mueller ruling was a harbinger of more recent Supreme Court decisions that have expanded the type of government aid, or public support, that can be used by private schools. First, in Agostini v. Felton (1997), the Court ruled that states could employ public school staff to provide remedial services, provided for using Title I funding from the federal government, to private school students on the grounds of private, including religious, schools. The Agostini ruling reversed the Court’s decision in Aguilar v. Felton (1985), made only twelve years earlier. Then, in Mitchell v. Helms (2000), the Court reversed a decision by the Fifth Circuit Court of Appeals that invalidated as unconstitutional the Second Chapter of the Education Consolidation and Improvement Act of 1981, which channeled Federal funds for educational materials and equipment into public and private schools to implement ‘secular, neutral, and nonideological’ programs (Mitchell v. Helms, 2000, p. 802). In reversing the lower court’s decision, the High Court expanded the type of government assistance that could be granted to nonpublic schools, including funds for educational materials and equipment, library books, and computer hardware and software (p. 803).

Most recently, in Zelman v. Simmons-Harris (2002), the United States Supreme Court, in a 5-4 decision, has ruled that publicly funded school voucher
programs, such as the one in the Cleveland City School District, do not necessarily violate the Establishment Clause. In that decision, the Court stated:

This Court’s jurisprudence makes clear that a government aid program is not readily subject to challenge under the Establishment Clause if it is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice. Under such a program, government aid reaches religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual aid recipients not the government, whose role ends with the disbursement of benefits. (n.p.)

It bears noting that the aspect of control rather than support has seemed to dominate in classifying, American schools as public or private. While private support can, within certain limits, be granted to public schools, and public support can be granted to private schools, public schools must be operated and regulated by public officials. In fact, it is the degree of public control, both regarding operation and extensive regulation, that defines a public school as public. Correspondingly, a lack of this type of control designates a particular school as private.

A telling illustration of the importance of control as a defining factor in distinguishing between public and private schools can be found in the United States Supreme Court decision in Rendell-Baker v. Kohn (1982). This case involved a lawsuit brought by teachers who were dismissed from a ‘private school’ in Massachusetts because they publicly opposed policies of the administration and published a letter protesting the school’s picketing policy. The school in question, the New Perspectives School, specialized in working with at-risk students, students with
behavioral and/or substance abuse problems, or students with other special needs. In
the years prior to the lawsuit, nearly all of the students at the New Perspectives School
had been referred there by public school committees in and around Brookline,
Massachusetts. The school committees who referred the students paid for their
education using public funds. Moreover, the school also received money from state
and federal agencies, such that public funds had recently accounted for 90 percent, and
in one year 99 percent, of the school’s operating budget, including specific funds to
pay the salaries of the dismissed employees (pp. 832-833). However, in considering
the case, the Court noted that the New Perspectives School was founded as a private
institution and was, as such, operated by a board of directors, none of whom were
public officials or chosen by public officials (p. 832). Thus, such a school, as
acknowledged by the general public, and as acknowledged by the United States
Supreme Court, was a private school.

In making its ruling, the High Court disagreed with the teachers’ claims that
their dismissal violated their rights under the First, Fifth, and Fourteenth Amendments.
In delivering the Court’s opinion, Chief Justice Burger noted that while the New
Perspectives School did have to comply with state regulations, most of which were
common to all schools, the state placed few requirements on the school, as a private
institution, concerning personnel policies. Thus, despite some public regulation of the
school, and despite the fact that the overwhelming majority of the school’s funding
came from public sources, there was no confusion in the Court’s opinion that the New
Perspectives School was indeed a private school. Therefore the High Court ruled that
the acts of the school in dismissing the teachers did not become acts of the government because the government, which had little control over the New Perspectives School, did not influence those actions.

**Privatization and School Reform**

**Typology of Privatization**

Before discussing privatization and its impact on our concepts of public and private schooling with regard to control and support, examining what various types of privatization mean, or may mean, to the control and support of schooling will be helpful. In *The Privatization of Schooling: Problems and Possibilities* (1996), Joseph Murphy creates the following typology regarding various privatization initiatives:

<table>
<thead>
<tr>
<th>Financing/Allocation</th>
<th>Government</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Government Service</td>
<td>G</td>
<td>(2) Government Vending</td>
</tr>
<tr>
<td>(2) Government Vending</td>
<td>G</td>
<td>User Fees</td>
</tr>
<tr>
<td>(3) Mixed Service</td>
<td>P</td>
<td>(4) Market &amp; Volunteer</td>
</tr>
<tr>
<td>Contracting</td>
<td>P</td>
<td>Volunteerism</td>
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<td>Grant/Subsidy</td>
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<tr>
<td>Voucher</td>
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<tr>
<td>Franchise</td>
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</tr>
<tr>
<td>Deregulation</td>
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</tr>
</tbody>
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From Fig. 2.1. A Typology of Privatization Initiatives – by Extent and Domain, p. 22
As can be seen from the figure above, the core educational services (instruction, evaluation, supervision, etc.) provided by traditional public schools would fall into quadrant 1, Government Service. They are provided by the government through public schools and paid for by public financing via taxation. By further examining the typology above, we see that privatization can take place in one of two ways. First, a government service, one formerly both provided and financed by the government, may come to be financed, in whole or in part, by private individuals or parties. This is most frequently done by charging the individual or party a fee, thus moving a particular service from quadrant 1 into quadrant 2, Government Vending. Secondly, a government service may be provided or distributed by a private entity through a variety of means (contracting, grants/subsidies, vouchers, etc.) that are still paid for using public funds. These types of arrangements would move a particular service from quadrant 1 into quadrant 3, Mixed Services. Educational services provided or distributed by private entities and financed with private funds would fall into quadrant 4 of Murphy’s typology. This would include volunteerism, such as tutoring or mentoring provided by parents or other interested individuals, as well as community and corporate partnerships (pp. 186-187).

Non-privatization Reform

As a preface to our examination of recent privatization trends and their impact on our traditional notion of public and private schools, it should be noted that not all current educational reform ideas necessarily involve privatization, though they may seek to change the operation of public or private schools. For example, school-based
management, or site-based management, (SBM) is a reform strategy that seeks to decentralize decisionmaking to the level of the individual public school. Proponents tout SBM as a strategy for encouraging innovation in schools and empowering teachers and parents, as they take more responsibility for school leadership and administration. While such a reform might change the administrative structure of public schools, this type of reform would not seemingly be considered privatization, as both the provision and the financing of public schools would remain public. However, depending on the extent to which parents are involved in SBM, some control over public school administration may be taken out of hands of public officials and granted to members of the public themselves, sometimes referred to as private citizens. Yet, while they are neither public officials as are school board members, nor public employees, it seems to be an assumption of SBM that such citizens would be working in the public interest, and not their own private interest (the distinction between which will be discussed further in Chapter 5).

Similarly, more profound systemic restructuring of public schools, while significantly changing various aspects of public schooling, would not seemingly be classified as privatization. Systemic restructuring may take place at the district level, or at the state level, and may involve reforming instructional methods, curriculum, finance, school governance, and other aspects of schooling. For example, state-level systemic restructuring has recently been effected in Kentucky, where the state supreme court declared the state’s system of schooling unconstitutional on the grounds that it was ineffective and inequitable (Ornstein & Levine, 2003, p. 517). The
Kentucky plan included performance-based assessments, teacher development strategies, increased funding, and public school choice. O’Day and Smith (1993) explain that systemic reform has emerged as a strategy because of the belief that the present public school system does not adequately provide for the needs of poor and minority students (cited Vinovskis, 1999, p. 179). However, as Hill, Pierce, and Guthrie (1997) note:

Systemic reform would not change the current definition of a public school as a school operated by a local public education agency. It contemplates the continuation of a system of schools managed and staffed by civil servants working under the supervision of elected state and local boards of education. (p. 106)

Moreover, regarding public school choice, while there is much debate about the effect of publicly-funded voucher programs that permit students to attend private schools, the same issues are not raised by allowing students to choose which public school they will attend, at least from the perspective of control and support. By public school choice here I mean one of the following: alternative and/or magnet school options; schools designed for severely ‘at-risk’ or delinquent students; intradistrict choice programs, including ‘open-enrollment’ plans, in which students can enroll in any school in the district that has not exceeded enrollment capacity, and ‘controlled choice’ programs, in which administrators guide student assignment to achieve a desired purpose, usually racial balance; and inter-district plans that allow students to choose schools outside the district in which they reside. (While some, e.g., Murphy (1998) describe charter schooling as a ‘public choice’ option, I explore the extent to which charter schools are actually public schools in detail below.) Whether students
are assigned to their public school, based on their home address or some other criteria (i.e., in the case of alternative or magnet schools), or whether they choose their public school from within a public school district, or even from multiple districts, as permitted by the state of Minnesota, all of the schools involved are still formally publicly controlled and supported in essentially the same ways as traditional public schools.

*Privatization Reform*

*Privately funded vouchers.*

An educational reform trend that does involve private schools is the growth of privately funded voucher programs. Such programs utilize private donations to provide vouchers or scholarships to send low-income students to private schools. While philanthropy has had a long history in the United States, Moe (1995) explains that today’s private voucher movement is more than mere philanthropy. He describes it as having a political nature as well, as it is founded upon an ideology which holds that the current public school system is failing to provide poor children with an adequate education, and that school choice is the key to bringing about positive change in the public school system. However, private voucher supporters realize the “political facts of life” that such change will be difficult and slow, (p. 8). Thus, they have chosen privately funded vouchers in order to provide low-income students with immediate assistance and to relieve private schools from judicial or regulatory interference.
Regardless of the growth of these privately funded voucher programs, or the merits of charitable giving, these programs do nothing to change the conceptual landscape of American schooling in terms of support and control. However, because of their objectives of enabling lower income students who could most likely not otherwise afford it to attend private schools, private voucher programs might be thought of as a type of privatization strategy. This classification would become increasingly clear if such a voucher program provided enough scholarships to significantly decrease enrollment in public schools and in turn resulted in much greater numbers of private schools being opened in the program areas. In such a scenario, the responsibility for schooling would be shifting from a predominantly public responsibility to an increasingly private one. (The growth of home schooling, again not a major focus of this dissertation, might be thought of along similar lines.) To date, however, this type of an effect has remained minimal.

*Contracting.*

However, beyond these approaches, there seem to be a number of current educational trends and reform movements which would not only fit into the category of *privatization*, but also alter the traditional differences in support and control between public and private schools, therefore blurring the line between these concepts. The first trend is the expansion of contracting for educational or support services that have traditionally been provided by public schools. According to Murphy (1998), contracting, or contracting out, is the most popular form of privatization in education,
one that is increasingly being considered by school board members and school administrators (p. 27). Lieberman (1989) defines contracting out of public services:

Contracting out of public services is defined as the contractual utilization of non-governmental entities to provide or help to provide public services. “Non-governmental entities” can be companies, partnerships, individuals, nonprofit organizations, and/or independent contractors, whether for-profits or nonprofits. The test is whether the persons providing the service are school district employees. If they are and are also acting in that capacity, their services are not contracted out. (p. 7)

As pointed out in the discussion above, for a number of years, some ‘non-core’, or supplementary, services have been provided to public schools and their students through contracting, or contracting out, with private companies, and many observers note that the use of this type of contracting is growing (Murphy, 1998, p. 11). Hunter (1995) explains that these supplemental services can include building cleaning and maintenance services, building security, food services, medical/nursing services, transportation services, and waste collection and disposal (cited in Murphy, 1998, p. 31). Beales and O’Leary (1993) found that the areas most likely to be contracted out are building maintenance, transportation, and food services (cited in Murphy, 1998, p. 31). They point out that roughly thirty percent of public school transportation is provided by private sector companies. Similarly, a 1995 NSBA survey found that contracting for food services, including private management of school cafeterias, is rapidly increasing. Contracting for food services also includes contracting with name brand companies to provide commercial products. According to the American School Food Service Association, more than 30 percent of public school cafeterias currently offer fast food supplied by brand name companies.
As examples, Domino’s Pizza is served in 12.5 percent of the nation’s public school cafeterias, Taco Bell operates in 4,500 schools nationwide, and Subway operates in 1,500 schools.

However, recent years have seen an increase in contracting, not only for the noncore functions of schooling, but also for the core functions of schooling, including management and instruction. While this type of phenomenon is fairly recent, it is not brand new. In the fall of 1969, an experimental federal program, supported by the United States Office of Educational Opportunity (OEO) and financed using Title VIII funding from the ESEA, began in Texarkana, Arkansas. The publicly funded program involved performance contracting between a private company, Dorsett Educational Systems, and the local school board. According to Gramlich & Koshel (1975), Dorsett would be reimbursed for its expenses only if the students’ achievement scores reached a certain level within a specified period of time. The Texarkana program, which concentrated on basic skills, ended in scandal when it was learned that some of the students had been prepped on the very test questions that would be used to evaluate the program’s effectiveness and determine Dorsett’s profits. During the same year, and again sponsored by the OEO, similar experiments were conducted between six private, for-profit contractors and eighteen public school districts, three for each contractor. Again focused on compensatory education, the project involved incentive contracts that would grant payments to these companies based upon student achievement gains during a single academic year. During the same year, and again sponsored by the OEO, similar experiments were conducted between six private, for-profit contractors and eighteen public school districts, three for each contractor. Again focused on compensatory education, the project involved incentive contracts that would grant payments to these companies based upon student achievement gains during a single academic year.
by the OEO, the nation’s first experiment involving a contract with an entire school took place at Banneker Elementary School in Gary, Indiana. At Banneker, Behavioral Research Laboratories (BRL) received a performance contract to teach all of the elementary school’s students for three years (Murphy, 1998, p. 39). Although responsible for all instruction at Banneker, the contract stipulated that BRL would receive a certain sum for every student who attained the national norms in standardized tests in reading and mathematics tests. While escaping the scandal associated with the Texarkana experiment, none of these experimental programs developed into an ongoing arrangement.

More recently, since the early 1990s, a number of private companies have emerged that contract to provide educational services to public school students. These companies can be classified into two types: Specialty Service Providers (SSPs), those that contract to provide specific educational services to schools (e.g., foreign language instruction, music instruction, instruction in computer assisted learning); and Educational Management Organizations (EMOs) that provide comprehensive instructional services to schools or school districts (Murphy, 1998, pp. 41-42). The SSPs, which differ in size but operate on similar principles, include individual entrepreneurs, small firms, and larger companies and corporations. Some of the larger SSPs include Dialogos International Corporation and Berlitz International, Inc., both of which specialize in foreign language instruction, as well as the Sylvan Corporation, which offers supplemental education and tutoring services in nearly 200 school districts. The EMOs that began contracting with public schools during the 1990s
include Educational Alternatives, Inc. (EAI), Alternative Public Schools, Inc. (APS),
and Edison Schools (initially founded as ‘The Edison Project’ in 1992), which has
implemented its design in over 130 public schools attended by over 75,000 students.

More recent entrants into the EMO market include Saber, the Walt Disney
Corporation, which recently entered into an agreement with the Osceola County
(Florida) school district to build and manage a pre-kindergarten through 12th grade
school and teaching academy, the Sabis Foundation, which runs 28 schools in at least
11 different countries, and Public Strategies Group (PSG), which, in 1994, was hired
by Minneapolis to manage the city’s entire school district (Murphy, 1998, pp. 57-58).

According to the Center for Education Reform, there are at least nineteen EMOs
currently operating in the United States that manage approximately 350 schools
(Innerst, 2002). While many, though not all, EMOs are for-profit entities, only a few,
most notably Edison, are publicly traded in the stock market.

In evaluating the effect of contracting on the control and support of public
schools, while there are a number of similarities between contracting for core and
noncore services, I will first consider contracting for noncore services. While
contracting for noncore services is becoming more widespread, the continued
expansion of these practices would not seem to jeopardize the traditional concepts of
public and private schooling from the standpoint of control and support. First, while
some immediate control over certain aspects of public education would be removed
from public officials, these officials would, through the provisions of such contracts
and applicable laws, retain some degree of control over these services. Secondly,
granting private providers even substantial control over non-core school services would not influence public control over core school services. Thus, public officials would still maintain traditional control over administration, curriculum, instructional leadership, etc., which are central to our conceptualization of a public school. Thirdly, while contracting out non-core services may be viewed as privatization, it does not necessarily make public schools more like traditional private schools. While they are themselves private institutions, with all of the aspects of private control and support detailed above, private schools have not traditionally contracted out with private providers for either non-core or core educational services to a much greater extent than have public schools. While there is nothing to preclude contracting by private schools, many choose to do so in only a limited fashion.

In contracting with private providers, the school district would understandably give up some control over certain services, but seemingly for some perceived greater benefit, such as cost, efficiency, and/or quality. Whether or not these benefits are ever realized, public officials do make the decision to pursue a contract with a private provider. While there may be political or financial pressure for a school district to initiate or grant a contract, this is a voluntary decision made by public, and usually publicly elected, school board members. These public officials or their representative would have the power to negotiate the terms and conditions of the contract. While such a contract places the responsibility for the service in the hands of nonpublic employees, this transference of public control is typically limited, both in extent and duration, by the terms of the contract and by applicable state and federal laws. If the
contracted provider fails to live up to or violates the terms of the contract, it may forfeit control over the provision of the contracted services. Moreover, at the end of the contract term, immediate control over these services returns to public school officials, who may, if they wish, contract out these services again. Thus, while contracting permits a private entity to have temporary control over certain public school services, formal control over these services ultimately remains in the hands of public officials.

However, it does seem fairly evident from the discussion above that contacting for core educational services, either with SSPs or EMOs, does significantly change some of the ways that public schools function. As with contracting for noncore services, contracting for core services (e.g., school administration, student instruction and evaluation) does place temporary, limited control of certain aspects of public schooling in the hands of private entity. Such contracting can focus on a particular core function of schools, such as foreign language instruction and evaluation, or, in the case of EMOs, can extend to virtually all core school services. While, as explained below, substantial formal control over schooling in privately managed schools would be retained by public officials and agencies, granting immediate control over core school functions to a private entity, particularly a for-profit entity, would make public control of public education more distanced than it has traditionally been. The management entity would become a type of intermediary between, the school board and school administration, taking over functions, including decisionmaking functions, traditionally held by public officials and employees. While, as explained above
regarding contracting for noncore services, the school board (or, in some circumstances, the state) voluntarily enters into the contract with the private management entity, these other public officials and employees (e.g., superintendents, principals, and/or classroom teachers) do not voluntarily cede control over these functions or services to the private entity. This reduced decision-making responsibility would constitute a loss of control, to some extent voluntary and to some extent involuntary, over various aspects of public schooling by public officials and employees. Thus, contracting with a private company to provide these functions does seem to significantly change the identity of public schools. The greater the control, both in breadth and depth, given to private contractors, the greater the loss of control by public officials and employees, and thus the greater the loss of the identity of the traditional public school.

However, while contracting with SSPs and EMOs will change the identity of the traditional public school, it will not, from the standpoint of control and support, entirely change public schools into private schools. Imagine, as an extreme example, that EMOs, whether for-profit or non-profit were hired to run all of the schools in a particular school district, with a good deal of influence over administrative and personnel policies and practices, significantly more than most contracted providers can today. In *Reinventing Public Education: How Contracting Can Transform America’s Schools*, Hill, Pierce, and Guthrie (1997) propose such a scenario. They favor another type of contracted educational institution, which they label a *contract school*, and describe it as follows:
Contract schools are publicly funded schools operated by an independent group of teachers and administrators under a contract with a public agency. Contract schools would be individual legal entities capable of negotiating contracts, spending public funds, and hiring and firing staff members on the basis of performance and contribution to the school’s overall success. Like any other publicly funded institutions, contract schools would be subject to audits by public authorities. But schools would also have the authority to defend their interests in court, a major change from current practice. (pp. 53-54)

According to Hill, Pierce, and Guthrie (1997), a system of contract schools would exhibit the following characteristics:

A district would hold many contracts, each specific to the mission and instructional approach of the individual school. The school board would determine the district’s need for certain kinds of schools [e.g., one offering or specialized in bilingual education].

Standard to all contracts would be the basic requirements for student graduation and state licensing that now apply to private schools, including civil rights guarantees and health standards. In addition, every contract would outline the goals of the school and its basic instructional program, along with the kinds of student outcomes expected and the methods for assessing them. (p. 54)

Examining such a hypothetical scenario reveals quite a bit about how today’s privately-run public schools are and are not changing the concept of the public school, or might if contracting become substantially more widespread. First of all, in contracting with SSPs and EMOs, public officials would still retain a substantial amount of control over public schooling, though not as much as when contracting for non-core services. Such policies would still have to be approved by a school board, which would still, most likely, consist of publicly elected members. These public school boards would still differ from private governing boards in the ways described previously in this chapter. In addition, employment decisions regarding teachers or administrators would still require school board approval, unless the school board
decided to delegate this authority to the contracted entity. Furthermore, contracting with SSPs and EMOs would not change state regulations concerning teacher and principal certification. Indeed, without legislative changes, privately managed public schools would still have to comply with state regulations, including health regulations, curriculum standards, and procedures for standardized testing. Furthermore, as noted above, privately managed public schools are still funded by public funding, which is subject to public support for school board decisions. Finally, none of this would seemingly affect the control and support of private schools as described above.

*Charter schools.*

While charter schools are currently classified as public schools, or public charter schools, rather than as private schools, this has not always been a foregone conclusion. In 1994, a Michigan court ruled that charter schools were not in fact public institutions because the schools themselves were not under the “exclusive control” of the state (Miron & Nelson, 2002, p. 13). Rather, charter schools were controlled by privately-selected boards, and therefore, due to an amendment to Michigan’s constitution barring state aid to private schools, were illegal. Although the trial court’s decision was upheld on appeal, in 1997, the Michigan Supreme Court disagreed, maintaining that Michigan’s constitution did not require that public schools be under “exclusive control” of the state.

What the Michigan courts confronted was the confusing nature of charter school control. While the control and accountability mechanisms of charter schools differ greatly from state to state, which makes analysis of the phenomenon difficult,
some generalizations can, and sometimes must, be made. As the Michigan Supreme Court concluded, particularly from the perspective of control and support, charter schools have been judged to be more similar to public schools than to private ones. Thus they are categorized as the former rather than the latter, though sometimes with an asterisk or qualification: public charter school. More specifically, the public label on charter schools is applied because they are similar to conventional public schools in a number of ways: they are, in most cases, open to all students who wish to attend, they are accountable to an authoritative public body, and they are principally funded with tax dollars and do not charge tuition (Manno, Finn, & Vanorek, 2000, p. 65).

While the ‘open’ characteristic will be discussed at greater length and in greater detail in the next chapter, these similarities in accountability and funding between charter schools and conventional public schools are particularly relevant and would qualify as evidence that charter schools are in fact public from a control/support perspective.

On the other hand, charter schools differ in a number of ways from conventional public schools, regarding the mechanisms of public control, accountability, and funding. First of all, the charter mechanism operates very differently than traditional public schools in terms of control and accountability. From Murphy’s typology above, charter schools seem to involve some combination of contracting and deregulation (in varying degrees), both which are integral parts of the charter arrangement. Miron and Nelson (2002) explain the major trade-off in the control and accountability of charter schools:

At the heart of the charter concept lies a bargain. Charter schools will receive enhanced autonomy over curriculum, instruction, and operations. In exchange,
they must agree to be held more accountable for results than other public schools. Standing at the center of charter school accountability is the charter document itself. A charter is an agreement between a school and an authorizer—the public body that grants the charter. The charter document prescribes the conditions under which the school will operate and the goals it must accomplish in order to remain in operation. (p. 3)

Gill et al. (2001) describe the contractual nature of charter schools in somewhat greater detail:

Charter schools operate under a quasi contract (the “charter”) granted by a public body—i.e., they cannot be established unless they meet the approval of a chartering authority. Approved charter schools are usually expected to meet a variety of standards, which include not only process-oriented legal requirements in areas such as auditing and safety, but also substantive standards for educational outcomes spelled out in the charter. Charters are granted for a designated period of time with renewal required at the end of the period. (p. 45)

Furthermore, the method of accountability imposed by the charter itself differs significantly from that of conventional public schools. Miron and Nelson (2002) explain this distinction:

Traditionally, public schools have been accountable primarily for the educational processes they employ. These include curricula, teaching methods, and the structure of the school calendar . . . This new accountability holds charter schools accountable for outcomes—may of them articulated in charter documents—and then employs deregulation to allow them to choose their own means for arriving at those goals. (p. 5)

It is important to note that states differ considerably in their accountability mechanisms for charter schools, from a “centralized” state agency approach to a “market-driven” approach to a “district-based” approach (Nelson et al., 2000, p. 3). Moreover, some states, such as Michigan, view charter schools as their own distinct school district, while other states consider them as part of the public schools district in which they operate (Miron and Nelson, 2002, p. 30). Nevertheless, as part of this ‘new
accountability’, at the end of the charter’s term, sponsors can choose not to renew a school’s charter, and in extreme cases, immediately revoke a school’s charter and close the school. Thus public bodies do relinquish a certain amount of control to charter schools, in the sense of operation and some decreased regulation, but they do so in return for another type of regulatory control.

Secondly, in conjunction with the charter arrangement certain aspects of the operation of the school itself, most notably the school’s administration and management, are placed in the hands of a private entity, be it a group of parents, a group of educators, a community group, a non-profit philanthropic organization, or a for-profit company or corporation, such as an EMO, rather than remaining in the hands of public employees. Miron and Nelson (2002) calculate that between 20 and 25 percent of all charter schools nationwide are operated by EMOs (p. 7). The two largest of these are Chancellor Beacon Academies, Inc., which operates 76 charter schools serving 18,500 students, and Edison Schools Inc., which operates 53 charter schools serving 21,500 students (Walsh, 2002, p.12). While EMOs do not manage a majority of charter schools nationwide, their influence over the charter school market in a particular city or state can be substantial, such as in Michigan, where EMOs, almost all of which are for-profit companies, run approximately three-fourths of the state’s charter schools (Miron & Nelson, 2002, p. 170).

As with contracting, the use of a private entity to manage schools can take away substantial direct control from public bodies, and in that sense make them less public. As private entities, these private entities are not required by law to release
information about their finances or personnel. While the charter does ensure
considerable public accountability, it does not require the same type of public
accountability as would be demanded of a conventional public school. Nevertheless,
while generally not accountable in the same ways as traditional public schools, charter
schools are still regulated and monitored to a greater extent than private schools.
Nelson et al. (2000) note that 90 percent of charter schools are monitored for
accountability in terms of schools finances, student achievement, and compliance with
regulations, while 80 percent were monitored for student attendance and 60 percent for
instructional practices (pp. 50-55).

Nevertheless, such arrangements seem appreciably different than the public
control exerted traditional public schools. For instance, one would not expect a local
school board to close a traditional public school based on performance criteria, such as
retention rates, standardized test scores, etc. On the contrary, it seems that, most often,
schools are closed based on cost assessments that the expense of operating certain
district schools is becoming too great. Even very poorly performing school districts
that, under extreme circumstances, are taken over by the state government, would be
highly unlikely to experience school closings based on performance criteria. Rather, a
typical course of action would be to fire or demote school administrators, and
subsequently to hire new ones, perhaps even additional ones.

Moreover, in terms of political support, community support for charter schools
works through a public mechanism, in the passage of charter school laws and policies,
but also, unlike many traditional public schools, through a choice, or market,
mechanism. In terms of financial support, like many district public schools, charter schools are funded according to enrollment from both state and district sources. However, unlike conventional public schools, charter school funding depends on the number of students that the school can voluntarily attract and retain, since, unlike their conventional counterparts, no students are assigned to charter schools. While public choice programs have some element of this characteristic, public schools that fail to attract enough students through voluntary means are much less likely to be closed than charter schools. Thus, while charter school funding for operational costs comes from public coffers, this aspect of their funding seems to make them more like private schools. Furthermore, public schools are generally not funded at the same levels as their conventional counterparts, nor are they typically given money for start-up costs (CER, 2002).

From this analysis, there seems to be considerable evidence that charter schools share a number of characteristics with both public schools and private. However, the discussion above has also shown that charter schools are significantly different than both public schools and private schools, and as such seem to constitute a third category of school type with regard to the control, support, and accountability facet. There is no better evidence of this than the fact that both conventional public schools and private schools must be converted into charter schools in order to operate as such under state laws. Thus, the control, support, and accountability structures of a both public and private schools must be changed significantly, though to varying degrees depending on state laws, to transform them into charter schools. Because of
the seemingly greater similarities with public than private schools in terms of control, support, and accountability, in most states, and because of the necessities of law, it seems understandable that charter schools continue to be categorized as public. Of course, these similarities are crafted, since, currently, most state laws mold charter schools into entities that are more similar with conventional public schools. While charter schools are subject to less regulation than conventional public schools, they are subject to considerably more regulation than private schools. Moreover, while many states permit public schools to convert to charter status, only eleven of the 36 states with charter laws (the most permissive ones, such as Arizona) permit private schools to do the same (Nelson et al., 2000, p. 2). However, if charter school laws become less restrictive, increasingly freeing charter schools from regulation, and if more states permit charter schools to become more autonomous legal entities with more substantial control of the operation of the charter school, charter schools will increasingly resemble private schools, and, as charter school enrollments rise, subsequently contribute to the privatization of public schooling.

*Public grants and subsidies for private schools.*

As mentioned above, publicly funded grants and subsidies for children attending private schools have been available for years, both by states (i.e., in providing textbooks, transportation, and diagnostic services) as well as the federal government, most notably through Title I programs and, to a lesser extent, through the Individuals with Disabilities Education Act (IDEA). Such aid can be aimed at private school students in general, such as state textbook aid, or at specific groups of students,
such as handicapped students (via IDEA) or students from lower income families (such as Title I). Moreover, with the recent Supreme Court decisions in Agostini v. Felton and Mitchell v. Helms, the state aid to students in private schools, especially religious schools, will undoubtedly increase.

However, subsidization of private schools is not merely expanding, it is creating new avenues into private school funding through public mechanisms. For example, a new instrument of subsidization, the ‘voucher credit’, was instituted by the state of Arizona in 1997. As Gill et al. (2001) describe it:

The law permits taxpayers to claim a credit on their state income tax of up to $500 annually for donations to organizations providing scholarships to private schools. Arizona parents thus cannot take a tax credit for their own child’s tuition charges, but they can take a tax credit for contributing to the tuition costs of other children. (p. 51)

A similar program was established by the state of Pennsylvania in 2001, permitting tax credits for businesses that contribute to private voucher programs.

Curiously, the State of Florida has recently instituted a hybrid of the ‘voucher credit’ program, the control and support of which are under public auspices: the Corporate Income Tax Scholarship Program. Under this program, Florida companies can claim income tax credits for directing funds toward a state voucher plan used to send students from low-income families to public schools outside of their home district, or to private, including religious, schools. Under the law that created this voucher credit program, companies can direct up to five million dollars of their tax bill to the state’s voucher program (Koehn, 2002, p. 6). The program is administered by FloridaChild, a nonprofit organization. Thus, the state of Florida has created a
program that provides a tax-incentive for private corporations to provide financial support to children attending private schools. In so doing, the state has selected a private organization to administer these seemingly private funds via a state-run, and therefore public, program. To a greater extent than either the voucher credits offered by Arizona or Pennsylvania, or the ESAs offered by the federal government (described below), the Florida program results in collusion between the public and private sector, since the private voucher plan that benefits from the scholarship program was created by the state.

At the federal level, the No Child Left behind Act of 2001 permits students attending persistently failing schools (those that have failed to meet state standards at least 3 of the 4 preceding years), to use Title I funds to obtain supplemental educational services from the public- or private-sector provider selected by themselves and their parents. According to the legislation, both public and private providers must meet state standards and offer services to assist students meet state academic standards. Furthermore, the new law requires school districts to spend up to 20 percent of their Title I allocations to provide school choice and supplemental educational services to eligible students (No Child Left Behind Act - Executive Summary, 2001).

Furthermore, with the signing of the 2001 tax cut package, the federal education savings account (ESA) was established. Gill et al. (2001) describe this new type of subsidy:

[The ESA] works like a Roth IRA in excluding income from federal taxation if that income goes into and then is drawn from an account intended for a specific purpose—in this case, to pay educational costs. Although ESAs already existed for higher-education tuition, the 2001 federal tax cut expanded
them to include K-12 tuition. The new law permits parents to place up to $2,000 per year in accounts that earn interest tax-free and can be used for private-school tuition payments. As is true for tuition tax deductions, the size of the subsidy (or implicit voucher) associated with the ESA depends on the taxpayer’s marginal tax bracket. (pp. 50-51)

While Gill et al. label these subsidies as ‘implied vouchers’ because the practical effect of such ‘subsidization’ for the benefactor are the same as if vouchers were used, no actual voucher is issued or redeemed. While the effects for the user may be similar, the control and support mechanisms are clearly different, since no money from this program actually passes through the public coffers and very little public control is exercised over the policy.

Nevertheless, both the direct subsidization supplied by the continuation and expansion of state and federal programs, as well as the indirect subsidization provided by tax credits and ESAs, qualify as types of privatization. From the support angle, to the extent that subsidized programs and practices take tax money, or potential tax money, away from public schools and redistribute it to private schools, they privatize schooling. Correspondingly, from the control angle, to the extent that they permit students who would not otherwise attend private schools to do so, and thus increase the influence of private schools over U.S. education as a whole, they increase the privatization of schooling. While this subsidization does not in and of itself blur the conceptual lines between public and private schools as do charter schools, it does create a collusion between public and private entities that contributes to the blurring of the public and private sectors in American society (Carper, 2001).
Current Publicly Funded Voucher Programs that Include Private Schools

From a control/support/accountability perspective, publicly funded voucher programs, those in Wisconsin, Ohio, and Florida, act as a type of subsidization for poor and low income, or handicapped students who attend private schools. By this I do not mean that vouchers are only being used by students who are already enrolled in private schools. For example, estimates from the Cleveland voucher program suggest that somewhere between one-fifth and two-thirds of the program’s students previously attended public schools (Fine, 2001). Rather, I mean that one of the primary effects of these programs is to defray, using public funding, some of the costs of private schooling for students and their families. While the Cleveland program requires parents to pay 10 percent of the private school’s tuition, no tuition is charged to students participating in the Florida or Milwaukee programs (Gill et al., 2001, p. 41).

However, there is also a choice mechanism involved that makes vouchers somewhat different than other existing grants and subsidies. Under the laws that created these plans, if not in practice, students are permitted to attend, not only private schools, but also other public schools to which they would not otherwise have the access or means to attend. Therefore, these students must be sufficiently unsatisfied with the current public schools, their enrollment in which may already involve some type of public choice, to opt for another school. The vouchers are distributed through the choices of the students and/or their parents rather than directly to a school. While the funding provided to the ‘voucher school’ is usually not equal to the amount spent on the students if they remained in their current public school, once a participating
private school receives the voucher, there are few if any restrictions on how the funds are used. Thus, the choice element that the voucher provides, allowing qualifying students and parents greater freedom in choosing a school, adds an important feature to the subsidization that it provides.

Moreover, according to the ‘choice theory’ espoused by many voucher advocates, this exercise of choice is supposed to exert market pressures on public schools, forcing them to improve in order to retain students. However, it is important to realize that, as described in Chapter 1 of this dissertation, the voucher programs operating in today Milwaukee and Cleveland differ substantially from Florida’s A+ plan in this respect. As Gill et al. (2001) correctly note:

The existing voucher programs in Milwaukee and Cleveland can be characterized as escape valves because they are intended to enroll only a small minority of the students in a community and are targeted to low-income students, much like the privately funded voucher programs now operating in many cities. (p. 52)

With the United States Supreme Court’s recent approval of Cleveland’s voucher program in Zelman v. Simmons-Harris (2002), it seems extremely likely that the two current programs mentioned above will expand and that similar types of programs will be implemented in other states. However, much greater percentages of students would have to be enrolled in such programs in order for considerable market pressure to be brought on public school systems to improve performance. As long as voucher programs such as these remain relatively small, their ability to create the kind of market accountability and reform in public schools that some desire will be severely limited.
However, Florida’s statewide voucher program that similarly focuses on children in schools deemed to be failing involves an added element that makes it qualitatively different than those operating in Wisconsin and Ohio. Gill et al. (2001) correctly categorize Florida’s Opportunity Scholarship Program as an ‘incentive-based’ voucher program, and, due to its accountability elements, it differs significantly with the programs in Cleveland and Milwaukee (p. 53). The purpose of the program is to catalyze improvement, at least in the state’s low-performing schools, and to create political incentives for other districts to boost performance as well. This is done so using a state evaluation of all of the state’s public schools, an evaluation currently based solely on students’ performance on the state’s criterion-referenced ‘FCAT’ test, though there are plans to incorporate other criteria into the evaluation formula. As opposed to the Cleveland and Milwaukee plans, public schools deemed to be performing poorly are first allocated additional resources and then re-evaluated the following year before any vouchers are issued to students.

While the prudence and effectiveness of the A+ Plan is debatable, the mechanism for school improvement therein includes substantial control, support, and accountability features that the Cleveland and Milwaukee plans lack (Hallifax, 2001b). Whether or not one believes that the A+ Plan is in fact improving Florida’s public schools, such a benefit could not be credited to market accountability to any substantial degree, and, given the extremely small number of students that have been awarded vouchers, would most likely be credited to the political pressure and added financial resources provided by the state’s actions. Therefore, while the Cleveland and
Milwaukee plans may be grouped with the Florida plan because they use similar mechanisms, a voucher, their structural and functional differences are substantial.

Therefore, while current voucher programs seem to combine both subsidization and deregulation and thus increase privatization of schooling, from a control/support/accountability perspective they do not blur the lines between public and private schools as do charter schools. While a charter school denotes a particular type of school with a particular, though variable, type of control-support-accountability structure, a ‘voucher school’, as some call them, does not. The term ‘voucher school’ is itself misleading and quite imprecise, since, based on current voucher programs, such a school can be either public or private, either religious or non-religious. Traditional public and private schools must be converted into charter schools, while voucher programs make use of existing public and private schools. In the latter case, vouchers are commonly referred to as the use of public funds to send children to private schools, with little apparent confusion about what constitutes such an institution. Moreover, neither public schools from other districts nor private schools can be forced to participate in voucher programs, nor is there a great deal of increased state regulation for private schools that do choose to participate (Gill et al., 2001, pp. 40-41). This is especially relevant given the importance or preeminence of control to the control-support-accountability facet, as noted above. Thus, current publicly funded voucher programs do little to fundamentally change the public and private school concepts.
Market or expanded choice system.

Some of the most prominent voices in the educational privatization movement want voucher and school-choice plans to move toward a market-based system of education. As described in Chapter 1, Milton Friedman has proposed a voucher system in which the government would require a minimum level of schooling to be spent on approved educational services provided by either for-profit or nonprofit entities. Parents could choose to spend their own money above and beyond the government allocation. Friedman’s system, if implemented, would contain both public and private schools, but very little regulation of either, save for some standardized testing.

Despite the fact that the use of vouchers and other forms of school privatization seem to be expanding, Friedman’s insistence on a free-market voucher system as the remedy for poorly performing schools and school districts has remained firm. He has recently characterized charter schools as “a halfway house” which are still “government schools” (Walsh, 2001). Similarly, he does not want a voucher program only for students from poor and low-income families. He maintains, “A program for the poor will be a poor program. All parents should have the same choice” (p. 16).

More recently, Chubb and Moe (1990) have offered a universal choice proposal, though one not requiring the use of vouchers for its implementation. As explained in Chapter 1, Chubb and Moe propose a movement away from ‘public control’ as directed through democratic processes and representatives, and toward ‘public control’ as directed through the market place as consumers who have a variety
of schools from which to choose. They desire that public authority be used to create a system that will largely be outside the power of public influence, especially from high level officials (pp. 218-219). They state:

Our guiding principle in the design of a choice system is this: public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority. Because states have primary responsibility for American public education, we think the best way to achieve significant enduring reform is for states to take the initiative in withdrawing authority from existing institutions and building a new system in which most authority is vested directly in the schools, parents, and students . . . As far as possible, all higher level authority must be eliminated. (pp. 218-219)

Under Chubb and Moe’s plan, the state will have the responsibility for setting minimal criteria as to what constitutes a ‘public school’ in that state, and any group or organization meeting those criteria must be granted a charter. The states’ criteria would roughly corresponding to those now used by many states to accredit private schools, such as graduation requirements, health and safety requirements, teacher certification requirements, etc. (pp. 219-220). However, each school chartered by the state would be granted sole authority to determine its own governing structure, and the state would have no say in the schools’ internal organization (p. 223). While adhering to minimal accreditation requirements and regulations, schools would thus become “legally autonomous”, enjoying the same freedom over governance, goals, curricula, programs, methods, admission, and personnel decisions as contemporary private schools (p. 226). Thus, while still regulated by the state, public schools under the proposal by Chubb and Moe will not necessarily be administered as, nor would they be as tightly regulated as, conventional public schools.
Schools in Chubb and Moe’s system would be channeled funding (from federal, state, and district sources) for each child through a ‘Choice Office’ that would be set up in each district. Each state will determine the funding formula for all districts, and a ‘scholarship’ amount for each student would be sent directly from the choice office to the schools, not to the parents or students. State funding could vary from district to district, providing greater funding to poorer districts, or within districts, providing more funding for handicapped students, or those requiring additional language instruction, or those from low-income families (pp. 219-220). Schools would set their own tuition, and Chubb and Moe suggest that families not be allowed to subsidize their children’s scholarship amounts for public schools (pp. 220-222).

Finally, Chubb and Moe (1990) claim that their proposal would create a system of schools that was public, and indeed more public than the present system. They state:

This proposal calls for fundamental changes in the structure of American public education. Stereotypes aside, however, these changes have nothing to do with “privatizing” the nation’s schools. The choice system we have outlined here would be a truly public system—and a democratic one. We are proposing that the state put its democratic authority to use in creating a new institutional framework. The design and legitimation of this framework would be a democratic act of the most fundamental sort. It would be a social decision, made through the usual processes of democratic governance, by which the people and their representatives specify the structure of a new system of public education . . .

Once this structural framework is democratically determined, moreover, governments would continue to play important roles within it. State officials and agencies would remain pivotal to the success of public education and to its ongoing operation . . .

The crucial difference is that direct democratic control of the schools—the very capacity (italics in original) for control, not simply its exercise—
would essentially be eliminated. Most of those who previously held authority over the schools would have their authority permanently withdrawn, and that authority would be vested in schools parents, and students (pp. 225-226)

While Chubb and Moe claim that their system will be a public system, in the sense of being implemented through democratic processes, and one that does not privatize education, this does not seem accurate, both from Murphy’s typology and from the analysis above. If Chubb and Moe mean that their proposal would not entirely privatize U. S. public education, their claim may be seen as correct. But clearly, as they state in their proposal, their plan would take control away from public officials and democratic processes, which they see as barriers to school reform and improvement. Thus, they would place more control in the hands of individual schools as autonomous entities, and in private individuals through market mechanisms, though to a lesser extent than Friedman’s voucher proposal.

Furthermore, while neither Friedman’s voucher system nor Chubb and Moe’s choice system would eliminate all distinctions between public and private schools, the decreased control exerted over conventional public schools, and/or the increased support of conventional private schools would significantly change the identity of each type of institution. Much of this would result from the fact that, based on both of these proposals, public authorities at all levels, but especially those at the district level, would lose considerable control over public schooling, both in terms of operation and regulation. In other words, both essentially call for a decline in governmental responsibility for providing and overseeing schooling.
Moreover, Friedman’s proposal, while decreasing public control, would undoubtedly increase the amount of public funding going to private schools, therefore increasing the number of private schools, and, as a further result, almost certainly increase the percentage of U. S. children attending private schools. Thus Friedman’s voucher plan would violate, to a much greater extent than current voucher programs, the American tradition, established during the common school era, that public control follows public support. In so doing, it would decrease not merely public control and support of public schools, but public control of schooling altogether. Increasingly, states would be leaving up to private institutions, with relatively little public control, the schooling of a greater portion of the populace, also referred to as ‘the public’.

To an even greater extent, Chubb and Moe’s proposal would create a new concept of ‘public school’, one that meets some minimum criteria set forth by a state. According to that proposal, the label ‘private school’ would only refer to schools that did not apply for or meet a state’s minimal criteria for a ‘public school’, which would roughly correspond to current state regulation of private schools. This would clearly alter our current concepts of public and private schools since, based Chubb and Moe’s definition, many schools which would currently clearly be classified as private, would, under their proposal, be classified as public.

Increasing Privatization and Regulation

There is one other point that should be made concerning school reform proposals, particularly those that call for increasing privatization of schooling. The assumption by many, both those who advocate various forms of school privatization
and those who oppose them, is that privatization, as the name implies, will make the public sector more like the private sector. The vision is one in which the public sector has been ‘marketized’, made leaner, more efficient, more cost effective, and better in terms of the quality of service provision. Indeed, this philosophy seems to drive the practice of contracting out, as well as the creation of many charter school laws and voucher programs.

However, as Gormley (1991) and Pack (1991) have pointed out, there is a significant likelihood that, particularly in education, certain proposals for privatization may result in increased government regulation (cited in Murphy, 1996, p. 105). Concerning this possibility, Salomone (2000) states, “As experience in other countries has taught, public funding for private schools generally brings with it government regulation, and understandably so” (p. 260). While many of today’s school privatization initiatives are designed to reduce regulation by public authorities, it seems that some level of government regulation over schooling, whether public or private, seems inevitable. Particularly if the current accountability trend continues, there will seemingly need to be officials who have the power to monitor and ensure accountability.

Whether or not these officials increase regulation of schooling, both public and private, in unconventional ways will certainly be a function of policy, but it will also be a function of practice and experience. As Dewey (1927/1954) explained, if public perception of private, or privatized, acts, such as schooling, sees them as having consequences that profoundly effect others, increased public oversight is likely to
result. If realized, this increased regulation very well might counteract the supposed benefits touted by privatization supporters, and/or curtail the supposed harm dreaded by its opponents.

Interestingly, we see in the analysis above that issues of control and support meld into issues of interest and benefit. Privatization advocates frequently argue that today’s system of publicly controlled schools is too regulated and political, thus harming the public interest. Privatization critics argue that funding private entities to control public education will result in the furthering of private, most notably religious and corporate, interests at the expense of the public interest. The question for educational stakeholders and policymakers, including the public itself, is how much public control and support can and should be placed in the hands of private entities to actually further public interests and create or sustain a public good. And this is one of the key issues that will be examined in Chapter 5 of this dissertation.
CHAPTER 4

‘OPENNESS’

Preliminary Clarifications and Stipulations

In beginning our discussion of the extent to which American public and private schools are ‘open’ institutions, and how this aspect of their identities has shaped our concepts of these institutions, some clarification is in order concerning my treatment of these issues. While I will be exploring the quality of school ‘openness’ along a continuum, or in a comparative way, looking at schools as ‘more open’ or ‘less open’ rather than merely open or closed, there are two different types of ‘openness’ which I will be examining. The first, which I will refer to as ‘access’, involves the extent to which students have the ability to enroll in a particular school or school system. ‘Access’, as I will be discussing it, will also include the financial ability of parents to send their children to a particular type of school, as well as the criteria which the schools’ use to enroll and dismiss students.

The second type of ‘openness’ that I will be discussing is ‘integration’, which I will use to mean the practice of enrolling a mix of students with different demographic characteristics (e.g., race/ethnicity, religion, socioeconomic status) into schools, school districts, and school programs. Due to the terminology used by various sources, the term ‘integration’ may be further refined in discussing either ‘inter-school’ or
‘intra-school’ integration. However, by using the word ‘integration’ in this chapter, I will not necessarily be assuming the assimilation, or cultural inculcation, of various ethnic and religious groups, though this has often been the underlying purpose of public school integration. As I will use the term, ‘integration’ will not also denote the richer, more complex aspects that some include as part of this term, involving tolerant attitudes, an appreciation for various cultures and student backgrounds, and social cohesion. My use of the term will thus largely discuss integration as a structural, rather than functional, phenomenon.

*Development of Public Schools as Open Institutions*

The importance of both ‘access’ and ‘integration’ to the identity of the public school as an ‘open’ institution was central to many nineteenth century advocates of public schooling and reflected in their vision of the common school. The identity of the public school as a common school was noted by Horace Mann in his Twelfth Annual Report, issued in 1848: “The very terms, *Public School*, and *Common School*, bear upon their face, that they are schools which the children of the entire community may attend” (p. 103). Public financing, via taxation, was utilized as a way of ensuring equal access to the new school system, since students from poorer and lower-income families would not need to overcome significant financial barriers to attend public schools.

Furthermore, the common school was seen as a place in which the various classes of the citizenry would be integrated. In this way, the purpose of the common school would be different than that of other institutions that were initially used to
serve poor children, such as monitorial charity schools, Sunday schools, and infant schools (Vinovskis, 1992, pp. 319-321). Horace Mann and some of the other common school reformers believed that spreading schooling to all children would provide an equality of educational opportunity that would in turn reduce poverty and other social ills. Again in his Twelfth Annual Report, Mann (1848/1957) alluded to this principle:

> According to the European theory, men are divided into classes,—some to toil and earn, others to seize and enjoy. According to the Massachusetts theory, all are to have an equal chance for earning, and equal security in the enjoyment of what they earn. The latter tends to equality of condition; the former to the grossest inequalities. (p. 85)

Furthermore, Mann believed that opening schools to all would, in keeping with the nation’s republican ideals, alleviate the class distinctions that characterized European societies, and thus promote social unity:

> Now surely, nothing but Universal Education can counter-work this tendency to the domination of capital and the servility of labor. If one class possesses all the wealth and the education, while the residue of society is ignorant and poor, it matter not by what name the relation between them may be called; the latter, in fact and in truth, will be the servile dependants and subjects of the former . . .

> Education, then, beyond all other devices of human origin, is the great equalizer of the conditions of men—the balance-wheel of the social machinery . . . The spread of education, by enlarging the cultivated class or caste, will open a wider area over which the social feelings will expand; and, if this education should be universal and complete, it would do more than all things else to obliterate factitious distinctions in society. (pp. 86-87)

Nevertheless, just as the development of the public school as a nondenominational, institution under the direction of civil authorities took a good deal of time and debate, some evolution was required to form the identity of the public school as an open institution. For example, the Twentieth Report of the Trustees of the Free-School Society of New-York, published in 1825, stated, “Still it is to be lamented
that a description of public school is wanting amongst us, where the rich and the poor may meet together; where the wall of partition, which seems now to be raised between them, may be removed” (Cremin, 1951, p. 158). In order to remedy this situation, the Free-School Society was transformed into, and thus renamed, the Public School Society, the purpose of which, according to the legislation that granted its powers, was as follows:

... to provide, so far as their means may extend, for the education of all children in the city of New-York, not otherwise provided for, whether such children be or be not the proper objects of gratuitous education, and without regard to the religious sect or denomination to which such children or their parents may belong. (p. 159)

While the development of the identity of the public school as a nonsectarian institution was detailed in Chapter 2 of this dissertation, there was certainly a relationship between the nonsectarian and open aspects of the public school concept. One of the features that distinguished the new common schools from the established denominational schools was the fact that the latter were not fully ‘open’, neither regarding access nor integration, to all of the children of the community. This was illustrated in an episode that took place in 1831, when Catholics and Methodists petitioned the Common Council of New York City for access to tax funds for their orphanages (Catholic) and charity schools (Methodist). Those petitioning for each of these institutions were essentially arguing that they were in fact common schools, despite their sectarian nature. The Public School Society, which filed a petition in opposition to these groups, responded thus:

“What are Common Schools? – This phrase cannot possibly mean any thing else than those schools, which are commonly know by that name, and have
been so called, because they are Common, that is, open to all. Those cannot be Common Schools which are the property of a particular Corporation, and from which all persons may be lawfully excluded, who do not belong to a particular sect.” (Cremin, 1951, p. 161)

Thus private schools, including sectarian schools, could not be classified as ‘common’ schools since these schools were not open to all children, and the ability of private schools to limit their enrollment to particular children could be legally enforced.

Later that year, the Law Committee of the New York City Board of Assistants issued a report that, according to Cremin (1951), would be “monumental in its definition of the role of common education” (p. 161). The committee argued:

If religion be taught in a school it strips it of one of the characteristics of a Common School . . . No school can be common unless parents of all religious sects, Mohammedans and Jews, as well as Christians, can send their children to it, to receive the benefits of an education without doing violence to their religious belief. (p. 161)

The committee went on to define a common school as one with the following characteristics:

a school in which nothing but the rudiments of an English education are taught to all who are admitted into it, which is open to every child that applies for admission, and into which all can be admitted without doing violence to their religious opinions, or their parents or guardians. (pp. 161-162)

Thus, as a matter of formal policy, public schools in New York came to be seen as open to all of the children in a community. Legislative steps in other states were also taken in order to promote access to all children, first by permitting, then by encouraging, then by mandating the establishment of school districts, school boards, and finally schools supported via taxation (Ornstein & Levine, 2003, p. 170).
Of course, the ideal of a common school that was open to all yet offended none was seldom, if ever realized in the history of American schooling. Nevertheless, the excerpt above captures the sentiment that a public school would also be characterized by integration, that parents of different backgrounds could send their children to the same school, and that the population of the school would reflect the population of the community that supported it.

One might expect that the legislative steps taken to promote greater access to schools would result in increasing percentages of school-age children enrolling in schools. However, this was not immediately the case, even in the cradle of the common school movement, Massachusetts. As Kaestle and Vinovskis (1980) detail, during the period from 1840 to 1880, while the total public school enrollments in Massachusetts increased, the percentage of school-age children who attended public schools actually fell, from over 55 percent to under 50 percent (pp. 34-35). In an attempt to attract unenrolled students, public schools developed differentiated curricula, and some public school systems even developed differentiated schools. As Kaestle and Vinovskis explain:

As a way to resolve their ambivalence between an all-encompassing system and a well-ordered system, urban school administrators created special nongraded, segregated alternatives for irregular students, schools designed to keep them enrolled but at the same time keep them from interrupting and confusing the efficient progress through the system of regular school attenders. Examples include evening schools and half-day schools for working teenagers, as well as intermediate schools to bridge the elementary and grammar levels for irregular attenders. The clients of these schools were often explicitly labeled children from poor families or the children of immigrants. Thus the differentiation process had a decided social as well as bureaucratic effect. Social organization, in this as in many ways, reflected and reinforced social stratification. (p. 37)
Indeed, regarding newly arrived immigrants (foreign born inhabitants), Kaestle and Vinovskis (1980) found a very negative correlation between immigrant children and school enrollment in 19th century Massachusetts towns. They cite a number of possible reasons for this, including the need of immigrant families for the income that could be brought in by working children, the lack of value that certain immigrant groups placed on schooling, and the cultural or religious alienation that immigrant groups experienced in the public schools (p. 131).

Thus, while access to all of the students in a community may have been growing, the integration of students within these communities seems to have been rather limited. This was true regarding the integration of rich and poor, as well as foreign-born and native-born, both primary objectives of many common school advocates. Nevertheless, as increasing numbers, and gradually increasing percentages, of school-age children began to attend public schools, and as private schools were disinherited from public funding (see Chapter Two), the percentage of students enrolled in private schools gradually declined. From 1840 to 1880, while the actual numbers of students attending private schools in Massachusetts remained largely unchanged, the percentage of children attending private schools, as opposed to public schools, dropped from 13.8 to 8.4 percent (Kaestle & Vinovskis, 1980, p. 34). Therefore, the clientele of private schools very likely became more elite.

However, while many private schools developed into and continue to function as elite institutions, this was not always the case. Private sectarian schools, including substantial numbers of schools run by Catholic and Lutheran churches, continued to
serve children from both poor and immigrant families. However, there were other private, nonsectarian schools that were not elite institutions. For instance, Foster (2000) discusses the development and importance of historically black independent (HBI) schools:

Historically, Africans in America (and later, after citizenship was granted, African Americans) opened independent schools in response to unsuccessful attempts to either integrate segregated schools, or gain influence over the policy, curriculum, and instruction at schools operated for them by European Americans. (pp. 292-293)

An example of this process would be the New York African Free School, which was founded in 1789, and was among the first nondenominational charity schools in urban America. As Rury (1983) details, the New York Manumission Society established the school “to divert black children from ‘the slippery paths of vice’” (p. 187). Other African Free Schools were opened in the next four decades, overseen by the society’s trustees, who were white, and staffed with white teachers. After the black community boycotted the Free Schools in 1832, the Manumission society chose a black teacher as the school’s leader, and hired more black teachers to staff the school.

However, just as the black community was asserting more control over the Free Schools, the Manumission Society transferred control over its schools to the Public School Society. The imposition of the Public School Society’s policies and lack of regard for input by New York’s black community resulted in a drop in the enrollment of black students (pp. 193-195). Thus, even though African Americans were provided access to the public school system, albeit often in segregated schools, African Americans, like Catholics, Lutherans, and members of some other religious
sects, often found the public school system so inhospitable that they decided to start their own private schools. Thus, “In the 1830s and 1840s, frustrated by their inability to gain seats on segregated school boards run by white benevolent societies, Africans established charitable societies of their own for the purposes of setting up private schools” (Foster, 2000, p.293).

As the preceding experiences of ethnic minorities, religious minorities, and the poor indicate, despite the ideal of the common school, the growth of public schools and public school systems was accompanied by a tension between the characteristic of ‘openness’ as access, and ‘openness’ as integration. Eventually, through the passing of compulsory attendance laws, the goal of universal access to public education was largely realized. However, as witnessed above, attempts by public school officials to expand, and eventually universalize, access did not always assist student or societal integration, and seems quite often to have hampered it.

Contemporary Public and Private Schools

Public Schools

The public school as part of an open system.

At this time, a few important observations must be made concerning the feature of ‘openness’ as it relates to the concept of the American public school as described above. First of all, especially with the growth and consolidation of schools and school districts, the public school did not so much develop as an ‘open’ institution, but rather as an institution that was part of an ‘open’ system. These systems have come to be characterized as being both ‘open’ and ‘free’, since a considerable
amount of a district’s financial support has traditionally come from property taxes paid by the district’s residents. Students were entitled, and later compelled, to attend a public school within a particular school district or system, and that school was generally designated by district policy. Thus, a public school district is generally considered open, at least in terms of access, to all of the children residing within that district. Within a particular district, students were typically assigned to a school that was in some proximity to their residence, but because of both inter-district and intra-district boundaries, students could not merely attend any public school they wanted, even if it was located closest to their homes.

However, a public school district has generally not been considered ‘open’ or accessible to students who resided outside of the district. While some districts do permit students residing outside the district to attend their schools, special permission and additional fees are typically required for such students to gain access to its schools. Thus, even in such cases, access to students outside a particular district would be granted under different conditions than for those living within the district.

Furthermore, while state constitutions may have given students the legal right to access within a particular school district, American public schools have not been unconditionally open, in terms of ‘accessible’, to the district’s students. Once admitted access to their local public school, students could be and were suspended or even assigned to another school in the system by district officials. Some districts even developed separate schools for unruly or delinquent students, with special programs adapted to their particular ‘needs’. Under extreme circumstances, with qualifications
narrowing during recent years, public school students can be expelled for violations of school rules, and therefore denied future access to the system.

*Racial segregation, desegregation, and integration.*

Unfortunately, the public school systems that developed in many districts and states, were not open systems. Especially, but not exclusively, in the southern states, where a system of public education did not really take shape until after the Civil War, what developed was not a public system of education, but a dual system of education, one for white children and one for black children. Such practices were permitted based on an adaptation of the ‘separate but equal’ doctrine approved by the United States Supreme Court in the *Plessy v. Ferguson* ruling in 1896. Black students were permitted access to a public system of education, but within that system, they were overwhelmingly or entirely segregated. They were legally denied access to the white system of education, which, despite the ‘separate but equal’ stipulation, was significantly, better funded, better staffed, better equipped, and better maintained.

However, in 1954, in *Brown v. Board of Education*, the Supreme Court reversed the *Plessy v. Ferguson* ruling and the ‘separate but equal’ doctrine that had been applied by U. S. courts for more than half a century. In its unanimous decision, the Court proclaimed:

> 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. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is
doubtful that any child may reasonably be expected to succeed in life if he is
denied the opportunity of an education. Such an opportunity, where the state
has undertaken to provide it, is a right which must be made available to all on
equal terms. (p. 493)

Concerning its new judgement about the ‘separate but equal’ doctrine established by
the *Plessy v. Ferguson* ruling, the Court stated:

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. (p. 495)

Thus, the Court found that, based on the equal protection guarantees of the Fourteenth
Amendment, public school students, regardless of race, have the right to access to a
single system. Therefore, in principle, the American public school was to be part of an
integrated system, not two segregated systems, that was open to all students.

However, the extent to which particular public school districts, and further
particular public schools, were to become more ‘open’ in the sense of ‘integrated’ was
yet to be settled. The *Brown* verdict was met with staunch resistance from supporters
of segregation, especially in the South. Southern political figures, both at the state and
federal level, were openly hostile to the *Brown* ruling. As Henig (1994) explains:

In March, 1956, most of the members of Congress from the southern states
issued a joint “Southern Manifesto” in which they declared the *Brown* decision
“contrary to the constitution” and commended the “motives of those states
which have declared an intention to resist forced integration by any lawful
means.”

By 1957, Gary Orfield notes, “at least 136 new laws and state
constitutional amendments designed to delay or prevent integration were on
the lawbooks.” (p. 103)
In that very year, Arkansas Governor Orval Faubus refused to allow five African American students to be admitted to Central High School in Little Rock. In response, the nation’s chief executive, President Eisenhower enforced the Brown decision by ordering the National Guard to escort the students to school.

In addition, many southern school districts instituted “minority-to-majority transfer” or “freedom of choice” plans. Under these arrangements, students who constituted a racial minority in their new school after a formal desegregation plan was implemented were given the option to transfer back to their former school in which they were part of the racial majority. Such plans were struck down by the United States Supreme Court in *Goss v. Board of Education* (1963) as violations of the Brown decision. In a unanimous decision, the Court stated, “It is readily apparent that the transfer system proposed lends itself to perpetuation of segregation. Indeed, the provisions can work only toward that end” (p. 686). Five years later in *Green v. County School Board* (1968), the Court would rule that no enactment of freedom-of-choice plans would relieve local school districts of the responsibility to desegregate their schools.

Furthermore, despite the reaction of some pro-segregation politicians, the United States Congress’ role in school desegregation, in concert with the executive and judicial branches was also considerable. With regard to the unification of this effort, Devins (1989) explains:

Congress set the stage for federal enforcement of the Brown mandate by enacting Title VI of the Civil Rights Act of 1964. Title VI prohibits recipients of federal financial assistance from engaging in purposeful discrimination. Armed with the power to cut off federal education funds, by the end of the
1960s, the efforts of the federal government had dramatically eroded southern school segregation. For example, between 1965 and 1968 the percentage of black children confined to all-black schools in the South dropped from 98 per cent to 25 per cent. (p. 12)

To further aid the courts in eliminating desegregation, Congress passed the Emergency School Aid Act of 1972, which was used to spend public money on school desegregation.

However, due to both district school assignment policies and traditional intra-district boundaries, many school districts remained segregated. In *Swann v. Board of Education* (1971), the Supreme Court addressed this issue. The case involved the Charlotte-Mecklenburg (North Carolina) school system, in which two-thirds of the district’s black children attended schools that were more than 99 percent black (pp. 6-7). In a unanimous decision, the Court agreed with the district court’s finding, and the appeals court’s affirmation, that, “School board actions based on these patterns, for example, by locating schools in Negro residential areas and fixing the size of the schools to accommodate the needs of immediate neighborhoods, resulted in segregated education” (p. 7). As a remedy, the *Swann* Court approved the limited use of racial quotas and bus transportation to implement majority-to-minority transfer plans aimed at reducing segregation in schools. However, the *Swann* decision noted that, “It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so” (p. 31). Thus, once federal courts took adequate steps to eliminate segregation policies and to desegregate districts, no further attempts to alter demographic patterns were required. Two decades later, this principle would be affirmed by the Court in *Freeman v. Pitts* (1992).
Two years after the Swann ruling, in Keyes v. School District No. 1 (1973), the Supreme Court held that school districts need not operate an explicitly dual system in order to violate the Brown decision. The Court stated:

... [W]here plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers, and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system. (p. 201)

The Keyes ruling further opened the door to forced desegregation in districts that manipulated the racial make-up of public schools, for instance by structuring attendance zones, designating ‘feeder’ schools, or limiting school construction or capacity. In addition, the Court’s ruling permitted segregation orders to remedy discrimination against Hispanic as well as African American students.

Interestingly, the struggle over desegregation of public school districts seems to manifest the conflicted nature of school district control described in Chapter 3. The tradition of local and state control of public schools was clashing with the requirements of public institutions as prescribed by the federal government. The goals of local communities and states were subjugated to the goals of the federal government in interpreting and enforcing constitutional principles. This produced a struggle in defining the character of the American public school as part of an open system. Through this process, different forces were attempting to answer the question, “To what extent would American public school systems be open?” This question referred both to providing genuine equal access to black and white students, and to the integration of students of different races within public school systems. This was not
essentially a conceptual question, but rather a legal question, and more deeply in some senses, a question of value. The federal courts and many in Congress were expressing, through their interpretation of the Constitution and through its legal framework, that school districts were to act as one, racially integrated system. Many public officials at the state and local level, usually in step with their respective electorates, resisted, valuing instead the maintenance of state and local control, with relatively little regard for the disparities or segregation created by the present system.

Many parents also resisted, and in ways that greatly reduced the effects of court rulings on genuine social integration. As a result of suburbanization, geographical mobility, and economic resources, many parents who objected to desegregation plans, particularly mandatory busing, moved out of previously segregated districts. Those able to move were predominantly middle-class and therefore predominantly white. This ‘white flight’ profoundly impacted the real effect of court-imposed desegregation plans, often in a very immediate fashion. Approximately two years after a 1973 court-ordered desegregation plan went into effect in Memphis, Tennessee, the white enrollment in the city’s public schools had declined from 50 percent to 30 percent. More dramatically, in Englewood, California, within five years of city’s implementation of an integration plan, the school population changed from 62 percent white to 80 percent nonwhite (Time Decades, 2000).

In order to combat the white flight phenomenon and to more fully integrate schools on a societal basis, some courts attempted to impose inter-district or multi-district desegregation plans. However, United States Supreme Court decisions limited
the power of the federal judiciary to integrate public school systems. As the Court
ruled in the *Milliken v. Bradley* (1974), the courts were not permitted to treat cases of
segregation on a multidistrict basis, unless collusion between those districts for the
purposes of segregation could be established. The *Milliken* Court concluded:

A federal court may not impose a multidistrict, areawide remedy for single-
district de jure school segregation violations where there is no finding that the
other included school districts failed to operate unitary school systems or have
committed acts that effected segregation within the other districts, there is no
claim or finding that the school district boundary lines were established with
the purpose of fostering racial segregation. (p. 718)

While inter-district desegregation plans were enacted in a few states, such as
Delaware, the *Milliken* decision generally immunized surrounding school districts to
which students fled from desegregation (Devins, 1989, p. 11).

Through the desegregation process, and the loss of white and middle-class
students from urban districts, the concept of the public school as an open institution
was evolving. As an instrument of integration, the public school was limited to the
legal and geographic confines of a particular system, generally meaning a public
school district and the schools that were part of that district. However, as will be
discussed in more detail below, this meant that the identity of the public school as part
of an open system was quite limited, as the educational and societal effects of school
integration would be continue to be bounded by the American tradition of local
control of public schools.

In the 1970s, as an alternative to busing, many districts began experimenting
with public school choice, including open enrollment and controlled choice plans, in
order to enhance integration. In initiating such plans, districts attempted to expand
access to more of the district’s schools to some degree, thus hoping to facilitate
integration within the district. However, many of these programs could do relatively
little to prevent the lack of real social integration in the district itself, which was
created by those leaving for surrounding districts. In order to address this, and to
further enhance integration within districts, both public school officials and the courts
in the 1970s began to favor the use of ‘magnet schools’. Henig (1994) explains the
magnet school concept:

Magnet schools traditionally have involved the assignment of extra
resources, attractive programs, or special teaching approaches to schools in
high-minority neighborhoods in order to stimulate voluntary integration and
moderate the conflict and white flight that might otherwise be generated in
response to mandatory desegregation initiatives. (p. 107)

In 1976, federal district courts in Milwaukee and Buffalo approved
comprehensive plans designed around the magnet school principle (Viteritti, 1999, p.
57). Such schools were also integral parts of court-ordered desegregation plans in
Boston, Houston, and St. Louis (Henig, 1994, p. 109). Beginning in 1976, the federal
government began to support magnet schools through the Magnet Schools Assistance
Program (MSAP) and the Emergency School Assistance Act (ESAA). In the next five
years, the ESAA would provide up to 30 million dollars per year to magnet school
programs (Blank, Levine, and Steel, 1996, p. 156). Thus, the use of magnet schools to
facilitate integration dramatically increased in the late 1970s and early 1980s.
Despite suspension of these programs in the early 1980s, in 1985 Congress
reestablished the federal Emergency School Aid Act as the newly titled Magnet
Schools Assistance Program. Between 1984 and 1994, 955 million dollars in federal
funds were allocated to 138 school districts to implement magnet schools (Peterson, 2001, p. 255). As a consequence, the number of magnet schools in the United States doubled between 1982 and 1991, while the number of students served by magnet schools tripled during this same period (Blank, Levine, & Steel, 1996, p. 157). In addition, in 1999, the federal Department of Education appropriated over one hundred million dollars for magnet school assistance (Salomone, 2000, p. 244). Meanwhile, the popularity of magnet schools, both as policy instruments and educational institutions, seemed to grow considerably. Viteritti (1999) reports that:

By 1991 more than 1.2 million school children were enrolled in 2,433 magnet schools in 230 districts. Another hundred and twenty thousand were on waiting lists. More than half the magnet districts and 80 percent of the programs were located in urban areas where enrollment exceeded ten thousand. (p. 57)

It is important to note that there are some significant differences among magnet schools and magnet programs. While there are magnet schools at all K-12 levels, over half of magnet schools in operation today are elementary schools (Blank, Levine, & Steel, 1996, p. 156). In addition, while most magnet programs are instituted throughout an entire school, many, approximately one-third, are categorized as ‘program within school’ (PWS) programs. (p. 163).

Furthermore, while two-thirds of magnet schools either offer an emphasis on specific subject matter or provide a distinctive instructional approach, about an eighth of them are for academically gifted and talented students. While admission to other magnet schools is generally based on some type of lottery, admission to these elite magnets is in part based on perceived student talent and ability. Examples of these schools include the Fiorella H. LaGuardia High School of Music & Art and the
Performing Arts in New York City, Thomas Jefferson High School for Science and Technology in Fairfax, Virginia, and Columbus Alternative High School (CAHS) in Columbus, Ohio. As Henig (1994) notes, many schools with the magnet-like qualities of specialized educational missions and/or rigorous academic programs, for example the Bronx High School of Science and Boston’s Latin School, had existed for years before magnet schools became popular (p. 108).

Of course, regardless of popularity or academic quality, there was still the empirical matter of whether or not magnet schools were instruments of integration. While there have not been a great number of studies conducted on this matter, in 1981, Blank et al. found that magnet schools promote “‘positive integration’; ‘help reduce real and potential community conflict concerning desegregation’; and ‘have a positive effect on holding students in public schools and reducing ‘white flight’”’ (Henig, 1994, p. 122). More recently, Blank, Levine, and Steel (1996) found that magnet programs have aided integration both of minority students into predominantly white districts and vice-versa (p. 170). The interesting conceptual point here is that, while access to the system was maintained, access to public magnet schools was limited, sometimes to elite students, in order to achieve a racial balance and to promote further integration of the public school system.

The interesting conceptual point about magnet schools as public schools, when looking at the quality of openness is the following. Many magnet schools, often as a part of open-enrollment or controlled choice programs, operate on the principle that, in conjunction with the variety they offer, by expanding access to district schools beyond
residence, the district will become more integrated. Put more simply, this principle can be stated: increased variety and increased access will improve integration. On the other hand, policies utilizing magnets for the gifted and talented seem to operate on the opposite principle: that increased variety and decreased access (to those particular schools) will improve integration.

In screening students, elite magnet schools seem to operate more like private schools than traditional public schools regarding access. They attempt to attract and cater to elite students who might otherwise leave the district or choose to attend private schools. Their enrollment is based on perceived talent or merit, though with broader residential permissibility (throughout the entire district) than neighborhood public schools. While the elite magnet school itself may not be the most integrated school in the district, the idea and hope is that it will contribute to the overall integration of the school district. Of course, both types of magnet schools are often part of the same school system, so that students with a variety of skill levels and interests may exercise school choice.

*Integration of disabled and non-English-speaking students.*

In addition to racial integration within school districts, it has become a characteristic of public schools to provide access to and to facilitate the integration of both students with disabilities and students from different ethnic backgrounds who speak primary languages other than English. As Salomone (2000) explains, during the last three decades of the twentieth century, Federal and state mandates require schools to accommodate vast numbers of students, including the handicapped, linguistic
minorities, and other students with special instructional needs (p. 217). While individual states did address these issues to varying degrees prior to Federal intervention, as was the case with desegregation, Federal legislation and court decisions helped to solidify these characteristics as part of the public school concept.

For example, Congressional passage of Section 504 of the Rehabilitation Act of 1973 required that any and all Federal funding be cut off from schools that discriminate against the disabled. Just two years later, the Education for All Handicapped Children Act of 1975 provided Federal assistance to assure equal protection of the law for students with disabilities, as required by the Fourteenth Amendment. Later renamed the Individuals with Disabilities Education Act of 1990, this law requires individualized education programs (IEPs) for all students with physical, behavioral, and mental handicaps, and learning disabilities. Furthermore, educational services for these students must be provided in the ‘least restrictive environment’, meaning that public schools must be made more accessible for handicapped students, and that, as much as possible, these students should attend regular classes with the rest of the student body. This process of *mainstreaming* or *inclusion* is thus meant to facilitate the intra-school integration of students with disabilities.

Moreover, in the last three decades, public schools have also taken steps to teach students of limited English proficiency in mixed classrooms to a much greater degree than has previously been attempted. While an initial Bilingual Education Act was passed in 1968, a great deal of progress was not made on this front until the
United States Supreme Court decision in *Lau v. Nichols* in 1974. In that case the Court found that the San Francisco school system’s failure to provide non-English-speaking students of Chinese ancestry with adequate instruction violated the Civil Rights Act of 1964, which banned discrimination on the basis of race, color, or national origin in activities receiving Federal funding. A second Bilingual Education Act was also passed in 1974, the purpose of which was to integrate students with no or limited English proficiency as much as possible with the general school population (Fischer, Schimmel, & Kelly, 1999, p. 412). That principle was also embodied in the act’s reauthorization in 1988 and 1994.

*The role of integration in public schools.*

As the examination above indicates, the extent to which a school is racially or socioeconomically integrated has not historically been as important to its public identity as part of an open system as the extent to which it is open to the children of the district in which it operates. Nor is the ‘openness’ of a school or school district in terms of integration the factor that defines a school as *public* or *private* to the same extent as do the control and support mechanisms described in the previous chapter. For example, we would not identify a school in a wealthy suburb with an all-white student body a *private* school if it were administered by a local school board. Such a school, open to all of the students of the district, would, by custom and legal necessity, be designated as a public school.

However, it is part of what we mean by a *public* school as a descendent of the common school, that students from various backgrounds would be educated together.
Integration, in the eyes of many, seems to be a goal for which to reach in order to make public schools and school districts more fully ‘open’, and therefore more fully public. As described above, especially in the latter half of the twentieth century, there have been a number of substantial attempts to make public schools better vehicles for integration. The extent to which these attempts have been made and been successful has varied from locale to locale, and waxed and waned from year to year. Various ‘publics’ and public officials seem divided on the extent to which the mission of integration should be part of the public school identity, and by which means more substantial, lasting societal integration can be brought about through schooling. For example, Devins (1989) has opined that currently with regard to public schooling, the public values nondiscrimination, not racial balance (p. 9). While this may be accurate, it is also true that the public’s views on both public school integration and societal integration are not set in stone, and have the potential to be effected by social dynamics, policy initiatives, and local and national waves of concern.

Private Schools

Of course, despite the struggle to make public schools in the United States part of a more ‘open’ system, American private schools today are not ‘open’ in any idealized way either. Regarding access, private schools have considerable control over which students they choose to enroll and which they choose to expel. For example, some religious schools restrict enrollment to a particular church or denomination, while a number of both sectarian and nonsectarian schools restrict admission to either boys or girls. Other private schools can deny admission to students based on perceived
talent level, or performance on an admissions test, or an unfavorable disciplinary record. Moreover, private schools have no obligation to accept or enroll students with physical or learning disabilities, although many of them do.

Beyond this, private schools do not have, and are not required to have, the capacity to accommodate all of the students who might wish to attend them. Quite to the contrary, many private schools, particularly elite private schools, operate on the principle that only a select number of students can attend and graduate from that institution. Furthermore, private schools can and do dismiss students for reasons that public school districts cannot. These include lack of academic performance, chronic misconduct or unruliness, or even a single, serious disciplinary infraction. Thus, regarding admission and retention, private schools are much less ‘open’, or significantly more ‘closed’ institutions than are public schools, or at least public school districts.

Furthermore, private schools are not ‘open’ in the sense of access because, unlike public schools, they are not ‘free’. As detailed in Chapter 2, the Supreme Court’s Pierce decision in 1925 guaranteed the rights of private schools to exist and operate in the United States. However, the right to a private school education recognized in Pierce can be exercised by parents and students provided that two conditions exist. First, there must be a private school in reasonable proximity to the student’s home. As private schools are more numerous in urban centers than in rural areas, the real option of private schools for rural residents is greatly reduced. Secondly, the tuition and fees charged by the private school must be such that the
student’s family can afford to pay for these expenses. Also detailed previously, private schools, especially church schools, were disinherited as denominational control of education waned, and as public schools were established under state auspices. Since the rise of public schooling in the United States, the higher tuition charged by many private schools, especially very selective private schools, has contributed to their elite status and appeal to a particular class of parents and students. Many private schools, particularly many operated by churches or religious societies, do grant considerable financial assistance, in the form of scholarships, or grants, or work study arrangements, to students who could not otherwise afford to attend them. Nevertheless, the additional expenses involved with private schooling still act as a barrier to access for many children. Thus, the lack of access to private schools, can be seen as both a function of private school policy, in keeping tuition at a certain level, as well as a function of government/public policy in limiting funding to private schools, particularly for lower-income and poor families. The degree to which one or the other factor affects access to private schools will differ based on variables such as the mission and clientele of each private school, the costs associated with operating each school, and state law.

In turn, access to private schooling affects the integration that takes place both in the private schools in a particular locale and within each private school. However, because of the differences in control, support, and accountability described in the previous chapter, integration in private schools has not been undertaken as aggressively as it has in public school districts. For example, all of the public schools
in a particular city, perhaps hundreds, typically belong to the same public school
district. As described above, it would be expected that, within the district itself,
schools would display some level of integration. However, private schools are often
independent entities, or perhaps part of a much smaller group of schools belonging to
a church or diocese, and thus the extent to which they are integrated or not is highly
related to the scope and nature of their mission. Quite to the contrary, as explained
above, the conditions for access to certain private schools are meant to ensure that
only pupils with certain characteristics are admitted.

For example, many private sectarian schools have as one of their primary
institutional missions to transmit a particular faith tradition to students. As such, some
of these students limit their admissions to students that belong to a particular church,
or are at least those who are willing to learn, the religious beliefs that the school
promotes. Other private schools have as part of their mission to foster the abilities of
elite students, or to instill the tastes, values, and attitudes that are deemed necessary by
a particular class of people, or to improve the academic achievement of urban youths.
As such, one of the primary purposes of many private schools is not to promote
various types of interaction or tolerance between different groups of people. Instead, it
is often to promote values and attitudes that are in some way, though not in others,
unique or different than those held by the majority of the larger society. Even if
private schools would have included some types of student integration as part of their
mission, and some have (i.e. Quaker schools) particularly since the common school
movement, private schools have not enrolled a large enough proportion of students in
most areas to greatly impact societal integration. Rather, they typically seek to attract
and create a student body that is similar with regard to some particular, identifiable
characteristic(s).

Moreover, as private institutions, private schools are not legally required to be
integrated in the same ways as public schools. Because of the religious freedom
guaranteed by the First Amendment, the courts have ruled that the extent to which
ingoan education laws apply to, or can be applied, to religious schools is even more limited.
For example, Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination
on the basis of disability, does apply to both public and private schools that receive
Federal financial assistance. However, if a private school would decide to refuse all
Federal funding, it could ignore the law’s requirements. In addition, the Individuals
with Disabilities Education Act guarantees students a ‘free, appropriate public
education’ (FAPE), not a free private education. Since they do not normally receive
the Federal funds to do so, private schools are not required to design IEPs for
handicapped students. Moreover, IDEA does not require a public school district to
provide all of the services that would be provided in a public school if the students
voluntarily attend a private school (Fischer, Schimmel, & Kelly, 1999, p. 404). On the
other hand, if, based on their evaluation, public authorities decide to place a
handicapped student in a private school, the private school, in accepting the student
and any corresponding funding, would be responsible for providing appropriate
services.
However, some of the Federal government’s attempts to integrate schools have been extended to private schools. Though legal battles have ensued over governmental regulation of private schools, Devins (1989) observes that private schools, especially Christian schools, tend to prevail in programmatic matters, such as curriculum, while the state ultimately prevails in nondiscrimination matters (p. 5). While the Supreme Court has consistently held that First Amendment’s guarantee of religious freedom must be protected, it has also viewed equality of an opportunity as a larger societal issue under the Fourteenth Amendment that reaches beyond the school walls.

For example, after the Brown rulings, some states enacted tuition grant programs to help defray tuition to nonsectarian private schools, thus provided an outlet for white families who did not wish their children to be educated in integrated schools. Fullinwider, (1989) explains that in the 1960s and 1970s, private academies in the south proliferated as a response to federally imposed public school integration, creating 2 school systems, one for whites, private and well-funded, the other for blacks, public and under-funded (p. 29). An extreme type of this ‘segregation academy’ developed in Prince Edward County, Virginia, in which the public school system actually closed and white parents sent their children to a newly established private academy that was supported by tuition grants funded by the state and county. In Griffin v. County School Board of Prince Edward County (1964), the Supreme Court struck down such tuition-grant programs. In its decision, the Court noted: . . . [T]he result is that Prince Edward County school children, if they go to school in their
own county, must go to racially segregated schools which, although designated as private, are beneficiaries of county and state support” (pp. 230-231).

In addition, in its unanimous decision in *Norwood v. Harrison* (1973), the Supreme Court struck down state textbook assistance to discriminatory private schools. The Court’s opinion noted:

> The private school that closes its doors to defined groups of students on the basis of constitutionality suspect criteria manifests, by its own actions, that its educational processes are based on private belief that segregation is desirable in education. There is no reason to discriminate against students for reasons wholly unrelated to individual merit unless the artificial barriers are considered an essential part of the educational message to be communicated to the students who are admitted. Such private bias is not barred by the Constitution, nor does it invoke any sanction of laws, but neither can it call on the Constitution for material aid from the State. (p. 469)

Thus, the Court ruled that, while private schools are not required to be nondiscriminatory, as are public schools, they can and should lose state support when they employ discriminatory policies.

Just three years later, the Supreme Court would extend this principle by prohibiting racial discrimination in the admissions policies of commercial private, nonreligious schools. In its decision in *Runyon v. McCrary* (1976), the Court stated:

> . . . it may be assumed that parents have a First Amendment right to send their children to educational institutions that promote the belief that racial segregation is desirable, and that the children have an equal right to attend such institutions. But it does not follow that the practice of excluding racial minorities from such institutions is also protected by the same principle. (p. 176).

Thus, the justices observed that parents “have no constitutional right to provide their children with private school education unfettered by reasonable government regulation” (p. 178). In accord with this principle, in the late 1970s, under the Carter
administration, the IRS required Christian schools to demonstrate that they had not been established to preserve segregation (Spring, 2002, p. 8).

Nevertheless, private schools continue to be, both conceptually and empirically, institutions attended predominantly by white students from middle- and upper-income families. Reardon and Yun (2002) report that private schools enroll a considerably higher percentage of white students (77.9 percent) than do public schools (63.6 percent) (p. 17). They also found that over 60 percent of students attending private schools come from families whose annual income exceeds 50,000 dollars, compared with less than 40 percent for public school students (p. 18). They further note that the percentage of white students attending private schools nationally has increased from 11 percent in 1985 to 13 percent in 2000 (p. 17).

Furthermore, while they emphasize that little evidence of white flight to private schools exists, Reardon and Yun (2002) have found a strong positive relationship between the proportion of students who are black in a public school district and the percentage of white students living in the district who are enrolled in private schools. They state: “Regardless of the variables we used as controls, the strongest predictor of white private school enrollment rates in all our models was the percentage of students living in the district who are black” (p. 43). Observations and opinions such as these have contributed to the concept of the private school as one that does not to any great extent, and to a much lesser extent than do public schools, foster racial and economic integration of students.
However, some contrary evidence does exist regarding integration in private schools. For example, Coleman, Hoffer, and Kilgore (1982) found that, while private schools enroll fewer black students as a percentage of total enrollment than do public schools, they enroll about the same percentage of Hispanic students. Moreover, they found that within the category of ‘public schools’, the schools were much more segregated than were schools in the category of ‘private schools’ (pp. 182-183). In addition, using the 1992 National Education Longitudinal Study (NELS), Greene (1998) has found that classes in private schools are considerably less likely than public schools to contain very few (less than 10 percent) minority students, and less than one-third as likely to contain an overwhelming majority (over 90 percent) of minority students (p. 96). Furthermore, Gill et al (2001) point out that the classes or programs within many private secondary schools, especially Catholic schools, are more likely to be racially and socio-economically integrated than in large, comprehensive public high schools (p. 179). Thus, poor and minority students in many private schools are less likely to be ‘tracked’ into homogenous, low-level courses. Even more recently, Reardon and Yun (2002) have found the following: the percentage of African-American students who attend private schools increased from less than 5 percent in 1990 to over 7 percent in 2000; Latino students attending private schools are less segregated from white students than they are in public schools; and both black-white and Latino-white segregation is lower among nonsectarian private schools than among public schools (pp. 17, 31).
Thus, a major point regarding our discussion of ‘openness’ here is that, while some, and perhaps even most, private schools continue to be elite, white, upper-middle-class institutions, many do not. Particularly when one keeps in mind that the majority of private school students still attend Catholic schools, and the number of nonsectarian private schools, while growing, is relatively few, the image of the private school as literally exclusive that has formed in the minds of some does not seem entirely inaccurate. As will be discussed at greater length below, the extent to which private schools foster integration in society as a whole may not differ a great deal from that fostered among public school systems.

*Residential Stratification and the Private Nature of School District Access*

Despite the attempts of legislatures, courts, and school districts to effect racial and other types of integration in America’s public schools, an accurate picture of the nation’s schools today reveals that our concept of the American public school system as an ‘open’ one seems to be a work in progress. Some believe that, based on the racial and socioeconomic stratification reinforced by public school district, today’s public school systems are in reality, not much more open than are private schools. For example, Bryk, Lee, and Holland (1993) have stated:

> Although the common school ideal inspired the formation of American public education for over one hundred years . . . the public schools have become increasingly private, turning away from the basic social and political purposes that once lent them the title ‘common school’. (p. 11)

Much of this has occurred because, whether or not particular school district policies contain an element of public school choice, a type of public school choice has been practiced for years throughout the United States. Many middle-income and
wealthy parents can choose not only to send their children to a private school, but also to enroll them into a particular public school system, access to which is limited by wealth and income. Since the reputation of the schools in a community is a major factor in making a residential choice, many American parents have effectively exercised school choice in choosing the communities in which they live. As Peterson (2001) explains:

Because the quality of the school affects a family’s residential decisions, housing prices vary with the quality of local schools. As a result, many families indirectly pay for their children’s education by purchasing homes that cost more simply because the home is located in a neighborhood which is perceived to have a higher-quality school. (p. 253)

Quite often the higher quality of public schools in wealthier neighborhoods is not merely a perception, but a reality. This is not terribly surprising, since schools in these neighborhoods are generally better financed, better equipped, and can attract better teachers and administrators because of the more attractive workplace and residential environment. More than three decades ago, James Coleman (1970) observed:

Modern technology, in particular the automobile, has allowed economic areas to become specialized and residential areas to become economically homogeneous. When this economic homogeneity coincides roughly with local school taxation boundaries, then the wealthy in one district can confine their expenditures to their own children and those of other families of similar wealth who are paying equally. The less wealthy in a neighboring district are left to finance their own children’s education, with a reduced set of resources. If their resources are very small, then their children’s education is very poorly financed. (pp. viii-ix)

Thus, Peterson (2001) asserts:

School choice by residential selection is highly inegalitarian, especially when one considers that the purchase of a home requires a capital investment. As
school quality drives up housing prices, access to the neighborhood school is determined by one’s capacity to obtain a mortgage. Those with higher earning power and more capital resources are able to command access to the best schools. (p. 253)

Peterson further asserts that, since, with the growth of suburbanization, the quality of neighborhood schools have become an even more dominant factor in affecting residential housing prices. Thus, he concludes, educational inequalities caused by residential school choice are growing.

Empirical evidence of this trend has been provided by Henig and Sugarman (1999), who demonstrated that residential school district selection is used more frequently by middle-and upper-income families than by low-income families (Gill et al., 2001, p. 139). Thus, while access to a district’s public schools is limited to those who live within that district, access to the district is limited to those who can afford to live within that district. While there is certainly variability among schools in the same district, it is often the case that citizens in districts with a large number of poor schools do not have the ability to gain access to better schools in neighboring districts. As Peterson (2001) explains:

It is difficult for low-income families to exercise choice through residential selection. Most do not have the earning power or access to financial markets to locate in neighborhoods with schools perceived to be of high quality. On the contrary, they often can afford a home or apartment only because it is located in a neighborhood where schools are perceived to be of low quality, a perception that depresses property values. In short, in a system of residentially determined school choice, such as exists in most metropolitan areas today, low-income families are very likely to be concentrated in areas where schools are thought to be of low quality. (p. 254)

The socioeconomic segregation in schools created by residential stratification is strongly related to racial demographics. Evidence of this has been presented by
Orfield and Yun (1999). They have reported that, a majority of schools with predominantly (over 50 percent) Black and Latino students also serve predominantly poor students. They have also found that, of schools that are overwhelmingly (over 90 percent) attended by Black and Latino students, 86.6 percent also serve students that are predominantly poor. Reinforcing these findings, Arons (1989) has explained: “Outside the South, and especially in urban/suburban areas, American public schools in the 1980s have remained segregated, with Hispanics increasingly becoming the victims of an absence of equal educational opportunities” (p. 63). Thus, lack of access to quality public schools for lower-income families limits integration of both races and social classes within schools, as wealthier, predominantly whiter, families utilize their access to the best public schools.

Orfield and Yun (1999) have also presented evidence that, not only are many American public schools still racially segregated, but those which have shown progress toward integration are in fact becoming ‘resegregated’. They point out that today’s largest urban school district serve only a very small minority (less than 20 percent) of white students. Furthermore, they point out that since the early 1980s, the percentage of black students attending predominantly minority (over 50 percent) or overwhelmingly minority (over 90 percent) schools in the United States has been gradually increasing, and are currently 68.8 and 35.0 percent respectively. They also demonstrate that, since the late 1960s, the percentage of Latino students who attend predominantly or overwhelmingly minority schools has steadily increased to 74.8 and
35.4 percent respectively. Analysis of the barriers to access and integration caused by residential stratification have prompted Gill et al. (2001) to assert:

Half a century after the legislated segregation imposed by many school districts was outlawed by the Supreme Court, by far the most important factor in creating stratification in our school system is residential segregation. Because school assignment is typically determined by residence, the differential residence patterns of white and minority families (as seen in the pattern of predominantly minority and poor central cities surrounded by predominantly white suburbs) have produced racially separate school districts. As the decades following Brown v. Board of Education made clear, the end of *de jure* segregation did not necessarily lead to integrated schools. Persistent patterns of residential segregation—increasing with white flight in many cities—left many urban schools desegregated as a matter of law but racially homogenous in fact. (p. 158)

Thus, for many children, especially those from lower-income, minority families, it seems that many of the public schools in their vicinity are no more ‘open’ in terms of access and integration than are nearby private schools. Financial barriers to residential access act like private school tuition in keeping out students from particular socioeconomic classes and/or ethnic backgrounds. My assertion here does not necessarily imply intent, either with regard to families that exercise residential choice, or with regard to those involved in suburban governance and development, though sometimes such intent is clearly present. Nor am I suggesting that, either empirically or conceptually, private schools are, on balance, superior to public schools in terms of either access or integration. Rather, for purposes of this chapter, I wish to point out that, within our concept of the *public* school, there are schools that are part of districts that are very accessible and fairly integrated, and schools that are quite exclusive and segregated, both with regard to race and socioeconomic status. This reality, by virtue of the control and support features described in the previous chapter, is a consequence
of the system of schooling that has developed in the United States. However, the system has developed through political and personal choices, frustrating many, such as Bryk, Lee, and Holland (1993), who have opined:

The old arguments about ‘common schools’ seem hollow when viewed against the reality of a system that affords unparalleled opportunities for some individuals while simultaneously undereducating large segments of society and denying basic human dignity to the most disadvantaged. (pp. 325-326)

_School Choice and Access_

_The Objective of Choice_

Some school choice advocates, especially voucher advocates, have asserted that access to private schools is a right, essentially a civil right, that is denied to poor and low-income families. They argue that tuition barriers, which, as described above, is a function of both public and private policy, deny access to those without substantial economic resources. Milton Friedman (1962/1982), who first proposed a market-based system for U. S. schools, noted:

Ask yourself in what respect the inhabitant of a low income neighborhood, let alone of a Negro neighborhood in a large city, is most disadvantaged. If he attaches enough importance to, say, a new automobile, he can, by dint of saving, accumulate enough money to buy the same car as a resident of a high-income suburb. On the contrary, he can get the money partly by economizing on his living quarters. And this goes equally for clothes, or furniture, or books, or what not. But let a poor family in a slum have a gifted child and let it set such a high value on his or her schooling that it is willing to scrimp and save for the purpose. Unless it can get special treatment, or scholarship assistance, at one of the very few private schools, the family is in a very difficult position. The “good” public schools are in the high income neighborhoods. The family might be willing to spend something in addition to what it pays in taxes to get better schooling for its child. But it can hardly afford simultaneously to move to the expensive neighborhood. (p. 92)
More recently, regarding this barrier to access to high quality schools that is confronted by low-income families, Salomone (2000) explains:

_Pierce_ essentially grants parents an abstract constitutional right, a freedom to choose private schooling at their own expense. But as the ever-worsening plight of inner-city poor children dramatically has proven, that right rings hollow for many parents whose lack of economic resources places a severe burden on their ability to exercise choice in the marketplace of private schools. Without that ability, parents are disempowered within the debate over value formation and realistic efforts at community building. (p. 241)

In addition, Viteritti (1999) has commented:

Just as providing a poor person with the same political rights as a wealthy person in no way assures the former that he will enjoy the same political influence as the latter, telling a poor mother that she may choose to send her child to a private or religious school on her own accord does not give her a real choice at all if she does not have the means to support it. On a practical level, those families who are economically disadvantaged do not enjoy the prerogative to have their children educated in a way that supports their particular view of the world. (p. 120)

According to arguments such as these, the lack of public financial support for private schools, or at least for the poor who cannot afford private schools, has created conditions that limit the ‘positive freedom’ (“freedom to”) of many citizens to choose private schools for their children. This right is granted as a ‘negative freedom’ (“freedom from” government prohibition of) by the First Amendment. Therefore, expansion of tax-funded tuition assistance or vouchers to private schools for poorer Americans would extend the actual use of this freedom to considerably more students.

School choice advocates have also argued that charter schools and vouchers may help to overcome the disparities created by residential segregation, as described above. For example, Coons and Sugarman (1992) have stated:
The present system of government schools, which exclude nonresidents and favor those who can afford to live where they choose, are anything but public. Choice for all families through scholarships is a distinctive contribution to the accessibility, hence public quality, of government schools. (p. 18)

In addition, Gill et al. (2001) have suggested:

The strongest argument for choice is that it bypasses the primary mechanism that creates stratified schools: residential segregation. By detaching school attendance from residence, choice may provide options for many families “trapped” in racially homogenous central-city districts or attendance areas. (p. 161)

Those making this type of argument desire a change in governmental policy that will allow students from traditionally segregated groups to attend private or charter schools. The purpose of this change in policy would be to generate some educational or societal benefit by alleviating the effects of residential segregation.

However, the suggestion that programs that utilize school choice, especially those involving using tax-funded vouchers to send children to private schools, will enhance educational access for low-income and minority students, seems counterintuitive to many (e.g., Poetter & Knight-Abowitz, 2001). First of all, the identity of the private school as literally *exclusive*, described above, developed very early in American history. Since then, many private schools have been used for precisely the opposite intentions than those stated by current voucher advocates, that is, to keep out low-income and minority students. Secondly, negative views about school choice were enhanced during the desegregation era, as described above, with the memory of ‘freedom-of-choice’ plans and tuition grants still fresh in the minds of many. These experiences suggest to many that increased school choice is not very likely to bring about increased access and integration.
Yet Arons (1989) has asserted:

With the failure of traditional desegregation tactics, the movement for educational choice may present a useful political and legal strategy for equalizing the availability of quality education regardless of race or wealth . . . The argument that an equality of school choice would increase the power of minority and poor families significantly does seem strong enough to suggest that civil rights advocates ought not dismiss school choice out of hand as a segregationist strategy. It may be that choice and racial equality can find common ground in carefully designed and monitored settings. (pp. 63-64)

In addition, Coons and Sugarman (1992) stipulate that any responsible choice system must ‘tilt’ toward the poor, to increase their access to quality schools, whether public or private (p. 3). For example, Coons, Clune, and Sugarman (1970) have proposed a ‘family power equalizing system’, in which government subsidizes education, but places fiscal control in the hands of individual families who can choose to send their children to various public or private scholarship schools (p. 259). Public schools electing to participate in such a program would be dramatically deregulated, permitting greater access by pupils to schools in other districts (Coons and Sugarman, 1992, p. 16). Private schools that participated in such a program would be subject to further regulation, especially in the areas of admissions, finance, and ensuring fair treatment of students (p. 19). For example, private schools participating in such a program would not be allowed to screen applicants for admission as many now do (Coons, Clune, & Sugarman, 1970, p. 264). While the major goal of the proposals made by Coons and his colleagues is to use market mechanisms and exert market pressures that will provide better quality schooling for the poor, socioeconomic integration, via schooling, seems to be a major byproduct of such a system.
Whether or not a particular school choice program would generate the benefits of school and/or societal integration, or increased quality of education for the poor and minorities, seems to be an empirical issue. However, this issue is related in a conceptual way because some school choice proposals, particularly those that seek to privatize certain aspects of public schooling such as charters or vouchers, may affect the institutional identity of American public and private schools in terms of ‘openness’. This is because, as discussed previously, charter schools are currently categorized as public schools, while vouchers would permit students to attend private schools. Thus, some examination of the extent to which privatization reforms, including charters and vouchers, are characterized by ‘openness’ in the same ways as conventional public and private schools is in order.

*Privatization Reforms*

*Charter schools.*

Unlike voucher laws, charter school laws do not typically target low-income or low-achieving students. While many charter school operators design their schools for at-risk populations, they are not required to, and many other charter schools are designed to serve a general population (Gill et al., 2001, p. 152). However, the growth of charter schooling may be marking a movement away from the idea of the ‘common school’ in many places. Nelson (2000) notes that 70 percent of all charter schools are newly created charter schools, and that nearly two-thirds of these were founded to serve a special target population of students (pp.1-2). Thus, almost half of the nation’s charter schools do not follow the traditional model of a comprehensive public school.
Moreover, because of the variability in the charter laws of different states, student access varies as well. For example, charter schools in Texas and Virginia have discretion in admissions, subject to civil rights laws (p. 40). Thus, charter schools in these states could choose the most talented and/or motivated students, but could not choose students based on race, ethnicity, etc. Therefore they seem to operate very similarly to conventional private schools rather than public schools. On the other hand, charter laws in Arizona, Colorado, and Massachusetts require students to be admitted by lottery, while those in California, Connecticut, and Kansas further require charter schools to reflect their school district’s racial or ethnic demographics (p. 40). Therefore charter schools in these states seem to operate more like some public schools, particularly those that participate in an ‘open-enrollment’ or ‘controlled choice’ program. However, it is important to remember that, as opposed to many traditional public schools, no students are assigned to charter schools or an individual charter school. Rather, they choose to attend, or apply to, a particular charter school.

Regarding student integration in current charter schools, depending on the state’s charter school law, public policy may or may not address integration in these schools. If a state law grants charter schools considerable discretion in selecting students, student bodies may be rather homogeneous with regard to talent and/or motivation. Because of the self-selection mechanism utilized by charter school students, such laws may permit the highest quality charter schools, those to which the most and best students would apply, to “skim the cream” from the proximal public school system. On the other hand, charter school laws which promote racial balance
seek to foster integration in those schools, at least to the extent that it exists within the local school district. However, particularly for those charter schools that operate within a school district attended by predominantly minority students, charter schools may do little to affect racial and ethnic segregation.

From an empirical perspective, Gill et al. (2001) report: “Unfortunately, we have seen no school-level data that demonstrate how charter schools compare to conventional public schools in terms of stratification by income” (p. 168). However, regarding racial/ethnic integration, they explain, “At the national level of aggregation, charter schools appear to be serving populations similar to those served by traditional public schools with respect to student race and ethnicity” (p. 168). Nelson et al. (2000) have also noted that student demographics in charter schools are similar to those in traditional public schools, and in several states (including Connecticut, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, and Texas) charter schools enroll significantly higher percentages of minority or economically disadvantaged students than traditional public schools (p. 2).

However, despite the fact that charter schools are required to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA), Nelson also noted that charter schools enroll a lower percentage of students with disabilities than traditional public schools (p. 2). Bolstering this assessment, Miron and Nelson (2002) have found that few charter schools in Michigan enroll a high proportion of students with special education needs, and most enroll few or none (p. 198).
Current voucher programs.

With regard to access to private schools currently taking part in publicly funded voucher programs, it is important to remember that private schools are not obligated to participate in such programs. In choosing to participate, the private schools agree to comply with the enrollment procedures stipulated by the program: that all students who receive a voucher are admitted to a school by lottery, given school capacity (Gill et al, p. 40). In so doing, however, the participating private schools would seem to sacrifice some of their private nature, as they are made more open, that is, more accessible, than they traditionally have been. Conversely, private schools that refused to accept this stipulation would not be eligible to participate in the program and therefore to receive funding from it. (An exception to this may exist for same-sex institutions which are eligible to participate in current programs, and for which lottery requirements would likely be waived with regard to sex.) It is therefore the case that access to elite private schools which have not need or desire to receive the funds that accompany vouchers is not likely to be enhanced.

Nevertheless, it seems clear that current voucher programs would, as is their aim, expand access to some private schools for those recipient families who could not otherwise afford to send their children to one. While a significant portion of students currently receiving vouchers were already attending private schools at the program’s inception, many others were not. Of course, those students not qualifying for vouchers would gain no increased access to private schools, though, due to the higher income levels of their families, some of them could potentially choose to attend one.
However, with regard to integration within the private schools themselves, as well as the effects that voucher programs would have on surrounding public schools, the picture is not quite so clear. Such integration, if it occurred, would likely be predominantly socioeconomic, as some students who previously did not have the means to attend private schools would now be able to do so. Moreover, since current voucher programs are predominantly focused on students from poor and low-income families, to the extent that racial and ethnic groups are disproportionately poor, integration may be fostered in private schools that are predominantly white, though without changing racial dynamics in public schools. However, many of the private schools, especially the Catholic schools, participating in the Milwaukee and Cleveland programs were already attended predominantly by minorities before the programs were initiated, and thus integration is unlikely to be enhanced in these schools.

Regarding this issue, Reardon and Yun (2002) warn that, particularly in certain locales, voucher programs may not significantly change the racial demographics of either public or private schools. They state:

> While, on average, minority students choosing the private sector enter a sector with far more white students, there is substantial evidence that they will face a highly segregated set of choices of private schools within their local schooling market. Moreover, because the patterns of segregation among private schools are linked to patterns of residential segregation, low-income families choosing private schooling for their children are likely to have few, if any, options for racially heterogeneous private schools . . . (p. 44).

Furthermore, the increased integration of students with disabilities into private schools in voucher programs varies depending on the program. For instance, Florida’s McKay Scholarship program in which handicapped/disabled students are given
vouchers that can be redeemed at a participating private school, seems likely to result in greater numbers of handicapped students attending private schools. This only stands to reason given the aims and regulations of the program which requires that participating private schools admit handicapped students, which they would not otherwise have to do. However, the Florida program does not require participating private schools to provide the same types of services that disabled students would receive in public schools, as do all current charter laws (Gill et al., 2001, p. 40). Similarly, the voucher programs in Cleveland and Milwaukee stipulate that only existing private school requirements for students with disabilities be met. Therefore, Rothstein (1999) has explained that IDEA does not necessarily apply to all private schools, and voucher schools that are operated by religious institutions that do not receive federal funding may not be required to adhere to the ADA and Section 504 (cited in Gill, 2001, p. 36).

Based on current evidence, Gill et al. (2001) provide a preliminary qualified analysis of the extent to which current voucher programs have affected various types of integration. With regard to socioeconomic integration, they state that the limited evidence available suggests that existing voucher programs may move some low-income nonwhite students into more-integrated voucher schools. However, they explain that they are aware of no evaluations of voucher programs that have collected the kinds of data needed to analyze how vouchers may have changed integration in both public and private schools (p. 167). They also point out that the impact of voucher and charter schools on residential segregation has not been examined.
empirically (p. 179). Despite a lack of hard data, Gill and his colleagues do conclude that, “Given the dominance of minority students in the enrollments of most voucher programs, however, it is unlikely that voucher programs have adversely affected racial integration in the public schools” (p. 168).

*Market or expanded choice system.*

While no market or universal choice plan has been implemented in the United States, with the recent Supreme Court ruling in the Zelman case inciting calls for expansion from some voucher advocates, some analysis of how these plans might work seems appropriate. In laying out one such universal choice system, Chubb and Moe (1990) have proposed the following:

Schools will make their own admissions decisions, subject only to nondiscrimination requirements . . . They must be free to admit as many or as few students as they want, based on whatever criteria they think relevant—intelligence, interest, motivation, behavior, special needs—and they must be free to exercise their own, informal judgments about individual applicants . . . Schools must also be free to expel students or deny them readmission when, based on their own experience and standards, they believe the situation warrants it (as long as they are not “arbitrary and capricious”). (pp. 222-223)

Such a plan, if adopted, would, in terms of access, make public schools operate like conventional private schools, perhaps with some failsafe measure created for those students who were deemed ‘undesirable’ by the schools within the system. However, Chubb and Moe do strongly suggest increased funding for economically disadvantaged or handicapped students, which could be used to provide greater incentives for schools to admit these children. Also, they would prohibit parents from supplementing the tax-funded subsidy they are given, in an effort to prevent the kind of disparities and inequalities that characterize the current system (p. 220).
Conversely, the voucher plan proposed by Milton Friedman does permit additional spending by parents and families, thus allowing parents of greater economic means to continue to afford to send their children to better schools, whether they be public or private. While students would theoretically have greater access to both public and private schools, financial barriers would seemingly still restrict access to a number of high quality schools. If public schools in wealthier districts or private schools merely set their tuition rates at very high levels beyond the value of the voucher, students from low-income families, who are disproportionately minority families in most urban centers, still could not afford to attend them. Friedman’s plan would also include very little government regulation, and thus not seek to actively promote integration in schools. Private schools in such a system might attempt to restrict access to students based on criteria currently protected by law. While I am not a legal expert, it seems that such system, if its implementation would be attempted, could be challenged, not merely on First Amendment grounds, but on the grounds that it violates the Fourteenth Amendment’s mandate of equal protection of the laws.

Furthermore, such a program, though designed to improve the quality and efficiency of schooling across the system, would very likely do very little to improve the socioeconomic stratification of schools, and even less to address racial or ethnic stratification. Referencing the findings of Glazerman (1997) concerning the controlled-choice plan in Minneapolis, Gill and his colleagues (2001) conclude that unrestricted choice programs may increase racial stratification as parents may be more
likely to choose schools enrolling a majority of students from their own ethnic group (p. 181).

Of course, while we have attempted to isolate the ‘access’ and ‘integration’ facets of ‘openness’ in this chapter, this aspect is integrally related to the other conceptual aspects of public and private schools that are addressed in this dissertation, especially the notions of public or private benefit. As Green (1980) discusses, access to schooling, as it provides access to educational resources, is a necessary means to the acquisition of educational benefits, as well as the social benefits that often accompany them (p. 143). Such a rationale was present in the arguments of the common school reformers, just as its importance is cited by many of today’s school choice advocates. Similarly, those who have attempted to promote integration in schools have done so largely because they see it as having instrumental value, contributing to more profound benefits such as societal integration and cohesion, as well as educational and economic equity and social justice. This leads us to examine the final topic of this dissertation, the facet of benefit as it relates to the concepts of public and private schools.
CHAPTER 5

BENEFITS OF SCHOOLING

Issues to Be Addressed

This chapter will address, to varying lengths, a number of distinct but interrelated issues regarding the benefits of schooling and the interests that are furthered in attempting to generate them. The first issue addressed will be how the facet of ‘good’ or ‘benefit’ has evolved as part of the concept of schooling, most notably public schooling. This is naturally a historical question, and I will examine or revisit a number of historical episodes to attempt to clarify the intended benefits of public schooling, and how this has differed from the intended benefits provided by private schooling. Secondly, I will discuss to what extent benefits of schooling can be classified as public and which can be classified as private. This is a conceptual issue, and I will attempt to clarify both the difference and relationship between these two types of benefit as they relate to schooling, including how each applies to both public and private schools. Next I will explore how the interests of various educational stakeholders operate to produce benefits from schooling, and how this differs between public and private schools. While this is an issue of fact, it is an extremely complex one that includes a host of political, sociological, and economic issues that I will only touch on at best. Nevertheless, my intention will be to come to some understanding of how interests and benefits are connected to public and private schooling.
Finally, I wish to examine how current educational reform trends and proposals, specifically those that seek to utilize educational privatization and school choice, might affect the institutional identity of public and private schools with regard to the facet of ‘benefit’ that will be discussed in this chapter. While this may seem to be an issue of fact, for policymakers and stakeholders, it is inherently tied to an ethical issue, and a question of value. As John Dewey noted in *The Public and Its Problems* (1927/1954), “Every serious political dispute turns upon the question whether a given political act is socially beneficial or harmful” (p. 15). Thus, implementing or expanding school choice and privatization reforms involves an ethical decision regarding what types of benefits, both public and private, should be derived from schooling, especially public schooling, and in what proportion. This would also entail some examination of which laws, policies, and programs will bring about certain benefits, and whether or not those benefits are desirable, or consistent with our educational values. Thus, the conceptual issues concerning public and private benefit, as well as the political issue concerning the interests of various parties will contribute to the discussion of values in educational reform.

As Green (1980), points out, an educational system cannot exist without distributing educational benefits, and it is one of the primary goals of the core functions of schooling to distribute such benefits. Of course, deciding which future laws, programs, or policies will produce the desired benefits of schooling still involves answering empirical questions based on current data. While my purpose here is not to provide empirical analysis, I will briefly discuss the extent to which empirical data
derived from current programs and practices allow us to predict the benefit or harm that changes or expansions in policy will produce, and therefore how our concepts of public and private schooling in relation to the facet of benefit may or may not be changed.

*Historical Development of Benefit as an Aspect of Schooling*

Today, over two and a quarter centuries since the nation’s inception, parents, educators, and political figures frequently extol the virtues of education, particularly its ability to improve the individual welfare of the recipient as well as the welfare of the community or state. As will be demonstrated in the discussion below, the growth of the American belief in the power of education has greatly contributed to the expansion of schooling and its goals in the United States. Indeed, current conventional wisdom accepts the power of education to provide benefits to individuals, communities, and the nation as a whole as fact, and support for schools and education policies often derives from these convictions. However, considerable faith in the power of schooling and the education it provides to produce these benefits has taken a good deal of time to develop to reach its present state of popularity.

As Cremin (1951) notes, colonial schools, which were then either private endeavors or joint endeavors between civil and religious authorities, did relatively little to help educate the populace. The curriculum was limited to the four R’s (reading, writing, [a]rithmetic, and religion), the instructional sessions were brief, the school ‘year’ often lasted only a few months, the facilities were inadequate, and attendance was inconsistent (p. 187). Nevertheless, through this highly imperfect
system, many students did expand their literacy and skills of measurement, and some even went on to higher education or the professions. However, these options were usually reserved for the children, particularly the male children, of the upper classes. As Kaestle (1983) notes, “Education was uneven at the time of the Revolution, and training beyond the rudiments was not widespread” (p. 4). Thus, American colonial schooling exhibited a dual-track system such as existed in England and many European countries.

However, with the founding of the new nation and the establishment of a novel system of government, many observers began to stress the importance of improved education and increased schooling for the infant republic. Though noted by a number of other figures, including, somewhat later, Horace Mann, Sam Houston is credited with observing that, “The benefits of education and of useful knowledge, generally diffused through a community, are essential to the preservation of a free government” (Martin, 1962, p. 3). This sentiment was shared by Thomas Jefferson, who sincerely believed that the proper functioning and perpetuation of republican government required an educated citizenry characterized by both virtue and intelligence. Thus, Salomone (2000) states that Jefferson perceived education as an instrument for realizing democracy and advancing social reform (p. 13). As evidenced by a bill he sponsored as a member of the Virginia legislature, Jefferson promoted free public elementary education for all white children, and a merit-based system by which talented poor students could receive a free secondary education along with the wealthy, and perhaps go on to attend the College of William and Mary (Kaestle, 1983,
As another example, in a prize-winning essay in 1797, Samuel Harrison Smith, a Washington newspaper editor, listed reasons for the broad diffusion of knowledge in the United States, including the preservation of rights, the reduction of error, and the promotion of happiness for individuals and society as a whole (p. 7).

Despite the opinions of these and other notable figures in American history, a general faith in education during the early years of the republic was not pervasive. Vinovskis (1992) notes:

Surprisingly, most early 19th-century Americans did not emphasize education as a key either to individual success or the growth of the economy. Only after the efforts of Horace Mann and others in the 1840s and 1850s was our current notion that education is central to growth of the economy explored and publicized. (p. 328)

Indeed, Mann and the common school advocates believed that a public school system would provide certain benefits, and many of their arguments grew to be accepted by both political figures and the general population. For example, in his Tenth Report as Massachusetts’ Secretary of Education, issued in 1846, Mann echoed the sentiments of Houston and Jefferson concerning the importance of education to the American experiment:

Since the achievement of American Independence, the universal and ever-repeated argument in favor of Free Schools has been, that the general intelligence which they are capable of diffusing, and which can be imparted by no other human instrumentality, is indispensable to the continuance of a republican government. (p. 61).

In addition to the civic benefit that public schools would provide for the American system of government itself, Mann and his colleagues stressed related
benefits that would contribute to the overall welfare of the republic. Again in his Tenth Report, Mann (1846/1957) stated:

. . . [I]n regard to the extent of the education to be provided for all, at the public expense, --some differences of opinion may fairly exist, under different political organizations; but under a republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge; --such an education as teaches the individual the great laws of bodily health; as qualifies for the fulfillment of parental duties; as is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal affairs; and finally, for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic.” (p. 63)

Furthermore, Mann indicated a belief that education would not only assist the functioning of society by promoting the development of common attitudes and abilities, but also exceptional talents in many of those who received it. In his Twelfth Report issued in 1848, Mann explains how such benefits would be gained from the expanded establishment of free public schools:

Under the Providence of God, our means of education are the grand machinery by which the “raw material” of human nature can be worked up into inventors and discoverers, into skilled artisans and scientific farmers, into scholars and jurists, into the founders of benevolent institutions, and the great expounders of ethical and theological science. By means of early education, those embryos of talent may be quickened, which will solve the difficult problems of political and economical law; and by them, too, the genius may be kindled which will blaze forth in the Poets of Humanity. Our schools, far more than they have done, may supply the Presidents and Professors of Colleges, and Superintendents of Public Instruction, all over the land; and send, not only into our sister states, but across the Atlantic, the men of practical science, to superintend the construction of the great works of art. Here, too, may those judicial powers be developed and invigorated, which will make legal principles so clear and convincing as to prevent appeals to force; and, should the clouds of war ever lower over our country, some hero may be found,--the nursling of our schools, and ready to become the leader of our armies,--that best of heroes, who will secure the glories of a peace, unstained by the magnificent murders of the battle-field . . . (p. 80)
Thus, according to Mann, public schools would be a vehicle for both individual and societal progress, as those developing exceptional skills and abilities would in turn provide social leadership.

In addition to these benefits, Mann and other common school reformers expressed a firm belief in the ability of public schooling to improve societal welfare by reducing poverty. In his Twelfth Annual Report, issued in 1848, Mann asserted:

Education, then, beyond all other devices of human origin, is the great equalizer of the conditions of men—the balance-wheel of the social machinery . . . it gives each man the independence and the means, by which he can resist the selfishness of other men. It does better than to disarm the poor of their hostility towards the rich; it prevents being poor. (p. 87)

Moreover, according to Mann, in addition to promoting greater equity in the distribution of societal wealth, public education would increase that wealth. He stated, “Beyond the power of diffusing old wealth, it has the prerogative of creating new. . . education develops new treasures,—treasures not before possessed or dreamed of by any one . . .” (p. 88). Arguments such as these evoked widespread support for public schooling among skilled artisans, who wanted their children to have a chance at a better life than they themselves had (Mann, 1968, p. 14).

On the other hand, Horace Mann was convinced that a society that did not provide schooling for its children would suffer “in the squalid forms of poverty and destitution, in the scourges of violence and misrule, in the heart-destroying corruptions of licentiousness and debauchery, and in political profligacy and legalized perfidy,—in all the blended and mutually aggravated crimes of civilization and of barbarism” (p.
Thus, the education provided by the public schools would curtail the spread of social ills that would harm both individual and communal welfare.

As can be evidence by the arguments above, public school proponents believed that in order to procure the benefits that they intended, public schools needed to be established as particular types of institutions with particular types of characteristics. Moreover, this particular set of characteristics, congealed through the common school movements, formed a good deal of the framework for the development of public school systems up to the current day. Therefore, many of the aspects of public schools that have been analyzed in the preceding chapters of this dissertation reflect the selection of certain characteristics through political and social processes, such as those discussed in Chapter 3, in order to bring about certain social benefits. Over time, with the evolving support of public officials and the citizenry, these aspects of public schools have hardened as integral parts of our current concept of the American public school.

Revisiting the development public schools developed as nonsectarian institutions provides an example of how certain characteristics of public schools were chosen to bring about various social benefits. As described previously, a religious fervor promulgated by the Second Awakening influenced many in the common school movement to see public schools as an agent of moral and social redemption (Jorgenson, 1987, p. 23). However, common school advocates also pushed for a reduction of sectarian control and, as the passion of the Second Awakening gradually subsided, a de-emphasis on religious instruction in the public schools. Control by
sectarian institutions came to be seen as problematic and counterproductive, sparking repeated controversy and antagonism that threatened the mission of the common schools. As discussed in Chapter 2, sectarian control of educational institutions was discussed in the 1831 report from the Law Committee of the Board of Assistants of New York City, as it considered whether a Catholic and a Methodist institution should be eligible to receive a portion of the money from the city’s common school fund. In recommending against this course action, the committee’s report stated that such a practice would give rise to hostility and divisiveness between religious factions, as well as foster a union between church and state, which it characterized as “destructive of human happiness, and subversive of Civil Liberty” (Cremin, 1951, p. 163).

Thus, common school proponents fought to place the primary responsibility for education in the hands of civil authorities, who, via mechanisms of public control, support, and accountability, would bring about certain benefits. Mann and his colleagues argued that American communities needed to establish public schools to extend these secular benefits to the general population, since nonpublic or private schools, due to their very nature, would fail to accomplish this. A system of elite private schools for the wealthy, and voluntary, charitable, private schools for the poor would not do for these purposes. The former would confine benefits only to the wealthy who could afford schooling, while the latter would not have the resources or the enrollments to spread educational benefits throughout a community. Neither would sectarian schools, the common school proponents argued, seek to extend needed societal benefits to all the children of a community. Rather, they would frequently be
operated to inculcate religious beliefs that would benefit particular religious sects, thus pursuing a much narrower set of interests. Common school proponents feared that, if schooling were left to private institutions, the following would result:

Schooling would have been sought for its limited ‘private’ benefits by families considering only their own personal interests rather than those of the larger society. Accordingly the concept of the common school required compulsory participation in an institution that provided a shared experience, rather than one based upon the more idiosyncratic elements of choice. (Levin, 1989, p. 219)

From these convictions, the concept of the common, ‘public’ school developed and came to be seen as the right and proper instrument by which to extend the benefits of education to the masses.

In practice, private schools of different kinds did typically seek to produce certain narrower sets of benefits. Some prepared young men for further study at a college or university. Others sought to cultivate certain tastes and attitudes to produce ‘proper’ young men and women. Still others sought to perpetuate a certain faith, or to school children in a particular way that was not appreciated or approved of by mainstream society. In addition these schools did generate benefits that had wider social value, value beyond that gained by the students themselves. In the case of elite private schools, these benefits included preparing students, usually young men, to become highly skilled professionals, such as doctors and lawyers, whose skills and knowledge could be used to benefit the rest of society. In the case of sectarian and charity schools, the basic literacy and skills, as well as moral lessons, taught to those children who attended schools quite likely aided in their functioning as law-abiding citizens, and might have even made them more efficient workers.
However, in either case, these benefits were primarily, if not exclusively, intended to be confined to certain groups or classes of recipients. As Kaestle (1989) explains, church charity schools typically enrolled only the children of the sponsoring congregation, and included a curriculum that contained large doses of scriptural memorization and religious exercises (p. 31). Common schools, on the other hand, were, by design, intended to extend benefits to all groups, classes, and children within a community, and were therefore public, rather than private, schools.

Concern about the limitation of private agencies, groups, or corporations to distribute societal benefits can be seen in the previously cited report from New York’s Committee on Colleges, Academies, and Common Schools that advocated placing responsibility for common schools in the hands of a public agency. As Cremin (1951) has described, the report, which advocated removing power over public schooling from the Public School Society, an entity which was not fully public in the sense of control and accountability, stated:

> It is too late to argue that private chartered corporations, with extraordinary powers and privileges, are more suitable or efficient agents for public objects than the community acting under general laws. But the question is not upon the merits or defects of other institutions; it is, whether the Public School Society has or has not failed to accomplish the great object of its establishment—the universal education of the children of the city of New York. That it has signally failed, has been shown by the statistics of the schools; and there is, moreover, incontrovertible proof in the fact that nearly one half of the citizens of the metropolis protest against the system and demand its modification. (p. 173)

Thus schooling was increasingly placed under public control as a way of fostering greater public benefit. Through civic debate and control, especially at the local level, accompanied by the workings of representative government, an understanding of and
consensus regarding schooling issues could be fostered. As Salomone (2000) explains, “Only through public control could the public define a public philosophy and avoid the dangers of partisanship” (p. 15).

In addition to the necessity of public control as a vehicle to bring about social benefits, Mann and other common school proponents argued for increased public support, via taxation, to provide the means to establish and operate the schools that would benefit their community. In his Twelfth Annual Report, Mann (1848/1957) justified public taxation in order to provide important social benefits, especially poverty:

He is taxed to support [schools], as a preventative means against dishonesty, against fraud, and against violence; on the same principle that he is taxed to support criminal courts as a punitive means against the same offences. He is taxed to support schools, on the same principle that he is taxed to support paupers; because a child without education is poorer and more wretched than a man without bread. (p. 103)

Thus, establishing public schools was intended to help alleviate the ignorance and misery that accompanied poverty, though in a way different than sectarian charity schools that had been operated for some time and with some public funding. Common school reformers supported making schools free of charge and open to all, not only to remove financial barriers to schooling, but also so that the poor would not be stigmatized (Jorgenson, 1987, p. 23). In this way the new common school was to have a different institutional purpose and mission than charity schools. Instead of focusing only on helping the poor, commons schools would endeavor to integrate the children of the community in one setting to provide and distribute social goods to all of them.
As confirmed by the growth and success of the common school movement, the arguments of common school proponents resonated with both the nineteenth-century public and their representatives. Thus, as previously noted, at its most basic level the term ‘common school’ came to refer to an educational institution that was attended by all of the children within a community. However, in addition to the aforementioned benefits, there was another, and some would argue darker, set of purposes that common schools were to serve: social cohesion, control, and stability. Glenn (1988) asserts that the institutional concept of the ‘common school’ also implied a reform agenda:

The term refers also, however, to a program of education reform, indeed of social reform through education. The heart of this program, which we will call “the common school agenda,” is the deliberate effort to create in the entire youth of a nation common attitudes, loyalties, and values, and to do so under the central direction of the state. In this agenda “moral education” and the shaping of a shared national identity were of considerably more ultimate importance than teaching basic academic skills. “Sectarian” religious teaching was seen as a major threat to the accomplishment of this program of national unification through common socialization. (pp. 4-5)

The suspicion and even loathing with which some common school advocates viewed ‘sectarian’, which typically meant Roman Catholic, schools has been detailed previously in Chapter 2. About this religious hostility, Lieberman (1993) has concluded:

In short, public education was not established in response to the failure of private schools, including schools for profit, to meet educational needs. On the contrary, public education resulted from Protestant dissatisfaction with nonpreferential assistance to Catholic schools. Its raison d’etre was religious prejudice, not the need to educate all children.

Of course the shift to public education was not always justified publicly by explicit assertions of anti-Catholic bias. Furthermore, once public education
was firmly established, the initial rationale for it disappeared from public and even professional awareness. (p. 15)

While the weight of such bias is debatable, it seems quite clear that many nineteenth century common school proponents and citizens genuinely feared that if the primary responsibility for educating the youth of a community were left to schools run by those they viewed as hostile religious sects and orders, and filled with poor, non-English speaking, immigrant children, the unifying fabric that held American society together would either be unable to be woven, or else ripped apart. These notions were most prevalent among clergymen, Whig politicians, educators, and the middle classes (Mann, 1968, p. 14). Thus, a common education, many hoped, would promote, not merely a similar foundation of knowledge, but similar attitudes and values that would incorporate newly arrived immigrants into the American culture. As Arthur Mann (1968) has observed:

... [M]ass education appealed to people in Jacksonian America who were concerned about stability. The common school would inculcate in the young a respect for law and order and property. It would teach future voters the meaning of representative government. It would provide a place where the children of rich and poor, and of native and immigrant parents, could come together and overcome their prejudices. In these respects, too, the school would be—in Horace Mann’s figure of speech—the balance wheel of the social machinery.

But it was one thing to win the battle for tax-supported, free schools and still another to persuade people to accept the even more radical proposition that the state could and must require parents to send their children to school. The most compelling argument was that, if families did not voluntarily see to the education of their young, society had a right to protect itself from a citizenry that might grow up illiterate, uninformed, and dangerous. Massachusetts, because of a unique tradition in social control, was the first to enact a compulsory attendance law, in 1852. Within the next fifty years all the other Northern states, each with its own timetable, followed suit. The Southern states came around only in the 20th century, with Mississippi the last to do so in 1918. (pp. 14-15)
Consequently, not only did public school systems increase in number in size, but so did the systemization among public schools. This purpose can be seen in the words and deeds of the early common school reformers as they set up a system of common schools. As Cremin (1980) explains, “Systemization [Mann] would have argued, meant rationality, not conformity. Still the call for uniformity also sounded through his reports—uniformity of textbooks, uniformity of curricula, uniformity of library collections, uniformity of methods, and uniformity of discipline” (p. 155).

As evidence that social control and stability, particularly with regard to Catholic immigrants, was a concern of both the citizenry and the common school advocate, one may examine the reaction of the Congregational journal *New Englander*, to the establishment of public schools in Massachusetts. When the efforts of Mann and his fellow reformers were successful in that state, the journal, while commending them, expressed hope that the mission of the public school would be successful: “These schools draw in the children of alien parentage . . . and assimilate them to the native born . . . So they grow up with the state, of the state, and for the state” (Peterson, 2001, p. 261). ‘The Immigrant Problem’, deciding what to do about the waves of new immigrants that were transforming the composition of urban neighborhoods, continued to be a major perceived social problem of the late 1800s and early 1900s (Mann 1968, p. 18). Education was seen as a way to ease the urban crisis and ensure that immigrant children would be shaped into useful citizens. The schools responded by promoting the assimilation, via ‘Anglo-Saxonization’, of newly arrived immigrant children. As detailed in Chapter Two, these sentiments contributed, not
only to the increased support of public schools, but to the disinheritance of sectarian schools.

Despite my notice that this would not be an empirical examination of particular benefits of public schooling, either historically or presently, a few observations about the actual benefits of the growth of public schooling are worth making here. First, the growth of common schools and public school systems did extend schooling, and whatever benefits may have accrued from it, to increasing numbers of children. Cremin (1951) cites increased enrollments in all states that established publicly controlled systems of common schools (p. 181). Secondly, while I will not detail particular types of benefits at this time, it seems indisputable that the establishment of public schools provided some societal benefit, most notably social mobility for poor and immigrant children. As Vinovskis (1992) explains:

Contrary to the strong and often cited claims of the revisionists of the 1960s and 1970s, it does appear that schooling in 19th-century America promoted individual social mobility.

. . . [T]he weight of the evidence suggests that [schools] . . . provided some real opportunities for advancement for those poor children able to take advantage of them. (p. 328)

In the context of this discussion, it is important to note that, as Arthur Mann (1968) has pointed out, while common schools were intended to benefit the poor in certain ways, they were not intended to create a classless society (p. 14). In the tradition of the Protestant ethic, the common school reformers believed that, once given an equal start, some individuals would learn and accomplish more than others. However, they believed that an equal start would ensure that students would progress based on their merit, not the wealth of their families. Moreover, despite the idealism of
this intention, the early common schools did not in reality create a truly equal start for children. Indeed, as Arthur Mann has observed, “Then as now the quality [of schooling] varied immensely not only from state to state but also from district to district in any given state and even among schools within the same district” (p. 15). As described in Chapters 3 and 4, much of this disparity resulted from, not only the fact that each state had developed its own system and laws regarding schooling, but also that within each state local school boards exhibited varying degrees of autonomy in creating educational policies and operating schools.

One can see in the previous discussion that the establishment of public schools was meant to produce a variety of benefits, indeed, different kinds of benefits for communities and their members. My intention in this regard is not to argue that public schools have historically delivered on all of their promises to improve societal welfare. Clearly, as will be seen in further discussions of contemporary public schooling, they have not, and, it could strongly be argued, could not possibly have done so. Rather, from the evidence above, it seems clear that an important facet of what made public schools public was their intention, their stated goal, to distribute these benefits to all in the community on a more equal basis. Eventually, though it sometimes took decades, a belief solidified amongst the citizenry and their representatives that common schools could in fact deliver their intended benefits, and this translated into political support for public schooling. Thus, the institutional identity of the public school developed as markedly different from that of private schools of any sort regarding their intention and perceived ability to produce and distribute certain societal benefits.
Due to the monetary costs of creating and operating public schools, political support also entailed financial support, and thus public funding, via taxation, was necessary. Therefore common school proponents urged individuals, especially the wealthy, to share their private riches with the rest of society in order to produce certain benefits through public schooling. In his Tenth Report, Horace Mann explained why a community’s well-to-do members should share their wealth with others:

But sometimes, the rich farmer, the opulent manufacturer, or the capitalist, when sorely pressed with his legal and moral obligation, to contribute a portion of his means for the education of the young, replies,—either in form or in spirit;—“My lands, my machinery, my gold and my silver are mine; may not I do what I will with my own?” There is one supposable case, and only one, where this argument would have plausibility. If it were made by an isolated, solitary being,—a being having no relations to a community around him, having no ancestors to whom he had been indebted for ninety-nine parts in every hundred of all he possesses, and expecting to leave no posterity after him,—it might not be easy to answer it. . . But is this the relation which any man amongst us sustains to his fellows? In the midst of a populous community to which he is bound by innumerable ties, having had his own fortune and condition almost predetermined and foreordained by his predecessors, and being about to exert upon his successors as commanding an influence as has been exerted upon himself, the objector can no longer shrink into his individuality, and disclaim connection and relationship with the world. He cannot deny that there are thousands around him on whom he acts, and who are continually reacting upon him. The earth is much too small, or the race is far too numerous, to allow us to be hermits, and therefore we cannot adopt either philosophy or the morals of hermits. All have derived benefits from their ancestors, and all are bound, as by an oath, to transmit those benefits, even in an improved condition, to posterity. (p. 71)

While Mann acknowledges human individuality, he continues with his explanation that human beings are inextricably linked to one another, in both a contemporary and a historical sense:

We may as well attempt to escape from our own personal identity, as to shake off the three-fold relation which we bear to others,—the relation of an associate with our contemporaries; of a beneficiary of our ancestors; of a guardian to
those who, in the sublime order of Providence, are to follow us. Out of these relations, manifest duties are evolved. The society of which we necessarily constitute a part, must be preserved; and, in order to preserve it, we must not look merely to what one individual or family needs, but to what the whole community needs; not merely to what one generation needs, but to the wants of a succession of generations. (p. 71)

Thus, Mann concludes that older generations, through civil authority and regulation, have the duty to oversee and safeguard the goods of society, so that they can be shared with, and passed on to, future generations (p. 72). Furthermore, Mann believed that these goods, as they emanated from the goodness of nature which was designed by God, were intended for, and should be distributed for, the common benefit of all mankind (p. 73).

Of course, many of the benefits of a common school education would be conveyed to the individual receiving that education, or, we might say, to an individual member of the ‘public’. However, Mann and other common school advocates seemed to argue that public schools would not merely benefit people in an individual sense, but also provide goods that would contribute to the betterment of society as a whole. As described above, this principle seemed to be embodied in the rationale that replaced mere ‘access’ to schooling with compulsory attendance. Public schools were not just to provide opportunity for education in a laissez-faire manner, but require attendance in order to spread benefits to all children, and thus to society as a whole. This intention was noted by the United States Supreme Court in its 1954 Brown decision:

Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education to our democratic society . . . It is the very foundation of good citizenship. Today, it
is a principal instrument in awakening the child to cultural values, in preparing
him for later professional training, and in helping him to adjust normally to his
environment. (p. 493)

While some discussion of the general benefits that public schools were
intended to provide has been conducted, to this point I have not endeavored to
distinguish between different types of classes of benefits, and how these would accrue
to individuals in a society and or to the society as a whole. Therefore, this will be the
next set of issues that I will examine.

Public and Private Benefits of Schooling

The Distinction between Public and Private Benefits

While an analysis of which benefits are and are not created or distributed by
schools is a factual issue, though often difficult to empirically demonstrate, this
classification of benefits into public and private categories involves the necessary
conceptual issue of determining what we mean when we use these two terms. For a
variety of reasons, a number of philosophers, researchers, and analysts have attempted
to distinguish between public and private benefits, especially as these concepts relate
to schooling. While some of their terminology is more stipulative than descriptive, I
will primarily be attempting to use the analysis of others to clarify what is generally
meant by these terms in current common usage.

As such, a few preliminary points of clarification must be made. First, for the
purposes of this dissertation, I will be using the terms ‘good’ and ‘benefit’
interchangeably. Secondly, as does Green (1980), I will be using these terms, not
merely to denote products or outcomes of certain activities, most notably schooling,
but rather outcomes that have, or are at least perceived to have, genuine value. Finally, though some of the authors that I reference may at times seem to do so, I will not limit my consideration of public and private goods to economic, monetary, or financial terms. While the tendency of many today is to try to measure all good or harm in dollars and cents, many, if not most, Americans today would use the terms ‘private good’ or ‘public good’ to denote a benefit that is not merely or strictly economic, or at least not necessarily so. Thus my discussion and description of public and private goods should be understood as considerably broader than one measured in mere monetary terms, taking into account other personal and social goods, such as knowledge, understanding, personal satisfaction, cultural tolerance, and social cohesion. (Please note that, in the case of both public and private benefits, it should be understood that I will consider absence of or protection from harm to qualify as a good as well.)

In *The Public and Its Problems*, John Dewey (1927/1954) described the public/private distinction in the following way:

The germ of distinction between the concepts of public and private can be seen in the distinction between two types of human consequences: acts which affect the persons directly engaged in a transaction, and acts which affect others beyond those immediately concerned. (p. 12) Dewey saw human beings as living in a state of association, “a state of interconnected action which affects the activity of singular elements” (p. 23). Therefore, Dewey maintains that public activity is not merely social activity. He states, “In the broad sense any transaction deliberately carried on between two or more persons is social in quality” (p. 13). He identifies truly private acts or affairs as those whose consequences
are perceived as only affecting those directly involved in these associations. Moreover, Dewey is careful not to equate the concept of *private* with that of *individual*, as private affairs include human associations among individuals and groups, and these include friendships, marriages, and businesses (p. 28).

However, Dewey (1927/1954) explains that the consequences of conjoint action take on new value when observed and reflected on by others (p. 24). He contends that the source of the public as a mode of association is the “perception of consequences which are projected in certain ways beyond the person and associations directly concerned in them” (p. 39). Therefore, once the indirect consequences of various human associations are perceived to have a significant impact on those not directly engaged in those associations, these outside individuals and groups can choose to organize into a public that will attempt to monitor and channel the indirect consequences of private associations. In other words, the public begins to be formed when those community members engaged in various associations conduct themselves in such a way that outside parties perceive that they are affected by the indirect consequences of such activities, often with the understanding that “the indirect and unthought-of consequences are usually more important than the direct” (p. 106). Thus, as Dewey conceptualizes it, “The public consists of all those affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for” (p. 15). When the public is organized as a state, there is an effort made to oversee and regulate public acts and their consequences. A *private* act, on the other hand, was one for which the consequences
are primarily confined, or perceived to be confined, to the persons directly engaged in
it.

While Dewey does not extend his analysis to a discussion of the benefits of
schooling in *The Public and Its Problems* (1927), he does briefly demonstrate how his
description of the public applies to public schooling. He states that an identifiable
mark of the public when organized as a state is a conviction or assumption that
“children and other dependents are peculiarly its wards” (p. 62). Presumably this
conviction stems in part from a paternalistic desire to prevent harmful consequences
from affecting those whose faculties and judgment have not reached maturity, but also
because of the observation that an activity such as mass schooling can significantly
impact society in a number of ways, either harmful or beneficial, depending on how it
is conducted. Thus, Dewey states, “In the degree, then, that a certain measure of
instruction and training is deemed to have significant consequences for the social
body, rules are laid down affecting the action of parents in relation to their children,
and those who are not parents are taxed . . . to maintain schools” (p. 63).

In extrapolating on Dewey’s analysis, I would point out that his explanation
reinforces the historical point made above, that public control, along with support and
accountability, result from a public concern with distributing certain benefits or
limiting costs, and that this logic in large part governed the development of American
public schools. Moreover, in reference to the conceptual point that we are attempting
to clarify, Dewey would likely categorize *public* benefits as those which are perceived
as indirectly benefiting those outside of the activity which produces them. Therefore,
activities such as schooling, which are perceived as having public benefits or costs, would, as the public became organized, have to be looked after by public officials who have been charged with looking after the public’s interest. *Private* benefits, conversely, would be those which are seen as affecting only those parties directly engaged in an activity, and thus would not require oversight by public officials.

Levin (1989) has recently provided another view describing schooling as a both a private and a public, or, as he also refers to it, *social* good. While his description of these concepts is specific to education goods or benefits, he seems to concur with some of the elements from Dewey’s analysis concerning the difference between the public and private realms. As a private good, one that families would seek in order to improve the lives of their own children, Levin explains that schooling does the following: enhances individual productivity and earnings; increases trainability, health, efficiency in consumption, and access to information; contributes to political participation and acceptance of civic values; and contributes to social status, technical and cultural literacy, and promotion of family values (pp. 217-218). As a public good, one that serves the social needs of the nation, region, and community, Levin notes that schools do the following: provide a common set of values and knowledge to create citizens who can function democratically; contribute to social, economic and political equality; promote employment and economic growth; and facilitate cultural and scientific progress (p. 218). Levin is careful to note that social goods, as he defines them, are not merely the sum of the private benefits produced in a given society, but rather those that are accrued in a collective manner (p. 216).
Even more recently, and from a different ideological perspective, Hill, Pierce, and Guthrie (1997) explain the difference between public and private benefits of education this way:

Schools provide a public benefit by preparing students for productive employment and participation in society and government. Everyone in a community benefits when schools do a good job and graduates contribute through employment and service to the community. Communities suffer when they must support the unemployed or pay the costs of incarcerating young people convicted of criminal acts. Schools are also expected to help each student reach his or her individual potential, the benefits of which accrue primarily to the individual and family. These private benefits of education are also important. (p. 60)

Here, Hill, Pierce, and Guthrie primarily discuss both public good and public harm as relating to the economic functioning and well-being of a society. Seemingly, providing public support for individuals who do not support the economic and social health of the community does public harm, while public support which contributes to employment and self-sufficiency provides a public benefit. Private benefit, on the other hand, accrues to individuals and families directly involved in schooling.

Most recently, Miron and Nelson (2002) provide a collage of notions of ‘public benefit’:

In layman’s terms, a public good is a good in which the public has a clear stake. Public policy analysts have formalized this notion somewhat by defining public goods as those goods that have significant “spillover” costs and benefits (“externalities”) associated with them. As English John Stuart Mill characterized the distinction, a public good or action is one that has other-regarding consequences,” whereas a private act is one that has only “self-regarding consequences”. (p. 9)

The layman’s definition provided may be accurate, but it is not precise enough for further development or application in this endeavor. The second definition, the one
from the lexicon of policy analysts and economists, in some ways recalls Dewey’s idea that private acts become public acts, when they ‘spillover’ or impact those not directly engaged in the activity. On the other hand, Mill’s concept of a public good applies to the entirety of society, though, based on his utilitarian outlook, as an aggregate of the good provided to individuals.

In examining these varied definitions of private and public goods or benefits, a descriptive interpretation of a ‘private good’ seems relatively clear. Thus, I will use the term ‘private benefit’ to refer to those which directly accrue to the parties involved in a particular activity, such as schooling. For example, Green (1980) classifies the distributive benefits of the educational system into the following categories:

- *educational* benefits, including knowledge, skills, taste, manners, and standards of civility;
- *non-educational social* benefits, which include income, occupational opportunity, status, and prestige;
- *second-order educational* benefits, such as certificates, diplomas, transcripts, and licenses (pp. 41-48). While Green does not explicitly describe them as such, this might be considered a list of the private benefits of schooling. In other words, these are the types of goods that students and their parents would want their schools to provide for their personal welfare.

However, there is another class of private benefits that schooling provides, but not to the parties that we have concentrated on thus far, that is students and their families. Schooling confers private benefits, not only to those who receive it, but to those who provide and oversee it. Here I refer to the employment of principals, teachers, and staff, as well as the positions of school higher level school administrators
and officials, including superintendents, members of state boards of education, etc. Private benefits for these parties would also likely come from the personal satisfaction and pride in that these individuals derive from their work, especially when they believe that they have helped students. While some may argue that these types of goods are not relevant to our discussion of private benefit, a fair and complete analysis of these issues would have to include them. Moreover, the importance of these considerations will become clearer as we discuss the importance of public and private interests and their influence on educational reform, below.

While the idea of a ‘private good’ seems relatively clear, given the variety of the descriptions above, further analysis is in order to come to an understanding of a ‘public good’. While Hill, Pierce, and Guthrie would seem to view the public good in a way more similar to Mill, that is one that is enjoyed by, or has the potential to be enjoyed by, each societal member, Levin and Dewey seem to hold a more collective, organismic, or shared sense of the ‘public good’. Simply put, this difference seems to be in viewing ‘public good’ from the ‘each’ sense, as do Mill and Hill, or in the ‘all’ sense, as do Dewey and Levin. These differences result from substantially different ways of looking at society, one as an aggregate, the other as a collective.

This fundamental difference is central to debates about governmental responsibility, structure, function, and policy, and it is not my intention here to attempt to settle this argument or to choose between these alternatives. Please note that I am not contending that the difference between these two notions of ‘public benefit’ is not germane to discussions of schooling, nor worthy of further analysis and debate.
Rather, in seeking to come to an understanding of what is commonly meant by ‘public
good’, it seems that many people, especially laypersons, seem to see ‘public good’ in
both senses. Seen one way, and used in that context, a ‘public good’ is a type of
aggregate good, one measured as the sum of indirectly acquired goods available to or
enjoyed by the individuals in a community. On the other hand, a ‘public good’ is often
seen as a type of universally shared, communal benefit. I suppose that I could
distinguish the aggregate nature of public good from the communal nature, perhaps
calling the latter a ‘common good’, similar to the notion held by Jacques Maritain (see
Bryk, Lee, & Holland, 1993). However, this would become problematic, as some
writers who would use the term ‘common good’ might mean it more in the aggregate
sense. Rather, a truly descriptive account of this concept would include both aspects,
consistent with current usage, and, unless I indicate otherwise, this is precisely how I
will use the term ‘public benefit’.

Having made this distinction, it is also important for subsequent discussion to
understand that there is a considerable overlap of public and private benefits,
particularly with regard to schooling. As Miron and Nelson (2002) explain:

Clearly education possesses characteristics of both public and private goods.
Private good dimensions of education include the human capital skills that
individuals acquire in school and take them to the job market. Public good
dimensions include the inculcation of a set of civic values and a common core
of cultural meanings. However, one and the same aspect of education may
have both public good and private good characteristics. The human capital
skills just mentioned are consumed not only by the individual who carries them
but also, through positive externalities, by other citizens who benefit from the
wealth and cultural value generated by that individual. Similarly, cultural and
civic values can also be consumed by individuals as they derive personal
pleasure from participating in politics and from enjoying cultural artifacts (e.g.,
museum trips). pp. 9-10)
Additional examples of the overlap of public and private benefits can be gained from re-examining some of the previously cited examples. Levin’s list points this out, explaining how schooling can be seen as both a public and a private good. Thus, in enhancing productivity and trainability of particular students, schooling in turn may contribute to the public goods of employment and economic growth, as well as social and economic equality. Furthermore, the educational benefits mentioned by Green, including taste, manners, and standards of civility, can be valuable to students and their families, particularly as these attributes are judged by potential friends and employers, but also to the general public, as they may contribute to a more pleasant, peaceful society.

Finally, it is also worth noting that public goods, particularly when viewed in the aggregate sense as those indirectly acquired by societal members, are not necessarily distributed equally, nor on an egalitarian basis. Green (1980) describes social goods as those which are pursued on the grounds that their advancement will be of benefit to everyone, and therefore of benefit each (p. 147). However, given the size of urban centers today and the complexity of modern society, it is unrealistic for most of what we would call public goods to also be equally distributed goods. For example, while most people would label the development of a more skilled workforce or the growth of the local or national economy as public goods that are fostered by schooling, certain members or segments of society would likely benefit from these types of public goods more than others. Forgoing utilitarian calculus, such a good
might be seen as most beneficial to the unemployed poor, or conversely to CEOs and major stockholders.

My point here is not that public and private goods are the same, but that the same good can have both public and private aspects. Understanding both the distinction and the relationship between public and private benefits will aid our discussion of the distribution of both types of benefits in public and private schools, and how this contributes to our development of these concepts.

*The Distribution of Benefits in Public and Private Schools*

Levin (1989) explains that schools are expected to provide both public and private benefits, and that all private schools produce some social [public] goods, just as public schools produce some private goods (p. 218). Therefore, an important issue to be discussed for the purposes of this dissertation is how public and private schools differ in their distribution of benefits and how these differences relate to our corresponding understanding of these concepts.

Historically, as described above, private schools were designed to promote certain types of private goods to students and their families, though this varied significantly depending on the type of private school. Elite schools prepared the children, usually the sons, of upper classes for future study and employment. Private venture schools provided basic literacy, moral training, and job skills. In addition to these benefits, denominational charity schools aimed to remove children from harmful family situations and provide them with a more wholesome environment (Kaestle,
Nevertheless, as previously discussed, these benefits were often intended to be confined to particular groups or classes of recipients.

As public schools developed, they were intended to provide a host of benefits, many of which had both private and public aspects. While the public goods distributed by public schooling will be discussed further below, it seems clear from our previous examination of the common school movement that public schools were intended to provide private as well as public benefits. Mann’s contention that public schools would ‘prevent being poor’, and teach the individual ‘the great laws of bodily health as qualifies for the fulfillment of parental duties’ clearly seem to reference private goods.

Moreover, it seems clear that both public and private schools today are expected to provide a common set of private benefits, a number of which were described in the preceding section. For example, both types of schools are expected to promote or enhance physical/motor skills, basic academic skills, student social development, ability to access information, understanding of democratic political processes, and future employability. Not only are public schools seen as just as responsible for distributing these private benefits as are public schools, the scope of their responsibility is considerably greater. While private schools enroll a relatively small and often select percentage of students, public schools are seen as the primary vehicle through which these private benefits are distributed to all of a community’s children.
In addition to this common set of private goods, recent history has seen one or
the other class of schools become more likely to promote particular types of private
goods. For instance, modern public high schools have promoted the development of
vocational or technical skills to a greater extent than private high schools, while the
latter have, as a group, concentrated greater attention and energy on academic
preparation for college study. However, nothing necessarily precludes either a public
or a private school from attempting to promote most of the private goods historically
distributed with greater frequency by its counterpart. Indeed, some private religious
schools have offered vocational or technical programs, while public schools are
increasingly concentrating on preparing students for postsecondary study.

Of course, one glaring exception to this is religious instruction, which, though
included to varying degrees in early public schools, is now excluded from them.
(Some would argue that religious instruction is not a private good at all, but rather is
actually harmful to students, filling them with superstitions and hampering the
consideration of other systems of thought. Nevertheless, it is certainly intended to be a
private good for students, and at least within the context of the religious community in
which most of these students participate, the instruction does seem to have private
benefits, so I will not argue this point further.) In addition, private nonreligious
schools may produce private goods by educating their students in a narrow ideological
manner, though, as a matter of practice, most do not. Contrarily, public schools are
not, by their very nature, supposed to produce this type of narrowly tailored private
good. As they must, by necessity, be open to all of the children of a community, or at
least a public school district, they are supposed to teach students who come from
different ideological backgrounds, and thus are supposed to present a more objective,
impartial, balanced approach to education.

On the other hand, as explained above, the intention to provide certain public
benefits developed as part of the identity of the American public school, which was
accompanied by a faith that the schools could actually accomplish this. To bring these
efforts to fruition, certain characteristics of public schools, such as civil rather than
sectarian control of schooling, developed based on the belief that only institutions of
this nature would be able to secure the public benefits of schooling. As will be
discussed later in greater detail, while various political factions can and do disagree
about what constitutes a public good, or which public goods are most important for
schools to distribute, there still exists an assumption that public schools will provide
some kind of public good.

The public goods produced by public schools typically comes from the
distribution of certain benefits to each student. As noted previously, when looked at on
a more individual basis, these may be seen as private benefits, but when widely
distributed throughout a community, these become public benefits. Green (1980)
explains, “Educational benefits are private goods, by nature, insofar as they are
divisible and primary. Yet their advancement in the society may be a social good
requiring a political decision” (p. 146). As a simple example, fostering literacy
provides a private benefit to students, while creating a literate society seems to be a
public good as a step toward general societal progress. As another frequently cited
example, fostering the skills and civic attitudes necessary for democratic participation is privately beneficial to students, though doing so often entails promoting common knowledge, values, and, as a result, a common culture that will result in social cohesion and governmental stability. As yet another example, providing the private goods of knowledge and skills to lower-income students, including preparation for postsecondary study, would contribute to the public good of improving economic equity. Finally, the health exams and monitoring of students in public schools promote a healthier citizenry which, both physically and fiscally, benefits the society as a whole.

In contrast, as explained above, private schools historically have been perceived by many, and often rightly so, as primarily concerned with producing and/or distributing private benefits, those that would principally accrue to their students and/or particular groups or classes of people. However, in addition to these, many private schools have historically produced some public benefits. For example, the charity schools run by various religious denominations did facilitate some increase in literacy for their students, and this in turn contributed to a more skilled labor force, or more informed voters. To the extent that denominational schools taught respect for laws and authority, they may have contributed to a more lawful and peaceful society. Elite private schools developed students for civic and political leadership which, in turn, contributed to the public good.
Furthermore, as Dewey (1927/1954) correctly points out, both public and private initiatives, the former of which would include private schooling, can be socially valuable. He explains:

A man may serve others, even in the community at large, in carrying on a private business . . . In short, private acts may be socially valuable both by indirect consequences and by direct intention . . .

There is therefore no necessary connection between the private character of an act and its non-social or anti-social character. The public, moreover, cannot be identified with the socially useful . . .

Just as behavior is not anti-social or non-social because privately undertaken, it is not necessarily socially valuable because carried on in the name of the public by public agents” (pp. 13-15).

Thus, by extrapolation, while every outcome produced by public schools is not necessarily beneficial to society, private schools are not precluded from producing socially, or publicly, benefits.

Contemporary private schools continue to contribute to the public good in various, though limited, ways. As noted in Chapter 1, the curricula in today’s public and private schools is quite similar, and, as noted above, both public and private schools aim to, and are expected to, produce a common set of privately usable goods for students, including transference of knowledge and skills that will be useful in social development and future employment. Private schools also require, typically in accordance with state guidelines, courses in American history and government, which, like those offered in public schools, are designed to foster democratic values and informed democratic participation. To the extent that private schools distribute these socially useful goods to their students, they are contributing to the public good.
Moreover, the public value of private schools has been acknowledged by the United States Supreme Court over the last quarter century. In 1977, in *Wolman v. Walter*, the Court placed limits on the type of government assistance that could be granted to private religious schools. However, in a concurring opinion, Justice Powell emphasized two important points. First, Powell noted that eliminating all state aid to private parochial schools would not be in the public interest. He stated:

> Parochial schools, quite apart from their sectarian purpose, have provided an educational alternative for millions of young Americans; they often afford wholesome competition with our public schools; and in some States they relieve substantially the tax burden incident to the operation of public schools. (p. 262)

Furthermore, Powell commented on concern about church control over government institutions:

> At this point in the 20th century we are quite far removed from the dangers that prompted the Framers to include the Establishment Clause in the Bill of Rights. The risk of significant religious or denominational control over our democratic processes – or even of deep political division along religious lines – is remote, and when viewed against the positive contributions of sectarian schools, any such risk seems entirely tolerable in light of the continuing oversight of this court. (p. 263)

Here, while Powell does not specifically mention the public benefits of private schooling, he does discuss the lack of harm from public funding of private schools and private schooling itself. His comments seem to indicate an attitude, which is held by a considerable segment of the American population, that the rationale for strict church-state separation in all matters, which is highly debatable when attributed to the nation’s founders or the Constitutional framers, is antiquated in light of the social and cultural changes that have taken place in the United States over the past two and a
quarter centuries. By extension, as will be discussed in greater detail below, some see the potential harm done by both private schooling and public support for it, principal reasons for placing schooling under public control, as not as great a concern today as it was nearly two hundred years ago during the common school movement.

Nevertheless, particularly based on current numbers and distribution, private schools have rather limited ability to distribute public goods. Furthermore, many contend that, in focusing on the production of certain types of private goods, especially those useful to specific groups or classes of people, private schools, or at least many private schools, diminish the public good, or cause a public damage. Therefore they argue that, as a private benefit, religious or narrowly ideological instruction has a public cost. They contend that such instruction reinforces ideological and religious factionalism and hampers formation of a common culture or civil order, or at least tolerance, and in doing so replaces education for democratic citizenship. While I will address the specifics of these arguments in greater detail when examining the potential benefits of certain educational reforms, some broad conclusions can be made at this time.

If certain private schools, whether sectarian or nonsectarian, promote an ideology that would devalue democratic institutions, or respect for constitutional and civil rights, or exposure to and debate of diverse ideas, it seems logical that, in so doing, such a school would not be furthering the public good, and would likely be causing public harm. While concern, and even panic over, this very issue has strongly influenced school policy since the common school movement, currently, most private
schools do not, as a matter of course, operate in this fashion. The similarities in curricula and goals shared by most modern private and public schools is extensive. Religious schools, over which most of the historical concern has been voiced, often differ from their public counterparts only in the teaching of one class in religious instruction per day and occasional religious services. Other ‘religious’ activities might include charitable works, which are similar to the ‘service project’ requirements that are increasingly being adopted in public schools.

As a related issue, some may contend that academically selective and elite private schools, whether religious or not, promote the interests of educated and/or upper-middle-class and wealthy parents. In so doing, they hinder attempts at social and economic equality which are in contrast furthered by public schools. Even if one would concede that most private schools do this, there are a number of other problems with this argument that private schools cause great public harm in doing so. First, some, if not many, private schools offer scholarships or financial assistance to gifted and/or dedicated students who have difficulty affording tuition. Thus, the supposed tendency of private schools to perpetuate social and economic inequality must be balanced against the social and economic mobility that these schools promote. Secondly, there are other public goods to consider besides social/economic equality in determining overall public benefit, including, given many private schools emphasis on academic development, the need for highly knowledgeable and skilled individuals in certain professions (e.g., doctors, lawyers, political leaders, researchers, college professors, etc.).
Finally, it could be argued that the ability of public schools to facilitate the public good, though somewhat greater than that of private schools, is not as great as many private school critics would contend. Based on the conflicted nature of the public school and the tradition of local control in the United States, many private schools seem to do no more harm to the public good of social and economic equality than do many public schools, or public school districts. That is, due to the private, exclusive nature of many public school districts, what may seem like a public benefit from within the perspective of community members, may seem more like a private benefit when viewed by those outside of the community who do not have access to it. While the well-being and quality of life enjoyed within the community may be a universally, or nearly universally shared good, those outside of the community may share very little in it.

Based on the criteria laid out above, whether or not a particular benefit produced by schooling is categorized, as public or private depends on how narrowly or broadly we choose to define the public in ‘public benefit’. Just as there are different levels of ‘public control’, as discussed in Chapter 3, there also seems to be different levels of ‘public benefit’. Certainly some public goods created by virtually all public schools are distributed to students in other communities and school districts, and even to the nation as a whole. These include those derived from a literate, more educated citizenry, the fostering of democratic attitudes and participation, and a more skilled, productive work force.
However, some good would not, in a substantial way, be shared outside of the community. Some of these would be educational benefits, including the high quality instruction and supervision provided by some communities’ well-funded, maintained, and staffed schools. Others might be social benefits, such as pride in local schools and campuses, or financial benefits, such as the increasing property value of homes that reside within the district. Everyone in the community, in the sense of the school district, could share in this, but this would be narrowly confined to a much narrower public. In many cases, only an exclusive socioeconomic group of people can afford to live within the district, in large part due to the private nature of school district access, as described in Chapter 4.

Green (1980) provides some additional explanation concerning the ambiguous nature of public benefits. He explains that educational goods differ from economic goods in that the former are not scarce, whereas the latter are (pp. 141-143). For example, one individual’s acquisition of knowledge/skill in no way takes away from any other individuals knowledge/skills or their ability to acquire more of the same. Thus, the distribution of knowledge and skills can be seen as both a private good, to individuals and their families, as well as a public good whose value can be broadly shared, even on the national level. However, many noneducational social benefits, such as socioeconomic status and prestige, are quite relative as derivatives of educational benefits. As such, one’s status and prestige can be diminished when others obtain knowledge or skills, and a corresponding diploma or license, especially when these have social or economic value. Therefore one district’s ability to positively
differentiate the schooling it provides from the schooling that other districts provide. May benefit those within that district as a public good, but in serves no real public good those outside the district. Thus, social status and prestige that result from schooling may be seen as both a public and a private good when viewed from inside a school district, but only as a private good when viewed from the outside. Moreover, the private nature of such goods is reinforced as they relate to the financial benefits that are derived from quality schooling, such as higher property values.

From this examination we see that when a good distributed by or derived from schooling is scarce, such as high-level knowledge or social prestige, it has the significant potential to acts as a private good, not merely in its distribution to individuals, but, because of the district structure that exists in the United States, in its distribution to all of the members of a particular community as a public good. In many ways this does not seem very different than the way private schools function in producing certain private goods that are valuable to a particular, restricted group of people. Indeed, in terms of the distribution of benefits, the public schools in wealthy districts may seem to bear greater resemblance to elite private schools than they do to public schools in neighboring urban districts. While many criticize private schools and extol the virtues of public schools as superior vehicles through which to distribute public goods, the potential for inequalities in public schooling to harm, or at least not further, the broader public good seems just as great, if not greater, than a similar type of threat posed by private schools.
While public school teachers and parents from well-supported districts may comment, in well-meaning tones, about the societal importance of high quality schooling for all and their wish that other communities had similar resources, in most places the system of public education is set up to ensure that this does not happen. Lawsuits filed against states in recent years, seeking more equitable funding of public schools, imply that the rationale of the district system, particularly its emphasis on local support of public schools, assumes an inadequate concept of ‘public’ with regard to the distribution of benefits. These lawsuits typically claim that state constitutions require a more equitable distribution of resources, which in turn is meant to distribute public benefits, namely a high quality education, more equitably to all of the children who reside in the state.

From this examination of how public and private benefits are distributed among public and private schools we have seen that, while both types of schools produce certain benefits, it is rather difficult to divide these into neat categories for the purposes of study or policy analysis. As Hill, Pierce, and Guthrie (1997) explain:

Clearly schools attempt to provide both public and private benefits, but not always in equal proportions or with the same understanding of those roles. A school’s or school district’s particular orientation to its mission will have much to do with how it sees its responsibilities. (p. 60)

This raises the question of how the responsibilities of schools, either public or private are determined. From the preceding discussion, it seems that there is a competition between public and private interests to distribute certain benefits of schooling in certain ways. The subject of how various interests attempt to determine how the benefits of schooling will be distributed will be my next topic of discussion.
The Consideration and Influence of Interests in Schooling

The Relationship Between Interests and Benefits

In The Public and Its Problems (1927/1955), John Dewey posits an explanation as to how the public interest arises. He states, “The public consists of all those affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for” (Dewey, 1927, p. 15). Thus, according to Dewey, once members of a community or society recognize the potential indirect consequences, either beneficial or harmful, of some activity, this brings about a common interest that requires rules and the selection of certain people to be the guardians, interpreters, and executors of those rules. These officials, public officials, are those who look out for and take care of the interests of the public (p. 16). These persons have a different status when acting in private character than they do when acting in their official or representative character, in which they have authority. When acting as officials, these individuals are ‘public agents’ who do the business of others “in securing and obviating consequences that concern them” (p. 19).

It follows from Dewey’s concept of the public that the officials who oversee the interests of the public are concerned with regulating both beneficial and harmful consequences that are generated by human associations. Presumably, this would involve attempting to monitor, promote, and or distribute beneficial indirect consequences of such associations to the public, and attempting to prevent deleterious indirect consequences from harming the public. Thus, in fulfilling their duty to
oversee the public interest, public officials are intended to promote public benefit and prevent public harm. Those pursuing private interests, on the other hand, would be predominantly, if not solely, interested in acting in such a way as to securing favorable consequences for themselves, that is, in promoting their own private benefit.

Of course, it is understood that these attempts to monitor the effects may or may not be fruitful, and that public officials can and do make mistakes about how to regulate these consequences. This can and does range from minor deficiencies and temporary setbacks to gross, perennial incompetence. It is also true, as Dewey (1927/1955) noted, that public officials may not only shirk their duty, but use their positions for personal gain. He observed, “The essential problem of government thus reduces itself to this: What arrangements will prevent rulers from advancing their own interests at the expense of the ruled? Or, in positive terms, by what political means shall the interests of the governors be identified with those of the governed” (p. 93)?

Given this understanding, an important question, as it relates both to our discussion of the difference between our current concepts of public and private schools, and to our subsequent discussion of how current reform trends and proposals may alter these concepts, is how public interests and private interests influence both public and private schools. This will require some more specific analysis of how certain types of interests interact within the United States educational system. In explaining the influence of various interests on the control of the educational system, Green (1980) identifies four sets of interests that influence the control of an educational system: those of the state, those of parents, those of the society, and those
of incumbents or occupants of positions in the system. I will briefly discuss each of
these sets of interests. Similar to Green’s work, my intention here will be to examine
the nature of certain sets of interests in education, including how they relate to the
distribution of benefits, and not primarily to identify sets of persons (p. 21), though
some distinction between groups of individuals will be necessary.

According to Green (1980), state interests include compelling interests,
promoting the economic independence of individuals and minimum obedience to civil
law, and derived interests, those that arise from efforts to secure the compelling
interests and the perpetuation of the state (e.g., interests concerning attendance
standards, regulating teacher training and certification, financing schools, and certain
curricular specifications) (pp. 23-24). In describing the state interest in U. S.
education, Wise (1968) explains

The purpose of education, according to state sources, appears to be the service
of the state. An analysis of state constitutional conventions found that the
major concern of the delegates was for “political safety and well-being” of the
state, and the state courts have interpreted education as the “governmental
means of protecting the state from the consequences of an ignorant and
incompetent citizenship.” (p. 34)

Salomone (2000) has likewise observed, “The Supreme Court has repeatedly
instructed the American public that the ultimate objective of publicly supported
primary and secondary education is to prepare the young for democratic citizenship”
(p. 197).

On the other hand, as Green (1980) describes them, the interests of parents
include the interests of the state, but in a more secondary sense. While the state is
cconcerned with the aggregate of the citizenry, and thus what is best for the entire
population, parents are primarily concerned with securing the greatest benefit for their own children. Thus, the interests of the state and those of the parents may conflict, for instance regarding the question of equal educational opportunity, which would be in the interests of the state, but would not be in the interests of most parents who want their children to have some educational advantage (pp. 24-25). Henry M. Levin (1989) also describes the potential conflict between the interests of the state and of parents, particularly in public schools:

Public education stands at the intersection of two legitimate rights. The first is the right of a democratic society to assure its reproduction and continuous democratic functioning through providing a common set of values and knowledge. The other involves the right of families to decide the ways in which their children will be molded and the types of influences to which their children will be exposed. To the degree that families have different political, social, and religious beliefs and values, a basic incompatibility may exist between their private concerns and the public functions of schooling. (p.217)

Moreover, Salomone (2000) explains that the United States Supreme Court’s Pierce decision, while attempting to balance the interests of parents and the state, emphasize the overriding interest of the state in reasonably regulating even private schools, in ensuring that parental decisions do not jeopardize the health and safety of children, and in intervening to prevent significant societal burdens (p. 90).

For Green (1980), societal interests are those whose advancement benefits everyone in the society, but do not fall under the general jurisdiction of the state. Societal benefits not only promote the continuation of a society, but its improvement as well. Like the interests of state, and unlike those of parents, societal interests are in aggregate goods: those that benefit everyone in the society. However, societal interests go beyond the minimal interests of the state in education. Green groups societal
interests into three broad classes: interest in producing an educated elite to govern society, interest in the expansion of skills and talents that contribute to the advancement of society, and interests in the widest possible distribution of certain minimal skills, dispositions, and personality characteristics. He notes that societal interests are in both those goods that benefit everyone even if they are only distributed to a few persons, such as preparing societal leaders, as well as those goods, like orderly governance or good roads, that cannot be possessed by anyone unless they are possessed by everyone (pp. 26-27). As Green explains, while societal interests may conflict with parental interests just as do those of the state, these interests are not mutually exclusive, since some individuals may have both a parental interest and a societal interest in the adoption of certain educational policies (p. 28).

However, Green (1980) notes a difficulty in describing the interests of incumbents of the educational system, such as school officials, administrators, teachers, and support staff. Such individuals fill multiple roles: one as a salaried employee, another as a professional who promote the welfare of children, and yet another as a technician. It also the case that, like parents, these incumbents are also concerned with the interests of society. Because of this multi-faceted nature, the interests of incumbents cannot easily be identified with one of the other sets of interests. To the extent that these individuals seek to use their positions to promote the public good through their activities, they are acting in the public interest. To the extent that they act so as to procure goods for themselves as private individuals, in the form of prestige or salary or benefits, they are acting in their own private interest.
Based on our previous discussion and common usage, these four different classes of interests can, for the most part, be categorized into either public or private interests. The interests of the state and societal interests, though substantially different, both appear to be public interests. As I will use the term ‘public interest’ then, I will be referring to the needs and desires of the state or of society as a whole, that is, to provide or distribute public benefits to society’s members. On the other hand, the interests of parents for the education of their own child would be categorized as private interests, referring to the needs and desires of certain individuals and groups, that is, to provide or distribute private benefits that are primarily useful to them. However, as members of society interested in distributing certain societal benefits from schooling, parents can be seen as concerned with the public interest. Similarly, regarding the interests of incumbents in the educational system, to the extent that they attempt to influence the distribution of the goods of schooling for their own benefit, they would be considered private interests, while their efforts to procure benefits for the state and society as a whole would be seen as public benefit. Finally, while Green understandably omits children’s interests from discussions of control over schooling, we could classify the interests of children in their own education and development as private interests as well.

In addition, as he is discussing the system of public education in the United States, Green does not discuss the interests of private schools or the groups that run them. Yet, for the most part, we would categorize these entities as private interests, especially to the extent that they attempted to garner specific benefits for the groups or
clientele that they served. While a private school’s teachers or administrators may themselves have private interests in schooling as parents, or have a public interest in education as a citizen and member of society, this does not alter the fact that those who operate or sponsor it constitute a private interest. This interest would be distinct from, though not unrelated to, the interests of the parents who enroll their children in private schools. Despite the fact that some shared, though still private, interest with parents is necessary for private schools to remain viable, those who operate the private school would not necessarily have the same interests, or the same balance of interests, as the parents of their students. For example, a parent may send his or her child to an academically rigorous religious school with a renowned reputation in order to get the student into a good college or university. However, the school may have as a higher priority the cultivation of knowledge, or the inculcation of religious beliefs.

Finally, there is another group of private interests that Green does not discuss, though they do attempt to influence or control certain aspects of schooling, including public schooling. These are the interests held by private entities, such as business and labor entities, that garner, whether directly or indirectly, private benefit from the operation of schools. Those that would gain more direct private benefit would include local operations, such as bakeries or dairies that supply food for school lunches, to national corporations, such as textbook companies and corporations that produce school supplies and equipment (e.g., Dell, Mead, Bic, etc.). Those who derive more indirect private benefit would include both general business interests and labor interests. Businesses want workers who are employable and will financially benefit
their companies and the economy as a whole. However, labor groups and trade union members, though often at odds with the aggressive profit-seeking motives of corporations, have historically favored certain education policies that will financially benefit themselves by exerting control over the labor market. As an example of this, Cremin (1980) explains:

. . . when Massachusetts actually enacted the first general compulsory school attendance statute in 1852, it was neither [Horace] Mann, [the State Secretary of Education] . . . nor the board, nor the teaching profession, nor the local town school committees that pushed through the law. It was rather organized labor and reform groups concerned about youthful idleness on the one hand and youthful exploitation on the other, that pressed its enactment. (pp. 156-157)

Before moving along, I should point out that, while I have decided, based on my interpretation of common usage, to combine both the interests of the state and societal interest under the heading of public interest, this does not mean that these two aspects of the public interest always act in unison. Historical examples of this distinction include the Brown decisions. As mentioned above, in making its ruling in the first Brown case in 1954, the court mentioned both public and private benefits that result from the education provided by adequate schooling. In doing so, the Supreme Court implied that the students not only had a right but also an interest in such schooling, which was inconsistent with a segregated system. Based on the constitutional principle of equal protection of the laws mandated by the Fourteenth Amendment, the Court ruled that public schools must provide the opportunity of this benefit to all without legal distinctions based on race. Thus, segregated schools were ruled unconstitutional, not merely because of the societal interest in ending desegregation, but because they neglected the personal interests of black children in
obtaining an adequate education, and the interests of the state in ensuring both equal protection of the laws and thus the required distribution of both public and private educational benefits. An example of this rationale can be seen in the \textit{Brown II} decision, as the Court stated:

\begin{quote}
At stake is the personal interest of the plaintiffs in admission to public schools as soon as a practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. (p. 300)
\end{quote}

Thus here the public interest in the sense of a \textit{societal} interest is separated from the interest of the state as interpreted by the Supreme Court. This illustrates the problem of defining or circumscribing a \textit{public} interest with regard to schooling, especially public schooling. For example, the public, or a public, may have a different set of interests when constituted at the level of a school district, than when it is constituted at the level of a metropolitan community, or a state, or a nation. What is in the interest of the citizens of Tinyville, Ohio may not coincide neatly at all times with the needs or priorities of the State of Ohio, or the United States of America. This is because social or societal benefits which may be of value to cities or towns or communities may conflict with the benefits desired by the state, at least with respect to priority. As evidenced by the historical record detailed above, discerning which \textit{public's} interest the schools are to serve, and to what extent, is often not easily accomplished. Therefore, \textit{public} interests in schooling should not be assumed to be
based upon a thoroughly consistent or cohesive set of objectives, but rather merely a group or collective desire to bring about some type of public benefit.

Public and Private Interests in Public and Private Schooling

As I have described them, parties with either or both public and private interest act to influence the operation of both public and private schools, but to considerably different degrees. Public interests, namely those of the state and society, are more influential with regard to public schooling than private schooling, though, based on previous discussion, the state does retain some interest in the operation of private schools. Similarly, societal interests are substantially more prominent in the operation of public schools, especially the interest in a broad distribution of basic skills and knowledge as well as values inculcation. Conversely, Devins (1989) explains that private schools have historically been an escape hatch for those who dissent from the values inculcated by the public schools (pp. 1-2).

Regarding private interests, parental interests are certainly influential in both types of schools, though, given the prominence of state and societal interests in public schools, and the importance of tuition to the operation of private schools, it seems that private-school parents would wield more influence over the schooling provided for their children. Nevertheless, given the history of local control over public schools, and the private nature of many public school districts, private parental interest in public schooling is substantial. Of course, as private interests, those who operate the private schools themselves have an essential interest in staying in operation and furthering their institutional mission, be it promoting academic excellence, or faith-based
education, or some other mission that distinguishes it from public schools. Other
private interests, especially business interests, want to see both public and private
schooling continue in ways that will benefit them. Similarly, there are incumbent
interests that operate in both public districts and private schools, though given the
more numerous levels of public school administration, the greater strength of public
teachers unions, and the civil service protections that exist for public employees, the
strength of incumbent interests seems greater in public schooling.

Thus, we observe that there can and does exist a substantial intersection
between public interests and private interests in the enterprise of schooling and the
distribution of its benefits. First, there can exist both a public interest and a private
interest in promoting the same benefits from schooling. For instance, there may be
both a compelling state interest and a societal interest in promoting highly skilled
individuals for various occupations. This would also be a desirable benefit for private
business interests, and thus, presumably, this joint interest, along with the prospect of
political contributions, explains the prominence of corporate and business leaders at
‘education summits’ and in other political discussions of schooling.

Secondly, in examining the interaction between public and private interests, we
observe that the pursuit of the private benefits of schooling by private interests can in
turn promote the public interest in distributing public goods. For instance parents and
their children pursue schooling, at least in part if not largely, because of their own
private interests, such as developing the child’s knowledge and skills, which in turn
will enhance employability. Nevertheless, this pursuit has advanced the public interest
to create a more literate, more skilled, and more civil society, thus creating both private and public goods. Green (1980) explains this mechanism: “Through the externalities of the system, the creation of appropriable goods, and the encouragement of individuals to pursue their own private advantage through the system, strong private incentives are created for the advancement of undoubted social goods” (p.151). Thus, public goods are often pursued indirectly, in promoting and adopting policies that directly appeal to private interests.

Third, public school districts or systems seem to provide schooling to further both public and private interests. To the extent that the district’s schools further state interests and attempt to extend educational and social benefits that will be valuable to those both inside and outside the district (e.g., basic language skills, preparation for democratic citizenship), it serves a public interest. However, to the extent that it seeks to distribute certain benefits that will almost exclusively be distributed to those living within the district, especially non-educational benefits such as the social status and higher property values that those in the district will enjoy because of their schools’ facilities and the reputation of their students’ academic achievement, the district seems to serve a private interest.

Interests, Benefits, and Education Reform

The Rationale of Choice and Privatization

Before exploring the impact, or potential impact, of current education reform practices and proposals on the concepts of public and private schools regarding the aspect of benefit, a brief examination of how the general rationale for the current wave
of ‘privatization’ reform is helpful. As noted by John Dewey at the beginning of this chapter, the issue of benefit is central to all political discussions, such as those involving educational reform. Thus, I will contrast the more traditional view concerning public interests and benefits with the views of those who advocate expanded school choice and other privatization reforms.

As described above, a considerable public interest in education has developed throughout the history of the United States, and the current conventional wisdom in the field maintains that this public interest is essential in guiding the mission of the public school. For example, Fullinwider (1989) advocates a certain measure of public or state control in order to perpetuate the state/community (pp. 21-22). He acknowledges that, while parents and families are principally responsible for raising children, only the state can represent collective societal interests in education (p. 26). Rather than seeing the interests of the state and families as those of two distinct parties, Fullwinder sees them in the following way:

The opposition between state and families should not be understood as a contest between alien forces (the state) and us (the people). The opposition is within ourselves, between ourselves as private individuals and ourselves as a public. The state is simply the institutionalized form of our collective interest in seeing that children are brought up in ways that do not harm them or us” (p. 26).

Thus this more traditional view of American education has held that considerable state control is necessary in order to oversee and further the public interest, and to bring about essential public benefits. Many public school advocates see a persistent and even increasing need for public schools to provide public benefits to a growing, more complex, but seemingly also more interconnected society. Those who
hold this view see or define ‘privatization’ not merely as a loss of control by the public sector over schooling, as described in Chapter 3, but also as a process by which private parties, including parents, private schools, and businesses, further their interests through the educational system and the process of schooling.

Thus, opponents of choice and privatization make two general objections toward reform proposals that increase the promotion of private interests in schooling. First, as they see a competition between many public and private benefits, they fear that an emphasis on private benefits will necessarily lead to a de-emphasis on needed public benefits. This is because, they contend, privatization, especially expanding the enrollments and influence of private schools, will produce and distribute benefits that are exclusively private, but in no meaningful ways public. Examples of this would be the religious indoctrination or narrow philosophical orientations that private schools supposedly promote, as well as the profits that businesses who manage or contract with schools would gain. Second, many public school advocates, especially the systems incumbents, claim that alternatives to contemporary public schools, when properly measured, are no better than, and usually considerably worse at, providing both public and private benefits from schooling.

On the other hand, those who favor various forms of school choice and privatization have a different philosophy regarding the advancement of the public interest and the distribution of public benefits. Rather than adopting Fullwinder’s rather cozy of a notion of the state as the mere embodiment of our collective interest, they see the state as a detached, impersonalized, coercive entity. Moreover, they
contend that the public, particularly as represented through government mechanisms, does not have as great an interest in education as the current structure of control and funding assumes. This is because, they argue, the potential benefits derived from schools are a largely, or most directly, private in nature. To this point, Miron and Nelson (2002) state: “Traditionally education has been viewed as a ‘public good.’ Advocates of choice and privatization, by contrast, generally regard education as essentially a private good (Englund, 1993; Lubienski, 2000)” (p. 9). Thus in de-emphasizing the public nature of the goods distributed by schools, these advocates urge a reduction in the public control and regulation justified as being necessary to ensure public benefits is needed.

Privatization advocates make two fundamental arguments regarding the interests in and benefits of schooling. First, they contend, public agencies often forward interests that are not really, or at least not fully public. They see the public arena, including the educational arena, as essentially a battleground of private interests. Since elected representatives and officials, including most school officials, must cater to the interests of a political majority in order to remain in power, the interests of minority groups or those without political power will very frequently take a back seat in a democratic system, as a variety of authors (e.g., Salomone, 2000; Vitteritti, 1999; Coons, Clune, & Sugarman, 1970) have argued. Because these voices are marginalized with regard to social discourse and policy formation, the current system of public education merely favors the private interests of some groups (e.g., the wealthy, public school officials and employees, government bureaucrats) over others.
(e.g., parents; poor families; or political and philosophical minorities). Thus, they contend, despite the gradual recognition of constitutional protections afforded to individual and minority rights during the last century, what has been accepted as the ‘public interest’ has often been that which promotes goods that are desired or valued by those holding the majority or entrenched viewpoint.

Secondly, privatization advocates argue that public schools and public school systems, as currently constituted and organized, are ineffective, or at best inefficient, in their capacity to distribute benefits, whether public or private, to their students or society. A primary reasons for this ineffectiveness, according to these advocates, is that public school agencies act like bloated government bureaucracies that first and foremost seek to perpetuate themselves and expand their power. For example, Chubb and Moe (1990) argue that the bureaucracy exhibited throughout much of public school governance, especially involving urban schooling, constrains the ability of public schools to address problems in beneficial ways:

Moreover, the fundamental obstacle to effective organization among urban public schools is not their conflictual, problem-filled environments. It is the way democratic control tends to manage and respond to such environments . . . For democratic control threatens to generate a vicious circle of problems and ineffectiveness . . .

The institutions of democratic control are thus likely to respond to serious educational problems by adding to the schools’ already disabling bureaucracy—rendering them even less capable of solving the problems that face them. The more poorly the schools perform, the more the authorities are pressured to respond with new bureaucratic constraints, which in turn make the schools still less effective. Hence the vicious circle. (pp. 65-66)
Thus, due to changing social circumstances, the current system of direct democratic control, not only fails to produce the same benefits it once did, but frequently produces quite a bit of harm in unintended ways.

Furthermore, specifically with regard to public benefits, Hill (2001) has argued that the ability of public mechanisms to produce genuine public benefits is hindered by the fact that the majorities that are represented by current school policies and practices may no longer be valid. He states:

The fact that a given school’s condition can be traced back to the actions of an elected board or legislature does not mean that it is public. As Terry Moe has argued, policy and legislation reflect the temporary ascendancy of one coalition of pressure groups after another. Each successful coalition leaves behind rules and procedures that favor its members, so that in the long run the actions of government agencies are constrained in ways that current majorities never choose. Over time, ironically, past majorities can become more influential than current ones. (p. 315)

Thus reform advocates making such arguments assert that the benefits that the current system are set up to produce are antiquated. They contend that our systems of public education must be redesigned not only to improve the distribution of the benefits of schooling, but also to produce benefits that will better serve society’s current needs.

Consequently, privatization reformers suggest that the benefits of education, including the public benefits, would best be forwarded indirectly, by focusing on the distribution of certain types of private goods, and largely through institutions other than conventional public schools. Their general alternative, as described in Chapter 3, is to place greater responsibility for schooling and the benefits that it would distribute in the hands of private parties seeking to forward private interests, such as parents, private management organizations, and private schools.
According to the theory which choice advocates espouse, sometimes called ‘choice theory’, school choice improves school quality, and therefore the benefits derived from schooling, in two distinct ways (Miron and Nelson, 2002). The first is through competition, as schools that satisfy student and family wants will attract students, while those who do not will lose students and, consequently, the funding that results from their enrollment. Schools that fail to attract students will, according to this theory, be forced to “improve” in quality, which will involve better satisfying parental and student desires, or go out of business. Secondly, choice theory holds that school choice will foster a sorting process by which each school will choose to provide a specific brand of schooling that features a specific mix of services. Parents will then be given greater freedom of choice, enabling them to choose the best school for their child, that is, the school that best caters to their preferences. Choice theory has been utilized to some extent in the development of ‘public-choice’ plans, as well as the privatization reforms detailed below.

In addition to changing the influence of certain public and private interests and the distribution of the benefits of schooling, education reform and its proponents may be changing, or at least attempting to change, this element of our concept of public and private schools. Many reform advocates challenge the idea that public governance, including that of public schools, necessarily makes an institution public, particularly as it pertains to its ability to further the public interest. Miron and Nelson (2002) contrast the formalist view of ‘public-ness’ with the functionalist view that is espoused by most school choice advocates. Whereas the formalist view holds that institutions
are public “if they are either publicly owned or controlled by citizens or their duly constituted representatives”, the functionalist view views institutions as public if they perform some important public functions (p. 14). Thus, the latter view is consistent with the notion of the “public use of private interest”, whereby individuals and groups are encouraged, via market-like incentives rather than government force and regulation, to pursue courses of action that, in serving their own private interests, would in turn further public goals (see Schultze, 1977). Thus, a number of these advocates (i.e., Hill, 2001; Chubb and Moe, 1990) draw a distinction between ‘public schooling’, as currently conceptualized, and ‘public education’, seeing the former as one possible mechanism through which the latter, as a right and proper goal, may be forwarded.

As described in the first section of this chapter, the perceived distribution of the benefits of schooling was important to the development of public schools as distinct from private schools. Thus the growth of privatization reforms, as it brings about perceived changes in this distribution, has the potential to change the identity of public and private institutions, as well as the way we view the relationship between American public and private school. Moreover, while virtually all school privatization reforms rely on public financing, the different mechanisms and varying degrees of government control and oversight each involves affect both the influence of public and private interests and the attempted distribution of public and private benefits. Therefore, while broader characterizations have been made above, an examination of specific reform trends and proposals will better reveal the extent to which each may
potentially modify our traditional concepts of the public school and the private school with regard to interests and benefits. Such an examination follows. While this dissertation is largely conceptual in focus, some discussion of the actual benefits from various privatization options as empirically calculated or estimated will be useful to demonstrate evolving perceptions about the benefits of these options.

*Analysis of Specific Schooling Trends and Reforms*

*Contracting.*

In contracting, or contracting out, with private providers, schools, school districts, or states give up some control over certain school services, either non-core or core. The private providers of both core and non-core services typically seek contracts in pursuit of their private interests so as to produce private benefits for themselves, primarily monetary profit. Of course, many of the individuals who work for these providers would also seemingly share in the public interest as members of society. The public officials charged with overseeing the public interest are seeking to gain some perceived or potential benefit, such as cost savings, efficiency, and/or quality that will be distributed to those they serve. Moreover, it is generally considered the responsibility of the public officials involved to enter into contracts that will further the interests of those they represent and in fact bring about prescribed benefits. While these benefits may have a private nature as enjoyed by students, their families, or other community members, they are generally expected to be enjoyed as a public benefit as well.
As explained in Chapter 3, some forms of contracting have been practiced by both public and private schools for years, and, particularly with regard to public schools, these practices have largely been viewed as innocuous arrangements that did not threaten the public benefit element of the public school concept. As an example, public schools and districts have often contracted with food service providers for years, purchasing milk from a local dairy or bread from local bakeries. Similarly, arrangements that provided for business sponsorship of school events and activities in return for placards or logos or advertising in public school publications had been practiced in many districts throughout the latter half of the twentieth-century.

However, both the frequency and the range of contracting for school services have increased significantly in recent years, especially by public schools and school districts, and, as Molnar and Morales (2000) note, this raises serious questions about the role of public schools in American society (p. 39). (While the growth of commercial practices in private schools has also occurred, and, while it may at times threaten the institutional mission of those schools, it would not, in a similar way, challenge their private identity.) Determining whether public school contracting for both core and non-core services enhances or erodes the concept of the public school as an agent of public benefit involves determining how the terms of the contract balance the interests of the school and the community it serves with the interests of the service provider. Arrangements that substantially favor the private interests of service providers over the public interests that the schools have traditionally forwarded would understandably hinder the ability of schools to distribute public benefits.
With the increase in contracting for non-core services and recent forays by private, largely for-profit, providers into contracting for core services in public schools, such contractual relationships are often described as ‘public-private partnerships’. While I will not make a universal judgment about the value of such partnerships to various parties related to public schooling, it does seem that that the interests furthered by private companies and corporations in some of these arrangements may be changing the public identity of public schools. To clarify, I am not arguing that the contracting mechanism has fundamentally changed in utilizing a private business to provide a public service, nor that all contracting today done with local businesses or larger companies or corporations is necessarily in conflict with the public interest and devoid of public benefit. Rather, I maintain that the continued expansion of certain types of contractual arrangements between public schools and private providers has the potential, particularly if such dramatic expansion continues, to alter the traditional American concept of the public school with regard to the aspects of interest and benefit.

One of the ways that these ‘partnerships’ have impacted the traditional concept of the public school is related to corporate sponsorship, commercialism, and the marketing of consumer goods to students. While not all such partnerships are technically contractual, most of these arrangements generally exhibit characteristics similar to non-core contracting. The Center for the Analysis of Commercialism in Education (CACE) defines ‘sponsorship’ as “corporations paying for or subsidizing school events or activities in return for the right to associate their name with the events
and activities” (Molnar & Morales, 2000, p. 40). In this way, corporate sponsorship provides private funding for certain aspects of schooling in a way that, theoretically, benefits both the companies and the schools. As Molnar & Morales (2000) explain:

Sponsorship offers a corporation the opportunity to associate its name with a good cause, to increase name recognition among important market segments, and to get its products into schools. The schools receive needed resources and develop connections with the business community. (p. 40)

Thus the intended public benefit from such an agreement would largely be indirect, as the resources obtained by the school would be distributed to the students and/or the larger community.

However, the commercialization, promotion, and brand name advertising that often accompanies sponsorship and similar types of contractual agreements for non-core services often seems to favor the private interests of companies at the expense of, or at least disregard for, the public interest that the schools are expected to promote. A well-publicized illustration this occurred in 1998, when the Coca-Cola Corporation sponsored a “Team Up with Coca-Cola” contest, in Evans, Georgia. Greenbrier High School entered the district-wide contest by sponsoring a “Coke in Education Day”, in their attempt to win the contest’s five hundred dollar prize, and possibly qualify for a national contest with a grand prize of ten thousand dollars. As Saltman (2000) details:

The contest encourages students to devise plans to distribute promotional Coke discount cards locally, Greenbrier’s “Coke in Education Day” entry involved a day of Coke rallies, speeches by Coke executives, economics classes about Coke’s marketing tactics, chemistry classes analyzing the sugar content in Coke, and the culminating activity—an aerial photograph of the students’ bodies dressed in red and white and forming the word Coke... During the photo shoot, two students removed their outer shirts to reveal Pepsi shirts. The students were sent to the principal’s office and given one-day in-school suspensions. (p. 57)
Manning (1999) provides other examples of commercialism being promoted through public-private partnerships. For instance, at one point Channel One, an in-school ‘news program’ complete with numerous commercials targeted at children or teenagers, operated in almost 40 percent of U.S. schools. Molnar and Morales (2000) report that exclusive agreements, those that limit products or services to one provider, have increased nearly 1,400 percent in the last decade, expanding into multi-million-dollar, district-wide contracts (p. 40). Other corporate promotions through school partnerships in schools include ‘giveaways’ such as book-covers or t-shirts that bear corporate logos or advertisements. Still others involve the sponsorship of lesson plans and curricular materials that promote the use of brand-name products Thus this type of non-core contracting does in some ways impact the core mission and services distributed by public schools.

As noted above, the public schools and districts involved in these types of relationships do get something of value in return for the marketing and distribution of products they permit, be it media attention, or better prices on the products that they purchase, or other goods and services. Moreover, given the extent of marketing that most public school students are already exposed to, via television, the internet, print media, etc., exposure to this type of marketing in their schools may merely seem like background noise. And, depending on the extent to which this type of practice pervades the climate/atmosphere of a particular public school or school district, it may or may not seriously detract from the school’s educational mission or other publicly important goals.
However, the extent to which private interests are pursued through these types of contractual arrangements, as well as the questionable overall public good that is served by them, does have the potential to counter-act the mission of public schools to produce publicly useful goods. As an example, contracts with soft-drink companies or foodservice providers sometimes reward schools who sell more product, and thus may encourage school policies that permit greater access to those products, including placing vending machines throughout the school and allowing students to eat or drink in class. The financial reward gained by the school in such a case must be weighed against potential ramifications for student health, classroom management, or the cleanliness of equipment and facilities. For example, the United States Department of Health and Human Services (2002) has very recently reported that an increasing percentage of children and adolescents are overweight, and that these tendencies are likely to continue into adult life, impacting both public health and corresponding government expenditures.

Many of the other examples cited above may likewise be of questionable public value, depending on the quality of the goods and services provided, the terms of the contracts, and the potential consequences from such contracting. If some of the more gratuitous types of practices described above become more pervasive, a modified paradigm of the public school as an instrument of private commercial promotion, or even as a battleground for corporate market-share, may develop. While it would not entirely change the identity of public schools as instruments of the public good and producers of public benefit, this would certainly detract from it.
As opposed to contracting for non-core services, contracting with Specialty Service Providers (SSPs), those that provide specific educational services to schools and Educational Management Organizations (EMOs), those that provide virtually all of the school’s core services, has been a more recent phenomenon. Questions about the public value of contracting for core services generally merit more consideration than those concerning non-core services, as the potential consequences of arrangements are perceived as being of greater importance for the public. That is, contracting that involve the distribution of the primary academic and social benefits of public schooling typically calls for different considerations than contracting for non-core services, such as food or sanitation services, the benefits of which are largely deemed auxiliary or peripheral to the process of schooling.

There are two chief overarching questions regarding contracting for core services as a growing phenomenon related to public schooling. First, how can public schools and school districts ensure that a private contracted entity such as an SSP or EMO will pursue goals and meet obligations that are in the public interest, rather than to merely pursue outcomes that would be in their own private interest? Essentially, this is a question about the very concept of private contracting for core services as a mechanism for furthering the public interest and distributing public benefits. While contracting for school equipment, such as textbooks or computers, and non-core services, such as transportation or food services, may be consistent with the American concept of the public school, many question whether contracting for school management and instruction is.
Moreover, questions about the effects of contracting for core services on the very concept of the American public school are related to those about described above concerning commercialism and corporate involvement in schooling. Opponents to contracting argue that its expansion will lead to the corporatization of schools, one of the primary influences on intellectual and social development, and that this will not enhance, and is quite likely to hinder, the mission of the public school as an agent of public benefit. The idea that the tasks traditionally undertaken by local public schools, institutions in which, despite their frequent complaints, most U.S. citizens feel a great deal of pride, might be turned into corporate ventures, does offend the sensibilities of some Americans. However, while contracting with for-profit management companies certainly allows the furthering of private interests, the conclusion that this will necessarily detract from the implementation of the public interest seems premature. Nevertheless, a key consideration in assessing the compatibility of contracting with the public interest is the extent to which types of contracts or contractual terms protect and promote the public interest, particularly regarding to school administration and oversight.

For example, as discussed in Chapter 3, the Walt Disney Corporation, which also owns the American Broadcasting Company, has recently entered into an agreement with the Osceola County (Florida) school district to build and manage the Celebration School, a pre-kindergarten through 12th grade school and teaching academy. The school is located in Celebration, Florida, a community itself planned and developed by the Disney Corporation. Beyond quips about a “Mickey Mouse
curriculum”, many fear that turning over public schooling to corporations such as Disney would transform public schooling into a private enterprise. They find incredulous the idea that these companies are capable of balancing their own private interests with those of the public, and believe that the public interest will inevitably take a backseat. However, the administrative structure of the Celebration school attempts to do just that. The school was formed out of a partnership between Disney, the Osceola County School District, and Stetson University, a private institution. As Ishler and Vogel (1996) explain:

The governance structure of Celebration School consists of a board of trustees, made up of representatives from the school’s three partners, that acts as an advisory panel for the Osceola County school board. A school advisory council, which includes students, parents, staff, interns, and college representatives, makes recommendations to trustees and provides advice on such matters as the budget and the school improvement plan. (n.p)

Thus, while employing a governance structure that is markedly different than that of the traditional public school, the Celebration School does utilize mechanisms to protect the public interest that do conform to the public school concept, and that other contract schools can and do as well.

The second overarching question regarding contracting for core services is whether or not private providers can more effectively and/or more efficiently provide services that will yield certain educational and social benefits. Particularly with regard to EMOs, contracting is sought, not merely because of a belief that the management company might be able to obtain marginally better results than the current school administration, but because of a perception that public schools weren’t living up to a particular aspect of their public nature. That is, they were not meeting the required
element of distributing public benefits that, as explained above, has been historically tied to the concept of the American public school. Advocates of contracting argue that it will produce a variety of benefits that will improve public schooling. For example, Hill, et al. 1997 propose that contracting will reduce constraints imposed by bureaucratic governance structures, increase innovative problem-solving, alleviate funding and resource inequalities, and improve students’ academic performance. They also claim that contractual terms and stipulations for renewal will maintain a sufficient amount of public control and accountability, and therefore protect the public interest (p. 88).

However, the actual benefits of core contracting to date are perceived by many as not as good as advertised. The apparent lack of success experienced in early contract ventures such as those involving Dorsett and BRL, described in Chapter 3, have been followed by other contracting episodes that have similarly raised questions about the benefits, either public or private, that such arrangements can generate. For example, Education Alternatives, Incorporated (EAI) demonstrated relatively little success in managing schools in Baltimore, Maryland and Hartford, Connecticut, as students test scores failed to show substantial improvement (Wallis, 1994). Though later reconfigured as the Tesseract Group, the company filed for bankruptcy in 2001 (Woodward, 2002).

More recent evaluations of and controversies over one of the largest and most prominent contracting companies, Edison Schools, Incorporated, has contributed to doubts that this type of privatization reforms can bring about a promised public
benefit. Miron and Applegate (2000) conclude that, while the results of Edison’s management of schools has been somewhat positive, they are definitely not as positive as Edison boasts. This perceived lack of performance has also hurt the company’s bottom line and the bank accounts of its investors. Shares of the company’s stock, which is traded on the NASDAQ exchange, fell from a high of thirty-eight dollars in 2001 to just over a dollar in June, 2002 (Woodward, 2002). Furthermore, the company recently endured an unfavorable investigation by the Securities and Exchange Commission, which found various accounting-related problems. These developments have impacted Edison’s ability to deliver promised benefits in its recently-acquired partnership with the state of Pennsylvania in managing the public schools of Philadelphia. Tyre and Kantrowitz (2002) report that, when Edison’s stock plummeted, and Edison’s contracts in Boston and Dallas were cancelled, the company recalled a considerable amount of equipment that was intended to be used in the Philadelphia schools they are to manage (pp. 61-62). Given all of the reservations and difficulties described above, general public acceptance of privately managed schools as fully ‘public’ in terms of benefit appears very much in doubt.

Charter schools.

Hoxby (2000) asserts that the choice theory, introduced above, on which charter schools operate assumes that school choice will improve schools, and thus produce desired benefits, through two mechanisms: competition and sorting (cited in Miron & Nelson, 2002, p. 5). First, since educational funding, which is a fixed sum per student, follows students to the charter schools they choose, students that fail to
provide a quality education will not attract enough students to remain operational. As Miron and Nelson (2002) explain, “Thus, the charter concept postulates that, other things [being] equal, competition for students will raise the quality of charter schools and that schools failing to compete on quality will be forced to close” (p. 5). Second, since different charter schools will offer different educational approaches and services, parental choice will produce schools with a relatively narrow range of educational preferences, contrary to the diversified options offered by traditional public schools. As they appeal to a particular market niche, charter schools will reduce conflicts among stakeholders, leaving more time and energy for the development and improvement of educational programs.

While choice theory will be discussed further as it relates to both current voucher programs and proposed universal choice systems below, this seems to be an appropriate moment to point out a paradox, or at least a tension, in this theory. The first mechanism of choice theory is aimed at producing both private benefits for students and parents, as well as public benefits for society, by utilizing the private interests of parents and families. As parents attempt to procure the best school for their child, higher quality schools will thrive and lower quality schools will fail, thereby raising the overall quality of schooling and the benefits it distributes to society. Thus, choice theory holds that charter schools will distribute these benefits, not only through the students enrolled in public charter schools, but also through those attending traditional public schools as well.
Meanwhile, the second mechanism of choice theory seeks to foster the differentiation of school missions and foci, with the derivative benefit of reducing political and bureaucratic barriers to school efficiency and effectiveness. Like the competition mechanism, the sorting mechanism seeks to create or enhance both public and private goods by utilizing private interest to increase schooling quality, thereby furthering the public interest. However, a great deal of differentiation in approaches and services would seem, in and of itself, to make raising the quality of schooling within a given society difficult. The reduction in political debate and bureaucratic barriers would certainly seem to make schooling more efficient in the sense of facilitating decision-making, but not necessarily more effective in the sense of increasing quality. That is, of course, unless one would define school effectiveness and quality as the extent to which schools cater to and satisfy the desires of individual families, which would render these terms meaningless for purposes of our discussion. Thus, if the outcomes of school choice are intended to actually bring about intended benefits, choice theory would seem to require some balance between institutional differentiation and qualitative standardization. As currently operated, charter schools seek to accomplish this by combining the mechanisms of choice theory, through varying degrees of deregulation, with non-traditional mechanisms of regulation and accountability.

Criticisms of charter schools are made on similar grounds to those made against core contracting with educational management organizations. First of all, despite the fact that charter schools are most commonly categorized as public schools,
charter opponents argue that, because of their more private control structure, they would most likely promote private interests over public ones. However, it is important to note that the private entities to which the charter, and therefore the school’s administration and management, are granted, vary considerably. The private entity can be a group of parents, a group of educators, a community group, a non-profit philanthropic organization, or a for-profit company or corporation, such as an EMO. While concerns about EMOs have been detailed above, Miron and Nelson (2002) calculate that only between 20 and 25 percent of all charter schools nationwide are operated by EMOs (p. 7). Thus, while EMO control of charter schools constitutes a substantial portion of this category, and can be the predominant paradigm in some states or markets, it would be inaccurate to view all charter schools, and their potential to be used largely for private gain, in the same light as those run by for-profit companies. While not public officials or employees, many private entities that operate not-for-profit charters, such as citizen or parent groups, may to a large extent be motivated by a public interest in improving the schooling of the community’s children. Thus the potential conflict between the private interest of the chartered entity and the public interest in distributing certain public benefits through schooling may not be as great as in cases involving for-profit EMOs.

An important related point regarding the compatibility of charter schools with the public interest involves the degree of accountability to which they are held by different governmental agencies. The very concept of the charter school assumes that contemporary public control and oversight structure is insufficient to bring about
needed benefits, and overabundance of bureaucratic burdens and a lack of accountability for results are two of the most frequently cited causes. However, Nelson et al. (2000) explain that states differ considerably in their accountability mechanisms for charter schools, from a “centralized” state agency approach to a “market-driven” approach to a “district-based” approach (p. 3). Furthermore, just as the level of government at which this control and oversight is exercised varies from state to state, so does the degree of public control and oversight exerted by public officials. Thus, while the charter mechanism is intended to ensure that the public interest is protected and furthered, there seems to be a lack of consensus regarding the amount of regulatory flexibility that charter schools require in order to both protect the public interest and to produce intended benefits. Certainly the managers of charter schools would seek to satisfy the students and families that they serve, as well as the charter terms required for renewal by its sponsors. As Miron and Nelson (2002) point out, the most frequently cited final outcomes for which charter schools are to be held accountable are student achievement and customer satisfaction (p. 7). However, this variance in accountability mechanisms and standards influences the extent to which the charter school will be most likely to act so as to further both private interests, either their own or that of their students, and public interests, either those of the state, or the local community, or society at large.

Secondly, there is an important question as to whether or not charter schools will produce both public and private benefits to any greater extent than traditional public schools. The passage of charter school legislation implies that this outcome is
not only desirable but possible. Overwhelmingly, the benefits that are emphasized by virtually all choice proposals are educational benefits, namely academic achievement. As explained above, charter proponents contend that charter schools will improve academic achievement in both charter and traditional public schools, and perhaps with reduced government expenditures on schooling. Charter opponents, or defenders of conventional public schools, contend that, not only are public schools improving their performance, but that any perceived advantage of charter schooling, or any choice plan involving non-conventional public schools, actually results from selection factors. In the case of charter schools, opponents argue that charter schools will “skim the cream”, alternatively referred to as “skimming” or “creaming”, from public schools, enrolling the most-talented, most-motivated, highest-achieving, and otherwise most-advantaged students (e.g., parental factors, socioeconomic status, etc.).

However, while total charter enrollments in the United States now exceed half a million students, and while data concerning charter schools is being accumulated, Gill et al. (2001) emphasize, “We are aware of no one who has attempted to conduct a controlled experiment to measure charter-school outcomes,” and thus “the research literature on the achievement effects of charter schools is sparse” (p. 91). Nevertheless, they cite a study of Michigan charter schools by Bettinger (1999) which found that new startup charter schools may not improve academic results, and a study of Texas charter schools by Gronberg and Jansen (2001), which found that charter schools that had been in operation longer produced improved results (Gill et al., 2001, pp. 91-97). However, they note that, “Despite some promising evidence on
achievement scores, there is as yet no evidence on the long-term academic effects of charter schools” (p. 97). Thus they conclude, “In sum, evidence on the academic effectiveness of charter schools is mixed” (p. 95).

Publicly funded voucher programs.

Like charter schools, current publicly-funded voucher programs voucher programs are in part founded on choice theory, particularly in the belief that both competition and sorting will produce greater public and private benefits from both public and private schooling. Similar to charter school programs, public voucher programs involving private schools imply that some, or perhaps most, of the public schools in the program area are much less capable of distributing certain benefits than private schools. Furthermore, consistent with the choice theory on which they are based, these programs assume that the direct pursuit of private interests by parents and students will not only benefit them, but also indirectly, provide a public benefit in promoting a better-educated populace. These benefits will be distributed both through private schools, which are generally assumed to be of higher quality than the public schools that students would leave, and, via competition, through public schools that would gradually improve in quality. Such programs seem to invert the concepts of the public and private in relation to benefit, at least in the short term and within the locality in which the voucher program is implemented. The public interest in distributing public benefit in this context is seen as best pursued through the vehicle of private, rather than public schools, with the former used as a catalyst for improving the latter in this regard.
However, the elements of choice theory and the urging of free-market voucher advocates notwithstanding, it should be noted that each of the operational publicly-funded voucher programs are aimed at a relatively narrow segment of the public, and therefore are likely to produce a relatively narrow, though not insignificant, public good. Both the Milwaukee and Cleveland plans, are limited to students from low-income families, while Florida’s McKay Scholarship Plan serves students with disabilities. Although Florida’s ‘A+’ program does theoretically apply to all of the schools in the state, it can only be utilized by students attending schools that are deemed to be performing very poorly. Moreover, while these programs attempt to provide private benefits to children and families who could most likely not otherwise afford higher-quality schooling, they also undoubtedly benefit the participating private schools financially, since, due to the additional financial costs incurred, many voucher students would otherwise attend public schools.

Like contracting and charter schools, a major question to consider with regard to the interest-benefit relationship is to what extent the interests that are forwarded by private schools funded by voucher programs are compatible with the pursuit of the public interest. While this argument is in part concerned with the effects that private, for-profit schools, though there are currently few in operation, could potentially have on education in the United States, more concern is voiced about the narrow ideological interests that private schools supposedly attempt to forward. Therefore, critics contend, private schools that receive vouchers do not, or would not, produce the proper attitudes and dispositions for life in a pluralistic, democratic society.
For example, while admitting that “it is not clear that many of the public benefits of schooling can be measured for purposes of public accountability,” Levin (1989, p. 225) nonetheless expresses doubts that private schools could present these same, though seemingly immeasurable, public benefits as public schools. Without stating how we can be sure that public schools are in fact producing these benefits, or that private schools are in fact not, Levin states the following:

Research on political socialization has shown that tolerance for diversity is related to the degree to which different children are exposed to different viewpoints on controversial subjects in both the home and the school . . . It would seem unrealistic to expect that Catholic schools will expose their students to both sides of the abortion issue; that evangelical schools will provide a disinterested comparison of creation and evolution; that military academies would debate disarmament; that leftist schools would provide a balanced presentation of the capitalist system; or that white academies would explore different views toward race in the US. Their curriculum and faculty would be selected to make them efficient competitors in a differentiated market for students in which the view of parents would be reinforced and others excluded or derided. (p. 226)

Similarly, Guttman (1987) has argued that vouchers “short-circuit democratic deliberation and undervalue the community’s public interest in promoting citizenship”, and thus will give parents excessive influence over their children’s education (cited in Gill et al., 2001, pp. 189-190). Thus, voucher opponents argue that the ability of private schools, and voucher programs that include them, to provide important social benefits, most importantly political socialization and tolerance, is extremely limited.

While there is not a great deal of empirical evidence on this matter, especially regarding a variety of different private schools, a few studies have examined this aspect of Catholic schooling, which still accounts for about half of all private
schooling nationwide. For example, Andrew Greeley and Peter Rossi (1966) contended that attending Catholic schools promoted even greater tolerance in Catholic youth than attendance in non-Catholic schools (cited in Salomone, 2000, p. 254). More recently, Hill and Celio (2000) have explained that Catholic schools in New York did not hold their graduates apart from the mainstream of American society. They state, “Catholic schools were meant to help immigrants remain Catholic yet be fully American and succeed in the context of New York City and America” (p. 255). Furthermore, Bryk, Lee, and Holland (1993) find nothing divisive about contemporary Catholic schools’ educational philosophy, and, quite to the contrary, provide and education for democratic life that embodies the ideal of the ‘common school’ (p. 341).

However, many voucher opponents are especially concerned about the type of socialization fostered by evangelical or fundamentalist Christian schools, which have increased significantly in recent years. Peshkin (1986) has suggested that the orthodoxy promoted by fundamentalist Christian schools’ brand of values inculcation does not seem compatible with fostering democratic attributes (cited in Gill et al., 2001, p. 191). Moreover, Campbell (2001) found that, while students in Catholic schools performed more community service, had better civic skills, and more political knowledge than their public school counterparts, students in non-Catholic religious schools exhibited somewhat less political tolerance than students in public schools (cited in Gill et al., 2001, p. 196).

The second question with regard to current voucher programs, again like contracting and charters, is the extent to which voucher programs, and particularly the
private schools that participate in those programs, are able to generate greater benefits than conventional public schools. By far the most common and most prominent output cited when comparing public and private schools, including those involved in voucher programs, is academic achievement. While a broad measure of academic achievement could include educational attainment, acquisition of knowledge and cognitive skills, development of problem solving skills, and creativity, the typical criteria for analyses of academic achievement are basic skills as measured by standardized test scores.

The justification for voucher programs comes from a belief, bolstered by some empirical evidence, that private schools are superior to public schools when it comes to promoting academic achievement. For example, Coleman, Hoffer, and Kilgore (1982) found that private schools do produce better cognitive outcomes than public schools, though they note that unmeasured parental background factors may account for at least some of this difference (pp. 179-180). Furthermore, they found that “achievement differences between students from advantaged backgrounds and those from disadvantaged backgrounds are considerably less in Catholic schools than in public schools,” which, interestingly, performed very similarly to non-Catholic private schools when it came to equality of achievement (pp. 194-195). More recently, when examining the achievement of students who applied to a privately funded voucher program, Peterson (1998) found that students who had been selected (via random lottery) for the program outperformed those not selected in math and reading after the first year (cited in Salomone, 2000, p. 249). Additional evidence from studies of privately-funded voucher programs (e.g., Greene, 2000; Howell et al., 2000; Myers et
al., 2000) indicates that some private schools, more specifically Catholic schools, have been able to improve academic achievement among African-American children (cited in Gill et al., 2001, p. 79).

Nevertheless, many researchers note the problem of selection bias when analyzing achievement gains in private school students, including those who use publicly-funded vouchers. They question whether the differences or gains by voucher students would be significant once factors such as prior academic achievement, student motivation, and family background and income were accounted for in the data’s analysis. John F. Witte (1996), whose research team was hired to evaluate Milwaukee’s school choice program, reported that students in the program appear to do no better than a randomly selected control group from Milwaukee Public Schools once external sources of achievement are factored out (p. 135). A report issued by the Carnegie Foundation for the Advancement of Teaching (1992) similarly concludes that “standardized test data fail to demonstrate that students who transfer from public schools are doing any better at private schools” (p. 70).

However, other researchers have argued that the Milwaukee voucher program has enhanced academic achievement for participating students. Greene, Peterson, and Du (1996) argue that Witte’s evaluations of the Milwaukee program’s effectiveness are based on only the first two years of its existence, maintaining instead that the experiment’s treatment had not had enough time to take effect (p. 17). Regarding the effectiveness of the private schools in the choice program to promote academic achievement, Greene’s team asserts:
Although the certainty with which conclusions may be drawn is restricted by certain data limitations, results based upon the highest quality information contained within the data set indicate that attendance at a choice school for three or more years enhances academic performance, as measured by standardized math and reading test scores. (Executive Summary, p. 3)

Greene, Peterson, and Du therefore conclude:

The results are quite consistent with a common sense understanding of the educational process. Choice schools are not magic bullets that transform children overnight. It takes time to adjust to a new teaching and learning environment. The disruption of switching schools and adjusting to new routines and expectations may hinder improvement in test scores in the first year or two of being in a choice school. Educational benefits accumulate and multiply with the passage of time. One can hardly be surprised that their impact is felt only with the passage of time. (p. 14)

Even more recently, Rouse (1998) has found that, while voucher students in Milwaukee did not perform better in reading, they did gradually perform increasingly better in math (cited in Gill et al., 2001, p. 83).

There have been other evaluations of this and other voucher programs, the results of which are certainly debatable. In addition to disagreements over which factors should be included in statistical analysis, many studies site the problems presented in evaluating program data, for instance in accounting for student attrition from voucher programs, and in generalizing results among voucher programs and over time, especially as these program change. To this point, Gill et al. (2001) conclude that no existing evidence permits reliable conclusions to be drawn regarding the effectiveness of the Cleveland voucher program (p. 85). They further state that there have been no studies conducted that could measure the effects of vouchers on the public schools within the voucher program areas, thereby preventing any evaluation of the promised systemic effects of vouchers on the overall improvement on schooling in
a particular area (p. 105). They also correctly point out that interpretations of positive effects of Florida’s ‘A+’ program must be tempered by the realization that this program is not merely a voucher program, but also has a high-stakes accountability element, which makes conclusions about the effects of the choice element in such a program extremely tenuous (p. 108). Furthermore, any substantial evidence that the accountability mechanisms of the ‘A-plus’ plan has improved student achievement, and thus made progress in distributing educational and social benefits, has largely materialized without the actual use of the vouchers to send public school students to private schools. Given all of this, it seems clear that no consensus opinion regarding the overall good that has come from current publicly-funded voucher programs involving private schools has been reached.

*Market or expanded choice system.*

A universal choice system would be the unbridled, or almost unbridled, embodiment of choice theory. For example, Milton Friedman (1962/1982) envisions a system in which government requires a minimum level of schooling and would ensure that minimum standards, for instance with regard to curriculum or content, were met. Parents would be given publicly-funded vouchers worth a specified sum per child, but which could be supplemented by parents. These vouchers could be used on approved educational services, such as schooling, provided by public or private institutions. Friedman and others who subscribe to a market system of education see the benefits of schooling as being primarily private in nature, and thus the state as having much less of an interest of education than the current system assumes and operates on. Instead,
parents would, via market mechanisms, gain much greater control over their child’s
education, which would be administered by institutions which satisfied their
educational wants. Friedman (1962/1982) states:

If present public expenditures on schooling were made available to
parents regardless of where they send their children, a wide variety of schools
would spring up to meet the demand. Parents could express their views about
schools directly, by withdrawing their children from one school and sending
them to another, to a much greater extent than is now possible. (p. 91)

In some contrast to Friedman’s proposal, Chubb and Moe (1990) do not
advocate a voucher system, but rather a broader “choice” system with no
predetermined formula:

Whether private schools are included is simply a matter of policy—they need
not be. Similarly, choice systems can be designed differently depending on
how reformers want to deal with the issues of racial integration, religion,
funding equalization, the educationally disadvantaged, and whatever other
special concerns they may have. (p. 218)

With regard to the potential for a choice system to improve the quality of U. S.
schooling, they conclude:

Without being too literal about it, we think reformers would do well to
entertain the notion that choice is a panacea . . . Choice is a self-contained
reform with its own rationale and justification. It has the capacity all by itself
to bring about the kind of transformation that, for years, reformers have been
seeking to engineer in myriad other ways . . . Taken seriously, choice is not a
system-preserving reform. It is a revolutionary reform that introduces a new
system of public education (italics in original). (p. 217)

Chubb and Moe (1990) cite the success of the choice reforms in New York
City’s District 4, in East Harlem, described in chapter 4, as evidence that expanding
choice will provide more substantial benefits than the current system. Regarding
academic achievement in East Harlem schools, the authors explain:
While only 15.9 percent of the district’s students were reading at or above grade level in 1973, 62.6 percent were doing so by 1987. Its scores now put it around the middle for New York City school districts, rather than at the bottom—quite remarkable, given how heavily the sociological odds are stacked against it. (p. 214)

Despite the fact that these unconventional decentralized reforms were brought about through the conventional public school control structure, Chubb and Moe argue that market-based reforms would encourage similar innovations in many districts and bring about similar positive results (p. 215).

Before I begin my analysis of how a market system of schooling might change out present concepts of public and private schools with regard to the benefit element, a brief preface is in order. It must be noted that the implementation of such system is theoretical and, for reasons that will become clearer in the analysis below, difficult to extrapolate from current educational system and institutions in the United States. Thus, much of the following analysis will be, to varying degrees, conjecture. In fact, no one is entirely sure what such a system, if implemented, would look like, and we are even less sure of the benefit or harm that it would produce. However, some aspects of such a system do seem fairly clear, particularly regarding the priority that it would give to various public and private interests, and thus my treatment of this theoretical arrangement will use this as a foundation for discussion.

For example, such a system would, to a much greater extent than the present one, rely on the satisfaction of private parental interests, as parents would be given considerably more freedom to choose the schools that their children attend than they presently have. Given both this factor, and the stipulation by market advocates that
government regulation of schooling would decrease in such a system, it seems clear that the public interests directly forwarded through schooling would decline. This would to some extent include state interests, but probably to a greater extent the societal or community interests that had formerly been forwarded through local school boards. In turn, the interests of incumbents within the current system of public education, both as stewards of the public interest, and as office-holders or employees attempting to further their own interests, would also likely be reduced. Instead, incumbent interests would be concentrated at the level of the school, as institutions, be they public or private, would both compete against one another for students and funding, and attempt to differentiate themselves to fill particular market niches.

In addition to these assumptions, if private schools were included in such a system, and most market advocates include, or at least do not exclude, this possibility, this would indicate an assumption, similar to that underlying present voucher programs, that private schools can and would provide certain benefits more effectively than conventional public schools. However, because of the inherent differences of this new market system, there is a real possibility that it would affect the distribution of some of the benefits that private schools are supposedly superior in fostering. Even Lieberman (1993), who predicts the demise of public schooling as we know it, admits, “The consequences of private schooling on a small scale might be very different from the consequences on a small one” (p. 153).

Benefit distribution from private schools would very likely result from a change in the make-up of the private school sector in the United States that would be
catalyzed by the creation of the new choice system. Milton Friedman himself acknowledged this possibility in *Capitalism and Freedom* (1962/1982):

> Here, as in other fields, competitive enterprise is likely to be far more efficient in meeting consumer demand than either nationalized enterprises or enterprises run by other purposes. The final result may therefore be that parochial schools would decline rather than grow in importance. (p. 91)

However, the new emphasis on efficiency, and on running schools like businesses, might not create a duplication of the very success that choice advocates seek. While presenting evidence that Catholic schools provide advantages, academic and otherwise, for many students, including those from disadvantaged backgrounds, Bryk, Lee, and Holland (1993) warn:

> It would . . . be inappropriate to assume that a new system of education, just because it was market-driven, would produce effects similar to those described here for Catholic schools. Popular arguments for a system of market controls in education commonly employ a microeconomic explanation that bears little relation to the ideas about schools-as-communities that we have discussed. Under this microeconomic view, teachers’ entrepreneurial motives would make schools into more efficient service providers. This conception of teacher thinking and behavior is quite antithetical, however, to the social foundations of a communal school organization. Although individual entrepreneurship may fuel economic development, it rings less true as a basic motivation for processes of human betterment. There is no evidence that such motives currently play a role in motivating teachers in Catholic schools. More generally, it is difficult to envision how unleashing self-interest becomes a compelling force toward human caring. (p. 311)

Thus, Bryk, Lee, and Holland conclude: “Extant research indicates differences among private schools in both their internal organization and their outcomes. These findings raise doubts about any blanket claim that a move toward greater privatization will ensure better consequences for students” (p. 312).
Similarly, Henig (1994) asserts that Chubb and Moe’s assumption that newly created, private schools, many of which would likely be for-profit institutions, will reproduce the effects of conventional private schools, especially Catholic schools, is erroneous:

Coleman attributes high performance of Catholic schools to their character as a “functional community,” in which social norms are broadly shared and consistently reinforced among students, parents, teachers, and school authorities. Such functional communities may depend on a certain degree of family choice in order to survive, but that is not the same thing as suggesting that simply expanding choice will allow them to replicate themselves and flourish. Coleman and Hoffer worry, in fact, that the market forces associated with market-based choice reforms, such as vouchers, could unleash individualistic impulses that would undermine and erode value-based communities.

Chubb and Moe, for their part, disregard the distinction between religious and nonreligious private schools. Their emphasis is on institutions, not values. They anchor their explanation in the generic market forces that presumably weed out, through competitive pressures, schools that fail to provide the requisite autonomy . . . By framing the advantages of private schools in terms of institutional differences, they open up the possibility that those advantages can be made universal through institutional reform. (pp. 127-128)

The distinct possibility that the private schools in a market or universal choice system would not be able to produce the academic benefits touted by advocates puts in doubt the hypothesis that a privatized system would provide greater overall benefit than the current one. This is because the academic benefits of private schooling, such as those derived from teaching basic skills or in promoting exceptional talents are the very benefits that, though certainly having private value, also contribute to the overall public good. Thus, over time, this new system very well may change the way we think of private schools with regard to the public benefits they distribute.
If the ability of private schools to forward publicly useful goods in an expanded choice system were diminished, private schools in such a system would seemingly continue to supply goods that would predominantly be private in nature. Moreover, as the number and percentage of private schools in the United States increased, this would very likely change, not only the relationship between public and private schools, but the ability of schooling in general to bring about certain public benefits. More specifically, many have speculated that the growth of private schooling in such a system would present a danger to the formation of a common culture and a democratic citizenry. For example, Levin (1989) has asserted:

. . . [T]he notion that educational experiences supporting public goals can be glued on to a core of activities on behalf of private ones is particularly naïve in a situation where the composition of students and the nature of their participation in the educational process are important determinants of educational outcomes. Even more ominous is the likelihood that the whole notion of a competitive market of private schools will necessarily undermine the public goals of creating a society based upon the common literacy, knowledge, and values required for democratic functioning. Such a view requires schools with common features drawing students from a reasonable cross-section of different social, racial, and political backgrounds. But the very appeal of private schools will be to provide the narrower values, philosophies, and orientations that are considered important by families in their private domains. That is, schools will seek to succeed in particular market niches by specializing in those areas will attract a particular clientele with similar values and viewpoints. Product differentiation is a natural market response to a non-homogenous clientele. Thus, the very nature of the private school market will tend to undermine the commonalities that spokesmen like Milton Friedman view as necessary for the stable and democratic society. (pp. 216-217)

Levin’s prediction may characterize both conventional public and private schools in stereotypical ways that do not capture the social dynamics involved with either type of schooling. For instance, it is certainly true that, as explained in Chapter
4, there are a number of public school districts in this country that do not, to a great extent, draw students from a diverse cross-section of social, racial, and political backgrounds. Given the tradition of local control of schooling, these schools are therefore not much more likely than many private schools, based on Levin’s premise, to broaden their students’ horizons or promote larger social cohesion.

In addition, it is not entirely clear that parents would necessarily choose schools merely because they promoted or reflected their philosophical or religious beliefs. Lieberman (1993) points out that about 12 percent of the students in Catholic schools, which still constitute about half of all private schools, are not Catholics (p. 154). Their parents either do not fear the education provided concerning the Catholic faith as terribly harmful to their children, or they believe that the secular benefits provided by the school outweigh the cost of religious instruction, or perhaps both. As pointed out in Chapter 1, much of the curriculum in conventional private schools, sectarian or otherwise, is similar to that offered in public schools, and a number of the schools’ ‘religious’ projects merely involve service-oriented activities that public schools similarly offer.

It also seems apparent that, at least with regard to some private sectarian schools, the inculcation of religious and/or moral values does in some ways contribute to the societal stability that Levin seeks (see Lieberman, 1993, pp. 153-155). Many religious traditions stress tolerance and patriotism, which are among the common values promoted by conventional public schools. Similarly, some private schools, even sectarian ones, invite students to examine a variety of ideas or values in fostering
values formation or clarification. Thus, it seems that some private schools participating in a choice program would continue to promote attitudes and values that, while important for group identity, would also promote the perpetuation of a common culture.

Furthermore, Levin’s admonition seems to overlook the fact that children are socialized by a number of agents from outside the school they attend, and that these agents would continue to influence students’ attitudes and values in a market system. Given the diversity of many U.S. metropolitan areas, the curiosity that many students have about new and different people and ideas, and the abundance of mass media and its importance in the transmission of culture, it seems unlikely that a choice system would do irreparable harm to our social fabric. Nevertheless, if, according to the choice theory on which it would be based, an expanded choice system would cater to a more homogeneous clientele than today’s public schools, such a system would quite likely not promote the same types of commonalities that public schools have traditionally sought. Therefore, from a systemic perspective, not only would private schools be educating a much greater percentage of American children, but the intended public benefits that come from schooling would likely diminish to some extent.

And it is this systemic perspective that is important when attempting to ascertain what a more market-based system would do to our concepts of public and private schooling with regard to benefit. Most choice proposals seek, not merely to promote access to conventional private schools via public funding, but to change the
way conventional public schools operate, largely by putting them in competition with both private schools and other public schools. Such a system would not only change the way private schools operate, but public schools as well, especially in making customer satisfaction on the part of parents and students, a primary, if not the primary, goal of schooling. As Miron and Nelson (2002) explain:

Some *laissez faire* market conservatives view customer satisfaction as the paramount aim of public programs and agencies. Advocates of this position hold that a policy decision or outcome is good only if its customers think it is good and continue to “vote with their feet” for the service. Proponents of this position also maintain that it is the customers—parents, guardians—and not public officials who are best suited to know what is good for children” (p. 9).

Henig (1994) has criticized this philosophy, which underlies school-choice proposals, as not merely neglecting the importance of, but abandoning any notion of, the public interest:

The reformers who originally helped build the nation’s public-school system were animated by a belief in an objective and unifying public interest, and by the notion that public schools would play a critical role in dispelling the ignorance and parochial loyalties that kept the masses from understanding what were their true interests. The emergence of pluralism as the dominant intellectual force in political theory challenged the legitimacy of the very concept of a public interest, arguing that claims to act in the public interest usually mask the baser realities of political life in which self-interested actors seek to better their position at the expense of others. And the influence of public-choice theory, with the consequent infiltration of economics concepts and terminology into public-policy discourse, carried this challenge even further. Rather than standing outside the game of competing self-interests, public-choice theory suggests that government should be regarded as just another player, albeit one with special advantages. The only legitimate test of governmental performance is satisfaction of the private desires of citizens qua consumers. (p. 95)

A market-based system would thus clearly be different in the emphasis that it would place on directly satisfying the interests of consumers, rather than those of
society as a whole. Thus even schools that were still *public* in the sense of being run by local school boards or government agencies would no longer be as *public* in the sense of the priorities of the public interest and the goal of producing public benefits. However, it does not follow that the actual overall benefit of schooling, both public and private, would be augmented. As one example, some parents may prize obtaining a high school diploma, as an important social credential, rather than the educational development, knowledge, and skills that are assumed to accompany it. In a market system, it’s entirely possible that schools would be created merely to cater to these individuals, thus decreasing the quality of education in society. While this type of problem certainly exists in the present system as well, neither conventional public or private schools are as susceptible to parental pressure of this sort. As a second example, it seems unlikely that public schools in rural settings throughout the United States would benefit from the same type of competition that choice advocates envision. Given the relative costs of building schools and transportation in such locales, any competition for students would likely be short-lived and result in a monopoly, which choice advocates want to avoid. (A possible exception to this would be internet-based instruction, to which many rural communities currently have very limited access.) Thus the benefits that would accrue to rural students and communities if such a system were implemented would quite likely be negligible.

As a result of some of these concerns, some choice advocates, though not market purists, favor placing restrictions or safeguards on such an expanded system, so that the public interest could, to a greater extent, be protected and so that the
distribution of certain benefits with public value could be ensured. For example, Chubb and Moe (1990) advocate a state-provided Parent Information Center, located inside each district Choice Office, to assist parents and students in choosing among schools (p. 221). Moreover, Sugarman (1991) has discussed the importance of guaranteed student access, parent outreach and information programs, and consumer protections (cited in Salomone, 2000, p. 255). Salomone (2000) has suggested health, safety, and enrollment standards, as well as performance-based academic standards which could be monitored in public and private schools via standardized tests, the results of which would be made public (pp. 260-261). She also proposes that the state could require schools participating in the choice program to follow certain curricular standards in history and civic education, though the schools would retain a good deal of control over much of the instructional program (p. 261). In this way the interests of the state and the parents would be incorporated to create system of schools that act as functional communities, share a sense of sense of purpose, and promote the academic success of students (p. 264).

One final observation is in order regarding the institution of a market system of education and its effects on the element of benefit with regard to the concepts of public and private schooling. Recently, there have been considerable efforts, largely through state-instituted standardized tests, to ensure that all school children can demonstrate a certain level of knowledge and skills. Regardless of the merits of these assessments, they can certainly be seen as an attempt to ensure that certain benefits which have public value are in fact being distributed through schooling. Moreover, the
newly passed No Child Left Behind Act attempts to extend these efforts to the national level, though the standards and testing authorized by the legislation will be determined by individual states. However, this trend seems to conflict with the escalation of school privatization practices, as described throughout this dissertation. A common feature of privatization proposals is a decentralization of decision-making and a devolution of power from public agencies. In applying choice theory and market philosophy to schooling, charter schools and voucher schools are supposed to appeal to the individual needs and desires of parents and students, and thus provide greater educational diversity. Yet, it seems counterintuitive that the creation of schools which cater to a narrower range of parental and student preferences with regard to academic programs, instructional philosophies, etc. will be able to produce a more standardized level of benefits. Thus, while only theoretical, any expanded choice system, as it seeks to utilize private interests to produce benefits deemed largely to be private, would seemingly clash with the requirements of the accountability and testing movements to protect the public interest and ensure certain public benefits.
CHAPTER 6
CONCLUSION

Now that this exhausting, though not exhaustive, analysis of the development of the concepts of the ‘public school’ and ‘private school’ has been completed, some reflection on this undertaking is in order. First, I will comment on the scholarly value of this study to the field of the foundations of education, both with regard to historical and conventional issues. Second, I will expound on the potential value of this study for educational policy discussions, particularly those regarding the particular types of reforms analyzed in this study.

From the perspective of scholarship in the foundations of education, this analysis has provided a useful framework for examining the historical development of the concepts of the ‘public school’ and the ‘private school’. A number of scholars, have discussed the historical development of public schools, illuminating some of the ways that they came to be differentiated from private schools. Other scholars have focused in depth on a particular aspect of the public school identity, such as government control and support, or student access, largely through discussions of legislation and court rulings.

However, in building on this scholarship, the value of this study is that it focuses on the development of these institutional identities with regard to a variety of
distinct aspects, incorporating both a historical and a legal perspective in its analysis. The historical and legal record cited throughout this dissertation does provide substantial evidence that each of the facets described has indeed been integral to the development of these conceptual classes of institutions. Based on this evidence, I have sought to create a complex lens, or set of lenses, through which to view public and private schools as distinct types of institutions. I have pursued, and believe that I have achieved, a good deal of descriptive accuracy, rather than fanciful mythology, about the development of both types of institutions. Thus, as a scholarly endeavor, my treatment has included a substantial exposition as to how the evolution of these concepts has occurred, thus providing valuable historical insights regarding the factors that have contribute to their conceptual formation and transition. I believe that this has resulted in a more thorough analysis than an examination of only one or two of them would yield.

Moreover, while I have attempted to isolate each set of facets in order to clarify particular characteristics or issues, my treatment throughout this dissertation suggests that these sets of facets, while fairly distinct, are nevertheless interrelated. For example, the public school’s identity as a publicly controlled and supported institution has come to necessitate certain characteristics regarding access, as required by judicial interpretation of constitutional protections. Likewise, the requirement that public schools produce or promote certain types of public benefits, for instance common knowledge and values, is related to the public school’s development as a nonsectarian institution, gradual though this was. Thus, I do not think that my treatment here has
oversimplified the identity of either public or private schools, but rather, hopefully, contributed to a richer understanding of the development of these concepts and the institutions to which they correspond.

As detailed in the previous chapters, this examination has detailed how public schools have generally developed as non-sectarian institutions, controlled and supported through government mechanisms, that are opened to all students in a given area, and are expected to provide certain public benefits. Conversely, private schools have developed as selective, and often sectarian, institutions, largely controlled and supported by private individuals and groups, whose operation are primarily intended to benefit specific groups of individuals. Moreover, I have demonstrated how each type of institution has become more public or private with regard to some facet of its identity in recent years. For example, as nonsectarian institutions, public schools have moved away from required school prayer or religious favoritism in the past half-century, and thus have become more public in this sense. On the other hand, private schools, which were gradually disinherited from public support, making them more private with regard to public support, have more recently, due to Supreme Court decisions, been deemed permissible recipients of increasing types of state aid, returning some of their public nature with regard to this aspect.

However, in detailing the limits of the public-private distinction today, this dissertation has pointed out how certain conceptual conflicts or contradictions have developed, both within each class, but also with regard to a particular facet of the public or private concept. An example of the former would be the development of the
public school as a largely locally controlled entity, via district school boards, which at times seems to conflict with the perception that schools should provide some larger public benefit, for instance to the state, as dictated by the National Defense Education Act, or even the No Child Left Behind Act. An example of the latter, in which there is an apparent contradiction, would be the concept of the public school as part of an open system of education, that is open to all of the children within a ‘community’ or district, but largely closed to children from outside the district. This has in turn created the image of many public schools as open in the sense of permitting access to all of the children within a district, but closed in the sense of promoting substantive social integration, on both a racial and a socioeconomic basis.

Furthermore, I have applied the framework that I have constructed in this dissertation in analyzing current educational reform trends, initiatives, and proposals, and the extent to which, they may be changing our conventional concepts of public and private schools. This aspect of my analysis was one of the most difficult, as it required fairly substantial knowledge of current educational reforms, the information and data for which, during this supposed moment of flux, often seems vague or contradictory, and assessments of which are necessarily quite tentative. Similarly difficult was attempting to extrapolate how these types of reforms or other proposals would alter the institutional identity of public and private schools. Nevertheless, my treatment of these reforms and proposals, including tax subsidies, vouchers for private schools, charter schools, contracting, and a potential market system of schooling, has
provided a number of valuable insights into how they are changing, or could potentially change, our current concepts of public and private schools.

Of course, any discussion of educational reform necessarily involves a discussion of policy, and this relates to the second major way in which I believe this dissertation will be useful. Most policy discussions today concern, and express concern about, public schools, both their place in society today, and their place in the future as institutions. Even broader discussion of ‘public education’ largely center on how public schools can, will, and should be changed as a primary component of and vehicle for educational change. But just how this change will take place, and what shape it will take, is as yet unclear. Nevertheless, these are questions to which I believe this dissertation, while not urging a specific avenue or vehicle, has provided some clarification which may be useful in determining the direction of further debate and action.

Change in public schools as institutions is inevitable, as the historical record presented above demonstrates. Many observers have expressed the belief that further change will gradually emerge out of changing social conditions and attitudes in order to meet evolving social needs. For example, in The Public and Its Problems, John Dewey (1927/1954) states:

There is no sanctity in universal suffrage, frequent elections, majority rule, congressional and cabinet government. These things are devices evolved in the direction in which the current was moving, each wave of which involved at the time of its impulsion a minimum of departure from antecedent custom and law. The devices served a purpose; but the purpose was rather that of meeting existing needs which had become too intense to be ignored, than that of forwarding the democratic idea. In spite of all defects, they served their own purpose well. (p. 145)
More specifically with regard to schools, Emile Durkheim (1977) has similarly observed: “For a people to feel at any given moment the need to change its educational system, it is necessary that new ideas and needs have emerged for which the old system is no longer adequate” (p. 92). Even more recently, in predicting the demise of the current education system in the United States, and its replacement with a market system of education, Lieberman (1993) has stated: “The change to a market system of education will come about because the conditions that gave rise to public education no longer exist and its rationale is no longer viable” (p. 316). These perspectives seem to suggest that educational change, the kind that could influence our conventional concepts of public and private schools, will be justified by its perceived suitability to current needs.

However, these new attitudes, ideas, and needs, or perhaps more accurately, perceived needs, do not merely develop out of thin air or on their own accord, and thus invite further examination. The change in consciousness required for educational or other social change is, to some extent, promoted or advocated as having the potential to replace the previous paradigm. The characteristics that shaped our current concepts of public and private schools developed as a result of social, political, and personal decisions. Therefore, societal conditions and social change are often influenced by political discussion and policymaking, and thus involve a considerable element of choice.

Thus, educational policymaking will inevitably involve choices about the direction of schooling reform, and two questions central to this issue are the following:

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What constitutes social and educational improvement?

Which laws, policies, programs, and practices will promote social and educational improvement?

These two questions embody the nature of public debate itself, over schooling or any other social issue. Answering the first question requires determining the direction, or overall goals, of social and educational policy. Answering the second question requires selecting policies that are judged to best meet the ends agreed upon in answering the first question.

However, the shaping of the social conditions and attitudes that those above maintain will bring about the changes in social institutions, including educational ones, will come about as these questions are answered through social dialogue and debate. These are political and ideological battles that this dissertation has described, but in which it has not largely engaged. Unlike the descriptive discussion about what public and private have come to mean, these will frequently be prescriptive or ethical debates over what public or private should mean. This is a debate, not merely about semantics, but about value, about the value of opposing views of social organization, between, for instance, those who view public from a more collective perspective, and those, especially privatization advocates, who view it from a more aggregate perspective. As another example, Levin (1989) explains, “[T]he larger issue is how to organize schooling to produce the highest level of social welfare that combines the production of public and private goods” (p. 220). The outcome of such discussions
and debates will no doubt influence the continuing evolution of our concepts of ‘public’ and ‘private’, as they relate to schools and other social institutions.

However, on these issues, this dissertation has not taken a philosophical or political stand, nor greatly contributed to these types of ethical discussions, important as they are. Indeed, discussions of educational policymaking and reform frequently neglect these larger, more overarching issues. Much of the debate concerning school reform is focused on budgetary efficiency, or the academic achievement of students, or parental satisfaction with particular types of schooling arrangements. What is often neglected is a discussion of the value that various arrangements will place on particular educational outcomes or variables, such as academic achievement, or institutional and systemic access, or the promotion of common values, and to what extent these are worthwhile goals that should be pursued through schooling. Miron and Nelson (2002) comment on this hole in the school reform debate:

While efficiency focuses our attention on bottom-line outcomes over inputs and processes, it can tell us nothing about which outcomes are worth pursuing . . . Technical efficiency, in short, can help us decide how to get somewhere, but it cannot tell us where we should go. (p. 8)

Neither does this dissertation assert educational values or priorities that would provide such a road map for twenty-first century education reform. These are issues that will require much further study, and careful, reasoned thought.

However, where this dissertation is valuable regarding issues of educational policymaking is in showing which courses of action or inaction will likely, or could likely, change the institutional identity of public and private schools, and thus change schooling practices and outcomes in the United States. As Godwin and Kemerer
(2002) discuss, school reform efforts, including school choice, force policymakers and voters to make trade-offs. While some reform trends and practices have not been discussed in detail, for instance home-schooling or ‘cyber-charters’, the analysis in this dissertation has demonstrated what these trade-offs are likely to be in pursuing, or not pursuing, different avenues of school reform. While the concepts we hold certainly influence our perceptions about schools, the choices that we make today regarding schooling will shape the ways we think about these institutions for years to come. Thus my analysis has demonstrated how our concepts of public and private schools may be altered through adopting or initiating certain policies that change various characteristics of public and private schooling.

This potential for transformation can be seen in examining the identity of public and private schools in reference to a particular set of facets, or between sets of facets. As an example of the former, this analysis has pointed out how charter school laws and policies, to varying degrees, seek to trade the traditional type of public control for a new type of public accountability. As an example of the latter, decisions to contract, or contract out, certain public school services with private companies involve trading public control for certain types of public benefit, which, based on examples provided in Chapter 5, may or may not actually materialize. To the extent that my analysis here helps to illuminate the variables that will impact and the potential outcomes that will result from the choices made by judges, elected representatives, school officials, and parents, I hope and believe that it has been of value.
Of course what these choices will be, and which ones will be most beneficial to schools and society, are as yet unclear. But two important, final points should be made concerning the future of American schooling and the issues that this dissertation has raised concerning it. First, as Green (1980) admonishes, policymakers and the public should realize that there will be delay in the outcomes of educational reform, and time will be needed to assess the benefits and costs of social and political action. While continuous assessments of reforms such as contracting, charter schools, and voucher programs are certainly valuable, a clear picture of the effects of various educational reforms may take years to develop.

Secondly, as has been evidenced throughout this dissertation, determining the future paradigm of schooling in the United States, including the extent to which it will be influenced by educational reform efforts, will require some public discussion, decision, and action. As pointed out by Dewey (1927/1954) and cited above, this will likely arise based on social benefit or harm (p.15). Green (1980) further explains:

A decision to raise school taxes is a social decision to purchase more social goods instead of private goods; and conversely, a decision to lower school taxes is a social decision to purchase more private goods rather than social goods. In either case, a political decision is required. Which decisions it will be depends upon the political appeal that can be enlisted for the advancement of the social goods that are sought through the spread of educational benefits. (p. 146)

However, particularly in certain educational circles today, certain thinkers have put forth the proposition that the formation of a viable, perhaps even vibrant, public capable of large-scale or national discussion and action is not merely difficult, as Dewey (1927/1954) acknowledged, but practically impossible. Here I am referring to
the arguments of the radical cultural pluralists described by Strike and Soltis (1998), or the discourse of postmodernism that, as Searle (1994) explains, challenges the possibility of reasoned discourse or rational discussion between individuals from different ethnic groups or social backgrounds. Those who advocate such perspectives would seemingly discount the value, or perhaps even the possibility of, a substantive public capable of social debate and action. Theirs is a worldview of individuals as “situated selves” with little possibility for dialogue or understanding beyond their own, restricted group. Such dispositions, if sufficiently popularized, will seemingly, as a self-fulfilling prophesy, cause the disintegration of the very dialogue and decision-making that has promoted the evolution of public and private schools as described above. I would instead argue that such a dialogue must, and I believe will, take place in order to determine the future of schooling, both public and private, in the United States. Indeed, promoting and furthering this dialogue, which I hope that my work here will do, is the first challenge for school reform in the twenty-first century.
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