

Introduction

The Thirteenth Amendment to the Constitution was ratified on December 6, 1865. The first section of the Amendment declares: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” The Amendment is unique within the structure of the United States Constitution. It does not merely prohibit governmental action. Rather, the Amendment prohibits purely private, interpersonal conduct. It bars every person from holding slaves or from engaging in any other form of involuntary servitude (except as punishment for a crime).

The immediate impact of the Thirteenth Amendment was to end slavery in the southern United States and to bar a wider range of labor arrangements that constituted involuntary servitude. In addition, the second section of the Thirteenth Amendment grants to Congress the “power to enforce” the Amendment’s prohibitions by passing “appropriate legislation.” The Supreme Court has long held that this second section allows Congress to pass laws to eradicate not just slavery and involuntary servitude, but also the lingering “badges and incidents” of slavery. Congress and the Supreme Court, however, have never fully recognized that the ongoing lack of educational opportunities afforded to African Americans is attributable to those badges and incidents.

To the contrary, this book will show how American law has legitimated and perpetuated dramatic disparities in educational opportunities based upon race, sex, gender identity, sexual orientation, socio-economic status, native language, and disability. Those disparities have been sustained and justified not only by legal and political structures, but also by long-disproved theories of human development and educational psychology.

This book will challenge the history of educational disparities in America and analyze the civil right to an education from an interdisciplinary perspective. The book brings together the persuasive authority of judicial precedent and legal analysis; the wisdom, coherence, and depth of political and educational philosophy; the foresight of the Founders of the American regime; the observations, experiences,

and profound understandings of educators; the prudence of policy-makers; the data sets and statistical regression analyses of economists; and the experiments and empirical evidence of cognitive psychologists and neuroscientists.

Throughout each of its chapters, the book raises and resolves the following question: What would the legal structures governing American education look like if they were based upon a proper understanding of the ways in which human beings actually learn?

The book will show that the American educational system sustains its inequities in part by projecting a misleading view of human learning and development. I will trace the evolution of the American educational system to the principles of behaviorist educational psychology which presume that human beings learn through operant conditioning. This presumption then leads to an educational system based on individual and systemic rewards and punishments, which ultimately serves to justify an inequitably funded and segregated regime. The book demonstrates how the checkered history of the right to education in America has been legitimated by this flawed presumption.

As this book will show, pathbreaking new research from the disciplines of neuroscience and educational psychology have belied the flawed behaviorist foundations that have long undergirded the legal structures supporting the American educational regime. The book will demonstrate that human beings actually learn by constructing knowledge together through meaningful relationships. I will carefully analyze that research, which reveals that all learning is constructed socially through meaningful relationships.

This book will also show that if the American educational system were founded on the correct understanding that all knowledge is socially constructed through meaningful relationships, it would recognize a civil right to adequate and equitable educational resources; it would fulfill the Founders' vision of a regime in which knowledge is diffused through important associations; it would develop diverse, inclusive, and equitable pedagogies and practices; it would extirpate the badges and incidents of discrimination; and it would teach all students the habits of mind that prepare them to be innovative leaders in a participatory democracy.

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The Political Philosophy of American Education

This first chapter will chronicle the history of educational thought that informed the nation's Founders. Specifically, the leaders who participated in the Constitutional Convention of 1787 accepted from classical political philosophers, including Plato and Aristotle, the view that education must be a public concern because it has the power to shape character and support the regime. The Founders also accepted from modern political philosophers like Locke, Montesquieu, and Rousseau the view that secular education is vital to moral freedom and self-government. They considered public, common, and secular education indispensable to the survival and growth of the new democratic nation.

This chapter will also carefully articulate the Founders' pedagogy. Although they were familiar with an educational system dominated by private and parochial schools, the Founders also understood that knowledge is constructed through meaningful social relationships and associations. The success of their democratic experiment depended in large part on the extent to which the citizens could avail themselves of the opportunity to learn in this manner. From the start, the Founders perceived that the general diffusion of knowledge to the citizenry through a common educational system would prove vital to the survival of the American democracy. Although the Founders justified certain "nondemocratic" aspects of their constitutional structure by suggesting that it was necessary to counter the natural tendency of human beings to pursue their individual self-interest, they took a far more egalitarian view of education.

This chapter shows that the Founders' conception of American educational policy supports the development of programs designed to encourage students to construct knowledge through meaningful relationships and associations. Indeed, many of the views espoused by the philosophers held in esteem by the Founders bear a remarkable resemblance to the contemporary social constructivist approach to education discussed throughout the book. They envisioned young learners growing and developing by building associations between disparate ideas while cultivating meaningful relationships with their fellow citizens. At the same time, the regime was built on a foundation of slavery, which continues to support racial subjugation in education.

CLASSICAL PHILOSOPHIES OF EDUCATION: EDUCATION MUST BE
 A PUBLIC CONCERN BECAUSE IT HAS THE POWER TO SHAPE
 CHARACTER AND SUPPORT THE POLITICAL REGIME

Plato's *Republic* is arguably the greatest text articulating the philosophy of education.¹ The regime envisioned in the *Republic* is built upon critical assumptions about the educational process.² First, the goal of education is to create relatively stagnant and stratified role players for the good of the state; it is a purely public concern. Second, education is extremely powerful; it is capable of altering a person's natural instincts – including the instinct of love of one's own – and of shaping character.³

In Book VIII of the *Politics*, Aristotle expressly shares Plato's assumption that "education should be regulated by law and should be an affair of the state."⁴ Aristotle declares that the "citizen should be molded to suit the form of government under which he lives." Each type of government has a "peculiar" character, and its educational system should strive to replicate the character required in its citizens to preserve its peculiar form.⁵ Since the whole regime has one end, "it is manifest that education should be one and the same for all, and that it should be public, and not private."⁶

In the *Politics*, Aristotle also concludes that the type of "education of citizens" in a regime must depend on the political structure of that regime. Education in a democracy, for example, must teach all citizens the political skills necessary to participate in both ruling the regime and in being ruled by popular choice.⁷ Democratic education must be specifically designed to develop in children the capacity to govern others by appreciating their needs and also the capacity for self-governance. As classical educational theorists, Aristotle and Plato share a belief in the supreme importance of public education for the health of the regime.

ENLIGHTENMENT EDUCATIONAL PHILOSOPHY: PUBLIC
 EDUCATION IS VITAL TO FREEDOM AND SELF-GOVERNMENT

In *Some Thoughts Concerning Education* (1693), John Locke emphasizes the significance of rationality and reason in the education of each child. Most people,

¹ Steven M. Cahn, *Classic and Contemporary Readings in the Philosophy of Education* (New York: Oxford University Press, 1997).

² See Plato, *Republic*, reprinted in Cahn, *Classic and Contemporary Readings*, 39–109.

³ The question about whether educators can, and should, shape character arises in the contemporary debates about the merits of character education in public school. In Plato's *Protagoras* dialogue, Socrates appears to concur in Protagoras's argument that virtue can indeed be taught, agreeing after his arguments that "human care can make men good." See Plato, *Protagoras*, reprinted in Cahn, *Classic and Contemporary Readings*, 35–39.

⁴ See Aristotle, *Politics*, Book VIII, reprinted in Cahn, *Classic and Contemporary Readings*, 137.

⁵ *Ibid.*

⁶ See Aristotle, *Nicomachean Ethics*, reprinted in Cahn, *Classic and Contemporary Readings*, 111–118.

⁷ See Aristotle, *Politics*, Book VIII, 134.

Locke writes, are “good or evil, useful or not, by their education.”⁸ Like the ancients, therefore, Locke understands the power of education. Yet education is designed to teach the child to comprehend reason so that there is no need for external, political, or religious forms of discipline.⁹ Locke believes that reason, if rightly understood and taught, can be the instrument of political freedom and self-governance.

In his seminal 1748 work, *The Spirit of the Laws*, Montesquieu concurs with Locke on the importance of public education for democracies.¹⁰ In a democratic society that values freedom and self-government, public education is critical to social cohesion. Only public education can inspire the civic virtues requisite to democratic government, including the “love of the laws” and a preference for community, social, and public life over private life.

Rousseau, as well, shares Locke’s emphasis on individual educational development, declaring that the “supreme good is not authority, but freedom.”¹¹ In the *Emile* (alternately titled *On Education*), he expressly couples the development of a free people with a proper education: “This is my fundamental maxim. Apply it to childhood and all the rules of education follow.”¹² Rousseau associates freedom with mankind’s natural childhood state and authority with mankind’s unnatural social condition. The rules of education, if they are to serve the supreme good of freedom, must be aligned with a child’s natural condition.¹³

Rousseau understood that children are by nature competent and curious. Educators must understand the “distinctive genius” of each child, and allow the child “full liberty” to grow.¹⁴ Hence, Rousseau creates the foundation for contemporary arguments against a standardized curriculum and in favor of child-centered education. He suggests that any educational process that neglects to “differentiate” – to take into account the unique developmental needs of each child – will fail.

In their calls for an education that promotes freedom and self-government, Locke, Montesquieu, and Rousseau share a fundamental distrust of direct instruction, dogma, or unquestioned presumptions as educational tools. Locke’s belief in the power of reason suggests the subordination of preconceived notions to individual examination and rational thought. Slavish adherence to dogma is inimical to self-governance and self-determination. Thus, an education for self-government must develop in children the capacity to construct knowledge by questioning accepted beliefs.

⁸ See Locke, *Some Thoughts Concerning Education*, reprinted in part in Cahn, *Classic and Contemporary Readings*, 145.

⁹ *Ibid.* at 147 (“Every man must some time or other be trusted to himself”).

¹⁰ Montesquieu, Charles de, *The Spirit of the Laws*, translated by Thomas Nugent. Digireads.com, 2010. Book. 49–51.

¹¹ See Rousseau, *Emile, Book II*, reprinted in Cahn, *Classic and Contemporary Readings*, 167.

¹² *Ibid.*

¹³ *Ibid.* at 170 (“Let the childhood ripen in children”).

¹⁴ *Ibid.* at 171.

In Montesquieu's thought, public education also is necessary to replace private religious zeal with a uniform, national allegiance to law and country. Rousseau, as well, believes that a proper education is the antidote to politically imposed moral doctrines. If allowed to develop their own interests free from such artificial constraints, children will naturally seek to form or construct socially useful alliances and boundaries, and they will naturally avoid socially destructive behavior.

PRIVATE EDUCATION IN COLONIAL AMERICA

The history of American education usually begins with the story of the importation of the English educational system to colonial America.¹⁵ Contrary to common understanding, the educational tradition brought by the European settlers who colonized America was not based on a singular New England mode of educational hierarchy and religious conformity.

Rather, education in the colonial period was diffuse, localized, haphazard, and heterogeneous. There were significant differences between the educational practices in the northern, southern, and middle colonies as well as significant differences within each individual colony.¹⁶ Nonetheless, it is fair to say that American colonists attempted for the most part to recreate the heavily religious educational institutions with which they were most familiar from their European experience.¹⁷

In 1647, for instance, the Massachusetts General Court enacted the "Old Deluder Satan Act." The Act declared that because Satan was keeping people in the colony from understanding scripture, every town with at least 50 families must provide for

¹⁵ See, e.g., Kern Alexander & M. David Alexander, *American Public School Law* (Belmont, CA: West/Thomson Learning, 2001), 21–23. Well before the colonists brought to America their notions of schools, however, Native Americans had developed their own approach to education, an approach that was purposefully discarded by the settling Europeans. For two excellent and thorough discussions of the history of Native American education, see Wayne Urban & Jennings Wagoner, *American Education: A History* (McGraw Hill: 2000), ch. 1; Margaret Szasz, *Indian Education in the American Colonies, 1607–1783* (Lincoln: University of Nebraska Press, 1988). Despite variations among Native American tribes, precolonial education had common objectives. The primary goal of education was the development of skills essential to survival. Education in these skills was closely joined with spiritual education. The European missions first attempted to replace Native American spiritual teachings with Catholicism. The elimination of Native American culture and educational practices continued in earnest throughout the late 1800s and early 1900s in the form of boarding school programs designed to "rid" Native American children of their culture through "assimilation." See Joel Spring, *Deculturalization and the Struggle for Equality: A Brief History of Education of Dominated Cultures in the United States* (New York: McGraw-Hill Higher Education, 2000); Alan Peshkin, *Places of Memory: Whiteman's Schools and Native American Communities* (New York: Routledge, 1997); David Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875–1928* (University Press of Kansas, 1995); Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (Chapel Hill: The University of North Carolina Press, 1973).

¹⁶ Urban & Wagoner, *American Education: A History*, 15.

¹⁷ Kenneth A. Lockridge, *Literacy in Colonial New England: An Enquiry into the Social Context of Literacy in the Early Modern West* (New York: W.W. Norton, 1974).

instruction in reading and writing. If a town had 100 or more families, it also had to provide grammar schools that would prepare boys for higher education at Harvard. The law threatened the town with a fine if it did not comply. While expressed in terms that may sound unusual to the modern ear, the Act reflected a conceptual link between more widespread education and an improved society. Although the Massachusetts General Court's impulse was more explicitly religious than the view of their Enlightenment counterparts, the two disparate groups both saw the need for a more systemic approach to education. The significance of this unlikely commonality was not lost on the Founders.

Despite this somewhat modest initial movement toward community-based education, those families with educated adults continued to rely primarily on the home as the institution of learning. Children who did not have the advantage of a learned adult in the home were sent to other homes occupied by adults who offered to teach groups of children together. These early private schools were run by men and women who typically instructed their own children and, for a fee, instructed the neighborhood children as well.

These private schools soon developed a shared curriculum with a strong religious flavor. Children were taught to read by first memorizing the Bible. As was true in England, the lessons were often presented on hornbooks – pieces of parchment placed on a wooden paddle, covered with a strip of clear horn to protect them from being smudged.

The lesson typically included a prayer, biblical passage, religious maxim, or psalm. The hornbooks were coupled with primers, such that religion and literacy were literally tied together. For example, the *New England Primer* contained the letters of the alphabet arranged so that each letter began a verse from the Bible. A series of illustrated rhymes taught children both the alphabet and the doctrine of original sin. The primary goal of these lessons was to teach children to read, but the lessons employed religious doctrine as the setting for language.

A variety of church-affiliated or church-sponsored schools sprang up together with the officially established religious institutions. The many religious sects in America all maintained parochial schools. Moreover, splinters that developed in the numerous Protestant denominations led to competing schools even within the same religion. The various sects soon competed vigorously for the scarce public resources devoted to education.

THE FOUNDERS' EDUCATIONAL PHILOSOPHY: DEMOCRATIC
EDUCATION MUST DEVELOP MEANINGFUL RELATIONSHIPS
BETWEEN INDIVIDUALS AND THE COMMUNITY

After Independence and before the Constitution was drafted, the nation's Founders were well aware that the nation was not yet a union. The Founders grew to believe that one of the most effective ways to achieve common values was to create a shared

system of education. As Urban and Wagoner have observed, “[e]ducation, then, emerged as an essential consideration in the minds of those who faced the momentous task of establishing the new nation.”¹⁸ The political structure of the new regime became dependent on the educational structure of the regime, and therefore the “architects of the American nation clearly and deliberately fused educational theory with political theory.”¹⁹

Benjamin Franklin, for example, argued consistently for the education of each individual in practical skills, useful in the world.²⁰ For Franklin, learned treatises and other established texts were important, but only insofar as they generated ideas that could be put into practice. Ultimately, Franklin wrote *Poor Richard’s Almanack* between 1732 and 1757 for the purpose of “conveying instruction among the common people, who bought scarce any other books.”²¹ To express Franklin’s approach in more contemporary terms, he sought to present knowledge in a broadly accessible manner. Any literate citizen could connect new ideas by building associations between the ideas in Franklin’s texts and the everyday concepts the reader already understood. In addition, they could take the next step by cultivating meaningful relationships with the other readers of the extremely popular book. Together they could explore the text in further detail and gain new, shared insights.

In order to create collections of books that could be used by more than a wealthy few, Franklin and his colleagues created the first colonial library by donating their most precious books to a common collection called the “Library Company of Philadelphia.” The collection contained classic works such as *Plutarch’s Lives*, as well as history books and maps.

In his *Proposals Relating to the Education of Youth in Pennsylvania* (1749), Franklin designed the “Philadelphia Academy,” whose mission was to create not a cadre of select scholars, but a generation of common men able to perform practical skills and community service.²² Although Franklin’s success in implementing his ideas was limited, he generated a vital discourse regarding the type of education that would serve the new nation and its people.

Thomas Jefferson attempted to advance the ideal of public education in his “Bill for the More General Diffusion of Knowledge,” which he placed before the Virginia legislature in 1779.²³ Rooted in his philosophy that public education was necessary to support the new republic and its democratic government,

¹⁸ Urban & Wagoner, *American Education: A History*, 70.

¹⁹ *Ibid.*

²⁰ See Leonard W. Larabee et al., *The Autobiography of Benjamin Franklin* (New Haven, Connecticut: Yale University Press, 1964); John Hardin Best, *Benjamin Franklin on Education* (Teachers College Press, 1962); Leonard W. Larabee and Whitfield J. Bell, *The Papers of Benjamin Franklin* (New Haven, CN: Yale University Press, 1959).

²¹ See *Poor Richard’s Almanack*, in Larabee & Bell, *The Papers of Benjamin Franklin*.

²² See *Proposals*, in Best, *Benjamin Franklin on Education*.

²³ Thomas Jefferson, *Bill for the More General Diffusion of Knowledge*, *The Educational Work of Thomas Jefferson* (New York: Russell & Russell, 1964), 199–204; see also Thomas Jefferson, *Writings* (Library of America: 1984); John Adams, *The Adams-Jefferson Letters* (New York: Simon & Schuster, 1971).

Jefferson proposed a system of free elementary-level education administered by separate counties or divisions. Each of these so-called little republics would provide children with basic literacy skills and with knowledge of history. Jefferson's system would allow the young pupils to make new associations across the different subjects presented. It would also encourage them to build meaningful relationships with their classmates. Over a century before the emergence of social constructivism in education, the basic ingredients of this approach presented themselves in Jefferson's proposal.

Jefferson's vision was that American children would have the education necessary to prepare them to participate as citizens in a democracy. He believed that the benefits of education should not be reserved solely for the established aristocracy or for any religious group.²⁴ The government had a compelling interest in providing sufficient resources to insure all young Americans gained the skills needed for democratic citizenship.

In fact, Jefferson believed that a public education was vital to the preservation of liberty. He wrote that a publicly supported educational system would raise the morals of children to the "high ground of moral respectability necessary to their own safety, and to orderly government."²⁵ The "most certain and the most legitimate end of government," according to Jefferson, was the provision of a free, public education to its citizens.²⁶

Jefferson's system of public education is not hostile to private education; rather, it simply understands private education to be inadequate to accomplish the political objective of educating all citizens for participation in their own government. To the extent that private education depletes resources from the public educational system, which is indispensable for the survival of democracy, private education is inimical to the ultimate realization of the democratic ideal.

²⁴ See *Act Establishing Religious Freedom (1779)*, in Adrienne Koch & William Pedren, *The Life and Selected Writings of Thomas Jefferson* (Modern Library, 1998), 289–291.

²⁵ Urban & Wagoner, *American Education: A History*, 73–74 (citing Thomas Jefferson to John Adams, Oct. 28, 1813).

²⁶ *Ibid.* As Urban & Wagoner put it: "equal educational opportunity was to allow the identification and proper education of those capable of leadership and worthy of public trust. Jefferson placed himself in opposition to those of his own social background, many of whom constituted the 'artificial aristocracy.' Content with private education for their own children, they were willing to leave the education of others to random local initiative, church benevolence, or perhaps to the well-meaning charity of a concerned citizen-benefactor. To Jefferson, however, the education required for participation and leadership in the new American social order was far too important to be left to chance, parental whim, or restricted to a traditional elite." *Ibid.* at 74. One of the tragic ironies of Jefferson's efforts to spread the benefits of education among American citizens, of course, is that his system completely excluded all Native Americans, all African Americans and virtually all women. See *Notes on the State of Virginia (1781)*, in Koch & Pedren, *The Life and Selected Writings of Thomas Jefferson*, 243–244; E. M. Halliday, *Understanding Thomas Jefferson* (HarperCollins Publishers, 2001), 234 (describing Jefferson's exclusion of African Americans and Native Americans as an "obvious travesty").

CONCLUSION

As they sought to build a sustainable and durable democratic society, the Founders drew on a wealth of philosophical traditions. From the classical era, they applied the principles of Plato and Aristotle. From the Enlightenment, they imbibed the theories of Locke, Montesquieu, and Rousseau. They synthesized these strands of thought, and added the original contributions of thinkers like Benjamin Franklin and Thomas Jefferson to create a new approach to education. The Founders came to realize that educating the citizenry stood among the foremost duties of a democratic government. Indeed, they would have viewed it as a fundamental responsibility. The Founders prized learning through the development of meaningful associations and relationships – between different ideas and different people. In short, they anticipated by over a century the main themes of the social constructivist approach to education.