1-1-2007

What Matters Even More: Codifying the Public Purpose of Education to Meet the Education Reform Challenges of the New Millenium

Charles A. McCullough II

camccull@aol.com

Follow this and additional works at: http://lawdigitalcommons.bc.edu/twlj

Part of the Education Law Commons

Recommended Citation
Charles A. McCullough II, What Matters Even More: Codifying the Public Purpose of Education to Meet the Education Reform Challenges of the New Millenium, 27 B.C. Third World L.J. 45 (2007), http://lawdigitalcommons.bc.edu/twlj/vol27/iss1/3
WHAT MATTERS EVEN MORE: CODIFYING THE PUBLIC PURPOSE OF EDUCATION TO MEET THE EDUCATION REFORM CHALLENGES OF THE NEW MILLENIUM

Charles A. McCullough, II*

Abstract: With the U.S. Constitution silent on the matter and local governments allowed to designate funds to fulfill various purposes of education, citizens and policymakers are left adrift in determining which educational reform initiatives will provide a quality education. Therefore a clear public purpose of education must be codified at the federal and state level through constitutional amendment and legislative enactments to avoid this current situation. This article explores philosophies, court opinions, and state constitutions to develop and propose a universal public purpose of education suitable for codification. The codification of a public purpose of education will assist the education community in promoting and funding educational reform initiatives, such as the National Board Certification of teachers offered by the National Board for Professional Teaching Standards, that have proven widely successful in increasing student achievement though, as of yet, have not garnered extensive federal and state government support.

I. The Need for a Public Purpose of Education

The education reform attendance list: increased funding, new facilities, more technology, challenging curricula, accountability through testing, quality teachers, and parental involvement. Yes, they are all equally important. No, alone, no single one is the silver bullet. More

* Charles A. McCullough, II, received a B.A. degree in History from Pepperdine University and an M.Ed. in Higher Education Administration and J.D., from Boston College. He is currently Special Assistant to the President of the National Board for Professional Teaching Standards. Prior to this, McCullough served as Attorney-Advisor to the District of Columbia Public Schools and law clerk to Harvard University. He has served Montgomery County, Maryland, as a member of the Board of Education, para-educator, and appointee to several community commissions. He extends his gratitude to Professor Ruth-Arlene Howe for being the impetus for this work. To his team of editors, Martin A. Earring, Anthony C. Dvarskas, Lyana G. Palmer, Monira I. Parkinson, Rashida J. Wilson, Lillie M. Saunders, Kenneth R. Hopson, Joseph A. Aguerrebere, and most dear of all, Sheryl D. Turner, he extends his eternal gratitude for their speed, efficiency, and thoroughness.
important than discussing these great concepts for reform, however, is defining a common ground upon which the nation can base its education reform dialogue. Plainly stated, it is imperative that the federal government and the state legislatures codify a single and uniform public purpose of education. With a codified purpose to reference, the courts and legislatures could play a more effective role in ensuring education adequacy under state constitutions and in the current context of education reform requirements. A clearly defined public purpose of education would also provide one more tool that would allow state and federal legislatures to move more rapidly beyond partisan entrenchments to find not just a middle ground, but a solid ground for identifying and funding effective educational reform initiatives. Furthermore, a federally codified public purpose may be used nationally by parents to determine the proper expectations and rights of a child sent to public school.

Some may argue that national standards or a national curriculum are better tools than codification to bring focus to the education reform movement. However, the problem is not an absence of good reform ideas or national standards. There are federal provisions that provide national standards for education.¹ A national curriculum has existed since the first day that Advanced Placement classes and exams were available to high school students. A national standard for receiving a high school diploma has been available since the inception of the International Baccalaureate Program. As the president of the National Commission on Teaching and America’s Future (NCTAF) observed, “We do have national standards, they are just not applied to all kids.”²

In this manner, education becomes a mirror to society, simply reflecting societal outputs.³ Additional studies are not needed to demonstrate the fact that children of minority groups or of low socio-economic status are more likely to receive a lower quality of public education than other children. Unfortunately, a broken public education system is often cited for being the cause of this fact. Ironically, it is not the system that is broken; the problem is that the system was


² Thomas Carroll, President, Nat’l Comm’n on Teaching & America’s Future, Address at the National Commission on Teaching and America’s Future Partners’ Symposium (July 9, 2006).

³ Kurt Landgraf, President & Chief Executive Officer, Educ. Testing Serv., Address at the National Forum on Education Policy (July 12, 2006).
never organized to serve everyone. Codifying a public purpose is part of a larger effort to get the educational system to do something that it was never designed to do—serve every student equitably.

Yes, there is a cultural divide as to how the nation views and receives education. Concepts of teaching, and therefore learning, are as varied as our schoolhouses. The nation needs a codified public purpose that is federally uniform. More importantly, with a set purpose by which to view the viability of education reform initiatives, any person vested in the educational debate—student, teacher, parent, or policymaker—could transcend the bureaucratic and traditional approach to determining educational reform. Armed with the codified public purpose, they will be better equipped to achieve an equitable and quality system of public education.

One must first address the question what is the purpose of education before one can fully understand the dimensions of an adequate education and, in turn, create a competent plan of reform. To this end, Neil Postman observed that “[w]ithout a purpose, schools are houses of detention, not attention.” This prophetic statement was perhaps not far-reaching enough in its honesty. What one observes throughout the country is that, without a defined purpose of education, the childhood schoolhouse becomes a mere holding cell for the adulthood detention house. For those lucky enough to avoid this fate, the alternative may consist of an even greater penance—arriving at adulthood unprepared to contribute the full capacity of one’s innate abilities.

A. The Federal Government and a Public Purpose of Education

1. The Call to Codification

As the importance of defining the purpose of education appears to be self evident, one would suppose that the chorus of philosophers, legislative enactments, and judicial pronouncements on education would have long ago led to a codified definition of a public educational purpose. However, this is not the case, most fundamentally because the American tradition of public education is deeply rooted in the notion of

---

4 Carroll, supra note 2.
local control. This is underscored by the fact that each of the seven articles and twenty-seven amendments of the U.S. Constitution is silent as to any aspect of education.

The silence of the founding fathers on the education issue has led some to conclude that the consequent intent was for all matters of public instruction to be legislated locally. However, just as the present-day Congress has increasingly crept into the area of local educational policy through the No Child Left Behind Act (NCLB), so too did the early Congress begin the process of shaping the look of public education with the passage of the Northwest Ordinance of 1785. Unfortunately, this zeal for education policy did not result in a specific provision in the U.S. Constitution, which was ratified only four years later. Nevertheless, the passage of the Ordinance suggests that the federal legislature contemplated by our founding fathers was properly empowered and obligated to guide matters of public instruction when the need for appropriate direction and uniformity arose.

If it is proper for the federal government to act more decisively in matters of public instruction—and if it chooses to do so—it becomes that much more necessary for the federal government to codify a public purpose of education. Without codification, education will remain subject to political whimsy. Even the President of the Educational Testing Service, discussing current investment in public education, has asserted that “[w]e must de-politicize the political discussion in education, because it is about the future of our society and we are failing large cohorts of our children.”

The idea of establishing a joint federal and state public purpose of education is not entirely new either. As recently as 1989, at the directive of President George H.W. Bush, the governors of several states, led by then Arkansas Governor Bill Clinton, convened to address the manner in which the nation could set goals and quantifiable standards to improve the quality of education in the United States. The following six National Education Goals were created:

---

8 See id.
9 William O. Swan, The Northwest Ordinances, So-Called, and Confusion, 5 Hist. of Educ. Q. 235, 235 (1965). In the Ordinance, the early federal government provided for the survey and reservation in each township of a lot at coordinate N16° to be used for the purpose of a public school. Id.
10 Landgraf, supra note 3.
• All children in America will start school ready to learn
• The high school graduation rate will increase to at least ninety percent
• American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter
• U.S. students will be first in the world in science and mathematics achievement
• Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy
• Every school in America will be free of drugs and violence

Unfortunately, though the completion deadline for these six goals was the year 2000, none have yet to be satisfied.

Yet these goals remain just as applicable today as they were nearly two decades ago. To avoid watching the hope for a clear and uniform public purpose of education fade, that public purpose must be codified into law to survive beyond the promising words of press conferences and television coverage. That defined purpose of education should be beyond a simple statement, and it should have the strength of legal accountability and the force of law through the interpretation of the courts. If such a public purpose of education were codified, it would remain the constant sifter used in policy discussions, board of education meetings, and classrooms when evaluating the course and speed of education reform.

2. The Legislative Challenge

A remarkable challenge exists when trying to pass a bill at the federal or state level, especially when the bill simply states a definition. As indicated by long time federal government relations official, Anna Davis, most bills are composed of programmatic, finding, and definition sections. With no associated program to authorize or appropriate and no findings to detail, a bill for codification would simply state a feeling of Congress. This type of measure is usually the province of a non-binding resolution. Such resolutions are often passed by general consent, without comment from the other house of Congress or legally binding significance other than the persuasive power of being recorded

12 Id.
13 Id.
14 Interview with Anna Davis, Executive Dir. for Fed. Gov’t Relations, Nat’l Bd. for Prof’l Teaching Standards, in Arlington, Va. (July 7, 2006) [hereinafter Davis Interview].
15 Id.
in the annals of the federal legislature.\textsuperscript{16} The weak character of this form of legislation would leave it to the same fate as the six National Education Goals championed nearly two decades ago.

Davis feels the most effective legislation has some means of quantification.\textsuperscript{17} Yet, a bill codifying the public purpose of education would not have any readily quantifiable elements, as the public purpose surpasses the scope of common education quantification tools. Furthermore, there is no simple funding formula that can be implemented to ensure the public purpose is met for every child. As a consequence, a united audience on this measure may begin to fracture. Also, though many legislators could agree in principal with such an organic act, they may be inclined to vote against it because of its potential to later limit the viability of their own proposed educational reform programs.\textsuperscript{18} In the end, a bill codifying a public purpose of education in Congress stands the same chances of succeeding as any other bill and would be subject to the same political winds. Yet, perhaps the strongest protection against these political winds is the growing national sentiment to better focus the education reform movement. In addition, the great strength of a public purpose codification bill is that it would illustrate the inspirational purpose for education shared by a vocal majority of citizens.

However, the matter of codifying a public purpose of education is also a matter for the states. In many ways, if the public purpose of education is codified solely as an act of the federal government, it may only have the effect of the widely criticized NCLB.\textsuperscript{19}

\textsuperscript{16} Id.

\textsuperscript{17} Id. However, Davis concedes that numerous factors often play a role in speeding the passage of a bill into law. Id. Having served with the Federal Trade Commission, Davis readily recalled that other than the authorization to enter World War II, the fastest bill ever passed by Congress was the establishment of the Do Not Call Registry. Id. Other than the impending 2004 election, the bill was able to pass swiftly with minimal dissent because the majority of Congress had personal knowledge of the matter. See id.; see also Press Release, Office of the Press Sec’y, President Signs Do Not Call Registry (Sept. 29, 2003), available at http://www.whitehouse.gov/news/releases/2003/09/20030929-10.html [hereinafter Do Not Call Registry]. As evidenced by the 50 million telephone numbers entered in the registry within the first three months of its existence, the bill also enjoyed the support of many Americans. See Do Not Call Registry, supra.

\textsuperscript{18} See Davis Interview, supra note 14.

\textsuperscript{19} Paul E. Robertson & Martin R. West, Is Your Child’s School Effective? Don’t Rely on NCLB to Tell You, 4 Educ. Next 76, 77 (2006), available at http://media.hoover.org/documents/ednext20064_76.pdf. A recent study conducted by Paul E. Peterson of Harvard University and Martin R. West of Brown University cites the major problem of NCLB as being the manner in which it characterizes schools by simply dividing them into two categories: those that are making adequate yearly progress (AYP) and those that are not.
B. State Governments and a Public Purpose of Education

1. The Interplay of State Constitutions and Courts

Codifying a public purpose of education is not a foreign concept for all states. Illinois and Louisiana have each created a state goal of education in enumerated articles of their respective constitutions. Much like the public purpose proposed later in this article, Louisiana’s goal of education is to establish educational learning environments that provide equal access to all children wherein the opportunity is present for each child to develop to their fullest potential.\(^{20}\) Illinois’s constitution takes this concept a step further, and declares that the public purpose of education is for all the state’s children to learn to the fullest capacity and that the right to such an education is fundamental to the state’s citizenry.\(^{21}\) Such a strong statement of purpose could easily be construed to create a right for all children to receive a superior education.

Unfortunately, Illinois courts have yet to go that far, but instead have found that “education [is] not a fundamental right for equal protection purposes under the United States Constitution, and . . .

---

\(^{20}\) La. Const. art. VIII, pmbl.

\(^{21}\) Ill. Const. art. X, § 1.
[is] not subject to strict scrutiny.” Rather, the court concluded that the appropriate standard of review was the rational basis test. Nevertheless, the court’s current interpretation should not discourage any codification efforts. Indeed, the fact that the court would even consider the argument of education to be a fundamental right indicates the power of enshrining the public purpose in a state constitution. Until the Illinois court’s relatively recent decision, the state constitution’s stated goal provided a clear and reasonable expectation for all Illinois residents as to the goal of the state in educating their school-aged children. Thus, it is necessary to codify the purpose in such a manner so that its positive effects would not be undone by subsequent statutes or court rulings as was the case in Illinois. Without question, this will be a difficult task.

In West Virginia, where the state legislature tepidly addressed the matter of public education in its constitution, the court held that the constitutionally required provision of a “thorough and efficient system of free schools” was enough to vest education as a fundamental right for all West Virginians. This decision required that any denial of the right to such an education system be subjected to strict scrutiny. Therefore, the language used to codify the public purpose of education need not be full of legal jargon to have far-reaching effects. Indeed, it may only take the right set of judges to have the public purpose of education reach into the courtroom where it can properly calibrate the scales of justice to assist in the proper adjudication of education reform debates.

Beyond specific language to be codified, another question regarding the codification of the public purpose of education may be where in the state constitution should the public purpose be added. The importance of location was illustrated in North Carolina, where education was declared a fundamental government function by the Supreme

23 Id.
24 See id.
26 Some would argue that the actions of the Illinois court could easily be remedied if the public purpose of education stopped being merely a “goal” and instead presented clearer and quantifiable directives to the state. This approach would, in theory, stymie any avenue for the court to limit the creation of a state educational right vesting from a public educational purpose codified in a state constitution. Unfortunately, theories like these do not always bare-out.
28 Phillip Leon M., 484 S.E.2d at 913.
The justices recognized the significance of education in the state and ruled as they did in part because education received its own specifically enumerated article in the state’s constitution.

2. State Legislatures and Codification

If citizens do not wish to try their luck at waiting for a sympathetic bench of judges, state legislatures must be urged to codify the public purpose of education in the declaration of rights articles common to all state constitutions. Similar in nature to our federal bill of rights, all fifty states have a section echoing federal rights and detailing additional state rights for their citizens. The Declaration or Bill of Rights sections range from the seventeen rights outlined in the Minnesota Constitution to the fifty-seven rights written in the Constitution of Maryland.

The rights articulated are, in large part, similar across the states. Freedom of speech, religion, and the press are universal. Many states have used their declaration of rights sections to grant rights not included in the U.S. Constitution. In fact, a recent and frequent spate of states passing similar constitutional amendments to declare rights that are important to them indicates that it is not improbable to have a national movement to codify the public purpose of education as a state right. Codifying the public purpose as a state constitutional right

---

30 See id.
31 See infra Appendix. The chart located in the appendix is one compiled from my own independent research on the state constitutions. I will refer to this chart periodically throughout the rest of the article.
32 Florida, New Jersey, and North Dakota have granted additional rights on matters of employment. See Fla. Const. art. I, § 6.; N.J. Const. art. I, § 19; N.D. Const. art XI, § 24. Other states, such as Louisiana and Wisconsin, have added rights dealing with inherently local concerns including a right to fish, trap, and hunt. See, e.g., La. Const. art. I, § 27; Wis. Const. art I, § 26. Triumphantly, states have also added rights for their citizens which seek to better society through individual empowerment. This has been the impetus behind the adoption of the various Victim Rights Amendments passed by thirty-four states throughout the Midwest, Northeast, and South. See National Victims’ Constitutional Amendment Passage, State Victims Rights Amendments, http://www.nvcap.org/stvras.htm (last visited Nov. 18, 2006) (providing a color-coded map indicating which states have enacted victims’ rights amendments and allowing users to link to the text of their respective amendments). Sadly, state declarations of rights also have been used to divest the rights of citizens. Such was the probable motive for the eighteen states that have passed the Marriage Protection Amendments barring marriage or civil unions for countless citizens. See Eric Ervin, Arizona Rejects Anti-gay Marriage Amendment, WASH. BLADE.COM, Nov. 8, 2006, http://www.washblade.com/2006/11-8/news/national/amendments.cfm.
would more efficiently prevent state courts from interpreting the public purpose of education as being an esoteric goal. Instead, the purpose will be interpreted as a directive and mandatory course of action by which all education reform efforts should be conducted or face strict scrutiny from the court. In addition, this would reaffirm the state’s commitment to defining a purpose by which education reform should be measured. It would also provide an additional level of civic engagement closer to education policymakers responsible for individual schools and school districts.

C. Effectiveness of Codification

The question remains whether a public purpose of education codified at either the federal or state level would be clear enough to guide subsequent reform implementation. Nancy Schwartz, a long-time education advocate, believed that many legislators still base decisions about education reform on their own personal experiences. Unless a public purpose bill provides a readily quantifiable means to review proposals for reform, such a bill would still run the risk of being interpreted subjectively. Yet, one benefit Schwartz saw in adopting a broad public purpose of education into a state constitution is that its inspirational nature would likely meet little opposition while providing parents, teachers, community groups, and other educational activists another tool to lobby for more thorough education reform.

While the legislative process may not be largely affected by codifying a public purpose of education, at the state level it is still a particularly important step as this is where implementation of education reform occurs. Effective education reform must happen beyond courtroom edicts and government regulations; rather, the hearts and minds of citizens must be changed. The public must become willing to change inherently inequitable funding structures, classroom pedagogy of a bygone time, and invest in educational reform programs that will deliver the public purpose of education. The first step toward motivating the public to invest in true educational reform is to codify the public purpose of education in a manner understood and accessi-

---

33 Interview with Nancy Schwartz, Dir. of State & Local Outreach Programs, Nat’l Bd. for Prof’l Teaching Standards, in Arlington, Va. (July 7, 2006).
34 Id. An example of a quantifiable method for determining educational reform is establishing a financial rubric by which one can measure the equity of funding for a student’s education. Id.
35 Id.
ble to the administrators and educators that work in schools implementing reform programs.

Because the U.S. Constitution is silent on the issue and because of the frenetic nature of local governments, citizens and policymakers are left adrift on matters of education. This paradigm is clearly not functioning. There must be a codified public purpose of education by which all may design, benchmark, and critique educational initiatives to ensure that “success” and “achievement” and “preparation” hold the same weight in every schoolhouse. Such a public purpose of education must be codified so all may easily understand when a government, policy, school, or teacher is failing to provide a proper education and how to cure that failure.

II. Understanding the Public Purpose of Education

A. Defining the Public Purpose of Education

Defining a public purpose of education must occur through a meticulous process—one that takes note of philosophers, courts, and earlier legislative enactments. Through this process, one arrives at a definition that avoids the pitfalls that would otherwise limit universal applicability.

To begin to define the purpose of education one must first have a common understanding of “education” and “purpose.” The word “education,” originating in the Latin *educere* meaning “to lead out,” led Socrates to define education as the process by which one draws out the innate abilities of a student.36 Many centuries later, the father of modern day experiential education, John Dewey, championed the importance of the subjective experience of the individual absent the presence of a teacher’s recitation.37 This leaves today’s common definition for education: “The act or process of educating or of being educated,” and “[t]he knowledge or skill obtained or developed by such a process.”38

So too, “purpose” finds a readily understood meaning: “The object toward which one strives or for which something exists.”39 When applied to defining the public purpose of education, however, many have

---

39 Id. at 900 (defining “purpose”).
confused “purpose” with “function.” Judith Lloyd Yero differentiated the two in defining the latter as “other outcomes that may occur as a natural result of the process.”

Using this logic, a naturally occurring consequence of schooling, such as acquiring factual knowledge, cannot in itself be a purpose of education due to the fact that this result is not a goal for which there is some extra effort, but simply a natural result of being recited facts.

Based on historical and current core definitions of education and its purpose, I propose that the codified purpose of education should read as follows: it is the public purpose of education to vest in the student the ability to investigate, locate, and develop the full complement of one’s abilities so as they may be refined in exercise for the benefit of the human condition.

This definition is most appropriate because in those school systems that have failed to adopt this view, one may witness the “miseducation” of the masses. Failure to comply with the purpose of education as herein defined leaves us with governments, policies, schools, and teachers that champion a lesser purpose. They call for recitation instead of investigation, location, and development. Their faulty lesson plans have an educational baseline of adequacy of the masses instead of excellence of an individual’s abilities. More troubling is that the schools that lack this public purpose unintentionally establish a goal of keeping the status quo as opposed to bettering the human condition, which is the goal of the educational philosophies most apt to American classrooms and society.

B. Philosophies of the Public Purpose of Education

It is necessary to develop a proper philosophical understanding of education to better understand where the public purpose of education I have proposed above stands in regard to the other purposes of education expressed by courts and policymakers. The voices of philosophers, legislative enactments, and judicial pronouncements tend to break into two major universities of thought, utilitarianism and humanism, though I will argue that the latter is the most preferable.

---

40 Yero, supra note 36, at 2.
41 See id.
42 The “human condition” referenced in the definition of the public purpose of education refers to humanity collectively and the civility of global society.
1. Utilitarian Philosophies of Education

The first university of thought is utilitarianism, which encompasses two of the educational philosophies with which one is accustomed: essentialism and behaviorism.\(^{43}\) The shared philosophical attribute between these two philosophies is the focus on how education can be used to efficiently and most effectively benefit the state.

In the school of essentialism, the philosophy of education is to produce useful individuals to become productive adult citizens.\(^{44}\) Thus, teachers should present only essential information that is practical to obtaining gainful employment. From this understanding come philosophies that emphasize an education that develops citizenship, preserves government, and provides essential skills needed for employment.\(^{45}\)


\(^{45}\) The notion of education being used to develop citizenship is highly regarded throughout the Western world. In a famous oration by the Archbishop of York to a group of headmasters, it was stated that “the true purpose of education is to produce citizens.” See Eleanor Roosevelt, *Good Citizenship: The Purpose of Education* (originally published in Pictorial Rev., Apr. 1930, at 94, 97), available at http://newdeal.feri.org/cr/er19.htm [hereinafter Selected Writings of Eleanor Roosevelt] (quoting the Archbishop of York). The United States embraced this same philosophy because large-scale immigration at the turn of the century fostered the idea that “American” society would disappear if a national consciousness was not developed through the sound preparation of its new immigrants for citizenship. See generally Kenneth L. Karst, Essay, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. Rev. 303, 333–35 (1986) (discussing the role of education in assimilation). Even after such baseless fears have disappeared, one state constitution still speaks of the need for education to instill a “high degree of . . . patriotism . . . on the part of every voter in a government,” and the need for school instruction to “impress upon the mind the vital importance of . . . public spirit.” N.D. Const. art VIII, §§ 1, 3.

A logical corollary to using education to build good citizens is the notion that an educational system ought to sustain the very government-society that provides the education. In the newly formed United States, the citizens of the Commonwealth of Massachusetts drafted in their constitution the understanding that the chief goal of educating students in arts and sciences was to qualify them for public office and preserve not only the Commonwealth, but the nation as a whole.\textsuperscript{46}

Many decades later this same sentiment is echoed in nearly identical language of the North Carolina and Michigan Constitutions, which both encourage education as being “necessary to good government.”\textsuperscript{47} The use of education to sustain the government was even echoed by the court in \textit{Fogg v. Board of Education of Union School District of Littleton}, as a manner by which New Hampshire achieved protection “from the consequences of an ignorant and incompetent citizenship.”\textsuperscript{48}

Though seemingly un-American, this coarse philosophy is at the cornerstone of our American capitalist system. In the \textit{Wealth of Nations}, Adam Smith posited that national wealth was very much determined by the quality of its workforce. Without a literate, skilled, healthy, and motivated labor force, capital and technology cannot create a productive environment.\textsuperscript{49} Professor James Schouler, in his work \textit{A Treatise on the Law of the Domestic Relations}, used the same philosophy from the educated citizen’s point of view, concluding that an intelligent population is the barometer that determines the strength of the state.\textsuperscript{50}

The unyielding coil of government and business ties a state’s global dominance more directly to its economic prowess. Thus, a capitalist society must have a highly skilled workforce to fuel the machinery of the capitalist system and ensure economic prosperity of the country.\textsuperscript{51} With an educational focus narrowed to producing a citizenry for economic productivity, the government has provided a pub-

\footnotesize
\begin{itemize}
  \item \textsuperscript{46} See Mass. Const. pt. 2, ch. V, § I, art. I.
  \item \textsuperscript{47} Mich. Const. art. VIII, § 1; N.C. Const. art. IX, § 1.
  \item \textsuperscript{48} 82 A. 173, 175 (N.H. 1912).
  \item \textsuperscript{50} See Ex parte Bayliss, 550 So.2d 986, 990 (Ala. 1989) (referring to a citation of Domestic Relations by J. Askren in Esteb v. Esteb, 244 P. 264, 266–67 (Wash. 1926)).
\end{itemize}
lic education that can produce little more than industrial age factory workers and managers.\(^{52}\)

Currently, the education articles of six states set some sort of job skill training as a goal of education.\(^{53}\) This type of education has the effect of diverting students away from their individual abilities toward the future needs of an outside economic source. This is far too short-sighted; the job skills necessary or evident in a student today may not yield a job in the future. Even if job demand could be predicted accurately, there exists no guarantee in our country that success in school will provide college admission or a job.

In the somewhat different school of behaviorism, the chief pronouncement is strict compliance and obedience.\(^{54}\) The student, negatively influenced by the outside environment, must be manipulated by the teacher to master the basic skills that have been pre-determined by local education authorities.\(^{55}\)

The behaviorist notion that curricula must be determined by state authorities and local boards of education is a notion that has long held firm in the American understanding of educational governance.\(^{56}\) Equally instilled in the American psyche is the idea that a purpose for education is also to inculcate proper behavior and morals. The concept of education for the purpose of instilling morals and good character is echoed in the same constitutions that espouse the essentialist viewpoint of using education for preservation.\(^{57}\)

\(^{52}\) See Reinventing Our Schools: A Conversation with Ted Sizer (1994), available at http://www.ed.psu.edu/insys/esd/sizer/purpose.html. As late as the 1980s this was the aim of education for Lee Iacocca, who, as the chief executive officer of Chrysler automobile factories, delivered numerous speeches championing labor force production as the aim of education. See id.

\(^{53}\) See infra Appendix.


\(^{55}\) See Peterson, supra note 54; Bourbon, supra note 54.


\(^{57}\) See Mich. Const. art. VIII, § 1; N.C. Const. art. IX, § 1. Although his viewpoint was not sustained by the court in Dawson v. Hillsborough County, Superintendent Shelton advocated for the educational philosophy of his generation, testifying that the learning process was best served by a “businesslike, pleasant, non-distractive atmosphere,” and that being ostracized was the just reward for deviating from this behavioral norm. See 322 F. Supp. 286, 291 (M.D. Fla. 1971). Justice Jackson would echo this same need for cohesion
This university of thought fails in establishing a universal purpose because it inherently presumes a static common end without regard to individual needs. Worse yet, the apodictic nature of this system does not foster in the student a proper understanding of why one performs or refrains from performing certain tasks. Without this understanding, one creates a doer, not a thinker. It is this ability to think and improve upon the knowledge attained that is a hallmark of the public purpose of education proposed herein and the characteristic of the second main university of thought concerning education.

2. Humanistic Philosophies of Education

With a common focus on how education benefits the student’s ability to contribute their inherent skill set, the second university of thought regarding education is humanism. Humanism is rooted in educational philosophies such as pragmatism and reconstructionism. These philosophies have grown in use by educational theorists because of their widespread applicability.

In the school of pragmatism, the teacher serves as an advisor who is charged with guiding the student in the development of problem-solving skills to effectively navigate a world filled with ever-changing views and expanding knowledge. A characteristic of pragmatism is using the progress of the student to determine the purpose of education. This philosophy is annunciated in the Code of Massachusetts Regulations, which requires teachers to assure the existence of “educational programs in their classrooms that address the needs, interests, and abilities of all students.” By making this a condition of licensure for its teachers, the Commonwealth, in theory, moves away and discipline as being a fundamental educational aim of Catholic parochial schools. See Everson v. Bd. of Educ. of Ewing Twp., 330 U.S. 1, 24 (1947) (Jackson, J., dissenting).

Superintendent Shelton was not alone in his call for limited disruption through conformity. During this same period, Richard Nixon’s successful presidential campaign had a central theme of “law and order.” See Book Rags, America 1960–1969: Government and Politics, http://www.bookrags.com/history/america-1960s-government-and-politics (last visited Nov. 27, 2006). At this time the social climate in the United States was marked by upheaval and disillusionment. The late 1960s saw the assassination of Dr. Martin Luther King Jr. and Sen. Robert F. Kennedy. Id. The civil rights movement had begun to evolve and its more vocal demands were being challenged by the large support garnered by segregationist icon and presidential candidate George Wallace. See id. As the federal government focused less on constructing the Great Society and more on building a stronger response to the Vietnam War, a significant antiwar movement had begun to divide the country. See id.

58 Travers & Rebore, supra note 44.
59 See id. at 72–73.
from a behaviorist pronunciation of a single curriculum set to the lowest common denominator. The statute encourages curricula that can adequately reflect and adapt to the needs and capabilities of the individual student. As termed by Howard Gardner, this “individually-configured excellence” has the benefit of developing the strengths of the whole person.\(^{61}\)

The public purpose of education proposed in this article addresses the need for education to be more individualized by calling for a learning environment where the pedagogy is to assist students in exploring and developing their inherent individual abilities. This produces students who can achieve beyond the skill set needed for the current job market. Similarly, a fundamental goal for providing knowledge in Illinois is to develop “all persons to the limits of their capacities.”\(^{62}\) In Louisiana, the goal of the public educational system is to provide learning experiences that afford every individual the opportunity to develop to their full potential.\(^{63}\) In adopting these educational philosophies, these states embark on the path of producing learning societies. Such societies produce not learned but learning people.\(^{64}\)

In the school of reconstructionism, as in pragmatism, there is the understanding that everyone can attain their full potential.\(^{65}\) However, reconstructionism is unique for the idea that despite the ills of society,

\(^{61}\) Excerpt from Reinventing Our Schools: A Conversation with Linda Darling-Hammond (1994), http://www.ed.psu.edu/insys/esd/darling/purpose.html. In a recent speech before the Education Commission of the States, Arkansas Governor Mike Huckabee championed the call for more individualized education by stating that one of the best results of NCLB is that children and the problems they may face will be worked through on an individual level. Mike Huckabee, Governor of Ark., Address at The Nat’l Forum on Educ. Policy (July 13, 2006). However, to date, only Alabama, Illinois, Louisiana, and Montana have recognized individualized education within their respective constitutions. See infra Appendix.

\(^{62}\) Ill. Const. art. X, § 1.

\(^{63}\) La. Const. art. VIII, pmbl.

\(^{64}\) See Yero, supra note 36, at 2. Learning people are a natural result of an educational system vested in identifying the abilities of an individual. This type of system guides a student to view the whole range of abilities possessed and understand the many ways those abilities may be applied. In this manner, the student, as an informed thinker, becomes his or her own teacher.

Ironically, this same sort of critical thinking formed the basis for the Alabama Academic Freedom Act. The Act’s stated purpose for education was in part to teach students to seek and acquire all information necessary for critical thinking. However, the catalyst was a desire to preserve the teaching of divine creation as tantamount to theories of evolution. See H.B. 391, 2004 Leg., 2004 Reg. Sess. (Ala. 2004). This example demonstrates how perennialist notions and utilitarian pedagogy must seek the cloak of pragmatism to survive. See id.

\(^{65}\) Peterson, supra note 54.
students, who are all deemed inherently good, should be taught that they can use their individual skill set to find a practical means to remake society into its ideal form. The Constitution of New Hampshire encourages the reconstructionist philosophy that knowledge ought to be used to remake the larger society. The state’s constitution calls upon the educated citizen to spread the advantages of learning throughout the various parts of the country to “inculcate the principals of humanity and general benevolence.” This purpose clearly contemplates the duty of the educated to spread good charity and improve society.

Even though the humanistic philosophies of education seek to establish a more complete and individualized result for students, a public purpose of education adopting such ideals still faces a major setback. In a review of state constitutions, it is evident that the notion of educating “all children” equitably was lost by their framers. Only twenty states explicitly indicate that classrooms are to be made available to all school-aged citizens. Eight others stop just short of this by indicating the need for education to be “generally diffused” throughout the public.

The varying manner in which the states have addressed this matter has left courts the final arbiter of defining equal schooling. If the public purpose of education were codified among state constitutions, how many more children would have received their rightful education without the years and toil of court cases? Even now, with varying judicial interpretations as to how a state is to arrive at schooling equality, a codified public purpose of education would provide a universal guide by which dialogue could be directed towards a more rapid solution.

The matter of equal educational access was consequently left to the federal courts in cases such as Brown v. Board of Education. Reconstructionism necessarily goes beyond educational equality because it

---

66 Id.
68 Id.
69 See id. However, the sentiment of most states is more generally expressed in the Constitution of Texas. See Tex. Const. art. VII, § 1. This document gives citizens the responsibility of preserving the liberties and rights of the people. Id. On its face this is the same societal improvement notion that was stated in the New Hampshire Constitution. See N.H. Const. pt. 2, art. 83; Tex. Const. art. VII, § 1. However, the use of the word “preserve” actually calls upon the citizenry to maintain the status quo of liberties without regard to its effect on society. See Tex. Const. art. VII, § 1.
70 See infra Appendix.
71 See id.
72 See id.
requires all students to attain full potential. Due to the fact that some students may need more resources to fully experience their capabilities, the philosophy of education in this paradigm must be rooted in the equity of programs. The public purpose of education I proposed for codification understands that reform programs must be designed to offer students an equitable education process to achieve equal results. Undoubtedly, this was the understanding of noted philosopher Jean-Jacques Rousseau who concluded that “it is precisely because the force of things tends always to destroy equality, that the force of legislation ought always to tend to maintain it.”

By exploring the utilitarian and humanistic schools of thought surrounding educational purpose, it is clear that the public purpose I have proposed herein has the most universal application. Borrowing from legislatures and court opinions, the public purpose of education proposed seeks to engage all students individually to the height of their abilities and for the good of humankind. However, the review of these philosophies also exposes the fact that numerous other meritorious purposes do exist for education. Can the public purpose of education have multiple definitions? Is one better than another?

In the same way a book, originally purchased for the purpose of diffusing information to the reader, may later be used to level a table or teach a debutant to lose her slouch, it is conceivable that education may also have many defined purposes. For example, some hypothesize that in industrial nations, education commonly has goals that are directed towards empowering the individual and goals preserving government. However, no matter how many purposes a thing has, there remains a better or more universal purpose for everything. As such, the multifaceted nature of education does not grant it an exemption. Moreover, Linda Darling-Hammond, a noted education philosopher, took this idea further by suggesting that it may not so much be a matter of a better or worse definition of the purpose of education; instead, it may be a matter of a single public purpose and many private purposes of education. However, this all may be a matter of semantics.

Regardless of the chosen definition, the public purpose necessitates educational equity so that all students may equally exercise the

74 See Roberts v. City of Boston, 59 Mass. 198, 204 (5 Cush. 198) (1849) (quoting Rousseau and his discussion of the theory of the social contract).
75 See Baig, supra note 51; Reilly Jones, Purpose of Education (2003), http://home.comcast.net/~reillyjones/education.html.
76 Interview with Linda Darling-Hammond, Professor Stanford Univ., in St. Paul, Minn. (July 10, 2006).
capacity of their knowledge and abilities in a manner beneficial to their global surroundings.

III. THE CURRENT STATUS OF EDUCATION REFORM AND HOW THE PUBLIC PURPOSE OF EDUCATION INFORMS PROFESSIONAL DEVELOPMENT

The United States already has organizations, businesses, and financial backers contributing to education reform efforts. There are teachers ready, administrators being prepared better than before, and a rise of new unionism casting away the management conflicts of yesterday. There are a thousand ideas and new ones produced every day.

Codifying the public purpose of education arrives at a time when the education reform movement is teeming with solutions of varying scope, cost, and achievement, though very few initiatives have produced more than the catchphrase featured on their latest media kit. These reform programs take many forms. Reform initiatives have sought to hurriedly certify new teachers without classroom observation. Others promise new funding by robbing Peter’s public school to pay Paul’s charter school. The most recent trend is quantifying educational quality through a battery of standardized testing shrouded in proprietary secrecy. The litany of education reform organizations seeking to find the most effective program reads like an alphabet soup—NCTAF, ECS, NCATE, ABCTE, CPSF, NCTQ, CCCSO, NEA, AFT, AACTE, ACE, NCEE, TEAC, INTASC, etc.

79 See Assoc. of Tex. Prof’l Educators, Vouchers/Charter Sch., http://www.atpe.org/Advocacy/Issues/vouchersCharters.asp (last visited Nov. 18, 2006) (indicating the organization’s opposition to voucher programs and charter schools that enrich for-profit companies during a time period when the state has limited funds for public schools and charter school students are evidencing little academic progress compared to their public school counterparts).
80 See Barnett Berry, Building the Teaching Profession: Do NBCTs Still Make a Difference? Yes (May 15, 2006), http://teachingquality.typepad.com/building_the_profession/2006/05/in_the_may_9th_.html (indicating that certain Value-Added researchers opt to use “methodology [that] is proprietary and held in secret, and thus not available for other researchers so that they can conduct the typical peer review of statistical procedures and models used”).
These valiant efforts and progressive organizations have only brought us to a place where far more needs to be done. Asian and European counterparts are still outperforming U.S. high school students in mathematics and science. A factor contributing to this and similar statistics is that, unlike other countries, the United States offers no universal professional development program for high school teachers.

A 2006 report by Education Trust indicated that teachers lacking experience and education were more likely to be located in low-income and minority-rich schools. The effect of these low-quality teachers is apparent in their students’ relative lack of college preparedness. Assuredly, this is one of the many factors that contributed to the barely seventy percent national high school graduation rate for the 2002–2003 school year.

In codifying a public purpose of education, federal, state, and local legislatures, in concert with judges, will have a legally binding description of what education reform is to produce. This directive will assist in purging the loaded phrases that often polarize intelligent discourse on education reform. With this universally applicable and easily understood definition, the public will enjoy an open conversation with education policymakers. These groups may more readily reach consensus on educational reform initiatives that have heretofore been extremely divisive.

An example of a reform effort that may be assisted by codifying the public purpose of education is the movement to determine the appropriate manner by which to develop and sustain highly qualified and

---

82 Barnett Berry & John Norton, Learn from the Masters, 2 Edutopia 46, 45 (2006). In Japan, first-year teachers may expect a full year of close supervision with an accomplished teacher. Id. In Germany, teachers are required to embark on a two-year teaching internship that is closely monitored and evaluated prior to assuming full instructional duties. Id.
83 See Vaishali Honawar, Teacher Quality Seen as Unequal for Poor, Educ. Week, June 14, 2006, at 11.
84 Id.
85 The graduation rate varied by state, ranging from New Jersey and North Dakota, with average graduation rates of 84.5% and 83.1% respectively, to South Carolina, which has a graduation rate of 52.5%. EPE Research Ctr., Diplomas Count: An Essential Guide to Graduation Policy and Rates, Educ. Week, June 22, 2006, at 14.
86 Scott Widmeyer, Communicating for Change: What Educators Must Know and Be Able to Do, Educ. Week, June 7, 2006, at 34–35 (“It’s not enough to make people aware, to provide accurate information, or to disseminate or debate research—especially if questions are misguided. Purge jargon and open up conversation with the public—defining terms as you go, reaching consensus on the course of action.”).
accomplished teachers through a system of professional development. Adopting the public purpose of education facilitates the growth of highly qualified and accomplished teachers by providing a clearer picture as to which professional development practices will best provide students an education that achieves the public purpose—vesting in students the ability to investigate, locate, and develop the full complement of their abilities so they may be refined in exercise for the benefit of the human condition.

In this manner, educational excellence is defined by a course of instruction properly fulfilling the public purpose of education. Consequently, one may define the highly qualified and accomplished teacher as one that implements a pedagogy fulfilling that codified public purpose. Therefore, to ensure excellence in education, citizens, businesses, and government must implement a system that will develop and sustain this definition of a highly qualified and accomplished teacher.

A. The History of Professional Development

For a long time now, the education reform movement has focused on the role of the teacher. Eleanor Roosevelt observed that the nation’s highest aspirations for teaching its children required a “high grade of teaching” that would “inspir[e] youth and send[[] them on to great heights.” 87 Roosevelt knew that few teachers could meet these lofty goals, and that, to meet them would necessitate professional development opportunities, or as she characterized, “leisure to prepare, to study, to journey in new fields, and to open new sources of knowledge” to develop the accomplished teacher. 88

The education reform debate tackled the question of how to design and implement a system of professional development a little over twenty years ago. Had the public purpose of education been codified as a legislative norm at that time, this debate may have concluded shortly after it began. Policymakers would have readily understood and provided earlier support for professional development initiatives that were grounded in the public purpose. This hypothesis is apparent in exploring the history and current status of one of the country’s most distinguished professional development organizations, the National Board for Professional Teaching Standards (NBPTS).

87 See Selected Writings of Eleanor Roosevelt, supra note 45.
88 See id.
1. The National Commission on Excellence in Education

In the early 1980s, studies demonstrated concerns about the declining abilities of the nation’s youth.\(^9\) Science achievement scores were in a steady decline nearly every year since 1969.\(^9\) Remedial math courses increased at four year colleges by seventy-two percent between 1975 and 1980.\(^9\) The Department of the Navy reported that one-quarter of recent recruits could not read at the ninth grade level.\(^9\)

Due to the end of the baby-boom, teacher hiring had been at a sluggish pace for many years.\(^9\) Between the school years ending 1977 and 1984, many of the baby-boom teachers started to retire.\(^9\) The feared result was an impending teacher shortage.\(^9\) Licensing standards were thought to be weak, and few states involved teachers in state standard review procedures.\(^9\) A lack of mobility in teacher licensure meant that no national market existed for teachers.\(^9\)

To provide a unified direction from which government, citizen, and business could address the growing need for education reform, President Reagan, through his Secretary of Education, established the National Commission on Excellence in Education (“the Commission”).\(^9\) In April of 1983, the Commission issued a report stressing that “the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people.”\(^9\)

The Commission suggested that new teachers should demonstrate academic and pedagogic competence, and a method should be devised to recruit stronger candidates through salary incentive programs.\(^9\) The Commission went on to suggest that input from all fac-


\(^{90}\) \textit{Id.}

\(^{91}\) \textit{Id.}

\(^{92}\) \textit{Id.}


\(^{94}\) \textit{Id.}

\(^{95}\) See \textit{id.}

\(^{96}\) See \textit{id.} at 35, 64.

\(^{97}\) See \textit{id.} at 102.

\(^{98}\) NCEE, \textit{A Nation at Risk, supra} note 89.

\(^{99}\) \textit{Id.} In true cold-war fashion, the Commission supposed that if this level of educational mediocrity had been cast upon the American people by a foreign power it would be considered “an act of war.” \textit{Id.}

\(^{100}\) \textit{Id.}
ets of American society were needed to generate the fundamental reform necessary to improve the educational system.\textsuperscript{101}

This idea of inclusiveness was a result of the preamble to the Commission’s charter.\textsuperscript{102} Articulated with a humanistic ideal, the preamble asserted that “[a]ll, regardless of race or class or economic status, are entitled to a fair chance and to the tools for developing their individual powers of mind and spirit to the utmost.”\textsuperscript{103} It is evident from the Commission’s recommendations that when a humanistic purpose is applied to conversations on education reform, the focus is directed towards how all students can be involved and equitably benefit from the suggested reform.\textsuperscript{104}

Why then did the work of the National Commission on Excellence in Education end with the \textit{Nation at Risk} report? Why did the preamble, held in esteem by a presidential commission, fail to finally define a singular purpose to education providing targeted and effective reforms twenty years ago?

Chester Finn hypothesized that the Commission lacked the vision and resources that could take its notions beyond theory.\textsuperscript{105} Furthermore, the Commission was stymied by the decentralized and inherently local structure of the system it wished to reform.\textsuperscript{106} This left the Commission’s recommendations free to be picked apart by legislatures and boards of education consumed by the lesser purposes of education.\textsuperscript{107}

Despite these shortcomings, the Commission did create a spark. Governors, more driven by the utilitarian economic aspects of education reform, began to fan the spark into a small flame. Governor Lamar Alexander of Tennessee asserted the need to prepare for better schools was the major domestic issue of the day.\textsuperscript{108} Missouri’s Governor, John Ashcroft, espousing the humanistic notion of the Commission, would state that it was the primary goal of his constituency to “create an environment of opportunity, development, and growth for

\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{103} NCEE, \textit{A Nation at Risk}, supra note 89. The preamble is strikingly similar to the public purpose of education espoused in this text. See id.
\textsuperscript{104} Id.
\textsuperscript{105} See Chester E. Finn, Jr., \textit{Teacher Reform Gone Astray}, in \textit{Our Schools & Our Future. Are We Still at Risk?} 216–17 (Paul E. Peterson ed., 2003).
\textsuperscript{106} See id.
\textsuperscript{107} See id.
\textsuperscript{108} Id.
all of [the State’s] citizens.” Finally, the little known Governor of Arkansas, Bill Clinton, weighed in that education reform was necessary to properly develop the minds of all the nation’s citizens. By raising interest in the need for education reform, the Commission also created an awareness for the need to improve America’s teachers.

2. The Rise of Professional Development as a Means for Purposeful Education Reform

In January of 1985 the small spark was ablaze. The modern conversation on teacher professional development began when the Carnegie Forum on Education and the Economy was established for the purpose of developing education reform initiatives that would address the economic challenges expressed in the report authored by the National Commission on Excellence in Education.

Within two months the Advisory Council chairing the Carnegie Forum established the fourteen-member Task Force on Teaching as a Profession (“the Task Force”). The Task Force was composed of a variety of education leaders, policymakers, and business executives reflecting the vast diversity of opinions on education reform. The group started with two essential tenets. First, educational standards would have to be more demanding to assure that students would achieve far more. Second, the teaching profession would have to rise to the standards required to meet the challenge of the first tenet. Both tenets were to be executed with the intention of educating the individual for the benefit of all.

Despite the underlying utilitarian mission of the Carnegie Forum—to propose reforms for national economic security and development—the Task Force set foundations of understanding that were similar to those articulated in humanistic purposes of education. It espoused the view that job-skill preparation should not be the sole focus or even most important focus of education. Finn, supra note 105, at 15. The Task Force superseded the utilitarian notion of using education as a means to establish a citizenry loyal to existing government design. Id. at 14–15. Instead, the Task Force focused on the idea that education must enable one to “make informed judgments about the complex issues and events that characterize life.” Id. at 14. This parallels the notion of developing the natural abilities of a student for use in the betterment of the human condition. To vest a student with the ability to make such personalized decisions, the Task Force understood teachers would have to concentrate on individual students’ abilities.
To meet its two goals and remain true to the humanistic approach to education reform, the Task Force issued the following eight recommendations in its report, *A Nation Prepared*:

- Make teachers’ salaries and career opportunities competitive with those in other professions.
- Relate incentives for teachers to school wide student performance, and provide schools with the technology, services and staff essential to teacher productivity.
- Mobilize the nation’s resources to prepare minority youngsters for teaching careers.
- Develop a new professional curriculum in graduate schools of education leading to a Master in Teaching degree based on systemic knowledge of teaching and including internships and residences in the schools.
- Require a bachelor’s degree in the arts and sciences as a prerequisite for the professional study of teaching.
- Restructure the teaching force, and introduce a new category of Lead teachers with the proven ability to provide active leadership in the redesign of the schools and in helping their colleagues to uphold high standards of learning and teaching.
- Restructure schools to provide a professional environment for teaching, freeing them to decide how best to meet state and local goals for children while holding them accountable for student progress.
- Create a National Board for Professional Teaching Standards, organized with a regional and state membership structure, to establish high standards for what teachers need to know and be able to do and to certify teachers who meet that standard.\(^\text{116}\)

Of the eight enumerated proposals, the establishment of the National Board for Professional Teaching Standards (NBPTS) is the most noteworthy and sustained education reform initiative presented by the Task Force.\(^\text{117}\) To date there are various other professional develop-

\(^{116}\) *Id.* at 3.

\(^{117}\) See *id.*
ment initiatives and organizations. However, it is worthwhile to further explore NBPTS because research surrounding that organization and governmental support of its practices demonstrate that it is an effective model of the professional development of teachers that is able to serve the public purpose of education. A review of NBPTS also demonstrates how embracing a reform initiative grounded in the public purpose of education can produce effective and long lasting educational reform.

3. The History of NBPTS’s Professional Development Initiatives

The Task Force envisioned that the professionalization of teaching would have much of the same impact for teachers as the professionalization of medicine had for doctors at the turn of the twentieth century. For true professional development to take place, teachers themselves would have to exhibit the specific knowledge and demonstrable abilities needed to be considered highly qualified and accomplished. The states would be left to determine standards for entry level teachers, and determine who would meet standards for certification.

NBPTS, as envisioned by the Task Force, would issue two certificates. The Teacher’s Certificate would establish a high entry level standard, and the Advanced Teacher’s Certificate would identify those that had reached a high level of teaching and had the acumen worthy of school leadership. The high standards for these certificates would represent a consensus of educators well versed in the specific field of certification. Assessments for certification would reach far beyond the mastery of subject knowledge. In a true humanistic fashion, teachers would also have to demonstrate their contribution to the school wide learning community. Assessment would focus on a teacher’s capacity to encourage learning in students of various learning styles, cultural

---

119 See id. at 7 (noting the impact of Abraham Flexner, who at the beginning of the twentieth century issued the report Medical Education in the United States and Canada. The document examined the state of American medical education and called for reforms to the manner in which students were selected for and trained in North American medical schools).
120 See id.
121 See id.
122 See id. at 66.
124 Id.
125 See id.
126 See id. at 67.
experiences, and economic realities. This voluntary certification process would be decentralized, allowing for easy access for teachers throughout the country. With the hope of providing a large number of professional teachers to communities most in need, a heavy emphasis would be placed on recruiting and preparing minority candidates.\textsuperscript{127}

The conceived design of NBPTS and its premier professional development tool, National Board Certification, are in concert with the public purpose of education. Teachers attaining the certification issued by NBPTS would advance the public purpose of education because their selection would espouse the same theme. In the design of NBPTS, one finds the humanistic notion of a chorus of different voices coming together to articulate a central theme. The process of certification emphasizes major components of the public purpose of education by championing individualized instruction for the ability of the student, emphasizing the equity of all students, and setting a high bar for service to the community. If a codified public purpose of education had existed at the conception of this organization, policymakers could have easily discerned the need to provide immediate and sustained investment in this reform initiative.

Two years after its 1987 creation, NBPTS took the first step in implementing a system of National Board Certification by issuing the policy statement \textit{What Teachers Should Know and Be Able to Do}, which served as the foundation on which all standards would be based and all assessments developed.\textsuperscript{128} The statement articulated the fundamental requirements for proficient teaching\textsuperscript{129} along with the following Five Core Propositions:\textsuperscript{130}

- Teachers are committed to students and their learning.
- Teachers know the subjects they teach and how to teach those subjects to students.
- Teachers are responsible for managing and monitoring student learning.

\textsuperscript{127} See id.


\textsuperscript{129} Id. at 2–3.

\textsuperscript{130} Id. at 3–4. The Five Core Propositions expressed the sentiment of the public purpose of education. \textit{Id.} at 2–6. They preserved the Task Force’s focus on producing teachers to advance the public purpose of education. \textit{Id.} The Propositions affirm the need to have a solid knowledge base and emphasize the ability to convey that knowledge and cultivate the desire to learn in the fluid atmosphere of our nation’s schools. See id.
Teachers think systemically about their practice and learn from experience.

Teachers are members of learning communities.

At present, the certification issued by the NBPTS remains voluntary and is open to anyone with a bachelor’s degree and three years of classroom experience.\textsuperscript{131} NBPTS’s certification-area repertoire includes nearly every educational field and development-level taught from early-childhood through young-adulthood.\textsuperscript{132} With a 2003–2004 national pass rate average of forty-seven percent, the performance-based assessments developed by teams of teachers and educational experts undoubtedly reflect high and rigorous standards.\textsuperscript{133} Thus, nearly twenty years after its creation, the NBPTS has grown into a sound facsimile of its artists’ rendering.

Yet, despite all the tremendous efforts made by NBPTS, the current level of government support and public knowledge of this initiative will only yield an estimated 50,000 National Board Certified Teachers (NBCTs) by the end of 2006.\textsuperscript{134} That is about 1.3\% of the nation’s teachers.\textsuperscript{135} This percentage would no doubt be larger and reform efforts further progressed if at inception, policymakers had a codified public purpose of education by which to judge this organization as one deserving of more generous amounts of public support.

Some may argue that one reason for moderate government support is the existence of a few research studies questioning the effectiveness of NBCTs to deliver standardized test scores.\textsuperscript{136} This does not explain moderate government support, as a larger body of research exists demon-


stowing the effectiveness of NBCTs. A 2001 national survey found that NBCTs were, on average, more desirous of leadership positions and received more awards than their counterparts. A 2005 study indicated that NBCTs were better equipped to work collaboratively with the diversity of parents and guardians of their students. A 2004 study conducted by the University of Arizona found that the students of NBCTs received the equivalent of one additional month of schooling. A much larger study conducted in Florida indicated that students of NBCTs performed at a significantly higher level.

B. Federal Government Support for NBPTS Professional Development Initiatives

Despite the design of NBPTS, which mirrors the public purpose of education proposed above, and the myriad of research demonstrating the program’s effectiveness, the federal and state governments have so far not taken the opportunity to invest more generously in NBPTS. Also, federal programs instituted in 1997 only provide limited financial assistance to individuals seeking certification in target areas. Some of these subsidies have covered up to half of the $2500 certification fee. However, with a national teacher salary average of only $46,597 in recent years, much more can be done by the federal government. Teachers should be able to pursue National Board Certification without

---

having to decide between professional development and household needs.\textsuperscript{144}

At the federal level, the decision to forego a larger investment in professional development initiatives is not due to a lack of understanding of the need for such programs. Recognizing the positive effects of identifying and developing accomplished teachers, President George W. Bush has stated that his “administration is committed to a goal that we’ll have a quality teacher in every classroom in America.”\textsuperscript{145} The Department of Education continually trumpets state-level findings that “students with ‘highly-qualified’ teachers for three years in a row scored 50 percentage points higher on a test of math skills than those who had ineffective teachers.”\textsuperscript{146}

Yet, instead of embracing programs like National Board Certification, the Bush Administration has left a vague set of disjointed standards to be implemented by the states. For example, through NCLB, an elementary school teacher is considered highly qualified if he or she has obtained full state certification or licensure, completed a bachelor’s degree, and demonstrated subject knowledge and teaching skills in reading, writing, mathematics, and other areas of basic elementary curriculum by passing a “rigorous” state test such as the state certification exam.\textsuperscript{147} Unfortunately, this definition fails the public purpose of education standard I propose, primarily because it is focused on the teacher’s basic content knowledge instead of the teacher’s ability to teach students. The public purpose of education requires a student-centered focus so that the individual’s abilities may be cultivated and because the skill-set the student possesses for the betterment of the human condition may exceed the scope of basic reading, writing, and math curriculum. By adopting the NCLB approach, the Bush Administration has lost the opportunity to ensure that teachers meet requirements as suggested by the public purpose of education. Through federal government support of the NBPTS and its humanistic vision of professional development, more students could have access to accomplished teachers that would encourage them to achieve


their fullest individual potential for the good of themselves and the betterment of society.

C. **State Government Support for NBPTS Professional Development Initiatives**

States have embraced professional development initiatives with as much variation as exists in their respective constitutions.\(^\text{148}\) The encouraging fact is that some states do recognize a need to pursue professional development through National Board Certification.\(^\text{149}\) Incentives can range from allowing an NBCT interstate license portability to a bevy of financial pay-incentives and certification process support.\(^\text{150}\)

North Carolina, the state with the largest number of NBCTs, observes a large state commitment to this professional development initiative.\(^\text{151}\) That state’s board of education has adopted the NBPTS’s Five Core Propositions into state educational policy.\(^\text{152}\) It allows for immediate licensure of NBCTs relocating to North Carolina, and incorporates the public purpose pedagogy of NBPTS into staff development and training programs.\(^\text{153}\) In addition, the state house has also approved legislation that provides for a twelve percent salary increase to NBCTs.\(^\text{154}\) These programs exemplify the support for education reform that can easily arise after codifying a strong commitment to the public purpose of education.

Despite these encouraging facts, it is also apparent that a great deal remains to be done in North Carolina. Of the state’s 115 school districts, only thirty-three offer assistance to those seeking professional development through NBPTS.\(^\text{155}\) Generally, these are the poorer rural

---


\(^{150}\) See id.

\(^{151}\) See id.

\(^{152}\) See id.

\(^{153}\) See id.

\(^{154}\) See NBPTS, North Carolina, supranote 148.

counties that could benefit from an influx of accomplished teachers. Though the state articulates a right to education, without a specifically delineated public purpose of education, less affluent counties lack the incentive and authority to break from their standard funding formulas to support these programs.

The situation in North Carolina is similar in more affluent states like California. There, the state implemented an NBPTS Incentive Program that provides to NBCTs teaching in high priority schools for four consecutive years a $20,000 pay incentive, paid in four annual installments. However, of 1056 separate school districts in California, only seventy-one offer some form of additional salary incentives to teachers in non-priority schools or assistance with certification fees.

D. How the Public Purpose of Education Should Be Applied to Support Effective Professional Development Initiatives

This review of the history and current status of one of the country’s most distinguished professional development organizations indicates the ways that codifying a public purpose of education in federal and state legislative enactments can have positive effects on educational reform. First, codification will lend more credence to the need to professionalize the teaching practice. The public purpose requires higher teaching standards necessary for orchestrating individualized student learning communities. Professionalization becomes necessary to identify highly qualified and accomplished teachers and to service the codified public purpose of education. Second, professional development initiatives, such as National Board Certification, will receive greater support. These initiatives will act as the conduit for attaining a critical mass of professional teachers. Finally, the codification of a public purpose will set a clear standard of government commitment and parent expectations. If commitment is compromised, a lobbyist would have the benefit of reminding legislators of their codified legal obligation, and parents could more effectively petition the courts for remedy. This will give smaller and less affluent school systems more leverage in state legislatures when requesting funding for professional development initiatives.

Effective education reform will occur by embracing the codified public purpose that calls upon all children to be granted an equitable opportunity to investigate, locate, and develop the full compliment of their abilities so that they may be refined in exercise for the benefit of the human condition. The codified public purpose will focus judicial, legislative, and executive dialogue in support of reform initiatives, such as National Board Certification, causing the enthroned pedagogy of least common denominator education to fall.

With purposeful resolve, our schools will develop the character articulated by Prakash Nair:

[S]tudent centered, not teacher centered; . . . personalized, not mass produced; . . . connected to real-world experiences, not classroom simulations; its communications technologies should cut across local, state, and national boundaries in real time; it should be a testing ground for new ideas and technologies; it should model and then build new social, economic, and democratic structures.158

These ideals are the fulfillment of the codified public purpose of education and the educational promised land to which the nation’s most humble reform efforts wished to deliver us.

**Conclusion: A Call for Codification**

In the 1980s, after years of waiting and wanting, the country’s eyes were opened to focus upon a mediocre education system. The nation was at risk and unsure of what to do. Many plans were put forth in the following twenty years. With so many theories hypothesized and tested, the United States truly became a nation prepared for what was ahead. Today, national policies, local programs, educational organizations, business collaborations, university support networks, learning communities, studies, standard measures, philanthropic billionaires, and even daytime television hosts dedicating shows for the benefit of education reform are everywhere. Yet the country is missing the catalyst to move from the event horizon and engage the future through a unified body of education reform initiatives. The catalyst missing is a unifying pronouncement by which we may together move all of our energies.

---

Herein lies the glory of codifying the public purpose of education. It will spawn collaboration by giving a common point of reference by which to resolve the most heated reform debates. It will present a common and clear expectation for all classrooms. American society is subconsciously embracing the definition already. In a piecemeal manner, one can observe the purpose contemplated in certain state constitutions, whispered in the dicta of lower court opinions, and hypothesized in the mission statements of reform organizations. The idea of a public purpose is heard faintly in the much maligned NCLB and its attempt to set a uniform standard for all of the nation’s children.

It will be incredibly difficult to codify the public purpose of education. Yet, now that the nation is truly prepared, it must move forward. The only way is by adopting a set definition for the public purpose of education while respecting that private purposes also exist. The public purpose of education is to be adopted not just in discussions, seminars, or whitepapers. It is to be drafted and adopted in policies and statutes. It is to be chiseled into state constitutions, argued in courthouses, and known in the nation’s collective heart. More than this, the public purpose of education must be applied now, to current education reform programs, so that we better understand which programs will more fervently lead us to the educational system desired throughout the country.

Despite the diminutive number of words comprising it, the proposed purpose has the power to transform public education and our known society simply because of where it is to be enshrined. The U.S. Constitution was born with ten amendments and Congress has given birth to seventeen more since 1789. The several states have a long history of amending their respective constitutions when the public demands that a state’s consciousness be preserved. One cannot avoid codifying a public purpose for education simply because the task was not done in the time of George Washington. Via the federal government or among the several state legislatures, by resolution or bill, the nation is ready to codify a public purpose of education. We are a nation ready. We must act now. We can no longer be guardians of the status quo.
### Appendix: Education as Specifically Enumerated in the Several State Constitutions’ Declaration of Rights and Education Article Preamble and Establishment Clauses

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Enumerated Rights/Number of Articles</th>
<th>Education is a Specifically Enumerated Right</th>
<th>Education is a Stand-Alone Article</th>
<th>Education is Specifically Mandated for All School-Age Citizens</th>
<th>Government/Liberty Preservation or Citizenship is an Education Goal</th>
<th>Vocational or Scientific Job Skill Development is an Education Goal</th>
<th>Development of a Student’s own Abilities is an Education Goal</th>
<th>The use of Education to Benefit Society is an Education Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>36 / 24</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alaska</td>
<td>25 / 22</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>34 / 29</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>29 / 20</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>31 / 35</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colorado</td>
<td>30 / 37</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>20 / 14</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td>20 / 17</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>26 / 12</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>28 / 11</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hawai’i</td>
<td>24 / 18</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>22 / 21</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>24 / 15</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>37 / 16</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>25 / 12</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>20 / 15</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky</td>
<td>26 / 17</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>27 / 14</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td>24 / 10</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>47 / 18</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>30 / 8*</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td>25 / 12</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>17 / 13</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td>32 / 15</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>32 / 13</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Articles</td>
<td>Provisions</td>
<td>Notes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>----------</td>
<td>------------</td>
<td>-------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Montana</td>
<td>35 / 14</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>29 / 16</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>21 / 19</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>39 / 16*</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>22 / 10</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>24 / 24</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York</td>
<td>19 / 20</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>36 / 14</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>24 / 13</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td>20 / 49</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>35 / 29</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>45 / 16</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>28 / 28</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td>24 / 15</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>24 / 17</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>22 / 29</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>35 / 11</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>32 / 17</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>29 / 24</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>21 / 13*</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>17 / 12</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>35 / 32</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>22 / 14</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>26 / 14</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>37 / 21</td>
<td>y</td>
<td>y</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"y"—Indicates the presence of a particular provision in a state constitution.

"*"—State constitutions consisting of two distinct parts—a declaration of the rights of the state’s citizenry and the plan or frame of government. For counting purposes the first part is counted as one article and the divisions of the second part are counted as separate articles.