

FOSTERING INNOVATION IN UTAH SCHOOLS: COMMON ELEMENTS OF EDUCATIONAL SUCCESS

RESPONSIBLE CITIZEN SUMMARY

Background

- In tax-subsidized schools as envisioned by Thomas Jefferson ("Jefferson Charter Schools"), parents maintain control, participation is voluntary, curriculum and methodology are customized, and all educational efforts respect the parent-child relationship.
- Civic reform is prerequisite to significant, widespread, positive pedagogical and organizational innovation.
- Four key components of civic structure – Flexibility, Accountability, Representation, and Modularity (FARM) – are essential if innovation is to flourish.

What's at stake?

- The quality and safety available for children in Utah schools.
- The academic and economic preparation sufficient to prepare children growing up in a rigorously-competitive 21st-Century world.
- The ability of parents to choose and shape the kind of education their children receive.

What's next?

- Utah should heed the wisdom of America's Founders by revising the state's charter law to allow for Jefferson Charter Schools and by enacting other civic reforms that allow innovation to thrive in Utah schools.
- Potential organizational and pedagogical innovations include a more voluntary, user-driven, user-defined educational experience; accelerated tracks to college for gifted or motivated students; more effective use of volunteers; an increased focus on public virtue; and a culture of excellence.

Responsible *Citizenship*[™]

Building a civic structure for Utah's education system will permit genuinely-innovative reform ideas to be considered, tested, and implemented in Utah schools.

I. INTRODUCTION

Nearly every year, policy-makers discuss the need for innovation, reform, or improvement in government schools. Many proposals are offered for this purpose. Sometimes it can be difficult to evaluate whether these ideas would really result in positive change.

We will identify general principles of genuine positive innovation and success in Utah government education.¹ The civic, organizational, and pedagogical realms of innovation are considered, with a focus on civic reform. Particular attention is paid to the insights of Thomas Jefferson regarding the design and function of effective local government-school systems. Some potential innovations in Utah educational pedagogy and organization are also described.

II. THE THREE LEVELS OF EDUCATION REFORM

Many, if not most, community, civic, business, education, and religious leaders recognize that Utah's government pre-college education system is defective, and that Utah is rapidly acquiring serious educational and social problems already entrenched in many other areas of the United States. These leaders know that if the pre-college education system available to the masses is not dramatically improved in Utah and beyond, the state's position as a global player will be eclipsed. In many cases, they even know many of the specific changes that need to be made.

Yet change efforts do not seem to ever gain traction. It is critical that we understand why.

Because “organizations are perfectly designed for the results they achieve,”² as a general rule, some historic person or group of people has identified desired results, and these priorities have then lead in a non-random way to a particular organizational design.³ Those who benefit from the design of the current system will accede to change only when forced to do so by the body politic.

History has repeatedly illustrated that Platonic rule by philosopher kings fails to harness the collective wisdom of society regarding what really is in the “benefit of the common good.”⁴ Worse yet, Platonic governance inevitably leads to kleptocracy, because members of any elite social class are susceptible to the basic instincts of human nature and will tend to put their own “narrow self-interest” ahead of anything remotely approximating the “public good.” One core insight afforded by any competent American civics class is that citizens cannot rely on their leaders to consistently and angelically put the public good first. Bedrock principles of constitutional government – such as, for example, elections, checks and balances, and free-speech criticism in the public square – are inherently premised on the notion that citizens should not just “trust” their leaders, but instead impose limits and transparency upon anyone temporarily authorized by the people to serve as a public official.

Educational innovation and reform really occurs at three different levels. Permanent, meaningful reform in the *pedagogical* realm (what and how to instruct) and in the *organizational* realm (operations, culture, human resources, and general-resource use within the educational institution) almost always depends upon prereq-

uisite change in the *civic* realm (including the legally-defined structures by which political and economic decisions are made and by which constituent families have representational input). If the *civic* part of the equation is dysfunctional – and Platonic governance of education is dysfunctional – it becomes virtually impossible for any educational institution to instigate positive internal innovation or borrow useful innovative ideas from other external sources. Without *civic* reform, efforts directed at the other two levels of innovation – *organizational* and *pedagogical* – will simply wither and die on the vine.⁵

Thomas Jefferson recognized this principle long ago. The prerequisite key to successful, long-term, sustained, meaningful educational innovation is a *civic* structure for the education system that will actually permit genuinely-innovative ideas to be considered, tested, and implemented.

III. LESSONS FROM JEFFERSON – THE JEFFERSON CHARTER SCHOOL CONCEPT FOR GOVERNMENT

Education

Home-educated Thomas Jefferson left a distinct mark upon the history of education in the United States. He was a consummate innovator and early advocate for education. It is therefore important to understand what Jefferson actually advocated with regard to families, parental liberty, and education, as well as what ideas he rejected.

First, Jefferson explained his core pedagogical precept: “Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all edu-

cation in him. From his cradle to his grave he is learning to do what he sees others do.⁶ Consequently, in both education and politics, Jefferson believed it was critical to acknowledge the imitative psychology of the individual and the herd-like tendency of groups.

Second, there is no doubt that Thomas Jefferson highly valued education and an educated citizenry. He believed that an educated citizenry was essential to the long-term survival of democracy, and believed strongly that the ladder of opportunity should be available to a person of any economic class who sought self-betterment:

I think by far the most important bill in our whole [Virginia] code, is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness.... The tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.⁷

Accordingly, Jefferson founded the University of Virginia and advocated the establishment of tax-supported elementary schools in his native state. However, his ideas were not ever implemented in an authentic manner. It is also crucial to understand that the concept of a “public school” as advocated by Jefferson (and other civic-oriented Founders such as Benjamin Franklin) had additional distinctive features.

Third, Jefferson believed that tax-subsidized elementary schools should be wholly governed by parents of the local neighborhood who had children attending as students, not by any “general authority of the government” at a municipal, state, or federal level:

But if it is believed that these elementary schools will be better managed by the Governor and Council, the commissioners of the literary fund, or any other general authority of the government, than by the parents within each ward, it is a belief against all experience. Try the principle one step further and amend the bill so as to commit to the Governor and Council the management of all our farms, our mills, and merchants’ stores.⁸

Without the preeminence of local parents and a market-responsive educational structure, Jefferson observed, a government-subsidized education system was doomed to failure.

Fourth, Jefferson believed that no government at any level, and no group of parents governing a local school, should *compel* education or school attendance upon any child over the objection of the child’s parents:

Is it a right or a duty in society to take care of their infant members in opposition to the will of the parent? How far does this right and duty extend? – to guard the life of the infant, his property, his instruction, his morals? The Roman father was supreme in all these: we draw a line, but where? – public sentiment does not seem to have traced it precisely...It is better to tolerate the rare instance of a parent refusing to let his child be educated, than to shock the common feelings and ideas by the forcible asportation and education of the infant against the will of the father...What is proposed...is to remove the objection of expense, by offering education gratis, and to strengthen parental excitement by the disfranchisement of his child while uneducated.⁹

Jefferson believed in using peer pressure, rather than legal force, to encourage citizen families and children to educate themselves. He believed that society has the right to “disavow” people who refuse to take any opportunity (independently or in a subsidized school) to become functionally literate, and to thereby use cultural pressure to “strengthen the motives to receive [instruction] when offered” to those lacking a basic education. At the same time, Puritan-style suppression of alternative education and parental liberty was wholly unacceptable to Jefferson:

The first settlers in this country were emigrants from England, of the English church, just at a point of time when it was flushed with complete victory over the religious of all other persuasions. Possessed, as they became, of the powers of making, administering, and executing the laws, they shewed equal intolerance in this country with their Presbyterian brethren, who had emigrated to the northern government. The poor Quakers were flying from persecution in England. They cast their eyes on these new countries as asylums of civil and religious freedom; but they found them free only for the reigning sect. Several acts of the Virginia assembly of 1659, 1662, and 1693, ...had prohibited the unlawful assembling of Quakers...had inhibited all persons from suffering their meetings in or near their houses, entertaining them individually, or disposing of books which supported their tenets. If no capital execution took place here, as did in New-England, it was not owing to the moderation of the church, or spirit of the legislature, as may be inferred from the law itself; but to historical circumstances which have not been handed down to us. ...

By our own [Virginia] act of assembly of 1705, c.30.... A father’s right to the custody of his own children being founded on his right of guardianship, this being taken away, they may of course be severed from him, and put, by the authority of a court, into more orthodox hands. This is a summary view of that religious slavery.... The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers have authority over such natural rights only as we have submitted to them. The rights of conscience we never submitted, we could not submit. ... The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. ... Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. ... Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: who will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and of stature. Introduce the bed of Procrustes then, and there is danger that the large men may beat the small, make us all of a size, by lopping the former and stretching the latter.¹⁰

Rendered in the language of the United States Constitution, Amendment X, Jefferson believed that the upbringing of children is in the first instance a “power[] ...

reserved ... to the people" instead of a "power[] ... reserved to the States" or a power expressly granted to the federal government. Jefferson understood that children are not a creature of the state.¹¹

Fifth, it is clear that Jefferson (and John Adams, with whom Jefferson reached a consensus on the topic by a series of letters) believed that law and education should protect families and the parent-child bond, and that the Platonic approach should be rejected. In a letter to John Adams, Thomas Jefferson observed:

I amused myself with reading seriously Plato's republic. ... While wading thro' the whimsies, the puerilities, and unintelligible jargon of this work, I laid it down so often to ask myself how it could have been that the world should have so long consented to give reputation to such nonsense as this? ... Education is chiefly in the hands of persons who, from their profession, have an interest in the reputation and dreams of Plato. ... But fashion and authority apart, and bringing Plato to the test of reason ... he is one of the race of genuine Sophists, who has escaped ... by the adoption and incorporation of his whimsies onto the body of artificial Christianity. His foggy mind, is forever presenting the semblances of objects which, half seen thro' a mist, can be defined neither in form or dimension. ... It is fortunate for us that Platonic republicanism has not obtained the same favor as Platonic Christianity; or we should now have been all living, men, women, and children, pell mell together, like beasts of the field or forest. ... [I]n truth [Plato's] dialogues are libels on Socrates. ... When sobered by experience, I hope that our successors will turn their attention to the advantage of education on

the broad scale, and not of the petty *academies* ... which are starting up in every neighborhood....¹²

In reciprocal letters to Jefferson, John Adams expressed similar dislike for Platonic concepts. Adams said the "philosophy" of Plato was "absurd,"¹³ berated Plato's concept of "a Community of Wives, a confusion of Families, a total extinction of all Relations of Father, Son and Brother,"¹⁴ and observed that "Plato calls [Love] a demon."¹⁵

Sixth, Thomas Jefferson advocated family autonomy and privacy. During the Founder's era, one of the primary organizational resources sovereigns had to invade family autonomy was a standing army, as well as government inspectors. Families who were forced to shelter and feed soldiers in their home could be controlled and harassed. The threat of being targeted and subjected to this indignity would, of course, deter many people from challenging the sovereign or orthodox ideology.

The *Declaration of Independence*, which was authored by Thomas Jefferson in collaboration with Constitution signers Benjamin Franklin, John Adams, Robert R. Livingston, and Roger Sherman, contains vociferous complaints about Great Britain's King George, who created "a Multitude of new Offices" and sent "[s]warms of officers" to "harass" the people in the Thirteen Colonies.¹⁶ Complaint was also made about "[s]tanding [a]rmies" that quartered troops in civilian homes, and the promulgation of regulations which had "destroyed the [l]ives of [the] [p]eople."¹⁷

As a result of these experiences, the Founders and Framers pointedly devoted an entire constitutional amendment solely to protecting the sanctity of the home. Their response to systemic state infringement upon

family autonomy is embodied in the Third Amendment to the United States Constitution, which provides that “No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.” The use of standing armies was carefully restricted and placed under direct control of Congress. Thomas Jefferson and the Framers were opposed to any government intrusion or monitoring pertaining to private homes or families.

In summary, Thomas Jefferson’s concept of education did advocate a system of tax-subsidized schools to provide a ladder of opportunity for people of all economic classes. However, Jefferson’s support was sustained only if such schools actually operated in a manner somewhat akin to the modern public library and voluntary community education programs. Jefferson believed tax-subsidized schools should be controlled by the local parents of the children attending each particular school, not by federal, state, municipal, or special governmental authorities. Schools were to be a resource to be made available on a wholly voluntary basis – compulsory education, compulsory attendance, legal coercion, and abrogation of parental custody or control of a child were utterly unacceptable to Jefferson. Any attempt to standardize education or obtain a uniformity of worldview in the population was also viewed to be inappropriate. Finally, Jefferson believed that education and law should operate through families and parent-child relationships, and not in subversion of them.

IV. PRECEPTS FOR FACILITATING INNOVATION – A FARM FOR NEW IDEAS

The optimal solution for Utah’s educational woes would be to implement the complete educational vision originally offered by Founders and Framers such as Thomas

Jefferson and Benjamin Franklin.¹⁸ Unfortunately, however, practical political constraints have made it impossible to fully implement such a singular vision in the short term. History teaches us that positive innovation often progresses in a halting, painful, incremental manner. Political experience teaches us that it is often necessary not to let the perfect be the enemy of the good.

Fortunately, much of Jefferson’s and Franklin’s wisdom can also be distilled into abstract, incremental measuring criteria, which can be applied to assess the relative value of nearly any reform proposal for any educational institution in the state. To the extent that the criteria reflect a scheme that is closer to what Jefferson and Franklin envisioned, we can expect that such a scheme is more likely to succeed. What follow are several key components of *civic* structure that nourish educational innovation. These components are Flexibility, Accountability, Representation, and Modularity (FARM).

A. Flexibility

Flexibility, for purposes of this discussion, means reduction of the number and impact of laws and regulations – federal, state, and local – to the bare minimum feasible extent, so that maximum autonomy, discretion, and ability to innovate over time is afforded to the board, principal, school organization, and teachers.

It should be self-evident that innovation cannot occur in Utah if those who govern a school are so hamstrung by orthodox external government constraints that they have no practical range of freedom to act. Innovation is seldom achieved through the centralized imposition of rules. Instead, innovation is usually achieved by numerous, varied, creative experiments, which collectively yield a limited but continually-accurring set of new in-

sights.¹⁹ These new insights have a “ratcheting effect” on the entire collective community as they are disseminated through voluntary imitation and adaptation throughout constituent members of that community.

Yet would-be reformers of the government education community often fail to appreciate this basic principle, perhaps due to the fact that all government entities have an inherent tendency to be centralized and rule-based. This is one reason why, in isolation, the notions of “hiring good teachers,” “raising teacher pay,” and “raising standards” are typically effective as political platitudes but do not substantially change actual student performance.²⁰

Consider one practical example of this flexibility principle, among the almost endless array that could be discussed. When various other states and the federal government pass detailed laws about the content of mathematics or history books, or allow state commissions to dictate to parents what all children will study, a counterintuitive consequence is that local Utah schools lose the ability to choose books of pedagogical and cultural interest to their local student body. Instead, textbook suppliers respond by contorting textbook content into configurations designed to comply with the many different artificially-imposed government regulations in multiple jurisdictions, usually as influenced by federal mandates and as established by large states such as California.²¹ Selection decisions are also guided by politics, lobbyists, bribery, and expensive marketing processes maintained by the three dominant textbook publishers in order to preserve oligopolistic barriers to entry.²² The result is diluted, boring, and tedious textbooks, not textbooks that teach mathematics or history in an interesting, efficient, and effective manner.²³ The large textbook publishers ca-

ter to the whims of large states like California, New York, and Illinois – which exert control through ideological regulation combined with exertion of disproportionate market power – then count on states like Utah to fall in line rather than open textbook selection to smaller publishers with content more conducive to Utah preferences. But even when a local Utah school administrator recognizes the problem, he or she lacks any power to resist the imposition of mandates from the federal government, large state governments such as California, and occasionally a legal mandate from Utah state government. Today, Utah is a vassal state with respect to education, where curriculum is controlled by everyone except local communities and students’ parents.

Lawmakers in some states have attempted to afford more flexibility to local government schools. In Colorado, for example, the Innovation Schools Act of 2008 was enacted to allow government schools, government school districts, and groups of schools to apply for exemption from collective bargaining agreements and the most onerous of state regulations.²⁴ Educators and politicians in Utah and other states are also beginning to seriously question the wisdom of the No Child Left Behind Act of 2001,²⁵ which was a classic example of a well-meaning but misguided bipartisan effort toward education reform.²⁶ Even the United States Ninth Circuit Court of Appeals recently issued a helpful decision, ruling that charter schools are not state actors for all purposes.²⁷ There are many federal and state court decisions which have accumulated to hamstring Utah educators, many of which are intractable impediments for the near future. However, a great deal of flexibility could be recovered if Utah was more willing to forgo federal funding that is conditioned upon compliance with retrograde federal regulations.

Of course, history has taught us that there are a few matters of concern that probably ought not to be wholly left to local experimentation. Such exceptions would include, for example, continued enforcement of laws prohibiting racial discrimination, basic fire and safety codes, and financial-reporting requirements designed to ensure proper use of public funds.

B. Accountability

Accountability means that educators must be directly, promptly, and reliably held responsible for results – especially student achievement and efficient use of resources. Administrators and teachers who achieve positive results should be employed, promoted, and awarded more compensation than lackluster performers. Accountability should be aligned with authority.²⁸ Those who perform poorly should receive fewer job offers, promotions, and increases in compensation; they should be terminated if performance is inadequate.

Results ultimately must be benchmarked against the satisfaction expressed by the *parents of the students enrolled in the relevant pre-college education program*. If a majority of those parents are dissatisfied with a particular board member or principal (headmaster), that person must be removed.²⁹ Subordinate administrators and teachers must be rigorously evaluated against benchmarks developed to implement parent preferences.

Thus, accountability should be a market-based concept, which seeks an equilibrium between what local parents are demanding and what the labor market of teachers are willing to supply.³⁰

Of course, parents are not always reasonable and rational. But the market equilibrium holds them in

check also. If a particular school becomes known for inadequate salaries or misguided parents, that school will be punished by the labor market. Skilled teachers will refuse to affiliate until conditions are adequately improved. Like football coaches known for winning programs, there will be some administrators and teachers who will actually be able to demand exceptional amounts of compensation.

Note, also, that a certain amount of leeway and detachment is often desirable, because political sentiment can be capricious, transitory, and volatile. Like a football coach trying to turn around a poor team, a principal often needs leeway and time to turn around a deficient government school. Thus, the best arrangement is often to afford a guaranteed term to the board members and the principal (absent recall for gross misconduct), and subject them to retention evaluation at the end of those terms. But the law should allow a principal to be removable at will or pursuant to negotiated contract terms.

Transparency is also essential to accountability. People in a position of trust cannot be held accountable if Utahns lack the ability to know what is happening.³¹ Government-school budgets, lesson plans, policies, calendars, activities, documents, and the like should be available on the Internet for public and parental review.³² Penalties should be assessed for schools, teachers, and administrators who fail to provide timely and accurate information. Obviously, there are some exceptions. For example, a student's personal contact information and emergency medical information would typically not be appropriate for public access, even though it is contained in government-school records.

C. Representation

Representation is a concept closely intertwined with accountability. The selection of the school board members – and the political, cultural, economic, and pedagogical agenda advanced by those representations – should directly represent the will of the parents of those students who actually attend the school in question. Selection or management by all voters in the general public, a municipal government, a state government, or the federal government, create misalignment between accountability mechanisms and the needs of students.

This concept is not unlike the election of a board of directors by corporate shareholders. The shareholders have invested in the entity and are far more affected by the decisions made than the public at large. The shareholders need to have the means to ensure that the directors are truly acting in the shareholders' interest, and to remove directors who fall short in this regard.³³

Similarly, parents and families need to have ultimate collective control of macro-decisions about pedagogical approach, personnel, organizational culture, and budgetary strategy that will be used in the environment that dominates their educational existence.³⁴ Over time, if given an opportunity, parents develop a sense of how to be successfully represented and school boards acquire expertise about how to represent the families they exist to serve. Without this direct link to parents, the systemic incentives motivate Utah government education administrators to maximize federal funding for education programs rather than optimize the learning experience for Utah students – even when those two objectives are in direct conflict.

Corporate governance typically entails shareholder election of a board of directors, with subsequent board selection and oversight of a chief executive officer. In like manner, it will usually be best to have student parents elect board members, and for board members to select and oversee the principal.

By far, the most important principle of representation is that the selection of the school board members should directly represent the will of the parents of those students who actually attend the school in question. But other aspects of the representational principle are also important, because civic dysfunctions occur when authority to decide an issue, take a position, or advocate in a certain manner is not carefully aligned to represent the stakeholders most impacted by the issue or position. For example, each government-school teacher has a right to join (or not join) any professional education organization, based on that individual teacher's assessment about whether the organization adequately reflects the teacher's own opinions. Teachers should not ever be directly or indirectly compelled to join or financially support any organization, including any teachers' union. A teacher should not be compelled to support any organization that takes a labor or political position at odds with the teacher's own views.³⁵ In this regard, Utah has made a great deal of progress in recent years, both in terms of affording teachers viable choices for affiliation³⁶ and in terms of restoring privacy and choice for teachers' decisions about how to use their own incomes.³⁷

D. Modularity

Modularity means that government schools should design classes and programs to allow portability, transferability, interchange, and efficient interfacing between

various government schools and other government schools, and between government and non-government schools. In today's increasingly mobile society – where credit hours, transient populations, and a computer-based society give rise to some practical logistical issues not present to the same extent in Jefferson's era – students, parents, and teachers in one system should be able to easily transfer credit or program participation between various institutions on a sequential or concurrent basis. For example, a private school student should be able to efficiently transfer credits to a government school; a home-educated student should be able to utilize sports and foreign-language programs in a government school without full enrollment; and a student who wants to transfer from one government Jefferson Charter School should be able to transfer to another government Jefferson Charter School with a very different focus.

Modularity allows students to sample and transfer between different educational programs, enjoy educational freedom as contemplated by the Founders, and still accumulate adequate progress towards modern accredited recognitions. This expands student opportunities to discover and consume services of most interest to them from a wide range of offerings.³⁸ Institutions with modularity can be more flexible and can coordinate with other educational programs to provide a better set of experiences and options than would otherwise be possible. Continuous incremental improvement in the design of organizations, programs, and curriculum can occur as different modular systems interact and generate ongoing feedback for everyone in a way that cannot be ignored.

In Utah, efforts are already underway to demonstrate that this coordination can include making government-

school lesson plans and non-copyrighted materials available for free to the public.³⁹ Laws and regulations have been promulgated over the last twenty years to allow the state's government schools (both of the "regular" and charter-school variety) to permit transfer credit from private schools; to afford driver's education, athletic, and other extracurricular programs to non-government school students from private and home schools; to allow but not require standardized testing of non-government school students, and so on.⁴⁰ But many opportunities for improvement remain. For example, Utah has not yet passed a law requiring, as opposed to merely allowing, equal access to athletic and extracurricular activities for alternative educators in private and home schools, as already exists in some states like Florida.⁴¹

To the degree that these four FARM components are present, innovation can and does tend to occur. Innovation is most exceptional when each component is present at a high-quality level. Innovation can still occur if only some of the components are present. However, the absence of any one of the components can operate to thwart change, even if the other components are in place.

By applying the FARM criteria, policy-makers and voters have some benchmark tools for evaluating whether an education "reform" really constitutes change, or just the status quo perpetuated under whatever the latest trendy label may be for pseudo-reform.

V. POTENTIAL INNOVATIONS IN UTAH EDUCATIONAL PEDAGOGY AND ORGANIZATION

This paper is not primarily focused on discussing potential reforms in the *pedagogical* realm (what and how to instruct) or in the *organizational* realm (operations, cul-

ture, human resources, and general resource use within the educational institution). Instead, the focus has been on reform at the *civic* level (including the legally-defined structures by which political and economic decisions are made and by which constituent families have representational input) – whether in the form of choice or more incremental reform – because *civic* reform is prerequisite to significant, widespread, positive pedagogical and organizational innovation.

Speculation about the pedagogical and organizational innovation that might be tried if the *civic* predicate was in place to allow innovation is virtually guaranteed to be off-target to some degree. Moreover, educational experiments would likely go in different and even conflicting directions. It is also likely that some innovations would work well for certain niches of students, while repelling other students looking for a different educational experience. Some experiments would succeed, others would fail. As is already the case, nearly every attempted innovation in a particular setting would result in heartburn for people on a different part of the ideological or pedagogical spectrum, including the author on occasion, resulting in some students who would quite naturally exercise their choice to enroll in schools with alternate offerings.

Nevertheless, in the interest of forecasting some likely experiments within the organizational and pedagogical realms, a few educated guesses will now be offered. Note that a guess herein about a particular potential future trend does not necessarily imply any endorsement of that trend, or any prediction that a particular trend will achieve long-term duration. Although this discussion does not parse out the organizational aspects from the pedagogical aspects, it is important for the reader to keep the difference firmly in mind and

to note that a certain coherence at *both* the civic and organizational levels of an educational institution will typically be required before positive pedagogical reform can flourish.

Scott D. Oki, author of *Outrageous Learning: An Education Manifesto* (2009), offers some intriguing ideas, and his book is well worth reading. He notes, for example, that one innovation might be to experiment with the quantity of formal educational activity.⁴² This might entail more instruction or cram-school activity on the weekend, in the early morning or late afternoon, on weekday evenings, or during the summer time.

Oki also suggests that government education should provide a curriculum that is more flexible and focused on the individual.⁴³ Put another way, the educational experience should be more voluntary, more user-driven, and more user-defined.⁴⁴ This is also a likely future innovation. It will probably occur in tandem with schools designed to tap into specialized talents and interests, such as institutions focused on more cutting-edge, specialized instruction in science, technology, art, athletics, trades, and the like. There will also be more mentoring, more tutoring, more apprenticeship, more emphasis on problem-solving, and more activity currently associated with “graduate school” college labs and inquiry. In some locales, cooperative sponsorship of 4-H, Civil Air Patrol, and similar programs would occur.

Another related Oki suggestion is more flexibility with regard to accelerated learning and the high-school track.⁴⁵ Again, this trend shows some signs of life even under the current stifling political status quo. With more flexibility, the government-school system would likely begin to offer accelerated tracks to college for gift-

ed or motivated students, to the point that some students may bypass high school entirely (not unlike top-tier basketball athletes who are increasingly choosing to accelerate into professional basketball in Europe and the National Basketball Association⁴⁶). This will reduce educational costs and keep students more engaged during their “high school” years.

Oki suggests more effective use of volunteers.⁴⁷ This, too, seems likely. But it would probably also entail a more general re-examination of teacher-certification requirements. Teachers and volunteers would be involved based upon their own practical abilities, both in terms of teaching skills and substantive knowledge. For example, the system would begin to show more favor to instruction from a would-be teacher or volunteer with engineering experience than an applicant with teacher certification but only minimally-adequate mathematics ability. Utah parents and others would become more eager to volunteer, because they would know that they were empowered in a practical way to enjoy transparency and actually impact their local school. In all likelihood, many schools would enlist parent volunteers to help monitor school programs, supervise students, and evaluate teacher performance in the classroom.

Oki also anticipates that innovative schools would focus more on public virtue, character, and establishing a culture of excellence.⁴⁸ In practice, this would probably entail a variety of tactics in different situations, including possible use of uniforms,⁴⁹ study of original texts from the Founders and Framers of the United States, study of classical literature and philosophy, voluntary student service projects, cooperation with organizations such as the Boy Scouts of America, comparative and historic religious study, and so on. The difficulty is that values

are essential to a well-developed student, yet there is no consensus about what constitutes public virtue, character, or excellence. This is why it is so important to allow different people and local institutions to pursue various different interpretations.

History would be taught with more ancillary source texts – such as actually reading the *Federalist Papers*, the *Declaration of Independence*, the *Northwest Ordinance*, and the like – and history instruction would have less of a generic, formulaic, politically-correct tone. Arts, humanities, and many other pursuits would be studied with more use of traditional styles and instruction methods. Classical writing and art would receive more attention. Many schools would insist on a rigorous physical-education component.⁵⁰

Some schools would probably emphasize fiscal efficiency or resource conservation. Depending upon local preferences, students would be taught about energy conservation, agribusiness, personal financial management,⁵¹ environmental responsibility, and similar topics. Some Utah students would learn about solar energy, wind energy, and other alternative energy sources.

Innovation would also arise in terms of cultural diversity. Schools in the state would be available for those who wished to study African-American or Native American culture,⁵² develop multi-lingual ability, learn new-immigrant skills and English as a Second Language,⁵³ or study in single-sex⁵⁴ classrooms. Some schools would emphasize an internationalist culture or a technology culture. Cultural exchange, international studies, and native-language instructors would also be popular. At the same time, “fluff” course offering paeans to politically-correct themes would wane in most schools. Also, since most minority parents genuinely want their chil-

dren to learn English,⁵⁵ most schools controlled by minority parents would insist upon rigorous and extensive English language instruction.

Regardless of the type of local government school involved, it also seems likely that innovation would focus on flatter, more fiscally-efficient institutions.⁵⁶ There would be fewer administrators relative to the number of teachers. Utah's teachers would probably operate under far fewer constraints of a regulatory or administrative nature, and would enjoy far more autonomy in their classrooms in return for more direct accountability to students and parents. Successful teachers would start to enjoy professional respect and prestige in a manner much more akin to well-regarded college professors.⁵⁷ Computer instruction technology would be used to teach some material in order to allow more expensive live-teacher instruction to focus on interactive tasks with students. Open-source approaches to textbooks, curriculum, and education would probably accelerate.⁵⁸ Artificial, counterproductive, perverse fiscal incentives from state-government micromanagement would give way to economic motivations derived from the preferences expressed through local student-family consumer behavior.

We should bear in mind that Benjamin Franklin and Thomas Jefferson also identified the essential aspects of not only *civic* reform, but also *organizational* and *pedagogical* reform. Franklin provided many key ideas, especially the notion that education should have practical value and become universally available.⁵⁹ For his part, Thomas Jefferson provided the timeless insight that "man is an imitative animal" and "[t]his quality is the germ of all education in him."⁶⁰ There are many successful kinds of pedagogical philosophies and techniques, but sound pedagogy implicitly and effectively accommodates the process whereby a student first imitates

others. The student then gradually draws upon experience and innate qualities to progress from initial imitation to personal synthesis and innovation.

The various possibilities discussed herein are speculative ideas, not inevitable or uniformly positive outcomes of facilitating innovation. The possibilities for innovation are almost endless; the outcomes unknowable. If civic reform occurs, people and communities of all backgrounds will be able to experiment in many different ways, without being held back by unnecessary conflicts with those who prefer a different kind of program.

VI. CONCLUSION

Utah education is at a crossroads. A large segment of Utahns are dissatisfied with the current government-education system. Many Utahns share a general sense that the quality, safety, and economic preparation afforded by government schooling is declining, even as global competition and increasing demographic diversity pose great challenges for Utah's younger generation.

But despite setbacks, the push for educational reform and innovation must continue. While the pace of change is slower than many would like, positive change is occurring. Even while families wait for complete choice and freedom to be achieved, there are still many opportunities to draw on generally-applicable principles of educational innovation in order to make the future for Utah's children as bright as possible.

Policymakers must become aware that educational innovation and reform actually occurs at three different levels. Permanent, meaningful reform in the *pedagogical* realm (what and how to instruct) and in the *organizational* realm (operations, culture, human resources,

and general-resource use within the educational institution) almost always depends upon prerequisite change in the *civic* realm (including the legally-defined structures by which political and economic decisions are made and by which constituent families have representational input). *Pedagogical* reform, which is the end goal and the key to what students actually encounter as a learning experience in school, can only occur in a positive direction after necessary changes occur at *both* the civic and then the organizational level. Otherwise, teachers and other would-be pedagogical innovators will be stifled by conditions that deny the flexibility, accountability, representation, and modularity needed to facilitate positive change.

It is time for the State of Utah (and America) to heed the wisdom that America's consummate innovators, Thomas Jefferson and Benjamin Franklin, shared two centuries ago. Only by so doing can students prepare for the challenges and opportunities of the twenty-first century.

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ance company. He has an extensive background in issues related to parental liberty, educational choice, and organizational reform. Mr. Witte is a Chartered Financial Consultant (ChFC), 2009, and Certified Life Underwriter (CLU), 2008. He is now an attorney with a large law firm, specializing in commercial litigation, commercial transactions, and insurance law.

The author acknowledges research assistance and feedback by Donald E. Witte, M.S.W., who occupationally specializes in providing social work assistance for youth from immigrant, refugee, mentally challenged, or criminally-troubled backgrounds. He also acknowledges valuable feedback and research leads from the following reviewers: Bryce Christensen, Ph.D., associate professor of English, Southern Utah University; William C. Duncan, Esq., director, Marriage Law Foundation; Derek Monson, policy manager, Sutherland Institute; Stan Rasmussen, public affairs manager, Sutherland Institute; and others. The views expressed herein are not necessarily the same as those held by any of the aforementioned researchers and reviewers.

ENDNOTES

1. This document is based upon legal and historical research involving numerous studies and citations. This document is designed to provide a concise overview for policy-makers. However, readers who would like to peruse an extended discussion about educational choice and innovation can review Daniel E. Witte, *Fostering Educational Innovation in Choice-based Multi-venue Settings and Government Single-venue Settings*, 2010 Sutherland J. L. & Pub. Pol'y, at http://sutherlandinstitute.org/uploads/Choice-based_Educational_Innovation.pdf.
2. NED HERRMAN, *THE WHOLE BRAIN BUSINESS BOOK* 178 (1996) (containing the well-known Paul Gustavson

maxim that “[o]rganizations are perfectly designed for the results they achieve”).

3. *Id.*
4. An illustrative example of the Platonic fantasy is contained in the otherwise incisive book of aspiring reformer Scott Oki.

Mr. Oki’s life story is inspirational in many respects. According to the jacket cover for his book, he was born to Nisei parents who had been interned during World War II. He went on to found his own software company, found Microsoft’s International Sales Division, serve as President of the University of Washington Board of Regents, participate as a member of Washington State Governor Locke’s Commission on Early Learning, and found the Oki Foundation. Clearly, this is a very knowledgeable man with many potentially useful insights about education reform, especially for children who might grow up in communities suffering from historic racial discrimination or economic deprivation.

Indeed, much of Mr. Oki’s book is thought-provoking and filled with very sound ideas for reform. But he stumbles badly when he turns to the question of how to actually achieve government school system reform:

Trust will be a mandatory ingredient. Give-and-take discussions will have to be held in strict confidence. As soon as this process becomes public, open and honest communications will abate since political agendas will influence the dialogue.

Assuming we can get everyone involved in education to agree on the problem as outlined above . . . coalitions can be formed to attack portions of the problem in a coordinated fashion. Those with an interest in public education are significant and numerous, each with their own agenda. However, we must all put aside narrow self-interest for the benefit of the common good.

SCOTT D. OKI, *OUTRAGEOUS LEARNING: AN EDUCATION MANIFESTO* 71 (2009).

Unfortunately, genuine reform and improvement in a representative democracy cannot be achieved with a Platonic approach. Secret deals and understandings – usually struck between paternalistic societal elites and self-interested special interest groups – are precisely what has brought government education into its present lamentable condition.

5. Sound configurations of the *civic* and *managerial* realms are *both* prerequisite to positive *pedagogical* innovation.
6. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, *Query 18*, available at <http://etext.virginia.edu/etcbn/toccer-new2?id=JefVirg.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=18&division=div1>.
7. Thomas Jefferson to George Wythe, 1786. *The Writings of Thomas Jefferson* (Memorial Edition 1904) (hereinafter “ME”) 5:396.
8. Letter from Thomas Jefferson to Joseph Cabell, (February 2, 1816), *reprinted in* POLITICAL WRITINGS OF THOMAS JEFFERSON 98 (1955); ME 14:420-21.
9. THOMAS JEFFERSON: NOTE TO ELEMENTARY SCHOOL ACT, 1817, ME 17:423. *See also* *Wisconsin v. Yoder*, 406 U.S. 205, 225 (1972) (“When Thomas Jefferson emphasized the need for education as a bulwark of a free people against tyranny, there is nothing to indicate he had in mind compulsory education through any fixed age beyond a basic education.”); *id.* at 226 n. 14:

While Jefferson recognized that education was essential to the welfare and liberty of the people, he was reluctant to directly force instruction of children “in opposition to the will of the parent.” . . . And it is clear that, so far as the mass of the people were concerned, he envisaged that a ba-

sic education in the “three R’s” would sufficiently meet the interests of the State. He suggested that after completion of elementary school, “those destined for labor will engage in the business of agriculture, or enter into apprenticeships to such handicraft art as may be their choice.”

10. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA, *Query 17*, available at <http://etext.virginia.edu/etcbin/toccer-new2?id=JefVirg.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=17&division=div1>.
11. Thus, a proper understanding of federalism envisions devolution of functions, as appropriate, not just to states or to local government, but in some cases primarily or exclusively to the people. Education and child-raising are two classic examples of powers properly reserved, and rights properly retained, to the people. Centralized planning of the economy, of family functions, and of child-raising will fail at a local or state government level, as surely as at the federal government or the international organization levels.
12. Letter from Thomas Jefferson to John Adams (July 5, 1814), in *THE ADAMS-JEFFERSON LETTERS* 432-34 (Lester J. Cappon ed., 1959) (hereinafter “*Letters*”).
13. Letter from John Adams to Thomas Jefferson (June 28, 1812), in *Letters*, at 308.
14. Letter from John Adams to Thomas Jefferson (September 15, 1813), in *Letters*, at 377.
15. Letter from John Adams to Thomas Jefferson (October 10, 1817), in *Letters*, at 522.
16. *THE DECLARATION OF INDEPENDENCE* paragraphs 2, 12-13, 15-16, 26, (U.S. 1776).
17. *Id.* at paragraphs 13, 15-16.
18. For a quick overview of Benjamin Franklin’s perspective, see Daniel E. Witte, *Benjamin Franklin—Practical Wise Man*, <http://www.quaqua.org/franklin.htm> (visited December 30, 2009); BENJAMIN FRANKLIN, PROPOSALS RELATING TO THE EDUCATION OF YOUTH IN PENSILVANIA (1749), available at <http://www.archives.upenn.edu/primdocs/1749proposals.html>; BENJAMIN FRANKLIN, A PROPOSAL FOR PROMOTING USEFUL KNOWLEDGE AMONG THE BRITISH PLANTATIONS IN AMERICA (1743), available at <http://nationalhumanitiescenter.org/pds/becomingamer/ideas/text4/amerphil-society.pdf>. See also SUTHERLAND INSTITUTE, SAVING EDUCATION & OURSELVES: THE MORAL CASE FOR SELF-RELIANCE IN EDUCATION 21-22 (2003), available at <http://www.sutherlandinstitute.org/uploads/SavingEducationReport.pdf> (quoting thoughts of George Washington and James Madison regarding education).
19. Put another way, the odds of obtaining a genuine innovation from any particular limited experiment are small. However, the odds of obtaining a genuine innovation from a collection of many different limited experiments are large. It is virtually impossible to achieve wide-scale systemic improvement without some limited-scale experimental failures, and it is virtually impossible to achieve limited-scale successes needed for systemic improvement if the wide-scale system prohibits any deviation from embedded wide-scale flaws.

One way to visualize all of this is to consider the way in which a sport like American college football has, over time, become much more sophisticated in its methodology over time. Experimental offensive and defensive schemes, initially considered radical when first tried by a particular team, are now considered basic knowledge for today’s coaches. Examples would include the spread offense, the soccer-style field-goal kick, and Brigham Young University’s “quarterback factory” scheme during the late 1970s and early 1980s. See *Cornell Big Red*, <http://www.cornellbigred.com/news/2007/10/29/dartnotes102907.aspx>

- (visited December 31, 2009) (recounting the first soccer-style field goal kick in American football, a 41-yarder by Cornell sophomore Pete Gogolak against Princeton on October 28, 1961); Jeff Miller, *Spread traces its roots to Depression-era Texas high school football*, <http://sports.espn.go.com/high-school/rise/football/news/story?id=4339959> (visited December 31, 2009) (start of the spread offense); Brigham Young University Athletic Creative Services, *Y Tradition – Quarterback Factory*, http://www.byucougars.com/media_guides/football/2009/tradition/quarterback.html (visited December 31, 2009) (Coach LaVell Edward’s trend-setting consistent use of the forward pass).
20. See, e.g., Meaghan Sexton, *Data: Little correlation between teacher pay, student achievement*, October 18, 2009, at http://www.siouxcityjournal.com/news/local/article_270a70e1-513e-5b5a-bbd5-fc41b-50790dc.html (Iowa Department of Education study showed there was “no apparent correlation between teacher pay and student performance in the state”; Iowa Democrats continued to advocate raising teacher pay as a method of education reform, while Iowa Republicans thought that Iowa state government politicians should impose “statewide academic standards” on local schools and parents).
 21. See, e.g., Kyle Zinth, *State Textbook Adoption*, <https://www.ecs.org/clearinghouse/57/75/5775.htm>, January 2005 (visited December 30, 2009); National Instructional Materials Accessibility Standard (NIMAS), *Textbook Adoption*, http://nimas.cast.org/about/resources/textbook_adoption (visited December 31, 2009).
 22. For an excellent general discussion about the problems surrounding the textbook selection process, review guest textbook author Joy Hakim’s interview as found on *In Depth, Book TV on CSPAN2* (CSPAN television broadcast, December 6, 2009), available at <http://www.booktv.org/Program/11001/In+Depth+Joy+Hakim.aspx> (visited December 30, 2009). Among other things, Ms. Hakim discusses the government school problems surrounding textbook quality, including the notion of “expanding horizons”; the phenomenon of textbook selection controlled by marketers, sales people, and lobbyists, instead of detached judgment of books on the basis of content and student preference; the lack of power teachers have to select textbooks and resources for their own classes; the scheme of expensive, repetitious, mandatory book submission processes rather than allowing students and teachers to shop for the books they prefer; the excessive ratio of administrators to teachers; the lack of a market-based philosophy for the pre-college textbook market; the three-company oligopoly that controls the nation’s textbook market; the lack of discussion about bona fide history, including the history of science and of religion; and so on. For a discussion about the stifling historic and economic impact of influential monopolistic interests of bureaucrats, vendors, contractors, and profiteers in the circle of government education, see, e.g., Daniel E. Witte and Paul Mero, *Removing Classrooms from the Battlefield: Liberty, Paternalism, and the Redemptive Promise of Educational Choice*, 2008 B.Y.U. L. Rev. 377, 392 n.66 (education system in Richard Henry Pratt area designed by politicians to provide revenue streams for profiteers at the expense of children); Daniel E. Witte, Comment, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. REV. 183, 222 n.162, 223 n.170 (economic considerations that cause government school systems to sideline innovation and the best interests of children).
 23. RICHARD FEYNMAN, *SURELY YOU’RE JOKING, MR. FEYNMAN!* (1985) (eminent physicist explains the State

- of California Curriculum Commission's counterproductive and corrupt approach to choosing mathematics textbooks, in a chapter titled "Judging Books by Their Covers").
24. *Innovation Schools Act of 2008*, <http://www.cde.state.co.us/cdegen/downloads/SB130Statute.pdf> (text of Senate Bill 08-130) (visited September 14, 2009); Liv Finne, *Innovation Schools Raise Learning Outcomes for Students*, <http://www.washington-policy.org/Centers/education/policynote/InnovationSchoolsPN.pdf> (December 2009); Colorado Department of Education, *Innovation Schools Act of 2008*, <http://www.cde.state.co.us/cdegen/SB130.htm> (visited December 17, 2009).
 25. No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425 (enacted January 8, 2002).
 26. *Utah snubs federal No Child Left Behind Act*, <http://www.msnbc.msn.com/id/7713931/> (May 2, 2005) (Governor Jon Huntsman signs law sponsored by Utah State Representative Margaret Dayton, despite Education Secretary Margaret Spellings' threat to withhold \$76 million in federal aid); Greg Toppo, *States fight No Child Left Behind, calling it intrusive*, http://www.usatoday.com/news/education/2004-02-11-no-child-usat_x.htm, (February 11, 2004) (states push back on No Child Left Behind because of reduction in local control over education).
 27. *Caviness v. Horizon Community Learning Center, Inc.*, 2010 WL 6261 (9th Cir. January 4, 2010). The federal Ninth Circuit Court of Appeals does not regularly include Utah within its jurisdiction, but the decision does provide persuasive precedent for the federal Tenth Circuit Court of Appeals. The Tenth Circuit, which does include Utah within its jurisdiction, should be encouraged to reduce the impact of the State Actor Doctrine in situations where parents have direct representation over a local government school or students and teachers have exercised a bona fide choice to voluntarily submit to a particular government charter school with an announced unique regulatory scheme. See also Kevin Booker, et al, *The Unknown World of Charter High Schools*, 10 EDUCATIONNEXT (Hoover Institute), No. 2, Spring 2010, available at <http://educationnext.org/the-unknown-world-of-charter-high-schools/> (charter school students are 7-15 percent more likely to earn a standard high school diploma and 8-10 percent more likely to attend college).
 28. "[A]ccountability must be attached to authority. In this sense, authority means the power to make decisions and to mobilize the resources necessary to effect those decisions." Kali Saposnick, *Accountability for the Bold of Heart: An Interview with Gerald Kraines*, <http://www.pegasus.com/levpoints/krainesint.html> (2002). Thus, it is typically counterproductive to allow anyone to exercise authority without accountability for results; to hold anyone accountable for an act or situation they lack the authority to control; to indulge doubt on the part of anyone about the scope of authority or its alignment to consequences; or to allow anyone to act outside of their authority without adverse consequences.
 29. This means, in other words, at-will political employment for certain specific positions, just the same as any political official who can be recalled or denied reelection by constituents for any reason or no apparent reason. No one has an automatic right to hold such a position of public trust indefinitely, and anyone who steps into the position consciously assumes the risk of rejection at any time.
 30. Obviously this runs counter to the traditional philosophy of most government school teacher unions, which seek to insulate educators from exposure to the judgments of the market or to adverse consequences for poor performance.

But in light of recent brutal lessons dealt by the modern global economy in “rust-belt” locales such as Detroit, Michigan, and in American industries like auto manufacturing, unions of all kinds should consider modifying their traditional strategy. Union members thrive only when they avoid killing the goose that lays the golden eggs needed for community economic prosperity. Any service system that fails to gradually adapt over time will eventually be circumvented and superseded because of the hydraulic pressure from market demand. A system that insulates itself from calls for reform tends to engender internal complacency and static behavior, until at last a shift of sudden, seismic, and catastrophic dimension occurs. This kind of pattern is harmful for everyone touched by it, including union members or others who make a livelihood off the existing system. It is much easier to maintain competitive advantage and prosperity through gradual adaptation than to regain it all once lost.

Unions injure their own members when efforts are made to prevent necessary incremental adaptation. This is especially true for households belonging to unions other than a teachers’ union. The educational needs of those union families render their interests directly adverse to the efforts of many teachers’ unions. Family members with membership in non-education unions typically need access to quality education in order to keep their skills competitive in a global marketplace, and these individuals do not even reap the deceptive short-term comforts accrued to government educators as a result of educational complacency.

Government spending can seem to temporarily soften the shock of a dysfunctional educational and commercial system. At a certain point, however, “population decline and the subsequent loss of tax base” eliminate the government’s ability to disguise the educational and commercial death

spiral. See, e.g., Ava Tabb, *GLUE founders stay put to help Rust Belt renaissance*, GRAINS’S DETROIT BUSINESS, January 13, 2009, at <http://www.craigslist.com/article/20090113/EMAIL01/301139996#> (discussing Great Lakes Urban Exchange effort to counter the common difficulties of “industrial cities” in the region); Susan Saulny, *Board’s Decision to Close 28 Kansas City Schools Follows Years of Inaction*, NEW YORK TIMES, March 11, 2010, at <http://www.nytimes.com/2010/03/12/us/12schools.html> (years of dysfunction, procrastination, and economic decline led to a \$50 million deficit, forcing Kansas City’s school board to make sudden, devastating, sweeping closures in order to avoid governmental bankruptcy); *Canyons district officially splits from Jordan School District*, KSL.COM, July 1, 2009, at <http://www.ksl.com/index.php?nid=148&sid=6995427> (Jordan School District faces increased taxes or teacher layoffs after the east side votes to secede and form Canyons School District, due to dissatisfaction about a perceived lack of local control over budgetary allocation and representation); Amelia Nielson-Stowell, *7 cities considering school-district split*, DESERET NEWS, September 1, 2006, available at http://findarticles.com/p/articles/mi_qn4188/is_20060901/ai_n16712192/ (same).

31. For a general discussion about the importance of transparency in government, including transparency at the level of local government, see generally Derek Monson, *Transparency in Government: Understanding Why Utah’s New Transparency Law Facilitates Good Government*, 2008 SUTHERLAND POLICY REPORT, <http://www.sutherlandinstitute.org/uploads/transparencyingovernment.pdf>.
32. This is a natural extension of successful past efforts made by the Sutherland Institute and Utah political leaders to enhance transparency in local government. *Id.* See also BENJAMIN DEGROW, COLO-

RADO SCHOOLS AND ASSOCIATION RELEASE TIME: MAKING THE PRIVILEGE ACCOUNTABLE AND TRANSPARENT TO CITIZENS 10 (February 2010), available at http://www.i2i.org/files/pdf/IP_1_2010_Web.pdf (looking to Utah's U.C.A. § 53A-3-425 (2010) as a model for achieving more transparency in Colorado).

33. One important difference between a corporation and a government school is that non-investors do not pay into a corporation, but non-parents do pay some portion of the taxes needed for the operation of a government school. What is the justification for having only parents decide how to operate a local government school that has been financed in part by non-parent taxpayers?

First, to be very clear, there would be no taxation without representation under such an approach. Parents of a local school would be limited to whatever *total tax revenue allocation* has been granted by *public officials elected by all relevant taxpayers*. Thus, as a hypothetical example, only the Utah State Legislature and Governor could properly decide to allot \$1 million of state tax revenue towards operation of Provo High School, and only the Provo City Council could properly decide to allot \$100,000 of Provo City funds towards operation of Provo High School. Parents of Provo High School students could conduct voluntary fundraisers to enhance the revenue available for Provo High School operations, and parents of Provo High School would elect the Board members deciding how to operate Provo High School with whatever funds might be available from various sources, but neither the Board or the parents of Provo High School could unilaterally compel any taxpayer to allocate more tax revenue toward the operation of Provo High School. In our example, parents could not unilaterally compel tax revenue beyond the sum of \$1.1 million to be spent on Provo High School.

Second, as mentioned earlier, non-parent taxpayers would exercise some influence over our hypothetical operation of Provo High School because the Utah Legislature would have agreed to enact the scheme affording local school autonomy. Additionally, there would still be some state and local laws that would constrain Provo High School, such as laws governing public safety codes, financial transparency, prohibition of racial discrimination, and so on.

Third, as a general matter, the primary purpose of a government education system should be to facilitate education, not to facilitate social engineering schemes for redistribution of wealth between individuals or communities. This is so even though, as a practical matter, some redistribution of wealth necessarily occurs on an incidental basis in order to educate the poorest individuals and communities. Ideally, the source(s) of funding for a government school should be aligned as closely as possible with the source(s) of students for that same school, because that arrangement enhances accountability, minimizes moral hazards and reduces perverse incentives.

Fourth, regardless of whether some redistribution or lack of representation should occur, it is, as Thomas Jefferson observed, still better for everyone that parents be allowed to govern the school attended by their own children, rather than governance from general public officials. Parents have a much more intense interest in what happens to their own children than the public (or public officials) at large. Parents tend to have a customized sense about the individualized needs of their own children, and about specialized needs and concerns pertaining to youth in the local community. Parents can act on this intense and nuanced interest by influencing their school in a way that is much more nimble than the public at large.

Parents are presumptively, though not conclusively in all cases, apt to act in the best interests of their children and not squander resources allocated for the well-being of their children. The parent of a Provo High School student is much better situated to effectively press for intelligent use of funds at Provo High than a generic taxpayer who resides in West Valley. The needs of the two communities can be very different.

Fifth, there is a general public interest in stimulating satisfaction and innovation with regard to government schools. A school managed by government officials who are elected by the general public will tend to suffer from a detached and generic style of management. The ideas and behavior of a large body politic are subject to the tendencies of statistical regression, which in turn imposes a stifling homogenization and political gridlock upon the government education system. If the general public wishes to achieve long-term innovation, improvement, and satisfaction in government pre-college education, local families and government schools must be empowered to customize and experiment. When local families are satisfied with their local government schools, and when new innovations are accruing and disseminating throughout the government education system, the general public reaps a benefit. The general public knows that innovation is needed, but it often cannot know what innovation it actually wants until someone can bring forth a new solution to address a previously unmet need.

Sixth, biodiversity is preserved. Homogenization, in contrast, eliminates valuable statistical control groups, engenders susceptibility to pandemic dysfunctional techniques, and increases the probability of system-wide iatrogenesis. Daniel E. Witte, *Biodiversity*, <http://www.quaqua.org/biodiversity.htm> (visited January 4, 2009); Hal

Whitehead and Peter J. Richerson, *The evolution of conformist social learning can cause population collapse in realistically variable environments*, 30 *EVOLUTION AND HUMAN BEHAVIOR* 261, 261, 267, 270 (2009), available at <http://www.des.ucdavis.edu/faculty/Richerson/RedNoise.pdf> (“fixation of social learning is less likely when individual learning is less costly ... and when learning is not conformist or is from parents rather than from the general population... the risk of population collapse may be reduced by promoting individual learning and innovation over cultural conformity”; “the pressure for cultural conformism could extinguish individual learning from the population much more quickly than selection on characters faithfully inherited from parents”; “[t]rying to increase parental influence on behavior is even harder, as horizontal social learning is usually more effective in the short-term and likely to invade”).

34. Parental governance is receiving some measure of renewed interest. *E.g.* Howard Blume, *L.A. Unified to allow parents to initiate school reforms*, *LOS ANGELES TIMES*, October 28, 2009, at <http://www.latimes.com/news/local/la-me-laUSD28-2009oct28,0,1211739.story> (“Under [L.A. Unified Superintendent Ramon C. Cortines’] plan, a majority of parents at a school could trigger reforms at a local campus.”)
35. *Cf., e.g.,* *Keller v. State Bar of California*, 496 U.S. 1 (1990) (California State Bar forced to allow member attorneys to opt out of paying dues to support positions that they found abhorrent).
36. Caleb Warnock, *Teachers group and alternative to UEA*, *DAILY HERALD*, January 17, 2010, at http://www.heraldextra.com/news/local/education/precollegiate/article_6404d085-ab15-56a4-bdd0-c2a7c11e15e2.html:

A new professional organization for Utah teachers is gaining traction in Utah County on the premise that

teachers' representatives should stay out of politics.

Dave Barrett founded the Utah Council of Educators three years ago because he was fed up with the Utah Education Association. Barrett is an assistant principal in the Canyon School District and president of the council.

"I did not believe that teacher money should be used for controversial social issues that have nothing to do with public education," he said. "I felt the dues were excessive for the union. I didn't believe a labor union in Utah was the appropriate way to represent Utah educators. I wanted to restore professionalism to the profession."

....

Hundreds of teachers have already joined the new council of educators. Barrett predicts membership will hit 2,000 within 24 months. There are now members in every school district in the state.

....

.... "I joined because their vision and mission are in line with my philosophy of education," said Cole Kelley of American Fork High School. "They are interested in quality teaching, and they want to elevate the level of teaching."

....

The council represents the first time Utah teachers have had an option when it comes to professional organizations, said Barrett and Kelley.

"I too often see young teachers that will bow to the pressure of an organization with the power of membership," Kelley said. "They don't often look for where they best fit in."

"We are non-union, we don't bargain on contracts," said Heather Reams, director of communications for the council, noting the council offers liability insurance, attorney services, and professional development to its teachers -- but stays out of politics. "We don't endorse candidates, we are

not endorsing legislation. For many teachers who disagree with the stances of the other union, we are a refreshing choice."

Barrett said his goal from the get-go was to stay acutely focused on education, "not on adversarial relationships on the Hill. It's been wonderful. Utah education is ripe for another voice to represent educators."

37. **Utah enacted the Voluntary Contributions Act, which prohibits any state or local public employer from withholding ostensibly "voluntary" political contributions from its employees' paychecks.** U.C.A. § 34-32-1.1. If a government employee really wants to donate a political contribution, the employee can always do so without monitoring from fellow employees or local union officials.

After the Act was passed, Chief Judge Tena Campbell attempted to strike down the law so that it could not take effect. *Utah Educ. Ass'n v. Shurtleff*, 511 F. Supp. 2d 1106, 1110 (D. Utah 2006). The Tenth Circuit affirmed Chief Judge Campbell in *Utah Education Ass'n v. Shurtleff* ("Shurtleff II"), 512 F.3d 1254 (10th Cir. 2008).

However, the Sutherland Institute cooperated with other organizations to persuade the United States Supreme Court to decide the same issues in favor of upholding an Idaho analog to the Utah Voluntary Contributions Act. *Ysursa v. Pocatello Education Ass'n*, 129 S. Ct. 1093 (2009). When the State of Utah petitioned in *Utah Educ. Ass'n v. Shurtleff* for rehearing or, in the alternative, rehearing en banc, the Tenth Circuit granted a panel rehearing and reluctantly reversed itself pursuant to the *Ysursa* decision, thereby allowing Utah's Voluntary Contributions Act to take effect. *Utah Educ. Ass'n v. Shurtleff*, 565 F.3d 1226 (10th Cir. 2009), available at <http://www.ck10.uscourts.gov/opinions/06/06-4142.pdf>.

38. As discussed in an earlier section, the most

ideal arrangement would be to have full student choice among a range of government and non-government alternatives, including regular government schools, Jefferson Charter Schools, private schools, religious schools, and home schools. But to the extent that a full range of choice is not available, a more limited range of choice is still better than no choice at all. Thus, even if tax-subsidized choice is allowed only in terms of alternatives involving multiple government schools offering a menu of different educational selections, that opportunity is still far better than when tax subsidies are linked in a “take it or leave it” fashion to only one local government school. Of course, modularity becomes a key to making any form of choice possible.

But even without any choice at all, modularity is still important. In today’s transient global society, where families move on an ever more frequent basis, and where some families are willing to try private or home education even without a tax subsidy, modularity is vital to a coherent education system and economy.

39. See, e.g., Kirsten Stewart, *Charter school breaks ground in ‘open education,’* SALT LAKE TRIB., January 2, 2010, at http://www.sltrib.com/news/ci_14108595:

[Wiley] recently convinced the Utah Board of Education to pass a rule encouraging Utah teachers to share their materials.

Anything created by a state-funded school should be fair game for other state-funded schools, said Wiley, who believes sharing knowledge this way breeds excellence through broader peer review.

40. U.C.A. §§53A-11-102, 102.5 (2009); U.C.A. § 53A-13-203 (2009); Utah Admin. Code R277-410-4, 277-438-1 et seq, 277-438-4, 277-700-6, 277-705-3, 277-705-3 E.(2)(c) (2009); see also, e.g., *Nebo School*

District Board of Education Policies and Procedures (J – Students, Compulsory Education/Home School, JDK, July, 9, 2008), <http://www.nebo.edu/pubpolicy/J/JDK.pdf> (setting forth Nebo District policy and citing numerous provisions of the Utah statutes and administrative codes).

41. Florida already has a law that requires equal access to extra-curricular activities for home educators. See F.S. 1006.15 (2009) (“Craig Dickinson Act”). Without it, Heisman Trophy winner Tim Tebow could not have had a football career. *Protégé Award*, <http://www.quaqua.org/protegerec.htm> (visited on December 31, 2009) (biographical sketch of Tim Tebow).

Utah has been in the process of following Florida’s lead with SB 66, a bill entitled “Public Schools Extracurricular Activities for Home School and Private School Students.” As of March 24, 2010, SB 66 has been passed by the Utah Legislature and awaits action by the Governor Gary R. Herbert. See <http://le.utah.gov/~2010/bills/sbillenr/sb0066.htm> (text of bill).

42. Oki, *supra* note 4, at 31.
43. *Id.* at 44, 50.
44. Although not discussed here, these same principles also apply to micro-credit and other assistance programs to the developing world. Effective assistance must respect the self-determination, practical intelligence, freedom, and dignity of intended participants. Ultimately, a person is educated when that person has the skills and knowledge they need to pursue any law-abiding lifestyle they may wish to pursue. The success of any program must be measured by the criteria voluntarily identified by program participants.
45. *Id.* at 34. This idea is garnering increasing interest. E.g. Sam Dillon, *High Schools to Offer Plan to Graduate 2 Years Early*, N.Y. TIMES, February 17, 2010, at <http://www.nytimes.com/2010/02/18/>

- education/18educ.html (“dozens of high schools in eight states” affording the early graduation option); Amy K. Stewart, *Utah Legislature: School budget cut ideas come fast and furious*, *DESERET NEWS*, February 8, 2010, at <http://www.deseretnews.com/article/700008175/Utah-Legislature-School-budget-cut-ideas-come-fast-and-furious.html> (accelerated high school graduation considered by Utah Legislature).
46. Marlen Garcia *High school junior chooses pro basketball in Europe*, *USA TODAY*, April 24, 2009, http://www.usatoday.com/sports/preps/basketball/2009-04-23-leaving-high-school-for-europe_N.htm (home-educated African-American Jeremy Tyler, a top 6’11” basketball recruit from California, skips high school basketball to play professionally in Europe, following a similar route taken by basketball prospect Brandon Jennings).
 47. Oki, *supra* note 4, at 41.
 48. *Id.* at 16, 63, 65, 67.
 49. See, e.g., Grauke, *The Pros and Cons of School Uniforms*, <http://www.articlesbase.com/advice-articles/pros-and-cons-of-school-uniforms-182.html> (visited on December 30, 2009); Robert Kiyosaki, *We need two school systems*, *USA TODAY*, February 9, 2010, at <http://blogs.usatoday.com/oped/2010/02/column-we-need-two-school-systems.html> (educational entrepreneur argues for military academy and uniforms approach for development of outstanding leaders and entrepreneurs).
 50. Grace Chen, *Physical Education Reform in Public Schools*, <http://www.publicschoolreview.com/articles/45> (visited on December 30, 2009) (discussing deteriorating health of students and efforts to revitalize physical education); National Conference of State Legislatures, *Vending Machines in Schools*, <http://www.ncsl.org/issuesresearch/health/vendingmachinesinschools2005/tab-id/14108/default.aspx> (visited on December 30, 2009) (legislation regarding vending machines).
 51. Students would benefit greatly from a basic course in personal law and finance. Specifically, a course that provides a general overview regarding credit, interest, net present value, mortgages, contracts, agency, consumer protection, wills, trusts, power of attorney, family law, tort law, purchasing a home, balancing a checkbook, writing checks, bankruptcy consequences, principles of personal savings, the process for starting a business, completing a tax return, and other legal and financial principles that are likely to be of central importance during the lifetime of virtually every student. Even a basic overview of critical practical life management issues could greatly assist many students seeking to avoid common pitfalls and climb the ladder of opportunity.
 52. See, e.g., *African-American Academy*, <http://www.seattleschools.org/schools/aaa/> (visited December 30, 2009); *Union Public Schools*, <http://www.unionps.org/index.cfm?id=202> (visited December 30, 2009).
 53. For an example of a school in Salt Lake City, Utah, that assists immigrants and other special track students, see *Horizonte Instruction and Training Center*, <http://www.slc.k12.ut.us/sites/horizonte/> (visited January 18, 2010).
 54. See, e.g., National Association for Single Sex Public Education, *The legal status of single-sex public education*, <http://www.singlesexschools.org/legal.html> (visited December 30, 2009); No Child Left Behind Act of 2001, Pub. L. 107-110, 115 Stat. 1425, §§ 5131(a)(23), 5131(c) (enacted January 8, 2002).
 55. The experience and observations of this author in Puerto Rico, Korea, the Navajo Reservation in Arizona, and in many other locales, indicates that the vast majority of minority families already understand the economic importance of English fluency. Minority parents already desire that their children

will be able to speak English in order to participate in the global economy. They do not need to be compelled to seek this for their children. The barrier is not one of motivation, but of obtaining the access and empowerment needed to enjoy a solid English language instruction program.

56. This is an idea that has been expressed by many critics of current government education, including Scott Oki. Oki, *supra* note 4, at 56.

57. In the pantheon of influential and renowned American teachers, the leading contender would probably be George Wythe. See, e.g., *Colonial Williamsburg: George Wythe*, <http://www.history.org/almanack/people/bios/biowythe.cfm> (visited on December 30, 2009); *Signers of the Declaration of Independence*, <http://www.ushistory.org/declaration/signers/wythe.htm> (visited on December 30, 2009). Until fairly recently in American history, teachers were deeply respected and enjoyed considerable social status. This was due to the fact that a successful teacher had proven himself or herself in the educational marketplace. No students were compelled to accept the tutelage of such teachers; to the contrary, parents implored the teachers for a hearing and students voluntarily subjected themselves to the strict instructional discipline of these professionals.

58. See, e.g., Kirsten Stewart, *Charter school breaks ground in 'open education,'* SALT LAKE TRIB., January 2, 2010, at http://www.sltrib.com/news/ci_14108595:

The Open High School of Utah is believed to be the first secondary school in the nation (perhaps the world) to use learning materials and textbooks that are freely available for anyone's use, remixing and redistribution. Because the materials aren't produced by commercial publishers, they can be tailored to meet students' educational needs, free of copyright or licensing restraints.

... [F]or David Wiley, the school's founder, it's a means to a larger end: providing America's schoolchildren with more educational opportunities and variety.

"As budgets shrink and the student population grows, we must find ways to deliver education more efficiently," said Wiley, associate professor of instructional psychology and technology at Brigham Young University.

The school has no fixed campus. Its director ... works in donated commercial space Students – a mix of gifted and struggling learners, athletes, home-schoolers, concert pianists and teens with health problems or disabilities – hail from all corners of Utah. And the school's four teachers conduct class from the comfort of their homes, sometimes responding to students' midnight queries on their Blackberries.

[Courses include] the use of Skype (free video conferencing), e-mail, instant messaging and pre-recorded lectures using an electronic white board ...

....

... [T]here's already a waiting list.

... The Internet is a "great equalizer" where kids are judged not by what they wear or how they look, but by their academic contributions ...

....

.... No need for an excused absence or tardy slip... [students can do] homework [anytime during the day] ... or join a late-night study session with classmates on Skype.

On the other end of the digital stream are teachers receiving instant feedback on students' performance via a learning management system called Brain Honey.

"It's the most amazing thing. I know how many minutes students spend on a reading assignment, how successful they are on a given

question or quiz” said teacher Becky Ellis, a 14-year veteran of California’s public school system], who uses that data to target tutoring and tweak lesson plans.

The curriculum must align with Utah’s core standards. But Ellis is free to diverge from, even rewrite, the “text” because it’s not copyrighted.

....

Wiley acknowledges the school isn’t for everyone. It takes self-driven learners and skilled teachers who are well versed in their subject areas.

Relatively low overhead frees the school to woo top talent with higher salaries and a \$5,000 “performance pay” bonus tied to test scores and student and parent reviews. The school has no building to maintain and outsources its legal and financial oversight, but it bears heavy I.T. costs.

Ironically, one of its biggest costs is its curricula, which the school’s teachers write or purchase with a \$150,000 grant from the U.S. Department of Education.

[Wiley] recently convinced the Utah Board of Education to pass a rule encouraging Utah teachers to share their materials.

Anything created by a state-funded school should be fair game for other state-funded schools, said Wiley, who believes sharing knowledge this way breeds excellence through broader peer review.

The Open High School of Utah is an example of true innovation in government education. Whether it will succeed and provide a template for others to follow remains to be seen. However, the implementation of some FARM principles in the effort is laudable, including the modularity for instructional materials.

See also UTAH STATE BULLETIN, Dec.1, 2009, Vol. 2009, No. 23, at 15, available at [http://www.rules.](http://www.rules.utah.gov/publicat/bull_pdf/2009/b20091201.pdf)

[utah.gov/publicat/bull_pdf/2009/b20091201.pdf](http://www.rules.utah.gov/publicat/bull_pdf/2009/b20091201.pdf) and <http://www.rules.utah.gov/publicat/bulletin/2009/20091201/33147.htm> (text of proposed new Utah Administrative Rule R277-111, as advocated by Professor Wiley and as became effective January 7, 2010); David Wiley, *Utah and Creative Commons*, OPEN CONTENT, December 3, 2009, at <http://opencontent.org/blog/archives/1156> (visited December 18, 2010) (explaining Wiley’s efforts to lobby for the new rule in order to create presumption that content personally created by Utah government teachers as part of employment will be amenable to sharing); <http://davidwiley.org/> (visited January. 18, 2010) (more about David Wiley’s career and efforts in connection with the open content movement).

59. For a quick overview of Benjamin Franklin’s perspective, see note 18, *supra*.
60. Jefferson, *supra* note 6.



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